



ROCKFORD POLICE DEPARTMENT

GENERAL ORDER

NUMBER: 2.02

TITLE: ARRESTS AND ALTERNATIVES TO ARREST

SERIES NUMBER: 2 - OPR

SERIES TITLE: OPERATIONS

TOPICS / REFERENCE: ARREST, DISCRETION, CUSTODIAL ARREST, MIRANDA RIGHTS

APPENDICES: A

ORIGINAL EFFECTIVE / ISSUE DATE: AUGUST 20, 2008

DATE OF LAST REVISION: JUNE 20, 2017

THIS ORDER REMAINS IN EFFECT UNTIL REVISED OR RESCINDED

POLICY:

It is the policy of the Rockford Police Department to vigorously and equitably enforce all laws, statutes, and ordinances of the State of Illinois and the City of Rockford. Sworn Department personnel are permitted to exercise discretion and use alternatives to arrest within limits and in conformance with Department goals and objectives.

PURPOSE:

The purpose of this General Order is to establish Department policy, procedures and guidelines regarding arrests and alternatives to arrest. Officers are permitted to exercise their own discretion when making decisions regarding arrests but must always comply with applicable legal requirements.

These guidelines are not meant to be all-inclusive, since each incident must be dealt with on an individual basis, but are intended as broad guidelines to assist the employees and supervisors involved.

This Order is comprised of the following numbered section:

- I. DEFFINITIONS**
- II. ARREST**
- III. DISCRETION**
- IV. ALTERNATIVES TO CUSTODIAL ARREST AND LODGING**
- V. RIGHTS OF ARRESTED PERSONS**

APPENDICES:

A. Miranda Rights Form

I. DEFFINITIONS:

- A. Discretion: A decision that represents a reasonable choice based on an officer's experience, training, and knowledge.
- B. Hot Pursuit / Fresh Pursuit: The immediate pursuit of a person who is fleeing in order to avoid arrest.
- C. Probable Cause: Facts and circumstances known to the complainant, which would warrant a prudent and cautious person, with the knowledge, training and experience of a police officer, in believing that an offense has been committed or is being committed and that the individual to be arrested committed the offense.
- D. Totality of Circumstances: An examination of all facts, circumstances and reasonable inferences from those facts and circumstances known or available to an officer in a particular situation.

II. ARREST:

- A. Illinois Compiled Statutes [725 ILCS 5/107-2](#), provides that a peace officer may arrest a person when he has reasonable grounds to believe that a person is committing or has committed an offense. When a lawful arrest is effected, with or without an arrest warrant, a law enforcement officer may reasonably search the person arrested and the area within such person's immediate presence, or under their immediate control, during or after the arrest for the purpose of:
 - 1. Protecting the officer from attack;
 - 2. Preventing the person from escaping;
 - 3. Discovering the fruits of a crime;
 - 4. Discovering any instruments, articles or things, which may have been used in the commission of the offense; and
 - 5. Discovering any instruments, articles or things, which may constitute evidence of the offense (including contraband).

Note: It shall be recognized that the phrase "arrestee's immediate presence" has been defined by the Supreme Court as that area within the arrestee's immediate control. All arrestees shall be accorded the protections of the "Rights of Accused" as provided for in the Illinois Compiled Statutes [725 ILCS 5/103](#). et seq.

B. Arrest with a Warrant:

- 1. Officers who possess an arrest warrant have the authority to execute the warrant anywhere within the State of Illinois (Illinois Compiled Statutes [725 ILCS 5/107-2](#)):
 - a. When serving a warrant outside the City of Rockford the officer shall notify the local law enforcement agency of the officer's

presence within the jurisdiction, unless exigent circumstances exist. In this event the officer shall notify the local law enforcement agency as soon as no exigency exists.

2. When making an arrest on the basis of a warrant, the arresting officer must inform the suspect of the following:
 - a. A warrant has been issued for their arrest; and
 - b. The nature of the offense specified in the warrant.
- C. Arrest within the City of Rockford Geographic Boundaries:
1. An officer may make an arrest based upon probable cause and without a warrant anywhere within the geographic boundaries of the City of Rockford (Illinois Compiled Statutes [65 ILCS 5/7-4-7](#) and [65 ILCS 5/7-4-8](#)); and
 2. When making an arrest without a warrant, the arresting officer must inform the suspect of the nature of the offense on which the charge is based.
- D. Hot or Fresh Pursuit:
1. Officers have the authority to make an arrest based upon probable cause and without a warrant anywhere in Illinois when the officer is engaged in hot or fresh pursuit ([People v. Clark, 360 N.E. 2d 1160 {1977}](#)).
- E. Mutual Aid:
1. Sworn officers from the Rockford Police Department have full authority as peace officers in another municipality when fulfilling a mutual aid role (Illinois Compiled Statutes [65 ILCS 5/1-4-8](#) and [65 ILCS 5/11-1-2.1](#)).
- F. Arrest by private person:
1. Officers have the authority to make a warrantless arrest outside the City of Rockford if the arrest would be valid if made by a private citizen (Illinois Compiled Statutes [725 ILCS 5/107-3](#)):
 - a. If the arrest is not the direct concern of the City of Rockford, officers should make a reasonable effort to bring about the appropriate action by the responsible law enforcement agency.
- G. Assisting another law enforcement agency:
1. Sworn Officers from the Rockford Police Department may be summoned outside the city limits to aid another law enforcement officer. Any person assisting a peace officer has the same powers of arrest as the peace officer being assisted (Illinois Compiled Statutes [725 ILCS 5/107-8](#)).
- H. Documentation of an arrest:
1. All arrests as described in **Section II., A. - G** of this Order will be documented and submitted by completing an incident report.

III. DISCRETION:

- A. It is unrealistic to expect officers to enforce all laws and ordinances without regard to the circumstances encountered. The proper use of discretion is an important aspect of law enforcement and is predicated on good judgement, experience, and training.
- B. Officers will always act in accordance with the law and [Department Rules and Regulations](#). When discretion is employed, it must be reasonable, defensible and always accomplish a police purpose.
- C. Officers will seek direction from their supervisor when the appropriate course of action is in doubt.
- D. Officers must realize that the use of discretion is not permitted when statutes, Department Orders and Directives or supervisory direction mandate a specific action.
- E. An officer's discretionary decision regarding enforcement action or inaction must not be influenced by malice, vengeance, or prejudice based upon status, age, race, ethnic background, religious belief, mental condition, gender, sexual preference, physical or mental disability.

IV. ALTERNATIVES TO CUSTODIAL ARREST AND LODGING:

- A. It will be the policy of the Rockford Police Department to comply with the bonding and bail procedures set forth in the applicable statutes and in [Article V of the Rules of the Supreme Court of Illinois on Trial Court Proceedings in Traffic and Conservation Offenses](#), Ordinance Offenses, Petty Offenses, and certain Misdemeanors Bail Schedules:
 - 1. [Public Act 98-0870](#) ("Sign and Drive") was signed into law August 2014 and is effective January 1, 2015. A summary of the major provisions and requirements of the amended Sign and Drive Law include:
 - a. Violators are no longer required to post a bond to secure their release by posting a driver's license or cash bail for any petty Illinois Vehicle Code violation;
 - b. All violators cited for a petty Illinois Vehicle Code violation must be released on a written Promise to Comply as authorized by [Section 6-308\(a\)](#) of the Illinois Vehicle Code;
 - c. A violator on a petty violation may satisfy the case with a written plea of guilty and payment of fines, penalties and costs equal to the bail amount established by the Illinois Supreme Court Rule;
 - d. Other more serious violations of the Illinois Vehicle Code; such as DUI, mandatory insurance, fleeing or attempting to elude a police officer, reckless driving, street racing or any other business offense or Class C Illinois Vehicle Code violation, continues to require the posting of bail to secure the violator's release, (same procedure as prior to amendments), regardless of being required to appear in court as specified in [Rule 551](#); and
 - e. Violations of overweight on axle or registration continue to require bail to secure release. The Code of Criminal Procedure was

amended to clarify that elimination of the bond requirement under “Sign and Drive” pertains exclusively to petty Illinois Vehicle Code violations, as provided in [Section 6-308](#). Additionally, on December 30, 2014, and also effective January 1, 2015, the Court amended its [Article V Rules](#) regarding traffic violations to compliment the amended law as follows:

- f. [Rule 501\(g\)](#) was amended to add “Illinois” residents and [Section 6-308\(a\)](#) of the Illinois Vehicle Code to the definition of Promise to Comply for petty offenses;
- g. [Rule 503\(a\) \(1\)](#) was amended to include [Section 6-308](#) of the Illinois Vehicle Code;
- h. [Rule 526\(e\)](#) was amended to add Promise to Comply and allow for the execution of a written promise on specified subparagraphs (1) and (8) of [Rule 526\(c\)](#) in lieu of bail; and
- i. [Rule 556\(a\)](#) was amended to add [Section 6-308](#) of the Illinois Vehicle Code for purposes of an entry of the Order of failure to Appear and suspension of an Illinois violator’s driving privileges.

B. Individual Bond. Persons arrested for or charged with an offense covered by [Rule 526](#), [Rule 527](#) and [Rule 528](#) who are unable to secure release from custody under these rules may be released by giving individual bond (in the amount required by this article) by those law enforcement officers designated by name or office by the chief judge of the circuit, except when the accused is:

1. Unable or unwilling to establish his identity or submit to being fingerprinted as required by law;
2. Is charged with an offense punishable by imprisonment and will pose a danger to any person or the community;
3. Elects release on separate bail under [Rule 503\(a\)\(3\) or 503\(a\)](#); or
4. Persons required to deposit both bail and driver’s license under [Rule 526\(e\)](#) may be released on \$1,000 individual bond and their current Illinois driver’s license. If authorized by the chief judge of the circuit, individual bonds under this section (B) may be executed by signing the citation or complaint agreeing to comply with its conditions.

C. Posting of Bond for Criminal Offenses:

1. The issuance of a “Notice to Appear” is an alternative to custodial arrest. The use of a “Notice to Appear” is not mandatory; however, it should be used when appropriate as an option to custodial arrest:
 - a. Issuance of a Notice to Appear will be limited to Class B and Class C misdemeanors and ordinance violations.
 - b. All Class A misdemeanors and felonies will be booked and processed through the jail.

Note: Exceptions to this may be made on a case-by-case basis with supervisory approval (e.g., Persons with medical conditions that would make lodging the person too difficult). Refer to [Memorandum 2017 – 028 \(r\) Changes to Custodial Arrests to Notice to Appear or Promise to Comply](#) for further information.

2. When a custodial arrest is made on a criminal complaint the defendant will be processed through the Winnebago County Jail, even if the defendant has the ability to immediately post bond:

- a. All persons processed through the Winnebago County Jail shall be fingerprinted and photographed, per Winnebago County Jail policy.
 3. The bond for a defendant arrested on a warrant will be pre-determined by local circuit court administrative order, state statute, or by the judge who issues the warrant. Officers will remand the subject to the Winnebago County Jail.
- D.** Law Enforcement officers, in the course of their duties, often encounter people in need of help that is more appropriately provided by another criminal justice agency, public social service agency or private social service agency:
1. The elderly, juveniles, alcoholics, mentally ill, substance abusers, physically sick, handicapped and transients frequently need help from resources outside the realm of law enforcement officials;
 2. To divert non-serious and/or social problems from the formal criminal justice system, Department personnel will refer persons to other criminal justice agencies, public social service agencies, or private social service agencies within the legal parameters of state statutes;
 3. Any decision about involvement in these situations will be based on the circumstances of the case, capabilities of the involved parties, available manpower, and potential harm to the individual or others;
 4. The most recent directory of services and resources available through various public and not-for-profit social service agencies is located in the District Commander or District Lieutenant's office to assist officers and supervisors for referrals; and
 5. Cases involving juvenile referrals will be handled in compliance with Illinois State statutes and appropriate Department policies and procedures.

V. RIGHTS OF ARRESTED PERSONS:

- A.** When in custody, an arrested subject must be provided with food, shelter, and if required, medical treatment. (Illinois Compiled Statutes [725 ILCS 5/103-2](#)).
- B.** When questioning a suspect after a lawful arrest, certain rights must be afforded to the suspect as decided by the United States Supreme Court in [Miranda v. Arizona, 384 U.S. 436 \(1966\)](#):
1. Custodial interrogation means the questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of their freedom in any significant way;
 2. Custodial interrogation does not include general on-scene questioning of citizens in the fact finding process or questions asked while gathering identifiers (e.g., name, age, address);
 3. Prior to custodial interrogation, a police officer must warn the suspect:
 - a. They have the right to remain silent;
 - b. Any statement made by them may be used against them in a court of law;

- c. They have the right to talk to an attorney before questioning and have an attorney present during questioning; and
 - d. If they cannot afford to hire an attorney, one will be provided prior to any questioning.
4. If the suspect indicates they do not wish to be interrogated, they may not be questioned;
5. If the suspect requests an attorney, interrogation must be stopped until the attorney arrives;
6. The suspect may consult with an attorney prior to interrogation and may insist on an attorney being present during interrogation.
7. A suspect may waive their right to remain silent and their right to an attorney provided the waiver is made voluntarily, knowingly, and intelligently.
8. No waiver can be effective unless the suspect is given the specific Miranda Warnings spelled out in this order.
9. An expressed statement of waiver, either oral or written, by the suspect is necessary. A pre-printed Department right waiver form ([Appendix A](#)) may be used for this purpose. When a rights waiver form is used, the original will be submitted with the officer's case report:
 - a. A suspect's failure to ask for an attorney does not constitute a waiver.
 - b. A valid waiver is not presumed simply from the silence of the suspect after the warnings are given.
 - c. Any evidence that the suspect was threatened, tricked, or coerced into a waiver is evidence that they did not freely waive their rights.
10. If a suspect, who has waived their rights to remain silent and to an attorney, changes their mind during questioning, the following must be adhered to:
 - a. Questioning must be stopped immediately;
 - b. They may consult with an attorney prior to the resuming of questioning; and
 - c. An attorney may remain present during the resumption if the suspect requests.
11. In all cases when the suspect has been given Miranda rights advisement, the officer(s) who gave the warning will document the information in the narrative portion of their incident report.
12. In the narrative portion of the report, the simple statement "the suspect was read his Miranda rights" is not sufficient. The narrative should detail whether or not the suspect exercised those rights. The narrative should also include the date, time, place, and persons present during the Miranda rights advisement.

- C.** Officers need to be aware that certain persons have immunity from arrest. Persons that may claim such immunity are as follows:
1. Per Illinois Compiled Statutes [725 ILCS 5/107-7](#) certain persons may be exempt from arrest:
 - a. Electors shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest during their attendance at election, and in going to and returning from same;
 - b. Senators and Representatives shall in all cases, except treason, felony or breach of the peace, be privileged from arrest during the session of the Illinois General Assembly or US Congress, and in going to and returning from the same;
 - c. Militia members shall in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at musters and elections, and in going to and returning from the same; and
 - d. Judges, attorneys, clerks, sheriffs and other court officers shall be privileged from arrest while attending court and while going to and returning from court.
 2. In addition, the following under either statutes of the State of Illinois and/or various Federal and International rulings or provisions may claim immunity:
 - a. Diplomats and their families (full immunity), employees of diplomatic missions and their families (in course of official duties only). See General Order 1.07 Diplomatic Immunity and Detainment of Foreign Nationals for further information on this issue; and
 - b. Members of Congress are exempt from traffic citations while in transit to or from the Congress of the United States or the Illinois General Assembly.
 3. In any of the above situations, officers will contact a supervisor to determine the proper course of action to be taken.

ALL GENERAL ORDERS REMAIN IN EFFECT UNTIL REVISED OR RESCINDED.

ANY MEMBER OF THE DEPARTMENT MAY, BY VIRTUE OF EXPERTISE OR POSITION OF FUNCTION, BE DESIGNATED TO AUTHOR OR PROVIDE SOURCE MATERIAL FOR A WRITTEN DIRECTIVE. THE OVERALL AUTHORITY TO ISSUE, MODIFY OR APPROVE WRITTEN DIRECTIVES IS DESIGNATED TO THE CHIEF OF POLICE. HOWEVER, AUTHORITY AND RESPONSIBILITY TO ISSUE DIRECTIVES IS DELEGATED TO THE FOLLOWING.

ALL GENERAL ORDERS ARE SCHEDULED TO BE REVIEWED ANNUALLY BY THE GENERAL ORDER REVIEW COMMITTEE AND WHEN NECESSARY, REVISED OR CANCELED IN ACCORDANCE WITH THE PROCEDURES FOR REVIEWING

WRITTEN DIRECTIVES ESTABLISHED IN GENERAL ORDER 1.10 – WRITTEN DIRECTIVES.

ALL NEW AND REVISED GENERAL ORDERS SHALL BE APPROVED BY THE CHIEF OF POLICE BEFORE ISSUE/REISSUE.

ANY EMPLOYEE WITH SUGGESTIONS FOR REVISIONS AND/OR IMPROVEMENTS TO THIS ORDER ARE ENCOURAGED TO SUBMIT THEIR IDEAS TO THEIR RESPECTIVE DISTRICT COMMANDER OR BUREAU CHIEF.

BY ORDER OF

_____ **04/18/2017**

Daniel G. O'Shea

Chief of Police