

OFFICE OF CHIEF OF POLICE
OAKLAND POLICE DEPARTMENT

MEMORANDUM

TO: All Personnel

DATE: 13 Nov 14

SUBJECT: Revision of DGO M-18, PROBABLE CAUSE ARREST AUTHORIZATION
AND REPORT REVIEW (01 Oct 05)

The purpose of this revision is to incorporate associated Special Orders to this policy, address changes due to technology changes (iPAS, PC Dec, ECAR) and to address re-classification of certain criminal offenses from felonies to misdemeanors as a result of the passage of Proposition 47.

Below is a summary of substantive changes to the policy which shall not take the place of reading and understanding the entire policy.

1. Change to Part III, A, 1, a-f (Arresting Officer's Responsibilities)

Previous version:

1. Officers who make a probable cause arrest for any of the following offenses shall request their immediate supervisor respond to the scene and obtain arrest approval prior to transporting the arrestee:
 - a. Felonies;
 - b. Arrests for possession of narcotics and drugs;
 - c. Marijuana offenses if the arrestee is transported to the Jail;
 - d. Resisting Executive Officers [Penal Code (PC) Section 69];
 - e. Resisting Peace Officers [PC Section 148(a)(1)]; and
 - f. Battery Against a Peace Officer [PC Section 243(b) or (c)].

Revised (emphasis added):

1. Officers who make a probable cause arrest for any of the following offenses shall request their immediate supervisor respond to the scene and obtain arrest approval prior to transporting the arrestee:
 - a. Felonies;
 - b. **Arrests for possession of narcotics, drugs, or marijuana if the arrestee is to be transported to jail for possession of narcotics, drugs or marijuana;**
 - c. Resisting Executive Officers [Penal Code (PC) Section 69];
 - d. Resisting Peace Officers [PC Section 148(a)(1)]; and
 - e. Battery Against a Peace Officer [PC Section 243(b) or (c)].

2. Special Orders 8536 and 8841 have been incorporated into this order and are hereby cancelled.
3. The addition of the Electronic Consolidated Arrest Report (ECAR) and Probable Cause Declaration (PC Dec), as currently used in CRIMS, IPAS and FBR.

By order of

A handwritten signature in black ink, appearing to read "Sean Whent". The signature is written in a cursive style with a prominent vertical stroke at the end.

Sean Whent
Chief of Police



DEPARTMENTAL
GENERAL
ORDER

M-18

Index as:

Arrest Approval
Report Review

Effective Date:
13 Nov 14

Evaluation Coordinator:
BFO Commander

Evaluation Due Date:
13 May 15

Automatic Revision Cycle:
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PROBABLE CAUSE ARREST AUTHORIZATION AND REPORT REVIEW

The purpose of this order is to set forth Departmental policy and procedures for supervisors to review certain field arrests and make a determination as to whether the articulated facts meet the required level of suspicion and for the supervisory review of the preliminary investigation and the offense reports documenting the arrests and investigations.

I. DEFINITIONS

A. Arrest

An arrest occurs when a person is taken into custody. This requires either:

1. An officer physically restrains or at least touches the person; or
2. That the person submitted to the officer's authority.

An arrest is more than an investigatory detention.

B. Arrest Approval

Whenever a supervisor determines that the legally required level of suspicion existed to make an arrest or a detention.

C. Arrest Disapproval

Whenever a supervisor determines that the legally required level of suspicion to make an arrest or detention did not exist.

D. Arresting Officer

A police officer, sergeant, or lieutenant of police who affects an arrest by taking another person into physical custody.

E. Probable Cause

Probable cause [to arrest] exists when, under the totality of the circumstances known to the arresting officers, a prudent person would have concluded that there was a fair probability that [the defendant] had committed a crime.

F. Reasonable Suspicion

In order for an investigative stop or detention to be valid, you must have a "reasonable suspicion" that:

1. Criminal activity may be afoot; and
2. The person you are about to detain is connected with that possible criminal activity.

G. Report Approval

Whenever a supervisor has reviewed the offense reports and associated documents and determined that the preliminary investigation is complete *and* that report is complete, clear, and properly written.

II. POLICY

A. This policy requires arrest approval for specific types of arrests made by Departmental personnel classified as police officer, sergeant, and lieutenant of police.

B. Arresting Officers, as defined in this order, shall not approve their own arrests.

C. All arrest approvals shall be made by the arresting officer's supervisor, a field supervisor, or a command officer in accordance with the provisions of this order.

D. This policy does not apply to:

1. Arrests made by sworn personnel above the rank of lieutenant or assigned an acting rank above lieutenant;
2. Detentions when no arrest is made;
3. Private Person Arrests (OPD accepts custody of arrestee from private person); and

4. Warrant Arrests (probable cause has already been reviewed) except when a new offense is committed that requires an approval per this policy.
- E. Appropriate arrest reports shall be prepared and submitted with a Probable Cause Declaration (PCDec) as follows:
 1. Adults – Electronic Consolidated Arrest Report (ECAR) or paper Consolidated Arrest Report (CAR);
 2. Juveniles – Juvenile Record (303-606).

III. PROCEDURES

- A. Arresting Officer's Responsibilities
 1. Officers who make a probable cause arrest for any of the following offenses shall request their immediate supervisor respond to the scene and obtain arrest approval prior to transporting the arrestee:
 - a. Felonies;
 - b. Arrests for possession of narcotics, drugs, or marijuana if the arrestee is to be transported to jail for possession of narcotics, drugs or marijuana;
 - c. Resisting Executive Officers [Penal Code (PC) Section 69];
 - d. Resisting Peace Officers [PC Section 148(a)(1)]; and
 - e. Battery Against a Peace Officer [PC Section 243(b) or (c)].
 2. Officers who make any arrest involving an *investigated use of force* shall request their immediate supervisor to the scene and obtain arrest approval prior to transporting the arrestee unless a medical necessity requires the arrestee be transported prior to the supervisor's arrival.
 3. If the immediate supervisor or a supervisor assigned to the Area is unavailable, officers shall seek arrest approval from any available supervisor or commander.
 4. The arresting officer shall complete the appropriate arrest reports documenting the probable cause for the arrest and if applicable, the reasonable suspicion for the detention that preceded the arrest prior to seeking arrest approval; AND

Document in the offense report whether the supervisor responded to the scene to approve the arrest.

5. Crime (Offense) reports do not need to be completed before an officer seeks arrest approval.
6. If the scene is not stable or safe, or it is impractical to request that a supervisor respond to the scene, the officer shall move and arrange to meet with the supervisor at an alternate location without unnecessary delay. The officer shall ensure that the reason for the change of location is documented in the offense report narrative.
7. Members shall identify and document all known witnesses to the criminal offense in the appropriate offense report. If there are no known witnesses, members shall document this fact in the appropriate offense report.

B. Supervisor's Responsibilities

1. Responding to the Scene

- a. Supervisors shall respond to the scene of any arrest or use of force described in Part III, A, 1-2. If the scene is not stable or safe, or it is impractical to respond, supervisors shall arrange to meet with the arresting officer at another location without unnecessary delay. The supervisor shall ensure that the reason for the change of location is documented in the offense report narrative.
- b. Supervisors shall advise the Communications Division of their arrival on-scene:
 - 1) Via radio using the radio code 997, or
 - 2) If the supervisor's vehicle is equipped with an MDC, the supervisor may manually change their status to OS (on-scene).
 - 3) Exemption:

Supervisors of field units are exempted from the 997 radio advisement requirement when the following conditions exist:

- a) The supervisor's unit is not operating on the main radio channel and the supervisor is in direct observation and control of the unit; **and**
 - b) The unit is involved in activities to include but not limited to the following:
 - (1) Surveillance;
 - (2) Buy/Bust operations;
 - (3) Arrest/Search warrant service; and
 - (4) Enforcement operations involving undercover operatives.
 - c. Supervisor's responding to an arrest involving an investigated use of force shall:
 - 1) Ensure that medical attention, if needed, is provided in a reasonable amount of time
 - 2) Ascertain the cause of any injuries and investigate any allegation of a use of force; and
 - 3) Ensure that the arrestee's injuries and/or complaints of pain are documented on the PCDec/Juvenile Record and/or other appropriate report.
2. Reviewing the Probable Cause and Reasonable Suspicion
- a. Supervisors shall review the specific facts articulated by the arresting officer justifying the arrest (and detention if applicable) as documented by the arresting officer on the PCDec or Juvenile Record and determine whether reasonable suspicion for the detention and/or probable cause for the arrest exists.
 - b. Supervisors shall either approve or disapprove arrests without unnecessary delay. Upon review, if a supervisor determines that probable cause exists but has not been properly articulated, they shall direct the arresting officer(s) to properly document the specific facts justifying the arrest on the PCDec/Juvenile Record.

3. Approving the Arrest

If the supervisor determines that probable cause exists and has been properly documented on the PCDec or Juvenile Record, they shall document their approval of the arrest by:

- a. Approving the ECAR on CRIMS;
- b. Signing in the appropriate box on line No. 9 of the CAR, if a paper CAR is used; or
- c. Signing in the narrative of the Juvenile Record and note the time of the approval.

The approving supervisor shall also document on the ECAR, paper CAR or Juvenile Record the location where the approval was made (i.e. on-scene, ACH, Glen Dyer Jail, etc.)

Upon completion of this assignment, the approving supervisor shall provide the disposition of **SAA** (supervisor's approval of arrest) for the incident to the Communications Division via radio or MDC.

Supervisors of field units are exempted from the SSA radio advisement requirement if any of the conditions enumerated in Part III, B, 1, b, 3 exist.

4. Disapproving an Arrest

- a. If the supervisor does not find probable cause exists, the supervisor shall ensure that the arrested person is released and offered transportation to the site of the arrest or another location that reasonably accommodates the arrested person.
- b. The supervisor shall:
 - 1) Prepare a Supplemental Report stating the reasons for the disapproval. Specifically, the Supplemental Report shall explain what specific facts were articulated by the arresting officer followed by the reviewer's opinion supporting their conclusion that the required level of suspicion was not met;
 - 2) Document that the Watch Commander was notified of the circumstances surrounding the disapproval; and

- 3) Submit the Supplemental Report with the arresting officer's offense report.
 - 4) Upon completion of this assignment, the disapproving supervisor shall provide the disposition of **SDA** (supervisor's disapproval of arrest) for the incident to the Communications Division via radio or MDC. Supervisors of field units are exempted from the SDA radio advisement requirement if any of the conditions enumerated in Part III, B, 1, b, 3 exist.
- c. The supervisor shall ensure that the arresting officer completes the appropriate offense report(s) and documents release of the arrestee in the narrative portion of the appropriate offense report.
- d. The supervisor shall determine whether the circumstances of a disapproved arrest indicate a need for training or constitute a possible *Manual of Rules* violation.
- 1) If a training need is identified and no *MOR* violation has occurred, the supervisor shall ensure that the involved officer receives appropriate training and the supervisor shall document the incident in a Supervisory Note File (SNF) entry for the involved officer.
 - 2) If the supervisor alleges a *MOR* violation, they shall initiate an investigation in accordance with the provisions of DGO M-3.
 - 3) Supervisors who disapprove any arrest for any reason shall immediately notify the Watch Commander regarding the details of the incident.

C. Watch Commander's Responsibilities

1. If a supervisor is not available, the Watch Commander shall assume the responsibilities of approving/disapproving arrests in the field.
2. The Watch Commander shall review the circumstances of each disapproval on their shift and ensure compliance with the provisions of this order. The purpose of the review is to identify training issues and policy violations that require managerial actions.

IV. REVIEW OF REPORTS IN THE FIELD

A. Officer's Responsibilities

1. Officers completing an offense report for any crime listed in Part III, A, 1-2, of this order or any felony offense, whether the suspect is in custody or not, shall submit the completed packet (e.g., the appropriate case/in-custody envelope containing the appropriate offense report, PCDec/ECAR/CAR/Juvenile Record and ancillary documents) to their immediate supervisor or follow-up investigator assigned to the case for review and approval prior to depositing the reports in the appropriate report receptacle.
2. All completed CAR/Juvenile Records documenting an arrest shall be submitted with the appropriate offense report.
3. PCDec/ECAR/CAR/Juvenile Records shall be submitted even if the arrest is disapproved or the arrest was approved but the arrestee was later released in the field pending further investigation. The case packet involving such incidents shall be forwarded in a Case Envelope, not in an In-Custody Envelope.
4. In the absence of the immediate supervisor, members shall submit the reports to the supervisor in an adjacent Area or an oncoming field supervisor for review.
5. Whenever possible, offense reports documenting approved arrests shall be reviewed and approved by the supervisor who approved the arrest.

B. Supervisor's Responsibilities

1. Supervisors shall review all offense reports submitted to them pursuant to Part IV of this order and shall ensure that a thorough preliminary investigation was conducted and that all investigative steps were properly conducted and documented.
2. Supervisors shall review the report packet prior to submission to ensure:
 - a. Reasonable suspicion for the detention and probable cause for the arrest are properly articulated;
 - b. Available witnesses to the criminal offense have been identified and documented in the appropriate offense report. If there are no known witnesses, supervisors shall ensure that fact is documented in the appropriate offense report.

- c. Solvability factors have been noted and documented on the Crime Report;
 - d. Reports articulate specific details unique to the incident of arrest and do not contain inappropriate “boilerplate” or “canned” language; and
 - e. All applicable offense reports, PCDec/ECAR/CAR/Juvenile Records and ancillary documents have been completed and submitted, the correct crime classification is noted, the documentation of crime elements is complete, and all documents are legible.
 - f. Collected evidence has been properly documented and processed.
3. Supervisors shall return incomplete or unsatisfactorily written reports to the reporting member for revision, completion, and/or further investigation.
 4. Upon satisfactory review and approval, a supervisor or follow-up investigator assigned to the case (e.g., Homicide, CID call-out) shall sign the offense reports in the appropriate box or approve the report in the FBR system.
 5. If the offense report states that an arrest has been disapproved, the reviewing supervisor shall ensure copies of the completed offense report including the PCDec/ECAR/CAR/Juvenile Record(s), any ancillary documents, and the Supplemental Report detailing the reason(s) for the disapproval(s) are forwarded to IAD for entry into the appropriate Departmental database.

By order of



Sean Whent
Chief of Police

Date Signed _____