
	GAITHERSBURG POLICE DEPARTMENT			
	Arrests without Warrants and Processing			
	GENERAL ORDER	800.2		Related CALEA Standards:
	Effective Date	04/24/2024		1.2.5, 61.1.2, 70.1.6, 74.3.1, 82.2.1, 82.2.4
Authorized by: Mark P. Sroka CHIEF OF POLICE		SIGNATURE	DATE 04/24/2024	

I. PURPOSE

1.1. The Laws of Arrest in Maryland are in both common law and statutory form. These laws have evolved with the intention of protecting society from crime and criminals, while at the same time protecting the individual from arbitrary arrest. This is generally accomplished by granting the legal authority to arrest without a warrant for felony offenses, while restricting the authority to do the same for misdemeanors.

2. POLICY

2.1. Consistent with the Laws of Arrest, officers are permitted to arrest without a warrant for felony offenses, but are restricted in their authority to arrest for misdemeanor offenses (see Criminal Procedure Article, Digest of Criminal Laws). Officers are expected to be knowledgeable concerning the laws, policies and procedures governing arrests made in absence of the authority of a warrant. All processing will conform to the requirements of the MCP Field Report Manual and processing facility procedures.

3. DEFINITIONS

3.1. Arrest

3.1.1. Within the context of this directive, the term “arrest” refers to the taking, seizing, or detaining of the person of another (1) by touching or putting hands on him; (2) or by any act that indicates an intention to take him into custody and that subjects him to the actual control and will of the person making the arrest; or (3) by the consent of the person to be arrested (Bouldin v. State, 276 Md. 511, 515-516 (1976)). Four elements must coalesce to constitute a legal arrest: (1) an intent to arrest; (2) under a real or pretended authority; (3) accompanied by a seizure or detention of the person; and (4) which is understood by the person arrested.

3.2. Special Police Officer (SPO)

3.2.1. Within the context of this directive, the term “special police officer” refers to an individual who has been issued a commission by the Governor to exercise many of the same powers as a police officer, on the property described in the application for commission. Special police officers may be employed by private

businesses and corporations, or governmental authorities for specific purposes.

4. PROCEDURE

4.1. General Provisions

- 4.1.1. In accordance with other Department directives, an injured or ill detainee's health and safety take precedence over processing.
- 4.1.2. Legal considerations and Department policy concerning limited statewide jurisdiction are outlined in General Order 700.2.
- 4.1.3. Procedures outlined in this directive specifically apply to adult arrests. Arrest, transport, charging, processing and holding of juveniles shall be in accordance with procedures outlined in the 900 series general orders.
- 4.1.4. When a crime has occurred but an arrest or charge is not made, the complainant/victim will be referred to a District Court commissioner and provided with sufficient information to seek a charging document, to include the report number, suspect identification information and how to apply for charges. An event report shall be completed to document the incident and this referral.
- 4.1.5. The arrest of a fugitive may be made by any peace officer, without a warrant, upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year (see General Order 800.1).
- 4.1.6. If an arrest is made based upon probable cause, but the arresting officer shortly thereafter determines that the placing of formal charges would be inappropriate, the defendant shall be released without unnecessary delay and an event report shall be written to document the incident.
- 4.1.7. Certain persons are exempt from arrest under certain circumstances:
 - 4.1.7.1. Friendly foreign Sovereigns and their attendants, their Ambassadors and other diplomatic agents, public ministers and their attendants, household, and retinue are exempt from arrest, entry of their houses, or subjection to the process of law of the

country visited (see General Order 627.1).

4.1.7.2. A member of the organized militia may not be arrested on any process not issued by a military authority while going to, remaining at, or returning from a place that the member is required to attend for military duty (Public Safety Art. § 13-905).

4.1.7.3. United States Senators and Representatives shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place (Article 1, Section 6, United States Constitution).

4.1.8. Upon arresting a White House employee (except for minor traffic violations), the arresting officer will notify the United States Secret Service (202-406-8800) immediately after the arrest, prior to any processing or appearance before a commissioner. The employee should possess a White House identification that will not indicate the words "White House," but the back of it states, "Postmaster, if found return to Room 825, 1800 G Street, NW, Washington, DC 20223."

4.2. Arrest without a Warrant (Generally)

4.2.1. A police officer may arrest without a warrant a person who commits or attempts to commit a felony or misdemeanor in the presence or within the view of the police officer.

4.2.2. A police officer who has probable cause to believe that a felony or misdemeanor is being committed in the presence, or within the view, of the police officer may arrest without a warrant any person whom the police officer reasonably believes to have committed the crime.

4.2.3. A police officer may arrest a person without a warrant if the police officer has probable cause to believe that a felony has been committed or attempted and that person has committed or attempted to commit the felony, whether or not in the presence or within the view of the police officer.

4.3. Arrest for Specified Misdemeanor Crimes

4.3.1. A police officer without a warrant may arrest a person if the police officer has probable cause to believe:

4.3.1.1. That the person has committed a crime listed below in section 2.; and

4.3.1.2. That unless the person is arrested immediately, the person:

4.3.1.2.1. May not be apprehended;

4.3.1.2.2. May cause physical injury or property damage to another; or

4.3.1.2.3. May tamper with, dispose of, or destroy evidence.

4.3.2. The specified crimes referred to in section 1. above are:

4.3.2.1. Manslaughter by vehicle or vessel under § 2-209 of the Criminal Law Article;

4.3.2.2. Malicious burning under § 6-104 or § 6-105 of the Criminal Law Article or an attempt to commit the crime;

4.3.2.3. Malicious mischief under § 6-301 of the Criminal Law Article or an attempt to commit the crime;

4.3.2.4. A theft crime where the value of the property or services stolen is less than \$1000 under § 7-104 or § 7-105 of the Criminal Law Article or an attempt to commit the crime;

4.3.2.5. The crime of giving or causing to be given a false alarm of fire under § 9-604 of the Criminal Law Article;

4.3.2.6. Indecent exposure under § 11-107 of the Criminal Law Article;

4.3.2.7. A crime that relates to controlled dangerous substances under Title 5 of the Criminal Law Article, or an attempt to commit the crime;

4.3.2.8. The wearing, carrying, or transporting of a handgun under § 4-203 or § 4-204 of the Criminal Law

Article;

4.3.2.9. Carrying or wearing a concealed weapon under § 4-101 of the Criminal Law Article; and

4.3.2.10. Prostitution and related crimes under Title 11, Subtitle 3 of the Criminal Law Article.

4.4. Stalking and Domestic Violence Incidents

4.4.1. A police officer may arrest a person without a warrant in a stalking case if:

4.4.1.1. The police officer has probable cause to believe the person has engaged in stalking under § 3-802 of the Criminal Law Article; and

4.4.1.2. There is credible evidence, other than the statements of the alleged stalking victim, to support the officer's probable cause; and

4.4.1.3. The police officer has reason to believe the alleged stalking victim or another person is in danger of imminent bodily harm or death.

4.4.2. A police officer may arrest a person without a warrant in a domestic violence case if:

4.4.2.1. A report to the police was made within 48 hours of the alleged incident; and

4.4.2.2. The police officer has probable cause to believe that the person battered the person's spouse or another individual with whom the person resides; and

4.4.2.3. There is evidence of physical injury; and

4.4.2.4. Unless the person is arrested immediately, the person:

4.4.2.4.1. May not be apprehended;

4.4.2.4.2. May cause physical injury or property damage to another; or

4.4.2.4.3. May tamper with, dispose of, or

destroy evidence.

- 4.4.3. If the police officer has probable cause to believe that a mutual battery occurred in a domestic violence incident, and an arrest is necessary, the police officer shall consider whether one of the persons acted in self defense when determining whether to arrest the person whom the police officer believes to be the primary aggressor.

4.5. Vehicle Law Arrest

- 4.5.1. A police officer may arrest without a warrant a person for a violation of the Maryland Vehicle Law, including any rule or regulation adopted under it, or for a violation of any traffic law or ordinance of any local authority of this State, if:

- 4.5.1.1. The person has committed or is committing the violation within the view or presence of the officer, and the violation is any of the following:

- 4.5.1.1.1. A violation of § 22-111 or § 24-111.1 of the Transportation Article, relating to the failure or refusal to submit a vehicle to a weighing or to remove excess weight from it;

- 4.5.1.1.2. The officer has reasonable grounds to believe that the person will disregard a traffic citation;

- 4.5.1.2. The person has committed or is committing the violation within the view or presence of the officer, and either:

- 4.5.1.2.1. The person does not furnish satisfactory evidence of identity; or

- 4.5.1.2.2. The officer has reasonable grounds to believe that the person will disregard a traffic citation;

- 4.5.1.3. The officer has probable cause to believe that the person has committed the violation, and the violation is any of the following offenses:

- 4.5.1.3.1. Driving or attempting to drive while intoxicated or while under the

influence of alcohol;

4.5.1.3.2. Driving or attempting to drive while under the influence of any drug, any combination of drugs and alcohol or while under the influence of any controlled dangerous substance;

4.5.1.3.3. Failure to stop, give information, or render reasonable assistance, as required by § 20-102 and § 20-104 of the Transportation Article, in the event of an accident resulting in bodily injury to or death of any person;

4.5.1.3.4. Driving or attempting to drive a motor vehicle while the driver's license or privilege to drive is suspended or revoked;

4.5.1.3.5. Failure to stop or give information, as required by § 20-103 through § 20-105 of the Transportation Article, in the event of an accident resulting in damage to a vehicle or other property;

4.5.1.3.6. Any offense that caused or contributed to an accident resulting in bodily injury to or death of any person; or

4.5.1.3.7. Fleeing or attempting to elude a police officer; or

4.5.1.3.8. Driving or attempting to drive a vehicle in violation of § 16-101 of the Transportation Article; or

4.5.1.3.9. A violation of § 14-110(b), (c), (d), or (e) of the Transportation Article.

4.5.1.4. The person is a nonresident and the officer has probable cause to believe that:

4.5.1.4.1. The person has committed the violation; and

4.5.1.4.2. The violation contributed to an accident.

4.5.1.5. The officer has probable cause to believe that the person has committed the violation, and, subject to the procedures set forth in § 26-203 of the Transportation Article, the person is issued a traffic citation and refuses to acknowledge its receipt by signature.

4.5.2. An arrest for a traffic violation shall be made in the same manner, and without more force than, as in misdemeanor cases.

4.5.3. A person arrested for a traffic violation shall be taken without unnecessary delay before a District Court commissioner, as specified under § 26-401 of the Transportation Article, unless the arresting officer in his discretion releases the individual upon the individual's written promise to appear for trial.

4.6. Arrests Made by Persons other than Police Officers

4.6.1. Security guards, retail loss prevention personnel and private citizens often apprehend suspects and hold them until police arrive. This may, or may not, lead to the arrest and charging of a suspect.

4.6.2. In all instances where a person other than a police officer has detained a suspect, responding officers will:

4.6.2.1. Determine the circumstances of the incident and whether there is probable cause to believe that a crime has occurred and that the suspect committed the crime; and

4.6.2.2. Obtain a written and signed statement from the complainant, describing what occurred, as well as why and how the suspect was apprehended;

4.6.3. If the offense is a felony, and it has been established that probable cause does exist, the responding officer will arrest the suspect.

4.6.4. If the offense is a misdemeanor, an arrest may be made (or citation issued where appropriate) if the responding officer has probable cause to believe:

- 4.6.4.1. That the person has committed a crime listed in section IV., C., 2. of this directive; and
- 4.6.4.2. That unless the person is arrested immediately, the person:
 - 4.6.4.2.1. May not be apprehended;
 - 4.6.4.2.2. May cause physical injury or property damage to another; or
 - 4.6.4.2.3. May tamper with, dispose of, or destroy evidence.
- 4.6.5. A commissioned special police officer (SPO) may exercise the same powers of arrest as a police officer, for non-traffic offenses, while upon the property, or under the conditions, described in the application for the special police officer's commission.
 - 4.6.5.1. After verification of the SPO's commission, and that the arrest was made pursuant to the Laws of Arrest, the arrestee may be taken into police custody to be processed and charged;
 - 4.6.5.2. When deemed appropriate and the defendant is eligible, a criminal citation may be issued in lieu of arrest, when in accordance with law and the MCP citation manual;
 - 4.6.5.3. If a lawful arrest cannot be made, the SPO will be advised to apply for a charging document.

4.7. Processing

- 4.7.1. When a non-traffic arrest is made without a warrant, the arresting officer shall search, handcuff and transport the defendant in accordance with other Department policies and procedures. GPD's Temporary Detention Area may be used for routine processing of arrestees before transport to CPU.
- 4.7.2. Upon arrival at MCDC Central Processing Unit (CPU), officers will:
 - 4.7.2.1. Secure their weapons in compliance with CPU procedure;

- 4.7.2.2. Obtain and complete a CPU 513 envelope designated for on-view arrests and complete paper and electronic forms;
- 4.7.2.3. CPU staff enters fingerprint card details based upon data recorded by the arresting officer on the CPU 513.
 - 4.7.2.3.1. Every reasonable effort will be made to complete the CPU 513 with as much information as possible. Blocks will be completed with “unknown” or “refused” when information is not known to, or is refused to be given by, the defendant.
 - 4.7.2.3.2. Fields that are commonly overlooked, but are required to be completed, include:
 - 4.7.2.3.2.1. Place of birth;
 - 4.7.2.3.2.2. Citizenship;
 - 4.7.2.3.2.3. Scars/Marks/ Tattoos;
 - 4.7.2.3.2.4. Aliases;
 - 4.7.2.3.2.5. Social Security number;
 - 4.7.2.3.2.6. Height, weight, eye and hair color; and
 - 4.7.2.3.2.7. Skin tone.
- 4.7.2.4. Inventory the defendant’s property, record it on the CPU 513 and relinquish the defendant, property and envelope to CPU staff;
- 4.7.2.5. Complete a statement of charges and statement of probable cause, assemble the arrest package and turn over to CPU staff. The remainder of the defendant’s processing will be completed by CPU personnel; and
- 4.7.2.6. The prisoner will be taken before a District Court

commissioner by CPU staff.

- 4.7.3. "State's Attorney's Witness Information" and "State's Attorney's Evidence Information" forms will be completed and submitted with other arrest related documents.
- 4.7.4. All reports and forms pertaining to the incident will be forwarded for supervisory review and approval.
- 4.7.5. If the defendant is also wanted on an outstanding warrant, or is a fugitive, he or she will be handled in accordance with procedures outlined in General Order 800.1.