

**GORHAM POLICE DEPARTMENT
STANDARD OPERATING PROCEDURES
Arrest Procedures**

**Effective: April 1, 2020
Review: March 1, 2023**

I. PURPOSE

The purpose of this policy is to provide police officers with basic guidelines for conducting arrests.

II. POLICY

It is the policy of this department that all arrests made by departmental personnel shall be conducted professionally and in accordance with established legal principles. In furtherance of this policy, all officers of this department are expected to be aware of, understand, and follow the laws governing arrest. This policy sets forth the fundamentals of the arrest procedure.

III. DEFINITIONS

Arrest: Taking a person into custody.

Arrest warrant: A written order issued by a judge, magistrate, or other proper authority that commands a law enforcement officer to place a person under arrest.

Probable cause for arrest: When facts and circumstances within an officer's knowledge are sufficient to warrant a prudent person, or one of reasonable caution to believe that the suspect has committed, is committing, or is about to commit an offense.¹

Investigative detention: Temporary detention for investigative purposes of a person based upon reasonable suspicion that the person has committed, is committing, or is about to commit a crime, under circumstances that do not amount to probable cause for arrest (also known as a *Terry stop*).²

Reasonable suspicion: A particularized and objective basis, supported by specific and articulable facts, for suspecting a person of criminal activity; the degree of suspicion of criminal activity that justifies an investigative detention but not an arrest.

Citizen contact: Also referred to as a threshold inquiry; an encounter between a police officer and a citizen that may be initiated by the officer for any reason and during which the citizen is free to leave at any time.

Exigent circumstances: A situation in which a police officer must take immediate action to effectively make an arrest, search, or seizure for which probable cause exists, and thus may do so without first obtaining a warrant.³ Such emergency situations are those that "would cause a reasonable person to believe that entry (or relevant prompt action) was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of the suspect, or some other consequence improperly frustrating legitimate law enforcement efforts."⁴

Weapons display: Drawing a handgun or readying a shotgun or similar firearm for quick use if needed, without pointing it at a suspect.

IV. PROCEDURE

A. Basis for Arrest

Officers shall conduct arrests only when based upon either probable cause or an arrest warrant.

1. Probable Cause

a. Probable cause for arrest may be established by one of the following:

- (1) Observations of the officer
- (2) Information or evidence obtained during an investigative detention (*Terry* stop) or during a consensual citizen contact
- (3) An identified citizen's specific complaint
- (4) Information provided by a police informant of proven reliability
- (5) Information provided by other law enforcement sources

b. Officers shall not make any arrest based solely upon the following:

- (1) Information received from an anonymous source
- (2) Mere suspicion, not amounting to probable cause

2. Arrest Warrants

a. Except when a warrantless arrest is justified by the existence of probable cause, arrests shall be made under an arrest warrant.

b. Arrest warrants shall be obtained from the judge, magistrate, or other legal authority empowered to issue such warrants in this jurisdiction.

c. Such warrants shall be in the form prescribed by the law of this jurisdiction and shall adequately identify the person to be arrested. The warrant shall also provide such other information as is required by law.

d. Any officer to whom an arrest warrant is delivered shall examine it to ensure that it is in proper form, that all information required by law is provided, and that the warrant appears to be valid. The officer shall also take note of any restrictions placed upon the arrest by the language of the warrant.

e. Once received, an arrest warrant shall be executed without delay, except as otherwise may be required by the circumstances of the case.

f. No arrest shall be made at a time or in a manner contrary to any express limitations included in the warrant.

g. In addition, no arrest shall be made in a manner or at a time or place prohibited by any of the following:

- (1) Departmental regulation
- (2) State or local legislation
- (3) Applicable court decisions

3. Wherever possible, arrests shall be planned in advance in consultation with a supervisor or other experienced officers.

4. Where advance planning and consultation are not possible, the arrest shall be made in accordance with the arresting officer's departmental training in arrest procedures.
5. Arrests shall be made at a time and place and in a manner that will maximize the probability of a successful arrest and minimize the danger to officers and innocent bystanders.
6. Whenever possible, arrests shall be made in a location where the arrest will not pose a threat to the safety of the public (e.g., not in crowded places where bystanders may be injured should the arrestee offer resistance, particularly resistance involving the use of firearms or other deadly weapons).
7. No officer shall enter premises owned or occupied by a third person to make an arrest unless the officer has a separate legal basis for entering the premises. Such a basis may be provided by any of the following:
 - a. Possession by the officer of a search warrant for those premises
 - b. Consent of a person empowered by law to give such consent
 - c. Exigent circumstances

B. Use or Show of Force During Arrest

1. Officers shall use only that level of force that they reasonably believe is necessary to make an arrest in accordance with this department's use-of-force policy.⁵
2. Weapons shall be displayed during an arrest only where it is reasonably believed necessary to ensure the safety of the officers or others, and for the successful completion of the arrest. Pointing a firearm at a suspect is governed by this agency's use of force policy.

C. Informing/Mirandizing Arrestees

1. The arresting officers shall identify themselves, inform the suspect of his or her arrest, and specify the charges for which the arrest is being made. Officers not in uniform shall display their shields and credentials when making the arrest to ensure proper identification.
2. Arrestees shall be advised of their *Miranda* rights before any questioning. Those rights should, whenever reasonably possible, be read verbatim from a standardized departmentally approved form.⁶
3. A waiver of the *Miranda* rights must be obtained before any questioning of an arrestee can begin. The waiver must be unambiguous, that is, clearly stated or conveyed by interrogating officer(s). Failure to make an explicit, affirmative invocation of these rights, by remaining silent or through other ambiguous means, does not constitute a waiver of *Miranda* rights.
4. If the suspect waives *Miranda* rights, he or she shall be requested to sign the departmental waiver form. Failure to sign shall be noted on the form by the interrogating officer and does not, in itself, preclude officers from proceeding with an interrogation.
5. If the arrestee has not waived his or her *Miranda* rights, no questioning shall be conducted beyond that necessary to accomplish the booking procedure (name, address, employer and so forth).

6. If the arrestee declines to waive his or her *Miranda* right to counsel, or if the arrestee, after waiving that right, elects to reassert it, questioning must cease immediately and no further questioning may be conducted with regard to the crime for which the arrest was made, for any other crime, or by any other law enforcement agency unless
 - a. an attorney representing the arrestee is present during questioning,
 - b. the arrestee voluntarily initiates a further interview, or
 - c. the arrestee has been subject to a break in custody of 14 days or more.
7. If the arrestee has not waived his or her *Miranda* rights, officers in the presence of the arrestee shall refrain from engaging in conversation among themselves that is calculated to elicit incriminating statements or admissions.⁷

D. Arrestee Requests

Following the arrest, officers shall not permit arrestees to leave the immediate area of the arrest for personal purposes (e.g., to get a coat). In exceptional cases where it is deemed necessary to grant the arrestee's request, the arrestee shall first be searched for weapons and then be accompanied and closely monitored by the arresting or other officers.

E. Safety Precautions

1. Officers shall approach every arrest situation with the knowledge that any arrest, regardless of the offense involved may present an element of danger. Therefore, officers making arrests shall take all reasonable precautions to ensure their own safety.
2. Restraint of the Arrestee
 - a. All arrested persons shall be handcuffed after being taken into custody, except as otherwise provided by departmental policy.
 - b. Other lawful forms of restraint may be used when necessary and reasonably available for the safety of officers, prisoners, and others.
 - c. Arrestees shall not be restrained in the four-point restraint unless the arrestee is uncontrollable by other means readily available. A four-point restraint is defined as the hands and ankles bound behind an individual's back. If a four-point restraint is deemed necessary, the arrestee shall be placed on his or her side once bound and monitored for potential physical problems such as difficulty in breathing.
3. Search Incident to Arrest
 - a. Officers shall conduct a thorough search of the person arrested. All property should be logged on a possessed property sheet. A copy should be provided to the arrestee upon their release from custody.
 - b. Any criminal evidence discovered during the search of the arrestee's person shall be seized and preserved in accordance with standing departmental procedures.
 - c. The search incident to arrest shall include not only the person of the arrestee, but also areas within the reach and control of the arrestee.
 - d. Strip searches shall not be conducted in the field except under the most extreme circumstances and with prior approval from a

supervisor. Any officer conducting a strip search of an arrestee in the field shall be prepared to justify the reasons for such a search and to document those reasons in a subsequent written report.⁸

- e. Body cavity searches shall not be conducted in the field.
 - f. Whenever possible, searches incident to arrest shall be conducted by officers of the same gender as that of the person being searched.
4. Protective sweeps of the premises or area where the arrest occurs shall be performed to ensure that no other persons or weapons are present that may represent a danger to the officers or the arrestee.
 5. Post-Arrest Protection
 - a. Officers shall be aware that, following an arrest, they are legally responsible for the safety of the arrestee, any victims present, and all bystanders. Therefore, officers shall take all steps reasonably necessary to protect
 - (1) the officer from the arrestee,
 - (2) victims and third persons from the arrestee, and
 - (3) the arrestee from self-injury or injury by others.
 - b. In particular, officers shall not allow victims into close proximity with the arrestee and shall prevent bystanders from approaching the arrestee until the arrestee is transported from the scene. In addition, officers shall not allow the arrestee out of their immediate presence for any reason until the arrestee is properly secured and transported.

F. Transportation of Arrestees

1. All arrestees shall be searched before being transported and whenever custody of the prisoner is transferred to another officer.
2. All arrestees shall be handcuffed or otherwise restrained during transportation in accordance with departmental policy.
3. Before an arrestee is transported, the area of the transporting vehicle to be occupied by the arrestee shall be searched for articles, including articles that may have been left behind by previous arrestees that may present a hazard to the transporting officers.
4. Security devices in the transporting vehicle, such as door locks and security screens, shall be checked to be certain that they are operating properly.
5. Officers shall seat arrestees in the vehicle in accordance with departmental policy.
6. All arrestees shall be safely restrained with seatbelts, unless there are circumstances present that prohibit this to be possible (e.g., extremely overweight)

G. Booking

1. All arrestee information should be collected, including but not limited to:
 - a. Place of residence; date of birth; place of birth; employment; spouse, including maiden name; height, weight, eye color; hair color; scars, marks and tattoos
2. All arrestees shall be photographed, consisting of a straight on "head shot" and the left and right profile of the person. The photographs shall be loaded into the IMC Records arrest report and ultimately the master file index of

the individual (with some exceptions, including extreme intoxication, transportation to the hospital, uncooperative, etc.).

3. All arrestees shall be fingerprinted (with some exceptions, including extreme intoxication, transportation to the hospital, uncooperative, etc.).
4. Arrestees should be provided with a copy of their bail paperwork, complaints, Notice of Intent to Seek Class A Misdemeanors (if applicable) and any other necessary documents, prior to their release

H. Arrest of Juveniles

All officers shall be aware that the arrest, the transportation, and the booking of juveniles are subject to special legal requirements. Officers shall be familiar with and observe these special requirements at all times when arresting juveniles.

I. Arrest of Department Members

When arresting a member of their own department, officers shall take all precautions and follow all procedures as provided by departmental policy. When possible, defer any case involving a sworn or non-sworn member of his department to another agency for investigation (State Police, Coos County Sheriff's Office, etc.).

J. Citation in Lieu of Arrest

Officers shall issue citations in lieu of arrest in all situations where citation is directed by law. In situations where citation is discretionary, officers shall consider the following:

1. Whether the person is likely to disregard a citation
2. Whether the person, if cited and released, is likely to cause harm to himself or herself or any other person
3. Whether there are other factors that should be considered and are permitted by law and departmental policy

K. Release after Arrest

1. If, after an arrest, it becomes apparent that there is no probable cause to hold the arrestee, the arrestee may be released, under the following conditions:
 - a. The officer is satisfied that there are insufficient grounds for making a criminal complaint against the person arrested.
 - b. The decision is made by a supervisor.
2. If the person is released, police shall ensure that the person is released at a safe location and is not otherwise placed at risk as a result of the incident. If necessary, police should provide transportation for the released person to a safe location.
3. Any record of arrest of a person released shall include a record of release that classifies the incident as a "detention" rather than an arrest.

L. Investigative Detentions

1. Officers shall conduct an investigative detention based upon reasonable suspicion that the person detained has committed, is committing, or is about to commit a crime.
2. Officers shall not prolong the investigative detention beyond the period necessary to accomplish the purpose of the detention. Officers shall be aware that prolonging an investigative detention unnecessarily may cause a

court to view the detention as an unlawful seizure if probable cause does not exist for an arrest.

3. Officers shall take precautionary measures for their own safety during an investigative detention, including display of firearms or handcuffing the detainee. Officers shall be aware that unnecessary or prolonged display of firearms, handcuffing, and so on during the investigative detention may cause a court to view the detention as an actual arrest.
4. Officers who reasonably believe that a person under investigative detention may pose a threat to their safety shall conduct a frisk or pat-down search of the detainee's clothing for weapons. Officers shall not conduct any further search of an investigative detainee unless and until it appears that there is probable cause for the arrest of the detainee.
5. If during the investigative detention, it becomes apparent that there is probable cause to believe that the detainee has committed a criminal offense, the detainee shall then be placed under arrest, and the procedures for arrest set forth in this policy, including the procedures for a search incident to an arrest, shall then be followed by the arresting officers.

¹ Fourth Amendment U.S. Constitution; See Illinois v. Gates (1983)

² Terry v. Ohio (1968)

³ Fourth Amendment U.S. Constitution; See U.S. v. McConney (1982)

⁴ Fourth Amendment U.S. Constitution; See U.S. v. McConney (1982)

⁵ NH RSA 627:5

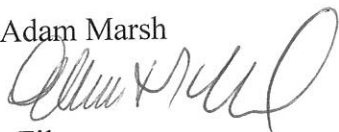
⁶ Miranda v. Arizona (1966)

⁷ Brewer v. Williams (1977)

⁸ Bell v. Wolfish (1979)

Per order of

Chief Adam Marsh



Master File

Town Manager

All sworn personnel