

SANTA CLARA POLICE DEPARTMENT GENERAL ORDER 74.3

CRIMINAL PROCESS

ISSUED APRIL 2006

74.3.1 Arrest Procedures

Policy

It is the policy of the Santa Clara Police Department to observe the rights of those placed under arrest. Not only will this uphold the Constitutional guarantees officers have sworn to protect, it will also increase the likelihood that violators will be convicted and punished for their acts.

During the normal course of duty, Santa Clara police officers are required to make a determination as to whether an arrest shall be made. This procedure provides a guideline for various types of arrests; i.e., probable cause, warrant, citizen, non-criminal custody, etc.

Definition

Probable Cause

“Probable Cause” to arrest exists when, under the totality of the circumstances known to the arresting officers, a prudent person would have concluded that there was a fair probability that the defendant had committed a crime.

Procedure

Arrest

Arrest is the taking of a person into custody. This requires the officer either (1) physically restrain or at least touch the person, or (2) that person submits to the officer’s authority. To be a valid arrest, an officer must take the person into custody “in a case and in the manner authorized by law.”

In making an arrest, officers shall treat individuals with respect. Officers shall not physically mistreat or verbally harass any individual. In the event of injury or illness to the arrestee, medical treatment should be provided in accordance with [General Order 71.3](#) - Prisoner Transportation.

Santa Clara Police Department policy requires an officer to advise a suspect of his Constitutional rights regarding self-incrimination and counsel according to case law prior to a custodial interview.

Section 625 of the California Welfare and Institutions Code **requires** that a juvenile be advised of his constitutional rights when the juvenile is taken into custody for a violation of Section 601

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or 602 of the Welfare and Institutions Code. The advisement **must** be given regardless of whether or not the juvenile is interviewed.

Any person making an arrest may orally summon as many persons as he deems necessary to aid him therein as per Penal Code Section 839.

Citation in Lieu of Physical Custody

Sworn officers have authority to issue a citation in lieu of physical custody using criteria outlined in [General Order 1.2.3](#), Alternatives to Arrest and/or Pre-arraignment Confinement.

Arrest by a Private Person

A private person may arrest another person in the following situations:

- A public offense committed or attempted in his presence.
- When the person arrested has committed a felony, although not in his presence; or
- When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it.

It is not required to accept a private persons' arrest before examining the circumstances leading to the arrest. If the investigating officer believes that there is insufficient information for making a criminal complaint, he shall release the person in accordance with the procedures established in Penal Code Section 849(b)(1).

In the case of a private person's arrest for shoplifting, the officer will obtain a copy of the store employee's report of the incident. This report will accompany the arrest report/offense report/misdemeanor citation.

Off-Duty Enforcement Action

Prior to taking enforcement action, off-duty officers will give first consideration to causing the appropriate action to be effected by on-duty personnel from the law enforcement agency in which the activity occurs.

Additionally, the Department recognizes that off-duty officers cannot rely on the immediate assistance or application of police resources in the same capacity as while on duty and, thus, does not expect officers to jeopardize themselves or others by taking police action while off duty. However, when action is considered necessary consistent with the tactical situation, offense involved, or other factors as articulated by the involved officer, any police action taken will be governed by the same policies, procedures, rules and regulations that apply to on-duty personnel in a similar situation.

When immediate attention is required, and there are no alternatives available, the officer is on-duty. On-duty time starts with the officer's initial action and lasts until the Patrol Sergeant dismisses the officer from duty.

An officer who makes an arrest while off-duty in another jurisdiction must contact the agency having jurisdiction. The officer must advise the on-duty Santa Clara Police Department Field Operations Watch Commander of the incident as soon as possible. The officer will further direct a memorandum detailing the incident to the Chief of Police (through the chain of command) as soon as practical.

Neighborhood Disputes: When on or off duty, members will avoid becoming officially involved in quarrels or disputes occurring in their own neighborhoods, unless the incident involves an immediate threat to human life. In any event, members will give first consideration to their capacity to render an appropriate and adequate response before any action is taken.

74.3.2 Execution of Warrants

Notification

Officers are generally made aware of the existence of warrants by teletype, telephone, computer records checks, radio, or through information filed in the Warrants Unit in the Records section of the Police Department.

Officers who are notified by other means shall consult with their immediate supervisor prior to taking any action concerning the arrest warrant.

Verification

Prior to service of an arrest warrant, the originating agency will be contacted to verify the validity of the warrant and that it is serviceable at the time of day and location that contact is made with the person named in the warrant.

Service of misdemeanor warrants after 2200 hours and prior to 0600 hours may be made if:

- the arrest is made in a public place
- the arrest is made when the person is in custody pursuant to another lawful arrest
- the warrant is endorsed for night service

Verification may be made by teletype, electronic mail, or telephone. This confirmation that the warrant is active and on file with the respective court of record must be followed by a teletype verification from the originating jurisdiction.

Officers notified of valid warrant/s utilizing the previously mentioned methods have the same authority to arrest as if they were in possession of the original warrant.

When an officer has probable cause to believe a warrant exists for a given person, that person may be detained while verification of the warrant is sought. In the event that the verification is not received within a reasonable length of time, the person shall be released from custody and information of the contact will be furnished to the originating agency.

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Officers will verify the identity of the person named in the warrant. If there is any doubt regarding positive identification, the person will be released and the officer will obtain adequate information to relocate the person.

Service of Warrants

Persons arrested on warrants are usually booked at the Santa Clara County Jail. Some may be eligible for a “notice to appear,” and will be given a specific court date for appearance prior to release from the Police Department. Other arrestees may be cited and released via a misdemeanor citation directly from the Police Department. In any case, officers shall insure that arrested persons who receive citations/releases in lieu of custody receive proper notification of their court appearance and booking requirement.

Officers will use discretion in executing a warrant for a minor misdemeanor offense where custody of the subject would cause undue hardship or unreasonable inconvenience to the person or their dependent family. Officers should consider the following criteria in making their decision:

- The seriousness of the charge
- Probability of court appearance by the arrested person
- The failure to appear history of the arrested person as evidenced by police record, outstanding warrants, and past pre-trial release experience.
- An existing law enforcement need to take them into custody or to remove them from a volatile situation.

Cancellation and Warrant Returns

After a warrant is served, Warrants or Records personnel will be notified so that the warrant can be removed from the in-house, County, State, and NCIC computer files.

In cases where Santa Clara Police Department personnel serve an a warrant for an outside agency, an electronic notification of the service will be sent to the originating agency.

Bail

Bail on Traffic, and Superior Court warrants will be accepted at the front desk.

Forcible Entries to Serve Arrest Warrants

If there is a warrant and the officer has reasonable cause to believe the subject is in a residence or other premise and the residence belongs to the subject or he/she otherwise dwells therein, and if, after giving notice of the officer’s identity, authority, and purpose, the officer is not admitted, the officer may enter the premises, forcibly if necessary (Penal Code Section 844).

Forcible entry, however, should be conducted only as the final option. In such case, authority must be granted by the on-duty supervisor who will immediately notify the on-duty Watch Commander. The following factors will be considered if forcible entry is being contemplated:

- Seriousness of the offense
- Risk to persons and property
- Impact on public safety, and
- Ability to relocate the individual at a later time

Forcible Entry Repair

Procedure: Whenever it is necessary, lawful, and reasonable for police personnel to forcibly enter a residence or commercial building, a report shall be written, documenting the facts surrounding the necessity for the forced entry. The Watch Commander, after being advised, will review the report and forward it, along with any comments added, to the Division Commander for the involved personnel

Claims: Officers shall not advise owners or occupants of the damaged property that the City will be responsible for repairing the damage or paying for the repair work. Inquiries concerning a claim against the City for the damages shall be referred to the Division Commander of the involved personnel. Each incident will be evaluated on its own merit and decisions concerning liability for repair will be made after a thorough review of the facts surrounding the incident.

Emergency Repair: There may be isolated instances where the City personnel may be called out after hours to make temporary repairs. The decision to call out personnel after hours shall be made by the Watch Commander.

Notification: Along with the report documenting the incident, the officer involved in the entry shall also complete a memorandum addressed to the Division Commander. See Attachment A -- sample memo entitled "Forced Entry Damage" at end of this General Order.

Search Warrants

Search warrants issued by a judge are valid for execution in the county specified on the warrant. As per Penal Code Section 1534, the search warrant shall be executed and returned to the court within ten days from issuance, unless specified otherwise by the issuing judge.

Telephonic search warrants may be obtained by following the current guidelines dictated by the Santa Clara County District Attorney's Office, Santa Clara County Municipal Court, and under the guidelines of Penal Code Section 1528(b).

74.3.3 Search and Seizure

Plain View

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Under the general rule, if officers are in a place that they have legal right to be and observe contraband, instruments, fruits or evidence of a crime, they may seize those items as evidence. The item seized must be immediately apparent as contraband or evidence of the crime.

Except in cases involving exigent circumstances or motor vehicles, a plain view observation of contraband or evidence does not justify a warrantless entry into a constitutionally protected area to seize the item. The plain view observation, however, may establish probable cause for the issuance of a search warrant.

Searches Incident to Arrest

A search subsequent to custodial arrest is permitted for the following reasons:

- To insure the safety of the arresting officer
- To collect and preserve crime-related evidence
- To prevent weapons and contraband from entering a custodial facility

The arrest must be valid and the search is conducted as soon as possible following the arrest.

The search should not go beyond the person and the immediate area where that person could reasonably obtain a weapon or dispose of evidence.

Consent Searches

Consent to Search form (SCPD 011) should be used by officers whenever possible and a valid, voluntary consent obtained before a search of a premise or vehicle.

If an officer has a valid consent, he/she is entitled to seize contraband or fruits or instrumentality of a crime, as well as any other item he/she can reasonably believe will aid in the suspect's apprehension or conviction.

Warrant Searches

Unless exigent circumstances exist, officers must obtain a warrant before entering or searching a house, building, or secured vehicle. Exceptions include vehicles observed in motion by the officer, and public areas of buildings.

The on-call Deputy District Attorney will provide assistance when applying to the court for a search warrant.

In the execution of search warrants, the following shall be observed:

- Control: a supervisor will retain full responsibility. The supervisor will make decisions on unusual circumstances and provide overall direction of the entry and search.

- Planning: A complete threat assessment shall be completed prior to the service of the warrant. A written operation plan will be completed prior to warrant service by the officer in charge of the case, or other individual as designated by the supervising officer.
- Coordination: All persons assigned to the search should be briefed on their specific assignment, the purpose of the search, possible suspects and who to report to by the supervisor.
- Uniformed Officers: The initial contact may be made in plain clothes, but the uniformed officers should be moved in as soon as possible, thereby effecting the presence of authority.

Officers must knock and announce police authority and purpose before entering any building to arrest or search. They must comply with Penal Code Sections 844 and 1531.

Officers shall secure the premise by conducting a preliminary search for persons and then assembling them in one area.

Officers shall advise those present of the nature of the warrant and secure the premise, typically not allowing anyone to enter or leave the area being searched.

Recording and seizure of evidence during the search should be done by two officers, with one functioning as the finder. A copy of the warrant and receipt for all property seized must be left at/in the premises searched. The original search warrant, along with a list of items seized, will be returned to the issuing magistrate/court within 10 days of issuance.

Searches During Detentions (Pat-downs/Frisks)

During a detention, you have no power to conduct a general, full, exploratory search of the suspect.

You may, however, conduct a pat-down or limited weapons search of someone you have detained, but only of his/her outer clothing, and only if you have specific facts which make you feel in danger. You must reasonably suspect that the person is armed or may be armed, although you do not need to be positive. At the very least you need a potentially dangerous situation to justify a pat-down search. Dealing with a suspected dangerous felon is by definition enough cause. On the other hand, pat-searching someone solely because he/she is on parole has been ruled illegal.

INTEROFFICE MEMORANDUM
CITY OF SANTA CLARA

DATE:

TO: Division Commander

FROM: Officer _____

SUBJECT: Force Entry Damage

Case No. _____

On _____ members of this Department forced

entry into _____

This was in regard to a police action that required immediate action resulting in the below listed damage:

DAMAGE DESCRIPTION (circle one) MINOR MODERATE HEAVY

Details

PHOTOGRAPHS TAKEN: YES___ NO___

This memorandum is for information purposes only. For further information refer to the associated Crime Report.

Supervisor Approval: _____

Watch Commander Approval: _____