



## TRANSIT POLICE

# ARRESTS

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## POLICY

[Refer to OD120 – Search, OD170 – Police Warnings, OD180 – Young Persons, OF020 – Use of Force, OH070 – Independent Investigations Office and OI010 – Prisoner Care, Control and Transportation]

### Definitions

BCAS – British Columbia Ambulance Service.

Breach of the Peace – Under the *Criminal Code*, there are two types of Breach of the Peace Arrests:

- (a) Breach of the Peace – Found Committing: A Breach of the Peace has been defined by the courts as an act or actions which result in actual or threatened harm to someone (also known as having a “tenor of violence”), or where a threat of harm against a person’s property occurs when the person who owns the property is present. This recognizes that violence may occur when a person attempts to damage property in the presence of the owner. An arrest for Breach of the Peace under Section 31 (1) of the *Criminal Code* should only be used when all other options, such as an arrest for a substantive offence, have been exhausted and the police officer has witnessed the breach.
- (b) Apprehended Breach of the Peace: Police Officers have a common law power of arrest for an "apprehended breach of the peace". This occurs when the police officer has not witnessed a breach of the peace, but the officer believes on reasonable grounds that a breach will take place unless an arrest is effected. Further, the apprehended disturbance or threat must be serious enough to cause a reasonable belief that, if the police do not intervene, a more serious problem will result involving personal injury or damage to property. The apprehended breach of the peace must be imminent and the risk that the breach will occur must be substantial.

Chief Officer – The Transit Police Chief Officer or delegate.

Criminal Code – Criminal Code of Canada, RSC 1985, c. C-46.

Critical Incident – Pursuant to the *Police Act* and the Memorandum of Understanding respecting IIO Investigations, whenever on-duty officers attend:

- (a) any incident where there is a reasonable belief that the presence, action, or decision of an **on-duty** officer

- i. may have been a contributing factor in the **death** of any person, including all in-custody deaths;
  - ii. may have been a contributing factor in a **life-threatening injury** to any person;
  - iii. may cause **disfigurement** (permanent change in appearance), if there were no medical intervention;
  - iv. may cause **permanent loss or impairment of any function or mobility** of the body, if there were no medical intervention;
- (b) any discharge of a **firearm** by an **on-duty** officer where there is a reasonable belief that any person (including a police officer) may have been **injured**;
- (c) any incident where there is a reasonable belief that the action of an **off-duty** officer
- i. may have been a contributing factor in the **death** of any person;
  - ii. may have been a contributing factor in a **life-threatening injury** to any person;
  - iii. may cause **disfigurement** (permanent change in appearance), if there were no medical intervention;
  - iv. may cause **permanent loss or impairment of any function or mobility** of the body, if there were no medical intervention.

***NOTE:** The IIO has asked that police agencies do not notify the IIO of on-duty incidents that concern pre-existing mental or physical illnesses or injuries that are not reasonably believed to have “resulted from the presence, action or decision of an on-duty officer.”*

Designated Constables – The Transit Police police officers appointed by the Police Board.

GO – General Occurrence report on PRIME.

HPI – Hold Pending Investigation. HPI is not an arrest authority but an administrative designation that is initiated when a person is arrested on reasonable grounds for an offence and is transported to a detention facility but further investigation is required before charges can be recommended in a completed RTCC.

H/SIPP – Hold/State of Intoxication in a Public Place.

IIO – The Independent Investigations Office of British Columbia established pursuant to s. 38.02 of the *Police Act*.

In-custody Death – A death of a person who was detained by or in the custody of a Member, or was in the custody of a police service.

Intoxication – The condition of being stupefied or drunk from the consumption of alcohol or drugs to such a marked degree that a person is a danger to himself or others or is causing a disturbance.” [Besse v. Thom (1979) D.L.R. (3d) 657 (B.C. Co. Ct.)]

JPD – Jurisdictional Police Department.

LCLA – The BC Liquor Control and Licensing Act [RSBC 1996, Chapter 267] and the regulations thereto, all as amended from time to time.

Medically Unfit – Means ill or injured and includes questionable consciousness, psychiatric illness and acute alcohol poisoning or drug overdose.

Member – Designated Constable, the Chief Officer or a Deputy Chief Officer of the Transit Police.

MHA – The BC Mental Health Act, RSBC 1996, Chapter 288.

OCC – The Transit Police Operations Communication Centre.

Offence Act – The BC Offence Act, RSBC 1996, c. 338, and the regulations thereto, all as amended from time to time.

Police Act – The BC Police Act, RSBC 1996, c. 367, and the regulations thereto, including the Transit Police Operations Regulation, all as amended from time to time.

Positional Asphyxia – Means a form of asphyxia which occurs when someone's body position prevents them from breathing adequately.

PTA – Promise to Appear.

Questionable Consciousness – A state of reduced awareness in which a person is not readily responsive.

Reportable Injury – As defined in the *Police Act*, any of the following: “an injury caused by discharge of a firearm; an injury requiring emergency care by a medical practitioner or nurse practitioner and, transfer to a hospital; or any injury described by s. 184(2)(c) of the *Police Act*.”

Restraint or Restraint System – Any mechanical device or system of mechanical devices that when used in their ordinary and intended manner, restrict the normal physical activity of range of motion of an individual in part or in whole.

RTCC – Report to Crown Counsel.

Serious Harm – As defined in the *Police Act*, “injury that may result in death, may cause serious disfigurement, or, may cause substantial loss or impairment of mobility of the body as a whole or of the function of any limb or organ”.

Transgender Person – Person who has non-identification with, or non-presentation as, the gender one was assigned at birth. Transgender can include a number of sub-categories, which, among others, include transsexual, cross-dresser, transvestite, consciously androgynous people, drag king and drag queen.

Transit Police – The South Coast British Columbia Transportation Authority Police Service.

## Authority

1. Members will undertake arrests in compliance with the provisions of the *Criminal Code* and other legislation. There must be reasonable and probable grounds and it must satisfy public interest.
2. The Transit Police is obligated to ensure that intoxicated persons who are unable to care for themselves are cared for and there are two statutes that assist a police officer in meeting this obligation:
  1. S. 41 of the *LCLA* authorizes a peace officer to arrest any person found to be intoxicated in a public place; and
  2. S. 91(1) of the *Offence Act* provides peace officers the authority to arrest a person who is intoxicated in a public place.
3. A person may be arrested under s. 41(1) of the *LCLA* if intoxicated by alcohol, or a combination of both alcohol and drugs. Members will not issue a Violation Ticket (VT) under s. 41 of the *LCLA* to a person who is intoxicated by drugs alone.
4. A person may be arrested under s. 91(1) of the *Offence Act* if intoxicated by drugs, alcohol, or a combination of both.
5. S. 91(3) of the *Offence Act* provides police the authority to hold a person arrested under s. 41 of the *LCLA* or s. 91(1) of the *Offence Act* in custody (H/SIPP) without charge until the person is able to take care of themselves.

## General

6. The primary objective of any intervention is public safety. Police officer safety is essential to public safety.
7. If a statute authorizes an arrest, the authority in the statute must be used. If no specific arrest authority exists in a provincial or federal statute offence, the provisions of s. 495 of the *Criminal Code* applies by virtue of s. 34(2) of the *Interpretation Act*.
8. All persons must be advised of their Charter rights promptly upon arrest or detention. The purpose of giving a warning is to help establish the voluntariness of any statement subsequently given. Sections 10(a) and 10(b) of the Charter are legal requirements when arresting or detaining a person. All arrested or detained persons must be cautioned by means of the appropriate police warning.

*NOTE: The Charter of Rights and Freedoms guarantees the protection of every person against arbitrary detention. If effecting an arrest, the Member should consider that an arresting officer is protected in an arrest only as long as the grounds for arrest remain valid.*
9. Prisoners in police custody are vulnerable, and entirely dependent on the police to obtain medical assistance for them. Members are responsible for the well-being and protection of persons in their custody, and must ensure that a person in custody

receives appropriate medical assistance. Arrests of an injured person will be handled as set forth in this policy chapter.

10. The arrest of young persons will be conducted in the same manner as adults while complying with the additional obligations imposed by the provisions of the *Youth Criminal Justice Act* (e.g., statements, detention, release, records, notification and discharge). Members to refer to policy chapter OD180 – Young Persons.

## **PROCEDURES**

### **Conducting an Arrest**

11. To effect an arrest, the arresting Member will;
  1. identify themselves as a police officer;
  2. inform the person that they are being arrested;
  3. inform the person the reason for the arrest;
  4. take physical custody of the person, which will include handcuffing where the circumstances warrant it, taking into account police officer safety, prisoner safety and safety of the public (refer to policy chapter OI010 – Prisoner Care, control and Transportation); and
  5. advise the arrested subject of their right to retain and instruct counsel pursuant to s. 10(a)(b) of the Charter of Rights and Freedoms.
12. Where the Member arrests or detains any person, or releases any person that was arrested or detained, the Member must immediately notify their Supervisor of all circumstances regarding the arrest or release from custody. This applies whether or not the person was charged.
13. Members will follow provisions of policy chapters OD120 – Search and OI010 – Prisoner Care, Control and Transportation for conducting of searches incidental to investigative detention and lawful arrest, and transporting of prisoners.

### **Police Warnings**

14. When arresting or detaining a person, Members will refer to policy chapter OD170 – Police Warnings for required warnings and information to be contained in the Member's notes.
15. Where there is a positive indication that the arrested or detained person does not understand (i.e., language or intoxication) their rights to counsel, the Member must take steps to facilitate that understanding, which may include utilizing a translation service or canvassing for another police officer who speaks the language.

16. Members will provide the arrested or detained person with the opportunity to exercise their rights to retain and instruct counsel without delay, and to use a private telephone as soon as practicable (use of a cell phone will be permitted if the Member verifies first that it is legal counsel on the phone).

#### **Release after Arrest without Warrant**

17. A Member may arrest without warrant where reasonable grounds exist for doing so, but when the grounds cease to exist, the Member will be required to release the person from custody. Prior to release, the Member will notify and consult with their Supervisor regarding the circumstances of the release.
18. The Member may only detain the accused in custody where there is reasonable and probable grounds to believe that the detention is necessary in the public interest, as described in s. 495(2)(d) of the *Criminal Code*.
19. If the arresting Member detains the person, but the officer in charge believes grounds no longer exist to hold the person in custody, the officer in charge must release the person under the Criminal Code, with the intention of compelling their appearance in Court, that allows for the release of the person:
  1. by way of summons;
  2. upon their giving a PTA (which may be issued with or without an accompanying Form 11.1 Undertaking with conditions);
  3. upon their entering into a recognizance before the officer in charge, without sureties, in such amount not exceeding five hundred dollars as the officer in charge directs, but without deposit of money or other valuable security; or
  4. upon entering in a recognizance before the officer in charge, without sureties, in such amount not exceeding five hundred dollars as the officer in charge directs and, if the officer in charge so directs, upon their depositing with the officer in charge such sum of money or other valuable security not exceeding in amount or in amount of value five hundred dollars, as the officer in charge directs where:
    - a. the person is not ordinarily a resident in the province in which they are in custody, or
    - b. does not ordinarily reside within 200 kilometers of the place in which they are in custody;
20. When a PTA is being given with an Form 11.1 Undertaking by the officer in charge , the Form 11.1 Undertaking may include one or more of the following conditions:
  1. to remain within a territorial jurisdiction specified in the Form 11.1 Undertaking;
  2. to notify a Peace Officer or another person mentioned in the Form 11.1 Undertaking of any change in their address, employment or occupation;
  3. to abstain from communicating with any witness or other person mentioned in the Form 11.1 Undertaking, or from going to a place mentioned in the Form 11.1

- Undertaking, except in accordance with the conditions specified in the Form 11.1 Undertaking;
4. to deposit the person's passport with the Peace Officer or other person mentioned in the Form 11.1 Undertaking;
  5. to abstain from possessing a firearm and to surrender any firearms in the possession of the person and any authorization, license, or registration certificate or other document enabling that person to acquire or possess a firearm;
  6. to report at the date, time and location specified in the Form 11.1 Undertaking to a Peace Officer or another person designated in the Form 11.1 Undertaking (Bail Supervisor and thereafter as directed);
  7. to abstain from: the consumption of alcohol or other intoxicating substances or the consumption of drugs except in accordance with a medical prescription;
  8. to comply with any other condition specified in the Form 11.1 Undertaking that the officer in charge considers necessary to ensure the safety and security of any victim or witness to the offence.
21. In all cases where the accused has been released on a Form 11.1 Undertaking with a condition that they are to report to a specific person or agency (i.e., bail supervisor, probation officer, youth worker etc.) a copy of the Form 11.1 Undertaking must be faxed or electronically transferred to the person/agency for their information. A copy of the transmittal sheet to be included in the case file.
22. Members will immediately fax all Form 11.1 Undertakings which contain a protection clause to the Protection Order/Firearms Registry.
- NOTE: An example of a protection clause would include: no contact, limited contact, or other protective condition which provides safety and security to a specified (named) person(s). Keep the peace and be of good behavior, or orders which protect objects (i.e., property or assets) do not constitute protection orders.*
23. A Supervisor will review the Form 11.1 Undertaking conditions with the investigating Member prior to the issuance of the Form 11.1 Undertaking and release of the individual.
24. Once the Form 11.1 Undertaking is issued, the RTCC must be completed forthwith by the Member so that the conditions can be added to CPIC.

### **Release after Arrest with Warrant**

25. A Member may arrest with warrant where reasonable grounds exist for doing so, but when the grounds cease to exist, the Member is required to release the person from custody.
26. Where a person has been arrested and detained in custody with a warrant, the officer in charge may, if the warrant has been endorsed by a justice under the

*Criminal Code*, release that person under the conditions available for the release of persons after arrest without a warrant.

27. Where a person has deposited any sum of money or other valuable security with the officer in charge, the officer in charge will immediately after the deposit with him, deliver the money or valuable security for deposit with the justice.

#### **Appearance Notice after Arrest**

28. A Member may issue an Appearance Notice to a person if the offence is:

1. an indictable offence mentioned in s. 553 of the *Criminal Code*;
2. an offence for which the person may be prosecuted by indictment or for which that person is punishable on summary conviction; or
3. an offence punishable on summary conviction.

29. Failure of the accused to appear in court in compliance with the Appearance Notice is an offence.

#### **Appearance Notice where there is no Arrest**

30. As enabled by s. 495(2) of the *Criminal Code*, where a Member does not arrest a person, the Member may issue an Appearance Notice to the person if the offence is:

1. an indictable offence mentioned in s. 553 of the *Criminal Code*,
2. an offence for which the person may be prosecuted by indictment or for which that person is punishable on summary conviction, or
3. an offence punishable on summary conviction.

31. Failure of the accused to appear in court in compliance with the Appearance Notice is an offence under the *Criminal Code*.

#### **Arrest - Holding Pending Investigation (HPI)**

32. When a suspect is arrested and the arresting Member intends to book the suspect into a detention facility prior to completing the investigation to a point where a charge can be laid, the arresting Member will:

1. obtain their Supervisor's authorization prior to booking the suspect;
2. in the absence of the Member's Supervisor, obtain the authorization from another Supervisor;
3. advise the holding agency of the nature of the arrest at the time of booking and clearly indicate on the booking sheet the subject is HPI; and

4. continue the investigation until it is completed (must be a continuous and on-going investigation) or the suspect is released, unless directed by the Supervisor to turn the investigation over to another Member or the JPD.

*NOTE: Members will be cognizant of the 24-hour maximum time before charges must be laid or the person is released. The maximum time does NOT mean that investigation can lapse as long as it is completed within 24 hours, but rather it means that there is UP to 24 hours to complete the investigation, as long as it is proceeding continuously.*

33. When the arresting Member will not be completing the investigation, the Member will submit a GO, completing it as far as possible. The Member will clearly outline in the GO what follow-up investigation is required and indicate the identity of the Member or section that will be doing the follow-up investigation. The follow-up investigator will:
  1. notify the holding JPD and confirm that they are responsible for the investigation; and
  2. continuously investigate the incident until conclusion, following the same requirements as in s. 32 of this policy.
34. When charges are not being recommended and the suspect is to be released, the investigating Member will notify the holding JPD so that the suspect can be released.
35. The Member's Supervisor will:
  1. ensure that there are sufficient grounds to substantiate the arrest;
  2. establish why the suspect should be HPI rather than proceeding with a charge or warrant;
  3. maintain contact with the assigned unit or follow-up investigator for the duration of the detention;
  4. prior to the end of shift, ensure charges are being proceeded with, or if not, the Supervisor, will update the oncoming Supervisor who will establish contact with the holding JPD to update the status of the investigation and verify the ongoing detention.

### **Arrest and Detention for Warrant Held by Other Agencies**

36. Whenever a person is arrested for a warrant held by another agency (NOT held by the Transit Police), the following procedures will apply.
  1. The arresting Member will:
    - a. confirm that the arrested party is the person named on the CPIC printout;
    - b. ensure through CPIC that the warrant is valid;
    - c. transport the person to the detention facility in the jurisdiction where the arrest occurred or as otherwise requested in the originating agency

instructions (the Member will consult with their Supervisor regarding transport);

- d. ensure that all warrants and charges are recorded on the booking sheet of the detention facility where the individual is being lodged; and
- e. document all action on PRIME.

2. The OCC will:

- a. immediately notify (via CPIC) the agency holding the warrant that the person is in custody;
- b. request confirmation that the warrant is endorsed or unendorsed, place a LOCATE on CPIC and request copy of warrant to be faxed;
- c. notify the Member if the person is to be held in custody;
- d. fax the warrant to the Supervisor of the detention facility where the person is being held;
- e. log all correspondence on CPIC/Narrative Traffic Log; and
- f. document phone conversations to CAD file.

37. For more specific details on execution of warrants, the Member will refer to policy chapters OD120 – Search and AF020 – Legal Process: Warrants/ Subpoenas/Summons.

### **Arrest for Breach of Peace**

38. Police Officers have a duty to maintain peace and security in the community. It is recognized that police officers will encounter situations where an individual or a group act in a manner that constitutes a Breach of the Peace. When arresting for a Breach of the Peace or an Apprehended Breach of the Peace, there must be a reasonable belief that if the police do not intervene, personal injury or damage to property will result.

*NOTES: Intense or emotional verbal expression of disagreement with police does not constitute a Breach of the Peace, if such behaviour does not otherwise create a risk of personal injury or damage to property. An arrest for a Breach of the Peace or an Apprehended Breach of the Peace is not meant to be a mechanism to control or monitor people that officers may regard as dangerous or prone to criminal activity.*

39. No person displaying symptoms of intoxication that meet the criteria for H/SIPP will be dealt with under the terms of this section.
40. When a Breach of the Peace arrest is contemplated, the Member will advise a Supervisor prior to arresting the person, or if impracticable, then immediately following the arrest.
41. All Members have a duty of care to the person(s) they have arrested. Members will consider the person's safety and well-being with respect to that person's removal from a scene, their incarceration, and their release. Specific issues to consider in determining when and where the person is released must include any vulnerability the person may have due to gender, age, mental state, suitability of clothing for the weather, lack of money (e.g., for public transit/taxi), release location, or any other relevant factor.

42. Whenever a person is arrested for an apprehended or witnessed Breach of the Peace, the arresting Member will submit a detailed GO prior to the completion of their shift. The GO will include the following:
1. narrative of event (detailed synopsis will suffice);
  2. reasons and authority (*Criminal Code* or Common Law) for arrest;
  3. name of the authorizing Supervisor;
  4. disposition of the arrested party (e.g., lodged in detention facility or removed to a specifically named location); and
  5. UCR code for Breach of Peace.

#### Supervisor's Responsibility

43. The authorizing Supervisor will be responsible for ensuring the lawfulness of the arrest and determining if the person is to be incarcerated or removed from the area (including the appropriateness of the release location). Where feasible, the authorizing Supervisor will attend the scene before making the breach determination.
44. Prior to a Supervisor authorizing the removal of an arrested person from an area, the Supervisor will consult with a Supervisor of the JPD where the person is located and/or being relocated to, if there is any likelihood that the person may continue the original behaviour once removed from the area. Where there is concern that the person may continue the breach of the peace, the Supervisor will consult with the JPD Supervisor to decide if temporary incarceration is an option that may be considered.
45. If the person is being sent to a detention facility, the authorizing Supervisor will contact the officer in charge of the detention facility before the arrested party is booked in and consult on the detention timeframe to be applied.
46. A person arrested for Breach of Peace must be released unconditionally as soon as the police officer believes that their continued detention is no longer required to prevent the Breach of Peace.
47. The authorizing Supervisor will ensure all required reporting and routing has been completed by the end of the Member's shift, and will approve the report prior to the end of shift.

#### **Arrest – Breach of Conditions (Undertaking, Recognizance, Probation)**

48. For breach arrests in the Metro Vancouver area, whenever possible the Transit Police will return the arrested person back to the jurisdiction where the order was made. The Crown office in the home jurisdiction of the breach will review the breach report and, if charges laid, will lay them in that jurisdiction and prosecute them there. However, if a person has committed a new offence and is also breaching a bail or probation order, then the person will be held in the jurisdiction where the new offence occurred and the Crown offices will handle any arising jurisdictional issue.

**Arrest - Hold Intoxication in a Public Place**

49. Those persons who are believed to be intoxicated by alcohol, or a combination of alcohol and drug, to such a marked degree that they have lost the capacity to care for themselves or prevent themselves from being a danger to others, may be arrested H/SIPP.
50. CPIC queries are to be done by the arresting Member on all persons arrested H/SIPP. In cases where the arresting Member could not make a CPIC query, the Member's Supervisor will ensure that it is done as soon as possible. If there is a warrant in effect the Supervisor will arrange for the warrant to be executed, or consult with the JPD detention facility Supervisor where appropriate to the circumstances.
51. When a person is arrested H/SIPP and being transported to a detention facility, the arresting Member will also comply with the care and custody provisions of policy chapter OI010 – Prisoner Care, Control and Transportation.

Safe Ride

52. In the City of Vancouver, SAFE RIDE will be considered in the first instance for intoxicated people who require detoxification and volunteer to go with SAFE RIDE to either a detox centre and/or their home. They are people:
  1. who are non-violent, and are eligible for admission to the designated detox centre; or
  2. who live within the City of Vancouver, and are capable of caring for themselves, and being transported to their residence is an option that the authorizing Supervisor deems available and/or appropriate.
53. If the person is voluntarily transported by SAFE RIDE to their home or to detox centre, the Member will be required to complete a GO.
54. If the person is voluntarily transported by the Transit Police to their home, the Member will ensure the person is turned over to a competent adult and complete a GO detailing the particulars of the person taking responsibility for the individual.

Medically Unfit

55. Intoxicated persons who are found to be Medically Unfit must be transported to a hospital. Members are advised that an individual may be unable, given the nature of his/her injuries or degree of intoxication, to make rational decisions with respect to medical treatment.
56. Any time a Member investigates a person who is intoxicated by drug and/or alcohol and that person is unconscious or unresponsive, the Member will have BCAS attend to treat the person. If the person is treated by BCAS for a drug overdose, the person will be transported to hospital by BCAS. Members may be requested to assist BCAS

during the transport if the person is violent. The Member will complete a GO documenting the incident as a casualty (UCR code – Casualty/Assist BCAS 8190-5).

57. If a medical practitioner states that the person does not require further medical attention, Members will take custody of the person (H/SIPP) and transport the person to the JPD detention facility or a detox centre, where applicable. (A copy of the clearance form will need to be obtained and supplied to the detention facility.)

#### Non-Violent

58. For non-violent persons arrested H/SIPP, a detox centre should be considered in lieu of incarceration. Prior to transport to the detox centre, the Member will check first that the person is not on the banned list for the detox centre.
59. When Members are transferring a person to a detox center, the Members will remain with the intoxicated person for the duration of the admission process, and ensure all information provided to the detox staff is also logged into the call via the CAD/MDT system. This information will include:
1. Name of arrested person, if unknown – Member to please indicate;
  2. Date of Birth;
  3. Circumstances of arrest;
  4. Time of pick-up;
  5. Injuries to arrested person;
  6. Whether BCAS attended; and
  7. Time that the arrested party was dropped off at the detox centre.
60. If the person becomes violent during transport or upon arrival at the detox centre, then the centre will issue the Member a signed refusal slip and the person can then be taken to the detention facility.

*NOTE: If there is a record of previous history of violence or flagged but the person is not exhibiting any violent tendencies at the time of arrest, then they are still to be taken to detox centre. If they then become violent during transport or at detox centre, then same procedure is applied and refusal slip obtained from detox facility. If a person is accepted by detox center and then becomes violent, the police of jurisdiction will be called to remove the person.*

#### Violent Behaviour - Intoxicated Person

61. Members will consider other more appropriate charges when dealing with intoxicated persons displaying violent behavior.
62. When dealing with violent H/SIPP arrests, if in the opinion of the arresting Member, the person poses an actual or potential physical risk (indicated by the

circumstances), the Member will arrange for transportation to the JPD detention facility.

#### Reporting Requirements For SIPP Arrests

63. When a person is arrested H/SIPP, regardless of whether or not the person is transported to a detention facility or a detox centre, the Member will submit a GO report.
64. When a GO report is submitted for H/SIPP and a Violation Ticket under s. 41(1) of the *LCLA* has been issued, Members will enter the Violation Ticket information, including type and number in a text page, under the Event Link category in the GO. The intoxicated person will be listed as “Charged” and will be charged under s. 41(1) of the *LCLA*.

#### **Arrest of an Injured Person**

65. Members will ensure that any persons who have questionable medical risks, or who are suffering from any of the following conditions, will be transported directly to a hospital emergency ward by BCAS:
  1. unconsciousness;
  2. intoxication by drug or alcohol to the degree that the individual is incapable of making a rational decision with respect to medical treatment;
  3. possible fractures, dislocations, head injury or possible hit to the head;
  4. cuts or lacerations requiring stitches;
  5. dog bites;
  6. suspected of ingesting anything that could cause them harm.
66. Where conditions in s. 65 exist, the Member will not release the prisoner from custody until such time the prisoner’s medical needs have been appropriately attended to.
67. Members will have any prisoner exhibiting Questionable Consciousness examined and cleared for incarceration by a qualified medical practitioner.
68. When a prisoner is sent directly to hospital (other than a person arrested H/SIPP) the arresting Member will notify their Supervisor.
69. If, at any time after the arrest of a person for H/SIPP, it is determined that the person requires hospitalization, that person will be treated as a casualty and not a prisoner.
70. Prisoners requiring minor medical attention not necessitating prolonged hospitalization will be guarded by the escorting Member.

71. Whenever a dispute arises with BCAS or hospital staff regarding hospitalization of a prisoner, a Supervisor will be consulted. The Supervisor will assess the situation and, if necessary, consult with senior BCAS or hospital personnel.
72. If after being booked into JPD detention facility it is determined that the person should be hospitalized, Members will follow the direction of the JPD Supervisor.
73. Members will ensure that a copy of the discharge report from a hospital accompanies the arrest report and that the JPD detention staff is notified when a prisoner being booked has required medical attention.
74. Members will comply with reporting requirements for reportable matters to the Office of the Police Complaint Commissioner and Independent Investigations Office (as set forth in the policy chapters OH070 - Independent Investigations Office and AC140 – Complaints), where applicable to the injury and incident.

### **Arrest for Shoplifting**

75. Members will following these procedures will when handling shoplifting complaints concerning Theft Under \$5,000:
  1. the investigating Members will investigate fully and only if the conditions of s. 495 of the Criminal Code are not met;
  2. if the conditions of public interest and appearance for Court are satisfied, the Members will issue the accused of an Appearance Notice and release them;
  3. if pre-trial release conditions are required, the accused may be released by the Member on a PTA with conditions; and
  4. if the accused is not suitable for release, the accused will be booked and the Member will comply with the JPD custody requirements.
76. As Theft Over \$5,000 is an indictable offence punishable with a maximum of 10 years, Members will not release persons on an Appearance Notice or Promise to Appear. The accused will be arrested and transported to the JPD detention facility, and held to appear before a Judicial Justice or Provincial Court Judge.
77. Members will take photographs of all recovered items prior to return to the store. All recovered identifiable goods will be retained by the store. The price tag or other identifying objects (e.g., stickers, labels) should be removed by store personnel, initialed by them and retained by the store for Court purposes.
78. Members will be responsible for custody of the accused and for the submission of GO and RTCC. The complete report from store personnel is to be submitted as an attachment.

### **Arrest – Transgender Persons**

79. Members will address and treat transgender adults and youth in a manner that complies fully with legal requirements and addresses the specific needs of

Transgender Persons. The arrest of Transgender Persons will be conducted in accordance with this policy and policy chapter OI010 – Prisoner Care, Control and Transportation, with consideration of issues in search and transportation as outlined below.

*NOTE: Transit Police policy addresses the need to provide privacy and protection to a transgendered person in the following manner: reducing the risk of harassment or injury which may occur while a transgendered person is being arrested, transported or detained; and respecting the unique needs of transgendered persons who may be subject to detention, and search and/or strip search.*

80. At all times, Members will address Transgender Persons by the individual's preferred name, even if the Transgender Person does not yet have identification in that name. If a Member is uncertain which name is preferred by the Transgender Person, the Member will respectfully ask the Transgender Person for clarification in a private setting (e.g., "You have two names on your identification, which name do you commonly go by?").

*NOTE: It is important that the clarification is done in as private setting as possible so as not to compromise the confidentiality, privacy and safety of the Transgender Person.*

81. In addressing or discussing a Transgender person, Members will use pronouns appropriate for the person's identity (e.g., she/her for an individual who identifies as female, and he/him for an individual who identifies as a male). If Members are unsure which pronoun is preferred by the Transgender Person, Members will respectfully ask the Transgender Person for clarification in a private setting.
82. Where a Member arrests a Transgender Person (person who identify themselves as being transgender, or where the Member has reasonable grounds to believe that the prisoner is transgender), the Member will:
1. where the Transgender Person is subject to search incident to lawful arrest, ask the person which gender police officer they would like to be searched by, and the Member who conducts the search must then make a notation in their notebook of the stated gender preference and consent of person being searched (where practicable, obtaining the signature of the person being searched). The search purpose will be as set forth in policy chapter OD120 – Search and not to determine the sex or surgical status of an Transgender Person;
  2. make every effort to transport the person with no other detainees, to protect the Transgender Person's safety and to prevent harassment. If the Transgender Person cannot be transported solo, they must not be transported with males, unless this is their stated preference; and
  3. verbally notify the detention facility (in advance of arriving at the facility where possible) that a Transgender Person is being transported to their facility, so that the prisoner can be lodged appropriately.

**Arrest – Immigration Act**

83. Every peace officer in Canada may arrest and detain without a warrant for an inquiry or removal from Canada any person who on reasonable grounds is suspected of:

1. being a visitor who takes or continues in employment without authorization;
2. being no longer a visitor;
3. eluding examination or inquiry;
4. escaping custody;
5. being in Canada by fraudulent or improper means;
6. returning to Canada after removal without Ministerial consent;
7. not leaving Canada as specified in a departure order;
8. being a deserting crew member; or
9. being the subject of a removal order

if, in the opinion of the arresting officer, the person poses a danger to the public or is unlikely to appear for inquiry or removal.

**Apprehensions under the Mental Health Act**

84. When it is necessary to apprehend a person who meets the criteria for apprehension under s. 28 of the *MHA*, a person's query must be made through CPIC as soon as possible (and checks on PRIME and other police or agency databases as appropriate to the circumstances).

1. Conditional Discharges of mentally ill persons on order-in-council signed by the Lieutenant Governor under s. 545(1)(B) of the *Criminal Code* are subject to an entry being made on CPIC.
2. A peace officer is authorized under s. 545(4) of the *Criminal Code* to arrest any such person when there are reasonable and probable grounds to believe that the person has violated any condition prescribed in the order-in-council for the conditional discharge.
3. If no other authority to apprehend a person believed to be mentally disordered can be located, proceedings should be instituted under s. 28 of the *MHA*.
4. A person suspected of being mentally disordered must be transported to the Psychiatric Unit of the local hospital. Effort should be taken to advise the Hospital prior to arrival.

5. Transportation of a mentally disordered person to a local hospital must be handled by either the BCAS or by a police vehicle, at the discretion of the Watch Commander.
  6. The Member must remain with the person in custody until such time the hospital has assumed responsibility for the person and admitted into care.
85. When making an apprehension under s. 28 of the *MHA*, Members will also complete Transit Police Form OZ190 – Mental Health Occurrences and attach the form to the GO.
86. Members are advised that it is not appropriate to apprehend a person under s. 28 of the *MHA* when the person has committed a serious or violent offence as there are specific NCRMD (Not Criminally Responsible by Reason of Mental Disorder) provisions within the Criminal Code that address this type of situation.
87. Members may seek the assistance of the specialized resources (e.g., JPD mental health response teams) to assist with incidents of apparent mental health crisis.

#### **Arrest of a Peace Officer**

88. When a Peace Officer (as defined in the *Criminal Code*) of another police department or other agency is arrested, the arresting Member will immediately notify their Supervisor.
89. The Supervisor will immediately notify the Watch Commander and Inspector Operations.

#### **Arrest of Armed Forces Personnel**

90. When a member of the Canadian Forces is arrested, the arresting Member will immediately notify their Supervisor and the Supervisor will notify the Military Police NCO at the Canadian Forces Area Support Unit. (The telephone number is available in the OCC.)
91. Members of Foreign Forces in Canada on leave, pass or absent without leave (AWOL) are in the same category as civilian visitors or residents. The provisions of the Visiting Forces (NATO) Act do not apply and they will be dealt with as civilians with the following proviso:
1. in every case where American Service Personnel are arrested, the Member will notify their Supervisor, and the Supervisor will report the facts to the Crown Counsel Office, including the full name of the individual and their serial number, unit and station. The Crown Counsel Office is the designated liaison with the American Judge Advocate's Branch and will deal with the matter from then on; and
  2. if a member of a foreign duty force, for example, a section, platoon, company, regiment, ship's company, (i.e. NATO stationed in Canada) is arrested, the Member will notify the Watch Commander through their Supervisor, and the

Watch Commander will then advise the commander of such Force. The Crown Counsel Office will also be advised exactly as in s.91.1 above.

### **Arrest of a Merchant Seafarer**

92. When a member of the crew of a ship in harbour is arrested, the arresting Member will immediately notify their Supervisor. The Supervisor will notify the Captain of the ship of the arrest and time of Court appearance. Where appropriate to the circumstances, the Transit Police may notify the JPD of the incident.

*NOTE: The Transit Police may seek the Vancouver Police Department Marine Squad (or police of jurisdiction) assistance in contacting the ship's captain.*

### **Arrest in a Private Dwelling**

93. Absent consent or exigent circumstances, a Member must obtain a warrant to enter a private dwelling to arrest or apprehend a person.

1. Use Ministry of the Attorney General special Information To Obtain Form – PCR 126 for warrant applications under s. 529 of the *Criminal Code*. The PCR 126 is to be attached to the RTCC in cases where an arrest warrant is being sought. Once Crown Counsel has approved the charge and after formal charges have been laid, the ITO can be sworn before a justice.
2. An s. 529 *Criminal Code* authorization to enter a dwelling-house is valid for one entry only. If an authorized entry fails to locate the person named in the arrest warrant, a second application must be made to a justice before the police can re-enter the dwelling-house. If a second application is made, Members will need to ensure that reference is made to the first application, the entry and any result of that entry. This information will be needed by the justice in determining whether to grant or deny the application.
3. Where feasible, the Member authorized to enter the dwelling-house will provide the arrested person with a copy of each document.

94. When a Member has reasonable grounds at the time the arrest warrant is requested to believe that the accused person is in a dwelling-house, the officer will request authorization to enter the dwelling-house be added to the arrest warrant.

95. When an arrest warrant is already in existence or where no arrest warrant exists but the grounds for arresting the suspect without a warrant exists and the Member has information that the accused person is in a dwelling-house, the Member will apply for a separate warrant to enter the dwelling-house.

96. Pursuant to s. 529.3 of the *Criminal Code*, the Member may enter a dwelling-house without warrant if that person is present in the dwelling-house and the conditions for obtaining a warrant under s. 529.1 of the *Criminal Code* exist but by reason of exigent circumstances it would be impracticable to obtain a warrant. The police have the power to enter private premises without a warrant to effect an arrest in a case of hot pursuit.

1. Exigent circumstances are defined to include circumstances in which the peace officer has reason grounds to:
  - a. suspect that entry is necessary to prevent imminent bodily harm or death to any person inside the dwelling-house; or
  - b. believe that evidence relating to the commission of an indictable offence is present inside the dwelling-house, and entrance is required to prevent its imminent loss or destruction.

### **Arrest in a Private Property**

97. Members may arrest and remove, without warrant, any persons on private property, if the Members are lawfully on the property and they have reasonable and probable grounds to believe that an indictable offence has been, or is about to be committed, or if they find a person committing a criminal offence or a breach of the peace (see s. 495 and s. 31 of the *Criminal Code*).

### **Key References:**

BC Liquor Control and Licensing Act [RSBC 1996, Chapter 267]  
BC Offence Act [RSBC 1996, Chapter 338]  
BC Police Act [RSBC 1996, Chapter 367]  
Canadian Charter of Rights and Freedoms [1982]  
Criminal Code of Canada [RSC 1985, c. C-46]  
Mental Health Act [RSBC 1996, Chapter 288]