


FORT SMITH POLICE DEPARTMENT

POLICIES AND PROCEDURES

SUBJECT	Use of Discretion		
NUMBER	1101.21	EFFECTIVE DATE	July 1, 2005
Scheduled Review Date	Annually beginning January 1	ISSUE DATE	July 1, 2005
Date Reviewed		REVISION DATE	December 8, 2020
APPROVED BY		CALEA STANDARDS	LE 1.2.3; LE 1.2.5; LE 1.2.6; LE 1.2.7; LE 61.1.5

I. Purpose and Scope

- A. The purpose of this policy is to establish guidelines for the use of discretion in enforcement contacts by sworn members of the Fort Smith Police Department.

II. Policy

- A. It shall be the policy of the Fort Smith Police Department that all sworn members utilize discretion in the performance of their duties. Public empathy can be enhanced by the careful use of discretion and potential ill-will can be avoided between citizens and officers of the Fort Smith Police Department.

III. Arrest Procedures [LE 1.2.5]

A. Authority to Arrest Without a Warrant

1. A law enforcement officer may arrest a person without a warrant if the officer has reasonable cause to believe that such person has committed:
 - a. A felony;
 - b. A traffic offense involving death or physical injury to a person; or damage to property; or driving a vehicle while under the influence of any intoxicating liquor or drug;
 - c. Any violation of law in the officer's presence;
 - d. Acts which constitute a crime under the laws of this state and which constitute domestic abuse as defined by law against a family or household member and which occurred within four (4) hours preceding arrest if no injury is involved, or within *twelve (12)* hours preceding the arrest for cases involving physical injury, as defined by Arkansas § 5-1-102 (14); (Arkansas Rules of Criminal Procedure Rule 4.1)
 - e. A theft of motor fuel as defined under Arkansas § 16-81-114 and which occurred within the four (4) hours preceding the arrest, notwithstanding the lack of a warrant for the arrest.

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2. A private person may make an arrest where he/she has reasonable grounds for believing that the person arrested has committed a felony. (Arkansas Rules of Criminal Procedure Rule 4.1)
 3. An arrest shall not be deemed to have been made on insufficient cause hereunder solely on the ground that the officer or private citizen is unable to determine the particular offense which may have been committed. (Arkansas Rules of Criminal Procedure Rule 4.1)
 4. A warrantless arrest by an officer not personally possessed of information sufficient to constitute reasonable cause is valid where the arresting officer is instructed to make the arrest by a police agency which collectively possesses knowledge sufficient to constitute reasonable cause. (Arkansas Rules of Criminal Procedure Rule 4.1)
- B. Any law enforcement officer may arrest a person pursuant to a warrant in any county in the state. (Arkansas Rules of Criminal Procedure Rule 4.2)
- C. A law enforcement officer need not have a warrant in his or her possession at the time of an arrest, but upon request he/she shall show the warrant to the accused as soon as possible. If the officer does not have the warrant in his/her possession at the time of the arrest, he/she shall inform the accused of the fact that the warrant has been issued. (Arkansas Rules of Criminal Procedure Rule 4.3)
- D. Upon making an arrest, an officer shall:
1. Identify himself/herself as such unless his/her identity is otherwise apparent;
 2. Inform the arrested person that he/she is under arrest; and
 3. As promptly as is reasonable under the circumstances, inform the arrested person of the cause of the arrest. (Arkansas Rules of Criminal Procedure Rule 4.4)
- E. No officer shall question an arrested person if the person has indicated in any manner that he does not wish to be questioned, or that he/she wishes to consult counsel before submitting to any questioning. (Arkansas Rules of Criminal Procedure Rule 4.5) [LE 1.2.3.c]
- F. Any person arrested shall be brought promptly to the Sebastian County Detention Center, the nearest appropriate police facility, or other similar place. The arresting officer may, however, first take the person to some other place, if:
- a. The person so requests; or
 - b. Such action is reasonably necessary for the purpose of having the person identified by a person who is otherwise unlikely to be able to make the identification; or by a person near the place of the arrest or near the scene of a recently committed offense. (Arkansas Rules of Criminal Procedure Rule 4.6)
- G. Authority to Issue Citations To Appear [LE 1.2.6] [LE 1.2.7]
1. A law enforcement officer in the field acting without a warrant who has reasonable cause to believe that a person has committed any violation of state law that constitutes a Class B misdemeanor or lesser offense or any violation of a city ordinance may issue a citation to appear in lieu of arrest or continued custody. ***However, if the arresting officer is unable to positively identify the arrested***

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person, through photographic identification or other method, a citation to appear shall not be issued and the arrested party shall be transported to the Sebastian County Detention Center and be required to post a bond on the offense.

2. When a person is arrested for any misdemeanor, the ranking officer on duty at the place of detention to which the arrested person is taken may issue a citation in lieu of continued custody.
3. *Any suspect arrested for an offense related to Domestic Abuse will not be issued a Citation to Appear.*
4. Upon the recommendation of a prosecuting attorney, the ranking officer on duty at the place of detention to which the arrested person is taken may issue a citation in lieu of continued custody when the person has been arrested for a felony.
5. In determining whether to continue custody or issue a citation, the officer shall inquire into and consider facts about the accused including, but not limited to:
 - a. Place and length of residence;
 - b. Family relationships;
 - c. References;
 - d. Present and past employment;
 - e. Criminal record; and
 - f. Other relevant facts such as:
 - (1) Whether an accused fails to identify himself/herself satisfactorily;
 - (2) Whether an accused refuses to sign a promise to appear pursuant to citation;
 - (3) Whether detention is necessary to prevent imminent bodily harm to the accused or to another;
 - (4) Whether the accused has ties to the jurisdiction reasonably sufficient to assure his appearance and there is a substantial likelihood that he will respond to a citation;
 - (5) Whether the accused previously has failed to appear in response to a citation. (Arkansas Code of Criminal Procedure Rule 5.2)

IV. Use of Discretion – Arrests [LE 1.2.7]

- A. At times, a decision *not to arrest* when there are actually *grounds to arrest* is considered appropriate law enforcement practice.
- B. If an arrest is not made at the time of the offense, an officer may, if he or she determines it to be necessary, obtain a warrant of arrest for the offender at a later date.
- C. If an officer makes a decision not to arrest, that decision should be based on but is not limited to:

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1. The arrest would cause greater danger to the public than not attempting to arrest the offender.
2. The arrest would cause harm to an offender who poses no threat of danger to the public, such as a juvenile offender whose wrongdoing could best be handled by a warning or an informal discussion with the parents.
3. The officer should always consider the seriousness of the offense and its consequences.
4. Should questions arise concerning a particular incident, the officer involved should confer with a supervisor.

D. The Fort Smith Pre-Arrest Diversion Program (FSPAD) allows officers the discretion to divert willing offenders of certain misdemeanor offenses away from the criminal justice system, while providing an opportunity to access behavioral health, mental health and substance abuse treatment. The criteria and procedures for such are covered in Operational Memorandum 20-07.

V. Use of Discretion – Traffic Offenses [LE 1.2.7]

- A. There is no legal defense for exceeding the posted speed limit or for driving faster than conditions permit. However, drivers stopped for speeding violations may indicate certain factors unknown to the police officer prior to the stop that may have contributed to the violation. Police officers should exercise discretion when deciding if a warning or a citation is appropriate. [LE 61.1.5.c]
- B. The selection of the appropriate enforcement action will primarily be left to the discretion of the officer who should consider the following factors in his or her enforcement decision:
 1. Observed speed;
 2. Posted speed limit;
 3. Volume of traffic;
 4. Condition of the roadway;
 5. Lighting conditions;
 6. Time of day;
 7. Weather conditions; and
 8. Other relevant circumstances.
- C. The officer’s discretion and judgment should guide enforcement action for non-hazardous violations by taking into consideration the circumstances that exist at the time of the violation. [LE 61.1.5.h]
- D. All newly-enacted traffic laws will be enforced as designated by the Arkansas Legislature. Officers will use their discretion as to the issuance of written warnings with regard to newly-enacted state laws or city ordinances. [LE 61.1.5.g]

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