



## Lunenburg Police Department

<b>Policy Number:</b> <b>1.11</b>	<b>Subject:</b> <b>Arrest</b>
<b>Issue Date:</b> <b>9/15/2008</b> <b>Revision Date:</b> <b>8/19/2021; 2/3/2022</b> <b>Effective Date:</b> <b>8/19/2021</b>	<b>Massachusetts Police Accreditation Standards Referenced:</b> <b>1.2.5; 1.2.6; 1.2.7; 1.3.1; 72.7.1 (d); 74.1.2; 74.1.3; 74.3.2; 82.3.6</b>
<b>Issuing Authority:</b>  <i>Chief Thomas L. Gammel</i>	

### I. GENERAL CONSIDERATIONS

The decision to deprive individual citizens of their freedoms by placing them under physical arrest is one of the most critical decisions made by law enforcement officers. This policy and procedure is designed to provide the officer with the information necessary to make lawful arrests in the performance of his/her duties.

### II. POLICY

It is the policy of the Lunenburg Police Department:

- A. To ensure that when persons are arrested and taken into police custody, all constitutional and statutory rights to which they are entitled will be provided at the time of their arrest and while in custody thereafter; [1.2.3]
- B. That a warrant should be obtained prior to making an arrest when the offender does not create a threat to the public, or is not likely to flee, and especially where less serious offenders are involved; and
- C. When appropriate circumstances exist, officers may exercise discretion and not make an arrest. In such limited cases, citations, summonses, informal resolutions, warnings and referrals to other agencies may be alternatives to arrest. [1.2.6; 1.2.7] Circumstances where alternatives to arrest may be appropriate including 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 neighborhood quarrels, noisy parties, landlord-tenant problems and minor disturbances of the peace where no serious crime has been committed and the officer can successfully act as a mediator.
4. In minor juvenile offenses where a warning and a talk with the parents can avoid a court appearance.
5. In other minor offenses where a summons can effectively accomplish the intended purpose.
6. Minor motor vehicle offenses.

### III. PROCEDURES

#### A. Definitions

1. *Arrest*: An arrest is defined as the exercise of custody over a person, which deprives that person of his/her liberty for more than a limited period of time, in order that s/he may be forthcoming to answer for the commission of a crime. An arrest is significant for numerous reasons:
  - a. It constitutes a critical stage of a criminal process.
  - b. It constitutes a substantial interference with rights of freedom.
  - c. It constitutes a very visible police activity within the community.

Whether or not an arrest has occurred will depend on the circumstances of each incident. However, a lack of formal activity does not preclude a finding of arrest. Merely because an officer fails to use the word “arrest” does not necessarily negate the existence of an arrest. Objective factors such as physical compulsion as well as subjective factors such as the reason for submission may be considered; when sufficient to establish arrest, important consequences may result (civil or criminal liability of the officer, admissibility of evidence, etc.). An arrest may be made with a warrant, or without a warrant in certain circumstances. However, arrest with a warrant is always preferred.

An arrest with or without a warrant may be made only by sworn law enforcement officers.<sup>1</sup> **[74.3.2]**

2. *Felony*: Any crime punishable by death or imprisonment in the state prison.<sup>2</sup>
3. *Misdemeanor*: Any crime less than a felony.<sup>3</sup>
4. *Breach of the Peace*: A violation of public order or decorum which disturbs the public peace and tranquility; or any act of disorderly conduct which disrupts the public peace.

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<sup>1</sup> G.L. c. 41, § 98.

<sup>2</sup> G.L. c. 274, § 1.

<sup>3</sup> Id.

5. *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 a crime.

#### **B. Probable Cause**

1. An officer must have probable cause to make an arrest with or without a warrant. Probable cause means that based on all facts and circumstances within the officer's knowledge, and of which s/he has reasonable trustworthy information, there is sufficient evidence to warrant a reasonable and prudent person to believe that the person to be arrested has committed, is committing or is attempting to commit a crime.<sup>4</sup> The evidence required to make an arrest is more than what is required for mere suspicion, but less than what is needed to support a conviction.

**NOTE:** It should be remembered that the ultimate goal of an arrest is the supporting conviction obtained in a court of law.

2. Officers may often encounter difficulty when establishing probable cause. While the courts and defendants have the benefit of hindsight, an officer in the field does not. Whether or not his/her arrest is based on probable cause will depend on a variety of factors, and unless the offense is committed in his/her presence, then usually no single fact alone is controlling.
  - a. Of great importance, therefore, is the totality of circumstances surrounding the arrest. Each officer should be aware of the type of circumstances which have been looked to in establishing probable cause:
    - i. Direct observation of the police officer;
    - ii. Knowledge of the prior criminal record or bad reputation of the person arrested;
    - iii. Evasive actions or flight from the scene by the suspect;
    - iv. Evasive answers and/or conflicting stories;
    - v. Time of day or night;
    - vi. Past experience of the officer in similar criminal situations; and/or
    - vii. Reliable hearsay.
  - b. Hearsay statements often present additional problems. Usually, they are derived from three principal sources:
    - i. Statements from the victims and/or witnesses;
    - ii. Statements from other police officers; and/or
    - iii. Statements from informants.
  - c. It is this latter source, such hearsay is closely scrutinized when used to establish probable cause. The officer relying on the hearsay statement of an informer must show:
    - i. The veracity of the information; and
    - ii. Knowledge and credibility of the informant.

#### **C. Arrest With A Warrant [1.2.5]**

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<sup>4</sup> Beck v. Ohio, 379 U.S. 89, 85 S. Ct. 223 (1964); Commonwealth v. Crawford, 410 Mass. 75, 571 N.E.2d 7 (1991); Commonwealth v. Motta, 424 Mass. 117, 676 N.E.2d 795 (1997).

1. An arrest warrant issued pursuant to a complaint must be founded upon probable cause supported by oath or affirmation. Officers shall recite the facts that constitute probable cause in the complaint.
2. A warrant must be obtained from the proper authority and must be signed by the authorized court official issuing it. As defined by G.L. c. 276, § 21, Justices of the Supreme, Judicial, Superior or District Courts may issue an arrest warrant.
3. A non-criminal immigration detainer (Form I-247 Request) is not an arrest warrant, nor does it provide probable cause for arrest.
4. *Procedures For Obtaining An Arrest Warrant*
  - a. The officer shall, under oath and affirmation, file a written complaint with the authorized official.
  - b. The warrant must be obtained from, and signed by the proper authority as set forth above.
  - c. The full legal name and any other available identifiers, or a sufficient description of the person to be arrested must appear in the arrest warrant. Therefore, so-called “John Doe” warrants, without such description, are illegal and void.
  - d. The substances of the charge must appear in the warrant.
5. *Arrest Warrant Service*

The following criteria must be met in order for an officer of this Department to affect the arrest of a person by virtue of a warrant:

  - a. The arresting officer verifies or causes to be verified that there is actual knowledge to believe that there is a warrant in full force and effect and that the person s/he has detained is in fact the person on said warrant. **[74.1.3]**
  - b. The arresting officer verifies or causes to be verified that the warrant has been issued by a court of competent jurisdiction and authority. **[74.1.3]**
  - c. The arrest warrant or warrant management system (WMS) entry should clearly describe the offense for which the arrest is to be made.
6. Service of the arrest warrant should be made promptly to prevent possible dismissal of the complaint or indictment. An officer who willfully delays service of a warrant is subject to a statutory fine.
7. A person arrested on a warrant, or otherwise taken into custody by a police officer, has a right to know the grounds for such arrest.
  - a. If the officer does not know of the offense charged at the time of arrest, s/he shall inform the defendant of such within a reasonable time thereafter, but prior to the completion of the booking process.
  - b. Officers are not required to have the arrest warrant in their physical possession at the time of arrest, however, upon request s/he shall show the warrant or a copy of the WMS entry to the defendant as soon as possible.
  - c. If the officer does not have the warrant in his/her possession at the time of arrest, s/he shall inform the defendant that a warrant has been issued and of the offense charged.

8. *Warrants Issued By Other Jurisdiction*

- a. *Other County*: When a person subject to a warrant issued by another county is arrested, [s]he shall be brought before a court of the county where the arrest was made in order to be admitted to bail.<sup>5</sup>
- b. *Other State*: 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 may be made on a Massachusetts Fugitive from Justice Charge or a Massachusetts Fugitive from Justice Warrant may be applied for at the District Court, or other appropriate Court, in accordance with G.L. c. 276, § 20A.

D. Arrest Without A Warrant [1.2.5]

1. Warrantless arrests merit more detailed analysis and study because of the subjective factors involved. If an unlawful arrest is made, any search made incidental to that arrest may be found unlawful and any evidence seized may be declared inadmissible. Any confession or admission made by the person arrested may also be excluded, if made after an unlawful arrest.
2. Arrest without a warrant is constitutionally valid if and only if the arresting officer has ***probable cause*** (as described above) and the arrest is for one of the following:
  - a. A felony committed in the arresting officer's presence or on reasonable and justifiable belief that a felony has been or is being committed; or
  - b. A misdemeanor committed in the officer's presence and causing or threatening to cause a breach of the peace, which is continuing or only briefly interrupted.
  - c. A misdemeanor not amounting to a breach of the peace that is committed in the officer's presence and the arrest is authorized by statute.
  - d. Certain violations of G.L. c. 94C even though the misdemeanor is not committed in the officer's presence.
  - e. A violation of an active 209A order, though not committed in the officer's presence.
3. Arrest without a warrant is constitutionally valid when probable cause exists for that arrest. In other words, when the facts within the officer's knowledge were sufficient to allow a reasonable and prudent person to believe that the individual arrested had committed or was committing a crime. Probable cause does not require evidence that would justify a conviction. However, arrest on mere suspicion is illegal.
4. There is one exception to the necessity that arresting officers have, either personally or by firsthand knowledge, all the facts necessary for probable cause. This is when the collective knowledge (sufficient to establish probable cause) of the police department as a whole is imputed to an individual officer when s/he is requested or authorized by his/her supervisors to make an arrest.
5. Following an arrest without a warrant, the arresting officer shall clearly articulate, in his/her report, those facts and circumstances which established probable cause.

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<sup>5</sup> G.L. c. 276, § 29.

## E. Procedures Regarding Arrest [1.2.5]

1. Arrest shall never be made to show authority or to vent personal feelings.
  - a. The attitude of the offender should not be the determining factor in making an arrest.
  - b. Verbal abuse is never a sufficient justification for an arrest.
  - c. Arrest shall never be a substitute for resolving a problem when less severe methods are available.
2. To effectively and lawfully execute an arrest there must be:<sup>6</sup>
  - a. An intention on the part of the police officer to make an arrest;
  - b. The knowledge and understanding of that intent must be communicated to the person to be arrested; and
  - c. Either a physical seizure or submission to the officer by the arrested person.
3. At the time of arrest, unnecessary conversation shall be avoided and any orders or statements to the person(s) arrested shall be clear and brief. However:
  - a. The arresting officer shall identify him/herself as a police officer.
  - b. Whenever possible, the person being placed under arrest shall be expressly informed that he/she is under arrest.
  - c. An officer shall state the reason for the arrest and allow examination of the arrest warrant, if any, by the person arrested or other persons acting on his/her behalf.<sup>7</sup> These procedures are not binding when the officer is met with resistance.
4. The arresting officer shall not act in a careless or routine manner but shall take all necessary steps to ensure the safety of him/herself and other persons. Such steps shall include, but are not limited to:
  - a. Obtaining assistance when necessary whether before or after the arrest. This is particularly advisable when:
    - i. There is more than one person to be arrested;
    - ii. A dangerous crime is involved, usually a felony of a serious nature;
    - iii. Prior experience has shown the need for assistance in similar situations; and/or
    - iv. If the person to be arrested is believed to be armed and/or dangerous
  - b. Seizing any instruments capable of inflicting bodily injury or causing death.
  - c. Making a search of the area within the immediate reach and control of the person(s) arrested.
  - d. Keeping the person(s) arrested in front of the officer at all times. If more than one officer is present, the additional officer shall never pass or position him/herself between the arresting officer and the person arrested.
5. Force shall only be used when there is resistance or reasonable certainty of resistance. The amount of force shall be restricted to that which is reasonable, necessary, and proper for

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<sup>6</sup> Mass. General Hospital v. Revere, 385 Mass. 772, 434 N.E.2d 1851 (1982), *rev. on other grounds*, 463 U.S. 239 (1983); Commonwealth v. Cook, 419 Mass. 192, 644 N.E.2d 203 (1994).

<sup>7</sup> G.L. c. 263, § 1.

safely taking the detainee into custody, or for overcoming any resistance that may be offered. [1.3.1]

6. The person(s) arrested shall be given the *Miranda Warnings* prior to interrogation regarding guilt. [1.2.3(b)]
  - a. Warnings should not be given from memory. They should be read from a card or other permanent record of them to ensure that none are omitted. This procedure is beneficial for other reasons:
    - i. The card itself can later be introduced as evidence;
    - ii. The officer has tangible proof that s/he has not relied solely on his/her memory; and
    - iii. The suspect can then be allowed to read the card him/herself.
  - b. Each officer giving the warning shall ask and verify that the person arrested has heard and understood the warnings to be given.
  - c. No questioning of the person shall take place until the warnings have been given. However, officers must note that the Miranda Warnings are aimed at "custodial interrogation". Therefore, if a suspect freely chooses to divulge information without questioning, there is no violation of his/her rights simply because s/he was not given his/her warnings. There is no requirement that an officer prevent the suspect from continuing to talk, and whenever statements are made voluntarily and with no compulsion, such statements shall be noted. However, if an officer wishes to gain further information through questioning, the warnings shall be given before pursuing the matter further.
  - d. Any custodial interrogations conducted at the station or other place of detention shall be in compliance with this department's policies and procedures pertaining to the taping of interrogations.
7. The person(s) arrested shall be promptly and safely transported in compliance with the Departmental Policies and Procedures **3.01 Transportation of Detainees**.
8. Upon arrival at the Police Department, the person(s) arrested shall be informed of the right to use the telephone and shall be permitted to use the phone within 1 hour thereafter.<sup>8</sup> [72.7.1(d)]

## F. Extra-Territorial Arrest

1. *Arrest With a Warrant*
  - a. An arrest with a warrant may be made at any-time and in anyplace throughout the Commonwealth.
  - b. When the arrest is to take place outside the jurisdiction of the arresting officer, local authorities shall be notified and requested to make the warrant arrest.
  - c. In cases where the agency having jurisdiction is unable to assist in the arrest, Officers shall be authorized to make the warrant arrest after notifying the agency of the existence of the warrant and their intentions.

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<sup>8</sup> G.L. c. 276, § 33A.

2. *Arrest Without a Warrant*

- a. A proclamation of a state emergency declared by the governor allows an officer to make an arrest where s/he has been stationed.
- b. An officer may “on fresh and continued pursuit” pursue and arrest an offender in any other city or town in the Commonwealth if:
  - i. The offense is one for which a warrantless arrest is authorized;
  - ii. The offense was committed in the officer’s presence; and
  - iii. The offense was committed in the officer’s jurisdiction.
- c. An officer may “on fresh and continued pursuit” pursue and arrest a person who has committed a felony in Massachusetts and may pursue and arrest such person in any other state if that other state has in force similar interstate fresh pursuit laws. (New York and all of New England have such laws). [41.2.2(h)]
- d. An officer may make arrests in another community when his/her services have been requested by the proper official in that community, or while on official business the officer observes a present danger to the public safety and the department of jurisdiction authorizes his/her intervention.
- e. An officer may exercise his/her citizen’s arrest powers. For example, any citizen may make an arrest for a felony if a felony has, in fact, been committed. When a police officer exercises citizen’s arrest powers s/he need only have probable cause to believe that a felony has been committed. Such citizen’s arrest powers may be exercised in another state.

3. It is important to note that statutes regarding the jurisdictional boundaries of courts do not enlarge or otherwise affect an officer’s arrest powers within his/her jurisdiction.

G. Arrests In Dwellings

1. Police Officers may enter the dwelling of a person named in an arrest warrant.
  - a. An officer may enter a suspect’s home to serve an arrest warrant without obtaining a search warrant, provided there is reason to believe the suspect is there and a valid arrest warrant exists for him/her.
  - b. To serve an arrest warrant on private property, police officers should first 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.<sup>9</sup>
  - c. Once a reasonable time has passed and the officers have not been voluntarily admitted, and there is reasonable cause to believe that the wanted person is on the premises, officers may use whatever force is reasonably necessary to gain entrance.<sup>10</sup> However, officers must obtain authorization from the Officer-in-Charge prior to an entrance, unless exigent circumstances warrant quick action.
- NOTE: The least amount of force that will accomplish an entrance should always be used.
- d. 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

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<sup>9</sup> Commonwealth v. Antwine, 417 Mass. 637, 632 N.E.2d 818 (1994).

<sup>10</sup> Commonwealth v. Reynolds, 120 Mass. 190 (1876).

purpose.<sup>11</sup> In such cases, they may attempt to deceive the suspect into voluntarily opening the door, or gain entrance by a ruse or ploy, if this will result in a safe and successful apprehension with less destruction of property or risk of harm to persons.

2. *Service Of Warrant At The Dwelling Of A Party Not Named In The Arrest Warrant*

- a. If police seek to arrest a person in someone else's dwelling they must first obtain a search warrant, unless:<sup>12</sup>
  - i. The owner/controller of said property gives the officer consent to enter the residence; or
  - ii. There is probable cause, not just suspicion, to believe that the person named in said arrest warrant is within the dwelling or building to be entered, and exigent circumstances are present which excuse the failure to obtain a search warrant. Any such entries or attempted entries of this nature shall only be made under the supervision of and in the presence of the Officer-in-Charge; except if exigent circumstances require immediate entry before the superior officer can arrive on the scene. In this case, express authorization for such entry must be given by the Officer-in-Charge.
- b. Exigent or emergency circumstances necessary to excuse the failure to obtain a search warrant before entering a dwelling to make an arrest will be determined by a combination of the following factors:
  - i. The crime was one of violence or a showing that the suspect is armed.
  - ii. There is a clear demonstration of probable cause to arrest.
  - iii. There is a strong reason to believe the suspect is in the dwelling.
  - iv. The likelihood that the suspect would escape if not apprehended immediately.
  - v. Whether the entry can be made peaceably.
  - vi. Whether the entry would be in the nighttime (or could be made in the daytime when court officials are more readily available).

3. *Warrantless Arrests In A Dwelling*

- a. With regard to making a warrantless arrest in a dwelling, police 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 the 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 the dwelling.
  - ii. If police seek to arrest a person in that person's own dwelling they must obtain an arrest warrant, unless:<sup>13</sup>
    - 1) lawful consent to enter is granted; or
    - 2) exigent circumstances are present which excuse the failure to obtain the warrant.

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<sup>11</sup> Commonwealth v. Allen, 22 Mass. App. Ct. 413, 494 N.E.2d 55 (1990).

<sup>12</sup> Warden v. Hayden, 387 U.S. 294, 87 S. Ct. 1642 (1967); Commonwealth v. DeRosia, 402 Mass. 284, 522 N.E.2d 408 (1988).

<sup>13</sup> Payton v. New York, 445 U.S. 573, 100, S. Ct. 1371 (1980); Steagald v. U.S., 451 U.S. 204, 101 S. Ct. 1642 (1981); Commonwealth v. Forde, 367 Mass. 798, 329 N.E.2d 717 (1975).

- iii. If police seek to arrest a person, without an arrest warrant, in someone else's dwelling they must first obtain a search warrant, unless:
  - 1) lawful consent to enter is granted; or
  - 2) exigent circumstances are present which excuses the failure to obtain the search warrant. [74.3.1]

#### H. Arrest Reporting Procedures

1. Upon the arrest or filing of formal charges for a misdemeanor or felony, the arresting officer shall complete all required departmental reports. [1.2.5(a)]
2. An arrest number shall be assigned to every individual arrested by officers of this Department. Each time a person is arrested a new arrest number shall be generated. This is committed to establishing a well-organized criminal history file, in which, once a person has been arrested, a reference to all subsequent arrests and information concerning that person can be obtained under his/her social security number and/or name. [82.3.6]
3. Upon the arrest or filing of criminal charges against any person known or identified as a full or part-time police officer in this or any other state, the arresting/charging officer shall inform the Officer-in-Charge, who will inform the Chief of Police of the situation. The Chief, or the Officer-in-Charge, shall then notify the arrested officer's department, by telephone or in writing, and inform his/her Chief of Police of the situation.

#### I. Off-Duty Arrests

1. Off-duty officers are often faced with situations involving criminal conduct that they are neither equipped nor prepared to handle in the same manner as if they were on duty. This could lead to unnecessary injuries to off-duty officers and confusion for those on duty officers arriving at the scene trying to correctly assess the facts.
2. Off-duty arrests will be permitted when a Department member is off duty and within legal jurisdiction of the Town of Lunenburg when all of the following three circumstances exist:
  - a. There is an immediate need for the prevention of a crime or apprehension of a subject;
  - b. The arresting officer is in possession of appropriate police identification; and
  - c. There is a likelihood that the delay posed by the calling and arriving of on-duty personnel would:
    - i. Allow the subject to escape or remain unknown;
    - ii. Allow further criminal activity; or
    - iii. Escalate the situation to a more serious degree than would exist if the arrest were made immediately.
3. Off-duty officers shall refrain from enforcing minor violations (such as parking or minor motor vehicle offenses) unless the officer has reason to believe that the violation may progress to a more serious crime or lead to personal injury.
4. Off-duty officers shall refrain from making arrests in situations in which they are personally involved. "Personally involved" for the purposes of this policy and procedure

shall mean that the officer was involved with the suspect in a noncriminal dispute or other matter which escalates to the point where a crime has been committed and an arrest can be made. In these incidents, on-duty officers will be used to assess the situation and make any decisions on further legal action. This does not apply, however, to those instances where the police officer him/herself is the victim. In these incidents, the on duty Officer-in-Charge shall be notified and will intervene. The Officer-in-Charge shall submit a report of the incident to the Chief of Police.

5. While off-duty, it is the responsibility of each member of this Department to be alert to any suspected or observed criminal activity and report that activity to on-duty officers, or take actions as authorized in this policy.
6. When an off-duty arrest becomes necessary, the arresting officer shall abide by all Department regulations concerning arrests. The officer shall use only that force necessary to detain the subject securely and then shall contact the Department for assistance. The officer shall file an incident report immediately and shall notify the on-duty shift commander of the circumstances surrounding the arrest.