

General Order

Houston Police Department



ISSUE DATE:

May 2, 2023

NO.

500-07

REFERENCE: Supersedes all prior conflicting Circulars and Directives, and General Order 500-07, dated May 2, 2019

SUBJECT: FILING CLASS B OR HIGHER CHARGES

POLICY

This General Order outlines procedural guidelines for officers and supervisors to use when filing charges in Harris, Fort Bend, and Montgomery Counties. Officers shall work cooperatively with each district attorney's office to reduce the number of cases dismissed and provide effective law enforcement. Proper documentation of the facts and supervisory review reduces incidents of charges being dismissed and protects officers from frivolous complaints.

This General Order applies to classified employees only.

1 GENERAL PROCEDURES

The officer filing a criminal charge shall file the highest appropriate charge according to the elements of the offense. The officer shall not issue a lesser citation or file a lesser charge as a matter of convenience (e.g., filing a charge of Public Intoxication if the actual offense was Driving While Intoxicated). Whenever an officer is unsure of the elements of a particular case, the officer should review the statute, if known, and contact the appropriate district attorney's office and/or consult with an appropriate supervisor.

The officer shall consult with a supervisor and contact the appropriate district attorney's office prior to simultaneously filing county and municipal charges against one suspect if these charges are based on the same set of circumstances or the same criminal action. This consultation eliminates the possibility of a case being dismissed because of noncompliance with the Speedy Trial Act or because of violations of legal restraints against placing a defendant in double jeopardy.

The officer shall include sufficient details in the charges to prove each and every element of the offense. The officer shall include details of the offense that show probable cause existed to arrest the person and that there was evidence to prove the person being charged did in fact commit the offense. The officer shall include a compelling probable cause statement in the charge details, given that this may be the only information available to the assistant district attorney (ADA) when the defendant is arraigned before a magistrate during a probable cause hearing. The officer shall also document the exact time of arrest.

Only an officer who believes probable cause exists shall complete the charges. A supervisor shall not order an officer to complete charges if the officer does not believe probable cause exists.

If a supervisor finds mishandling by any officer filing charges, the supervisor shall instruct the officer on policy, procedure, and the applicable statute to avoid recurrences.

Officers shall submit original and supplement incident reports pursuant to General Order 800-07, **Completion of Incident Reports**. Officers shall tag all property and evidence pursuant to General Order 700-01, **Property and Evidence Control Regulations**. Officers shall also adhere

to the requirements of General Order 500-08, **Required Booking Information and Procedures**, and General Order 500-10, **Brady/Michael Morton Act Disclosure Requirements**.

2 CHARGES FILED IN HARRIS COUNTY

Prior to filing charges with the Harris County District Attorney's Office (HCDAO), the officer filing the charges shall speak with an ADA to ensure the HCDAO will accept the charges. The officer shall provide the elements of the offense, sufficient details to show that probable cause existed to arrest the person, and evidence that the person being charged did in fact commit the offense.

Charges Declined or Referred by an Assistant District Attorney

If the consulted ADA indicates that the HCDAO will not accept charges, the officer shall include the following information in the original or supplement incident report:

- a. Time and date the officer spoke with the ADA about filing charges in the case.
- b. Name of the ADA who did not accept the charge and the reason given by the ADA.
- c. If referred for further investigation, clarification on what the ADA wants investigated.

If the ADA declines the charge or refers the incident for further investigation and the officer does not agree, the officer shall notify a supervisor. If appropriate or required by policy, the supervisor shall respond to the scene to further review the facts of the case with the officer. If the supervisor determines probable cause exists for arrest, the supervisor shall contact the HCDAO and speak with the same ADA who initially declined the charge. If the ADA further declines the charge, is unavailable, or the facts of the case warrant bypassing the initial ADA, the supervisor may contact the Intake Chief on Duty to further discuss the facts of the case.

Filing In-Custody Charges for Class B or Higher Offenses

The officer filing charges shall enter Class B or higher charges via the District Attorney Intake Management System (DIMS) within two hours of the booking and registration process. The officer shall receive approval from an HPD Joint Processing Center Unit (JPCU) supervisor for any exception to this rule.

The officer shall provide a sworn statement to the charges, swearing to the provided information. The officer shall contact an HPD JPCU supervisor to review the charges. The supervisor shall review all charges filed by an officer, including digital evidence tagged in the department's digital evidence system, and send the charges to the HCDAO. If the supervisor determines the charges require additional information and/or revisions, the supervisor shall inform the officer of such required information and/or revisions. The officer shall immediately add the requested information and/or make the revisions to the charges and inform the supervisor, who shall review and send the charges to the HCDAO.

If the HCDAO returns the charges with a request for additional information and/or revisions, an HPD JPCU supervisor shall immediately contact the officer that submitted the charges and inform the officer of the requested information and/or revisions. The officer who submitted the charges, regardless of duty status, shall immediately add the required information and/or make the

revisions required for the HCDAO to approve the resubmitted charges. Upon completion, the officer shall immediately contact an HPD JPCU supervisor, who shall review the resubmitted charges and resend the charges to the HCDAO.

Filing To-Be Warrants for Class B or Higher Offenses

After an ADA accepts a charge, the officer filing the charge shall complete a typed probable cause statement and submit the statement to the HCDAO by email at tobe@dao.hctx.net. The officer shall contact and inform the HCDAO Intake when the officer will appear in person at the HCDAO Intake to complete the filing process. The officer shall complete the incident report, complete charges in DIMS, and collect any evidence required by the HCDAO to complete the filing process.

The officer shall complete the filing process at the HCDAO Intake during regular weekday business hours. After hours and on weekends, the officer may only complete the filing process for violent offenses, if a significant concern for public safety exists, and/or if there is concern for the safety of the victim. The officer shall confirm with the Intake Chief on Duty that the charge meets this criteria prior to going to the HCDAO Intake.

The officer filing the charge for a to-be warrant shall document the following in the incident report prior to going off duty, or within three calendar days of receiving the information if the officer receives the information at a later time:

- a. The transaction number and the date the officer sent the probable cause statement to the ADA.
- b. The charge information (e.g., charge, court, cause number, bond, and date of warrant).
- c. If any officer sent the warrant information to a warrant service team and any warrant service attempts, in accordance with General Order 500-19, **Warrant Service Procedures**.
- d. The supervisor the officer informed of any issue or delay in filing of the warrant.

Written Statement of Evidence Checklist

For Class B and higher charges, the officer filing charges shall submit a written statement acknowledging that all documents, items, and evidence required by Texas disclosure laws have been disclosed to the prosecuting attorney when filing charges. The officer shall complete the *Written Statement of Evidence Checklist* when filing charges for both in-custody charges and to-be warrants.

Cite and Release Program

Following an arrest and search incident to arrest, if no disqualification(s) exist, an officer shall issue a *Cite and Release (CAR) Citation* in lieu of taking the individual before a magistrate for the following Class A and B misdemeanors:

- a. Possession of Controlled Substance in Penalty Group 2-A; 4 ounces or fewer.
- b. Theft, if the value of the property stolen is \$100 or more, but less than \$750.

- c. Theft of Service, if the value of the service stolen is \$100 or more, but less than \$750.
- d. Criminal Mischief, if the amount of monetary loss is \$100 or more, but less than \$750.
- e. Graffiti, if the amount of monetary loss is \$100 or more, but less than \$2,500.
- f. Contraband in a Correctional Facility (Class B Misdemeanor).

If the officer believes that offering CAR to an otherwise qualified suspect is not the best course of action, the officer shall contact a supervisor for approval to withhold the offer. The officer shall document the supervisor's name and the basis for this determination in the incident report.

Disqualifications:

Juveniles and young adults, age 17 or younger, are not eligible for CAR; the officer shall process the juvenile or young adult in accordance with General Order 500-06, **Juvenile and Young Adult Encounters**. If the suspect is age 18 or older, the officer shall book the suspect in the JPC in the following circumstances:

- a. The suspect declines to participate in the CAR program or refuses to sign the *CAR Citation*.
- b. The officer used Reportable Force (RF) to detain or arrest the suspect.
- c. The officer cannot positively identify the suspect by government identification, mobile fingerprints, or other reasonable means.
- d. The suspect is not a resident of Harris County.
- e. The suspect needs immediate medical attention.
- f. The suspect demands immediate appearance before a magistrate.
- g. The suspect has outstanding warrants.
- h. The suspect is on parole for any crime.
- i. The suspect is to be charged with Possession of Marijuana - 4 ounces or fewer, and it is handled through Misdemeanor Marijuana Diversion Program (MMDP).
- j. Upon discussion with the ADA, the charge is enhanced due to prior convictions.
- k. The suspect's release could jeopardize the suspect's safety or the safety of others (e.g., intoxicated, family disturbance incident where leaving the suspect at the scene might enhance the incident from criminal mischief to violence).
- l. The officer determines, and a supervisor concurs, that there is reason to believe the suspect would not appear in court. The officer shall document the basis for this determination in the incident report (e.g., suspect has a history of capias pro fines and/or bond forfeiture).

Procedures:

After the officer determines the suspect qualifies for the CAR program, the officer shall:

- a. Contact the HCDAO to review probable cause and confirm suspect eligibility.
- b. Complete the *CAR Citation*, not the Class C misdemeanor citation.
- c. Release the suspect and, when applicable, ensure the suspect departs the scene.
- d. File the appropriate charge in DIMS and complete the steps as described in the above subsection, *Filing In-Custody Charges for Class B or Higher Offenses*.
- e. Scan the citation, email a PDF copy to the HCDAO at CAR@dao.hctx.net, upload the citation to the incident report via Intellinetics, and shred the hardcopy upon successfully uploading.

3 CHARGES FILED IN MONTGOMERY COUNTY

Prior to filing charges with the Montgomery County District Attorney's Office (MCDAO), the officer shall speak with an ADA to ensure the MCDAO will accept the charges. The officer shall provide the elements of the offense, sufficient details to show that probable cause existed to arrest the person, and evidence that the person being charged did in fact commit the offense.

An officer shall process an adult arrested in Montgomery County, inside the city limits of Houston, at the appropriate jail in Montgomery County. An officer shall process an adult female suspect at the Montgomery County Jail in Conroe. An officer shall process an adult male suspect at either the Montgomery County Jail in Conroe, or the East Montgomery County Jail Annex (non-violent and non-CIT prisoners only) in New Caney.

Charges Refused by an Assistant District Attorney

If the consulted ADA indicates that the MCDAO will not accept charges, the officer shall include in the original or supplement incident report the time and date the officer spoke with the ADA about filing charges in the case, the name of the ADA who refused the charges, and the reasons given for refusing the charges.

If the ADA refuses the charge and the officer does not agree with the refusal, the officer shall notify a supervisor. If appropriate or required by policy, the supervisor shall respond to the scene to further review the facts of the case with the officer. If the supervisor determines probable cause exists for arrest, the supervisor shall contact the MCDAO and speak with the same ADA who initially declined the charge. If the ADA further refuses the charge, is unavailable, or the facts of the case warrant bypassing the initial ADA, the supervisor may speak with a different ADA, or the Intake Chief on Duty during regular business hours to further discuss the facts of the case.

Filing In-Custody Charges for Class B or Higher Offenses

The officer shall complete all required booking and charge information at the applicable jail facility in Montgomery County. Upon completing the booking and charge information, the officer shall email the completed probable cause statement with a reference to the HPD incident number to

MCDAO at daintake@mctx.org. Upon request, the officer shall also provide a copy of the HPD incident report.

Filing To-Be Warrants for Class B or Higher Offenses

The officer shall complete the warrant at the MCDAO Intake during normal business hours.

Written Statement of Evidence Checklist

To acknowledge that all documents, items, and evidence required by Texas disclosure laws have been disclosed to the prosecuting attorney when filing charges, an officer shall add the following written acknowledgment in the charges: *"I am an agency employee with knowledge of this case and I acknowledge that all documents, items, and information that are known to me at this time and are in the possession of my agency that are required to be disclosed have been disclosed to your office."*

DWI Arrests

An officer shall take an adult arrested for DWI in Montgomery County to either the Montgomery County Jail in Conroe or the East Montgomery County Jail Annex in New Caney for an intoxilyzer and video test. If the two locations are unavailable, the officer may use the Harris County Sheriff's Office Annex in Humble, Texas Department of Public Safety (DPS) intoxilyzer locations, or the JPC.

If a certified HPD intoxilyzer operator is not readily available to meet and assist the arresting officer, the officer shall make a request to the dispatcher to have a DPS officer meet the officer and administer the intoxilyzer test. The officer may also request a Montgomery County deputy to administer the intoxilyzer test if a DPS officer is unavailable. The officer shall then process and charge the suspect as indicated above and deliver to the HPD JPCU the DWI paperwork and, if confiscated, the suspect's Texas driver license.

Juvenile Arrests

An officer shall transport a juvenile arrested in Montgomery County to the Montgomery County Juvenile Detention Center, in Conroe, where the juvenile shall be fingerprinted. The officer shall take a juvenile who is going to be interrogated as a suspect before a magistrate in Montgomery County for legal warnings.

The officer shall complete the Referral/Identification portion of the DPS *Juvenile Justice Tracking* form and leave a copy of the probable cause statement with Detention Center personnel. The officer shall also leave a copy of the HPD incident report, if completed. After normal business hours, the officer should contact the Montgomery County Juvenile Detention Center, Juvenile Intake Control Center, at 936-538-7755. The officer shall also email a copy of the probable cause statement to the MCDAO.

Pursuant to General Order 500-06, **Juvenile and Young Adult Encounters**, the officer shall contact the HPD Juvenile Intake Unit and route the incident report to both the Juvenile Intake Unit and any other applicable HPD concerned division.

4 CHARGES FILED IN FORT BEND COUNTY

An officer shall take an adult arrested in Fort Bend County (FBC), inside the city limits of Houston, before a magistrate in FBC to be given legal warnings. An officer shall process all FBC arrests through the FBC Jail, not the JPC.

Filing In-Custody Charges for Class “B” or Higher Offenses

An officer shall file charges at the FBC District Attorney’s Intake Division (Intake). The officer shall complete the *Fort Bend County Warrant Information Sheet* and arrest packet information, which are accessible on the HPD Intranet Portal under *Documents in General > Departmental Forms > Intake*.

The officer shall forward the arrest packet (i.e., incident report, suspect criminal history, *Warrant Information Sheet*, jail booking documents) to the Southwest Division commander or designee. The officer shall deliver a copy of the arrest packet to FBC Intake. After normal business hours, the officer shall provide the FBC Intake copy to the Southwest Division desk sergeant. The Southwest Division liaison shall deliver the copy to the FBC Intake during normal business hours.

Filing To-Be Warrants for Class “B” or Higher Offenses

The officer shall complete the warrant process at the FBC Intake during normal business hours.

Written Statement of Evidence Checklist

The officer shall follow the existing checklist and processes for the FBC District Attorney’s Office, which are sufficient to acknowledge that all documents, items, and evidence required by Texas disclosure laws have been disclosed to the prosecuting attorney when filing charges.

DWI Arrests

An officer shall take an adult arrested for DWI in FBC to the FBC Jail for an intoxilyzer and video test. The officer shall contact the HPD dispatcher, who shall notify the FBC Sheriff’s Office to have an on-duty intoxilyzer operator meet the arresting officer at the FBC Jail.

The officer shall submit copies of all necessary paperwork to the FBC Intake. After normal business hours, the officer shall deliver the paperwork to the Southwest Division desk sergeant. The Southwest Division liaison shall then deliver the paperwork to the FBC Intake during normal business hours. The officer shall deliver to the HPD JPCU the DWI paperwork and, if confiscated, the suspect’s Texas driver license.

Juvenile Arrests

An officer shall transport a juvenile who is arrested in FBC to the FBC Juvenile Detention Center. The officer shall take a juvenile who is going to be interrogated as a suspect before a magistrate in FBC for legal warnings. The officer shall not take a juvenile arrested in FBC to Harris County.

The officer shall not leave the FBC Juvenile Probation Department until the officer has obtained the juvenile’s fingerprints and fingerprint identification number and completed the Juvenile CJIS form. The officer shall leave the juvenile arrest packet, with the juvenile warrant information sheet

and a copy of the incident report, with Juvenile Probation Department personnel. The officer shall deliver a copy of the arrest packet to the FBC District Attorney's Juvenile Intake Division. The officer shall contact the HPD Juvenile Intake Unit and route the incident report to both the Juvenile Intake Unit and the applicable HPD concerned division.

5 ADDITIONAL REQUIREMENTS FOR CERTAIN CHARGES

Resisting Arrest, Search, or Transportation; Evading Arrest or Detention; and Interference with Public Duties

If an incident warrants an officer making an arrest for Resisting Arrest, Search, or Transportation, Interference with Public Duties, or Evading Arrest or Detention, the arresting officer shall notify a supervisor prior to contacting the appropriate intake office or filing charges.

A supervisor shall check by on all scenes involving any of the above incidents. After securing the scene, the supervisor shall immediately determine whether anyone is injured and ensure that the injured are treated. The supervisor shall speak with all the involved officers, review the facts with them, and discuss the applicable charges with the arresting officer.

In Harris or Montgomery County, the arresting officer shall contact the appropriate intake office for charges only after discussing the applicable charges with the supervisor. After speaking with the ADA, the officer shall notify the supervisor of the ADA's decision. For incidents occurring in Fort Bend County, the officer shall make an arrest based on the supervisor's determination as to whether there is probable cause to make a warrantless arrest for any of the above offenses. The officer shall document the supervisor's name in the incident report.

The officer and the supervisor shall adhere to the use of force reporting requirements outlined in General Order 600-20, **Use of Force Reporting**. Regardless of whether reportable force was used by the officer, the supervisor shall review the officer's incident report to ensure there are sufficient details to support the applicable charge.

Driving While License Invalid

An officer shall contact Vehicular Crimes Division to verify Texas driver license suspensions. A license is considered invalid if it is confirmed to be suspended, revoked, cancelled, non-renewed, or expired. A DWLI first offense is a Class C misdemeanor. DWLI becomes a Class B misdemeanor if the person has a previous conviction for DWLI or the person's driver license was previously suspended as the result of a DWI offense.

Theft

The officer shall determine the value of items in theft cases by the retail value of the stolen goods.



Troy Finner
Chief of Police