

Anchorage Police Department Regulations and Procedures Manual	Operational Procedures 3.02.025	
Policy and Procedure Title Arrests Misdemeanor	Effective Date April 5, 2021	Page 1 of 6
Replaces Prior Policy: September 1, 2020	Approved by: Chief Justin Doll	

This policy is for departmental use only and does not apply in any criminal or civil proceeding. This policy should not be construed as creation of a higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this policy will only form the basis for departmental administrative sanctions. Violations of law will form the basis for civil and criminal sanctions in a recognized judicial setting.

3.02.025 Arrest--Misdemeanor

PURPOSE

To advise all personnel of the methods for effecting and processing arrests of misdemeanor violations.

POLICY

That members of the Anchorage Police Department conduct arrests that are legally sufficient and acceptable, are appropriate to the situation and minimize risk exposure, and flow smoothly into the court and correctional system.

DEFINITIONS

Crime: An act or omission which can be punished by any imprisonment.

Custody: A restraint of liberty; a stopping of movement.

Infraction: An act or omission which can be punished by a fine up to \$300, impoundment of property, or other minor sanctions, but not by imprisonment of any duration.

Misdemeanor: One type of crime which, if convicted, could subject the violator to a fine in excess of \$300.00, and/or a term of imprisonment of up to a year, and/or a license action (suspension or revocation) for that single act (**Note:** A traffic infraction does not elevate to a misdemeanor if that infraction happens to give the violator sufficient points for a license action. The one act must, standing alone, be sufficient to allow license action).

Arrest: The taking of a person into custody to answer to an allegation of a criminal offense. This excludes, by definition, violations or infractions.

Charging Document: That form which sets forth the particulars of a violation. These documents include:

- A. **Criminal Complaint.** The document which the arresting officer, or another may prepare for state or municipal arrest warrants.
- B. **Uniform Summons and Complaint:** A field-issued complaint under AS 12.25.150. If the complaint is for a traffic infraction, it is a “traffic citation.” When used to charge a eligible misdemeanor, it is referred to as a “cite and release”.
- C. **Order and Conditions Release Per Schedule, Form CR-766:** This form is much like the Uniform Summons and Complaint in that the arrestee may be released from an appropriate misdemeanor offense with a court date. This form can be issued in lieu of a Uniform Summons and Complaint when conditions of release are desired. This paperwork is commonly referred to as “OR” paperwork. This form is preferred when releasing an arrestee from arrest.

"Committed in One's Presence." For purposes of this procedure, "presence" requires the person to detect an act (or a sufficient portion of an act) with any of the five senses. That detection must be of such quality as to conclude that only the person(s) accused could have committed the act(s) alleged.

PROCEDURE

I. MISDEMEANOR ARRESTS

- A. **Warrant Arrests.** When the court issues an order compelling any peace officer to arrest and detain a specific individual for the violation of a misdemeanor law. That misdemeanor law can appear in State Statute, Municipal Ordinance, the various traffic codes, or in any other body of law. For more information, see the procedure " Investigations- Warrants/Summons/Subpoenas 3.02.075."
- B. **Warrantless Arrests**
 - 1. Conducted by the officer.
 - a. If any misdemeanor is committed in his/her presence; or
 - b. On probable cause, developed by that officer or other officers, if and only if the subject misdemeanor is:
 - 1) The OUI provisions; or
 - 2) The “Domestic Violation” provisions.
 - 2. Conducted by a private person.

- a. If any misdemeanor is committed in that citizen's presence.

II. EXECUTING THE ARREST

A. Warrant Arrest

1. A warrant is a court order to arrest. Department policy allows officers to select the time and place for arrest, provided they are able to articulate why an arrest was not immediately made.
2. Anchorage police officers can serve any valid warrant. However, policy is to serve only the following:
 - a. All Anchorage Police Department warrants.
 - b. All Alaska State Trooper warrants, regardless of which post in the State originates the charge.
 - c. Any other municipal warrants if that municipality agrees in advance to transport the subject. This advance notice is normally in the form of announcements at briefings, flagging the computer entry, or other interagency means.
3. In executing an arrest warrant, the most critical elements are:
 - a. Establishing positive identity. This includes both the identity of the person named on the warrant, and the identity of the subject being considered for arrest.
 - b. Confirming the existence of the warrant through the Dispatch Center or the Mobile Data Computer.
 - c. "Removing" the warrant from APSIN, ensuring the Department Serial Number (DSN) of the operator is annotated in the report.
4. If both the aforementioned elements (3.a and 3.b) meet the officer's satisfaction and the officer elects to execute the warrant, the subject is arrested in the conventional manner (see "In-Custody Transports" procedure 3.02.060).
5. When processing a warrant arrest, ensure the following information appears on the Arrest Report:
 - a. The warrant number; and
 - b. The Criminal Case Intake and Disposition form, ATN; and
 - c. The original offense. Neither "Failure to Appear" nor "Failure to Satisfy" is the violation. The warrant should charge, for

instance, “Failure to Appear--Shoplift” as the complete offense; and

- d. The bail amount or conditions of release, specifying whether that bail is “Cash Only” or “Third Party”; and
- e. The agency of origin (Alaska State Trooper warrants require the Detachment, for instance, “AST, Soldotna”); and
- f. The Department Serial Number (DSN) of the computer operator who cleared the warrant.

B. Warrantless Arrests

- 1. Misdemeanors committed in the presence of an officer.
 - a. All sworn members of the Anchorage Police Department, whether on or off duty, within the boundaries of the Municipality, may effect an arrest as a police officer for any misdemeanor committed in their presence.
- 2. Misdemeanors not committed in the presence of an officer.
 - a. State law allows officers to arrest for only two types of misdemeanor crimes if the violations did not occur in their presence. They are:
 - 1) Operating Under the Influence, if the arrest can be made within four (4) hours of the offense; and
 - 2) Domestic Violence violations, which are designed to protect “household members” from having to proffer charges against a family member. (See 3.01.025 Domestic Violence Response and Investigations.) Subcategories of domestic violence violations include:
 - i. Violating a protective order
 - ii. Violating conditions of release in domestic violence cases
 - iii. Violating conditions of release in crimes involving stalking
- 3. Charging a misdemeanor without physical arrest.
 - a. Officers can use charging documents at the conclusion of misdemeanor investigations. Although the misdemeanor was

not committed in the officer's presence, one is reminded that issuing these documents is **not** an arrest, but rather a charging procedure. Nothing prohibits officers from charging a misdemeanor offense which was not committed in their presence. However, officers are also reminded that:

- 1) In the absence of issuing an Uniform Summons and Complaint or Order and Conditions Release Per Schedule, Form CR-766, and releasing the defendant, the arrestee must be:
 - i. brought before a magistrate for a bail hearing or conducted telephonically (See Arrests and Custody-General, 3.02.005VI for details on bail hearings.) or
 - ii. the officer must use the current Bail Schedule for misdemeanor charges,

and

- 2) Whenever a person is charged with a misdemeanor crime, whether a physical arrest has been made or not, officers must complete a Criminal Case Intake and Disposition form, ATN, and submit it with the Police Report.
 - i. A private person cannot make a "probable cause" misdemeanor arrest, including the OUI and Domestic Violence special provisions (for peace officers) described in the preceding paragraph. Consequently, officers must initiate the arrest based on the probable cause furnished by the victim or complaining witness.
4. Misdemeanor arrests by private persons. (See Arrest and Custody--Private Persons 3.02.030.)
5. State Misdemeanors. When a person is charged with a misdemeanor crime, officers should cite Municipal Ordinance whenever possible. One exception applies to this policy:
 - a. When multiple violations include both municipal and state charges, then all charges should be referred to the District Attorney as state charges (when juveniles are arrested for misdemeanor violations, the officer would use state charges).

III. CRITERIA FOR ISSUING CHARGING DOCUMENTS

A. Standards. For officers to issue a Uniform Summons and Complainant or Order and Conditions Release Per Schedule, certain conditions must be met. These are:

1. The offense must be a State or Municipal misdemeanor.
2. The arrestee must be an adult, or a juvenile arrested for a crime found in the traffic code (i.e. crimes found in Alaska Statute Title 28, 13 AAC, or Municipal Code Chapter 9), Fish and Game code, or Parks and Recreation code.
3. Identification must be positive, either through pictures, identification, personal knowledge, or other absolute method.
4. Officers must have reasonable belief that arrestees are not a danger to themselves or others.
5. The arrestee does not insist on seeing a judge or magistrate.
6. Force was not used to effect the arrest.
7. Charging documents shall not be issued if the peace officer has probable cause to believe the person committed a crime involving domestic violence; in this paragraph, "crime involving domestic violence" has the meaning given in AS 18.66.990.
8. There is no evidence to suggest the arrestee would not appear in court. This can be established by investigating the arrestee's:
 - a. Marital status and family ties.
 - b. Residence history.
 - c. Employment history.

No Requirement to Issue. Issuing charging documents is an option for officers. Although issuing of charging documents in eligible misdemeanor cases is encouraged, it is not required, and a physical arrest can be affected.

IV. PROCESSING THE CHARGING DOCUMENTS

- A. Distribution. Once completed, the arrestee is given a legible copy, specifying a court date. A court date which is either provided by dispatch or it can be obtained from the officer's MDC. Court dates are set no less than 30 days out from the date of issuance and is dependent on the defendant's first initial of their last name.
- B. Time of Appearance. The time for appearance is 9:00 a.m.

- C. Disposition. At the time of issuance, the Charing Documents is signed by the officer's, including officers DSN. At the end of the shift, the form is submitted to the records section either electronically or in paper form.

*****END OF DOCUMENT*****