

1.2.4 Physical Arrests

I. POLICY

It shall be the policy of the Johnstown Police Department to provide for and promote the delivery of police services corresponding to the provisions of this general order.

II. PURPOSE

The purpose of this general order is to provide for the recognition of police authority and the associated limitations of authority. Policing is an extraordinarily dynamic and complex endeavor.

This policy is established to define an officer's authority through governmental legitimacy by defining that authority in terms of constitutional requirement, statute, case law, and the rules of criminal procedure.

III. PROCEDURE

A. Power of Arrest

1. Granted to Act 120 certified police officers is one of the alternatives available under circumstances that require some form of police action.

B. Arrests by Warrant

1. Title 234, The Pennsylvania Rules of Criminal Procedure
 - a. Governs criminal proceedings in all courts, including courts not of record. All actions involving arrests by warrant for the Penal Law of the Commonwealth of Pennsylvania must follow these rules.
 - b. Summary Warrant Issuance
 - i. Chapter 4, Part D [1] Rule 430, Issuance of Arrest Warrant
 - c. Court Case Arrest warrants issuance
 - i. Chapter 5, Part B [1] Rule 509, Use of Summons or Warrant of Arrest in Court cases provides that the issuing authority shall issue a warrant of arrest when:
 1. The offense charges is punishable by a sentence to imprisonment of more than five years or the defendant is charged with more than one offense and one of the offenses is

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punishable by a sentence to imprisonment of more than five years.

2. The issuing authority has reasonable grounds to believe that the defendant will not obey a summons.
 3. The summons has been returned undelivered.
 4. A summons has been served and disobeyed by a defendant.
 5. The identity of the defendant is unknown.
- ii. Chapter 5, Part B [3], Arrest Warrants, Rule 513, Requirements for Issuance.
1. No arrest warrant shall be issued, but upon probable cause supported by one or more affidavits sworn before the issuing authority
 2. Officers shall submit an affidavit of probable cause, under the provisions of the Pennsylvania Rules of Criminal Procedure with all criminal complaints where an arrest warrant is required or being requested.
 3. Arrest warrant service procedures for Johnstown Police officers shall be governed by the following orders.
 - a. General Order – Body Armor
 - b. General Order – Mutual Aid Requests for warrant service
 - c. General Order – Summary Warrant Service

C. Warrantless Arrests

1. Title 234, the Pennsylvania Rules of Criminal Procedure
 - a. Governs criminal proceedings in all courts, including courts not of record. All actions involving warrantless arrest for violations of the Penal Laws of the Commonwealth of Pennsylvania must follow these rules.
 - b. Summary arrest procedures
 - i. Chapter 4, Part D [2], Rule 440, Procedures in Summary Cases when Defendant is Arrested Without Warrant.
 - ii. Chapter 4, Part D [2], Rule 441, Procedure Following Arrest Without Warrant.
 - c. Court case arrest procedures
 - i. Chapter 5, Part [B], Rule 502, Means of Instituting Proceedings in Court Cases.
 1. Warrantless arrest is authorized when the offense is a felony

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- or misdemeanor committed in the presence of the officer making the arrest.
2. Warrantless arrest is authorized based upon probable cause when the offense is a felony.
 3. Warrantless arrest is authorized upon probable cause when the offense is a misdemeanor not committed in the presence of the officer making the arrest, when such arrest without a warrant is specifically authorized by statute.
- ii. Chapter 5, Part [3], Arrest Without Warrant, Rule 518, Procedure in Court cases Initiated by Arrest Without Warrant.
1. When an officer has arrested a defendant without a warrant in a court case, the officer shall file a complaint against the defendant and he/she shall be afforded a preliminary arraignment before the proper issuing authority without unnecessary delay.
 - a. The arresting officer, or his/her designee, will contact the District Judge for the jurisdiction of arrest, or the on-call District Judge, and schedule or arrange for the defendant's preliminary arraignment under this rule.
 2. Prompt release of the defendant following warrantless arrest, instead of preliminary arraignment, shall be considered by officers in the following circumstances, when all conditions are met, as provided for in this rule.
 - a. When a defendant has been arrested without a warrant for driving under the influence of alcohol or controlled substances, or
 - b. When the most serious offense charged is a misdemeanor of the second degree,
 - c. When the defendant is a resident of this Commonwealth,
 - d. When the defendant poses no threat of immediate physical harm to any other person or to himself or herself,
 - e. When the arresting officer has reasonable grounds to believe that the defendant will appear as required if the charges are instituted by summons,
 - f. When the defendant does not demand to be taken before an issuing authority.

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3. In cases where the defendant is released pursuant to Rule 518, officers shall file a complaint against the defendant within five [5] days of the defendant's release. Thereafter, a summons, not a warrant of arrest, shall be issued and the case shall proceed as provided for in Pennsylvania Rules of Criminal Procedure Rule 510.

D. Warrantless Arrests Authorized by Statute

1. Title 18, Crimes Code of Pennsylvania, Chapter 27, Assaults, Section 2711.
 - a. Officers shall have the same right of arrest without a warrant as in a felony whenever she/he has probable cause to believe the defendant has violated crimes code sections 2504 [related to involuntary manslaughter], 2701 [related to simple assault], 2702 (a)(3), (4) and (5) [related to aggravated assault], 2705 [related to recklessly endangering another person], 2706 [relating to terroristic threats], or 2709.1 [relating to stalking] against a family or household member, although the offense did not take place in the presence of the police officer. The officer must first observe recent physical injury to the victim or other corroborative evidence of the offense[s].
2. Title 18, Crimes Code of Pennsylvania, Chapter 39, Theft, Subchapter B, Section 3904.
 - a. Officers shall have the same right of arrest without a warrant for any grade of theft that exists or may hereafter exist, as in the case of the commission of a felony.
3. Title 18, Crimes Code of Pennsylvania, Chapter 65, Scattering Rubbish, Section 6501.
 - a. A police officer shall have the same right of arrest without a warrant as in a felony whenever the officer has probable cause to believe the defendant has violated subsection (a)(3), although the offense did not take place in the officer's presence. The officer must first observe recent evidence of the offense or other corroborative evidence.
4. Title 75, Vehicle Code of Pennsylvania, Chapter 38, Driving After Imbibing Alcohol or Utilizing Drugs, Section 3811.
 - a. A police officer is hereby authorized to arrest without a warrant any person who the officer has probable cause to believe has violated

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- provisions of section 1543(b)(1.1) relating to driving while operating privilege is suspended or revoked, section 3802 relating to driving under the influence of alcohol or controlled substance, or section 3808(a)(2) relating to illegally operating a motor vehicle not equipped with ignition interlock, regardless of whether the alleged violation was committed in the presence of such officer.
5. Title 75, Vehicle Code of Pennsylvania, Chapter 63, Enforcement, Subchapter A, Section 6304, Authority to Arrest Without a Warrant.
 - a. Officers may arrest any non-resident who violates any provision of this title in the presence of the officer making the arrest.
 - b. Upon arrest of a non-resident under this section, the officer shall proceed in accordance with the provisions of Section 6305 of the Vehicle Code
 6. Title 42, Pennsylvania C.S. Section 8902 authorizes arrests without a warrant under Title 18, Crimes Code of Pennsylvania.
 - a. When a police officer has probable cause from viewing ongoing conduct that endangers the personal security of any person or endangers public or private property when such conduct constitutes certain summary offense[s].
 - b. General Rule: Warrantless arrests, upon probable cause, shall only be authorized for the following summary offenses of Title 18 when there is ongoing conduct that puts the personal security of any person at risk or endangers public or private property:
 - i. Disorderly Conduct [18 PA C.S. Section 5503]
 - ii. Public Drunkenness [18 PA C.S. Section 5505]
 - iii. Obstructing Highway [18 PA C.S. Section 5507]
 - iv. Underage Purchase/Possession of Liquor [18 PA C.S. Section 6308]
 - c. When making such warrantless arrests, police officers are to follow the Pennsylvania Rules of Criminal Procedure, Chapter 4, Part D [2], Rule 441; “Procedure Following Arrest Without Warrant.”

E. Alternatives to Arrest

Officers shall institute proceedings by citation in summary cases based upon the following procedural guidelines:

1. Title 234, the Pennsylvania Rules of Criminal Procedure.

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- a. Governs proceedings in all courts, including courts not of record.
All actions that involve instituting a proceeding by citation in summary cases for violations of the Penal Laws of the Commonwealth of Pennsylvania must follow these rules.
- b. Summary arrest procedures.
 - i. Chapter 4, Procedures in Summary Cases
 - 1. Sets Rules governing the instituting of summary proceedings against defendants.
 - 2. It is intended under these rules that a citation will be issued to the defendant except in exceptional circumstances [such as those involving violence, or the imminent threat of violence, or a danger that the defendant will flee].
 - 3. There may, however, be situations when it is not feasible to immediately issue a citation to the defendant. In these situations, the law enforcement officer would file a citation with the District Judge.
 - ii. Chapter 4, Part B [1], Procedures when Citation is issued to Defendant
 - 1. Sets rules governing the institution of summary proceedings against defendants by issuing the citation to the defendant at the time of the offense.
 - iii. Chapter 4, Part B [2], Procedures when Citation Filed
 - 1. Sets rules governing the instituting of summary proceedings against defendants by filing the citation against the defendant following the offense.
- c. Officers shall institute proceedings in court cases by summons based upon the following procedural guidelines of Title 234, the Pennsylvania Rules of Criminal Procedure.
 - i. Chapter 5, Part B [1], Rule 509, Use of Summons of Warrant of Arrest in Court Cases, provides for the charging of a complaint by summons:
 - 1. In cases which the offense charged is punishable by a sentence to imprisonment of not more than five years, except when:
 - a. Reasonable ground exist to believe that the defendant will not obey a summons
 - b. The identity of the defendant is unknown.
 - ii. In cases where the defendant had been arrested and is thereafter released pursuant to Chapter 5, Part B [3], Rule 518, officers

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shall file a complaint against the defendant within five [5] days of the defendant's release. Thereafter a summons, not a warrant of arrest, shall be issued and the case shall proceed as provided for in Rule 510 of Chapter 5, Part B [2]

- iii. In lieu of formal action, an officer may exercise discretion, consistent with the laws of the Commonwealth and the provisions of this General Order, and choose informal action to solve a given problem, such as referral, informal resolution, and written or verbal warning.
 1. Referrals: The officer shall offer referrals to other agencies and organizations when, in his/her discretionary judgment, it is the most reasonable alternative for the offender and the victim.
 2. Informal resolution: An officer, at his/her discretion may offer informal resolutions to situations and conflicts when in the officer's judgment they can be adequately resolved by the use of verbal warning, informing a proper agency or organization, advising parents of juvenile activity, etc.
 3. Warnings: an officer may issue a warning when, in his/her discretionary judgment, it is the most reasonable alternative for the offender and the victim.

F. Release without charges

1. If an individual is arrested on probable cause and further investigation by the arresting officer determines that sufficient probable cause no longer exists, their supervisor will be immediately notified. Once insufficiency of probable cause is determined, the suspect must be released.
2. A detailed report shall be submitted immediately by the arresting officer if a situation such as this would ever arise developing the events that led to the probable cause arrest and the information which subsequently required the release.
 - a. The shift supervisor will also submit a report including a review of the events and circumstances surrounding the arrest and the release.
 - b. Reports involving these incidents shall be submitted to the Captain.

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G. Use of Discretion

1. Discretionary power is the power of free decision or latitude of choice within certain legal bounds. When this power is poorly exercised, the public as favoritism, bias or corruption may view discretionary power.
2. Therefore, it is imperative that when exercising discretionary power officers take into consideration the goals and objectives of the department, the best interests of the public they serve, any mitigating or aggravating circumstances, and the volatility of the situation at hand.

Effective:

Date: June 14, 2006

By Order Of:

Craig Foust
Chief Of Police