

Metropolitan Police Academy



6.3 Processing Custodial Arrests

Introduction

During this lesson students will be introduced to guidelines and procedures for processing custodial arrests. This includes adhering to the *Lively* standard, identifying the *Gerstein* affidavit, and the process of papering a case. Recruits should take another look at Block 3, report writing, to review the basic steps and processes of completing a report.

6.3.1 Identify the case statuses used by the Metropolitan Police Department

As a police officer, you will take many reports. Each report will have a status associated with it. The status of each case can change and be updated as the investigation progresses.

There are five (5) case statuses, although as patrol officers you will be most concerned with open cases and those that are closed by arrest. If you believe that you should use one of the other case statuses, you will need approval from an official. The case statuses are as follows:

Open Cases

A case is considered open when more investigation is required to accumulate additional evidence and/or to identify the offender or to make an arrest.

Cases Closed by Arrest

A case is considered closed by arrest when a person is arrested, charged with the commission of the offense, and presented to court for prosecution (whether following arrest, court summons, or police notice). In addition:

- A case may be considered closed by arrest even if no physical arrest is made when the offender is under eighteen (18) years of age and is cited to appear in juvenile court or before other juvenile authorities.
- Even if more than one person was involved in the commission of the offense, the offense is considered closed by arrest if one person is arrested and charged.
- Several associated crimes may be cleared by the arrest of a single person. When that occurs:
 - Each offense specified for a particular case must be closed in the internal narrative (formerly form PD252).
 - Where an offender has been identified and there is corroborating evidence, the case will be presented to an Assistant US Attorney (AUSA) or Assistant Attorney General.
 - The offender must be specifically associated with each case closed. General statements based on such things as similar modus operandi, same offense locations, offender identification, etc., will not be sufficient in themselves for justifying multiple closures.
 - In the event the deciding official (CID sergeant or lieutenant or district official, depending on the nature of the crime) determines that multiple cases may be closed by the same arrest, he or she will ensure that the complaint number, the date of the original and supplemental reports, the district of occurrence, the offense, the value of property recovered and/or the value of property not recovered, and specific reasons why the AUSA declined to prosecute are listed for each case closed in the report narrative.

Cases Exceptionally Closed

A number of exceptional conditions not resulting in an arrest can also close an offense report.

- To be considered exceptionally closed, the deciding official must answer, “yes” to all of the following four questions:
 - Has the investigation definitely established the identity of the offender?
 - Is there enough information to support an arrest charge and turn the case over to the court for prosecution?
 - Is the exact location of the offender known so that he or she could be taken into custody now?
 - Is there some reason outside law enforcement control that precludes the arrest, charging, and prosecution of the offender?

- Examples of cases exceptionally closed include:
 - Suicide of the offender.
 - Double murder where the two persons kill each other.
 - Deathbed confession.
 - Offender killed by police or citizen.
 - Offender dies by other means not specified above.
 - Confession by an offender already in custody or serving a sentence for another offense.
 - Offender is prosecuted by state or local authorities in another city for a different offense or is prosecuted in another city or state by the federal government for an offense that may be the same, and the MPD makes an attempt to return the person for prosecution but the other jurisdiction will not allow the release.
 - Extradition is denied.
 - Victim refuses to cooperate in the prosecution.
 - Warrant is outstanding for the offender but before being arrested, the offender dies (e.g., of natural causes, as the result of an accident, or in the commission of another crime).
 - Any juvenile offender eligible for diversion.

Suspended Cases

A case may be suspended by the deciding official when every reasonable avenue of investigation has been pursued and exhausted. Under such circumstances, the case will not be considered closed. Although active work on the case is discontinued, additional information such as new evidence, arrest of a suspect on a subsequent case, etc., may be forthcoming and should be pursued at that time.

Unfounded Cases

The deciding official may classify a report as unfounded when an investigation proves the report to be false or baseless (i.e., the investigation shows that no offense occurred or was attempted). Unfounded cases are not calculated into MPD clearance rates.

6.3.2 Explain the booking procedures used by the Metropolitan Police Department

In this lesson, we are going to focus on cases that are closed by arrest. After an arrest, a prisoner is handcuffed, searched, and transported to the station. Once your prisoner arrives at the station, the booking process begins. When the prisoner is brought into the station, you present the Quick Booking form (PD256) to the booking team in the station.

Once the booking team has taken custody of the prisoner, the prisoner will be fingerprinted using Livescan. **Livescan** is located at a workstation and is used to digitally capture the prisoner's fingerprints. The Livescan system will then compare the fingerprints to known fingerprints in the Automated Fingerprint Identification System (AFIS).

AFIS is a biometric identification system that uses digital information obtained through Livescan to store and analyze fingerprint data. AFIS is administered by the FBI and used by agencies across the country to identify arrestees and solve crimes. If AFIS returns a hit, it will provide the booking officer with the prisoner's true name. A **true name** is the name that was given at the time of the prisoner's first arrest, and it is associated with the Police Department Identification Number (PDID) and fingerprint record. A **PDID** is a unique six-digit number that is also assigned to the prisoner at the time of their first arrest. The PDID will be used to track individuals every time they are arrested, even if they give false names. A photograph will also be taken of the arrestee at this time.

6.3.3 Complete an arrest for a defendant who is the subject of an arrest warrant in WALES/NCIC

Now we are going to talk about completing arrest packages using warrants. The three types of arrest warrants that you will most commonly see in the field are Superior Court arrest warrants, Failure to Appear warrants, and arrest warrants issued outside the District of Columbia, which we refer to as Fugitive from Justice warrants.

Superior Court Arrest Warrant

This is an arrest warrant issued for an individual based on probable cause that he or she committed a specific crime. These warrants are granted by a judge after a review of probable cause based on an affidavit provided by a law enforcement officer. Arrest warrants for misdemeanor crimes expire after one (1) year from the date of issuance. If the prosecuting attorney wishes to extend a misdemeanor warrant, he or she can do so by asking a judge to renew it.

Bench Warrant

This is an umbrella term that encompasses Failure to Appear warrants, Contempt of Court warrants, and Probation/Parole Violation warrants. Additionally, it should be noted that "Bench Warrant" is not a valid charge when making an arrest. Instead, the officer must use one of the following as the charge:

- **Failure to Appear Warrant** – This type of warrant is issued when the subject of the warrant failed to attend a scheduled court hearing. A judge issues the warrant without any application or request from law enforcement.
- **Contempt of Court Warrant** – This type of warrant is issued when the subject of the warrant has failed to comply with a judge's order and the judge deems it necessary to have the subject arrested and brought before the court.
- **Probation/Parole Violation Warrant** – This type of warrant is issued when a judge finds that a subject has not followed the conditions of probation or parole and the judge deems it necessary to have the subject arrested and brought before the court.

- **Fugitive from Justice** – This actually is only a holding charge that carries no penalty pursuant to DC Code. Procedures for the booking and processing of this type of prisoner are the same as if he or she was arrested for a criminal offense. A fugitive from justice is any person who has an active arrest warrant issued by another jurisdiction that is subjecting him or her to extradition, meaning the other jurisdiction is requesting that the individual be turned over for prosecution there.

Processing a warrant following an arrest is very similar to processing the other charges you have learned. The difference is in the arrest narrative.

- When making an arrest for a DC Superior Court warrant, your arrest narrative must include:
 - The facts and circumstances of the original incident that establish probable cause.
 - The CCNs from the original report.
 - The court that issued the warrant. (e.g., DC Superior Court or US District Court)
 - The name of the judge who issued the warrant.
 - The date the warrant was issued.
 - The warrant number.
- When making an arrest for a bench warrant, your arrest narrative must include all of the following:
 - The original charge, if available.
 - The court that issued the warrant. (e.g., DC Superior Court or US District Court)
 - The name of the judge who issued the warrant.
 - The date the warrant was issued.
 - The warrant number.
- When arresting a subject for fugitive from justice, you must verify through the Office of Unified Communications (OUC) or the originating jurisdiction that the person arrested under the warrant is subject to extradition. In addition, your arrest narrative must include the following:
 - The law enforcement officer or agent who verified the extradition status.
 - The original charge, if available.
 - The issuing jurisdiction.
 - The date the warrant was issued.
 - The warrant number

In addition to the completion of the arrest/prosecution report, let's now discuss the rest of the arrest package for a warrant arrest.

Arrest Package

An arrest package is a collection of all the documents and notes that have been created in reference to an arrest. All of these documents and notes need to be put into a particular order to be presented to the prosecutor and potentially a defense attorney. The documents most commonly contained in an arrest package for a warrant arrest are listed below:

- **District Review Sheet**
The district review sheet is commonly referred to as the cover sheet. It is a checklist to ensure that your arrest package includes all the pertinent information and documents.

- **Arresting Officer and Assisting Officer List**
This list was formerly referred to as the PD168. The arrest report in Cobalt must contain an accurate list of all the officers that were involved in the case, their information, and the role each one played in the case. This list is used by the prosecuting attorney to determine which officers are needed for trial and why they might be needed.
- **Arrest/Prosecution Report**
This report, formerly known as the PD163, is the statement of facts regarding an arrest. The arrest/prosecution report will contain all the information collected for the suspect. It will chronologically describe the crime that occurred and the facts and circumstances that led the arresting officer to believe that a particular individual committed the crime.
- **Offense or Incident Report**
This report is formerly known as the PD251. It is a public document used to report an incident or an offense. The report is located in the Cobalt report in the card labeled “Narrative.” In the case of an offense, the event report’s narrative is simple and lists only the elements of the crime. The narrative does not go into detail or reveal sensitive information.
- **Internal Report**
This report is formerly known as the PD252. It is a non-public/internal document. It is also located in the Cobalt report in the card labeled “Narrative.” It is where sensitive information that should not be released to the public is documented. The internal report is also used to add additional information that was not available at the time of the original report. Keep in mind that there may be more than one internal report if a case has been open for a longer period of time.
- **Rights Card (PD 47)**
The rights card is used to document the issuance of *Miranda* warnings in the case of custodial interrogation. The rights card must be included in your arrest package only if a defendant was advised of his or her rights. Do not include a blank PD47 if the defendant was not advised of his or her rights.
- **Officer’s Notes**
Officer’s notes are anything you write in your notebook or anywhere else. These notes are required to be presented to the defense should a case go to trial and need to be included in your arrest package.
- **Gerstein Affidavit**
A *Gerstein* affidavit documents the facts that led to a particular defendant’s arrest. The affidavit is used by the court during a judicial review of probable cause to determine if a defendant should be held prior to trial. This document gets its name from the court case *Gerstein v. Pugh*. The *Gerstein* affidavit is typically identical to the arrest narrative.

Once you have completed all of the documents in the arrest package, arrange them in the following sequence:

1. District Review Sheet
2. Mark43 Arrest Report
3. Rights Card (PD47), if advised
4. Officer Notes

5. Gerstein x3

You will arrange the documents of all arrest packages submitted in this sequence. When dealing with arrests that are more complex additional documents may be required and the sequence for those arrests can be located in **General Order 701.01 – Courts and Hearings**.

6.3.4 Identify the Gerstein Affidavit

Gerstein v. Pugh, 420 U.S. 103 (1975)

CASE SYNOPSIS

Petitioner sought review of a judgment of the US Court of Appeals for the Fifth Circuit that affirmed a ruling that held that the practice holding a person for trial on an information (complaint) without a judicial determination of probable cause for detention was unconstitutional.

CASE FACTS

Respondents were arrested in Florida and charged with offenses under a prosecutor's information. One respondent was denied bail and the other respondent was unable to post bond. At the time of the respondents' arrests, a person charged by information could be detained for a substantial period without the opportunity for judicial determination of probable cause. Respondents filed a class action in which several defendants claimed a constitutional right to a judicial hearing on probable cause.

DISCUSSION

The Florida State Attorney petitioned the US Supreme Court for review. The Supreme Court took the case and addressed two issues: "whether a person arrested and held for trial on an information is entitled to a judicial determination of probable cause for detention and, if so, whether the adversary hearing ordered by the District Court and approved by the Court of Appeals is required by the Constitution."

HOLDING

The judgment was affirmed in part and reversed in part. The US Supreme Court agreed that the Fourth Amendment requires a timely judicial determination of probable cause as a prerequisite to detention; however, the Court did not agree that the US Constitution requires the determination of probable cause to be in the form of an adversary hearing.

6.3.5 Adhere to the *Lively* standard in processing arrests

While the station is booking the prisoner, the arresting officer must begin processing the arrest package. There is a limited amount of time from the point of arrest to have the prisoner ready to appear in court. This time period is known as the *Lively* standard. This standard gets its name from the lawsuit brought in the case *Lively v. Cullinane*, 451 F. Supp 1000 (1978). Though this case was eventually dismissed, the department agreed to adhere to the court's interim order establishing a four (4) hour period from the point of arrest to having a prisoner ready to appear in court.

As a result of this agreement, it is the policy of MPD to process prisoners coming into custody of the department in the most reasonable time required for the collection of information to positively identify and process the individual in custody.

- In all circumstances, the *Lively* four (4) hour time period begins at the time of arrest and ends at the time the prisoner is ready to be transported to court or is released from custody.
- Officers involved in booking and processing must make all reasonable efforts to ensure that prisoners are processed and either released or presented to the Central Cell Block (CCB) or court in accordance with the following requirements:

Lockup Cases

- When processing lockup cases for transport to the CCB, members have up to three (3) hours from the time of the arrest to complete their arrest paperwork, process the arrest, book the arrest, and transport the prisoner to the CCB. This provides CCB with the remaining hour to Livescan the prisoner and complete the processing of the case for presentment in court.
- When processing lockup cases for transport directly to the US Marshal's Service cell block, members will have four (4) hours from the time of the arrest to complete their paperwork, process the arrest, and transport the prisoner to the Marshal's cellblock.

Prisoners Eligible for Release – Members must process prisoners eligible for early release within the four (4) hour time requirement.

NOTE: Failure to adhere to the *Lively* standard can expose the department and officers to civil liability.

6.3.6 Explain the release outcomes possible for a custodial arrest

Once your arrest package has been completed, the booking team will contact the Pretrial Services Agency to assist in determining which release outcome is appropriate for the prisoner.

Pretrial Services Agency (PSA)

This agency assists judicial officers in both the Superior Court for the District of Columbia and the US District Court for the District of Columbia in formulating release recommendations and providing supervision and services to defendants awaiting trial. It also is responsible for making a recommendation to the booking team as to whether a prisoner is eligible for citation release and the scheduling of all arraignment hearing dates for prisoners released on citation.

Citation Release

Citation Release is the release of adults pending a court date who have been charged with misdemeanors and meet the specific eligibility requirements below.

Any adult eighteen (18) years of age or older arrested on one (1) or more non-violent misdemeanor charges shall be considered eligible for release on citation unless they:

- are being charged with a dangerous crime under DC Code § 23-1331(3) or a crime of violence under DC Code § 23-1331(4).

- are being charged with an intra-family offense as defined in DC Code § 16-1001 (Domestic Violence).
- are being charged with indecent exposure or proposal to a minor.
- are being charged with Unlawful Entry under DC Code § 22-3302 at the White House complex or an Embassy.
- are being charged with any violation related to firearms or ammunition.
- are in possession of a destructive device unless the device is self-defense spray that complies with DC Codes § 7-2502.12 and § 7-2502.13 whether or not the device is registered.
- Cannot conduct a coherent interview (e.g., due to intoxication from alcohol or drugs.)
NOTE: These arrestees shall be transported for medical evaluation and reconsidered for citation release after being medically released by a hospital or after they are considered to be sober.
- Inaccurately reports information concerning their name.
- Indicates an intention to flee or to cause harm to any person or property, or otherwise poses a serious risk of flight.
NOTE: This includes arrestees for offenses related to gang/crew involvement who may seek retaliation.
- May be held pursuant to **DC Code §23-1322** for one of the following reasons:
 - Is currently on probation, parole, or supervised release.
 - Is currently on release in a pending felony case .
 - Is currently on release in two or more pending misdemeanor cases.
 - Is currently on release for a simple assault, domestic violence, or misdemeanor weapons offense.
 - Is currently on release for a misdemeanor case and the defendant’s behavior suggests that he may be a danger to others due to possible mental illness.
- Is arrested for a traffic offense and is on probation for or has a pending DWI, DUI, OWI, fleeing, reckless driving, or leaving after colliding (with property damage or personal injury) charge.
- Has a criminal history that includes a BRA or escape conviction within the past two (2) years.
- Has an outstanding extraditable warrant from another jurisdiction.
- Is in violation of a court order (i.e., curfew, stay away, Drug Free Zone, or Prostitution Free Zone).
- Is a current Gun Stat candidate.
- Is charged with Unlawful Entry under DC Code 22-3302 at the White House Complex or any Embassy.

- Is arrested on White House grounds.

NOTE: Arrestees who are homeless and/or who reside in homeless shelters and/or group homes are eligible for citation release and are not to be automatically denied. Arrestees who do not reside in the District of Columbia are not to be automatically denied. If it is determined that a prisoner is eligible for citation release, he or she will be released using a **Notice to Appear in Court** or **Post and Forfeit**.

Elect to Forfeit

This is a process where, in lieu of appearing for a trial and if the offense is eligible, the violator may post and forfeit the collateral amount assigned to the charge without either admitting guilt or adjudicating the criminal offense. In other words, the offender waives the right to a hearing in court and the case against the offender is concluded without an admission of guilt. The offender will not have a conviction record but will have an arrest record on the charges for which collateral was forfeited.

General Criteria

- Post and forfeit is available twenty-four (24) hours a day, including when court is in session.
- Members shall only charge arrestees the authorized forfeit amount that appears on the bond and collateral list and relevant teletypes.
- Arrestees may not be offered post and forfeit unless all of the charges are post and forfeit eligible and the arrestee elects to dispose of all charges through post and forfeit.
- Arrestees who elect to post and forfeit and who have multiple charges that are eligible for post and forfeit must forfeit the assigned collateral amount for each and every charge.
- Any offer to permit an arrestee to use post and forfeit expires when the arrestee declines the offer and is given a court appearance date.
- Non-custodial arrestees **shall not** be allowed to post and forfeit if they fail to abide by the requirement that they report to the district within fifteen (15) calendar days from the date that the field arrest took place to complete the booking process. However, they may still be eligible for citation release if no arrest warrant has been issued pursuant to the Violation Citation (61D).

Charge Criteria

- The charge must be on the approved bond and collateral list (**GO 503.03**).
- The arrestee must not be charged with any of the following:
 - Impaired Driving or Boating
 - False Report to a Police Officer
 - Leaving after Colliding
 - Object Falling or Flying from a Vehicle
 - Misrepresentation of age to purchase alcohol or enter into an ABC licensed establishment
 - Selling or giving alcohol to a minor or an intoxicated person
 - Tax Fraud or Welfare Fraud

Arrestee Criteria

Arrestees may be eligible for post and forfeit when they have been arrested previously multiple times on the same or different charges. However, per the Office of the Attorney General, arrestees **shall not** be allowed to post and forfeit if they have elected to forfeit collateral on three (3) previous occasions within the previous twelve (12) months. In order to be eligible for post and forfeit, the arrestee must meet the following criteria:

- **Must** be 18 years of age or older.

- **Must** meet the eligibility criteria for citation release as outlined in this lesson.
- **Must not** have an open criminal or delinquency case, including probation.

Lockup Cases

Any prisoner who does not meet the eligibility requirements for citation release or for elect to forfeit is considered a lockup case. Lockup cases must be transported to the department's Central Cell Block after processing but prior to appearing in court.

Detention Journal

The detention journal is a record of information on individuals that have been arrested and then released without charge. The watch commander will make the determination based on the existence of probable cause. The detention journal is most commonly used in cases where a member of the department makes an arrest but new facts later become known that eliminate probable cause.

6.3.7 Define Papering

Papering is the initial presentation of a member's case to the prosecuting attorney. There are two (2) types of papering: in-person papering and officer-less papering. Cases are considered officer-less unless they meet the criteria listed below.

In-person papering is required in juvenile cases, firearms cases, and with the following charges:

- Aggravated Assault
- Arson
- Acts of Terrorism
- Assault on a Police Officer (APO) (all cases)
- Assault with a Dangerous Weapon (ADW)
- Assault with Intent to Kill (AWIK)
- Assault with Intent to Commit Any Offense (e.g., Robbery)
- Burglary
- Carjacking
- Cruelty to Children
- Domestic Violence (misdemeanor or felony)
- Extortion or Blackmail
- Gang Recruitment
- Kidnapping
- Malicious Disfigurement
- Manslaughter
- Manufacturing, Using or Possessing a Weapon of Mass Destruction
- Mayhem
- Murder
- Robbery
- Sex Abuse Charges (Including Child Sex Abuse)

NOTE: In terms of the above charges, in-person papering also includes situations involving:

- the committing these offenses While armed.
- the attempt or Conspiracy to Commit any of these offenses.
- any federal charges.

- any co-defendant cases where one of the defendants is charged with any of these offenses.

When in-person papering is required, you must first respond to department Headquarters and check in with the Court Liaison Division (CLD). CLD is located on the first floor at 300 Indiana Ave NW. While at CLD, you will complete a Court Attendance Record (PD140) and then present it to the CLD officer so you can be checked into court. Once you have checked in, you will go to the appropriate papering office to present your case to the prosecutor.

Summary

In this lesson, we discussed how the station booking team books a prisoner. We also discussed how to complete arrest packages for warrant arrests. The completion of arrest packages is a skill that you will be required to perform repeatedly throughout your career.