



**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF SAFETY**  
**DIVISION OF STATE POLICE**  
**PROFESSIONAL STANDARDS OF CONDUCT**



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DIRECTIVE TITLE: SPECIAL ARREST & BAIL SITUATIONS

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**CHAPTER 41-C**  
**SPECIAL ARREST & BAIL SITUATIONS**

**41-C.1.0 Discussion:**

The following directive is designed to provide guidance to the Division member in some of the uncommon arrest, detention, and bail situations. Due to the fact that these situations occur infrequently, supervisors should ensure that special care and attention are exercised in order to avoid errors.

**41-C.1.1 Arrest & Detention of Probationer or Parolee:**

- A. In the event an individual who is arrested is on probation or parole, the Division member should contact the Probation or Parole Officer (PPO) prior to contacting a bail commissioner.
1. Parolees and probationers are required to inform an arresting officer that they are on either probation or parole and to identify their Probation or Parole Officer.
  2. To confirm or determine whether an arrested subject is on probation or parole, call the Dept. of Corrections, Main Control at 271-1804. To determine an arrested subject's PPO, a Division member may call the Dept. of Corrections, Division of Field Services at 271-5652 during regular business hours.
- B. NH RSA 597:2, paragraph V(c) allows a probationer or parolee to be detained by an arresting officer for a period of not more than 72 hours from the time of arrest, excluding Saturdays, Sundays and holidays, **provided** that the officer notifies the appropriate court or PPO. Upon such notice the court shall direct the clerk to notify by telephone the Dept. of Corrections, Division of Field Services of the pending bail hearing.

1. Probationers and parolees will not be detained under these provisions without the authorization of the court.
- C. During this 72 hour period, the PPO is charged with investigating the matter and preparing any documentation needed by the Superior Court regarding detention hearings, violation hearings, etc.
  - D. If the PPO fails or declines to take the person into custody during the 72 hour period, the person shall be treated in accordance with the provisions of law governing release pending trial.
    1. If, on initial contact with the PPO, the PPO advises that he won't be pursuing violation or detention charges, the arrestee shall be bailed on the charge(s) for which he is under arrest by the Division member as required under the provisions of the bail statute.
  - E. In the event that a Division member arrests a probationer or parolee who is on probation or parole for a conviction of a violent crime listed in RSA 651:4-a, and there is a judicial finding of probable cause based on an arrest warrant affidavit or a Gerstein affidavit, that the subject has committed a violation of RSA 630, 631, 632-A:2-4, or 633:1-3, RSA 597:1-d, it is presumed that release on bail will not reasonably assure the appearance of the probationer/parolee for trial, and RSA 597:1-d III provides that the court may detain the subject without bail pending a bail hearing to be held as soon after arraignment as possible but in no event no later than 72 hours after arraignment.

#### **41-C.2 Arrest & Detention of US Armed Forces Deserters (AWOL)**

##### **41-C.2.1 Authority to Apprehend and Detain:**

- A. Any civil officer having authority to apprehend offenders under the laws of the United States, of a state, a territory, commonwealth or possession; or the District of Columbia, may apprehend a deserter from the Armed Forces and deliver him into the custody of those forces (Chapter 47 of Title 10 section 808, Article 8 US code).
- B. The Interstate Agreement on Detainers Act provides the authority to detain deserters until the establishment of military control. No bail is authorized for military desertion (Public Law 91-538).

##### **41-C.2.2 Absentee Status:**

- A. There are two primary classification of a person who is missing from his military assignment. They are as follows:
  1. In the first 30 days that the individual is missing from his military assignment he is classified as absent with out leave (AWOL) or unauthorized absence (UA). In all branches of the Armed Forces this classification lasts for the first 30 days that the individual is missing.

2. On the 31st day of absence the individual is administratively placed on a deserter's status. The preliminary source of information is the DD-553 form (Absentee wanted by the Armed Forces Form) provided by the parent command of the deserter. It is this form that provides information on the individual and initiates an entry into the NCIC wanted person file.

#### **41-C.2.3 Verification of Unauthorized Absence / Deserters Status:**

- A. Administratively, the fact that a member of the Armed Forces is reported as an unauthorized absentee (UA) is normally known only by the individual's command.
  1. Although the arrest and detention for military authorities of such a member of the Armed Forces is lawful, the status of the member will often be difficult to verify as the service must contact the individual command for verification.
  2. NO Division member shall make an arrest of a member of the military for (unauthorized absence or AWOL) unless the Division member has established that proper military authority will pick the prisoner up.
  3. The Division member shall insure that he obtains the name, rank and telephone number of any military personnel providing information or verification.
  4. The actual arrest should be delayed until written or teletyped authorization has been received unless this is not practical or possible.
  5. Verification of UA or AWOL status can be accomplished through the same locations as prescribed for deserter information. If there is doubt as to a suspect's status as a UA or AWOL, then an arrest shall not be made.
- B. After the 30-day period an AWOL or UA of the Armed Forces is classified as a deserter. Upon such classification the deserter is placed into the NCIC wanted person file.
  1. When a person is suspected of being a military deserter or if a person is listed as a NCIC hit as a deserter, then verification can be made at the deserter information point (DIP) for the specific branch of the service involved. A suspected military deserter may be detained temporarily if there is probable cause to believe that he is a deserter or if there has been a NCIC hit. No arrest shall be made until the Division member has established and verified the individual's status.
  2. The Division member shall ensure that the name, rank and telephone number are obtained of any person providing information or verification of the deserter status.
  3. Verification of an individual's deserter status may be verified by calling the deserter information point for the specific service involved.

- a. The Division member shall insure that written verification is requested.
- C. When a detained individual claims previous discharge from the service, yet the active wanted person file reflects his name, the Division member shall communicate directly by the most rapid means available with the DIP to ascertain the individual's correct status. Any documentation the member has will be useful for the DIP to determine if he was discharged or not. If it is determined that the individual has been discharged, the Division member shall request and the DIP should provide a release form through NCIC.
- D. When an individual facing civil charges is wanted for desertion, contact the DIP immediately. Upon verification, the DIP will send a detainer to the place of incarceration to detain the member without release. Upon resolution of civil charges, contact the DIP to arrange for a pick-up. If the member is sentenced, the DIP will contact local military authorities. If the sentence is over 6 months the military will normally process the member for an administrative discharge inabsentia.

#### **41-C.2.4 Payments:**

- A. Rewards
  - 1. No employee is authorized to accept any reward or payment for an apprehension or delivery of an absentee or deserter to military control if these actions were conducted while on duty.
  - 2. In any situation where a monetary reward or payment is applicable, the employee shall request that any payment be made to and in the name of the State of New Hampshire.

#### **41-C.3 Diplomatic Immunity**

##### **41-C.3.1 Class of Immunity:**

- A. Diplomatic immunity is granted by the United States Government under provisions of the Vienna Convention on Diplomatic Relations. Generally, these provisions apply to two classes of immunity.
  - 1. Diplomats and members of their families enjoy full immunity.
  - 2. Employees of diplomatic missions and members of their families enjoy immunity with respect to acts performed in the course of their official duties.

##### **41-C.3.2 Verification of Diplomatic Immunity:**

- A. While the burden is upon the diplomat to claim immunity through the presentation of valid credentials, diplomatic status may also be verified through the U.S. State Department. Division dispatch centers maintain telephone numbers for this purpose.

### **41-C.3.3 Diplomat Driving While Intoxicated:**

- A. Diplomats may not be arrested, however they may be "delayed" and "held for protection". See Professional Standards of Conduct Chapter 61-A TRAFFIC LAW ENFORCEMENT PROCEDURES for a more thorough discussion of processing DWI diplomats.

### **41-C.3.4 Additional Requirements:**

- A. Consular Officers and their family members that are not recognized as having diplomatic immunity shall be handled with the same appropriate courtesy, respect and procedures that would be applicable to any other citizen.
- B. All serious incidents involving diplomatic and Consular Officers and their families shall be reported to the United States Department of State, office of Protocol by the Field Operations Bureau Commander or his designee at the first opportunity.
- C. Any serious incident or violation of the law involving a diplomat or his family shall be documented in the normal and established reporting method.

## **41-C.4 Arrest & Release of Juvenile Offenders**

### **41-C.4.1 Arrest of a Juvenile:**

- A. Refer to Professional Standards of Conduct Chapter 44-A JUVENILE PROCEDURES.
- B. Nothing in this directive shall be construed as forbidding any Division member or Probation Officer from immediately taking into custody any minor who is found violating any law, or who is believed to be a fugitive from justice or whose circumstances are such as to endanger his person or welfare, unless immediate action is taken (RSA 169:B-9).
  - 1. Arrested juveniles shall be transported to a police facility immediately unless emergency medical treatment or other valid reasons require otherwise.
  - 2. The arresting Division member shall attempt to notify the juvenile's parents or guardians of the arrest as soon as possible.

### **41-C.4.2 Release of Juvenile:**

- A. Any Division member taking a minor into custody pursuant to RSA 169:B-9 (Arrest or Taking Minor Into Custody) may release the minor to a parent, guardian or custodian pending arraignment. However, if the minor is not released within four hours of being taken into custody, the court shall be notified and thereupon, placement made until arrangements shall be determined by the court.
- B. If a parent, guardian or custodian is not available, the court may release the minor under the supervision of a relative or a friend or place the minor in a crisis home, shelter care facility or a group home.

- C. If the court determines that continued detention is required, based upon criteria specified below, it may order continued detention at the police station, jail or YDC provided that any minor detained shall not be placed in a facility in which the minor can come into sight & sound contact with an adult charged, convicted, or committed for any criminal offense.
1. A minor shall not be detained unless detention is necessary:
    - a. To insure the presence of the juvenile at a subsequent hearing, or
    - b. To provide care and supervision for the minor who is in danger of harming himself, when no parent, guardian, custodian or other suitable person or program is available to supervise and provide such care, or
    - c. To protect the personal safety or property of others from the probability of bodily or other harm.
- D. Based on the criteria, if the Division member believes that detention of a juvenile is warranted beyond four hours, he shall contact the district court Justice and obtain an order to either hold or release the minor. In no case will the minor be held in excess of four hours without authorization from the court.

**41-C.4.3 Extended Detention of Juvenile:**

- A. In cases where extended detention is warranted (i.e. YDC), it will be the responsibility of the Division member to contact the district court having jurisdiction to schedule an arraignment.
- B. No minor shall be detained for more than twenty-four hours, Sundays and holidays excluded, from the time of being taken into custody without being brought before the court.
- C. Any problems concerning juveniles not covered by this or other directives, or if additional information or assistance is needed, the Division member shall contact his/her troop supervisor.

**41-C.4.4 Additional Juvenile Procedures:**

- A. Additional procedures relating to the handling, processing and disposition of juvenile offenders can be located in Chapter 44-A "Juvenile Procedures".

**41-C.5 Other Special Arrest & Bail Situations**

**41-C.5.1 NCIC Arrest:**

- A. Division members shall follow the procedures dictated below when coming into contact with a subject who registers as a NCIC "hit":

1. Obtain and confirm whatever available data possible beyond a name and date of birth, such as physical description, social security number, scars, marks, tattoos, etc.
2. Contact or have contact made with the ORI, either via telephone or NLETS, to confirm that a warrant is still outstanding on the subject and that the ORI will extradite the individual.
3. After making the arrest, ensure that a "locate" message is sent to the ORI.

**41-C.5.2 Arrest and Bail / Domestic Disputes:**

- A. Arrest and bail in cases of domestic violence shall be in accordance with procedures required in RSA 173-B:7 through 11-b.

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**SOURCES:**

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**C.A.L.E.A. 3<sup>rd</sup> Ed. STANDARD(S):** 1.2.5

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