

THURMONT POLICE DEPARTMENT			
GENERAL ORDER	<i>Date Issued:</i> January 15, 2014	<i>Effective Date:</i> January 15, 2014	<i>Order No:</i> Chapter 1.1
<i>Authority: Chief of Police</i> <i>Gregory L. Eyer</i>		<i>Manual Page No:</i>	
<i>Subject: Limits of Authority</i>		<i>Replaces Page No:</i>	
<i>CALEA Standard: 1.2</i>	<i>Distribution: ALL</i>	<i>Amends: Previous Policy</i>	<i>Number of Pages: 28</i>
<i>Related Documents:</i>		<i>Rescinds:</i>	

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I. PURPOSE:

To establish guidelines which define the legally mandated authority and responsibilities for all sworn personnel.

II. POLICY:

It is the policy of the Thurmont Police Department to impartially enforce the laws of the United States, the State of Maryland, Frederick County, Maryland, and the Charter and Ordinances of the Town of Thurmont.

III. DEFINITIONS:

Incorporated in procedures.

IV. PROCEDURE:

1.2.1 Legally Mandated Authority

A. Sworn members of the Thurmont Police Department have legal authority granted to them by Statute, Common Law, and the Town of Thurmont's Charter and Ordinances.

- B. The Maryland Annotated Code, Article 23A, Section 2 (b)(22) gives municipalities the express power to “establish and maintain an adequate police force.”
 - C. The Town of Thurmont Charter, Article II, C-16, “...authorizes the Commissioners of the Town of Thurmont to create and establish a Police Department, with such number of officers as they shall determine.” Sworn members of the Department will enforce the applicable laws of the Town of Thurmont, Frederick County, and the State of Maryland that are within their jurisdictional authority.
- 1.2.2 Legal Authority to Carry and Use Weapons
- A. The legal authority for members of the Thurmont Police Department to carry and use weapons in the performance of their duties is defined under Criminal Law Articles 4-201 and 4-203.
 - B. Article 4-201 defines a law enforcement official as:
 - 1. A full time member of a police force or other unit of the United States, a state, a county, a municipal corporation, or other political subdivision of a state who is responsible for the prevention and detection of crime and the enforcement of the laws of the United States, a state, a county, a municipal corporation, or other political subdivision of a state;
 - 2. Has met the minimum qualifications and has satisfactorily completed the training required by the Maryland Police and Corrections Training Commission.
 - C. Article 4-203 does not prohibit the wearing, carrying, or transporting of a handgun by a person who is on active assignment engaged in law enforcement, is authorized at the time and under the circumstances to wear, carry, or transport the handgun as part of the person’s official equipment, and is a law enforcement official of the United States, the state, or a county, or a city of the state.
 - D. Criminal Procedure Article 2-101 defines a police officer as any person who, in an official capacity, is authorized by law to make arrests and is:
 - 1. a member of the Department of State Police;
 - 2. a member of the police department of Baltimore City;
 - 3. a member of the Baltimore City school police force;

4. a member of the police department, bureau, or force of any county;
5. a member of the police department, bureau, or force of a municipal corporation.

1.2.3 Interviews and Interrogations

A. The gathering of information by police officers is generally done utilizing two techniques: interviews and interrogations. Departmental personnel who conduct investigations must be familiar with laws, statutes, ordinances, and departmental procedures that pertain to these aspects of police work. Information must be gathered from arrestees, suspects, and witnesses to allow final disposition of cases. It is paramount that members be cognizant of the legal considerations that apply to both interviews and interrogations. Neglecting these considerations can result in the suppression of the testimonial evidence. Questioning of juveniles should be performed in accordance with the special provisions that are applicable to them.

B. Definitions

1. Interview – the process by which an officer obtains information from a person who may have personal knowledge of interest to the department. Interviews are conducted in order to collect facts relating to an incident, to substantiate information obtained from other sources, or to obtain additional relevant information.
2. Interrogation – the process by which an officer obtains information from a person who is a suspect in the incident under investigation or to obtain information from an otherwise uncooperative person who has knowledge of the incident in question.
3. Investigative Questioning – an officer may obtain routine information from a subject without advising him/her of his/her Miranda Rights. This information can include name, addresses, telephone numbers, occupation, and normal identifying data.

C. Legal Considerations: Interviews

1. When an officer has not arrested a person or otherwise taken the person into custody by restricting the person's freedom or ability to discontinue the conversation, that person can be asked whatever questions are necessary and pertinent. The key to this circumstance is custody – when there is no custody, the law places no restrictions on questioning

2. Authority and Method:

- a. Department members will interview all persons who have the potential to provide information relating to the incident under investigation. Interviews should be conducted, when possible, to cause the least amount of inconvenience to the person being interviewed. They should also be accomplished as soon after the incident as practical. Members will conduct interviews in a manner to prevent alienating the person being interviewed.
- b. If, while being interviewed, the person begins to make incriminating statements, the officer conducting the interview will stop the proceeding and advise the person of his/her Miranda Rights.
- c. Interviews may be conducted in the field or at the station as long as the subject is free to leave. If the officer refuses to allow the person to leave, the interview becomes an interrogation and the suspect must be read his/her Miranda Rights.

3. Factors Affecting Witnesses:

- a. Department members will note the condition of victims and witnesses, such as their use of alcohol and/or drugs during, or prior to, interviews. Consideration should be given to their relationship to the incident under investigation, or any other factors that could impact the credibility of the person being interviewed.
- b. The following critical factors should be considered about each witness or other person being interviewed:
 - i. PRESENCE AT THE SCENE: Was the person present for all or part of the incident under investigation?
 - ii. VANTAGE POINT: Could the person actually see what they claim from their location during the incident?
 - iii. AWARENESS: Was the person attentive to the incident as it occurred? Were they under the

influence of alcohol and/or drugs at the time of the incident?

- iv. OBSERVANT: Was the person able to relate specific facts about the incident from personal observations? Did they fill in gaps with information of which they are unsure to tie together the story they are relating?
- v. ARTICULATION: Is the person able to convey what they saw in a manner that is understandable to others? Is what you thought they said what they actually meant?
- vi. RELATIONSHIP TO INCIDENT: Does the witness have a personal stake in the outcome of the incident under investigation? Are they related to the victim? Do they stand to benefit by personal gain if the investigation is steered in a certain direction?

D. Legal Considerations: Interrogations

- 1. Legal Restrictions: When an officer exerts authority or control over a person in a manner that restricts the person's freedom to act, then a custodial situation exists. Legal restraints on questioning arise to protect the person's rights concerning self-incrimination and the right to be represented by counsel. When probable cause to arrest develops, and the officer intends to **restrict the freedom** of the suspect while continuing to ask questions, or the questioning has become **accusatory**, advisement of rights will be given. At times it is difficult to determine when an accusatory atmosphere exists. However, when questioning begins to relate to a specific crime, and the questions become accusatory regarding that crime, advising the person of their constitutional rights is indicated. The point at which custody occurs is determined by the circumstances surrounding the interrogation as interpreted by the "prudent man" test. The beliefs or intent of the Department member or the suspect are not considered. Some of the factors to be considered when applying the "prudent man" test may be as follows.
 - a. PLACE OF QUESTIONING: When conducted at a police station, in a Departmental vehicle, at jail, or in a prosecutor's office, such circumstances may lead to the conclusion that "custody" has occurred.

- b. TIME OF QUESTIONING: When conducted at unusual hours, time of questioning may become a factor.
 - c. PERSONS PRESENT: If a person is removed from the presence of family or friends, or if several officers are present, a custodial situation may exist.
 - d. PHYSICAL RESTRAINT USED: Any kind of physical restraint invariably leads to a finding of custody.
 - e. ORDERS TO PERFORM TASKS NOT REQUIRED BY LAW: Any order to do something that the law does not require is indicative of custody. Example: ordering a person not to leave a room.
 - f. LENGTH AND FORM OF QUESTIONING: Lengthy questioning consisting of accusatory statements, confrontation with witnesses or evidence, and leading questions may lead to a finding of custody.
 - g. DEMANOR OF DEPARTMENT MEMBER: When an officer confronts a person with alleged guilt or is accusatory during questioning, a finding of custody may result.
2. Questioning in Custody: Custodial situations that involve some restraints on questioning include, but are not limited to the following:
- a. CUSTODY OF JUVENILES: Special rules govern questioning of juveniles when criminal charges have been placed or when there is a reasonable possibility that such charges will be made. Personnel will follow all procedures outlined in G.O. 44.2.2 and 44.2.3.
 - b. CUSTODY OF ADULTS: Whenever an officer arrests, or otherwise deprives someone of their freedom of action in any significant way, and the officer intends to question the person about incidents, actions or conduct which is criminal in nature, then the officer will advise the arrestee of his/her constitutional rights.
 - c. Whenever a person is advised of their rights, the officer may advise the person verbally, but every effort should be made by the officer to advise the person on the printed

departmental form when possible to provide a written record of the advisement,. All officers will carry the “Miranda Warning” card and will make the advisement by reading aloud from the “Miranda Warning” card if they are not utilizing the preprinted departmental form.

- d. Officers should have the person’s statement written out whenever possible. Tape-recorded statements are permissible as long as the person is advised that it is being taped.
3. Standard Miranda Warning: the following is the standard Miranda Warning to be given in accordance with this order and the law:
 - a. You have the right to remain silent.
 - b. Anything you say can and will be used against you in a court of law.
 - c. You have the right to talk to a lawyer and have him present with you while you are being questioned.
 - d. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish one.
 - e. You can stop answering questions at any time.
 4. Waiver of Constitutional Rights:
 - a. To assure statements made by suspects are admissible in court, the prosecution must prove that suspects were not only advised of their rights but also that they understood the advisement, and having been so advised, **knowingly and intelligently waived those rights**. To secure a waiver, the following questions will be asked:
 - i. Do you understand each of these rights I have explained to you?
 - ii. Having these rights in mind, do you wish to talk to me now?
 - b. An affirmative reply will be obtained from suspects before questioning begins. Circumstances that establish an

“affirmative reply” include, but are not limited to, the following:

- i. FORMAL WAIVER: Suspects state orally, or in writing and unequivocally, that they understand their rights and wish to talk.
 - ii. WAIVER FOLLOWED BY STATEMENT: An acknowledgement by a suspect that he/she understands, followed closely by a statement, is held to be a waiver.
 - iii. NON-VERBAL WAIVERS: Nods and shrugs may be sufficient, absent coercion. Officers should attempt to obtain a verbal response. Gestures are subject to interpretation; it is best to avoid them.
 - iv. REQUEST TO TALK TO ATTORNEY AFTER: A desire to talk to an attorney in the future, while manifesting a willingness to answer questions now, without counsel, is a waiver.
- c. In any event, once a suspect has indicated a desire to remain silent or talk to a lawyer before answering questions, all interrogation will cease until the person has consulted with a lawyer and has agreed to answer questions after the consultation. The interrogating officer will provide the person with a telephone and telephone book, if necessary, and an area (preferably private) from which to use the telephone to contact a lawyer if the officer desires to continue the interrogation.
- d. REFUSAL FOLLOWED BY CHANGE OF MIND: Officers may question a suspect who originally refused to “waive” whenever the **suspect** initiates a request to talk. Officers will re-advise such suspects of their rights and obtain a waiver before beginning a suspect-initiated interrogation.

1.2.4 Arrests Without a Warrant

A. Discussion:

The power of police officers to make arrests without an arrest warrant is strictly defined by the United States Constitution, the laws of the State of Maryland, the Charter and Code of the Town of Thurmont, and applicable case law.

B. Policy:

It is policy of the Thurmont Police Department that all arrests will be made in compliance with all applicable laws, court decisions, and General Orders of the Department. Only sworn law enforcement officers will make arrests.

C. Definitions:

ARREST: The taking into custody of a person, pursuant to the laws of arrest, for whom a police officer has probable cause to believe has committed a crime.

PROBABLE CAUSE (REASONABLE GROUNDS): Facts and circumstances, of which there is reasonably trustworthy information, sufficient in themselves to lead a police officer of reasonable caution to believe that a person in question is committing or has committed a crime.

D. Arrests Without a Warrant Permitted for Criminal Offenses:

Maryland Code permits sworn police officers to make warrantless arrests for criminal violations under the following circumstances.

1. A police officer may arrest without a warrant a person who commits or attempts to commit a felony or misdemeanor in the presence or within the view of the police officer.
2. A police officer who has probable cause to believe that a felony or misdemeanor is being committed in the presence or within the view of the police officer may arrest without a warrant any person whom the police officer reasonably believes to have committed the crime.
3. A police officer without a warrant may arrest a person if the police officer has probable cause to believe that a felony has been committed or attempted and the person has committed or attempted to commit the felony whether or not in the presence or within the view of the police officer.

4. A police officer without a warrant may arrest a person if the police officer has probable cause to believe:
 - a. that the person has committed one of the following crimes:
 - i. manslaughter by vehicle or vessel under § 2-209 of the Criminal Law Article;
 - ii. malicious burning under § 6-104 or § 6-105 of the Criminal Law Article or attempt to commit the crime;
 - iii. malicious mischief under § 6-301 of the Criminal Law Article or an attempt to commit a crime;
 - iv. a theft crime where the value of the property or services stolen is less than \$500 under § 7-104 or § 7-105 of the Criminal Law Article or an attempt to commit the crime;
 - v. the crime giving or causing to be given a false alarm of fire under § 9-604 of the Criminal Law Article;
 - vi. indecent exposure under § 11-107 of the Criminal Law Article;
 - vii. a crime that relates to controlled dangerous substances under Title 5 of the Criminal Law Article or an attempt to commit the crime;
 - viii. the wearing, carrying, or transporting of a handgun under § 4-203 or § 4-204 of the Criminal Law Article;
 - ix. carrying or wearing a concealed weapon under § 4-101 of the Criminal Law Article; and,
 - x. prostitution and related crimes under Title 11, Subtitle 3 of the Criminal Law Article; and,
 - a. that unless the person is arrested immediately, the person:
 - i. may not be apprehended;

- ii. may cause physical injury or property damage to another; or,
 - iii. may tamper with, dispose of, or destroy evidence.
- 5. A police officer without a warrant may arrest a person if:
 - a. the police officer has probable cause to believe that:
 - i. the person battered the person's spouse or another person with whom the person resides;
 - ii. there is evidence of physical injury; and,
 - iii. unless the person is arrested immediately, the person:
 - may not be apprehended
 - may cause physical injury or property damage to another; or,
 - may tamper with, dispose of, or destroy evidence; and,
 - b. a report to the police was made within 48 hours of the alleged incident.
 - c. If the police officer has probable cause to believe that mutual battery occurred and arrest is necessary, the police officer shall consider whether one of the persons acted in self-defense when determining whether to arrest the person whom the police officer believes to be the primary aggressor.
- 6. A police officer without a warrant may arrest a person if:
 - a. the police officer has probable cause to believe the person has engaged in stalking under §3-802 of the Criminal Law Article;
 - b. there is credible evidence other than the statements of the alleged stalking victim to support the probable cause; and,

- c. the police officer has reason to believe that the alleged stalking victim or another person is in danger of imminent bodily harm or death.
7. If a law enforcement officer has probable cause to believe that a person has trespassed on posted property that is used for a defense-related activity as defined in § 9-701 of the Criminal Law Article, the law enforcement officer may arrest the person without a warrant for a violation of § 9-702 or § 9-703 of the Criminal Law Article.

E. Arrests Without a Warrant Required for Criminal Offenses:

The Annotated Code of Maryland requires sworn police officers to make warrantless arrests for criminal violations under the following circumstances:

1. An officer shall arrest without a warrant and take into custody a person who the officer has probable cause to believe is in violation of:
 - a. the relief granted in an interim protective order under § 4-504.1 (c)(1), (2), (3), (4)(i), (7), or (8), of the Family Law Article in effect at the time of the violation;
 - b. the relief granted in a temporary protective order under § 4-505 (a)(2)(i), (ii), (iii), (iv), or (v) of the Family Law Article in effect at the time of the violation; or,
 - c. the relief granted in a final protective order under § 4-506(d)(1), (2), (3), (4), or (5) of the Family Law Article in effect at the time of the violation.
2. A law enforcement officer shall arrest without a warrant and take into custody an individual who the officer has probable cause to believe is in violation of:
 - a. the relief granted in an interim peace order under § 3-1503.1 of the Courts and Judicial Proceedings Article in effect at the time of the violation;
 - b. the relief granted in a temporary peace order under § 3-1504(a)(2) of the Courts and Judicial Proceedings article in effect at the time of the violation; or,
 - c. the relief granted in a final peace order under § 3-1505 (d)(1)(i), (ii), (iii), or (iv) of the Courts and Judicial Proceedings Article in effect at the time of the violation.

F. Arrests Without a Warrant Permitted for Motor Vehicle Offenses:

The Annotated Code of Maryland permits sworn police officers to make warrantless arrests for motor vehicle offenses under the following circumstances:

1. The person has committed or is committing the violation within the view or presence of the officer, and the violation is any of the following:
 - a. a violation of § 24-1411 or § 22-409 of the Transportation article, relating to vehicles transporting hazardous materials; or,
 - b. a violation of § 24-111 or § 24-111.1 of the Transportation Article, relating to the failure or refusal to submit a vehicle to a weighing or to remove excess weight from it.
2. The person has committed or is committing the violation within the view or presence of the officer, and either:
 - a. the person does not furnish satisfactory evidence of identity; or,
 - b. the officer has reasonable grounds to believe that the person will disregard a traffic citation.
3. The officer has committed or is committing the violation within the view or presence of the officer, and is either:
 - a. driving or attempting to drive while under the influence of alcohol, while impaired by alcohol, or in violation of an alcohol restriction;
 - b. driving or attempting to drive while impaired by any drug, any combination of drugs, or any combination of one or more drugs and alcohol or while impaired by any controlled dangerous substance;
 - c. failure to stop, give information, or render reasonable assistance, as required by §§20-102 and 20-104 of the Transportation Article, in the event of an accident resulting in bodily injury to or death of any person;

- d. driving or attempting to drive a motor vehicle while the driver's license or privilege to drive is suspended or revoked;
 - e. failure to stop or give information, as required by §§ 20-103 through 20-105 of the Transportation Article, in the event of an accident resulting in damage to a vehicle or other property;
 - f. any offense that caused or contributed to an accident resulting in bodily injury to or death of any person; or,
 - g. fleeing or attempting to elude a police officer.
4. The person is a nonresident and the officer has probable cause to believe that:
 - a. the person has committed the violation; and,
 - b. the violation contributed to an accident.
 5. The officer has probable cause to believe that the person has committed the violation, and, subject to the procedures set forth in § 26-203 of the Transportation Article, the person is issued a traffic citation and refuses to acknowledge its receipt by signature.

G. Arrests of Ill Persons:

1. Before a law enforcement officer may charge with a crime a person who is found by the law enforcement officer in a semiconscious or unconscious condition, the law enforcement officers shall make a diligent effort to determine whether the person:
 - a. suffers from epilepsy, diabetes, a cardiac condition, or another type of illness that causes semi-consciousness or unconsciousness; and,
 - b. is carrying an identification bracelet, tag, or card that is engraved, stamped, or imprinted with the person's name, type of illness, physician's name, and required medication.
2. If the law enforcement officer determines that the person suffers from an illness that causes semi-consciousness or unconsciousness, and the person is carrying an identification card that is engraved, stamped, or

imprinted with the person's name, type of illness, physician's name, and required medication, the law enforcement officer shall:

- a. notify the person's physician immediately; or,
- b. have the person immediately transported to:
 - i. a physician; or,
 - ii. a facility where the services of a physician are available.

H. Release Without Placing Charges:

1. A person who has been arrested without a warrant will be released from arrest without having charges placed against them if:
 - a. the arresting officer's supervisor or a member of the command staff determines that probable cause to arrest did not or does not exist; or,
 - b. the arresting officer, his supervisor, or a member of the command staff determines that, although probable cause to arrest did exist:
 - i. there is not sufficient evidence to warrant further action against the arrestee; or,
 - ii. the placing of charges against the arrestee is not in the interest of justice.
2. In the event that a person who has been arrested without a warrant is to be released from arrest without having charges placed against them, the arresting officer will notify their immediate supervisor. The notified supervisor will ensure that:
 - a. the situation, reason(s) for the arrest, and reason(s) for release without charging are fully explained to the arrestee and, if juvenile, the arrestee's parent or guardian; and,
 - b. arrangements are made for transportation of the arrestee back to the scene of the arrest or, at the request of the arrestee, to another reasonable location.

3. With the exception of charging documents and other District Court paperwork, the arresting officer will complete all of the paperwork required for an arrest. The incident report will include a description of the probable cause upon which the arrest was based, as well as, an explanation of the reason(s) for the decision to release the arrestee without charges. If a supervisor or command member was involved in the decision to release without charges, that supervisor or command member will be responsible for explaining the reason(s) for the decision in an incident report narrative.
4. A copy of the incident report will be forwarded via chain of command to the Chief of Police. If any supervisor or commander in the chain of command does not concur with the decisions or actions as described in the report, they will take appropriate action to document and resolve the situation.

I. Placing Criminal or Motor Vehicle Charges:

1. Unless they have been released under Section H of this General Order, each adult or juvenile charged as an adult arrested without a warrant will be taken to the Central Booking facility at the Frederick County Adult Detention Center, where custody of the arrestee will be transferred to a FCADC correctional officer.
2. The arresting officer will ensure that one or both of the following are filed against the arrestee with the District Court as soon as practical, describing the charges to be placed:
 - a. Maryland Uniform Complaint and Citations; and/or,
 - b. a Statement of Charges.
3. The arresting officer will ensure that a Statement of Probable Cause is filed with the District Court as soon as practical, describing the probable cause upon which the arrest was made.
4. Juveniles arrested and charged as juveniles will be handled as described in G.O. 44, "Juvenile Operations."

1.2.5 Alternatives to Arrest

- A. In lieu of formal action, an officer may exercise discretion and choose informal action to solve a problem. Such action may take the form of a referral, informal resolution, or warning.

1. Referrals: the officer shall offer referrals to other agencies and organizations when, in their judgment it is the most reasonable alternative for the offender and the violation.
2. Informal Resolutions: an officer, at their discretion, may offer informal resolutions to situations and conflicts when in the officer's judgment they can be adequately resolved by use of verbal warnings, informing the proper agency or organization, advising parents of juveniles' activities, etc. However, verbal warnings are not permitted as an action after a traffic stop.

1.2.6 Use of Discretion

- A. Discretionary power is the power of free decision, or latitude of choice within certain legal bounds. When this power is poorly exercised, discretionary power may be viewed by the public as favoritism, bias, or corruption.
- B. Therefore, it is imperative that members of the Thurmont Police Department take into consideration when exercising discretionary power, the goals and objectives of the Department, the best interest of the public, any mitigating circumstances, and the volatility of the situation.
- C. There are some situations in which a minor crime is alleged but not committed within the officer's presence or view, and/or an arrest does not fit the criteria listed in "Laws of Arrest" in the Criminal Law Article 594B. In instances in which a lawful arrest cannot be made, an appropriate referral would be to the District Court Commissioner's Office.
- B. An officer referring a citizen to the District Court Commissioner to apply for a charging document must write an incident report.
- C. Departmental policy generally gives officers guidelines to consider in exercising their discretion, except when a written directive dictates a specific procedure for responding to and/or handling certain circumstances or situations. In those instances, discretion is either restricted or eliminated since said written directive will describe the individual officer's course of conduct or action.
- D. Officers will be especially cognizant of these laws which remove an officer's discretion regarding mandatory arrests, the placing of certain charges, etc., and in those instances, officers will comply with the applicable statute governing such conduct.
- E. Any conflict between Department directives and applicable laws will be resolved in favor of the applicable laws.

1.2.7 Searching of Prisoners

A. Policy: All arrested persons will be searched. The search will be conducted by an officer of the same sex whenever possible. Regardless of gender, a search incident to arrest will be made whenever it is believed that an arrested person is concealing a weapon or evidence on their person. The reasonableness of the officer's conduct in searching an arrested person of the opposite sex depends upon the exigencies warranting the search and the intrusiveness of the search.

B. Definitions:

FIELD SEARCH: A thorough search of an arrested person (conducted at the scene or at a safer location) which includes going into all pockets, articles of clothing, purses, knapsacks, etc. to locate weapons, evidence, or contraband. It does not include a strip search or a body cavity search.

FRISK: The "patting down" of the outer garments of an individual for the purpose of locating a weapon.

STRIP SEARCH: Having an arrested person remove or arrange some or all of their clothing so as to permit a visual inspection of the genitals, buttocks, anus, female breasts, or undergarments of such person.

C. Search Incidental to Arrest:

1. All prisoners will be field searched incidental to arrest and prior to transport.
2. Any officer who becomes responsible for the transportation of a prisoner (adult or juvenile taken into custody for a "delinquent act") will conduct at least a thorough field search of the prisoner for contraband and weapons prior to transport regardless of any prior searches. *If exigent circumstances exist*, minimally a "frisk" will be conducted for weapons.
3. Whenever a Thurmont Police Officer receives a prisoner from another officer, the officer to whom custody is relinquished will field search the prisoner.
4. Prior to and after an officer transports a prisoner, the officer(s) will conduct a search of the police vehicle used for the transport to ensure that the vehicle is free of weapons or contraband.

D. Field Searches:

1. A thorough field search of prisoners will be conducted by officers of the same sex as the prisoner.
2. An officer may conduct a patting of the clothing of a prisoner of the opposite sex as long as the search does not extend to the groin area of the male or the genital and/or breast areas of the female.
3. If a more thorough search must be conducted for safety reasons, an officer of the same sex will be requested to conduct the search.
4. *Under exigent circumstances*, an officer may thoroughly field search a prisoner of the opposite sex if the officer sees any weapon, escape implement, or evidence, or if he has reason to believe that the prisoner is in possession of any of these items *and there is no same sex officer available*.
 - a. When field searching a prisoner of the opposite sex, officers are reminded that the primary purpose of a search is to check for weapons.
 - b. All opposite-sex field searches will be conducted in a professional manner, utilizing appropriate search techniques, documented in the incident narrative and witnessed by another officer whenever possible.

E. Strip Searches:

No person arrested for a traffic violation or misdemeanor will be strip searched unless there is reasonable, articulable suspicion that the individual is concealing a weapon or a controlled substance.

1. No strip search, other than examination of the mouth, will be conducted without approval of a supervisor.
2. Strip searches must be conducted only by a member of the same sex as the arrestee and will be observed by a witness officer of the same sex.
3. The decision to conduct a strip search must be based on specific factors or reasonable suspicion that the prisoner may be concealing weapons, escape implements, contraband, or evidence.
4. To protect the privacy of the person being searched, the search will be completed at Headquarters, Central Booking, or in an area that cannot

be observed by persons not involved in the search and is conducive to privacy.

5. The prisoner will not be required to remain unclothed any longer than necessary.
6. Civilian employees will not be used to conduct or assist with strip searches.
7. The primary officer handling the strip search will document in the narrative of the incident report that the strip search was conducted; the specific reason(s) why it was necessary; and the names of the approving supervisor and witness officer.

F. Body Cavity Searches:

1. A search warrant *must* be obtained prior to a body cavity search.
 - a. The mouth is the only body cavity that can be searched without a search warrant.
 - b. An item protruding from a body cavity may be removed as long as there is no insertion or probing of the suspect's body by the officer.
2. Applications for search warrants for body cavity searches will be made only with supervisory approval.
3. An officer will be assigned to monitor the prisoner to ensure that the prisoner does not dispose of evidence while the search warrant is being obtained.
4. Any authorized search of body cavities other than mouth will be performed only by a licensed physician in a sanitary area after the search warrant has been issued.
5. Officers will use only the force necessary to execute the warrant and to accomplish lawful objectives.
6. Body cavity searches will be witnessed by at least one officer of the same sex as the prisoner.
7. The premises utilized will be located out of view of persons not involved in the search.

8. The witnessing officer will take custody of the item(s) recovered and ensure proper evidence procedures are followed.
9. The witnessing officer will document in the incident narrative the fact that a body cavity search was conducted and will include the names of the approving supervisor, the judge that issued the warrant and the physician conducting the search. All search warrant paperwork will be attached to the incident narrative.

G. Supervisor Considerations:

Prior to approving a strip search or application for a search warrant concerning a body cavity search, supervisors must consider the following factors:

1. The type of crime for which the person was arrested;
2. The prisoner's age;
3. Prior arrest record; and,
4. The specific factors giving rise to the belief that the item(s) sought are concealed on/in the prisoner's body.

H. Removal of Property:

1. After searching, all property removed from prisoners must be taken prior to the prisoner being placed in a holding cell. Property to be removed will include:
 - a. All items carried,
 - i. Exception – money may be left on the individual if it is not evidence or contraband.
 - b. All removable jewelry,
 - i. Wedding rings and religious symbols may be retained as long as they do not pose a threat of safety or destruction
 - c. Belts,
 - d. All outdoor wear,

- e. Shoes and/or laces,
 - f. Purses and all items within,
 - g. Clothing draw strings which are removable,
 - h. Any item which could pose a hazard or be used as an escape tool.
2. The prisoner's personal property will be inventoried by the arresting/processing officer, packaged accordingly, and given to the Central Booking officer to whom custody is relinquished unless said property is being seized as evidence or contraband. Evidence and contraband are to be inventoried separately in accordance with department evidence procedures.
3. If the personal property contains an item which could be dangerous (i.e., pocketknife, syringe, razor blade, etc) the officer relinquishing custody will advise the booking officer of this information.

1.2.8 Bias Based Profiling/Discriminatory Practices

- A. Purpose: To affirm the Department's commitment to providing unbiased law enforcement services and ensuring the constitutional protections of the citizens we serve.
- B. Discussion: Law enforcement officers have a duty and authority to investigate suspicious activities that may be associated with the violation of criminal and motor vehicle laws. This duty does not include stereotyping, but is limited to reasonable articulable factors which would likely lead any knowledgeable, reasonable officer to the same conclusion, i.e., that a violation is occurring or has occurred.
- C. Policy: The Department recognizes the legitimacy of criminal profiling. However, the selection of persons for police detention based solely on common traits of a group is unacceptable, illegal, and will not be tolerated. Officers will have reasonable suspicion supported by specific articulable facts that and person detained, regarding his identification, activities, or location has been, is, or is about to commit a violation of the law or currently presents a threat to his safety or the safety of others. All enforcement actions such as investigative detentions, traffic stops, arrests, searches and seizures, asset forfeitures, etc., will be based on reasonable suspicion or probable cause as required by statutes and the 4th Amendment of the U.S. Constitution. The Department is committed to impartial policing.

D. Definitions:

BIASED BASED PROFILING: The arrest, detention, interdiction, or other disparate treatment of an individual on the basis of the race, ethnic background, age, gender, sexual orientation, religion, economic status, cultural group, or other identifiable group of such individual.

E. Procedures:

1. Members will not consider the common traits of a group to establish reasonable suspicion nor probable cause EXCEPT when the reported trait of specific suspects, based on credible, reliable, and current information, links a person to a specific crime or quasi-criminal incident based on a credible report.
2. Members will clearly articulate the specific police or public safety purpose of any stop/detention whenever they submit a report. Persons will not be singled out or otherwise treated differently because of their race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group or other identifiable groups, or other potentially improper criteria.
3. The detention of any individual that is not based on factors related to a violation of law, city ordinances, or any combination thereof, is prohibited. Asset forfeiture and forfeiture efforts will also be based upon the law and will not be motivated by bias based profiling.
4. Officers will, as necessary and professionally appropriate, use techniques and strategies to advance the reality of impartial policing. These techniques and strategies include, but are not limited to:
 - a. Being courteous, polite, and professional.
 - b. Providing officers' names and department information and explaining reasons for the stops as soon as practical unless doing so compromises the safety of officers, others, or would compromise a police investigation.
 - c. Ensuring the lengths of stops, investigative detentions, field contacts, etc., are no longer than necessary to undertake appropriate actions.
 - d. Answering questions citizens may have, including any options for dispositions of related enforcement actions.

- e. Explaining the credible, reliable, or locally relevant information that lead to stops or contacts when no enforcement actions were taken.
 - f. Requesting the presence of supervisory or administrative ranked officers to allow citizens to voice their field contact or enforcement related concerns.
 - g. Explaining the department's complaint process.
5. Nothing in this policy should be construed to alter the authority of a law enforcement officer to make an arrest, conduct a search or seizure, or otherwise fulfill the officer's law enforcement obligations.

F. Training:

1. Newly sworn members will receive training in the area of bias based profiling and discrimination during their initial training in the academy.
2. Officers will receive periodic training in subjects that promote and encourage impartial policing. Applicable training subjects may include, but are not limited to laws of arrest, officer safety, courtesy, cultural diversity, search and seizure, asset seizure and forfeiture, interview techniques, interpersonal communication skills, and constitutional and case law.
3. Additional diversity and sensitivity training will be designated for members with sustained bias based profiling or other sustained discrimination complaints filed against them if warranted.

G. Complaint Process:

1. Any employee who believes there is, or is made aware of any violation of this Order, will immediately report the violation to his immediate supervisor.
2. All complaints of bias based profiling or discriminatory practices will be investigated. Violations of this policy, or portions thereof, will result in remedial training and/or disciplinary action as set forth in the Department's applicable general orders.
3. Each supervisor will be responsible for continually monitoring and examining all members under their direct supervision to ensure that

members' actions and activities adhere to this policy and to discover any indications of bias based profiling or discriminatory practices.

4. Officer Responsibility

- a. Bias-based policing by any department personnel is prohibited. Officer must be able to articulate specific facts, circumstances and conclusions that support probable cause or reasonable suspicion for any search and seizure, including but not limited to traffic stops, field contacts, and in arrest seizure forfeiture efforts.
- b. Officers shall conduct searches based on the standard of reasonable suspicion or probable cause as required by the Fourth Amendment of the U.S. Constitution and statutory authority.
- c. Nothing in this section shall limit an officer's ability to interview witnesses or discourage routine conversations with citizens not suspected of an offense.

H. Supervisory Responsibility

1. Supervisors shall ensure that personnel assigned under their command are familiar with this policy and comply with its provisions.
2. Supervisors shall receive all citizen complaints or allegations of bias-based policing on the part of officers under their command and forward such information in writing in compliance with this department's standard operation procedures covering citizen complaints and internal investigations.
3. Supervisors shall monitor the activities of personnel under their command to ensure that bias-based policing is not practiced.

I. Corrective Action

The department shall promptly address any bona fide occurrences of bias-based policing within the department. Methods to address such may include, but not limited to:

1. Policy modification
2. Training

3. **Punitive disciplinary action**

J. Administrative Review:

1. Annually in January, the Chief or his designee, will conduct a review of agency activities in regard to bias based profiling, which includes the following:
 - a. An administrative log of any complaints and their status;
 - b. An explanation of any remedial action taken;
 - c. Recommendations for training needs;
 - d. A listing of any citizen complaints; and,
 - e. Recommendations for policy changes.
2. If there are any indicators/suspicions of biased profiling by a member of the agency, the Chief of Police will consult with the officer's supervisor to develop a plan of action for remedial action/correction is warranted.

K. **Participation in Traffic Stop Statistical Study**

1. As of January 1, 2004, whenever an officer issues a uniform traffic citation, warning citation, or safety equipment repair order for an alleged violation of the Maryland Motor Vehicle Code, he or she shall record the following:
 - a. The name, address, gender, and the officer's subjective determination of the race of the person stopped; the person's race shall be selected from the following list: Caucasian, African-American, Hispanic, Native American/Alaskan, or Asian/Pacific Islander;
 - b. The alleged traffic violation led to the stop of the motorist chosen from the following: Moving violation, Equipment violation, or License Plate/Registration. If the alleged violation is a moving violation, the type of violation shall be indicated from the following list: Speed, Lane Violation, Seat belt, Traffic Sign or Signal, Following too Close or other;
 - c. The make and year of the vehicle stopped;

- d. The date, time and case number of the stop;
 - e. The location of the traffic stop;
 - f. Whether or not a search contemporaneous to the stop was conducted of the vehicle, driver, passengers; and, if so, the search type chosen from the following list: Consent, Probable Cause, Incident to Arrest, Exigent Circumstances, Drug Dog Alert, or Other; and
 - g. The results of the search if a search was conducted, chosen from the following list: Contraband Seized, Other Property Seized, Arrest Made;
 - h. Charges placed.
2. Standardized forms for data collection shall be provided by the department and utilized by officer collecting this data.
 3. Once completed, forms shall be attached to the department's copy of the citation, warning, or S.E.R.O. Supervisors shall conduct periodic checks of completed forms to insure completeness and consistency.
 4. The data collected shall be transmitted to MPCTC in a format approved by MPCTC.
 5. Information related to the data collected as required by Maryland Law and this order is not subject to the Freedom of Information Act and shall not be released to the public or other organization(s) unless required by law or order of court.

ATTACHMENTS:

DOCUMENT DATES:

Amended Date: 1/8/2014(Warrantless Search & Seizure and Search & Seizure Warrants removed and made into separate policies.)

Review Date:

Review Date:

Rescinds:

Order Written by: Chief Gregory L. Eyer

Order Edited and Approved by: Chief Gregory L. Eyer, Thurmont Town Attorney's Office

*CALEA Standards included in this Order
1.2.1-1.2.9*