

Cobb County Police Department

Policy 5.11

ARREST PROCEDURES

Effective Date: February 1, 2015
Rescinds: Policy 5.11 (December 15, 2013)
Related Orders: Policy 5.22 “Use of Force”; Policy 5.25 “Search Warrants”; Policy 5.27 “Juvenile Procedures”
Issued By: Chief J.R. Houser Page 1 of 9
The words “he, his, him,” which may appear in this policy, are used generically for clarity and ease of reading. These terms are not meant to imply gender and relate to all employees of the Department.

The purpose of this policy is to establish guidelines regarding the arrest of criminal suspects.

I. POLICY

It shall be the policy of the Department to make arrests based upon probable cause in conformance with constitutional and state guidelines.

II. AUTHORITY

Sworn officers of the Police Department shall have the authority to cite for violations of Cobb County Ordinances in the unincorporated area of the county, make arrests, and execute arrest warrants for violations of state law pursuant to the Official Code of Georgia Annotated, occurring within the jurisdictional limits of Cobb County.

- A.** Georgia Code 36-8-5 “Powers of County Police Generally” provides that county police officers have:
 - 1. The same power to make arrests and to execute and return criminal warrants and process in the county of their election or appointments only, as sheriffs have; and
 - 2. All the powers of sheriffs as peace officers in the county of their election or appointment.
- B.** By virtue of this code section, members of this Department have jurisdiction to enforce state laws within Cobb County, including municipalities.

III. LAWS OF ARREST

A. Probable Cause Defined

Facts and circumstances based upon observations or information that would lead a reasonable officer to believe that a crime has been or is being committed and the person to be arrested is the one who is or has committed the crime.

B. Arrest with a Warrant

An arrest with a warrant is made when a criminal arrest warrant has been issued by an appropriate judicial officer of the court, and the officer fulfills his responsibility by taking into the custody the individual named in the warrant.

1. Non-Uniformed Officers

Whenever a non-uniformed officer attempts to serve a criminal arrest warrant, he should notify his supervisor prior to the attempt. The supervisor may request the presence of uniform officers during the warrant execution.

2. Tactical Team Assistance for High-Risk Warrants

The policies and procedures outlined in Policy 5.25 "Search Warrants" Section IV, shall be adhered to when serving high-risk arrest warrants within the jurisdictional limits of Cobb County.

C. Arrest without a Warrant

1. An arrest for a crime may be made by a law enforcement officer without a warrant if:

- a. the offense is committed in his presence or within his immediate knowledge.
- b. the offender is endeavoring to escape.
- c. the officer has probable cause to believe that an act of family violence, as defined in OCGA 19-13-1, has been committed.
- d. the officer has probable cause to believe that an offense involving physical abuse has been committed against a vulnerable adult (as defined in OCGA 17-4-20).
- e. for other cause, if there is likely to be failure of justice for want of a judicial officer to issue a warrant. (OCGA 17-4-20).

2. An officer's power to arrest without a warrant does not extend to offenses which are long past. For past offenses a warrant must be obtained.

3. Generally, an officer has no official power to arrest without a warrant

beyond the boundaries of his jurisdiction.

4. Whenever an individual is arrested by a law enforcement officer without a warrant, the Cobb County Adult Detention Center requires that a warrant be obtained for the applicable charges within four (4) hours.

D. Citizen's Arrest

Occasionally, officers will be dispatched to situations where a civilian has effected (or wishes to effect) a "citizen's arrest" of a suspect (OCGA 17-4-60). As long as the officer acts in good faith, he will be relieved of any liability (OCGA 17-4-61(c)). In cases involving a "citizen's arrest," the following procedures will be followed before transporting the arrestee to the jail:

1. The officer must have a reasonable belief that the defendant has committed the crime for which he is accused.
2. The officer should consider any indication that the arresting citizen is not a reliable witness (e.g. the arresting citizen is intoxicated or has been untruthful to law enforcement in the past).
3. The officer should not encourage or advise the citizen to make the arrest.
4. The arresting citizen should complete a written statement.
5. The officer will write an incident report and properly execute a Verification of Citizen's Arrest and Request to Transport form. Two copies of this form should be completed for each defendant; one will be submitted to the Security Control Technician at the jail, and the other will be sent to Central Records.
6. The officer should also tell the arresting citizen that they must obtain the arrest warrant within four (4) hours.
7. Citizens cannot apply for warrants for the offenses listed below. For these crimes, officers must obtain the charges.

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|--------------------------------|--------------------|
| • Aggravated Assault | • False Statements |
| • Aggravated Battery | • False Swearing |
| • Aggravated Child Molestation | • Fraud |
| • Aggravated Sexual Battery | • Hijacking |
| • Aggravated Sodomy | • Kidnapping |
| • Aggravated Stalking | • Manslaughter |
| • Armed Robbery | • Murder |
| • Arson | • Purjury |
| • Bigamy | • Rape |
| • Burglary | • Robbery |

- Child Molestation
- Cruelty to Children
- County Ordinance Violations
- False Imprisonment
- False Report of a Crime
- Sexual Battery
- Sodomy
- Statutory Rape
- Treason
- V.G.C.S.A.

E. Arrest for Traffic Offenses

1. OCGA 17-4-20 and 17-6-11 are the two primary statutes that govern the authority to effect an arrest for a traffic offense. In order to avoid confusion resulting from individual interpretations of the various OCGA statutes, officers should use the following guidelines to assist in the decision to arrest for a traffic violation.

a. Officers should generally make an arrest for the following offenses:

- 40-5-20 No License
- 40-5-58 Habitual Violator
- 40-5-120 Unlawful Use of License or Identification Card
- 40-5-121 Suspended License
- 40-5-125 Unlawful Use of Driver's License
- 40-6-15 Suspended Registration
- 40-6-180 Racing on Highways or Streets
- 40-6-270 Duty of Driver
- 40-6-390 Reckless Driving
- 40-6-391 Driving Under the Influence
- 40-6-393 Homicide by Vehicle
- 40-6-394 Serious Injury by Vehicle
- 40-6-395 Fleeing or Attempting to Elude
- 40-6-396 Homicide/Serious Injury by Interference with Official Traffic Control Devices
- 40-6-397 Aggressive Driving

b. In addition, officers should generally make an arrest for any other offense for which a driver's license may be suspended for the first offense by the commission of motor vehicle safety. The only exceptions to this are violations of 40-5-72 and 40-6-10. For both of these offenses:

1. If the driver displays a valid license on lieu of bail, the officer shall release this person on a copy of the citation.
2. If the driver does not have a valid license on his person to display in lieu of bail, the officer should make an arrest.

- c. For drivers under the age of 21, officers should generally make an arrest for any of the charges listed above. Officers may also arrest for any offense for which four or more points are assessable under 40-5-57, including:
 - 40-6-45 Improper Passing on a Hill or Curve
 - 40-6-163 Unlawful Passing of a School Bus
 - 40-6-181 Exceeding the Speed Limit by 24 mph or More
- d. At the discretion of the officer, the following violators may be required to post a cash bond:
 1. When the violator possesses a license issued by a state that is not a member of the Non-Resident Violator Compact (Alaska, California, Michigan, Montana, Oregon, Wisconsin).
 2. When a driver refuses to sign the citation (after being advised that signing the citation is not an admission of guilt and failure to sign will result in having to post a cash bond).

A cash bond may be accomplished by making a physical arrest of the violator, or escorting the driver to the Traffic Violations Bureau of State Court (during business hours) or the Adult Detention Center Bonding Counter (after hours).

2. The officer will indicate the date and time for the initial appearance on the citation (8:30 A.M. for State Court).
3. When an officer executes an arrest of an individual for a traffic offense, the officer shall complete a Citation Arrest Affidavit. The Affidavit, in addition to the citation, will be submitted to the Security Control Technician at the Cobb County Adult Detention Center.

F. Arrest for Underage Possession of Alcohol Offenses

1. OCGA 3-3-23 allows the arrest of an individual by use of a citation for:
 - a. Underage possession of alcohol
 - b. Underage purchasing an alcoholic beverage
 - c. Misrepresenting age to obtain alcoholic beverage
 - d. Misrepresenting identity or using false identification to purchase or obtain alcoholic beverage
2. The officer will indicate the date and time for the initial appearance on the

citation (8:30 A.M. for State Court).

3. When an officer executes an arrest of an individual for an Underage Possession of Alcohol offense, the officer shall complete a Citation Arrest Affidavit. The Citation Arrest Affidavit, in addition to the citation, will be submitted to the Security Control Technician at the Cobb County Adult Detention Center.

G. Arrest for Cobb County Ordinance Violations

The Disorderly Conduct ordinance (86-2) is the only ordinance violation for which an individual may be arrested. In determining the appropriate procedure to follow, the officer must first decide whether to issue a citation only or arrest the offender.

1. Issuing a citation. An officer may elect to make a local ordinance case whereby the offender is released at the scene with a copy of charges to appear at the appropriate court. In these cases, the officer must either have observed the offense occur or have probable cause that the offense occurred.
 - a. The officer will indicate the date and time for the initial appearance on the citation (Thursdays 9:00 A.M. for Magistrate Court).
 - b. In cases where only probable cause exists, the officer must locate someone who observed the violation occur and subpoena that individual to court.
2. Physical Arrest. When an officer executes an arrest of an individual for Disorderly Conduct, the officer shall complete a Citation Arrest Affidavit. The Affidavit, in addition to a citation, will be submitted to the Security Control Technician at the Cobb County Adult Detention Center.

IV. THE “ARREST” OF JUVENILES

See Policy 5.27 “Juvenile Procedures”.

V. OBTAINING AN ARREST WARRANT

- A. The Fourth Amendment to the United States Constitution provides protection to citizens against unreasonable searches and seizures, and states that “NO WARRANTS shall be issued but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

The test for probable cause is whether the facts and circumstances within the

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knowledge of the officer would justify a person of reasonable caution to believe that an offense has been, or is being committed, and this requires merely a probability less than certainty, but more than a mere suspicion.

- B.** All arrest warrants shall be obtained from a Cobb County Magistrate. If the officer is the prosecutor, the officer shall swear or affirm under oath that probable cause exists to arrest the individual.

VI. FORCE USED TO EXECUTE AN ARREST

- A.** An officer has a right to use reasonable force (in accordance with Policy 5.22 “Use of Force”) to arrest an individual where probable cause has been defined.
- B.** Neck restraints and similar weaponless control techniques with a potential for serious injury will not be used to control arrestees.

VII. PROCEDURAL MECHANICS OF ARREST

- A.** A person about to be arrested has the right to know that he is being taken into custody by an officer with lawful authority. One or more of the following factors may provide such notice:
- The suspect actually knows the person making an arrest is an officer.
 - The suspect sees the officer’s uniform or badge.
 - The suspect is apprehended while committing a crime.
 - The suspect is pursued from the scene of a crime.
 - The suspect is told by the officer that he is making an arrest and why he is being arrested.
- B.** If an officer, who is not known to a suspect, fails to identify himself or to make his purpose known, the suspect has the right to resist what appears to be an unjustified assault. However, once identified as an officer, the suspect’s assumption that the arrest is unlawful is made at the peril of the person who resists.
- C.** If the arrest is unlawful, a person has the right to resist the arrest.
- D.** Prisoners will be handcuffed with their hands behind them. The only exceptions are:
1. When the arrested person is either physically handicapped or injured.
 2. Where resistance or violence on the part of the arrested person makes it difficult or impossible to handcuff the person from behind.

In these cases, the officer will find an alternate method or restraint (such as flex cuffs, waist chains, etc.) to secure the arrested person in a manner that will assure

the safety of the officer and the arrested person.

- E.** Once the prisoner has been handcuffed, a thorough search for weapons and contraband should be made.
 - 1. In the case of female arrestees, male officers should make a reasonable effort to either have a female officer assist in the search or have another officer standby as a witness.
 - 2. In the case of male arrestees, female officers should make a reasonable effort to either have a male officer assist in the search or have another officer standby as a witness.

Under no circumstances should an officer delay a weapons search and place his safety in jeopardy in order to comply with section 1 or 2 above.

- F.** The handcuffs will be checked for fit and double-locked.
- G.** When switching handcuffs, the second set of handcuffs should be placed on the suspect first, and then the first pair removed. In all situations, for the safety of the officer and the arrested person, care should be taken when removing an arrested person from a vehicle.
- H.** All purses, briefcases and or any other type of container will be kept out of reach of all arrested persons.

VIII. ALTERNATIVES TO PHYSICAL ARREST

An officer's discretion is an essential function of effective law enforcement. It is a delegated authority where officers are given the responsibility to make the decisions necessary for the effective execution of their duties.

- A.** What is reasonable in terms of appropriate police action, or what constitutes probable cause varies with each situation. Different facts may justify any of the following: an investigation, a detention, a search, an arrest, a citation, a warning, referral, informal resolution, or no action at all.
 - 1. The requirement that legal justification be present imposes a limitation on an officer's action. In every case, an officer must act reasonable and within the limits of his authority as defined by statute and judicial interpretation.
 - 2. Whether an individual is arrested or released with a copy of charges (citation), officers will not inhibit the individual's right of access to the courts. This requirement is accomplished by assigning or obtaining a court date. If the case is sent to Magistrate Court, the officer will assign a court date. Superior Court dates are assigned by the court, and the court

personnel will make the appropriate court date notifications.

- B.** No officer will arrest any person under color of a warrant unless he reasonably believes a valid warrant exists and that the person described in the warrant is before him.
- C.** No officer will arrest any person without a warrant when he knows that he is without probable cause to arrest such person.

IX. GOOD FAITH

If, during or after a lawful probable cause arrest where the officer acted in good faith, there is insufficient evidence to continue to detain the individual, that individual shall be immediately released from custody. This opinion has been rendered by the Cobb County Attorney's Office.