



BETHLEHEM POLICE DEPARTMENT

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| Stop, Arrest, and Search of Persons | Related Policies: |
| <i>This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.</i> | |
| Applicable New Hampshire Statutes: NH Const. Part 1 st Art. 19; NH Const. Part 2 nd Art.21; R.S.A. §594:1; §594.10; §594.13; §594.14; §594:15; §594:2; §594:3; §594:4; §110-B-71 §169-B:9 | |
| CALEA Standard: 1.2.3, 1.2.4 | |
| Date Implemented: 09/2007 | Review Date: 06/2012 |

I. **Purpose:** The purpose of this policy is to direct the members of this agency on the lawful limits of authority with respect to contacts with persons.

II. **Policy:** The policy of this department is to protect and serve the constitutional rights of all citizens when stopping, arresting or searching individuals while balancing the needs of law enforcement in solving crime for the protection of the community.

III. **Definitions:**

- A. **Probable Cause: (search):** Facts and circumstances based upon observations or information that would lead a reasonable law enforcement officer to believe that evidence of crime exists and that the evidence exists at the place to be searched.
- B. **Probable Cause: (arrest):** Facts and circumstances based upon observations or information that would lead a reasonable law enforcement officer to believe that a crime has been or is being committed and the person to be arrested is the one who is or has committed the crime.
- C. **Reasonable Grounds:** As used in this policy reasonable grounds shall have the same meaning as probable cause.
- D. **Reasonable Suspicion (temporarily detain):** Facts and circumstances based upon observations or information, short of probable cause but based upon articulated facts that would lead a reasonable law enforcement officer to believe that criminal activity is afoot.
- E. **Reasonable Suspicion (frisk):** Facts and circumstances based upon observations or information, short of probable cause but based upon articulated facts that would lead a reasonable law enforcement officer to believe that a person who is lawfully stopped is in possession of a weapon.



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- F. Frisk (weapon):** A limited type of search where an officer may only conduct a search for weapons. With respect to a person such a search is limited to a pat-down of the subject's outer-clothing.
- G. Strip search:** The removal or rearrangement of clothing that results in the exposure or observation of a portion of the genitals, the buttocks or the breasts of a female.
- H. Consensual Contact:** An interaction between a member of law enforcement and the public that is voluntary in nature. The law enforcement member has shown no authority that would cause a reasonable person to believe that they had no choice but to respond or comply with the officer's efforts. Under this type of contact an officer has no power to detain an individual who chooses not to participate in the contact.
- I. Arrest:** An arrest is the taking of a person into custody so that he may be forthcoming to answer for the commission of a crime. To constitute an arrest there must be
1. An intent by the officer to take the person into custody, and
 2. A corresponding understanding by the person that he or she is in custody.
- J. Felony:** Any crime that may be punished by death or imprisonment in the state prison. Any other crime is a misdemeanor.
- K. Intrastate Fresh Pursuit:**
1. Any peace officer of this state or other person authorized to make arrests in a criminal case in this state in fresh pursuit of a person who is reasonably believed by such officer to have committed a felony in this state or who has committed or attempted to commit any criminal offense in this state in the presence of such officer, or for whom such officer holds a warrant of arrest for any offense, shall have the authority to arrest and hold in custody such person anywhere in this state.
 2. Any peace officer of this state in fresh pursuit of a person who is reasonably believed by such officer to be driving under the influence of intoxicating liquor or controlled drugs, or has violated any motor vehicle statute in the presence of such officer, or for whom such officer holds a warrant of arrest for any offense, shall have the authority to arrest and hold in custody such person anywhere in this state.
- L. Interstate Fresh Pursuit (New Hampshire):** The authority to arrest or to issue a summons to an individual by a police officer in New Hampshire is set forth in RSA 594:10 and :14. The territorial jurisdiction of New Hampshire police extends *only* to the borders of the sovereign State of New Hampshire. N.H. Const. pt. I, art. 7, and RSA 625:4:, 7 The one exception is the Uniform Law on Interstate Fresh Pursuit, adopted New Hampshire, RSA ch. 614 (1974) which allows border crossing if in fresh or "hot" pursuit for a *felony*.

IV. Procedures:



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- A. Consensual Contact** - An officer may approach anyone and attempt a consensual contact.
1. Officers are not required to have reasonable suspicion for this type of contact.
 2. Officers may not take any steps through words or conduct to stop the person's movement under this type of stop.
 3. A person cannot be compelled in any way to participate in the stop.
- B. Reasonable Suspicion Based Stops/Terry Stops** - An officer who is aware of facts and circumstances that would lead a reasonable police officer to conclude that criminal activity is afoot, may stop a person, using reasonable force short of deadly force, and detain the person for a reasonable amount of time to investigate further.
- C. Reasonable Suspicion Based Frisk** - An officer may conduct a limited frisk/pat-down of a person's outer clothing when the officer has reasonable suspicion to believe that a person who has been lawfully stopped is in possession of a weapon that poses a danger to the officer or others present.
1. Items that may support reasonable suspicion:
 - a. The type of crime for which the stop is based is one that would lead a reasonable officer to conclude generally involves a weapon.
 - b. The officer observes a bulge in the subject's clothing that has the appearance of a weapon.
 - c. The officer has information (anonymous tip merely providing description and location is not enough) indicating that a person is armed.
 - d. The officer is aware of the subject's history of carrying weapons.
 - e. The officer observes the subject reach as if reaching for, or reaching to hide a weapon (furtive movements).
 2. The frisk is limited to a pat-down of the outer-clothing and does not include reaching into pockets etc. unless the officer feels an item during the frisk that the officer reasonably believes is a weapon.
- D. Arrest:** An officer may arrest an individual if the officer has probable cause to believe that a crime has been committed and probable cause to believe that the person to be arrested is the person who committed that crime. Once probable cause is established an officer may take custody of the subject and involuntarily transport the subject.

NOTE: If the person to be arrested is in a dwelling-refer to Home Search Policy/ If the person to be arrested is in a vehicle-refer to vehicle search policy.



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E. Under New Hampshire Law:

1. An arrest by a police officer without a warrant on a charge of a misdemeanor or a violation is lawful whenever:
 - a. The officer has probable cause to believe that the person to be arrested has committed a misdemeanor or a violation in his presence; or
 - b. The officer has probable cause to believe that the person to be arrested has within the past 12 hours committed an act of domestic abuse as defined by RSA 173-B:1; or within the past 12 hours violated a permanent or temporary protective order issued under RSA 173-B or RSA 458:16 by committing assault, criminal trespass, criminal mischief, or another criminal act, or has within the last 12 hours violated stalking provisions under RSA 633:3-a, violated a criminal bail protective order; or
 - c. The officer has probable cause to believe that the person to be arrested has committed a misdemeanor or violation and, if not immediately arrested, such person will not be apprehended, will destroy or conceal evidence of the offense, or will cause further personal injury or damage to property.
2. An arrest by a police officer without a warrant on a charge of felony is lawful whenever:
 - a. A felony has actually been committed by the person arrested, regardless of the reasons which led the officer to make the arrest.
 - b. The officer has reasonable grounds to believe that the person arrested has committed a felony.
3. Citation: In any case in which it is lawful for a peace officer to arrest without a warrant a person for a misdemeanor or violation, he may instead issue to him in hand a written summons. A summons may also be issued after an arrest for a misdemeanor or violation in lieu of bail.
4. Notice of Arrest: The officer in charge of the station shall immediately secure from the prisoner, if possible, the name of the parent, nearest relative, friend or attorney with whom the prisoner may desire to consult, and shall immediately notify such relative, friend, or attorney of the detention when possible.
5. Presentment:
 - a. Whenever a person is arrested or held in custody pursuant to a warrant, that person shall be taken to the court as directed in the warrant without unreasonable delay.
 - b. An officer arresting a person without a warrant shall without unreasonable delay take such person to the court to answer a complaint for the offense.

F. Search Incident to Arrest of a Person:



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1. When an officer arrests a person on the street, the officer shall conduct a thorough search of the subject's person (not strip search) and the subject's immediate area of control. When an arrest occurs in a vehicle, the vehicle search provisions shall apply. When the arrest occurs in a dwelling the dwelling search policy provisions shall apply.
2. Cross-gender pat-downs and searches are restricted to those circumstances where exigent circumstances are present and no officer of the subject's gender is available to conduct the search. Exigency includes cases where no person of the same gender is immediately available and the safety of the officer or other persons present is in jeopardy.
3. The purpose of this search is the following:
 - a. Protecting the officer from attack;
 - b. Preventing the person from escaping;
 - c. Discovering or seizing the fruits of the crime for which the person has been arrested; or
 - d. Discovering or seizing any instruments, articles, or things that are being used or which may have been used in the commission of the crime for which the person has been arrested.
4. This search may include the subject's clothing as well as any items they are in possession of at the time of the arrest.

G. Privilege from Arrest:

1. Diplomatic and Consular Immunity
 - a. Background. Diplomatic immunity is a principle of international law by which certain foreign government officials are not subject to the jurisdiction of local courts and other authorities for both their official and, to a large extent, their official and, to a large extent, their personal activities. It should be emphasized, however, that even at its highest level, diplomatic immunity does not exempt diplomatic officers from the obligation of conforming with national and local laws and regulations.
 - b. Categories of persons entitled to diplomatic immunity are as follows:
 - 1) Diplomatic Agent: Enjoys the highest degree of privileges and immunity. Diplomatic Agents may not be handcuffed (except in extraordinary circumstances), arrested or detained for any criminal offense. Generally, they are immune from any civil suits, but are not immune from receiving a citation/summons. Family members of these persons enjoy the identical privileges and immunity.
 - 2) Diplomatic Administrative and Technical Staff: Enjoy privileges and immunity similar to Diplomatic Agents. Diplomatic Administrative and Technical Staff may not be handcuffed, arrested or detained for any criminal offense. They enjoy



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immunity from civil suits arising in connection with the performance of their official duties. Officers may issue a citation for a motor vehicle violation. Family members enjoy identical privileges or immunity.

- 3) **Diplomatic Service Staff:** They are accorded few privileges and immunities. Diplomatic Service Staff may be arrested or detained for criminal offenses. They enjoy immunity from civil suits arising in connection with the performance of their official duties. Officers may issue a citation for traffic violations. Family members enjoy no privileges or immunities.
 - 4) **Consular Officers:** Enjoy privileges and immunity from criminal and civil matters arising from their performance of official duties. Consular Officers may be arrested or detained, pursuant to an arrest warrant, for felony offenses. They may be prosecuted for misdemeanors, but may not be arrested or detained prior to trial or other disposition of charges. Officers may issue a citation for traffic violations. Generally, family members enjoy no privileges or immunity.
 - 5) **Consular Employees:** Enjoy privileges and immunity from criminal and civil matters arising from their performance of official duties. Consular Employees may be arrested or detained for criminal offenses. Officers may issue a citation for traffic offenses. Family members enjoy no privileges or immunity.
 - 6) **Honorary Consuls:** Enjoy privileges and immunity from criminal and civil matters arising from their performance of official duties. Honorary Consuls may be arrested or detained for criminal offenses. Officers may issue a citation for a traffic offense. Family members enjoy no privileges and immunity.
2. Procedure for Notification When a Foreign National is arrested.
- a. Determine the foreign national's country. In the absence of other information, assume this is the country on whose passport or other travel documents the foreign national travels.
 - b. All foreign nationals must be told of their right to Consular notification.
 - c. If the foreign national's country is not on the mandatory notification list:
 - 1) Offer, without delay, to notify the foreign national's consular officials of the arrest/detention.
 - 2) If the foreign national asks that consular notification be given, notify the nearest consular officials of the foreign national's country without delay.
 - d. If the foreign national's country is on the list of mandatory notification countries:

Notify that country's nearest consular officials, without delay, of the arrest/detention. Tell the foreign national that you are making this notification



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- e. Keep a written record of the provision of notification and actions taken.
3. New Hampshire Exemptions from Arrest:
 - a. Members of the national guard shall, except for treason, felony or breach of peace, be privileged from arrest and imprisonment while under orders in the active service of the state from the date of the issuing of such orders to the time when such service shall cease, or while going to, remaining at or returning from, any place at which the individual may be required to attend any military duty.
 - b. No member of the House of Representatives or senate shall be arrested, or held to bail, on mesne process, during his going to, returning from, or attendance upon, the court.
- H. Strip Search:** In order to conduct a strip search of an individual two threshold issues must be met:
1. The person must first be arrested based upon probable cause to believe that person has or is committing a crime.
 2. Field: The officer must have probable cause to believe that the arrestee is concealing evidence, contraband or weapons on their person. These searches shall be conducted at the police station or jail, unless exigent circumstances exist that make the search necessary to protect the officer or others from serious bodily harm or death. In such a case, the officer shall obtain supervisory authorization before making this search, unless no supervisor is available. In all cases the officer must seek a private area to conduct the search which is out of view of the public and other persons.
- I. Booking:** Strip searches during the booking process may only be conducted when an officer can articulate reasonable suspicion to believe that the subject is concealing weapons or contraband.
1. All strip searches conducted shall be performed by persons of the same sex as the arrested person, in a professional manner, and on premises where the search cannot be observed by persons not physically conducting the search.
 2. Officers performing strip searches must obtain the permission of a supervisor for the purpose of authorizing the strip search.
 3. In all cases where a strip search has been conducted, the officer will document the following:
 - a. The name of the person searched;
 - b. The person who conducted the search;
 - c. The supervisor who authorized the search;
 - d. The offense the suspect was arrested for;



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- e. Facts and circumstances that led the officer to believe that the suspect was hiding weapons or contraband on his or her person;
 - f. The manner in which the search was conducted;
 - g. The persons who were present during the search;
 - h. The location where the search occurred;
 - i. The items that were recovered as a result of the search.
- J. Body Cavity Searches:** No search of any body cavity other than the mouth shall be conducted without a duly executed search warrant. Any warrant authorizing a body cavity search shall specify that:
- 1. The search must be performed under sanitary conditions;
 - 2. The search must be conducted by or under the supervision of a physician licensed to practice medicine in all branches in this state.