



Executive Committee

- DCC Operations
- DCC Investigation
- DCC Operational Support

Planning, Research & Audit Section Project Tracking Cover Sheet

To: Jim Chu, Chief Constable

Re:

PROJECT NO. 2008-033	REPORT AUTHOR: Cst. Roger Berar	DATE: 2008/07/17
PROJECT TITLE: Amendments to Regulation and Procedures Manual Section 2.03: <i>Breach of the Peace</i>		

From: Earl Andersen, A/Inspector 1507, Planning, Research & Audit

Subject: **Attachments**

PROJECTS DISTRIBUTED TO THE EXECUTIVE COMMITTEE FOR THE FOLLOWING:

Executive Committee Meeting

2008.07.22

YMD

PR&A is directed as follows:

YMD

Chief Constable

INSTRUCTIONS

- (1) Executive Assistant to Chief Constable assigns meeting date; distributes to Executive Committee copies of VPD 13 for return to PR&A; and adds item to appropriate agenda
- (2) Following the Executive Committee meeting, Chief Constable completes directions to PR&A and dates, signs and returns original to PR&A



VANCOUVER POLICE DEPARTMENT

Planning, Research & Audit Section

Date: July 17, 2008

To: Executive Committee

From: Earl Andersen, A/Inspector 1507
Planning, Research and Audit Section

Subject: **Amendments to Regulations and Procedures Manual Section 2.03:**
Breach of the Peace

PR2008-033

Planning, Research and Audit received a request from the Executive to examine if amendments are required to section 2.03 of the RPM: *Breach of the Peace*. Specifically if it would be feasible for the VPD to adopt an amendment which would require that all individuals arrested for Breach of the Peace are to be transported to jail.

The proposed procedural police response for handling individuals arrested for Breach of the Peace would have a significant negative impact on patrol member waiting times, wagon driver and jail staff workload, and potential exposure of members of the VPD to civil and criminal liability. The attached report outlines the implications of a policy that requires all individuals who are arrested for Breach of the Peace to be transported to jail.

I recommend that no amendments be made to RPM Section 2.03: *Breach of the Peace*.

A/Inspector Earl Andersen, 1507
Planning, Research and Audit Section



VANCOUVER POLICE DEPARTMENT PLANNING, RESEARCH & AUDIT SECTION

July 17, 2008

To: Earl Andersen, A/Inspector 1507
Planning, Research & Audit Section

From: Roger Berar, Constable 1862
Planning, Research & Audit Section

Subject: **Amendment to Regulations and Procedures Manual Section 2.03:
*Breach of the Peace***

PR2008-033

Assignment

To evaluate a proposal to amend the Regulations and Procedures Manual (RPM) regarding Breach of the Peace Arrests.

Background

Planning, Research and Audit Section received a request from the Executive to examine whether section 2.03 of the RPM, Breach of the Peace, needs to be amended with the purpose of directing that all individuals arrested for Breach of the Peace are to be transported to jail. Over the past few years there have been several high profile negative incidents that have stemmed from Breach of the Peace arrests.

The current policy requires a Supervisor to attend the scene, ensure the lawfulness of the arrest, determining if the person arrested is to be incarcerated or removed from the area and the appropriateness of the release location. If the policy were amended to require that all individuals arrested for Breach of the Peace are to be transported to jail, it would eliminate allegations of inappropriate conduct by members at locations where the arrested person is released.

Resources

Jessbir Ram, Inspector 1242, Operations Division, District Four
Daryl Wiebe, Inspector 1162, Operations Division, District Three
Shayne Apostoliuk, Staff Sergeant 1127, Court and Detention Services Section
Keith Hammond, Staff Sergeant 1342, Operations Division, District Four
Doug Bain, Sergeant 1300, Beat Enforcement Team
Mike Anfield, Sergeant 52, Operations Division, District 3 Team 5

Cam Lawson, Sergeant 1682, Operations Division, District 3 Team 10
Dave Duncan, Sergeant 1557, Operations Division, District 3 Team 6
Brad Brewer, Sergeant 1411, Operations Division, District 4 Team 6
Derral Daniels, Sergeant 1207, Operations Division, District 3 Team 3
Gordon McGuinness, Sergeant 1168, Operations Division, District 3 Team 9
Hari Gill, Sergeant 1378, Operations Division, District 3 Team 2
Brad Wallace, Sergeant 1230, Operations Division, District 1
Keiron McConnell, Sergeant 1499, Operations Division, District 1 Team 8
Don Cayer, Sergeant 1213, Operations Division, District 1 Team 5
Rod Pedersen, Sergeant 997, Operations Division, District 1 Team 7
Cindy McCluskie, Sergeant 2302, Operations Division, District 1 Team 1
Ed Wright, Sergeant 1338, Operations Division, District 2 Team 3
Jeremy Johnson, Sergeant 1491, Operations Division, District 4 Team 9
Lisa Hodgetts, Constable 2153, Operations Division, District 4 Team 5
Jack Sarna, Constable 2544, Operations Division, District 2 Team 5
Dawn Boblin, Legal Advisor, VPD
Magda Marczak, Serious Criminal Analyst, District 1
Agnes Li, Serious Criminal Analyst District 2
Jenny Tsang, Serious Criminal Analyst District 3
Lucas Birch, Serious Criminal Analyst District 4
Abbotsford Police Department
Calgary Police Service
Edmonton Police Service
New Westminster Police Service
Peel Regional Police Service
RCMP
Toronto Police Service
Victoria Police Service
West Vancouver Police Department
Winnipeg Police Service
York Regional Police Service
Criminal Code of Canada
Brown v. Regional Municipality of Durham Police Service Board, 1998, On C.A.

Research and Analysis

The Vancouver Police Department (VPD) Executive requested that a review be conducted of the current VPD Breach of the Peace policy to determine whether it would be more effective to amend the existing policy to direct members to transport all Breach of Peace arrests to jail. The reasons behind this proposal are:

- to establish consistent practices by all members when making Breach of Peace arrests;
- to increase transparency regarding these types of arrests;

- to create a “check and balance” by requiring not only a Supervisor’s attendance at the scene to approve the arrest, but also having a Supervisor receive the arrested individual at the jail; and
- to reduce the number of allegations of misconduct against member

On the surface, such a proposal appears to have several positive aspects; however, an analysis of this proposition reveals several negative implications. First, such a requirement would dramatically increase the number of individuals brought to jail for these types of arrests. For example, according to 2007 statistics, there were a total of 814 Breach of the Peace arrests; however, only 151 were transported to jail and lodged, with the remaining individuals released either at scene or driven to a safe location and released. Therefore, the actual number of Breach of the Peace arrests transported to the jail account for less than 20 percent of the total arrested. If the suggested policy change is adopted, the consequences would have a profound impact on the jail staff, wagon drivers and patrol members.

A district-by-district analysis of Breach of Peace arrests in 2007 further illustrates the potential impact the proposed policy:

District	Breach of the Peace Arrests	Transported to Jail
One	250	26
Two	310	93
Three	166	22
Four	88	10

In District One, for example, wagon drivers, especially on weekends, would be overwhelmed if all of those arrested for Breach of Peace had to be transported to jail. Patrol members would be spending significantly more time waiting for wagon drivers to clear the jail so that more arrested individuals could be transported. Vancouver Jail S/Sgt. Apostoliuk advises that depending on the circumstances and the cooperation of the arrested party, it often takes approximately one hour to book and process an individual through the system. This includes the time that the person waits in the holding cell, being searched by jail staff, seizing and documenting all personal effects, and then returning a person’s effects to them upon release. Processing an arrested person through the jail is very time consuming and the only difference between a Breach of the Peace arrest and someone arrested on other charges, is that individuals detained for Breach of the Peace arrests are not photographed.

The current jail staffing level reflects a system that processes approximately 60-70 people per day, and increases to approximately 100 people on weekends.

Sec. 15(1)(a), (f), (j) Sec. 15(1)(a); (f); (j) - Harm to Law Enforcement When there is a planned event, such as a large rock concert or Celebration of Lights, the jail

staff is supplemented accordingly. However, the majority of Breach of the Peace arrests do not occur during planned events. Therefore, in the event of an occurrence of significant numbers of Breach arrests, another floor would have to be opened, and additional staff would be called out on an overtime basis.

Sec. 14 -Legal Advice
Sec. 14 -Legal Advice

Section 31(1) of the *Criminal Code of Canada* (CCC) authorizes a police officer to arrest and detain, or take custody of, persons suspected of a breach of the peace. It is a preventive remedy for not more than 24 hours and there are no criminal charges laid against a person arrested for Breach of the Peace. An arrest for Breach of the Peace under the Criminal Code should only be used as a last resort when all other options, such as an arrest for a substantive offence, have been exhausted and the member has observed the breach, or an apprehended breach. Breach of the Peace has been defined by the Courts as an act or actions which result in actual or threatened harm to someone. In other words, there must be a “tenor of violence” to the situation.

Authority to arrest and detain for an apprehended Breach of the Peace flows from common law. This occurs when the member has not witnessed the breach, but the member believes on reasonable grounds that a breach will take place unless the individual is arrested. The apprehended Breach of the Peace must be imminent and the risk that the breach will occur must be substantial.

VPD legal advisor,

Sec. 14 -Legal Advice
Sec. 14 -Legal Advice

The law clearly establishes that, where the police have grounds and do arrest someone they must not detain that person unless it is absolutely necessary. Under the provisions of the *Bail Reform Act* (BRA), members routinely release people they have arrested, without taking them to jail. According to the BRA, if the offence is not strictly indictable the person should not be arrested unless to the arrested is required to satisfy the identification of the accused, to prevent continuation of the offence, protection of evidence, or satisfy court appearance.

Sec. 14 -Legal Advice
Sec. 14 -Legal Advice

Finally, research of policies and procedures of several police services across Canada reveal that half of the agencies contacted do not have any formal breach policy (See

Appendix "A"), those departments that do, often encourage their members to consider other substantive offences before arresting for Breach of the Peace. The only department that has a Breach of the Peace policy similar to the VPD is the Victoria Police Service. Its policy instructs members that Breach of the Peace arrests should be used as a last resort and that members should consider other Criminal Code provisions. However, if Victoria members do make a Breach arrest, and they wish to lodge the person in cells, they must first receive approval from the Watch Commander before doing so.

Risk Management

Sec. 14 -Legal Advice

Sec. 14 -Legal Advice

Budget Implications

The potential budget implications involved with the Court and Detention Services Section could be significant. Dramatic increases in the number of breach arrests being transported to jail may require an increase in jail staffing levels. Furthermore, due to the demands on the wagon drivers, additional wagon deployment on weekends may be required which would further impact Patrol minimums. In addition, the capacity of the jail to process additional arrests may also be impacted. All these concerns have financial costs associated to them.

Conclusion

The current Breach of the Peace policy does not require amendment because it requires the patrol Supervisor to attend the scene and ensure the lawfulness of the arrest and authorization to transport an arrested party to a determined location. Members and supervisors must take into consideration the person's safety and well-being with respect to that person's removal from a scene, their detention, and their release.

If the police arrest an individual for Breach of the Peace and determine that his/her release is more appropriately made at a location other than the jail, the officer will be expected to exercise a particular standard of care to ensure that no harm comes to the individual.

The current policy reminds officers of the duty of care required for the person they have arrested and to take into consideration the following issues when determining when and where the person is to be released and any vulnerability the person may have due to:

- gender
- age
- mental state
- suitability of clothing for the weather
- lack of money
- release location
- or any other relevant factor

Sec. 14 -Legal Advice

Sec. 14 -Legal Advice

In our City, with its entertainment district, it is essential to have an effective Breach of the Peace policy that allows members to remove potentially combative individuals from a scene before they escalate to criminal offences, while also providing members and Supervisors with the discretion to release those individuals from custody once the breach or apprehended breach has subsided. Therefore, a Breach of the Peace policy that directs members to transport all breach arrests to the jail would have significant negative impacts on the VPD in terms of human resource requirements, police wagon waiting times, and potential civil and criminal liability.

Recommendations

I recommend that:

1. no amendment be made to RPM Section 2.03: Breach of the Peace; and
2. this file be concluded.

Roger Berar, Constable 1862
Planning, Research & Audit Section

Existing Procedure

Section 2.03: Breach of the Peace

(Effective: 2005.09.26)

POLICY

Police Officers have a duty to maintain peace and security in the community. It is recognized that police officers will encounter situations where an individual or a group act in a manner that constitutes a breach of the peace. When arresting for a Breach of the Peace or an Apprehended Breach of the Peace, there must be a reasonable belief that if the police do not intervene, personal injury or damage to property will result.

PROCEDURE

1. There are two types of Breach of the Peace Arrests:

a. Breach of the Peace – Found committing: A breach of the peace has been defined by the courts as an act or actions which result in actual or threatened harm to someone (also known as having a “tenor of violence”), or where a threat of harm against a person’s property occurs when the person who owns the property is present. This recognizes that violence may occur when a person attempts to damage property in the presence of the owner. An arrest for Breach of the Peace under the Canadian Criminal Code (Section 31 (1)) should only be used when all other options, such as an arrest for a substantive offence, have been exhausted and the police officer has witnessed the breach.

b. Apprehended Breach of the Peace: Police Officers have a common law power of arrest for an "apprehended breach of the peace". This occurs when the police officer has not witnessed a breach of the peace, but the officer believes on reasonable grounds that a breach will take place unless an arrest is effected. Further, the apprehended disturbance or threat must be serious enough to cause a reasonable belief that, if the police do not intervene, a more serious problem will result involving personal injury or damage to property. The apprehended breach of the peace must be imminent and the risk that the breach will occur must be substantial.

2. Vehement or emotional verbal expression of disagreement with police does not constitute a breach of the peace, if such behaviour does not otherwise create a risk of personal injury or damage to property.

3. An arrest for a Breach of the Peace or an Apprehended Breach of the Peace is not meant to be a mechanism to control or monitor people that officers may regard as dangerous or prone to criminal activity.

4. No person displaying symptoms of intoxication that meet the criteria for H/SIPP will be dealt with under the terms of this section.

5. When a Breach of the Peace arrest is made the member shall advise an NCO prior to arresting the suspect, or if impracticable, then immediately after the arrest has taken place.

6. When an NCO authorizes the removal of an arrested person from an area, that person shall be released within Vancouver at a point determined by the NCO.

7. All officers have a duty of care to the person(s) they have arrested. Officers shall consider the person's safety and well-being with respect to that person's removal from a scene, their incarceration, and their release. Specific issues to consider in determining when and where the person is released must include any vulnerability the person may have due to gender, age, mental state, suitability of clothing for the weather, lack of money (e.g., for public transit/taxi), release location, or any other relevant factor.

8. Whenever a person is arrested for an apprehended or witnessed Breach of the Peace, the arresting member shall submit a detailed General Occurrence (GO) report prior to the completion of their shift.

9. The GO report shall include the following:

- a. Narrative of event (detailed synopsis will suffice);
- b. Reasons and authority (Criminal Code or Common Law) for arrest;
- c. Name of the authorizing NCO;
- d. Disposition of the arrested party (example: lodged in jail or removed to a specifically named location);
- e. UCR code 8610-2; and the GO will be routed as follows:
- f. The Jail, when the person is to be held in custody (notify);
- g. The arresting officer's assigned squad handle (route);
- h. The District Administrative Sergeant (notify); and
- i. The authorizing field supervisor's (notify)handle.

Field Supervisor's Responsibilities

10. The authorizing field NCO shall attend the scene and is responsible for ensuring the lawfulness of the arrest, determining if the person arrested is to be incarcerated or removed from the area and the appropriateness of the release location.

11. If the arrested person is sent to the Vancouver Jail, the authorizing NCO shall contact the Vancouver Jail Police NCO before the arrested party is booked into the Jail.

The Vancouver Jail Police NCO, in consultation with the authorizing NCO, shall decide how long the person will be held.

12. The authorizing NCO will ensure all required reporting and routing has been completed by the end of the arresting member's shift.

13. The authorizing NCO shall approve the report prior to the end of shift.

Appendix "A"

Breach of the Peace - Other Jurisdictions

Abbotsford Police Department -

Sec. 16(1)(b) - received in confidence. Contact agencies directly.

[Redacted]

Calgary Police Service -

[Redacted]

[Redacted]

Edmonton Police Service -

[Redacted]

[Redacted]

New Westminster Police Service -

[Redacted]

[Redacted]

Peel Regional Police Service -

[Redacted]

RCMP -

[Redacted]

[Redacted]

Toronto Police Service -

[Redacted]

[Redacted]

Victoria Police Service -

[Redacted]

[Redacted]

West Vancouver Police Department -

[Redacted]

[Redacted]

Winnipeg Police Service -

[Redacted]

[Redacted]

York Regional Police Service -

[Redacted]

- END -