

TITLE: ARREST PROCEDURES

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PURPOSE

The purpose of this directive is to provide guidelines for sworn members to follow when taking subjects into custody.

DISCUSSION

Officers of the Santa Fe Police Department are entrusted by the communities they serve to fairly and impartially enforce the laws of the State of New Mexico and the ordinances of the City of Santa Fe.

These guidelines are intended to provide officers with the information needed to make an informed decision regarding the arrest of a subject and are not designed to override officer discretion.

POLICY

It is the policy of the Santa Fe Police Department to take criminal offenders into custody and to follow correct legal procedures so that the rights of the criminal offender are not diminished.

DEFINITIONS

Arrest: A subject is considered to be under arrest as soon as an officer indicates by word or action his intention to take the subject to the police station or before a judicial officer, or otherwise to take him into custody.

Probable Cause: An officer must have sufficient knowledge of facts and circumstances that would

lead a reasonable police officer to conclude that the suspect committed the crime.

PROCEDURE

ARREST WITHOUT A WARRANT

57.1.01 Officers may arrest a person for a **felony** offense in a public or private place when the officer has probable cause to believe a felony has been committed and that the person being arrested committed the offense. Additionally, officers may only arrest a person in a public or private place for a felony offense when at least one of the following exigent circumstances also exists:

- Swift action is required to prevent the imminent destruction of property;
- Swift action is required to prevent imminent destruction of evidence;
- Swift action is required to prevent imminent risk of flight;
- Swift action is required to prevent imminent danger to the community.

57.1.02 Officers may arrest a person for a **misdemeanor** offense committed in the presence of the officer, unless there is a statutory exception to the requirement that the crime be committed in the presence of the officer.

57.1.03 “In the presence of the officer” is generally held to mean that the officer either through team concept or his sight or hearing observed the crime.

STATUTORY EXCEPTIONS

57.1.04 The following are statutory exceptions to the requirement that a misdemeanor offense be committed in the presence of an officer:

- **Section 30-3-6(B) NMSA;** allows warrantless arrest of a person an officer has probable a use to believe committed the offense of assault or battery, public affray or criminal damage to property occurring at establishments licensed to sell alcoholic beverages.

- **Section 31-1-7 NMSA**; allows warrantless arrest of a person an officer has probable cause to believe committed the offense of assault or battery upon a household member at the scene of a domestic disturbance.
- **Section 30-16-23 NMSA**; allows warrantless arrest of a person an officer has probable cause to believe committed the crime of shoplifting.
- **Section 30-16-14 NMSA**; allows warrantless arrest of a person an officer has probable cause to believe has committed the crime of falsely obtaining services or accommodations.
- **Section 66-8-125 NMSA**; allows warrantless arrest of a person present at the scene of a motor vehicle accident, on a highway when charged with theft of a motor vehicle and charged with a crime in another jurisdiction upon receipt of a message giving the name or a reasonably accurate description of the person wanted, the crime alleged and a statement that the person is likely to flee the jurisdiction of this state.
- Police Team Concept.

57.1.05 Officers who make an arrest for any misdemeanor traffic violations must be in uniform or, readily identified as a Law Enforcement Officer.

A. All violations, to include 1st, 2nd and 3rd DWI's, covered by City Ordinance shall be cited into Municipal Court. The only exception is when the violations are secondary to a primary charge that is a high-court misdemeanor or felony.

57.1.06 Officers should remember that there is no prohibition against an officer investigating a misdemeanor offense which the officer does not witness and then, based on his investigation, obtaining a warrant for the arrest of the suspect.

MISCELLANEOUS

57.1.07 When an officer makes an arrest under authority of a State Statute, the officer shall book the

arrested person into the Adult Detention center under the proper State Statutes. Likewise, an officer shall use the correct municipal ordinance when arresting a person under authority of municipal ordinance.

57.1.08 In cases where a suspect is not arrested at the scene or shortly after the commission of a crime, the investigating officer should prepare an affidavit for and obtain an Arrest Warrant.

FELONY AND HIGH COURT MISDEMEANOR ARREST

57.1.09 Criminal complaints and statement of probable cause will be prepared by the arresting officer and will be reviewed by the on-duty commander.

57.1.10 The arrested person will be served with a copy of the criminal complaint prior to booking at the Adult Detention Center.

57.1.11 The original criminal complaint and probable cause statement shall be placed in the Magistrate Court Box at the Jail and a copy placed in the DA/Court Liaison Officer box.

ARRESTING ADULTS WITH MINOR DEPENDENT CHILDREN

57.1.12 In order to minimize the potential emotional harm that can result from a child witnessing the arrest of a parent and in an effort to ensure child safety, the following steps shall be taken:

1. Whenever it is safe to do so, the officer shall make the arrest away from the children or at a time when the children are not present.
2. When officers make an arrest, they shall inquire about the presence of children or other vulnerable individuals for whom the arrested adult has responsibility. The inquiry could be phrased, "Is there anyone in your home who depends on you for their care?" If the arrest is made in a home environment, the officer should be aware

of items which suggest the presence of children such as toys, clothing, formula, bunk bed, diapers, etc.

- 3. Whenever it is safe to do so, the officer shall allow the parent to assure his or her children that they will be provided care. If this is not safe or if the demeanor of the in-custody parent suggests this conversation would be non-productive, the officer at the scene should explain the reason for the arrest to the children in age-appropriate language and offer reassurances to the children that both the parent and the children will be taken care of.
- 4. When an arrest or search warrant is planned, the ages and likely location of the children shall be considered when determining the time, place and logistics of the arrest.
- 5. If children are present at the arrest, or if the arrested parent indicates the children are or will be at home without an adult caretaker, the officer shall determine whether or not the other parent is available to care for the children. If not, the officer shall attempt to locate an adult relative or adult fictive kin (a person not related by birth or marriage who has an emotionally significant relationship with a child) who is willing to take responsibility for the children. Preliminary criminal background checks of the alternate caregiver shall be completed. Any history of sexual crimes or violence against children shall make the adult ineligible to assume custodial care.
- 6. Prior to placing any child with an adult other than the non-arrested parent, the officer shall check with CYFD State Centralized Intake (SCI) for information on any child abuse or neglect history of the potential caregiver. The number is 1-800-797-3260 (Statewide) or 841-6100 (Albuquerque). SCI staff has a duty to verify the identity of the law enforcement officer.

- 7. If the non-arrested parent is not available, and the officer is unable to identify another adult to care for the children, SCI can provide the officer with contact numbers for shelters in the area closest to the place necessary.
- 8. If the officer believes protective custody is necessary, SCI will notify the CYFD worker on-call. The CYFD worker will ask any officer placing a child in protective custody to sign a "Statement of Reasonable Grounds for Emergency Custody."
- 9. If the children are currently in school, the responding officer shall contact the school and shall advise the School Resource Officer, the school principal, or the principal's designee of the parent's arrest and his/her stated preference for placement.
- 10. The reporting officer shall include in his/her report:
 - the names and contact information for the adults with whom a child is left;
 - the name of any CYFD workers or school personnel contacted;
 - the names and contact information for any family members identified whether or not the children are placed with them; this information is crucial for CYFD workers if future placement becomes necessary.

MIRANDA WARNING

REFER TO DIRECTIVE 56.1

DRAFTED(adp)/08-00, amended(awm) 0904, revised (gcr)04-11

APPROVED: _____

Ray Rael

Ray Rael, Chief of Police

DATE: _____

6/8/2011