

| WEBER COUNTY SHERIFF'S OFFICE | | POLICY AND PROCEDURES | |
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| SUBJECT: Arrest With or Without Warrant | | CHAPTER/SECTION NO.:1.10,1.11, 1.12,1.13 | |
| EFFECTIVE DATE:10/7/03 | | REVIEW DATE: | |
| AMENDS/SUPERSEDES: See attached sheet | | APPROVED: <u>**See Master File</u> Sheriff | |
| STANDARD NUMBER: 1.2.5 | | | |

1.10 Definitions

- 1.10.1 Arrest - An actual restraint of the person arrested or submission to custody. The person shall not be subjected to any more restraint than is necessary for the person's arrest and detention. Deputy safety must be considered if the arrestee remains violent after arrest.
- 1.10.2 Reasonable Suspicion - Facts and circumstances which, taken together with reasonable inferences in light of a Deputy's training and experience and measured in terms of common sense, would cause a reasonable Deputy to suspect that:
 - A. (To stop) a person has been, is, or is about to be, involved in criminal activity; or
 - B. (To frisk) a person is armed with a quickly accessible weapon and constitutes a danger to the Deputy or to others.
- 1.10.3 Search - A police action which infringes upon a person's reasonable expectation of privacy.

1.11 Purpose

- 1.11.1 To define the authority of Deputies to arrest, and the mechanism for making arrests with and without a warrant.

1.12 Policy

- 1.12.1 Arrests are very serious police actions. Deputies shall accordingly exercise critical judgement in making arrests. Deputies shall also consider alternatives to arrest consistent with their law enforcement mission.
- 1.12.2 This policy recognizes that occasionally circumstances exist, i.e., jail overcrowding, that would preclude the Deputy from effecting an arrest where otherwise appropriate.
- 1.12.3 Arrests with Warrant, Daytime/Nighttime:
 - A. A felony arrest based on a warrant may be made at any time of the day or night.
 - B. A misdemeanor arrest based on a warrant may be made during daytime hours, and at night only if:
 - 1. The magistrate has endorsed authorization to do so on the warrant.
 - 2. The person to be arrested is upon a public highway or in a public place open to or accessible to the public.
 - 3. The person to be arrested is encountered by a Deputy in the regular course of that Deputy's investigation of a criminal offense unrelated to the misdemeanor warrant for arrest. UCA 77-7-5.
- (3) Definitions of daytime and nighttime are:
 - (a) Daytime hours: between 0600 and 2200 hours.
 - (b) Nighttime hours: between 2200 and 0600 hours.
- 1.12.4 Arrests with a Warrant
 - A. Who may issue: An arrest warrant may be

issued by any magistrate of any court. UCA 77-7-5(1), 77-1-3.

- B. When it may issue; what to recite: A magistrate or judge may issue a warrant for arrest upon finding probable cause to believe that the person to be arrested has committed a public offense. UCA 77-7-5(1) prob.cause.
 - (a) Deputies requesting an arrest warrant should consult with the appropriate prosecuting attorney, if possible, before asking a magistrate to issue the warrant.
 - (b) Deputies requesting an arrest warrant should be prepared to outline to the satisfaction of the magistrate the probable cause for the arrest and the identity of the person to be arrested.
- C. What the warrant contains: If the magistrate determines that the accused must appear in court, the magistrate shall include in the arrest warrant the name of the law enforcement agency in the county or municipality with jurisdiction over the offense charged. **The agency identified by the magistrate is responsible for providing inter-county transportation of the defendant, if necessary from the arresting agency to the court site. UCA 77-7-5(3)**
- D. Execution of arrest warrant: A warrant shall be executed by the arrest of the accused and may be executed by a Deputy at any place within the State. A summons may be served as an alternative to arrest under circumstances outlined in Section 1.17 of this policy.
- E. Executing a warrant not in possession:
 - 1. Service when not in possession of warrant - Any Deputy who has knowledge of an outstanding warrant of arrest may arrest a person he/she reasonably believes to be the person described in

the warrant, without the peace Deputy
having physical possession of the
warrant. UCA 77-7-11.

2. Warrant to be shown upon request - The Deputy need not have possession of the warrant at the time of arrest, but upon request shall show the warrant to the defendant as soon as practical. URCr.P 6(c)(3).
 3. Informing arrested person of charges - If the Deputy does not have possession of the warrant at the time of the arrest, the arrested person will be informed of the charge and the fact that a warrant exists. URCr.P 6(c)(3).
- F. Exemption of witnesses from arrest or service of process:
1. If a person comes into this state in obedience to a summons, subpoena or court order directing him/her to attend and testify in this state he/she shall not, while in this state pursuant to such order, be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his/her entrance into this state under the order.
 2. If a person passes through this state while going to another state in obedience to a summons, subpoena or court order to attend and testify in that state or while returning therefrom, he/she shall not while so passing through this state be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his/her entrance into this state under the order. UCA 77-21-5, 78-24-12, 77-33-8.
- G. Routing of Warrant When Executed:
1. Copies of warrants originating from agencies participating on the State Wide Warrant System may be obtained at the Jail. Arrests made on warrants originating from agencies not participating in the State Wide Warrant

system, must be accompanied by the original or certified copy of the warrant.

2. The Jail Booking Deputy will route original warrants to the originating courts.
3. Civil warrants; Any arrest for civil warrants must be accompanied by the original or certified copy of the civil warrant. Civil warrants are not maintained on the State Wide Warrant system.

H. If the person is arrested based on a fugitive warrant from another state, see UCA 77-30-13.

1. Any person who is found to be a fugitive from another state:
 - a. Should be listed in a police report which will be forwarded to investigations for further screening.
 - b. Should be arrested based on the NCIC listing of the fugitive warrant and transported to a local detention facility until the screening and/or extradition process has been satisfied.

1.12.5 Arrest Without a Warrant

A. Authority:

1. The Federal Constitution allows arrests to be made upon probable cause, without a warrant (except where a warrant is required to enter private premises). Utah law, however, requires that arrests be made pursuant to warrants except in certain specified circumstances.

B. When warrantless arrests may be made: a Deputy may make a warrantless arrest:

1. When a person commits or attempts to commit any public offense in the Deputy's presence; "presence" includes all of the physical senses or any device that enhances the acuity, sensitivity, or range of any physical sense, or records the observations of any of the physical senses.
2. When the Deputy has reasonable cause to believe a person has committed a felony, or a Class A misdemeanor.
3. When the Deputy has reasonable cause to believe a person has committed a public offense, and there is reasonable cause to believe that the person may:
 - a) Flee or conceal him/herself to avoid arrest;
 - b) Destroy or conceal evidence of the commission of the offense; or
 - c) Injure another person or damage property belonging to another person. (UCA 77-7-2)
4. When the Deputy has reasonable ground to believe a person has committed shoplifting or library theft. (UCA 77-7-13).
5. When a deputy has reasonable information that the accused stands charged in the courts of another state with a crime punishable by death or imprisonment for a term exceeding one year. When arrested under this provision, the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him/her under oath setting forth the ground for the arrest and thereafter his/her answer shall be heard as if he/she had been arrested on a warrant. UCA 77-30-14.

6. Domestic Violence

- a. When a deputy responds to a domestic violence call and has probable cause to believe that an act of domestic violence has been committed, the deputy shall arrest without a warrant or issue a citation to any person that he has probable cause to believe has committed an act of domestic violence.
- b. If the deputy has probable cause to believe that there will be continued violence against an alleged victim, or if there is evidence that the perpetrator has either recently caused serious bodily injury or used a dangerous weapon in the domestic violence offense, the deputy shall arrest and take the alleged perpetrator into custody, and may not utilize the option of issuing a citation. (UCA 77-36-2.2)

1.12.6 Searches Incident to Arrest

- A. Deputies may conduct warrantless searches only in those areas within reach of the suspect for weapons and contraband unless otherwise directed by current case law.
- B. Regardless of the Deputy's knowledge of current case law, if any doubt exists as to whether a search warrant is needed or not, the Deputy should opt for a search warrant.
- C. Deputies should, after discussing the situation with their supervisor, utilize advice from the pertinent prosecutor's office whenever a question exists as to application of the laws of arrest, search and seizure, etc.

1.12.7 Statements from Suspects

- A. Deputies should advise every person arrested of their constitutional rights, as directed by case law, prior to the time a suspect is questioned concerning the crime.
- 1.12.8 Citizens' arrests: UCA 77-7-3.
- A. A private person may arrest another:
 - 1. For a public offense committed or attempted in his/her presence; or

2. When a felony has been committed and he/she has reasonable cause to believe the person arrested has committed it.
UCA 77-7-3.
- B. Utah Law requires a citizen making an arrest to take the arrested person before a magistrate or deliver him/her to a Deputy without delay. Deputies are **not** required to accept the arrestee but must make an independent judgement of the situation.
 - C. In such cases, Deputies shall first determine the legality of the arrest. If the Deputy finds that probable cause exists, he/she can take custody of the arrestee and take him/her before a magistrate. If he/she does not find probable cause, he/she shall advise the citizen to proceed directly to a magistrate or to the prosecutor's office.
 - D. Accepting custody:
 1. A Deputy who determines that a citizen's arrest is lawful may take one of the following courses of action:
 - a. Accepting custody and transporting:
 - i. Whenever possible, the Deputy should issue a misdemeanor citation, and have the arresting person co-sign the citation, and avoid booking the prisoner.
 - ii. Before the Deputy accepts custody, the arresting person must complete a witness statement articulating the facts supporting probable cause for the citizen's arrest.
 - b. Misdemeanor citation:
 - i. The Deputy may accept custody, but release the arrested

person on a misdemeanor citation, subject to the standard requirements of the citation.

1.12.9 Arrests While Off-Duty

- A. Deputies shall use good judgement and discretion when making off-duty arrests. Deputies shall respond, at any time, to an emergency requiring an arrest, particularly if a crime of violence is involved. Arrests for minor misdemeanors and neighborhood disputes are discouraged unless the circumstances are so severe that arrest is unavoidable. In such instances, a Deputy should call an on-duty Deputy to handle the matter.
- B. Deputies must be particularly aware of responsibilities involving domestic disputes. Such disputes will often involve domestic violence issues which require action by deputies as specified in 1.12.5(B)(6). In such instances the off duty deputy should call an on-duty Deputy to handle the matter.

1.12.10 Manner of Making an Arrest (UCA 77-7-6)

- A. The Deputy making the arrest shall inform the person being arrested of his/her intention, cause, and authority to arrest that person. Such notice is not required when:
 - 1. There is reason to believe the notice will endanger the life or safety of the deputy or another person or will likely enable the party being arrested to escape;
 - 2. The person being arrested is actually engaged in the commission of, or an attempt to commit, an offense; or
 - 3. The person being arrested is pursued immediately after the commission of an offense or escape.

B. If a hearing impaired person, as defined in UCA 78-24a-1(2), is being arrested for a criminal offense or local ordinance violation, the arresting deputy shall assess the communicative abilities of the person, and conduct notifications of rights, warnings, interrogations, or taking of statements, in a manner that accurately and effectively communicates with the person including the use of qualified interpreters, lip reading, pen and paper, typewriters, computers with printout capability, and telecommunications devices for the deaf.

1. Compliance with this policy is a factor to be considered by any court when evaluating whether statements of a hearing-impaired person were made knowingly, voluntarily, and intelligently.

1.12.11 **Force in Making an Arrest:** If a person is being arrested and flees or forcibly resists after being informed of the intention to make the arrest, the person arresting may use reasonable force to affect the arrest. Deadly force may be used only as provided in UCA 76-2-404.

A. **Doors and Windows May be Broken when:** In all cases a deputy may break the door or window of the building in which the person to be arrested is, or in which there are reasonable grounds to believe the person to be. Before making the break, the deputy shall demand admission and explain the purpose for which the admission is desired. Demand and explanation need not be given before breaking under exceptions in 1.12.10 of this policy or where there is reason to believe evidence will be secreted or destroyed.

1.13 Procedure

1.13.1 When an arrest is effected on a Weber County Justice Court warrant, the following alternative courses of action may be available. The alternatives are listed below

in the order of preference.

- A. First, if the Justice Court is in session, take the defendant before the court without necessary delay.
- B. Second, the Deputy may transport the prisoner to the Weber County Jail or other facility to post bond or incarcerate.