



# ADULT CRIMINAL ARREST PROCEDURE

FC No.: 510  
Date: 03-13-13

If a provision of a regulation, departmental directive, rule, or procedure conflicts with a provision of the contract, the contract prevails except where the contract provision conflicts with State law or the Police Collective Bargaining Law. (FOP Contract, Article 61)

## Contents:

- I. Policy
- II. Discretion
- III. Arrest Warrants
- IV. Follow-Up Investigations Resulting in Probable Cause for Arrest
- V. Warrantless Arrests by Police Officers or Commissioned Special Police Officers
- VI. Warrantless Arrest on Accusation/*Individual's* Arrest
- VII. Citation Use for *Mandatory* Offenses
- VIII. Authority to Arrest Military Deserters
- IX. Bail Bondsman Retakes
- X. CALEA Standards
- XI. Proponent Unit
- XII. Cancellation

### I. Policy

All *individuals* have basic rights, which are set forth in common law, statutory law, and the Constitution. Among these rights is the right of persons suspected of criminal acts to be protected from abuse of police power. The policy of the department is to exercise the power of arrest in conformity with all applicable laws. For information concerning juveniles, refer to FC 509, "Juvenile Criminal Arrest Procedure."

### II. Discretion

- A. Officers are vested with a broad range of discretion when deciding whether or not to make an arrest. This directive is not intended to deprive any officer of that discretion when deciding whether or not to make an arrest provided it is exercised in accordance with departmental rules and regulations and in furtherance of the police mission.
- B. The proper exercise of discretion does not relieve the investigating officer of the responsibility to conduct a thorough preliminary investigation of the event.

### III. Arrest Warrants

- A. The primary and most basic source of authority to arrest, recognized under common law and under modern statutes, is that of a warrant. This is the only authority expressly sanctioned by the Constitution of the United States.
- B. An arrest with a warrant can be made at any time, day or night. If the Warrant *Management* Section determines the charge is of a minor nature, service will be made at a reasonable time of day (normally 0700 to 2200 hours).

#### IV. Follow-Up Investigations Resulting in Probable Cause for Arrest

During a follow-up investigation, whenever an officer develops probable cause to make an arrest and the decision is made to affect the arrest, the officer should, whenever practical, apply for a charging document.

#### V. Warrantless Arrests by Police Officers or Commissioned Special Police Officers

- A. The legislatures and courts have historically maintained a delicate balance between the interest of the community in protecting itself and the right of the *individual* to be free from *an* unjustified arrest. In doing so, the legislatures have strictly limited the authority to arrest without a warrant.
- B. In accordance with statutory authority and Maryland case law, an officer or commissioned special police officer (SPO) may arrest an individual without a warrant:
  - 1. Pursuant to the laws of arrest (Criminal Procedure Article § 2-202 and § 2-203), and
  - 2. Under the authority of the Maryland Police Team Rule (when an officer is advised via official police communications that there is lawful authority to make an arrest).
- C. Officers must follow the procedures listed below when responding to warrantless arrests for felonies made by SPOs:
  - 1. Verify that the complainant is an SPO.
  - 2. Obtain a written and signed statement prepared by the SPO.
  - 3. Arrest, transport, and process the defendant.
  - 4. Complete the necessary reports according to FC 513, "Processing Arrested Persons." and the Field Report Manual.

#### VI. Warrantless Arrest on Accusation/*Individual's Arrest*(commonly known as a *Citizen's Arrest*)

- A. Legal Authority
  - 1. **Felony** - In Maryland, a private *individual* has the authority to arrest without a warrant when a felony is being committed in the *individual's* presence, or has been committed, whether or not in the *individual's* presence, and the *individual* has probable cause to believe that the person arrested committed it.
  - 2. **Misdemeanor** - In Maryland, a private *individual* has *the* authority to arrest without a warrant when a misdemeanor that amounts to a breach of the peace is being committed in the presence or view of the *individual*. Breach of the peace includes disorderly, dangerous conduct disruptive of public peace. To constitute a breach of peace, it is necessary to show an affray, actual violence, or conduct tending to or provocative of violence by others. There is a narrow exception to this in the common law: *An individual* has the right to detain a person believed to have taken the *individual's* property. This must be done to prevent theft or recapture property and not as punishment. It is false imprisonment if the person does not have the property.

**NOTE:** All Warrantless arrests will be charged via a statement of charges prepared by the arresting officer or an SPO who is empowered to execute the statement of charges (exception: see section VII). District court commissioners will not issue post-arrest warrants when the defendant is in police custody.

#### B. Warrantless *Individual's* (Non-Police) Felony Arrests

Responding officers will interview the complainant and:

- 1. If probable cause to arrest the suspect does NOT exist, officers will:
  - a. NOT ARREST THE SUSPECT.
  - b. Inform the complainant that the arrest does not meet legal requirements.
  - c. Complete the appropriate police report.
- 2. If probable cause to arrest the suspect does exist, officers will:

- a. Obtain a written, signed statement from the complainant.
- b. Arrest, transport, and process the defendant.
- c. Complete the necessary reports according to FC 513 and the Field Report Manual.

C. Warrantless *Individual's*(Non-Police) Misdemeanor Arrests

1. *Individuals* may make a warrantless misdemeanor arrest for (see section VI.A.2):
  - a. A crime that amounts to a breach of the peace, or
  - b. The theft of one's own property when the suspect still has possession of that property.
2. Responding officers will interview the complainant, and:
  - a. Ensure that the crime the suspect was arrested for meets the above criteria.
  - b. If the incident meets the guidelines of Criminal Procedure Article § 2-202 and §2-203:
    - Arrest, transport, and process the suspect.
    - Complete the necessary reports according to FC 513 and the Field Report Manual.
  - c. If the incident does not meet the guidelines of Criminal Procedure Article § 2-202 and § 2-203:
    - DO NOT ARREST THE SUSPECT.
    - Explain to the complainant that under Maryland law officers may not arrest or transport the suspect.
    - Advise the complainant of the process for applying for a charging document.
    - Complete an *incident* report.

VII. Citation Use for Mandatory Offenses

*In 2012, the Maryland General Assembly passed legislation (Senate Bill 422/Chapter 504) mandating the issuance of a criminal citation for certain criminal offenses if the defendant meets certain criteria. If these criteria are met, the law allows an officer who has grounds to make a warrantless arrest to issue a citation in lieu of making an arrest. However, if the defendant is subject to a full custody arrest for another criminal charge arising out of the same incident (that is not citation eligible), that defendant will be taken to Central Processing and he/she be presented before a court commissioner, and processed for all charges. Refer to the citation manual for qualifying offenses.*

A. Mandatory Offenses

1. *The following offenses shall be charged by citation: (Refer to VII.A.2 for exceptions)*
  - a. *Any misdemeanor or local ordinance violation that does not carry a penalty of imprisonment;*
  - b. *Any misdemeanor or local ordinance violation for which the maximum penalty of imprisonment is 90 days or less; or*
  - c. *All misdemeanor possession of marijuana under § 5-601 of the Criminal Law Article.*
2. Exceptions- *The following offenses may not be charged by criminal citation:*
  - a. *Failure to comply with a peace order under § 3-1508 of the Courts Article;*
  - b. *Failure to comply with a protective order under § 4-509 of the Family Law Article;*
  - c. *A violation of a condition of pretrial or post trial release while charged with a sexual crime against a minor under § 5-213.1 of the Criminal Procedure Article;*
  - d. *Possession of an electronic control device after conviction of a drug felony or crime of violence under § 4-109(b) of the Criminal Law Article;*
  - e. *Violation of an out-of-state domestic violence order under § 4-508.1 of the Family Law Article;*  
*or*
  - f. *Abuse or neglect of an animal under § 10-604 of the Criminal Law Article.*
3. *An officer may charge a defendant by citation only if:*
  - a. *The officer is satisfied with the defendant's evidence of identity;*
  - b. *The officer reasonably believes that the defendant will comply with the citation;*
  - c. *The officer reasonably believes that the failure to charge on a statement of charges will not pose a threat to public safety;*
  - d. *The defendant is not subject to arrest for another criminal charge arising out of the*

- same incident; and*  
e. *The defendant complies with all lawful orders by the officer.*

**B. Citations: Arrests and Searches**

1. *An officer who has probable cause to make an arrest for an offense that does not carry a penalty of imprisonment and who determines that the defendant meets the criteria (section VII.A.3) shall issue a citation in lieu of an arrest. The defendant shall be released upon their signature of the citation.*
2. *An officer who has probable cause to make an arrest for an offense which carries a maximum penalty of imprisonment of 90 days or less will make the arrest and search incidental to that arrest (See the Citation Manual for qualifying offenses and exceptions).*
  - a. *If the officer determines that the defendant meets the criteria (Section VII. A. 3), the officer will issue a citation and release the defendant, in lieu of continued custody (e.g. possession of marijuana). No additional searches can be conducted once the officer makes the determination to charge the defendant via citation.*
  - b. *If the officer determines that any of the above criteria (Section VII. A.3) are not met, the officer may charge the individual via a statement of charges. The officer will include in the probable cause the reason why the defendant went before the commissioner instead of being released via a citation.*
3. *An officer may issue a criminal citation for offenses where a warrantless arrest may ordinarily be impermissible. At times, there are no grounds for a misdemeanor arrest where the offense is not committed in an officer's presence. Therefore; a criminal citation may be issued to a defendant based on witness information (i.e. destruction of property, theft under \$100, and trespassing).*
4. *An officer may issue a citation to a defendant for a civil violation. No physical arrest may be made on defendants for civil violations.*

**C. Forms and Reports**

1. *The officer should not try to write the entire probable cause statement on the front of the citation. Officers will use the probable cause continuation sheet to complete the narrative, including the facts and circumstances of the charge.*
2. *On the citation, the officer will check the block indicating the court will notify the defendant when to appear for trial. Include in the space provided what penalty (both fine and incarceration) the court may impose if a conviction results. Failure to do so may result in dismissal of the case.*
3. *After an officer issues a citation the officer must:*
  - a. *Initiate an incident report, including witness and evidence information.*
  - b. *If multiple citations are issued to the same subject during the same incident, the officer will include a sentence at the bottom of the incident report linking the citations together.*
  - c. *Turn the completed citation and incident report into the officer's assigned district station/division.*

**VIII. Authority to Arrest Military Deserters**

- A. The Uniform Code of Military Justice sets forth, and the Federal Courts have affirmed, the authority of civil law enforcement officers to arrest a deserter from the armed forces and deliver the deserter to those forces.
- B. Officers who arrest military deserters will treat the offense as a misdemeanor and process the individual according to FC 521, "Arrest Procedures for Fugitives."

**IX. Bail Bondsman Retakes**

**A. Investigating Officer's Responsibilities**

The investigating officer will:

1. Notify a supervisor to respond when requested to assist a bail bondsman/ bounty hunter.

2. Assist a bail bondsman/bounty hunter by:
  - a. Attempting service of known arrest warrants following procedures in this directive.
  - b. Standing outside a premise to preserve the peace and enforce observed violations of the criminal law in the absence of a warrant.
  - c. Transporting a prisoner only after the following conditions are met:
    - Verify the identification of the bail bondsman/bounty hunter.
    - Verify the existence of a valid arrest warrant or Court Order of Forfeiture for the prisoner.
    - Obtain known criminal history/background information on the suspect from the bail bondsman/bounty hunter.
3. Limit their duties to protecting life and property and not involve themselves in the forced entry of a premise without supervisor approval. Bail bondsmen have the authority to kick down the door to make an arrest so long as it is the residence of the suspect and not a third party. (Note: Officers will ensure premises are secured if a forcible entrance is made.)
4. Not assist a bail bondsman/bounty hunter with an arrest or prisoner transportation without a Court Order of Forfeiture or an arrest warrant.
5. Report all encounters with bail bondsman/bounty hunters requiring assistance and document the action taken in an *incident* report.
6. Not enlist the aid of a bail bondsman/bounty hunter as an agent of the department or an extension of police powers.

**B. Supervisor Responsibilities**

Supervisors will:

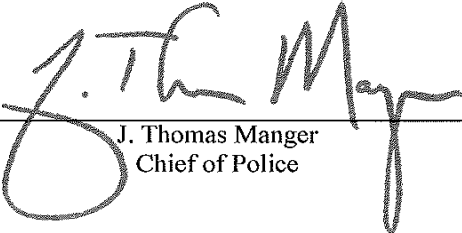
1. Respond to calls for assistance from a bail bondsman/bounty hunter.
2. Recommend to the bail bondsman/bounty hunter that they obtain a Court Order of forfeiture or an arrest warrant in appropriate cases.

**X. CALEA Standards: Chapters 1 and 42**

**XI. Proponent Unit:** Field Services Bureau and Investigative Services Bureau Administrations

**XII. Cancellation**

**This directive cancels Function Code 510, effective date 05-21-04, and Headquarters Memo 95-07.**



J. Thomas Manger  
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