



## Policy 302: Arrest and Detention

### POLICY

Our policy is to effect arrests safely and lawfully.

#### Order 302:

This order deals with arrest, detention, bail, citizen's arrests, and the 36- and 48-hour rules. Officers are responsible for this information.

#### Order 302.1: Arrest, Detention and Bail for Violators

The basic authority for police officers within the State of Minnesota to make arrests derives from MSS 629.30. The primary purpose of an arrest is to bring an arrested person before the court to answer to the violation for which he/she was arrested.

#### Order 302.2: Custodial Arrests

A custodial arrest is the actual, physical restraint of a person and subsequent detention. Custodial arrest may occur with or without a warrant depending on the circumstances.

#### Order 302.3: Arrest with a Court Warrant

It is not necessary that the police officer possess the actual warrant, however there must be reliable information that an active warrant exists for the individual's arrest. The officer shall inform the defendant that the officer is acting under a court warrant and shall show the warrant if requested to do so, or as soon as possible and practical.

A police officer may make a custodial arrest of a named or described individual after being informed by any competent court or police agency that a warrant is active:

- If the warrant is a misdemeanor or petty misdemeanor, the defendant may be taken into custody only between 8:00 AM and 10:00 PM and not on Sunday, unless the warrant is "night-capped" by the specific court authority, or if the defendant is found on a public highway, street or public place.
- If the defendant is charged with a felony or gross misdemeanor, the defendant may be arrested on any day and at any time.

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#### **Order 302.4: Arrest Without a Warrant**

According to MSS 629.34 Subd 1-c, an officer may make an arrest without a warrant under the following circumstances:

- For a public offense (misdemeanor or gross misdemeanor) committed or attempted in his/her presence.
- When the person arrested has committed a felony, although not in his/her presence.
- When a felony has in fact been committed and he/she has reasonable cause to believe the person arrested has committed the felony.
- Upon a charge made upon reasonable cause of the commission of a felony by the person arrested.
- Under the circumstances described above when the offense is a gross misdemeanor violation of MSS 609.52 (Theft), 609.595 (Damage to Property), 609.631 (Check Forgery), 609.749 (Harassment/Stalking), or 609.821 (Financial Transaction Card Fraud);
- Under circumstances described above when the offense is a non-felony violation of a restraining order or no contact order previously issued by a court.

According to MSS 629.34 Subd 1-d, to make an arrest authorized under this subsection, the officer or constable may break open an outer or inner door or window of a dwelling house if, after notice of office and purpose, the officer or constable is refused admittance.

This must be read along with the case of *Payton v. New York*, a United States Supreme Court case that states without consent or exigent circumstances, a search warrant is necessary to enter a private dwelling to effect an arrest based upon probable cause. Examples of exigent circumstances would be that the defendant may commit another crime, the defendant may harm himself or someone else, or when the officer is in fresh pursuit.

#### **Order 302.5: Citations in Lieu of Arrest or Detention**

The use of citations is controlled by Rule 4.02 Subd 2 of the Minnesota Rules of Criminal Procedure. Officers of the Lakeville Police Department who have decided to proceed with the prosecution of an individual without the direction of a court order shall issue citations to a person subject to arrest for misdemeanors, unless it reasonably appears to the officer that arrest or detention is necessary to prevent bodily harm to the accused or another, or that the arrestee is likely to commit further criminal conduct, or there is a substantial likelihood that the arrestee would fail to respond to the citation.

If you decided to proceed with the prosecution of a misdemeanor, you must issue a citation and not further detain the accused, if he/she does not fit any of the other exceptions.

Minnesota Rules require that a person arrested for a misdemeanor without a warrant must be released on a promise to appear unless it reasonably appears that continued detention is necessary based on the following factors:

- If the accused refuses to satisfactorily identify him/herself.
- If the accused has no permanent address.

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- If the accused has a past history of not responding to criminal procedure.
- If the accused is an out of state resident
- If the defendant may cause harm to himself or another, or may upon release engage in further criminal conduct
- If the accused is under the influence of drugs or liquor and not accompanied by an otherwise responsible person
- If the accused exhibits assaultive behavior or verbally threatens another
- If the accused is charged with a crime that constitutes the violation of previous conditions of release.

In all cases where citations or summons are issued, the officer should pay attention to using the correct wording in the charge, along with the correct statute or ordinance citation. For instance, use "Driving While Under the Influence of an Alcoholic Beverage" instead of D.U.I.

- The officers should make sure that everything is in order before a citation or summons is issued.
- Once issued, only a judge can void a citation or summons if an error is made.
- If there is a wish to void the citation or summons, this must be accompanied by a letter of explanation written by the arresting officer.
- The entire citation must be filled out in detail, including the notes/Officer copy portion of the summons.
- Detailed descriptions on the back of a summons facilitate prosecution and provides necessary information to the court, the prosecuting attorney, and the defendant.
- The officer is not to advise the violator on court procedures or the amount of the fine.
- The officer should only inform the subject as to the date, time and location of any court appearance.
- Fine schedules provided by the court, if available, will be distributed to violators.

If a subject is arrested on a misdemeanor charge for any of the aforementioned reasons:

- The original summons must be attached to the arrest report and submitted to the court at the first appearance.
- It is very important that the court have all reports at that time so appropriate release conditions can be determined.
- These items should go with the arrestee to the jail.
- It is the jail's responsibility to see that the summons and police reports accompany the arrestee to court.
- A copy of the police report in this type of case must be sent to the appropriate prosecutor as soon as possible.

In the case of felonies and gross misdemeanors, the prosecutor's complaint and warrant are the preferred method to commence prosecution, unless on probable cause you intercept a crime or immediately pursue the report of a felony and the delay in time in obtaining a warrant may result in the loss of evidence and subsequent inability to locate the defendant. In any case, when a defendant is jailed under a gross misdemeanor or felony, it is imperative that you contact the appropriate prosecuting authority as soon as possible so that the authority can prepare formal charges against the defendant within the time prescribed by law.

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#### **Order 302.6: Citizen's Arrest**

In cases where the complainant makes a citizen's arrest, the complainant will be required to:

- Complete and sign a citizen's arrest form against the arrestee.
- The complainant will also be advised that it may be necessary for him/her to testify in court against the arrestee and the complainant must indicate a willingness to do so.
- The handling of the arrestee will then follow guidelines for a petty misdemeanor or misdemeanor arrest and be referred to the appropriate prosecutorial office.

#### **Order 302.7: 36 Hour Rule**

General Rule:

- The 36-hour rule controls how long a person arrested without a warrant may be held in custody before he/she must be brought before a judge or judicial officer.
- Whenever a suspect is taken into custody, he/she must be brought before a judge without unnecessary delay and in any event, not more than 36 hours after the arrest.
- The rule applies to all misdemeanor, gross misdemeanor and felony warrantless arrests regardless of whether a complaint or affidavit has been signed. (Rules of Criminal Procedure 4.02 Subd 5).

Time Computation:

In calculating the 36-hour rule for arrested adults, the clock always starts ticking at midnight at the end of the day of arrest, but you do not count the following:

- The day of the arrest, or Sundays, or Legal holidays

Juvenile Arrests:

If the person arrested is a juvenile, the 36-hour calculation does not include the following:

- Saturdays, Sundays, or Legal holidays

Arrests by Warrant:

If the arrest is pursuant to a warrant, then the arrested person must be brought promptly before the court, if court is in session. If court is not in session, then the arrested person must be brought before a judge without unnecessary delay, and in any event, not later than 36 hours after the arrest excluding the day of arrest, or as soon thereafter as a judge is available.

When computing the 36 hours for warrant arrests, the clock starts ticking at midnight following the arrest. Although you do not count the day of arrest, you do count all other days, including Saturdays, Sundays, and legal holidays. (Rules of Criminal Procedure 3.02 Subd 2).

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#### **Order 302.8: 48 Hour Rule**

##### General Rule:

Whenever a person (adult or juvenile) is arrested without a warrant (misdemeanor, gross misdemeanor or felony), he/she may not be detained for longer than 48 actual hours from the time of the arrest unless a complaint has been signed by a judge or a judicial determination has been made that probable cause exists for continued detention.

The judicial determination that probable cause exists will almost always take the form of a judge either signing a formal complaint prepared by a City or County Attorney or signing an affidavit of warrantless arrest prepared by a peace officer.

##### Time Computation:

The clock on the 48-hour rule starts ticking as soon as the suspect is arrested and runs continuously for the next 48 hours. There are no exclusions in computing the 48-hour time limit. Each day is counted, including the day of the arrest, weekends and legal holidays.

##### 36-hour v. 48-hour rule:

Because of the exclusions permitted in computing the time under the 36-hour rule (i.e. excluding the day of arrest, Sundays, and legal holidays) compliance with the 36-hour rule does not guarantee compliance with the 48-hour rule. The 36- and 48-hour rules are separate and distinct, and both must be followed:

- *36 Hour Rule:* Friday morning 9:00 a.m. arrest = Defendant must appear before a judge by Monday at noon (end of 36 hours excluding day of arrest and Sunday).
- *48 Hour Rule:* Friday morning 9:00 a.m. arrest = Defendant must be released by 9:00 a.m. Sunday morning (end of 48 hours) unless defendant's continued detention is authorized by a judge.

##### Unreasonable Delays:

The probable cause determination must occur without unreasonable delays but in no event later than 48 hours after the arrest. Even a probable cause determination made within 48 hours may be too late if there is evidence of an unreasonable delay in gathering additional evidence to justify the arrest, a delay motivated by ill will toward the arrested individual, or bad faith.

#### **Order 302.9: Release on Bail**

Under most circumstances, an individual charged with a misdemeanor may be released on bail pending appearance in court for arraignment. The supervisor on duty will determine whether the person is eligible for bail and see that proper bail forms are filled out. The personal appearance on a court date assigned is mandatory, even though bail is posted, and the arrested person must be so informed. Therefore, in making determination as to whether a person arrested on a misdemeanor charge should be allowed to bail, the supervisor may take into consideration such things as:

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- Residence
- Employment
- Past record
- Possible hardship to family
- Circumstances involved in the crime
- Completeness of the investigation, and
- Danger to subject and others if he or she is bailed
- As a general rule, the normal bail schedule is to be followed.

### **Order 302.10: Photographs**

All adult persons arrested and processed at the Lakeville Police Department will have a photograph taken. For juveniles, see Order 319.

### **Order 302.11: Detention/Holding Cell**

The detention cell is intended for temporary confinement only. The purpose is to detain those individuals who are awaiting transport to a secure facility, those individuals who are in danger of harming themselves or others or those individuals whose detention is necessary to prevent further criminal activity. Complete procedures for use of the Holding Cell are found in Order 408.

### **Order 302.12: Arrests Under Mutual Aid**

Officers in another jurisdiction on official business have the same arrest authority as if in their own jurisdiction and may use their own summons/citation forms.