
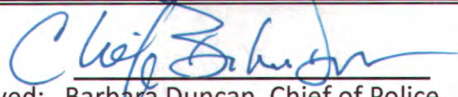


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|  | SALISBURY POLICE DEPARTMENT |
| | Written Directive: Arrest Procedures/Alternatives to Arrest |
| | Publication Date: September 30, 2019 |
| |  Approved: Barbara Duncan, Chief of Police |
| Related CALEA Standards: 1.2.1, 1.2.5, 1.2.6, 1.2.7 | Arrest Procedures/Alternatives to Arrest Section #904 |

Arrest Procedures/Alternatives to Arrest

1. Policy:

The policy of the department is to exercise the power of arrest in conformity with all applicable laws. 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.

2. Purpose:

The purpose of the policy is to ensure that all applicable laws are followed when making an arrest or using other alternatives to an arrest.

3. Alternative To Arrest:

- A. Under certain circumstances police officers are faced with situations where an arrest will not present an adequate solution to the problem. When these situations arise; officers may elect to exercise certain alternatives such as the issuance of summonses, referral to diversionary programs, referral to a social service agency, warnings in lieu of arrest for minor infractions. Examples may include:
 - a) Domestic situations where counseling may be appropriate and no crime has been committed.
 - b) Juvenile offenders.
 - c) Transient persons who need shelter, food, etc.
 - d) Certain misdemeanor cases.

- B. Authority to Issue Summonses in Lieu of Arrest/Confinement
 - a) Petty offense citations authorize police officers to issue a summons in lieu of arrest for persons charged with certain misdemeanor criminal offense. The citation may be used when enforcing city ordinances.

- C. In determining whether a summons should be issued, the officer should:
 - a) Decide whether the offense committed is of a serious nature.

- b) Make a judgment as to whether the accused poses a danger to the public or him/her.
 - c) Decide, based on the circumstances at the time whether the person may disregard a summons.
- D. The use of a warning may sometimes provide a satisfactory solution to a problem and may enhance the public perception of the department. Normally, the use of a warning occurs in traffic offenses, but occasionally may be applied to some criminal offenses. In determining if a warning should be issued the officer should consider:
- a) The seriousness of the offense.
 - b) The likelihood that the violator will heed the warning.
 - c) The reputation of the violator, i.e., known repeated offender, have they received previous warnings, etc.

4. **Petty Offense Citation:**

A. Definitions:

- a) Petty Offense: A petty offense is an offense for which the penalty may not exceed imprisonment for a period of three months or a fine of five hundred dollars. An exception to this type of offense is considered when the value of a theft is at \$100 but less than \$1,500 and the penalty is not exceeding 6 months' imprisonment or a fine not exceeding \$500 or both.
- b) Citation: A citation is the charging document for petty offenses which include any local city ordinance the police department normally enforces may be charged on this citation.

B. Procedure:

- a) All petty offenses as defined under petty offense definition will be charged on the DC-45 (Petty Offense Citation).
- b) When a defendant is charged they will be transported to S.P.D for processing and released on issuance of citations.
- c) When a defendant is issued a criminal citation, the officer will complete the DC/45 (Petty Offense Citation) and a statement of probable cause DC/CR-4A (Continuation Sheet). The officer will supply the defendant with their respective copy of the DC-45 as well as their respective copy of the statement of probable cause DC/CR. A case report will be completed and attached to the arrest paperwork. At no time will the victim(s) or witness(s) be named on the DC-45 or the statement of probable cause. All witness and victim information will be captured within the case report.
- d) The issuance of a citation is subject to all relevant laws of arrest, probable cause, and any other controlling factors which would have an impact on a custodial arrest.

- e) If the defendant cannot meet the criteria listed below, the officer must charge the individual on a statement of charges and ensure the defendant's appearance before a court commissioner. A law enforcement officer may charge a defendant by citation only if:
 - i. the officer is satisfied with the defendants' evidence of identity;
 - ii. the officer reasonably believes that the defendant will comply with the citation;
 - iii. the officer reasonably believes that the failure to charge on a statement of charges will not pose a threat to public safety;
 - iv. The defendant is not subject to arrest for another criminal charge arising out of the same incident; and
 - v. The defendant complies with all lawful orders by the officer.
 - vi. Under no circumstances will a suspected illegal alien (without a valid driver's license) be issued a traffic citation or a petty offense citation where they are released on signature. Illegal aliens (without a valid driver's license) will be arrested, transported and processed at central booking. The arresting officer will ensure that a photograph including scars, marks, and tattoos are taken, entered into CIS, and attached to the arrest report.
- f) Officers will follow district court guidelines for the completion of criminal, civil, and juvenile citations.
- g) Offenses that cannot be charged by citations:
 - i. Failure to comply with a peace order under 3-1508 of the Courts Article;
 - ii. Failure to comply with a protective order under 4-509 of the Family Law Article;
 - iii. 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 Law Article;
 - iv. 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;
 - v. Violation of an out-of-state domestic violence order under 4-508.1 of the Family Law Article: and
 - vi. Abused or neglect of an animal under 10-604 of the Criminal Law Article.
- h) When there are instances where multiple arrests are needed and manpower is not sufficient, the squad commander will make the decision whether to issue a citation and not take subject into custody. The squad commander will complete a memo to the operations commander depicting the reason why the suspect was not taken into custody. This memo will include but not limited to all the details of the initial investigation and will be completed prior to the end of the squad commander's tour of duty.

5. Release of Arrestee by Officer:

If an arrest is made on probable cause and a further investigation reveals that the suspect is not involved in a particular crime, he/she can be released. This is done by continuing the investigation after an arrest, possibly by checking the suspect's alibi and determining that he/she is not involved. It is better to release this individual than have him/her remain in jail for several months knowing a conviction cannot be sustained. Remember, in the above situation the person is arrested and the arrest report is made, but the arrest report indicates the reason for release.

The arresting officer/detective will call the on-call state's attorney and discuss the investigation with him/her. If he/she agrees, then the suspect can be released and a statement like the following can be made on the arrest report.

"Based on further investigation.....and consultation with Assistant State's Attorney _____, the suspect was released at (time and date) by _____."

An important aspect to remember is that while this investigation is being conducted, the suspect's rights cannot be violated in regards to his right to be taken before a commissioner or a judge.

6. Officer Discretion:

- A. It is difficult for a police agency to make rules covering the infinite variety of situations faced by the individual officer. The directives will define the limits of individual authority and provide guidelines for the exercise of discretion. By establishing guidelines, the police department will provide for uniformity of decisions and action and eliminate unnecessary discretion. The directives enumerated are for this agency's use only and do not apply in any criminal or civil proceeding. Violations of law will form the basis for civil and criminal sanctions in a court of law. The exercise of discretion should always be compatible with the rule of law, departmental policy, and within the limits of the officer's authority as a sworn law enforcement officer.
- B. With the exception of departmental directives, departmental policy generally gives officers factors or guidelines to consider in exercising reasonable discretion. It is up to the individual officer to consider the relevant factors, the situation, and then, using knowledge previously gained, training, and good judgment to make appropriate decisions. An officer exercising such discretionary judgment will not normally be held to be totally wrong by a supervisor, although the supervisor may point out factual errors or other alternatives which might have been more appropriate. It is from this learning experience that an officer's discretion improves and develops. The officer must decide if the use of discretion is reasonable for each particular

circumstance. Reasonableness may be judged by answering such questions as:

- a) Is my department and the law enforcement profession being properly served by the use of discretion in this instance?
- b) Does the use of discretion impact the community perspective of the department?
- c) Does the use of discretion place the community as a whole in danger in any way?
- d) Does the use of discretion in this matter violate the department's written directives or the law enforcement code of ethics?
- e) Will the use of discretion in this circumstance leave me and my department open to public criticism?
- f) Will the use of discretion achieve the desired result?

7. Arrests Made with or Without A Warrant:

As stated in the City of Salisbury, Maryland Charter (Article XVII, "Police Department", SC17-2, "Duties", A), members of the Salisbury Police Department shall at all times enforce the bylaws, resolutions and ordinances of the city and the laws of the State of Maryland relating to crimes committed within the city and take appropriate enforcement action. In all cases where a reasonable belief exists that a violation of federal law has been committed the appropriate federal agency will be notified. Members do, however, have the authority to enforce federal law where there is concurrent jurisdiction.

A. Arrest – Definition:

- a) An arrest has been defined as the detention of a known or suspected offender for the purpose of prosecuting him/her for a crime. The court has said that there is an arrest only when there is a touching by the arrestor or when the arrestee is told that he/she is under arrest and submits. It is realized that there are circumstances, such as crowd control, where touching may take place, but without the intent to arrest. Officers of the department shall ensure in an arrest situation that there is physical touching of the arrestee and that the arrestee is advised of the reason for arrest, whether the arrest is with or without a warrant.

B. Arrest - Probable Cause:

- a) The provisions of the law which define the circumstances under which an officer may arrest must be strictly observed. No person may be arrested or detained except under the authority of law. An arrest is authorized either by warrant, issued by competent authority, or without a warrant, under certain circumstances as set forth hereunder. Probable cause to arrest exists where the facts and surrounding circumstances, of which the officer has reasonable trustworthy information, would justify a man of reasonable caution to believe that an offense has been committed and that the person to be arrested had committed it. Probable cause requires a reasonable belief, based on reliable evidence, that the suspect has committed a crime. Probable cause must go beyond mere suspicion. However, it is less than absolute certainty. The lawfulness of an arrest is not affected by the fact that the arrested person may be later found to be innocent.

C. Arrest - With a Warrant:

- a) Arrest Warrant: When a warrant is placed in the hands of an officer he/she is not bound to inquire into the particulars of the complaint, or whether any was made at all. If the warrant is in due form and issued by a person having a right to issue it, the duty of the officer is to execute it without further inquiry, and the warrant will protect him.
- b) Life of Warrant: A warrant remains in force until it is returned; even if the accused has been arrested and escapes he/she may be taken again on the same warrant, if it has not been returned. A return is an official statement by an officer of what he/she has done in executing the command of the warrant. However, after a warrant has been returned, it has no validity.
- c) Authority to Alter a Warrant: No person, other than the issuing authority has the right to alter a warrant, because, if altered by a third party, it would not be the warrant issued by the authority who signed it.
- d) Requisites of a Warrant: The warrant should be signed by the authority issuing it, set forth the time and place of making it, the charge or offense, and be directed to the proper police employee, requiring him to bring the accused either generally before any commissioner or judge of the city or county where issued or specifically before the authority issuing it. The full name, or if it be unknown, a statement of the fact and a description of the person to be arrested must be given, but a mere formal irregularity upon the face of the warrant will not render the officer liable who serves it.
- e) Promptly after his/her arrest, the defendant shall be given a copy of the warrant by the arresting officer.

D. Arrest Without a Warrant:

- a) A police officer may arrest without a warrant any person who commits, or attempts to commit, any felony or misdemeanor in the presence of, or within the view of, such officer.
- b) A police officer who has probable cause to believe that a felony or misdemeanor is being committed in the officer's presence or within the officer's view, may arrest without a warrant any person whom the officer may reasonably believe to have committed such offense.
- c) A police officer may arrest a person without a warrant if the officer has probable cause to believe that a felony has been committed or attempted and that such person has committed or attempted to commit a felony whether or not in the officer's presence or view.
- d) A police officer may not, without a warrant, arrest a person he accused of having committed a misdemeanor if the misdemeanor was not committed in his presence, subject to certain exceptions.
- e) One exception allows an officer to arrest a party without a warrant for a misdemeanor that was not committed in his presence, providing the misdemeanor was committed in the presence of another police officer who promptly relays the

- information to the other officer, and the arrest is made within a reasonable time of the receipt of information relayed.
- f) Another exception provides a police employee with authority to charge a person with a violation of any of the offenses enumerated in the transportation article.
 - g) Third exception would be the domestic abuse criminal procedure.
 - h) Bailiffs are considered special police officers for the State of Maryland. On very rare occasions they do make arrests at the district court building. Their procedure, when they make an arrest, which was approved by the State of Maryland, is to contact their local law enforcement agency to handle the arrest. In cases occurring at district court on Baptist Street they are to call the Salisbury Police Department.
 - i) The bailiffs upon arrest will detain and search the arrested person. They will also recover any evidence and separate that from the arrestee's personal property. They will provide the evidence and/or personal property to the S.P.D officer upon their arrival and transfer of custody. In addition, they are required to complete an incident report which is to be faxed to S.P.D within a day or two of the arrest.
 - j) The S.P.D officer taking custody will interview the bailiff to ascertain the probable cause for the arrest. They will also collect the evidence and personal property of the arrested person and ensure the chain of custody is maintained. Finally, the officer needs to properly subpoena the bailiff as a witness for the case.

8. Student Arrest Procedures:

- A. Under the Maryland Title 7 Education Article the Salisbury Police Department is required to notify the local superintendent of education (or his/her designee), the arrestees respective school principle and the school security officer when a "student" aged 5-21 is arrested and charged with any of the below listed offenses or an offense that is related to the student's membership in a criminal gang.
 - a) Murder
 - b) Manslaughter (except involuntary)
 - c) Kidnapping/Abduction
 - d) Rape
 - e) Sex Offense (except 4th degree)
 - f) Robbery
 - g) Carjacking
 - h) Burglary 1st Degree (not others)
 - i) Felony CDS violations
 - j) Dangerous Weapons and Firearms violations
 - k) Destructive Devices violations
 - l) Arson and Malicious Burning, or attempts to
 - m) Gang Offenses
 - n) Assault (any degree)
 - o) Malicious Destruction of Property
 - p) Witness/Juror Intimidation
 - q) Motor Vehicle Theft

- r) Animal Cruelty
- B. The students name and charges will be forwarded to the local superintendent of education (or his/her designee), the arrestees respective school principle and the school security officer within 24 hours or as soon practicable. As a result, the squad commander will be responsible for notifying the coordinator of safe schools for incidents involving students of the Wicomico County Public Schools as directed by the Wicomico County superintendent of education. These notifications should be made from 0600 hours to 2200 hours unless later notification is deemed necessary but prior to end of shift.
- C. The arresting officer shall obtain the information of the current school that the arrestee is attending and document that information on the arrest report (S.P.D-006). The arresting officer will also indicate that notification was made and who the officer spoke with by noting this under the comments section on the arrest report (S.P.D-006).
- D. When it is not known if the person arrested is a Wicomico County Public School Student and verification is needed the arresting officer will contact the Wicomico County Sheriff's Office to confirm the information. If they are found to be a student, then notify him of the charges and follow through on the above described notification procedure.

9. Arrest - Federal Violations:

- A. Salisbury Police officers only have the authority to arrest for federal law violations in the following situations. They are as follows:
 - a. A felony has been committed in the officer's presence.
 - b. A federal felony violation committed and the officer has a reasonable belief that a person committed the violation.

10. Recording Arrest Information:

- A. Fingerprinting/Photographing:
 - a) When an arrest is made, the arresting officer will check the arrest file within the computer system to ascertain if the individual has a past arrest record. If so, the officer will use the correct CID number (Arrest Identification #). If this is the individual's first arrest, the next sequential number will be automatically retrieved from the computer system. For all arrests (adult and juvenile), the arresting officer will complete S.P.D-006(a,b) (front and back), which will capture the arrestees identifying information to include the current charge(s).
 - b) Adult arrestees are transported and fingerprinted at the Wicomico County Detention Center via an electronic scan fingerprinting system at the time of being processed at the facility.

- c) When the electronic fingerprinting system at the Wicomico County Detention Center is not functioning, it will be the arresting officer's responsibility to fingerprint adult arrestees.
- d) Personnel of the Wicomico County Detention Center will notify the Salisbury Police Department communications center when the fingerprint system is not functioning. Personnel may also advise police officers as the officers bring arrestees to their facility. Any officer receiving such information shall inform his supervisor immediately of that information. The arresting officer and supervisor will ensure that the arrestee is fingerprinted as part of the arrest processing.
 - i. The arresting officer will complete all pertinent information on fingerprint cards and forward to the records division for processing to the appropriate agency.
 - ii. Once an individual is arrested, the CID number (Arrest identification #) for that individual remains the same regardless of the number of times the individual is re-arrested.
 - iii. Officers are responsible for the quality of those fingerprints that they have taken. Officers will ensure that both they and the arrestee have signed the fingerprint cards. Supervisor will inspect the fingerprint cards submitted by officers.
 - iv. Palm prints and major case prints will be taken at the direction of an investigator or supervisor and need not be taken from those persons routinely arrested.

B. Photograph:

- a) Persons arrested will be photographed at the time of the arrest to be entered into agency computer-based imaging system. Arresting officers will ensure the best quality arrest photograph possible with consideration made for use in possible future photographic line-ups. The photograph should be a frontal facial photograph devoid of jewelry and other suggestive materials or expressions. Supervisors will inspect the arrest photographs submitted by officers.

11. Adult Diversion Program:

- A. The Salisbury Police Department diversion program is designed to reduce the number of negative law enforcement contacts between members of the Salisbury Police Department and the community.
- B. Eligibility:
A person who is 18 years of age or older that has been taken into custody or has had a negative contact with the Salisbury Police Department shall be eligible for diversion. Prior diversion efforts, which may include success or failure, do not disqualify individuals from future diversion opportunities.

C. Procedure:

- a) The officer must successfully get the subject to agree to have mediation;
- b) The officer will then complete SPD-283 (Juvenile/Adult Mediation Referral) form and submit the completed form to his/her supervisor;
- c) The respective supervisor shall review the completed SPD-283, as well as sign and initial the form;
- d) The completed SPD-283 form will then be attached to the arrest paperwork or the incident report paperwork by the supervisor;
- e) The supervisor will, on a daily basis, turn in any referrals along with the arrest report and/or incident report to the CID commander or his/her designee;
- f) The CID commander or his/her designee will review the daily reports as well as the referral forms;
- g) All referral forms will be routed to the CID commander and forwarded for necessary mediation services;
- h) The CID commander or his/her designee shall ensure the mediation referral forms are forwarded for necessary mediation services; and
- i) The CID commander will be the central repository for all referral documents and copied on the emailed referrals sent by his/her designee.