

# ARRESTS WITH AND WITHOUT A WARRANT

<i>Effective Date:</i> <b>April 15, 2013</b>	<i>Directive Number:</i> <b>10-1-12</b>
<i>Special Instructions: See also "10-1-12 Diplomatic Immunity"</i>	
<i>Distribution: All Sworn &amp; Civilian Personnel</i>	<i>Last Re-Evaluation Date:</i> <i>Total Pages:</i> 11+Appendices A&B

## I. PURPOSE

The purpose of this policy is to state the powers of arrest provided by law to members of the Cheswold Police Department:

- A. When making an arrest within their defined jurisdiction;
- B. When making an arrest outside of their defined jurisdiction;
- C. When making an arrest with a warrant;
- D. When making an arrest without a warrant;
- E. When making an arrest while on duty;
- F. When making an arrest while off duty;
- G. When making an arrest while in fresh pursuit; and
- H. When making an arrest while in fresh pursuit into another state.

## II. DEFINITIONS

Arrest: To deprive a person of his/her liberty by legal authority; taking, under real or assumed authority, custody of another for the purpose of holding or detaining him/her to answer a criminal charge or civil demand.

Criminal Summons: A document directing the person named in the complaint to appear in court at a stated time and place.

Felony: In Delaware, an offense that is defined by statute as a felony. The court's sentence may include a fine; restitution, or both. Seven classes of felonies (Class A through Class G felony) have been established. The term of incarceration which the court may impose is fixed for each class; e.g., the term of incarceration for a Class G felony may not exceed two (2) years.

Misdemeanor: In Delaware, an offense that is defined by statute as a misdemeanor. The sentence for Class A misdemeanor may include a term of incarceration up to one (1) year, and such fine up to \$2,300.00, restitution, or other conditions as the court deems appropriate. A Class B misdemeanor is a lesser offense.

Offense: An act or omission forbidden by state or federal statute and punishable upon conviction by imprisonment, fine, removal from office, disqualification to hold any office of trust, honor or profit under a state or the United States, or other penal sanction. An offense is either a felony, a misdemeanor, or a violation.

Personally Involved: An officer is deemed personally involved where the off-duty officer, a family member, or a friend becomes engaged in a dispute or incident involving a personal matter with the person to be arrested or any other person connected with the incident. This does not apply to situations where the officer is a victim of a crime.

Traffic Summons: In cases involving violations of statutes relating to the operation or use of motor vehicles (traffic offenses), a non-custodial arrest is made of the violator by a police officer. A uniform traffic ticket, referred to as a traffic summons, serves as the complaint when signed by a police officer and issued to the violator.

Violation: In Delaware, an offense that is defined by statute as a violation. An offense is considered a second or third offense of the same violation provided that it occurs within five (5) years of the violation for which the sentence is imposed.

### **III. DISCUSSION**

- A. Officers of the Cheswold Police Department are vested with the powers of arrest both on-duty and off-duty as defined and limited by state and federal law. Officers shall display their police identification prior to effecting an arrest unless in police uniform or when exigent circumstances prevent the display of police identification.
- B. Off-duty officers may be faced with situations involving criminal conduct that they are neither equipped nor prepared to handle in the same manner as if they were on duty. Such situations may lead to unnecessary injuries to off-duty officers, and confusion for those on-duty officers arriving at the scene trying to correctly assess the facts. Officers may have liability protection for on duty and off-duty performance of official duties. This protection does not extend to acts intended to cause injury or damage, or to those actions that the officer knew, or reasonably should have known, were in conflict with the law or the established policies of the department.
- C. A quick reference chart (***Appendix 33-1-12-A***) is included as part of this directive to provide all officers with a summary of their arrest powers. Should there be a conflict between the chart and this directive, it shall be resolved by following the directive.

### **IV. ORIGIN AND RESTRICTION OF POLICE AUTHORITY**

As a general rule, police officers cannot act outside the territorial boundaries or defined jurisdiction of the body from which they derive their authority except as provided by law.

### **V. ARREST POWERS IN DELAWARE**

#### **A. Within the Defined Jurisdiction of the Department**

##### **1. Criminal Law Enforcement**

Officers of the Cheswold Police Department are empowered:

- a. To arrest any person for a violation of 11 Del. C when in possession of a warrant or when it is known a warrant exists.

- b. To arrest without a warrant for a felony whether committed within or without the state whenever an officer has reasonable grounds to believe that the person to be arrested has committed a felony.
- c. To arrest without a warrant for a misdemeanor whenever the officer has reasonable grounds to believe that the person to be arrested has committed a misdemeanor within the officer's presence.
- d. To arrest without a warrant for a misdemeanor whenever the officer has reasonable grounds to believe that the person to be arrested has committed a misdemeanor out of the officer's presence and outside the state and a law enforcement officer of the state where the misdemeanor was committed requests an arrest, and the accused will not be apprehended unless immediately arrested.
- e. To arrest without a warrant for a misdemeanor whenever the officer has reasonable grounds to believe that the person to be arrested has committed a misdemeanor out of the officer's presence and within the state:
  - 1) For the crime of shoplifting, and the arrest is based upon personal investigation at the scene of the arrest, and where a store employee is present who has observed the activity of the person to be arrested, and that person is still present.
  - 2) For any misdemeanor involving physical injury or threat thereof, or any misdemeanor involving illegal sexual contact or attempted sexual contact.
  - 3) For a violation of a protective order issued by Family Court.
- f. To question and detain any person abroad, or in a public place, who the officer has reasonable grounds to suspect is committing, has committed, or is about to commit a crime and may demand his/her name, address, business abroad, and where he/she is going.

2. **Motor Vehicle Law Enforcement**

- a. Officers of the Cheswold Police Department are empowered to arrest any person without a warrant for:
  - 1) A violation of 21 Del. C. that is committed in the officer's presence.
  - 2) A violation of 21 Del. C. §4169, relating to speed violations when the speed is determined by radar even though the arresting officer did not actually observe the radar speed meter, provided that the motorist being apprehended is the motorist detected and the arresting member is:
    - (a) working in conjunction with the reading officer (radar operator); and
    - (b) immediately advised of the violation.

- 3) A violation of 21 Del. C., if at the scene of a motor vehicle accident, upon reasonable and probable cause to believe, based upon personal investigation which may include information obtained from eye witnesses, that a violation of the law has been committed by any person then and there present.
- b. Officers of the Cheswold Police Department may make an arrest for a violation of 21 Del. C. when in possession of a warrant or when it is known that a warrant exists.

**B. Outside the Defined Jurisdiction of the Cheswold Police Department**

**1. Criminal Law Enforcement**

Officers of the police department, acting outside of the defined jurisdiction of the Cheswold Police Department but within the State of Delaware, are empowered:

- a. If on-duty, to arrest at any location in the state any person for any offense committed within the department's jurisdiction and for whose arrest a warrant has been issued. Reasonable measures shall be taken by the officer executing such a warrant to notify the primary jurisdictional police agency of the intended time and place of the execution of an arrest warrant.
- b. To arrest without a warrant at any location within the state any person who the officer has reasonable grounds to believe is committing or attempting to commit a felony while in the officer's presence.
- c. If on-duty, to arrest upon view and without a warrant at any location within the state any person when probable cause exists to believe that the person is committing or attempting to commit any crime which creates a substantial risk of death or serious physical injury to another person.
- d. To render assistance to another police officer at any location in the state when he/she reasonably believes that:
  - 1) The police officer to be assisted is lawfully performing his/her duty; and
  - 2) Death or injury will occur to that police officer if assistance is not provided.

**2. Motor Vehicle Law Enforcement**

- a. If on-duty, an officer may arrest upon view and without a warrant at any location within the state any person when probable cause exists to believe that the person is committing or attempting to commit any crime which constitutes a violation of 21 Del. C. § 4177 (driving under the influence of alcohol or drugs).
- b. Officers have the authority to make motor vehicle arrests outside the defined jurisdiction only when such offense(s) conform to the requirements of Section V.B.1b., c., or d.

C. Fresh Pursuit

1. An officer may affect an arrest outside of his/her jurisdiction but within the State of Delaware when in fresh pursuit.
  - a. An officer may carry out fresh pursuit of any person anywhere within Delaware in order to arrest such persons pursued when there is reasonable grounds to suspect that a felony, misdemeanor, or violation of Delaware's motor vehicle code was committed in Delaware by the person pursued.
  - b. Fresh pursuit is defined as pursuit, without unreasonable delay, of a person who has committed a felony or a misdemeanor or a violation of the Motor Vehicle Code of Delaware or is reasonably suspected of having committed a felony or a misdemeanor or a violation of the Motor Vehicle Code of Delaware, and also includes the pursuit of a person suspected of having committed a supposed felony or misdemeanor or violation of the Motor Vehicle Code of Delaware though no violation of the law has actually been committed, if there is reasonable grounds for believing that a violation of the law has been committed. Fresh pursuit does not mean instant pursuit, but pursuit without unreasonable delay.

D. Police Mutual Aid Agreements

1. The Delaware police mutual aid law states that, whenever the necessity arises during an emergency, the police of one jurisdiction may lawfully enter another jurisdiction, if a mutual aid agreement is in existence between the agencies, for the purpose of assisting in meeting such emergency.
2. Officers of the police department may render assistance, which shall include the enforcement of all appropriate laws, when requested to do so by the principal law enforcement officer of any agency with whom the Cheswold Police Department has executed a mutual agreement.
3. The Cheswold Police Department's on-duty police supervisor or acting supervisor has been designated to represent the police administrator for purposes of activating the mutual aid agreement.
4. The Chiefs of Police of all the departments with whom we hold mutual aid agreements have designated their on-duty supervisor(s) to represent them for the purposes of activating the mutual aid agreement.

E. Assisting State Police

Officers shall be considered to be acting as State Police officers and shall have the powers of arrest thereof when responding to a request for assistance from the State Police anywhere within the State of Delaware.

F. Authorization from the Attorney General

The Attorney General of the State of Delaware may authorize officers of the Cheswold Police Department full, statewide police, arrest and enforcement powers for such period of time as he/she specifies.

1. Such authorization may be withdrawn whenever the Attorney General deems necessary.
2. As of the date of this directive, the Attorney General has not authorized such powers to this department.

**VI. INTERSTATE TRANSPORTATION OF ARRESTEES**

Prisoners, arrestees, detainees, or anyone else in police custody shall not be transported across the boundary line of any state unless the extradition proceedings of the state in which the arrest was made have been satisfied. The only exceptions to this requirement are cases in which a custodial arrest is made in one state and the only safe or practical way of traveling to a location within that state (to process the arrest or carrying out other related duties and activities) is to convey the arrestee into an adjoining state and then return to the state where the first arrest was made. All such trips must be as direct and short as possible, and the arrestee must be in custody at all times. An example follows:

*Officer "Y" stops "A" for DUI eastbound at the top of the Delaware Memorial Bridge. The only way to safely return "A" to the Delaware Memorial Bridge troop is to transport him to the base of the span in New Jersey and then return to Delaware on the westbound span.*

**VII. STATE ARREST FOR FEDERAL CRIME**

- A. Officers may make an arrest pursuant to a violation of state law and, thereafter, request the U.S. Attorney's office to prosecute the case in federal court.

Example #1: A motorist is arrested for automobile theft. The follow-up investigation reveals that the car involved was being driven interstate, thus constituting a violation of the Federal Dyer Act.

Example #2: A person is arrested for robbery of a state bank whose funds are insured by the Federal Deposit Insurance Corporation. In such a case, the single act for which the defendant was arrested will at once and the same time constitute a breach of the state law and the federal bank robbery statute.

B. Arrest with a Warrant

1. Officers are empowered to arrest a person based on a warrant issued by any judge or justice of the United States for any crime or offense against the United States of America

2. Officers are empowered to arrest a person based on a warrant issued by a state judge or justice for any crime or offense against the United States of America. While a state judge cannot try the offense charged, he/she can order the defendant held for trial or discharge him from custody.

C. Arrest Without a Warrant

Officers are empowered to arrest a person without a warrant who commits a purely federal offense if a warrantless arrest is permitted by state law.

## **VIII. IMMUNITY FROM ARREST (DIPLOMATS)**

A. It is important that the law enforcement authorities of the United States always treat foreign diplomatic and consular personnel with respect and with due regard for the privileges and immunities to which they are entitled under international law. Failure to do so has the potential of casting into doubt the commitment of the United States to carry out its international obligations and influencing larger foreign policy interests.

B. Appropriate caution on the part of law enforcement should never escalate into a total “hands off” attitude in connection with criminal law enforcement actions involving diplomats. Foreign diplomats who violate traffic laws should be cited. Allegations of serious crimes should be fully investigated, promptly reported to the Department of State, and procedurally developed to the maximum permissible extent.

C. The U.S. Department of State should be advised promptly of any serious difficulties arising in connection with diplomatic or consular personnel. It has provided offices to assist police authorities in verifying individuals who may enjoy inviolability or immunity. In addition, police departments should feel free to contact the Department of State for general advice in any matter bearing on diplomatic or consular personnel.

D. Certain classes of persons are, by federal law, immune from arrest. They are as follows:

1. Ambassadors.
2. Foreign Ministers, their families, and members of their official household (personal servants and personal secretaries).
3. Civil and military attaches.
4. Delegates to the United Nations, the Organization of American States, and the North Atlantic Treaty Organization.

E. Certain classes of persons are, by federal law, granted limited immunity from arrest. They are as follows:

1. Foreign nationals and United States citizens employed as clerical staff when on official foreign business.

2. Consuls of all ranks when on official foreign business.
  3. To ascertain whether a person has full or partial immunity, contact the Chief of Protocol of the United States Department of State.
- F. The closest embassy consulate or legation shall be notified of the arrest of any person who is a foreign national or claims to be a foreign national. Memorandum #95-35 (Detained Foreign Nationals) provides specific guidelines for contacting embassies or consulates.
- G. The imprisonment of or assault on foreign officers, official guests, or internationally protected persons, as defined by 18 U.S.C. 1116, is a federal crime punishable by up to ten (10) years of imprisonment in accordance with 18 U.S.C. 112.
- H. A quick reference chart (**Appendix 33-1-12-B**) is included as part of this directive to provide all officers with a summary of diplomatic and consular privileges and immunities.
- I. Formal Identity Documents Issued by the Department of State
1. The only authoritative identity document is the identity card issued by the Department of State, Protocol Office. There are three types of identification cards: **Diplomatic** (blue border for diplomats), **Official** (green border for employees), and **Consular** (red border for consular personnel). The identifications cards are 3 ¾" x 2 ½" and contain a photograph of the bearer. The bearer's name, title, mission, Town and state, date of birth, identification number, expiration date, and a U.S. Department of State seal appear on the front of the card. A brief statement of the bearer's immunity is printed on the reverse side. Space is provided for the bearer's signature.
  2. While this form of identification is generally to be relied upon, law enforcement authorities are nonetheless urged to immediately seek verification in connection with any serious incident or in any case where they have reason to doubt the validity of the card.
  3. Officers should be alert to the fact that newly-arrived members of diplomatic and consular staffs may not yet have these official identity documents and should be prepared to contact the U.S. Department of State Operations Center (202-647-1512) for verification if confronted with such situations.
  4. An inquiry will promptly be made to the Department of State in any case where an individual claims immunity and cannot present satisfactory identification or in any case where the member has reason to believe that invalid identification is being presented.

## **IX. IMMUNITY FROM ARREST (GOVERNMENT OFFICIALS, ELECTORS, AND NATIONAL GUARD)**

- A. The United States Constitution prohibits the arrest of all United States senators and representatives, except for treason, felonies, and breach of the peace, during their attendance at a session of Congress, and while they are traveling to and from such sessions.
- B. The Delaware Constitution prohibits the arrest of all state senators and representatives, except for treason, felonies, and breach of the peace, during their attendance at a session of the General Assembly, and while they are traveling to and from such sessions.
- C. No person belonging to the military forces of the State of Delaware shall be arrested on any traffic citations while going to, remaining at, or returning from any place at which he or she may be ordered to attend for military duty when the Delaware National Guard has been called out upon state duty.
- D. The Delaware Constitution provides that electors (voters) shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections and in going to or returning from them.

## **X. ARREST OF OUT-OF-STATE FUGITIVES**

- A. Upon reasonable information, officers are empowered to arrest any person who stands charged in the courts of another state with a crime punishable by death or imprisonment for a term exceeding one (1) year, provided that:
  - 1. The demanding state's warrant is confirmed in writing. (A copy of the warrant and/or a teletype will suffice); and
  - 2. The demanding state will extradite the accused and such intentions are received in writing (teletype, fax or otherwise) prior to the individual being charged.
- B. The accused must be charged as an out-of-state fugitive and taken forthwith before a judge or magistrate without undue delay.
  - 1. The accused may elect to waive extradition before the judge or magistrate.
    - a. If extradition is waived, the court may, depending on the charged offense, release the accused on bond or order him/her incarcerated until such time as officials from the demanding state arrive to transport him/her to that state.
  - 2. Under no circumstances will waiver of extradition be handled "on the street" or otherwise outside the supervision of the court.
    - a. The court may, upon the execution of a fugitive warrant and depending on the charged offense, release the accused on bond or order him/her incarcerated until such time as officials from the accusing state arrive to transport him/her to the demanding state.

- 1) Prior to the subject being returned to the demanding state, certain procedural formalities and hearings must be performed pursuant to state law.
- 2) Once the accused is processed into the court system of the holding state, officials representing the respective governor's office and prosecutor's office, will perform the requisite hearings and/or formalities. Officers may be called to appear and/or cooperate in any hearings or investigations.

## **XI. OFF-DUTY CONDUCT: POWERS OF ARREST**

### **A. Off-Duty Responsibilities**

1. While off-duty, officers will be held responsible for reporting any suspected or observed criminal activities immediately to appropriate on-duty authorities.
2. Except as allowed by this directive, off-duty officers should not enforce minor violations such as harassment, disorderly conduct, or other nuisance offenses. Where an off-duty officer becomes aware of such violations, he or she will promptly contact the appropriate on-duty personnel to respond to the situation.
3. When an off-duty officer, who is armed and not wearing a police uniform, becomes involved in a situation where he/she draws his/her weapon, the officer should never turn with a weapon in his/her hand towards any other police officer at the scene. That officer may perceive the off-duty officer as a threat to his/her safety.
4. Off-duty officers are encouraged to develop a plan of action for their families clearly covering what each family member should say or do if the family becomes drawn into a crime in progress.
5. If any off-duty officer becomes involved in an incident which requires police action, he or she will submit the appropriate police report.
6. If an off-duty officer is injured as the result of his/her involvement with an off-duty incident, he or she will follow departmental procedures for reporting the incident.

### **B. Permitted Off-Duty Arrests Within Territorial Boundaries of the Cheswold Police Department**

When off-duty and within the territorial boundaries of the department, an officer may make an arrest when:

1. The arresting officer is not personally involved in the incident underlying the arrest; and
2. There is an immediate need to prevent a crime or apprehend a suspect;  
And
3. The crime would require a full custodial arrest; and
4. The arresting officer possesses appropriate police identification.

## **XII. PERMITTED ARRESTS OUTSIDE THE TERRITORIAL BOUNDARIES OF THE CHESWOLD POLICE DEPARTMENT**

- A. When outside the territorial boundaries of the department, an officer may make an arrest when:
1. The arresting officer is not personally involved in the incident underlying the arrest; and
  2. There is an immediate need to prevent a crime or apprehend a suspect; And
  3. The crime would require a full custodial arrest; and
  4. The arresting officer possesses appropriate police identification; and
  5. The following statutory authority must exist for the officer to affect such an arrest:
    - a) An officer of the Cheswold Police Department may arrest without a warrant at any location within the State any person who he/she has reasonable grounds to believe is committing or attempting to commit a felony in his/her presence.
    - b) An on-duty officer may arrest upon view and without a warrant at any location within the State, any person when probable cause exists to believe that the person is committing or attempting to commit any crime which creates a substantial risk of death or serious physical injury to another person or which constitutes a violation of §4177 of Title 21.
    - c) An on-duty officer may arrest at any location in the State any person for any offense committed within the Town of Cheswold for whom an arrest warrant has been issued. The on-duty officer shall, where acting outside of his department's jurisdiction, take reasonable measures to notify the primary jurisdictional police agency of the intended time and place of the execution of the arrest warrant.
    - d) An officer may render assistance to another police officer at any location within the State when he/she reasonably believes that the police officer to be assisted is lawfully performing his duty and death or injury will occur to that police officer if assistance is not provided.
    - e) A police officer acting under the authority of this Section shall be considered to be acting within the scope of his employment.
    - f) For the purpose of definition, the term "on-duty" shall mean that the officer was working with the knowledge and approval of the Cheswold Police Department at the time of the arrest. In the instances described as "on-duty", the officer cannot put himself in "on-duty" status if in fact he was not on the Cheswold Police Department work schedule.

**B. Prohibited Off-Duty Arrests**

Officers of the Cheswold Police Department may not make an arrest off duty when:

1. The arresting officer is personally involved in the incident underlying the arrest; or
2. The arresting officer is under the influence of intoxicants; or
3. The arresting officer is engaged in off-duty employment of a non-police nature, and his/her actions are only in furtherance of the interests of the private employer; or
4. The arrest is made solely as enforcement of a minor traffic violation. Despite the fact that an officer has police powers and responsibilities 24 hours a day throughout the territorial boundaries of the Cheswold Town Police Department, the off-duty officer will not enforce minor traffic violations.

ORDERED and EXECUTED this 15<sup>th</sup> day of APRIL, 2013

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Christopher Workman  
Chief of Police