



# ARREST

**General Order Number: 3.1**

**Effective Date: December 17, 2024**

## **POLICY:**

It shall be the policy of the Brookline Police Department to comply with all the provisions of the laws, ordinances, and court decisions consistent with arrest and accepted police procedures.

## **GENERAL CONSIDERATIONS AND GUIDELINES:**

The power and authority to arrest and to deprive a person of liberty and freedom is one of the most sensitive duties of a police officer. Under the Fourth Amendment to the U.S. Constitution, all persons 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 an arrest constitutes a critical stage in the criminal process, the courts have indicated that an arrest with a valid warrant is to be preferred and that warrantless arrests are an exception to the general rule. Whenever there is sufficient time and opportunity to do so, a warrant should be obtained in advance of an arrest.

When persons are arrested and taken into police custody, their fundamental rights under the U.S. Constitution, the Massachusetts Declaration of Rights, and the General Laws of Massachusetts 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.

## **DEFINITIONS OF TERMS:**

1. **Arrest:** The power and authority of a police officer to apprehend and deprive persons of their liberty, as provided by law, in order that such persons may be brought before the court to answer to criminal charges.
2. **Probable Cause:** Probable cause for arrest exists if, at the time of arrest, the facts within the knowledge of the arresting officer (or within the collective knowledge of the police) are reasonably trustworthy and are sufficient to warrant a person of reasonable caution and prudence to believe that the person being arrested has committed or is committing the crime for which the arrest is being made.
3. **Felony:** Any crime punishable by death or imprisonment in the state prison.

4. **Misdemeanor:** Any criminal offense less than a felony.
5. **Breach of the Peace:** A violation of public order or decorum that disturbs the public peace and tranquility, or any act of disorderly conduct which disrupts the public peace.
6. **Arrest Warrant:** An order issued by an authorized court official, directed to officers authorized to serve criminal process, commanding them to arrest the person named or described therein and to bring such person before the court to answer to a charge of crime.

#### **ARRESTS IN GENERAL:**

**1. WITH A WARRANT:** An arrest warrant is 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 of crime. An arrest warrant issued pursuant to a complaint must be founded upon probable cause supported by oath or affirmation but 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]). Whenever possible, arrests should be made with a warrant.

A duly authorized police officer may make a lawful arrest with a warrant if any of the following conditions are met:

- A. WARRANT IN POSSESSION:** Where the officer possesses a valid arrest warrant (Mass. Gen. Law, Chap 276, Sec. 23).
- B. KNOWLEDGE OF WARRANT:** Where the officer making the arrest and detention has actual knowledge that a warrant then in full force and effect for the arrest of such person has in fact been issued (M.R. Crim. P. 6(b) (3): Mass. Gen. Law, Chap 276, Sec. 23).

When the officer's knowledge of the existence of a warrant is based on a computer query and verification, not in the warrant management system, no arrest shall be made until the Commanding Officer - Platoon on Duty verifies the warrant by telephone with the department holding the warrant. If the warrant is in possession of said department, the Commanding Officer - Platoon on Duty shall request that department to immediately send a copy of the warrant via facsimile or email.

When this facsimile or email is received, it shall be attached to the booking slip and remain a part of the arrest report.

**NO ARREST BASED ON A COMPUTER RESPONSE NOT IN THE WARRANT MANAGEMENT SYSTEM SHALL BE MADE PRIOR TO THE TELEPHONE VERIFICATION OF ITS EXISTENCE.**

- C. WARRANTS ENTERED THROUGH THE WARRANT MANAGEMENT SYSTEM:** All warrants appearing in the warrant management system shall be accessible through the criminal justice information system, maintained by the Criminal History Systems Board. The warrant shall consist of sufficient information electronically appearing in the warrant management system, and a printout of the electronic warrant from the criminal justice information system shall constitute a true copy of the warrant. This applies only to Court Entered warrants in the Warrant Management System. The traditional “paper warrants” shall be handled as in B above (Mass. Gen. Law, Chap. 276 Sec. 23A).

Confirmation of a Warrant Management System warrant shall be made prior to arrest. (For example, A Brookline officer obtains a Warrant Management System Warrant at 4 p.m. At 8 p.m. the officer locates the wanted person. Even though the officer has the Warrant Management System teletype in his or her possession, it is conceivable this person could have been arrested on that same warrant some time between 4 p.m. and 8 p.m.)

- 2. WITHOUT A WARRANT:** An officer in their own jurisdiction may make an arrest without a warrant for a felony if the officer has probable cause to believe the person to be arrested committed or is committing a felony. An officer may also, without a warrant, arrest for a misdemeanor, which constitutes a breach of the peace, or for a misdemeanor where warrantless arrest is allowed by statute.

- A. JENKINS HEARINGS:** Whenever police effect a warrantless arrest of a subject, it must be followed by a judicial determination of probable cause within twenty-four hours of the arrest, including weekends and holidays, based on explicit oath or affirmation of the arresting officer, or based on the officer’s police report (*Jenkins v. Chief Justice of The District Court*, 416 Mass. 221 [1993]). The bail Clerk who has set the bail on the arrestee can NOT also make a probable cause determination, as they must be "neutral and detached".

"A warrantless arrest must be followed by a judicial determination of probable cause no later than reasonably necessary {24 Hours} to process the arrest and reach a magistrate ... An arrestee promptly released on bail is not entitled to a prompt post arrest determination of probable cause. Such determination, when constitutionally required is governed by the same legal standards as apply to the issuance of a warrant. A magistrate who is sufficiently 'neutral and detached' may make the probable cause determination: there is no requirement that a judge make such determination. The probable cause determination may be made at an ex parte hearing, at which the arrestee is not entitled to the assistance of counsel. The arresting officer's documentation of probable cause may be oral or written, and must satisfy the explicit 'oath' or 'affirmation' requirement of art.14. The determination of probable cause need not be reviewed at arraignment." *Jenkins v. Chief Justice of the District Court Dep't 416 Mass. 221,232,239 {1993}*

Where it appears an arrested person may be in custody for more than a twenty-four hour period, the Commanding Officer - Platoon on Duty shall contact the “on call” bail commissioner in an attempt to obtain a judicial determination of probable cause.

- B.** For a **felony committed in the officer's presence or on probable cause that a felony has been committed** (Comm. v. Phelps, 209 Mass. 396, 95 N.E. 868 [1911]; Comm. v. Mitchell, 353 Mass. 426, 233 N.E. 2d 205 [1967]).
- C.** For a **misdemeanor committed in the officer's presence and causing or threatening to cause a breach of the peace** which is continuing or only briefly interrupted (Comm. v. Gorman, 288 Mass. 294, 192 N.E. 618 [1934]).
- D.** 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, N.E. 82 [1893]).
- E.** For certain misdemeanors for which **arrest is allowed even though such misdemeanors were not committed in the officer's presence**.

**NOTE:** A felony is any crime punishable by death or imprisonment in the state prison; all other crimes are misdemeanors (Mass. Gen. Law, Chap. 274, Sec. 1). A breach of 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.”

- F. WARRANTLESS ARREST IN A DWELLING:** With regard to making a warrantless arrest in a dwelling, police should first determine whether a warrantless entry and arrest is allowed by law. Generally, no arrest warrant (or search warrant) is required to arrest a person who is in public (U.S. v. Watson, 423 U.S. 411, 96 S.Ct. 820 [1976]). However, with regard to making entry into and arrest in a dwelling, the following standards apply:

- 1.** If the arrest pursuit was set in motion in public, the officer may make a hot pursuit warrantless entry into a private dwelling if the suspect runs into the dwelling, (U.S. v. Santana, 427 U.Ss. 38,96 S.Ct. 2406 [1976]).
- 2.** If police seek to arrest a person in that person’s own dwelling, they may do so:
  - a.** If lawful consent to enter is granted; or

- b.** If exigent circumstances are present which excuse the failure to obtain an arrest warrant.

Otherwise, they must obtain an arrest warrant (Peyton v. New York, 445 U.S. 573, 100 S.Ct. 1371 [1980]).

- 3.** If police seek to arrest a person in someone else's dwelling, they may do so:

- a.** If lawful consent to enter is granted; or
- b.** If exigent circumstances are present which excuse the failure to obtain a search warrant.

Otherwise, they must obtain a search warrant (Steagald v. U.S. 204, 101 S.Ct. 1642 [1981]).

- 4.** In assessing whether there are sufficient exigent circumstances present to excuse the failure to obtain a warrant before entering a dwelling to make an arrest, police should consider the following factors:

- a.** Whether the crime was one of violence;
- b.** Whether the suspect is armed;
- c.** Whether there is clear demonstration of probable cause to arrest;
- d.** Whether there is strong reason to believe the suspect is in the dwelling;
- e.** The likelihood that the suspect would escape if not apprehended immediately;
- f.** Whether entry can be made peaceably;
- g.** Whether the entry would be in the nighttime (or could be made in the daytime when clerks and magistrates are more readily available) (Comm. v. Forde, 367 Mass. 798, 329 N.E.2d 717 [1975]).

In addition to the factors set forth immediately above, police must also consider the seriousness of the crime. Generally, a warrantless entry into and arrest in a dwelling cannot be justified by the exigent circumstances doctrine if the crime is a minor or non-serious one (Welsh v.

Wisconsin, 104 S.Ct. 2091[1984]: warrantless nighttime entry into defendant's home held unlawful where offense was a non-bailable offense punishable only by a small monetary fine).

**G. EXTRA JURISDICTIONAL WARRANTLESS ARREST:** A police officer may make an arrest outside their municipal jurisdiction in any of the three following situations:

**1. FRESH AND CONTINUED PURSUIT:** An officer may “on fresh and continued pursuit” pursue and arrest an offender in any city or town in Massachusetts if:

- a.** The offense is one for which a warrantless arrest is authorized; and
- b.** The offense was committed in the officer's jurisdiction (city or town).

**2. MUTUAL AID:** Pursuant to Chapter 212 of the Acts of 1998:

A duly sworn officer of the Town of Brookline, who is authorized to exercise police powers within said town, may exercise all such police powers within 500 yards into the corporate limits of the City of Boston and the City of Newton, as if such officer were a duly sworn officer of said cities.

A duly sworn officer of the City of Boston, who is authorized to exercise police powers within said city, may exercise all such police powers within 500 yards into the corporate limits of the Town of Brookline and the City of Newton, as if such officer were a duly sworn officer of said cities.

A duly sworn officer of the City of Newton, who is authorized to exercise police powers within said city, may exercise all such police powers within 500 yards into the corporate limits of the Town of Brookline and the City of Boston, as if such officer were a duly sworn officer of said cities.

**3. FELONY ARREST:** Pursuant to Mass. Gen. Law, Chap. 41, Sec. 98A, an officer may "on fresh pursuit" pursue and arrest a person who has committed a felony in Massachusetts, and may pursue and arrest such person in any other state if that state has in force similar interstate felony fresh pursuit laws.

- a. In addition, while an officer may legally make a valid warrantless felony arrest based on probable cause outside their jurisdiction, it shall be the policy of the Brookline Police Department to have the foreign jurisdiction police agency effect the arrest based on the probable cause of the investigating Brookline officer.
- b. The foreign jurisdiction police agency will then be asked to formally book the arrested person to properly document the arrest. Subsequent to booking, with the permission of the foreign jurisdiction Commanding Officer - Platoon on Duty, the arrested person shall be transported to the Brookline Police Department, booked, processed, and placed in a holding cell (Mass. Gen. Law, Chap. 276, Sec. 10A-10D [New York and all New England states have such laws]).

**H. TRANSFERRED AUTHORITY:** A Brookline police officer may make a valid motor vehicle stop or a stop of a person outside their jurisdiction upon the request or authorization of that jurisdiction's police department, provided the Brookline officer has reasonable suspicion that the person being stopped is, has, or is about to commit a crime. The Brookline police officer's police power is limited in making the stop in order to search for weapons. It is up to the foreign jurisdiction's police agency to conduct any investigation and make any arrest (Commonwealth v. Morrissey, 422 Mass. 1 [1996], Mass. Gen. Law, Chap. 37 Sec. 13, & Mass. Gen. Law, Chap. 268 Sec. 24).

#### **POLICE DISCRETION TO ARREST:**

Although police officers must always be guided by the intent and purpose of the law, there are limited circumstances in the discretion of the officer involved when the public interest could be better served by not making an arrest, even though there is legal justification for such action. Alternatives to arrest include issuing citations, summonses, informal resolutions, warning, referrals, etc. Such circumstances could include, but are not limited to, the following:

- A. When the arrest could aggravate community conflict or possibly precipitate a serious disorder.
- B. When there is greater priority to respond to a more serious crime or to an urgent public emergency.

- C. In 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.
- D. In minor juvenile offenses where a warning and a talk with the parents can avoid a court appearance.
- E. In other minor offenses where a summons can effectively accomplish the intended purpose.

## **PROCEDURES:**

- A. An arrest should never be made to show authority or to vent personal feelings:
  - 1. The attitude of the offender should not be the determining factor in making an arrest;
  - 2. Verbal abuse alone is not justification for an arrest;
  - 3. An arrest should not be used to resolve a problem when other options are more appropriate.
  - 4. Whenever practicable, arrests should be made with a warrant.
  - 5. Prior to serving an arrest warrant, an officer should examine it carefully to determine:
    - a. Whether it has been issued by a court of competent jurisdiction and authority;
    - b. Whether the officer is authorized to serve it;
    - c. Whether it clearly names or describes the offense for which the arrest is to be made;
    - d. What the officer's powers are under it;
    - e. That it names or describes the party to be arrested;
    - f. That the seal of the court is either printed or embossed upon the warrant, except Warrant Management System warrants which will not have seals.

**B.** Other than constitutional safeguards, the other major constraint on the power of arrest is jurisdictional. Generally, the power to arrest ceases at the boundaries of the officer's city or town, although, there are four instances in which an officer may make "extra-territorial" arrests; that is, arrests outside the limits of his or her city or town (these are discussed earlier in this policy and procedure statement). It should also be noted that although an arrest warrant can be executed anywhere in Massachusetts, generally it is to be executed by an officer of the city or town where the arrest is to be made.

**C. Elements of an arrest consist of the following:**

1. An intention on the part of the police officer to make an arrest;
2. The knowledge and understanding of that intent must be communicated to the person to be arrested;
3. Either a physical seizure or submission to the officer by the arrested person.

**D. 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 circumstances, which have been looked to in establishing probable cause:

1. Direct observations of the police officer;
2. Knowledge of the prior criminal record or activity of the person arrested;
3. Flight accompanied by other factors;
4. Evasive answers and/or conflicting stories;
5. Time of day or night;
6. History of criminal activity in the particular area;
7. Experience of the officer.

**E.** 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.

**F.** Arresting officers should not act in a careless or routine manner, but should take all necessary steps to ensure their own personal safety and that of the public, and to secure **any** evidence. Such steps shall include, but are not limited to:

1. Obtaining assistance when necessary whether before or after the arrest; this is particularly advisable when:
  - a. There is more than one person to be arrested;
  - b. A dangerous crime is involved, usually a felony of a serious nature;
  - c. Prior experience has shown the need for assistance in particular situations.
2. Searching for and seizing any instruments capable of inflicting serious bodily injury or causing death, and evidence of any crime;
3. 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 685 [1969]);
4. Keeping the person(s) arrested in front of the officers 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.

**G.** Force should only be used when there is resistance or reasonable certainty of resistance. The amount of force shall be restricted to that which is reasonable, necessary, and proper for the safe custody of the arrestee, or for overcoming any resistance that may be offered. An arrestee has no right to resist arrest, lawful or unlawful, by a police officer, unless the officer uses excessive force (Comm. v. Moreira, 447 N.E.2d 1224 [1983]).

**H.** Once an arrest is made, it is the responsibility of the arresting officer or officers to ensure that arrestees do not injure themselves or others and that they do not escape or dispose of evidence.

**I.** Persons arrested shall be given the **MIRANDA WARNINGS** prior to interrogation (Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 2d 694 [1966]).

1. The warnings are as follows:
  - a. I advise you that you have the right to remain silent;
  - b. I advise you that if you choose to speak, anything you say may be used against you;

- c. I advise you that you have a right to have an attorney present while being questioned;
    - d. I advise you that if you cannot afford counsel, an attorney will be provided for you at the Commonwealth's expense.
  2. The warning should be read from a card or other permanent record, to ensure that none are omitted. This procedure is beneficial for other reasons:
    - a. The card itself can later be introduced into evidence;
    - b. Officers have tangible proof that they have not relied solely on memory.
  3. No questioning of arrested persons shall take place until these warnings have been given. However, officers must note that the Miranda Warnings are aimed at "custodial interrogation." Custodial interrogation means questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his or her freedom of action in any significant way. Therefore, if suspects freely choose to divulge information without questioning, 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 without compulsion, such statements shall be noted and incorporated as part of their official report. However, if an officer wishes to gain further information through questioning, the warnings shall be given before pursuing the matter further.
  4. Valid Waivers: Statements made by an arrestee more than six hours after the arrest (safe harbor period) are inadmissible unless the arrestee has been arraigned or has made a valid written waiver of his/her right to be arraigned without unreasonable delay.
    - a. If the arrestee is incapacitated due to a self-induced disability (such as the use of drugs or alcohol) the six-hour safe harbor period does not begin until the disability terminates.
    - b. The six-hour period is also tolled when interrogation is not possible or must be suspended for reasons not attributable to the police, such as a natural disaster or emergency.
    - c. The interrogating officers should be certain that the suspect understands the rights that have been read to him/her, as the burden will be on the prosecution to prove that the waiver was valid.

- i. The waiver must be made voluntarily, knowingly and intelligently to meet the conditions of the Miranda decision.
  - ii. In determining whether a valid waiver was made, the court examines whether in light of the totality of the circumstances surrounding the making of the waiver, the will of the suspect was overborne such that the statement was not a free and voluntary act. The court considers the circumstances of the interrogation and the individual characteristics and conduct of the suspect, such as the length of time which transpired between the giving of the Miranda warnings and the waiver, the suspect's age, mental capacity and experience.
  - iii. When the suspect waives his/her rights, the interrogating officers shall obtain a written waiver when possible. A waiver may be made orally or in writing, but a written and properly witnessed waiver is more likely to be upheld in court.
  - iv. Silence on the part of the suspect does not constitute a valid waiver.
  - v. The physical and emotional condition of the person being questioned is an important consideration in determining the validity of a waiver. The police should refrain from questioning if the suspect is clearly not capable of understanding his/her rights.
- J.** The person(s) arrested shall be handcuffed and promptly and safely transported to the police station in accordance with departmental procedures to include fingerprinting and photographing (see Departmental Policy and Procedures: Transportation of Prisoners).
- K.** Arresting officers will make a full and complete report of any arrests made, with or without warrants, in accordance with standard department practices and procedures.
- L.** It shall be the responsibility of the arresting officer to make criminal complaint applications against any person arrested. Complaint applications shall be made out as soon after the arrest as possible, and in any case shall be made out prior to arraignment. In situations where there is no arrest but a summons is to be issued, it shall be the responsibility of the investigating officer to seek such criminal complaint.
- M. MILITARY PERSONNEL:** In the event of the arrest and custody of a member of the Armed Forces, in cases of crimes which carry a jail sentence, or group arrests of military personnel concerned in disturbances, etc., the Commanding Officer - Platoon on Duty shall notify Hanscom Air Force Base, Security Police Desk Sergeant, twenty-four hours a day.

The above office will handle all arrests for **ALL MILITARY PERSONNEL**. The above office should be notified of all military personnel arrested as described above, or AWOL, etc., provided; however, such arrest is not for a minor crime or protective custody for incapacitated person, etc. Commanding Officers - Platoon on Duty must follow the normal booking procedures for military persons under arrest.

- N. **OFF DUTY ARRESTS:** It is generally more appropriate, and preferred, that an off-duty officer witnessing a crime or incident contact the appropriate police agency, provide them with all necessary information and descriptions and make themselves available as a witness. There will be occasions, however, when additional action, in the form of direct intervention and arrest, may be appropriate particularly within the borders of Brookline. Officers should refer to General order 39.1: **OFF – DUTY INTERVENTION / ARRESTS** for more detailed policies regarding this matter.