

Annapolis Police Department



GENERAL ORDER

Number: C.12

**Issue Date: July
2005**

TO: All Sworn Officers

SUBJECT: Criminal Arrest Policy

PURPOSE

The purpose of this General Order is to establish clear guidelines and procedures for the handling of criminal arrests.

POLICY

It shall be the policy of the Annapolis Police Department that we as police officers recognize that all citizens have basic rights which are set forth in common law, statutory law, and the constitution. Among these rights is the right of persons suspected of criminal acts to be protected from abuse of police power. The policy of the Department is to exercise the power of arrest in conformity with all applicable laws.

I. Discretion

- A. Officers are vested with a broad range of discretion when deciding whether or not to make an arrest. This policy is not intended to deprive officers of this discretion provided it is exercised in accordance with departmental rules and regulations and in furtherance of the police mission.
- B. The proper exercise of discretion does not relieve the investigating officer of his/her responsibility to conduct a thorough preliminary investigation of the event.

II. Arrest Warrant/Juvenile Warrants

- A. The primary and most basic source of authority to arrest, recognized under

common law and under modern statutes, is that of a warrant. This is the only authority expressly sanctioned by the Constitution of the United States. The Fourth Amendment of the Constitution provides that: “no Warrants shall be issued, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized”.

- B. An arrest with a warrant can be made at any time, day or night.
- C. A juvenile warrant issued by a judge is an order of the court as described in the Courts and Judicial Proceedings Article of the Annotated Code of Maryland. This order gives a police officer the legal authority to take the juvenile for whom the warrant is issued into custody.
- D. Any officer holding a juvenile warrant or having knowledge of one has lawful authority to take the juvenile named into custody. Once the juvenile is in custody, the officer will contact the juvenile’s parents, guardian or custodian of the action **and** an intake worker of the State Department of Juvenile Services (DJS). Refer to the Courts and Judicial Proceedings Article of the Annotated Code of Maryland. During business hours, officers must call DJS at 1623 Forest Drive. During non-business hours, an on-call intake worker can be contacted through the DJS dispatcher/clerk. The juvenile may not be released to anyone unless authorized by a state DJS intake worker.
- E. No arrest shall be made on a warrant until the warrant has been confirmed. The officer will confirm through Communications that the warrant is still valid.
 - 1. Upon confirmation and arrest, the officer will confirm the identity of the person arrested. Confirmation can be through DOB, social security number, physical description, comparing prior arrest information such as photographs, fingerprints, series of questions directed to verify personal data and/or any reasonable means available. Confirmation of identity applies to both warrant arrests and warrantless arrests.
 - 2. If it is necessary to establish identity while the detainee is in the holding facility and confirmation cannot be made through prior arrest records, a fingerprint check will be made. A fingerprint comparison can be made by a crime scene technician specially trained in fingerprint comparison by comparing any existing fingerprints against current fingerprints or the fingerprints can be faxed to the FBI.

III. Follow-Up Investigations Resulting in Probable Cause for Arrest

A. Adult suspects

Whenever an officer develops probable cause for the arrest of an adult and the decision is made to effect the arrest, the officer should, whenever practical, apply for a charging document.

B. Juvenile Suspects

1. Pursuant to the law of arrest if an officer develops probable cause to believe a juvenile committed a crime, the officer has the authority to arrest the juvenile.
2. Currently, there is no warrant application process for juveniles. If an officer develops probable cause to arrest a juvenile, but the officer cannot effect a physical arrest for some reason (e.g. the juvenile cannot be located), the officer shall complete a juvenile citation, leaving blank the date of arrest, to whom the juvenile was released and the hearing date.

IV. Warrantless Arrests by Police Officers or Commissioned Special Police Officers

- A. The legislatures and courts have historically maintained a delicate balance between the interest of the community in protecting itself and the right of the citizen to be free from unjustified arrest. In striking the balance, the legislatures have strictly limited the authority to arrest without a warrant.
- B. In accordance with statutory authority (Maryland Code Criminal Procedure Title 2 Subtitle 2 §2-202) and Maryland case law, a police officer or commissioned special police officer may arrest an individual without a warrant in the following instances.
 1. When a felony or misdemeanor is committed or attempted in the officer's presence or view.
 2. When the officer has probable cause to believe that a felony or a misdemeanor is being committed in his/her presence or view, and the officer reasonably believes the individual committed the offense.
 3. When the officer has probable cause to believe that a felony has been committed or attempted and probable cause that a specific person committed or attempted the felony whether or not in the officer's presence or view.
 4. Under the authority of the Maryland Police Team Rule (when an officer is advised via official police communications that there is lawful authority to make an arrest).
- C. For those misdemeanors listed in Maryland Code Criminal Procedure Title 2 Subtitle 2 §2-203 an officer can make a warrantless arrest, provided that there is probable cause to believe that:
 1. The person has committed the offense, and
 2. Unless the person is immediately arrested:
 - a. He may not be apprehended; or,
 - b. He may cause injury to the person or damage to the property of one or more other persons; or,
 - c. He may tamper with, dispose of, or destroy evidence.

- D. In domestic violence cases, a police officer may arrest a person without a warrant if:
1. The officer has probable cause to believe that:
 - a. The person battered the person's spouse or other individual with whom the person resides (refer to **General Order C.15** for a description of victims of domestic violence).
 - b. There is evidence of physical injury; and
 - c. Unless the person is immediately arrested;
 - i). The person may not be apprehended;
 - ii). The person may cause injury to the person or damage to the property of one or more other persons; or
 - iii). The person may tamper with, dispose of, or destroy evidence; and,
 2. A report to the police was made within 48 hours of the alleged incident.
 3. When dealing with warrantless arrests, officers will abide by the Maryland Code Criminal Procedure Title 2 Subtitle 2 §2-202.
- E. Juveniles may be taken into custody under the guidelines set forth in the Courts and Judicial Proceedings Article, Section 3-814 (Taking a Child into Custody). These guidelines state that a juvenile may be taken into custody:
1. Pursuant to an order of the court (juvenile warrant).
 2. By a law enforcement officer pursuant to the laws of arrest.
 3. By a law enforcement officer or other person authorized by the court if he/she has reasonable grounds to believe that the child is in immediate danger from his/her surroundings and the removal of the child is necessary for his/her protection.
 4. By a law enforcement officer or other person authorized by the court if he/she has reasonable grounds to believe that the child has run away from his/her parents, guardian, or legal custodian.
- F. Officers will be required to follow the procedures listed below when responding to warrantless arrests for felonies or misdemeanors (with the exception of those offenses enumerated in Section V,D) made by commissioned special police officers. Responding officers will;
1. Verify that the complainant is a commissioned special police officer.
 2. Obtain a signed statement of charges prepared by the commissioned special police officer.
 3. Transport the defendant to the police station and process him/her.
 4. Complete all required reports.
- G. To justify warrantless arrest, officers must point to specific and articulable facts

which, taken together with rational inferences from those facts, reasonably warrant the intrusion as referenced in the 4th Amendment to the United States Constitution.

V. Warrantless Arrest on Accusation/Citizens' Arrest

A. Legal Authority

1. Felony- In Maryland, a private person has authority to arrest without a warrant when a felony is being committed in his presence, or when a felony has in fact been committed, whether or not in his presence, and the arrester has probable cause to believe that the person he/she arrests has committed it.
2. Misdemeanor- In Maryland, a private citizen has authority to arrest without a warrant when a misdemeanor is being committed in the presence or view of the arrester which amounts to a breach of the peace. There is a narrow exception to this in the common law: A person has the right to detain a person believed to have taken his/her property. This must be done to prevent theft or recapture property and not as punishment. It is false imprisonment if the person does not have the property.

Note: All adult warrantless arrests will be charged via a statement of charges prepared by the arresting police officer or a commissioned special police officer who is empowered to execute the statement of charges (Note the exception to this in Section V, subsection D). District Court Commissioners will not issue post-arrest warrants when the defendant is in police custody.

B. Warrantless Citizens' (Non-Police) Felony Arrests

Responding officers will interview the complainant and determine if there is probable cause to believe that a felony was committed and the suspect committed it.

1. If probable cause to arrest the suspect does NOT exist, officers will:
 - a. NOT ARREST THE SUSPECT;
 - b. Inform the complainant that his/her arrest did not meet legal requirements;
 - c. Complete the appropriate police reports.
2. If probable cause to arrest the suspect does exist, officers will:
 - a. Obtain a written, signed statement from the complainant;
 - b. Detain and transport the suspect to the police station;
 - c. Complete a statement of charges for adult defendants based on information supplied by the complainants;
 - d. Process the defendant and complete the required written reports.

C. Warrantless Citizens' (Non-Police) Misdemeanor Arrests (For exceptions to this

procedure, see Section V, subsection D).

1. Responding officers will obtain identification from the suspect and if:
 - a. The suspect's identity is established to the officer's satisfaction; and,
 - b. The suspect is a Maryland resident; and,
 - c. The suspect is not wanted as a result of the officer's wanted check.

DO NOT ARREST THE SUSPECT. Explain to the complainant that under Maryland law (Maryland Code Criminal Procedure Title 2 Subtitle 2 §2-202) officers may not arrest or transport the suspect.

2. If the suspect is an adult:
 - a. Show the complainant the suspect's identification and advise the complainant to see the commissioner and apply for a charging document. *Give the complainant the suspect's name, address and date of birth (DOB).*
 - b. Write an incident report listing the suspect information and the date and time of the wanted check;
 - c. Give the Case number to the complainant so that the complainant can show the District Court Commissioner that an initial report was written.
 - d. Advise the complainant that if the District Court Commissioner issues a charging document it will be served at a later date.
3. If the suspect is a JUVENILE:
 - a. Complete the juvenile citation and ensure a copy is given to the complainant.
 - b. Complete the appropriate reports to include detailed information of the juvenile and to whom the juvenile was released.
4. If the suspect, adult or juvenile, was arrested by a citizen for a crime listed in Maryland Code Criminal Procedure Title 2 Subtitle 2 §2-203 and:
 - a. The officer is unable to establish the suspect's identity to his/her satisfaction, or
 - b. The suspect is not a resident of Maryland, or
 - c. The suspect is wanted,
 - i). **ARREST THE SUSPECT AND TRANSPORT HIM/HER TO THE POLICE STATION.**
 - ii). Process the defendant and complete the required written reports.

D. Citation Use for Specified Offenses

Malicious destruction of property valued under \$500.00, misdemeanor theft (under \$500.00), disturbing the peace and disorderly conduct violations and other crimes which the penalty does not exceed 3 months in jail and/or a \$500 fine may be charged via the Maryland Uniform Citation (refer to General Order C.13) as long as the defendant **furnishes satisfactory evidence of identity and the officer has reasonable grounds to believe that the defendant will comply with the requirements of the citation.** The following procedures shall be adhered to:

1. Special Police Officer and non-Special Police Officer cases:
 - a. Establish/confirm the suspect's identity.
 - b. Check for wanted status.
 - c. Issue a citation to the defendant or have the SPO issue the citation to the defendant, check the block indicating the defendant will be notified by the court when to appear for trial. Include in the space provided what penalty (both fine and incarceration information) the court may impose.
 - d. Release the defendant after he/she signs the citation (Release juveniles to parent/guardian).
 - e. Complete proper reports.
2. Even if defendants meet the above criteria, **officers still have the discretion to either physically arrest** or have the SPO or citizen obtain warrant for theft or destruction of property events in those cases which would warrant such action. If officers feel issuing a citation would be inappropriate, they are encouraged to proceed under the guidelines outlined in Sections IV and V subsections A through C.
3. Violations of ordinances for the City of Annapolis which are specified as misdemeanors in the Charter and Code of the City of Annapolis may be charged (Ref to General Order C.13) via the Maryland Uniform Citation as described above in Section V subsection D.

VI. **Search Warrants**

- A. A search warrant is a written order by a judicial officer commanding a peace officer to search for and seize the property described. Generally, a judge may issue a search warrant if there is probable cause to believe a crime is being committed on property or there is property subject to seizure on a person or on a premises within the judge's jurisdiction.
- B. The Maryland Constitution prohibits general or vague warrants and warrants that are not supported by a sworn statement. Generally, search warrants must contain sufficient probable cause to justify searching and seizing and must be supported by a

personal knowledge statement under oath describing the factual basis for probable cause. The person and place to be searched and seized must be described with particularity.

- C. In general, a District Court Judge or Circuit Court Judge may issue a search warrant when there is probable cause to believe that a misdemeanor or felony is being committed by a person or in a building, apartment, premises, place or thing within the territorial jurisdiction of the judge or property subject to seizure under the criminal laws of the state, in or on the person or in or on the building, apartment, premises, place or thing.
- D. Search Warrants must be served within 15 days after it was issued, after which it expires and is void. The returned search warrant must be made to the issuing judge along with the inventory of property seized.

VII. Authority to Arrest Military Deserters

- A. The Uniform Code of Military Justice sets forth, and the Federal Court have affirmed, the authority of civil law enforcement officers to arrest a deserter from the armed forces and deliver him to those forces.
- B. Officers who arrest military deserters will treat the offense as a misdemeanor and process the individual as such.

Joseph S. Johnson
Chief of Police

References
1. Accreditation Standards 1.2.5, 1.2.6, 1.2.7, 44.2.2, 74.3.1 2. Maryland Code Criminal Procedure 3. Uniform Code of Military Justice 4. Courts and Judicial Proceedings Article 5. Fourth Amendment to the United States Constitution 6. General Orders C.13 Maryland Uniform Criminal Citation and Uniform Municipal Infraction/Civil Citation, C.15 Domestic Violence

Revision: This General Order replaces General Order C.12 Criminal Arrest Policy dated November 2004