TRANSIT POLICE

ARRESTS

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POLICY

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

Definitions

Arrest – A person is arrested where there is either "(i) the actual seizure or touching of a person's body with a view towards his detention, or (ii) the pronouncing of 'words of arrest' to that person who submits to the arresting officer."[2]
Note to Reader: The term 'his" is used above as it is direct quotation; however, it is recognized that 'their" will be applicable (in consideration of Equity, Diversity and Inclusion).

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.

Charter – Canadian Charter of Rights and Freedom [1982].

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[2] *R. v. Whitfield*, 1969 CanLII 4 (SCC); *R. v. Latimer*, [1997] 1 SCR 217 at paragraph 24; *R. v. Asante-Mensah*, [2003] 2 SCR 3 at paragraphs 42-46.

CSO – Community Safety Officer, a Designated Law Enforcement Officer ("DLEO") of the South Coast British Columbia Transportation Authority Police Service.

Criminal Code – *Criminal Code of Canada*, RSC 1985, c. C-46, as amended from time to time.

Detention – Refers to a suspension of an individual's liberty interest by virtue of a significant physical or psychological restraint at the hands of the state (***R. v. Grant***). Therefore, when police conduct general inquiries with Members of the public, they have the ability to do so, without the interaction becoming a "detention" as long as that restraint is not significant. The point at which the restraint becomes a *significant one* is the point at which the interaction turns into a legal detention, and the citizen's *Charter* interests become engaged. *(Refer to Transit Police policy chapter **OB330 – Police Stops** for more on lawful detention and psychological detention.)*

GO – General Occurrence report in PRIME.

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

Indigenous – Persons who are First Nations, Inuit and Métis.

Intoxication – "[T]he condition of being stupefied or drunk from the consumption of alcohol or a drug to such a marked degree that the person is a danger to himself or others or is causing a disturbance." [*Besse v. Thom* (1979), 96 D.L.R. (3d) 657 (B.C. Co. Crt.)]
Note to Reader: The term 'himself" is used above as it is direct quotation; however, it is recognized that the plural 'themselves' or 'herself' will be applicable (in consideration of Equity, Diversity and Inclusion).

JPD – Jurisdictional Police Department.

LCLA – The BC *Liquor Control and Licensing Act* [RSBC 2015], c. 19 and the regulations thereto, all as amended from time to time.

Medically Unfit – Injured or ill, with some level of impairment or risk to self and deterioration, this includes questionable consciousness, psychiatric illness and acute alcohol poisoning or drug overdose.

Member – For the purpose of this policy, Designated Constable (all ranks), the Chief Officer or a Deputy Chief Officer of the Transit Police.

Metro Vancouver Transit Police ("Transit Police") – The operating name of the South Coast British Columbia Transportation Authority Police Service Designated Policing Unit.

MHA – The BC *Mental Health Act* [RSBC 1996], c. 288, as amended from time to time.

NCRMD – Not Criminally Responsible Due to Mental Disorder.

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, all as amended from time to time.

Qualified Medical Practitioner – A physician or registered nurse. *(NOTE: BCAS paramedics are not medical practitioners and cannot declare a person fit for incarceration.)*

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

Restraint – Pursuant to BC Provincial Policing Standards 1.2.3, "any mechanical device or system that when used in its ordinary and intended manner restricts the normal physical activity or range of motion of an individual in part or in whole".

RTCC – Report to Crown Counsel.

Supervisor – For the purpose of this policy, any Member assigned the responsibility and authority to supervise Transit Police Members, Community Safety Officers, and Civilian Professionals.

Undertaking – A judicial interim release that includes the name, date of birth and contact information of the accused; the offence(s) allegedly committed; date, place and time of first court appearance; and, requires the accused to abide by one or more additional conditions as listed on the form.

Authority

1. Members will undertake arrests in compliance with the provisions of the *Criminal Code, Canadian Charter of Rights and Freedoms ("Charter"),* BC Provincial Policing Standards ("BCPPS"), other legislation and Transit Police policy.

   Intoxicated Persons

2. Peace officers in British Columbia have the statutory authority to arrest someone for being intoxicated in a public place. This power to arrest is provided by the following statutes:
   a. Section 78(1) of the *Cannabis Control and Licensing Act* ("*CCLA"*)
   b. Section 175(1)(a)(ii) of the *Criminal Code*
   c. Section 74(2) of the *Liquor Control and Licensing Act ("LCLA"*)
   d. Section 91(1) of the *Offence Act*.

3. The Transit Police is obligated to ensure that intoxicated persons who are unable to care for themselves are cared for and the statutes above assist a police officer in meeting this obligation:

   (1) A person may be arrested under s. 78(1) if intoxicated by Cannabis.

(2) A person may be arrested under s. 175(1)(a)(ii) of the *Criminal Code* who not being in a dwelling-house, causes a disturbance in or near a public place, "by being drunk".

(3) A person may be arrested under s. 74(1) of the *LCLA* if intoxicated by alcohol or a combination of both alcohol and drugs. (*NOTE: Members will not issue a Violation Ticket ("VT") under s. 74 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 release a person if they are able to take care of themselves, or into the care of a capable adult, upon being arrested under s. 74 of the *LCLA* or s. 91(1) of the *Offence Act*.

4. If the intoxicated person is also suffering from a mental disorder, Members may also consider whether an apprehension of the intoxicated person under s. 28(1) of the *MHA* is appropriate.

General

5. Police have a common law and statutory duty to investigate crimes and enforce the law, particularly the criminal law; however, discretion is an essential feature of the criminal justice system and police necessarily exercise discretion, on the basis of law and the public interest, in deciding whether to arrest and recommend or lay a charge.

6. Detaining, arresting and processing individuals will be performed in accordance with law, and Members are responsible for understanding applicable statutes and the scope of the law.

(1) It is the duty of all Transit Police staff to deliver services impartially and equitably, in a manner that upholds human rights, and without discrimination based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability, gender identity and expression, political beliefs, types of employment, economic or social standing. Further, it is the Transit Police's commitment and expectation that all Transit Police staff will provide services in a culturally safe, responsive and trauma-informed manner. [BCPPS 6.1.1(1) and (2)]

7. Members may temporarily detain persons ('investigative detention') only if objectively discernible facts give a Member reasonable cause to suspect the person is implicated in the commission of a specific criminal offence under investigation.

8. Transit Police recognizes the effects of colonialism, displacement, forced assimilation and inter-generational trauma on Indigenous persons, and how this has contributed to their overrepresentation in the criminal justice system. Specific to incidents involving persons who identify as Indigenous, Members will consider whether the public interest has been or can be served without detention or arrest (e.g., exercising of discretion, releasing without charge or issuing of a verbal warning, or participating

in restorative justice methods, alternative measures and/or Indigenous community justice practices (if available). Whenever possible, Members will liaise with the Transit Police - Indigenous Liaison Officer, who can provide guidance and assistance to Members when responding to victims, witnesses or offenders who identify as Indigenous.

9. 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. (Refer to **Transit Police policy chapter OD170 – Police Warnings**.)

    (1) A "statement caution" is to be provided by a Member in advance, when seeking information from a suspect that has the potential to inculpate the suspect.

    (2) Any spontaneous utterance implying guilt, made to a Member by a person before being cautioned, is required to be recorded in the Member's notebook at the earliest opportunity, to the best of the Members recollection, and "in quotations" if able to be accurately recalled.

    NOTE: The Charter 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.

10. 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 direct 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.

11. 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 will consider whether the public interest has been or can be served without detention or arrest (e.g., exercising of discretion, releasing without charge or issuing of a verbal warning, or participating in restorative justice methods or alternative measures). Members to refer to Transit Police policy chapter **OD180 – Young Persons**.

PROCEDURES

PART A – COMMUNITY SAFETY OFFICERS

12. CSOs will undertake arrests in compliance with the provisions of the *Criminal Code, Canadian Charter of Rights and Freedoms ("Charter"),* BC Provincial Policing

Standards ("BCPPS"), other legislation[3], case law and Transit Police policy. CSOs will refer to Transit Police policy chapter **OD360 – Arrest by Community Safety Officers**.

PART B – MEMBERS

Conducting an Arrest

13. A Member who detains or arrests a person will;

    (1) Identify themselves as a police officer;

    (2) Inform the person that they are being detained or arrested;

    (3) Inform the person the reason for the detention or arrest;

    (4) Advise the arrested person of their right to retain and instruct counsel pursuant to s. 10(a)(b) of the *Charter.* Members *are to* refer to the "Charter Card" and also provide any additional advisements that may be legally required in the circumstances, such as Impaired Driving (see Transit Police policy chapter **OJ140 – Impaired Driving**); and

    (5) Take physical custody of the person (this will include physical search of the person and belongings, and handcuffing where the circumstances warrant it, taking into account safety of police officers, the public or the person (refer to Transit Police policy chapter **OI010 – Prisoner Care, Control and Transportation**);

14. Where the Member arrests or detains any person, or releases any person that was arrested or detained, the Member must, as soon as practicable, notify a Supervisor of all circumstances regarding the arrest or release from custody. This applies regardless of whether or not the person was charged.

15. Members will follow provisions of Transit Police 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

16. 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. (Also, refer to the Transit Police provided *Charter* cards for guidance.)

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[3] South Coast British Columbia Transportation Authority Police Service Regulation B.C. Reg 80/2026, which replaced Order of the Lieutenant Governor in Council No. 586 - 2022 which approved the application for the establishment of the SCBCTAPS-DLEU.

17. If there are indicators that the arrested or detained person does not understand (e.g., language barrier, cognitive capabilities, intoxication or other circumstance that may impact a person's understanding) their rights to counsel, the Member must take steps to facilitate that understanding. This may include utilizing a translation service, canvassing for another police officer who is proficient in the language, or having the person explain to the Member their understanding of their rights to counsel.

[Refer to Transit Police **SOP20 – Interpreters and Translators**]

18. 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 phone to speak with counsel in private as soon as practicable. If the person wishes to speak to counsel roadside, the Member will make reasonable attempts to provide access to counsel, with the understanding that the phone call will mostly likely not be private.

19. Once the person has spoken with counsel, the Member will ask if they spoke with their counsel of choice and if they understood the legal advice.[4]

Arrest – Warrant

20. When a person is being arrested for a warrant held by another agency or by the Transit Police, Members, the OCC and Information Management Section professionals will follow the procedures set out in Transit Police policy chapter AF020 – Legal Process: Warrants/Subpoenas/Summons.

Arrest – Breach of Peace

Member Responsibility

21. 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.

NOTE: 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.

22. 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

[4] *R. v. Willier*, [2010] S.J.C. No. 37.

the arrest. The Member will document the name of the authorizing Supervisor in their notebook, in the GO or in the CAD remarks.

23. All Members have a duty of care to the person 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.

24. Whenever a person is arrested for an apprehended or witnessed Breach of the Peace, the arresting Member will submit a detailed GO in PRIME prior to the completion of their shift. The GO will include the following:

    (1) Detailed synopsis of event and reasons for the arrest; and

    (2) Disposition of the arrested party (e.g., lodged in detention facility or removed to a specifically named location, and the location of personal belongings if not accompanying the person).

Supervisor Responsibility

25. 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.

26. 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.

27. 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 person is transported or booked in and consult on the detention timeframe to be applied.

28. 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.

29. A Supervisor will ensure that a GO has been completed by the end of the Member's shift and a Supervisor will approve the report as soon as is practicable.

Arrest – Breach of Conditions (Undertaking, Release Order, Probation)

30. Persons arrested on Breach of Undertaking, Release Order and Conditional Sentence Order, and when in the public interest to hold for Breach of Probation, in Metro Vancouver are to be lodged in the Jurisdictional Police detention facility where the breach occurs (the same will apply when there is a breach arrest and a new offence is committed).

(1) Transit Police will submit the RTCC to the Crown office where the offence (breach) took place. This is similar to how other JPDs operate and effect their breach arrests. Crown has the ability to transfer files (RTCCs) in their back-end amongst their various office locations. The same process applies when there is a breach arrest and a new offence is committed; Transit Police will submit one RTCC to the Crown office where the offence occurred.

NOTE: For example, subject is arrested in Vancouver for new substantive charge but the breach is from Port Coquitlam. The subject will be lodged in VPD jail and Transit police should submit the RTCC for both charges to the Vancouver Crown office, as Vancouver is where the arrest occurred. If the new substantive charge cannot be met, the in-custody report is submitted to Vancouver Crown and the supplemental charges and RTCC on the new substantive charge are submitted to Vancouver Crown on the same file number.

(2) Members will refer to **Appendix "A"** for additional guidelines related to various types of breach of conditions.

Arrest – Hold Intoxication in a Public Place ("H/SIPP")

Assess

31. When responding to a report of an intoxicated person (or on view), Members will assess whether that person is intoxicated by liquor, or by drugs, or is being affected by a medical condition, and whether the person is able to care for themselves.

(1) Members will be mindful that, as a society, persons who have consumed liquor or drugs are encouraged to not drive and to utilize other modes of transportation, including public transit. Accordingly, Transit Police adopts a reasonable approach to intoxicated persons on the transit system and only takes enforcement action on those persons who are causing problems or are unable to care for themselves. When Members take custody of intoxicated persons, the Members are charged with their care. Members must not only assess a person's general state of intoxication but also their state of intoxication relative to the transit environment (i.e., escalators, elevators and platforms within a light rail station, and moving train).

32. If an intoxicated person does not require further supervision or care, they may be released by the Member.

Release to Care

33. A non-violent intoxicated person who the Member believes requires further supervision, may be released to a friend, family member, or acquaintance that a Member believes is capable of safely supervising the intoxicated person.

(1) If the intoxicated person is under the age of 18, they may be released to a parent or guardian. If a parent or guardian is not available, the young person may be released to another suitable adult.

a. Members will refer to Transit Police policy chapter **OD180 – Young Persons** for directions on operational response to intoxicated youth. Members will document all efforts to contact a parent/guardian and, when Members are able to consult with the parent/guardian of the intoxicated youth, they will add an entity for that person to the GO, with contact information. (This information will be required if, at last resort, the youth is taken to cells.)

34. When a non-violent intoxicated person requires further care, and there is no appropriate person to care for them, they will be taken to a sobering or detox facility, or other accommodation deemed suitable by a Member. Alternate accommodations will need to be approved by a Supervisor and may include, but are not limited to, a shelter, medical facility; or other place with supervision.

Held in Custody

35. 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.

36. CPIC queries are to be done by the arresting Member on all persons arrested H/SIPP. In cases where, due to the level of intoxication, the arresting Member is unable to make an identification, a Supervisor will ensure that it is done as soon as possible.

37. When a person is arrested H/SIPP and is being transported to a detention facility, the arresting Member will comply with the care and custody provisions of policy chapter **OI010 – Prisoner Care, Control and Transportation**.

Medically Unfit – Intoxicated Persons

38. Intoxicated persons who are assessed by Members to be Medically Unfit must be transported to a hospital. (Members are advised that an individual may be unable, given the nature of their injuries or degree of intoxication, to make rational decisions with respect to medical treatment, in such cases, it is necessary to take them to hospital for assessment.)

39. 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 arrested person is treated by BCAS for a drug overdose, the person will be transported to a 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. (In most instances, an intoxicated person who has ingested drugs will require hospital clearance before being transported to the JPD detention facility or a sobering or detox centre.)

(1) If BCAS advises of a long delay, in exigent circumstances, transport may be done by the Members after consultation with their Supervisor, if this can be done safely having assessed the needs of the apprehended person.

40. If a Qualified 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 - SafeRide

41. In the City of Vancouver, SafeRide will be considered in the first instance for intoxicated people who agree to be transported to either the Sobering Unit or other accommodation deemed suitable by a Member. These are people who are:

    (1) Non-violent and are eligible for admission to the Sobering Unit; or

    (2) Capable of caring for themselves and a Member determines that transporting the person to their residence or another accommodation is an option that is available and appropriate;

    (3) Unable to care for themselves but have alternate accommodation where a Member believes they will be safely supervised and cared for by a competent and sober adult.

Non-Violent

42. For non-violent persons arrested H/SIPP, the Vancouver Coastal Health Detox Centre ("Sobering Unit"), or another available sobering unit as the case may be, will be considered instead of incarceration. Prior to transport to the Sobering Unit, the Member will contact the Sobering Unit to determine if they will accept the person (or alternatively, request the OCC to confirm that the person is not on the banned list for the Sobering Unit).

43. Once at the Sobering Unit, a Member will advise the staff of the intoxicated person's pending arrival, prior to escorting the intoxicated person inside.

44. When Members are transferring a person to the Sobering Unit, the Members will remain with the intoxicated person for the duration of the admission process and ensure all information provided to the unit staff is also logged into the call on the CAD remarks. This information will include:

    (1) Name of person or if unknown, the Member is to make a notation;

    (2) Date of birth;

    (3) Circumstances of arrest;

    (4) Any injuries of the person;

    (5) If BCAS and/or local fire department medical personnel attended; and

    (6) Time at the start and end of transport to the unit.

45. If the person becomes violent during transport or upon arrival at the Sobering Unit, the Members can advise the OCC accordingly and transport the person to the appropriate detention facility (also notifying the detention facility in advance). If the person becomes violent during or after the admission process, then the Sobering Unit will issue the Members a signed refusal slip and the person can then be taken to the detention facility.

    (1) 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 the Sobering Unit. If they then become violent during transport or at Sobering Unit, then same procedure is applied and refusal slip obtained from the unit staff. If a person is accepted by the Sobering Unit and then becomes violent, Members will re-attend and transport the person to the local JPD detention facility.

Violent Behaviour - Intoxicated Person

46. Members will consider other more appropriate charges when dealing with intoxicated persons displaying violent behavior.

47. If the arresting Member believes 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

48. When a person is arrested H/SIPP, the Member will submit a GO report. This includes when the person is transported to a detention facility, taken to the Sobering Unit, or turned over to SafeRide or another competent person.

    (1) If the intoxication is due to alcohol or a combination of drugs and alcohol, the Member will enter UCR Code: Liquor-Intox in Public Place 7100-3. (The intoxicated person will be listed as a “Suspect Chargeable.”)

    (2) Where a person is refused admission to a sobering or detox centre, the basis for the refusal must be fully documented in a GO. Where possible, the name of the centre’s staff person who is refusing admission is be included in the documentation.

49. If a VT under s. 74(1) of the *LCLA* has been issued, Members will enter the VT information into the GO, including type and number in a text page, under the Event Link category. (The intoxicated person will be listed as “Charged” and will be charged under s. 74(1) of the *LCLA*.)

50. If BCAS transports the intoxicated person to hospital and Members are asked by BCAS to accompany them for safety reasons, a Member will also complete a GO and document the incident as a casualty (use UCR Code: Assist-Casualty/EHS 8900-21).

Arrest – Intimate Partner Violence

51. When considering arrests related to violence in relationships, Members will refer to Transit Police policy chapter **OD160 – Intimate Partner Violence**.

Arrest – Injured Person

52. 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 by BCAS for examination by a Qualified Medical Practitioner:

    (1) Unconsciousness or Questionable Consciousness;

    (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 head trauma;

    (4) Cuts or lacerations requiring stitches;

    (5) Dog bites; and

    (6) Suspected of ingesting anything that could cause them harm.

53. If BCAS advises of a long delay, in exigent circumstances, transport may be done by the Members after consultation with their Supervisor, if this can be done safely having assessed the needs of the apprehended person.

54. Where conditions in s. 52 exist, the Member will not release the person from custody until such time the person has received appropriate medical attention. The Member will ensure that the person is cleared for incarceration by a Qualified Medical Practitioner.

55. 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.

56. When a prisoner is sent directly to hospital (other than a person arrested H/SIPP), the arresting Member will notify a Supervisor.

57. Prisoners requiring minor medical attention will be guarded by the escorting Member.

58. 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.

59. 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.

60. 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.

Reportable Matters

61. Members will comply with notification requirements for reportable matters (e.g., injuries) to the Office of the Police Complaint Commissioner and Independent Investigations Office, as set forth in the Transit Police policy chapters **OH070 - Independent Investigations Office** and **AC140 – Complaints**.

Arrest – Gender Diverse[5] Persons

62. Members will address and treat gender diverse adults and youth in a manner that complies fully with legal requirements and addresses the specific needs of gender diverse persons (including the risk of harassment or harm).[6] The arrest of gender diverse persons will be conducted in accordance with this policy, Transit Police policy chapter **OI010 – Prisoner Care, Control and Transportation** and **SOP88 – Interactions with Gender Diverse Persons**.

Arrest – *Immigration and Refuge Protection Act ("IRPA")*

63. Under the *IRPA*, 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.

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[5] Previously titled Transgender Person. Updated on May 16, 2023 to align with SOP88 – Interactions with Gender Diverse Persons.

[6] See *Dawson v. Vancouver Police Board (No. 2) 2015 BCHRT 54 (CanLII).*

64. Members will refer to **Transit Police SOP62 – Victims and Witnesses Without Legal Status and Enquiries to CBSA** for the operational approach to be taken with victims/witnesses without legal status. That SOP also includes direction to Members when entering into an investigation beyond a Fare Infraction Notice (i.e., when investigating criminal activity or the suspected violation of a provincial statute such as "obstruct fare officer"), and when Members are to be contacting the Canada Border Services Agency. Nothing in that SOP is to be construed as prohibiting Members from fulfilling their duties under Canadian legislation, including but not limited to the execution of warrants or written orders.

65. A Member who arrests a person on the basis of an immigration warrant will ensure that:

    (1) The federal Immigration Division is contacted as soon as practicable (if the Immigration Duty Officer cannot be contacted, immediate assistance can be obtained through the Douglas/Peace Arch Immigration Centre); and

    (2) During their confinement, the person arrested is not required to be brought before a Justice in criminal courts, unless also charged with a criminal offence.

66. Under the federal *IRPA*, the Vancouver Police Department jail is designated an Immigration Detention Area and the Immigration Officer will make arrangements for escorting the detainee to that location.

67. The *IRPA* does not give Members the authority to require a person to submit fingerprints; however, Members may fingerprint persons for purposes authorized by the *IRPA*, with the person's consent.

68. Where a permanent resident or foreign national is arrested for an offence, other than an offence under the *IRPA*, the arresting Member will process the person in accordance with normal criminal procedures and also notify the Immigration Division.

Arrest – Peace Officer

External Peace Officer

69. When a Peace Officer (as defined in the *Criminal Code*) of another police department or other law enforcement agency is arrested by a Member, the following steps will be taken:

    (1) The arresting Member will notify a Supervisor and the Duty Officer as soon as practicable;

    (2) The Supervisor will notify the Watch Commander and Inspector Patrol Section, as soon as is practicable;

    (3) The Duty Officer will advise the Deputy Chief Officer Operations of the arrested Peace Officer's department/agency; and

(4) The arresting Member will adhere to the same criminal investigation process requirements as would apply in the circumstances of any other arrested person.

(5) If a Peace Officer attempts to use their rank/position to influence the outcome of an investigation (including an issuance of a Violation Ticket), the Member will report the circumstances to their Supervisor so that appropriate action can be taken pursuant to Part 11 of the *Police Act*.

Transit Police Personnel

70. In cases of criminal allegations where a Member has arrested another Member, Community Safety Officer, or a Civilian Professional of the Transit Police, the matter must be brought to the attention of a Supervisor, Inspector Patrol Section and the Deputy Chief Officer Operations. The Chief Officer and Professional Standards Unit will be promptly advised by the Deputy Chief Officer Operations. Follow-up actions and criminal investigation will be as set out in Transit Police policy chapter **AC140 – Complaints.**

Confidentiality

71. Members involved in the arrest and subsequent investigation of Transit Police Personnel, or a police officer from another agency, are to maintain confidentiality regarding the matter and not discuss the matter with persons not involved in the investigation, unless authorized by function (e.g., Media Relations Officer) or by the Inspector Patrol Section or higher rank. (This is important to both the integrity of the investigation as well as avoiding potential misconduct under the *Police Act.*)

Arrest – Armed Forces Personnel

72. When a member of the Canadian Forces is arrested, the arresting Member will immediately notify a Supervisor and the Supervisor will notify the Military Police NCO at the Canadian Forces Area Support Unit. (The telephone number for the Military Joint Operations Centre for Pacific Region is available in the OCC.)

73. 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., British Military) is arrested, the Member will notify the Watch Commander through a Supervisor, and the Watch Commander

will then advise the commander of such Force. The Crown Counsel Office will also be advised exactly as stated in subsection (1) above.

Arrest – Merchant Seafarer

74. When a member of the crew of a ship in harbour is arrested, the arresting Member will notify a Supervisor as soon as practicable. The Supervisor or designate will notify the captain of the ship of the arrest, if the crew member is:

    (1) Being charged and not released by the Transit Police; or

    (2) Being charged and released, and the Watch Commander (in consultation with the Inspector Patrol Section) deems it in the interest of the safety of the captain and crew, in light of the nature of the alleged offence.

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

75. As appropriate to the circumstances, the Transit Police may notify the JPD of the incident.

Arrest – Private Dwelling

76. Absent consent from the property owner or a legal tenant, 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 has approved the charge and, after formal charges have been laid, the ITO can be sworn before a justice.

    (2) A s. 529 of the *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.

77. 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 that authorization to enter the dwelling-house be added to the arrest warrant.

78. When an arrest warrant is already in existence, or where no arrest warrant exists but the grounds for arresting the person 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.

79. 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 impractical 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 reasonable 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 – Private Property

80. Members may arrest and remove, without warrant, any persons on private property, if the Members are lawfully on the property and they have reasonable 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*).

Release Post-Arrest – No Warrant

81. A Member may arrest without warrant where reasonable grounds exist for doing so; however, 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.

82. The Member may only detain the accused in custody where there is reasonable grounds to believe that the detention is necessary in the public interest, as described in s. 495(2)(d) of the *Criminal Code*.

83. Members are to be mindful of the following principles and considerations under the *Criminal Code*:

    <u>Principle of Restraint/S. 493.1</u>
    In making a decision under this Part, a peace officer, justice or judge shall give primary consideration to the release of the accused at the earliest reasonable opportunity and on the least onerous conditions that are appropriate in the circumstances, including conditions that are reasonably practicable for the accused to comply with, while taking into account the grounds referred to in subsection 498(1.1) or 515(10), as the case may be.

    <u>Aboriginal accused or vulnerable populations/S. 493.2</u>
    In making a decision under this Part, a peace officer, justice or judge shall give particular attention to the circumstances of (a) Aboriginal accused; and (b)

accused who belong to a vulnerable population that is overrepresented in the criminal justice system and that is disadvantaged in obtaining release under this Part.

84. If the arresting Member detains the person but believes grounds no longer exist to hold the person in custody, that Member 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 being issued an Appearance Notice (Transit Police Form **OZ1030**/pcr059)[7]; or

    (3) Upon being issued an Undertaking (Transit Police Form **OZ1040**/pcr108)[8] with condition(s).

    NOTE: When issuing an Undertaking, Members will refer to the conditions as set out in the Criminal Code as well as consider other conditions as appropriate to the circumstances.

85. When practicable, a Supervisor will review the Undertaking condition(s) with the investigating Member prior to issuing the Undertaking and release of the person.

86. Once the Undertaking is issued, the Undertaking must be immediately provided to the OCC so that the condition(s) can be added to CPIC.

87. IMS will immediately fax all Undertakings that contain a protection clause to the Protection Order/Firearms Registry. Members will select “yes” under the PIP drop down box in PRIME to ensure that the GO is routed to the Chief Firearms Officer.

    NOTE: An example of a protection clause would include no contact, limited contact, or other protective condition that provides safety and security to a specified (named) person(s). Keep the peace and be of good behavior, or orders that protect objects (i.e., property or assets), do not constitute protection orders.

88. If an arrested person is issued an Undertaking and released, and it is later determined that:
    (1) There is an error on the face of the Undertaking; or

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[7] Signature of Accused on Appearance Notice: S. 500(4) or the *Criminal Code* states that an accused shall be requested to sign in duplicate their appearance notice and, whether or not they comply with the request, one of the duplicates shall be given to the accused. If the accused fails or refuses to sign, the lack of signature does not invalidate the appearance notice.

[8] Signature of Accused on Undertaking: S. 501(6) of the *Criminal Code* states that an accused shall be requested to sign in duplicate their undertaking and, whether or not they comply with the request, one of the duplicates shall be given to the accused. If they fail or refuse to sign, the lack of signature does not invalidate the undertaking.

(2) The protective conditions imposed are no longer suitable and need to be revised; or

(3) Police are unable to process the file in time to meet the first appearance date;

Members will submit a report to Crown and request a summons or a warrant. In most cases, it will be appropriate to request an endorsed warrant to allow police to re-arrest the person and subsequently re-release them on a new Undertaking. This is presuming that protective conditions were required, which is why an Undertaking was issued as opposed to an Appearance Notice.

NOTE: Police do not have the authority to re-issue an Undertaking once an arrested person has been issued an Undertaking and released.

Release Post-Arrest – Warrant

89. 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.

90. Where a person has been arrested and detained in custody with a warrant, the Member 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.

Release Post-Arrest – Appearance Notice

91. 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.

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

93. If an arrested person is issued an Appearance Notice and released, and it is later determined that:

(1) There is an error on the face of the Appearance Notice; or

(2) Police are unable to process the file in time to meet the first appearance date;

Members will submit a report to Crown and request a summons or a warrant. In most cases, it will be appropriate to request an endorsed warrant to allow police to re-arrest the person and subsequently re-release them on a new Appearance Notice.

NOTE: Police do not have the authority to re-issue an Appearance Notice once an arrested person has been issued an Appearance Notice and released.

No Arrest – Release on Appearance Notice

94. 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.

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

Arrest versus Apprehensions – *Mental Health Act*

96. Apprehensions under s. 28 of the MHA will primarily occur when a Member comes into contact with a person who meets the criteria for apprehension and the person has not committed a criminal offence. However, there may be occasions where Members use their discretion to apprehend a person under the MHA, where the offence is minor and non-violent in nature.

    (1) When it is necessary for Members 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). Members will refer to Transit Police **SOP02 – Mental Health Response** and **SOP84 – CET Support to Mental Health Clients** for guidance on assessment, response and specialized resources.

97. 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[9].

98. Members may seek the assistance of the specialized resources (e.g., the Transit Police Mental Health Liaison, JPD mental health response teams) or negotiators to assist with incidents of apparent mental health crisis.

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[9] The NCRMD regime allows defence or Crown counsel to lead evidence at trial that the person was not criminally accountable on account of mental disorder at the time of the offence. If the court makes that finding, then the offender may be sent to a forensic psychiatric institution. Therefore, public interest and public safety should be the primary considerations for police officers when dealing with a mentally ill person who has committed a violent act. It is essential that police officers conduct a complete criminal investigation and recommend charges, when appropriate, in situations involving a mentally ill person who has allegedly committed a violent criminal offence(s).

References:

BC *Liquor Control and Licensing Act* [RSBC 2015], c. 19
BC *Mental Health Act* [RSBC 1996], c. 288
BC *Offence Act* [RSBC 1996], c. 338
BC *Police Act* [RSBC 1996], c. 367
Canadian Charter of Rights and Freedoms [1982]
Criminal Code of Canada [RSC 1985, c. C-46]
Transit Police SOP02 – Mental Health Response
Transit Police SOP84 – CET Support to Mental Health Clients
R. v. Antic, 2021 SCC 27
R. v. Zora, 2020 SCC 14

APPENDIX "A"

Procedures for Members on Failure to Comply with (Breach of) Undertaking, Release Order, Conditional Sentence Order, or Probation

Overview

The *Criminal Code* authorizes a police officer to arrest, without warrant, anyone whom they have reasonable grounds to believe has breached or is about to breach a condition of an Undertaking, Release Order, Conditional Sentence Order or Probation Order.

Members should arrest any person who has breached a No Contact Order or when public interest criteria has not been satisfied, as the use of discretion is not appropriate in these situations.

NOTE: the provision that follows has not yet rolled out.

As per section 496 of the Criminal Code, if a Member has reasonable grounds to believe that a person has failed to comply with Summons, Appearance Notice, Undertaking, or Release Order, and the failure did not cause a victim:

- *physical or emotional harm;*
- *property damage; or*
- *economic loss;*

the Member may, without laying a charge, issue an Appearance Notice to appear at a Judicial Referral Hearing ("JRH").

PROCEDURES

Failure to Comply with Undertaking or Release Order

1. Members will process as an In Custody – Report to Crown Counsel ("RTCC").

2. Submit a RTCC In Custody including:

    (1) The primary UCR code as failure to comply with undertaking or release order;
    (2) The charging section as 145(4)(a) for Undertaking and/or section 145(5)(a) for Release Order of the *Criminal Code*;
    (3) A copy of the Undertaking or Release Order as an attachment. If a copy of the Undertaking or Release Order is not readily available, then submit a copy of the CPIC printout; and
    (4) An event-to-event link to the original RTCC.

    <u>For JRH Appearance Notice only</u>

3. In exigent circumstances when a person has been released on an Appearance Notice to a JRH for failure to comply with an Undertaking or Release Order, Members should:

    (1) Allow 10-14 straight days (not business days) between the day that an Appearance Notice is served and the court appearance;

(2) Document the court location on the Appearance Notice for provincial adult court matters. The locations and times for the JRH can be obtained from the OCC, Watch Commander or on Cufflink under Administrative Services/Information Management/Court Clerk;
(3) Document the offence committed in the space provided on the Appearance Notice;
(4) Check the JRH box immediately below the offence area on the Appearance Notice;
(5) Void the "PRINT" section of the Appearance Notice by drawing a line through the section and initialling as photographs and fingerprints are not required;
(6) Provide the person with a copy of the Appearance Notice marked for "Accused";
(7) Swear or affirm the 'affidavit of service' on the back of the Appearance Notice;
(8) Submit RTCC including:
    a. The primary UCR code as failure to comply with Undertaking or Release Order and a secondary UCR code of JRH;
    b. The charging section as 523.1 of the *Criminal Code*;
    c. A copy of the Undertaking or Release Order as an attachment. If a copy of the Undertaking or Release Order is not readily available, then submit a copy of the CPIC printout; and
    d. An event-to-event link to the original RTCC; and
(9) Treat JRH Breach files as "in custody" files, with the end of the shift being the target completion time. If the investigation is complex and cannot be completed this day, Members should complete the investigation in a timely manner.

Breach of Conditional Sentence Order ("CSO")

4. When a person has been arrested for breach of Conditional Sentence Order, Members should:

(1) Take the person to be lodged at JPD cells where the breach occurred; and
(2) Submit an In Custody RTCC including:
    a. A copy of the CSO as an attachment. If a copy of the CSO is not readily available, then submit a copy of the CPIC printout;
    b. A signed copy of the RTCC Narrative page as an attachment; and
    c. An event-to-event link to the original RTCC.

Failure to Comply with Probation Order

5. When a person has been arrested for failing to comply with a Probation Order, Members will determine if it is in the public interest to hold the person in custody or release on an Undertaking or Appearance Notice. When considering the release of a person, section 493.2 of the *Criminal Code* requires Members to give particular attention to the circumstances of:
    - Indigenous people; and
    - Vulnerable populations that are overrepresented in the criminal justice system and that are disadvantaged in obtaining release.

(Refer to s. 83 of Transit Police policy OD080 – Arrest for more information.)

6. Members should also consider:
   - Criminal history,
   - Type of breach,
   - Domestic violence,
   - Continuation of offence(s).

7. If holding the person in custody, Members should:

   (1) Take the person to be lodged in the JPD cells where the breach occurred; and
   (2) Submit a RTCC including:
      a. A copy of the Probation Order as an attachment. If a copy of the Probation Order is not readily available, then submit a copy of the CPIC printout; and
      b. An event-to-event link to the original RTCC.

Multiple Charges

8. When recommending new charges in conjunction with a breach charge:

   (1) One RTCC In Custody is required, including the court documents as attachments;
   (2) The accused is to be brought to the local JPD cells where the new charge took place; and
   (3) An event-to-event link to the original (breach) RTCC is required.

General

9. When breach charges are being recommended in relation to an intimate partner violence incident, Members should request a copy of the 911 call, through the Exhibits Custodian, by completing and submitting the PS-VR-SOG-006 – AUDIO REQUEST Form (Transit Police Form OZ1330 – 911 E-Comm Audio Request).

10. A Supervisor should review any investigations where there is any evidence to suggest a breach of a court order has occurred in relation to an intimate partner violence or serious incident that involves No Contact Orders, **prior to a Member not recommending charges**. A Supervisor should document the reasons why an arrest was not made and/or charges are not recommended in the General Occurrence Report.