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| Approval: Chief of Police | Manual: Policy and Procedure | | | |

I. PURPOSE

The purpose of this policy is to provide guidelines for the Kinston Police Department to follow during an arrest.

II. DEFINITIONS

- A. Arrest: The act of placing a person in custody pursuant to the service of legal process or as a result of an observed or suspected criminal violation, either by the use of physical force or by the person submitting to the control of an officer.
- B. Detention: For the purposes of this directive, the temporary detaining of a person as part of a lawful investigation of criminal activity or suspected criminal activity, pursuant to a lawful search of the person or premises or for officer safety purposes.
- C. Probable Cause: The determination that a fair probability exists that a person committed a criminal offense or that a particular activity has occurred; mathematical probability or likelihood is not required. By comparison, the term "reasonable suspicion" is more than a feeling, but less than probable cause.
- D. Warrant: A criminal process issued to initiate a person being taken into custody and restrained pending review by a judicial official.
- E. Summons: A criminal process notifying a person to appear in a court of law to answer charges of a criminal violation. Similar to a citation, a (Criminal) Summons is a non-arrest procedure.
- F. Citation: A directive issued by a law enforcement officer or other authorized person, requiring a person to appear in court and answer a misdemeanor or infraction charge or charges.
- G. Juvenile: A person who has not reached his/her eighteenth birthday and is not married, emancipated, or a member of the Armed Services. For the purposes of defining a delinquent or undisciplined juvenile: a person who has not reached his/her sixteenth birthday.

III. POLICY

- A. Officers are vested with a broad range of discretion in deciding when to make an arrest. The proper exercise of discretion does not relieve an arresting officer of the responsibility to conduct a thorough preliminary investigation of events precipitating the arrest.
- B. Officers are authorized and encouraged to use alternatives to arrest and/or pre-arraignment confinement when, based upon their discretion, such action is in the best interest of the public, the parties involved, and the criminal justice system. These alternatives include:

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1. Citation and summons in lieu of physical arrest.
 2. Conflict resolution between complainant and defendant.
 3. Referral to human service agencies.
 4. Verbal and written warnings.
 5. Alternatives to arrest should be considered in the following types of incidents:
 - a. Shoplifting
 - b. Other non-violent misdemeanors
 - c. Criminal traffic violations
 - d. Situations bordering on a criminal/civil threshold
- C. When determining whether to apply alternatives to physical arrest, officers should consider the following criteria, in addition to other mitigating and aggravating circumstances:
1. The defendant's ability to provide positive identification to the officer.
 2. The age of the defendant.
 3. The location of the defendant's residence.
 4. Any criminal history of the defendant.
 5. The defendant's cooperative or uncooperative behavior.
 6. The defendant's degree of intoxication and/or mental impairment and ability to comprehend the nature or quality of the act.
 7. Supervisors will review the use of alternatives to arrest by subordinates to ensure their appropriate use. When necessary, supervisors will counsel personnel concerning any improper decisions.
- D. Arrest Pursuant to a Warrant
1. Priority Order - Since quick action in serving outstanding warrants can significantly increase the likelihood of apprehension, the Kinston Police Department will serve outstanding arrest warrants without delay. The priority order of warrant service is as follows:
 - a. Priority One Felony warrants - Because of the serious nature of felony offenses, all felony warrants should be served as expeditiously as possible.

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- b. Priority Two Misdemeanor warrants - In the absence of any valid felony warrants, misdemeanor warrants should be served beginning with the most serious misdemeanors.
 - c. Priority Three Traffic warrants - Traffic warrants are generally of a less serious nature and may be served at any time in the absence of more serious warrants. Consideration should be given to serving "Failure to Comply" and "Failure to Appear" warrants, as there is a greater likelihood that those who willfully fail to appear do not remain in the area for long.
- E. Officers may make an arrest with a warrant at any time, day or night. If the charge is of a minor nature, service will be made at a reasonable time. Warrants that have been difficult to serve due to lack of the defendant's cooperation may be served at any time.
- 1. An officer who possesses a warrant may arrest the person named or described on the warrant at any time within the officer's territorial jurisdiction.
 - 2. An officer who has knowledge that an arrest warrant exists, but who does not have possession of the warrant, may arrest the person named on the warrant. The officer will inform the person that a warrant has been issued and will serve the warrant as soon as possible.
- F. An officer who believes that a juvenile petition is necessary will make referral to the Juvenile Intake Counselor's office.
- 1. An officer who holds a secure custody order or who has knowledge of the existence of a secure custody order has lawful authority to take into custody the juvenile named on the order. Once the juvenile is in custody, the officer will contact the Juvenile Intake Counselor and release the juvenile to the counselor or abide by other instructions provided within the order.
- G. In accordance with statutory authority, officers are empowered to arrest without a warrant any person who the officer has probable cause to believe has committed a criminal offense in the officer's presence.
- 1. When an offense has been committed out of the officer's presence, the officer may arrest, without a warrant, any person who the officer has probable cause to believe:
 - a. has committed a felony, or has committed a misdemeanor, and
 - b. will not be apprehended unless immediately arrested, or
 - c. may cause physical injury to himself/herself or others, or damage to property unless immediately arrested, or
 - d. has committed a misdemeanor under North Carolina General Statutes 14-72.1, 14-134.3, 20-138.1, or 20-138.2, or

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- e. has committed a misdemeanor under North Carolina General Statute 50B.
- H. A juvenile may be taken into custody without a court order under the following circumstances:
1. If grounds exist for the arrest of an adult in identical circumstances under North Carolina General Statute 15A-401 (b);
 2. If there are reasonable grounds to believe that he/she is an undisciplined juvenile;
 3. If there are reasonable grounds to believe that he/she is abused, neglected, or dependent and that he/she would be injured or could not be taken into custody if it was first necessary to obtain a court order;
 4. If there are reasonable grounds to believe that he/she is an absconder from any state training school or approved detention facility;
 5. If, at the request of his/her parent, guardian, or custodian, there are reasonable grounds to believe that the juvenile is 16 or 17 years of age and beyond the disciplinary control of the parent, guardian, or custodian and has been absent from the home without permission for 48 consecutive hours. An Order to Assume Custody Form must be signed by the custodial parent(s) or legal guardian.
- I. An officer may issue a citation to any person who he/she has probable cause to believe has committed a misdemeanor. The citation must contain the specific information required by North Carolina General Statutes.
1. Citations should be used for criminal misdemeanor charges unless one of the following conditions exists:
 - a. The person to be charged is less than 16 years of age;
 - b. The officer believes that the person is likely to disregard the citation. This belief should be based on one or more of the following:
 - i. The person to be charged does not provide positive identification to the officer.
 - ii. The person attempts to escape or resists arrest.
 - iii. The person cannot understand the requirement to appear in court.
 - iv. The person makes a statement that indicates an intent to disregard the citation.

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- v. The officer has knowledge of the person's prior history of failing to appear in court.
 - vi. A warrant check discloses an outstanding warrant on file for the person being charged.
 - c. The officer believes that the person is likely to harm himself/herself or another person if released on a citation. This belief should be based on one or more of the following:
 - i. The person is under the influence of alcohol or drugs;
 - ii. The person exhibits violent behavior before, during, or after the arrest;
 - iii. The person's statements or behavior indicate likelihood that he/she will continue the offense or commit another violent offense.
 - d. The officer will list any witnesses on the back of the original citation filed with the Clerk of Court. The officer will give the defendant's copy to the person cited.
- J. An arrest is complete when the person submits to the control of the arresting officer, or the arresting officer takes a person into custody by the use of physical force.
- 1. Upon making an arrest, the officer must:
 - a. Identify himself/herself as a police officer before initiating the arrest, unless his/her identity is otherwise clearly apparent.
 - b. Inform the arrested person that he/she is under arrest.
 - c. As soon as is reasonable under the circumstances, inform the arrested person of the reason for the arrest. In the case of a felony or misdemeanor arrest requiring the person to be processed, the arresting officer will transport the person arrested to the Magistrate's Office for booking, the officer will transport the person to the Department for processing as required by state law and departmental policy.
 - e. Upon completing the arrest, the arresting officer will take the person arrested before a judicial official without unnecessary delay. On an occasional basis, it may be necessary for the arresting officer to transport the arrested person to some other location for the purpose of identification prior to taking him/her before a judicial official.

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- f. For non-capital offenses, certain defendants may be eligible for pretrial release in accordance with North Carolina General Statutes.
 - g. For all criminal arrests and all in-custody traffic arrests, the arresting officer will complete an Arrest Report, along with any other associated reports required for review by his/her immediate supervisor.
 - h. When a juvenile is taken into physical custody and charged with an offense requiring parental notification, the arresting officer or his/her immediate supervisor will contact the parent, guardian, or custodian as soon as reasonably possible by telephone or in person. If notified by telephone, written documentation will follow by mail within 24 hours. If notified in person, the officer will hand-deliver the written documentation in accordance with General Statutes.
 - i. When a juvenile is charged but not taken into physical custody, verbal notification will suffice. All verbal notifications will be documented in a written report. If notified by telephone, written documentation will follow by mail. If notified in person, the officers will hand-deliver the written documentation.
- K. An investigative detention stop is considered the seizure of a person and therefore requires factual justification in order to be reasonable. Contacts that are not seizures do not require justification.
- 1. A seizure is an investigative detention, and not an arrest, if:
 - a. it is brief, usually no more than 10-15 minutes and not more than about one hour;
 - b. the subject is not moved involuntarily, except for short distances for legitimate safety and/or security purposes.
 - 2. Any force used is non-deadly and is limited to the minimum amount reasonably necessary to detain the subject safely.
 - 3. The subject is not told he/she is under arrest or otherwise not made to believe that he/she is being arrested rather than detained.
- L. It is mandatory that the officer release the person being arrested when there is no longer factual justification for continued custody. In such circumstances, the arrested person should be released as quickly as possible, in a safe place, preferably of his/her choosing. The officer should inform the person of the reason for the release and take all possible steps to prevent any further inconvenience.

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If the person then wishes to voluntarily accompany the officer to a judicial official, the officer will transport the person and make it clear that he/she is not being required to accompany the officer.

1. The officer will document the facts that justify the arrest and the reason for the release in a memorandum submitted through the supervisory chain of command to the Chief of Police. If an Arrest Report has been completed and no other charges are filed, the Arrest Report will be voided and attached to the memorandum. An exception is an arrest for Driving While Impaired in which no probable cause is found and no other charges are pending, which should be treated and reported as an arrest.
- M. When a private citizen detains a suspect, the responding officer will document the event and take the following steps, as applicable:
1. For felonies, the officer will:
 - a. Take the suspect into custody.
 - b. Take a complete statement from the citizen.
 - c. Make application for the appropriate legal process document, using the proper exercise of discretion.
 - d. Process the suspect according to departmental policy.
 2. For misdemeanors, the officer will:
 - a. Take the suspect into custody if legal grounds exist for the arrest and the offense is committed outside of the officer's presence.
 - b. Advise the citizen to apply for a warrant and process the suspect according to departmental policy.
 - c. If the citizen refuses to apply for a warrant and the officer has legal authority to arrest for the misdemeanor, decide whether to charge the suspect. If charging the suspect, obtain the appropriate information from the citizen in order that he/she may be subpoenaed.
 - d. If the citizen refuses to apply for a warrant and the officer does not have legal authority to arrest, release the suspect and record all relevant information in the Incident Report.

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- N. When an officer arrests a person who is unconscious, semi-conscious, or otherwise apparently suffering from a disabling condition, the officer will make a reasonable effort to determine if the person is wearing a bracelet or necklace containing the Medic Alert Foundation symbol. If this symbol is found, the officer will make a reasonable effort to have appropriate medical care provided.

Whenever a person is experiencing any type of medical problem, the officer should summon emergency medical personnel as soon as it is practical to have the person evaluated.

- O. Officers may detain an individual based upon information obtained from the appropriate branch of the United States military and the National Crime Information Center (NCIC). This detention is not an arrest.

1. To substantiate an arrest, the military unit that entered the deserter must be contacted to verify that the individual is presently wanted for desertion and is subject to apprehension. Once this verification is completed, the National Crime Information Center confirmation and the subject will be taken to the magistrate's office. A Service Without Process form will be completed in triplicate and presented to the magistrate. All necessary departmental reports will be filed, including custody reports.

P. Restraint of the Arrestee

1. Officers should handcuff arrestees in accordance with training and agency policy.
2. The preferred method when making an arrest is utilizing handcuffs behind the back of the arrestee; however,
3. Officers may handcuff the arrestee with their hands in front, or use other appropriate and approved restraining device(s) where the arrestee
 - a. is in an obvious state of pregnancy,
 - b. has a physical handicap,
 - c. displays behaviors consistent with mental illness or an intellectual/developmental disability,
 - d. has injuries that could be aggravated by standard handcuffing procedures, or
 - e. where other special circumstances exist.
4. Multiple handcuffs shall be used when needed to prevent injury.
5. Additional approved restraint devices may be used to secure an individual who violently resists arrest or who acts in a manner that indicates they pose a threat to themselves or to the public. Officers should use only those restraints that appear necessary to control the situation and only for the period of time required.

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6. When restraining individuals on the ground, officers should position the subject in a manner that will assist breathing, such as placement on their side, and avoid pressure to the chest, neck, or head.
7. When reasonable, double-locks shall be utilized and tightness shall be checked anytime someone is handcuffed.
8. When making an arrest, officers should document or attempt to memorize that the individual was checked for tightness and double-locks were utilized when handcuffs were used.
9. The Department will conduct annual training on issues surrounding handcuffing by a certified instructor.