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## 70.1 ARRESTS

RSA 594:10

### I. **PURPOSE:**

To establish general guidelines for officers, with regard to the arrest and restraint of prisoners.

### II. **POLICY:**

It is the policy of the Berlin Police Department to recognize that the power to arrest is one of the most serious responsibilities of a police officer. All constitutional and statutory rights will be afforded to an arrested person at the time of arrest.

### III. **PROCEDURE:**

#### **A. AN ARREST IS THE EXERCISE OF CUSTODY OVER A PERSON WHICH DEPRIVES THEM OF THEIR LIBERTY FOR MORE THAN A LIMITED PERIOD OF TIME. AN ARREST IS SIGNIFICANT FOR NUMEROUS REASONS:**

1. It constitutes a critical stage of a criminal process.
2. It constitutes a substantial interference with rights of freedom.
3. It constitutes a very visible police activity within the community.

Other than constitutional safeguards, the other major constraint on the power of arrest is jurisdictional: an officer can serve warrants anywhere in the state.

#### **B. ARRESTS SHALL NEVER BE MADE TO SHOW AUTHORITY OR TO VENT PERSONAL FEELINGS:**

1. Verbal abuse is never a sufficient justification for an arrest.
2. Arrest shall never be a substitute for resolving a problem when less severe methods are available.

#### **C. WHENEVER POSSIBLE, ARRESTS SHALL BE MADE WITH A WARRANT:**

An arrest warrant is a process, issued in the name of a legal authority and directed to an officer authorized to serve criminal process, commanding him to take an individual into custody.

#### **D. ARREST WITH A WARRANT:**

Service of an arrest warrant, including bench warrants, should be made as promptly as possible. An arrest

with a warrant may be made at any time and in any place throughout the state. However, it is not advisable to make an arrest on a misdemeanor warrant in the middle of the night or on a holiday. An officer's discretion should be used in determining at what time an arrest should be made, taking all circumstances into account.

1. If a warrant is in existence an officer does not have to have it in his possession to effect the arrest (RSA 594:9). However, it is advisable whenever possible for the officer to have the warrant in his possession at the time of arrest. In the event a person requests to see the warrant it will be shown to the person as soon as practical.
2. Whenever possible two (2) officers should be present when attempting to serve an arrest warrant.
3. The officers should knock, identify themselves as police officers, and advise there is a warrant in effect for a particular resident. The officers should then request entry into the residence.
4. An officer may enter a suspect's home and arrest them without a search warrant provided there is probable cause to believe the person is there and a valid arrest warrant exists.
5. An officer may not enter a third party's home to make an arrest without an arrest warrant even if there is probable cause to believe the person is there unless:
  - a. The resident gives the officer consent to enter the residence.
  - b. The officer has a search warrant to search the premises for the suspect.
  - c. Exigent circumstances preclude the officer from obtaining a search warrant.
6. After a person has been apprehended the warrant will be signed and attached to the police reports.

**E. ARREST WITHOUT A  
WARRANT:**

1. An arrest by a peace officer without a warrant on a charge of a misdemeanor or a violation is lawful whenever:
  - a. The officer has probable cause to believe that the person to be arrested has committed a misdemeanor or violation in his presence; or
  - b. The officer has probable cause to believe that the person to be arrested has committed a misdemeanor or violation, and, if not immediately arrested, such person will not be apprehended, will destroy or conceal evidence of the offense, or will cause further personal injury or damage to property.
  - c. The officer has reasonable ground to believe that the person arrested has committed a felony.
  - d. The officer has probable cause to believe that the person to be arrested has within the past 12 hours committed abuses defined in RSA 173-B 1, I against a person eligible for protection from domestic violence as defined in RSA 173-B, 1, has within the past 12 hours violated a temporary or permanent protective order issued under RSA 173-B or RSA 458:16 by committing assault, criminal trespass, criminal mischief or another criminal act, or has within the past 12 hours violated stalking provisions under 633:3-a.
  - e. a law enforcement officer may, without a warrant, arrest any person involved in a traffic accident, OHRV accident, or boating accident when the officer has probable cause to believe that such person has committed an offense, an element of which is driving under the influence of intoxicating liquors or controlled drugs, prescription drugs, over-the-counter drugs, or any other chemical substances, natural or synthetic,

which impair a person's ability to drive, or both.

**NOTE:** It is suggested that in all arrests, where probable cause does exist, that a warrant should be obtained, unless exigent circumstances demand that the arrest be made solely on the existence of probable cause in the prosecution of the public interest.

1. Probable cause means that the facts within the officer's knowledge were sufficient to allow a reasonable and prudent person, to believe the suspect arrested had committed, or was committing a crime.
2. Each officer shall be able to point to specific factors which lead to the arrest without a warrant. Examples of such factors are:

a. Did s/he see the crime being committed.

b. Did s/he see the person run away.

c. Did s/he receive prompt and direct replies to questions, or was the suspect vague and confused.

d. Has s/he had experience in similar situations.

e. Did s/he receive information from other persons, and if so, was s/he certain of the reliability of that person and the information received.

**F. FUGITIVE FROM JUSTICE/NCIC HIT:**

1. The Berlin Police Department will only execute warrants from another state under the following circumstances:

a. Felony charges.

b. The suspect is entered into NCIC.

c. The originating agency will extradite.

2. In the event an officer requests a NCIC check and the dispatcher advises the subject is wanted, the officer shall:

- a. Confirm the identity of the subject with the wanted subject given by the dispatcher.
- b. Communications personnel will contact the originating agency to confirm the warrant and extradition.
- c. Place the subject in custody under the charge of "Arrest Without A Warrant -Fugitive From Justice."
- d. Complete appropriate booking and bail procedures.
- e. Complete BPD Fugitive From Justice packet for the Prosecutor prior to the end of shift.
- f. The suspect shall be arraigned by the 1st Circuit - District Court- Berlin on the ne\_xt available court date.

**G. ARREST ON WARRANTS FROM ANOTHER NEW HAMPSHIRE JURISDICTION:**

1. A valid arrest warrant issued by any law enforcement agency within the State of New Hampshire may be served by the Berlin Police Department.

2. A True and Attested copy of the warrant shall be requested from the originating agency prior to service. If immediate service is requested from the outside agency a faxed copy of the warrant shall be obtained prior to service.

3. The following procedures shall be adhered to regarding officers encountering suspect(s) wanted via the New Hampshire In-State Misdemeanor File:

a. Confirm proper identity.

b. Check with originating agency regarding the validity of the warrant.

c. Take the suspect into custody; perform booking and bail procedures.

d. Make arrangements for transferring custody.

4. Upon arrest on a warrant from another agency (including bench warrants) the following procedures should be followed:

a. Transportation to the station.

b. Booking and arrest reports completed.

c. Notify originating agency to make arrangements for transferring custody.

#### **H. OFF DUTY ARRESTS:**

1. Off duty officers may be faced with a situation involving criminal conduct that they are neither equipped nor prepared to handle in the same manner as if they were on duty. Because of the above, off duty arrests are not encouraged. If at all possible an on duty officer shall be summoned to the scene to take over the situation. A peace officer retains his/her power and authority to arrest, even if off duty and in civilian clothes (State v Brodhead).

2. Off duty arrests will be permitted within the legal jurisdiction of this department in the following situations:

a. When there is an immediate need in order to prevent a crime from occurring or to apprehend a suspect.

b. When the officer has in his possession appropriate police identification.

c. When there is a likelihood that the delay posed by calling and waiting for arrival of on duty personnel would allow further criminal activity or escalate the situation to a higher degree of seriousness.

3. When off duty, officers are not to enforce traffic violations.

4. When an off duty arrest becomes necessary, the off duty officer will abide by all departmental policies and procedures. An arrest report will be completed and the reasons for the arrest will be noted.

#### **I. AT THE TIME OF ARREST, UNNECESSARY CONVERSATION SHALL BE AVOIDED AND ANY ORDERS TO STATEMENTS TO THE PERSON(S) ARRESTED SHALL BE CLEAR AND BRIEF:**

1. The arresting officer shall identify her/himself as a police officer, except in an emergency situation. Therefore, it is a good idea for the officer to carry his/her credentials when possible.

2. Whenever possible, the person(s) being placed under arrest shall be expressly informed of the fact. The officer shall state as follows: "Police Officer. You are under arrest."

3. An officer shall state the reason for the arrest and allow examination of the arrest warrant, if any, by the person arrested or when the officer is met with resistance.

**J. THE ARRESTING OFFICER SHALL NOT ACT IN A CARELESS OR ROUTINE MANNER, BUT SHALL TAKE ALL NECESSARY STEPS TO ENSURE THEIR SAFETY AND THE SAFETY OF OTHER PERSONS. SUCH STEPS SHALL INCLUDE, BUT ARE NOT LIMITED TO:**

1. Obtaining assistance when necessary, whether before or after the arrest. This is particularly advised when:

a. there is more than one person to be arrested.

b. a dangerous crime is involved, usually a felony of a serious nature.

c. prior experience has shown the need for assistance in a particular situation.

2. Seizing any instruments capable of inflicting serious bodily injury or causing death.

3. Making a search of the area within the immediate reach and control of the person(s) arrested.

4. The person(s) arrested shall be kept in front of the officer at all times. If more than one officer is present, the additional officer shall never pass or position her/himself between the arresting officer and the person arrested.

**K. THE FOLLOWING ARE SITUATIONS IN WHICH TO USE HANDCUFFS:**

1. When an arrest is made.

2. When transporting a prisoner in public or from one facility to another.

3. When a prisoner is violent or gives an indication of belligerence.

4. When a prisoner may cause injury to himself or others.

5. When a suspect's history is not known.

**L. SITUATIONS WHEREBY THE OFFICER MAY DETERMINE THE PRACTICALITY OR NECESSITY TO USE HANDCUFFS:**

1. When transporting juveniles, senile or mentally ill persons.

2. When arresting seriously injured or ill persons.

3. When physical deformities will interfere with the ability to handcuff.

**M. THE USE OF HANDCUFFS:**

1. Handcuffs shall be of a type specified by the department. Officers shall be trained in the use of handcuffs at the Academy and by In-Service Training.

2. Prisoners shall be handcuffed with hands behind their back when feasible.

3. Only in emergency cases, will the following be allowed:

- a female prisoner handcuffed to a male prisoner.
- a juvenile handcuffed to an adult.

4. All handcuffs shall be properly adjusted and double-locked.

**N. THE USE OF FORCE SHALL BE IN COMPLIANCE WITH THE BERLIN POLICE DEPARTMENTS PROCEDURES (S.O.P. 20.2, USE OF FORCE).**

**O. THE PERSON(S) ARRESTED SHALL BE PROMPTLY AND SAFELY TRANSPORTED TO THE STATION.**