

POLICY #1-10



ARREST

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GENERAL CONSIDERATIONS

The authority to arrest, thereby depriving a person of his/her liberty is one of the most serious and sensitive duties of a police officer. Whenever there is sufficient time and opportunity to do so, a warrant should be obtained in advance of an arrest. In any case where the offender does not create a threat to the public, or is not likely to flee, it is good police practice to obtain a warrant prior to arrest. This is particularly true for the less serious offenses.

By the very nature of police work, however, many arrests must be made without a warrant. Police officers should have a clear understanding of their powers, duties and responsibilities under the law of arrest. If an unlawful arrest is made, any search made incidental to that arrest may be found unlawful and any evidence seized declared inadmissible. Any confession or admissions made may also be excluded, if made after an unlawful arrest. In addition, civil liability may also result.

Every police officer must 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. 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, officers should be alert and should anticipate the unexpected.

POLICY

It is the policy of the Weymouth Police Department that officers make mandatory arrests as required by statute or policy; that officers exercise discretion and make warrantless arrests as appropriate in the performance of their duties; that a warrant should be obtained when practical prior to making an arrest when the offender does not create a threat to the public, or is not likely to flee, and especially where less serious offenders are involved; and that when appropriate circumstances exist, officers may exercise discretion and not make an arrest. In such limited cases, citations, summonses, informal resolutions, warnings and referrals to other agencies may be alternatives to arrest.

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DEFINITIONS

Arrest - The taking of a person into custody and depriving him/her of his/her freedom of action, in accordance with law, in order that such person can be brought before the court to answer to a criminal charge.

Probable Cause - The facts observed, information obtained from others and personal knowledge and experience that is sufficient to lead a reasonable and prudent person to believe that a particular crime has been, is being, or is about to be committed, and that seizeable evidence of crime is likely to be found in a specific location or on a specific person and which would justify a judge or magistrate to issue a search warrant.

Felony - Any crime punishable by death or imprisonment in the state prison.

Misdemeanor - Any crime where there is no possibility of punishment by death or imprisonment in the state prison.

Breach of Peace - 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.

Arrest Warrant - An order in writing, issued by an authorized court official, directed to officers authorized to serve criminal process, 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.

PROCEDURES

1. Arrests in General

- 1.1. Duly sworn police officers of cities and towns gain their authority to make arrests from G.L. c. 41, s. 98.
- 1.2. An arrest should never be made to show authority or to vent personal feelings.
 - 1.2.1. The attitude of the offender should not be the determining factor in making an arrest.
 - 1.2.2. Verbal abuse alone is not a sufficient justification for an arrest.
 - 1.2.3. An arrest should not be used to resolve a problem when other options are available.
- 1.3. A duly sworn police officer may make a lawful arrest, either with or without a warrant. However, whenever possible, arrests should be made with a warrant. To effectively and lawfully execute an arrest there must be:
 - 1.3.1. An intention on the part of the police officer to make an arrest;
 - 1.3.2. The knowledge and understanding of that intent must be communicated to the person to be arrested; and
 - 1.3.3. Either a physical seizure or submission to the officer by the arrested person.

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- 1.4. Force should be only 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 (see Departmental policy on Use of Force.)

2. Arrests with a Warrant [1.2.5]

- 2.1. A police officer may make a lawful arrest with a warrant when the officer making the arrest and detention has actual knowledge that a warrant then in full force and effect for the arrest of such person has in fact been issued, or the officer possesses a valid arrest warrant.

2.2. Application of Warrant

- 2.2.1. An arrest warrant issued pursuant to a complaint must be founded upon probable cause supported by oath or affirmation but it is not necessary to recite the facts that constitute probable cause in the complaint.
 - 2.2.2. A warrant shall be directed to and executed in any place within the Commonwealth.
 - 2.2.3. On July 10, 1994, the Legislature enacted M.G.L. c. 276, s. 23A, which created the Warrant Management System. This system dramatically changed the way warrants are handled in Massachusetts. Previously all warrants were paper warrants, physically delivered to the requesting police department for service. Under the Warrant Management System (WMS), warrants are issued electronically by the court of origin and appear in a statewide master name file. They are further entered automatically into the Criminal Justice Information System (CJIS). The complaining department receives a notice of the issuance of a warrant via CJIS.
 - 2.2.4. The warrant must be obtained from the proper authority. The following judicial officers have the statutory authority to issue arrest warrants:
 - Justices of the Supreme Judicial Court, The Superior Court, and the District Court Departments; and
 - A Clerk/Magistrate, Assistant Clerk/Magistrate, Temp Clerk/Magistrate, or Temporary Assistant Clerk/Magistrate of a District Court Department.
 - 2.2.5. The preference of the legislature is that defendants are summonsed rather than arrested. A summons shall issue instead of a warrant unless, in the judgment of the court or justice, there is reason to believe that the defendant will not appear upon summons.
- 2.3. Prior to serving an arrest warrant, an officer should examine it carefully to determine what the officer's powers are under it and whether:

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- 2.3.1. It clearly names and describes the person to be arrested or, if his/her name is unknown, any name or description by which (s)he can be identified with reasonable certainty;
 - NOTE: A so-called "John Doe" warrant without a further satisfactory and sufficient description is unlawful and void.
 - 2.3.2. The officer is authorized to serve it; and
 - 2.3.3. It clearly describes the offense for which the arrest is to be made.
 - NOTE: The warrant shall recite the substance of the offense charge and it shall command that the defendant be arrested and brought before the court.
 - 2.4. A person arrested on a warrant, or otherwise taken into custody by a police officer, has the right to know the true grounds for such arrest.
 - 2.4.1. The officer need not have the warrant in his/her possession at the time of arrest; however, upon request (s) he shall show the warrant to the arrestee as soon as possible. A printout of a warrant from CJIS shall constitute a true copy of the warrant.
 - 2.4.2. If the officer does not have the warrant in his/her possession at the time of arrest, (s) he shall inform the arrestee that a warrant has been issued and of the offense charge.
 - 2.4.3. If the officer does not then know of the offense charge, (s)he shall inform the arrestee thereof within a reasonable time after the arrest.
 - 2.5. After the warrant has been executed, the officer-in-charge shall ensure that the warrant is located on CJIS/WMS.
 - 2.6. When a person subject to a WARRANT ISSUED by ANOTHER COUNTY is arrested, (s)he shall be brought before a court of the county where the arrest was made in order to be admitted to bail.
 - 2.7. A person who is the subject of an OUT-OF-STATE WARRANT may not be arrested in Massachusetts on that warrant. Rather, a warrantless arrest shall be made on a Massachusetts Fugitive from Justice Charge.
3. Arrests Without a Warrant [1.2.5]

Warrantless arrests merit much more detailed study because of the subjective factors involved. If an unlawful arrest is made, any search made incidental to that arrest may be found unlawful and any evidence seized may be declared inadmissible. Any confession or admission made by the person arrested may also be excluded, if made after an unlawful arrest.

- 3.1. Lawful Authority - An arrest without a warrant may be lawfully made when certain circumstances exist:

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3.1.1. Felony: For a felony committed in the officer's presence or on a probable cause that a felony has been committed.

3.1.2. Misdemeanor:

- For a misdemeanor committed in the officer's presence when such arrest is authorized by statute; or
- For certain misdemeanors authorized by statute for which arrest is allowed even though such misdemeanors were not committed in the officer's presence; or
- For a misdemeanor where there is no statutory authority to arrest, such arrest may be made only if:
 - The misdemeanor is committed in his/her presence;
 - The misdemeanor is causing or threatening to cause a breach of the peace; and
 - The misdemeanor is still continuing or only briefly interrupted.

3.2. Probable Cause

3.2.1. In addition to having lawful authority, it is required under the Fourth Amendment that a police officer have "probable cause" in order to make a valid arrest without a warrant.

- The element of probable cause must exist at the time of arrest. Subsequent events or information acquired later cannot be used to justify that arrest.
- 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. 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, constitute probable cause.
- 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. Therefore, the totality of circumstances surrounding the arrest is of great importance. Each officer should be aware of the following types of circumstances, which have been looked to in establishing probable cause:
 - Direct observations of the police officer
 - Knowledge of the prior criminal activity of the person arrested;
 - Flight accompanied by other factors;

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- Evasive answers and/or conflicting stories;
- Time of day or night;
- History of criminal activity in the particular area;
- Experience of the officer applied to observations and firsthand information; and
- Reliable hearsay.

4. Hearsay

4.1. Hearsay statements often present problems in establishing probable cause and also evidentiary problems during trial. Usually, they are derived from three principle sources:

- 4.1.1. Statements from the victims and/or witness;
- 4.1.2. Statements from other police officers;
- 4.1.3. Statements from informants: It is this source that is most closely scrutinized when used to establish probable cause. An officer relying on the hearsay statement of an informant must:
 - Show the circumstances establishing the reliability of the informant (Veracity); and
 - Show the circumstances establishing the reliability of the informant's information (Basis of Knowledge).

5. Extra-Territorial Arrest

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. Where an officer has been appointed and sworn as a "special police officer" in another (often neighboring) jurisdiction, s/he has arrest powers in that community as well. However, there are four instances in which an officer may make "extra-territorial" arrests, that is, arrests outside the limits of the city or town where s/he has been appointed:

- 5.1. Fresh Pursuit in State: An officer may "on fresh and continued pursuit," pursue and arrest an offender in any city or town in Massachusetts if:
 - 5.1.1. The offense is one for which a warrantless arrest is authorized;
 - 5.1.2. The offense was committed in the officer's presence; and
 - 5.1.3. The offense was committed in the officer's jurisdiction.
- 5.2. Mutual Aid: If there is a mutual aid agreement in effect between his/her city or town and the city or town to which s/he has been assigned under the mutual aid agreement, an officer may exercise the same authority in such city or town as s/he exercises in his/her own city or town.
- 5.3. Interstate Fresh Pursuit: 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 other state has in force similar interstate felony fresh pursuit laws. (New York and all New England states have such laws.)

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- 5.4. Citizen's Arrest: An officer may exercise his/her citizen's arrest powers. For example, any citizen may make an arrest for a felony if a felony has, in fact, been committed. When a police officer exercises a citizen's arrest powers outside his/her jurisdiction, s/he need only have probable cause to believe that a felony has been committed and that the person arrested committed it. Such citizen's arrest powers may be exercised in another state.

6. Arrests in a Dwelling

- 6.1. Police officers may enter the dwelling of a person named in an arrest warrant.
- 6.2. An officer may enter a suspect's home to serve an arrest warrant without obtaining a search warrant, provided there is a reasonable belief that the arrestee is in his or her residence at the time the arrest warrant is executed.
- 6.3. To serve an arrest warrant on private property, police officers shall knock and announce their authority and purpose (unless the warrant issued is a "No Knock and Announce Warrant") and wait a reasonable period to be admitted.
- 6.4. Once a reasonable time has passed and the officers have not been voluntarily admitted, and there is reasonable cause to believe that the wanted person is on the premises, officers may use whatever force is reasonably necessary to gain entrance. NOTE: The least amount of force that will accomplish an entrance should always be used.
- 6.5. Dispensing with Announcement: If the police officers reasonably believe that announcing their presence and purpose will endanger themselves or others, or will result in the escape of the wanted person or the destruction of evidence, they may dispense with the announcement of authority and purpose.
 - 6.5.1. In such cases, they may attempt to deceive the suspect into voluntarily opening the door, or gain entrance by a ruse, if this will result in a safe and successful apprehension with less destruction of property or risk of harm to person.
 - 6.5.2. Massachusetts has given recognition to a "Useless Gesture" exception, at least in the narrow situation where the facts known to the officers would justify them in being virtually certain that the occupant already knows the police officers' identity and purpose. Further, violation if the "no-knock" rule may require that the evidence, which has been seized, be suppressed.

7. No Knock Warrant

If at the time police make application for an arrest warrant, they reasonably believe that dispensing with the knock and announce rule may be necessary, they should so inform the magistrate, give their reasons, and ask that the arrest warrant be marked "No Knock and Announce Warrant."

- 7.1. Valid reasons for requesting a "No Knock and Announce Warrant" would include a reasonable belief that the suspect would escape, or would resist violently if not taken quickly and by surprise

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or that evidence or contraband would be destroyed if the police have to knock and announce their presence.

- 7.2. A defendant is entitled to suppression of the evidence seized to a “no knock” search where the officer had knowledge or information available that would have justified dispensation with the rule, but had not presented the evidence to the issuing magistrate.
- 7.3. However, when the police seek to execute the no knock and announce warrant, they must reappraise the situation at that time. If the reason or circumstance that justified issuance of the no knock and announce warrant is no longer present, then they must follow the normal knock and announce procedure.

8. Service of Arrest Warrant at the Dwelling of a Party Not Named in the Warrant

- 8.1. If police seek to arrest a person in someone else’s dwelling, they must obtain a search warrant unless:
 - 8.1.1. Lawful consent to enter is granted; or
 - 8.1.2. Exigent circumstances are present which excuse the failure to obtain a search warrant.
- 8.2. Exigent or emergency circumstances necessary to excuse the failure to obtain a warrant before entering a dwelling to make an arrest are determined by the following factors:
 - 8.2.1. The crime was one of violence or a showing that the suspect is armed;
 - 8.2.2. There is a clear demonstration of probable cause to arrest;
 - 8.2.3. There is strong reason to believe the suspect is in the dwelling;
 - 8.2.4. The likelihood that the suspect would escape is not apprehended immediately;
 - 8.2.5. Whether the entry can be made peaceably; and/or
 - 8.2.6. Whether the entry would be in the nighttime (or could be made in the daytime when the clerk/magistrates are more readily available).

9. Warrantless Arrest in Dwelling

Police officers 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. However, with regard to making an entry into and arrest in a dwelling, the following standards apply:

- 9.1. 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 a dwelling.
- 9.2. If the police seek to arrest a person in that person’s own dwelling, they must obtain a search warrant unless:
 - 9.2.1. Lawful consent to enter is granted; or
 - 9.2.2. Exigent circumstances are present which excuse the failure to obtain an arrest warrant.

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10. Police Discretion to Arrest [1.2.6]

10.1. 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 would be better served by not making an arrest, even though there is legal justification for such action.

10.2. Arrest alternatives include citations, summonses, informal resolutions, warnings and referrals to other agencies. Circumstances where alternatives to arrest may be appropriate include the following:

10.2.1. When an arrest could aggravate community conflict or possibly precipitate a serious disorder.

10.2.2. When there is a greater priority to respond to a more serious crime or to an urgent public emergency.

10.2.3. 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.

10.2.4. In minor juvenile offenses where documented diversion and consultation with the parents can avoid a court appearance.

10.2.5. In other minor offenses where a summons can effectively accomplish the intended purpose.

10.2.6. Minor motor vehicle offenses

10.3. Circumstances where little or no discretion to use alternatives to arrest is appropriate include the following: [1.2.7]

10.3.1. Domestic Violence

- Arrests are statutorily mandated for violations of restraining orders (209A's)
- Arrests are the preferred method for domestic crimes of violence including assaults and battery.

10.3.2. Operating Under the Influence of Alcohol

- Officers should arrest all operators for whom probable cause exists for operating under the influence of alcohol or drugs.
- Officers may, with a supervisor's approval, issue a criminal summons for operators injured in serious motor vehicle accidents.

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10.3.3. Traffic Offenses – All enforcement actions will be accomplished using one of the following methods:

- Verbal Warnings: A verbal warning may be appropriate when the violator commits an act which may be due to ignorance of a particular law, minor equipment violation, or when enforcing a new traffic law or regulation. [61.1.2(c)].
- Written Warnings: A written warning is a proper alternative by officers in response to a minor traffic infraction. [61.1.2(c)]
- Civil Citations: An officer's discretion and experience should be used in the decision to take punitive action against a violator. The officer should consider this course of action for: [61.1.2(b)]
 - Violators who jeopardize the safe and efficient flow of vehicular and pedestrian traffic;
 - Hazardous moving violations;
 - Multiple violations;
 - Operating unsafe and/or improperly equipped vehicles; and
 - Repeat offenders.
- Criminal Complaint: Officers may issue a criminal citation for violations of criminal motor vehicle laws. [61.1.2(b)]
- Arrest: Officers may affect the physical arrest of any person in violation of those traffic laws allowing an arrest. Officers also have the discretion to issue a criminal citation for an arrestable offense. [61.1.2(a)]

11. Officer Safety

Arresting officers should not act in a careless or routine manner. They should take all necessary steps to ensure their own personal safety and that of the public and to secure destructible evidence. Such steps shall include, but are not limited to:

11.1. Obtaining assistance when necessary, whether before or after the arrest. This is particularly advisable when:

- 11.1.1. There is more than one person to be arrested;
- 11.1.2. A dangerous crime is involved, usually a felony of a serious nature; or
- 11.1.3. Prior experience has shown the need for assistance in particular situations.

11.2. Searching for and seizing any instruments capable of inflicting serious bodily injury or causing death, and evidence of any crime;

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11.3. Making a search of the area within the immediate reach and control of the persons arrested for weapons or destructible evidence; and

11.4. Keeping the persons arrested in control and in view of the officer at all times. If more than one officer is present, the additional officer shall never pass or position him/herself between the arresting officer and the person arrested.

12. Following Arrest

12.1. Once an arrest is made, it is the responsibility of the arresting officer or officers to ensure that arrestees do not injure themselves or others, and that they do not escape or dispose of evidence.

12.2. At the time of arrest, a "search incidental to arrest" shall be conducted in accordance with the departmental policy.

12.3. At the time of arrest, unnecessary conversation should be avoided and any orders or statements to the person arrested should be clear and brief.

12.4. Persons arrested shall be given the Miranda warnings as soon as possible and prior to interrogation or any questioning likely to elicit an incriminating response.

12.4.1. The warnings shall be read from a card or other permanent record of them to ensure that none are omitted. This procedure is beneficial for other reasons:

- The card itself can later be introduced as evidence;
- Officers have tangible proof that they have not relied solely on memory;
- The suspect can also be permitted to read the card.

12.4.2. Each officer giving the warning shall ask and verify that the person arrested has heard and understood the warnings so given.

12.4.3. No questioning of arrested persons shall take place until these warnings have been given. However, 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. Whenever statements are made voluntarily and with no compulsion, such statements shall be noted and incorporated as part of the officer's official report. However, if an officer wishes to gain further information through questioning, the warnings shall be given before pursuing the matter further.

12.5. The persons arrested shall be handcuffed (double locked) and promptly and safely transported to the station house in accordance with the departmental policy on Transporting Prisoners.

12.6. All arrests, made with or without a warrant shall be booked according to department policy, that includes criteria for:

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- 12.6.1. Complete reports; [1.2.5(a)]
- 12.6.2. Fingerprinting; and [1.2.5(b)]
- 12.6.3. Photographing. [1.2.5(c)]

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