

Anchorage Police Department Regulations and Procedures Manual	Operational Procedures 3.02.005	
Policy and Procedure Title Arrests-General	Effective Date 9/1/2020	Page 1 of 9
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This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.

3.02.005 Arrest-General

PURPOSE

To instruct and inform all personnel of the rules and procedures governing arrests made by members of the Anchorage Police Department.

POLICY

That arrests effected by members of the Department be legally and constitutionally acceptable, appropriate to the situation, using only an amount of force consistent with the attendant circumstances.

DISCUSSION

A common misconception is that an arrest is the conclusion to a police operation. In fact, it is only a step towards the true conclusion--adjudication in court. As a step, the arrest becomes a potential weak link in the chain of events leading towards a conviction.

Because an arrest is such a significant intrusion into the privacy of the citizen, there are many protections against abuse incorporated into law. This can make an otherwise simple act seem complex to officers. This procedure explores arrests of all types in detail, laying a foundation for a more complete understanding of the actual arrest methods explained in subsequent procedures in this chapter.

DEFINITIONS

Probable Cause: Reliable information in sufficient quantity and detail that would lead a reasonable person to believe that a crime has been committed or was attempted and that the suspect committed the crime.

PROCEDURE

I. ELEMENTS OF AN ARREST

- A. **Statutory Definition of an Arrest.** AS 12.25.160 defines arrest as “...the taking of a person into custody in order that the person may be held to answer for the commission of a crime.” This statute exposes the three elements of an arrest, specifically: Custody of a Person to answer for a Crime
- B. **Comparison of Arrests to Other Violations.** Not every type of violation of law can result in an arrest, and even within the body of “arrestable offenses” are subcategories. What creates the different categories of violations are the possible consequences of the act. An understanding of the different types of violations enables officers to correctly select the appropriate response, charging document, and Police Report form. The following list identifies the various categories:
1. **Criminal Offenses**--These are offenses so serious that the violator can receive imprisonment and/or a fine in excess of \$300 for committing that act. The subcategories of crimes are:
 - a. **Felony Crimes**--Which are the most serious crimes, punishable by imprisonment in excess of one year. The State of Alaska has adopted a crime classification system that further describes the seriousness of the offense, which is:
 - 1) Unclassified Felony Offenses.
 - 2) Class A Felony Offenses.
 - 3) Class B Felony Offenses.
 - 4) Class C Felony Offenses.
 - b. **Misdemeanor Crimes**--Which are offenses still serious enough to warrant imprisonment as a possible sanction, but constitute the least serious criminal acts. Misdemeanor offenses cannot be punished with more than one year in jail. Alaska classifies misdemeanors as follows:
 - 1) Class A Misdemeanor Offenses.
 - 2) Class B Misdemeanor Offenses.
 2. **Infractions**--Infractions are still violations of law, but fall short of being crimes. Infractions are usually regulatory in nature (such as speed restrictions for motor vehicles, licensing requirements for hunting and fishing, how to properly turn a vehicle), but still regarded as important. How important they are can be measured by considering this: A “conviction” for an infraction will not expose the violator to punishment in jail. If the violator fails to provide officers with certain information required for the issuance of the charging document, the violator can be brought before a magistrate (through Title 12 of the Alaska Statutes). Additionally, there is a separate criminal charge for providing false information to officers needed for the issuance of the charging

document. Officers should note that if a person is charged for an infraction (usually on a Uniform Summons and Complaint), that person must appear in court to answer to the charge unless that infraction appears on the “bail forfeiture schedule” established by District Court Rule 8 (and approved by the Alaska Supreme Court). That bail schedule allows the violator to send in the bail amount in lieu of appearing in court. (This procedure is the one officers are most familiar with--the “traffic ticket”--that has points and bail assessed. The more serious infractions do not allow the violator to exercise this option, and officers recognize these offenses as the “mandatory court” infractions.)

3. **Civil Violations**--For officers, most commonly, parking and curfew violations. The most important distinction between civil code and an infraction or crime is that the civil violator:
 - a. Does not get a record of violation established; and
 - b. Cannot be imprisoned, even by warrant. Instead, “civil action/relief” is sought through fines and impoundment of property.

II. TYPES OF ARREST

A. **Warrant Arrests**, which only police officers can serve, comprising:

1. Felony warrants
2. Misdemeanor warrants
3. Juvenile Detention Orders
4. Ex-parte Orders (a court order affecting any citizen, and usually for mental commitments).

B. **Warrantless Arrest**, comprising:

1. Felony arrests, made by either:
 - a. Personal observation of the crime; or
 - b. Probable cause, established by investigation.

Note: The law allows a citizen to make a private person’s felony arrest, but Department policy prohibits it. Instead, officers will arrest based on probable cause supplied by that citizen.

2. Misdemeanor arrests, made by
 - a. officers, when either

- 1) The offense occurred in their presence (see the Definition Section of “Arrests—Misdemeanors 3.02.025” for full discussion), or
- 2) Through probable cause, if the misdemeanor is the result of domestic violence or a traffic crime. See the specific procedure in this manual for details on these two sole exceptions.

All other misdemeanor warrantless arrests require commission in the officer's presence (to be arrested by that officer).

-OR-

- b. by a private citizen, through personal observation only. Recall that Department policy allows this for misdemeanors only.

III. EFFECTING AN ARREST

- A. **Statutory Description.** AS 12.25.050 states “An arrest is made by the actual restraint of a person or by a person’s submission to the custody of the person making the arrest.”
- B. **Significance.** Knowing when an arrest has been legally made is significant to officers for several reasons, including:
 1. Proper charging--for example, “resisting” can only occur prior to the arrest, while “escape” only after.
 2. Legal searching--prior to arrest, “stop and frisk” is the only intrusion allowed by law, and that is solely for officer safety (so, very limited in scope). After the arrest, however, the exceptions to the search warrant requirement include the “search incidental to the arrest.”
 3. “Starting the clock”--an arrest triggers several deadlines, including charging, going before the magistrate, and speedy trial.
- C. **Delaying Arrest.** Officers must be aware that an immediate arrest is not always in the best prosecutorial interests. Refer to “Arrests—Felony 3.02.010” procedure.

IV. ARREST AUTHORITY

- A. **Background.** The Constitutions of both the United States and of the State of Alaska guarantee freedom from unwarranted intrusion and unlawful detention, while statutory law and case law define and interpret what is “lawful” detention, and who can effect that detention. Elsewhere in this chapter the “reasonableness” of detention is discussed in detail. This procedure focuses on the police officer’s scope of authority.

B. **Foundation of Authority.** The police officer's authority to arrest comes from two broad sources:

1. Specific Statute--AS 12.25.010 (Persons Authorized to Arrest) "An arrest may be made by a peace officer or a private person." Thus, any competent person--not just a police officer--can make an arrest.
2. Tradition--As expressed in case law, common law, and expectations of the citizenry.

C. **Expansion of Authority.** Various social and legal factors have expanded the police authority and responsibility, making some distinction between police authority and private citizen authority possible. This includes:

1. Service of warrants and summons.
2. In some jurisdictions, service of certain subpoenas.
3. Conducting investigative stops (i.e. field interviews, based on "reasonable suspicion").
4. Commit mentally ill people directly for evaluation.
5. Carry concealed weapons and certain contraband in the line of duty.
6. Take certain persons into protective custody.
7. Operate a motor vehicle against various traffic laws to discharge their duty.
8. Obtain and serve search warrants.

D. **Police as a Recognized Profession.** The law carefully guards the citizens' powers of arrest, to include the application of deadly force when necessary to stop a crime that they coincidentally observe. Police officers, however, are expected to actively and effectively seek out crime and arrest offenders. To facilitate this, carefully selected, highly trained citizens are entrusted with the additional authority (discussed in the previous paragraph), and they are called "police officers." The courts routinely recognize the special talents and equipment of police, which operate to not only expand the authority, but heighten the responsibility as well. Police then, are professionals at "citizen arrests," and have a duty to protect the citizens who hire and trust them.

E. **On- and Off-Duty/Jurisdictional Boundaries.** The law makes no distinction between being "on" or "off" duty. Once recognized as a police officer within the State, no time boundaries or political boundaries can divest officers of their knowledge, skills, training, or responsibilities. A police officer does not "forget" *Miranda* at the end of a tour, nor are skills at detecting suspicious activities when outside of one's jurisdiction lost. Realistically, though, it is impossible to perform all

the time, in all places. Where, then, do the distinctions lie between on and off duty, and in and out of jurisdiction? Note the following:

1. "On-duty" officers are expected to seek out criminal activity, respond to calls for service, and take the risks necessary to discharge these duties. "Off-duty" officers, however, revert somewhat to the role of the private citizen, in that they are expected to take "appropriate" action to crimes which coincidentally occur in their presence.
2. The "appropriate action" mentioned above is greater than the action expected from a citizen. The citizen is not required to take any action at all. "Appropriate action" for officers is that action which is both:
 - a. Necessary--considering the totality of the circumstances. A vehicle registration two days into expiration represents no hazard or urgency. A reckless driver creates some degree of danger. The first can be ignored, while the second may require calling an on-duty unit, getting a license number and operator description, or giving first aid to a victim of the reckless driver.

-AND-

- b. Within present ability--meaning a consideration of the off-duty officer's weapon status, radio or home car availability, alcohol consumption, etc.

F. **Department Policy.** The Anchorage Police Department has adopted the following guidelines for police action on and off duty, and within and outside of the Municipal boundaries:

1. **On Duty**--Primary focus is on area of assignment, actively seeking criminal activity and engaging in crime prevention. Officers are to respond to all calls for service, and to all on-view activities.
2. **Off Duty**--Take the appropriate action, as described in the above paragraph (E.2), for incidents detected by chance.
3. **Home Car Responses**--Take appropriate action as if off-duty, but expanded to include response to priority calls. Officers shall not, however, "jump" or "chase" calls, nor participate in unwarranted code runs or pursuits. Officers should always be aware of the limitations of a home car response (no portable radio, decreased effectiveness and identity out of uniform, etc.) and evaluate those factors when considering "present ability." Merely calling for an on-duty unit is often the most appropriate response.

V. "UNARRESTING" AN INDIVIDUAL

A. **Justifiable Occasions.** Despite precautions, and even with best intentions, officers may discover facts suggesting the wrong person was arrested, or that an arrest was inappropriate. In these cases, the following procedure applies:

1. If the charging document **has not** been submitted, the subject **can** be released with an explanation. A police report must sufficiently document the events leading to the arrest, and the subsequent events requiring reconsideration. Additionally, officers must notify their immediate supervisor of the incident and the circumstances surrounding prior to the release.
2. If the charging document **has** been submitted, officers **cannot** on their own authority "unarrest" the arrestee. Instead, the respective prosecuting authority must be contacted and advised, both verbally and through written report (supplement), of the facts leading to the arrest and the subsequent reconsideration. That prosecutor can initiate the appropriate action based on this new information.

VI. Bail Hearings--Release/Incarceration

A. Telephonic or Physical Appearance Before a Magistrate.

1. When a person is arrested for a misdemeanor, the defendant may be cited and released (Uniform Summons and Complaint with no CORs), releasing the defendant on their own recognizance (Order and Conditions Release Per Schedule CR-766), or may be brought before a magistrate for a bail hearing, in person or telephonically, which will include the Release Per Judicial Officer Order (CR-765). The following describes that hearing, and subsequent actions:
 - a. During the defendant's appearance,
 - 1) Officers should provide a brief criminal history of the subject. Officers can get this information from their MDC or from the Dispatch Center prior to the hearing; and,
 - 2) Officers must briefly present the facts of the case to the magistrate; and,
 - 3) The magistrate will determine conditions of release for the defendant.
 - b. Magistrate:
 - 1) The subject can be released "on his/her own recognizance" ("OR'd"), often with specific conditions of release. In that event, and ensuring all conditions can be met upon release, the person is free to leave.

- 2) The magistrate or officer will complete a Release Per Judicial Officer Form (CR-765), issuing it directly to the defendant before release. Ensure the court date is documented on the form and the defendant can sign and date the appropriate location. If a defendant refuses to sign the form, then the officer should annotate where the defendant would have signed, that the defendant refused to sign but was explained the form. The defendant should be given a copy of the form and a copy should be turned into the Anchorage Police Department Records.

OR

- c. The magistrate may require the subject to post bail and may impose additional bail requirements.

OR

- d. If a felony or a DV related crime, the defendant shall be remanded to jail custody without bail until arraignment.
- e. Transporting.
 - 1) Should the magistrate impose bail upon the defendant, the officer must then transport the person to the appropriate facility.
 - 2) If “OR’d,” officers have no legal obligation to transport released subjects but may do so at their discretion.

VII. MEDICAL CONSIDERATIONS

- A. **Detention Facility Policies.** All detention facilities have policies regarding the acceptance of prisoners who are in need of medical attention due to illness or injury. Most often, these prisoners will not be accepted without a medical clearance from a physician. Although officers generally know when medical treatment is needed, the requirements of each facility may differ. Therefore, a medical clearance will be obtained before booking whenever a detention facility demands such clearance.
- B. **Injured by Police Action.** In all cases where an arrestee is injured as a result of police action, the involved officers will ensure that the subject receives appropriate and immediate medical attention, and will reflect in their reports the nature, extent and cause of that injury. A field supervisor will be notified of the injury. Photographs will also be taken of any visible injuries.
 1. In these cases, the officers' supervisors will review all the facts and circumstances surrounding the injury so as to:

- a. Ensure all facts are properly reported; and
 - b. Review officers' actions for possible misuse of force.
- C. **Injury not from Police Action.** In cases where the subject is injured, unconscious, or ill independent of police action, all effort should be made to attend to that medical aspect prior to remand.
- D. **Hospital Admittance.** Should an arrestee require actual admittance to a hospital, the following procedure should be followed:
 - 1. Ensure medical attention is provided, as expressed above.
 - 2. Notify a supervisor of the necessity to maintain a guard on the arrestee.
 - a. The field supervisor, being fully aware of the incident and having all available health assessment information, should solely, or with consultation of the shift commander, make a determination for future custody by APD officers.
 - 3. Under the approval of a field supervisor, arraignment at the hospital can be arranged with a magistrate, or an arrest warrant may be applied for.
 - 4. After charging and arraignment, the Department of Corrections normally assumes responsibility for guarding the arrestee. Officers, through a supervisor, should contact the appropriate facility to make arrangements.
- E. **Refusing Medical Treatment.** Should an arrestee refuse medical treatment, they can be processed without further consideration. However, should Department of Corrections personnel or the officer feel attention is required, the officer must have the attending physician provide a brief note verifying the subject's refusal.
- F. **Expenses.** Officers should not obligate the Municipality to pay for expenses beyond the scope of current procedure. However:
 - 1. If hospital staff indicates treatment will be denied if such authorization is not furnished, a field supervisor should be contacted.
 - 2. In any other circumstance an officer is being requested to authorize an expense be paid by the department and the officer believes the charge is not otherwise currently covered by an active contract between the department and the requester, a field supervisor should be contacted.

END OF DOCUMENT

