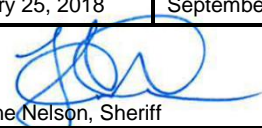




# DESCHUTES COUNTY SHERIFF'S OFFICE

Policy Title: <b>Search, Apprehension and Arrest</b>	Effective Date: February 25, 2015	Policy Number: <b>6.05</b>	
Accreditation Reference: 1.2.2, 1.2.3, 2.1.3, 2.1.7, 2.5.3, 4.3.1, 4.3.4	Review Date: February 25, 2018	Supercedes: September 20, 2011	Pages: 8
Attachments:	 L. Shane Nelson, Sheriff		

## I. PURPOSE

Apprehension and arrest of those who violate the law is one of the primary functions of law enforcement. The manner in which Deschutes County Sheriff's Office sworn personnel carry out their responsibilities in this area is extremely important. Deputy performance affects the safety of citizens and their property. It also affects the safety of other deputies. Finally, it affects the reputation and civil liability of the Sheriff's Office and its members. This policy provides guidelines on how to conduct arrests, bookings and citations.

## II. POLICY

The administration of criminal justice consists of the identification, arrest, prosecution, punishment and rehabilitation of those who violate the law. It has as its objective voluntary compliance with the law as an alternative to punishment.

Once a crime has been committed, it is the duty of the Sheriff's Office to initiate the criminal justice process by identifying and arresting the perpetrator, to obtain necessary evidence, and to cooperate in the prosecution of the case.

Since the certainty of swift and sure punishment serves as an effective deterrent to crime, the Sheriff's Office shall diligently strive to solve crimes and to bring perpetrators to justice.

When violations of laws and ordinances come to their attention, deputies are expected to take appropriate action within the policies of the Deschutes County Sheriff's Office.

## III. DEFINITIONS

*Probable cause* is a substantial, objective basis for believing that, more likely than not, an offense has been committed and a person to be arrested has committed it. (ORS 131.005(11))

*Arrest* means to place a person under actual or constructive restraint or to take a person into custody for the purpose of charging that person with an offense. (ORS 133.005(1))

## IV. RESPECT FOR CONSTITUTIONAL RIGHTS

Individuals may not be deprived of their constitutional rights merely because they are suspected of committing a crime. A deputy who lawfully acts within his scope of authority does not deprive persons of their civil liberties.

Deputies may, within the scope of their authority, make reasonable inquiries, conduct investigations, and arrest persons based on probable cause that they committed a crime.

## **V. DISCRETION AND ALTERNATIVES TO ARREST**

Discretion is the freedom to act according to one's own judgment. Deputies may use discretion to select an appropriate response when dealing with traffic offenses, violations, requests for public records, and certain criminal offenses of a minor nature.

The more significant or serious an incident, the less discretion is authorized. A deputy's discretion is limited by training, education, experience, laws, ordinances, Sheriff's Office directives and supervisors' instructions.

Once a violator has been identified, it is the function of the Sheriff's Office to initiate the criminal process; however, there are circumstances when a crime may occur and the Sheriff's Office will not make a physical arrest.

There may be a report written and an application for a complaint made; or, in some cases, when the offense is of a minor nature, a warning or other direction may be given.

The decision not to make an arrest will be guided by Sheriff's Office policy and the factual situation involved, not by the personal feelings of the deputy.

### **A. Discretion Concerning Issuance of Citations in Lieu of Custody**

ORS 133.055 allows the use of a citation in lieu of custody for all violations, most misdemeanors and felony charges subject to misdemeanor treatment under ORS 161.705. A citation in lieu of custody is authorized if:

1. The crime is a misdemeanor or a class C felony and the arrest is not mandatory per ORS 107.700, such as an arrest related to the Family Abuse Prevention Act.
2. The arrest is made without an arrest warrant (unless the warrant specifically authorizes a citation in lieu of custody).
3. The suspect does not appear to pose an immediate threat to the victim, community or self.
4. The suspect does not appear to pose a high risk of fleeing the area.

### **B. Restrictions on Discretion**

1. A deputy shall not use a misdemeanor citation in lieu of custody for valid arrest warrants or during domestic disturbance incidents meeting requirements of ORS 133.055 except when specifically authorized by that statute.
2. Members are authorized to use verbal or written warnings to resolve minor traffic and criminal violations when appropriate.
3. Even though a deputy originally believed probable cause existed at the time of the arrest, when a deputy determines that the probable cause under which a person was arrested does not in fact or no longer exists, the deputy shall release the arrested person.

## **VI. AUTHORITY TO ARREST**

ORS 133.235 empowers all Oregon peace officers to make arrests for offenses, pursuant to ORS 133.310, anywhere within the boundaries of the state of Oregon. Sheriff's Office policy recognizes this authority and recommends discretion on the part of each deputy.

### **A. On-Duty Arrests Outside Primary Jurisdiction**

On-duty arrests may be made inside the boundaries of a city or another county in cases of hot and/or fresh pursuit, while following up on crimes committed in the county or while assisting another agency.

### **B. Off-Duty Arrests Outside Primary Jurisdiction**

Refer to Deschutes County Sheriff's Office [Policy 6.30, Off-Duty Powers of Arrest](#).

Deputies observing criminal activity shall affect an arrest only when an imminent risk to life or property exists and there is no reasonable opportunity to contact the law enforcement agency with primary jurisdiction. In

such situations, the involved deputy shall clearly identify himself as a deputy sheriff. As soon as possible, notify the law enforcement agency with primary jurisdiction and a DCSO supervisor.

## **VII. TREATMENT OF INDIVIDUALS UNDER ARREST**

In making an arrest, deputies shall treat individuals with respect. Deputies shall not physically mistreat or verbally harass any individual. If a person taken into custody is ill or injured, medical treatment will be provided. Persons taken into custody are subject to:

### **A. Advice of Rights**

Once in a custodial situation, an arrested individual shall be advised of his constitutional rights prior to any questioning.

### **B. Search Incident to Arrest**

All persons in custody shall be searched incident to their arrest.

### **C. Transportation**

Persons in custody shall be attended to at all times and will be transported to the appropriate detention facility without unnecessary delay.

## **VIII. ADVISING SUSPECTS OF THEIR RIGHTS**

Deputies are responsible for advising suspects of their constitutional rights in the proper manner. Deputies shall observe legal requirements and Sheriff's Office procedures at all stages of an investigation and arrest.

A suspect shall be advised of rights prior to **custodial interviews** or the taking of any statements likely to be incriminating, oral or written, **after custody or arrest**. The deputy shall document all admonishments of rights.

(Refer to [Policy 7.10 Interviews, Interrogations and Confessions](#))

### **A. Access to Counsel**

Persons arrested shall be granted access to counsel, if requested, prior to any further custodial interviews, in accordance with an advice of rights statement. Access may be by telephone or in person, depending on the existing conditions.

### **B. Volunteered and Spontaneous Statements**

Volunteered and spontaneous statements are not barred and no warning need be given preceding them. If, however, the suspect is in a custodial setting any questioning initiated by the deputy thereafter in clarification or amplification of the volunteered or spontaneous statements should be preceded by a Miranda warning.

### **C. Documentation of Rights**

The fact that a suspect who gives a statement was so advised or admonished should be included at the beginning of any written or recorded statement or included in the incident report if the statement is obtained verbally.

Advice of Constitutional Rights should be, when practical, read directly from a prepared card. It may be necessary for the deputy to testify in court as to the precise language used to warn the suspect of his rights and the precise language by which the suspect waived these rights.

## **IX. SEARCHES**

Deputies will conduct all searches in a legal manner consistent with Sheriff's Office guidelines and in accordance with Oregon State Statutes and case law.

### **A. Consent Searches**

Persons may be requested by a deputy to submit to a consent search. Any such consent to search shall be freely and knowingly given, and not initiated through intimidation or coercion. The request should be clearly and precisely stated, assuring that the person knows:

1. The search is being requested and is in no way compelled or ordered.
2. What the scope of the search being requested is, (person, vehicle, area, premises, etc.).
3. To assure that the request to search is understood and consent is voluntary, deputies shall respond to any reasonable question or request.

### **B. Searches of Persons in Custody**

1. Every arrestee shall be searched once he is placed in restraints and prior to being placed in the vehicle for transport.
2. Searches shall include, but not be limited to, a pat down of all outside body surfaces, a search of all clothing pockets, shoe tops, and any other locations where a weapon can be secured and readily accessible.
3. The deputy shall seize all weapons and articles that could be used as a weapon or an escape instrument. Any article such as a small knife, which could be used as a weapon but which is not evidence, shall be secured and placed in the arrestee's property.
4. All evidence or contraband located shall be seized and processed according to Sheriff's Office evidence procedures.
5. Any contraband found during the booking process will be seized and a report taken by the arresting deputy.
6. Once jail staff has logged property as inmate property, a search warrant or consent is necessary to remove and/or seize any contents.

### **C. Search Warrants for Blood Draws/Urine Samples**

The purpose of this section is to establish a procedure by which search warrants can be obtained for blood draws or urine samples when necessary. This procedure represents the process that needs to be followed in order to satisfy the requirements of the District Attorney's Office and case law regarding blood draws and collection of urine samples.

#### **1. Scope or Procedure**

This procedure is to be followed whenever blood is drawn or urine is collected from a suspect. This includes, but is not limited to, circumstances where a vehicle may be involved in vehicular homicide, assault or recklessly endangering.

It also includes other situations in which blood or urine would be required as evidence and is collected in order to be tested for alcohol or controlled substances. Examples of such situations include, but are not limited to:

- crimes involving reckless conduct;
- in anticipation that a suspect could assert intoxication; or
- a diminished intent as a defense in court.

If the suspect gives consent, or if the suspect is unconscious and therefore unable to give or refuse consent, the deputy may have blood drawn, and the results may be used to support a charge of Driving Under the Influence of Intoxicants.

If the suspect refuses to give consent, a blood draw taken through a search warrant can be used in a criminal charge of Driving Under the Influence of Intoxicants. The results can also be admitted as evidence to support other criminal charges.

The procedure for obtaining the warrant should be pursued aggressively.

## **2. Request for Blood/Urine**

Deputies should ask for consent to draw blood or collect urine from the suspect immediately.

- a. If the suspect consents to the blood draw or urine collection, that consent should be documented in writing.
- b. The best documentation is a blood draw or urine collection consent form.
- c. Other documentation could include a statement signed by the suspect allowing the blood draw or urine collection. If written consent is not possible but verbal consent is given, that verbal consent should be either witnessed by at least one other person or tape recorded.
- d. If consent to the blood draw or urine collection is withdrawn at any time, the deputy should immediately begin procedures to obtain a search warrant.
- e. If the suspect is unconscious, incapacitated, or unable to indicate refusal or consent, the deputy may draw the blood as if consent had been given. The consent is assumed under ORS 813.010. The incapacity shall be documented. If the suspect becomes capable of giving or refusing consent, then consent needs to be obtained for further blood draws.

## **3. Refusal**

If the suspect refuses to consent to a blood draw or urine collection, the deputy should proceed to obtain a search warrant. The deputy may call the on-call District Attorney for assistance, if needed.

The warrant form can be filled out by hand, providing it is legible. There is no expectation that the form be typed.

Once the warrant form and the affidavit are completed, the deputy should contact a Circuit Court Judge to obtain approval and a signature. If a Judge is unavailable, the deputy shall document the specific steps taken to make contact, including:

- a. the name of the judge;
- b. the phone number called;
- c. at what time and how many times the phone rang; and
- d. what the response was.

The steps and the documentation shall be repeated each time an attempt is made to contact a judge.

If it is necessary to leave the hospital in order to make contact with a judge, the deputy requesting the warrant should be the one to do so. Another deputy should be left at the hospital to monitor the suspect while the warrant is being signed and returned.

Oregon Statutes allow the taking of blood under exigent circumstances. In most cases, exigent circumstances are limited to situations such as when Circuit Court Judges are unavailable. If this situation occurs, document the unavailability of the judges, conduct the blood draws as required, and continue efforts to contact a judge.

If a warrant has been obtained a copy should be given to the suspect.

A Search Warrant Return shall be filed within five working days of the search and seizure.

## **4. Handling Blood or Urine Samples**

Blood shall be taken by utilizing qualified personnel who are acting under the control of a duly licensed physician and who makes the search in a safe and medically acceptable manner. In most cases, blood evidence will not degrade at room temperature within 48 to 72 hours.

When the blood has been drawn or urine collected, it should be secured in the locking refrigerator in the evidence area. Refer to Policy 4.10 Evidence Control, IV, C, 10.

#### **D. Plain View Searches**

At times, a deputy may come across illegal items that are in plain view. When a deputy is in a place where he has a right to be, he may seize evidence in plain view without the necessity of first securing a search warrant.

#### **E. Exigent Circumstances**

Exigent circumstances are any circumstances requiring the police to act swiftly to prevent danger to life or serious damage to property, to forestall a suspect's escape or to prevent the destruction of evidence. In seizing items under this subsection, exigent circumstances shall exist both for the item deputies wish to seize and during the time frame in which they wish to seize it.

### **X. TRANSPORTATION**

Refer to [Policy 6.22, Transportation of Prisoners](#).

A deputy making an arrest will transport the arrested individual, or cause them to be transported, to the correctional facility to be booked as soon as possible after investigative needs are met. All persons detained in a correctional facility or juvenile detention center will be accompanied by a booking sheet and probable cause statement, if applicable. The paperwork will be turned over to the booking deputy.

The vehicle shall also be inspected before and after transporting a prisoner to ensure that evidence or weapons have not been hidden in the seat cushions or under the seat by the prisoner.

### **XI. ARREST WARRANTS**

#### **Warrant Confirmation**

When a wanted subject is contacted, the deputy will request that 9-1-1 Dispatch confirm validity of the warrant with the issuing agency.

Once the warrant has been confirmed and the subject is taken into custody, the deputy will transport the prisoner to the Deschutes County Adult Jail for booking and processing.

Dispatch will send a printout of the LEDS/NCIC entry to the jail. The printout will include the notation "Confirmed Warrant" and the deputy's name.

Dispatch will send a teletype to the agency holding the warrant advising that the warrant has been served and will place a 'Locate' on the LEDS and NCIC entries.

### **XII. PARENTS/CAREGIVERS**

At the time of arrest or as soon as practical thereafter, deputies shall ask the arrested person if he is in charge of or providing care for a minor or dependent child or children. (A minor or dependent child is any person under the age of 16 or any person who by age or mental incapacity cannot provide for his own welfare or safety.) The arrested person's response will be noted on the booking sheet at the time of arrest.

If an arrested person indicates that he does have minor or dependent children in his custody or under his control, the deputy will contact the Department of Human Services, Child Welfare Division (DHS) and file a report. The deputy will also investigate to determine whether or not a crime has occurred.

The deputy shall contact the shift supervisor and inform him of the circumstances. The supervisor will determine whether a response to the location of the minor or dependent child or children is necessary until DHS can respond or DHS gives approval to release the child or children to another responsible person. The deputy will make every reasonable effort to ensure that the child or children are not left with a person or in a place where their welfare will be at risk.

If an arrested person fails to advise that he is responsible for minor or dependent children until after he has been lodged at the Deschutes County Adult Jail, the jail shift supervisor shall notify the patrol shift supervisor who will assign a deputy to follow-up on the potential neglect case as well as contact DHS.

### **XIII. JUVENILES**

Refer to [Policy 5.30, Juvenile Enforcement and Custody](#).

Response to crimes involving juveniles will not differ from that for adult crimes. Deputies may use any reasonable means to protect themselves when a juvenile is a threat to personal or public safety.

### **XIV. ESTABLISHING IDENTITY**

Deputies shall exercise discretion when a violator cannot or will not provide satisfactory identification. If a citation-in-lieu of custody is issued, the deputy should, to the extent possible, obtain information for the execution of an arrest warrant should the violator fail to appear for arraignment.

If a prisoner is being transported from a correctional facility the deputy should make reasonable attempts to positively identify the person as the prisoner to be transported. Reasonable attempts will include identifying through correctional facility name tags, wristbands, and booking photographs.

### **XV. SICK OR INJURED PERSONS**

When deputies are confronted with a situation involving a sick or injured suspect or arrestee, deputies will render any first aid necessary and obtain medical help if needed.

Decisions to be made by the deputy in the field regarding emergency hospitalization of injured persons shall be based on the seriousness of the injury and the pending charge against the arrested person.

Deputies will contact a supervisor who will make a determination as to whether or not the prisoner will be released prior to medical treatment and/or admittance to the hospital. When transporting any in-custody person for medical attention, [Policy 6.22, Transportation of Prisoners](#), will be adhered to.

### **XVI. CITIZEN'S ARREST**

Situations that involve a citizen taking a suspect into custody should not be encouraged.

In the event of a citizen arrest, the citizen's responsibility is to surrender the arrestee without delay to a deputy. The crime must have been committed in the arresting citizen's presence. The deputy shall independently review the circumstances surrounding the arrest.

Custody of the arrestee should be maintained only after the deputy has determined that the arrest is valid. The citizen making the arrest shall inform the arrestee that he is under arrest, and state the charge.

If the arrest is valid and the arrestee is taken into custody, the matter will be processed as would any other arrest report. The deputy may take physical custody or issue a citation according to the criteria in section V of this policy.

The arrest report shall state that the arrest was initiated by a citizen and describe the relevant facts and circumstances. The deputy shall obtain the arresting citizen's signature using the appropriate Sheriff's Office Citizen Arrest form.

If the arrest is not accepted because of a question over probable cause, the deputy shall document the incident in his report. A copy of the report shall be forwarded to the District Attorney's Office for review.

## **XVII. JAIL DETENTION**

Adult arrestees meeting incarceration criteria will be lodged in the Deschutes County Adult Jail for arraignment in the proper court on the next available court date.

Proper documentation is necessary at the time of booking such as a copy of warrants, warrant confirmations, probable cause affidavits, and victim assistance information.