



MONTGOMERY COUNTY FIRE AND RESCUE SERVICE
MONTGOMERY COUNTY, MD.

**DIVISION OF COMMUNITY RISK REDUCTION SERVICES
DIRECTIVE**

Date: August 11, 2006

Number: 06-10

TO: All Fire and Explosive Investigations Section Personnel
FROM: Division Chief Michael T. Love *Michael Love*
SUBJECT: Adoption of Montgomery County Police Department Directive
FC No: 510, Date: 05-21-04 – Adult Criminal Arrest Procedure

All Fire and Explosive Investigations personnel must comply with and follow Montgomery County Police Department Directive (Function Code) 510, Adult Criminal Arrest Procedure, May 21, 2004, with one amendment:

The language in MCP Function Code #510, Adult Criminal Arrest Procedure, May 21, 2004, Section V.B.1. shall read:

“Pursuant to the laws of arrest (*Criminal Procedure Article 2-202, 2-203, 2-208, and 2.208.1*), and”

When a new MCP Department Directive or Headquarters Memorandum is issued that affects the Function Code 510, the FEI Section Chief will determine the applicability and will amend this Directive as required.

MTL:MD:ss



ADULT CRIMINAL ARREST PROCEDURE

FC No.: 510

Date: 05-21-04

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)

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I. Policy

All citizens 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." (CALEA 1.2.1, 1.2.5)

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. (CALEA 1.2.7)
- B. The proper exercise of discretion does not relieve the investigating officer of the responsibility to conduct a thorough preliminary investigation of the event. (CALEA 42.1.4)

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 Control *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 effect 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 citizen to be free from 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: (CALEA 1.2.1)
 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 or misdemeanors (exceptions are listed in section VII) 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/ Citizen's Arrest

A. Legal Authority

1. Felony - In Maryland, a private citizen has the authority to arrest without a warrant when a felony is being committed in the citizen's presence, or has been committed, whether or not in the citizen's presence, and the citizen has probable cause to believe that the person arrested committed it.
2. Misdemeanor - In Maryland, a private citizen has 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 citizen. ***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: A citizen has the right to detain a person believed to have taken the citizen'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 Citizen'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 Citizen's (Non-Police) Misdemeanor Arrests

1. Citizens 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 on the process for applying for a charging document.
 - Complete an event report.

VII. Citation Use for Specified Offenses (CALEA 1.2.6)

- A. Violations that are malicious destruction of property valued under \$500 and misdemeanor theft under \$500 may be charged via the Maryland Uniform Criminal/Civil Citation as long as:
 1. The suspect furnishes satisfactory evidence of identity.
 2. The suspect is a Maryland resident.
 3. The suspect has a negative wanted status.
 4. The officer has reasonable grounds to believe that the defendant will comply with the requirements of the citation.
- B. Even if the defendant meets the above criteria, the officer has the discretion to have the SPO or citizen obtain a DCS/warrant. The officer may not make a physical arrest in this situation.
- C. The officer or the SPO may issue the citation to the defendant (refer to the Citation Manual). 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.
- D. Release the defendant after the defendant signs the citation.

- E. After an officer issues a citation the officer should:
1. Initiate an event report.
 2. Attach an MCP 107, "State's Attorney Witness Information Report," and an MCP 107A, "State's Attorney Evidence Information Report," to the event report.
 3. Turn the citation in at the station.

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
(CALEA 1.2.5)**

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 event 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. Proponent Units: FSB and ISB Administrations

XI. Cancellation

This directive cancels Function Code 510, effective date 02-06-99, and Headquarters Memo 97-34.

J. Thomas Manger
Chief of Police

FC No.: 510

Date: 05-21-04