



Town of Lexington

Police Department

Subject: Arrest (with or without a warrant) Reference: 1.2.6; 1.2.7	
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By Order of: Mark J. Corr, Chief of Police	

Policy & Procedure

41A

The Municipal Police Institute, Inc. (MPI) is a private, nonprofit charitable affiliate of the Massachusetts Chiefs of Police Association. MPI provides training and model policies and procedures for police agencies. This policy is an edited version of MPI Policy 1.11, "Arrest."

GENERAL CONSIDERATIONS AND GUIDELINES

The authority to arrest, or otherwise deprive a person of their liberty, is one of the most serious and sensitive duties of a police officer. Whenever there is sufficient time and opportunity to do so, a warrant should be obtained in advance of an arrest.

By the very nature of police work, however, many arrests must be made without a warrant. Police officers must have a clear understanding of their authority, duties and responsibilities under the law of arrest.

If an unlawful arrest is made, any search made incidental to that arrest may be found to be unlawful and any evidence seized declared inadmissible. Any confession or admission may also be excluded, if made after an unlawful arrest. In addition, civil liability attaches to unlawful arrests.

Officer safety must be a primary concern in arrest situations. It should always be recognized that there is no routine arrest. Because of the unpredictability of human behavior, there is always a potential for danger in every arrest and officers must be alert to this possibility. Life threatening struggles have resulted during simple misdemeanor arrests. As a fundamental guideline in making arrests, all officers should always anticipate the unexpected.

It is the policy of the Lexington 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 in the performance of their duties;
3. A warrant should be obtained whenever possible, prior to making an arrest
4. When appropriate circumstances exist, officers may exercise discretion and issue citations or summonses. Informal resolutions such as warnings and referrals to other agencies may also be alternatives to arrest.

PROCEDURES

A. Definitions

1. **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.ⁱ
2. **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.
3. **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.ⁱⁱ
4. **Felony:** Any crime punishable by death or imprisonment in the state prison.ⁱⁱⁱ
5. **Misdemeanor:** Any crime where there is no possibility of punishment by death or imprisonment in the state prison.^{iv}
6. **Probable Cause:** Probable cause for arrest exists if, at the time of arrest, the facts within the knowledge of the arresting officer (or within the collective knowledge of the police) are reasonably trustworthy and are sufficient to warrant a person of reasonable caution and prudence to believe that the person being arrested has committed or is committing the crime for which the arrest is being made.^v

B. Arrests in General

1. Authority
 - a. Lexington Police Officers gain their authority to make arrests from M.G.L. c. 41, § 98.

- b. A sworn police officer may make a lawful arrest with or without a warrant. Whenever possible, arrests should be made with a warrant.
- c. To effectively and lawfully execute an arrest there must be:
 - i. An intention & purpose on the part of the police officer to take the person into custody and deprive him/her of freedom under lawful authority.
 - ii. The communication to and knowledge by the person of the police officer's purpose.
 - iii. Physical seizure of the person by the arresting officer or submission to his authority.

NOTE: the determination used as to when a person is under arrest is an **objective person standard**. A person is seized within the meaning of the Fourth Amendment only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he/she was not free to leave.

2. Force

- a. Force should only be used when there is resistance or reasonable certainty of resistance.
- b. The amount of force shall be restricted to that which is reasonable, necessary, and proper for the safe custody of the arrestee, or for overcoming any resistance that may be offered. See Department policy **41B-Use of Force**.^{vi}
- c. An arrestee has no right to resist arrest, lawful or unlawful, by a police officer, unless the officer uses excessive force.^{vii}

C. Arrests with a Warrant

1. Authority

- 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 warrant then in full force and effect for the arrest of such person has in fact been issued, or
 - iii. The officer possesses a valid arrest warrant.
- b. A warrant may be executed in any place within the Commonwealth by a sworn police officer^{viii}

2. Application of Warrant:
 - a. An arrest warrant issued pursuant to a complaint must be founded upon probable cause. This should be supported by the officer's oath or affirmation, but it is not necessary to recite the facts that constitute probable cause in the complaint.^{ix}
 - b. The warrant must be obtained from the proper authority. The following judicial officers have the statutory authority to issue arrest warrants:
 - i. Justices of the Supreme Judicial Court, the Superior Court, and the District Court Departments;^x and
 - ii. A Clerk/Magistrate, Assistant Clerk/Magistrate, Temp Clerk/Magistrate, or Temporary Assistant Clerk/Magistrate of a District Court Department.^{xi}
 - c. The preference of the legislature is that defendants are summonsed rather than arrested. A summons shall be issued 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.^{xii}
 - d. An arrest warrant may be issued in any case except where the accused is a juvenile less than twelve years of age, in which case a summons is the appropriate mechanism.^{xiii}

3. Execution
 - a. **Reasonable Person Standard.** The point at which a person is deemed to be under arrest is established by the "reasonable person" standard, which reads:

"If in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave, a "seizure" (arrest) of the person has occurred." **Commonwealth v. Borges**, 395 Mass. 788, 791 (1985); **U.S. v. Mendenhall**, 446 U.S. 544, 554 (1980); **Commonwealth v. Avery**, 365 Mass. 59, 65 (1974).
 - b. Some of the constitutional and statutory rights, which apply at the point of arrest include:
 - i. **Miranda** warnings as a pre-requisite to custodial interrogation;

- ii. Search and seizure requirements subsequent to the arrest;
 - iii. Property inventory requirements;
 - iv. Procedural requirements such as the right to use the telephone, the right to be informed of the charges which resulted in the arrest, and the right to be brought before a magistrate.
- c. Prior to serving an arrest warrant, an officer should examine it carefully to determine what the officer's powers are under it 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;^{xiv}
 NOTE: A so-called "John Doe" warrant without a further satisfactory and sufficient description is unlawful and void.^{xv}
 - 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 charged, 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 a 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]he shall show the warrant to the arrestee as soon as possible.^{xvi} A printout of a warrant from CJIS shall constitute a true copy of the warrant.^{xvii}
 - 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 charged.^{xviii}

- iii. If the officer does not then know of the offense charged, [s]he shall inform the arrestee thereof within a reasonable time after the arrest.^{xix}
 - e. After the warrant has been executed, a “Locate” shall be put on the warrant in the Criminal Justice Information System, Warrant Management System (CJIS/WMS).^{xx}
- 4. Warrants Issued by Other Jurisdictions
 - 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.^{xxi}
 - 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 shall be made pursuant to M.G.L. 276 §20B, Fugitive from Justice.^{xxii}

D. Arrests without a Warrant

- 1. Generally: Warrantless arrests merit much more detailed study because of the subjective factors involved.
 - a. 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.
 - b. Any confession or admission made by the person arrested may also be excluded, if made after an unlawful arrest.
- 2. Lawful Authority: An arrest without a warrant may be lawfully made when certain circumstances exist:
 - a. FELONY: For a felony committed in the officer's presence or on probable cause that a felony has been committed.
 - b. MISDEMEANOR:
 - i. For a misdemeanor committed in the officer's presence when such arrest is authorized by statute; or
 - ii. For certain misdemeanors authorized by statute for which arrest is allowed even though such misdemeanors were not committed in the officer's presence; or

- iii. For a misdemeanor where there is no statutory authority to arrest, such arrest may be made only if:
 - (a) The misdemeanor is committed in her/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.
- 3. Specific statutory misdemeanors where an officer has the authority to arrest for an offense not committed in the officer's presence but where there is probable cause to believe that the person to be arrested committed the offense. These statutory offenses include:
 - a. Shoplifting: M.G.L. Chapter 266, section 30A provides that the statement of a merchant or his employee or agent that a person has violated this section shall constitute probable cause for arrest. However, police officers should attempt to make an independent determination of probable cause by questioning the merchant as to his basis of knowledge.
 - b. Violations of Domestic Abuse and Restraint Orders M.G.L. Chapter 208, section 34C. The authority to arrest is granted in M.G.L. Chapter 276, section 28.
 - c. Violation of Abuse Prevention Act; M.G.L. Chapter 209A, sec. 6.
 - d. Operating a Motor Vehicle While Intoxicated: M.G.L. Chapter 90, section 21.
 - e. Violations of Controlled Substance Act: M.G.L. Chapter 94C, section 41.
 - f. Possession/Receiving of Motor Vehicle or Part with Altered or Obliterated Identifying Number: M.G.L. Chapter 266, section 139(c).
 - g. Violation of harassment orders under 258E.
- 4. Selected Statutes Authorizing Arrest for Particular Misdemeanors Without a Warrant.
 - Abuse Prevention, Family/Household Member (M.G.L. Ch. 209A, sec. 6).
 - Accosting and Annoying Persons of the Opposite Sex (M.G.L. Ch. 272, sec. 53, 54).

- Alcoholic Beverage Laws, Violation of (M.G.L. Ch. 138, sec. 56).
- Anti-Litter Law, Refusal to give Name (M.G.L. Ch. 270, sec. 16A).

- Bombs/High Explosives, Illegal Possession of (M.G.L. Ch. 148, sec. 35).

- Bylaws and Ordinances, Violation of Certain (M.G.L. Ch. 272, sec. 59).

- Children in Need of Services (M.G.L. Ch. 119, sec. 39H).

- Cigarettes, Illegal Transportation or Possession of Unstamped or Untaxed (M.G.L. Ch. 64C, sec. 8 and 35).

- Common Nightwalkers, Male or Female (M.G.L. Ch. 272, sec. 53 and 54).

- Controlled Substances Law, Violation of (M.G.L. Ch. 94C, sec. 41).

- Credit Card Offenses Involving Fraud, Larceny, Misrepresentation, etc. (M.G.L. Ch. 266, sec. 37B and 37C).

- Cruelty to Animals (M.G.L. Ch. 272, sec. 54 and 82).

- Curfew Law, Knowingly Violating Official (M.G.L. Ch. 40, sec. 37A).

- Disorderly Persons, Disturber of the Peace, etc. (M.G.L. Ch. 272, sec. 53 and 54).

- Dog and Other Animal Fighting (M.G.L. Ch. 272, sec. 89).

- Election Laws, Violation of (M.G.L. Ch. 56, sec. 57).

- Fireworks, Unlawful Possession for Sale (M.G.L. Ch. 148, sec. 39).

- Fish and Game Laws, Violation of (M.G.L. Ch. 131, sec. 87).

- Fugitives from Justice from Another State (M.G.L. Ch. 276, sec. 20B).

- Gaming Laws, Violation of Certain (M.G.L. Ch. 271, sec. 10A).

- Gaming in Public Place (M.G.L. Ch. 271, sec. 2).

- Indecent Exposure (M.G.L. Ch. 272, sec. 53 and 54).
- Larceny, Regardless of Property Value (M.G.L. Ch. 276, sec. 28).
- Lewd and Wanton Person (M.G.L. Ch. 272, sec. 53).
- Malicious Mischief on Sunday (M.G.L. Ch. 266, sec. 131).
- Molotov Cocktail or Similar Device, Possession, Sale or Use (M.G.L. Ch. 266, sec. 102B).
- Motor Vehicle Laws, Violation of Certain (M.G.L. Ch. 90, sec. 21).
- Railroad Offenses, etc. (M.G.L. Ch. 160, sec. 220).
- Rivers and Harbors, Offenses Upon (M.G.L. Ch. 91, sec. 58).
- Rubbish, Throwing or Placing in Public Way -- If unknown to Officer (M.G.L. Ch. 272, sec. 60).
- Shoplifting (M.G.L. Ch. 266, sec. 30A).
- Toxic Vapors, Inhaling for Purpose of Intoxication (M.G.L. Ch. 270, sec. 18).
- Trespass After Being Forbidden (M.G.L. Ch. 266, sec. 120).
- Water Supply, Willfully Polluting (M.G.L. Ch. 111, sec. 171).
- Youth Service Board Escape (M.G.L. Ch. 120, sec. 13).

5. Probable Cause

- a. In addition to having lawful authority, it is required under the Fourth Amendment that police officers have "probable cause" in order to make a valid arrest without a warrant.^{xxiii} [See definition of "probable cause" in definitions section.]
- b. 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.^{xxiv}
- c. 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.^{xxv}

Note: It does require a reasonable, common sense approach by a police officer and an honest judgment based upon a combination of factors, any of which standing alone might not be enough to justify an arrest but which, if viewed as a whole, constitute probable cause.

- d. Probable cause to make an arrest is always an overriding consideration for every police officer.
 - i. 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 a deciding factor.
 - ii. 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 and must be able to articulate with specificity:
 - (a) Direct observations of the police officer;
 - (b) Knowledge of the prior criminal record or criminal activity of the person arrested;^{xxvi}
 - (c) Flight accompanied by other factors;^{xxvii}
 - (d) Evasive answers and/or conflicting stories;^{xxviii}
 - (e) Time of day or night;^{xxix}
 - (f) History of criminal activity in the particular area;^{xxx}
 - (g) Experience of the officer applied to observations and firsthand information;^{xxxi} and
 - (h) Reliable hearsay.^{xxxii}
- e. HEARSAY: Hearsay statements often present problems in establishing probable cause and also evidentiary problems during trial. Usually, they are derived from three principal sources:
 - i. Statements from the victims and/or witnesses;
 - ii. Statement from other police officers;
 - iv. Statements from informants.

- (a) It is this source that is most closely scrutinized when used to establish probable cause.
- (b) An officer relying on the hearsay statement of an informant must:
 - Show the circumstances establishing the reliability of the informant; and
 - Show the circumstances establishing the reliability of the informant's information.^{xxxiii}

E. Extra-Territorial Arrest without a warrant:

Other than constitutional safeguards, the other major constraint on the power of arrest is jurisdictional. 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 (often neighboring) jurisdiction, [s]he has arrest powers in that community as well. However, there are **four** 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.

1. **FRESH PURSUIT IN STATE:** An officer may, "on fresh and continued pursuit," pursue and arrest an offender in any other city or town in Massachusetts if:^{xxxiv} Note: "Fresh Pursuit" is another term for "Hot Pursuit"
 - a. The offense is one for which a warrantless arrest is authorized; and
 - b. The offense was committed in the officer's presence; and
 - c. The offense was committed in the officer's jurisdiction (city or town, etc.).
2. **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, or acting within the Massachusetts General Laws pertaining to provision of mutual aid, an officer may exercise the same authority in such city or town as [s]he exercises in his/her own city or town.^{xxxv} See Policy 1B-Requesting Mutual Aid.
3. **INTERSTATE FRESH PURSUIT:** An officer may "on fresh 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 felony fresh pursuit laws.^{xxxvi} (New York and all New England states have such laws.)

4. CITIZEN'S ARREST

- a. 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.
- b. When a police officer exercises his/her citizen's arrest powers outside his/her jurisdiction, [s]he need only have probable cause to believe that a felony has been committed and that the person arrested committed it.^{xxxvii}
- c. Such citizen's arrest powers may be exercised in another state.^{xxxviii}

F. Arrests in Dwellings

1. Service of Warrant At Dwelling of Named Person

- a. Police officers may enter the dwelling of a person named in an arrest warrant 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.^{xxxix}
- b. **KNOCK AND ANNOUNCE:** To serve an arrest warrant on private property, police officers shall 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.^{xl}
 - i. 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.^{xli}
 - ii. The least amount of force that will accomplish an entrance should always be used.
- c. **DISPENSING WITH ANNOUNCEMENT:** 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.^{xlii}

- i. In such cases, they may attempt to deceive the suspect into voluntarily opening the door, or gain entrance by a ruse, if this will result in a safe and successful apprehension with less destruction of property or risk of harm to persons.^{xliii}
 - ii. 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.^{xliv} (An example of a “Useless Gesture” would be officers being witnessed handcuffing a subject having to show identification as to who they were to someone else).
 - iii. Further, violation of the “no-knock” rule may require that the evidence, which has been seized, be suppressed.^{xlv}
- d. NO KNOCK WARRANT: 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.”
- i. Valid reasons for requesting a “No Knock and Announce Warrant” would include a reasonable belief that the suspect would escape, or 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.^{xlvi}
 - ii. A defendant is entitled to suppression of the evidence seized subsequent to a “no-knock” search where the officer had knowledge or information available that would have justified dispensation with the rule, but had not presented that evidence to the issuing magistrate.^{xlvii}
 - iii. However, when the police seek to execute the “No Knock and Announce Warrant,” they must reappraise the situation at that time. If the reason or circumstance that justified issuance of the “No Knock and Announce Warrant” is no longer present, then they must follow the normal knock and announce procedure.^{xlviii}
2. Service of Arrest Warrant at the Dwelling of a party not named in the Warrant

- a. If police seek to arrest a person in someone else's dwelling, they must obtain a search warrant unless:^{xlix}
 - i. Lawful consent to enter is granted; or
 - ii. Exigent circumstances are present which excuse the failure to obtain a search warrant.

- b. 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 established by **Commonwealth v. Forde**:
 - i. Whether the crime was one of violence or there is a showing that the suspect is armed;
 - ii. Whether there is a clear demonstration of probable cause to arrest;
 - iii. Whether there is strong reason to believe the suspect is in the dwelling;
 - iv. Whether there is the likelihood that the suspect would escape if not apprehended immediately;
 - v. Whether the entry can be made peaceably; and/or
 - vi. Whether the entry would be in the nighttime (or could be made in the daytime when clerk/ magistrates are more readily available).

- c. 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 an arrest in a dwelling, the following standards apply:
- d. 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.
- e. If the police seek to arrest a person in that person's own dwelling, they must obtain an arrest warrant unless:
 - i. Lawful consent to enter is granted; or
 - ii. Exigent circumstances are present which excuse the failure to obtain an arrest warrant.

G. Alternatives to Arrest [1.2.6]

1. Although police officers must always be guided by the intent and purpose of the law, there are limited circumstances in the discretion of the officer involved when the public interest would be better served by not making an arrest, even though there is legal justification for such action.
2. Alternatives to Arrest include:
 - a. Citations,
 - b. Summonses,
 - c. Informal resolutions,
 - d. Warnings,
 - e. Diversion of youthful offenders and
 - f. Referrals to other agencies.
3. Discretionary Situations:
 - a. Circumstances where alternatives to arrest may be appropriate include the following:
 - i. When an arrest could generate community conflict or precipitate serious disorder;
 - ii. When there is a greater priority to respond to a more serious crime or other urgent public emergency;
 - iii. 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.
 - iv. In minor juvenile offenses where a warning and a talk with the parents can avoid a court appearance; (See department policy **44B - Handling Youthful Offenders.**)
 - v. In other minor offenses where a summons can effectively accomplish the intended purpose; and
 - vi. Minor motor vehicle offenses.

- b. Circumstances where little or no discretion to use alternatives to arrest is appropriate include the following: [1.2.7]
 - i. Domestic Violence
 - (a) Arrests are statutorily mandatory for violations of restraining orders (209A's)ⁱⁱ
 - (b) Arrests are the preferred method for domestic crimes of violence including assaults and assaults and battery.ⁱⁱⁱ
 - (c) For further information, see the department policy **41E-Domestic Violence**.
 - ii. Operating Under the Influence of Alcohol:
 - (a) Officers should arrest all operators for whom probable cause exists for operating under the influence of alcohol or drugs.
 - (b) Officers may, with a supervisor's approval, issue a criminal summons for operators injured in serious motor vehicle accidents.

- H. Officer Safety: Arresting officers should not act in a careless or routine manner. They must take all necessary steps to ensure their own personal safety as well as the safety of the public and to secure evidence. Such steps shall include, but are not limited to:
 - 1. Obtaining assistance when necessary whether before or after the arrest. This is particularly advisable when:
 - a. There is more than one person to be arrested;
 - b. A dangerous crime is involved, usually a felony of a serious nature; or
 - c. Prior experience has shown the need for assistance in particular situations.

 - 2. Searching for and seizing instruments capable of inflicting serious bodily injury or causing death, and evidence of any crime;

3. Making a search of the area within the immediate reach and control of the persons arrested for weapons or destructible evidence. See **Chimel v. California**, 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969); and
 4. Keeping the person(s) arrested in control and in view of the officer at all times. If more than one officer is present, the additional officer should never pass or position themselves between the arresting officer and the person arrested.
- I. Following Arrest
1. Once an arrest is made, it is the responsibility of the arresting officer(s) to ensure that arrestees do not injure themselves or others, and that they do not escape or dispose of evidence.
 2. At the time of arrest, a "search incidental to arrest" shall be conducted in accordance with the Department policy **41M - Searches and Seizures**.
 3. At the time of arrest, unnecessary conversation should be avoided. Orders or statements to people arrested should be clear and brief.
 4. People arrested must be provided with Miranda warnings as soon as possible and prior to interrogation or any questioning that is likely to elicit an incriminating response. See Department policy **41K - Interrogating Suspects and Arrestees**.
 5. See Department policy **44B - Handling Youthful Offenders** when a person under the age of seventeen is arrested.
 6. The person arrested shall be handcuffed and promptly and safely transported to the station house in accordance with the Department policy **71A-Transporting Detainees**.
 7. Upon arrival at the station house, the person arrested shall be booked and processed in accordance with the department policy **72B – Booking**.
- J. REPORTS: Arresting officers will make a full and complete report of any arrest, in accordance with standard Department procedures. *Warrant arrests will be documented through the journal note process and department booking, unless there are additional charges.*
- K. Special Arrest Situations
1. **Diplomats and Consular Officials**. Diplomatic immunity is granted by the United States Government under the provisions of the Vienna Convention on Diplomatic Relations.

- a. The Vienna Convention provisions establish immunity for two classes of people:
 - i. Diplomats and members of their families enjoy full immunity.
 - ii. Employees of diplomatic missions and members of their families enjoy immunity with respect to acts performed in the course of their official duties.
- b. While the burden is upon the Diplomat to claim immunity through the presentation of valid credentials, diplomatic status may also be verified through the United States State Department at the following numbers:
 - i. The State Department Consular's Office, (202) 632-0706.
 - ii. Diplomatic Officer's (202) 632-0291; Consular Officer (202) 632-0605; nights and weekends (202) 632-2412.
- c. Police officers shall not permit a person with diplomatic immunity to present a clear and present danger to himself or others. However, in the absence of this danger, Diplomats and Consular Officers should not be physically restrained, deprived of their motor vehicle by towing, issued motor vehicle citations, or subjected to sobriety tests.
- d. If any Diplomat or Consular Officer is stopped while operating a motor vehicle under the influence of alcohol or drugs, the officer should:
 - i. Immediately notify the Commanding Officer or Patrol Supervisor.
 - ii. If necessary, transport the official to a telephone where arrangements can be made for further assistance.
 - iii. If necessary, arrange for a taxi or other transportation.
- e. Consular Officers and their family members that are not recognized as having diplomatic immunity shall be handled with the same courtesy, respect and procedures that would be applicable to any other member of the community. If the family member is a juvenile, the person shall be released to a parent.
- f. All serious incidents involving Diplomats and Consular Officers and their families shall be reported to the U.S. State Department, Office

of Protocol by the Commanding Officer. This notification shall be reported to the Chief of Police as soon as possible.

2. **Foreign Nationals** (any person who is not a U.S. Citizen)
 - a. When a foreign national is arrested or detained, they must be advised of the right to have their consular officials notified.
 - b. In some cases, regardless of their wishes, the nearest consular official must be notified of the arrest or detention of a foreign national. Fifty-eight countries or territories require notification if one of their citizens is arrested or detained. This can be found on the U.S. State Department website:
http://travel.state.gov/law/consular/consular_5125.html
 - c. A complete list of Consular Notification and Access can be obtained on the U.S. Department of State Bureau of Consular Affairs website www.travel.state.gov/law/consular/consular

3. **United States Armed Forces Deserters.** Any officer having the authority to apprehend offenders under the laws of the United States, of a state, a territory, commonwealth or possession; or the District of Columbia, may apprehend a deserter from the Armed Forces and deliver him into the custody of those forces (Chapter 47 of Title 10 section 808, Article 8 U.S. code). In addition, the Interstate Agreement on Detainers Act provides the authority to detain deserters until the establishment of military control. No bail is authorized for military desertion.
 - a. **Absent without leave (AWOL)** - Any individual who is missing from his/her military assignment for 30 days or less is classified as absent without leave in all branches of the Armed Forces.
 - i. Although the arrest and detention for military authorities of AWOL persons is lawful, it will often be difficult to verify the AWOL status because this information is not maintained in a central location.
 - ii. Arrest of an AWOL person should not be made until the Shift Commander has verified the AWOL status of the suspect **and** insured that proper military authorities will take custody of the prisoner as soon as possible.
 - iii. Verification should be obtained by telephoning one of the Armed Forces listed below. The name and rank of the verifying military officer should also be recorded.

4. **DESERTERS** - Any individual who is missing from his/her military assignment for more than 30 days is classified as a Deserter in all branches of the Armed Forces. This person will be found in NCIC wanted persons files after having been entered by military authorities.
 - a. A person may be temporarily detained when there is probable cause to believe that the person is a Deserter and/or there is a NCIC wanted person listing.
 - b. The Shift Commander should verify the Deserter status of each person prior to an arrest. Verification can be obtained by telephoning one of the Armed Forces listed below.
5. No member or employee of the Lexington Police Department shall accept any reward or payment for the apprehension or delivery of any person wanted by the Armed Forces for AWOL or desertion.
6. **DESERTER INFORMATION POINTS AND CONTACTS FOR VERIFICATION:**
 - UNITED STATES NAVY
Naval Military Personnel Command (NMPC-843)
Washington, DC 20370
1-800-336-4974 or 1-202-694-2551/2552/2553/2554
NCIC ORI USN 0000000
 - Navy Absentee Collection Unit
Naval Education and Training Center, Bldg. 149
Newport, RI 02841-5001
1-401-841-2681/2682/2683
 - UNITED STATES MARINE CORPS
Commandant, U.S. Marine Corps
Code NPH-57
Washington, DC 20380
1-202-694-2927/2180
 - UNITED STATES COAST GUARD
Washington, DC
1-202-426-1830
 - UNITED STATES ARMY
United States Army Deserter Information Point
Fort Benjamin Harrison, Indiana 46249
1-317-542-3711/3712/3713

- UNITED STATES AIR FORCE
Manpower Personnel Center
Randolph AFB, Texas 78148
1-512-652-5118/3505

* When in doubt, contact Hanscom Air Force Base for assistance.

6. For additional information, see the Navy Deserter Apprehension Program Booklet (October 1985) and the Department of Defense Form DD-553 (February 1983).

ⁱ See, 6A C.J.S. “Arrest” §4.

ⁱⁱ See 11 C.J.S. “Breach of the Peace” §1.

ⁱⁱⁱ M.G.L. c. 274, §1.

^{iv} M.G.L. c. 274, §1.

^v *Beck v. Ohio*, 379 U.S. 89, 85 S. Ct. 223 (1964); *Com. v. Crawford*, 410 Mass. 75, 571 N.E.2d 7 (1991); *Com. v. Motta*, 424 Mass. 117, 676 N.E.2d 795 (1997).

^{vi} See *Com. v. Klein*, 372 Mass. 823, 363 N.E.2d 1313 (1977).

^{vii} *Com. v. Moreira*, 388 Mass. 596, 447 N.E.2d 1224 (1983).

^{viii} M.G.L. c. 276, §23.

^{ix} *Com. v. Baldassini*, 357 Mass. 670, 260 N.E.2d 150 (1970).

^x M.G.L. c. 276, §21.

^{xi} M.G.L. c. 318, §32.

^{xii} M.G.L. c. 276, §24.

^{xiii} M.G.L. c. 119, §54.

^{xiv} *Won Sun v. U.S.*, 371 U.S. 471, 83 S. Ct. 407 (1963).

^{xv} *Com. v. Crotty*, 92 Mass. 403 (1865).

^{xvi} Mass. Rules of Crim. Proc. 6(c)(3).

^{xvii} M.G.L. c. 276, §23A.

^{xviii} *Id.*

^{xix} *Id.*

^{xx} *Id.* at 6(c)(4).

^{xxi} M.G.L. c. 276, § 29.

^{xxii} M.G.L. c. 276, § 20B.

^{xxiii} See *Whren v. U.S.*, 116 S. Ct. 1769 (1996).

^{xxiv} *Beck v. U.S.*, 385 U.S. 293, 87 S. Ct. 408 (1966); *Com. v. Bottari*, 395 Mass. 777, 482 N.E.2d 321 (1985).

^{xxv} *Won Sun v. U.S.*, 371 U.S. 471, 83 S. Ct. 407 (1963); *Com. v. Stevens*, 361 Mass. 885, 283 N.E.2d 673 (1972), *Com. v. Roman*, 414 Mass. 642, 609 N.E.2d 1217 (1993).

^{xxvi} *Com. v. Rossetti*, 349 Mass. 626, 211 N.E.2d 658 (1964); *Com. v. Silva*, 366 Mass. 402, 359 N.E.2d 942 (1974).

^{xxvii} *Won Sun v. U.S.*, 371 U.S. 471, 83 S. Ct. 407 (1963); *Com. v. Thibeau*, 384 Mass. 762, 429 N.E.2d 1009 (1981).

^{xxviii} *U.S. v. Brown*, 457 F.2d 731 (1st Cir. 1972); *Com. v. Chaisson*, 358 Mass. 587, 266 N.E.2d 311 (1971).

^{xxix} *Com. v. Ellis*, 365 Mass. 574, 254 N.E.2d 408 (1970).

^{xxx} *Com. v. Mercado*, 422 Mass. 367, 773 N.E.2d 243 (1996); *Com. v. Doulette*, 32 Mass. App. Ct. 506, 609 N.E.2d 473 (1992).

^{xxxi} *Com. v. Mitchell*, 353 Mass. 426, 233 N.E.2d 205 (1967); *Com. v. Santaliz*, 413 Mass. 238, 596 N.E.2d 337 (1992).

^{xxxii} *Draper v. U.S.*, 358 U.S. 307, 79 S. Ct. 329 (1959).

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- xxxiii *See Aguilar v. Texas*, 378 U.S. 108, 84 S. Ct. 1509 (1964); *Spinelli v. U.S.*, 393 U.S. 410, 89 S. Ct. 584 (1969); *Com. v. Frazier*, 410 Mass. 235, 571 N.E.2d 1356.
- xxxiv M.G.L. c. 41, §98A.
- xxxv M.G.L. c. 40, §8G.
- xxxvi In Massachusetts, see M.G.L. c. 276, ss. 10A-10D (The Uniform Extraterritorial Arrest on Fresh Pursuit Law).
- xxxvii *Com. v. Claiborne*, 423 Mass. 275, 667 N.E.2d 873 (1996); *Com. v. Harris*, 11 Mass. App. Ct. 165, 415 N.E.2d 216 (1981).
- xxxviii *Com. v. Harris*, 11 Mass. App. Ct. 165, 415 N.E.2d 216 (1981); *Com. v. Gullick*, 386 Mass. 278, 435 N.E.2d 348 (1982); *Com. v. Dise*, 31 Mass. App. Ct. 701, 583 N.E.2d 271 (1991).
- xxxix *Com. v. Silva*, 440 Mass. 772, 802 N.E.2d 535 (2004).
- xl *Com. v. Antwine*, 417 Mass. 637, 632 N.E.2d 818 (1994); *Com. v. Silva*, 440 Mass. 772, 781 n. 12, 802 N.E.2d 535, 543 n. 12 (2004).
- xli *Com. v. Reynolds*, 120 Mass. 190 (1876).
- xlii *Com. v. Allen*, 22 Mass. App. Ct. 413, 494 N.E.2d 55 (1990).
- xliii *Com. v. Cundriff*, 382 Mass. 137 (1980).
- xliv *Com. v. Gondola*, 28 Mass. App. 286, 550 N.E.2d 880 (1990); *rev. den'd* 407 Mass. 1103, 554 N.E.2d 1214 (1990).
- xlvi *Com. v. Gomes*, 408 Mass. 43, 556 N.E.2d 100 (1990).
- xlvi *U.S. v. Ramirez*, 523 U.S. 65 (1998).
- xlvi *Com. v. Gomes*, 408 Mass. 43, 556 N.E.2d 100 (1990).
- xlvi *Com. v. Scalise*, 387 Mass. 413, 439 N.E.2d 818 (1982).
- xlix *Warden v. Hayden*, 387 U.S. 294, 87 S. Ct. 1642 (1967); *Com. v. DeRosia*, 402 Mass. 284, 522 N.E.2d 408 (1988).
- ¹ *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); *Com. v. Forde*, 367 Mass. 798, 329 N.E.2d 717 (1975).
- li M.G.L. c. 209A, §6(7).
- lii M.G.L. c. 209A, §6(7).