

<b>Somerville Police Department</b> 	<b>TYPE:</b> <b>GENERAL ORDER</b>			<b>POLICY NUMBER:</b> <b>114</b>			
	<b>Subject:</b> <b>Arrest Procedures</b>						
	<b>Issuing Authority:</b> <b>Charles Femino</b> <b>Chief of Police</b>			<b>Signature:</b> 		<b>Effective Date:</b> November 29, 2023	
<b>Accreditation Standards (6<sup>th</sup> Edition) 41.4.3, 41.4.4, 41.4.5, 74.1.3, 82.1.2</b>			<input type="checkbox"/> New <input checked="" type="checkbox"/> Revised <input type="checkbox"/> Amended				
<b>Revision &amp; Reissued Dates:</b>	5/22/14	6/15/15	02/16/16	12/5/17			

## Purpose

The authority to arrest, thereby depriving a person of their liberty, is one of the most serious and responsibility-laden duties of a police officer. Whenever there is sufficient time and opportunity, 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 unlikely to flee, it is good police practice to obtain a warrant prior to arrest. Officers should be mindful of the purpose for an arrest which is simply to identify a subject and not to punish a subject. Warrant petitions and criminal complaint applications are viable alternatives to a physical arrest and they should be utilized whenever legally permissible and appropriate. This is particularly true for less serious offenses.

By the very nature of police work, 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 incur.

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 situation. Life-threatening struggles have occurred from what appeared to be a misdemeanor arrest or a routine motor vehicle stop. As a fundamental guideline in making arrests, officers should always remain alert.

## Policy

It is the policy of the Somerville Police Department to ensure that when people are arrested and taken into custody, all Constitutional and Statutory Rights to which they are entitled will be provided at the time of their arrest and while they are in custody.

## Procedures

## 1. Lawful Execution of an Arrest

To effectively and lawfully execute an arrest, there must be:

- 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 person arrested.

## 2. Arrest With a Warrant: [41.4.3][74.1.3]

A duly authorized police officer may make a lawful arrest if any of the following conditions are met:

- A. Where the officer possesses a valid arrest warrant.
- B. Where the officer making the arrest and detention has actual knowledge that a warrant is in effect for the arrest for that person, and has in fact been issued (Mass. Gen. Law, Chap. 276, Sec. 23).
- C. When the officer's knowledge of the existence of a warrant is based on a computer query and verification.
  - 1. If not in the Warrant Management System, then no arrest shall be made until the Station Officer verifies the warrant by telephone with the department holding the warrant. If the warrant has been verified with the other police department, the Station Officer shall request that department to send an administrative message over the teletype, indicating the warrant number, subject's name, address, offense, and issuing court.
  - 2. An arrest based on a computer response **NOT** in the Warrant Management System shall not be made until verification of the warrant's existence.

## 3. Arrest Without a Warrant [41.4.3]

A duly authorized police officer may make a lawful arrest if any of the following conditions are met:

- A. For a felony, if the officer has probable cause to believe the person to be arrested committed or is committing a felony.
- B. For a misdemeanor committed in the officer's presence which constitutes a breach of the peace.
- C. For a misdemeanor where a warrantless arrest is allowed by statute.

- D. In conjunction with The Middlesex County Mutual Aid Agreement covered under M.G.L. 40 sec 8.

#### 4. Probable Cause

In addition to having lawful authority, it is required under the Fourth Amendment for a police officer to have **Probable Cause** in order to make an arrest.

- A. Probable cause for arrest exists if the facts within the knowledge of the arresting officer, or within the collective knowledge of the police, are reasonably trustworthy and are sufficient to warrant a person of reasonable caution and prudence to believe that the person being arrested has committed, or is committing the crime, for which the arrest is being made. Probable cause must exist at the time of arrest. Subsequent events or information acquired later cannot be used to justify the arrest.
- B. When a lawful arrest is made, with or without an arrest warrant, the officer may search the arrestee and the area within his immediate presence or control, during, or after, the arrest for the purpose of:
1. Protecting the officer from attack.
  2. Preventing the arrestee from escaping.
  3. Discovering fruits of the crime.
  4. Discovering any instruments, articles, or things which may have been used in the commission of the crime.
  5. Discovering any instruments, articles, or things that may constitute evidence of the crime (including contraband).
- C. It shall be recognized that the phrase “arrestee’s immediate presence” has been defined by the Supreme Court as that area within the arrestee’s immediate control, i.e., that area from which the arrestee might gain possession of, or seize a weapon, or other thing to assault the officer, or effect an escape, or seize concealable or destructible evidence.
- D. All arrestees shall be accorded the protections of the “Rights of Accused” as provided for in state law.

#### 5. Extra-Territorial Arrest

Other than constitutional safeguards, the other major constraint on the power of arrest is jurisdictional authority. Generally, the power to arrest ends at the boundaries of a city or town. There are, however, five (5) instances in which an officer may make extra-territorial arrests.

- A. An officer may “on fresh and continued pursuit,” pursue and arrest an offender in any other city or town in Massachusetts if:
1. The offense is one for which a warrantless arrest is authorized.
  2. The offense was committed in the officer’s presence.
  3. The offense was committed in the officer’s jurisdiction.
  4. The officer is in a city or town where the City of Somerville has a mutual aid agreement in effect and is in compliance with said agreement. (M.G.L. Chap. 40, Sec. 8G).
  5. On “fresh pursuit” of a person who has committed a felony in Massachusetts into any other neighboring state if that other state has similar interstate felony fresh pursuit laws (M.G.L. Chap. 276, sec. 10A-10D). Currently, all New England States and New York have these laws in effect.
- B. An officer may exercise citizen’s arrest powers for a felony, upon probable cause, in any jurisdiction.

## 6. Arrest in a Dwelling

Police officers may enter the dwelling of a person named in an arrest warrant under the following circumstances:

- A. An officer may enter a suspect’s home to serve an arrest warrant without obtaining a search warrant, provided there is reason to believe the suspect is there.
- B. To serve an arrest warrant on private property, police officers should first 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.
- C. 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.
- D. 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. 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.
- E. Police may seek to arrest a person on a warrant at the dwelling of a third party. They may do so without a search warrant if:
1. Lawful consent to enter is granted.
  2. Exigent circumstances are present which excuse the failure to obtain a search warrant.

## 7. Warrantless Arrest in a Dwelling

A. Warrantless Arrest in a Dwelling is only allowed if:

1. Lawful consent to enter is granted
2. Exigent circumstances are present which excuse the failure to obtain a search warrant

## 8. Alternatives to Arrest [41.4.4]

- A. Citations
- B. Summons
- C. Informal resolutions
- D. Warnings
- E. Referrals to other agencies

## 9. Discretionary Situations:

- A. Circumstances where alternatives to arrest may be appropriate include the following [41.4.4] [41.4.5]
1. When an arrest could generate community conflict or precipitate serious disorder.
  2. When there is a greater priority to respond to a more serious crime or other urgency.
  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.
  4. In minor juvenile offenses where a warning and a talk with the parents can avoid a court appearance.
  5. In other minor offenses where a summons can effectively accomplish the intended purpose.
  6. Minor motor vehicle offenses.

## 10. Non-Discretionary Situations:

- A. Circumstances where little or no discretion to use alternatives to arrest is appropriate include the following [41.4.5]
1. Domestic Violence
    - a) Arrests are statutorily mandatory for violations of restraining orders.
    - b) Arrests are the preferred method for domestic crimes of violence including assaults and assault & battery.
  2. Harassment

- a) Arrests are statutorily mandatory for violations of harassment prevention orders.
- 3. Operating Under the Influence of Alcohol:
  - a) Officers should arrest all operators for whom probable cause exists for operating under the influence of alcohol or drugs.
  - b) Officers may, with a supervisor's approval, issue a criminal summons for operators injured in serious motor vehicle accidents.

## 11. Officer Safety

- A. Officers involved in an arrest 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.
- B. Officers should never be reluctant to request assistance when an arrest is to be made. This is especially true when there is more than one person to be arrested, when the crime involved is a felony, or otherwise serious in nature, or when prior experience has shown the need for assistance in particular situations.

## 12. Processing:

- A. All persons arrested and booked, will be fingerprinted and photographed as part of the booking procedure [41.4.3] [82.1.2]
- B. All arresting officers will complete their arrest reports prior to the conclusion of their respective shift unless otherwise authorized. All arrest reports must be completed prior to arrestee(s) arraignment. [41.4.3]

## 13. Immigration and Customs Enforcement (ICE) Notification:

- A. In the event an individual is arrested and is a non-resident (alien), the Somerville Police Department's policy regarding the notification of Immigration and Customs Enforcement (ICE) will only be authorized by a Lieutenant or above.

In the event an individual is arrested for one of the four categories of crimes listed below, the booking officer shall attempt to determine if the arrestee is a non-resident alien. The following guidelines shall be used in order to notify ICE. The following are guidelines that will be used for the notification:

1. ICE will be notified if there is a detainer for a non-resident (alien) wanted by ICE.
2. ICE will be notified if a non-resident (alien) is arrested for murder.
3. ICE will be notified if a non-resident (alien) is arrested for sexual offenses.
4. ICE will be notified if a non-resident (alien) is arrested for narcotics trafficking.
5. ICE will be notified if a non-resident (alien) is arrested for causing serious injury.

- B.** The person who notifies ICE will also send an email to the Deputy Chief in Charge of Operations.

[Executive Order – Executive Policy for Responding to ICE Detainers](#)