



ORONO POLICE DEPARTMENT

STANDARD OPERATING PROCEDURES

Protect with Vigilance & Serve with Compassion and Excellence

Subject:	Arrests Warrants	Policy #	O-34
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	<i>Rescinds All Previous Policies Related to This Current Policy</i>		
Issuing Authority:	Chief of Police Daniel Merrill		

I. POLICY

It is the policy of the Orono Police Department to affect arrests consistent with constitutional and statutory requirements and without favor or prejudice toward any person or group of persons. Arrests shall never be conducted to show authority, vent personal feelings, or as a reaction to provocation. Arrest should not be used as a substitute for resolving issues in a less invasive manner.

II. PURPOSE

The purpose of this policy is to articulate the legal framework within which a Orono Police Department officer is authorized to affect arrests in criminal cases.

III. PROCEDURES

A. ARREST

There are four elements to a formal arrest in Maine:

1. An **intention** on the part of the arresting officer presently to make the arrest;
2. A **communication** of that intention to the prospective arrestee;
3. An **understanding** of that intention by said prospective arrestee; and
4. The actual or constructive seizure or **detention** of the person to be arrested by the officer having the present power to control him.

The seizure or detention element of an arrest may be satisfied by either a 'touching' (physical seizure) or a submission by the arrestee to the officer's authority. For purposes of the Fourth Amendment, an arrest has occurred when a reasonable person would believe that he or she was not free to leave

B. PROBABLE CAUSE

1. Probable cause means that, based on all the facts and circumstances within an officer's knowledge and of which the officer has reasonably trustworthy information, there is sufficient evidence – a "fair probability" – to warrant a reasonable and prudent person to believe that the person to be arrested has committed, is committing, or is attempting to commit a crime. The evidence required to make an arrest is more than suspicion, but less than that needed to support a conviction.
2. In addition to having lawful authority, an officer must also have probable cause to make an arrest.
3. Each officer must be aware of the circumstances and information that may help to establish probable cause:

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- i. Direct observations of the officer.
 - ii. Knowledge of the prior criminal record or reputation of the person(s) arrested.
 - iii. Evasive actions or flight from the scene by the suspect.
 - iv. Evasive answers and/or conflicting stories.
 - v. Time of day or night.
 - vi. Experience of the officer in similar situations.
 - vii. The transfer of information or probable cause between deputies.
 - viii. Reliable hearsay information in the form of statements from victims, witnesses, or informants.
4. Information obtained through informants and used to establish probable cause will be closely examined and may be the subject of legal challenge. The officer relying on the hearsay statement of an informant must show that the information was reliable by a "totality of circumstances."

C. ARREST WARRANT PREPARATION

MLEAP 7.02

- 1. Before issuing the warrant, the officer must have probable cause to believe that an offense has been committed and that the person sought to be arrested committed it.
- 2. The full legal name, including the first name, middle name, or initial, and last name, must be included if known.
- 3. The substance of the charge shall appear in the warrant itself and in an affiliated complaint.
- 4. The complaint, affidavit, and warrant must be reviewed and signed by a neutral and detached magistrate authorized to issue an arrest warrant.
- 5. A supporting affidavit is required in all felony case warrants where an officer is applying for an arrest warrant.
 - i. Affidavits shall be prepared on the forms provided by the court or approved departmental facsimile.
 - ii. The affidavit must establish probable cause to believe that the named defendant has committed the offense(s) alleged.
 - a. When practical, present affidavits for felonies to judges, not justices of the peace.
 - b. Insert the itemized elements of the offense following the phrase, "Based on the foregoing, I have probable cause to arrest [name of defendant] for the crime of...."
- 6. A supporting sworn court complaint or affidavit for misdemeanor case warrants utilizing the same principles above.

D. ARREST WARRANT SERVICE

- 1. An arrest with a warrant may be made at any time and in any place throughout the state.
 - i. When the arrest is to take place outside the jurisdiction of the arresting officer, local authorities should be notified and requested to affect the arrest.

- ii. In cases where it is decided that a Orono Police Department officer will affect the arrest in another jurisdiction, they shall first notify the agency having jurisdiction of the existence of the warrant and the department's intent to execute it.
2. An officer may not enter a third party's home to make an arrest with an arrest warrant, even if the officer has reason to believe the suspect is there, unless:
 - i. The resident gives the officer consent to enter the residence.
 - ii. The officer has a search warrant to search the premises for the suspect; or
 - iii. Exigent circumstances preclude the officer from obtaining a search warrant.¹
3. An officer with a valid arrest warrant for a suspect may enter a suspect's home and arrest the suspect provided there is a reasonable belief that the subject is within the residence.²
4. Officers are not required to have the arrest warrant in their physical possession at the time of arrest; however, the existence and validity of the warrant must be verified prior to any attempt at executing it.
5. Execution of arrest warrants should be made promptly to prevent possible dismissal of the complaint and warrant.

¹ Exigent circumstances may include hot pursuit of a fleeing felon, or imminent destruction of evidence, or the need to prevent a suspect's escape, or the risk of danger to the police or to other persons inside or outside the dwelling. In the absence of hot pursuit, there must be at least probable cause to believe that one or more of the other factors justifying the entry is present and that in assessing the risk of danger, the gravity of the crime and likelihood that the suspect is armed is considered. An important factor to be considered when determining whether an exigency exists is the gravity of the underlying offense for which the arrest is being made. Although no exigency is created simply because there is probable cause to believe that a serious crime has been committed, application of the exigent circumstance's doctrine in the context of a home entry will rarely be sanctioned when there is only a minor offense involved.

² A "reasonable belief" is one that is objectively articulated with facts and circumstances; thus "reasonable belief" is the same as "articulable reasonable belief." A subjective belief is not relevant to Fourth Amendment analysis.