

**COUNTY OF MONROE
OFFICE OF THE SHERIFF
ROCHESTER, NEW YORK**

GENERAL ORDER MULTI-BUREAU	DATE OF ISSUE October 8, 2018	EFFECTIVE DATE October 8, 2018	No. 017-18
SUBJECT: GENERAL ORDER Arrest Procedures		DISTRIBUTION All Personnel	AMENDS
REFERENCE: NYSLEAP 47.5, 50.8			RESCINDS 017-17 PBB-03-13

Purpose: To establish guidelines and procedures relative to arrest situations by members of the Office of Sheriff.

Policy: Members will comply with all New York State Laws, statutes and agency procedures relating to custodial or arrest situations.

Definitions: **Cosmetic lenses:** Costume contact lenses – also known as cosmetic or decorative contact lenses, are any type of contact lenses that are meant to change the appearance of your eyes. They include colored contacts, fashion lenses and lenses that can make your eyes look like vampires, animals or other characters.

I. Authority to Arrest:

A police officer may arrest a person for:

1. Any offense when he/she has reasonable cause to believe such person has committed such offense in his/her presence (CPL Section 140.10).
2. A crime (misdemeanor or felony) when he has reasonable cause to believe that such person has committed such crime, whether in his presence or otherwise (CPL Section 140.10).

II. Procedures of Arrest:

- A. Deputies effecting arrests will notify their immediate supervisor and provide details of the arrest.
- B. The immediate supervisor will determine if a zone investigator or other CIS personnel should be notified either to coordinate the investigation (major crime) or assist the arresting deputy in conducting the investigation (as per current directives).

Note: Notices to CIS will be in accordance with **PBGO-015 Managing Criminal Investigations.**

- C. An arresting deputy who is preparing his/her own case file will submit the completed package to the appropriate designated supervisor for review, prior to submission to the Records Unit for processing.

- D. The designated supervisor will review the entire arrest package for accuracy and completeness. Once a Penal Law Felony arrest package is approved and signed by a supervisor, the supervisor will distribute copies within the zone per current directives and forward appropriate copies to the Records Unit for data entry. Penal Law Misdemeanors, Violations, and all DWI arrests packages will be approved by a supervisor and forwarded to the Records Unit for processing. The Records Clerk shall complete appropriate data entries and forward copies to the District Attorney and Case Analyst.
- E. In arrest situations of an unusual or questionable nature, the arresting deputy, through an immediate supervisor, will determine if an investigator should be notified.
1. If it is determined that an investigator is needed, the above (pertaining to CIS) will apply.
 2. If it is determined that an investigator is not needed at the scene, the arresting deputy will either process the individual at the scene or will transport the subject to an appropriate agency facility for processing.
 3. No arrested individual shall be released from custody until the arresting deputy has conducted a check to ascertain if any warrants are outstanding for the individual in custody prior to his/her release.
- F. In cases of violations (disorderly conduct, harassment, parks laws, town code violations, ABC Law Violations etc.), arresting deputies:
1. Must notify an immediate supervisor if they intend to take the arrested person before a local court for arraignment.
 2. Do not need to notify an immediate supervisor if they intend to release the arrested person after issuing an Appearance Ticket or Uniform Traffic Ticket (UTT).
 3. The **Short Form Arrest Report** can be used to arrest individuals for violations of the Monroe County Code, Monroe County Parks Law, ABC Law and Town Codes. The form is a one page document that acts as the Crime Report, PDR, Information and Appearance Ticket. After completing this form, remove the white copy and give it to the defendant prior to release. This will be their appearance ticket for court.
- G. In all misdemeanor, violation and designated class E felony arrest cases, (See CPL 150.20 (2) (a) for the designated Class E Felonies) the deputy has the discretion to issue an Appearance Ticket instead of presenting the individual before a local criminal court justice for arraignment (CPL Article 150).
1. The determination to issue an Appearance Ticket will be based on considerations such as the charge, the circumstances of the alleged incident, the individual's roots in the community, as well as the defendant's criminal history. A supervisor may be consulted to make this determination.
 2. In any case where a misdemeanor arrest is affected and the decision is made to arraign the individual, but no local criminal court is available "with reasonable promptness," then the deputy must issue an Appearance Ticket.

3. In cases where a misdemeanor DWI arrest is made and in the absence of any unusual circumstances which would prevent the release on recognizance, the arrested individual will be issued a UTT with an appropriate appearance date imposed thereon and released to a responsible individual (i.e., family, friend, etc.) (**Refer to PBGO-012 DWI Procedures**).
4. Where unusual circumstances prevail and the services of a judge or magistrate are required for immediate arraignment, such unusual circumstances are to be relayed to the judge upon contact.

Note: When an Appearance Ticket is issued for a designated class E felony, fingerprints and a photo **must** be taken prior to the release of the arrested individual.

- H. In arrests for A, B, C, D, or non-designated E-Felony offenses, the issuance of Appearance Tickets is **NOT PERMITTED BY LAW**.
 1. If the local court judge refuses to come to court to perform an arraignment and instructs the deputy to issue an Appearance Ticket, the deputy should advise the judge that he/she is not permitted to do so by law.
 2. If the local court judge persists in the refusal to perform the arraignment, the deputy should advise that he/she will be contacting another judge to perform the arraignment. The deputy then must advise his/her supervisor of the arraignment status.
 3. For arraignments on felony complaints, if the proper local court is unavailable for arraignment, the arraignment may occur before any local Criminal Court in Monroe County. (**CPL 180.20**)

III. Arrest without a Warrant By Any Person (Third-Party or Turnover Arrest):

- A. Any person can arrest another person:
 1. For a felony when the latter has in fact committed such felony.
 2. For any offense when the latter has in fact committed such offense in his/her presence. (**CPL 140.30**)
- B. A person may arrest another person for an offense as stated above at any time of the day or night. Such person making the arrest must inform the person whom he/she is arresting of the reason for such arrest unless physical resistance, flight or other factors render such procedure impractical (**CPL 140.35**).
- C. In order to effect an arrest, a person may use such physical force as is justifiable, pursuant to Penal Law Section 35.30-4.
- D. A person affecting an arrest must, without unnecessary delay, deliver or attempt to deliver the arrested person to the custody of an appropriate police officer and the arresting person must, without unnecessary delay, file the appropriate accusatory instruments (**CPL 140.40(1)**).
- E. In all third party felony cases, the procedure outlined in Paragraph II A will be followed.
- F. In third-party misdemeanor or violation arrest situations, the procedures outlined in paragraph II E will be followed.

- G. A police officer is not required to take an arrested person into custody or take any other further action on behalf of the third party if he/she has reasonable cause to believe the arrested person did not commit the alleged offense or that the arrest was unauthorized (CPL Section 140.40-4).

Note: The arresting person (third party) will be given an explanation or be advised as to other courses of action in resolution to his/her complaint. The deputy will also summarize the details of the investigation, where an arrest was refused, when submitting the prescribed report.

IV. Arrest with a Warrant:

- A. All court-issued warrants forwarded to the Office of Sheriff for service, will be processed through the Special Operations Warrant Unit, which will be responsible for logging and tracking all warrants and associated documents.
- B. The service of any warrant by Sheriff's Office employees will be in compliance with CPL Section 120 relating to timeliness, validity and geographic limitation.
- C. Employees must also be familiar with and follow the provisions of **MBGO-033 Response to Resistance/Aggression & Subject Management Resistance Report** and **PBGO-047 Foreign Diplomats, Consular Officials, Immunities & Special Privileges**

V. Warrant Cancellation Procedures:

Employees will adhere to the following procedures upon serving a warrant of arrest:

1. Upon the service of a warrant, prior to release of the subject the arresting deputies will notify the Warrant Unit clerk or the Central Records Unit during non-business hours, of the service of such warrant.
2. The respective clerk will request the following information from the arresting deputy for MoRIS and NYSPIN input:
 - a. Warrant subject's name.
 - b. Date of birth.
 - c. CR# of the warrant.
3. The Warrant Unit clerk will log the cancellation in the warrant and NYSPIN books and follow all other unit procedures for the cancellation of the warrant.
4. Deputies will submit the Warrant Report cover sheet and all other reports pertaining to the service of the warrant to their supervisor at the end of their respective shifts.
5. The Warrant Unit clerk will collect all hard copy printouts of the warrant cancellations, together with the completed Warrant Report cover sheets. The Warrant Unit clerk will also ensure cancellation of warrants in the log books and computers (MoRIS and NYSPIN).
6. For all warrants lodged at Jail Records, Jail Records staff will be responsible for cancelling the warrant in MoRIS.
7. The original Warrant Report cover sheet **must** be forwarded to the Warrant Unit.

VI. Procedures Following Arrest:

A. Fingerprinting

1. As required in CPL Section 160.10, all cases of arrest will be followed by fingerprints being taken from the arrested party. The process of fingerprinting will take place at the nearest MoRIS processing station as specified in **MBGO-057 Monroe/Rochester Identification System (MoRIS)**.
2. In cases where fingerprints/IRIS Photographs are impossible to obtain immediately, it is the arresting deputy's responsibility to arrange a future date for processing, schedule no sooner than five business days to allow time for the arrest package to be sent down to the Central Records Unit. Under such circumstances, the arresting deputy will attach a copy of form **PB-083 Fingerprint Appointment Notification- Defendant** to the defendant's copy of the summons or Appearance Ticket, designating the time. The arresting deputy will simultaneously attach a copy of form **PB-084 Fingerprint Appointment Notification- Court** to the remainder of the summons or Appearance Ticket as a notation to the court that fingerprints were not taken at the time of the arrest. After the defendant has provided the arresting deputies with the required fingerprints, **PB-085 Fingerprint Appointment Verification** will be completed and forwarded to the appropriate court via the Records Unit.

B. Photographs

Whenever fingerprints are required (CPL 160.10 (1)) or permitted (CPL 160.10(2)), a photograph of the arrested person will also be taken (CPL 160.10 (3)).

- C.** The prisoner will be required to submit to retina photographs which will be submitted to the Inmate Recognition Identification System (IRIS). This will enable law enforcement agencies to enroll and positively identify individuals using Biometric Recognition Technology. Individuals who have been previously enrolled by an IRIS participating law enforcement agency can be identified, as well as identification of a partial criminal background of an individual.

Note: The prisoner cannot wear cosmetic lenses as this causes an inaccurate scan. Standard contact lenses may be worn.

D. Inmate Recognition Identification System (IRIS)

1. IRIS recognition is an automated method of biometric identification that uses mathematical pattern-recognition techniques on video images of one or both of the irises of an individual's eyes, whose complex patterns are unique, stable, and can be seen from some distance.
2. Iris Recognition is a versatile tool that can be used, but not limited to, the following situations;
 - a. Discovering a person's true identity during investigations .
 - b. Check irises against a local, state, and/or federal IRIS databank.
 - c. Booking process at MCJ and MCF.
 - d. Advance crime prevention efforts.

3. Staff will create a new Inmate Recognition Identification System (IRIS) entry by telling the inmate/defendant to step up to the IRIS camera. Staff will open the IRIS capture screen and activate the IRIS camera. Staff will instruct the inmate/defendant to look directly at the mirror from about 12 inches away. The camera will automatically move to search for the eyes. Staff will watch the capture page and tell the inmate/defendant to lean forward or backward slightly based on whether the screen says they are **too far away or too close**. A green light will flash on the camera when it can get a good image of the irises. **When staff hears the click, the camera has captured the image.** Once the image is taken, the system searches the database for a match. If no match is found, the system will notify staff of negative results. The inmate/defendant can now be added to the National IRIS database. Please refer to the **IRIS Quick Guide** located on the MCSO intranet for enrollment instructions.
5. IRIS Photograph Stations will be in the following locations;
 - a. All Zones
 - b. MCF Booking
 - c. MCJ Booking and Release
 - d. Central Records
6. For booking and release IRIS procedures/instructions refer to the **Public Safety Solutions IRIS User Guide which is located on the MCSO Intranet.**

E. Arrest Report Procedures

In all cases of arrest pursuant to the Penal law and all arrests pursuant to other laws which are classified as misdemeanors, felonies and certain violations, a Prisoner Data Report (PDR) will be filed with the Records Unit, electronic fingerprints will be taken or a fingerprint card and any other pertinent reports.

F. Information and Depositions

1. In cases where an Appearance Ticket has been issued, the arresting deputy will ensure that the accusatory instrument and all other supporting documents are completed prior to the date noted on the appearance ticket.
2. In cases of Third Party Arrests, the arresting deputy will assist in preparing an accusatory instrument. All statutory language constituting the offense must be included in the complaint as well as the factual information setting forth the criminal activity of the arrested person. The arresting person, third party, must sign such accusatory instrument under penalty of perjury (CPL Section 100.15).
3. Where supporting depositions are obtained, they must be properly completed and signed under penalty of perjury (CPL Section 100.20).
4. Accusatory instruments, information and supporting depositions may be verified in the following manner:
 - a. Sworn to before the court in which they are filed or

- b. Sworn to before another designated public servant, who by law is authorized to administer such oath (notary public, commissioner of deeds, etc.) or
 - c. Such instruments may bear a form notice stating that false statements made therein are punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.
5. Original accusatory instruments will be sent to the local criminal court from the Sheriff's Office, along with the traffic court docket.

VII. Family Court:

A. Felony, misdemeanor or violation arrests

For all felony, misdemeanor, or violation arrests, the procedures set forth above will be followed unless and until such time as the court having jurisdiction transfers a case to the Family Court.

B. Orders of Protection

- 1. An individual may be taken into custody for an alleged violation of a Family Court Order of Protection **only if** the order has been certified by the clerk of the Family Court, below the signature of the issuing judge (Section 168 Family Court Act).
- 2. When it is necessary to take such an individual into custody, the deputy must:
 - a. When Family Court is in session, bring the individual immediately before the Family Court.
 - b. When Family Court is not in session, bring the individual before the nearest available magistrate for arraignment, at which time the magistrate may set bail, release the individual or order the individual remanded to the custody of the Sheriff for the purpose of being brought before the next session of Family Court (Section 155 Family Court Act).
- 3. On occasion, Orders of Protection are issued by a Supreme Court, County Court, or a local criminal court. The deputy should attempt to bring the individual before the court of issuance. However, if the issuing court is not in session or a magistrate is not available, the individual may be brought before the nearest available magistrate.

Note: There is no requirement that "the nearest available magistrate" be in the issuing town or an adjacent town.

C. Juvenile Arrests

- 1. Juveniles may be taken into custody and petitioned into Family Court under the following circumstances:

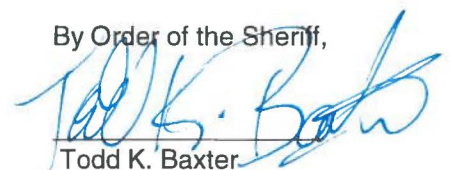
***Note:** As of 1 October, 2018, No 16 year old individuals will be accepted into the Monroe County Jail.

- * a. As a juvenile delinquent, a person over 7 and less than 16, who commits any act which, if committed by an adult, would constitute a crime or a 16 year old (includes 17 year olds effective 1 October, 2019) who commits a misdemeanor. Refer to Section 712 Family Court Act.
- * b. As a person in need of supervision (PINS), a child less than 18 years of age, who is a habitual truant or who is incorrigible, ungovernable, or habitually disobedient and beyond the lawful control of a parent or other lawful authority (Section 712 Family Court Act).
- * 2. Juveniles may be taken into custody and charged in the Youth Part of criminal court under the following circumstances:
 - * a. As a Juvenile Offender (JO), a 13, 14, 15 year old charged with specific felonies as specified in Article 10.00(18) of the NYSPL
 - * b. As an Adolescent Offender (AO), a 16 year old (and 17 years old effective 1 October, 2019) who commit a felony level crime.
- * 3. A police officer may take a juvenile under 17 (18 effective 1 October, 2019) into custody without a warrant as is permitted in the case of an adult (Section 721 Family Court Act). In doing so, the officer will immediately notify the parent, etc., that the child has been taken into custody. After making every reasonable effort to give notice, the officers will (Section 724 Family Court Act):

Release the child to his/her parent, etc., as in the case of a runaway or when an arrest is forthcoming, and no need exists to hold the juvenile in custody or,
- * D. When a police officer determines that questioning the juvenile is necessary, then the child must be taken to a facility designated by the court as a suitable place. The officer may question the juvenile for a reasonable period of time, provided a parent or guardian is present during the entire interview (Section 724 B (II) Family Court Act).

Note: It is recommended that a supervisor be contacted when there is a question concerning the detention of a child.

By Order of the Sheriff,


Todd K. Baxter

* This indicates a change to the previous versions of this General Order.