



# BRAINTREE POLICE DEPARTMENT

## Policy and Procedure

### Arrests

2019-57

Date of Issue: 03/12/2019

Issuing Authority:

Review Date:

Chief Mark Dubois

Revised:

Certification Standards: **1.2.5 a,b,c; 61.1.2 a,b,c**

Accreditation Standards: **1.2.6; 1.2.7**

Optional Accreditation Standards:

**General Considerations** Police officers should have a clear understanding of their powers, duties and responsibilities under the law of arrest. Failure to understand what these powers, duties and responsibilities are can result in the exclusion of evidence at trial and potential civil liability.

**Policy** It is the policy of the Braintree Police Department:

- 1) That officers make mandatory arrests as required by statute or policy;
- 2) That officers exercise discretion and make warrantless arrests as appropriate;
- 3) That officers may, depending on the circumstances, exercise discretion, and not make an arrest.

**Definitions** **Arrest** - The taking of a person into custody and depriving him/her of his/her freedom of action, in accordance with law, in order that such person can be brought before the court to answer to a criminal charge.

**Probable Cause to Arrest** - When an officer possesses reasonably trustworthy information which is sufficient for a person of ordinary or reasonable intelligence to believe that the person is committing or has committed the crime for which the arrest is being made.

**Probable Cause to Search** - Reasonably trustworthy information which would lead a person of reasonable prudence and caution to believe that what is sought will be found in the place to be searched and would justify a judge or magistrate to issue a search warrant.

**Felony** - Any crime punishable by death or imprisonment in the state

prison.

**Misdemeanor** - Any crime where there is no possibility of punishment by death or imprisonment in the state prison.

**Breach of Peace** - A violation of public order or decorum, which disturbs the public peace and tranquility or which disrupts the public peace.

**Arrest Warrant** - An order in writing, issued by an authorized court official, directed to officers authorized to serve criminal process, commanding them to arrest the person named or described therein and to bring such person before the court to answer to a charge of crime.

## Procedures

### **Arrests in General**

- a) Duly sworn police officers of cities and towns gain their authority to make arrests from M.G.L. c. 41 § 98.
- b) A duly sworn police officer may make a lawful arrest either with or without a warrant.
- c) To effectively and lawfully execute an arrest there must be:
  - i) An intention on the part of the police officer to make an arrest;
  - ii) That intent must be communicated to the person to be arrested; and
  - iii) Either a physical seizure or submission to the officer by the arrested person.
- d) Force should be only used when there is resistance or reasonable certainty of resistance. The amount of force used shall be reasonable and necessary for taking custody of the arrestee. An arrestee has no right to resist arrest, lawful or unlawful, by a police officer, unless the officer uses excessive force (see Departmental policy on ***Use of Force.***)

### **Arrests with a Warrant [1.2.5]**

- a) A police officer may make a lawful arrest with a warrant when:
  - i) The officer making the arrest and detention has actual knowledge that a valid warrant has in fact been issued for the arrest of that person, or
  - ii) The officer possesses a valid arrest warrant.
- b) Application of Warrant
  - i) An arrest warrant issued pursuant to a complaint must be founded upon probable cause supported by oath or affirmation.
  - ii) A warrant shall be directed to and executed in any place within the Commonwealth.

- iii) On July 10, 1994, the Legislature enacted M.G.L. c. 276, § 23A, which created the Warrant Management System. Under the Warrant Management System (WMS), warrants are issued electronically by the court of origin and appear in a statewide master name file. They are further entered automatically into the Criminal Justice Information System (CJIS). The complaining department receives a notice of the issuance of a warrant via CJIS.
  - iv) Warrants must be obtained from the proper authority. The following judicial officers have the statutory authority to issue arrest warrants:
    - (1) Justices of the Supreme Judicial Court, the Superior Court, and the District Court Departments; and
    - (2) A Clerk/Magistrate, Assistant Clerk/Magistrate, Temporary Clerk/Magistrate, or Temporary Assistant Clerk/Magistrate of a District Court Department.
  - v) The preference of the legislature is that defendants are summonsed rather than arrested. A summons shall issue instead of a warrant unless, in the judgment of the court or justice, there is reason to believe that the defendant will not appear upon summons.
- c) Prior to serving an arrest warrant, officers should examine it carefully to determine what their powers are under it the warrant and whether:
- i) It clearly names and describes the person to be arrested or, if his/her name is unknown, any name or description by which (s)he can be identified with reasonable certainty;  
**NOTE:** A so-called “John Doe” warrant without a further satisfactory and sufficient description is unlawful and void.
  - ii) The officer is authorized to serve it; and
  - iii) It clearly describes the offense for which the arrest is to be made.  
**NOTE:** The warrant shall recite the substance of the offense charge and it shall command that the defendant be arrested and brought before the court.
- d) A person arrested on a warrant, or otherwise taken into custody by a police officer, has the right to know the true grounds for such arrest.
- i) The officer need not have the warrant in his/her possession at the time of arrest; however, upon request (s) [s]he shall show the warrant to the arrestee as soon as possible. A printout of a warrant from CJIS shall constitute a true copy of the

warrant.

- ii) If the officer does not have the warrant in his/her possession at the time of arrest, [s]he shall inform the arrestee that a warrant has been issued and of the offense charge.
- e) After the warrant has been executed, the Shift Commander should ensure that the warrant is located on CJIS/WMS.
- f) A person who is the subject of an OUT-OF-STATE WARRANT may not be arrested in Massachusetts on that warrant. Rather, a warrantless arrest shall be made on a Massachusetts Fugitive from Justice Charge.

### **Arrests Without a Warrant [1.2.5]**

- a) Lawful Authority - An arrest without a warrant may be lawfully made when certain circumstances exist:
  - i) Felony: For a felony committed in the officer's presence or on a probable cause that a felony has been committed.
  - ii) Misdemeanor:
    - (1) For a misdemeanor committed in the officer's presence when such arrest is authorized by statute; or
    - (2) For certain misdemeanors authorized by statute for which arrest is allowed even though such misdemeanors were not committed in the officer's presence; or
    - (3) For a misdemeanor where there is no statutory authority to arrest, such arrest may be made if:
      - (a) The misdemeanor is committed in his/her presence; and
      - (b) The misdemeanor is causing or threatening to cause a breach of the peace; and
      - (c) The misdemeanor is still continuing or only briefly interrupted.
- b) Probable Cause
  - i) In addition to having lawful authority, police officers must have "probable cause" in order to make a valid arrest without a warrant.
    - (1) The element of probable cause must exist at the time of arrest. Subsequent events or information acquired later cannot be used to justify that arrest.
    - (2) The information upon which an officer relies in making an arrest must be more than just rumor or mere suspicion, but it does not require sufficient evidence to justify a

conviction.

- (3) Whether or not an arrest is based on probable cause will depend on a variety of factors, and unless the offense is committed in the officer's presence, usually no single fact alone is controlling. Therefore, the totality of circumstances surrounding the arrest is of great importance. Each officer should be aware of the following types of circumstances, which have been looked to in establishing probable cause:
- (a) Direct observations of the police officer;
  - (b) Knowledge of the prior criminal activity of the person arrested;
  - (c) Flight accompanied by other factors;
  - (d) Evasive answers and/or conflicting stories;
  - (e) Time of day or night;
  - (f) History of criminal activity in the particular area;
  - (g) Experience of the officer applied to observations and firsthand information; and
  - (h) Reliable hearsay.

c) Hearsay

- i) Hearsay statements are derived from three principle sources:
- (1) Statements from the victims and/or witness;
  - (2) Statements from other police officers;
  - (3) Statements from informants (this source that is most closely scrutinized when used to establish probable cause.) An officer relying on the hearsay statement of an informant must:
    - (a) Show the circumstances establishing the reliability of the informant (Veracity); and
    - (b) Show the circumstances establishing the reliability of the informant's information (Basis of Knowledge).

d) Extra-Territorial Arrest

Generally, the power to arrest ceases at the boundaries of the officer's city or town. Where an officer has been appointed and sworn as a "special police officer" in another jurisdiction, s/he has arrest powers in that community as well. However, there are three instances in which an officer may make "extra-territorial" arrests, that is, arrests outside the limits of the city or town where

[s]he has been appointed:

- i) Fresh Pursuit in State: An officer may “on fresh and continued pursuit,” pursue and arrest an offender in any city or town in Massachusetts if:
  - (1) The offense is one for which a warrantless arrest is authorized; and
  - (2) The offense was committed in the officer’s presence; and
  - (3) The offense was committed in the officer’s jurisdiction.
- ii) Mutual Aid: If there is a mutual aid agreement in effect between his/her city or town and the city or town to which [s]he has been assigned under the mutual aid agreement, an officer may exercise the same authority in such city or town as [s]he exercises in his/her own city or town.
- iii) Interstate Fresh Pursuit: An officer may “on fresh pursuit” pursue and arrest a person who has committed a felony in Massachusetts in any other state if that other state has in force similar interstate felony fresh pursuit laws. (New York and all New England states have such laws.)

e) Arrests in a Dwelling

- i) Police officers may enter the dwelling of a person named in an arrest warrant.
- ii) An officer may enter a suspect’s home to serve an arrest warrant without obtaining a search warrant, provided there is a reasonable belief that the arrestee is in his or her residence at the time the arrest warrant is executed.
- iii) To serve an arrest warrant on private property, police officers shall knock and announce their authority and purpose (unless the warrant issued is a “No Knock and Announce Warrant”) and wait a reasonable period to be admitted.
- iv) Once a reasonable time has passed and the officers have not been voluntarily admitted, they may use whatever force is reasonably necessary to gain entrance. **NOTE:** The least amount of force that will accomplish an entrance should always be used.
- v) If the police officers reasonably believe that announcing their presence and purpose will endanger themselves or others, or will result in the escape of the wanted person or the destruction of evidence, they may dispense with the announcement of authority and purpose.

- (1) In such cases, they may attempt to deceive the suspect into voluntarily opening the door or gain entrance by a ruse.
  - (2) Massachusetts has given recognition to a “Useless Gesture” exception, at least in the narrow situation where the facts known to the officers would justify them in being virtually certain that the occupant already knows the police officers’ identity and purpose. Further, violation of the “no-knock” rule may require that the evidence, which has been seized, be suppressed.
- vi) If at the time police make application for an arrest warrant, they reasonably believe that dispensing with the knock and announce rule may be necessary, they should so inform the magistrate, give their reasons, and ask that the arrest warrant be marked “**No Knock and Announce Warrant.**”
- (1) Valid reasons for requesting a “No Knock and Announce Warrant” include: a reasonable belief that the suspect would escape; the suspect would resist violently if not taken quickly and by surprise; or that evidence or contraband would be destroyed if the police have to knock and announce their presence.
  - (2) A defendant is entitled to suppression of the evidence seized as the result of a “no knock” search warrant where the officer had knowledge or information available that would have justified dispensation with the rule, but had not presented the evidence to the issuing magistrate.
  - (3) When police seek to execute a no knock and announce warrant, they must reappraise the situation at that time. If the reason(s) or circumstance(s) that justified the issuance of the no knock and announce warrant are no longer present, officers must follow the normal knock and announce procedure.
- f) Service of Arrest Warrant at the Dwelling of a Party Not Named in the Warrant
- i) If police seek to arrest a person in someone else’s dwelling, they must obtain a search warrant unless:
    - (1) Lawful consent to enter is granted; or
    - (2) Exigent circumstances are present which excuse the failure to obtain a search warrant.
  - ii) Exigent or emergency circumstances necessary to excuse the failure to obtain a warrant before entering a dwelling to make an arrest are determined by the following factors:
    - (1) The crime was one of violence or a showing that the suspect is armed;

- (2) There is a clear demonstration of probable cause to arrest;
- (3) There is strong reason to believe the suspect is in the dwelling;
- (4) The likelihood that the suspect would escape if not apprehended immediately;
- (5) Whether the entry can be made peaceably; and/or
- (6) Whether the entry would be in the nighttime (or could be made in the daytime when the clerk/magistrates are more readily available).

g) Warrantless Arrest in Dwelling

Police officers should first determine whether a warrantless entry and arrest is allowed by law. Generally, no arrest warrant (or search warrant) is required to arrest a person who is in public. However, with regard to making an entry into and arrest in a dwelling, the following standards apply:

- i) If the arrest pursuit was set in motion in public, the officer may make a hot pursuit warrantless entry into a private dwelling if the suspect runs into a dwelling. **NOTE:** The arrest must be for a felony or jailable misdemeanor.
- ii) If the police seek to arrest a person in that person's own dwelling, they must obtain a search warrant unless:
  - (1) Lawful consent to enter is granted; or Exigent circumstances are present which excuse the failure to obtain an arrest warrant.
- iii) If the police seek to arrest a person in someone else's dwelling, they must obtain a search warrant unless:
  - (a) Lawful consent to enter is granted; or Exigent circumstances are present which excuse the failure to obtain a search warrant.

h) Police Discretion to Arrest / Arrest Alternatives [1.2.6] [1.2.7]

- i) There are circumstances when the public interest is better served by not making and arrest.
- ii) Arrest alternatives include citations, summonses, informal resolutions, warnings and referrals to other agencies.
- iii) Circumstances where alternatives to arrest may be appropriate include the following:
  - (1) When an arrest could aggravate community conflict or possibly precipitate a serious disorder.
  - (2) When there is a greater priority to respond to a more serious crime or to an urgent public emergency.
  - (3) In minor juvenile offenses where documented diversion

and consultation with the parents can avoid a court appearance.

- (4) In other minor offenses where a summons can effectively accomplish the intended purpose.
  - (5) Minor criminal motor vehicle offenses. **[1.2.6]**
- iv) Circumstances where little or no discretion to use alternatives to arrest is appropriate include the following: **[1.2.7]**
- (1) Domestic Violence
    - (a) Arrests are statutorily mandated for violations of restraining orders (209A's) and per department policy **Domestic Abuse/Violence** officers shall arrest for domestic crimes.
  - (2) Operating Under the Influence of Alcohol
    - (a) The standard response is to arrest all operators for whom probable cause exists for operating under the influence of alcohol or drugs. See department policy; **OUI Enforcement.**
    - (b) Officers may, with a supervisor's approval, issue a criminal summons for operators injured in serious motor vehicle accidents.
  - (3) Traffic Offenses – All enforcement actions will be accomplished using one of the following methods **[1.2.6]** **[61.1.2 a-c]:**
    - (a) Verbal Warnings: A verbal warning may be issued when the violator commits a minor motor vehicle infraction. **[61.1.2 c]**
    - (b) Written Warnings: A written warning is a proper alternative by officers in response to a minor traffic infraction. **[61.1.2 c]**
    - (c) Civil Citations: An officer's discretion and experience should be used in the decision to take punitive action against a violator. The officer should consider this course of action for: **[61.1.2 b]**
      - (i) Violators who jeopardize the safe and efficient flow of vehicular and pedestrian traffic;
      - (ii) Hazardous moving violations;
      - (iii) Multiple violations;
      - (iv) Operating unsafe and/or improperly equipped vehicles; and
      - (v) Repeat offenders.
    - (d) Criminal Complaint: Officers may issue a criminal citation for violations of criminal motor vehicle laws. **[61.1.2 b]** **[1.2.6]**
    - (e) Arrest: Officers may effect the physical arrest of any

person in violation of those traffic laws allowing an arrest. Officers also have the discretion to issue a criminal complaint/citation for an arrestable offense.  
**[61.1.2 a] [1.2.6] [1.2.7]**

i) Officer Safety

Arresting officers should take necessary steps to ensure their own personal safety. Such steps shall include, but are not limited to:

- i) Obtaining assistance when necessary, whether before or after the arrest. This is advisable when:
  - (1) There is more than one person to be arrested; or
  - (2) A dangerous crime is involved; or
  - (3) Prior experience has shown the need for assistance in particular situations.
- ii) Searching for and seizing any instruments capable of being used as a weapon and evidence of that crime (where applicable);
- iii) Making a search of the area within the immediate reach and control of the person(s) arrested for weapons or destructible evidence; and
- iv) Keeping the person(s) arrested in control and in view.

j) Following Arrest

- i) Once and arrest is made officers should prevent arrestees from injuring themselves or others, from escaping, and from disposing of evidence.
- ii) At the time of arrest, a “search incidental to arrest shall be conducted, if practical, in accordance with the departmental policy.
- iii) Persons arrested should be given the Miranda warnings as soon as possible. They shall be given Miranda warnings prior to interrogation or any questioning likely to elicit and incriminating response.
  - (1) The warnings should be read from a card or form to ensure that none are omitted. This procedure is beneficial for other reasons:
    - (a) The card/form itself can later be introduced as evidence;
    - (b) Officers have tangible proof that they have not relied solely on memory;
    - (c) The suspect can also be permitted to read the card/form.
  - (2) Each officer giving the warning shall ask the person

arrested if s/he has heard and understood the warnings given.

(3) Questioning of arrested persons shall not take place until these warnings have been given unless there are exigent circumstances. However, if suspects freely choose to divulge information without questioning, there is no violation of rights simply because they were not given these warnings. There is no requirement that an officer prevent suspects from continuing to talk. Whenever statements are made voluntarily and with no compulsion, such statements should be noted and incorporated as part of the officer's official report.

iv) The person(s) arrested shall be handcuffed (double locked when reasonably possible) and transported to the police station in accordance with the departmental policy on ***Transporting Detainees***.

v) All arrests should be booked according to department policy, that includes criteria for:

- (1) Complete reports; [1.2.5 a]
- (2) Fingerprinting; and [1.2.5 b]
- (3) Photographing. [1.2.5 c]