

Arrests/De-Arrests

404.1 VERSION

Review Date	Effective Date	Approving Authority
02/02/19	07/09/18	Eric D. English, Chief of Police

404.2 POLICY AND PURPOSE

This policy is intended to define and provide clear guidelines when making arrests. Law enforcement officers must be familiar with the laws governing arrests, as well as the procedures for conducting arrests that promote the safety of officers, arrestees, victims, and bystanders. Making an arrest, therefore taking the liberty from an individual, is one of the most serious constitutional actions an officer can undertake. Officers shall exercise legally sound law enforcement judgment in making an arrest whether based upon a valid arrest warrant or upon probable cause. Officers shall also consider alternatives to arrest, such as releasing on summons or verbal/written warnings, consistent with carrying out their law enforcement mission and restorative justice.

404.3 ACCOUNTABILITY STATEMENT

All employees are expected to fully comply with the guidelines and timelines set forth in this policy. Responsibility rests with the supervisor to ensure that any violations of policy are investigated and appropriate training, counseling and/or disciplinary action is initiated. This directive is for internal use only, and does not enlarge an employee's civil liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violation of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

404.4 DEFINITIONS

Arrest -An individual has been arrested when he/she is not free to go, whether or not formal words of arrest are used. An arrest constitutes a seizure of the person for Fourth Amendment purposes. The Fourth Amendment requires probable cause to arrest. The test, in interviews or stops of persons, for whether an arrest has occurred is whether a reasonable person, under the circumstances of the encounter, would feel free to leave.

De-arrest - The release of an individual from full custodial arrest when the arresting officer determines one of the following:

- that probable cause for the arrest no longer exists;
- that the person under arrest did not commit a crime; or
- that upon further investigation, the event is found not to constitute a crime.

Probable cause -Probable cause exists when the facts and circumstances within an officer's knowledge and of which he has reasonably trustworthy information are sufficient to cause a

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prudent person to believe that an offense has been or is being committed. Probable cause has come to mean more than mere suspicion, but less evidence than would justify judicial conviction.

Reasonable suspicion -Articulable facts which lead an experienced officer to reasonably suspect that a crime has been, is, or about to be committed. Reasonable suspicion, as a standard of belief or proof, is less stringent than probable cause, and is intended to enable the law enforcement officer the opportunity to freeze the action by stepping in to investigate. Reasonable suspicion, however, is more than just a hunch, it's a well-founded suspicion based on the totality of circumstances and does not exist unless it can be articulated.

Restorative Justice - Restorative Justice Practices views crimes as more than just breaking the law. Restorative Justice allows an alternate process that operates parallel to the Criminal Justice System. It requires all parties to participate in the process and holds offenders responsible by addressing the harms and creating obligations to repair those harms.

404.5 CLASSIFICATION OF OFFENSES

Criminal offenses for which an individual can be arrested are divided into felony and misdemeanor categories.

404.5.1 FELONY

A felony arrest can be affected:

- (a) If the offense is observed by the arresting officer
- (b) If probable cause exists
- (c) With a valid arrest warrant
- (d) Upon knowledge of the existence of a warrant

404.5.2 MISDEMEANOR

A misdemeanor arrest can be affected:

- (a) If the offense is observed by the arresting officer
- (b) With a valid arrest warrant
- (c) Under the provisions of Virginia Code Section §19.2-81 in certain cases.
 - 1. Shoplifting
 - 2. Carrying weapon on school property
 - 3. Assault and Battery
 - 4. Brandishing a Firearm
 - 5. Destruction of Property on Business or Commercial Premises
 - 6. Domestic Assault and Battery
 - 7. Violating a stalking protective order or family/household member protective order

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8. At the scene of an accident (or at any hospital or medical facility to which the person(s) involved were transported) for crimes committed at the scene
9. Within 3 hours of the alleged offense, those suspected of DUI
10. Persons duly charged with a crime in another jurisdiction upon receipt of a photocopy of a warrant or capias, telegram, message, facsimile, etc., giving reasonably accurate description or the wanted subject and the crime committed
11. Alleged misdemeanor not in his/her presence upon receipt of a radio message that a warrant or capias is on file

404.5.3 ISSUANCE OF A SUMMONS IN LIEU OF ARREST

Refer to Misdemeanor Arrest/Summons Release Policy

404.6 ARREST WARRANTS

404.6.1 CURSE AND ABUSE

During the course of their normal duties, police officers are sometimes subjected to obscene gestures, name calling, or harsh or rude language from citizens. Generally, these types of communications are protected by the First Amendment and cannot be used as the sole basis for criminal prosecution. This does not imply that officers cannot arrest a person under the provisions of Curse and Abuse, 18.2-416 of the Code of Virginia. The Supreme Court defined “fighting words” as “...those words which-by their very utterance inflict injury or tend to incite an immediate breach of the peace.” Federal and State court decisions reveal four generally accepted principles that can assist officers in deciding whether to arrest for speech directed to them.

- Direct threats to officer’s safety generally constitute “fighting words” and are not constitutionally protected.
- Speech, which clearly disrupts or hinders officers in the performance of duty, is not constitutionally protected.
- The Supreme Court has determined that professional law enforcement officers are expected to exercise greater restraint in their response to “fighting words” than the average citizen.

404.6.2 SERVICE

Whenever possible, service of arrest warrants should be made shortly after issuance. Unless such action is likely to cause the defendant to flee, otherwise avoid arrest, create a risk for other officers or jeopardize public safety, officers may request, by telephone, defendants named in arrest warrants to report to the Harrisonburg Police Department for service of the warrant. Whenever feasible, this approach is preferred over affecting the physical arrest of the defendant at his or her residence or place of employment.

Sworn personnel executing arrest warrants shall not search a third party residence for a suspect unless there is probable cause to believe the suspect is present on the premises. In addition, one of the following situations **MUST** exist:

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- (a) Search Warrant
- (b) An officer is in hot pursuit of a suspect
- (c) Consent of the owner or person occupying the premises to be searched.
- (d) Other exigent circumstances are present; i.e., those circumstances requiring immediate action

These criteria do not apply to a property wherein the person named in the warrant lives. Reasonable belief the person named in the warrant is present on his own premises is sufficient reason to conduct the search. Reasonable belief in this instance would mean articulable facts and circumstances which, taken together with rational inferences therefrom, would cause an officer to reasonably suspect that the person named on the warrant is currently present inside the dwelling in which they live. Individuals who are arrested on warrants that require Central Criminal Records Exchange (CCRE) processing will be processed using the below procedures:

- (a) When service is made by the officer and the suspect is physically arrested, he/she will be processed at the time (exceptions: injury, severe illness, etc.)

In cases such as injury or illness, the court will order the individual to be processed upon conviction.

- (a) Harrisonburg Police Department will be responsible for all court ordered processing through the Live Scan System at the Harrisonburg/Rockingham County Regional Jail.
- (b) Upon completion of processing, the defendant will be released by the processing officer and the processing paperwork will be turned over to HPD Records Unit.

404.6.3 DETENTIONS DURING WARRANT SERVICE

Officers must be sensitive to the safety risks of all persons involved with the service of a warrant.

Depending on circumstances and facts present, it may be appropriate to control movements of any or all persons present at a warrant service, including those who may not be the subject of a warrant or suspected in the case. However, officers must be mindful that only reasonable force may be used and weapons should be displayed no longer than the officer reasonably believes is necessary (see the Use of Force Policy).

As soon as it can be determined that an individual is not subject to the scope of a warrant and that no further reasonable suspicion or safety concerns exist to justify further detention, the person should be promptly released.

Officers should, when and to the extent reasonable, accommodate the privacy and personal needs of people who have been detained.

404.6.4 WARRANT CONTROL PROCEDURES/IN-HOUSE COMPUTER ENTRY

It is the responsibility of the officer attempting to serve a warrant to ensure that the warrant is valid and properly executed. See Virginia Code Section §19.2- 72.

Upon receipt, warrants received into Records Unit will be logged on a Warrant Control Form and computer entry shall be completed by the Records Specialist for a warrant which cannot be served immediately.

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All information required on the Warrant Control Form shall be completed when known, to include:

- (a) Date and Time received
- (b) Agency tracking method
- (c) Nature of document
- (d) Source of document
- (e) Name of complainant and defendant
- (f) Officer assigned for service or serving officer
- (g) Date of assignment
- (h) Method of service
- (i) Date of service and/or return
- (j) Location of service or attempted service
- (k) Reason for non-service

All unserved warrants will be kept in a file and signed out for service by the area officer at the beginning of each shift. A log shall be maintained to ensure that the location of the warrant is known in the event an inquiry is received.

Officers assigned warrants for service shall enter remarks as to what action was taken on the warrant control form.

If the warrant is served, the officer shall so indicate by completing the Warrant Control Form and turning it over to the Records Specialist as soon as possible. A wanted person's check, both local and NCIC/VCIN, shall also be completed on all persons who are physically arrested to determine the existence of additional warrants.

Warrants that cannot be served or must be routed to another location shall be returned to the Records Specialist. The Warrant Control Form shall be completed detailing the necessity for return.

When a warrant has been served, the arresting officer will immediately notify the Records Specialist of the service, warrant number, and name of the arrested person. The Records Specialist will change the status of the warrant to 'served' upon receipt of the completed Warrant Control Form, in both the Harrisonburg Police Department computer/records system, and clear from the VCIN/NCIC computer system if applicable.

Arrest indictments received from the court shall be treated as an arrest warrant for the purpose of warrant control procedures, arrest and reporting procedures as outlined in this policy.

Officers shall serve criminal and traffic summonses only. All civil summonses will be forwarded to the RCSO for service.

Officers will have 24-hour access to warrants through the Records Unit.

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404.6.5 HIGH-RISK WARRANT SERVICE

If an officer reasonably believes that serving an arrest warrant may pose a higher risk than commonly faced, the officer should coordinate with his/her supervisor who should then assess the risk by reviewing the circumstances with the Special Operations Bureau Commander and/or SWAT Commander.

If the warrant is not classified as high-risk, the supervisor should still weigh the risk of entry into a residence to make an arrest against other alternatives, such as arresting the person outside the residence where circumstances may pose a lower risk.

If the warrant is deemed to be high-risk, the SWAT Commander or the authorized designee shall coordinate the service with the Special Operations Commander and shall have sole authority in determining the manner in which the warrant will be served, including the number of officers deployed.

For additional guidance on planning and serving high-risk warrants see Operations Planning and Deconfliction Policy.

404.6.6 OUTSIDE AGENCIES AND CROSS-JURISDICTIONAL WARRANTS

The Department will ensure that cooperative efforts with other agencies in the service of warrants conform to existing mutual aid agreements or other memoranda of understanding and will work cooperatively to mitigate risks.

Officers will remain subject to the policies of the Harrisonburg Police Department when assisting outside agencies or serving a warrant outside Harrisonburg Police Department's jurisdiction.

404.7 PRIVATE PERSONS ARREST

A private person may arrest another under the following circumstances:

- (a) Without a warrant when the person arrested has committed a breach of the peace in his/her presence.
- (b) Without a warrant when a felony has actually been committed and there is reasonable grounds for believing the person arrested has committed the crime.
- (c) Without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year (Va. Code § 19.2-100).

404.7.1 AUTHORITY

- (a) Merchants, or Their Employees or Agents
 1. Under Virginia Code Section §8.01-226.9, merchants, or their agents or employees who cause the arrest of any person for shoplifting are provided an exemption from civil liability. Virginia Code Section §18.2-105.1, authorizes merchants or their agents or employees to detain a person suspected of shoplifting for a period not to exceed one hour based upon probable cause that the person committed larceny, or concealed merchandise. The purpose of the detention is to hold the person until the arrival of a police officer.

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- (b) Registered Employee of a Private Security Services Business
 - 1. The powers of arrest for a registered employee of a private security services business is controlled by Virginia Code Section §9.1-146. Such employees may arrest for offenses committed in their presence or in the presence of a merchant, their agent or employee, if probable cause exists to believe that the person arrested had shoplifted or committed willful concealment of goods. This arrest is valid only on the premises at a location, which the private security services firm, have contracted to protect.
- (c) Special Conservators
 - 1. Special conservators are appointed by the Circuit Court of Rockingham County. Special conservators are given full arrest power within the geographical location set forth by the court.
- (d) Electronic Article Surveillance Devices
 - 1. The activation of an electronic article surveillance device as a result of a person exiting the premises or an area within the premises of a merchant where an electronic article surveillance device is located, shall constitute probable cause for the detention of such person by such merchants, their agents or employees, provided such person is detained only in a reasonable manner and only for such time as is necessary for an inquiry into the circumstances surrounding the activation of the device, and provided that clear and visible notice is posted at each exit and location within the premises where such a device is located indicating the presence of an anti-shoplifting or inventory control device. For purposes of this section, "electronic article surveillance device" means an electronic device designed and operated for the purpose of detecting the removal from the premises, or a protected area within such premises, of specially marked or tagged merchandise.

404.7.2 OFFICER RESPONSIBILITIES

An officer confronted with a person claiming to have made a private person's arrest should determine whether such an arrest is lawful.

If the officer determines that the private person's arrest is unlawful, the officer should:

- (a) Take no action to further detain or restrain the arrested individual, unless there is independent justification for continuing a detention.
- (b) Advise the parties that the arrest will not be accepted but the circumstances will be documented in a report.
- (c) Document the incident, including the basis for refusing to accept custody of the individual.

Whenever an officer determines that a private person's arrest is justified, the officer may take the individual into custody and proceed in the same manner as with any other arrest.

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404.7.3 MERCHANTS, THEIR AGENTS OR EMPLOYEES

Complaints involving the detention of a shoplifting suspect by non-sworn merchants, their agents or employees require the following:

- (a) The officer must consider the facts and circumstances presented and determine whether probable cause exists to arrest the person detained for the alleged offense.
- (b) If probable cause exists, the officer shall effect an arrest in felony cases or release on a summons in misdemeanor cases in accordance with Misdemeanor Arrest/Summons Release Policy. If the officer concludes that probable cause does not exist, the person who detained the suspect shall be advised of their right to seek a warrant from a magistrate.
- (c) In cases where an arrest is made and the detainee is not released on a summons, the person observing the offense shall accompany the officer in order to provide evidence for probable cause.
- (d) The person observing the offense shall appear as the complainant on the warrant issued.
- (e) The assigned officer shall complete all department forms, arrest documents, and shall process for Central Criminal Records Exchange (CCRE) in cases of arrest.

404.7.4 PRIVATE SECURITY FIRMS

Arrests of persons by registered employees of private security firms shall be the complete responsibility of such employees when the offense involves only a misdemeanor. For felonies, with probable cause established, the responding officer shall be responsible for the following:

- (a) Transportation to a magistrate.
- (b) Completion of all department reports, forms, CCRE forms, and service of the warrant.
- (c) The registered employee of a private security firm shall be the complainant on the warrant issued.

404.7.5 SPECIAL CONSERVATORS

When an officer responding to a shoplifting complaint finds that a suspect has been arrested by a special conservator, the officer shall offer full assistance. The responding officer is responsible for the following:

- (a) Transportation to a magistrate.
- (b) Completion of all department reports, forms, and CCRE forms as needed.
- (c) The special conservator shall appear as the complainant in the warrant issued. This assures that the court docket will reflect the person who is actually the source of action against the defendant.

404.7.6 CUSTODY OF EVIDENCE AND COURT APPEARANCE

- (a) The custody of evidence relating to shoplifting offenses shall remain the responsibility of the special conservator, store employee, or registered security employee,

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regardless of whether a police officer makes an arrest. The police officer should explain the responsibility and custody of evidence to the complainant.

- (b) Police officers assigned to shoplifting complaints shall not appear in court for the prosecution of such offenses unless:
 - 1. The officer observed the offense, or has other information essential to the prosecution; or,
 - 2. The Office of the Commonwealth's Attorney requests the officer's presence in court.
- (c) The police officer should advise the complainant of their responsibility for appearing in court.

404.8 OFF-DUTY ARRESTS

Guidelines dealing with off-duty law enforcement actions to include arrests can be found in the Law Enforcement Authority Policy.

404.10 SEARCH OF ARRESTEE

To ensure the safety of the arresting officer and prevent possible harm to the arrestee or other persons, officers shall perform a systematic search of the person at the earliest possible time and, unless conditions dictate otherwise, prior to transporting prisoners in police vehicles.

Officers accepting temporary custody of a prisoner for transportation, detention, interview, or interrogation should take it upon themselves to conduct a search of the person with the assumption that the subject has not been searched.

Additional guidance can be found in the Search and Seizure Policy

404.11 TRANSPORTING ARRESTEES

Persons placed under arrest should be taken to the nearest magistrate without undue delay; however, certain precautionary measures must be taken before prisoners are transported.

All persons will be searched for weapons, evidence or contraband prior to being transported in any police vehicle. In extenuating circumstances, prisoners may be taken from the immediate scene of arrest prior to being searched.

Any individual arrested should be thoroughly searched and secured using handcuffs to maintain control and security of the arrestee. This is for officer safety and to prevent the arrestee from performing self-harm or property damage while in custody. Factors may be present, such as an arm injury, age or other circumstances, which may make handcuffing unreasonable. In all situations in which handcuffs are used, they shall be double-locked.

No juvenile should be transported with an adult accused of any criminal act (Va. Code § 16.1-254).

When transporting a juvenile or a person of the opposite sex, the vehicle mileage and transport time shall be recorded with Emergency Communications Center.

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In the event of a prisoner escape, the transporting officer shall immediately notify the on-duty supervisor. Requests for specialized units, such as K-9, are the responsibility of the officer or the supervisor. However, if the officer or supervisor is not immediately available, the Commander may make the request. The officer shall complete an incident report describing in full the facts surrounding the escape and all actions taken.

404.12 ARREST PAPERWORK

For arrest paperwork procedures, refer to Arrest Paperwork in the supplemental policy

404.13 NCIC/VCIN CHECK AND CLEARANCE REQUIREMENTS

In all cases where an arrested person is not released on a summons but is brought before a Magistrate, the arresting officer shall initiate an NCIC/VCIN wanted check of the arrested individual.

If an arrested person is entered as wanted in the NCIC/VCIN, it shall be the arresting officer's responsibility to arrange for NCIC/VCIN removal of the arrested person's name, or notification of the arrest to the jurisdiction that made the NCIC/VCIN entry.

404.14 CRIMINAL HISTORY REQUIREMENT

When an individual is arrested and taken before a Magistrate, the arresting officer is required to present a criminal history (if one exists) to the Magistrate. The officer may obtain the criminal history from HPD Records Unit or from the Rockingham County Sheriff's Office PCA staff.

404.15 MANDATORY EMPLOYER NOTIFICATION-SCHOOLS

In the event a school employee is arrested for a felony or a Class 1 misdemeanor or an equivalent offense in another state, an officer shall file a report of such arrest with the division superintendent of the employing school division as soon as practicable (Virginia Code § 19.2-83.1).

Virginia Code Section §19.2-83.1, imposes certain requirements of law enforcement officers for the reporting of crimes against children by school employees.

A second portion of this law requires every state official or agency and every sheriff, police officer, or other local law-enforcement officer or conservator of the peace having the power to arrest for a felony, shall file a report, as soon as practicable, with the division superintendent of the school division in which the student is enrolled upon arresting a person who is known or discovered by the arresting official to be a student age 18 or older in any public school division in this Commonwealth for:

- (a) A firearm offense
- (b) Homicide
- (c) Felonious assault and bodily wounding
- (d) Criminal sexual assault

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- (e) Manufacture, sale, gift, distribution or possession of Schedule I or II controlled substances
- (f) Manufacture, sale or distribution of marijuana or synthetic cannabinoids
- (g) Arson and related crimes
- (h) Burglary and related offenses, pursuant to §18.2-89 through §18.2-93;
- (i) Robbery
- (j) Prohibited criminal street gang activity
- (k) Recruitment of juveniles for criminal street gang

Any officer conducting a preliminary investigation of an incident which involves the circumstances described in Virginia Code Section §19.2-83.1, shall report such to his/her supervisor. The supervisor will up-channel the information via memorandum through the chain of command, who will in-turn make notification to the appropriate school division superintendent and document such notification in a supplementary report.

404.16 IMMUNITY FROM ARREST

- (a) Except for treason, felony, or breach of the peace, members of the Virginia General Assembly, clerks and their assistants are privileged from arrest during the session of the General Assembly, and five days before and after the session.
- (b) Except for treason, felony, or breach of the peace, members of the Congress of the United States are privileged from arrest during session and in traveling to and from session.
- (c) Vehicles belonging to members of Congress bearing congressional license plates are exempt from State and local vehicle registration requirements. Vehicles not bearing congressional license plates but belonging to members of Congress and vehicles belonging to their administrative aides are authorized to obtain from the Division of Motor Vehicles a "Nonresident Permit." This permit allows these vehicles to be exempt from state and local vehicle registration requirements. However, such an exemption is not automatic; application must be made and the resulting permit displayed in the lower left-hand corner of the windshield.
- (d) Witnesses entering the Commonwealth of Virginia, or traveling through the state en route to another state, in response to a summons directing them to give testimony are immune from arrest in connection with matters which arose before their entrance into this state under the summons. They are subject to arrest for any violations committed after entry into the state.
- (e) The service of warrants is prohibited inside any courtroom while court is in session.

404.17 DE-ARREST

In some instances, officers may encounter a circumstance where probable cause develops to arrest an individual for an offense only to find out shortly thereafter that probable cause for the arrest no longer exists, the person under arrest did not commit a crime, or that further investigation

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reveals the event does not constitute a crime. It is imperative that the officer terminate the arrest process immediately to avoid becoming liable for false imprisonment. False imprisonment, as defined in *Montgomery Ward v. Freeman*, 199 F 2D 720 (1953), "is the restraint of one's liberty without any sufficient legal excuse."

404.17.1 DE-ARREST PROCEDURES

- (a) The arresting officer shall not formally charge those under arrest when it is proven to the officer's satisfaction that either the person under arrest did not commit a crime or that an event investigated is found not to constitute a crime.
- (b) When an officer de-arrests a subject, the officer should take care to restore the person to the same location or positions occupied before the arrest, or to improve upon it. An example of this would be if a subject is arrested and the officer begins to transport the subject when that officer learns that the probable cause utilized to make the arrest no longer exists, instead of releasing the subject along the roadside, the officer should return to the original contact point and release the subject. If a vehicle has been towed, the vehicle shall be returned to the operator or registered owner.
- (c) Upon releasing a subject in a de-arrest circumstance, the officer shall immediately contact their supervisor and advise the supervisor of the incident.

404.17.2 REPORTING

At the earliest possible time, the officer should have a case number generated for the incident and complete an Incident Report, which shall include, but is not limited to, the following:

- (a) Date and time of arrest
- (b) Subject arrested (name, address, date of birth, race)
- (c) Location of arrest
- (d) Location and time of de-arrest and whether subject was transported
- (e) Reasons or discovery of information which led the officer to de-arrest.
- (f) Witnesses to the alleged crime, or to the fact the individual arrested was allegedly involved.

The officer shall forward a copy of the report through his/her chain of command to his/her Bureau Commander.

404.17 QUARTERLY REPORTS

HPD Records Unit shall comply with Virginia Code Section §19.2-76.1 through the submission of quarterly reports to the Commonwealth's Attorney concerning unexecuted criminal processes that have remained unexecuted in excess or statutory provision.

The quarterly reports shall be submitted in writing no later than the tenth day of April, July, October and January of each year and accompanied with a list of the unexecuted criminal processes, which may be considered by the circuit court for destruction.

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404.18 TRAINING

The Training Officer should ensure officers receive periodic training on this policy and associated topics, such as legal issues, warrant service and reporting requirements.