

# UPPER MERION TOWNSHIP POLICE DEPARTMENT

## POLICY AND PROCEDURES

No. 400

Supercedes: NA

Effective: September 2, 2015

Page: NA Section: NA

Page: 1 OF 10

Dated: June 10, 2002

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### **ARREST PROCEDURES WITH/WITHOUT A WARRANT**

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- I. **PURPOSE:** To specify the legal requirements and procedures for any physical arrest completed with or without a warrant.
- II. **POLICY:** The power of arrest is granted to certified police officers. It shall be the policy of the Department to comply with all applicable statutes and court decisions when effecting an arrest.
- III. **CROSS-REF:** Policy #110, DOMESTIC VIOLENCE INCIDENTS  
Policy #1420, LEGAL PROCESS  
Policy #850, DOCUMENTATION OF OFF-DUTY INCIDENTS
- IV. **PROCEDURES:**
  - A. **PRIMARY MUNICIPAL POLICE JURISDICTION:** Any duly employed municipal police officer shall have the power and authority to enforce the laws of the Commonwealth or otherwise perform the functions of that office anywhere within his/her primary jurisdiction as outlined in Title 42, Judiciary and Judicial procedures, Section 8952.
  - B. **ARREST BY WARRANT:** The following procedures shall apply to the service or attempted service of all warrants. Officers shall arrest persons by warrant in accordance with the procedures established by Title 234, the Pennsylvania Rules of Criminal Procedure, which governs criminal proceedings in all courts, including courts not of record.
    1. No arrest warrant shall issue but upon probable cause supported by one or more affidavits sworn to before the issuing authority. Under the provisions of Chapter 5, Part B (3), Rule 513, officers shall submit an Affidavit of Probable Cause with all Criminal Complaints where an arrest warrant is required or being requested.

2. The decision whether to have an Arrest Warrant or Summons issued for the defendant should be determined by following Rule 509 of the Rules of Criminal Procedure. If the defendant fails to appear at the preliminary hearing after being sent a summons, Rule 543 Section D of the Rules of Criminal Procedure shall be followed.
3. Warrants shall only be served by sworn police officers.
4. When serving warrants on subjects not in custody two officers must be present. When serving warrants on subjects already in police custody, or in a secure facility, the number of officers sent will be at the discretion of the shift supervisor. If the officers serving the warrant anticipate the subject will, or may attempt to, flee or to be violent, additional assistance should be requested from the appropriate agency.
5. The requirements of Policy #410, USE OF FORCE, apply when serving warrants
6. It is the investigating officer's responsibility to show due diligence in attempting to serve the warrant. Due diligence would include any number of actions on the officer's part designed to locate and arrest the defendant. Due diligence for felony and misdemeanor warrants will be done and all such actions must be recorded on a Supplementary Report.
  - a. As long as due diligence is performed as noted above, felony and misdemeanor warrants may remain active indefinitely. As a general rule, summary warrants should remain active for two years.
7. At the discretion of the investigating officer, phone contact may be attempted with the defendant and arrangements made for him/her to appear and surrender for service. If the arrangements are made by someone other than the investigating officer, he/she should be notified by the officer making the arrangements.
8. Upper Merion Township police officers will make attempts to assist an outside agency with the service of a warrant. In the case of an NCIC/CLEAN hit, the Communications Center will obtain confirmation that the warrant is active and have a copy of the warrant faxed to this department. If the agency is able to respond immediately and pick up the defendant, it will be their responsibility to arraign him/her.
  - a. If the warrant is from a state other than Pennsylvania, verify that that the arresting agency will extradite and then proceed according to the Uniform Criminal Extradition Act (42 Pa.C.S.A., Section 9135).

- C. ARREST WITHOUT A WARRANT: All actions involving warrantless arrests for violations of the Penal Laws of the Commonwealth of Pennsylvania must follow the rules established by Title 234, the Pennsylvania Rules of Criminal Procedure.
1. Warrantless arrest is authorized in the following cases (reference Chapter 5, Part B, Rule 502, Means of Instituting Proceedings in Court Cases):
    - a. When the offense is a felony or misdemeanor committed in the presence of the officer making the arrest.
    - b. When based on probable cause and the offense is a felony.
    - c. When based on probable cause and 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.
  2. When making an arrest without a warrant in a summary case, officers shall follow the rules established in Chapter 4, Part D(2), Rule 440 (Procedures in Summary Cases When Defendant is Arrested Without Warrant) and Rule 441 (Procedure Following Arrest Without Warrant).
  3. 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. The arresting officer, or his/her designee, will contact the proper issuing authority, or the on-call magistrate, and arrange for the defendant's preliminary arraignment under this rule. (Refer to Chapter 5, Part B(3), Rule 519)
  4. As provided for in the above rule, officers shall consider prompt release of defendants instead of preliminary arraignment following warrantless arrest in the following circumstances:
    - a. When a defendant has been arrested without a warrant for driving under the influence of alcohol or controlled substance.
    - 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.
5. The following are warrantless arrests authorized by statute:
- a. Officers shall have the same right of arrest without a warrant as in a felony whenever there is probable cause to believe the defendant has violated Crimes Code Sections 2504 (Involuntary Manslaughter), 2701 (Simple Assault), 2702(a)(3), (4) and (5) (Aggravated Assault), 2705 (Recklessly Endangering Another Person), 2706 (Terroristic Threats), or 2709(b) (Stalking) against a family or household member, although the offense did not take place in the presence of the officer (for the definition of a family/household member, refer to Policy, # 110, Section IV, DOMESTIC VIOLENCE INCIDENTS). An officer may not arrest a person pursuant to this section without first observing recent physical injury to the victim or other corroborative evidence. (Refer to Title 18, Crimes Code, Chapter 27, Section 2711, Probable Cause Arrests in Domestic Violence Cases)
  - b. Officers shall have the same right of arrest without a warrant for any grade of theft as exists or may hereafter exist in the case of the commission of a felony. Such arrests without a warrant must be made on view or with probable cause. (Refer to Title 18, Crimes Code, Chapter 39, Subchapter B, Section 3904, Arrest Without Warrant)
  - c. Officers may arrest, with the approval of the shift supervisor, any non-residents of the Commonwealth who violates any provision of the Vehicle Code in the presence of the officer making the arrest. (Refer to Title 75, Vehicle Code, Chapter 63, Subchapter A, Section 6304, Authority to Arrest Without Warrant)
  - d. Title 42, Section 8902 authorizes arrests without a warrant under Title 18, Crimes Code, when an officer has probable cause from viewing ongoing conduct which imperils the personal security of any person or endangers public or private property when such conduct constitutes certain summary offense(s). Warrantless arrests, upon probable cause shall only be authorized for the following summary offenses of Title 18:
    - (1) Disorderly Conduct (Title 18, Section 5503)
    - (2) Public Drunkenness (Title 18, Section 5505)
    - (3) Obstructing Highway (Title 18, Section 5507)
    - (4) Underage Purchase/Possession of Liquor (Title 18, Section 6308)
  - e. The right of arrest without a warrant under Title 42, Section 8902 (see “d” above) shall be permitted only after the governmental body

employing the officer promulgates guidelines to be followed by an officer when making a warrantless arrest.

(1) The Board of Supervisors has authorized warrantless arrests for violations of Title 18, Sections 5503, 5505, 5507, and 6308 (see Attachment A).

(2) When making such warrantless arrests officers are to follow Title 234, the Pennsylvania Rules of Criminal Procedure, Part IV, Procedures in Summary Cases When Defendant is Arrested Without a Warrant.

D. VIOLATIONS OF COURT ORDERS:

1. Protection from Abuse Orders: Officers are authorized to make warrantless arrests for violations of valid Protection From Abuse Orders in accordance with the provisions of Policy #110, Section VII-B, DOMESTIC VIOLENCE INCIDENTS.
2. Protection of Victims of Sexual Violence or Intimidation Act (Title 42, Chapter 62A): this act allows for two different types of orders to be issued to victims: Sexual Victim Protection Order (SVP) and a Protection from Intimidation Order (PFI).
  - a. An order may prohibit the defendant from having any contact with the victim, including, but not limited to, restraining the defendant from entering the victim's residence, place of employment, business or school. This may include prohibiting indirect contact through third parties and also prohibiting direct or indirect contact with other designated persons.
  - b. An arrest for violation of these orders may be without a warrant upon probable cause, whether or not the violation is committed in the presence of the police officer. The police officer may verify the existence of an order by telephone, radio or other electronic communication with the appropriate police department, Pennsylvania State Police registry or issuing authority. A police officer shall arrest a defendant for violating an order by a court within the judicial district or issued by a court in another judicial district in this Commonwealth.
  - c. Subsequent to an arrest, the defendant shall be charged with Indirect Criminal Contempt and be taken by the police without unnecessary delay before the court in the judicial district where the contempt is alleged to have occurred.
  - d. When that court is unavailable, the police officer shall take the defendant to a magisterial judge designated as appropriate by local rules of court.

- e. The officer making the arrest shall make reasonable efforts to notify any person protected by these orders of the arrest of the defendant for violation of an order as soon as possible. Unless the person cannot be located, notice of the arrest shall be provided not more than 24 hours after preliminary arraignment.
  - f. The department shall insure that all officers are familiar with crime victims' compensation as provided for in the Crime Victims Act. Instruction concerning crime victims' compensation shall be made a part of the field training program for all trainee officers.
2. Warrantless arrests are also authorized to enforce valid orders issued by courts of competent jurisdiction.
- E. FOOT PURSUITS: Foot pursuits are inherently dangerous police actions. Whenever an officer decides to engage, or continue to engage, in a foot pursuit a quick risk assessment must take place. Officers must evaluate the risk involved to themselves, to other officers, the community and the suspect versus what would be gained from pursuing the suspect. Supervisors are responsible for reviewing the tactical soundness of foot pursuits.
- F. STATEWIDE MUNICIPAL POLICE JURISDICTION: Any duly employed municipal police officer who is within this Commonwealth, but beyond the territorial limits of his/her primary jurisdiction, shall have the power and authority to enforce the laws of the Commonwealth or otherwise perform the functions of that office as if enforcing those laws or performing those functions within the territorial limits of his primary jurisdiction in the following cases (refer to Title 42, Section 8953:
- 1. Where the officer is acting pursuant to an order issued by a court of record or an order issued by a district magistrate whose magisterial district is located within the judicial district wherein the officer's primary jurisdiction is situated, or where the officer is otherwise acting pursuant to the requirements of the Pennsylvania Rules of Criminal Procedure. The service of an arrest or search warrant shall require the consent of the chief law enforcement officer, or his/her designee, of the organized law enforcement agency which regularly provides primary police services in the municipality wherein the warrant is to be served.
    - a. When felony or misdemeanor warrants are served outside Montgomery County, the defendant must be afforded the opportunity to an arraignment in the county in which they were arrested.
    - b. The defendant may waive the right to an arraignment in the county of arrest. Such waiver must be obtained in writing on the Voluntary Waiver Form prior to transport to Montgomery County.

2. Where the officer is in hot pursuit of any person for any offense which was committed, or which he/she has probable cause to believe was committed, within his/her primary jurisdiction and for which offense the officer continues in fresh pursuit of the person after the commission of the offense.
3. Where the officer has obtained the prior consent of the chief law enforcement officer, or his/her designee, of the organized law enforcement agency which provides primary police services to a political subdivision which is beyond that officer's primary jurisdiction to enter the other jurisdiction for the purpose of conducting official duties which arise from official matters within his/her primary jurisdiction.
4. Where the officer has been requested to aid or assist any local, State or Federal law enforcement officer or park police officer or otherwise has probable cause to believe that the officer is in need of aid or assistance.
5. Where the officer is on official business and views an offense, or has probable cause to believe that an offense has been committed, and which offense is a felony, misdemeanor, breach of the peace or other act which presents an immediate, clear and present danger to persons or property. The officer shall make a reasonable effort to identify him/herself as a police officer.
6. Where the officer views an offense which is a felony, or has probable cause to believe that an offense which is a felony has been committed, and the officer makes a reasonable effort to identify him/herself as a police officer.
7. Whenever a municipal police officer exercises any power or authority over any person or event pursuant to the provisions of sections B-3, 4, 5 or 6 of this policy, the officer shall relinquish authority and control over any such person or event upon the request of the chief law enforcement officer, or his/her designee, of the organized law enforcement agency which regularly provides primary police services in the municipality.
8. Any officer involved in an arrest outside of Upper Merion Township must comply with the provisions of Policy #00.2.1, DOCUMENTATION OF OFF-DUTY INCIDENTS.

G. ALTERNATIVES TO CUSTODIAL ARREST

1. Officers shall institute proceedings by citation in summary cases based upon the following procedural guidelines. All actions involving instituting proceeding by citation in summary cases for violations of the Penal Laws of the Commonwealth of Pennsylvania shall follow the rules established by Title 234, the Pennsylvania Rules of Criminal Procedure.

- a. Chapter 4, Procedure in Summary Cases, sets the rules governing the instituting of summary proceedings against defendants. It is intended under these rules that a citation will be issued to the defendant except in exceptional circumstances. There may be situations when it is not feasible to immediately issue a citation to the defendant. In these situations, the officer would file a citation with the district justice.
  - b. The rules governing the instituting of summary proceedings against defendants by issuing the citation to the defendant at the time of the offense are set by Chapter 4, Part B(1), Procedures When Citation is Issued to Defendant.
  - c. The rules governing the instituting of summary proceedings against defendants by filing the citation against the defendant following the offense are set by Chapter 4, Part B(2), Procedure When Citation is Filed.
2. Officers shall institute proceedings in court cases based upon the rules established by Title 234, the Pennsylvania Rules of Criminal Procedure.
    - a. The charging of a complaint by summons is provided for by Chapter 5, Part B, Rule 509, Use of Summons or Warrant of Arrest in Court Cases. A summons may be used in cases in which the offense charged is punishable by a sentence to imprisonment of not more than five years, except when:
      - (1) Reasonable grounds exist to believe that the defendant will not obey a summons.
      - (2) The identity of the defendant is unknown.
    - b. In cases where the defendant had been arrested and is thereafter released pursuant to Title 234, Rule 519, officers shall file a complaint against the defendant within five days of the defendant's release.
3. In lieu of formal action, an officer may exercise discretion, consistent with the laws of the Commonwealth and the provisions of this policy, and choose informal action to solve a given problem, such as referral, informal resolution. and written or verbal warning.
    - a. The officer shall offer referrals to other agencies and organizations when, in his/her discretionary judgement, it is the most reasonable alternative for the offender.
    - b. An officer, at his/her discretion, may offer informal resolutions to situations and conflicts when in the officer's judgement they can be adequately resolved by the use of verbal warning, informing the proper agency or organization, advising parents of juvenile activity, etc.

- c. An officer may issue a warning when, in his/her discretionary judgement, it is the most reasonable alternative for the offender.
4. If an individual is arrested on probable cause and further investigation determines that sufficient probable cause no longer exists, the individual must be released. The shift supervisor shall be immediately notified. The arresting officer shall submit a detailed report outlining the events that lead to the probable cause arrest and the information which subsequently required the release.
5. Youth Aid Panels: The following shall be the procedure for processing juveniles from **MONTGOMERY, CHESTER, DELAWARE, BUCKS, BERKS COUNTY** and **PHILADELPHIA** who commit **NON-TRAFFIC** summary offenses, and/or misdemeanor offenses not exceeding \$1000 for criminal mischief related cases, summary and/or misdemeanor offenses not to exceed \$999 related to theft and/or retail offenses:
  - a. Officers shall bring the juvenile to the station or Plaza sub-station, complete a juvenile referral form and release the juvenile to a parent or guardian after informing them that they will receive notification through the mail concerning the next step in the process.
  - b. **Do not fingerprint** juvenile offenders or issue non-traffic citations to juveniles who are being recommended to the Youth Aid Panel, however, a suspect ID is allowed in cases where officers are having difficulty determining accurate identification of an offender. In Philadelphia County cases you may fingerprint the juvenile and upon completion they will be expunged as part of the YAP Program.
  - c. Officers shall submit the initial police report, juvenile referral and a **“Youth Aid Panel Recommendations Form”** to the juvenile detectives. The YAP form gives the officer an opportunity to express an opinion regarding the suitability of the juvenile for YAP action.
  - d. All information regarding the case will then be reviewed by the juvenile detectives who will assess the juvenile’s arrest and adjudication record before making the decision to refer the juvenile to a panel.
  - e. If the decision is made to deny the juvenile participation in the panel, or if a participant fails to successfully complete it, a **“Youth Aid Panel Disposition Form”** will be forwarded to the team sergeant of the arresting officer so that a citation(s) can be filed.
  - f. In cases where processing is required, the responsibility remains with the arresting officer and can be done after the scheduled hearing.

APPROVED: \_\_\_\_\_  
Chief Thomas M. Nolan

DATE: \_\_\_\_\_

APPROVED: \_\_\_\_\_  
Captain James M. Early

DATE: \_\_\_\_\_

TO BE REVIEWED: ANNUALLY

DISTRIBUTION: All Police Officers  
Township Manager  
File