

Orono Police Department

Standard Operating Procedures

Arrest

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SUBJECT: Arrest

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APPROVED: _____

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Chief of Police**

I. Policy

An arrest significantly affects the constitutional rights of the person being placed in custody. Therefore, officers must use sound judgment when deciding whether to exercise the police authority to arrest. The authority to arrest does not always include the duty to arrest. An officer must employ his discretion, common sense, experience and good judgment in deciding whether to effect an arrest. In all instances, the constitutional rights of the accused person are to be recognized and protected.

Officers should always consider whether an arrest would cause a greater risk of harm to the public than allowing a person to remain at large. Wise police practice may at times require a restraint of the power to arrest.

II. Purpose

The purpose of this procedure is to establish uniform, legal procedures by which an Orono Police Officer takes a person into custody.

III. Definitions

Arraignment - An initial appearance of the arrested person before a judge within 48 hours of the arrest in order to determine probable cause and set bail

Arrest - the apprehension or detention of a person in order that he/she may be brought before a court to answer for an alleged crime

Felony - Murder or any Class A, B or C crime

Misdemeanor - Any Class D or E crime

Felony Fresh Pursuit - an officer's immediate pursuit of a person, suspected of committing a felony, into another jurisdiction after the officer has attempted to arrest the suspect in the officer's jurisdiction.

Misdemeanor Fresh Pursuit - Instant pursuit of a person suspected of committing a misdemeanor or traffic infraction with the intent to apprehend

Hot Pursuit - The pursuit of a criminal suspect into a constitutionally protected area, i.e. a dwelling place, without a warrant in order to effect an arrest which was set in motion in a public place. The pursuit must be instantaneous.

Probable Cause - The facts and circumstances within an officer's knowledge, which the officer received through reasonably

trustworthy information, which are sufficient to convince a person of reasonable caution to believe that an offense has been or is being committed and a particular person(s) is committing it.

Warrant - a written order issued by a proper judicial authority upon probable cause, directing the arrest of a particular person or persons. A warrant is issued on the basis of a sworn complaint, charging that the accused has committed a crime, and an affidavit setting forth the facts and circumstances giving probable cause to issue the arrest warrant.

IV. Procedures

A. Warrant Arrest

1. Whenever practicable, an arrest should be made with a warrant.
2. The warrant should contain the following information: the caption of the issuing court; the defendant's name (if known) and/or a brief description of the defendant; date of birth; a description of the offense charged; a command to the appropriate officer(s) to arrest the defendant; and a magistrate's signature.
3. Prior to the execution of an arrest warrant, the arresting officer must verify the existence and validity of the warrant through the Communications Center. If an officer has any questions regarding the validity of a warrant or the identity of the person he is about to arrest, he should first discuss his concerns with his supervisor.
4. An arrest warrant may be executed at any time of the day or night or on any day of the week unless otherwise stated in the warrant. It is not necessary for the officer to be in possession of the warrant.
5. An arrest does not have to occur immediately upon issuance of the warrant. However, the execution of a warrant should not be unreasonably delayed.
6. Officers arresting a person with a warrant are required to provide the person with the following information prior to or simultaneous with the arrest:

- a. that the person is under arrest;
 - b. that the officer has the authority to arrest, i.e., announce identity as a police officer; and
 - c. the reason for the arrest, i.e. the crime charged. (An officer may refrain from providing this information if it would endanger the officer or make it difficult to effect the arrest.)
7. The officers shall include a copy of the warrant confirmation with the arrest report.

B. Arrests without warrants

1. The authority of a law enforcement officer to arrest without a warrant is established by 17-A M.R.S.A. subsection 15. All officers are expected to know and follow that law.
2. In domestic violence cases, the officer shall follow the procedures outlined in SOP 5-13, Domestic Violence.
3. Except for those situations enumerated in 17-A M.R.S.A. subsection 15 (1)(A), misdemeanors must be committed in an officer's presence in order to justify an arrest without a warrant. The phrase, "committed in the presence," is defined by 17-A M.R.S.A. subsection 15 (2) and generally means that an officer may use one or more senses (sight, hearing, taste, touch and smell) to determine facts indicating the commission of a misdemeanor. Prior to making an arrest, the officer must have personal knowledge of these facts; in other words, information obtained by direct perception through the officer's own senses.
4. An officer investigating a crime may enhance the senses in various ways. This includes, but is not limited to, flashlights, binoculars, dogs, searchlights, burglar alarms or an admission or confession of a suspect.
5. If an officer is making an arrest without a warrant for a misdemeanor committed in his presence, then the arrest must take place within a reasonable time after the officer witnesses the conduct. Obviously, a "reasonable time" will always depend on the circumstances of a particular case. In any event, the

arrest should always be made as soon as it is practicable.

6. If an officer is making an arrest for a crime listed in 17-A M.R.S.A. subsection 15 (1)(A), i.e. a felony, domestic violence case or other exempt misdemeanor, the arrest does not need to be made at the time of the commission of the crime or even a reasonable time thereafter. An officer may postpone making an arrest for legitimate investigative purposes, such as to complete further undercover work, to avoid alerting other offenders or to protect the identity of an informant. The purpose for the delay must be reasonable and cannot be designed to prejudice a person's constitutional rights.

C. Arrests outside of Municipal Boundaries

1. An officer may make a lawful arrest with or without a warrant beyond the town limits in cases of fresh pursuit. In order for fresh pursuit to be lawful, the officer must have had authority to arrest within his jurisdiction; must be pursuing a suspect who is attempting to avoid capture; and must begin the pursuit promptly and maintain it continuously. If the pursuit is for a felony, the pursuit must occur without unreasonable delay. The continuity of the pursuit is not legally broken by unavoidable interruptions connected with the act of apprehension, i.e. summoning assistance, obtaining further information. If the pursuit is for a misdemeanor, it must be made immediately or instantly.

D. Use of Force

1. A police officer's authority to arrest provides the primary justification for the officer's right to use force. The force used in effecting an arrest shall be in accordance with 1-8 Situational Use of Force, and State law (see 17-A M.R.S.A. subsection 107).

E. Entry of Dwellings

In general, an officer may not enter a dwelling to arrest a person without a warrant, unless there is consent or exigent circumstances. Whether an arrest warrant or search warrant is required depends on whether the dwelling to be entered is a suspect's home or another person's home.

1. Suspect's home - An arrest warrant gives an officer limited authority to enter a suspect's dwelling if the officer has reason to believe the suspect is at home.
2. Third person's home - An arrest warrant does not authorize a police officer to enter the home of another person in order to search for a suspect unless there is consent or exigent circumstances. In order to enter a third person's home, the officer must obtain a search warrant.
3. Hot pursuit - Officers may enter a dwelling in order to complete an arrest of a person, which was set in motion in a public place. The pursuit must be instantaneous.
4. Exigent circumstances - In determining whether exigent circumstances exist to justify the arrest without a warrant entry of a dwelling place, the officer should consider the following factors:
 - a. is there probable cause to believe a crime has been committed;
 - b. is there reason to believe the person who committed the crime is in the dwelling place;
 - c. the seriousness of the crime;
 - d. the risk to public safety if the person is not immediately apprehended;
 - e. the risk that a delay in apprehension would result in the movement or destruction of evidence and/or contraband; and
 - f. if there is some other means of apprehending the suspect.
5. Forced entry - before an officer may lawfully force his way into a dwelling (with or without a warrant) to make an arrest, the officer must first knock on the

door, announce why he is there and demand admittance. If the demand is refused or met with silence, then the officer may forcibly enter the dwelling.

An unannounced entry may be made when:

- a. the officer's purpose is already known to the occupants;
- b. the personal safety of the officer or third persons is at risk;
- c. an announcement may result in the escape of the suspect; and
- d. an announcement may allow the occupants to destroy evidence.

If an officer is in doubt regarding his authority to enter a dwelling place, a supervisor should be consulted.

F. Officer Safety

Arresting officers should take all necessary steps to ensure their safety and the safety of any other persons involved in the arrest. This includes:

1. Obtaining assistance when necessary. Assistance should be requested when:
 - a. there is more than one person being arrested;
 - b. a dangerous crime is involved; and
 - c. there is a risk that the person is armed.
 - d. any time an officer has a concern for his/her safety.
2. Conducting a thorough search of the suspect for weapons or other items capable of inflicting injury.
3. Making sure that you are identifiable as a police officer.
4. Controlling any third persons at the scene that may pose a risk of harm to the arresting officer.
5. Officers should handcuff all suspects, as long as necessary, to insure continued custody or safety of the law enforcement officer and others.

6. Arrestees should be kept handcuffed at all times during transportation or when inside the agency for processing or questioning.

G. Searching of Prisoners

1. All prisoners will be searched, in as complete a manner as possible, considering safety and circumstances by the arresting law enforcement officer. Each Orono Police officer taking custody of a prisoner will be required to conduct a search, regardless of prior searches by other law enforcement officers. In all cases when a search is conducted, the officer shall document the search in writing.
2. Arrestees should be kept handcuffed at all times during transportation or when inside the agency for processing, testing, or questioning.
3. The arresting officer should handcuff all suspects, as long as necessary, to insure continued custody or safety of the law enforcement officer or others.
4. Orono Police officers will only use handcuffs that are agency approved.
5. Orono Police officers are encouraged to double-lock all handcuffs after application and after determining that the handcuffs are properly adjusted to prevent escape and injury to the arrested person.
6. If reasonable, officers should secure arrestees in agency vehicles, with the use of a seatbelt.

H. Disposition of Arrested Persons

1. Persons arrested shall be taken to the Penobscot County Jail.
2. Bail must be set by a bail commissioner. Bail conditions should be listed in the arrest report.
3. In the case of an arrest without a warrant (felony or misdemeanor), a probable cause determination must be made within 48 hours of the arrest, including weekends and holidays, if the arrested person has not posted bail. That determination may be done on the basis of a probable cause determination form.
4. If the arrested person will not appear in an arraignment within 48 hours of the arrest, a Probable Cause Determination form must be completed and

reviewed by a Complaint Justice, Justice of the Peace, or a District Court Judge.

5. A copy of the approved Probable Cause Determination will be delivered to the jail. The original will be attached to the arrest report.
6. All Affidavits must be completed and notarized before the end of the shift in which the arrest took place.
7. All necessary reports, including booking sheet, incident report, intake forms, ATN/CTN requests, shall be completed for all arrests.
8. There may be unforeseeable or good faith situations when an officer may have made an arrest on probable cause, but subsequently discovers that his probable cause has vanished in part or in total by circumstances. In such case(s), an officer is obligated to unconditionally release the person. This same release procedure applies to warrant arrests, when it is determined the wrong person has been arrested or the warrant is invalid. However, in such cases and prior to release, an officer will seek the approval of the Supervisor on duty. Furthermore, in such “release from arrest” situations, the officer should document the circumstances and actions in an incident report.

I. Off-Duty Arrests

1. Off duty arrests are permissible when a member is within the legal jurisdiction of this Department and there is an immediate need for the prevention of a crime or apprehension of a subject. The officer must be in possession of appropriate police identification.
2. All Department standard operating procedures must be adhered to, and the shift supervisor must be immediately notified of the arrest.
3. In no event shall an officer of this Department make an arrest while the officer is under the influence of intoxicating liquor.

J. Effect of an Illegal arrest

If an officer exceeds his lawful arrest authority, uses unjustifiable force or is careless or reckless in performing the law enforcement

duties connected with an arrest, it may cause severe consequences. These consequences can range from the suppression of evidence seized incident to the arrest, the inadmissibility of a confession obtained subsequent to the arrest, to civil liability including punitive damages or criminal prosecution of the officer. Officers must be sure that they are familiar with and understand the laws governing arrests in Maine and that they act in accordance with those laws and these procedures.

K. Medical Attention of Arrestees:

1. Medical Conditions: Whenever any person is arrested, law enforcement officers will make a deliberate and reasonable effort to ascertain the presence of any medical alert devices, such as: bracelets, neck chains or cards.
2. Medical Attention: In the event an arrestee requires medical attention, the law enforcement officer will insure appropriate medical attention is provided, as soon as reasonably possible.
3. Guarding of arrestees: An arrestee transported via ambulance to a medical facility will be accompanied and guarded by a law enforcement officer, unless law enforcement emergencies dictate otherwise. In such cases, a request for another agency to assist in guarding the arrestee should be made, as soon as reasonably available.

L. Fingerprints

Law enforcement personnel have the authority and the responsibility to take or cause to be taken the fingerprints of any person under certain circumstances, this authority is granted and responsibility assigned by 25 M.R.S.A. sec. 1541, et seq.

1. An adult arrested by a member of this department will normally be transported to the Penobscot County Jail for booking. Jail staff will be responsible for obtaining fingerprints and photographs of the prisoner.
2. This department will take fingerprints and photographs of any person booked and bailed from the police station in accordance with current state rules and guidelines.
3. Fingerprints of persons charged with committing a juvenile offense will be taken on the Juvenile Crime

Fingerprint Record form as supplied by the State Bureau of Identification.

4. Upon the request of any person this department will take and furnish a set of fingerprints and/or palm prints on a form provided by the requesting person. If no form is provided by the requester the SBI Noncriminal Fingerprint Record form will be used. Copies of fingerprints/palm prints taken at a citizen's request will not be retained by this department.

M. Palm and Foot Prints:

Whenever fingerprints are taken pursuant to the guidelines above, this agency has the right to take palm and/or foot prints of the arrestee. Palm and footprints will be taken at the discretion of the supervisor or investigator.

N. Photographs:

Whenever any law enforcement officer of this agency is authorized to take the fingerprints of a person, the law enforcement officer should also take at least one full face and/or one profile photograph.

V. **ADMINISTRATIVE REVIEW**

At least annually, this Standard Operating Procedure shall be reviewed and updated in a timely fashion so that it reflects new decisions that add to the substantive law of arrest.