

DAYTON POLICE DEPARTMENT
GENERAL ORDER
**ARREST POWERS, DISCRETION
AND ALTERNATIVES TO ARREST**



RICHARD S. BIEHL – DIRECTOR AND CHIEF OF POLICE

Rev. 12/18

POLICY STATEMENT

The purpose of this policy is to discuss three important subject areas: **AUTHORITY TO ARREST, USE OF DISCRETION and ALTERNATIVES TO PHYSICAL ARREST**. The **State of Ohio Constitution and the Ohio Revised Code** give the **AUTHORITY TO ARREST** to the police officer. By this method, society has bequeathed the primary responsibility for enforcing its laws and standards to the police officer. Unlike some, however, our society demands that the **AUTHORITY TO ARREST** be tempered with moderation. The law provides for ample **USE OF DISCRETION** and allows for **ALTERNATIVES TO PHYSICAL ARREST**.

I. AUTHORITY TO ARREST

- A. Dayton Police Department sworn police officers derive their authority to arrest from the constitution of the State of Ohio and the Ohio Revised Code. Each police officer takes an oath of office and is sworn to uphold the duties and responsibilities relevant to their office as required by the Ohio Revised Code.
- B. A police officer is sworn to enforce the law. Where definite violations of the law occur, there is a responsibility to attend to those violations, unless **action** will cause more harm than **non-action**. **However**, the police officer must **always** act within the parameters justifiable for the particular offense and circumstances surrounding it.
- C. The officer will **determine** whether the **necessary elements** of the offense **exist**, and if there is **sufficient probable cause** to believe the accused committed the offense.
- D. The seriousness of the offense dictates the options available to the police officer. The Ohio Revised Code provides the following guidelines:
 1. **Section 2935.04 of the Ohio Revised Code** authorizes **any** person the power to arrest "*when a felony has been committed, or there is reasonable ground to believe that a felony has been committed...*" "*Any person without a warrant may arrest another whom he/she has reasonable cause to believe is guilty of the (felony) offense, and detain him until a warrant can be obtained.*"
 2. **Section 2935.03 of the Ohio Revised Code** specifies the conditions necessary for a police officer to arrest and detain a person found violating a law of this State. When there are **reasonable grounds** to believe that an **offense of violence, domestic violence (2919.25), violation of a protection order (2919.27), menacing by stalking (2903.211), theft offense (2913.02), criminal child enticement (2905.05), public indecency (2907.09), aggravated trespassing (2911.211)** or a **felony drug abuse offense (2925.01)** has been committed within his jurisdiction, a police officer may arrest and detain until a warrant can be obtained for any person whom he/she has reasonable cause to believe is guilty of the violation.
 - a. **ANY MISDEMEANOR NOT DEFINED HEREIN MUST BE WITNESSED BY A POLICE OFFICER BEFORE AN ARREST IS MADE.** See also Section IV.
 - b. Officers may still make a physical arrest while serving a warrant or capias.
 - c. Law enforcement officers may also make physical arrests for certain traffic offenses. See General Order 3.02-2, Traffic Enforcement.

II. USE OF DISCRETION

- A. Dayton Police Department sworn police officers are cautioned to use discretion in the performance of their assigned tasks. They are to consider the conditions present at the time, (their safety/security and that of others), the constraints of existing policy, statutes, laws and ordinances pertaining to the situation, as well as available alternatives.

- B. Of special concern is the matter of physical arrest and incarceration of an individual. All personnel of the Dayton Police Department must consider such actions as very serious. When a person is deprived of their liberty to move about, the officer must be certain that their goal cannot be accomplished by any other method and that their decision is legally correct. Arrests must **NEVER** occur prior to the establishment of the necessary facts.

III. ALTERNATIVES TO ARREST

- A. The physical arrest and incarceration of a person is not always a necessity.
- B. Police officers **must** use proper discretion in the selection of the appropriate alternative to physical arrest and incarceration.
- C. Many misdemeanor offenses do not **require** the person be incarcerated but permits the officer to use discretion. See General Order 3.04-4, Requesting Summons in Misdemeanor Cases.
- D. Minor Misdemeanor offenses do not provide for incarceration **unless** certain conditions exist. Even then, the officer may not be required to incarcerate the person. See General Order 3.03-4, Minor Misdemeanor Citations.
- E. Public intoxication arrests require a different set of circumstances due to our limited options in regards to the Montgomery County Sheriff's Office accepting minor Misdemeanor public intoxication arrests. Officers should be prudent in their application of these guidelines to ensure that they do not unnecessarily overburden the agencies cooperating with this policy. Arrest for public intoxication should be the exception rather than the rule and must comply with the guidelines established in General Order 3.03-4, Minor Misdemeanor Citations. If there is a question as to a person's state of intoxication, a supervisor should be called to the scene. Options are divided into three categories:

1. Quiet and Generally Cooperative – If the intoxicated person has a verifiable home address, officers will attempt to remove that person to their residence but they must agree to be transported. St. Vincent's has agreed that they would accept intoxicated persons in this category if they do not have a verifiable address but again they must agree to be transported to that location. If an intoxicated person becomes belligerent and uncooperative after being accepted by St. Vincent's, we will return and assist them. This procedure will be documented on the MDT removal screen as listed in General Order 3.01-3, Removals, Section (I).
2. Belligerent and Uncooperative – There are no social service providers in this area that can accept intoxicated persons in this category. This person is to be charged with O.R.C. 2917.11 Disorderly Conduct (M4). Officers are to warn the intoxicated person to desist their belligerent and uncooperative behavior. If they continue after being warned, they will be charged and booked into jail on both the Public Intoxication and Disorderly Conduct.

Officers will complete DIBRS offense and arrest reports detailing the person's actions and their warnings for that person to desist their behavior. The person's condition should be detailed, smelling of alcoholic beverages and slurred speech alone are not sufficient to document intoxication. The same indicators used for describing an OVI offender should be used to document the intoxicated person's behavior.

3. Those in need of Medical Intervention – If an intoxicated person is simply too intoxicated to properly care for themselves and is not capable of making decisions about their own care and hygiene, they should be removed to an area hospital for treatment. If the intoxicated person does not agree to be transported, a medic will be called to make the transport.

Reminder: Persons transported in this manner are not in custody and are being removed to the hospital for their own personal well being. This procedure will be documented on the MDT removal screen as listed in General Order 3.01-3, Removals, Section (I).

Minor Misdemeanor Citations are acceptable for violators in categories one and three.

- F. Juvenile offenders often require different handling than adult offenders. Various alternatives exist for disposition of the juvenile offender. See General Order 2.05-1, Juvenile Policy.

- G. Many parking violations permit the police officer discretion in their enforcement. See General Order 3.02-3, Parking Enforcement.
- H. Traffic Enforcement allows the police officer a wide range of discretionary alternatives. The decision to physically incarcerate may depend upon the situation. See General Order 3.02-2, Traffic Enforcement.

IV. MISDEMEANOR OFFENSES

THE FOLLOWING IS A LIST OF MISDEMEANOR OFFENSES FOR WHICH AN OFFICER CAN MAKE A PHYSICAL ARREST, EVEN THOUGH THEY DO NOT WITNESS THE OFFENSE TAKE PLACE. Prior to making the arrest, the officer must have reasonable grounds to believe that the person alleged to have committed the offense is guilty of the violation.

A. CRIMES AGAINST PROPERTY

Tampering with Coin Machine
 Theft
 Unauthorized Use of Motor Vehicle
 Unauthorized Use of Property
 Passing Bad Checks
 Misuse of Credit Card
 Making or using slugs
 Defrauding a Livery or Hostelry
 Tampering with Records
 Securing Writings by deception
 (Property less than \$500)
 Receiving Stolen Property
 Arson (Less than \$500 damage)
 Aggravated Trespassing

B. CRIMES AGAINST PERSONS

Child Enticement
 Assault
 Menacing/Aggravated Menacing/Stalking
 Inducing Panic
 Domestic Violence
 Violation of a Protection Order
 Carrying a Concealed Weapon
 (Without or in Violation of Permit)
 Public Indecency
 Riot

C. MISCELLANEOUS CRIMES

Personating an Officer
 Defrauding creditors
 Cheating

V. FORCIBLE ENTRY PROCEDURES FOR RESIDENTIAL ARRESTS

A. RESIDENTIAL ARRESTS

1. A Search Warrant need not be obtained to arrest a suspect on an Arrest Warrant while in his own home. A Search Warrant **must** be obtained to search for a suspect other than in his own residence, even though an Arrest Warrant is on file. An exception to this is if a "Consent to Search" form is signed by a person with standing at that residence.
2. A suspect's own residence is considered any private dwelling where they have been living, even if another person owns it. EXAMPLES: A house, apartment, boarding house room, overnight hotel room.
 - a. Where the suspect is merely a guest in another person's home for a brief period, and has no intention of establishing a residence there, it does not become his own residence.
 - b. A suspect can have several legal residences, and can be arrested at any of them. Example: A college student living away from home; persons living together for a significant amount of time but retaining separate residences; summer homes.
3. Before making an arrest, the officers should attempt to confirm the suspect's correct residence by checking available information, such as phone books, mailbox, neighbors, informants, voting records, billing addresses and police records.
 - a. Where officers have any question as to whether a suspect is a guest or is in their own residence, a Search Warrant should be obtained.

4. Searches for persons must be limited in scope to areas where a person could be hidden. Small compartments, cabinets, drawers, etc. cannot be searched under these circumstances.

B. FORCIBLE ENTRY ISSUES - See Also General Order 3.03-9

1. Forced entry is defined as anytime an officer uses force to gain entry to a dwelling, structure, vehicle or other property.
2. O.R.C. 2935.12 permits officers to force entry into a residence to make an arrest, either with or without an Arrest Warrant.
3. Entry is considered forced where the officer must use any amount of force to gain entrance, where there has been no express or implied consent to enter by a resident.
 - a. Examples of Forced Entry: Breaking open a locked door or window; opening an unlocked, closed door or window; opening a locked door with a passkey; pushing a partially open door or window further open; breaking a chain lock on a partially open door; use of any amount of force to move a person blocking an opened door out of the way.
 - b. Where no resident resists the entry, it is not forced entry to walk through an open door.
4. Forced entry may be used when making an arrest of a juvenile at his home.

C. FELONY/MISDEMEANOR/MINOR MISDEMEANOR WARRANT/CAPIAS ARRESTS

1. Forced entry may be used to make Warrant/Capias arrests ONLY if there is PROBABLE CAUSE that the person named in the Warrant/Capias is within his home, and there has been compliance with "Knock and Announce" requirements.
2. If a police officer has Probable Cause to believe the person named in a Warrant/Capias is within a residence other than their own, consent to enter and search for him/her must be obtained unless exigent circumstances exist. Absent Consent or Exigent Circumstances, a Search Warrant must be obtained with the Arrest Warrant. Where consent is withdrawn, the search must stop.

D. PROBATION AND PAROLE VIOLATORS

1. Verbal orders to arrest City, County, State, and Federal Probation/Parole violators will not be honored. Persons on probation may be arrested for probation violation only if a warrant is on file. Parole violators may be arrested for parole violation only if a warrant is on file unless the parole officer is present. State Parole Officers have the authority (ORC 2967.15), when present, to order police officers to arrest or assist in the arrest of a violator with no warrant.
2. City, County, State ADULT and Federal Probation/Parole Officers have the authority to arrest without a warrant. Ohio Department of Youth Services Officers do not have this authority.
3. In all circumstances where a warrantless arrest is made, the Parole/Probation Officer is carried as the arresting officer and the Dayton Officer is carried as the conveying officer.
4. Officers needing assistance from any of the above agencies should request contact through the Communications Center.

E. SHOPLIFTERS

1. Shoplifting is a theft from a retail, wholesale or other mercantile establishment. Misdemeanor thefts involve property valued under \$1000.00. Over \$1000.00 constitutes a felony. A suspect who uses or threatens to use force while committing or immediately after committing a theft offense will be charged with robbery. Officers should use discretion and consider alternatives to incarceration (summons request etc.) when dealing with shoplifters.
 - a. Probable cause must be established. Ascertain the location and time of offense, names of witnesses to actual theft, description and value of stolen items, place and means of concealment (booster devices), actions of defendant etc.

- b. State licensed store security or security guards will be carried as arresting officers. Dayton Officers will be carried as conveying officers only.
- c. Tag or release property per the General Order 1.06-1, Evidence and Impounded Property.
- d. Obtain witness statements from security personnel or detaining persons.
- e. Off-duty Dayton Officers working in a security capacity will complete all reports.

VI. WARRANTLESS FORCIBLE ENTRY PROCEDURES

A. GENERAL ISSUES REGARDING STANDING

1. Permission to enter a premise to make a warrantless search for a suspect can be given by any adult occupant having equal authority and control with the other occupants over the immediate shared living quarters.
2. Such person may be a spouse, common law partner or other adult sharing the living quarters.
 - a. A landlord cannot give consent to search a tenant's apartment or rented room. Landlords **can** give consent to search common passageways, hallways or other areas that are mutually used by both the landlord and the tenants.
 - b. A minor cannot consent to a search of his parents' home. A parent or legal guardian **can** consent to a search of his minor child's room, where the parent or guardian owns or controls the entire premises.

3. A person who otherwise would have STANDING to consent may be **excluded** from certain areas by previous agreement with other residents.

Two adults sharing a home, but through a previous agreement, one party has no access to the garage, a dresser drawer or a certain room. The person excluded **cannot** grant access to the excluded area.

4. The search must remain within the scope of permission given by a person with STANDING. EXAMPLE:
 - a. If permission is given to search a bedroom only, the search must be confined to that room.
 - b. If a police officer states to a person with STANDING, "Do you mind if I come in and have a look around?" and permission is granted, this has been understood to authorize search of the entire premises ... barring any excluded areas.
5. If permission to search has been granted by a person with **STANDING**, another occupant with STANDING can revoke it. Co-occupants when present must be in agreement when granting permission. The person with **STANDING** who initially gave consent to search **can also, AT ANY TIME**, withdraw that permission.
6. A "Consent to Search" form should be signed by the resident who has given officers permission to enter and arrest a suspect.
 - Where a resident orally consents to entry but refused to sign a Consent form, no entry should be made unless more than one officer or an additional impartial party witnesses the oral consent.

B. EXIGENT CIRCUMSTANCES

1. The exigent circumstances exception to the Warrant requirement allows officers to make warrantless entries to residences to make an arrest. This applies only to officers. Civilian riders, news media or other non-police personnel cannot enter the premises with the officer(s).

2. Exigent circumstances are emergency situations requiring an immediate entrance to arrest a suspect for a serious offense, because any further delay added by waiting to obtain an arrest warrant would lead to:
 - a. Real and immediate possibility of danger to the public, an officer or another person's life, or to property. Example: To stop a fire or domestic violence; OR
 - b. Significant possibility that material evidence of crime will immediately be destroyed or removed; OR
 - c. Escape of suspect when officers were in hot pursuit. There must be immediate and continuous pursuit of the suspect either from the scene of the crime or from when the suspect was located. Hot pursuit is not broken by a brief wait for back-up once the suspect enters a residence.
 - *Middletown v. Flinchum* 95 Ohio St.3d 43: "When police officers, having identified themselves are in hot pursuit of a suspect who flees to a house to avoid arrest, the police may enter without a warrant to make arrest, regardless of whether the offense is a misdemeanor."
 - d. Significant possibility that suspect will try to escape.
 - e. The offense for which the suspect was to be arrested prior to the warrantless entry must be of a somewhat serious nature; involving actual or threatened harm to the public, a person or property. The totality of circumstances should be taken into account; officers do not have an unbridled authority to enter a suspect's residence on a whim or with blatant disregard for the constraints of the Fourth Amendment.
3. While use of the exigent circumstances exception is mostly limited to arrests for serious offenses, the seriousness of a crime itself DOES NOT create an exigent circumstance.
 - a. For example, investigation of a possible murder scene DOES NOT constitute the type of exigent circumstance necessary to support a generalized warrantless search. When investigating a homicide scene, the following limited searches may be made without a warrant. All other more extensive evidentiary searches will only be made after a search warrant has been secured.
 - (1) Police officers may forcibly enter premises to locate the victim.
 - (2) A prompt search of the entire premises may be made to ascertain whether the killer or other victims are on the premises. Such searches will be limited to those areas in which a human body could be located.
 - (3) Police officers may seize any evidence of the crime found in plain view while conducting such permissible warrantless searches.
 - (4) Where police officers have probable cause to believe that someone at the scene intends to destroy or remove evidence.
 - (5) Where consent to search is given by an adult with STANDING at the premises.
 - (6) It should be remembered that the murder scene can be secured against interference with vital evidence while a search warrant is being obtained.
4. There must be Probable Cause to believe the suspect committed the offense, and Probable Cause to believe he/she is within the residence to be entered.
5. Officers will only enter those areas where the person sought to be arrested could be found. Evidence in plain view may also be seized.
6. Officers will accurately and fully detail in their D.I.B.R.S. Reports, the circumstances leading them to believe that exigent circumstances existed.

7. Where a warrantless entry is either not allowed, or the officer is unsure whether consent or exigent circumstances exist, the following procedure may be followed instead of making an entry.
 - a. Officers will call a supervisor and immediately radio for back-up assistance.
 - b. The residence should be secured against the suspect or other person's escape.
 - c. After the residence is secured, an officer will then proceed to get a Search or Arrest Warrant.

C. ISSUES REGARDING WARRANTLESS ENTRY

1. No warrantless or forcible entry to a residence to arrest for any Minor Misdemeanor offense, absent consent or hot pursuit.
2. No warrantless or forcible entry to a residence for arrest for Misdemeanor offenses in the absence of consent, exigent circumstances or hot pursuit.
 - Misdemeanor offenses RARELY merit an exigent circumstance warrantless or forcible entry under federal or Ohio case law. Such entries will usually only be made if the suspect has committed an offense of violence, threatened violence, or otherwise endangered a life.
3. No warrantless or forcible entry to a residence to arrest for any Felony crime in the absence of consent, exigent circumstances or hot pursuit.

VII. WARRANTLESS ARRESTS IN OTHER JURISDICTIONS

- A. The City of Dayton is a cosignatory of the area Mutual Aid Pact negotiated by the Montgomery County Prosecutor's office.
- B. The Mutual Aid Pact allows member agencies to request other member agencies for a loan of manpower and equipment when EMERGENCY situations occur.
 1. Dayton police officers will work under the direction and supervision of the senior officer(s) of the requesting agency on duty at the time the aid is requested.
 2. Dayton police officers may arrest for ANY violation of law in another jurisdiction during an emergency situation (Mutual Aid Pact declared in effect).
- C. The Mutual Aid Pact allows police officers the following powers during a non-emergency situation:
 1. Any Dayton police officer, who witnesses a FELONY being committed in any member political subdivision will have the authority to apprehend, or attempt to apprehend the persons committing such felony.
 2. Dayton police officers are restricted to FELONY ARRESTS ONLY in other jurisdictions when the Mutual Aid Pact is not in effect.

This does not preclude an officer from making a physical arrest in a foreign jurisdiction if the arresting officer witnesses a misdemeanor committed by a suspect in Dayton who flees into another jurisdiction.
 3. A Dayton police officer may come to the aid of another police officer from another jurisdiction in a distress situation.