



<b>Series</b> 200 Operations	<b>Effective Date</b> TBD	<b>Review Date</b> <i>Three Years</i>	<b>Directive Number</b>  <b>202.1</b>
<b>Chapter</b> 202 - Limits on Authority			
<b>Reviewing Office</b> Planning and Deployment			<div><input type="checkbox"/> <b>New</b></div> <div><input checked="" type="checkbox"/> <b>Directive</b></div> <div><b>Revised</b></div> <div>Revisions in <i>italics</i></div>
<b>References</b> <i>Michigan Law Enforcement Accreditation Commission 3.1.3</i> <i>Adult Arrests</i>			

## ARRESTS

### 202.1 - 1 PURPOSE

To set forth the procedures for making lawful arrests, *detaining* material witnesses, reviewing arrests for probable cause, and *ensuring* prompt judicial review of *pre-arraignment detainees*.

### 202.1 - 2 POLICY

Arrests are authorized only when supported by probable cause. All arrests shall be processed at the Detroit Detention Center (DDC) unless a clearly delineated exception applies. The circumstances of every arrest must be reviewed and approved by the DDC's front desk supervisor. Where an arrestee is conveyed to another command or outside agency (e.g. Wayne County Sheriff's Department), the desk supervisor of the command to which the member is assigned shall conduct the probable cause review. Arrests not supported by probable cause shall be reported on a Review of Arrest (UF001) form in MAS.

Pre-arraignment detainees shall not be held for durations that exceed constitutional standards. No detainee shall be held longer than 48 hours absent extraordinary circumstances.

This policy outlines general arrest procedures. For detailed guidelines and requirements concerning the arrest, custody, and notification protocols for juvenile offenders, members shall refer to Directive 203.5 or other applicable laws, directives, or orders.

### 202.1 - 3 PROCEDURES

#### 202.1 - 3.1 Arrest Defined

The Michigan Supreme Court has defined an arrest as "the taking, seizing, or detaining of the person of another, either by touching or putting hands on him, or by any act which indicates an intention to take him into custody and subjects the person arrested to the actual control and will of the person making the arrest. The act relied upon as

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*constituting an arrest must have been performed with the intent to effect an arrest and must have been so understood by the party arrested.” People v. Gonzalez, 356 Mich 247, 253 (1959). An arrest is a seizure of greater scope or duration than an investigatory or Terry stop.*

**202.1 - 3.2 Probable Cause Defined**

*Arrests are authorized only when supported by probable cause. The term “probable cause” refers to a reasonable belief that an individual has committed, is committing, or is about to commit an offense. The United States Supreme Court has defined probable cause as facts that would induce a fair-minded person of average intelligence to believe that the suspect has committed an offense for which an arrest is permitted. Such facts must be present at the time of arrest. People v. Summers, 407 Mich 432, 442 (1979). Michigan statutes sometimes refer to the term “reasonable cause,” which is synonymous with “probable cause.”*

*Probable cause may be based solely upon the word of an accuser only where the accuser’s reliability, credibility, and basis of knowledge support the allegation when considered in totality. Illinois v. Gates, 463 US 213, 233-235 (1983). The member should not have difficulty meeting this requirement when the accuser claims to be either a victim of a crime or an eyewitness to a crime. Unlike confidential informants, victims and eyewitnesses are usually presumed to be credible.*

*The definition of probable cause includes a reasonable belief that a person is “about to commit” a crime. Under MCL 750.92, a person who commits an act toward the commission of an offense but fails in its perpetration or is stopped from carrying out the offense has committed an attempt crime. If no acts have been taken towards the commission of an offense, probable cause cannot be established.*

**202.1 - 3.3 Authority to Arrest [MLEAC 3.1.3 b]**

*Sec. 7-801 of the Charter of the City of Detroit requires the DPD and its members to “arrest offenders” in appropriate circumstances. Arrests are authorized only when the member has probable cause to believe an individual has committed, is committing, or is about to commit an offense. MCL 764.15 and other laws give officers the authority to arrest an individual without a warrant in a number of circumstances. This includes, but is not limited to, where—*

- a. A felony, misdemeanor, or ordinance violation is committed in the officer’s presence.*
- b. The police officer has reasonable cause to believe a misdemeanor punishable by imprisonment for more than 92 days or a felony has been committed and reasonable cause to believe the person committed it.*

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- c. *A police officer has reasonable cause to believe the person is an escaped convict, has violated a condition of parole from a prison, has violated a condition of a pardon granted by the executive, or has violated one or more conditions of a conditional release order or probation order imposed by a court of this state, another state, Indian tribe, or United States territory.*

*Members shall familiarize themselves with all laws and policies governing a member's authority to arrest. If there is doubt as to a member's authority to make an arrest, the member shall contact a supervisor for guidance. Members are ultimately responsible for ensuring that both statutory and constitutional standards are met when making an arrest. Members shall advise the complainant of the process for obtaining an arrest warrant when the suspect is not arrested.*

**202.1 - 3.4 Citations in Lieu of Arrest** [\[MLEAC 3.1.3 c\]](#)

*MCL 764.9c requires members to serve an individual arrested for certain misdemeanors with a citation and release the individual from custody unless the issuance of an appearance ticket is expressly prohibited, or the officer is able to articulate the presence of one or more circumstances authorizing the officer to take the arrested person before a magistrate and promptly file a complaint.*

*Under MCL 764.9c, a citation may not be issued to any of the following:*

- a. *A person arrested for domestic violence in violation of MCL 750.81, MCL 750.81a, or an offense involving domestic violence as defined in MCL 400.1501.*
- b. *A person subject to detainment for violating a personal protection order.*
- c. *A person subject to a mandatory period of confinement, condition of bond, or other condition of release until he or she has served that period of confinement or meets that requirement of bond or other condition of release.*
- d. *A person arrested for a "serious misdemeanor."*
- e. *A person arrested for any other "assaultive crime."*

*Under MCL 764.9c, an officer required to issue a citation and release may instead take the individual before a magistrate and promptly file a complaint as provided in MCL 764.13 if one of the following circumstances exists:*

- a. *The arrested person refuses to follow the police officer's reasonable instructions.*
- b. *The arrested person will not offer satisfactory evidence of identification.*
- c. *There is a reasonable likelihood that the offense would continue or resume, or that another person or property would be endangered if the arrested person is released from custody.*
- d. *The arrested person presents an immediate danger to himself or herself or requires immediate medical examination or medical care.*

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- e. *The arrested person requests to be taken immediately before a magistrate.*
- f. *Any other reason that the police officer may deem reasonable to arrest the person which must be articulated in the arrest report.*

*In addition to other reporting requirements, a member making an arrest under one of the foregoing exceptions shall explain the reason for not issuing a citation in the arrest report. The arrest report and other required documentation shall be forwarded to the prosecuting attorney in accordance with DPD protocols without delay. An arrested person who is taken into custody instead of being issued a citation and released must be charged by the appropriate prosecuting authority or released from custody no later than 3:00 p.m. the following day during which arraignments may be performed.*

**202.1 - 3.5 Arrest Warrants** [\[MLEAC 3.1.3 a\]](#)

*An arrest warrant is a court order that allows law enforcement to arrest the individual named in the warrant. Members must be sure that the person upon whom the warrant is served is properly identified as the person named in the warrant. A mistake in identity may subject the officer to a lawsuit for false arrest. Only sworn members are authorized to serve arrest warrants.*

*When an arrest is made pursuant to a warrant, the arresting member need not have the warrant in his possession. However, the member 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 member, arrestee, bystanders and/or general public.*

**202.1 - 3.6 Individuals Surrendering**

*Citizens may turn themselves in at any DPD facility for an outstanding warrant or any type of offense. An arrest may be made subject to the foregoing requirements governing arrests. Under no circumstances shall an individual surrendering to the Department be turned away and redirected to the DDC.*

*Members taking an individual into custody on the basis of an arrest warrant shall verify the identity of the person surrendering and confirm the existence of the warrant with the appropriate court or agency.*

**202.1 - 3.7 Arrests Inside Private Dwellings**

*An arrest warrant authorizes members to forcibly enter the home of the individual named in the warrant if the members reasonably believe the individual is inside. Members intent on entering the home of an individual not named in the arrest warrant must first obtain a search warrant before entering without the consent of the homeowner.*

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*Where the decision to arrest is made, the arrestee shall be advised of the reasons for the arrests, undergo a full search, and be handcuffed behind the back at the time of the arrest or as soon as the situation permits. Arrestees shall be transported in accordance with applicable training and directives. Individuals must be given the opportunity to submit to arrest before force is used unless providing this opportunity would be ineffective or dangerous.*

The arresting officer shall complete an arrest report on the circumstances surrounding the arrest, including all facts contributing to the officer's probable cause determination. All officers involved in a felony arrest shall complete an arrest report. Arrests that are exclusively based on a felony or misdemeanor warrant only require one arrest report.

**202.1 - 3.9 Positional Asphyxia**

*Positional asphyxia occurs when a person is immobilized in a position that impairs adequate breathing and can result in death. Factors that may increase the risk of positional asphyxia include the suspect being positioned on their stomach, particularly on a hard surface; pressure applied to the suspect's back, such as during struggles where officers use their bodyweight to gain control; drug or alcohol use by the suspect; cocaine induced delirium; the suspect's physical characteristics (e.g., obesity); and environmental factors, such as high temperatures.*

*To help reduce the risks associated with positional asphyxia, members shall move an individual to a seated position once the subject is under control, monitor the subject for signs of medical distress (e.g., difficulty breathing), and, if feasible, determine whether the individual has recently used drugs or alcohol or has any cardiac and respirator conditions that may increase the risk of injury.*

*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.*

**202.1 - 3.10 Supervisory Review**

*The officer in charge of the DDC desk shall review the circumstances of every arrest conveyed to the DDC and conduct an independent probable cause determination. In situations where the arrestee is conveyed to a location other than the DDC, the arresting officer's supervisor shall be informed of the arrest and perform the aforementioned steps.*

*If the officer in charge of the DDC determines that probable cause for the arrest did not exist and the arrestee is released, the supervisor shall complete a Review of Arrest Exception form (UF-001), in MAS, within 12 hours of making the determination and*



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*forward to the commanding officer of the DDC. When the arrestee is conveyed to a location other than the DDC, the aforementioned procedure shall be conducted by the member's desk supervisor and commanding officer.*

**202.1 - 3.11 Commander's Review Report**

*The commanding officer of the DDC shall review and submit findings to all UF-001 forms within seven days of receiving. The commander's review shall include a brief evaluation of the corrective action taken by the reviewing supervisor and whether it was appropriate. ). In instances where the arrestee was conveyed to a location other than the DDC, the procedure shall be completed by the command in which the member is assigned.*

**202.1 - 3.12 Prompt Judicial Review**

*Individuals arrested without a warrant shall be presented to a court of appropriate jurisdiction for a probable cause determination as soon as reasonably feasible or released. A reasonably feasible time period is the period of time necessary to schedule the arraignment and complete the administrative processing of the arrestee. This period may not exceed 48 hours, absent extraordinary circumstances. The fact that particular cases may take longer to process or intervening weekends do not qualify as extraordinary circumstances. Under no circumstances shall presentment of the arrestee to the court be unreasonably delayed (e.g., out of spite, ill-will, or delay for delay's sake).*

**202.1 - 4 Off-Duty Police Action**

*Off-duty members shall notify on-duty DPD or local law enforcement members (if outside of the city of Detroit) before taking police action, absent exigent circumstances, so that they may respond with appropriate personnel and resources to handle the problem.*

*Off-duty members are prohibited from carrying or using firearms or taking police action in situations where a member's performance may be impaired or the member's ability to take impartial action may be compromised. If it appears that the member making an arrest or carrying a firearm while off-duty has consumed alcohol or is otherwise impaired, a responding supervisor shall order that the off-duty member submit to a field sobriety, breathalyzer, and/or blood tests. Internal Controls will respond to the incident and then take control of the investigation.*

**202.1 - 5 Unlawful Arrests****202.1 - 5.1 Illegal Arrest**

*An illegal arrest refers to the unlawful restraint of a person's liberty for any length of time. An unlawful restraint occurs where a seizure is made without an adequate legal basis or when the seizure is executed in an unlawful manner. A member who unlawfully stops or arrests an individual may be subject to criminal penalties, civil damages, or*

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departmental discipline. Members shall bear in mind that every person has a lawful right to resist an illegal arrest. *People v. Moreno*, 491 Mich 38, 57-58 (2012). However, a citizen's right to resist an unlawful arrest does not include the right to use deadly force.

**202.1 - 6 Material Witnesses****202.1 - 6.1 Material Witness Policy**

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 testimony. A material witness can be taken into custody **only** upon an order from the court where the criminal matter is pending. Furthermore, a material witness can only be subjected to further confinement after the witness is given an opportunity to be heard in court, this determines that there is a danger that the testimony may be lost, and the witness does not enter into a recognizance with the surety (bail) in order to ensure the witness's appearance in court.

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.

**202.1 - 7 Citizen's Arrest**

While citizens have the legal right to make arrests under certain circumstances, DPD does not encourage citizen arrests. Whenever possible, the taking of persons into custody should be accomplished by trained and authorized law enforcement members. Under MCL 764.16, a private person may make a citizen's arrest—

- a. For a felony committed in the citizen's presence.
- b. When the citizen knows the person to be arrested has committed a felony, although not in the citizen's presence.
- c. When summoned by a law enforcement officer to assist in making an arrest.
- d. Where the private person is a merchant, an employee of a merchant, an agent of a merchant, or an independent contractor providing security for a merchant of a store and has reasonable cause to believe that the person to be arrested has committed an act of retail fraud.

If a member 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 member has determined that probable cause exists.

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*Arrests of certain government employees require special notifications to ensure that citizens relying on the services these employees provide are not inconvenienced more than necessary. The following chart outlines these notifications:*

Type of Employee	Procedures to be Followed
<b>Bus drivers operating a bus.</b>	<p>Unless there is evidence of intoxication or continuing threat, the driver of a bus will not be taken into custody. The driver will be directed to report to the precinct to which the member is assigned so that an ordinance violation or, if appropriate, an arrest can be made. The member shall contact Notification and Control and the officer in charge of desk with details of the incident.</p> <p>For a felony or misdemeanor, or where the driver is intoxicated or poses an ongoing threat to public safety, the driver shall be taken into custody. The member shall contact Notification and Control, who will notify the arrestee's dispatch center to request proper relief. Members must remain with the bus until relief arrives.</p>
<b>U.S. Postal Service</b>	<p>Unless there is evidence of intoxication or ongoing threat, an employee engaged in mail delivery will not be taken into custody. The employee will be directed to report to the precinct to which the member is assigned so that an ordinance violation or, if</p> <p>appropriate, an arrest can be made. The member shall contact Notification and Control and the officer in charge of desk with details of the incident.</p> <p>For a felony or misdemeanor, or where the employee is intoxicated or poses an ongoing threat to public safety, the employee shall be taken into custody and conveyed to the DDC. The member shall contact Notification and Control, who notify the Office of the Inspector in Charge of the U.S. Postal Service. A representative of the U.S. Postal Service may contact the officer in charge of the case for details on the arrest. A copy of the incident report may be made available to the representative after the warrant has been obtained.</p>
<b>Internal Revenue Service (IRS) Employees</b>	<p>Members arresting an IRS employee for an offense other than a minor traffic violation shall notify Notification and Control of the arrest. Notification and Control shall notify the IRS, Detroit Inspection Office. The officer in charge of the case shall serve as the liaison between the DPD and the Detroit Inspection Office throughout the course of the investigation.</p>
<b>City of Detroit Employees</b>	<p>Members arresting an employee of the city of Detroit for a serious offense shall notify Notification and Control. Notification and Control shall notify the concerned department head of the arrest and status of the involved employee.</p>
<b>Arrest of DPD Employee by DPD</b>	<p>Members detaining or arresting a DPD member, regardless of the reason, shall notify a supervisor as soon as possible of the situation. The supervisor shall notify Internal Affairs either directly or, if during non-business hours, through Notification and Control.</p>
<b>Arrest of DPD Employee by Other Police Agency</b>	<p>A member who is arrested by a law enforcement agency (other than the DPD) shall report the arrest to the officer in charge of the desk of the precinct to which the member is assigned as soon as possible. The officer in charge of the precinct</p>



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	desk shall ensure the member's commanding officer and Internal Affairs are notified as soon as possible following the notification.
<b>Members of the Armed Force</b>	<p>Members are authorized to arrest armed forces personnel who may be deserters or are Absent Without Leave (A.W.O.L.) upon request of military authorities. The arresting member shall notify Notification and Control of the arrest.</p> <p>The military authorities of the 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). Offers of reward shall be directed to the Chief of Police.</p> <p>No member may enter a military installation for the purpose of arresting a member of the armed forces without first having obtained the permission of the Office of Enforcement Operations. After approval has been obtained, the member shall notify Notification and Control before entering the installation.</p>

**Related Policies:**

- Directive 202.2 - Search and Seizure
- Directive 303.4 - Foot Pursuits
- Training Directive 04-01 - Material Witness
- Directive 203.5 - Juveniles and School Incidents
- Directive 203.9 - Custodial Questioning

**Related Forms:**

- Review of Arrest Exception Form (UF-001)
- Detention of Material Witness Form (UF-006)