

## 1.11 ARREST



# ARREST

POLICY & PROCEDURE NO. <b>1.11</b>	SECTION <b>OPERATIONS</b>	PAGES: 9	ISSUE DATE: August 15, 2023
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: <b>41.4.3, 41.4.4, 41.4.5, 42.2.0(C,E,F,K)</b>		EFFECTIVE DATE: September 1, 2023	REVISION DATE:
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Chief Nathan C. Hagglund			

## I. GENERAL CONSIDERATIONS AND GUIDELINES

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. 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 incident to that arrest may be found unlawful and any evidence seized declared inadmissible. A confession or admission 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.

## II. POLICY

Duly sworn police officers of cities and towns gain their authority to make arrests from M.G.L. c. 41, s. 98. When persons are arrested and taken into police custody, all constitutional and statutory rights to which they are entitled will be provided at the time of their arrest and while in custody thereafter.

### **III. DEFINITIONS**

### **IV. PROCEDURES**

#### **ARRESTS IN GENERAL**

A duly authorized police officer may make a lawful arrest either with or without a warrant. To effectively and lawfully execute an arrest there must be:

1. An intention on the part of the police officer to make an arrest;
2. Knowledge and understanding of that intent communicated to the person to be arrested; and
3. Either a physical seizure or submission to the officer by the arrested person.<sup>1</sup>

Force should only be 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.<sup>2</sup> An arrestee has no right to resist arrest, lawful or unlawful, by a police officer, unless the officer uses excessive force.<sup>3</sup> (See departmental policy on Use of Force)

#### **ARRESTS WITH A WARRANT [41.4.3(1)]**

Officers of the court may issue arrest warrants when they are deemed necessary to bring a suspect before the court. The following judicial officers have the statutory authority to issue arrest warrants:

1. Justices of the Supreme Judicial Court, the Superior Court, and the District Court Departments; and<sup>4</sup>
2. A Clerk/Magistrate, Assistant Clerk/Magistrate, Temp Clerk/Magistrate, or Temporary Assistant Clerk/Magistrate of a District Court.<sup>5</sup>

A police officer may make a lawful arrest with a warrant anywhere in the Commonwealth when that officer has actual knowledge that a valid arrest warrant has been issued. Arrest warrants assigned to the

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department for service will be handled according to the policy on Warrant Management.

Oftentimes officers encounter individuals with arrest warrants during the course of their duties. Prior to making a warrant arrest, the officer should review its contents carefully to determine that it clearly names the person to be arrested or, if his/her/their name is unknown, any name or description by which they can be identified with reasonable certainty;<sup>6</sup>

A person arrested on a warrant, or otherwise taken into custody by a police officer, has a right to know the true grounds for such arrest.<sup>7</sup> The officer need not have the warrant in their possession at the time of arrest; however, upon request they shall show the warrant to the arrestee as soon as possible.<sup>8</sup> A printout of a warrant from CJIS shall constitute a true copy of the warrant.<sup>9</sup>

After the warrant has been executed, the officer shall ensure that the warrant is located by C8 Dispatch on CJIS/WMS.<sup>10</sup>

When a person is arrested on a warrant issued by a court in another jurisdiction they may be brought before the court having jurisdiction over the place where the person was arrested, or before the court that issued the warrant.<sup>11</sup>

NOTE: 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 charge of being a Fugitive from Justice.

### **ARRESTS WITHOUT A WARRANT [41.4.3(2)]**

The lawful authority to make an arrest without a warrant exists anytime that a felony was committed, whether or not it was committed in the officer's presence. The lawful authority to make an arrest for a misdemeanor only exists when it constitutes a breach of the peace in the officer's presence or when arrest is authorized by statute. If an arrest for misdemeanor is authorized by statute, it may be based on probable cause or may require that it takes place in the officer's presence depending on the statute.

In addition to having lawful authority, it is required under the Fourth Amendment that a police officer has "probable cause" in order to make a valid arrest without a warrant.<sup>12</sup> 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.<sup>13</sup>

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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.<sup>14</sup> 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. The following factors may contribute to establishing probable cause:

1. Direct observations of the police officer;
2. Knowledge of the prior criminal record or criminal activity of the person arrested;<sup>15</sup>
3. Flight accompanied by other factors;<sup>16</sup>
4. Evasive answers and/or conflicting stories;<sup>17</sup>
5. Time of day or night;<sup>18</sup>
6. History of criminal activity in the particular area; <sup>19</sup>
7. Experience of the officer applied to observations and firsthand information;<sup>20</sup> and
8. Reliable witness statements.<sup>21</sup>

If an unlawful arrest is made, any search made incidental to that arrest may be found to be 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. **[42.2.0(F)]**

### **WARRANTLESS ARREST IN DWELLING**

If the police seek to arrest a person in a dwelling they must obtain an arrest warrant unless:<sup>22</sup>

1. Lawful consent to enter is granted; or
2. Exigent circumstances are present which excuse the failure to obtain an arrest warrant; or
3. The arrest was the result of a fresh and continuous pursuit set in motion in public where the suspect runs into the dwelling.

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### **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 town. However, there are four instances in which an officer may make “extra-territorial” arrests outside the limits of the town.

#### **Fresh Pursuit in State:**

An officer may “on fresh and continued pursuit”, pursue and arrest an offender in any other city or town in Massachusetts if:<sup>23</sup>

1. The offense is one for which a warrantless arrest is authorized; and
2. The offense was committed in the officer’s presence; and
3. The offense was committed in the officer’s jurisdiction.

#### **Mutual Aid:**

If there is a mutual aid agreement in effect between West Brookfield and the city or town to which the officer is present in, an officer may exercise the same authority in such city or town as they exercise in their own city or town.<sup>24</sup> Please see policy on Central Massachusetts Law Enforcement Council (CEMLEC) Mutual Aid Agreement

Whether or not a mutual aid agreement exists, the commanding officer of the police department in one city or town may request assistance from the commanding officer in another city or town, and officers assigned to render assistance under such circumstances have full police authority, including the power of arrest.<sup>25</sup>

A police officer is empowered to command aid from a person in the execution of [their] office in a criminal case, in the preservation of the peace, in the apprehension or securing of a person for a breach of the peace, and in cases of escape or rescue of persons arrested upon civil process.<sup>26</sup> Massachusetts courts have ruled that where a police officer requests aid from a second police officer for one of the purposes included in the statute, the second officer becomes empowered to stop a subject or make an arrest even if they are outside their jurisdiction.<sup>27</sup>

#### **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

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person in any other state if that other state has in force similar interstate felony fresh pursuit laws.<sup>28</sup> (New York and all New England states have such laws).

### **Citizen's Arrest:**

An officer may exercise their citizen's arrest powers anywhere in the Commonwealth. 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 their jurisdiction, they need only have probable cause to believe that a felony has been committed and that the person arrested committed it.<sup>29</sup>

### **POLICE DISCRETION TO ARREST [41.4.4][41.4.5]**

Although police officers must always be guided by the intent and purpose of the law, there are circumstances when, in the discretion of the officer involved, the public interest would be better served by not making an arrest, even though there is legal justification for such action.

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

1. When an arrest could aggravate community conflict or possibly precipitate a serious disorder.
2. When there is a greater priority to respond to a more serious crime or to an urgent public emergency.
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. For minor juvenile offenses where a warning and a talk with the parents can avoid a court appearance. See departmental policy on **Handling Juveniles**.
5. For offenses where a summons can effectively accomplish the intended purpose.
6. Minor motor vehicle offenses.

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### **MAKING AN ARREST**

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

1. Obtaining assistance when necessary whether before or after the arrest, particularly when:
  - a. There is more than one person to be arrested;
  - b. A dangerous crime is involved, usually a felony of a serious nature; or
  - c. Prior experience has shown the need for assistance in a particular situation.
2. Searching for and seizing any evidence of a crime or instruments capable of inflicting serious bodily injury or causing death;<sup>30</sup>
3. Making a search of the area within the immediate reach and control of the persons arrested for weapons or evidence<sup>31</sup> ; and
4. Keeping the persons arrested in control and in view of the officer at all times. If more than one officer is present, additional officers should never pass or position themselves between the arresting officer and the person arrested.

### **POST ARREST**

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.

At the time of arrest, a "search incident to arrest" shall be conducted in accordance with the departmental policy on **Warrantless Searches**.

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

Persons arrested shall be told immediately that their attorney is trying to contact them and recommends that he not talk to the police.<sup>32</sup>

#### **[42.2.0(K)]**

Persons arrested shall be given the Miranda warnings prior to interrogation or any questioning likely to elicit an incriminating response. No arrested person may be interrogated after six hours has passed from the time of their arrest. An arrested person may execute a

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written or recorded waiver of the right to be brought to the court without unreasonable delay, even after the six hours has expired. The six-hour rule does not start running if the arrested person is “incapacitated” due to drugs or alcohol, or for any reason not attributable to the police.<sup>33</sup> See departmental policy on **Interrogating Suspects.[42.2.0(C)(E)(J)]**

See department policy on **Handling Juveniles** when a person under the age of eighteen is arrested.

The persons arrested shall be handcuffed and transported in accordance with the departmental policy on **Transportation of Detainees**.

Upon arrival at Police Headquarters, the persons arrested shall be booked and processed in accordance with the departmental policy on **Processing Detainees**.

### REPORTS

Arresting officers will make a full and complete report of any arrests made, with or without warrants, in accordance with department policy and procedures.

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<sup>1</sup> *Mass. General Hospital v. Revere*, 385 Mass. 772, 434 N.E.2d 1851 (1982), *rev. on other grounds*, 463 U.S. 239 (1983); *Com. v. Cook*, 419 Mass. 192, 644 N.E.2d 203 (1994)

<sup>2</sup> See *Com. v. Klein*, 372 Mass. 823, 363 N.E.2d 1313 (1977)

<sup>3</sup> *Com v. Moreira*, 388 Mass. 596, 447 N.E.2d 1224 (1983)

<sup>4</sup> M.G.L. c. 276, s. 21

<sup>5</sup> M.G.L. c. 318, s. 32

<sup>6</sup> *Won Sun v. U.S.*, 371 U.S. 471, 83 S. Ct. 407 (1963)

<sup>7</sup> M.G.L. c. 263

<sup>8</sup> Mass. Rules of Crim. Proc. 6(c)(3)

<sup>9</sup> M.G.L. c. 276, s. 23A

<sup>10</sup> *Id.* at 6(c)(4)

<sup>11</sup> M.G.L. c. 276, s. 29

<sup>12</sup> See *Whren v. U.S.*, 116 S. Ct. 1769 (1996)

<sup>13</sup> *Beck v. U.S.*, 385 U.S. 293, 87 S. Ct. 408 (1966); *Com. v. Bottari*, 395 Mass. 777, 482 N.E.2d 321 (1985)

<sup>14</sup> *Won Sun v. U.S.*, 371 U.S. 471, 83 S. Ct. 407 (1963); *Com. v. Stevens*, 361 Mass. 885, 283 N.E.2d 673 (1972), *Com. v. Roman*, 414 Mass. 642, 609 N.E.2d 1217 (1993)

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<sup>15</sup> *Com. v. Rossetti*, 349 Mass. 626, 211 N.E.2d 658 (1964); *Com. v. Silva*, 366 Mass. 402, 359 N.E.2d 942 (1974)

<sup>16</sup> *Won Sun v. U.S.*, 371 U.S. 471, 83 S. Ct. 407 (1963); *Com. v. Thibeau*, 384 Mass. 762, 429 N.E.2d 1009 (1981)

<sup>17</sup> *U.S. v. Brown*, 457 F.2d 731 (1st Cir. 1972); *Com. v. Chaisson*, 358 Mass. 587, 266 N.E.2d 311 (1971)

<sup>18</sup> *Com. v. Ellis*, 365 Mass. 574, 254 N.E.2d 408 (1970)

<sup>19</sup> *Com. v. Mercado*, 422 Mass. 367, 773 N.e.2d 243 (1996); *Com. v. Doulette*, 32 Mass. App. Ct. 506, 609 N.E.2d 473 (1992)

<sup>20</sup> *Com. v. Mitchell*, 353 Mass. 426, 233 N.E.2d 205 (1967); *Com v. Santaliz*, 413 Mass. 238, 596 N.E.2d 337 (1992)

<sup>21</sup> *Draper v. U.S.*, 358 U.S. 307, 79 S. Ct. 329 (1959)

<sup>22</sup> *Payton v. New York*, 445 U.S. 573, 100, S. Ct. 1371 (1980); *Steagald v. U.S.*, 451 U.S. 204, 101 S. Ct. 1642 (1981); *Com. v. Forde*, 367 Mass. 798, 329 N.E.2d 717 (1975)

<sup>23</sup> M.G.L. c. 41, s. 98A

<sup>24</sup> M.G.L. c. 40, s. 8G

<sup>25</sup> M.G.L. c. 41, s. 99

<sup>26</sup> M.G.L. c. 37, s. 37

<sup>27</sup> *Com. v. Twombly*, 435 Mass. 440, 758 N.E. 2d 1051 (2001)

<sup>28</sup> In Massachusetts, see M.G.L. c. 276, ss. 10A-10D (The Uniform Extraterritorial Arrest on Fresh Pursuit Law)

<sup>29</sup> *Com. v. Claiborne*, 423 Mass 275, 667 N.E.2d 873 (1996); *Com. v. Harris*, 11 Mass. App. Ct. 165, 415 N.E.2d 216 (1981)

<sup>30</sup> M.G.L. c. 276, s. 1

<sup>31</sup> Id

<sup>32</sup> *Comm v McNulty*, 458 Mass. 305

<sup>33</sup> *Comm v Rosario* 422 Mass, 48 and *Comm v Ortiz* 422. Mass 64