JOPLIN POLICE DEPARTMENT	6-07 STANDARD OPERATING GUIDELINE
SUBJECT: Arrests	**REVIEW DATE: Annually - June**
EFFECTIVE DATE: 06/01/2007	**ACTION DATE:**
AMENDS/SUPERSEDES: 07/01/2009	**AMEND DATE: 05/06/2020**
ACCREDITATION INDEX: 1.1.4, 1.2.5 a,b,c, 1.2.6, 1.2.7, 1.3.5, 74.3.1	**APPROVED:** Richard A. Pearson **Chief of Police**

I. POLICY

Short of the application of force, an arrest is the most serious action an officer can undertake. An arrest can cause repercussions throughout a person's life, even if eventually found not guilty or never brought to trial. The most important legal question facing an officer at the moment of an arrest is the existence of probable cause. Without probable cause, the arrest is illegal and the evidence of criminality that was obtained because of the arrest is inadmissible. Officers shall accordingly exercise critical judgment in making arrests. Critical judgment includes consideration for bystanders, the time, place, and location of offenses, and the use of force in making the arrests. Officers shall consider alternatives to arrest consistent with their law-enforcement mission.

II. PURPOSE

To define the authority of officers to arrest and the mechanism for making arrests with and without a warrant.

III. DEFINITIONS

A. Arrest

An arrest is a seizure of a person. An arrest is supported by probable cause. Generally, according to Fourth Amendment cases, the test of whether an arrest has taken place is whether a reasonable person under the circumstances would have felt free to leave. RSMo. 544.180. says “an arrest is made by an actual restraint of the person of the defendant, or by his submission to the custody of the officer, under authority of a warrant or otherwise. The officer must inform the defendant by what authority he acts and must also show the warrant if required.” (1.2.5)

B. Probable cause

According to the U.S. Supreme Court, "Probable cause exists where the facts and circumstances within [the arresting officers'] knowledge and of which they had reasonable trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed" and that the person to be arrested committed it.

1. An officer must have probable cause to make an arrest.

2. When an officer has probable cause, he or she may undertake a search incident to an arrest, record the suspect's fingerprints as the situation requires, take the suspect's photograph, and jail him. Probable cause also supports a complete body search (as opposed to a body-cavity search) subject to the conditions listed under SOG 6-08. The aim of probable cause is **to make a formal charge**.

C. Fit for Confinement

The condition of a detainee who may be admitted to the jail facility, if they are not an immediate medical risk in their current state of health.

IV. DISCRETION (1.2.6, 1.2.7)

A. Officers shall demonstrate discretionary judgment. Discretion shall be applied reasonably and shall be guided by the oath of office, the limits of authority as established by law, the decisions and interpretations of the courts, the written orders of our department, and the oral instruction provided by field supervisors.

B. Officers shall not make arrests based on or affected by a person's sex, race, creed, color, general or assumed attitude, ethnic or natural origin, disabilities, or sexual orientation.

C. Officers have four forms of discretionary authority when making arrests: no arrest at all, an informal resolution of the incident or problem, issuance of a summons, or a full-custody arrest.

1. Informal resolutions take the form of referrals to other agencies, mediating agreements between two or more parties, or issuance of a warning. Informal resolutions are the least coercive of all enforcement measures and shall be applied when stronger enforcement methods are unnecessary or inappropriate under the circumstances.

D. The decision to apply one or more enforcement methods must be based on the totality of the circumstances and must be consistently applied.

E. Supervisors shall periodically review arrests made by their subordinates to ensure that proper action was taken under the circumstances.

V. ARRESTS WITH A WARRANT (1.2.5)

A. Who may issue?

An arrest warrant may be issued by the judges of the supreme court throughout the state; judges of the court of appeals and circuit judges within their respective districts and circuits; associate circuit judges within their respective counties and municipal judges within the limits of their respective municipalities (§ 542.020).

B. When the warrant may issue

Whenever complaint shall be made, in writing and upon oath, to any associate circuit judge setting forth that a felony has been committed, and the name of the person accused thereof, it shall be the duty of such associate circuit judge to issue a warrant reciting the accusation, and commanding the officer to whom it shall be directed forthwith to take the accused and bring him before such associate circuit judge, to be dealt with according to law (§ 544.020).

Joplin City Code Section 9.01 states that the municipal court "may issue warrants of arrest, and search warrants or warrants for search and seizure as authorized by law for circuit judges or magistrates, directed to the chief of police or other police officers of the city upon application of the city attorney, assistant city attorneys, chief of police, or other police officers."

C. What the warrant contains

A warrant commands the accused to appear before a judge or magistrate at a stated time and place. The warrant names the accused or gives a description if his or her name is not known, describes the offense

and names the violation, and bears a judge's signature. The warrant contains the complaint and sworn statements from witnesses.

D. Escape, flight, and pursuit; Arrest anywhere in the state

1. § 544.120 RSMo, allows an officer, with or without a warrant, to pursue an escapee from custody. If the officer is in close pursuit, he or she may arrest the suspect wherever he is found.

2. § 544.155 RSMo, authorizes a law-enforcement officer from any other state or the District of Columbia to pursue a fleeing felon into Missouri and take the suspect into custody as if the suspect had committed a felony in Missouri. Foreign officers shall immediately take the arrestee to a local judicial officer to determine the lawfulness of the arrest.

E. Exemption of such witnesses from arrest or service of process

RSMo. § 491.430 states that persons coming into Missouri in obedience to a summons to testify shall not while in this state pursuant to such summons be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons. The same provision applies to a person traveling through Missouri in obedience to a summons from another state.

F. Arrest of suspect inside dwelling

1. If an officer wishes to arrest a suspect inside a residence and consent is not obtained or not exigent circumstances exist, the officer must first obtain an arrest warrant. The officer must have a reasonable belief that the suspect is inside the residence. If the residence belongs to the suspect, only an arrest warrant is required. If the dwelling belongs to someone else, the officer must obtain a search warrant as well.

2. A search warrant is not required if the officer is in hot pursuit or the owner of a residence consents to the officer's search for the suspect, or exigent circumstances exist.

VI. ARREST WITHOUT A WARRANT (1.2.5)

A. Authority

The search and seizure provision of the Fourth Amendment protects citizens from the arbitrary and oppressive interference with privacy by law enforcement officials. Further, officers must have probable cause that a crime has been committed, and that the person to be arrested has committed the crime. See SOG 6-09 on constitutional safeguards and SOG 6-11 on search warrants.

B. When warrantless arrests may be made

1. An officer may arrest on view, and without a warrant, any person the officer sees violating the law, or who such officer has reasonable grounds to believe has violated any law of this state, including a misdemeanor or infraction, or has violated any ordinance over which such officer has jurisdiction (§ 544.216 RSMo).

a. All persons arrested and confined in any jail or other place of confinement by any peace officer, without warrant or other process, for any alleged breach of the peace or other criminal offense, or on suspicion thereof, shall be discharged from said custody within twenty four (24) hours from the time of such arrest, unless they shall be charged with a criminal offense by the oath of some credible person, and be held by warrant to answer to such offense (§ 544.170 RSMo).

2. An arrest without a warrant by a law enforcement officer is lawful whenever the arresting officer has reasonable grounds to believe that the person to be arrested was driving while intoxicated or with excessive blood alcohol, whether or not the violation occurred in the presence of the arresting officer. Such arrest without warrant must be made within one and one-half hours after such claimed violation occurred, unless the person to be arrested has left the scene of an accident or has been removed from the scene to receive medical treatment, in which case such arrest without warrant may be made more than one and one-half hours after such violation occurred (§ 577.039 RSMo).

3. When any person is charged with a felony in this state or another state, and the officer is able, through NCIC or by way of a photocopy, to verify that a felony warrant exists; or when the officer receives information from any other law-enforcement agency in Missouri for an alleged misdemeanor not committed in the officer's presence (provided a warrant for the offense is on file).

4. Under §455.085 RSMo, officers may arrest without a warrant in cases of assault and battery against a family or household member and for violations of protective orders, regardless of whether the violation occurred in the officer's presence, provided the officer has probable cause.

C. Actions upon arrest

1. Persons arrested under any warrant for any offense shall, when no provision is otherwise made, be brought before the associate circuit judge who issued the warrant, or if he be absent or his office be vacant, or if he is not authorized to act within the county in which the offense was committed, then before the nearest associate circuit judge in such county (§ 544.260 RSMo).

2. Any person charged with a bailable offense, at his appearance before an associate circuit judge or judge may be ordered released pending trial, appeal, or other stage of the proceedings against him on his personal recognizance, unless the associate circuit judge or judge determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person as required. (§ 544.455).

3. If the arrest is a probable cause arrest, the arresting officer shall ensure that contact is made with the law enforcement officials where the charge was made and inform them that the accused has been arrested based on the teletype message (or other arrest document), and if not bonded, ascertain when a representative will arrive to transfer the accused back to the locality having trial jurisdiction.

4. If the suspect is arrested under a copy of the original warrant, the officer shall request dispatch to contact the originating agency via NCIC. The message shall state that the suspect has been arrested under a warrant from the originating agency's jurisdiction and shall request that the original warrant be marked "served."

5. Once the arrest has been made, the officer shall notify dispatch. The on duty dispatcher will then ensure that the arrestee's name has been removed from NCIC/MULES.

6. Complete a MULES/NCIC check on any person who is jailed or to whom a summons was issued before releasing them.

D. Juveniles

Refer to SOG 9-09 concerning handling of juveniles.

E. Summonses

1. An arresting officer may issue a summons to appear at a time and place specified in such summons whenever any person is detained by or in the custody of an arresting officer for any of the following:

    a. Any offense committed in the officer's presence that is a violation of any city ordinance or any ordinance violation that the officer has reasonable grounds to believe was violated.

2. If, after issuing a summons for (a) above, the suspect continues the unlawful act, then the officer may immediately arrest the suspect.

3. If the officer believes that the suspect is likely to disregard a summons, or may cause harm to himself or another person, then the officer may take the suspect into custody.

4. Complete a MULES/NCIC check on any person to whom a summons was issued before releasing that person.

F. Public intoxication

RSMo. § 67.305 states that no county or municipality may adopt or enforce a law, rule or ordinance, which authorizes or requires arrest or punishment for public intoxication or being a common or habitual drunkard or alcoholic. However, § 67.315 RSMo. states that a person who appears to be incapacitated or intoxicated may be taken by a peace officer to the person's residence, to any available treatment service, or to any other appropriate local facility, which may if necessary include a jail, for custody not to exceed twelve hours.

VII. POST-ARREST PROCEDURES (1.2.5)

A. Constitutional considerations

Refer to SOG 6-05 and SOG 6-08, for a discussion of search guidelines and searches incident to arrest.

B. Booking

Consistent with Joplin City Jail Standard Operating Guideline (G-7.73), an arrestee will not be accepted into the Joplin City Jail under the following conditions:

1. B.A.C. level greater than 0.30%

2. Involvement in a motor vehicle crash where the arrestee was subject to:

    a. Roll Over
    b. Ejected from the Vehicle

3. Physical deformities from trauma, to include:

    a. Inability to stand or walk
    b. Bleeding that is not controlled
    c. Mental Confusion, to including being disoriented to person, place or time

If the arrested person is not released on a summons, officers shall observe the following procedures:

1. Transport the suspect to the Joplin City Jail.

2. Advise jail personnel of the charges against the suspect so that booking procedures may begin.

3. Complete all paperwork pertaining to the arrest (e.g. summons, DWI forms, etc).

C. Injury before or during arrest

1. If a person receives an injury before or during an arrest and either requests medical attention or, in the officer's judgment, medical attention is needed, officers shall have the person evaluated by medical personnel (i.e. EMT, doctor, etc.) before booking. The jail staff shall be notified of any medical attention that has been provided for an arrestee. When the arrestee is returned to the Joplin City Jail, the officer shall provide written documentation that indicates the arrestee is fit for confinement. (1.3.5)

2. If force is used during an arrest, either by an officer against the suspect or by the suspect against the officer, a Use of Force form shall be completed by the involved officer(s).

3. If an officer receives an injury, the officer shall:

   a. Notify his or her supervisor on the day of the injury (when possible);

   b. Complete an injury report which shall be forwarded through the chain of command to the Chief of Police who shall forward it to the Personnel Department.

   c. Pick up a "Referral for Treatment" form from the Personnel Department each time medical treatment is to be received unless the injury is of the emergency nature.

D. Processing of paperwork

1. Offense reports: When the arrestee is incarcerated on a felony, any offense report associated with the arrest must be typed into the department's report management system before the end of the reporting officer's shift. Offense reports associated with misdemeanor arrests must, at least, be called into the reporting system before the end of the reporting officer's shift. Exceptions will be limited to exigent circumstances and must be authorized by a supervisor. (1.2.5 A)

2. Booking forms: In most instances, the booking process, to include all booking forms, will be completed by the staff of the City jail. However, the officer bringing the prisoner into the jail will fill out the initial booking form. The form will then be forwarded to the jail staff for completion of the booking process.

   a. Among other information, the case number or complaint number must be included on the form so that jail staff may include it as part of the computer entry.

   b. Forms and information to be obtained during booking include:

      i. Booking information form (1.2.5 A)

      ii. Property information form (1.2.5 A)

      iii. Medical information form (1.2.5 A)

      iv. Fingerprint cards (1.2.5 B)

      v. Photographs (mug shot) (1.2.5 C)

3. Copies of summonses: When applicable, a copy of the citation/complaint will be left with the jail staff for inclusion in the arrestee's property. Other copies will be attached to a Complaint Transmittal Form and forwarded to the shift supervisor.

4. Probable Cause Affidavit: The arresting officer must fill out a Probable Cause Statement form (in the case of a warrantless misdemeanor arrest) or a Probable Cause Affidavit (in the case of a warrantless felony arrest). The statement/affidavit will be forwarded along with other pertinent paperwork to the appropriate prosecuting attorney.

5. Prosecutor's Summary: The arresting officer must fill out a Prosecutor's Summary when a warrantless felony arrest is made, and when an arrest is made on an out-of-state felony warrant.

6. Copies of warrant: When a warrant is served on the arrestee, a copy of the warrant or MULES/NCIC printout will be attached to the booking paperwork.

7. Bond papers: When a bond is posted, the paperwork will be forwarded by jail staff to the court of jurisdiction.

8. Juvenile arrest

   a. When a complaint is filled out during a misdemeanor juvenile arrest, the copy with the officer's narrative is left with the juvenile authorities at the juvenile detention center. A second copy is given to the juvenile, and a third copy will be placed in the Squad Room tray and forwarded to the shift supervisor.

   b. When a juvenile is arrested for a felony, a Prosecutor's Summary and Affidavit is required. A complaint (citation) is required, the officer must leave the offense report number with the juvenile authorities for their records.

   c. The rule-of-thumb on when to complete an offense report in a juvenile case is, if the case would require an offense report in an adult situation, the case will require an offense report in a juvenile situation.

   d. When an offense report is completed in conjunction with a juvenile arrest, and the juvenile is listed as the suspect, a Juvenile Suspect Form shall be completed with the juvenile's information. The juvenile's identifiers shall not be listed in the offense report. The completed Juvenile Suspect Form will be forwarded to the Senior Clerk within the Investigations Bureau.

E. Further processing

1. If bond is allowed, the jail staff will book, photograph, and fingerprint the suspect before they can leave after meeting the required bond.

2. If bond is not allowed or cannot be made, the person is committed to jail by the jail staff following the booking process.

3. Items seized as evidence shall be tagged and placed within the departmental evidence locker.

VIII. RELEASE FROM ARREST

A. Legal background

Officers may encounter a circumstance where probable cause develops to arrest a person for an offense, only to find out shortly thereafter that the person under arrest did not commit a crime, or that the event

was not a crime. It is imperative, then, that the officer ends the arrest process immediately to avoid becoming liable for false imprisonment.

B. Procedure

1. If the arresting officer determines that probable cause no longer exists to arrest a suspect, and the officer is satisfied that the person under arrest either did not commit the crime or that the crime did not occur, then the officer shall release the suspect.

2. When an officer releases a subject from arrest under the circumstances described in (1), he or she shall return the person to the place of the arrest, if the location is safe. The officer shall not release the person along the roadside. If a vehicle has been towed, the vehicle shall be released to the operator/registered owner unless it is required as evidence, or some other legal authority assumes custody of the vehicle.

3. Upon releasing a person in this manner, the officer shall immediately contact the on-duty supervisor and advise him or her of the incident.

4. To protect him- or her and the department, the officer shall document in an incident report:

   a. The date and time of arrest.

   b. The person arrested (name, address, date of birth, race).

   c. The location of arrest.

   d. Probable cause for the arrest and the specific charge(s).

   e. The location and time of release from arrest and whether the person was transported.

   f. The reasons or discovery of information that led the officer to release from arrest.

   g. Any witnesses to the alleged crime, or to the fact the person arrested was allegedly involved.

   h. Whether force was used in making the arrest, and if so, the nature of any force used and the consequences (including medical aid).

5. If the officer makes an arrest based on probable cause, the arrest is lawful. Probable cause must continue to exist through the appearance of the officer and arrested person before the judge. If not, the officer must release the person as soon as practicable.

IX. IMMUNITY FROM ARREST (74.3.1)

A. Legislative immunity

1. Members of the United States Congress are exempt from arrest when Congress is in session, or when they are enroute to or from congressional business, **except** for traffic summonses. (Article I, Section 6, U.S. Constitution)

2. Senators and representatives are exempt from arrest during a legislative session (or for fifteen days before the beginning or after the ending of any session) except in cases of treason, a felony, or a breach of the peace. (Article III Section 19, Constitution of Missouri)

3. Voters shall be privileged from arrest while going to, attending and returning from elections, except in cases of treason, felony or breach of the peace. (Article VIII Section 4, Constitution of Missouri)

B. Diplomatic immunity (1.1.4)

1. While a person claiming diplomatic immunity may present any number of identification papers, the only one that is indicative of the level of privilege and immunity is a card issued by the U.S. State Department. The holder's level of immunity will be indicated on the card. If a person claiming immunity does not possess this card **and** the incident involves a criminal offense, officers may detain the person either at the scene or at the department long enough to verify official status.

2. Upon exhibiting proof of diplomatic immunity, persons shall be released upon being stopped for a misdemeanor traffic violation. If questions arise about this procedure, or if an arrest for a felony is necessary, call and advise the U.S. Department of State (202-647-4415, days, or 202-647-1512, nights and weekends).

3. When encountering a criminal suspect who claims diplomatic immunity, officers shall first take reasonable measures--including pat-downs or other legal searches--to ensure safety to the public or other officers. Verification of the diplomatic claim shall take place after a danger has been neutralized. A criminal investigation shall proceed as if no valid diplomatic immunity claim has been made. Interviews, interrogations, seizures of evidence, or issuance of warrants shall proceed per departmental procedure. In a criminal investigation, the chief shall remain in contact with the State Department.

4. **Regardless of the claim of immunity, in any case where officers arrest or detain foreign nationals, the suspects shall be advised of their right to have their consular officials notified.** In some cases, this notification is mandatory. Note: the list of countries which require mandatory notification of consular officials if one of their citizens has been arrested is extensive. The State Department shall be contacted for guidance.

X. COMPLIANCE

Violations of this policy, or portions thereof, may result in disciplinary action as described in the City of Joplin's Personnel Rules, or the Joplin Police Department's Rules and Regulations and General Orders. Members of the Joplin Police Department, while assigned to or assisting other agencies shall comply with this policy.

XI. APPLICATION

This document constitutes department policy, is for internal use only, and does not enlarge an employee's civil or criminal liability in any way. It shall not be construed as the creation of a higher legal standard of safety or care in any evidentiary sense, with respect to third party claims insofar as the employee's legal duty as imposed by law. Violations of this policy, if proven, can only inform the basis of a complaint by this department, and then only in a non-judicial administrative setting.