

Metropolitan Police Academy



9.2 Arrest Warrants

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Introduction

While you have come to learn the value of composing the narrative for an Arrest/Prosecution Report and the ways to conduct a preliminary investigation and establish probable cause, there will be times during your career when you are unable to place an individual under arrest at the scene of the offense. The offense may be a probable cause misdemeanor that does not meet the three (3) criteria that would mandate an arrest or the suspect may have fled the scene prior to your arrival.

In cases such as these, it will be necessary for you to obtain an **arrest warrant**. In order to do so, you must understand the definition of an arrest warrant as well as a **bench warrant**. There must be an understanding on your part of being an affiant in the process of obtaining an arrest warrant, and at which point an affidavit in support of an arrest warrant becomes an arrest warrant.

During the course of this lesson, you will learn the key terms regarding arrest warrants, the legal requirements and process for obtaining an arrest warrant, about an affidavit in support of an arrest warrant, and the departmental policies in place for the service of arrest warrants following affidavit approval.

9.2.1 Define key terms related to arrest warrants

As a police officer, there will be times when you will be unable to immediately make a custodial arrest. You may arrive on a scene and upon the conclusion of your preliminary investigation realize that the offense that occurred is one of the twenty-seven (27) Probable Cause Misdemeanors and it did not occur in your presence (Lesson 4.1 Criminal Law). When the suspect who committed the offense does not meet any of the three (3) criteria set in place that enable you to affect a custodial arrest, an affidavit in support of an arrest warrant must be presented to an Assistant US Attorney and signed off by a judge. A warrant is defined by Black's Law Dictionary as "a writ directing or authorizing someone to do an act, especially one directing a law enforcer to make an arrest, a search or a seizure."

Arrest Warrants

An arrest warrant is a warrant to take a person into custody that is based upon probable cause. It is an order issued by a judicial official that authorizes law enforcement officers to locate and arrest a person for committing one or more specified offenses and bring the person to court where he or she will be presented before a judge. (**GO 702.01 – Arrest Warrants**).

An arrest warrant is based upon an **Affidavit** which, according to GO 702.01, is a "written statement of facts made by an affiant under an oath or affirmation, administered by a person authorized to do so by law." You will serve as the **Affiant**, the "person who signs an affidavit and swears to its truth before a judicial official or other person authorized to take oaths" when you present an affidavit in an effort to obtain an arrest warrant.

Custody Order

A custody order is the equivalent of an arrest warrant but is used for juveniles and the commission of delinquent acts. Offenses committed by juveniles are often referred to as **delinquent acts**.

Bench Warrant

A bench warrant is a type of arrest warrant that, according to Black's Law Dictionary, is "...issued directly by a judge to a law-enforcement officer, especially for the arrest of a person who has been held in contempt, has been indicted, has disobeyed a subpoena, or has failed to appear for a hearing or a trial."

The bench warrant is issued directly from a judge because an individual has ignored a court summons to stand trial for a crime for which they were placed under arrest or because the person did not arrive for a hearing in court. When a bench warrant is issued, probable cause has already been established for an arrest to be made based on what did or did not occur before the judge. That is how a bench warrant differs from an arrest warrant: an arrest warrant details an offense, establishes probable cause for an arrest, and enables you to take a person into custody for an offense committed on a *prior* occasion.

This is why it is important that you request a WALES/NCIC check on any individual you come into contact with (**GO 304.11**). Such a check can aid with finding missing persons, assist in conducting injured persons to hospital investigations, and locating individuals who have outstanding warrants. When you fail to make the checking of WALES/NCIC a routine habit and priority, your effectiveness as a police officer is diminished.

9.2.2 Explain the legal requirements for obtaining an arrest warrant

After your arrival on the scene of a crime, you will determine if a felony or misdemeanor has occurred and if you have probable cause to make a summary arrest. A **summary arrest** is one made without an arrest warrant that is based upon probable cause that an offense occurred and the individual to be taken into custody committed the offense. If conditions for a summary arrest at the scene do not exist, then an arrest warrant may be necessary.

Arrest warrants are used as a form of rights protection for those who live within the United States of America. The necessity of the existence of rights regarding search and seizure (arrest) are codified within the Bill of Rights to the US Constitution. in the Fourth Amendment.

The Fourth Amendment states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The right of people to be secure in their persons and know that neither they nor their property can be searched or seized without probable cause for such action is not only a check on the hand of the government, but a pillar of democracy.

Probable Cause is based on the set of facts, circumstances, or reliable information that would lead a reasonable and prudent police officer to believe that a crime has been or is about to be committed and that a certain person is responsible. This standard of proof is a necessary component of any arrest warrant. Without probable cause, an affidavit for arrest will not be approved.

The Fourth Amendment explicitly states what must be included in an affidavit for an arrest warrant. If the affiant does not produce an affidavit meeting the criteria, then, by operation of law, an arrest warrant cannot and will not be issued.

When submitting an affidavit for approval, affiants must comply with the following requirements:

- Support the affidavit by oath or affirmation;
- Show probable cause, and
- Describe in detail the person to be taken into custody. A recent photo should also be utilized when one is available.

When an affidavit in support of an arrest warranted is prepared, it must be presented to and signed by a judge. The judge acts as an impartial party when determining whether probable cause has been established and whether an arrest warrant should be approved allowing the seizure of the person in question.

9.2.3 Discuss the Affidavit in Support of Arrest Warrant

You can locate the affidavit on the MPD intranet homepage via the **MPD Online Forms link**, locating the **Form Packages w/ Narratives** (warrants, custody orders, etc..), then finding the **Arrest Warrant Affidavit** form.

Prior to beginning your narrative for the Arrest Warrant Affidavit, you should speak to the detectives in the applicable district or state within the non-public portion of your report that you will seek an arrest warrant for the referenced case. This eliminates the potential of two (2) different departmental members attempting to obtain an arrest warrant for the same offense and individual.

The below information *must* be included in the affidavit's narrative and should parallel the information necessary within an arrest narrative. Just as the arrest narrative establishes probable cause and enables the lawful presence of police officers, the affidavit in support of arrest adheres to the same guidelines.

The narrative portion of the Affidavit in Support of an Arrest Warrant must contain:

- the date.
- the approximate time the offense occurred. (**NOTE:** Arrest warrants do not use military time.)
- the address of the offense.
- the PSA in which the offense occurred.
- the fact that the offense occurred in Washington, DC.
- your call sign for the tour.
- whether you were operating a scout car, mountain bike, Segway, etc., or whether you were on foot.
- that your BWC was activated.
- what kind of police identifiers you had on (full uniform, plain clothes with badge and raid-style jacket, etc.).
- all radio channels utilized.
- the way in which you came to know of the offense (radio run, notification by a member of the public, noticed during the course of patrol duties, etc.).
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- the sequence of facts and details about the offense, including all the elements of the offense.
NOTE: Any information that would show a person did not commit the offense must be included as a judge must be able to make a decision based upon the totality of circumstances. You are not a finder of guilt; you must provide all the facts.
- the offenses for which you are requesting a warrant.
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- how the defendant was identified (verbally, State Driver's License, Passport, etc.). Describe the investigation you performed. Include the person's social security number and date of birth. Include whether the person goes by any aliases.
- any medical or caution codes in relation to the individual (armed and dangerous, violent tendencies, diabetic, suicidal, etc.)
- the tag number and registration state of any vehicle owned by the wanted person.

The affidavit narrative should be written in the third person, with the exception of the final paragraph.

The narrative, if approved and signed off on by a judge, will authorize your fellow officers to apprehend the individual described within the Affidavit in Support of an Arrest Warrant. Just as taking a person into custody, detaining them, and restricting their movement and freedom is an act that should be conducted with utmost seriousness, your affidavit has the potential to take another person's freedom in response to an offense and must be treated accordingly.

You are not attempting to prove a person guilty when writing up the narrative portion of the affidavit. You are to provide all of the relevant facts of the offense, regardless of whether any of the facts show that the individual in question may not have committed the offense.

Any information that would have been included within an arrest package must be included within the narrative portion of the arrest warrant. You are not a finder of guilt. It is your job to remain neutral and present the judge with the details of the event in its entirety so he or she can consider the totality of circumstances in order to make a decision on whether to approve or deny the arrest warrant.

What you write within the narrative portion of an affidavit in support of arrest is also what you will swear to and affirm as the truth. Everything therefore must be factual and as detailed as possible. Purposefully withholding information or swearing to information you know to be false within the affidavit is against the law and you could be charged with **False Swearing** and **False Statements** (Lesson 7.3 Offenses Against the Legal Processes).

9.2.4 Construct an Affidavit in Support of Arrest Warrant

Practice filling out the online form.

9.2.5 Describe the process of obtaining an arrest warrant

Review Within the Department

Once you have filled out your affidavit in Support of Arrest Warrant in its entirety, you must present a copy of the affidavit to a lieutenant within your district for review. It is the lieutenant's responsibility to ensure that you have all the necessary information within the Affidavit in Support of Arrest Warrant. You are not to present an affidavit to a judge without the knowledge and approval of a district official the rank of lieutenant or above. Once your lieutenant or a higher-ranking official has approved the affidavit, he or she will sign the copy.

Gather Documents

Next you must obtain and gather the following:

- Record of a Warrant/Custody Order Requiring Service
- The most recent Arrest/Prosecution Report and photograph for the individual for whom you are attempting to obtain an arrest warrant.

Review by an Attorney

Present all of the available documents to the appropriate attorney. The procedure for presentation of the affidavit differs based upon whether the offense is a felony or a misdemeanor.

- When you are seeking an arrest warrant for a *felony* charge, submit the affidavit for attorney review at the Grand Jury Intake Section of the US Attorney's Office within the DC Superior Court. If the affidavit is approved, the arrest warrant will be valid until it is served. Email a copy to USADC.Felonywarrants@usdoj.gov.
- If the warrant is for a *misdemeanor* offense, then it should be presented before an attorney of the Special Litigation Branch of the Misdemeanor Trial Section within the US Attorney's Office. In the case of a misdemeanor, the approved warrant will be valid for a period of one (1) year. Email a copy to USADC.Misdemeanorwarrants@usdoj.gov
- If you must obtain an arrest warrant for a *juvenile*, you will follow the same procedures with the exception that you will present the custody order affidavit to an attorney in the Juveniles Section of the DC Office of the Attorney General.

The attorney will review the affidavit to ensure that you have included all of the necessary elements. If he or she is satisfied with the information contained within the affidavit, he or she will sign off on your affidavit, at which point you will be directed to the judge in chambers.

If the attorney does not sign off on your affidavit, return the declined affidavit to the detective's office and note within the non-public narrative for the related report that the affidavit was declined. Be sure to include the name of the attorney that decided not to approve the affidavit.

Review by a Judge

The judge in chambers will read over your approved affidavit and either approve or deny your request for an arrest warrant. The judge may ask you questions for clarification purposes. When answering the questions, if you do not remember or you simply do not know, then state that to the judge. It is better to admit this than to guess, lie, or misrepresent the facts. Your entire reputation and career hinge upon the fact that you must always tell the truth.

After review and if the judge determines that you have established probable cause for an arrest warrant, then you will be asked to swear before the judge that everything contained within the affidavit is factual and correct. After that, you and the judge will both sign the affidavit and it then becomes an arrest warrant.

Getting the Warrant into the System

You then take your signed arrest warrant to the court clerk who will assign it a warrant number and enter it into the WALES system. The approved and signed arrest warrant should be submitted to the warrant office at DC Superior Court via DCCriminalWarrants@dcsc.gov. Once it is entered into the system, any officer who encounters the suspect and conducts a criminal background check will know there is an active warrant out for the person's arrest and will take him or her into custody.

Service of the Arrest Warrant

Absent exigent circumstances, the US Marshals Service handles arrests of wanted persons who are inside court buildings at the time.

Do not execute an arrest warrant on any military base prior to contacting the provost marshal or on duty officer.

Do not assist another agency in the execution of an arrest warrant without the approval of a captain or above.

If you encounter a person who has committed an offense for which you have probable cause to make an arrest and, after conducting a WALES check, you learn that the person is also the subject of an arrest warrant, then you will process the person within your district and add the arrest warrant offense as an additional charge. You must also contact a detective or official in the originating district of the arrest warrant so they are aware the individual has been placed under arrest.

All warrant arrests must be papered the next day. A detective or official in the originating district of an arrest warrant must be informed of the arrest in order to ensure that person's compliance with this order because the member who obtains an arrest warrant is responsible for papering that warrant. You must then file a copy of the warrant in the detective's office.

Arrest Warrants from Another Jurisdiction

When the person with whom you have come into contact has a warrant for his or her arrest from an outside jurisdiction, you must confirm with the dispatcher and the jurisdiction that issued the warrant whether the warrant is extraditable. When a warrant is extraditable, the other jurisdiction will arrange to have the defendant transported there to face trial. Sometimes, a warrant will have limited jurisdiction. The issuing jurisdiction, for example, will specify certain areas from which they are willing to arrange transport for the defendant. If the subject is stopped outside of those specified areas, the warrant is treated as non-extraditable.

Upon confirmation of an extraditable warrant, the person will be placed under arrest using the charge **Fugitive from Justice**. If the warrant is non-extraditable, you should advise the subject and take whatever other police action the circumstances dictate, but do *not* arrest the person solely on the warrant—you may not make an arrest for a non-extraditable offense as the state of origin will not pick up the prisoner.

The **Fugitive from Justice** charge is merely a *holding* charge. It is not a *criminal* charge.

With regard to body-worn camera (BWC) usage during an arrest warrant or custody order arrest or attempted arrest, members shall:

- Record and classify all BWC recordings of the service or attempted service of arrest warrants and custody orders in Evidence.com.
- Classify the recordings using the category “Search or Arrest Warrant” along with the BWC category for the original underlying offense if there is one.
- If forcible entry was necessary, members shall also use the BWC category “Forcible Entry.”

Administrative Warrants in NCIC and Immigration Enforcement

Members shall not make arrests solely based on ICE administrative warrants or detainers for federal immigration violations, to include administrative immigration warrants for persons with outstanding removal, deportation or exclusion orders.

Members shall not assist ICE in the arrest or transport of individuals solely based on administrative warrants and detainers.

When members receive a “hit” for an ICE warrant or detainer in NCIC, they shall contact the Teletype Unit at (202) 727-4225. The Teletype Unit shall contact the ICE Law Enforcement Support Center (LESC) to confirm the person’s status.

- Upon Confirmation from ICE LESC that the warrant is a criminal arrest warrant, the Teletype Unit shall notify the officers to enforce the warrant.
- When ICE does NOT confirm the warrant is a criminal or administrative detainer for federal immigration violations, the Teletype Unit shall notify the officers to take no action on the warrant or detainer.

9.2.7 Outline the departmental policies regarding processing warrant-related arrests

The two most common warrant-related arrests are those involving active arrest warrants issued by the DC Superior Court and Fugitives from Justice. Depending upon the circumstances of the arrest and the warrant type, members shall process warrant-related arrests in accordance with the procedures outlined below:

- **Active Arrest Warrants from the DC Superior Court or District Court of the District of Columbia**
Members who encounter a subject with an active arrest warrant or custody order issued by the DC Superior Court or District Court of the District of Columbia shall arrest the wanted subject but refrain from requesting additional CCNs unless the subject will be charged with additional crimes not already stated in the arrest warrant.

Example 1: A member conducts a traffic stop on John Smith after observing him failing to yield to an emergency vehicle. Utilizing WALES, the member confirms that Mr. Smith possesses a valid driver's license; however, in the process of doing so, the member discovers Mr. Smith has an active arrest warrant related to a Burglary One (CCN 16000123) charge. In this case, the member should arrest Mr. Smith but should not request a CCN for Burglary One. A new CCN is not necessary because Mr. Smith is being arrested for a crime which has already been reported, documented with a CCN (16000123), and investigated. The arresting member should inform the dispatcher he or she is arresting Mr. Smith in reference to CCN 16000123. At the arresting member's district or element, the officer shall process the arrest in accordance with the following procedures:

- Search for the Offense Report associated with CCN 16000123;
- Add an Arrest Card and select "Add Prior Offense (+ PRIOR OFFENSE);"
- Select the checkbox in the "Charges and Warrants Section" associated with the arrest warrant;
- Complete the remaining fields on the arrest card, including a description of how the defendant was encountered in the "Statement of Facts" field;
- Notify the MPD detective or investigator that applied for the warrant; and
- Add the following information to the "Internal Narrative:"
 - A description of how the defendant was encountered; and
 - The name and badge number of the detective or investigator notified.

Example 2: A member arrests Mr. John Smith for "Destruction of Property" after observing him intentionally strike and shatter his neighbor's window with a brick. During the course of the arrest, the officer discovers that John Smith has an open DC Superior Court arrest warrant for a Burglary One charge (CCN17081122). In this case, the member should request a CCN for Destruction of Property only. At the arresting officer's district or element, the officer would process the arrest in the same manner as any other arrest for Destruction of Property, taking the following additional steps:

- On the Arrest Card, select "Add Prior Offense (+ PRIOR OFFENSE);"
- Input the CCN associated with the warrant (17081122) and select "Search" (Attachment D);
- Select the checkbox that matches the crime in the arrest warrant (e.g., "Burglary One") and click "ADD OFFENSES" (Attachment E);
- Complete the remaining fields in the arrest card, including a description of how the defendant was encountered in the "Statement of Facts" field;
- Notify the MPD detective or investigator that applied for the warrant; and
- Add the following information to the "Internal Narrative:"
 - A description of how the defendant was encountered; and
 - The name and badge number of the detective or investigator notified.

- **Fugitives from Justice**

Members encountering a subject with an active, extraditable arrest warrant or custody order issued by judge or magistrate from an outside jurisdiction (e.g., Prince George’s County, MD) shall arrest the subject and request CCNs for “Fugitive from Justice” as well as any other applicable charges that led to the arrest *except* the specific crime(s) outlined in the arrest warrant.

Example: In the process of arresting Mr. John Smith for Simple Assault, the arresting member discovers that Mr. Smith has an active, extraditable arrest warrant issued by a magistrate in Richmond, VA, for Burglary One. In this situation, the arresting officer would request CCNs for Simple Assault and Fugitive from Justice. The member should not request a CCN for Burglary One” as that charge is the subject of the arrest warrant. At the arresting officer’s district or element, the officer would process the arrest in the same manner as any other arrest for Simple Assault, taking the following additional steps:

- Add an “Offense Card (+ Offense)” for the charge of Fugitive from Justice.
- On the “Charges & Warrants” section of the Arrest Card:
 - Enter the warrant number (this is located in the arrest warrant);
 - Provide a description of the warrant (e.g., Burglary One Warrant – Richmond)
 - Select the checkbox labeled “External Jurisdiction.”
- Follow the procedures outlined in **GO 702.01 Arrest Warrants** in the Fugitive from Justice section.

NOTE: In all of the aforementioned situations, the arresting member did not add a Burglary One charge because the crime had already taken place and had a pre-existing CCN or there was an extraditable arrest warrant from another jurisdiction.

Summary

Throughout this lesson you have learned the options that will be available to you as a law enforcement officer when you are unable to make an arrest on scene for a variety of potential reasons. When this occurs, you now have the tools necessary to obtain an arrest warrant since you understand what an arrest warrant, bench warrant, and custody order are and what information an affidavit in support of an arrest warrant must contain.

You have learned how an Affidavit in Support of Arrest Warrant transitions into an arrest warrant and the steps you must take to ensure this is accomplished. These skills are necessary for being a competent and efficient police officer.

REFERENCES

GO 305.01	Interacting with Juveniles	01/28/2020
GO 702.01	Arrest Warrants	07/14/2022

GO 701.01	Courts and Hearings	12/31/2008
EO-17-008	Body Worn Cameras: Consent Searches and the Execution of Search Warrants, Arrest Warrants, Custody Orders, and Warrantless Searches	03/10/2017
3 rd Edition	Constitutional Rights of the Accused	1996
11 th Edition	Black's Law Dictionary	2019
Law.Cornell.edu	Edward H. Coolidge, Jr., Petitioner, v. New Hampshire	7/23/2015