

302.00 - FILINGS AND REPORTS

302.01 Case Filing

(1) Case Preparation

- a. Case preparation begins with the initial investigation. The arrest of a criminal is only the first step in criminal justice. The case must be painstakingly prepared, evidence gathered, witnesses contacted, statements taken and all possible facts carefully recorded in preparation for the trial.
- b. A member of the Department assigned to the investigation of a criminal case shall enter in his Supplementary Report in an orderly and legible manner all information relative to the case which they are able to ascertain.
- c. Officers shall collect, properly identify and preserve all real evidence which may be material to the case. Where such evidence is of considerable value, photographs shall be taken, detailed drawings made, fingerprint evidence obtained and such chemical or other scientific analysis or examination, as may be required, shall be made.
- d. Officers shall contact and take statements from all witnesses and shall interrogate the suspect for the purpose of obtaining a confession or admission. In taking a statement from the suspect, leading questions shall be avoided. Officers shall not resort to inducements, promises, threats, or duress to obtain a confession or an admission. See OMS 302.10 & 302.11. The Advisement Form, DPD 369, shall be used prior to talking to suspects.
- e. An officer shall not depend upon a confession or admission made by a suspect to the extent of becoming lax in the preparation of their case. They should anticipate a denial by the defendant or the possibility that the admission or confession may not be admissible in evidence and should spare no effort in investigating the slightest circumstance for the purpose of having their case complete.
- f. A member of the Department, having filed a case in the Criminal Division of District Court, shall furnish the District Attorney a written digest of the case, listing each witness, their name and address, and setting forth the testimony that each witness may be expected to present. It is important that the list of witnesses be complete so that they may all be endorsed at the same time, so as to obviate the necessity of endorsing additional witnesses at a later date.
- g. Members shall appear in court on the date set for trial with their cases properly prepared, and all evidence ready for presentation. They shall promptly respond when called upon to present evidence. See OMS 103.01.
- h. An officer, when called upon to testify, shall speak in a calm, clear, distinct, and audible tone and give a strictly accurate, impartial, and complete account of the circumstances pertaining to the case before the court. See OMS 103.05.
- i. An officer shall answer the defendant or their attorney with the same readiness and civility as when giving evidence in support of their case and shall tell the truth at all times whether it be against or in favor of the defendant.
- j. When mentioning the prisoner being tried in court, the officer shall refer to the prisoner as the defendant.
- k. An officer shall study their original notes and the records and reports in the case before appearing in court in order to refresh their memory as to all the circumstances of the case. However, they may, if necessary, refer to their original notes in court.

(2) Rule - Advisement of Rights and Filing of Complaints or Information in Felony Cases:

- a. When a person is arrested for investigation of a felony offense or pursuant to a felony warrant, they shall be brought before the appropriate County Judge at the next scheduled first advisement session of the County Court which immediately follows the defendant's arrest.
- b. All persons arrested on Saturday after the last County Court advisement session or on Sunday shall be brought before the appropriate County Judge at the next regular scheduled session of the County Court.

- c. If a complaint has not been filed against the defendant at the time of the first advisement, a complaint or information shall be filed within three (3) regular working days after the defendant's arrest, if the defendant has not been released on bond. In computing said three (3) day period, the date of arrest shall not be considered a working day. If the defendant is released on bond, the complaint or information shall be filed within ten (10) days from the date of posting said bond. Such time may be extended for an additional reasonable time upon good cause shown by the District Attorney.
- d. If the complaint or information has not been filed within three (3) days of defendant's arrest and the defendant has not been released on bond, they shall be released from custody or released on a personal recognizance bond. If the defendant has been released on bond and the complaint or information has not been filed within ten (10) days from posting said bond, the defendant shall be discharged from further orders of the Court and said bond shall be ordered released.

(3) Filing criminal actions by investigating detectives.

- a. Outline the case completely including all circumstances, principals, M.O., etc. A photocopy of the Offense/Incident Report, suspect(s) records, and case summary shall be included.
- b. List all substantiating evidence, displays, exhibits, etc., which may be pertinent to the case.
- c. List of witnesses
 - 1. List all witnesses, their names, complete addresses, place of employment, and telephone numbers, being careful to include all witnesses who can testify to facts, identify evidence or confirm the chain of custody of such evidence. State what each witness can present in court testimony. Refer to OMS 109.01(2)b,3.
 - 2. When preparing witness lists that include police officers, filing detectives will list the witness officer's rank, full name and five (5) digit serial number.
Example: Det. John M. Smith 72015
initials, incomplete, or hyphenated serial numbers are not acceptable.
- d. Every document pertaining to an offense report, regardless of size and shape, shall have the case number clearly visible for filming and indexing purposes.
- e. Present all the facts, evidence, and all pertinent information available to the Complaint Deputy of the District Attorney's office for evaluation. Prepare a Case Filing Information Form on each case submitted to the Complaint Deputy for the signature of the deputy, indicating a date and time of acceptance of the case. If the case is refused, the date and time should be noted as well as the reason for refusal.
- f. Notify the District Attorney in writing of any additional evidence and the witness who can establish its relevance to the case.
- g. In all cases where evidence or property is not returned to the Property Section, the disposition of such case shall be given to the Property Section in writing. (Such notification may be entered by the officer upon the Property Withdrawal Slip.)
- h. When it becomes apparent that property being held as evidence will not be needed in the prosecution of a criminal case, the assigned investigator will contact the Property Section to arrange for the release of the property. See OMS 106.06.

(4) Cases dismissed as a result of alleged police mishandling.

- a. The District Attorney will forward to the officer's Division Chief any case where prosecution is declined or dismissed due to alleged police mishandling.
- b. These cases will then be forwarded through the chain of command to the officer's supervisor, who will review the case with the officer to prevent a recurrence in future similar situations.

302.02 Misdemeanor Case Filing Using the Criminal Summons and Complaint

It is incumbent upon the detective assigned a case investigation to initiate the process by which prisoners involved in the matter and held in the Detention Facility are properly advised of their rights and/or made eligible for bond at the next scheduled court session following their arrest.

- (1) Upon completion of the case investigation, the detective may charge the prisoner with a misdemeanor violation of the State Statutes. The case filing can follow the simplified procedures using the Criminal Summons and Complaint. If the prisoner is still in custody and all necessary documents have been completed, the detective will appear at the Detention Facility prepared to:
 - a. Serve the defendant with the appropriate copy of the Criminal Summons and Complaint.
 - b. Deliver to the Deputy Sheriff on duty the Jail Copy of the CS&C and a Change of Charge, DPD 43, for the defendant.
 - c. Place in the designated repository in the Detention Facility an envelope, addressed to Room 111, City and County Building, containing those documents necessary to complete the misdemeanor filing. These documents will be securely attached to the remaining copies of the CS&C.
- (2) In those instances when the detective anticipates a delay in completing the investigation and subsequent misdemeanor filing, the Misdemeanor Processing Form, DPD 314, shall be completed and HAND CARRIED to the Detention Facility at the earliest possible time after case assignment so that the prisoner may be advised of his rights and made eligible for bond without any unnecessary delay.
 - a. If the defendant remains in custody when the detective has completed both the investigation and case filing, the procedures outlined in OMS 302.02(1) shall apply.
 - b. If the defendant has been released from custody on a bond when the detective has completed the investigation and case filing, detectives will deliver to the Detention Facility the Jail Copy of the CS&C at the same time the case filing is placed in the designated repository.
 - c. When the prisoner has been released from custody before being served with a copy of the CS&C, upon returning to court, the defendant will be served with the complaint by the judge.
- (3) When the exact nature of the charges to be filed against the defendant have yet to be determined, the Felony Processing Form, DPD 275, may be used by the investigator to insure prisoners being held on investigation charges will be properly advised of their rights and made eligible for bond without unnecessary delay.
- (4) The misdemeanor case filing will include:
 - a. Court Copy of the CS&C - ALWAYS THE ORIGINAL.
 - b. District Attorney Copy of the CS&C.
 - c. At least one (1) extra copy of the CS&C (may be a photocopy).
 - d. At least two (2) copies of any additional lists of witnesses.
 - e. Any supplementals not left with the D.A. at the time of acceptance.
 - f. The R-84 sheet, except in DUI arrests.
- (5) Officers will not place any dollar amounts for bonds on Felony or Misdemeanor Processing Forms, or on the bottom of the Criminal Summons & Complaint.
- (6) If, after an advisement form has been sent to the court, the charges are either dropped or reduced to a City Ordinance charge, the detective shall contact personnel in Room 111 and advise them of the change.

302.03 Bail and Bondsmen: Investigator's Procedures (See OMS 104.47 and 113.12)

302.04 Restitution and Dropping of Charges

- (1) Under no circumstances shall any investigator negotiate, agree to, or accept restitution in any case whatsoever, for the purpose of reducing or dropping any charges or for any other purpose.
- (2) The complainant in every case must understand and accept the fact that any case filed is for the sole purpose of prosecuting the defendant and not for the purpose of recovering personal property, losses, or forcing payments or collections of any kind.

- (3) The primary job of the investigator is to investigate, file, and present competent testimony on every criminal offense.

302.05 Grand Jury Procedures

- (1) Definitions
- a. **GRAND JURY:** A jury of 12 to 23 citizens that investigates accusations concerning crimes. If there is sufficient evidence, the jury may return an indictment.
 - b. **INDICTMENT:** A formal accusation against a person by a **grand jury**, based upon probable cause that the person committed a crime.
 - c. **NO TRUE BILL:** The grand jury returns a "no true bill"; effectively closing the case, when it determines the evidence is insufficient to find probable cause. The court will normally seal no true bill cases.
 - d. **REPORT:** If the grand jury does not indict, it can write a report (*C.R.S. §16-5-205.5*)
- (2) The chief judge of the district court or his designee may order a Grand Jury where authorized by law or required by the public interest. (*Rule 6 Grand Jury Rules (a),(b),(c), Colorado Rules of Criminal Procedures, Colorado Revised Statutes*)
- (3) All persons associated with a grand jury and its investigations or functions should at all times be aware that a grand jury is an investigative body, the proceedings of which shall be secret. Witnesses or persons under investigation should be dealt with privately to insure fairness and confidentiality. The oath of secrecy shall continue until such time as an indictment is made public, if an indictment is returned, or until a grand jury report dealing with the investigation is issued and made public as provided by law. (*Rule 6.2 Secrecy of Proceedings (a), Colorado Rules of Criminal Procedures, Colorado Revised Statutes*)
- a. Only the prosecutor may disclose information of the general-purpose regarding the grand jury's investigation.
 - b. Justification for grand jury secrecy include but are not limited to:
 1. To prevent the escape of those individuals whose indictment may be contemplated.
 2. To prevent disclosure of derogatory information presented to the grand jury against someone who has not been indicted.
 3. To encourage witnesses to come before the grand jury and testify with respect to the commission of crimes.
 4. To encourage grand jurors to conduct uninhibited investigation of and deliberation on suspected criminal activity.
 - c. At no time will any Denver Police officer make any release or comment regarding grand jury proceedings, acknowledge the existence of an investigation conducted by a grand jury or comment on a grand jury which has been empanelled.
- (4) The court upon written motion of the grand jury appoints investigators. Investigators may be law enforcement officers who are presently investigating the subject matter before the grand jury. (*Rule 6.5 Investigator (a), Colorado Rules of Criminal Procedures, Colorado Revised Statutes*)
- a. Every person appointed as a grand jury investigator will be administered an oath of secrecy by the chief judge of the district court or his designee.
 - b. Discussions regarding a grand jury investigation will be limited to other sworn investigators or the grand jury prosecutor.
 - c. Sworn investigators may only discuss a grand jury investigation for which they are appointed and only with other persons appointed to the investigation.
 - d. A grand jury investigator can never have a discussion with a member or members of the grand jury except under oath on the witness stand. There are no exceptions to this rule.

- e. Investigators are sworn at the discretion of the presiding District Court Judge and the District Attorney. The commanding officer of the affected bureau responsible for the Grand Jury investigation will determine appropriate levels of supervision required. Command and supervisory officers will be sworn as necessary.
- (5) The indictment shall be a written statement presented in open court by a grand jury to the district court, which charges the commission of any crime, by an alleged offender. (*Rule 7, Indictment and the Information (a) Colorado Rules of Criminal Procedures, Colorado Revised Statutes. C.R.S. §16-5-201 Indictments*)
- a. Upon motion by the prosecutor, the court shall order the indictment to be sealed and **no person** may disclose the existence of the indictment until the defendant is in custody or has been admitted to bail, except when necessary for the issuance of a warrant or summons. (*Rule 6.6 Indictment-Presentation-Sealing, (b) Colorado Rules of Criminal Procedures, Colorado Revised Statutes*)
 - b. Information released to the public shall be made only **after** the court has unsealed the indictment. The determination for release of information will be made by the Denver District Attorney's office. The Denver Police Department may participate in the information release at the request of the Denver District Attorney.
- (6) A grand jury report may be prepared and released as permitted by **C.R.S. §16-5-205.5 Grand Jury Reports**. (Rule 6.7 Reports, Colorado Rules of Criminal Procedures, Colorado Revised Statutes. C.R.S. §16-5-205.5 (1) through (5))
- a. A grand jury report may be deemed to be in the public interest only if the report addresses one or more of the following:
 1. Allegations of the misuse or misapplication of public funds
 2. Allegations of abuse of authority by a public servant, as defined by C.R.S. §18-1-901 (3)(o), or a peace officer, as defined by C.R.S. §18-1-901 (3)(l).
 3. Allegations of misfeasance or malfeasance with regard to a government function, as defined by C.R.S. §18-1-901 (3)(j).
 4. Allegations of commission of a class 1, class 2, or class 3 felony.

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302.10 Rights Advisement Form, DPD 369

- (1) When an arrest is made by a Denver police officer, the arresting officer shall advise the arrested person of their rights as indicated on Advisement Form, DPD 369, and shall, in their own handwriting, fill out DPD 369.
- (2) If the arrested person refuses to sign DPD 369, the arresting officer shall write the word "refused" in the space provided for the suspect's signature. It is desirable, but not absolutely essential, that the advisement be witnessed.
- (3) When the Advisement Form, DPD 369, is made out by department personnel, both copies of the completed form will be immediately hand carried to the Detective Bureau.
- (4) If no Advisement Form, DPD 369, is received from the arresting officer, investigators should make an attempt to locate it. Investigators shall submit a report to their supervisors when arresting officers fail to comply.

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- (5) Personnel assigned to the communications desk will immediately route to the proper investigative detail all DPD 369s received. Investigators shall notify their supervisors of any delay in the arrival of these forms.
- (6) Prior to any interrogation or questioning of suspects, DPD 369 shall be made out by the investigator.
 - a. DPD 369 shall be made out by the investigator on each succeeding occasion when a suspect is questioned at intervals. For example, if a suspect is questioned during the forenoon hours and again during the afternoon hours, a DPD 369 shall be filled out prior to each interrogation period. If a formal statement is obtained from the suspect during any subsequent interrogation period, the DPD 369 at that time will not be needed.
 - b. If the case is not filed by the District Attorney, all copies of DPD 369 will be retained with the case file.
- (7) Public Defender

In the event a suspect requests the Public Defender, a current list of the available attorneys of the Public Defender's Office is posted at the Investigation Division Communications Desk, and the Detention Center.

302.11 Statements

- (1) Use of DPD 366, Statements
 - a. When investigation arrests and other arrests are made that could result in a case being filed in District Court, the arresting officer shall fill out form DPD 366.
 - b. All remarks or responses to interrogation made by the suspect shall be entered in complete detail.
 - c. A separate sheet shall be used for each suspect. The reports shall not be filed by two officers unless all remarks are made in the presence of both.
 - d. Remarks to individual officers shall be the subject of a separate report.
 - e. Besides the above information, the arresting officer shall detail all phases of the arrest that could be related as evidence during the trial.
 - f. The report shall be completely filled out and shall be printed or typed and legible.
 - g. The report shall be taken immediately to the Detective Bureau upon street arrest and jailing. In cases where the suspect is taken to the Detective Bureau the report shall be made and given to the detective on duty.
 - h. Date and time of statements must appear on the form.
- (2) Witness' Statements
 - a. DPD 366 shall be used for all witness' statements and should be completed in its entirety.
 - b. All witness' statements included in case filings presented to the District Attorney shall indicate the time of day and the specific date on which the statement was taken.
 - c. If a witness' statement is received from a uniformed officer and the time and date are not indicated, the investigator shall contact the officer making out the statement form, ascertain the time of day and date, and enter this information on the statement form.
- (3) Confessions
 - a. A confession may be oral, written and signed, or written and unsigned.
 - b. A confession must be voluntary. The prosecutor, before introducing a confession into evidence, must prove that it was voluntarily given by the defendant without the use of force, threats, duress, promises, or other inducements.
- (4) All confessions shall be taken in formal form and the opening questions in order shall be as follows:
 - a. What is your name?
 - b. Where do you live?

- c. What is your date of birth?
 - d. This concerns an incident that occurred on (date) in which (name of victim), located at (address) (brief explanation of crime which occurred). I want to question you at this time concerning any knowledge you might have of this incident. Do you understand this?
 - e. Before doing this, you are advised that you have a right to remain silent. Do you understand?
 - f. Do you understand that any statement you do make can be used as evidence against you?
 - g. Do you further understand that you have a right to the presence of an attorney, either retained or appointed?
 - h. Knowing these things, do you care to tell us about this incident?
 - i. Have any promises or threats been made to you?
 - j. Now tell us in your own words what knowledge you have of this incident.
- (5) If it is known during the taking of a formal statement that any person being questioned is suffering a definite physical or mental impairment, then ask that person if he or she feels physically and mentally able to give a statement.
- a. Do not ask this question relative to impairments generally during any interrogation, but only when you have definite knowledge of such physical or mental impairment.
 - b. If there is in fact no obvious impairment, the asking of the question could constitute an invitation to the suspect to set up a possible defense for the commission of the act or an excuse for making the statement.
- (6) Admissibility of Statements
- a. If one co-suspect makes a confession or an admission outside of the presence of the other co-suspect(s), that statement is inadmissible against the other co-suspect(s) even if the other co-suspect(s) is implicated in the crime.
 - b. The officer should read a co-suspect's statement that was made outside of the presence of the other co-suspect to the other suspects and if these suspects assent to the statement, then it is admissible against them at the trial.

302.12 Polygraph

- (1) In criminal investigations, the polygraph may be used to test any of the following subjects: (a) suspect, (b) victims, or (c) witnesses, provided however, that proper preliminary field investigation has been exercised prior to the polygraph examination.
- a. The polygraph examiner may refuse to examine any subject if it is believed that the subject is not in proper physical or mental condition for an examination, or if there is not sufficient information on which to base an effective instrumental interrogation.
 - b. A subject cannot be forced to take a polygraph examination. Any force or intimidation used to force a subject to take a test would render any subsequent confession inadmissible as evidence. The subject must agree without any duress to take the examination.
- (2) Polygraph procedures:
- a. A polygraph request form shall be completed in its entirety with all information set forth. Include the following documents so that a proper examination may be prepared: Copy of the offense report, statements - including written statements, and criminal record. The investigator who actually participated in the investigation and is, therefore, the most familiar with the facts and particulars of the pending case, should make this information available, in writing.
 - b. The original polygraph request form, plus all required documents, should be placed in the polygraph mail box in the Detective Bureau and will be retained as part of the subjects examination file.
 - c. The polygraph examiner will notify the investigating detective of the scheduled examination date and time, in writing if time permits.

- d. The detective is then solely responsible for notifying the subject of the appointment. Should a person fail to appear for a scheduled examination, the investigator may, if deemed necessary, request a second appointment. Thereafter, no additional examination date for the same subject will be accepted without the permission of the polygraph supervisor.
 - e. The very nature of a polygraph examination is such that the examiner does not confine themselves solely to the questions which may be of interest to the investigator. Control situations can and often are developed around questions based on the personal history of the subject, in order to measure responses to controlled stimuli or those questions relating to the actual case under investigation. Therefore, it is mandatory that all information requested on the polygraph request form be filled in completely.
 - f. Once an individual has been filed on in any court, he/she shall not be administered a polygraph examination by this Department. Only the Division Chief of Investigations may authorize such examination with his written permission.
- (3) Polygraph subjects will not be examined on the polygraph until the investigator has contacted the subject in person and either conducted an interrogation or an interview.
- (4) Whenever possible, investigators shall remain in their office during the polygraph examination of a subject in one of their cases. This is requested since a confession or admission can be immediately repeated by the subject to the investigator if one results from the examination.
- (5) No public disclosure shall be given by a police officer as to whether the examinee passed or failed a polygraph examination.
- (6) The investigators should avoid disclosure of any details or facts established in the investigation which are not known to the subject. If this precaution is disregarded, it may preclude the examiner conducting the best possible informative and reliable tests.
- (7) Unfit Subjects. Subjects with any of the following disabilities are not considered to be suitable for examination and should not be scheduled under any conditions:
- a. Under the influence of alcohol, sedatives, opiates, or other drugs.
 - b. Those complaining of physical pain.
 - c. Severe colds or other respiratory involvements.
 - d. Nervous disorders.
 - e. Psychiatric or mental problems.
 - f. Coronary or heart conditions.
 - g. History of drug or narcotic addiction.
 - h. Involved in any type withdrawal program.
 - i. Pregnant women.
- (8) Juvenile Examination (under 18 years of age)
- a. Should you require a polygraph examination for a juvenile, the following steps should be carefully adhered to.
 - b. The polygraph request form shall be filled out completely, then forwarded along with the entire case file to the investigator's Division Chief for his authorization. The Division Chief's signature must appear on the face of the request form.
 - c. Once an examination date has been set by the examiner, the investigator shall notify the juvenile and one parent or adult guardian of the date and time to appear for examination. The examiner shall obtain the signatures needed on the consent or waiver at the time of the examination. Individuals under fourteen years of age shall not be considered for polygraph examinations.
 - d. At the conclusion of a polygraph examination, the examiner will notify the investigator concerning the examination results and other pertinent information developed during the examination procedure.

302.13 Deleted**302.14 Investigation Funds and Informant Use, Supervision and Compensation**

- (1) The Division Chief of Investigations shall establish guidelines in the form of written Directives to govern investigative funds and the use, supervision, and compensation of informants. These Directives will cover the following:
- (2) A Directive will establish a bookkeeping procedure for the use of funds to pay informants, make controlled buys and cover miscellaneous investigative expenses.
 - a. Requests for money from such funds will be made to the commanding officer of the appropriate bureau and must follow the guidelines set forth in the Investigative/Informant Fund Directive.
 - b. It shall be the responsibility of the supervisor or command officers who check out money to assure that all monies are accounted for.
 - c. All funds of the Criminal Investigation Division will be audited monthly by the Office of the Division Chief, and copies of the audit provided to the Chief of Police and the Manager of Safety.
- (3) A Directive for the use, supervision, and compensation of informants will identify the importance of the use of informants, categories of informants and informant classifications.
 - a. Restrictions will be established for using certain types of criminals and juveniles as informants.
 - b. Supervisors must be aware of agreements between subordinates and informants.
 - c. Compensation for informants in the form of pay, dismissal of cases or appearances on their behalf must follow the Directive guidelines.
 - d. Informant record keeping, codes, and file security will be covered in the Directive.

