



## City of Johns Creek Police Department

<i>Subject:</i> Arrests		<i>Number:</i> 04-10
<i>Reference:</i> See also "Legal Process"		<i>Amends:</i>
<i>Effective:</i> 04/08 08/13	<i>Review Date:</i> Annually	<i># of Pages:</i> 9

### PURPOSE:

Establish guidelines for serving criminal arrest warrants and for making probable cause arrests by officers of the Department.

### DEFINITIONS:

**Arrest:** The restraint of liberty of a person to come or go as he pleases, no matter how slight. A person has been arrested when he/she is not free to go, regardless of whether formal words of arrest are used. If the person voluntarily submits to an arrest or yields on condition of being allowed his freedom of locomotion under the discretion of the officer, the arrest is complete (OCGA 17-4-1).

**Arrest Warrant:** A judicial Supervisor to arrest a particular person and to bring said arrestee promptly before the magistrate issuing the warrant or other judicial officer. There is no such thing as an oral or a telephone warrant.

**Interview:** The free and willing exchange of information between the interviewer (officer or detective) and the person being interviewed. This type of verbal exchange may occur at

accident scenes, when interviewing witnesses, or when responding to general calls for information.

**Interrogation:** An exchange in which the subject is unwilling to exchange information with the interviewer or is being questioned about his/her involvement in a crime or criminal activity.

**Investigative Detention:** The brief detention of a person to investigate a suspicion of criminal activity. The officer should, based on his/her natural senses, experience, and good judgment, have articulable reasons to support the suspicion. The person's outer garments may be frisked if the officer believes weapons are involved.

**Felony:** A violation of State law, criminal in nature, with the minimum punishment being one year imprisonment.

**Misdemeanor:** A misdemeanor is a violation of state law, criminal in nature, with the maximum punishment being up to one year imprisonment.

**Immediate Knowledge:** The officer did not actually observe the event, but is knowledgeable enough to draw strong conclusions that it occurred. An example of immediate knowledge would be an officer who hears a gun discharge and immediately turns to observe someone holding a smoking gun.

## **POLICY: (04-10)**

Sworn law enforcement officers within the Johns Creek Police Department shall have the authority, pursuant to state law, to arrest any person pursuant to a valid criminal arrest warrant. Even though the laws of Georgia provide for "citizen's arrest" to be made by citizens, criminal arrest warrants can not be executed by citizens or civilian Department employees.

The Department will arrest the defendant(s) listed on criminal arrest warrants and perpetrator(s) of crime within the Department's jurisdiction, while ensuring that the rights of the accused are observed. Persons taken into custody and questioned about a criminal matter must be advised of their constitutional rights pursuant to Miranda.

Once a law enforcement officer has obtained probable cause for the arrest of a person, the officer should obtain a criminal arrest warrant. Once the warrant is obtained, it will be the responsibility of the officer to attempt to locate the person named on the arrest warrant in order to effect an arrest. Wanted persons shall be entered into G.C.I.C./N.C.I.C. in accordance with established G.C.I.C./N.C.I.C. procedures.

The physical arrest of any person should not be a punitive measure undertaken by any officer. Punishment is the sole domain of the Courts and Judges. Arrest and incarceration should be considered only after there has been careful consideration of the criteria in this chapter.

## PROCEDURES:

### Miranda Warnings (04-10-01)

The Fifth Amendment to the United States Constitution states that persons shall not be compelled in any criminal case to be a witness against themselves. With this in mind, any person suspected of committing a crime or interviewed/interrogated concerning their involvement in any crime shall be advised of their constitutional rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966). *Miranda* states that before an *in-custody* interrogation of any person in a criminal case, he or she must be warned of the right to consult with counsel and to have counsel present during questioning. The person must also be advised that if he or she cannot afford an attorney, one will be appointed by the court. If the person requests an attorney, the interrogation must cease until the attorney is present. The burden is on the government (officer) to show the accused knowingly and intelligently waived the right to counsel. **The failure of an accused to ask for counsel does not constitute a waiver.**

Once a person has been advised of his/her "Miranda Warnings" and has invoked the right to have counsel present during custodial interrogations/interviews, the person or accused shall not be subject to further interrogations/interviews until counsel has been made available or the person has initiated further communications, exchanges, or conversations (*Edwards v. Arizona*, 451 U.S. 477 (1981)). Once again, the burden is on the officer to prove a voluntary waiver by the person or accused.

It should be emphasized that the *Miranda* decision is applicable **only** when two elements are present. For *Miranda* to apply, there must *first* be "in custody". The person has been arrested and charged with an offense. In custody extends beyond actually being in jail or under your immediate physical control, and applies to any time subsequent to the initial arrest. *Second*, there must be an attempt to interrogate the person. Absent either of these two conditions, a person may be asked any question. Being merely a suspect in any criminal matter does not require you advise them of *Miranda*.

### Alternatives to Physical Arrests (04-10-02)

What can be defined as reasonable police action or what constitutes probable cause varies with each situation, and different facts may justify either an investigation, a detention, a search, an arrest, or no action at all. There may be a report written and an application for a complaint made, or in some cases, when the offense is of a minor nature, a verbal warning or other direction may be given. The requirement that legal justification be present imposes a limitation on an officer's action. In every case, an officer must act reasonably within the limits of his/her authority as defined by statute and judicial interpretation.

Whether a person is arrested or released with a copy of charges (citation), officers shall not inhibit the person's right of access to the courts. This is accomplished by assigning or

obtaining a court date. If the case is sent to Municipal Court, the officer will assign a court date. State and Superior Court dates are assigned by those courts, and they will make defendant court date notifications.

### **Arrest without a Warrant (04-10-03)**

OCGA 17-4-20 provides for arrests without a warrant in the following situations:

- A. When an offense is committed in the officer's presence or within his/her immediate knowledge.
- B. When an offender is endeavoring to escape.
- C. If the officer has probable cause to believe an act of family violence has occurred.
- D. When there is likely to be a failure of justice for want of an officer to obtain a warrant.
- E. To prevent the commission of a felony (when the act constituting the felony is imminent).
- F. Upon receiving information from a law enforcement officer who observed an offense being committed, provided such information would constitute the basis for arrest had it been committed in the officer's presence. (The citation issued must list the names of each officer, and both must be present when charges against the offender are heard.)

All of the above exceptions are based on timeliness. If enough time has passed for a warrant to have been obtained, an arrest without a warrant will not be upheld.

- G. Outside of the time restriction, a seventh exception is noted; that of a fugitive arrest based on the belief that a warrant exists in the jurisdiction from which the person fled. A fugitive, who has no right to be at large, cannot complain if recaptured without a warrant. An officer has no official power to arrest without a warrant beyond the boundaries of his/her jurisdiction except for when the officer is in hot pursuit that is continuous and uninterrupted (an officer may temporarily lose sight of the suspect). No officer shall arrest any person without a warrant when the officer does not have probable cause to arrest such person.

An officer's power to arrest without a warrant does not extend to offenses that are long past. The officer must obtain a warrant.

If the arrest is made without a warrant, the officer shall bring the arrested person before a judicial officer within a reasonable time, but under no circumstances later than 48 hours.

It is not necessary to obtain an arrest warrant for a warrantless arrest after the person is arrested. A Johns Creek Police Department General Criminal Citation must accompany all arrests.

No officer will arrest any person without a warrant when he/she knows that probable cause for an arrest is not present.

#### **Arrest with a Warrant (04-10-04)**

An arrest with a warrant is made when a criminal arrest warrant has been issued by an appropriate judicial officer of the court, and the officer fulfills his/her responsibility by arresting the person named in the warrant. Criminal arrest warrants will be secured at the City Municipal Court. (See also "Legal Process" and "Records: Warrants")

Whenever any person is arrested with a warrant, the officer shall bring the arrested person before a judicial officer within a reasonable time, but under no circumstances later than 72 hours. A Johns Creek Police Department General Criminal Citation must accompany all arrests.

No officer will effect an arrest under the authority of a warrant unless the officer reasonably believes the warrant is valid and the person described in the warrant matches the person being arrested.

#### **Obtaining an Arrest Warrant (04-10-05)**

All arrest warrants shall be obtained from a judicial officer. If the police officer is the prosecutor, he/she shall swear or affirm under oath that probable cause exists to arrest the person. Once issued, a warrant may be carried from one county to another, and it may be served in any county of the state regardless of where it was issued.

#### **Contents of Arrest Warrant (04-10-06)**

A valid arrest warrant must contain the following information as required by statute and court decisions:

- A. The authority under which the warrant is issued.
- B. Identification of the person who is to execute the warrant (Generally addressed "To any sheriff deputy, sheriff, coroner, constable, marshal, or police officer.")
- C. Identification of the person to be arrested.
- D. The offense committed, along with the time, date, and place of occurrence of the offense, including the county in which it was committed.
- E. The victim's name.
- F. A description of the offense, including all the elements of the offense.
- G. If the offense is a theft, the warrant must contain a description of the stolen property, identification of the owner, the property's value, and the person from whose possession it was taken.

#### **Legal Categories of Arrest (04-10-07)**

When an officer is presented with a situation calling for legal action, the officer must determine if any laws or ordinances have been violated and, if so, what action should be taken. The following legal categories of offenses will help clarify the appropriate action to be taken:

- A. Felony arrests may be made with a warrant or without a warrant when the offense occurred in the officer's presence or immediate knowledge, or when the officer has probable cause to believe a felony has occurred.
- B. Misdemeanor arrests may be made with a warrant or without a warrant when the offense occurred in the officer's presence or immediate knowledge. (Exceptions to this are offenses resulting from traffic accidents and the "Family Violence Act." These exceptions entitle the officer to make a warrantless misdemeanor arrest based on probable cause.)

In misdemeanor cases where the offense did not occur in the officer's presence or immediate knowledge, the officer should locate the victim and, if the victim desires to prosecute, have him/her sign the warrant. In cases where the victim is an entity other than a person, an agent for that entity should sign the warrant.

In cases of shoplifting, to protect the officer from false arrest charges and liability, the officer should have the agent for the entity complete a Retail Theft Affidavit. The officer, upon arresting the person, should transport him/her to the appropriate Detention Center and, in conjunction with the booking process, shall complete the arrest citations. As long as the officer acted in good faith, he/she will be relieved of any liability.

- C. Local Ordinance: A violation of the Code of Ordinances of the City of Johns Creek is heard in the Municipal Court. The maximum punishment for a local ordinance violation is twelve (12) months imprisonment and/or a maximum fine of up to \$1,000.00. An officer may elect to release the offender at the scene with a copy of charges to appear at Municipal Court. The officer must either have observed the offense occur or have probable cause that the offense occurred. If the officer did not observe the offense, a witness must be located and subpoenaed to court.

An officer may elect to take the offender into custody based on the City Ordinance violation. However, the courts have determined this is a warrantless arrest. For City Ordinance violations, a warrantless arrest is legal *only* if an offense is committed in an officer's presence or within his/her immediate knowledge. An officer may elect to release the offender at the scene with a copy of charges to appear at Municipal Court. Whenever an officer makes an arrest based on a City ordinance, the officer will set a court date for Municipal Court, and the court time will be written on the citation. A copy of the citation with the court date will be given to the arrested person.

### **Procedure When Making an Arrest (04-10-08)**

When serving a high-risk, criminal arrest warrant at any location within the city limits of Johns Creek, uniformed officers should be present during the warrant execution. When an officer attempts to serve a similar type criminal arrest warrant at any location outside the City limits, uniformed officers from the appropriate agency shall be present.

In certain situations, such as when the element of surprise is necessary to affect an arrest, criminal arrests may be executed without the presence of uniform law enforcement officers. This practice will be an exception to the rule and will only be done after approval of a Division or Unit Supervisor.

When a lawful arrest cannot be made except with a warrant, the arresting officer should have the warrant, or a valid copy, in his/her physical possession at the time of the arrest. Otherwise, the arresting officer has no authority to take the person into custody.

However, knowledge that the warrant exists, such as a valid, confirmed, teletype message of the existence of the warrant, shall suffice as probable cause to take the person into custody. This shall not be considered as “execution” of the warrant, and execution must occur when practical and by the proper agency.

### **Force Used to Execute an Arrest (04-10-09)**

An officer has the right to use the amount of force necessary and reasonable to arrest a person where probable cause has been attained. When force is used to effect an arrest and the force used causes injury or any damage to any property, the incident shall be fully documented by completion of an incident report, completion of the response to aggression forms, and photographs shall be taken. (See also “Use of Force” and “Reporting Use of Force”.)

### **Initial Contact with a Person to be Arrested (04-10-10)**

A person about to be arrested has the right to know he/she is being taken into custody by an officer with lawful authority. Notice is defined as the following:

- A. The person actually knows the person making an arrest is an officer.
- B. The person sees the officer's uniform or badge.
- C. The person is apprehended while committing a crime.
- D. The person is pursued from the scene of a crime.
- E. The person is told by the officer that he/she is under arrest and why.

In the State of Georgia, if an officer, who is not known to a person, fails to provide the above

notice, the person has a right to resist what appears to be an unjustified assault. However, once identified as an officer, the assumption that the arrest is unlawful is made at the peril of the person who resists. A person who knows or believes the arrest is lawful has the duty to submit quietly to custody.

### **Taking People into Custody (04-10-11)**

All persons taken into custody shall be searched incident to arrest. This search should include a full and careful search of the person for weapons, contraband, and evidence of the crime for which the arrest is made. The search should also include the area within the person's immediate reach at the time of the arrest. (See also "Securing and Transporting in Custody Arrests/Prisoners")

### **Transporting Prisoners (04-10-12)**

When an arrested person requires medical attention due to injuries sustained in an accident, arrest procedure, or has acute symptoms of a debilitating or life-threatening illness, that person shall be afforded the necessary treatment *before* transport to the appropriate Detection facility.

- A. Medical treatment shall be made available to all injured prisoners prior to being transported to the jail. The jail has the authority to refuse the intake of any complaining and/or visibly injured prisoner.
- B. Officers will handle prisoners needing medical treatment at the time of arrest as follows:
  1. EMS will be notified by the Communications Center immediately.
  2. If possible, the prisoner shall be secured for the safety of the officer(s) and medical treatment staff.
- C. In a life-threatening or extreme emergency situation, the prisoner will be transported via ambulance to the closest medical facility. If the injury is not life-threatening, EMS is to make the determination as to the mode of transportation (i.e., ambulance or patrol vehicle) required. In a non-life-threatening situation, the prisoner shall be transported to Johns Creek Emory Hospital.
- D. Any prisoner being transported to a medical facility shall be thoroughly searched for harmful objects. When a prisoner is transported by ambulance, the arresting officer shall follow the ambulance, unless the arresting officer is unable to do so at that time. The ambulance personnel may request an officer accompany the prisoner in the ambulance.
- E. See also Securing and Transport of In-Custody Arrestees/Prisoners

### **Releases on Recognizance (Supervisors) (04-10-13)**

- A. At the direction and authority of the Chief of Police, supervisors may request pre-trial personal recognizance release of persons from the jail.
- B. A Judge is the sole authority designated to approve a personal recognizance bond.

### **Consular Notification (04-10-14)**

The cooperation of law enforcement agencies in extending consular notification and access to foreign nationals in accordance with international law helps the national government comply with its international treaty obligations. Therefore, the JCPD will ensure all mandatory consular notifications are executed, and the notification is documented in a police incident report, and the consular notification form will be submitted to the Records Division.

If the detainee is from a country that has a non-mandatory consular notification requirement, the officer shall inquire if the detainee would like a consular notification executed. If the detainee refuses consular notification, the refusal and request shall be documented in the police incident report. All consular notification forms and access requirements/numbers are located on the Police P Drive in the Consular Notification file.