OFFICE OF THE COUNTY SHERIFF

Montgomery County, Maryland

Raymond M. Kight, Sheriff

GENERAL OPERATIONAL PROCEDURES

Subject:	Number:	Effective Date:
Arrest Policy and Procedure	**3.03**	**04/13/05**

Policy: All citizens have basic rights that 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. It is the policy of this Office to exercise the power of arrest in conformity with all applicable laws. **(1.2.1)**

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I. Probable Cause for Arrest

A. Adult Suspects

Whenever a deputy develops probable cause for the arrest of an adult, and the decision is made to effect the arrest, the deputy should, whenever practical, apply for a charging document. (1.2.5)

B. Juvenile Suspects

If a deputy develops probable cause to believe a juvenile committed a crime, the deputy's authority to arrest the juvenile is limited by the ***Md. Code, Criminal Procedure Article***. (1.2.1, 1.2.5)

II. Warrantless Arrests (1.2.1, 1.2.5)

The legislatures and courts have historically maintained a delicate balance between the interest of the community in protecting itself and the right of the citizen to be free from unjustified arrest. In striking the balance, the legislatures have strictly limited the authority to arrest without a warrant (See Administrative Directive, 1.03; Statewide Authority - Warrantless Arrests). The criterion applies equally to juveniles and adults, affording all citizens equal protection.

Note: The term "arrest" in this order, when used with regard to juveniles, means "taking into custody."

A. In accordance with statutory authority ***in Md. Code, Criminal Procedure Article § 2-202*** and Maryland case law, a deputy may arrest an individual without a warrant in the following circumstances:

(1) When a felony or misdemeanor is committed or attempted in the deputy's presence or view.

(2) When the deputy has probable cause to believe a felony or misdemeanor is being committed or attempted in their presence or view and the deputy reasonably believes the individual committed the offense.

(3) When the deputy has probable cause to believe a felony has been committed or attempted and probable cause that a specific person committed or attempted the felony.

(4) Under the authority of the Maryland Police Team Rule (when a deputy is advised via official communications there is lawful authority to make an arrest).

(5) For ***specified crimes*** listed in ***Md. Code, Criminal Procedure Article § 2-203***, provided there is probable cause to believe:

(a) The person has committed the offense, and unless the person is immediately arrested:

(i) The person may not be apprehended or

(ii) The person may cause injury to the person or damage to the property of one or more persons, or

(iii) The person may tamper with, dispose of, or destroy evidence.

(6) In domestic ***abuse*** cases ***as outlined in Md. Code, Criminal Procedure Article § 2-204***, if a report to the police was made within ***48*** hours of the alleged incident, and the deputy has probable cause to believe ***that***:

(a) The person battered the person's spouse or ***another person with whom the person resides***, and

(b) There is evidence of physical injury, and

(c) Unless the person is immediately arrested, ***the person***:

(i) May not be apprehended;

(ii) may cause ***physical*** injury ***or property damage to another; or***

(iii) May tamper with, dispose of, or destroy evidence.

(7) ***In stalking cases as outlined in Md. Code, Criminal Procedure Article § 2-205 if:***

(a) The deputy has probable cause to believe the person has engaged in stalking under §3-802 of the Md. Code, Criminal Law Article;

(b) There is credible evidence other than the statements of the alleged stalking victim to support the probable cause under item (a) of this section; and

(c) The deputy has reason to believe that the alleged stalking victim or another person is in danger of imminent bodily harm or death.

(8) ***In a proclaimed state of emergency as outlined in Md. Code, Criminal Procedure Article § 2-206, and defined in Md. Code, Public Safety Article § 14-301 when:***

(a) Public safety is imperiled; or

(b) On reasonable apprehension of immediate danger of public safety being imperiled.

B. Juveniles may be taken into custody under the guidelines above or under the authority set forth in the Courts and Judicial Proceedings Article, § 3-814 ***and § 3-A8-14,*** (Taking a Child into Custody). These guidelines state a juvenile may be taken into custody: (1.2.1, 1.2.5)

(1) Pursuant to an order of the court (juvenile warrant); ***or,***

(2) By a law enforcement officer pursuant to the law of arrest; ***or,***

(3) By a law enforcement officer or other person authorized by the court if they have reasonable grounds to believe the child is in immediate danger from their surroundings and removal is necessary for their protection; or, (44.2.2.b)

(4) By a law enforcement officer or other person authorized by the court, if such officer has reasonable grounds to believe the child has run away from his/her parents, guardian, or legal custodian. (44.2.2.a)

III. Arrest Warrants/Juvenile Warrants

A. The primary and most basic source of authority to arrest, recognized under the 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. The Fourth Amendment of the Constitution provides that: "...no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."

B. A juvenile warrant issued by a judge is an order of the court as described in Maryland law (see Courts and Judicial Proceedings, § ***3-814 and §*** 3-8*A*-14). This order gives a peace officer the legal authority to take the juvenile for whom the warrant is issued into custody.

(1) Any deputy holding a juvenile warrant or having knowledge of one has lawful authority to take the juvenile named into custody.

(2) Once the juvenile is in custody, the deputy ***must*** contact an intake worker of the State ***Department of*** Juvenile ***Services (D.J.S.)***.

(a) During court hours, deputies must call the ***D.J.S***. at 27 Courthouse Square in Rockville.

(b) During non-court hours, the on-call intake worker can be contacted through the ***Public Safety Communications Center (P.S.C.C.)***. Supervisor.

(i) The juvenile will not be released to anyone unless authorized by a Judge or ***D.J.S***. intake worker. (44.2.2.d)

IV. 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 them to those forces.

B. Deputies arresting military deserters will process the individual ***in accordance with Criminal Section S.O.P. 04, Section III, Sub-section D, Processing Procedures for Montgomery County District Court Civil Body Attachments***.

V. Arrest Procedures (74.3.1)

A. An arrest is the act of depriving an individual of their freedom.

(1) No two people will react in the same way when faced with the prospect of incarceration.

(2) All arrests must be made with the knowledge that an element of danger is present.

(3) There are no routine arrests and all arrested persons, regardless of the charge, must be considered dangerous.

B. At least two deputies should make every attempt of arrest. There are instances when a lone deputy may arrest a wanted person, however, sound discretion must be exercised to avoid injury to either the deputy or the wanted person. Anytime deputies believe more than two deputies are needed to effect an arrest, they should request assistance.

(1) If other deputies are not reasonably available, a police department should be contacted for assistance.

(2) ***Sworn law enforcement officers only must execute all arrest warrants***. (74.2.2, 74.3.2)

(a) ***The term "arrest warrants" includes "bench warrants" and "body attachments."***

(3) ***Deputies may not attempt to serve arrest warrants inside Maryland, outside the geographical boundaries of Montgomery County unless:***

(a) ***A law enforcement officer from the local jurisdiction is physically present and requests the assistance of the deputy;***

(b) ***A deputy is participating in a joint investigation with a law enforcement officer from the local jurisdiction;***

(c) ***An arrest is authorized by Md. Code, Criminal Procedure Article, § 2-102 because an emergency exists; or***

(d) ***An arrest is authorized by Md. Code, Criminal Procedure Article § 2-301 while engaged in fresh pursuit within the State of Maryland.***

(4) All attempts of warrant service ***must*** be documented on the Warrant Investigation Worksheet.

C. In every arrest, deputies must be prepared to protect themselves as well as others. The force they may use will vary from that of a command to physical contact, causing injury or even death. However, the only force, which may be used by a deputy, is that which is necessary to complete the arrest. The use of deadly force must be carefully evaluated and will only be utilized in accordance with the written directive Use of Force. (1.3.1)

D. In every arrest, the suspect must be informed of the deputy's intentions to deprive them of ***their*** liberty.

(1) Deputies will display their ***badge and*** identification when announcing who they are and their purpose.

(2) Deputies must identify themselves, inform the person ***they are*** under arrest, and specify the charge.

E. All arrested persons, who must be processed, will be transported to ***the appropriate processing facility***.

(1) Processing will be conducted in accordance with the Criminal Section S.O.P.

F. Any arrest made by a deputy ***that*** the State's Attorney declines to process, or dismisses, will be referred to the arresting deputy's supervisor. The supervisor will review the case and report the findings to the Division Captain. If mishandling is identified, the Captain will initiate the appropriate corrective action. The Captain will report the findings to the Chief Deputy and the Sheriff.

VI. Discretion and Alternatives to Arrest (1.2.7)

A. Discretion in Using Law Enforcement Authority

(1) Many instances of public contact will occur where an arrest ***could*** be made but should not be effected due to mitigating circumstances. Generally, it is not the role of law enforcement to decide whether an offender should be prosecuted. That decision lies with the State's Attorneys Office.

(2) A decision by a deputy not to arrest should be made only after careful consideration of the following:

(a) An arrest would cause a greater risk of harm to the public than not arresting the offender.

(b) An arrest would cause harm to an offender who posses no threat of danger to the public.

(c) The seriousness of the crime committed.

(3) At times, a decision not to arrest when there are grounds to arrest is considered a good law enforcement practice. Public empathy can be enhanced by careful use of discretion and potential ill will can be avoided.

(4) Should any questions arise concerning a particular situation, the deputy involved should confer with a supervisor.

B. Alternatives to Arrest (1.2.6, 1.1.3)

Under the authority of the Sheriff, deputies may exercise discretion in certain situations to the extent that an alternative to an arrest may be employed to resolve a situation. Warnings, referrals, informal resolutions, summonses, and citations shall be considered approved alternatives to arrest. Alternatives to arrest must respect the rights of the parties involved and must accomplish a law enforcement purpose. Some of these alternatives may include:

(1) Informal Resolutions

(a) The interests of the parties involved are often satisfied better by a mediated settlement on the scene rather than a formal prosecution in court. Resolutions of this nature should be by agreement with the affected parties and should not be employed as an excuse for not effecting an arrest.

(2) Referrals

(a) Referrals may be made to other law enforcement, governmental or social service agencies that are better suited to address and resolve the problem(s).

(3) Warnings

(a) Deputies may exercise discretion in minor traffic and ordinance violations by delivering oral or written warnings. Deputies are reminded voluntary compliance is the goal of minor enforcement actions.

(4) Citations and Summonses

(a) These are formal enforcement procedures, which are alternatives to arrest solely by the fact they may be used to preclude physical custody or as a less severe enforcement option.

VII. CALEA Standards

1.1.3, 1.2.1, 1.2.5, 1.2.6, 1.2.7, 1.3.1, 44.2.2.a, 44.2.2.b, 44.2.2.d, 74.2.2, 74.3.1, 74.3.2

VIII. Cancellation

This directive cancels and replaces General Operational Procedure 3.03, Effective Date ***05/01/95. Shred replaced directive.***

AUTHORITY:

Raymond M. Kight, Sheriff
04/13/05