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SECTION: Arrests General

Arrests General

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I. General Information

In Tennessee, an arrest may be made either (1) by an officer under a warrant, (2) by an officer without a warrant, or (3) by a private person.

Officers of this department will make arrests for state felonies and state or city misdemeanors.

Offense in presence of magistrate - When a public offense is committed in the presence of a magistrate, he may, by verbal or written order, command any person to arrest the offender, and thereupon proceed as if he had been brought before him on a warrant of arrest.

A. Arrests of Adults for Warrants

Arrest warrants will only be executed by sworn law enforcement officers. Should an officer check a person and find that an outstanding warrant exists for that person's arrest and the Memphis Police Department officer has no other charges, the Memphis Police Department officer will notify Station B of the arrest. Station B, in turn, will notify the Shelby County Fugitive Squad, which will be operating on a 24-hour basis. If the prisoner is male the transporting Memphis Police Department officer will take the prisoner to the CJC (205 Poplar) and turn him over to the Shelby County Fugitive Squad officer. If the prisoner is female, the transporting officer will transport the prisoner to Jail East. The Fugitive Squad officer will then take the prisoner and serve the warrant. Memphis Police Department officers will provide their names, IBM numbers, and call numbers to the Fugitive Squad officer. That information will be placed on the Arrest Ticket by the Fugitive Squad officer.

If a person is arrested on a City Ordinance arrest warrant, the Memphis Police Department Officer will verify the warrant through the dispatcher, complete the Arrest Ticket, and obtain the warrant from the ADE office. If the person was arrested on charges other than the arrest warrant, then a separate Arrest Ticket must be completed on those charges.

Persons arrested on warrants, where circumstances indicate the need for additional investigation, will be handled as described in the procedures for Adult Arrests on Probable Cause.

B. Arrests by officer without warrant

An officer may, without a warrant, arrest a person:

1. For a public offense (misdemeanor) committed or a breach of the peace threatened in his presence;
2. When the person has committed a felony, though not in his presence;
3. When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it;
4. On a charge made, upon reasonable cause, of the commission of a Felony by the person arrested;

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5. Who is attempting to commit suicide;
6. Who has committed a crime involving domestic abuse in or out of the presence of the officer (T.C.A. 36-3-619) re: (Note: For arrests of mental consumers, see Ch. IX).

C. Arrests by private persons - No fees allowed

A private person may arrest another: (1) for a public offense committed in his presence; (2) when a felony has been committed, and he has reasonable cause to believe that the person arrested committed it. Provided that a private person who makes an arrest of another pursuant to the provisions of State Law shall receive no arrest fee or compensation thereof.

A private person who has arrested another for a public offense (citizen's arrest), shall, without unnecessary delay, take him before a magistrate or deliver him to an officer. An officer taking custody of a suspect in this situation acts as transporting officer.

An officer may take before a magistrate, without a warrant, any person who, being engaged in the commission of a public offense, is arrested by a bystander and delivered to him, and anyone arrested by a private person as provided by state law.

II. Arrests Made as a Result of Crime Stoppers Information

Crime Stoppers is required to maintain accurate records of arrests based on tipster information. Arrests must be verified to ensure legitimate and proper awards are paid to tipsters, and to monitor the overall effectiveness of the program. In the past, verification has been difficult because arresting officers were not aware that the call originated from Crime Stoppers.

Dispatchers will notify responding officers if a call originates from Crime Stoppers. If an arrest is made as a result of the call, arresting officers will write "Crime Stoppers" in the narrative and at the top of the arrest ticket. ADE personnel will forward a copy of the arrest ticket to Crime Stoppers.

Arrests made as a result of Crime Stoppers information by the investigative bureaus will be handled as outlined in Investigative Services SOP chapter 9.

III. Probable Cause Arrests:

A. Adult Arrests on Probable Cause:

1. Prior to transporting individuals who are arrested for committing offenses that warrant additional investigation, the arresting officer will obtain the approval of his immediate Supervisor. The Supervisor will make the scene to approve the arrest and will contact the supervisor of the appropriate bureau. The bureau supervisor will advise if investigators will make the scene immediately, or if witnesses and/or suspects are to be transported to the bureau. During the hours of 1600-0800 Felony Response will be the contact bureau for the arresting officer's supervisor.

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2. It will be the responsibility of the arresting officer's supervisor to determine if bureau notification is necessary:
 - a. If no further investigation is warranted, the supervisor will deny the request for additional investigation, and it will be the responsibility of the arresting officer, after the approval of the Supervisor to either straight charge or release the suspect.
 - b. If probable cause is present and further investigation is warranted, it will be the responsibility of the arresting officer to immediately execute the required arrest documents.

B. Juvenile Arrests on Probable Cause:

Arrests warranting additional investigation will be handled as described in the procedures for Adult Arrests on Probable Cause. Unless otherwise instructed by a supervisor, the defendant will be transported to Juvenile Court then the arresting officer will proceed to the ADE office with the original arrest ticket. These charges will not affect the policies of Juvenile Court and it will still be required that the arrest document indicate the specific offense with which the juvenile is charged.

IV. Straight Charged Felony Arrests

Some felony arrests warrant no additional investigation from a bureau. It will still be mandatory that the arresting officer's supervisor approve the felony arrest ticket on the scene. The ADE will route the Arrest Ticket, Affidavit of Complaint, and Bond Recommendation to the appropriate bureaus. The Bureau Involved and Offense Report Number blocks must be completed by the arresting officer.

When a suspect is arrested for the following offenses they will be straight charged by the arresting officer:

- Evading Arrest (Vehicle Pursuit) - Traffic Division must sign off on this arrest ticket also.
- Felony Vandalism – Vandalism over \$500 (report required)
- Felony Shoplifting – Shoplifting Merchandise over \$500 (report required)
- False Fire Alarms
- Carrying a Weapon on School Property (report required)
- Aggravated Prostitution (HIV+)
- Obtaining Controlled Substance by Fraud/Dec/Forged Prescription
- Possession of Controlled Substance w/intent to Man/Del/Sell

These are the **only** charges that this procedure applies to.

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V. Mandatory Investigation Bureau Notification

All Supervisors have the responsibility of notifying the appropriate bureau or after hours (1600-0800) Felony Response, with regard to the following circumstances or events.

- A. Crimes that involve serious or critical injuries.
- B. Crimes with injured elderly and/or sick victims, regardless of the seriousness of the injury.
- C. Crimes where a felony arrest has been made, which requires the bureau to charge the suspect.
- D. Crimes where a public official, celebrity, or other high profile individual is a victim, suspect, witness or otherwise involved.
- E. Crimes which occurred on school campuses.
- F. Crimes that match an established pattern of acts.
- G. Crimes where the value of the property taken is an excessive amount.
- H. Crimes where further investigation by a bureau is warranted.
- I. Crimes that gain media attention.
- J. Homicides, suicides, accidental deaths, and all other deaths which are suspicious in nature.
- K. Business robberies, including banks.
- L. Home invasion robberies with injuries.
- M. Child Abuse cases where the victim is less than 12 years old.
- N. Sex Crimes where the suspect is unknown and the victim has no local contact information.

On a probable cause arrest where a bureau is assigned the matter, it will be the responsibility of the investigating officer to complete the Affidavit of Complaint and have it sworn to. When a person has been arrested on probable cause wherein misdemeanor charges are also to be lodged, the arresting officer WILL NOT complete an Affidavit of Complaint. The investigator handling the felony charge will complete the Affidavit of Complaint to include the misdemeanor charges. The arresting officer need only fill out a probable cause Arrest Ticket. The only exception will be on narcotics arrests where the arresting officer will straight charge the suspect. It may be noted that if a person is arrested for charges lodged by the arresting officer and it is found that a state arrest warrant is outstanding on this person, the Memphis Police Department Officer will complete the Arrest Ticket on the observed charges or on probable cause charges only and place the prisoner in jail as outlined above. The Shelby County Fugitive Squad will be notified by jail personnel and the Fugitive Squad officer will make out an Arrest Ticket on the charges as outlined on the outstanding warrant.

NOTE: Officers must contact a Traffic Division investigator whenever an arrest is made for a traffic related felony.

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VI. Handcuffing Techniques

All arrested persons who are to be transported by Memphis Police Department Officers shall be handcuffed with their hands behind their back and the handcuffs double locked. This includes persons being detained by officers relative to a criminal investigation.

Exceptions to this handcuffing policy are as follows:

- Any person age 12 years or younger.
- Any person who has an injury or handicap, which may be aggravated by handcuffing.
- Elderly persons who may be injured by handcuffing.

Officers will retain discretion to handcuff the above-listed persons if they deem it necessary to prevent escape or injury.

When a prisoner is handcuffed, the handcuffs are not to be used to punish nor inflict pain. They shall be tightened only to the degree necessary to prevent escape from the handcuffs.

When officers are transporting a prisoner who is handcuffed, all traffic laws and ordinances will be obeyed. In instances of multiple suspects or dangerous felony arrests, a back-up officer should be utilized before proceeding to handcuff and search the suspects if it is practical to do so under the circumstances.

The four approved common positions for handcuffing and searching are:

- Kneeling
- Prone
- Standing with support
- Standing

The kneeling position is recommended for optimal safety; however, officers will retain discretion to utilize the best position under prevailing circumstances.

Additionally, the following points shall be considered whenever handcuffs are being utilized:

- If a person is to be secured to an immovable object, it will be designed and intended for such use;
- Officers shall not handcuff persons to themselves;
- Officers should recognize handcuffs as only a temporary restraining device;
- Officers are to use caution when removing handcuffs and try to maintain a grip on the cuffs at all times since open handcuffs, controlled by an arrestee, could be used as a weapon.
- Auto seat belts can be utilized for control of unruly prisoners. Possible methods of seat belt utilization are:
 - 1) Standard pelvic area use
 - 2) Seat belt through the handcuffed arms

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- Officers should maintain control of handcuffed persons by utilizing a hands-on technique or securing the person in the back of the patrol unit to prevent escape.
- Utilization of the arrestee's belt is an acceptable method of further controlling the hands. The handcuffs can be through the belt to prevent the hands from being looped under the body and brought to the front.
- Persons being transported while handcuffed in patrol unit should be seat-belted in their seats, if it is practical to do so. Persons who have **not** been handcuffed, but who have been placed in the back of a patrol unit, and who are subsequently placed under arrest, should not be removed from the unit to be handcuffed without the presence of a back-up unit. All criminal suspects should be searched before being placed in the back of a patrol unit.

VII. Prisoner Restraint Devices

A. Purpose:

To reiterate the policy prohibiting the use of hog-tying to secure a prisoner and to establish a policy regarding the use of the Ripp Hobble Restraint Device.

B. Information:

1. Hog-tying

Memphis Police Department Policy prohibits the use of hog-tying techniques on any person. This applies to all prisoners, regardless of whether or not the person is being transported. **Hog-tying** is defined as securing the hands to the feet or legs, either in front or in back of the person, with any restraining device or method.

2. Ripp Hobble Restraint

The Ripp Hobble Restraint Device which can be used to effectively minimize the threat of danger to the officer and to maximize the restraints placed on the prisoner. Deployed in the proper manner, the Ripp Hobble should minimize injuries to the prisoner and prevent damage to the transporting vehicle.

The Ripp Hobble is designed to secure the ankles or knees of a violent or potentially violent person. The individual can be controlled and transported in an upright-seated position. This minimizes the possibility of POSITIONAL RESTRAINT ASPHYXIA.

a. Deployment Guidelines

To ensure the safety of officers and to limit the possibility of unwarranted injuries, officers should adhere to the following guidelines:

- 1) A prisoner will be handcuffed **before** being restrained with the Ripp Hobble.
- 2) Always keep the prisoner in an upright position. **Do NOT leave any person in a chest down or side down position.**

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- 3) The Ripp Hobble will **ONLY** be applied to the prisoner's legs.
- 4) Always secure the snap end strap inside of the front door of the squad car. Do **NOT** leave the strap hanging out of the vehicle's rear door.

b. Monitoring

Officers shall continuously monitor prisoners who are being restrained. Any officer, who confines an individual in a squad car and restrains the person with the Ripp Hobble, shall ensure that the circulation in the prisoner's legs is adequate. Officers will:

- 1) Ask the prisoner if the circulation is adequate.
- 2) Visually inspect the prisoner's legs, ankles, and/or feet for swelling, discoloration, or any other indication of inhibited circulation.
- 3) Adjust the tension on the Ripp Hobble to the extent necessary for adequate circulation to be maintained.
- 4) **Always** remember, the **only** reason for the application of the Ripp Hobble is to restrain the prisoner in order to minimize the possibility of injury to the officer or the person being restrained.

VIII. Processing Prisoners

It is important to note that for officer safety, all prisoners must be transported **properly handcuffed. A thorough search for weapons and/or contraband must be made prior to transport.**

A. The below listed procedures will be followed during the booking process:

1. Entry into the Sally Port will be made through the East overhead door. Officers will gain entry by making contact with the Deputy Jailers through the intercom.
2. Once inside the Sally Port, the officers will secure **all weapons and ammunition** (including ASP/wooden batons) in the trunk of the squad car or in one of the weapon lock boxes mounted on the south wall of the Sally Port. **Weapons must be secured prior to removal of the prisoners from the squad car.**
3. The prisoner will be removed from the squad car and walked to the Intake Medical Observation window where the following steps will take place:
 - a. Medical Staff will visually inspect and assess the arrestee in the Sally Port for any obvious signs of injury, illness, emotional problems, or intoxication that would require immediate medical attention. Examples would include:
 - 1) Unconsciousness;
 - 2) Noticeable injuries or open wounds and sores that would require bandaging, stitching, or splinting;

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- 3) Severe impairment where the arrestee is unable to stand or appears disoriented;
 - 4) Prisoners who have registered a BAC of .28 or higher;
 - 5) Violent or uncontrollable behavior that appears to medical personnel to be the result of a mental disorder.
 - 6) Any officer who observes or reasonably believes a subject in their care or control has ingested ANY substance (tampering with evidence), SHALL immediately contact Communications to request EMS and notify their shift supervisor.
- b. The Medical Staff will make a determination whether or not the arrestee will be accepted into the facility. If the arrestee is refused due to medical reasons, the arresting officer will be directed to transport the individual to the hospital for medical attention.

Individuals previously deemed medically unacceptable by the Medical Staff due to a physical or mental condition will not be admitted into the jail without a written medical release from the emergency room or hospital. Federal law requires this documentation, even if the prisoner refuses treatment.

The arresting officer may request the use of a wheelchair for prisoners who have been medically cleared to enter the jail, but refuse to walk on their own. This request must be made through the intake security supervisor.
- c. Once the arrestee's condition is verified to be acceptable, the Intake Control Officer will observe the arresting officer's use of a hand-held detector wand to clear the arrestee of any metal contraband before entering the Law Enforcement Lobby. The hand-held wand will remain in the Sally Port and be used on ALL arrestees transported to the CJC.
4. At Jail East, when the arresting officer removes a prisoner(s) from their vehicle, the prisoner will clear the scanner and be escorted, by the officer, to the marker in front of the surveillance monitor in the Sally Port. The officer should push the button located underneath the monitor to alert Intake personnel. Prior to admission, the Intake Medical Staff will do a visual and verbal assessment of the inmate by looking through the Intake window to determine if she is in need of outside medical attention.
5. If the arresting officer has not completed the arrest ticket upon entering the Lobby area, the arrestee must be seated in the lobby or placed in a holding cell. The arresting officer remains responsible for the prisoner until the booking process is completed.

An arrestee that is **cooperative** and **non-violent** may be seated and handcuffed to the bench in the lobby.

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Arrestees that are **violent, uncooperative, or pose a physical threat** will be placed in the holding cell. The arresting officer is responsible for monitoring the arrestee that they have placed in the holding cell.

Due to officer safety concerns and the absence of jail personnel in the lobby area, MPD Officers will place only ONE (1) arrestee per holding cell.

The key to the holding cells will be obtained from the Shelby County Fugitive Office window and returned to them before the officer leaves the lobby area.

It is the Jail Policy for deputy jailers to immediately assist officers with uncooperative prisoners. The Jail Clerical staff is not allowed to come from behind the glass window to assist the officer(s) with an uncooperative prisoner.

5. Upon completion of all paperwork pertaining to the arrest, the arresting officer will remove the handcuffs from the arrestee, obtain a thumbprint, and escort the arrestee and deliver all necessary paperwork to the Processing window.
 - a. The Processing Staff will check the arrest ticket for a legible right thumbprint, the arrestee's name, D.O.B., sex, race, address, R&I number (if obtainable), charges with the appropriate TCA codes, and the arresting officer's name and employee number.

If the right thumbprint cannot be taken, then officers will use the left thumb for a print. When this occurs or no thumbprint can be obtained, the officer must document the reason for this in the arrest ticket narrative.
 - b. The Processing Staff will enter the arrestee's information into the JMS system as it appears on the arrest ticket. The arresting officer will then be instructed to have the arrestee place their right or left thumb onto the Thumbprint Scanner to verify the identity of the arrestee.
 - c. If the print verification matches, the R&I number will appear on the thumb scan showing a positive "HIT" verifying the arrestee's identity. If prints cannot be determined or verified, the Processing Staff will notify the Records and Identification Section for assistance. The arresting officer will be allowed to proceed to the next process while the verification is taking place. If a message appears as "POSSIBLE HIT", the R&I staff will be contacted to verify the prints electronically. If the prints cannot be verified, the arrestee will be processed as a new arrest.
 - d. During the verification process, a photo will be taken of the arrestee, and the Processing Staff will assign a tracking number (booking number) on the top right corner of the arrest ticket and make a copy.
6. On October 1, 2002, the District Attorney General's office assigned an experienced prosecutor to the A.D.E. Office during most shifts to assist officers with charging decisions in the processing phase of suspects that have been transported to jail.

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If an assistant D.A. is on duty, officers will take their charging documents to the assistant D.A. for approval **prior** to presenting the charging documents to the Judicial Commissioner. The screening assistant D.A. will advise the officer of any corrections that need to be made on the charging documents.

The screening assistant D.A. will be looking for more than mere probable cause. They may decline to prosecute a case where there is insufficient admissible evidence to create a reasonable chance for a conviction, especially when considering the most plausible, reasonably foreseeable defense that could be raised with the evidence presented.

A case may be declined for prosecution, even though the standard of evidentiary sufficiency has been satisfied, in situations where the District Attorney's office feels, after a review of the evidence, that the case cannot be proved beyond a reasonable doubt.

The screening assistant D.A. will be available for consultation by phone before transport to assist officers and supervisors with any questions they may have.

The arresting officer will then proceed to the Judicial Commissioner's window at which time the Commissioner will review the arrest on the pending charge(s). The following could occur at the window:

- a. If the charges are validated, the arresting officer will take the arrest ticket back to the Processing Window and the arrestee will be admitted into the jail.
- b. If the Judicial Commissioner rules that the affidavit of complaint lacks probable cause, the arresting officer should make the necessary corrections to the affidavit of complaint and re-submit it. However, if all the possible facts were in the original affidavit of complaint and no corrections can be made, then the arrestee will be released.
- c. If the arresting officer believes that the affidavit of complaint contained sufficient facts for probable cause but was rejected by the Judicial Commissioner for whatever reason (animosity toward a particular law, belief that the arrest or search was illegal), then the arresting officer should obtain permission from a supervisor to prepare an arrest warrant for the now released arrestee. The arresting officer should present this arrest warrant affidavit to one of the General Sessions Judges at the next session of General Sessions Court.
- d. If the Judicial Commissioner finds that the affidavit of complaint sets out probable cause but since the arrestee has now been identified by jail personnel at the processing window, directs that the arresting officer issue a misdemeanor citation, the arresting officer should advise the Judicial Commissioner:
 - 1) The prisoner was arrested in accordance with State law, as evidenced by the Judicial Commissioner's finding that the affidavit of complaint sets out probable cause; and

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- 2) Post arrest citation release is controlled in Tennessee law by TCA 40-7-120 (set out in its entirety at the end of this Policy and Procedure Update), which grants the Sheriff the authority to release by citation, after processing, persons brought to the jail under arrest for misdemeanors.
 - e. If the situation cannot be resolved, then the arresting officer should immediately request a supervisor meet them at the Sally Port.
 - f. If a Judicial Commissioner cannot be located when the officer is ready to swear to the affidavit of complaint, the officer should locate a 24-hour clerk as in past practice.
 - g. If a prisoner is issued a Misdemeanor Citation or released from the jail by any other means Memphis Police Officers will not transport the released arrestee to any location.
7. The Intake Control Officer will instruct the arresting officer to have the arrestee pass through the metal detector in the lobby. Arrestees that are admitted into the jail will be placed in one of four (4) transfer holding cells. Each cell will not contain more than five (5) arrestees. Once these cells have reached their maximum capacity, MPD Communications will be advised to notify officers that there will be a delay in accepting new arrestees. When the transfer holding cells are full, jail security staff will be assigned to supervise arrestees (more than one) inside the Law Enforcement Lobby after the booking process has been completed.

At the point the officer has turned the prisoner over to the custody of the Shelby County Jail and has completed the written Arrest Ticket, the Arrest Ticket will be given to the Arrest and Data Entry personnel by passing it through the receiving tray at the ADE Office window. Prior to the officer leaving, a copy of the arrest ticket will be made for the arresting officer that includes a date and time stamp. (71.1.6.d)
8. Personnel from the Investigative Bureaus will continue to access prisoners for questioning via the elevator system that is currently used. If Investigative Personnel must remove individuals from the jail, they will follow the above procedures in 3, c) when returning a prisoner to the Sally Port. Since prisoners will have to be escorted outside the building, two (2) Detectives must accompany any individual that is removed from the jail area to be questioned or is being returned to the jail after questioning.

IX. Release citations for misdemeanants. 40-7-120.

A. As used in this section, except as otherwise specifically indicated:

1. "Citation" means a written order issued by a sheriff requiring a person accused of violating the law to appear in a designated court at a specified date and time. Such order shall require the signature of the person to whom it is issued; and

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2. "Magistrate" means any state judicial officer, including the judge of a municipal court, having original trial jurisdiction over misdemeanors or felonies.
- B.** A sheriff or sheriff's designee may, at a county jail, issue a release citation to any person who has been arrested for a violation of law which is punishable as a misdemeanor and who has been booked and processed for such violation.
- C.** The citation shall demand the person cited to appear in court at a stated time and place, and it shall state the name and address of the person cited, the name of the issuing sheriff and the offense charged. The time specified on the citation to appear shall be as fixed by the sheriff issuing the citation.
- D.** The citation shall be executed in triplicate, the original to be delivered to the court specified therein, one (1) copy to be given to the person cited, and one (1) copy to be retained by the sheriff issuing the citation. The original citation delivered to the court shall be sworn to by the issuing sheriff before a magistrate or official lawfully assigned such duty by a magistrate. The person cited shall signify such person's acceptance of the citation and such person's agreement to appear in court as directed by signing the original citation.
- E.** Whenever a release citation has been prepared, accepted and the original citation delivered to the court as provided herein, the original citation delivered to the court shall constitute a complaint to which the person cited must answer, and neither the arresting officer nor the sheriff issuing the citation shall be required to file any other affidavit of complaint with the court.
- F.** The signature of the person cited shall create a presumption of knowledge of notice to appear and a presumption of intent to violate this section if such person should not appear as required by the citation.
- G.** The citation shall give notice to the person cited that such person's failure to appear as ordered is punishable as a separate misdemeanor offense. Each citation issued pursuant to this section shall have printed on it in large, conspicuous block letters, the following:
- NOTICE: FAILURE TO APPEAR IN COURT ON THE DATE ASSIGNED BY THIS CITATION WILL RESULT IN YOUR ARREST FOR A SEPARATE CRIMINAL OFFENSE, WHICH IS PUNISHABLE BY A JAIL SENTENCE OF UP TO SIX (6) MONTHS AND/OR A TWO HUNDRED FIFTY DOLLAR (\$250) FINE.

X. Duty Commander Notification of Injured Suspects

If any suspect taken into custody by members of the department has serious or critical injuries that require immediate medical treatment, the Duty Commander must be notified.

The Duty Commander, upon receiving notification, will immediately contact the Commander of Inspectional Services.

XI. Prisoner's Right to Phone Call

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No person under arrest by any officer or private citizen shall have his name entered on any book, ledger, or any other record until such time that said person has successfully completed a telephone call to an attorney, relative, minister, or any other person that he shall choose, without undue delay. One (1) hour shall constitute a reasonable time without undue delay. However, if the arrested person does not choose to make a telephone call, then he shall be "booked" or docketed immediately.

To abide by state law, to provide prisoners with all their rights, and to protect our personnel from criminal as well as civil liabilities, all persons shall be informed of their right to make a phone call and be allowed to successfully complete one call to whomever the prisoner chooses to call. This includes drunks and persons under the influence of drugs. If assistance is needed, we should furnish it.

The one (1) hour stipulation is construed to be the time in which the prisoner is allowed to successfully complete his phone call. For example, if we arrest an individual at 1000 hours and transport him to detention at 1030 hours, he shall be informed of his right to a phone call immediately. Assuming we inform the prisoner of this right at 1031 hours, he has until 1131 hours to complete his phone call. At 1132 hours we can book him. This does not mean the prisoner can sit around and delay attempting his call, but must make an earnest effort to complete his call.

XII. Removing Prisoners from Detention Area

A. For Investigation:

All prisoners removed from the Detention area to be taken to an area for interrogation or further investigation will be handcuffed behind the back prior to leaving the Detention area and entering the hall.

Whenever a prisoner is suspected of committing a major crime, the prisoner will be handcuffed prior to leaving the Detention area and will remain handcuffed until returned to Detention. Also, two officers will accompany prisoners who are suspected of committing a major crime.

B. Temporarily Taken From Criminal Justice Complex:

In the event a prisoner is temporarily taken from the Justice Complex for any reason, such as to the hospital or for a physical examination, that prisoner must be returned to the jail using the same name under which he initially left the jail. If, during the time he is temporarily out of the jail, it is discovered that he has been using an alias, he should be returned to the jail under his alias, a.k.a. true name. Otherwise, he will not be accepted into the jail.

XIII. Jail Records & Information

A. Generally:

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All original documents pertaining to, or affecting the status of, a person incarcerated in the Shelby County Jail will be transmitted directly to the Release Control area of this facility. This would include status changes from all courts, bond information on all types of charges, add-on charge documents, hold for, release holds, and any other documents that might affect the incarceration, length of same, or release from this facility.

If any agency transmitting information to the Release Control Center needs that same information to be held or handled by another branch of the system, it is the responsibility of the originating agency to notify all needed or interested parties.

No information of this type will be sent to the R & I Section. All information relative to this operation will be handled in-house by the Sheriff's personnel. All requests for information about the status of persons incarcerated in the County Jail will be handled in this area by calling 545-5660 or appearing in person at this area.

Do not call R & I for information about the current status, charges, bonds, or release information for persons currently in jail. They no longer have this information. It must be requested of the Records personnel located in the Release Control Center of the jail.

B. Prisoner Hold Forms

If a defendant is arrested for a misdemeanor or "straight charge felony", and the arresting officer believes the defendant is involved in other criminal activity; the arresting officer should *submit a memo to the proper investigative bureau and attach a copy of the arrest ticket*.

If there is probable cause to believe a person has committed a Class A or B felony that needs to be investigated further, the charging officer (Bureau Investigator only) will complete a "48 Hour Order Granting Detention for Probable Cause" and submit it to a Judge or Judicial Commissioner. This order will expire in forty-eight (48) hours.

If there is probable cause to believe a person has committed a crime involving narcotics where the arresting officer is required to test and weigh contraband, the officer will complete a "2 Hour Order Granting Detention for Probable Cause" and submit it to a Judge or Judicial Commissioner. This order will expire in two (2) hours.

Officers will never bring a prisoner into the Property and Evidence Room or leave a prisoner unattended to bypass this procedure.

C. Release without Charge/Status Forms

If a defendant is released without charge and no additional charge(s) are to be placed against said defendant, then the investigating officer needs to complete a Release without Charge form and submit it to the 24-hour clerk. Please note that this Release without Charge form will be printed on a red paper, which will indicate to the officer, the clerk, and the Sheriff that the defendant is to leave the jail.

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If a defendant's original charge is being changed to another charge, then the investigating officer needs to complete the Status Change form and attach it to his amended original Arrest Ticket and Affidavit of Complaint at the same time they are presented to the 24-hour clerk.

If the defendant's charge(s) remains as an active charge(s), but additional charge(s) are placed against said defendant, then no Status Change form is necessary. The officer needs only to correct his original Arrest Ticket by adding the additional charge(s) and submit it to the 24-hour clerk along with his Affidavit of Complaint.

XIV. Bail Bondsmen

Officers are often faced with a situation involving Bail Bondsmen who are attempting to make an apprehension and who may request the aid of the Memphis Police Department officers. Further, the bondsmen may be from another jurisdiction and the question of extradition arises. The following legal authorities will provide guidelines for officers dealing with such situations. Officers, after determining the identity of the bail bondsmen and checking their warrant (which is their authority to act), should engage in no agreements, nor act in concert, with the bondsmen. This means that officers should not enter, or go upon the premises where the warrant is to be served, in a manner that could be reasonably construed as an attempt to aid the bondsmen with their apprehension. Officers still have a duty to protect the public's peace. However, this should be handled as any other police matter.

The definitive case is Maynard V. Kear, 474 F.Supp. 794- (1979), which is a 6th Circuit case. In that case, two out of state bail bondsmen saw two police officers and advised them they were about to attempt to apprehend a wanted party. The officers checked their warrant from the other jurisdiction, advised them to not engage in any affray and apparently gave them directions to the suspect's residence. The bondsmen proceeded to that address, forced entry, briefly fought with the suspect, and placed him in their auto. The police officers, who had obviously stayed in the area, stopped the bondsmen's car, checked the suspect for serious injuries and inquired as to what had happened. The bondsmen returned to the other jurisdiction the next day. When suit was brought against the officers by the arrested party for violating his civil rights, the court held in favor of the officers.

The court cited Fitzpatrick V. Williams, 46F2d.40, and Taylor V. Tainter, 83 U.S. 366 for the proposition that no extradition is necessary when a bail bondsman crosses state lines. The court was specific in pointing out that the police did not act in concert with the bondsmen, or pursuant to an agreement with them. Continuing, the court said there was no state action involved and no liability on the part of the municipality or their agents.

The bondsmen's authority, however, is not unbridled and they can use only that force which is necessary in effecting the arrest. The case of Poteete V. Olive, 527 S.W.2d 84 (1975), which is a Tennessee Supreme Court decision holds that:

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- (1) State law vests the bondsman with authority to arrest the principal (suspect) after a conditional judgment of forfeiture has been rendered and extends that authority even after final forfeiture if the principal is surrendered prior to payment.
- (2) State law however, states that following payment, the bondsmen's right to surrender the accused lapses and with it, his power to arrest.
- (3) State law also, requires a bondsman to give his agents a certified copy of bond properly endorsed in order to authorize the arrest and allows the endorsed bond, in the hands of the bondsmen's agents, to serve a legal process which must be exhibited to the principal (party to be arrested) when arresting him.

XV. Consular Notification

All levels of law enforcement must ensure that foreign governments can extend appropriate consular services to their nationals in the U.S. and that the U.S. complies with its legal obligations to such governments. It is essential that U.S. citizens be offered the same consular services when they are detained abroad. To require that of other countries, we must be certain we provide the proper procedures here.

A. Summary of Requirements Pertaining to Foreign Nationals

1. When foreign nationals are arrested or detained, they must be advised of the right to have their consular officials notified.
2. In some cases, the nearest consular officials must be notified of the arrest or detention of a foreign national, **regardless of the national's wishes.**
3. Consular officials are entitled to have access to their nationals in detention, and are entitled to provide consular assistance.
4. When a government official becomes aware of the death of a foreign national, consular officials must be notified.
5. When a guardianship or trusteeship is being considered with respect to a foreign national who is a minor or incompetent, consular officials must be notified.

These are mutual obligations that also pertain to American citizens abroad. In general, you should treat a foreign national as you would want an American citizen to be treated in a similar situation in a foreign country. This means prompt, courteous notification to the foreign national of the possibility of consular assistance, and prompt, courteous notification to the foreign national's nearest consular officials so that they can provide the consular services they deem appropriate.

NOTE: All foreign nationals are entitled to consular notification and access, regardless of their visa or immigration status in the United States.

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B. Steps to Follow When a Foreign National is Arrested or Detained

1. Officers must determine the foreign national's country. In the absence of other information, assume this is the country on whose passport or other travel documents the foreign national travels.
2. If the foreign national's country is **not** on the mandatory notification list (verification must be made through the dispatcher via Station B):
 - a. Offer, without delay, to notify the foreign national's consular officials of the arrest/detention.
 - b. If the foreign national asks that consular notification be given, the officer's supervisor will direct the communications supervisor to notify the nearest consular officials of the foreign national's country without delay.
3. If the foreign national's country **is** on the list of mandatory notification countries (verification must be made through the dispatcher via Station B):
 - a. The officer's supervisor will direct the communications supervisor to notify that country's nearest consular officials, without delay, of the arrest/detention.
 - b. Tell the foreign national that you are making this notification.
4. Officers must document the provision of notification and actions taken in the arrest ticket narrative.

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Processing of individuals arrested on Probable Cause:

I. Arrests on Probable Cause:

- A.** Prior to transporting individuals who are suspected of committing offenses that require additional investigation, the arresting officer will obtain the approval of his immediate supervisor (Lieutenant). The supervisor will make the scene to approve the arrest and will contact the supervisor of the appropriate bureau who will, in turn, advise if anyone from that bureau will make the scene for further investigation. During the hours of 1600-0800, Felony Response will be the contact bureau.
- B.** It will be the responsibility of the arresting officer's supervisor to:
 - 1. Determine if no further investigation is warranted, or would not prove productive. In this event he will deny the request for additional investigation, and it will be the responsibility of the arresting officer, after conferring with the Commanding Officer, to either straight charge or release the suspect.
 - 2. Determine that probable cause is present and further investigation is required and approves the detention of the suspect. In the event additional investigation is approved, it will be the responsibility of the arresting officer to immediately execute the required arrest documents and transport the suspect to the appropriate bureau for investigation.
- C.** Upon the suspect's arrival in the bureau, the case investigator will begin and complete a detention log on the suspect. The detention log is part of the case file and should appropriately be filed with the case records, whether the suspect is eventually charged or released.

II. Arrests of Adults on Warrants:

Arrests on warrants, where circumstances indicate the need for additional investigation, will be handled as described in the procedures for Adult Arrests on Probable Cause. Arrests on warrants that do not require additional investigation will be handled in the same manner that is currently employed, i.e., transported to the SCSD Fugitive Squad at 201 Poplar, Jail Annex, Room 10-24.

III. Juvenile Arrests on Probable Cause:

Approval for extended detention of juveniles arrested on probable cause will be obtained in the same manner as the procedure outlined for adults. The defendant will be transported to Juvenile Court then the arresting officer will proceed to the ADE's office with the original arrest ticket. These charges will not affect the policies of Juvenile Court and it will still be required that the arrest document indicate the specific offense with which the juvenile is charged.

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IV. Straight Charged Felony Arrests

Some felony arrests require no additional investigation from a bureau. It will still be mandatory that the arresting officer's supervisor approve the felony arrest ticket on scene. The ADE will route the Arrest Ticket, Affidavit of Complaint, and Bond Recommendation to the appropriate bureaus.

When a suspect is arrested for the following offenses they will be straight charged by the arresting officer:

Evading Arrest (Vehicle Pursuit) - Traffic Division will sign off on this arrest ticket also.

Felony Vandalism – Vandalism over \$500 (report required)

Felony Shoplifting – Shoplifting Merchandise over \$500 (report required)

False Fire Alarms

Carrying a Weapon on School Property (report required)

Aggravated Prostitution (HIV+)

Obtaining Controlled Substance by Fraud/Dec/Forged Prescription

Possession of Controlled Substance w/intent to Man/Del/Sell

These are the **only** charges that this procedure applies to.

V. DNA Collection

When a person is arrested for the commission of a **violent felony**, as defined in TCA 40-35-321, such person shall have a biological specimen taken for the purpose of DNA analysis. The DNA analysis is taken to determine identification characteristics specific to the person.

As used in this statute, "violent felony" means:

- Murder, First Degree
- Murder, Second Degree
- Kidnapping, Aggravated
- Kidnapping, especially Aggravated
- Aggravated Assault
- Aggravated Child Abuse
- Burglary, Aggravated
- Burglary, Especially Aggravated
- Robbery
- Robbery, Aggravated
- Robbery, Especially Aggravated
- Carjacking
- Sexual Battery
- Sexual Battery by an authority figure
- Sexual Battery, Aggravated
- Statutory Rape
- Statutory Rape by an authority figure

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- Rape
- Rape of a child
- Rape of a child, Aggravated
- Aggravated Arson
- Attempt, under 39-12-101, to commit the offenses above
- Solicitation, under 39-12-102, to commit the offenses above
- Conspiracy, under 39-12-103, to commit the offenses above
- Criminal responsibility, under 39-11-402(2), for any offense above
- Facilitating the commission, under 39-11-403, of any offense above
- Accessory after the fact, under 39-11-411, to any offense above.

Memphis Police Investigators/Officers will collect a sample sufficient to determine the DNA profile of all individuals charged with the above listed offenses.

Investigators/ officers are responsible for completing the Arrestee DNA Sample Submittal Form, and ensuring that the charges placed against the individual arrested is within the list of statutes that require DNA samples.

To ensure that DNA samples are not rejected by T.B.I. Investigators/ Officers shall:

1. Complete the Arrestee DNA Sample Submittal Form by filling in all of the requested information and placing the right and left thumb print of the arrestee in the appropriate space on the form.
2. Place the correct charges with the corresponding TCA codes in the offense area.
3. Sign the Arrestee DNA Sample Submittal Form. If the form is not signed, the booking process will cease and the form will be rejected.

Arrestee DNA Sample Submittal forms are located in the jail area and on Kiosk.

The Shelby County Sheriff's Department – Jail Division will collect the samples for the Memphis Police Department and submit them to the Tennessee Bureau Crime lab in Memphis, Tennessee in a timely manner.

MEMPHIS POLICE DEPARTMENT POLICY AND PROCEDURES

SECTION: Detention of Suspects

A law enforcement agency has the right, as well as the duty, to investigate alleged criminal conduct. Consistent with his right, officers have the authority to:

1. Arrest a subject where they have probable cause to believe that the subject is guilty of a criminal offense;
2. Place the subject in a lineup for the purpose of identification;
3. Require a subject to give a sample of his handwriting;
4. Photograph the subject;
5. Fingerprint the subject;
6. Search the subject;

and to take any action consistent with the right of a department to conduct an investigation.

A person being subjected to custodial interrogation by a law enforcement officer is entitled to all the rights afforded by Miranda.

The Miranda warning need not be given during the questioning of a suspect who has not been taken into custody or otherwise deprived of his freedom of action in any significant way. If in doubt as to whether the defendant needs to be advised of Miranda rights, give the warnings. Although a defendant has a constitutional right not to make a statement, he is required to give such information as is necessary to fill out the top portion of the arrest ticket (name, DOB, address, etc.). This information has been held by the courts not to be a confession. A defendant refusing to give this information can be held in custody until he/she gives it.

It is well understood by police officers that once a criminal suspect in custody has "expressed his desire to deal with the police only through (legal) counsel, (he or she) is not subject to further interrogation by the authorities until counsel has been made available to him/her, unless the accused himself/herself initiates further communication, exchanges or conversations with the police", Edwards vs. Arizona, 101 S.Ct. 1880. Now that concept has been expanded in Michigan vs. Jackson, 106 S.Ct. 1401. That case holds that "if police initiate interrogation after defendant's assertion, at arraignment or similar proceeding, of his right to counsel, any waiver of defendant's right to counsel for that police initiated interrogation is invalid". Further, the Court held that while officers conducting the investigation may not know of the defendant's request for an attorney at the arraignment, "one set of state actors (the police) may not claim ignorance of defendant's unequivocal request for counsel to another state action (the Court)".

The effect of this recent decision is to disallow a waiver by the suspect, of his/her right to remain silent, if the police officer, even after advising him/her of his rights under Miranda, initiates the

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SECTION: Detention of Suspects

interview. This does not preclude, however, initiation, by the suspect, of an interview with the investigating officer who informs him of his rights under Miranda prior to taking his statement.

Warrantless Felony Arrests:

A Police Officer can still make an arrest in a private home without an arrest warrant, but the U.S. Supreme Court has greatly restricted the police in making warrantless entries into the home to make an arrest. Only if there are exigent or emergency circumstances, is a warrantless entry to arrest justified. If an officer can make a non-forcible entry into a private home with the valid consent of a person who lives there, it is not necessary that he/she have an arrest warrant in order to make a lawful arrest on the premises. Further, if an officer is in "hot pursuit" of a fleeing felon, it is not necessary that he stop at the door and retreat to obtain an arrest warrant. Also, an officer does not need a warrant to enter premises to make a probable cause arrest if the arrest is necessary to prevent destruction of evidence. This ruling does not apply to houses other than the defendant's house. Thus, the police could not enter a defendant's home to arrest him/her without at least an arrest warrant **AND** reason to believe that he was at home at that time. The Court held that no search warrant was necessary because an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within".

A determination as to whether a felony arrest is "routine" or whether "exigent circumstances" exist will be based on the reasonableness of the officer's actions in light of the information available to the officer at the time of the arrest.

An arrest warrant, for misdemeanor or felony, empowers the executing officer to search for the individual named in the warrant when the executing officer has:

- a. probable cause to believe that he/she is searching the primary residence of named individual, AND
- b. has probable cause to believe that the named individual is at home at that time.

Officers should make every reasonable attempt to leave the matters of executing arrest warrants to the Sheriff's Department Fugitive Squad, and advise any officers from other jurisdictions, or bounty hunters, to seek the assistance of that unit.

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SECTION: Eyewitness Identification Procedures

Eyewitness Identification Procedures

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I. Identification Procedures - Generally:

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SECTION: Eyewitness Identification Procedures

- A. Single Shot: An identification procedure within a short time after a criminal event, where a possible suspect is caught at, or a short distance from, the crime scene. The purpose of a single shot identification is to identify or eliminate a person as suspect in an offense.
- B. Photographic Display: An identification procedure where a series of photographs, including a photograph of the suspect, is displayed to a witness.
- C. Physical Lineup: An identification procedure, in which a group of persons, including the suspect is displayed to a witness for the purpose of determining whether the witness identifies the person responsible for the offence.

II. Conducting a Single Shot:

The practice of placing a defendant in a "single shot" situation shall be used only in cases where a witness or victim is at the scene of a crime and a possible suspect is detained in the immediate area of the crime within an hour. Officers should be reasonably certain that the witness/victim can identify the suspect and obtain a physical description prior to the single shot.

- A. Officers who apprehend the suspect away from the scene will, without delay, transport the suspect. The courts allow the suspect in these cases to be brought back to the scene in order to ensure that the right person is arrested.
- B. Officers should separate all witnesses to ensure each witness makes an independent identification without the influence or advice from other potential witnesses.
- C. Witnesses should be instructed that an offense report will be taken and the investigation will continue regardless of their ability to make or not make identification.
- D. The reporting officer will document in the offense report the results of the single shot identification. To identify the level of confidence of the witness, an investigator will take a written statement to continue the investigation.
- E. During the single shot and the interview process, the witness/victim should not be given any hints or suggestions to influence the identification.

NOTE: PDA's will not be used for single shot purposes.

III. Escorting an Eye Witness in the Field for Identification Purposes:

Where a victim or eyewitness feels that he may be able to aid in the location and/ or identification of a suspect, officers may allow that person to ride in a patrol car for the purpose of helping to locate and identify the suspect.

IV. Multiple Eyewitnesses

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SECTION: Eyewitness Identification Procedures

Regardless of the lineup method used, at no time will investigators conduct a lineup (photographic, physical, or single shot) for more than one eyewitness at the same time. When there is more than one witness scheduled to participate in viewing a lineup, separate witnesses from one another to ensure that each witness makes an independent identification without influence or advice from other potential witnesses. (42.2.11c)

V. Photographic Display:

When a photographic spread is used for identification purposed, at least six (six) photographs of individuals similar in appearance must be used. If it is not possible to secure six (6) similar photographs because of unusual physical characteristics involved, a lesser number may be used. However, under no circumstances may less than four (4) photographs be used.

VI. Physical Lineups:

All suspects involved in identifications shall be identified in the show-up room of the Criminal Justice Center. In the event the show-up room is unavailable, lineups will be taken in the large interview room in the MPD Homicide Office. Pictures shall be taken of all lineups whether or not an identification is made.

- A. Where a lineup is conducted BEFORE the defendant has been placed on the docket, indicted, or arrested on a warrant, the following procedure shall be followed:
1. The defendant shall be advised that he/she MAY have an attorney of his/her own choice present during the lineup; or if he/she is unable to afford an attorney, the public defender will be contacted on his/her behalf.
 2. In the event the defendant does not desire to have his/her own attorney or the public defender present during the lineup, then the existing waiver cards now being used shall be signed by the defendant indicating that he/she has been advised that he/she may have an attorney present during the lineup but does not desire one.
 3. The attorney for the defendant, including the public defender if the defendant is unable to afford an attorney, shall be notified of the pending show-up and be given a reasonable opportunity to appear. If the attorney engages in unreasonable delay and attempts to otherwise delay the lineup, then the lineup may be conducted without him/her being present.
- B. Where the lineup is conducted AFTER a defendant has been placed on the docket for his/her preliminary hearing, has been indicted, or has been arrested on a warrant, the following procedure shall be followed:

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1. The defendant shall be advised that he/she has a RIGHT to an attorney of his/her own choice; or if he/she is unable to afford one or contact his attorney, the public defender will be contacted for him/her.
2. Where the defendant chooses to waive this right, the existing waiver card shall be signed by the defendant.
3. When officers are establishing lineups for possible identification of suspects, they will submit the "Interview Request Form". The investigator will then go to the Jail Release Section and have the Lower Level Housing Supervisor (Intake Sergeant) meet them. The supervisor and the investigator will then select the inmates whom the investigator wishes to appear in the lineup.
4. Lineups shall be conducted as in the past; and where a defendant's attorney is present, he/she shall be allowed to witness the lineup and observe whether or not any person made suggestive remarks to a potential witness. To avoid any allegations of improper conduct, communications between members of the department in the show-up room and the witnesses shall be held to an absolute minimum.

VII. Prisoner Interviews

Any officer wishing to interview a prisoner of the Criminal Justice Center shall complete an Interview Request Form. The jail release section will have a supply. There is no change in the procedures officers have been following in the event they wish to check a prisoner out for interviews, viewing of a crime scene, line-ups, etc. It is not necessary that court orders be obtained.

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SECTION: Fingerprints

In order to conduct the necessary background checks to determine if a defendant is a second offender for charging purposes, to determine if he/she is wanted for other offenses, to use for identification purposes in the event the defendant should escape and assist other law enforcement agencies in performing their duties. It is essential that a set of fingerprints be obtained from an arrestee before his/her release. Thus when a defendant refuses to submit voluntarily to the fingerprinting process, a minimum amount of force may be used to obtain the prints.

When it is necessary to obtain fingerprints by the use of force, obviously the minimum amount of force needed to obtain a satisfactory set of prints will be used. Additionally, for the protection of the officers, an objective witness shall be present as an observer during the time in which the fingerprints are taken. (Not one who has been charged with the responsibility of processing the prisoner.)

MEMPHIS POLICE DEPARTMENT POLICY AND PROCEDURES

SECTION: Sexually Oriented Crime Investigations

Sexually Oriented Crime Investigations

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MEMPHIS POLICE DEPARTMENT POLICY AND PROCEDURES

SECTION: Sexually Oriented Crime Investigations

I. Purpose:

To outline a protocol for coordinated preliminary and continued investigations of sexually oriented crimes and other related offenses.

II. Policy:

Sexually oriented crimes (see Section III: Definitions) are personal violence crimes that have great psychological or physical effects on the victims. It is the policy of this department to assist victims of sexually oriented crimes in a supportive manner, using appropriate crisis intervention skills. Because of the special considerations involved in investigations of sexually oriented crimes, this policy encourages a multidisciplinary, coordinated community response. Public confidence in the reporting and investigative process will encourage all victims of sexually oriented crimes to report the crime. Reducing recidivism through the apprehension and prosecution of the assailants is a department policy.

III. Definitions:

Forensic medical examination: An examination by any healthcare provider who proves medical care and gathers evidence of a sexually oriented crime in a manner suitable for use in a court of law, provided to a victim reporting a sexually oriented crime to a healthcare provider (T.C.A. § 39-13-519(a)(1)).

Hold kit: A sexual assault evidence collection kit of an adult victim that is coded with a number rather than a name pending the victim's decision to report the crime to law enforcement authorities, and has not been submitted to the state crime lab or similar qualified laboratory (T.C.A. § 39-13-519(a)(2)).

Law enforcement agency: An established state or local agency that is responsible and has the duty to prevent and detect crime and enforce laws or local ordinances; and has employees who are authorized to make arrests for crimes while acting within the scope of their authority; and a campus security force created by an institution of higher education (T.C.A. § 39-13-519(a)(2)).

Sexual assault evidence collection kit: Evidence collected from the victim of a sexually oriented crime with a sexual assault evidence collection kit provided by the state of Tennessee, T.C.A. § 39-13-519(a)(4).

Sexually oriented crime: The following crimes are considered sexually oriented: rape, aggravated rape, statutory rape, mitigated statutory rape, aggravated statutory rape, rape of a child, sexual battery by an authority figure, aggravated rape of a child, and statutory rape by an authority figure.

Victim: A victim of a sexually oriented crime.

Victim Advocate: This term applies to service providers trained to assess and address the needs of the victim as well as provide counseling, advocacy, resources and information, and ongoing support. Depending on the primary functions of the advocate, the level of confidentiality and privilege they have will vary and should be communicated to those involved.

IV. Procedures:

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Section 6: Sexually Oriented Crime Investigations

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SECTION: Sexually Oriented Crime Investigations

A. Training and Personnel Selection

Training is necessary for all personnel who have contact with victims of sexually oriented crimes, including dispatch/communications and initial responders, as well as those who investigate these crimes. All officers receive ongoing training that specifically addresses the realities, dynamics and investigations of these crimes, the impact of these crimes on victims, community services available to victims of sexually oriented crimes, and legal developments pertaining to sexually oriented crimes. Responders at every level need to use appropriate communication skills when interacting with victims of sexually oriented crimes and recognize that they are accountable to the victims.

Careful consideration is taken when selecting personnel for the Department's Sex Crimes/Child Abuse Unit.

B. Communications Responsibilities

Communications/dispatch personnel may be the first to whom the victim will speak following a sexually oriented crime. In general, communications personnel should address two primary goals: collecting information and dispatching assistance.

C. Patrol Officer Responsibilities

When an officer comes in contact with a victim of a sexually oriented crime, the officer should notify their field supervisor of the situation. Each incident will be handled on case by case bases depending on the age of the victim and the hour in which the offense is reported.

Officers should be mindful of the impact of trauma on memory, especially when contact with the victim is within a short time after the sexually oriented crime occurred. Victims of any trauma, including but not limited to sexually oriented crimes, may experience difficulty with memory storage and recall. As a result, victims may be inconsistent or unclear in their descriptions. These symptoms may be indications of a traumatic experience rather than fabrication. This fact should be considered by the investigator to assure a more accurate follow-up interview after appropriate time has passed from the traumatic event.

1. Responding officers have the following immediate responsibilities:
 - a. The victim's physical well-being – Give attention to the victim's emergency medical needs. Ensure safety.
 - b. Preservation of the crime scene – Call additional officers, or a supervisor when necessary (The supervisor will contact the bureau when necessary).
 - c. Be alert to any suspect in the vicinity – If applicable, give crime broadcast.
 - d. A victim advocate should be contacted as soon as possible to provide assistance throughout the reporting and investigative process.
 - e. Explain to the victim the officer role and what will be done at the scene.
2. The officer shall obtain detailed information essential to determine what occurred.
3. The officer shall obtain preliminary statements from victim and witnesses to obtain information in an effort to identify and locate the suspect.

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4. The officer should ask if the victim would prefer to have a support person present and offer to contact the person if necessary.
5. The officer shall arrange transportation of the victim to the hospital, if necessary.
6. After approval from an Investigative Supervisor, officers should request that all adult victims go to the Shelby County Rape Crisis Center (SCRCC) for an examination due to their extensive evidence collection procedures. The officer will escort or transport the victim to the SCRCC. No victim will be forced to go to SCRCC. The victim has the choice of going to the SCRCC or they may go to any qualified physician who will conduct an examination. If the victim makes the decision to use their personal physician, this should not preclude the investigation of the case. It is recommended that a Sexual Assaults Kit be collected from a Sexual Assault Nurse Examiner.

D. Investigator Responsibilities

1. The investigator shall obtain a complete report from the patrol officer assigned to the case.
2. The initial contact with the victim may happen in different ways. Investigators have the following responsibilities:
 - a. At the crime scene: The investigator shall protect the crime scene and begin the preliminary investigation. Explain to the victim the investigator's role and what will be done at the scene and through follow-up. The investigator shall inform the victim of the SCRCC and other community-coordinated response agencies and resources available to support the victim. The investigator should establish rapport with the victim and offer to transport the victim to SCRCC. The investigator should explain the medical and investigative purposes of the exam and advise the victim to bring a change of clothing.
 - b. At the hospital: The investigator should collaborate with medical staff to arrange for the collection of evidence needed for prosecution. Ensure the victim understands the exam procedures and establish rapport for further interviews. Assist in arranging for clothing the victim may need after the examination. The investigator should never be in the examination room during the sexual assault exam, but shall have the victim sign a consent form in order to obtain a copy of the medical report. The sexual assault evidence collection kit shall be received from medical staff after it has been properly sealed and labeled. The sexual assault evidence collection kit will be stored and/or submitted for testing in accordance with state law. See, subsection G: Collection and Storage of Evidence.
 - c. At the department: Before interviewing the victim, the investigator should review the officer's report and establish rapport with the victim by allowing the victim to ask preliminary questions and voice initial concerns.
 - d. A victim advocate should be contacted as soon as possible to provide assistance throughout the reporting and investigative process.
 - e. Explain to the victim the investigator role and what will be done at the scene and through follow-up.

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3. Investigators shall be trained in sexual assault procedures:
 - a. The investigator shall allow the victim advocate to be with the victim for support during the interview(s), if the victim desires.
 - b. If the victim prefers a gender specific investigator, every attempt to provide one should be made. If one is not available, the investigator shall nevertheless encourage the victim's cooperation.
 - c. The investigator shall prepare the victim for each phase of the investigation. The investigator will encourage the victim's cooperation by explaining investigative procedures.
4. Victim interviews:
 - a. Privacy is a necessity for follow-up interviews. Choose a quiet room at the department or go to the victim's home. Recording is encouraged. A victim advocate may be helpful to the investigation. Ask the advocate not to interfere with questioning. The investigator shall obtain detailed information essential to determine what occurred.
 - b. Polygraph Test, T.C.A. § 38-3-123. Victims of sexual offenses (T.C.A. § 40-39-402), or violent sexual offenses (T.C.A. § 40-39-202), shall not be required to submit to a polygraph test or any other test designed to detect deception, as a condition of proceeding with the investigation of the offense.
 - c. The investigator should determine if there were any witnesses and interview them. Investigators should also determine if the incident was reported to someone else.
 - d. Questions that must be addressed include, but are not limited to, the following:
 - 1) Assault circumstances: Where approached? How? Where occurred? When?
 - 2) Suspect information: Name, if known? Age? Race? Hair color? Clothing? Height? Weight? Identifying marks? Relationship to victim, if any?
 - 3) Multiple crimes: Did multiple assaults occur? Were other crimes committed?
 - 4) Assault details: What happened during the assault? Were weapons used? Describe them. Were threats made? What were they? Was there a fight or struggle? Were injuries sustained by the victim and/or suspect? Were drugs/alcohol involved? Was the victim incapacitated in any way?
 - 5) Details of sexual acts: What did the suspect do? If a male suspect, did he ejaculate? If so, where? Was a condom used? Was a lubricant used, and if so, what type?
 - 6) Duration: How long was the suspect with the victim?
 - 7) After the assault: What did the victim or suspect do immediately after the assault?
 - 8) Prosecution: Does the victim have concerns about prosecuting?
 - e. At the conclusion of the interview, the investigator should ask about any additional assistance needed by the victim and refer the victim to appropriate services.

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- f. Inform the victim that it is common to remember additional details later. Encourage the victim to contact the investigator with additional details or to ask questions. Provide contact information to the victim.
- g. Interviewing child sexual assault victims under the age of 18 requires special guidelines set forth by established statutory child sexual abuse investigative protocols. (See subsection F. Handling of Child Victims.)

E. Handling of Child Victims:

1. When an officer receives a complaint of a child who has been involved in a sexual offense, they will determine the following:
 - a. If the child is under thirteen (13) years of age, or
 - b. If the child is between the ages of thirteen (13) and seventeen (17) years of age, and the perpetrator is a parent, guardian, lives in the child's home, is in the custodial care of the victim, or responsible for the child's welfare in any way (Relative, child care provider, etc.).
2. If an officer determines that any of the above circumstance are present, the officer, if necessary to secure pertinent information, may briefly question the victim of the alleged offense, to obtain minimal facts. **Officers will not conduct an in-depth interview with the victim at this time.** Officers will request for their supervisor to make the scene and advise prior to questioning the victim in order to determine the necessity for the immediate preliminary interview.

The decision will be based upon:

- a. The immediate safety or well-being of the child, or
 - b. The probability the child may not be available later for the purposes of conducting a child protective investigation, or
 - c. That the facts so warrant.
3. If the supervisor deems an immediate preliminary interview is necessary, the appropriate bureau (Sex Crimes/Felony Response Unit/ Child Abuse) will be notified for instructions.

All investigations of child sexual offenses will be handled by the Child Abuse - Child Protection Investigation Team (CPIT). The above guidelines are for officers to determine what cases are covered under the Child Sexual Abuse Law and the procedures for notifying the Child Protection Investigation Team.

Any investigation of a sexual offense of a child between the ages of thirteen (13) and seventeen (17) years of age which do not meet the criteria (Subsection (E)(1)) will be handled by the Sex Crimes Bureau.

F. Supervisor Responsibilities:

Effective supervision plays a key role in ensuring comprehensive responses to an investigation of sexually oriented crimes. Though this is important for victims, it is also important for ensuring compliance with department policy and accountability. Supervisors

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shall demonstrate a thorough understanding of the victim issues and proper response by subordinates.

1. After the field supervisor is notified of a sexual offense, regardless of the age of the victim, the field supervisor will contact the appropriate bureau.
 - a) If the victim is an adult, the field supervisor will contact Sex Crimes or Felony Response with pertinent details. After the appropriate bureau's supervisor determines that the victim should be examined and the victim is willing to complete an examination, the field supervisor will then notify Communications. Communications will notify a Nurse Clinician which will be dispatched to a designated location. (Shelby County Rape Crisis Center (SCRCC), Regional One Health, etc.)
 - b) If the victim is a child (described in Subsection (E)(1)) the field supervisor will contact Child Abuse (Monday – Friday, 8:00 a.m. – 4:00 p.m.) or Felony Response (after regular bureau hours). The Felony Response supervisor will notify the on-call Child Abuse supervisor for instructions. After the appropriate bureau's supervisor determines the victim should be examined, the field supervisor will then notify Communications. Communication will notify a Nurse Clinician which will be dispatched to SCRCC. The field supervisor will provide Communications with the victim's sex and age and the estimated time of arrival at SCRCC. (The victim's name can only be given by telephone; do not advise the victim's name through radio communications.) Communications will call SCRCC or the nurse clinician and relay the information. Officers will transport the victim to the SCRCC. Nurse Clinicians should respond to calls within one (1) hour.
2. **The Child Abuse supervisor or designee must give approval in all cases pertaining to child sexual offenses prior to transporting the victim to SCRCC.**
3. Upon arrival at SCRCC, the transporting officer will remain with the victim until a Sex Crimes/Felony Response or Child Abuse investigator arrives on the scene and relieves the officer. The transporting officer will remain until the examination has been completed and/or they are advised that they are no longer needed.

G. Collection and Storage of Evidence:

The Sexual Assault Evidence Collection Kit or Hold Kit shall be received from the medical staff after it has been property sealed and labeled. A chain of custody for the Sexual Assault Evidence Kit or hold kit shall be established and the kit will be prepared for DNA testing or storage in accordance with established protocols. See, T.C.A. § 39-13-519 (b).

Collection and storage procedures for sexual assault evidence kits and hold kits are stated below.

1. Sexual Assault Evidence kit (T.C.A. § 39-13-519-(c)(2) and (d)(1)).
 - a. If an adult victim reports the alleged offense to the police, or if the victim is a minor, the health care provider shall attach the victim's name to the sexual assault

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- evidence collection kit, and it shall be released to the appropriate law enforcement agency.
- b. The law enforcement agency shall, within sixty (60) days of taking possession of the sexual assault evidence collection kit with the victim's name affixed to it, submit the kit to the Tennessee Bureau of Investigation (TBI) or similar qualified laboratory for either serology or deoxyribonucleic (DNA) testing.
2. Hold Kit (T.C.A. § 39-13-519 (c)(1) and (d)(2)).
- a. If an adult victim elects not to report the alleged offense to police at the time of the forensic medical examination, the sexual assault evidence collection kit becomes a hold kit, and the healthcare provider shall assign a number to identify the kit rather than use the victim's name. The healthcare provider shall provide the victim with the identifying number placed on the victim's hold kit, information about where and how long the kit will be stored, and the procedures for making a police report.
 - b. Upon receipt of a hold kit with only an identification number attached to it, the department shall store the hold kit for a minimum of three (3) years or until the victim makes a police report, whichever events occurs first. Once the victim makes a police report, the department shall have sixty (60) days from the date of the police report to send the sexual assault evidence collection kit to the state crime lab or other similar qualified laboratory for either serology or deoxyribonucleic acid (DNA) testing. However, no hold kit shall be submitted to the state crime lab or similar laboratory for testing until the victim has made a police report.

V. Compliance:

Violations of this policy, or portions thereof, may result in disciplinary action. All members shall comply with this policy.

VI. Application:

This document constitutes department policy, is for internal use only, and does not enlarge an employee's civil or criminal liability in any way. It shall not be construed as the creation of a higher legal standard of safety or care in an evidentiary sense, with respect to third party claims insofar as the employee's legal duty as imposed by law. Violations of this policy, if proven, can only form a basis of a complaint by this department, and then only in a non-judicial administrative setting.

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SECTION: Weapons Possession

THIS POLICY SECTION IS UNDER REVIEW 7-01-21

An officer who comes in contact with a person in possession of a weapon should use caution and good judgment. Individuals may lawfully carry a knife or switchblade of any length and a handgun with a valid permit. A person commits an offense who **possesses any deadly weapon with the intent to employ it** during the commission of, attempt to commit, or escape from any offense.

Individuals exercising their right to carry or possess a firearm in a vehicle should not be subject to investigatory detention unless an officer has reasonable suspicion that the aforementioned individual has committed or is about to commit a crime (i.e. the firearm is removed from the vehicle or brandished towards someone). The officer may take control of the firearm and then determine whether the individual is carrying the firearm legally as part of the officer's investigation into suspected criminal activity. However, this does not prevent an officer from approaching an individual possessing a firearm in a vehicle for the purpose of engaging them in voluntary conversation regarding the circumstances of the carry.

Carrying or possessing a firearm or firearm ammunition in a motor vehicle is legal if the person is not prohibited from possessing or receiving a firearm **and the person is in lawful possession of the motor vehicle. Passengers may not lawfully carry or possess a firearm without a permit, unless they are the registered owner of the vehicle.**

Persons may not legally carry or possess a firearm or ammunition if any of the following conditions apply:

1. The person has a domestic violence conviction; (check JSSI, Communications)
2. The person is under indictment or pending indictment for a felony; (check Fugitive)
3. The person is a convicted felon (verify); (check JSSI, Communications - III)
4. The person is the subject of an order of protection or exparte order; (check Communications, Fugitive)
5. Bail/ bond conditions prevent possession; (check Fugitive)
6. The person is a fugitive from justice; (check Fugitive, Communications)
7. The person has a dishonorable discharge from the military; (check Communications)
8. The person is a mental consumer;
9. The person is under the influence drugs/alcohol;
10. The firearm is prohibited, stolen, or the serial number is obliterated; (check Communications)
11. The individual is a juvenile or undocumented immigrant;
12. The firearm is possessed on school property;
13. The person is a driver of a vehicle provided by a government/private entity for the course of employment and that entity prohibits its drivers from carrying or possessing firearms or ammunition in their vehicle(s).

The following steps will assist officers in conducting field interviews and investigations.

1. Determine ownership of the vehicle and check the firearm to determine if it is stolen.
2. Determine ownership of the weapon.

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- In a situation where there are multiple occupants in a vehicle and no one claims ownership of a firearm, officers should make an arrest **if it is determined** that the owner is in unlawful possession of the firearm. Have all occupants of the vehicle complete Rights Waiver Forms and tag the firearm and Rights Waiver Forms as evidence.
 - If ownership cannot be determined, officers should take a memo, have all occupants' complete Rights Waiver forms, and tag the firearm as found property.
 - If an occupant is transported to a bureau for further investigation, the investigator will complete the Rights Waiver Form. (Rights Waiver questions may be incorporated into a Defendant Statement.) Scene officers will still complete Rights Waiver forms for all occupants not transported to a bureau.
3. Check each person for warrants and contact Fugitive concerning bail/bond conditions.
 4. Contact an investigator 170 N. Main and have them request a criminal history check (Triple I/III) from Communications. The criminal history will advise if the person has been convicted of a crime or offense that prevents them from possessing a firearm by 18 U.S.C. 922(g). South Main GIB (or Economic Crimes) should be contacted during daytime business hours (B shift). Felony Response should be contacted after hours (C, D, and A shifts).

Once the investigation has concluded and there are no known felony convictions in any jurisdiction (which would require the seizure of the weapon and arrest of the individual as a convicted felon) the subject should be released and their weapon returned without further action.

Officers should not allow a legal weapon to remain in a vehicle that is not under the direct control of a person designated by the weapon's owner. That designee must be at least 18 years of age, not legally prohibited from possessing the weapon, and otherwise competent to safeguard the weapon.

If a firearm is tagged, the owner should be advised to contact the Legal Advisor's Office (901-636-3718) concerning the release of the weapon.

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The following policy will govern *response to resistance* and the investigative procedures thereof.

I. Definitions

- A. **Violent Felony** - A felony in which the suspect has used, threatened to use, or attempted to use force that can cause death or serious bodily injury.
- B. **Deadly Force** - That amount of force that is sufficient to, intended to, or may be reasonably expected to inflict serious bodily injury and/or death. This includes the discharge of any firearm at, near, or in the direction of any individual.
- C. **Empty Hand Control** – A method of control employed by an officer without the aid of equipment or weapons. This physical force is employed when it is necessary to overcome a subject's physical resistance to an officer's lawful objectives. There are two subcategories: Soft and Hard Empty Hand Techniques.
- D. **Soft Empty Hand Techniques** – This subcategory includes escort controls, touch pressure points, wrist or arm locks, and take down techniques that have a minimal chance of injury.
- E. **Hard Empty Hand Techniques** – This subcategory includes kicks, punches or other striking techniques such as brachial stun or other strikes to key motor points that have a moderate chance of injury.
- F. **Probable Cause** - *Probable cause* exists when facts and circumstances within an officer's knowledge, and of which he has reasonably trustworthy information, are sufficient to warrant a man of reasonable caution in believing that an offense has been, or is being committed, and that the suspect committed it.
- G. **Exhaustion of all Other Reasonable Means** - All other reasonable means have been exhausted when an officer has tried to control conflict by using all alternate methods other than deadly force. However, all other reasonable means may be considered to have been exhausted when an officer analyzes a set of circumstances and honestly and reasonably concludes that any other means will be ineffective, useless, or hazardous to the officer or some innocent third party.
- H. **Necessary Force** – *Necessary Force* or “reasonable force” is force that can be reasonably used by an officer to accomplish their duties in a timely manner; force that keeps both the officer and citizen as safe as possible. Members are permitted to use whatever force is necessary and reasonable to protect others or themselves from bodily harm.
- I. **Excessive Force** – *Excessive force* is defined as the amount of force which is beyond the need and circumstances of the particular event, or which is not justified in the light of all circumstances.
- J. **Unnecessary Force** - *Unnecessary Force* is that force or violence that is unprovoked, needless, or not required when making an arrest or dealing with a prisoner or any person. Officers shall **NEVER** use Unnecessary Force.
- K. **De-escalation** – *De-escalation* enables an officer when practicable to initiate specific actions to defuse an event where the use of force would be legally justified at that time. This may be accomplished through both verbal and tactical actions which may include: containment, securing backup, using cover or requesting CIT.

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II. Response to Resistance Continuum

The Memphis Police Department has provided a **Response to Resistance Continuum** for its officers to use as a guide in the **Response to Resistance** in general and the use of Deadly Force in particular.

Officers should only use **THE NECESSARY AMOUNT OF FORCE** to safely accomplish their duties. Whenever possible, officers should allow individuals time to submit to the officer's commands before force is used. Officers should react to the amount of resistance shown by a suspect and then determine the amount of force that is reasonable and necessary to safely take this person into custody during a lawful arrest. (1.3.1)

This idea of safety should include the officer(s) involved, the person(s) suspected of committing the offense, and any innocent third parties that may be involved as victims, witnesses, or bystanders.

Any time there is an injury or an alleged injury as the result of any law enforcement action, officers will, upon properly restraining the subject (if necessary), examine any person appearing injured or claiming injury and render the appropriate medical aid. Officers will request emergency medical aid (Memphis Fire Department Paramedics) when obvious severe injuries have occurred, medical distress is apparent, or the individual is unconscious. Any officer on the scene of an incident wherein he/ she is made aware of an injury or a claim of injury must immediately notify a supervisor. The notified supervisor will examine the suspect(s) injuries, speak with witnesses, and ensure the incident is documented via the Response to Resistance Incident in Blue Team, photographs, and/or other appropriate documentation. (1.3.5)

The **Response to Resistance Continuum** uses an escalating/de-escalating format to determine how Officers should consider the response to resistance. Officers must quickly react and establish objective reasonableness according to circumstances and the totality of facts known to the officer at the time of the incident. Officers are allowed to escalate their response to resistance in reaction to a particular situation as their experience and training dictate. Officers should also de-escalate their response to resistance when the situation is safely under control and a higher level of force is no longer necessary or reasonable.

RESPONSE TO RESISTANCE CONTINUUM

1. Physical Presence
2. Verbal Warnings
3. Verbal Commands
4. Chemical Agents
5. Empty Hands Control (Soft and Hard)
6. Impact Weapons/Less Lethal Weapons/MPD Canine
7. Deadly Force

Officers must be aware that this is a dynamic continuum where an officer can be justified in instantly escalating from the lowest level of force to Deadly Force without having to stop and

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utilize each and every step in between. The Officer can also de-escalate from a higher level of force to one of the lower levels without stopping at each lower level.

The Officer's experience and training are his/her guides as to which level of force to use in each situation.

Officers are reminded that choke holds of any kind are **strictly prohibited** during the course of effecting an arrest or after a subject has been handcuffed. This would include the use of hands, knees, feet, or one's body weight to restrict a subject's ability to breathe. This prohibition is outlined in MPD Policy and Procedure and is supported by the following state law:

Tenn. Code Ann. § 38-3-121. Choke holds; restrictions on use (2019)

No law enforcement officer shall use a choke hold or other similar respiratory restraining maneuver, with or without the use of a police baton, on any suspect, defendant or other person unless other methods of restraint are ineffective. Nothing in this section shall be construed to prohibit the use of the lateral vascular maneuver.

While the above statute does not prohibit the use of the lateral vascular maneuver, MPD officers are prohibited from using this self-defense technique.

The **only exception** for the use of any choke hold would be if an officer was otherwise justified to do so in self-defense where the officer has been attacked with deadly force, is being threatened with the use of deadly force, or where the officer has probable cause and reasonably perceives an immediate threat of deadly force. In other words, an officer **may** resort to the use of a choke hold only if the officer was involved in a situation where **deadly force** would be authorized/justified.

III. Response to Resistance Incidents

- A. It is the responsibility of the officer utilizing deadly force to complete a *Response to Resistance Form* on all incidents involving:
 - 1. The discharge of a firearm (with the exception of recreation or training purposes). (1.3.6a)
- B. It is the responsibility of the officer utilizing less than lethal force to complete a *Response to Resistance* incident in Blue Team on all incidents involving:
 - 1. The use of any part of the officer's body to compel compliance. This would include uses of force that fall in level 5 (Empty Hands Control) of the response to resistance continuum. (1.3.6d)
 - 2. Chemical agent use. (1.3.6c)
 - 3. The discharge of a SL-6/IDS and CEW deployment event (1.3.6c)
 - 4. The use of an MPD canine to apprehend a suspect.
 - 5. The use of the Baton/Expandable Baton. (1.3.6c)
 - 6. Whenever a suspect is charged with **T.C.A. 39-16-602 Resisting Arrest**.
 - 7. Whenever there is a death, injury, or an alleged injury to an officer or suspect(s), as a result of police utilizing less than lethal force. (1.3.6b)

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C. The *Response to Resistance* incident in Blue Team need not be completed for:

1. The mere presence of police officers, the issuance of tactical commands; or
2. Routine or procedural physical contacts, which are necessary to effectively accomplish a legitimate law enforcement objective. Examples include: guiding a subject into a police vehicle, holding the subject's arm while escorting, handcuffing a subject, and maneuvering or securing a subject for a frisk; or
3. The pointing of a firearm, SL-6/IDS, or CEW at a subject. When these weapon types are pointed at a subject, a Pointed Weapon Incident in BlueTeam will be completed. This report will **NOT** be a Blue Team threshold indicator of the PEP program, however; it may prompt an intervention. After chain of command approval of the response to resistance incident, the Workstation Commander or his/her designee will forward the incident to the Inspectional Services Bureau. The Inspectional Service Bureau will forward copies of the response to resistance incident to the Training Academy Firearms Training unit. (1.3.7.c)

The *Response to Resistance* incident will be submitted to the supervisor for approval prior to the end of the officer's shift. The Supervisor will ensure that the report has been completed, and will review the incident for any departmental concerns regarding policy and procedures, training, equipment and/or officer conduct. If the Supervisor recognizes that one of these areas needs to be reviewed and addressed by the Memphis Police Department, only then will he/she submit the concerns in a memo and forward the memo with a copy of the *Response to Resistance* incident to the Accreditation Office.

A supervisor, who is involved in a reportable response to resistance, including ordering the force used, will not review the incident report or the *Response to Resistance* incident for approval. Additionally, a supervisor will not handle/take a complaint/allegation of misconduct arising from an incident if the supervisor witnessed, was involved in the incident, or if he/she authorized the conduct that led to the complaint.

The *Response to Resistance* and the *Pointed Weapon* incidents are prepared as internal administrative instruments. The incidents will not be released to persons or agencies outside the Memphis Police Department without the prior approval of the Chief of Police.

All reported *Response to Resistance* incidents will be reviewed by the Inspectional Services Bureau. The Inspectional Services Bureau will be responsible for the maintenance of the original *Response to Resistance* incidents, as well as the data generated by the incidents. This review will examine the following elements of the incident: (1.3.7)

- Was department policy and procedure adhered to?
- Is the applicable policy clearly understandable and effective in covering the incident?
- Is current departmental response to resistance training adequate?
- Is department equipment adequate?
- Are there tactical issues that should be addressed in training?

An annual analysis of response to resistance incidents will be submitted from the Commander of ISB to the Chief of Police. This report will summarize the data extracted from reported response to resistance incidents and include written recommendations

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regarding any policy or training issues that need to be addressed by the department. All training issues should also be forwarded to the Commander of the Training Academy for review. (1.3.13)

IV. Use of Deadly Force Authorized

Officers shall use only the **NECESSARY** amount of force that is consistent with the accomplishment of their duties, and must exhaust every other reasonable means of prevention, apprehension, or defense before resorting to the use of deadly force (*if the situation allows time for this*). (1.3.2)

A. Use of Deadly Force in Defense of Self or Others

Officers are authorized to use deadly force:

1. In self-defense where the officer has been attacked with deadly force, is being threatened with the use of deadly force, or where the officer has probable cause and reasonably perceives an immediate threat of deadly force; **or**
2. In defense of others where a third party has been attacked with deadly force, is being threatened with the use of deadly force, is in danger of serious bodily injury or death; or where the officer has probable cause and reasonably perceives an immediate threat of deadly force to a third party.

B. Use of Deadly Force to Affect an Arrest

Officers are authorized to use deadly force to effect the arrest of a fleeing felon only when:

1. The officer has probable cause to believe the individual to be arrested has committed a felony involving the infliction or threatened infliction of serious bodily injury; **AND**
2. The officer has probable cause to believe that the individual to be arrested poses a threat of death or serious bodily injury, either to the officer or to others unless immediately apprehended; **AND**
3. Where feasible, the officer has identified himself/herself as a police officer and given warning such as, “**STOP--POLICE--I’LL SHOOT,**” that deadly force is about to be used unless flight ceases; **AND**
4. If all other means of apprehension available to the officer under the attendant circumstances have been exhausted.

V. Use of Deadly Force Prohibited

The use of **DEADLY FORCE** is prohibited in the following circumstances:

- A. To apprehend or arrest a person for a misdemeanor offense; or
- B. To effect the arrest of any person for escape from the commission of any misdemeanor

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offense; or

- C. As warning shots [Warning shots will not be utilized under any circumstance (1.3.3)]; or
- D. To apprehend or arrest a person known to be or believed to be a juvenile, unless the use of deadly force is immediately necessary in the defense of the officer's life or of another person's life after all other reasonable means have been exhausted [The officer's knowledge or belief of a person's age may be based upon factors such as the officer's previous knowledge of the person, his/her observations of the person's appearance, or upon reliable information given to him/her by other persons]; or
- E. To apprehend or arrest a person fleeing from a felony which is not a violent felony [This includes, but is not limited to, felonies such as auto theft, larceny, embezzlement, fraud, burglary of an auto, or any other felony, which does not involve the use of deadly force, attempted use of deadly force, or threatened use of deadly force]; or
- F. From or at any moving vehicle, except in a case where an officer has probable cause to believe that the suspect committed a violent felony and poses a direct threat of serious bodily injury or death to other persons if not immediately apprehended. If the officer is in the path of the vehicle, the officer's first responsibility, if possible, is to move from the path of the oncoming vehicle, as shooting the driver of a moving vehicle raises the danger from an uncontrolled vehicle. Officers should not intentionally place themselves in the path of a moving vehicle or reach inside of a moving vehicle; or
- G. In any case, where the officer does not have a clear field of fire and cannot be reasonably certain that only the suspect will be hit and that the potential for harm to innocent persons is minimum.

VI. Notification Procedures When Weapons Are Fired:

When any officer of the Memphis Police Department discharges any firearm (with the exception of recreation or training purposes), whether on-duty or off-duty and regardless of the type of firearm, the officer will immediately report the incident to the dispatcher who will notify the proper supervisor. The appropriate supervisor will proceed to the scene of the shooting to begin an immediate investigation and notify the precinct or bureau commanders of the incident.

It will be the responsibility of the first Supervisor on the scene to secure the crime scene, separate and secure the witnesses (both civilian and police), and contact the following via the Communications Supervisor: Inspectional Services (ISB); Homicide; Felony Response, (after hours) and CSI. All weapons of officers involved in the initial incident are to remain holstered until a representative from Homicide, Inspectional Services and Crime Scene are prepared to check the weapon. Because of the chain of evidence, it is paramount that only CSI or ISB personnel take possession of any police weapon and this is to be done only after a representative from Homicide, ISB and CSI is present. An inner perimeter should be marked off with crime scene tape around the actual crime scene. No one should enter the crime scene

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area, unless an emergency exists, until the Homicide Bureau and Inspectional Services arrive.

An outer perimeter should be established in order to assist with crowd control. The Supervisor will immediately notify the dispatcher and appropriate Deputy Chief or Duty Chief if the incident occurs after regular business hours or on a weekend.

The on-scene uniform commander will be responsible for returning uniform cars to service once it is determined they are no longer needed.

A. ISB, CSI, and Homicide Bureau will be notified and will respond for an on-the-scene investigation for all shooting incidents involving:

1. Shootings by an officer, either on-duty or off-duty, regardless of the weapon, where a suspect/individual has been shot or there is evidence that the suspect was shot and has not been located. *A courtesy call will also be made to the AG's office by the Chief of Police or Assistant Chief anytime a suspect is carried critical, advising them of the situation. *See Chapter X Section 7: Handling Deaths, subsection (V)*
2. When an officer has fired their weapon at a suspect and there is no evidence that the suspect was shot.
3. Incidents where an officer has been shot or shot at by a suspect.
4. When an officer reports that they were attacked but not seriously injured.

ISB and CSI will respond for a scene investigation regardless of the time of occurrence. Homicide will respond during daytime hours. Between 1600 hours and 0800 hours, Felony Response supervisors will be notified and respond to the scene with investigators to handle the preliminary investigation. Felony Response will assist with scene security and containment of witnesses.

CSI will send a supervisor and two CSI officers to all police related shootings.

B. ISB and CSI will be notified and respond for an on-scene investigation of all incidents involving:

1. Any shooting by an officer that occurs on-duty or off-duty, regardless of the weapon, resulting in property damage; or
2. Animal related shootings by an officer that occur on-duty.

This policy excludes recreational use of personal firearms and training on legitimate firing ranges unless injury or death occurs.

C. Law Enforcement Use of Force and Custodial Death Investigations

The TBI will investigate law enforcement use of force investigation requests (from the District Attorney General) that involve the death of any person by police action, or the death of a detainee while in custody. These investigations will be conducted solely by TBI personnel, and they will take command of the scene when they arrive.

Upon the occurrence of such incidents, the department shall:

- Make the usual notifications to the bureaus and the Duty Chief;

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- Duty Chief will notify the Chief of Police and/or Assistant Chief;
- Immediately notify the DA's office (notified by the Chief of Police/Assistant Chief), who will notify TBI.

ISB will direct uniform patrol to:

- Secure any scenes connected to the incident, including the main crime scene perimeter with access limited to emergency medical personnel, medical examiner personnel and TBI personnel;
- Detain and hold any suspects or arrested persons pending the arrival of TBI personnel, and
- Identify and separate all officers and witnesses for subsequent interview by TBI.

In exigent circumstances, necessary steps will be taken to shield the crime scene and document evidence prior to TBI's arrival when it is absolutely necessary to protect the integrity of the crime scene. TBI will be contacted prior to any actions by Crime Scene.

TBI will work with the department per the MOU with the Memphis Police Association and the agency's Critical Incident Stress Debriefing protocols.

TBI will initiate an investigation in accordance with state law and TBI policy. They will:

- dispatch TBI personnel necessary for the proper conduct of the investigation;
- be responsible for the collection, documenting, and processing of all evidence, including the uniforms, gun belts and possibly shoes of involved officers
- issue investigative reports and summaries to the DA's as appropriate in the investigative process; and
- submit final reports to the DA's office for review without an opinion on whether the force used, if any, was justified.

NOTE: Officers should complete an Equipment Replacement Form to replace any items collected and not returned by TBI.

ISB and the Training Academy Response Team will still be notified to conduct department investigations. ISB will be the point of contact for on scene investigations with TBI. See Chapter X Section 7: Handling Deaths, subsection (V) for the detailed MPD policy on TBI investigations.

VII. Investigation

- A. The Commander of the Homicide Bureau (or a designee) will be the overall on-scene commander, **unless the incident is one that requires TBI notification**. If the incident requires a TBI investigation, TBI will assume control of the scene when they arrive.

The primary objective of the ISB is to investigate all shooting incidents involving police officers either on-duty or off-duty. This includes incidents where the use of deadly force is authorized, use of deadly force is prohibited or any accidental discharge(s).

ISB will provide an on-scene debriefing area for the officers involved in discharging their

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weapons. This area may be a room, van or any other location deemed appropriate by the ISB Commander. This area will serve as a central point for filling out reports, checking weapons, issuing replacement weapons, and any other task necessary to complete the on-scene investigation. An ISB member will be provided at this location to assist the officers with any issue that may arise. No walk-through will be performed before ISB arrives. The walk-through will be done under the supervision of an ISB member. The purpose is to insure the integrity of the scene.

When a squad car is involved in an accident during a shooting incident, the Traffic Bureau will make the scene and take all necessary accident reports.

- B. ISB will only investigate compliance with the department's policy on the use of deadly force.** Any officer involved in a shooting incident where a suspect has been shot or there is evidence that the suspect was shot will be routinely relieved of duty with pay pending the outcome of the investigation. (1.3.8)
- C. The Homicide Bureau will be responsible for the criminal investigation of shooting incidents handled by MPD.** The Homicide Bureau will be called to handle the investigation of the incident including obtaining statements, supplemental reports, state reports and presentation to the Shelby County Attorney General. It will be at the discretion of the lead scene investigator whether additional bureaus will be contacted for assistance in the investigation.

The following procedures shall be followed on all police related shootings handled by MPD Homicide where a police officer has been shot, a citizen has been shot or there are substantial facts to believe a suspect or citizen has been shot.

- The Homicide Bureau will be responsible for the on-scene investigation. The oversight of Inspectional Services reinforces the integrity of the process.
- The only evidentiary photographs to be taken on the scene of a police shooting are by CSI, under the direction of the lead Homicide investigator and the Inspectional Services investigator. Photos will include both 35mm and digital photographs. A photo log will also be completed. CSI will tag all evidence, including the officer's weapon. The officer's weapon is evidence and is to be treated as such. The lead Homicide investigator will be responsible for ordering all evidentiary testing. A copy of the CSI report will be made available for the Inspectional Services' file along with a copy of the photographs.
- The scene will be described in writing, evidence documented and procedures taken by the lead Homicide Investigator or Felony Response investigator.
- Entrance into a contained scene shall be limited to the Lead Homicide/Felony Response investigator and one investigator to assist if necessary, one Inspectional Services investigator, for observation and note taking for internal investigation only, CSI Officers, and Medical Examiner staff. After the scene has been completely processed, the Homicide Supervisor and Inspectional Services Supervisor will review the scene

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with the lead Homicide Investigator to ensure that all investigative measures have been taken. Inspectional Services should then conduct a walk-through.

- The Inspectional Services Bureau, Homicide or any other Investigative Bureau will not interview officers who have been involved in a critical incident until at least 48 hours has passed since the time of the critical incident. This 48-hour provision will not preclude conducting interviews at the discretion of the Chief of Police, his/her designee or the ISB, Homicide or any other Investigative Bureau Supervisor when circumstances dictate such. Inspectional Services will retain the original officer's statements and a copy will be provided to Homicide.
- Homicide Investigators, with Inspectional Service Investigators, will take live statements from all witnesses, including officer witnesses. The original statement will remain with the lead Homicide Investigator and a copy will be retained by Inspectional Services for their file.
- Within **five (5)** days of the scene investigation, a debriefing will take place with the lead investigator from Inspectional Services, Homicide, the Supervisor/**Commander** from both bureaus, and the **Commander or Assistant Commander** of Investigative Services. This debriefing will cover the initial facts gathered and direction needed for a successful completion of the case. This debriefing will take place at Inspectional Services office.

This can also be an opportunity for the involved investigating bodies to discuss problems and develop solutions to these problems. It will be the responsibility of the Commander of Inspectional Services and the **Commander or Assistant Commander** of Investigations to brief the command staff.

Homicide Bureau or Felony Response will handle criminal charges placed against a suspect wounded during the commission of a crime.

VIII. Review Procedures

- A. Two Attorney General's Homicide advisors will review the case independently at the conclusion of the initial investigation. The initial investigation is concluded when all crime scene work is completed and all known statements, including officer statements, have been taken. At the conclusion of this review, the Attorney General may recommend further investigative action, completion of the case and presentation to the grand jury for criminal prosecution, or indicate in writing that at this stage it appears the case will not be prosecutable. The Homicide Commander will advise the command staff in writing as to the initial findings.
- B. All reports, including the *Response to Resistance Incidents*, Crime Scene Report, and Bureau Report, copies of arrest tickets, offense reports, and memos will be presented by Inspectional Services to the Chief of Police for review.

Upon reviewing all initial reports, the Chief of Police will take the following action:

- Order new and / or any additional investigations as required; or

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- Concur with the investigative findings that the officer(s) was justified in the use of deadly force and order notification of the officer of said findings by letter; or
 - Concur with the investigative findings that the officer(s) was not justified in the use of deadly force and direct administrative processing of the Statement of Charges issued by Inspectional Services under the established disciplinary procedures.
- C. The lead Homicide Investigator will complete the investigative file, including all reports, lab results, final autopsy report, and all evidentiary information along with a written summary of the facts. The Homicide Supervisor and Lt. Colonel of Investigative Services will review the investigative file within ten (10) working days and accept or order additional investigative measures. The Homicide file will then be forward to Inspectional Services for review and presentation to the Grand Jury Section of the Attorney General's office for final review.
- D. Upon completion of this review, the Inspectional Services Commander/Supervisor will notify the command staff of the final disposition.

IX. Response to Resistance Involving Animals

Officers should be aware that from time to time they will find themselves in a situation or receive a call that involves an animal that is causing a disturbance or is a threat to the officer or the community.

TCA 39-14-202 prohibits unnecessary cruelty to animals, and while animals are considered property under the law and are **NOT** guaranteed protection under the United States Constitution and Bill of Rights, officers should attempt to adhere to the guidelines concerning force established in the Response to Resistance Continuum in their dealings with animals. This means that officers should use force that is reasonable and consistent with the accomplishment of their duties.

The safety of the officer and the community should be the primary factor when officers make the decision to use Deadly Force to control an animal. If a decision is made that, the animal must be shot in order to protect the officer or the community, the officer must make every effort to insure that the discharge of his/her weapon is done as safely as possible. The officer's actions must be in conscious regard for both the foreground and background near the animal to minimize the danger to other officers, citizens and/or private property. The officer's use of deadly force against an animal should be undertaken in such a manner that is humane, but unlikely to result in the animal's undue suffering or escape.

In addition, the officer must remain acutely aware of the potential danger that results from wounding a large frightened and/or vicious animal. If the animal's death is not immediate, officers are warned that the animal might become enraged and desperate, causing it to attack the officer or further threaten the safety of other citizens.

If deadly force is used against an animal, the officer should notify the dispatcher who in turn will notify the appropriate supervisors, bureaus and departments for further action. Per Policy and Procedure, the officer will complete a *Response to Resistance* form.

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Misdemeanor Offenses

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I. Citizens Dispute Office

The Citizens Dispute Office handles Orders of Protection. Since the creation of the office, there has been confusion as to whether the Officer should, 1) take an offense report, or 2) refer to the Citizens Dispute Office, 3) write a memo, 4) advise the securing of a warrant, or 5) take no action. Citizens Dispute is a mediation service which has the option to refer citizens elsewhere in the Legal System. The Citizens Dispute Office is located at 201 Poplar Avenue, room LL-01, phone number 545-2520. It is open Monday through Friday, from 8:00 a.m. to 4:30 p.m. The Citizens Dispute Office does not handle criminal warrants.

The criteria for referral to Citizens Dispute Office for an Order of Protection are as follows:

1. Relatives involved in a dispute, or boyfriends and girlfriends, or neighbors.
2. Suspect known by name to the victim.

When an officer refers a citizen to the Citizens Dispute Office for assistance with an Order of Protection, the officer will note this on his/her log sheet.

II. Misdemeanors Observed by an Officer

A. Misdemeanor Charges

An officer witnessing a misdemeanor may make an arrest without a warrant. Two types of misdemeanor charges exist - state misdemeanors and city ordinances. The difference between the two is that state misdemeanors carry jail time and increased fines. City ordinance violations are civil in nature and can only result in a \$50.00 fine to the offender. It is the policy of the Memphis Police Department that an officer uses a state misdemeanor charge, rather than a city ordinance, whenever possible in a criminal case. **An officer must not place both state and city charges on an arrest document.** City ordinance charges may be used when an officer is issuing a city ordinance summons or a traffic citation.

B. Dismissal of City Ordinance Charges

Occasionally, citations have been turned in with no violation listed, or situations have arisen where a citation/ summons was written in error. The following procedures must be followed for dismissal of summons and citations that do not have a violation listed and/ or summons/ citations that were written in error by officers.

1. Summons/ citations without a violation listed or checked:
A copy of the summons/ citation will be sent back to the officer for correction.
2. If the summons/ citation needs to be dismissed:
 - a. The officer must write a detailed memo explaining the reason for the request for dismissal and have it **signed and approved** by their immediate supervisor. **This detailed request must accompany all summons/ citations to be dismissed.**
 - b. The officer must come to the City Court Clerk's Office during their regular work hours or on their next court date, with the signed dismissal request and the original summons/ citation **to be placed on the docket for their next available assigned**

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court date.

- c. The officer must appear before the judge of the division of court that they are assigned to and give an explanation for **possible dismissal**.

This process will be completed during the officer's tour of duty, prior to Signal "C" or on the officer's next court date. A copy of the summons and a copy of the memo will be maintained in the officer's personal file.

III. Domestic Disputes

- A. In order for a call to be handled as **Domestic Abuse** per TCA 39-13-11 Domestic Assault, the following relationship (as defined in TCA 36-3-601) must exist between the primary aggressor and the victim of the assault:

1. Adults or minors who are current or former spouses;
2. Adults or minors who live together or who have lived together;
3. Adults or minors who are dating or who have dated, or who have or had a sexual relationship, [as used herein "dating" and "dated" do not include fraternization between two (2) individuals in a business or social context];
4. Adults or minors related by blood or adoption;
5. Adults or minors who are related or were formally related by marriage; or
6. Adults or minor children of a person in a relationship that is described in 1 through 5.

Officers are required by law to make a written offense report of the incident, utilizing the appropriate offense classification based on the circumstances. The notation "Domestic Violence" is to be included as part of the classification. The officer should indicate in his/her narrative that the report is based on a "Domestic Violence" situation.

All "Domestic Violence" complaints will be reported by using the appropriate criminal classification, which could range from an assault to a homicide, along with a "Domestic Violence" notation. The original will be forwarded to Compstat.

- B. A **"Domestic Violence Hold Harmless/ Victim's Rights Information"** sheet will be distributed to **EACH** victim of Domestic Violence on **EVERY** scene **EVERY** time. This is a two page document. The first page is left with the victim; the second page is completed by the victim and returned to the officer. Some victims may need assistance in completing the form; use direct quotes, and have the victim sign at the end of the quotes.

1. **If an arrest is made, the second page of the Domestic Violence Victim's Rights Information sheet is to be tagged in the property and evidence room.**
2. **If there is no arrest, the form is to be logged at the workstation and forwarded to the Domestic Violence Bureau.**

- C. When a law enforcement officer responds to a domestic violence call and finds both the victim and the alleged assailant present:

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1. The officer may arrest the alleged assailant without a warrant if he has probable cause to believe that that domestic abuse as defined in TCA 36-3-601 (1) "Abuse" has been committed against a domestic violence victim (as defined in TCA 36-3-601) though not in his presence. The law states if a law enforcement officer has probable cause to believe that a person has committed a crime involving domestic abuse, whether the crime is a misdemeanor or felony, or was committed within or without the presence of the officer, the preferred response of the officer is arrest.
2. If the disputants do not meet the guidelines of a domestic violence call as established by state law, then the call should be handled as a disturbance, and the party who owns the premises or is on the lease as tenant has the exclusive rights to the premises and may order the other party to leave. In such cases, a party may swear out a warrant or make a citizen's arrest as above.

D. When a law enforcement officer responds to a domestic violence call and the alleged assailant is no longer present:

1. The Officer must offer to transport the victim to the location where an arrest warrant can be obtained and assist them in procuring the warrant; AND
2. The Officer must also offer to transport the victim to a place of safety such as a shelter, another similar service, or a friend's or family's residence, or return the victim home.

If the victim wishes to obtain an arrest warrant between the hours of 8:00 AM and 4:00 PM, the Officer will transport the victim to the Domestic Violence Bureau located at 1750 Madison Avenue., 6th floor.

E. Wife Abuse Services of Y.W.C.A.

When the victim requests to be transported to a place of safety other than a friend's or family's residence, the Officer must contact the dispatcher to have them contact the YWCA to find out if room is available. If not, the dispatcher should contact one of the alternate shelters for available room. If there is no available room, then the only option is for the officer to transport the victim to a friend's or family's residence.

IV. Domestic Violence Bail Conditions Violations

- A.** Any member of the Memphis Police Department having been made aware that a defendant, who having been released on bail for domestic abuse, may have violated the conditions of bail, shall immediately contact the Shelby County Sheriff's Fugitive Division at 545-5620 to determine the conditions of bail and to determine if an arrest is to be made.

The Shelby County Sheriff's Fugitive Division shall maintain a copy of any order issued as an "Order Granting Bail for Domestic Abuse Cases" for all such active domestic abuse cases. Such order is no longer valid once the case has been disposed of in court.

If an active "Order Granting Bail for Domestic Abuse Cases" is on file with the Fugitive Division, then the arresting officer can legally assume that the defendant has been served with the notice of conditions for bail release and the defendant is subject to immediate arrest without a warrant for violating the conditions of bail. The proper charge is "**Violate Bail**

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Conditions/ DV”, TCA 40-11-150. The Fugitive Division shall provide a copy of the order, which is to be attached to the arrest ticket. It **is not** necessary to bring the defendant to the Fugitive Office.

If the defendant is still on the scene, an immediate arrest is to be made. If the defendant is no longer on the scene, the victim is to be advised to contact the Domestic Violence Bureau, 1750 Madison Ave., 6th floor 636-3741, Monday – Friday from 8:00am – 4:00pm for assistance in obtaining a warrant. An officer may arrest a defendant without a warrant who is not on the scene, if through the lawful course of their duties they locate the suspect who has not previously been arrested on a warrant for that offense.

B. Background:

September 1, 1999, Tennessee law regarding the release of defendants arrested in Domestic Abuse cases has been amended as follows:

1. TCA 40-7-103(b) If a law enforcement officer has probable cause to believe that a person has violated one (1) or more of the conditions of release imposed pursuant to Tennessee Code Annotated 40-11-150, and verifies that the alleged violator received notice of such conditions, the officer shall, without a warrant, arrest the alleged violator regardless of whether the violation was committed in or outside the presence of the officer.
2. TCA 40-11-150(c) Concurrent with the imposition of one (1) or more conditions of release, the magistrate shall;
 - a. issue a written order for conditional release containing the conditions of such release on a form prepared by the administrative office of the courts in consultation with the Tennessee Task Force Against Domestic Violence and distributed to judges and magistrates by the administrative office of the courts;
 - b. immediately distribute a copy of the order to the law enforcement agency having custody of the defendant which agency shall file and maintain such order in the same manner as is done for orders of protection; and
 - c. provide such law enforcement agency with any available information concerning the location of the victim in a manner that protects the safety of the victim.
3. TCA 40-11-150(h) A person who violates a condition of release imposed pursuant to this section shall be subject to immediate arrest with or without a warrant as provided in Tennessee Code Annotated, Section 40-7-103(b). Such a violation shall be punished as contempt of the court imposing the conditions and the bail of such violator may be revoked.

V. Employee Domestic Violence.

PURPOSE: It is the policy of the Memphis Police Department to fully enforce laws dealing with Domestic Violence involving any employee of the Police Department and to take appropriate action to prevent or ameliorate domestic violence in the families of employees.

A. ACTION:

Date: 07-05-21

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1. If an employee is involved in an alleged domestic violence incident the employee shall be immediately referred to a Departmental Psychologist for assessment and referral. A written report of the incident and the action taken will be sent through the chain-of-command starting with the scene supervisor to the appropriate Deputy Chief.
2. Police officers or employees as alleged offender/ victim:
 - a. When an officer of this Department responds to a call of Domestic Violence and finds that one of the involved persons is a law enforcement officer or Memphis Police Department employee, the responding officer will, as soon as reasonably possible, call his/her supervisor to the scene. Should the individual be of equal or higher rank than that of the responding supervisor, the responding supervisor will then contact the Duty Chief. It will be the responsibility of the responding supervisor to ensure that state law is followed and to immediately notify the Inspectional Services Bureau where an officer is involved as a victim or as a suspect, regardless of the circumstances or initial statements. **The Inspectional Services Bureau will investigate all domestic violence incidents involving any suspect who is an employee of the Memphis Police Department.**
 - b. Failure to Arrest/ Privilege/ Special Consideration.
In any situation where an arrest is warranted, officers will not fail to arrest, when probable cause exists, and will not give privilege or special consideration to other law enforcement officers or employees when such officers or employees are alleged to have committed acts of Domestic Violence.
 - c. Solicitation of Privilege/ Special Consideration.
Officers or employees who are being investigated for any allegation of Domestic Violence will not solicit privileges or special consideration from other law enforcement officers.

B. Compliance:

All officers or employees shall adhere to this Policy in its entirety. Failure to do so will result in disciplinary action.

C. Incidents / Information That Does Not Result In Charges:

1. When information about Domestic Violence in an employee's family comes to the attention of a commanding officer or supervisor, it is the commanding officer's or supervisor's responsibility to conduct an informal inquiry. Such a session could be triggered by virtually any source, a family member, a neighbor, friend or colleague. The commanding officer or supervisor should discuss safety issues and treatment referral. Employees will be encouraged to make use of the treatment options which include our Psychological Services and Concern - the City's Employee Assistance Program.
2. If an employee is referred to Psychological Services by a member of management, notification will be given to the appropriate manager regarding an initial assessment

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and preliminary treatment plan. Information beyond this will remain confidential, unless there is suspicion of intent to harm self or others, or if there is information regarding child abuse. If the employee is referred to an outside practitioner, professional communication will be maintained with the Psychological Services and will be kept confidential where appropriate.

3. Educational Programs. A curriculum on Employee Domestic Violence will be developed for presentation at the Training Academy. Information will be presented to recruits and new employees. Additional courses shall be developed for In-Service Training. Topics to be covered will include; Applicable Laws, Communication Skills in Family Relationships, Recurrent Problems in Police Marriages, and Information on Available Resources For Support. Training sessions will stress peer responsibility. Spouses will be encouraged to attend a separate session.

VI. Civil Matters

Generally, an Officer of the Memphis Police Department is not authorized to enforce the civil law or settle civil disputes unless a breach of the peace occurs or is about to occur. Members of the Shelby County Sheriff's Department are authorized to enforce civil court decrees. There are numerous types of court orders with which officers must be familiar, and each is handled differently.

A. Circuit and Chancery Court Injunctions:

In the event an officer makes a call to a domestic disturbance and is shown an injunction purporting to prohibit a spouse from coming about the premises, etc., the officer should act as follows:

1. Notify the offending spouse that the injunction may be binding upon that party even though the injunction has not been served upon him/her, and that a stamp stating "True Copy Attest" means the injunction has been signed by the judge.
2. Advise the enjoined spouse to leave, so as not to be subject to contempt of court and to contact his/her attorney.
3. Do not make an arrest on the basis of the enjoined spouse's refusal to leave, unless a disturbance continues or a misdemeanor is committed in the presence of the officer, i.e., vandalism, public drunkenness, etc.

B. Orders of Protection:

Orders of Protection are a different form of judicial order than a regular injunction. In the heading of the court order, it should specifically state "Order of Protection", rather than "Injunction".

In the Order of Protection, the victim is listed as the "Petitioner". The person the Order of Protection is against (the suspect) will be listed as the "Respondent".

All orders of protection must be verified through the Shelby County Fugitive Division. Out of

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State Orders of Protection must be verified through NCIC then handled as any other Order. Officers must verify through fugitive the following information:

1. There is an order of protection in place against the respondent by the victim.
2. The order is not expired.
3. The order has been served on the respondent.
4. If the order is a Permanent Order or an Ex Parte Order.
5. If the findings of fact box on the order has been checked.

A person arrested for violation of an Order of Protection **shall** be charged with:

36-3-611. Arrest for violation of protection order

(a) An arrest for violation of an order of protection issued pursuant to this part may be with or without warrant. Any law enforcement officer shall arrest the respondent without a warrant if

- (1) The officer has proper jurisdiction over the area in which the violation occurred;
- (2) The officer has reasonable cause to believe the respondent has violated or is in violation of an order for protection; and
- (3) The officer has verified whether an order of protection is in effect against the respondent.

If necessary, the police officer may verify the existence of an order for protection by telephone or radio communication with the appropriate law enforcement department.

(b) No ex parte order of protection can be enforced by arrest under this section until the respondent has been served with the order of protection or otherwise has acquired actual knowledge of such order.

In addition to the 36-3-611 contempt charge, officers **must** place **the TCA criminal charge of 39-13-113** on the respondent if:

1. the order of protection is a permanent order, not an ex parte
2. the findings of facts box on the order has been checked

An offense report is to be taken on every Violation of an Order of Protection call. If it cannot be determined if an Order of Protection exists, then the officer should offer the victim transportation to a safe place, obtain a signed hold harmless form, provide the victim with a victim's rights form and recommend that the victim contact the Domestic Violence Bureau for assistance in obtaining a warrant or contact Citizens Dispute for assistance with an Order of Protection.

1. Types of Orders of Protection:

- a. **Agreed Order of Protection** is granted if the suspect comes to court and agrees to the order without a hearing.
- b. **Order of Protection** is granted after a hearing and the Judge finds that the victim should be granted an order of protection for safety reasons.
- c. **Ex Parte Order of Protection** is a temporary order of protection that is served to the suspect notifying them of a court ordered hearing. The Ex Parte is to be enforced as an Order of Protection, if the suspect has been served with a copy of the Ex Parte order, until the parties come to court for the hearing. Officers who

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encounter a situation where an **Ex Parte Order of Protection** is produced must determine if it has been served on the responding party. No **Ex Parte Order of Protection** can be enforced by arrest until the responding party has been served or otherwise has acquired actual knowledge of such order.

Ex Parte Order: is issued by either a Civil Court, or General Sessions Criminal Court, without the knowledge or presence of one of the individuals involved in a dispute.

Example: Jane Smith goes to Court and Mike Smith is not present at the hearing and the Judge issues an **Ex Parte Order of Protection**, Mike Smith who was not present has no knowledge of the order. Officers are then called to a scene where Jane and Mike are involved in an argument and Jane produces the order. Officers, upon checking with the Shelby County Fugitive Division, must determine if the order is an **Ex Parte Order of Protection** and, if so, is there evidence Mike has been served with it or otherwise has actual knowledge of the order.

- If he has been served with it, and is in violation, then an arrest **must** be made.
- If he has not been served **and denies knowledge of the order**, then the officer will verify the existence of the order, and advise Mike that he is in violation and refusal to comply with the order might result in his immediate arrest.
- If he has not been served **and admits knowledge of the existence of the order**, then Mike should be arrested.

Officers must arrest Mike if he has committed a domestic violence act that requires such action.

d. **OUT OF STATE ORDERS OF PROTECTION**

If an Officer is advised by a victim that they have an out of state Order of Protection, the Officer should try to verify the order by:

- 1) Verifying the Order through N.C.I.C from Station “B” by running a QW on the suspect.
- 2) Determine if the victim has a copy in hand.
- 3) Determine if the order states that there is finding of fact that the order was issued because of a domestic violence.

All Memphis Police Officers **must** enforce the provisions of **any** Order of Protection; this includes Agreed Order of Protection, Order of Protection, Ex Parte Order of Protection, and Out of State Order of Protection.

C. **Attachments, Replevin, etc.:**

These orders generally allow one person to reclaim or get possession of personal property (appliances, furniture, etc.). Usually, a Shelby County Sheriff’s Deputy will be present to serve these papers. Memphis Police Department officers are not authorized to do so. If a Sheriff’s Deputy is not present, then the police officer called to the scene will only insure that no disturbance of the peace occurs. If the person with the court order already has complete

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possession of the item, he/she will be allowed to leave with it without interference. If the party does not have complete possession of the item, he is to be referred to the Shelby County Sheriff's Department for assistance.

D. Evictions:

A person having a valid court order may forcibly evict another from a house, apartment, etc. The Shelby County Sheriff's Department usually assists in these matters. If a person is attempting to evict another, he will be allowed to do so if the other party is not resisting the eviction. If a disturbance occurs, the evicting party should be referred to the Shelby County Sheriff's Department for assistance.

E. Process Servers

T.C.A. 8-8-108 allots process servers the same power prescribed to sheriff deputies while in the performance of process service. Memphis Police Officers will not interfere nor assist in the service of any writ or process; the officer's involvement should be restricted to preventing any sort of violence or other type altercation. This necessarily requires a neutral approach and would preclude any assertive action on behalf of one individual to the detriment of another. If the police are called, they should stand by only to prevent personal injury and should not become a participant in the civil dispute. TCA code 39-16-602 states "It is an offense for a person to intentionally prevent or obstruct an officer of the state or any other person known to be a civil process server in serving, or attempting to serve or execute any legal writ or process". If an obstruction of service occurs, the process server will be the arresting officer and the scene officer will transport, completing a hearsay affidavit or issuing a misdemeanor citation.

F. Repossession of Automobiles:

In Tennessee, a reposessor may legally take a vehicle as long as he does so peaceably and does not destroy any private property. A court order is not necessary. An example is when a reposessor tows away a vehicle from private or public property without the owner's knowledge.

If the owner catches the reposessor and the Memphis Police Department is called, it is a civil matter. If the reposessor has full control of the vehicle, off the private property of the owner, he should be permitted to retain custody. If the reposessor does not have full control of the vehicle, or he is still on the owner's property, he must notify the Sheriff's Department for assistance. The owner will be allowed to keep the property until such time as the Shelby County Sheriff's Department takes over.

A reposessor who is taking a vehicle is required to have his/her lien papers on his/her person and must notify the Memphis Police Department's Report Center immediately upon taking the vehicle.

Police Officers inquiries regarding repossessions should be directed to the Report Center not to the Police Dispatcher.

Whenever an officer is called to a scene where a wrecker driver is attempting to effect a removal of any vehicle pursuant to a contract, the officer's involvement should be restricted

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to preventing any sort of violence or other type altercation. It should be noted that the role of a police officer in any civil dispute, unless mandated by law to the contrary, is to maintain the peace and provide for the safety of the parties. This necessarily requires a neutral approach and would preclude any assertive action on behalf of one individual to the detriment of another (i.e. owner of private property calls a wrecker to said location to tow a vehicle which is improperly parked; the owner of the vehicle arrives on the scene and confronts the owner of the property and the wrecker driver. If the police are called, they should stand by only to prevent personal injury and should not become a participant in the civil dispute).

VII. Misdemeanor Arrest Procedure:

The Attorney General's Office and the City Prosecutor's Office have requested that our officers utilize state charges in every case where a state charge is applicable and to avoid using city ordinance charges except when no state charge is available. General Sessions Courts do not have jurisdiction to hear city charges. When a person is charged with a state misdemeanor and a city charge, the city charge may be dismissed for lack of jurisdiction by the General Sessions Court.

When a person is physically arrested for a state misdemeanor and other related charges, then the related charges should also be misdemeanor charges. For example: If a person is arrested for DUI and a city charge of speeding, that city charge of speeding should be designated as a state charge, using the appropriate T.C.A. sections. In all traffic related physical arrests, officers should utilize the proper state misdemeanor section numbers for the traffic offenses, rather than the past policy of using city charges. These state misdemeanor charges would have to be included in the Affidavit of Complaint.

In the event that only a city charge is applicable and it is the only charge against the person arrested, that city charge will still be heard in the City Court system. Officers will not place any city charges to be heard in General Sessions Courts. If there are a combination of state misdemeanor charges and city charges and the basis for the arrest is a city charge, then the situation should be explained in the narrative portion of the arrest ticket. Example: If a person is arrested after being observed drinking alcoholic beverages in the park (city charge) and after the arrest a search reveals that he is carrying a pistol (state charge), then he should only be charged with the state charge of Unlawful Possession of a Weapon. The facts leading up to the arrest, i.e. drinking in the park, should be set out in the narrative portion of the arrest ticket.

A different procedure will be followed in traffic arrests. Where a city charge was the original basis for the observation in that event, a physical arrest will be made and a traffic summons issued.

IN SUMMARY, OFFICERS SHOULD:

- CONTINUE TO USE CITY CHARGES ONLY ON TRAFFIC TICKETS.
- IF A PHYSICAL ARREST IS MADE FOR A STATE MISDEMEANOR, CONVERT ANY RELATED CITY CHARGES TO STATE CHARGES IF THERE ARE

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CORRESPONDING STATE CHARGES.

- IF STATE MISDEMEANOR AND CITY CHARGES ARE APPLICABLE, CHARGE THE DEFENDANT WITH THE STATE MISDEMEANOR CHARGE ONLY; BUT IF THE BASIS FOR THE ARREST IS THE CITY CHARGE, THOSE FACTS SHOULD BE SET OUT IN THE NARRATIVE PORTION OF THE ARREST TICKET. (EXCEPTION: IF THE OFFICER FEELS IT IS NECESSARY TO CHARGE THE DEFENDANT WITH BOTH A STATE CHARGE AND A CITY ORDINANCE VIOLATION, THEN THE OFFICER MAY ISSUE AN ORDINANCE SUMMONS FOR THE CITY VIOLATION.) FOR A TRAFFIC ARREST INVOLVING STATE AND CITY CHARGES, THEN A PHYSICAL ARREST IS MADE FOR THE STATE CHARGE AND A TRAFFIC SUMMONS ISSUED FOR THE CITY CHARGE.
- IF A PHYSICAL ARREST IS MADE FOR CITY ORDINANCE VIOLATIONS ONLY, CONTINUE TO USE THE APPROPRIATE CITY CHARGES.

VIII. Prior Records Check on Misdemeanor Suspects by Field Personnel

Officers may request a check for "wants" and "warrants" through Station B, but should not contact the Shelby County R & I Section for a record check unless it is an emergency or with the prior approval of a Supervisor.

In Shoplifting arrests, officers will still make a "wants" and "warrants" check through Station B, and will enter the charge of "Theft of Property - Over/Under \$500 (depending on the dollar amount) in all shoplifting arrests where a want or warrant is not located on the individual. It will be the General Sessions Prosecutor's responsibility to determine whether that arrested party has prior convictions for purposes of punishment enhancement. Officers should use the "Theft of Property - Over/Under \$500" charge in all shoplifting arrests, without checking with the R & I Section on whether that individual has prior convictions. Nothing in this policy should be construed as limiting investigators' access to information and records contained in the Shelby County R & I Section. Terminals in the various bureaus will give officers the general arrest history of individuals. Should an officer wish to see the file on a given individual, he/she need only go to the R & I Section and that information will be made available to him/her.

IX. Strikes/ Picketing:

It is the policy of this Department, when confronted with situations involving strikes and picketing activities, to consider the matter as a private dispute between the employers and the striking or picketing employees. Certain Federal Laws regulate private labor picketing.

Should officers of this Department receive a call from a business owner to a location where picketing activity is taking place the officers should advise the storeowner that he/she must obtain a warrant for any activity which the officer has not witnessed. The officer may arrest in only those situations where a misdemeanor has been committed in his/her presence or a felony has occurred, and the officer has probable cause to believe that a given individual committed the felony.

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In situations where officers receive a call regarding picketers blocking ingress and egress to a business where the business is located on a shopping center lot, the officer should not require the picketers to conduct their picketing on the sidewalk adjacent to the street. Numerous cases have held that the shopping center lot and the sidewalks in front of the businesses on these lots can be used by persons conducting lawful picketing activity.

X. Ordinance Summons:

The below procedures will be followed for issuance of an Ordinance Summons:

A. Issuance and Routing

An Ordinance Summons is a ticket issued to an offender by a police officer to appear in the City Court, City of Memphis, for any offense other than traffic, showing the offense charged and signed by the offender agreeing to appear at the place and time indicated.

1. White Copy - This is the Court Complaint.
The white copy of the Ordinance Summons will be filed with the City Court Clerk's office and shall be deemed to be a lawful complaint for the purpose of prosecution. Only police officers acting within the scope of their authority will be empowered to issue said Summons.
2. Yellow Copy - This is the City Prosecutor's copy.
The yellow copy is to be turned in at the same time as the white copy (Court Complaint copy), and it is to be forwarded to the City Court Clerk's Office. The yellow copy will then be forwarded to the City Prosecutor's Office by the Court Clerk's Office.
3. Pink Copy - This is the Summons copy (Defendant's copy).
The pink copy is given to the defendant to advise him/her of the date, time, division, and location of court. The court date is assigned by the officer issuing the Summons at the time the Summons is issued. Officers will set the court date and time on their REGULAR SUMMONS DAY, as is now being done with long traffic tickets wherein the court date is assigned a minimum of four (4) weeks from the date of issuance.
4. Officers will set all traffic tickets and City Ordinance Summons on their regularly scheduled monthly court date. (This will eliminate the need for Wednesday City Court Summons appearances, unless the officer's regularly scheduled date falls on a Wednesday).
5. In situations where more than one officer's name appears on an Ordinance Citation, the court date will be set on the arresting officer's (affiant's) scheduled court date.
6. In situations where there are co-defendants, an officer will assign **all** co-defendants the **same** court date and meet the guidelines above.
7. The affiant will be the **only** officer that appears in court.
8. If the case is continued by the prosecutor, it will be reset on the officer's next regularly assigned court date.

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These guidelines are intended to improve the use of resources. Any effort to manipulate or circumvent the intent of these guidelines will be considered a violation and will result in disciplinary action.

B. Physical Arrest:

An Ordinance Summons should not be issued under the following circumstances:

1. The person arrested requires a medical examination, medical care, or if that person is unable to care for his own safety;
2. There is a reasonable likelihood that the offense would continue or resume, or that persons or property would be endangered by the arrested party;
3. The person cannot or will not offer satisfactory evidence of identity;
4. The prosecution of the offense for which the person was arrested or if another offense would thereby be jeopardized;
5. A reasonable likelihood exists that the arrested person will fail to appear in court; (i.e. previous warrants for Failure to Appear).
6. The person demands to be taken immediately before a Magistrate or refuses to sign the Summons.

**** Officers should run a check on the individual for "wants" and "warrants" prior to issuing the Ordinance Summons. If the check is positive, officers should make a physical arrest.**

C. Evidence:

If evidence is taken, this evidence should be marked with the defendant's name and date and it should be tagged by the officer, in the Property/Evidence Room without undue delay.

D. Procedure:

Whenever any person is served with an Ordinance Summons, said person shall appear at the date and time set forth therein in court for a hearing of said cause, unless said violation has a forfeiture set specifically in Section 23-28 of the City Code. If said person fails to appear on the date and time, a default judgment shall be taken not to exceed Fifty Dollars (\$50.00) and costs for each offense.

The Field Commander will sign the Summons in the appropriate space marked "APPROVED BY", and the white and yellow copies will be forwarded to the City Court Clerk's Office, via the Clerks assigned to the various precincts, or by the following day's mail run. There will be no need to fingerprint the defendant at the time of issuance, as is done with the Misdemeanor Citations.

E. Other Charges:

In the event an officer feels it is necessary to charge a defendant with both a state charge and a city ordinance violation, the officer should issue the Ordinance Summons for the city violation and either make a physical arrest or issue a misdemeanor citation for the state charge. However, officers are not encouraged to use this double charging procedure unless

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absolutely necessary.

F. Distribution of Ordinance Summons Books:

Ordinance Summons books will be distributed by the Clerks assigned to the various precincts.

XI. Misdemeanor Offense Situations:

All officers will adhere to the following procedures when they encounter misdemeanor situations:

A. Suspect is known:

When a uniform officer is called regarding a misdemeanor offense and the suspect is known and no further investigation is required, the officer should refer the victim to the Citizen's Dispute Office so that the matter might be resolved through mediation. If a crime has occurred the officer will take the appropriate offense report and the victim will be referred to the General Investigative Bureau for assistance in obtaining a warrant.

B. Suspect is unknown:

When a uniform officer is called regarding a misdemeanor offense and the suspect is presently unknown and further investigation is required, the officer should take a report and refer the victim to the appropriate investigative bureau.

XII. Smoking Prohibited as Public Nuisance in Certain Public Places and Areas, City Code 20-25.

A. Definitions:

1. The term "smoking" includes carrying a lighted cigar, cigarette, cigarillo, pipe, or any other lighted smoking material and/or equipment.
2. The term "restaurant" shall mean any eating-place which is open to the public, having a seating capacity of fifty (50) individuals or more.

B. Areas Affected:

Smoking in certain enclosed areas has been determined to be injurious to human health, to constitute a source of annoyance and discomfort to nonsmokers, and to be a public nuisance. Therefore:

1. Smoking shall be unlawful and prohibited in:
 - a. All public elevators;
 - b. All Memphis Area Transit Authority buses;
 - d. The Canon Center and the Auditorium stage area;
 - e. The Criminal Justice Center (CJC);

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- f. The FedEx Forum;
 - g. All rooms in the Cook Convention Center designated by its management as nonsmoking meeting rooms;
 - h. Any theater, hall, hotel, public building, store warehouse, factory, or on the premises of any establishment, public conveyance or anywhere that smoking is dangerous, provided signs of a suitable size are posted in such places where they can be seen.
 - i. All publicly or privately owned restaurants or other eating establishments, as defined herein, except that this prohibition shall not apply to any such eating establishment which maintains a nonsmoking area adequate to meet demands and which informs all patrons that a nonsmoking area is provided. At the request of the patron, the patron shall be seated in the nonsmoking area. This prohibition shall not apply to any rooms while being used for private functions. Notwithstanding the provisions of this paragraph, any owner or person in charge of a business activity hereby governed may designate the restaurant as a nonsmoking area in its entirety.
 - j. All enclosed areas open to the public in any shopping area of a retail merchandising store, including grocery stores having more than five (5) employees; however, nothing herein shall prevent areas other than shopping areas from being established for "smoking" and "nonsmoking" employees and/or patrons by posting proper signs.
2. Nonsmoking areas shall be designated by the person in charge of all hospital lobbies and waiting rooms. After such designation, shall be unlawful and prohibited in such areas.

Both the places described in foregoing subparagraph (1.) and the areas designated as nonsmoking areas pursuant to foregoing subparagraph (2.) shall henceforth be referred to as "nonsmoking areas".

Exception: This ordinance is not intended to regulate smoking in retail stores whose sales consist principally of tobacco or tobacco related product sales.

Notice Requirements: This proprietor or other person in charge of any of the places or areas described in paragraph (b) above shall post and maintain conspicuous signs in all non-smoking areas, advising the public that smoking is prohibited therein, describing generally the perimeters of the nonsmoking area, and stating the penalty for violation of the prohibition in language similar to the following:

NO SMOKING
(General Description of Non-Smoking Area)
Memphis Code Section 20-25
Up to \$50.00 Fine

Penalties: Any person or entity who fails to post and maintain the signs required by this section is guilty of a misdemeanor punishable by a fine of up to fifty dollars (\$50.00) per required sign for each day during which a required sign is either not posted or not maintained. Any person who smokes or carries a lighted cigar, cigarette, cigarillo, pipe or

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any other lighted smoking material and/or equipment in a non-smoking area is guilty of a misdemeanor punishable as provided in Section 1-8 of this Code.

Injunction: The director of the City and County Health Department, the Chief of the City Police Services Division, the Chief of the City Fire Services Division, or any adversely affected party may institute an action to enjoin repeated violations of this section in any court of competent jurisdiction. (Ord. No. 2852, S 1, 4-3-79; Code 1967, SS 17-13, 22-61. Ord. No. 3517, S 20-25, 2-11-86; Code 1985)

XIII. Environmental Court / General Sessions Div 14

Officers issuing citations for environmental violations must place the court date at least 30 days from issuance. Any precincts that do not have a Community Court within its precinct boundaries must assign the court location as General Sessions Criminal Court Div. 14, 201 Poplar. The following precincts have Community Courts within their precinct boundaries.

<u>Station</u>	<u>Assigned Court</u>	<u>Session Dates</u>
Old Allen Station	Frayser Community Court	1 st and 3 rd Tuesday
Mt. Moriah/ Ridgeway Stations	Hickory Hill Community Court	2 nd and 4 th Thursday
Tillman Station	Orange Mound Community Court	2 nd and 4 th Thursday
Raines Station	Whitehaven Community Court	2 nd and 4 th Thursday

Distribution of Copies

- (1) White Copy – Court’s Copy (General Sessions Criminal Court Clerk, Div. 14)
- (2) Yellow Copy - Station’s copy.
- (3) Pink Copy - Summons’ copy (Defendant's copy)

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The Rules of Criminal Procedure have established the requirement that every arrest that is made by a law enforcement officer be supported by an official warrant, which serves as a formal charging document to commence a criminal prosecution. If a judge of any Tennessee court issues an arrest warrant, then that warrant serves as the charging instrument and when the defendant is arrested on that warrant, no further document is needed.

When a defendant is arrested without a warrant for either a felony or a state misdemeanor, an Affidavit of Complaint is required and serves as an arrest warrant for purposes of formally commencing the criminal prosecution. UNDER THE RULES OF CRIMINAL PROCEDURE, THE COURT CLERKS ARE DESIGNATED AS MAGISTRATES FOR PURPOSES OF DETERMINING PROBABLE CAUSE FOR THE AFFIDAVIT OF COMPLAINT. THE CLERK, BY STATUTORY AUTHORITY, IS ACTING AS A JUDICIAL OFFICER AND IS RESPONSIBLE FOR REVIEWING THE ARREST TO INSURE THAT PROBABLE CAUSE EXISTS.

Whenever a defendant is arrested without a warrant for a felony charge, approved by the Command Duty Officer, and assigned to a Investigative Bureau for further investigation, it will not be necessary for the uniform officer to fill out an Affidavit of Complaint. The detective assigned to the case will do this when he charges the defendant. When an arrest on probable cause is made wherein misdemeanor charges are also lodged, the investigator handling the felony charge will complete the Affidavit of Complaint to include the misdemeanor charges. The arresting officer need only fill out a probable cause Arrest Ticket. WHENEVER A DEFENDANT IS ARRESTED WITHOUT A WARRANT FOR ANY MISDEMEANOR CHARGE, THE ARRESTING OFFICER MUST OBTAIN THE APPROPRIATE AFFIDAVIT OF COMPLAINT, FILL IT OUT COMPLETELY, AND HAVE IT REVIEWED AND APPROVED BY THE GENERAL SESSIONS COURT CLERK ON DUTY IN THE DETENTION AREA. IT IS CRITICAL THAT THE ARRESTING OFFICER PUTS SUFFICIENT INFORMATION IN THE AFFIDAVIT OF COMPLAINT TO ESTABLISH PROBABLE CAUSE.

The County Jail will not accept a prisoner unless an arrest ticket and an Affidavit of Complaint is completed. In the past, citizens/security guards were required to come to the Criminal Justice Center to complete the Affidavit of Complaint prior to the 9:00 a.m. setting of court on the next day. This procedure is not feasible in the Criminal Justice Complex. Therefore, all officers transporting prisoners to the County Jail who have been arrested by citizens/security guards must complete a hearsay affidavit.

For example: An officer receives a call for "Holding a Prisoner" to Joe's Supermarket and after arrival on the scene, talks to Mike Johnson, Security Guard, who advises the officer that he observed Harry Smith place a package of meat in his pants and attempted to leave the store without paying for same. The transporting officer would take the prisoner to the CJC and after placing him in the Intake Facility, fill out an Affidavit of Complaint relating that Security Guard Mike Johnson had advised the officer that he (Mike Johnson) had observed Harry Smith place a

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package of meat in his pants and attempted to leave the store (list name, address of business, and value of item(s) taken) without paying for same. The officer would then take this Affidavit of Complaint and have it reviewed by Central Intake. The Officer would then proceed to the 24-Hour Clerk and swear to its truthfulness, as told to the officer by the security guard.

It must be understood that the officer is not swearing to the truth of the security guard's allegations. The officer is swearing to the truth of what was related to him by that security guard.

Any defendant who makes his/her first appearance in court for whom there is no charging instrument will be automatically dismissed. It is important for each officer's own protection from a false arrest that the Affidavit of Complaint be filled out accurately and completely.

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I. Issuance and Routing of a Misdemeanor Citation

- A. The following procedures will be followed for issuance of Misdemeanor Citations:
1. Misdemeanor citations may be issued when an officer makes an arrest or when an officer is called to the scene where a security guard or citizen has made an arrest.
 2. If the officer witnesses the offense and issues a citation, he swears to the correctness of the form of the misdemeanor citation.
 3. If a security guard or citizen has made an arrest and calls the police officer to the scene and it is determined by that officer that the subject meets the criteria for issuing a Misdemeanor Citation, then the officer issues the citation. **(Officer is not swearing to the truthfulness of the allegations made by the security guard/citizen, he/she is only swearing to the correctness of the form of the citation.)**
 4. It is necessary to obtain the right thumbprint on the back of the hard copy for identification purposes. This will aid in the immediate release of persons wrongly identified and subsequently arrested for failure to appear for booking and processing or for failure to appear in court. On many occasions in the past, persons have given the officer wrong identification at the time the Misdemeanor Citation was issued, resulting in an arrest warrant being issued for the wrong party after the named party failed to appear for processing. Therefore, the thumbprint **SHOULD BE ROLLED** and clearly imprinted on the hard copy. **Be certain that the thumbprint is legible.**
 5. The issuing officer of the misdemeanor citation must swear to the citation before a notary public (**located at some precincts**), a city court clerk (**located at some precincts**), a Twenty-four hour (24) clerk, or a judicial commissioner (**located at 205 Poplar Ave in the Jail Annex**).
- B. Officers having written Misdemeanor Citations during the "Bravo" shift, must at the end of their shift, sign those citations before a notary public or a City Court Clerk, (**article 35, section 268 of the Memphis City Charter authorizes all Deputy City Court Clerks to administer oaths**) at the precinct, Twenty four hour (24) clerk, or judicial commissioner at 205 Poplar Ave in the Jail Annex.
- C. "Charlie" and "Delta" shift officers will swear to their misdemeanor citation before a notary public or give any misdemeanor citation that they have written to their lieutenant who will hold them until the officer's next tour of duty for swearing before a notary public or city court clerk.
- D. "Alpha" shift officers will swear to their misdemeanor citations before a notary public or city court clerk or if no notary public or city court clerk is/ or will be soon available the alpha shift officers will notify their Lieutenant that they have written a Misdemeanor Citation and proceed, at a time designated during the shift by their Lieutenant, to the 24 hour clerk or judicial commissioner where their signatures on the Misdemeanor Citation will be notarized.

E. In the event a holiday or weekend is involved, the officer will appear before a notary public

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or city court clerk at the first opportunity.

- F. The officer will turn in the sworn Citation to his/her supervisor who will forward the white copy and hard copy to the General Sessions Court Clerk on the following day's mail run. A photo-copy will also be sent to ICAP.

II. Distribution of the copies of the Misdemeanor Citation (MPD Form 202)

A. White Copy - this is the court complaint.

The white copy of the Misdemeanor Citation will become the official charging document. If a security guard or citizen is the complainant, he should be advised that failure to prosecute the matter will result in dismissal of the charges against the defendant and may result in civil liability. Officers should make sure that the information on the back of the white copy (court complaint copy) is filled out completely.

If a security guard or citizen is the complainant, his/her name, address, and phone number should be listed in the proper space provided on the back of the white copy.

Any other persons issued Citations or witnesses to the Citation should be listed on the back of the white copy. Witnesses or complainant's name should not appear on the pink or hard copies.

B. Pink Copy - this is the Summons.

The pink copy is **given to the defendant** to advise him/her of the charges against him/her and to inform him/her the date and place to appear for booking and processing, and the date, time, and Division number and location of Court. The officer issuing the citation assigns the booking and processing date and the court date. The booking and processing date must be 7-10 days from issuance. The court date will be set according to the dates on the court issued Misdemeanor Citation Court. **Officers will follow the issued court schedule to avoid setting a court date on a court holiday.** Officers will assign the court division as room LL-81.

C. Green Copy- Officers' Copy

D. Hard Copy - This is for the R & I Section.

The hard copy is to be turned in at the same time as the white (court complaint) copy and they are to be forwarded to the General Sessions Court Clerk. The General Sessions Court Clerk will assign a docket number on the Misdemeanor Citation. The hard copy will then be forwarded to the R & I Section.

III. Arrest

Tennessee law (TCA 40-7-118(b) (1) requires a peace officer to arrest a person for a misdemeanor (or receive the person from someone who has arrested the person for a misdemeanor) before the peace officer can consider issuing a misdemeanor citation instead (in lieu) of transporting the person to jail. A misdemeanor citation is not issued instead (in lieu) of arrest but instead (in lieu) of transport to jail.

- A. An arrest for anyone of the five (5) specific misdemeanors (TCA 40-7-118(b)(3)(A)-(E),

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grants the peace officer unreviewable discretion to transport or issue a misdemeanor citation and the peace officer need not insert a reason for the transport in the arrest ticket. **These five (5) Crimes are:**

1. Theft, formerly constituting shoplifting, TCA 39-14-103.
2. Issuing Bad Checks, TCA 39-14-121.
3. Use of a cancelled, suspended or revoked driver license, TCA 55-50-504 (driving), TCA 55-50-601 (display, possession of cancelled, suspended, revoked or altered license or other fraudulent or illegal use), and TCA 55-50-602 (fraudulent reproduction, issue or sale of license or its use).
4. Assault, if the officer believes there is a reasonable likelihood that person(s) would be endangered if there is no custodial arrest of the defendant.
5. Prostitution, TCA 39-13-513, if there is past conducts of the defendant in prostitution or there is a reasonable belief that the defendant will attempt to engage in prostitution activities.

B. An arrest for any misdemeanor, other than the five (5) misdemeanors listed above, requires the issuance of a misdemeanor citation after the arrest instead (in lieu) of transport to jail unless one of the eight exceptions listed in TCA 40-7-118(c)(1)-(8) is present. These eight exceptions are:

1. The person arrested requires medical examination or medical care, or if he/she is unable to care for his/her own safety;
2. There is a reasonable likelihood that the offense would continue or resume, or that persons or property would be endangered by arrested person.
3. The person arrested cannot or will not offer satisfactory evidence of identification, including the providing of a field-administered fingerprint or thumbprint which a peace officer may require to be affixed to any citation.
 - a. Note that an officer must make "all reasonable efforts to verify a defendant's identity". If a defendant does not produce identification, but is able to provide his/her name, date of birth, and valid drivers license number, once verified by the officer, this information is deemed "satisfactory evidence of identification."
 - b. If not presented with a reasonably satisfactory form of identification, or if by exercising reasonable discretion an officer cannot determine the true identity of an offender, the officer will follow the guidelines as specified in this chapter.
4. The prosecution of the offense for which the person was arrested, or of another offense, would thereby be jeopardized;
5. A reasonable likelihood exists that the arrested person will fail to appear in court. In making such a determination, the arresting officer should look for those communal ties with the arrested party that would substantiate a belief that he or she was reasonably likely to appear for court. Such ties would include those individuals who are residents of the state of Tennessee and those who reside out of state but who are either employed within the state or attend school within the state. Under these

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circumstances, the issuance of a misdemeanor citation would be proper;

6. The person demands to be taken immediately before a magistrate or refuses to sign the citation;
7. The person arrested is so intoxicated that he/she could be a danger to himself / herself or to others; or
8. There are one (1) or more outstanding arrest warrants for the person.

If the officer determines that one or more of these eight (8) exceptions are met, then no citation shall be issued and the arrested person shall be transported to jail. In the event the arrested person is transported to jail, the peace officer is required to state in the narrative upon which of the eight (8) exceptions he/she is relying. This should be done as concisely and specifically as possible.

IV. Wanted Persons

OFFICERS SHOULD RUN A CHECK ON THE INDIVIDUAL FOR "WANTS" AND "WARRANTS" PRIOR TO ISSUING THE MISDEMEANOR CITATION. IF THE CHECK IS POSITIVE, OFFICERS SHOULD TRANSPORT THE ARRESTED PERSON TO JAIL. This requirement cannot be stressed too strongly. The R & I Section is not a secured area and very few commissioned personnel work in this department. Should a person appear for booking and processing against whom there is an outstanding arrest warrant, a serious situation could develop due to a lack of commissioned personnel, who would be needed to effect the arrest.

V. Theft of Services/Service Providers

The preferred method of charging individuals responsible for **theft of services** is to issue a misdemeanor citation on first offenses. However, an individual should be taken into custody and should be transported to the Criminal Justice Complex in instances where an individual(s) is involved in a second or subsequent event regarding theft of services from service providers such as (**i.e. M.L.G.W., Bell South, Time Warner Cable, etc**), or the reckless endangerment of lives and property resulting from such thefts or attempts to steal such services and who through their actions have recklessly endangered the safety of lives or property.

A **representative** of the service provider involved with the investigation will proceed to the office of the Judicial Commissioner to provide **documentation** of the previous violation and evidence of the current violation including photographs and other physical evidence such as tools, parts, etc., which supports the charges.

Additionally, the arrest report and affidavit will include justification to transport individuals in both of these documents based on at least one previous charge, and the current violation with the inclusion of previously issued criteria for misdemeanor arrests. (Chapter II, Section 11, Page 3, Paragraph 2, Section B. - There is a reasonable likelihood that the offense would continue or resume, or that person(s) or property would be endangered by the arrested person.)

The officers should consider the following charges relating to theft of services:

T.C.A. 39-14-104. Theft of services.

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A person commits theft of services who:

- (1) Intentionally obtains services by deception, fraud, coercion, false pretense or any other means to avoid payment for the services;
- (2) Having control over the disposition of services to others, knowingly diverts those services to the person's own benefit or to the benefit of another not entitled thereto; or
- (3) Knowingly absconds from establishments where compensation for services is ordinarily paid immediately upon the rendering of them, including, but not limited to, hotels, motels and restaurants, without payment or a bona fide offer to pay

T.C.A. 39-14-105. Grading of theft.

Theft of property or services is:

- (1) A Class A misdemeanor if the value of the property or services obtained is five hundred dollars (\$500) or less;
- (2) A Class E felony if the value of the property or services obtained is more than five hundred dollars (\$500) but less than one thousand dollars (\$1,000);
- (3) A Class D felony if the value of the property or services obtained is one thousand dollars (\$1,000) or more but less than ten thousand dollars (\$10,000);
- (4) A Class C felony if the value of the property or services obtained is ten thousand dollars (\$10,000) or more but less than sixty thousand dollars (\$60,000); and
- (5) A Class B felony if the value of the property or services obtained is Sixty thousand dollars (\$60,000) or more.

T.C.A. 39-14-411. Destruction or interference with utility lines, fixtures or appliances, or property utilized by railroads.

- (a) It is unlawful for a person to knowingly tap, cut, burn, break down, injure, destroy, or otherwise interrupt or interfere with the current, lines, cables, poles, towers, fixtures or appliances utilized to furnish service to the general public by any telephone or telegraph company, or electric light or power company engaged in furnishing communication, light, heat or power by electricity; or in any way to injure, remove, destroy or interfere with any gas fixtures or appliances.
- (b) It is unlawful for a person to knowingly destroy or interfere with any property utilized by a railroad company to furnish service to the general public. Should the destruction or interference place a person in imminent danger of death or serious bodily injury, then it shall be reckless endangerment and punished according to § 39-13-103. In all other cases, it shall be punished according to the provisions of § 39-14-408.
- (c) A violation of this section is a Class E felony.

T.C.A. 65-35-102. Prohibited acts.

It is unlawful for a person to:

- (1) (A) Knowingly tap, cut, burn, break down, injure, destroy or otherwise interrupt or

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interfere with the current, lines, cables, poles, towers, fixtures or appliances utilized to furnish service to the general public by any telephone or telegraph company, or electric light or power company engaged in furnishing communication, light, heat or power by electricity; or

(B) In any way injure, remove, destroy or interfere with any gas, sanitary sewer, or water fixtures or appliances:

- (2) Obtain or attempt to obtain, by the use of any fraudulent scheme, device, means or method, telephone or telegraph service or the transmission of a message, signal or other communication by telephone or telegraph, or over telephone or telegraph facilities with intent to avoid payment of the lawful price, charge or toll therefor, or for any person to cause another to avoid such payment for such service, or for any person for the purpose of avoiding payment, to conceal or to assist another to conceal from any supplier of telecommunication service or from any lawful authority the existence or place of origin or of destination of any telecommunication, or for any person to assist another in avoiding payment for such service, either through the making of multiple applications for service at one (1) address, or otherwise;
- (3) Obtain or attempt to obtain by use of any fraudulent scheme, device, means or method, electric, sanitary sewer, water, or gas service, with intent to avoid payment of the lawful price, charge or toll therefor, or for any person to cause another to avoid such payment for such service, or for any person to assist another in avoiding payment for electric, sanitary sewer, water, or gas service, either through the making of multiple applications for service at one (1) address, or otherwise;
- (4) Divert or use electrical power with the intent to defraud or deprive any public or private electric power supplier from receiving proper charges or payment for such electrical power; or
- (5) Commit any of the following acts which would make gas, electricity, telephone, sanitary sewer service, or water available to tenant or occupant by committing any of the following acts:
 - (A) Connect any tube, pipe, wire or other instrument with any meter, device or other instrument used for conducting telephone, gas, electricity, sanitary sewer service, or water in such a manner also to permit the use of the telephone, gas, electricity, sanitary sewer service, or water without same passing through a meter or other instrument recording the usage for billing;
 - (B) Alter, injure or prevent the action of a meter, valve, stopcock, or other instrument used for measuring quantities of telephone, gas, electricity, sanitary sewer service, or water;
 - (C) Break, deface or cause to be broken or defaced any seal, locking device or other parts that make up a metering device for recording usage of telephone, gas, electricity, sanitary sewer service, or water or a security system for such recording device;
 - (D) Remove a metering device for measuring quantities of telephone, gas, electricity, sanitary sewer service, or water;
 - (E) Transfer from one (1) location to another a metering device for measuring utilities of telephone, gas, electricity, sanitary sewer service, or water;

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- (F) Use a metering device belonging to the utility that has not been assigned to the location and installed by the utility;
- (G) Adjust the indicated consumption, jam the measuring device, bypass the meter or measuring device with a jumper so that it does not indicate use or registers incorrectly or otherwise obtain quantities of telephone, gas, electricity, sanitary sewer service, or water from the utility without same passing through a metering device for measuring quantities of consumption for billing; or
- (H) Fabricate or use a device to pick or otherwise tamper with the locks used to deter electric current diversion, telephone diversion, gas diversion, water diversion, sanitary sewer service diversion, and meter tampering and meter thefts.

T.C.A. 65-35-103. Evidence of violation.

Any property on which it is found to have telephone, electric, gas, sanitary sewer, or water utilities tampered with in violation of § 65-35-102, and capable of receiving telephone, electricity, gas, sanitary sewer, or water service as a result of the use of any method of diversion prohibited in that section, is prima facie evidence and creates against the tenant or occupant a presumption of intent to tamper or divert in violation of the provisions of § 65-35-102.

The presence upon property served by a utility of a metering device altered to improperly monitor the amount of utility service used on or by such property is presumptive evidence that the utility customer has diverted or used utility service with the intent to deprive or defraud the utility from receiving proper charges or payment for such utility service in violation of the provisions of chapter.

T.C.A. 65-35-105. Criminal proceedings.

- (a) A violation of § 65-35-102 is also a violation of § 39-14-104 and § 65-35-103 applies to any proceeding brought to impose the penalties for a violation of § 39-14-104.
- (b) In all criminal proceedings brought to impose penalties under § 39-14-104 for violation of this chapter, the provisions of § 65-35-103 pertaining to "prima facie evidence," "presumption of intent" and "presumptive evidence" shall be deemed to be an inference of such evidence or intent.

T.C.A. 65-35-106. Civil remedies and criminal penalties mutually exclusive.

It is the intent of the general assembly that the civil remedies of this chapter and the criminal penalties imposed by any other act of the general assembly are mutually exclusive methods for the prosecution of the unlawful activities described in the respective statutes.

VI. Processing Date

The officer issuing the citation is register the misdemeanor citation in the Misdemeanor Citation Court Scheduler Program maintained by the Shelby County Sheriff's Office. It is an internet based program that can be connected to <http://mcpcs.shelby-sheriff.org> or by accessing the link in MDSAS under the links tab.

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VII. Court Date

The officer will be set a court date for the person cited, according to the Misdemeanor Citation Court Scheduler Program maintained by the Shelby County Sheriff's Office.

VIII. Evidence

If evidence is taken, this evidence should be placed in a bag and marked with the defendant's name and then secured in the trunk of the officer's car. At some time before the officer completes his shift, the officer should properly tag the evidence in the Property Room and obtain a receipt.

IX. City Charges

Where only a city charge is to be placed against a defendant, officers should issue an **Ordinance Summons for the city violation**. (See section on City Ordinances.) If an individual violates a city ordinance and a state law, a State Misdemeanor Citation would be issued for the state misdemeanor violation and the city violation would be listed in the narrative to support probable cause. **Do not issue a misdemeanor citation and city ordinance summons/city traffic summons. Do not mix state and city charges on any charging document.**

X. Duties of the General Sessions Court Clerk

When the white copy and the hard copy are received, the clerk will obtain a docket number and enter this number in the space provided on both copies of the Citation. The General Sessions Court Clerk will keep the white copy as the official complaint. The hard copy will be forwarded to the R & I Section. A copy of the Citation will also be forwarded to the General Sessions Prosecutor's Office.

XI. Duties of R & I Personnel

When the hard copy of the Misdemeanor Citation is received from the General Sessions Court Clerk, either via the pneumatic tube or through the mail, it should be placed in a dated file. Each day the file should be checked to see who is scheduled to appear for processing on that date. When the defendant appears for processing, he will be printed and photographed and a jacket opened with the hard copy being placed in it as a permanent record. The R & I number will be placed into the computer and linked with the docket number already obtained by the General Sessions Court Clerk.

XII. Failure to Appear for Processing

If a defendant does not appear at the R & I Section for processing on the date and time scheduled, the R & I technician, at the end of the time allotted for processing on that date, will sign the back of the hard copy in the space provided, showing that the defendant did not appear for processing as instructed. The hard copy will then be forwarded to the General Sessions District Attorney for disposition.

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SECTION: Misdemeanor Citations

XIII. Agency Blocks

The misdemeanor citation has spaces for the officers' names, IBM numbers, and car numbers. You will note that there are two (2) blocks designated "Agency". The computer designation for the Memphis Police Department is "MP". This designation should be placed in those blocks when filling out the citation.

XIV. Misdemeanor citations issued where not permitted, required, or warranted:

- **For incidents where there are only Class C misdemeanor violations of TCA Title 55; Chapters 8 (Operation of Vehicle-Rules of the Road), 9 (Equipment and Lighting Regulations), 10 (Accidents, Arrests, Crimes and Penalties), 50 (Driver Licenses) and 55-12-139 (Financial Responsibility Law) a misdemeanor citation can not be issued.** TCA 40-7-118(b) (2) (B).
- **Citations for DUI, 55-10--401, are specifically prohibited**, except where the defendant is admitted to a hospital or detained for medical treatment for a period of at least three hours, TCA 40-7-118(b)(2)(A).
- Citations **should not be issued** in cases of **domestic violence**.
- Officers must not issue a misdemeanor citation for DWLSRC and then issue a traffic citation for the initial moving violation. **Issue a misdemeanor citation for state charges only. Include the initial moving violation charge as a state charge.**
DO NOT ISSUE BOTH; a state charge by affidavit of complaint or misdemeanor citation and a city charge by issuance of a traffic citation.
- Officers must not issue a misdemeanor citation charging defendants with Reckless Driving where there is clearly no conduct of reckless disregard for the property or safety of others. The only recourse is to issue a city ordinance summons for the appropriate city ordinance traffic violation.
- Misdemeanor Citations will no longer be given out by the Hit & Run Squad for Leaving the Scene of an Accident, as a result of a follow-up investigation. A misdemeanor citation may be issued for Leaving the Scene of an Accident **only if** the responsible party is witnessed, by the officer, committing this offense.

XV. Appropriate Steps to Follow When Making a Misdemeanor Arrest

1. **Arrest the person:** an arrest is the taking, seizing or detaining of the person of another, either by touching or putting hands on him/her, or by any act which indicates an intention to take him/her into custody and subjects that person arrested to the will and control of the person making the arrest.
2. Tell the person what he/she is under arrest for as required by TCA 40-7-106.
3. Restrain the person (use of handcuffs or the back seat of the squad car).

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4. Tell the person he/she will be transported to jail unless he/she is found through further investigation to qualify for release in the field with the issuance of a misdemeanor citation.
5. Search the person.
6. Search the area the person had control over when you first made contact with the person
7. Check for warrants.
8. **Apply TCA 40-7-118(b) and (c) to your facts to determine whether the person will be issued a citation or transported.** *The arrest was already made in Step One. It is now time to determine if you give a ride or a citation.*

XVI. Civil or Criminal Liability

The misdemeanor citation law provides that an officer who, on the basis of facts reasonably believed to exist, determines that a citation cannot be issued because of one (1) of the eight (8) exceptions enumerated, shall not be subject to civil or criminal liability for false arrest, false imprisonment or unlawful detention.

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SECTION: Arrest Warrants

Arrest Warrants

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SECTION: Arrest Warrants

1. Procedure in Obtaining Arrest Warrants

The General Sessions warrants containing the affidavit and warrant on the same form will be issued in the following manner: The officer will present this arrest warrant to the General Sessions Judge, who will determine probable cause and if that probable cause is present, the Judge will sign the warrant portion of that form. The warrant is then given to the Clerk in the Courtroom and the warrant will be forwarded to the Fugitive Squad after it has been assigned a number by the computer. The officer will not have physical possession of the warrant once the Judge has signed it. Copies for files may be obtained before the judge signs it; however, officers may not obtain copies of a signed warrant. The warrant will be forwarded to the Shelby County Fugitive Squad in all misdemeanor and felony cases. The Fugitive Squad will enter the warrant in the local computer system if it has not been previously entered by the Clerk.

It is not necessary for investigative personnel to complete a request for arrest form. The responsibility for entering the wanted party's name in the computer is that of the General Sessions Clerk and the Fugitive Squad. The wanted person's name will automatically be deleted under the new procedure once that person has been arrested. The supplemental information contained on the request for arrest which would further aid in identifying the wanted party, is now made a part of the new General Sessions warrant. This warrant requires that the description of the named party be set out on the back of the warrant.

Only a *duly elected judge* will be allowed to sign an arrest warrant wherein the defendant or defendant(s) are being charged with a Class "A" or Class "B" Felony.

A. General Sessions Arrest Warrants:

The General Sessions arrest warrant will be utilized for all state misdemeanor charges as well as all felony charges. Both the Affidavit of Complaint and the warrant is on the same document. Officers must fill out the informational description block on the back of the warrant. THIS INFORMATION BLOCK MUST BE FILLED OUT WITH ALL THE PERTINENT INFORMATION WHICH THE AFFIANT HAS AVAILABLE. This is necessary in order to enter the document into the computer and receive a warrant number.

It is also necessary to supply the names of witnesses needed in the prosecution of the case. This is also on the back portion of this document. This information is for the prosecutor's benefit and should not be used in listing any party who the officer wishes to remain confidential. That information should be given to the prosecutor prior to the trial date.

For clarification purposes, the information block contains initials for certain phrases, most of which are obvious; but the following information is for complete clarification.

DOB	-	Date of Birth
R/S	-	Race & Sex

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Ht/WGHT	-	Height & Weight
R & I	-	Records & Identification Number

The designation R & I, as referred to in the General Sessions arrest warrant, refers to the Records and Identification number given to an arrested party. Do not put the offense report number in this section. If an offense report number is available, it should be entered below the description block. This will enable the Command Duty Officer to forward the information to the proper bureau once the wanted party is arrested.

It should be noted that in the "Warrant" section of the General Sessions arrest warrant, there is a space after the words " You are hereby commanded in the name of the State to". The word arrest should be written or typed in this space unless the "Fiat" has been signed by the Judge, in which case the words summons would be written or typed in this space. It will be extremely seldom that a summons would be issued. In almost every case handled by this Department, the document will become an arrest warrant after the Judge signs the warrant portion and the word arrest will be entered.

B. City Ordinance Arrest Warrants:

The procedure for obtaining City Ordinance arrest warrants is the same. The officer will obtain the warrant from a City Court Judge after it is signed and the officer will take it to the City Court Clerk's Office where this City Warrant will be properly numbered and entered into a log book. The warrant will be forwarded to the Warrant Squad for service.

C. Possession of Warrant:

It should be noted that officers may arrest based on the knowledge that a warrant for a person's arrest is in existence. It is not necessary that the officer have the warrant in his/her possession at the time of the arrest. In the past, if it was the officer's intention to immediately arrest the party after obtaining an arrest warrant, the officer would have the warrant in hand. This is not the case as far as misdemeanor and felony warrants issued by General Sessions Courts are concerned. The warrant will be forwarded to the Fugitive Squad who will maintain possession of that warrant.

D. Issuance of Warrants Beyond Memphis City Limits:

Situations have arisen when citizens of Shelby County, but not Memphis (i.e., Germantown, Collierville, Millington), have been cited with violations while in Memphis; and subsequently, warrants need to be served on these individuals to secure their presence in court to respond to such charges.

(1) If there has been a warrant issued for the arrest of an individual for the

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SECTION: Arrest Warrants

violation of a Memphis city ordinance committed within the City of Memphis, it may be served anywhere in Shelby County.

(2) If there is a warrant of arrest for the violation of a state law, Memphis police officers have authority to execute such warrant within Shelby County.

2. Procedure for Defendants Arrested on Warrants

Arrest warrants will only be executed by sworn law enforcement officers. The following procedure will be followed when a person or persons are arrested on a warrant and turned over to the Shelby County Sheriff's Fugitive Squad: (74.3.2)

When an officer stops an individual and determines there is an outstanding warrant for that person and the outstanding warrant charges are the only charges to be placed against the individual, the officer should:

A. Notify the dispatcher to contact the Fugitive Squad.

B. Transport the prisoner to the Fugitive Squad Office.

C. Fill out a Memphis Police Department Arrest Ticket on the prisoner, to specifically include a narrative stating the circumstances surrounding the stop and subsequent arrest.

It should be noted that officers should NOT list any charge on the Arrest Ticket. This should be left blank, since the warrant charge will be listed on the Fugitive Squad's arrest ticket.

D. Turn the prisoner and the Memphis Police Department arrest ticket over to the Fugitive Squad, who will make out their own arrest ticket on the charges as outlined on the outstanding warrant. The Fugitive Squad will attach the Memphis Police Department Arrest Ticket to their arrest ticket and give these tickets to Memphis Police Department Central Intake.

This procedure only applies to outstanding warrants handled by the Fugitive Squad. It does not apply to outstanding city warrants and warrants from other local area jurisdictions.

Once Central Intake receives the Arrest Ticket, he will check and approve it for the following information:

(1) Arrest on warrants previously issued - The Sheriff's Fugitive Squad will pull the file card containing the MPD file number and other information and attach it to the copy of the Arrest Ticket given to Central Intake.

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(2) On new warrants issued after the move to the Justice Complex, the officers obtaining the warrants from the General Sessions Clerk will place the investigator's name, the squad involved, the MPD file number, and their telephone number on line 5 in the subpoena section of the warrant. Upon receipt of an Arrest Ticket, Central Intake will check and make sure that this information is in narrative section.

Central Intake, will make sure either the blue file card is attached to the Arrest Ticket or the necessary information is written in the narrative section.

Upon receipt of the Arrest Ticket, Central Intake will immediately check the MPD file number and determine which squad is handling the case and notify that squad's commander, who will assign an investigator to pick up the Arrest Ticket. Between the hours of 4:00 p.m. and 8:00 a.m., the night Felony Response Commanding Officer will be notified.

3. PROCEDURES FOR ARRESTS ON JUVENILE COURT WARRANTS AND ATTACHMENTS PRO CORPUS (JC):

An officer may check for adult Juvenile Court warrants or juvenile Attachments Pro Corpus through Station B. Upon obtaining a "hit", Station B can verify the existence of the warrant by contacting Juvenile Court.

Adults should be transported to the Criminal Justice Complex.

Juveniles should be transported to Juvenile Court Intake.

4. Procedures for Arrests on Warrants From Other Local Area Jurisdictions

When an officer stops an individual and determines there is outstanding warrant for that person from other local area jurisdictions (i.e., Bartlett, Collierville, Germantown, and Millington) and the outstanding warrant charges are the only charges to be placed against the individual, then the defendant should be turned directly over to the law enforcement agency holding the warrant. The dispatcher will contact the agency holding the warrant and will have that agency send a unit to transport the prisoner.

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SECTION: Assaults on Police Officers

When an officer is the victim of an attack that results in personal injury or damage to police equipment, the supervising officer should insure that the Crime Scene Investigation Unit photograph the injured officer and/or the equipment. This will assist the City Legal Department in later defending the officer if civil action arises. This includes the officer's damaged or torn clothing, leather goods, eye glasses, etc.

In cases of serious assault or damage, all evidence should be properly maintained, and Homicide, General Assignment, or Felony Response Squad is requested to make the scene.

Officers are to immediately notify a supervisor any time a resisting arrest situation occurs.

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SECTION: Public Recordings

Public Recordings

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I. POLICY

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SECTION: Public Recordings

The Memphis Police Department (MPD) recognizes that members of the general public have a First Amendment right to video record, photograph, and/or audio record MPD members while members are conducting official business or while acting in an official capacity in any public space, unless such recordings interfere with police activity.

II. REGULATIONS

- A. Members are reminded that photography, including videotaping, of places, buildings, structures and events are common and lawful activities. If a person is taking photographs or recording from a place where he or she has a right to be, members are reminded that this activity by itself does not constitute suspicious conduct.
- B. In areas open to the public, members shall allow bystanders the same access for photography as is given to members of the news media. Members shall be aware that:
 - 1. A bystander has the same right to take photographs or make recordings as a member of the media, as long as the bystander has a legal right to be present where he or she is located.
 - 2. A bystander has the right under the First Amendment to observe and record members in the public discharge of their duties.
 - 3. Public settings include, e.g., parks, sidewalks, streets, and locations of public protests; but that protection extends also to an individual's home or business, common areas of public and private facilities and buildings, and any other public or private facility at which the individual has a legal right to be present.
 - 4. The fact that a bystander has a camera or other recording device does not, however, entitle the bystander to cross a police line, to enter an area that is closed to the public, or to enter any area designated as a crime scene.
- C. As long as the photographing or recording takes place in a setting at which the individual has a legal right to be present and does not interfere with a member's safety, members **shall not** inform or instruct people that photographing or recording of police officers, police activity or individuals who are the subject of police action (such as a *Terry* stop or arrest) is not allowed, requires a permit, or requires the member's consent. Additionally, members **shall not**:
 - 1. Order that person to cease such activity;
 - 2. Demand that person's identification;
 - 3. Demand that the person state a reason why he or she is taking photographs or recording;
 - 4. Detain that person;
 - 5. Intentionally block or obstruct cameras or recording devices by direct physical means (i.e. place hand over recording device); or
 - 6. In any way threaten, intimidate or otherwise discourage an individual from recording members' enforcement activities.

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NOTE: Members may ask questions during the course of a contact, but members are reminded that there is no justification for ordering a person to stop or requiring that they answer unless the member reasonably suspects that a person has committed, is committing, or is about to commit any crime.

- D. Members are reminded that the public does not have a right to interfere with police activity. Interference consists of conduct, threats, actions or activities that prevent or hinder, or purport to prevent or hinder, members from doing their job. Note the following actions:
1. If a person is photographing or recording police activity from a position that impedes or interferes with the safety of the public or members, or with a member's ability to perform their duties, a member may direct the person to move to a position that will not interfere. However, a member shall not order the person to stop photographing or recording.
 2. A person's recording of members' activity from a safe distance, absent any action that obstructs the activity or threatens the safety of the member(s), does not constitute interference.
 3. A person has the right to express criticism of the police activity being observed. So long as that expression does not jeopardize the safety of any member, suspect or bystander; and so long as that expression does not violate the law or incite others to violate the law, the expression does not constitute interference.

III. Digital Evidence Recovery

A. Evidence on a Camera or Recording Device: Probable Cause

1. Probable cause exists where the known facts and circumstances are such that a reasonable member in the same situation would believe that evidence of a crime will be found.
2. If a member has probable cause to believe that a camera or other recording device contains images or sounds that are evidence of criminal acts, the member shall:
 - a. Request that the person voluntarily provide the device to include recording medium (e.g., removable media, memory card) to the member; or
 - b. Detain the person if they refuse to provide the recording device, and notify a supervisor following the steps outlined below in (4.).

Note: Consent to take possession of a recording device and/or medium must be given voluntarily. A member shall not, implicitly or explicitly, coerce consent to take possession of any recording device or any information thereon.

3. If the person provides the device or recording medium to the member, the member shall:
 - a. Exercise due care and caution with any of the individual's property or electronic device(s);

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- b. Obtain a report or memo number for the evidence obtained, and provide the number to the individual;
 - c. In the “Property listing/Evidence” section of any applicable field report(s), document the item(s) surrendered by the individual;
 - d. Document the member’s request and the individual’s response in the narrative of the field reports, take photos of the device to include any damage to the device and attach it to the report in InformRMS, obtain a “Consent to Search” for the device, and tag the device and form in the Property and Evidence Room;
Note: A “Consent to Search” is only applicable when the owner is present during the data extraction to allow him to withdraw consent; otherwise, the assigned investigator must obtain a warrant to view any evidence located on the device.
 - e. Submit the report information and evidence number to the Sex Crimes/ ICAC Unit to access any relevant material as quickly as practicable. Members shall not attempt to view, download, or otherwise access any material contained on the device.
4. If the individual declines to voluntarily provide the device and/or recording medium and the member believes that exigent circumstances exist in so far as the evidence of criminal activity will be lost absent a seizure of the device, the member shall contact their immediate supervisor.
- a. The immediate supervisor, or higher ranking official with supervisory authority over the member, must be present at the scene before a member takes any significant action involving a person’s use of a recording device. This includes warrantless search or seizure of a camera or recording device, or an arrest.
 - b. The member shall inform the supervisor of the nature of the evidence of criminal acts believed to be contained on the device.
 - c. The supervisor shall determine whether exigent circumstances, including the seriousness of the possible crime at issue, permit the seizure of the device without a warrant. The Bureau or GIB supervisor should be consulted when necessary. Warrantless seizure is permissible only when:
 - (1) There is probable cause to believe that the property holds contraband or evidence of a crime; and
 - (2) The exigent circumstances demand it, or some other recognized exception to the warrant requirement is present.**Note:** If the supervisor determines that the device or media contains evidence of improper police behavior, the supervisor will notify the Station or Bureau Commander for IAB notification.
 - d. If the supervisor finds that exigent circumstances permit the seizure of the device without a warrant, approval shall be given to the member for the seizure.

MEMPHIS POLICE DEPARTMENT POLICY AND PROCEDURES

SECTION: Public Recordings

- e. The member shall obtain and provide the report number to the individual possessing the device.
 - f. Any such seizure must be a temporary restraint intended only to preserve evidence until a warrant can be obtained.
 - g. The appropriate Bureau will author and request a search warrant based on the facts presented and will notify Sex Crimes/ ICAC Unit of the report information and property receipt number for the seized property.
5. Officers should not attempt to view the material, but should take measures to place a cellular phone in airplane mode to prevent remote wiping of the memory of the device.

B. Viewing/Listening to Evidence on a Camera or Recording Device

1. Absent exigent circumstances or a signed “Consent to Search” for a device, members shall obtain a search warrant before viewing photographs or listening to recordings on a camera or media storage device (i.e. memory card or DVD) that has been voluntarily provided or seized as evidence.
2. In exigent circumstances, where there is reason to believe that an immediate search of the seized material is necessary to prevent death or serious injury, members shall contact their immediate supervisor, for authorization to review photographs or recordings without a warrant. Again, the Bureau/ GIB supervisor should be consulted when necessary.
3. The recordings should be downloaded as soon as possible by Sex Crimes/ICAC investigators for evidentiary purposes.
4. Photographs or recordings that have been seized as evidence and are not directly related to the exigent purpose shall not be reviewed.

C. Return of Property to Owner

1. The Sex Crimes/ ICAC Unit will review the data on the phone and provide the relevant video or photographs to the respective bureau.
2. Sex Crimes investigators will return the device or media to the Property and Evidence room and the respective bureau will be responsible for releasing the property and contents back to its owner.
3. If the owner is present for a signed “Consent to Search” request, the investigator can release the device to the owner after the download is complete.

D. DR 141 PUBLIC RECORDINGS

- A. Members shall not, under any circumstances, erase or delete, or instruct or require any other person to erase or delete, any recorded images or sounds from any camera or other recording device that is in the possession of a non-member, or that has been voluntarily turned over or seized for law enforcement purposes.

MEMPHIS POLICE DEPARTMENT POLICY AND PROCEDURES

SECTION: Public Recordings

- B. Members shall maintain cameras and other recording devices that are in Department custody so that they can be returned to the owner intact with all images or recordings undisturbed in a timely manner.
- C. In the case that a recording in the Department's custody is considered contraband or has been determined to be contraband by the AG's office, the recording and/or device will not be returned.

MEMPHIS POLICE DEPARTMENT POLICY AND PROCEDURES

SECTION: Mid-America Mall Regulations

The City Council has adopted several ordinances, which affect activities on the Mid-America Mall, amending City Ordinance Chapter 2-84. These ordinances require that all concessions, encroachments, solicitations, and sidewalk activities be approved by the Downtown Memphis Commission and a permit be issued.

Certain ordinances will be enforced by the staff members of the Downtown Memphis Commission rather than by Memphis police officers. These include situations where a permanent business located on the Mall violates concession and encroachment requirements. In such cases, the Downtown Memphis Commission will notify the owner of the business involved to cease such violation. If the business fails to cooperate then the Downtown Memphis Commission staff will obtain a City Court summons or warrant. Police officers will not become involved in these type situations except to serve the summons or warrant. Once a summons or warrant has been obtained by the Downtown Memphis Commission staff, the Mall Walking Detail will take said summons or warrant and serve it.

Other violations will be enforced by the Memphis Police Department. These include:

1. Complaints of loud noise and/or music being played on the Mall without a permit (City Code Section 12-48-2);
2. Persons distributing handbills without a permit (excluding religious groups which are not required to have a permit) (City Code Section 12-48-2);
3. The operation of concessions or solicitations which are transient or non-stationary and being conducted without a permit (City Code Section 12-48-2);
4. Littering on the Mall (City Code Section 9-56-25);
5. No manually propelled vehicles such as bicycles, skateboards, etc. (other than infant and baby strollers, wheelchairs, and push delivery carts, which shall be allowed at any time) shall be allowed on the common mall area without a permit from the Downtown Memphis Commission, except after 6:00 p.m. Monday through Saturday and all day on Sunday. Except as otherwise provided in this section, the common mall area shall be designated as a tow-away zone and any illegally parked vehicles thereon shall be subject to the provisions of Section 11-40-3 of the City Code.
6. No motorized vehicles, other than emergency vehicles, are allowed on the Mall at any time without a permit (City Code Section 12-48-7). The only exceptions are wheelchairs and motorized carts for the handicapped.

The Mall has been designated as a tow-away zone except for the area of North Court and South Court from Second Street to the Mall, where vehicles are allowed to park. Vehicles cannot load or unload on the mall at any time. All vehicles must use designated loading zones or alleys for loading and unloading. City Code Section 11-40-18 allows any vehicle (car, station wagon, or truck) to use any loading zone regardless of the type of registration tags on the vehicle (commercial or private) as long as the vehicle is parked in compliance with the City Ordinance. This means that the vehicle may use the loading zone for up to thirty (30) minutes as long as the

MEMPHIS POLICE DEPARTMENT POLICY AND PROCEDURES
SECTION: Mid-America Mall Regulations

driver is actually loading or unloading the vehicle and the emergency flashers or left turn signal of the vehicle are operating. The driver may not park his vehicle and go into an establishment to eat, shop, or conduct business. He must be either making deliveries or pickups. The only time a vehicle may use a loading zone in excess of thirty (30) minutes is when the vehicle personnel are continuously and visibly loading or unloading a large shipment.

MEMPHIS POLICE DEPARTMENT POLICY AND PROCEDURES

SECTION: Fugitives Extradition

I. Fugitives:

The Shelby County Sheriff's Office Fugitive Squad has primary responsibility for the Fugitive functions in Shelby County. This includes the arrest and processing of fugitives wanted by other jurisdictions, the request for arrest of fugitives from Memphis and Shelby County, and the return of fugitives to this jurisdiction.

- A. When warrants or requests for arrest on indictable offenses are received by the Memphis Police Department from jurisdictions outside of Shelby County, they, along with information relative to them, will be referred immediately to the Shelby County Sheriff's Office Fugitive Squad. No request for arrest need be made or other action taken by the Memphis Police Department regarding these matters except in cases where charges may be placed, or further investigation may be required growing out of offenses in the City of Memphis. When this situation arises, the Shelby County Sheriff's Office Fugitive Squad should be notified.
- B. In cases where arrests are made by the Memphis Police Department of persons wanted in jurisdictions outside Shelby County, the arrested person, along with all available information, shall be referred to the Shelby County Sheriff's Office Fugitive Squad. Any local charges should be disposed of prior to this referral; however, the Shelby County Sheriff's Fugitive Squad should be furnished with information concerning the detention of the fugitive at once.

When arrests are made by the Memphis Police Department of persons wanted in jurisdictions outside the city of Memphis but within Shelby County (Germantown, Bartlett, Collierville, and Millington) and the only charge is the active warrant, the arresting officer will verify the warrant with communications (Station B). The arresting officer will standby as communications notifies the surrounding jurisdiction of the arrest. The dispatcher will determine a location where officers from both jurisdictions can convene to safely exchange the wanted party. Under no circumstances will the arresting officer contact the agency where the warrant is active to arrange the exchange of the wanted party.

II. Extradition Limitations:

When an individual commits a felony in a state other than Tennessee and is pursued into this state by law enforcement officers of that state (i.e., Mississippi or Arkansas), the officers of that state can apprehend the fleeing felon in Tennessee while in hot pursuit. After the officers have apprehended the individual, the law requires them to immediately take that individual to a magistrate in Tennessee for the purpose of the magistrate determining whether the arrest was lawful or not. If the magistrate determines the arrest to be lawful, the individual is to be held in Tennessee and not released to the authority of the state where the felony was committed unless he is extradited or waives extradition.

The same procedures apply when we pursue an individual into Mississippi or Arkansas.

In no instance should we bring the individual back into Tennessee without the extradition

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MEMPHIS POLICE DEPARTMENT POLICY AND PROCEDURES

SECTION: Fugitives Extradition

process being carried out, nor in any situation should we permit an individual to be taken back to a state without the extradition process being carried out. Such action would be illegal.

Hot pursuit privileges are only permitted when pursuing a suspected felon. We nor officers of other states have the right to cross state lines to attempt to apprehend a person who has committed only a misdemeanor.

Officers of this Department are not to initiate requests for arrest to agencies outside Shelby County.

III. Entries into NCIC:

All felony warrants obtained by Memphis Police Officers will be entered into NCIC through the Emergency Communications Bureau.

- According to the District Attorney General's Policy (DAG), criminal arrest warrants for Murder First Degree, and all A, B, C, D and E felonies shall be entered into NCIC.

MEMPHIS POLICE DEPARTMENT POLICY AND PROCEDURES

SECTION: Undocumented Immigrants

The Memphis Police Department will protect and defend all persons consistent with current local, state, and federal law and afford all persons justice and the full protection of the law. A police report/investigation is not contingent upon a person's citizenship status or recognizable identification. Memphis Police Officers will take reports of crime that occurred within the City of Memphis from any individuals who need to file them, regardless of their citizenship status.

All individuals, regardless of citizenship, are entitled to basic rights and privileges which are set forth in common law, State and Federal law, and the United States Constitution. In addition, undocumented immigrants/foreign speaking persons may be entitled to rights and privileges set forth in the Vienna Convention and other international laws. It is the policy of this department to exercise its duties in conformance with all applicable laws, regardless of nationality or racial/ethnic background. (From Ch. XI Sec 01)

The Immigration and Customs Enforcement (ICE) will not respond to reports of undocumented immigrants unless the individual has been charged with any drug or other criminal offense. Undocumented Immigrants are subject to the laws of this country and are subject to arrest for violations.

The following procedures will be utilized when an officer encounters a situation involving an undocumented immigrant:

1. If an undocumented immigrant is arrested on any drug or other criminal charges involving moral turpitude and/or a felony, then the officer should arrest and transport the individual and notify the Immigration and Customs Enforcement (ICE) at 544-3500, twenty-four hours a day.
2. If the undocumented immigrant is arrested for a lesser offense, i.e. Criminal Trespass, Public Intoxication, Disorderly Conduct, Traffic, Theft of Property \$500 or less, or other less serious charges, then the Immigration and Customs Enforcement (ICE) should not be contacted.
3. If no charges involving the undocumented immigrant exist, then an arrest should not be made.
4. If the suspect is a juvenile undocumented immigrant without the presence of a parent or guardian, officers should follow the MPD policy on Juvenile Arrest Status/Protective Custody, Chapter VII Section 4.

MEMPHIS POLICE DEPARTMENT POLICY AND PROCEDURES

SECTION: Fraudulent Prescription Complaints

To insure uniformity in handling cases involving fraudulent prescriptions, the following procedures should be followed:

I. Suspect Not on Scene:

On calls regarding fraudulent prescriptions where the suspect is not on the scene, officers should obtain as much information as possible (suspect description, vehicle, pharmacist, doctor, witness), submitting a report to be investigated by Economic Crimes Bureau. The prescription should be handled as little as possible, preferably by placing it in an envelope before leaving the pharmacy. If the fraudulent prescription has been filled, and the pharmacist is reluctant to release the prescription due to record keeping procedure, leave the prescription with the pharmacist and include this information in the report. An Economics Crimes Investigator will retrieve the prescription at a later time.

II. Suspect Is Arrested:

If the suspect is arrested for passing or attempting to pass a fraudulent prescription, they are to be straight charged (w/Affidavit of Complaint and Bond Recommendation) and a report will be submitted. (Use T.C.A. 53-11-402, Obtain or Attempt to Obtain Controlled Substance by FRD/DEC/FORG Prescription, or T.C.A. 53-10-104, Obt/Attempt to Obtain Legend Drug by Fraud) If additional investigation is warranted regarding additional fraudulent prescription charges being placed against the suspect, the charges may be added after the Field Supervisor contacts an Economics Supervisor.

The two types of Prescription Fraud reports are:

Phone Prescription Fraud (TIBRS Code 26E) – The use of a phone, fax machine or other wireless communication device to intentionally transmit a false and/or deceptive message in furtherance of a fraudulent activity to obtain a drug or drugs that requires a prescription by law.

Prescription Forgery (TIBRS Code 250) — The altering, copying, or imitation of a prescription without authority or right, with the intent to deceive or defraud by passing the prescription as that which is original or genuine to obtain a drug or drugs that require a prescription by law.

MEMPHIS POLICE DEPARTMENT POLICY AND PROCEDURES

SECTION: City Inspectors

This department wishes to render all aid possible to the City of Memphis Building, Plumbing, Electrical, Safety, Sign, and Elevator Inspectors in the enforcement of the technical City Code ordinances relating to their department.

The above-mentioned City inspectors have the duty to enforce certain Code sections of the City and have the right to issue citations but do not have arrest powers. If a person to whom a citation is to be issued refuses to sign the citation as required by law, the Code Enforcement inspector will need the aid of the Police Department in arresting the party involved for violating the City Code.

The proper procedure to be followed is for the inspector, accompanied by a police officer, to make a citizen-type arrest of the violator for the misdemeanor and for the accompanying officer to transport the law violator to jail.

Whenever any of these fellow City employees need aid in enforcing the technical Code ordinances of the City, the officer of the Memphis Police Department should respond promptly.

MEMPHIS POLICE DEPARTMENT POLICY AND PROCEDURES

SECTION: Training Academy Response Team

The Training Academy Response Team (TART) will enable Academy instructors to observe first hand, the tactical procedures utilized in officer survival/ injury situations. By responding to the scene, Training Academy staff members will be able to analyze each situation from a training perspective and assess the effectiveness of training. The response team will gather information concerning the incident and address training issues in an attempt to prevent a recurrence of injuries/ situations.

- A. The team will respond to:
 - 1. Any shooting by an officer, either on-duty or off-duty, regardless of the weapon, which involves death or injury to oneself, a suspect, other officers, or a citizen; or
 - 2. Any shooting by an officer, either on-duty or off-duty, regardless of the weapon, where a suspect has been shot or there is evidence that the suspect was shot and has not been located; or
 - 3. Any incident where an officer has been shot by a suspect.
 - 4. Any incident where an officer seriously injured during an assault or accident.
- B. Each team will consist of a Lieutenant from both the Academy and Firearms Training Unit or the Training Commander's designee.
- C. Each team will be "on-call" for one calendar month before completing rotation. Memphis Police Communications will be provided a call out roster and will be responsible for notifying the appropriate team Lieutenant.

MEMPHIS POLICE DEPARTMENT POLICY AND PROCEDURES

SECTION: Victim's/Witness' Rights

In May 2000, the Tennessee Legislature introduced an Act to amend Tennessee Code Annotated Title 40, Chapter 3. The Amendment added a section that requires law enforcement agencies and their officers to notify crime victims of their rights.

To comply with this requirement, whenever an officer responds to a complaint of a crime where there is a victim/witness and an offense report is taken, or an arrest warrant obtained, the officer will give that victim/witness the "Notification of Victim's/Witness' Rights" form. Officers must note in their narrative whenever this form is given to a victim/witness.

These forms notify victims/witnesses of their rights under Article I, Section 35 of the Tennessee Constitution as well as gives pertinent information that will aid them during the criminal justice process.

All precincts should keep a generous supply of these forms for officer utilization.

In addition, Investigative Services' personnel should complete a "Victim/Witness Assistance Referral Form" for any victim/witness believed to be in need of any of the services provided by the Crime Victims Center. Investigators must note in their report supplement whenever a referral is made.

When applicable, the department will also provide victims with the National VINE Program number for Shelby County VINE: 1-877-590-VINE for notification of suspects' release, transfer or escape.

NOTIFICATION OF VICTIM'S/WITNESS' RIGHTS

As a victim/witness of a crime in the City of Memphis, in accordance with TCA 40-38-113, the Memphis Police Department shall provide notice of the following information:

- 1. The victims/witnesses are to be free from intimidation, harassment and abuse throughout the criminal justice system;*
- 2. The availability, if any, of crisis intervention services, emergency and medical services;*
- 3. The name of the law enforcement agency and telephone number;*
- 4. In cases of domestic violence, the procedures and resources available for protection of the victim/witness;*

MEMPHIS POLICE DEPARTMENT POLICY AND PROCEDURES
SECTION: Victim's/Witness' Rights

5. *The names and telephone numbers of public and private victim assistance programs, including the state criminal injuries compensation program and programs that provide counseling, treatment and other support services; and*
6. *The procedural steps involved in a criminal prosecution.*

VICTIM'S/WITNESS' RIGHTS

The right to confer with prosecution

The right to be free from intimidation, harassment, and abuse throughout the criminal justice system.

The right to be present at all proceedings where the defendant has the right to be present.

The right to be heard, when relevant, at all critical stages of the criminal justice process as defined by the General Assembly.

The right to be informed of all proceedings and the release, transfer, or escape, of the accused or convicted person.

The right to a speedy trial or disposition and a prompt and final conclusion of the case after the conviction or sentence.

The right to restitution from the offender.

The right to be informed of each of the rights established for victims.

MEMPHIS POLICE DEPARTMENT POLICY AND PROCEDURES
SECTION: Detox

Detox

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I. Public Intoxication

MEMPHIS POLICE DEPARTMENT POLICY AND PROCEDURES

SECTION: Detox

Tennessee Code Annotated 33-10-407 provides protective custody procedures regarding public intoxication. “Any county may ... provide facilities and services for the treatment and/or housing of a person intoxicated and/or incapacitated by alcohol in lieu of arrest”.

The statute also states that “in such county or counties, when any person is intoxicated or incapacitated by alcohol and is clearly dangerous to the health and safety of such person or others, such person may be taken into protective custody by law enforcement authorities, or custodial health officers, acting with probable cause and taken to an approved treatment or social services facility.”

Tennessee Code Annotated 33-10-407 provides definition for the context of the above mentioned in statute (TCA 33-10-407).

II. DEFINITIONS

- A. Incapacitated by alcohol-** means that a person, as result of the use of alcohol, is unconscious or that such person’s judgment is otherwise so impaired that the person is incapable of realizing and making a rational decision with respect to such person’s need for treatment is unable to take care of such person’s basic personal needs or safety or lacks sufficient understanding or capacity to make or communicate rational decisions concerning such person’s welfare.
- B. Intoxicated person or person intoxicated by alcohol-** means any person who meets a condition or the conditions set forth in **TCA 39-17-310- Public Intoxication Statute**. A person commits the offense of public intoxication who appears in a **PUBLIC PLACE** under the **influence of a controlled substance** or any other intoxicating substance to the degree that:
1. The offender may be endangered;
 2. There is endangerment to other persons or property; or
 3. The offender unreasonably annoys people in the vicinity.

III. GENERAL GUIDELINES FOR PUBLIC INTOXICATION

- A.** The Protective Custody DETOX Law (TCA 33-10-407) does allow **discretion/consideration** on the part of the officer as outlined in (TCA 33-10-407 (b) (1)-(4).
- B.** *Tennessee Code Annotated 33-10-407(e)* states, a law enforcement officer or custodial health officer, in detaining the person, is taking such person into protective custody. In doing so, the detaining officer may use reasonable protective methods, but shall make every reasonable effort to protect the detainee’s health and safety.
- C.** For the purposes of determining whether a person is clearly dangerous to such person’s health and safety, the degree of intoxication alone is sufficient if the enforcement officer

MEMPHIS POLICE DEPARTMENT POLICY AND PROCEDURES

SECTION: Detox

reasonably believes that the individual is unable to avoid severe impairment or injury from specific risks by or as a result of intoxication. (TCA Sec 33-10-407 (a))

- D. There are several factors that an officer shall consider before taking a person to a treatment or social services facility in lieu of arrest:
1. Whether the person is likely to engage in a violation of the law while being transported to the treatment or social services facility or while at the facility.
 2. Availability of services at the Crisis Assessment Center and not the Jail.
 3. Whether the treatment or social services facility has space available for the type of services needed.
 4. The “amenability” of the detain person. The context would suggest that “amenability” may best be considered within the conditions outlined in item 1 of this section.
 5. Whether the person is in need of serious medical attention. (See **XII, C.**)

IV. PROCEDURES FOR TAKING PUBLICLY INTOXICATED PERSON’S INTO CUSTODY

A. Adults

Officers who encounter individuals who meet the procedural statues of the **Public Intoxication Law (TCA 39-17-310)** will apply the statue TCA 33-10-407 as outlined in the following procedures and guidelines:

1. Officers who take individuals into custody for Public Intoxication will utilize TCA 33-10-407 and transport the individual to the Crisis Assessment Center (CAC) located at 135 N. Pauline on the second floor. **(Note: A person commits the offense of Public Intoxication who appears in a PUBLIC PLACE under the influence of a controlled substance or any other intoxicating substance.)**
2. Officers are to run a check on individual for “WANTS” and “WARRANTS” before transporting the individual to the Crisis Assessment Center. If the check is positive, the officer will make a physical arrest. **No criminal charges can be accepted at the Crisis Assessment Center. Outstanding warrants will continue to follow MPD policy and procedures using criminal charges.**
3. Individuals taken to the Crisis Assessment Center facility **must** provide satisfactory evidence of identification.
 - a. Unsatisfactory identification requires officers to transport the individual to jail with the criminal charge of Public Intoxication.
EXCEPTION: Individuals without satisfactory identification but are known to the officer(s) may be transported to the Crisis Assessment Center based on the officer’s familiarity of the individual.

MEMPHIS POLICE DEPARTMENT POLICY AND PROCEDURES

SECTION: Detox

- b. Officers may park in the curved lane next to the south side main entrance to the building. Officers should not block the access ramp under the canopy.
 - c. Officers will enter the building through the front door and take the elevator to the second floor. Between the hours of 11:00 PM and 7:00 AM, the doors could be locked if the front desk security guard is making rounds. If this occurs, officers should have the dispatcher call the CAC, 577-9400, for entry.
 - d. **Officers will use the lock boxes located outside of the elevators on the second floor to secure their weapons before entering the facility.**
 - e. Officers will be directed to take the intoxicated individual into the male or female observation rooms before turning in the paperwork and briefing CAC personnel about the individual at the front desk.
4. Officers are required to complete **two** documents:
 - a. **DETOX APPLICATION** – Staff members of the Crisis Assessment Center will supply the DETOX Application, that the officer must complete and return. TCA requires a copy to be given to the detained person(s); this is the responsibility of the Crisis Assessment Center staff.
 - b. **Arrest Ticket**- Officers will complete an Arrest Ticket.
 - 1) The original arrest ticket (DETOX Ticket) is to be left at the Crisis Assessment Center in the appropriate box.
 - 2) Arresting/Transporting Officer is to submit a Copy of the arrest ticket to staff members of the Crisis Assessment Center.
 - 3) Routing of Original DETOX Tickets will follow the same procedures as Emergency Commitment Tickets. DETOX and Emergency Commitment tickets will be delivered to the ADE Office under normal mail routing procedures of the Uniform Patrol. **(NOTE: In the Charge Block of the Arrest Ticket DETOX TCA 33-10-407 will be the written entry.)**
 - 4) No affidavit of complaint is needed.
5. The Crisis Assessment Center will notify MPD Communications if the Crisis Assessment Center is full and unable to accommodate additional people. If the Crisis Assessment Center is full, officers will use the Public Intoxication Statue- TCA 39-17-310 and transport the individual to jail using normal public intoxication procedures. The Crisis Assessment Center will notify MPD communications, when they can begin accepting individuals again.
6. Officers will continue to utilize appropriate procedures such as: search techniques, warrant checks, documented narrative noting information that protects the officer(s) and the arrested individual, such as, large sums of money or jewelry, etc. The Crisis Assessment Center will be responsible for receipting the property to the individual. The officer will be provided a copy of the receipt to include with the paperwork.

MEMPHIS POLICE DEPARTMENT POLICY AND PROCEDURES
SECTION: Detox

B. Detox Patients must meet the following requirements for admission:

1. Patient must be able to walk on their own, with no assistance from officers or CAC staff and
2. without the use of wheel chairs (unless person is handicapped/disabled) or stretchers.
3. Patient must be conscious and able to communicate with CAC staff or officers.
4. Patient must not have any visible injuries or be complaining of medical problems.
5. Patient is non-combative and non-violent with CAC staff or officers.
6. Patient must submit to a blood alcohol content test (the only exception is if the person also has an Emergency Commitment charge).

C. Detox Patients may be refused by CAC Staff for the following reasons:

1. Patient cannot walk on their own without any type of assistance
2. Patient is unable to communicate or is unconscious
3. Patient has visible injuries or is complaining of medical problems
4. Patient is combative and violent with staff or officers
5. Patient refuses to submit to blood alcohol content test

If officers have an intoxicated individual that has been refused by CAC staff at 135 N. Pauline, the officers must transport the individual to the Regional Medical Center.

D. Juveniles

1. Officers may call a parent to take charge of an intoxicated juvenile and issue a Juvenile Summons for the offense in lieu of arrest, if the facts of the case so warrant (see MPD P&P Chapter VII Section 5).
2. Intoxication involving Juveniles will continue to include procedural referrals to Juvenile Court or appropriate emergency medical services for extreme intoxication (ex. juvenile is unable to stand, is injured, or is incoherent). See MPD P&P Chapter VI, Section 2, subsection VI. If medical services are needed:
 - a. Juveniles (14) fourteen years of age or older should be transported to the Med ER.
 - b. Juveniles under the age of (14) fourteen should be transported to LeBonheur.

Note: When juveniles are transported to a medical facility, officers will have to remain with the juvenile until they are medically cleared for transport to Juvenile Court.

MEMPHIS POLICE DEPARTMENT POLICY AND PROCEDURES
SECTION: ADE (Arrest Data Entry)

ADE (Arrest Data Entry)

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MEMPHIS POLICE DEPARTMENT POLICY AND PROCEDURES
SECTION: ADE (Arrest Data Entry)

I. THIS SECTION IS FOR ADE PERSONNEL ONLY

A. ADE Procedures: The Arrest Ticket will be logged and entered into VISONRMS and will be distributed as follows:

1. Misdemeanor Tickets – ADULT – Original & 2 Copies

Original	R&I
Copy	ADE
Copy	G.I.B./Bureau Involved

* Make requested copies for Arresting Officer

2. Felony Investigation Tickets – ADULT – Original & 2 Copies

Original & 1 Copy (stapled)	Bureau Involved
Copy	ADE
Copy	G.I.B./Bureau Involved

* No Felony Arrest, with exception of a Drug Felony Arrest, will be accepted without a local R&I Report Number.

* Make requested copies for Arresting Officer

3. Felony Drug Arrest Tickets – ADULT – Original & 3 Copies

Original	R&I
Copy	Vice & Narcotics
Copy	ADE
Copy	G.I.B./Bureau Involved

* Make requested copies for Arresting Officer

4. Felony Drug Arrest Tickets – JUVENILE – Original & 1 Copy

Original	Station/Bureau Involved
Copy	ADE

* Attach all other documents such as Affidavit, etc...

* Make requested copies for Arresting Officer

5. Misdemeanor Arrest Tickets – JUVENILE – Original & 2 Copies

Original	Bureau Involved
Copy	ADE
Copy	Station Involved

* Make requested copies for Arresting Officer

6. Felony Arrest Tickets – JUVENILE – Original & 1 Copies

Original & 1 Copy (stapled)	Bureau Involved
Copy	ADE

- * Assign a Juvenile Number to **ALL** Juvenile Felony Arrest Tickets including Felony Drug Arrest Tickets, then log with a **RED** number in the Log Book. (Ex. – **J022472**)
- * Make requested copies for Arresting Officer

Original	R&I
Copy	ADE
Copy	Station Involved

Original	Bureau
Copy	ADE
Copy	Station Involved

Original	R&I
Copy	IAB
Copy	ADE
Copy	Station Involved

Original	R&I
Copy	IAB
Copy	ADE
Copy	Station Involved

MEMPHIS POLICE DEPARTMENT POLICY AND PROCEDURES
SECTION: ADE (Arrest Data Entry)

B. OTHER EXCEPTIONS OR STRAIGHT CHARGES:

Make one (1) additional copy of ALL **DUI Arrest Tickets** for the Traffic Bureau.

Habitual Motor Vehicle Offenders (**Felony**) should be **Straight Charged** and **Signed off** by an STIS Supervisor. Arrest Ticket distribution is the same as **Felony Investigation Tickets – ADULT** – make a copy for Traffic, **NO** copy to R&I. Assign a number if JUVENILE.

FELONY LOG BOOK – Enter ALL Felony Arrest Tickets, (Adult & Juvenile) in Felony Log Book except:

- 1. Habitual Motor Vehicle Offender**
- 2. Felony Drug Charge**

Carrying Weapons on School Property – Log as “**General Assignment**”, (Give Juvenile Assigned Number) An Offense Report Number is required [Weapons Offense].

PROSTITUTION (HIV) – Log as “**Straight Charge**” – assign a number if Juvenile, No copy to R&I, copy of Arrest Ticket and Bond Recommendation to O.C.U.

OBTAIN CONTROL SUBSTANCE BY FRAUD/DECEIT/FORGED PRESCRIPTION – Log as “**Straight Charge**”, assign a number if a Juvenile, No copy to R&I, copy of Arrest Ticket and Bond Recommendation to O.C.U.

POSSESSION OF CONTROL SUBSTANCE WITH INTENT TO MAN/DEL/SELL – DO NOT LOG IN AS A STRAIGHT CHARGE. Assign a number if Juvenile, copy to O.C.U. ONLY if approved by O.C.U. Supervisor. No copy to R&I, copy of Arrest Ticket and Bond Recommendation to O.C.U..

EVADING ARREST – Log as “**Straight Charge**” – Assign a number if Juvenile, No R&I copy required, copy of Arrest Ticket, Affidavit, Bond Recommendation to **the appropriate G.I.B.**

FELONY VANDALISM - Log as “**Straight Charge**” – Assign a number if Juvenile, No R&I copy required, copy of Arrest Ticket, Affidavit, Bond Recommendation to **the appropriate G.I.B.**

FELONY SHOPLIFTING - Log as “**Straight Charge**” – Assign a number if Juvenile, No R&I copy required, copy of Arrest Ticket, Affidavit, Bond Recommendation to **The Economic Crimes Bureau**.

FALSE FIRE ALARMS - Log as “**Straight Charge**” – Assign a number if Juvenile, No R&I copy required, copy of Arrest Ticket, Affidavit, Bond Recommendation to **the G.I.B.**

All **GROUP “A”** Arrest Tickets must have an OFFENSE REPORT NUMBER in the appropriate field. (Record of Arrest, Misdemeanor Citation, Juvenile Summons, & City Ordinance Summons.) **If there is NO Offense Report Number entered for the Arrest Ticket it will NOT be accepted by the ADE Office.**

MEMPHIS POLICE DEPARTMENT POLICY AND PROCEDURES
SECTION: ADE (Arrest Data Entry)
