



# CLEVELAND DIVISION OF POLICE

## GENERAL POLICE ORDER



EFFECTIVE DATE: JANUARY 1, 2020	CHAPTER: 3 - Arrestees	PAGE: 1 of 5	NUMBER: 3.04.01
SUBJECT: PROBABLE CAUSE/WARRANTLESS ARRESTS			
CHIEF: <i>Calvin D. Williams, Chief</i>			

**PURPOSE:** To establish Cleveland Division of Police guidelines to ensure all arrests are conducted in accordance with the rights secured and protected by the Constitution and federal and state law. The Division will conduct arrests fairly and respectfully as part of an effective overall crime prevention strategy consistent with community values.

**POLICY:** It is the policy of the Division to respect the fundamental privacy rights of all individuals. Officers shall conduct arrests in strict accordance with the rights secured and protected by the Constitution and federal and state laws. All seizures by the Division shall likewise comply with relevant federal and state laws governing the seizure of persons and property. Officers shall not use an individual’s gender, race, ethnicity, national origin, or perceived sexual orientation as a factor, to any extent or degree, in establishing probable cause, unless such information is part of an actual and credible description of a specific subject in an investigation that includes other identifying factors.

**DEFINITIONS:**

**Arrest** - the taking of a person into custody by an officer based upon a warrant or probable cause. To constitute an arrest, there must be an actual restraint of the person. The restraint may be imposed by force or may result from the submission of the person arrested to the custody of the officer arresting him/her. An arrest is a restraint of greater scope or duration than an investigatory stop or detention.

**Probable Cause** - the facts and circumstances known to the officer that would lead a reasonable person to believe that an individual has more likely than not committed or is committing a crime.

**PROCEDURES:**

- I. General Requirements for Probable Cause/Warrantless Arrests
  - A. Unless possessing a warrant, officers may not arrest a suspect unless the officer:
    - 1. Has probable cause that a subject has committed or is committing a felony offense.
    - 2. Has probable cause that the subject has committed or is committing certain misdemeanor offenses (e.g., an offense of violence, criminal child enticement, public indecency, domestic violence, violation of a protection order, menacing by stalking, aggravated trespass or theft).
    - 3. Has probable cause from the officer’s own observation that the subject has committed or is committing any other misdemeanor offense (other than a minor misdemeanor).

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- B. An officer may conduct a warrantless arrest for a minor misdemeanor when one of the following exceptions applies:
    - 1. The subject requires medical care or is unable to provide for one's own safety.
    - 2. The subject cannot or will not offer satisfactory evidence of one's own identity.
    - 3. The subject refuses to sign the citation.
  - C. When taking a subject into custody, as early as practical under the circumstances, officers shall identify themselves, inform the subject that he/she is under arrest, and state the reason for the arrest.
  - D. Prior to interrogating an individual, officers shall advise arrestees of their full Miranda rights (Refer to 2.02.03 Miranda Warning and Waiver).
- II. Entering a Residence/Habitation without a Warrant to Make a Warrantless Arrest
- A. Officers may enter a residence without a warrant to make a warrantless arrest when officer reasonably believe the person is within the residence at the time of entrance and:
    - 1. Consent to enter the residence is given by a person who shares access and control of the premises. The burden is on the officer to ascertain whether the person granting access has the right to give permission (Refer to 2.02.02 Search and Seizure).
    - 2. Exigent circumstances exist (e.g., hot pursuit, spontaneous violence, prevention of a crime, or imminent escape to avoid apprehension).
- III. Officer Responsibilities for Reporting Probable Cause/Warrantless Arrests
- A. Where no other substantive violation is alleged, officers shall immediately notify a supervisor when effectuating a custodial arrest for:
    - 1. Obstructing official business.
    - 2. Resisting arrest.
    - 3. Assaulting an officer, where no other substantive violation is alleged.
  - B. Officers shall make an arrest report when appropriate.
    - 1. Arrest reports shall be completed before the end of the officer's tour of duty.
    - 2. Officers shall not use "canned" or conclusory language without supporting detail in their arrest reports.

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3. Officers shall articulate the justification for an arrest in a specific and clear manner in all reports related to the arrest using individualized, descriptive language.
4. Officers shall complete the appropriate Probable Cause Affidavit in accordance with Sections IV. through VI.

IV. Completion and Forwarding of Probable Cause Affidavit Forms for all Non-UTT/MMC Warrantless Arrests

- A. Arresting officers shall properly complete the Affidavit Establishing Probable Cause (PC affidavit form) checking only the “Warrantless Arrest” box on the form for all Non-UTT/MMC warrantless arrests.
- B. Officers shall complete the Warrantless Arrest PC Affidavit form in the following manner:
  1. Officers shall check the Warrantless Arrest box on the form.
  2. Only one officer’s name may appear on the Officer/Detective/Complaint line.
  3. When completing the PC affidavit form, officers shall begin the narrative with the day, date, time, and location or approximate location (e.g., On Friday, April 12, 20XX, at approximately 1020 hours at a residence located at 1234 Maple Street).
  4. Officers shall explain the established probable cause that led to the arrest in the narrative section.
- C. Officers shall have their immediate supervisor review and notarize the PC affidavit form before conveying the arrestee to the Cuyahoga County Corrections Center (CCCC), if feasible. The PC affidavit form shall be submitted to the county booking officers at the time of booking.
  1. If the officer’s immediate supervisor is unable to review and notarize the PC affidavit form, members shall convey the form to the OIC of the Record Section for review and notarization after booking the arrestee. Officers shall immediately return the form to the county booking officers.
  2. In the case of officers working secondary employment, the supervisor in the district of occurrence shall review and notarize the PC affidavit form unless a supervisor of a higher rank than the arresting officer is concurrently working that secondary employment.

V. Completion and Forwarding of PC Affidavit Forms for all Non-UTT/MMC Misdemeanor Arrests Where a Detective is not Handling the Charging Duties

- A. In addition to the Warrantless Arrest PC affidavit described in Section IV., officers arresting for Non-UTT/MMC misdemeanors shall complete a second PC affidavit form checking only “Statement of Facts” box on the form. This second form is required by the Record Section supervisor to file charges on the misdemeanor arrest.

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- B. Officers shall complete and forward the second PC affidavit form as described in Section IV. B. and C.
  - C. Officers assigned to investigative units are not required to route the misdemeanor charging process through the Record Section, but rather may opt to handle the charging process as normally handled in their investigative unit, as long as all the filing requirements are met.
- VI. Felony, Combination Felony/Misdemeanor, Escalating Misdemeanor, and Misdemeanor Arrests Where the Assigned Detective Is Also Handling the Charging Duties
- A. Detectives shall ensure the proper follow-up is completed in charging or releasing of arrested persons as applicable.
  - B. Detectives shall handle the charge/release of escalating misdemeanors generated by the Patrol Section regardless if the misdemeanor has been determined to not have escalated to a felony. This is necessary to ensure that persons are charged/released within the 36 hour requirement.
- VII. Supervisor Responsibilities for Probable Cause/Warrantless Arrests
- A. Supervisors shall respond to the scene whenever notified that officers are effectuating a custodial arrest for obstructing official business; resisting arrest; or assault on an officer, where no other substantive violation is alleged.
  - B. Supervisors shall review all documentation of arrests for completeness and adherence to law and Division policy.
  - C. Supervisors shall review each report and PC affidavit form by officers under their command, whether or not they involve the seizure of contraband, and sign off on those reports to memorialize their review within 24 hours of the arrest, absent exceptional circumstances. Supervisors shall review reports and forms for deficiencies, including but not limited to:
    - 1. Canned or conclusory language without supporting detail, inconsistent information, insufficient articulation of the basis for the action, or other information in the report or form that is not correct or complete.
    - 2. Arrests following stops that were not supported by reasonable suspicion.
    - 3. Arrests that are not supported by probable cause or are otherwise in violation of the law or Division policy.
    - 4. For every search or arrest involving the recovery of contraband evidence, whether the circumstances by which the evidence was recovered and/or probable cause for the arrest, was established are plausible and complete.
    - 5. Arrests that, while comporting with law and policy, indicate a need for corrective action or review of agency policy, strategy, tactics, or training.

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- D. Reviewing supervisors shall complete an investigation in the Division tracking software if deficiencies are noted from Sections VII. C. 2. through 5. The investigation shall be forwarded through their chain of command within seven calendar days.
- E. Supervisors shall take appropriate action to address all apparent violations or deficiencies in arrests. Appropriate action may include recommending non-disciplinary corrective action for the involved officer and documenting such action in the tracking software or referring the incident for administrative or criminal investigation.

#### VIII. Training

- A. The Division shall provide officers with annual training on Search and Seizure and Probable Cause/Warrantless Arrests that is adequate in quality, quantity, type, and scope.

**THIS ORDER SUPERSEDES ANY PREVIOUSLY ISSUED DIRECTIVE OR POLICY FOR THIS SUBJECT AND WILL REMAIN EFFECTIVE UNTIL RESCINDED OR SUPERSEDED.**