

SCRANTON POLICE DEPARTMENT POLICY

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Physical Arrests

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I. PURPOSE

The purpose of this policy is to provide for the recognition of police authority and associated limitations of that authority for members of the Scranton Police Department.

II. POLICY

Policing is an extraordinarily dynamic and complex endeavor. This policy is established to define an officer's authority by defining that authority in terms of constitutional requirements, statutes, case law, and the rules of criminal procedure. It shall be the policy of the Scranton Police Department to provide for and promote the delivery of police services corresponding to the provisions outlined in this policy. This policy further discusses the application of discretion to arrest alternatives.

III. PROCEDURES

A. The power of arrest granted to Act 120 certified police officers is one of the alternatives available under circumstances that require some form of police action.

B. Arrest With a Warrant

Officers shall arrest persons by warrant in accordance with Title 234, The Pennsylvania Rules of Criminal Procedure, Chapters 4 and 5, as follows:

1. Governs criminal proceedings in all courts, including courts not of record. All actions involving arrests by warrant for Penal Laws of the Commonwealth of Pennsylvania must follow these rules.
 2. Summary warrant issuance, Chapter 4, Part D, Rules 430-431, Issuance of a Warrant.
 3. Court case arrest warrant issuance, Chapter 5, Part B (3), Arrest Procedures in Court Cases provides that the issuing authority shall issue a warrant of arrest when:
 - a. The offense charged 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 such offenses is punishable by a sentence to imprisonment of more than five years.
 - b. The issuing authority has reasonable grounds to believe that the defendant will not obey a summons.
 - c. The summons has been returned undelivered.
 - d. The summons has been served and disobeyed by a defendant.
 - e. The identity of the defendant is unknown.
 4. Chapter 5, Part B (3)(a), Arrest Warrants, Rule 513, Requirements for Issuance.
 - a. No arrest warrant shall be issued but upon probable cause supported by one or more affidavits sworn to before the issuing authority.
 - b. Officers shall submit an Affidavit of Probable Cause, under the provisions of the Pa. Rules of Criminal Procedure, with all Criminal Complaints where an arrest warrant is required or being requested.
- C. Arrests Without a Warrant
1. Officers shall arrest persons without a warrant as follows:
 - a. Title 234, Pennsylvania Rules of Criminal Procedure, Chapters 4 & 5.
 - 1) Governs criminal proceedings in all courts, including courts not of record. All actions involving arrests by warrant for Penal Laws of the Commonwealth of Pennsylvania must follow these rules.
 - 2) Summary arrest procedures; Chapter 4, Rule 440, Procedures in Summary Cases When Defendant is Arrested Without Warrant; Chapter 4, Rule 441, Procedure Following Arrest Without Warrant.
 - 3) Court case arrest procedures; Chapter 5, Rule 519, Procedures in Court Cases Initiated by Arrest without Warrant.
 - a) Warrantless arrest is authorized when the offense is a felony or misdemeanor committed in the presence of the officer making the arrest.
 - b) Warrantless arrest is authorized based upon probable cause when the offense is a felony.

- c) 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 warrant is specifically authorized by statute.
- 4) Chapter 5 (b). Arrest without Warrant. Rule 519, Procedure in Court Cases Initiated by Arrest Without Warrant.
- a) 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.
 - b) Prompt release of the defendant following Warrantless arrest, instead of preliminary arraignment, shall be considered by officers in the following circumstances, as provided for in this Rule:
 - i) When a defendant has been arrested without a warrant for driving under the influence of alcohol or controlled substances.
 - ii) When the most serious offense charged is a misdemeanor of the second degree.
 - iii) When the defendant is a resident of the Commonwealth.
 - iv) When the defendant poses no threat of immediate physical harm to any other person or to himself or herself.
 - v) When the arresting officer has reasonable grounds to believe that the defendant will appear as required if the charges are instituted by summons.
 - vi) When the defendant does not demand to be taken before an issuing authority.
 - c) In cases where the defendant is released pursuant to Rule 519, 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 Rule 110 of the Pennsylvania Rules of Criminal Procedure.
 - d) Affidavits of Probable Cause are required when the defendant is taken before an issuing authority for formal contact with the criminal justice system through preliminary arraignment.
- b. Warrantless arrest authorized by statute.
- 1) Title 18, Crimes Code of Pennsylvania, Chapter 27, Assaults, Section 2711.

Officers 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 crimes code section 2701 (related to simple

assault), 2702 (a)(3), (4) and (5) (related to aggravated assault, or 2705 (related to recklessly endangering another person) against his spouse or other person with whom he resides or has formerly resided although the offense did not take place in the presence of the police officer if the officer first observed recent physical injury to the victim or corroborative evidence of the offense(s).

- 2) Title 18, Crimes Code of Pennsylvania, Chapter 39, Theft, Subchapter B, Section 3904.

Officers shall have the same right of arrest without a warrant for any grade of theft as exists or may hereafter exist as in the case of the commission of a felony.

- 3) 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.
- 4) Title 42, Pa. C.S. Section 8902 authorizes arrests without a warrant under Title 18, Crimes Code of Pennsylvania, when a police 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 offenses.

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 imperils the personal security of any person or endangers public or private property.

- a) Disorderly Conduct (18 Pa. C.S. Section 5503).
- b) Public Drunkenness (18 Pa. C.S. Section 5505).
- c) Obstructing Highway (18 Pa. C.S. Section 5507).
- d) Underage Purchase/Possession of Liquor (18 Pa. C.S. Section 6308) (under 18 years of age).

2. Alternatives to Arrest – Officers shall institute proceedings by citation in summary cases based upon the following procedural guidelines.

Chapter 4 of 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 Penal Laws of the Commonwealth of Pennsylvania must follow these rules.
- b. Summary arrest procedures: Chapter 4, Rule 400, Means of Instituting Proceedings in Summary Cases, sets 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 (such as those involving violence, or the imminent threat of violence, or a danger that the defendant will flee). 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 justice."

- c. Chapter 4, Part (B)(1) Procedures When Citation is Issued to Defendant, sets rules governing the instituting of summary proceedings against defendants by issuing the citation to the defendant at the time of the offense.
 - d. Chapter 4, Part (B)(1) Procedures When Citation is Filed, sets rules governing the instituting of summary proceedings against defendants by filing the citation against the defendant following the offense.
3. Officers shall institute proceedings in court cases by summons based upon the following procedural guidelines.

Chapter 5, the Pennsylvania Rules of Criminal Procedure.

- a. Rule 509, Use of Summons or Warrant of Arrest in Court Cases provides for the charging a complaint by summons:

In cases which the offense 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 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 Pa. Rules of Criminal Procedure.
- c. Affidavits of Probable Cause
Shall be completed and attached to Criminal Complaints as required by statute or local rule.

4. In lieu of formal action, an officer may exercise discretion, consistent with the laws of the Commonwealth and the provisions of this Directive, and choose informal action to solve a given problem, such as referral, informal resolution, and written or verbal warning.
- a. Referrals – The officer shall offer referrals to other agencies and organizations when, in the officer's discretionary judgment, it is the most reasonable alternative for the offender and the violator.

- b. 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 the proper agency or organization, advising parents of juvenile activity, etc.
 - c. Warnings – A warning may be issued by an officer when, in his/her discretionary judgment, it is the most reasonable alternative for the offender and the victim.
5. Release without charges
If an individual is arrested on probable cause and further investigation by the arresting officer determines that sufficient probable cause no longer exists, a supervisor will be immediately notified. Once insufficiency of probable cause is determined, the suspect must be released.
6. Discretionary power is the power of free decision or latitude of choice within legal bounds. When this power is poorly exercised, discretionary power may be viewed by the public as favoritism, bias or corruption. 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 circumstances, and the volatility of the situation at hand.

By Order Of:

Chief Carl R. Graziano
Superintendent of Police
Scranton Police Department