

## ARREST WITHOUT WARRANT

### POLICY:

It is the policy of the Omaha Police Department (OPD) to use the most efficient and effective process to make an arrest. When a suspect is contacted during the course of an investigation, it is preferable to clear the case through arrest or citation as appropriate to the circumstances. A citation may be issued in lieu of a physical arrest in appropriate circumstances. To justify an arrest or citation without warrant, an officer shall have Probable Cause to make the arrest. Officers shall also adhere to:

- The OPD "[Searches – Private Property and Residences](#)" policy when making a warrantless, non-consensual entry into a private residence/property to make an arrest.
- The OPD "[Booking – General Procedure](#)" policy when a suspect is booked into the Douglas County Department of Corrections (DCDC).
- The OPD "[Arrest Affidavit/Order \(Warrantless\)](#)" policy when officers arrest a suspect on a felony without a warrant and need to complete a Warrantless Arrest Affidavit/Order ([OPD Form 156A](#)).
- The OPD "[Juvenile – Authorization to Detain](#)" policy for information on detaining and booking juveniles.

### PROCEDURE:

- I. Criteria for Lawful Arrest Without a Warrant (Probable Cause) (Nebraska Revised Statute – NRS [§29-404.03](#))
  - A. When determining whether Probable Cause exists to justify an arrest, officers may take into account all facts and circumstances, including facts and circumstances that are based upon any expert knowledge or experience of the officer, which is relevant to the likelihood that a crime has been committed and that the suspect to be arrested committed the crime:
    1. Officers may rely on information received from any informant whom it is reasonable under the circumstances to credit, whether or not at the time of making the arrest the officer knows the informant's identity.
    2. Officers may rely on information provided by other officers and/or information from the dispatcher.
    3. Officers may also consider anonymous tips, along with other facts and circumstances, in determining whether Probable Cause exists for an arrest.

**NOTE:** "Probable Cause" cannot rest on a "hunch" or "mere belief." Probable Cause must be supported by specific information.

### II. Physical Arrest Made Without a Warrant – Felonies and Misdemeanors

- A. An officer will physically arrest and book a suspect without a warrant if the officer has Probable Cause to believe the suspect has committed (NRS [§29-404.02](#)):

1. A felony.

**NOTE:** Officers shall complete a Warrantless Arrest Affidavit/Order ([OPD Form 156A](#)) and refer to OPD's "[Arrest Affidavit/Order \(Warrantless\)](#)" policy when arresting a suspect on a felony without a warrant.

2. A misdemeanor, AND the officer has Probable Cause to believe that such person:

- a. Will not be apprehended unless immediately arrested;
  - b. May cause injury to themselves or others or damage to property unless immediately arrested.
  - c. May destroy or conceal evidence of the commission of such misdemeanor.
- OR –
- d. Has committed a misdemeanor in the “Presence of the Officer.”
    - (1) “Presence of the Officer” indicates that it occurred within one (1) or more of the officer’s five (5) senses. It is not required that it be viewed with eyesight.
    - (2) Per the City Prosecutor’s Office, officers may issue a citation in lieu of arrest for most misdemeanors that are committed in the presence of the officer, unless the suspect:
      - i. Committed certain acts against household members, as defined in NRS [§29-404.02\(c\)\(i\)-\(iii\)](#).
      - ii. Violated a Protection Order as outlined in NRS [§28-311.11](#) or [§42-928 – 42-929](#).
- AND / OR –
- iii. May cause injury to themselves or others or damage to property unless immediately arrested, or may destroy or conceal evidence in the commission of such misdemeanor.

- 3. One (1) or more of the following acts to one (1) or more household members, whether or not committed in the presence of the officer (NRS [§29-404.02\(c\)\(i\)-\(iii\)](#)):
  - a. Attempting to cause or intentionally and knowingly causing bodily injury with or without a dangerous instrument;
  - b. Placing, by physical menace, another in fear of imminent bodily injury;

– OR –

  - c. Engaging in sexual contact or sexual penetration without consent as defined in NRS [§28-318](#).

**NOTE:** See OPD’s “[Domestic Violence](#),” “[Abuse/Neglect/Injury-Child](#),” and “[Adult Sexual Assaults – Investigations](#)” policies for more information.

B. Officers shall also physically arrest and book a suspect without a warrant if they have Probable Cause that the suspect has:

- 1. Violated a Protection Order (NRS [§28-311.11](#), [42-924](#), [42-928 - 42-929](#)).

**NOTE:** See OPD’s “[Protection Orders and Harassment](#)” policy for more information.

- 2. Committed one of the following offenses and the property involved is a motor vehicle:

- a. Theft by Receiving Stolen Property ([NRS §28-517](#)).
- b. Theft by Unlawful Taking or Disposition ([NRS §28-511](#)).
- OR –
- c. Unauthorized Use of a Propelled Vehicle ([NRS §28-516](#)).

**EXCEPTION:** Under certain circumstances, Criminal Investigations Bureau (CIB) detectives may issue a Citation or Citation Request for the above-listed offenses when the offense is classified as a misdemeanor, if approved by their supervisor. See OPD's "[Citations](#)" and "[Vehicles Reported Stolen](#)" policies for more information.

- 3. Committed certain weapons offenses, as outlined in OPD's "[Weapons Offenses – Booking and Charging](#)" policy.

### III. Misdemeanors and Infractions – Other Stipulations

- A. Per NRS [§29-422](#), officers are authorized to issue citations in lieu of arrest or continued custody for any offense which constitutes a traffic infraction, any other infraction, a misdemeanor, and for violations of city ordinances, to the maximum extent consistent with the effective enforcement of the law and the protection of the public.
- B. When Probable Cause exists that a suspect has committed a misdemeanor, but a physical arrest is not allowed due to a failure to meet the requirements for physical arrest without a warrant, the officer will attempt to clear the case through citation in lieu of arrest.
- C. When Probable Cause exists that a suspect has committed an infraction, officers shall make every attempt to clear the case through citation. The law requires that citations be issued for infractions, except in limited circumstances as outlined in NRS [§29-427](#), [29-432](#), and [§60-684](#).
- D. If officers attempt to issue a citation to a suspect for a misdemeanor that is eligible for citation release and/or for an infraction, officers may physically arrest and book the suspect without a warrant if (NRS [§29-427](#)):
  - 1. The suspect fails to identify themselves satisfactorily or refuses to sign the citation after multiple requests by officers.
    - a. If a suspect refuses to sign a citation for a traffic infraction, the suspect shall be guilty of a misdemeanor and booked for "Refusal to Sign" (NRS [§60-684](#), [§29-426](#)).
    - b. For refusing to sign a citation for any other misdemeanor or infraction, suspects shall be booked for the underlying charge but will not be booked for an additional charge of "Refusal to Sign."

**EXCEPTION:** If a suspect refuses to sign a citation for Possession of Marijuana (Less than 1 Ounce), officers shall not book the suspect but will still issue the citation without the signature.

- 2. The officer has reasonable grounds to believe:
  - a. The suspect will refuse to respond to the citation;

- b. Such custody is necessary to protect the accused or others when their continued liberty would constitute a risk of immediate harm (See NRS [§29-427](#) and [29-432](#));
- c. Such action is necessary in order to carry out legitimate investigative functions;
- d. The suspect has no ties to the jurisdiction reasonably sufficient to assure his appearance;
- OR –
- e. The suspect has previously failed to appear in response to a citation.

**NOTE:** An officer's supervisor must approve booking in lieu of citation for misdemeanors and infractions. For infractions, officers shall make multiple attempts to issue a citation first (NRS [§29-422](#)).

- E. If the suspect committed a misdemeanor that is eligible for citation release and the suspect is not present and/or cannot be located, the officer may issue a Citation Request, per the OPD ["Locate Persons and Citation Requests"](#) policy.

NOTE: Citation Requests may be issued for misdemeanors but cannot be issued for infractions.

- F. For misdemeanors, if neither physical arrest nor citation is prudent or practical, the completed report will be forwarded with all information regarding "Probable Cause," including complete identification of the suspect. In these cases, the officer may apply for a warrant at a later time.
- G. See OPD's ["Citations"](#) policy for more information.

#### **IV. Uniform Patrol Bureau (UPB) Officers' Investigatory Responsibility**

- A. UPB officers will make an investigation of all misdemeanor offenses including the following:
  - 1. Identification of the suspect and any evidence that may give Probable Cause to arrest.
  - 2. All witnesses will be completely identified, for later contact.
  - 3. Witness/victim/suspect statements will be documented thoroughly and individually, and the officer's personal observations and actions will be documented thoroughly.
  - 4. Officers shall not identify witnesses solely by a non-specific descriptor, such as "clerk" or "neighbor," or to group individual witness statements into a single generic statement.
  - 5. All of this information shall be documented in the Incident Report or Supplemental Reports.
- B. The obligation to continue the investigation on that same shift in misdemeanor offenses is mandatory for UPB officers within the reasonableness of the geography of the precinct in which they are assigned.
  - 1. If contact can be made with the suspect, the officer will contact the suspect and will make full investigative inquiry regarding:
    - a. Statements about the crime.
    - b. Full identification so that the suspect can be located at a later date.

- c. If Probable Cause exists, the officer will issue a citation or physically arrest/book the suspect as appropriate to the circumstances. Command approval is required for physical booking. The name and rank of the commanding officer approving the booking will be documented in the narrative of the original Incident Report.
- C. Officers who make arrests after the initial investigation will, when possible, advise the victim that an arrest has been made. This notification will be documented in Supplemental Reports.
- D. For felony offenses, officers in the Criminal Investigations Bureau will make an investigation per applicable OPD policies and procedures. UPB officers may assist if needed at the direction/approval of CIB and UPB command.

## **V. Identification of Arrestees**

- A. All arrestees (to include citations in lieu of arrest) will be positively identified, to include:
  - 1. Full name.
  - 2. Address.
  - 3. Date of Birth.
  - 4. Race.
  - 5. Sex.
- B. If necessary, it is acceptable to remove a suspect to a separate location for fingerprint identification before issuing a criminal citation.
  - 1. A fingerprint is required for all criminal citations.
  - 2. A fingerprint is only required for traffic citations if a suspect is unable to produce a valid driver's license or other government issued photo identification.
  - 3. If a suspect refuses to provide a fingerprint for a citation, see OPD's "[Citations](#)" policy for procedures.
- C. On rare occasions when identification is not possible, *initial* booking may be under a placeholder name, e.g., John or Jane Doe, until a true identification can be established.
- D. See OPD's "[Fingerprinting and Identification Checks – Adults](#)" policy for more information.

## **REFERENCES:**

### **I. Nebraska Revised Statutes (NRS)**

- A. Nebraska Revised Statutes (NRS): [§29-402](#), [29-402.01](#), [29-402.02](#), [29-402.03](#), [29-404.02](#), [29-422 – 29-438](#), [28-318](#), [28-511](#), [28-516](#), [28-517](#), [42-924](#), and [60-684](#).

### **II. Previous OPD Orders**

- A. Previous General Orders: #23-96, 24-02, 29-08, 14-12, 6-14, 88-17, 31-18, 75-21, 18-22, and 46-25.

### **III. Accreditation Standards**

A. Relevant CALEA Accreditation Standards: 1.2.5, 1.2.6, and 1.2.7.