

TAKOMA PARK POLICE DEPARTMENT - GENERAL ORDERS



| | | |
|--|----------|--|
| TITLE: Limits of Authority- Constitutional Safeguards | | Number: 625 |
| Effective Date: march 20, 2012 | | Review Date: |
| New | X Amends | Rescinds |
| | | General Order 625, dated January 05, 2012 |
| Authority: Chief Ronald A. Ricucci | | CALEA STANDARDS 1.1.1, 1.2.1-1.2.6, 44.2.2 |
| | | Total Pages 10 |

01 Purpose: To define the legally mandated authority of police officers, and the limits of such authority, in accordance with Federal, State, and local laws and individual protections guaranteed by the United States Constitution.

02 Policy: The Takoma Park Police Department will perform its law enforcement function in a manner responsive to, and protective of, the constitutional rights of the community.

03 Oath of Office: all officers shall take an oath swearing to support the Constitution of the United States, Constitution of Maryland, and laws and ordinances of Montgomery County and the City of Takoma Park. (1.1.1)

1. The Oath of Office will be administered by the Mayor of the City of Takoma Park, or designee.

2. The Takoma Park Police Department Oath of Office:

I _____, do affirm under the penalties of perjury that I will faithfully perform those duties assigned to me as a Police officer of the City of Takoma Park, Maryland,

and That I will uphold the Constitutions of the United States and Maryland;

That I will obey the commands of my supervisors, and abide by the Rules, policies and procedures of the Police Department;

That I will enforce all laws within the City of Takoma park and as I may otherwise have jurisdiction;

That I will perform my duties without prejudice or partiality; and,

That I acknowledge and accept this appointment as a Police Officer as a public trust requiring honesty and diligence.

.04 Police Authority to Enforce Laws: The legally mandated authorities for the department's police officers to enforce criminal laws of the State and the ordinances and regulations of the City in which they are appointed are provided in the following: (1.2.1)

A. Maryland Code, Article 23A Corporations-Municipal, §2 (b) (22), authorizes an incorporated municipality in the State "To establish and maintain an adequate police force." Takoma Park became an incorporated municipality in 1890.

B. Municipal Charter of the City of Takoma Park, Article IV, Section 401 (b) 40 includes within legislative powers of the Council "To establish and maintain a police force. All city police officers within the municipality shall have the powers and authority to make arrests and to

restrain and detain persons who are in violation of the laws of the City or State of Maryland.”

C. Maryland Code, Public Safety Article § 2-101 defines Police officer as “a person who has the authority to enforce the general criminal laws of this State and is a member of ... a police department, bureau, or force of an incorporated city or town.” A police officer is further defined, in Maryland Code, Transportation Article, §11-147, as “an officer authorized to direct or regulate traffic or to make arrests for violations of any of the provisions of the Maryland Vehicle Law, or of local or other traffic laws or regulations.” (1.2.1)

D. Authority to carry and use weapons: Maryland Code, Criminal Law Article, §4-203 (b))1) (i) prohibits persons from wearing, carrying and/or, transporting various weapons. Each of the sections contains an exception for law enforcement officers of the State and of and County or City, (1.2.2).

E. officers have the authority to enforce criminal laws and take necessary actions when exercising the powers and authority granted them under the Limited Statewide Jurisdiction provisions of the Maryland Code, Criminal Procedure Article, §2-102 (refer to General Order 658-Limited Extra Jurisdictional Authority).

F. Authority to take a juvenile into custody (also refer to General order 804); Officers are authorized to take a juvenile into custody pursuant to provisions of § 3-814 of the Courts and Judicial Proceedings Article, Maryland Code, under the following circumstances: (44.2.2 a and b)

1. If the officer has reasonable grounds to believe the juvenile has run away from his/her parents, guardian or legal custodian; or
2. Pursuant to the laws of arrest; or
3. if the officer has reasonable grounds to believe the juvenile is in immediate danger due to his/her surroundings and removal is necessary for his/her protection; or
4. Pursuant to an Order of the court.

G. Officers are authorized to take a mentally disordered person into custody without a Court order pursuant to Maryland Code, Health-General Article § 10-622 and 10-624, if it believed that;

1. The individual has a mental disorder; and
2. The individual presents a danger to the life or safety of the individual or of other persons.

H. Pursuant to provisions of Maryland Code, Criminal Procedure Article, §9-109 and 9-114, officers have the authority to arrest a Fugitive from Justice (an individual wanted by a jurisdiction outside Maryland).

I. Pursuant to Maryland Code, Correctional Services Article § 6-107, officers are authorized to arrest or “retake” an alleged parole violator.

J. Officers are granted the authority in the Maryland Code, Correctional Services Article, §11-803, to arrest an escapee on the strength of a Retake Warrant issued by a local or regional detention facility.

K. Pursuant to the Maryland Code, Criminal Procedure Article, §2-106, an officer transporting a defendant to a District Court Commissioner in another County, has the same authority to maintain custody as if the arrested person was taken before a District Court Commissioner in Montgomery County.

L. Authority to issue Maryland Traffic Citations: Officers are authorized (when in their jurisdiction), pursuant to Maryland Code Transportation Article (hereinafter referred to TA), §26-201, to charge a person with a violation, of any of the following, if an officer has probable cause to believe the person committed or is committing a violation of:

1. The Maryland Vehicle law;
2. A traffic law or ordinance of any local authority;
3. Maryland Code, Tax-General Article, Title 9, Subtitle 2 (Motor Carrier Tax);
4. Maryland code, Tax-General Article, Title 9, Subtitle 3 (Motor Fuel Tax);
5. Maryland Code, Business Regulation Article, Title 10 (Motor fuel and Lubricants)

M. Authority to Arrest for Traffic Violations:

1. Pursuant to the provisions of TA 26-202, an officer may arrest a person without a warrant if the person has committed or is committing the violation within the view or presence of the officer and the violation is any of the following

a. A violation of TA 21-411 or TA 22-409 relating to vehicles transporting hazardous materials;

b. A violation of TA 24-111 or TA 24.111.1 relating to the failure or refusal to submit a vehicle for weighing or to remove excess weight from it.

2. An arrest is also authorized if a person has committed or is committing a violation of the TA within the view or presence of the officer and either;

a. The person does not furnish satisfactory evidence of identity; or

b. The officer has reasonable grounds to believe that the person will disregard a traffic citation.

3. An arrest within the officer's jurisdiction if the officer has probable cause to believe that the person has committed a violation of the following offenses;

a. Driving or attempting to drive while under the influence of alcohol, while impaired by alcohol, or in violation of an alcohol restriction;

b. Driving or attempting to drive while impaired by any drug, any combination of drugs, or any combination of one or more drugs and alcohol or while impaired by any controlled dangerous substance;

c. Failure to stop, give information, or render reasonable assistance as required by TA 20-102 and 20-104 in the event of a collision resulting in bodily damage injury to or death of any person;

d. Driving or attempting to drive a motor vehicle while the driver's license or privilege to drive is suspended or revoked;

e. Failure to stop or give information required by TA 20-103 through 20-105 in the event of a collision resulting in damage to a vehicle or other property;

- f. Any offense that caused or contributed to a collision resulting in bodily injury or death of any person; or
- g. Fleeing or attempting to elude a police officer.

N. Authority to Arrest for Certain Offenses Based on Probable Cause:

1. The provisions of the law that define the circumstances under which an officer may arrest must be strictly observed.
2. No person may be arrested or detained except under the authority of law.
3. An arrest is authorized either by warrant, issued by a competent authority, or without a warrant in accordance with the “Laws of Arrest” as set forth hereunder:
 - a. **Probable Cause** to arrest exists where the facts and circumstances, of which the officer has reasonably trustworthy information, would justify or lead a person of reasonable caution to believe that an offense has been committed and that the person to be arrested committed it;
 - b. Probable cause requires a reasonable belief, based on reliable evidence, that the suspect has committed an offense;
 - c. Probable cause must go beyond mere suspicion, but is less than absolute certainty;
 - d. The lawfulness of an arrest is not affected by the fact that an arrested person may be found innocent later.

Note: This General Order limits the initiation, or continuance, of vehicular, foot, bicycle and/or K-9 pursuit across the border with the District of Columbia to those instances wherein probable cause exists to believe that a **felony** has been committed and the person being pursued committed it. Limits on vehicular pursuits across major jurisdictional boundaries are addressed in General Order 702 Section 03 C.

O. Authority to Disregard Certain Traffic Laws: Laws in certain situations: TA 21-106 allows officers who are responding to an emergency call or pursuing a violator or suspected violator of the law, or responding to, but not while returning from a fire alarm to park or stand without regard to other provisions of TA, Title 21. (Refer to General Order 701).

P. Authority to Serve Warrants and Summons: In accordance with Rule 4-212 of the Maryland Rules, only police officers or sheriffs are authorized to serve criminal process (also refer to General Order 630).

1. Pursuant to Rule 4-212, an officer serving a warrant or summons shall give the defendant a copy of it.
2. When a warrant is placed into the hands of an officer, he/she is not bound to inquire into the particulars of the complaint or even if one was made.
3. If the warrant is in due form and issued by a person authorized to issue it, the officer’s duty is to execute service of it without question.
4. The warrant, issued upon the finding of probable cause, will protect the officer.
5. A warrant remains in force until it is returned as served or recalled by the Court.

6. Even if the defendant has been arrested on the strength of a warrant and escapes, he/she may be arrested again on the same warrant if it has not been returned (or “cepied”).
7. Officers will not serve warrants “in blank” because they are void and valid for service.
8. A warrant will not be issued “in blank” with a view of later inserting the defendant’s name or other information.
9. No one, other than the warrant’s issuer, has the right or authority to alter a warrant.

Q. Authority to Execute Search Warrants: Officers are authorized to serve/execute Search Warrants pursuant to the provisions of Maryland Code, Criminal Procedures Article § 1-203 and Rule 4-601 of the Maryland Rules. (Also refer to General Order 630).

R. Authority to Arrest for Federal Law:

1. The Attorney General for the State of Maryland has rendered an opinion in Volume 56, Attorney General Opinions, 1971, pages 347-353, that Municipal and State Police Officers only have authority to arrest for Federal Law violations in three situations, as enumerated below:

a. A police officer has the same authority to arrest as an ordinary citizen does if the violation amounts to a “Breach of the Peace.” However, officers should be cautioned that a “Breach of the Peace” has not been appropriately defined.

b. A police officer can arrest if a violation of a federal law amounting to a felony has been committed in the officer’s presence or view.

c. A police officer can arrest if there is has been a federal felony violation committed and the officer has reasonable belief that the person committed the violation.

2. The Maryland Attorney General has also opined that, since municipal police officers are not familiar with federal law violations, it is best for municipal police officers to contact the appropriate federal agency **before** invoking arrest powers.

S. Authority to Arrest Armed Forces Deserters: The Uniform Code of Military Justice sets out, and the Federal courts have affirmed, the authority of civil law enforcement officers to arrest deserters from the armed forces and deliver to the branch of service from which they deserted.

05. Limitations of Police Authority: Limitations are derived from statues, Federal, State, and local judicial interpretations of laws, opinions, of the State’s Attorney’s Office and the Attorney General of the State of Maryland, as well as departmental policies, rules and regulations and City administrative decisions.

A. Maryland Code, Article 23A, Section 2b, paragraph 23, grants authority to enforce all ordinances relating to disorderly conduct and suppression of nuisances equally within the limits of the municipality and beyond those limits for one-half mile, or for much of this distance as does not conflict with the powers of another municipal corporation.

B. Courts constantly interpret laws that place limitations on the authority of police. The more common include: Miranda Rights/Warnings, rulings on Search and Seizure, eyewitness identification, Line-ups, ect.

06. The Fifth Amendment Right Against Self-Incrimination: Police Officers are often in doubt as to when or if they should advise an individual of his/her Miranda Rights. While Miranda deals with in-custody interrogation, the question of when custody applies may arise. *Escabido v. Illinois* requires the giving of Miranda warnings when the investigation focuses on a suspect or suspects and the interrogation reaches the accusatory stage. Since these two cases appear to contradict one another, a proper guideline for police officers to follow would be to advise suspects of their Miranda warnings in all felony and Class I and II misdemeanor cases and all DWI cases.

A. In order to achieve uniformity and ensure that individuals receive Miranda warnings, officers will read aloud from the Miranda warning card when advising individuals of their rights.

B. After the warnings have been read, understood and the individual wishes to waive them, the officer will have the suspect sign the TPPD Form 600-050, Advice of rights form, which then constitutes an acceptable waiver of rights.

C. Officers will allow the defendant to call an attorney if he/she so desires.

07. Police Limitations on Search and Seizure: The Fourth Amendment to the Constitution guarantees the right of the people to be free from unreasonable searches and seizures of their homes, persons, and property. The Supreme Court is constantly interpreting the Fourth Amendment as it applies to police conduct. Illegally seized items of evidence will not be admitted to court and may be cause for a lost criminal case. Additionally an illegally conducted search invites civil suits under the Civil rights Act. In order to ensure that citizens' Fourth Amendments Rights are protected, Takoma Park officers will obtain search warrants in all appropriate criminal cases except the following:

A. Consent searches: the consent must be voluntarily given by a person with authority to relinquish his/her rights. When exercising a consent search, the officer should, if possible, obtain written consent on Permission to Search Without a Warrant form (600-029). If the form is not immediately available, obtaining a brief signed statement of consent is valuable to demonstrate voluntariness of consent.

B. Emergency to Save Life or Property: An emergency must exist and the area searched must be directly related to the emergency.

C. "Terry Stops" – An officer may stop and frisk an individual under circumstances where the officer has articulable reasons to fear for his/her safety.

D. Plain View: The officer must be legally where he/she can discover fruits, instruments, evidence, and contraband, the seizure must be inadvertent, and the property must be recognized as fruits, instruments or evidence of a crime, or contraband.

E. Abandoned Property.

F. Inventory Searches of Vehicles.

G. Incident to Arrest: Only the area within the immediate control of the person may be searched.

H. Emergency search to prevent destruction/loss of evidence..

I. Fresh Pursuit.

08. Police Limitations Pertaining to Eyewitness Identification: Eyewitness identification generally does not provide reliable evidence during criminal investigations. Consequently, the Supreme Court has addressed this issue in numerous cases and set forth guidelines to be followed when eyewitness identifications are solicited by the police. Departmental policy and procedural guidelines that comply with the U.S. Department of Justice standards on obtaining eyewitness identifications are contained in General Order 640C.

09. Other Limitations on Police Authority: From time to time, certain entities may limit police authority. Such entities and their limitations include, but are not limited to:

A. Local courts may impose limitations regarding:

1. Enforcement of parking ordinances,
2. Handling of juvenile offenders,
3. Issuance of summons as opposed to arrests, and
4. Municipal infractions

B. The State's Attorney's office may issue opinions to the Department, which may regard:

1. Prosecution of certain cases,
2. Extradition, and
3. Enforcement of certain statues pending opinions from the Attorney General's office.

C. The City Council, City Administrator and the Chief of Police may impose limitations on police authority to include:

1. Parking violations, and
2. All Police Department policy/General Orders pertaining to the use of force.

10. Changes in Law/Interpretational Limitations: Periodically, changes take place, which may impose new limitations on authority or remove/alter existing limitations. Normally, annual updates on such changes are provided to all personnel by the State's Attorney. In case immediate changes in Departmental operations are required, information may be received orally and confirmed in writing.

11. Compliance with Constitutional Requirements During Criminal Investigations:

A. All officers while conducting criminal investigations, will take every precaution to ensure that all persons involved are afforded their Constitutional safeguards. Police officers will ensure that:

1. All statements or confessions are of a voluntary nature.
2. All persons are advised of their rights in accordance with this procedure.
3. All arrested are taken promptly before a Court Commissioner for formal charging, and to have bond and a court date set.
4. All persons accused or suspected of a criminal violation for which they are being interviewed are given an opportunity to consult with an attorney.

5. Prejudicial pretrial publicity is avoided so as not to interfere with a defendant's right to a fair and impartial trial.

B. Officers will know and abide by the following guidelines regarding Miranda warnings:

1. Miranda applies only to **custodial interrogation**. Interrogation is defined as, "... express questioning or its equivalent... any words or conduct on the part of police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." Custody refers to suspect's reasonable belief the he/she is not free to leave.

a. The officer's view of what constitutes custody and that of the suspect may differ. Officers must remember that the reasonable belief of the suspect is what counts.

b. Officers are reminded that an interrogation does not rely solely or exclusively on words: conduct of officers can be the "functional equivalent" of asking questions.

2. Officers are directed to consult with CID personnel **prior to** administering rights to suspects in Part I offenses, or serious Part II offenses.

3. In order to achieve uniformity in administering Miranda warnings, police officers will be issued cards with the Miranda warnings and waiver on them. Officers will advise suspects, verbatim, using either the card, or the TPPD 600-050 Advice of rights Form.

4. After reading the warnings, in order to secure a waiver, the officer shall ask and receive an affirmative reply to question number 6 on the form: "do you understand what I have just said?"

5. After the rights have been read, understood and the person acknowledges a desire to waive them, the officer will have the suspect sign the Advice of Rights Form. Officers must cease questioning whenever the suspect invokes the right to silence or request the presence of counsel.

6. If a suspect, once in custody, requests counsel after being advised of Miranda rights, he/she cannot be interrogated again unless:

- o Counsel is present during interrogation, or
- o The suspect initiates the interrogation.

7. Officers will take care in advising juveniles of their rights to ensure that the rights are understood before obtaining a waiver. Officers should honor a juvenile's request to speak to a parent or guardian before waiving his/her rights. Whenever possible, the juvenile's parents should be present while the juvenile's rights are explained and the waiver obtained.

8. Miranda warnings to not apply in the following situations:

- a. Brief on-scene questioning
- b. Identification procedures such as fingerprinting, line-ups, sobriety tests,
- c. Volunteered, spontaneous statements (once the officer has heard the suspect express spontaneous incriminating statements, the officer shall advise the suspect of Miranda rights and obtain a waiver before undertaking additional questioning),
- d. Brief investigative detention,
- e. Roadside questioning during traffic stops,

- f. Routine booking questions attendant to arrest, and
- g. Questioning by private persons.

10. No firm guidelines exist regarding governing when fresh warnings must be given. In considering whether previously administered Miranda rights have become legally stale, investigators must consider:

- a. The length of time between the first warnings and subsequent interrogations,
- b. Whether warnings and later interrogation were given in the same place,
- c. Whether warnings and later interrogation were given by the same or different officers,
- d. The extent to which the later statement differed from the previous one, and
- e. The apparent intellectual, mental and emotional state of the suspect.

12. Use of Discretion by Police Officers:

- A.** Police officers are constantly required to exercise discretion in the performance of their duties. The police Department provides officers with written policy and procedures, orders, directed patrol assignments and training to aid them in making decisions, which call for discretion.
- B.** Department rules and policy give officers guidelines to consider in exercising discretion. The individual officer must consider all relevant factors associated with a particular situation, and make appropriate decisions.

13. Alternatives to Arrest:

A. Under certain circumstances, police officers are faced with the situation where arrest and confinement are not appropriate. Certain alternatives may be exercised when such situations arise. These options include, but not limited to:

- Issuance of summons,
- Referral to social service agency,
- Issuance of criminal citations, and
- Warnings

B. The State of Maryland and the District Court of Maryland authorize police officers to issue criminal/civil citations in lieu of arrest for persons charged with misdemeanor criminal offenses.

C. In determining whether a summons/citation should be issued, the officer will:

1. Decide whether the offense committed is of a serious nature,
2. Make a judgments as to whether the accused possess a danger to the public or him/herself, and
3. Decide, based on circumstances, whether the person may disregard a citation.

D. Police officers often deal with situations wherein social services should intervene. A detailed list of social service and similar agencies is contained in the Department's Victim Assistance brochure. Officer's should consult the brochure when, in their judgment, referral is the best solution.

E. the use of a warning may sometimes provide a satisfactory solution to a problem, and may enhance public support for the Department. Normally, the use of a warning involves traffic offenses, although, warnings may be applied to criminal offenses. In determining if a warning will suffice, the officer should consider:

1. Seriousness of the offense,
2. Likelihood that the violator will heed the warning,
3. Reputation of the violator (is he/she a known repeat offender), and
4. Age of the violator.

F. Limitations on Intelligence Activities:

1. Department intelligence gathering activities will be limited to that information concerning criminal conduct that relates to activities, which present a threat to the community.
2. Department personnel and equipment will only be used in connection with intelligence gathering in full compliance with all the laws, and only with the advanced approval of the Chief of Police.
3. Intelligence information will be collected, used and processed in accordance with General Order 631-Intelligence and Information.