

# GENERAL ORDERS | SOUTH MIAMI POLICE DEPARTMENT



<b>G.O. Number:</b> 1.2	<b>Subject:</b> Limits of Authority	
<b>Chapter:</b> 1 Law Enforcement Role and Authority	Number of Pages: 26	
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<b>By Order of Chief of Police :</b> Rene G. Landa Chief of Police		<b>Revised:</b> 11/01/2020 <b>Status:</b> Amended

**SECTIONS:**

- 1.2.1 Definitions
- 1.2.2 Legal Authority Defined
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- 1.2.9 Body Cavity and Strip Searches
- 1.2.10 Biased Policing

**RESCINDS:** Any other existing orders in conflict.

**PURPOSE:** To establish the basis and limits of authority for the South Miami Police Department; to define the guidelines for discretion by members of the Department; to establish guidelines for a search without a warrant; arrest with or without a warrant; to establish guidelines for alternatives to arrest; and to provide guidelines for the Department and members to monitor and prevent racial and ethnic biased policing.

**SCOPE:** All departmental personnel.

**POLICY:** It is the policy of the South Miami Police Department to advise personnel of the source of their authority and the limits of discretionary use of this authority.

### 1.2.1 DEFINITIONS

- A. **ACCESS AREA:** The area into which a person might readily reach to grab a weapon (also known as the “area of immediate control”).
- B. **ARMED:** Having a weapon or other object capable of inflicting death or serious bodily injury on or about his/her person.
- C. **BAKER ACT:** A section of Chapter 394 F.S.S., which allows a law enforcement officer to take a person, who is believed to suffer from a mental illness and is an immediate threat to him/herself or others, to a receiving facility for an involuntarily examination for mental illness. Also known as the Florida Mental Health Act.
- D. **BIAS POLICING:** The inappropriate consideration of specified characteristics while enforcing the law or providing police services. Specified characteristics includes, but is not limited to, race, ethnic background, national origin, gender, gender identity, sexual orientation, religion, socioeconomic status, age, disability, political status, or any other legally protected characteristics also known as “racial profiling.” [CFA 2.06M(C)]
- E. **FIELD INTERVIEW:** The stopping and questioning of a person by a law enforcement officer because the officer: (1) has reasonable suspicion that the person may be committing, or is about to commit a crime; (2) believes the subject may be a hazard; or (3) believes the interview may have a preventive effect on an action deemed criminal.
- F. **FRISK:** Jargon describing a limited weapon search of a person (generally limited to a pat-down of outer clothing) to ensure the safety of the officer and others.
- G. **INFORMED CONSENT:** A voluntary agreement to participate in an activity and/or allow an activity or procedure to be performed based upon availability of all pertinent information and the ability to understand the consequences of the agreement decision. This agreement can only be made by a person with the legal right to authorize or deny the activity, who understands they have a legal right to deny permission without a lawful court order.
- H. **NEAREST RECEIVING FACILITY:** A hospital, community facility, public or private facility, or receiving or treatment facility providing for the evaluation, diagnosis, care, treatment, training, or hospitalization of persons who appear to have a mental illness and meet certain criteria for voluntary admission or involuntary examination.

- I. **PROBABLE CAUSE:** That total set of facts and circumstances, based upon trustworthy information and/or observations, which would warrant a prudent person (in the position of and with the same knowledge of the particular police officer) to believe something has happened or is about to happen; for example, that a particular person has committed an act violating the law.
- J. **REASONABLE SUSPICION:** The facts or circumstances the officer knows, or should know, are such as to cause an ordinary and prudent person to act or think in a similar way under similar circumstances. Suspicion that is more than a mere hunch, but is based on a set of articulable facts and circumstances that would warrant a person of reasonable caution in believing that an infraction of the law has been committed, is about to be committed, or is in the process of being committed, by the person or persons under suspicion. This can be based on the observations of a police officer combined with his or her training and experience, and/or reliable information received from credible outside sources.
- K. **STOP:** A temporary investigative inquiry, generally including limited field questioning of a suspect; also, a complete cessation of all movement.
- L. **SUSPECT:** A person a reasonable officer suspects of involvement in criminal activity.

#### **12.1.2 LEGAL AUTHORITY DEFINED**

- A. The Code of Ordinances of the City of South Miami states:
  - 1. *Established.* The police department is established.
  - 2. *Commission, powers, authority to make arrests.* All city police officers, upon being duly sworn, commissioned and certified by the state, shall be peace officers and as such shall be conservators of the peace and shall have power to restrain and detain citizens; to issue warnings and citations; to make arrests and engage in all activities as authorized under the Constitution and laws of the United States, the constitution and laws of the State of Florida, the ordinances of Miami-Dade County, and the ordinances of the City of South Miami; and to execute lawful warrants and civil process directed to city officers.
- B. Florida State Statute 943.10 (1) defines the duties and powers of a law enforcement officer as one, "Who is vested with authority to bear arms and make arrests; and whose

primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state.” This definition includes all certified supervisory and command officers whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, but does not include support personnel employed by the law enforcement agency such as Parking Violations Officers (PVO).

- C. Police Officers shall enforce all laws and ordinances, ensuring fairness and impartiality in all matters of law enforcement interest. Proper enforcement action must be taken whenever required.
- D. The Department shall make available legal materials for all sworn departmental employees. Supervisors will perform roll call training on recent legal changes or related issues for sworn departmental employees as necessary. **NOTE: It is each officer’s responsibility to keep current on court decisions affecting laws or ordinances.**

### 1.2.3 LEGAL AUTHORITY TO CARRY AND USE WEAPONS

- A. **Carrying Firearms On-Duty:** Legal authority for police officers to carry and use weapons rests in Florida State Statute 943.10 (1), listed in section 1.2.1. Additionally, Florida State Statutes indicate when an officer is justified in using reasonable force to carry out the duties of his/her position. Officers are reminded that they may only use that degree of force that is reasonably necessary to accomplish lawful objectives, i.e. effect an arrest or to accomplish a police mission as defined by Florida State legal guidelines and the “Response to Resistance” Matrix.
- B. **Carrying Firearms Off-Duty:** South Miami Police officers are authorized to carry departmentally issued firearms upon qualification of the state certified firearms course. Officers are also authorized to carry personally owned firearms upon authorization and qualification of the state certified firearms course. Officers who possess a State of Florida Class W Concealed Weapons Permit issued by the Florida Department of State (FSS 790) may carry personally owned firearms off-duty without qualification of the state certified firearms course.

Officers are also authorized to carry and use the approved intermediate weapons issued by the Department, as long as they have demonstrated proficiency in those weapons during training.

- C. **Carrying Firearms Out-of-State:** The Law Enforcement Officers Safety Act of 2004, codified at 18 U.S.C. §§ 926B and 926C (Public Law 108-277). With certain limitations and conditions, the Act exempts active and retired "qualified law enforcement officers" from state laws and local ordinances prohibiting the carrying of concealed weapons.

This law requires that the SMPD Agency ID **AND** the agency firearms qualification card be carried whenever the firearm is carried under this law. Firearms not listed on the card will not be eligible for carry.

This law shall not be construed to supersede or limit the laws of any State or the Federal Government that

1. Permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or
2. Prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park; or
3. Exempt from Federal law or regulation, which governs the carry of firearms onto aircraft, Federal buildings, Federal property, and national parks.

The carry of firearms on aircraft is regulated by other Federal statutes and airline policy. SMPD Officers are **NOT** allowed to carry firearms on planes under this law. The Officer should seek assistance from the carrier's ground security coordinator prior to arrival at the airport to find out how to check firearms through as luggage.

If an officer chooses to carry out of state under a State of Florida Class W Concealed Weapons Permit issued by the Florida Department of State (FSS 790), it is important for license holders to understand that when they are traveling in or through another state they are subject to the firearm laws of that state. The following states have signed reciprocity agreements with Florida: Alaska, Arizona, Arkansas, Colorado, Delaware, Georgia, Idaho, Indiana, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, and Wyoming.

#### 1.2.4 CONSTITUTIONAL REQUIREMENTS

- A. In the performance of their authorized duties, officers shall not violate the rights and protections afforded to any individual by the United States Constitution, the Florida State Constitution, or any other federal, state, or local law. This includes statutory and case law.
1. **Interviews:** Officers will ensure they meet constitutional requirements when questioning a person suspected of criminal involvement. They will not coerce or obtain involuntary confessions from persons suspected of criminal involvement. The mere asking a person their name or other personal identifiers does not require "Miranda Warnings." However, a person's refusal to identify oneself may substantiate other law violations.
  2. **Interrogations:** Whenever a suspect is in **custody**, or otherwise deprived of their freedom, **and being questioned**, an officer must advise the suspect of their Constitutional Rights as required by the United States Supreme Court decision of *Miranda vs. Arizona* (1966), **prior** to asking any questions that could implicate the suspect in a criminal action. What makes up custodial interrogation is initially a matter of interpretation by the officer. A court may view this interpretation differently later. Consequently, when there is any doubt about whether or not the person in custody is to be interrogated, the officer will advise the person of his or her Constitutional Rights **prior to the questioning**. [CFA15.06M]
    - a. It is recommended but not mandatory that if the subject of a custodial interrogation waives those rights, the officer in charge will complete a "Constitutional Rights Waiver" Form. They will request that the subject (affiant) sign the completed form. One person of known reliability will witness signing of the form, as well as the lead officer, and the date/time entered thereon.
    - b. If the subject declines to sign the waiver form the lead officer will complete the form and indicate the subject orally waived his constitutional rights but refused to sign a waiver form. The officer completing the waiver form and at least one other person of known reliability shall then sign the waiver form.
    - c. It is also recommended that the lead officer should ensure that it is noted on the incident report showing the time interrogation started/ended, and when the subject received food, water, rest and access to toilet facilities.

- d. Patrol officers are to avoid reading Miranda warnings or interrogating a person when there are reasonable grounds to believe that a detective will be dispatched to interrogate that person due to the seriousness of the crime, i.e. homicide, sexual battery, robbery, and/or burglary investigations. Upon the detective's arrival and prior to their interrogation(s), the lead detective shall read Constitutional Rights to the suspect and will follow the above procedures.
3. **Right to Counsel:** Once a defendant has expressed a desire to exercise the right to counsel, an officer will **not** interrogate him or her until the defendant has counsel present or the defendant initiates the conversation.

### 1.2.5 SEARCH AND SEIZURE

- A. Agency personnel will handle searches and seizures without a warrant in the following manner (these procedures are also covered in detail in the Florida Law Enforcement Handbook, "Florida Legal Guidelines"):
  - a) **Search by Consent:** A lawful warrant-less search may be conducted pursuant to consent given voluntarily by the suspect. It is recommended, but not mandatory, that any time an officer of this department has the consent to search; he or she will complete a "Voluntary Consent for Search of Premises" form and/or "Voluntary Consent for Search of Vehicle" form.
  - b) **Stop and Frisk:** (FSS 901.151), states that when any officer encounters any person under circumstances which suggest that such person has committed, is committing, or is about to commit a violation of the criminal laws of this state or the criminal ordinances of the City of South Miami and Miami-Dade County, he or she may temporarily detain such person to find out the person's identity and the circumstances surrounding his or her presence or behavior that led the officer to believe he or she had committed, was committing, or was about to commit a criminal offense.
    - a) No person will be temporarily detained under the provisions above longer than is *reasonably* necessary to affect the purposes of the above section. Such temporary detention will not extend beyond the place where it was first affected or the immediate vicinity of it. According to Florida Legal Guidelines, the handcuffing of a person, while conducting a stop and frisk, is reasonable when circumstances reasonably justify the use of such restraint (i.e. officer's safety, or to thwart a

suspect's attempt to flee). The continued use of handcuffs after the pat-down should cease if it is determined an arrest will not be made.

- b) If at any time after the onset of the temporary detention authorized by F.S.S. 901.151, probable cause for arrest of the person becomes apparent, the person may be arrested. A supervisor should respond to review the facts of the arrest and will approve the arrest if applicable. If, after an inquiry into the circumstances which prompted the temporary detention, no probable cause for the arrest of the person is present, the person will be released.

**Note: Any time a person is “unarrested”, the officer will notify a supervisor and complete a detailed incident report that indicates why, when, and how the arrest/detention occurred and the reasons for release, and submit it through the appropriate channels.**

- c) Whenever an officer authorized to detain temporarily any person under the provisions of a F.S.S. 901.151 has probable cause to believe that the person is armed with a dangerous weapon and thereby threatens the safety of the officer or any other person, the officer may search such person *and the area immediately accessible to that person*, to the extent necessary to reveal the presence of such weapons. Note: Once the cause of the suspicion is found and identified (i.e. a bulge, bump, physical deformity, money-belt containing valuables concealed under clothing), a search may be continued without having to articulate an additional reason to search. If such a search reveals a weapon or any evidence of a criminal offense, it may be seized.[]
- B. **Vehicles:** A search of a vehicle under a movable vehicle exception (Carroll Doctrine) may be conducted either by voluntary consent; incident to an arrest; or whenever any officer of this department encounters any person under circumstances which suggest that such person has committed, is committing, or is about to commit a violation of the criminal laws of this state or the criminal ordinances of this city or this county. Additionally, when an officer has conducted a legal stop of a vehicle, and the officer has reasonable suspicion that the vehicle contains a weapon; the officer may frisk the occupants and conduct a search for weapons of the full passenger compartment, including all closed containers.
- C. **Search and Seizure without a Warrant:** Search and seizure without a warrant of items at a crime scene will be handled following standard evidence collection procedures and in the pursuit of recovering evidence of the crime or the fruits of a crime.

- D. **Exigent Circumstances:** Any time exigent circumstances exist that endanger the officers' and/or public's safety, officers of this department will immediately search and either seize such items to eliminate the danger, or secure and protect the scene until the appropriate agency arrives to dispose of it; e.g., hazardous material disposal units, or bomb disposal units.
- E. **Inventory:** Any time an officer of this department seizes a vehicle or other property, they will inventory and document all items (including easily removed components such as a radio or compact disc player) on a Property Receipt and/or Vehicle Storage Receipt and complete the appropriate incident report. Any items of value will be placed on a Property Receipt and entered into the South Miami Police Property/Evidence facility for safekeeping (see G.O. 35, Collection and Preservation of Evidence). An inventory and its validity depend on the legality of the initial impoundment of the vehicle. Illegal items found within the vehicle shall result in additional charges being placed against the driver/arrestee, if all essential elements of a lawful arrest exist.
- F. **Searches:** All searches will be organized and conducted according to Florida State Statutes, Florida Legal Guidelines, and federal and state case law and constitutional provisions, regarding search warrants, probable cause searches and consent searches.
- G. **Search Incident to Arrest (Persons).** F.S.S. 901.21 indicates:
1. When a lawful arrest is affected, a peace officer may search the person arrested and the area within the person's immediate control for the purpose of:
    - a) Protecting the officer from attack;
    - b) Preventing the person from escaping; or
    - c) Discovering the fruits of a crime.
  2. A peace officer making a lawful search without a warrant may seize all instruments, articles, or things discovered on the person arrested or within the person's immediate control, the seizure of which is reasonably necessary for the purpose of:
    - a) Preventing the officer from attack;
    - b) Preventing the escape of the arrested person; or
    - c) Assuring subsequent lawful custody of the fruits of a crime or the articles used in the commission of a crime.

## 1.2.6 ARREST WITH OR WITHOUT A WARRANT

- A. Under Chapter 901 of Title XLVII of the Florida Statutes, a law enforcement officer is given the authority to make an arrest for the commission of a crime with or without a warrant.

### 1. **Arrest With A Warrant** (see G.O. 32.3 – CRIMINAL PROCESS)

F.S.S. 901.16 states: A peace officer making an arrest by warrant shall inform the person to be arrested of the cause of arrest and that a warrant has been issued, except when the person flees or forcibly resists before the officer has an opportunity to inform him or her, or when giving the information will imperil the arrest. However, on the request of the person arrested the officer shall show it to him or her as soon as practical.

Additionally, under F.S.S. 901.19, a peace officer making an arrest by warrant may use all necessary and reasonable force to enter any building or property where the person to be arrested is or is reasonably believed to be, after the peace officer has announced his or her authority and purpose and fails to gain admittance.

The procedures and general requirements for the arrest of persons for other jurisdictions are as follows:

- a) A warrant or teletype PC message containing the following information will be in this Department's possession prior to an arrest being made:
1. Subjects' name;
  2. Description (if possible);
  3. Warrant number;
  4. Charge;
  5. Bond amounts (if applicable);
  6. Date of warrant;
  7. Validation date and
  8. The judge's name, court, and location.
- b) When a request for arrest is made by telephone, the caller must be advised of the warrant or Teletype requirements (a Teletype can usually be received in thirty minutes or less).

- c) The procedures for persons arrested for out-of-state jurisdictions where no local charges (within the officer's jurisdiction) have been filed consist of the following: Arrestee will be booked/ charged as a Fugitive from Justice (not charged with the crime from the demanding state). No bond is allowed at the time of booking.
  - d) The procedures for persons arrested for other Florida Jurisdictions where no local charges have been filed consist of the following:
    - 1. Arrestees must be booked on the charges shown on the warrant or Teletype and *not* as a Fugitive from Justice; and
    - 2. The judge, court location, returnable date, and bond will be used on the Complaint/Arrest Affidavit, the same as if it were a local warrant. The arrestee will be allowed to post a bond on bondable charge(s) at the time of booking (if applicable).
- B. **Warrantless Arrests:** F.S.S. 901.17 states: A peace officer making an arrest without a warrant shall inform the person to be arrested of the officer's authority and the cause of arrest except when the person flees or forcibly resists before the officer has an opportunity to inform the person or when giving the information will imperil the arrest. [
- 1. For a complete list of circumstances in which an officer can arrest without a warrant please refer to: **F.S.S. 901.15-When arrest by officer without warrant is lawful.**
  - 2. When persons are arrested for local charges, and the arrestee also has a warrant from another jurisdiction, the arrestee will be charged with the local charges (felony or misdemeanor). The arrestee will be charged with the applicable warrant as well.
- C. **Fresh Pursuit Arrest Outside of Jurisdiction:** A police officer has the authority to arrest on fresh pursuit outside the City of South Miami and Miami-Dade County for a felony, misdemeanor, or City ordinance violation according to F.S.S. 901.25.
- 1. Any officer making such an arrest outside Miami-Dade County must immediately notify the supervisor in charge of the jurisdiction, (via the SMPD shift commander or his designee) in which they make the arrest.

**D. General Arrest Procedures :**

1. Officers affecting an arrest will exercise sound judgment and use the utmost caution. When investigating suspicious persons, officers will immediately summon assistance if the least doubt exists as to their safety or the safety of others.
2. Officers will not use unnecessary force or violence in making an arrest. Officers will use only such force as is necessary to affect a lawful arrest, to prevent violence to another person, in self-defense, or to prevent an escape.
3. When a person is arrested and charged with an offense, complete information pertaining to the elements of each offense (i.e. probable cause) must be included in the narrative section of the Offense/Incident Report and the Complaint/Arrest Affidavit, if used.
4. All persons arrested will be handcuffed and transported in accordance with G.O. 30 PRISONER TRANSPORTATION and G.O. 31 HOLDING FACILITY.
5. Supervisors will approve and sign all Complaint/Arrest Affidavits whenever practicable. It is the responsibility of the supervisor to ensure that the report is accurate and legible and that all elements of each offense charged are cited in the report's affidavit.
6. Officers will search the scene of an arrest for weapons or evidence that may have been concealed, dropped, or thrown away by the prisoner.
7. If an officer is attempting to handle a situation or arrest involving person(s) asserting diplomatic or other forms of immunity, the officer will notify their supervisor prior to taking enforcement action. Also, departmental personnel should refer to the Florida Legal Guidelines in the Law Enforcement Handbook for specific guidance on procedures.

Certain persons are immune from arrest and/or detention under certain conditions. Officers, however, will report the details of all offenses on applicable Offense or Incident Reports.

- a. Diplomatic Agents and Diplomatic Officials, along with their recognized family members and Administrative Staff, are totally immune from arrest for any offense except those listed below.

- b. Questions arising as to the authenticity of credentials or whether an individual is entitled to this immunity may be directed to the Office of Security of the Department of State at (305) 536-5781.
  - c. Officers will only arrest for offenses and misdemeanors in the following instances:
    - 1. Violent Offenses;
    - 2. DUI;
    - 3. An immediate danger to public/officer safety.
  - d. The interpretation of a breach of the peace and the decision to arrest will be referred to a sworn supervisor in all cases.
  - e. Diplomatic and Consular Officials may be issued traffic citations for moving violations if applicable.
  - f. A foreign career Consular Officer has immunity from arrest or detention except in the case of a grave crime (felony offense that would endanger the public safety) or pursuant to a warrant.
  - g. The courtesy of immunity is not extended to these persons related to the Consular Officer: Family members, servants, and employees.
  - h. Family members, servants and employees involved in misdemeanor offenses (excluding domestic violence) will be arrested and released pending the signing of a Notice to Appear affidavit.
- E. **Consular Notification for Foreign Nationals:** A foreign national is defined as anyone other than a United States citizen; they do not have any immunity to arrests or detention.

The Vienna Convention on Consular Relations requires that law enforcement officials notify arrested foreign nationals of their right to contact their foreign consul officials. Local officials must notify the nearest consul official "without delay" when arrested foreign nationals request that a consul official be notified.

While the requirement states that the consul officials shall be notified "without delay," the State Department does not recommend delaying interviews or investigations pending notification.

Notifications are in addition to Miranda Warnings, and apply to all custodial arrest situations.

Police Officers will make every effort to determine the nationality of anyone who is arrested, if their citizenship is in question.

If the citizenship of an arrestee is determined to be from a country other than the United States and **there is no** diplomatic immunity:

1. Determine the foreign national's citizenship;
2. Consult the Department of State Consular Notification and Access list of mandatory notification countries (see chart);

<b>Mandatory Notification Countries and Jurisdictions</b>	
Algeria	Malta
Antigua and Barbuda	Mauritius
Armenia	Moldova
Azerbaijan	Mongolia
Bahamas, The	Nigeria
Barbados	Philippines
Belarus	Poland (non-permanent residents only)
Belize	Romania
Brunei	Russia
Bulgaria	Saint Kitts and Nevis
China	Saint Lucia
Costa Rica	Saint Vincent and the Grenadines
Cyprus	Seychelles

Czech Republic	Sierra Leone
Dominica	Singapore
Fiji	Slovakia
Gambia, The	Tajikistan
Georgia	Tanzania
Ghana	Tonga
Grenada	Trinidad and Tobago
Guyana	Tunisia
Hong Kong	Turkmenistan
Hungary	Tuvalu
Jamaica	Ukraine
Kazakhstan	United Kingdom
Kiribati	Uzbekistan
Kuwait	Zambia
Kyrgyzstan	Zimbabwe
Malaysia	

3. If the arrestee is a foreign national from the above list, the nearest consular must be notified, even if they do not request notification.

4. Foreign nationals will be read the following statement:

*“Because of your nationality, we are required to notify your country’s consular representatives here in the United States that you have been arrested or detained. After your consular officials are notified, they may call or visit you. You are not required to accept their assistance, but they may be able to help you obtain legal counsel and may contact your family and visit you in detention, among other things. We will be notifying your country's consular officials as soon as possible.”*

5. Foreign nationals (if from non-mandatory notification countries) will be read the following non-mandatory consular notification statement:

*“As a non-U.S. citizen who is being arrested or detained, you are entitled to have us notify your country's consular representatives here in the United States. A consular official from your country may be able to help you obtain legal counsel, and may contact your family and visit you in detention, among other things. If you want us to notify your country's consular officials, you can request this notification now, or at any time in the future. After your consular officials are notified, they may call or visit you. Do you want us to notify your country's consular officials?”*

6. Foreign nationals who request notification will have their nearest consular notified, using one of the Department of State Consular Notification Fax Forms.
7. Telephone numbers for the nearest foreign consul office can be located in the Department of State Consular Notification and Access List found in the dispatch room.
8. Foreign nationals who do not request notification require no further special considerations and should be processed following normal arrest and/or transport procedures.
9. Officers will document in their police report in the narrative section, one of the following:

Notification was mandatory and made whether requested or not (The fax form will be attached to the report and/or the arrest affidavit as proof of notification, in all situations where notification was made).

Notification was not mandatory, but requested and made. (Attach the fax form to the report as proof of notification).

Notification was not mandatory, not requested and no notification was made.

- F. **Sick/ Injured Prisoners:** If a person is under arrest, and requires hospitalization and/or shows signs of needing medical attention, the following procedure will apply (see G.O. 30.3 Special Transport Situations, for complete details):
  1. Dade County Corrections Facilities require that all sick or injured prisoners must have medical clearance prior to acceptance.

2. If the subject has an apparent recent, fresh injury, or complains of illness on the scene of the arrest, the arrestee shall be provided with immediate medical attention utilizing Miami-Dade Fire Rescue. After on scene treatment is completed, the arrestee shall be transported to the hospital for medical clearance. The arrestee may then be transported to a county jail.

### **1.2.7 ALTERNATIVES TO ARREST, PRE-ARRAIGNMENT CONFINEMENT AND/OR PRETRIAL RELEASE**

- A. Florida State Statutes give law enforcement officers the authority to exercise alternatives to arrest. One of the most critical aspects concerning the use of police authority is that of discretion. Officers must differentiate between:
  1. The effects of enforcement and community relations;
  2. The role of police in society; and
  3. The effectiveness and efficiency of the overall operation.
- B. Discretion is the freedom to act. Every officer uses discretion to resolve situations he or she confronts. Unless otherwise directed, officers may use discretion to select an appropriate response when dealing with traffic offenses that are not dangerous, flagrant or threatening, and certain criminal offenses of a minor nature. The more significant or serious the incident, the less discretion is authorized. Training, education, experience, laws, ordinances, department directives and supervisors' instructions guide officer's discretion. Officers typically do not have any discretion when:
  1. Given a lawful order;
  2. Dealing with compliance of department directives, statutory or case law;
  3. Dealing with specific laws mandating certain actions by police officers.
- C. Types of alternatives include; Verbal Warnings, Traffic Citations, Adult Civil Citations, and the issuance of a Notice to Appear. [CFA 2.02M]
  1. **Verbal Warnings:**

- a. For persons who have committed a misdemeanor, ordinance violation, or applicable traffic law violation, the officer may decide to handle the violation by giving the individual a Verbal Warning, a Traffic Citation, a Notice to Appear affidavit, or a Referral to another social agency.
- b. Officers are authorized to use verbal warnings to resolve minor traffic and criminal violations where the facts suggest they can achieve proper resolution of the event without formal charge.
- c. Officers should also reference G.O. 29.1 Traffic – Enforcement for complete guidelines on dealing with traffic violators.

**2. Traffic Citations:**

- a. Traffic violators may be issued Verbal Warnings or Citations.
- b. Florida State Statutes give police officers the authority to issue Uniform Traffic Citations instead of physical arrests. The officer issuing the Uniform Traffic Citation will ensure that they follow the provisions outlined in F.S.S. 318.14 (2); to wit: "Any person cited for an infraction under this section WILL sign and accept a citation indicating a promise to appear."
- c. Officers should also reference G.O. 29.1 Traffic – Enforcement for complete guidelines on dealing with traffic violators.

**3. Adult Civil Citations:**

- a. When an adult is alleged to have committed a certain non-violent misdemeanor/ ordinance offense(s), officers may issue a Civil Citation pursuant to the Miami Dade County Code of Ordinances, Section 8-CC.
- b. Police Officers are authorized to issue Miami Dade County Civil Citations instead of physical arrests.
- c. Officers should reference G.O. 18.17 Adult Civil Citation Program for complete guidelines.

#### 4. Referrals:

- a. The South Miami Police Department recognizes that some first time juvenile offenders may be better served through referrals to other programs, such as Perspectives in Mental Health, Community Service, etc., rather than being formally charged and introduced into the criminal justice system. For additional information, refer to G.O. 21 Juvenile Operations.
- b. Involuntary Mental Illness Examinations (Baker Act):
  1. While conducting some investigations officers may encounter persons that fit the criteria as described in paragraph (2) below. In such cases the offender may be better served through referral to the appropriate social service facility.
  2. The criterion for an Involuntary Examination is contained in F.S.S. 394.463 (1) "**Baker Act**," which states that patients may be taken to a receiving facility for involuntary examination if there is reason to believe that they are mentally ill, and because of their mental illness.

#### **Criteria:**

- a) They have refused a voluntary examination after conscientious explanation and disclosure of the purpose of the examination;
- b) They are unable to decide for themselves whether examination is necessary;
- c) Without care or treatment, they are likely to suffer from neglect or refuse to care for themselves, such neglect or refusal poses a real and present threat of substantial harm to their well-being, and they may apparently avoid such harm through the help of willing family members or friends or the provision of other services; or
- d) There is a substantial likelihood that without care or treatment they will cause serious bodily harm to themselves or others in the future, as evidenced by recent behavior.

3. Law Enforcement Officers will take persons who appear to meet the criteria for involuntary examination into custody and deliver them or have them delivered to the nearest receiving facility for examination, i.e. Larkin Hospital. Officers who transport persons who meet the criteria for an involuntary examination initiated by law enforcement are required to complete the following:
  - a. Offense/Incident Report; and
  - b. The Baker Act form provided by the receiving facility (attach copy to the report).
4. Officers who transport persons who meet the criteria for an involuntary examination initiated by a qualified medical professional are required to complete the following:
  - a. Offense/ Incident Report.
5. **Notice to Appear:** Officers may use a Notice to Appear in Miami-Dade County Court, as an alternative to arrest for most traffic violations misdemeanors. The Department recognizes limitations to this power. Therefore, officers may be required to clear some decision such as potentially sensitive areas through a supervisor.
  - a. A Notice to Appear may *not* be used for any felony charge. A Notice to Appear may be used in the following circumstances:
    1. City of South Miami/Miami-Dade Ordinance violations;
    2. Criminal Traffic (non-felonies) ;
    3. Misdemeanors;
    4. The arrest is not under the Family Abuse Prevention Act, and is made without an arrest warrant (unless the warrant specifically authorizes a citation instead of custody);
    5. A police officer will not use a Notice to Appear instead of custody for valid arrest warrants or during domestic disturbance incidents;

6. The suspect does not appear to pose an immediate threat to the victim, community or self; and
  7. The suspect does not appear to pose a risk of fleeing the area.
- b. A Notice to Appear may be issued if the following conditions exist:
1. The violator, subject to lawful arrest, identifies him/herself sufficiently to permit the exclusion of all others. Examples of acceptable identification include a State of Florida driver's license or identification card, or a military I.D. card;
  2. The violator is a resident of Miami-Dade, Broward, Monroe, Collier, or Palm Beach Counties;
  3. The violator agrees to sign the affidavit;
  4. The potential for violence by the violator, if applicable, does not exist;
  5. Neither alcohol nor drugs impair the faculties of the violator to the extent that he/she is unable to function and assume responsibility for himself/herself;
  6. The violator is not a juvenile (exceptions: traffic law violations and/or tobacco product infractions);
  7. A name check by the officer finds neither of the following: A warrant for the violator's arrest; or a history of failing to appear within the last twelve months in response to a notice issued after the violator's arrest or issuance of a Notice to Appear citation.
- c. Guidelines for preparing the Notice to Appear Citation (Complaint Affidavit):
1. Officers will fill out the affidavit as completely as possible. Officers will write in the name of the company or store where the infraction occurred (if applicable) and address.

2. The violator will be advised that he/she will be receiving in the mail a notice to report to the specified location, at the specified time and date. The violator will sign and provide the specified fingerprint on the form.
  3. The officer will make sure that the violator understands that there is an obligation to appear, and failure to appear, as the written promise shows, will result in the issuance of an arrest warrant.
  4. Officers will give the violator the gold defendant's copy (last page) of the affidavit, and place the white original, yellow and pink copies in the in box at the South Miami Police station after supervisory review and signature, when practicable.
- d. When issuing a Notice to Appear to eligible offenders charged with petit theft (including retail theft), the issuing officer should make certain the violator leaves the premises where the offense occurred.

**NOTE:** Medic-alert identification. F.S.S. 901.215 requires that, *Every law enforcement officer, sheriff, deputy sheriff, or other arresting officer shall, when arresting any person who appears to be inebriated, intoxicated, or not in control of his or her physical functions, examine such person to ascertain whether or not the person is wearing a medic-alert bracelet or necklace, or has upon his or her person some other visible identifying device which would specifically delineate a medical disability which would account for the actions of that person.* Any arresting officer who does, in fact, discover such identifying devices upon such person shall take immediate steps to aid the afflicted person in receiving medication or other treatment for their disability via a hospital or Ward D.

### **1.2.8 OFFICER'S USE OF DISCRETION**

- A. There are circumstances where, although there are grounds for a lawful arrest, better police practice dictates that the offender not be arrested. However, in most cases, it is not the role of a police officer to decide whether an offense should be prosecuted. That is the responsibility of the State Attorney's Office.

The decision to arrest or take other enforcement action remains within the discretion of the officer, except as noted. An arrest will be made if any of the following exists:

1. Any violent felony offense; i.e., homicide, robbery or sexual battery;
  2. Any misdemeanor offense for which Florida State Statutes require a physical arrest, i.e. domestic violence;
  3. An arrest is required by department policy;
  4. A supervisor and/or other competent authority orders an arrest.
- B. Though an officer believed probable cause to arrest existed at the time of the arrest, when the officer determines that the probable cause under which the person was arrested does not in fact or no longer exists, the officer will release the arrested person and ensure that the person is made whole. The arresting officer will notify a supervisor before unarresting the person(s) and document his/her actions on an incident report.

#### **1.2.9 BODY CAVITY AND STRIP SEARCHES**

- A. Florida State Statute 901.211 defines Strip Search as *“having an arrested person remove or arrange some or all of his or her clothing so as to permit a visual or manual inspection of the genitals; buttocks; anus; breasts (in the case of a female); or undergarments of such person.”*
1. **Body cavity searches:** other than the mouth, shall be conducted only pursuant to a search warrant. If probable cause exists to obtain a warrant for a body cavity search, the suspect shall be transported to an approved medical facility, where a body cavity search will be conducted by a medical professional. During the search, an officer of the same sex as the suspect, shall remain in the room for security reasons. The officer shall not assist the medical professional in performing the search.
  2. **Strip searches:** shall be conducted pursuant to a search warrant or incident to arrest only. If an arresting officer has probable cause to believe that an arrestee may be armed or possess contraband that cannot be detected during a pat down search, the officer may perform a strip search. These procedures will be followed when conducting a strip search [CFA 2.01M]:
    - a. Written permission will be obtained from the supervisor on duty.

- b. The search will be conducted in a room that has controlled access out of the public view.
  - c. Officer(s) of the same sex will conduct the search.
  - d. The suspect will be required to disrobe with no assistance from the officer(s).
  - e. The officer(s) shall be attentive to any contraband or weapons that may be present while the suspect disrobes.
  - f. Upon completion of the search the suspect will be required to clothe himself/herself with no assistance from the officer(s).
3. **Reporting requirements:** ALL strip searches and body cavity searches, other than the mouth, will be documented on an Offense/Incident Report.[CFA 2.01M]

#### **1.2.10 BIAS BASED PROFILING**

- A. Because of the nature of their business, law enforcement officers are required to be observant, to identify unusual occurrences and law violations, and to act upon them. It is this proactive enforcement that keeps the quality of life of our citizens free from crime, our streets and highways safe to drive upon, and that detects and apprehends criminals.

It is the policy of this department to patrol in a proactive manner, to aggressively investigate suspicious persons and circumstances, and to actively enforce the motor vehicle laws, while insisting that citizens will only be stopped or detained when there exists reasonable suspicion and/or probable cause to believe they have committed, are committing, or are about to commit an infraction of the law.

The purpose for this section is to state that racial and ethnic profiling in law enforcement, including traffic contacts, field contacts, searches and seizures, and in asset seizure and forfeiture efforts, is unacceptable and to provide guidelines in accordance with Florida Statute 166.0493 for officers to prevent such occurrences, and to protect our officers when they act within the dictates of the law and policy from unwarranted accusations.

- B. The detention, interdiction, or other disparate treatment of any person on the basis of their racial or ethnic status or characteristics (bias policing) in traffic contacts, field contacts, and in asset seizure and forfeiture efforts is prohibited and a cause for disciplinary action, up to and including dismissal.[CFA 2.06M(B)] Traffic enforcement will be accompanied by consistent, ongoing supervision to ensure that officers do not go beyond the parameters of reasonableness in conducting such activities.

Appropriate enforcement action should always be completed, generally in the form of a warning, citation or arrest. The proper form must be filled out by the officer, and will include the gender, race or ethnicity of the person stopped, if this information can reasonably be ascertained by physical appearance or from the driver's license or other documents provided by the individual.

1. No motorist, once cited or warned, will be detained beyond the point where there exists no reasonable suspicion of further criminal activity, and no person or vehicle will be searched in the absence of a warrant, a legally recognized exception to the warrant requirement, or the person's voluntary consent. In each case where a search is conducted, this information will be recorded, including the legal basis for the search, and the results thereof.
  2. Motorists and pedestrians shall only be subjected to stops, seizures, or detentions upon reasonable suspicion and/or probable cause as stated above.
  3. In the absence of a specific, credible report containing a physical description, a person's race, ethnicity, gender or sexual orientation or any combination of these will not be a factor in determining probable cause for an arrest or reasonable suspicion for a stop.
- C. Officers will distribute the official traffic enforcement and citation information pamphlet to each person regarding citation and legal procedures, whenever appropriate. The Department will make available through its website information outlining the prohibition of bias based profiling and means a citizen can take to complain if they believe they are a victim of such behavior. [CFA 2.06M(D)]
  - D. Officers will receive initial and ongoing training in accordance with CJSTC guidelines (at the police academy and departmental in-service training) as well as updates in proactive enforcement tactics, including training in officer safety, courtesy, cultural diversity, the laws governing search and seizure, and interpersonal communications skills. Cultural

Diversity training will emphasize the need to respect the rights of all citizens to be free from unreasonable government or police action. [CFA 2.06M(A)]

- E. Any person may file a complaint with the department if they feel they have been stopped or searched based on racial, ethnic, or gender based profiling, and no person shall be discouraged, intimidated, or coerced from filing such a complaint, or discriminated against because they have filed such a complaint. The supervisor receiving such a report shall forward it following the department's standard complaint procedures. The report and the reviewer's conclusion shall be forwarded to the Chief and filed in the departmental Internal Affairs files, and shall contain findings and any suggestions for disciplinary action or changes in policy, training, or tactics. [CFA 2.06M(F)]
  
- F. A documented annual administrative review of agency practices involving bias policing will be conducted at the direction of the Chief of Police and include areas of forfeitures, traffic stops, and seizures. [CFA 2.06M(E)]