

SALEM POLICE

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ARRESTS

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NEW AMENDS RESCINDS

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GENERAL CONSIDERATIONS & GUIDELINES

The power and authority to arrest and to deprive a person of liberty and freedom is one of the most serious and sensitive duties of a police officer. Duly sworn police officers of cities and towns gain their authority to make arrests from M.G.L. C.41 S.98. (1.2.1) Under the Fourth and Fourteenth Amendments to the U.S. Constitution all person are entitled to be secure from arbitrary and unreasonable governmental intrusion. In recent years, the courts have shown an increasing concern for the protection of these personal rights. As all arrests constitute a critical stage in the criminal process, the courts have indicated that at arrest a valid warrant is to be preferred and that warrantless arrests are an exception to the general rule. Absent statutory authority, whenever there is sufficient time and opportunity to do so, a warrant should be obtained advance of an arrest.

Due to the very nature of police work many arrests must be made without a warrant. This places upon the officer in the field in a most important decision-making responsibility. The police may be held responsible both civilly and criminally for any abuse of authority when taking suspected criminal offenders into custody therefore it is expected that all police officers will have a clear understanding of their powers, duties and responsibilities under the law of arrest. If an unlawful arrest is made, any search made incidental to that arrest may be found unlawful and any evidence seized declared inadmissible. Any confession or admission made may also be excluded, if made after an unlawful arrest. It is for this purpose that the following basic guidelines have been prepared.

An "arrest" is defined as the taking of a person or persons into custody and depriving them of their freedom of action, in

accordance with law, in order that such persons can be brought before the court to answer to criminal charges. It also includes the taking of persons into custody to prevent them from injuring themselves or from doing harm to others. The arresting officer must have lawful authority to make the arrest and must exercise that authority in a lawful manner.

To effectively and lawfully execute an arrest there must be:

An intention on the part of the police officer to make an arrest;

The knowledge and understanding of that intent must be communicated to the person to be arrested;

Either a physical seizure or submission to the officer by the arrested person.

When persons are arrested and taken into police custody, their fundamental rights under the U.S. Constitution and the General Laws of the Commonwealth are immediately activated. All constitutional and statutory rights to which they are entitled must be provided to all arrested persons at the time of their arrest and immediately thereafter. (1.2.3)

ARRESTS

In the implementation of the following arrest procedures all related Department policies such as the use of force, search and seizure, transporting prisoners, booking process, threshold inquiries and stop and frisk should also be considered.

- 1.1.1 PROBABLE CAUSE:** In addition to having lawful authority, it is required under the Fourth Amendment that a police officer have "probable cause" in order to make a valid arrest. There is no exact formula for determining probable cause and each case must be decided on its own facts and circumstances. Essentially, probable cause for arrest exists if the arresting officer, at the time of arrest, has reasonable trustworthy knowledge that is sufficient for a person of ordinary or reasonable caution and prudence to believe that a crime is occurring or has occurred and that the person being arrested is committing or has committed the crime for which the arrest is being made (Beck V. Ohio, 379 U.S. 89 5. Ct., 233~ 13 L. Ed. 2nd 142g 1964).

The information upon which an officer relies in making an arrest must be more than just rumor or mere suspicion, but it does not require sufficient evidence to justify a conviction (Comm. V. Stevens, 362 Mass. 24, 283 N.E. 2d 673, 1972). It does require a reasonable, common sense approach by a police officer and an honest judgment based upon a combination of factors, any of which standing alone might not be enough to justify an arrest but which, if viewed as a whole, does constitute probable cause. The element of probable cause must exist at the time of arrest and subsequent events or information acquired later cannot be used to justify that arrest.

Probable cause therefore, is not a complex formula that is understandable only to those with a legal background. It consists of personal knowledge and reasonable inferences drawn from practical police experience or reliable information obtained from others which causes a reasonable cautious police officer to believe that it is more likely than not that a crime has been committed and that the person being arrested has committed that crime. In the case of Brinegar V. U.S. (338 U.S. 160, 69 S.Ct. 1302, 93 L.ED.2d, 1879, 1949), the Supreme Court said, "In dealing with probable cause, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of every day life on which reasonable and prudent men not legal technicians act."

1.1.2 ARRESTS IN GENERAL: A duly authorized police officer, with probable cause, may make a lawful arrest if one of the following conditions are met:

Arrest with a valid warrant (**Chapter 276 Section 23**).

"Any officer.... may arrest and detain a person charged with a misdemeanor, without having a warrant for such arrest in his possession, if the officer making such arrest and detention shall have actual knowledge that a warrant is in full force and effect for the arrest of such person has in fact issued." Chapter 276 Section 28.

Arrest without a warrant for a felony committed in the officer's presence or on reasonable belief that a felony has been committed (**Comm. v. Phelps, 209**)

Arrest without a warrant for a misdemeanor committed in the officer's presence that is causing or threatening to cause a breach of the peace (**Comm. V Gorman, 288 Mass. 294, 192 N.E. 618 1934**).

Arrest without a warrant for a misdemeanor not amounting to a breach of the peace committed in the officer's presence when such arrest is authorized by statute (**Comm. V. Wright, 158 Mass. 149, 33 N.E. 82 1893**).

Arrest without a warrant for certain violations of the Controlled Substance Law even though such misdemeanors were not committed in the officer's presence (**Chapter 94C Section 41**).

A felony is any crime punishable by death or imprisonment in the state prison; all other crimes are misdemeanors (**Chapter 274 Section 1**). A breach of the peace may be defined as "a violation of public order or decorum which disturbs the public peace and tranquility; or any act of disorderly conduct which disrupts the public peace."

1.1.3 It should be noted that there are selected statutes authorizing arrest for particular misdemeanors without a warrant when committed in the presence or view of a Police Officer.

1.1.4 ARRESTS WITH A WARRANT: The district court may authorize the issuance of an arrest warrant in any case except where the accused is a juvenile less than twelve years of age. The decision to authorize an arrest warrant may be based upon the representation of a prosecutor made to the court that the defendant may not appear unless arrested. An arrest warrant shall be signed by the authorized court official issuing it and shall contain the name of the defendant or if his name is unknown, any name or description by which he can be identified with reasonable certainty. The warrant shall recite the substance of the offense charged and it shall command that the defendant be arrested and brought before the court. A warrant shall be directed to and executed by an officer authorized by law to serve criminal process. (1.2.5) (74.3.2) A warrant may be executed any place within the Commonwealth. The officer need not have the warrant in his possession at the time of arrest but upon request, he shall show the

warrant to the defendant as soon as possible. If the officer does not have the warrant in his possession at the time of the arrest, he/she shall inform the defendant that a warrant has been issued and of the offense charged but if the officer does not then know of the offense charged, he/she shall inform the defendant thereof within a reasonable time after the arrest. The officer executing a warrant shall make a return thereof to the issuing court and an officer who willfully delays service of a warrant is subject to a fine. A defendant who has been arrested shall be brought before the court if it is in session and if not, at its next sitting. Generally, arraignment the next morning is not unreasonable when a defendant is arrested late in the day. The foregoing are excerpts from Rule 6 of Massachusetts Rule of Criminal Procedure, established by the State Supreme Judicial Court, effective: July 1, 1979.

Upon the arrest of a juvenile, a child under 18 years old, the arresting officer shall notify the parent or legal custodian (guardian, caretaker, DCF) of the juvenile and the probation department. This is to permit the prompt release of the juvenile, consistent with Massachusetts General Laws, Chapter 119 Section 66 and 67. All juveniles are entitled to bail. For guidance see *Salem Policy #48.0 Juvenile Operations*.

An arrest warrant is, therefore, an order in writing, issued by an authorized court official directed to officers authorized to serve criminal process and commanding them to arrest the person named or described therein and to bring such person before the court to answer to a charge or crime. A so-called "John Doe" warrant without a further satisfactory and sufficient description, is illegal and void (**Comm. V. Crotty, 92 Mass. 403, 1865**). An arrest warrant, issued pursuant to a complaint must be founded upon probable cause supported by oath or affirmation but it is not necessary to recite the facts that constitute probable cause in the complaint (**Comm V. Baldassini, 357 Mass., 670, 260 N.E. 2d, 150, 1970**).

A person arrested on a warrant or taken into custody by a police officer, has a right to know the true grounds for such arrest and an officer who refuses to answer a question relative to the reason for such arrest or who answers such question untruthfully is liable to a criminal penalty

An arrest warrant should not be used as a pretext to permit officers to search or take persons into custody to obtain evidence or information relating to some other crime. Officers shall confirm the warrant before taking any person into custody.

Officers shall have 24 hour access to all warrants via the CJIS system. All warrant information will be entered and canceled within the time constraints as set down by CJIS rules.

To serve an arrest warrant on private property, police officers should first announce their authority and purpose and wait a reasonable period to be admitted. Once a reasonable time has passed and they have not been voluntarily admitted and there is reasonable belief that the wanted person is on the premises, they may use whatever force is necessary to gain entrance (**Comm. V. Reynolds, 120 Mass. 190, 1876**). The least amount of force that will accomplish an entrance should always be used. *Redacted in accordance with Exemption (f) of the Massachusetts Public Records Law (MGL Ch. 66 § 10).* (74.3.1)

1.1.5 ARREST WITHOUT A WARRANT: An arrest without a warrant may be lawfully made when the arresting officer is exercising his lawful authority in a lawful manner and has probable cause for the arrest. (1.2.5) Warrantless arrests merit much more detailed study because of the subjective factors involved. If an unlawful arrest is made any search made incidental to that arrest may be found unlawful and any evidence seized declared inadmissible. Any confession or admission made may also be excluded if made after an unlawful arrest.

An arrest for a felony based upon probable cause may be made at any time but an arrest without a warrant for a misdemeanor must be made immediately upon view of the offense and must be provided for by statute or amount to a breach of the peace. Immediately in this case does not necessarily mean during the continuance of the misdemeanor; the offender may stop before the officer can reach him or the offender may flee at the officer's approach. In general, it means as soon as possible upon fresh and continuous pursuit or where the offense and the arrest are all part of the same incident (**Leddy V. Crossman~ 108 Mass. 237, 1871**).

Duly authorized police officers may, on fresh and continued pursuit, exercise their police authority in any other city or town for any offense committed in their presence for which they would have the right to arrest within their own jurisdiction without a warrant and may return persons so arrested to the jurisdiction where the offense was committed out of his presence where a dangerous wound was inflicted which he has reasonable ground to suppose may end in a felony (**Comm. v. Phelps, 209 Mass. 396, 95 N.E. 868, 1911**).

The statute (**Chapter 41 Section 98**) **(1.2.1)** which authorizes officers to examine persons abroad who they have reason to suspect of unlawful design, does not authorize arrests without probable cause (**Alegata V. Comm., 353 Mass. 287, 231 N.E. 2d 201, 1967**). This statute does permit a police officer to make a brief threshold inquiry of a person whose suspicious conduct gives the officer reason to suspect such person of unlawful design but does not permit the officer to search for evidence of crime in the absence of probable cause for arrest. Officers may, however, act reasonably to ensure their own safety during this inquiry by patting and frisking the suspect for weapons (**Comm. v. Lehan 347 Mass. 197, 196 N.E. 2d 840, 1964**).

The reasonableness of a threshold inquiry is a matter to be determined by each particular case and it is not unreasonable when done to meet the practical demands of criminal investigation and law enforcement (**Comm. V. Salerno 356 Mass. 642, 255 N.E. 2d 318, 1970**);).

Pursuant to Comm. vs. Jewett (2015) Police may make a warrantless entry into a dwelling to make an arrest when they have probable cause to believe a jailable misdemeanor has been committed and they are in hot pursuit.

- 1.1.6 POLICE DISCRETION TO ARREST:** Although police officers must always be guided by the intent and purpose of the warrant, there are limited circumstances in the discretion of the officer involved when the public interest would be better served by not making an arrest even though there is legal justification for such action. Such circumstances would include the following; **(1.2.6)**

When an arrest could aggravate community conflict or possibly precipitate a serious disorder.

When there is a greater priority to respond to a more serious crime or to an urgent public emergency.

In family disputes, neighborhood quarrels, noisy parties, landlord-tenant problems and minor disturbances of the peace where no serious crime has been committed and the officer can successfully act as a mediator.

In minor juvenile offenses where diversion, a warning and/or a talk with a parent/guardian can avoid a court appearance. (44.2.1)

In other minor offenses where a summons can effectively accomplish the intended purpose.

1.2 PROCEDURES

1.2.1 An arrest should never be made to show authority or to vent personal feelings.

The attitude of the offender should not be the determining factor in making an arrest.

Verbal abuse alone is not sufficient justification for an arrest.

1.2.2 Whenever possible, arrests should be made with a warrant.

The officer must fill out a complaint and affidavit.

The warrant must be obtained from the proper authority:

Justices of the Supreme Judicial, Superior and District Courts may issue process for the apprehension of persons charged with a crime (**Chapter 276, Section 21**).

A clerk, assistant clerk, temporary clerk or temporary assistant clerk in a District Court may receive complaints, administer oaths required and issue arrest warrants search warrants and summonses. No other

person, except a judge, shall be so authorized (Chapter 218 Section 33).

1.2.3 Prior to serving an arrest warrant an officer should examine it carefully to determine:

Whether it has been issued by a court of competent jurisdiction and authority;

Whether the officer is authorized to serve it;

Whether it clearly names or describes the person to be arrested;

Whether it clearly describes the offense for which the arrest is to be made;

What the officer's powers are under it.

Verify the warrant is currently valid (74.1.3)

1.2.4 Other than constitutional safeguards, the other major constraint on the power of arrest is jurisdictional. Generally, the power of arrest ceases at the boundaries of the governmental unit by which the officer is appointed. There are situations when this general rules does not apply; an officer can serve warrants anywhere in the Commonwealth; a proclamation of a state of emergency declared by the Governor allows an officer to make an arrest where he has been stationed; during fresh and continuous pursuit an officer may pursue a felon into another jurisdiction and make an arrest. An officer may make arrests in another community when his services have been requested by the proper official in that community.

1.2.5 Probable cause to make an arrest is always an overriding consideration for every police officer. Whether or not an arrest is based on probable cause will depend on a variety of factors and unless the offense is committed in the officer's presence, usually no single fact alone is controlling.

Of great importance, therefore, is the totality of circumstances surrounding the arrest. Each officer should be aware of the type of circumstance, which have been looked to in establishing probable cause:

Direct observation of the police officer;

Knowledge of the prior criminal record or criminal activity of the person arrested;

Flight accompanied by other factors;

Evasive answers and/or conflicting stories;

Time of day or night;

History of criminal activity in the particular area;

Experience of the officer;

Reliable hearsay;

Hearsay statements often present problems in establishing probable cause and also evidentiary problems during trial. Usually, they are derived from three principal sources;

Statements from the victims and/or witnesses;

Statements from other police officers;

Statements from informants.

It is the latter source that is closely scrutinized when used to establish probable cause. The courts have applied strict standards in determining whether an informant's information establishes probable cause (**Aguilar V. Texas**, 378 U.S. 108, 84 S. Ct. 1509, 12 L.Ed. 2d 723 (1964) and **Spinelli V. U.S.**, 390 U.S. 410, 89 S. Ct. 584, 21 L.Ed. 2d 637 [1969]).

First, the officer should be able to set forth the underlying facts and circumstances indicating the reliability of the informant (for example, this may be met by establishing that such informant has been reliable in the past).

Second, the officer should be able to set forth the underlying facts and circumstances indicating the reliability of the basis from which the informant draws his conclusion and the facts supporting those conclusions. This may be established by describing how the informant acquired the information (**Comm. V. Kane**, 362 Mass. 656, 290 N. E. 2d 164 (1972)).

1.2.6 All officers should be able to point to specific factors that justify an arrest without a warrant. Examples of such factors are:

Did they see the crime being committed?

Did they see the suspect run away?

Did they receive prompt and direct replies to questions or was the suspect vague and confused?

Have they had experience in similar situations?

Did they receive information from other persons and if so, were they certain of the reliability of that person and the information received?

At the time of arrest, unnecessary conversation should be avoided and any orders or statements to the person(s) arrested should be clear and brief. However, the arresting officers must clearly identify themselves as police officers and state their purpose.

1.2.7 Arresting officers should not act in a careless or routine manner but should take all necessary steps to ensure their own safety and the safety of the public and to secure all evidence. Such steps shall include but are not limited to;

Obtaining assistance when necessary whether before or after the arrest, this is particularly advisable when:

There is more than one person to be arrested;

A dangerous crime is involved;

Prior experience has shown the need for assistance in particular situations, for example domestic violence or motor vehicle arrests;

Searching for and seizing any instruments capable of inflicting serious bodily injury or causing death and evidence of any crime.

Making a search of the area within the immediate reach and control of the person(s) arrested for weapons or destructible evidence (**Chimel v. California**, 395 U.S.752, 89 S.Ct.2034, 23 L.Ed. 2d 6851969).

Keeping the person(s) arrested in front of the officer at all times. If more than one officer is present, the additional officer shall never pass or position himself between the arresting officer and the person arrested.

1.2.8 Once an arrest is made it is the responsibility of the arresting officers to ensure the prisoners do not injure themselves or others and that they do not escape or dispose of evidence.

1.2.9 Persons arrested shall be given the **Miranda Warnings** prior to any interrogation (**Miranda v. Arizona**, 384 U.S. 436, 86 5 Ct. 1602, 16 L.Ed. 2d 694 (1966)). (1.2.3)

The warnings shall be read from a card or other permanent record to ensure that none are omitted this procedure is beneficial for other reasons.

The card itself can be introduced as evidence;

Officers have tangible proof that they have not relied solely on memory;

The suspect can also be permitted to read the card.

Each officer giving the warning shall ask and verify that the person arrested has heard and understood the warnings so given.

No questioning of arrested persons shall take place until these warnings have been given. However, officers must note that the Miranda Warning are aimed at custodial interrogations; meaning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. Therefore, if suspects freely choose to divulge information there is no violation of rights simply because they were not given these warnings. There is no requirement that an officer prevent suspects from continuing to talk and whenever statements are made voluntarily and with no compulsion, such statements shall be noted and incorporated as part of his official report. However, if an officer wishes to gain further information through questioning, the warnings shall be given before pursuing the matter further. (1.2.3) If no card

is available to be read at the scene the warnings should be given orally and documented as such.

- 1.2.11** The person(s) arrested shall be handcuffed and promptly and safely transported to the station house in accordance with Department procedures. (70.1.6b)
- 1.2.12** Upon arrival at the station house, the person(s) arrested shall be informed of the right to use the telephone (Chapter 276 Section 33A). (72.7.1d)
- 1.2.13** After booking procedures are completed, the person(s) arrested shall be brought to court forthwith if it is in session or at the next regular sitting of the court. (72.7.1a)
- 1.2.14** Arresting officers will make a full and complete report of any arrests made with or without warrants, in accordance with standard Department policies and procedures. (1.2.5a)

08/26/2015 Policy revised see prior versions

02/18/2016 1.1.3 Re-worded

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