



# SPECIAL ORDER

DATE OF ISSUE

12/16/2022

EFFECTIVE DATE

12/16/2022

NUMBER

22-48

SUBJECT

**ARRESTS POLICY**

REVISIONS

Revisions are italicized

RESCINDS

Department Manual Directive 202.1, **ARRESTS**

EXPIRATION DATE

12/16/2023

DISTRIBUTION

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## Purpose

The purpose of the policy is to provide guidelines and procedures for officers of the Detroit Police Department (DPD) in making lawful arrests, the detention of material witnesses, to provide supervisory review of arrests for probable cause, and to provide for prompt judicial review of arrests.

## Policy

Short of the application of force, an arrest is the most serious action an officer can undertake. An arrest can cause repercussions throughout a person's life, even if eventually found not guilty or never brought to trial. The most important legal question facing an officer at the moment of arrest is the existence of probable cause. Without probable cause the arrest is illegal and the evidence of criminality that was obtained because of the arrest is inadmissible. It is the policy of the DPD:

- a. That no person shall be arrested with less than probable cause having been established at the time of the arrest;
- b. That a DPD supervisor shall review every arrest; and in all instances in which a probable cause determination is made, document same on the *incident report*;
- c. That for all arrests unsupported by probable cause, the Review of Arrest Exception Form (UF-001) shall be completed within twelve (12) hours of the event;
- d. That for every arrestee, a warrant request for arraignment on the arrest shall be submitted to the prosecutor's office within forty-eight (48) hours of arrest;
- e. That in every instance in which an exception of this Department's prompt judicial review policy occurs, the exception shall be documented on the Warrant Tracking Hold Form (UF-004/007); and
- f. That all arrests in which an arraignment warrant was not sought, the Warrant Tracking Hold Form (UF-004/007) shall be completed within twelve (12) hours.

## Definitions

### **Arrest**

An arrest is a seizure of greater scope or duration than an investigatory or Terry stop. An arrest is lawful when supported by probable cause.

### **Frisk**

A frisk is authorized **only** when the officer has reasonable suspicion to fear for their safety *and/or the safety of public/bystanders*, and the scope of the frisk must be narrowly tailored to those specific reasons. A frisk is a limited search of a person usually *restricted* to a pat down

of outer clothing where the primary purpose is the discovery of weapons for the protection of the officer. Refer to Directive 202.2 (Search and Seizure).

### **Investigatory Stop or “Terry Stop”**

An investigatory *stop* or “Terry Stop” is a limited seizure. A stop is a temporary detention of an individual for purposes of investigation and is based on a reasonable suspicion that criminal activity is afoot.

### **Material Witness**

A witness subpoenaed to testify in a criminal case.

### **Probable Cause**

A reasonable belief that an individual has committed, is committing, or is about to commit an offense<sup>1</sup>.

### **Prompt Judicial Review**

Prompt judicial review means the presentment of an arrestee before a court of appropriate jurisdiction for a probable cause determination as soon after an arrest as is reasonably feasible. A *reasonably* feasible time period is the period of time necessary to schedule the arraignment and complete the administrative processing of the arrestee within a period up to and not exceed forty-eight (48) hours, absent extraordinary circumstances.

### **Reasonable Suspicion**

The facts and circumstances that existed at the time of the stop that would lead a reasonable officer to believe that criminal activity had been or was about to be afoot.

### **Seizure or Detention**

A seizure or detention occurs when an officer’s words or actions convey to a reasonable person that they are not free to leave.

## **Definitions**

### **General**

1. *Officers* making an arrest shall inform the person arrested of the officer’s authority and the cause of the arrest, except when the person arrested is engaged in the commission of a criminal offense, flees, or if the person forcibly resists arrest before the *officer* has time to inform them. However, as soon as the resistance is overcome, the subject shall be informed of the reason for the arrest.
2. Individuals shall be given the opportunity to submit to arrest before force is used and force

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<sup>1</sup> It should be noted that the definition of probable cause includes a reasonable belief that a person is “about to commit” a crime. MCL 750.92 requires that “[a]ny person who shall attempt to commit an offense prohibited by law, and in such attempt shall do any act towards the commission of such offense” has committed an *attempted* crime. If a person has not taken any act towards the commission of a criminal offense, there is no probable cause for an arrest. However, an investigative detention (Terry v. Ohio, 392 U.S. 1, 1968) is permitted when there exists reasonable articulable suspicion. Reasonable articulable suspicion exists where the facts and reasonable inferences drawn from those facts convince an ordinarily prudent person that criminality is at hand.

may be used only when verbal commands and other techniques not requiring the use of force would be ineffective or present a danger to the officer or others.

### **Police Action Regarding Off-Duty Arrest**

1. Off-duty officers shall notify on-duty DPD or local law enforcement officers (if outside of the city of Detroit) before taking police action, absent exigent circumstances, *so that the appropriate personnel may respond with resources to assist with the situation.*
2. *Engaging or attempting to take police action when off duty is principally regarded as a prohibited act by DPD Code of Conduct with only specific exceptions akin to exigent circumstances. Refer to Department Manual Directive 102.3, Code of Conduct.*
3. *Responsibility of all DPD officers' duty to intervene does extend to include off-duty behavior by another officer. Refer to Department Manual Directive 102.12, Duty to Intervene.*
4. Off-duty officers are prohibited from carrying or using firearms or taking police action in situations where an officer's performance may be impaired or the officer's ability to take objective action may be compromised.
5. If it appears that the officer making an arrest or carrying a firearm while off duty has consumed alcohol or is otherwise impaired, the officer shall submit to field sobriety, breathalyzer, *and/or* blood tests.

### **Illegal Arrest**

1. The unlawful restraint of a person's liberty for any length of time is considered an illegal arrest.
2. Even if justified, a restraint of an individual may be considered unlawful if executed in an unreasonable manner.
3. An officer who restrains or arrests a person unlawfully is subject to criminal and/or civil sanctions, as is every person who aids in the unlawful arrest.
4. Officers shall bear in mind that every person has a lawful right to resist an illegal arrest. *However, a citizen's right to resist an unlawful arrest does not include the right to use deadly force.*

### **Positional Asphyxia**

*It is important for officers to keep in mind that during the process of subduing and restraining an uncooperative individual, there is an even greater risk of causing respiratory compromise. Positional asphyxia can occur when a person's breathing is restricted from pressure exerted against their chest, or the position of a person's head causes obstruction of the airway. Either of these conditions can result from a body position that interferes with breathing.*

*Persons who are restrained shall not be transported in prone position, as doing so may contribute to positional asphyxia. As soon as any detainee who is lying on their stomach has been handcuffed, officers shall roll the detainee onto the detainee's side or place the detainee in a seated position.*

*Certain factors increase the risk of positional asphyxia. These factors include the following:*

1. *Suspect's position - a suspect on their stomach, particularly on a hard surface, may experience labored breathing;*
2. *Pressure applied on the back, which can include struggles where officers use body weight for control;*
3. *Cocaine induced delirium;*
4. *Drug/alcohol use;*
5. *Environmental factors such as extreme temperatures; and*
6. *Physical characteristics such as obesity.*

*During the struggle of subduing and restraining an individual, there is the potential for further compression and restriction on the chest by those executing the restraint. The more weight placed on an individual, the more severe the degree of compression which further limits the individual's ability to expand the lungs and breathe. The natural reaction to oxygen deficiency occurs and the person may struggle more violently. Officers must be alert to not interpret a subject's struggle to breathe as further resistance.*

*Several different measures are to be taken to minimize the risks of positional asphyxia, including:*

1. *Moving the individual to a seated position once the subject is under control;*
2. *Careful monitoring of the individual and obtaining medical treatment if necessary or requested by the subject; and*
3. *Determining, if feasible, whether or not the individual has recently used drugs/alcohol or has any cardiac or respiratory conditions.*

*Members shall refer to Manual Directive 305.4, Transportation of Detainees; Training Directive 05-04, Positional Asphyxia; and Manual Directive 304.2, Use of Force, and act in compliance with Department policies and procedures.*

### **Material Witness Policy**

1. Under Michigan Law, only a court has the authority to decide whether an individual is a material witness, and whether that material witness should be committed to jail pending their testimony. Refer to Training Directive 04-01, Confinement of Material Witness.
2. A material witness can be taken into custody only upon an order from the court where the criminal matter is pending. No material witness will be taken into DPD custody without the officer first obtaining a court order.
3. A material witness can only be subject to further confinement after:
  - a. The witness is given an opportunity to be heard in court;
  - b. The court determines, after the hearing, that there is a danger that the testimony may be lost; and
  - c. The witness does not enter into a recognizance with the surety (bail) in order to ensure their appearance in court.



4. All material witnesses taken into DPD custody shall be documented on a Detention of Material Witness Form (UF-006). A copy of the court order authorizing the confinement shall be attached.

## **Arrests with a Warrant**

### **Execution of Arrest Warrants**

1. Only *officers* (sworn members) shall serve arrest warrants.
2. In executing an arrest warrant, the officer must be sure that the person upon whom the warrant is served is positively identified as the person named in the warrant.
3. A mistake in identity may subject the officer to a civil suit for false arrest.
4. When an arrest is made pursuant to a warrant, the arresting officer need not have the warrant in their possession. However, the officer shall show the warrant to the person or otherwise inform the person of the nature and contents of the warrant, as soon as feasible, and at a time when doing so will not increase the danger of escape or harm to the officer, arrestee, or bystanders.

### **Individual Surrendering with a Warrant**

1. DPD *officers* taking an individual into custody, where there is an existing warrant for their arrest shall first:
  - a. Verify the identity of the person surrendering (via identification supplied by the individual, the Law Enforcement Information Network [LEIN], or *Talon*); and
  - b. Verify the existence of the warrant for which the individual is surrendering (via LEIN, *Talon*, the Message Center, or other law enforcement agency).
2. The arresting *officer* shall complete *an incident* report which details the circumstances for the arrest, including the warrant information and *the source utilized* for confirmation of the warrant.
3. If a citizen, under their own accord, turns themselves in to any DPD facility for a crime, a not in custody warrant, or any type of offense, they may immediately be taken into custody. The officers and/or supervisors at the facility shall perform the aforementioned manual procedures and then cause the detainee to be transported to the Detroit Detention Center (DDC) for processing without delay. Under NO circumstances shall a citizen wishing to turn themselves in be turned away and redirected to the DDC.

### **Arrest of Suspect *Inside* Private Residence**

A greater burden is placed on officers who enter a home or dwelling without consent to make an arrest. Freedom from intrusions into a home or dwelling is at the center of the privacy protection guaranteed by the Fourth Amendment. Therefore:

- a. If an officer wishes to arrest a suspect inside a residence, the officer must first obtain an arrest warrant *and/or* a search warrant and have a reasonable suspicion that the suspect is inside the residence. If the residence belongs to the suspect, only an arrest warrant is required. If the dwelling belongs to someone else, the officer must obtain a search warrant *for the residence and an arrest warrant for the suspect*; and
- b. There are two (2) exceptions to a warrant requirement in order to arrest a person inside a dwelling:

- With consent; or
- If exigent (emergency) circumstances exist. Refer to Department Manual Directive 202.2, Search and Seizure, for a discussion on what constitutes consent and exigent circumstances.

## **Arrests Without a Warrant**

### **When Warrantless Arrest May Be Made**

1. When a person commits a felony or misdemeanor in the officer's presence,
2. *When a person has committed a felony, although not in the officer's presence,*
3. When the officer has positive information that another officer holds a warrant (e.g. the *officer* has received positive information either written or by teletype, telephone, radio or other authoritative source that another officer holds a warrant for such arrest),
4. The officer has received positive information broadcast from a recognized police or other governmental radio station, or teletype, that affords the officer probable cause to believe *an arrestable misdemeanor, as defined by MCL 764.9c*, or a felony has been committed and probable cause to believe the person committed it, *or*
5. There is probable cause to believe a person:
  - a. Is an escaped convict;
  - b. Has violated a condition of parole from any prison;
  - c. Has violated a condition of probation imposed by any court; or
  - d. Has violated any condition of a pardon granted by the executive (governor),
6. When the officer has *reasonable* cause to believe that the person has committed a felony *in fact*,
7. When the officer has *reasonable* cause to believe that the person has committed a misdemeanor punishable by imprisonment for more than ninety-two (92) days. In all other misdemeanor arrests, a warrant must be obtained if the crime is not committed in the officer's presence,
8. The following are examples of misdemeanors (punishable by imprisonment for more than ninety-two [92] days) for which an officer may arrest on probable cause without a warrant, even if the crime was not committed in the officer's presence. This list is not all-inclusive, but it is meant to provide examples encountered daily by officers:
  - a. Assault and infliction of serious injury (aggravated assault);
  - b. Child abuse, 4<sup>th</sup> degree;
  - c. Stalking (less than aggravating circumstances);
  - d. Malicious use of service provided by *telecommunications service provider*;
  - e. Breaking and Entering a motor vehicle, trailer, etc. (*property taken more than \$200 but less than \$1,000*);
  - f. Malicious and willful destruction of property (*\$200 or more but less than \$1,000*);
  - g. Indecent exposure; and
  - h. Simple assault or simple assault and battery.

### **Person Accusing Another**

1. When an individual accuses another person of committing a felony or a misdemeanor punishable by imprisonment for more than ninety-two (92) days, and insists that an arrest be made, the officer should take the person into custody only if the officer has probable

cause to believe that the accused person has committed a crime *and is not one of the exceptions cited above (202.2 – 6.1 When Warrantless Arrest May Be Made)*.

2. If probable cause is based solely upon the word of the accuser, the officer must be prepared to demonstrate both why the accuser is worthy of belief and that the accuser obtained their information in a reliable way. The officer should not have difficulty meeting this requirement when the accuser claims to be either a victim of or an eyewitness are usually presumed credible.

### **Citizen's Arrest**

1. While citizens have the legal right to make arrests under certain circumstances, the DPD does not encourage citizen arrests. Whenever possible, the taking of persons into custody should be accomplished by trained and authorized law enforcement officers. A private person may make a citizen's arrest in the following situations:
  - a. For a felony committed in the citizen's presence;
  - b. When the arresting citizen knows the person to be arrested has committed a felony although not in their presence; and
  - c. When summoned by an officer to assist in making an arrest.
2. There is additional statutory authority for merchants, their agents and security guards providing security for merchants to arrest for retail fraud regardless of whether the offense was committed in the presence of the private person.
3. If an officer encounters a citizen that has made a citizen's arrest, or is attempting to make a citizen's arrest, the arrestee shall be taken into custody only after the officer has determined that probable cause exists.

### **Probable Cause**

#### **Reviewing Arrests**

1. When any individual who has been arrested is brought into *the DDC*, the officer-in-charge (OIC) of the *DDC* desk shall review the circumstances of the arrest and confirm whether or not probable cause existed at the time of the arrest. If the reviewing supervisor determines that there was not probable cause to detain the person, the person shall be immediately released.
2. If the OIC of the *DDC* desk or specialized command makes such a determination, and releases a person for lack of probable cause, he/she shall document the facts and circumstances of the arrest and subsequent release on a Review of Arrest Exception Form (UF-001), within twelve (12) hours of the arrest.
3. The reviewing supervisor shall also ensure that at the beginning of the narrative section of the *incident* report, *officers* shall make a declarative statement specifically stating whether force was used during the arrest, e.g. "no force was used" or "force was used."

### **Prompt Judicial Review Policy**

1. When an arrest is made without a warrant, based on probable cause, the officer-in-charge of the case must, within the statutory and constitutional limits as reflected by DPD policies, either discharge the person and seek a "not in custody" arrest warrant, or obtain prompt judicial approval of the arrest by bringing the accused before a judicial officer "without unnecessary delay."

2. A warrant request for arraignment on the charges underlying the arrest shall be submitted to the prosecutor's office within forty-eight (48) hours of arrest. If the warrant request for arraignment is denied by the prosecutor's office, the arrestee must be released immediately. If the request for a warrant is approved by the prosecutor's office then the arrestee shall be brought before a judicial officer for a prompt judicial review (arraignment) without "unnecessary delay." Examples of unnecessary delay are delays for the purpose of gathering additional evidence to justify the arrest, a delay motivated by ill-will against the arrested individual, or delay for delay's sake.
3. Where an arrested individual does not receive a probable cause determination within forty-eight (48) hours, the burden shifts to the government to demonstrate the existence of a bona fide emergency or other extraordinary circumstance. The fact that, in a particular case, it may take longer than forty-eight (48) hours to prepare the paperwork or the fact that there is an intervening weekend or holiday, does not qualify as an extraordinary circumstance.

## **Documentation**

### **General**

1. Documentation on a Warrant Tracking Hold Form (UF-004/007) shall be completed by the officer-in-charge of the case, or a supervisor at the *DDC* that is responsible for submitting the warrant, in all instances in which:
  - a. A request for arraignment warrant is submitted more than forty-eight (48) hours after arrest; and
  - b. An arrestee is not presented for arraignment within forty-eight (48) hours of arrest in which extraordinary circumstances delayed the arraignment.
2. This documentation shall be completed by the end of the shift in which there was:
  - a. A failure to request an arraignment warrant within forty-eight (48) hours;
  - b. An arraignment was delayed because of extraordinary circumstances; or
  - c. A failure to comply with this Department's prompt judicial review policy.

### **Commander's Review Report**

The commanding officer of *the DDC* shall review in writing all reported EXCEPTIONS to the DPD's arrest, investigatory stop and frisk, witness identification and questioning policies, and all reports of arrests in which an arraignment warrant was not sought. The Commander's Review Report shall be completed within seven (7) days of receiving the Review of Arrest Form. The Commander's Review Report shall include an evaluation of the actions taken to correct the EXCEPTION and whether any corrective or non-disciplinary action was taken. The Commander's Review Report is located on the lower portion of the Review of Arrest Exception Form (UF-001).

### **Commander's Daily Review Report**

The commanding officer of *the DDC* shall review in writing all reported EXCEPTIONS of the DPD's prompt judicial review, holds, restrictions, and material witness policies. The Commander's Review Report shall be completed on a daily basis of receiving the Warrant Tracking Hold Form (UF-004/007). The Commander's Review Report shall include an evaluation of the actions taken to correct the EXCEPTION and whether any

corrective or non-disciplinary action was taken. The Commander's Review Report is located on the lower portion of the Warrant Tracking Hold Form (UF-004/007).

### **Special Arrest Notifications**

When an officer makes an arrest of certain governmental employees, the following procedures are to ensure that citizens who may rely on these governmental employees for services are not inconvenienced any more than necessary.

#### **Arrest of Bus Drivers**

1. If a bus driver driving a bus is charged with a simple misdemeanor and is not intoxicated or does not pose a continuing threat (e.g. domestic violence, disorderly conduct, PPO violation, etc.), the person shall not be taken into custody *but instead be issued an appearance ticket by officers. The officer(s) shall notify the precinct Watch Commander, Communications Section, and Internal Controls with details of the incident, in addition to any necessary notifications to the arrestee's dispatch office and/or supervision.*
2. For a felony or a misdemeanor where the bus driver is intoxicated or poses a continuing public safety concern, the arresting officer shall notify *the precinct Watch Commander, Communications Section, and Internal Controls with the details of the arrest. Communications Section will notify the arrestee's dispatch office to request proper relief for the bus. **Officers must remain with the bus until a relief driver arrives; the officers standing by for relief of the vehicle may be an assisting or supervisory unit if the primary unit must transport the arrestee in a timely manner.***

#### **Arrest of Postal Employees**

1. *If a postal employee, who is engaged in the delivery or collection of mail, is charged with a simple misdemeanor and is not intoxicated nor posing a continuing threat (e.g. domestic violence, disorderly conduct, PPO violation, etc.), the person shall not be taken into custody but instead be issued an appearance ticket by officers. The officer(s) shall notify the precinct Watch Commander, Communications Section, and Internal Controls with the details of the incident, in addition to any necessary notifications to the arrestee's dispatch office and/or supervision.*
2. *For a felony or a misdemeanor where a postal employee engaged in the delivery or collection of mail is intoxicated or poses a continuing public safety concern, the arresting officer shall notify the precinct Watch Commander, Communications Section, and Internal Controls with the details of the arrest.*
3. *Communications Section will notify the arrestee's dispatch office to request proper relief for the postal vehicle and shall notify the office of the inspector in charge of the U.S. Postal service. **Officers must remain with the postal vehicle until a relief driver arrives; the officers standing by for relief of the vehicle may be an assisting or supervisory unit if the primary unit must transport the arrestee in a timely manner.***
4. *A representative of the inspector in charge of the U.S. Postal Service may contact the officer-in-charge of the case to be apprised of the details. A copy of the incident report may be made available to the representative after a warrant has been obtained.*

#### **Arrest of Internal Revenue Service Employees**

1. In the event that an Internal Revenue Service (IRS) employee is arrested for an offense other than a minor traffic violation, the arresting officer shall notify *the precinct Watch Commander, Communications Section, and Internal Controls* of the arrest.

Communications *Section* shall notify the Internal Revenue Service, Detroit Inspection Office.

2. *All notifications* shall be made within a reasonable time following the arrest and the officer-in-charge of the case shall maintain liaison with the Detroit Inspection Office throughout the course of their investigation.

### **Arrest of City of Detroit Employees**

1. Whenever *officers* of this Department have cause to arrest an employee of the city of Detroit for any serious offense, the arresting officer shall notify *the precinct Watch Commander, Communications Section, and Internal Controls* of the arrest.
2. Communications *Section* shall notify the concerned department head of the arrest and status of the involved employee.

### **Arrest of DPD Employees**

1. When *DPD officers* detain and/or arrest *any sworn or non-sworn* member of the DPD, irrespective of the reason, the arresting officer shall notify *the precinct Watch Commander* without unnecessary delay.
2. The supervisor shall notify Internal Controls during normal business hours. If other than normal business hours, the Alert Team shall be contacted through Communications *Section*.
3. *Officers* shall report the detention or arrest by a law enforcement agency other than the DPD to their commanding officer without unnecessary delay.
4. The commanding officer shall ensure that Internal Controls is notified as soon as possible.

### **Arrest of Armed Forces Members**

1. *Officers* of this Department shall be authorized to arrest armed forces personnel who may be deserters or are Absent Without Leave (A.W.O.L.), upon the request of military authorities. The arresting officer shall notify *the precinct Watch Commander, Communications Section, and Internal Controls*.
2. The military authorities of armed forces personnel who are deserters or who are A.W.O.L., shall notify the Message Center via LEIN. The Message Center shall be responsible for notifying the appropriate *Precinct Detective Unit (PDU)*.
3. When a reward is offered for the apprehension of deserters or A.W.O.L. personnel of the armed forces, the Chief of Police shall determine who is entitled to the reward.
4. When *an officer* desires to enter a military installation for the purpose of arresting a member of the armed forces for violation of a state law, the *officer* shall first clear their actions through the Office of *Neighborhood Policing*. The Office of *Neighborhood Policing* shall determine if the action is necessary and shall ensure that formal requirements are met. After approval, the *officer* shall notify Communications *Section* before entering the installation.

Updates to the Department Manual are forthcoming.

**JAMES E. WHITE**  
Chief of Police