

Waltham Police Department

CHAPTER 70

ARREST

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Accreditation Standard #'s: 1.2.3, 41.4.5, 42.2.0, 74.1.3, 74.3.1, 74.3.2, 82.2.1

POLICY:

It shall be the policy of the Waltham 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.

ARREST:

Every officer must also recognize that there is no such thing as a routine arrest. Because of the unpredictability of human behavior, there is a potential element of danger in every arrest, and all officers must guard against this possibility. It has been said that no two arrests are exactly alike. The time of day, the offense involved, and the type of person being arrested accounts for some of these differences. Alcohol and drug use can exacerbate an arrest situation. Taking the mentally disturbed into custody can set up a tragic set of circumstances. Many police officers have been seriously injured in responding to domestic disputes where an arrest was necessary. Life threatening struggles have resulted from what appeared to be a simple misdemeanor or a routine motor vehicle stop. As a fundamental guideline in making arrests, all officers should always be alert and should always anticipate the unexpected.

PROBABLE CAUSE:

In addition to having lawful authority, it is required under the Fourth Amendment that a police officer must have "probable cause" in order to make a valid arrest. Essentially, probable cause for arrest exists if the arresting officer, at the time of arrest, has reasonably trustworthy knowledge that is sufficient for a person of ordinary or reasonable caution and prudence to believe that a crime is occurring or has occurred, and that the person being arrested is committing or has committed the crime for which the arrest is being made. (Beck v. Ohio, 379 U.S. 89, 85 S. Ct. 223, 13L.Ed2d 142 [1964]).

The information upon which an officer relies in making an arrest must be more than just rumor or mere suspicion, but it does not require sufficient evidence to justify a conviction (Comm. v. Stevens, 362 Mass. 24, 283 N.E. 2d 673 [1972]). It does require a reasonable, common-sense approach by a police officer and an honest judgment based upon a combination of factors, any of which standing alone might not be enough to justify an arrest but which, if viewed as a whole, does constitute probable cause. The element of probable cause must exist at the time of arrest, and subsequent events or information acquired later cannot be used to justify the arrest.

Probable cause, therefore, is not a complex formula, which is understandable only to those with a legal background. It consists of personal knowledge and reasonable inferences drawn from practical police experience, or reliable information obtained from others, which causes a reasonably cautious police officer to believe that it is more likely than not that a crime has been committed and that the person being arrested has committed the crime. In the case of Brinegar v. U.S., 338 U.S. 160, 69 S. Ct. 1302, 93 L.Ed.2d 1879 (1949), the Supreme Court said in dealing with probable cause, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent persons, not legal technicians, act.

ARRESTS IN GENERAL: [41.4.3], [74.1.3], [74.3.1-2A], [74.3.2]

1. **WITH A WARRANT: [41.4.3-1]** 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]). A duly authorized police officer may make a lawful arrest with a warrant if any of the following conditions are met: **[74.3.2]**

- a. **WARRANT IN POSSESSION:** Where the officer possesses a valid arrest warrant (Mass. Gen. Law, Chap 276, § 23). **[74.1.3]**
- b. **KNOWLEDGE OF WARRANT:** **[74.1.3]** Where the officer making the

arrest and detention have 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, Ch. 276, § 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 send an administrative message over the teletype to that effect, indicating the warrant number, subject name, address, offense, and issuing court.

When this administrative message 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:** [74.1.3a] 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 § 23A).

Confirmation of a Warrant Management System warrant shall be made prior to arrest. (For example, A Waltham 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 their possession, it is conceivable this person could have been arrested on that same warrant sometime between 4 p.m. and 8 p.m.)

2. **WITHOUT A WARRANT:** [41.4.3-2] 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.

Whenever police affect 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, 619 N.E.2d 324 [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 or designee shall contact the back-up on call bail commissioner within the twenty-four-hour period in an attempt to obtain a judicial determination of probable cause.

a. EXTRA JURISDICTIONAL WARRANTLESS ARREST: A police officer may make an arrest outside their municipal jurisdiction in any of these three 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 Mass. Gen. Law, Ch. 41, § 99:

- a.** When a Commanding Officer - Platoon on Duty of any city or town requests assistance from the Commanding Officer - Platoon on Duty at the Waltham Police Department, and the Commanding Officer - Platoon on Duty at the Waltham Police Department authorizes said assistance, the Waltham officers responding to the foreign jurisdiction aid shall occupy the same police powers as allowed with the City of Waltham.
- b.** Mass. Gen. Law, Ch. 40, § 8G, empowers a city or town to enter into an agreement with one or more other cities or towns to provide mutual aid programs for [their] police departments to increase the capabilities of such departments to protect the lives, safety, and property in the area designated in the agreement.

3. **FELONY ARREST:** Pursuant to Mass. Gen. Law, Ch. 41, § 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. Note: New York and all New England states have such laws.
 - a. In addition, an officer may make a valid warrantless felony arrest based on probable cause outside their jurisdiction. It, however, shall be the policy of the Waltham Police Department to have the foreign jurisdiction police agency affect the arrest based on the probable cause of the investigating Waltham officer.
 - b. The foreign jurisdiction police agency shall then 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 Waltham Police Department, booked, processed, and placed in a holding cell (Mass. Gen. Law, Chap. 276, § 10A-10D).
4. **TRANSFERRED AUTHORITY:** A Waltham 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 Waltham officer has reasonable suspicion that the person being stopped is, has, or is about to commit a crime. The Waltham police officers' police power is limited in making the stop only. It is up to the foreign jurisdiction's police agency to conduct any investigation and make any arrest (Commonwealth v. Morrissey, 422 Mass. 1, 660 N.E.2d 376 [1996], Mass. Gen. Law Ch. 37, § 13, & Mass. Gen. Law Ch. 268 § 24).
5. **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:
 - a. 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.S. 38, 96 S. Ct. 2406 [1976]).
 - b. If police seek to arrest a person in that person's own dwelling, they may do so:
 1. If lawful consent to enter is granted; or

2. If exigent circumstances are present which excuse the failure to obtain an arrest warrant.

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

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

1. If lawful consent to enter is granted; or
2. 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., 451 U.S. 204, 101 S. Ct. 1642 [1981]).

- d. In assessing whether there are sufficient exigent circumstances present to excuse the failure to obtain a warrant before entering a dwelling to make an ID consider the following factors:

1. Whether the crime was one of violence.
2. Whether the suspect is armed.
3. Whether there is clear demonstration of probable cause to arrest.
4. Whether there is strong reason to believe the suspect is in the dwelling.
5. The likelihood that the suspect would escape if not apprehended immediately.
6. Whether entry can be made peaceably.
7. 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,

466 U.S. 740, 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).

- e. 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]).
- f. 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]).
- g. 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, 33 N.E. 82 [1893]).
- h. 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.

6. **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 citations, summonses, informal resolutions, warnings, and referrals to other agencies [41.4.4-1]. Circumstances which may warrant this could include, but are not limited to, the following: [1.2.6], [41.4.5], [41.4.4-2]

- 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. See departmental policy on Juveniles (Ch 44)
- e. In other minor offenses where a summons can effectively accomplish the intended purpose.
- f. In minor motor vehicle offenses. See departmental policy on Traffic (Ch 61, 62, 65) with regard to state legislators, diplomatic and consular officers.

PROCEDURES:

- 1. An arrest should never be made to show authority or to vent personal feelings. Verbal abuse alone is not justification for an arrest;
- 2. Whenever practicable, arrests should be made with a warrant.
- 3. 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 officers' 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.
- 4. 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 their 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.

5. ELEMENTS OF AN ARREST CONSIST OF THE FOLLOWING:

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

6. 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:

- a. Direct observations of the police officer;
- b. Knowledge of the prior criminal record or activity of the person arrested;
- c. Flight accompanied by other factors;
- d. Evasive answers and/or conflicting stories;
- e. Time of day or night;
- f. History of criminal activity in the particular area;
- g. Experience of the officer.

7. 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.

8. 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:

- a. Obtaining assistance when necessary whether before or after the arrest; this is particularly advisable when:
 - 1. There is more than one person to be arrested.

2. A dangerous crime is involved, usually a felony of a serious nature.
 3. Prior experience has shown the need for assistance in particular situations.
 - b. Searching for and seizing any instruments capable of inflicting serious bodily injury or causing death, and evidence of any crime;
 - c. 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]);
 - d. 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.
9. 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, 388 Mass. 596, 447 N.E.2d 1224 [1983]).
10. Once an arrest is made, it is the responsibility of the arresting officer or officers to ensure that arrestee's do not injure themselves or others, and that they do not escape or dispose of evidence.
11. 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]).
- a. The warnings are as follows:
 1. You have the right to remain silent.
 2. Anything you say may be used against you in a court of law.
 3. You have the right to consult with an attorney before any questioning and to have an attorney present during any questioning.
 4. If you cannot afford an attorney, one will be provided at State expense, prior to any questioning, if you so request.
 - b. 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:

1. The card itself can later be introduced into evidence;
 2. Officers have tangible proof that they have not relied solely on memory.
- c. 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 their 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.

Officers must keep in mind the Rosario Decision (Comm v Rosario 422 Mass. 48, 661 N.E.2d 71 [1996]), which is the six- hour Safe Harbor rule and effects the questioning of a person in custody. [42.2.0-2J]

12. The person(s) arrested shall be handcuffed and promptly and safely transported to the station house in accordance with departmental procedures (see Departmental Policy and Procedures: Chap. 71 - Transportation of Detainees).
13. 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. [41.4.3-3A], 82.2.1a]
14. It shall be the responsibility of the officers assigned to the Prosecution Unit 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 or those assigned to the Prosecution Unit to seek such criminal complaint.
15. **MILITARY PERSONNEL:** In the event of the arrest and custody of a member of the Armed Forces, in cases of crimes that 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 at 781-225- 5000.

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 may use their discretion in the processing of military persons under arrest.