

Asheville Police Department Policy Manual

Chapter: 6 - Search and Seizure

Policy: 600 - Arrests

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Introduction

The purpose of this directive is to define and provide details of the scope and limits of law enforcement authority in the context of arrests.

Policy Statement

It is the policy of the Asheville Police Department (APD) that officers will fully observe the civil and constitutional rights of arrested persons while simultaneously being mindful of their own safety.

Definitions

Arrest Warrant: an order issued by a judicial official directing law enforcement officers to locate and arrest a person based upon probable cause to believe that the person has committed a crime.

Rules and Procedures

600.1 General

- A. Officers are vested with a broad range of discretion when deciding whether to make an arrest and carry out other police duties and functions. This directive is not intended to deprive any officer of such discretion, provided it is exercised in accordance with law and departmental regulations and in furtherance of a legitimate police objective.
- B. Officers may choose to utilize alternatives to arrest within their discretion, such as citations or other alternatives; see Policy 400 - Authority, Jurisdiction, & Mutual Aid.
- C. When making arrests, officers will strictly observe all laws and directives, including N.C. Gen. Stat § 15A-401 defining when an arrest by a law enforcement officer may occur.
- D. Officers will only use the force reasonably necessary to accomplish lawful objectives during arrest; see Policy 402 - Response to Resistance.
- E. Transportation and processing of detainees will be in accordance with all department and receiving detention facility guidelines, see Policy 601 - Detainee Search & Transport. [1.2.5]
- F. Off-duty officers will not make arrests for misdemeanor offenses, including traffic, except where necessary to prevent injury to another person. This does not apply to officers engaged in extra-duty employment as defined by Policy 2002 - Secondary Employment.

600.2 Arrest Pursuant to a Warrant [74.3.1 b]

- A. An officer with a warrant for arrest in their possession may arrest the person named or described therein at any time and place within the officer's territorial jurisdiction (N.C. Gen. Stat. § 15A-401).
- B. An officer who has verified that an arrest warrant exists, but does not have the warrant in their possession, may arrest the person named therein. The officer is

to inform the person arrested that a warrant has been issued and serve the warrant upon them as soon as possible ([N.C. Gen. Stat. § 15A-401](#)).

- C. Only sworn officers will execute arrest warrants. [74.3.2]
- D. Juvenile custody orders give officers the legal authority to take into physical custody the juvenile for whom a petition is issued. Officers will follow the guidelines in [Policy 500 - Juveniles](#) when taking juveniles into custody.

600.3 Arrest Without a Warrant

- A. A police officer may arrest, without a warrant, any person whom the officer has probable cause to believe has committed a criminal offense in the officer's presence.
- B. When practical, officers should first obtain a warrant.
- C. When an offense has been committed outside of the officer's presence, the officer may arrest, without a warrant, any person the officer has probable cause to believe ([N.C. Gen. Stat. § 15A-401](#)):
 - 1. Has committed a felony; or
 - 2. Has committed a misdemeanor, and
 - a. Will not be apprehended unless immediately arrested.
 - b. May cause physical injury to themselves or others or may damage the property of others, unless immediately arrested.
 - 3. Has committed one of the following misdemeanor offenses:
 - a. Shoplifting under [G.S. § 14-72.1](#)
 - b. Domestic criminal trespass ([G.S. § 14-134.3](#))
 - c. Impaired driving ([G.S. § 20-138.1](#), [§ 20-138.2](#))
 - 4. Has committed one of the following misdemeanor offenses if committed by a person with whom the alleged victim has a personal relationship as defined in [N.C. Gen. Stat. § 50B-1](#):
 - a. Simple assault ([G.S. § 14-33\(a\)](#))
 - b. Assault with a deadly weapon ([G.S. § 14-33\(c\)\(1\)](#))
 - c. Assault inflicting serious injury ([G.S. § 14-33\(c\)\(1\)](#))

- d. Assault on a female by a male at least eighteen (18) years old ([G.S. § 14-33\(c\)\(2\)](#))
 - e. Assault by pointing a gun ([G.S. § 14-34](#))
 - 5. Has committed a misdemeanor for violating a domestic violence protective order under [G.S. § 50B-4.1\(a\)](#).
 - 6. Has violated a pretrial release order under [G.S. § 15A-534](#) or [G.S. § 15A-534.1\(a\)\(2\)](#).
- D. [Policy 500 - Juveniles](#) outlines the circumstances and requirements for officers to take juveniles into custody without a court order.

600.4 Duties Upon Arrest

- A. The arresting officer will, after placing a person under arrest with or without a warrant, inform the person arrested of the charge against them or the cause for their arrest ([N.C. Gen. Stat. § 15A-501](#)). [1.2.5]
- B. Persons arrested will be searched for weapons and contraband. A search incident to a custodial arrest may extend to areas, articles, and containers located in areas subject to the suspect's immediate control.
 - 1. Searches incident to arrest must be made as soon as practical after the arrest.
 - 2. The search must be made at or near the place of the arrest. In cases involving hostile crowds or other pressing circumstances, removing the arrestee from the immediate area may be desirable before the search.
- C. Strip and body cavity searches will only be conducted according to [Policy 606 - Strip & Body Cavity Searches](#).
- D. The arresting officer is responsible for the safety and protection of arrested persons in their custody. Arrested persons will not be left unattended (such as in a police vehicle or interview room). [1.2.5]
- E. Officers arresting a foreign national or an individual they believe to be a foreign national will follow [Policy 516 - Consular Notification & Access](#). [1.2.5]
- F. The arresting officer is responsible for the arrestee's personal property until it is turned over to the detention facility personnel or submitted to APD's property and evidence function.

- G. The arresting officer will ensure post-arrest processing of the person in accordance with [N.C. Gen. Stat. § 15A-502](#) and [G.S. § 15A-266.3A](#) or [G.S. § 7B-2102](#), as applicable. Upon completing all post-arrest processing, the arresting officer must take the person arrested before a judicial official without unnecessary delay. [1.2.5]
- H. The magistrate determines the pre-trial release of any physically arrested persons. Department employees will not make any recommendations regarding bonds or conditions of release. Employees may provide information (e.g., if the person is a local resident) upon request by the Magistrate.

600.5 Notification of Rights [1.2.3 a]

- A. Officers will advise arrestees of their 5th Amendment rights, commonly referred to as Miranda rights, in cases where the officer intends to question the suspect. The advice of Miranda rights are required when:
 - 1. A person is under arrest or its functional equivalent (e.g., a reasonable belief they are not free to leave), **and**
 - 2. A law enforcement officer asks questions of the person, likely to get the person to incriminate or engage in conduct likely for the person to incriminate themselves.
- B. Miranda advisements do not apply to statements made by suspects who are not under arrest and being questioned or suspects who are under arrest and not being questioned.
- C. Patrol officers do not need to advise a person of their Miranda rights if they do not intend to question them - regardless of whether the person is in handcuffs or being transported in a police car. In cases where Criminal Investigation personnel are to interview the suspect, a patrol officer should not advise the person of their rights; instead, the detective conducting the interview should complete the rights advisement.

By order of:



David Zack
Chief of Police