



DEPARTMENT OF PUBLIC SAFETY OPERATING PROCEDURES MANUAL		
CHAPTER 223	ARREST	
	Effective: 5/1/2024	Commissioner Approval: 
	Authorities:	AS 04.21.065 ; AS 11.56.330 ; AS 12.25.150 ; AS 12.25.180 ; AS 12.25.190 ; AS 18.35.300-305 ; AS 18.35.341 ; AS 18.65.530 ; AS 33.30.071 ; AS 41.21.960 ; AS 46.06.080 ; GRADY v. CORBIN
	Applicability:	ALL DEPARTMENTAL EMPLOYEES
	Special Instructions:	SEE CHAPTERS 107 & 216

223.100 INTRODUCTION

This policy establishes departmental protocol when making an arrest.

223.300 GENERAL INFORMATION ON ARREST

A. *Conditions constituting arrest.* The following elements must be present to constitute an arrest:

1. The seizure or restraint of a person, either actual or constructive, must be for the purpose of taking the person before the court for the administration of law;
2. The arresting person must be acting under actual or assumed authority for taking a person into custody;
3. The actual taking into custody, or detention of a person, either by force or by the persons acquiescence to control, resulting in restraint of the person's movements and loss of liberty (an officer making a statement to the accused that they are under arrest does not meet this criteria); and
4. The person must understand that they are under arrest and in the control and custody of the person making the arrest.

B. *DNA Database Collection Kits.* In accordance with AS 44.41.035 and exercising reasonable efforts, the arresting officer shall complete DNA Database Collection Kit from persons who are adults at the time of arrest for the following criminal violations: all AS 11 felonies, all AS 11.41 felonies and misdemeanors, and/or AS 28.35 Felonies. The DNA Database Collection Kit will be completed when a person has been placed under arrest and is being transported or is going to be transported to a DOC or corrections facility for booking. In accordance with the MOU between DPS and DOC, for those persons transported to a DOC facility, the kit will be completed by DOC personnel. All other arrestees shall be processed by the arresting officer.

C. *Brief detention does not constitute arrest.* The brief investigative stop of a person for the purpose of issuing a citation or for investigating suspicious activities does not constitute arrest. Officers having questions of when investigative stops constitute arrest are encouraged to seek legal advice.

D. *Warrant arrests.* Any police officer may serve an arrest warrant issued by a judge or magistrate who has been given probable cause supported by oath and affirmation. It is not necessary to have the warrant in your possession; knowledge of its existence is sufficient. Although a copy of the warrant does not have to be given to the accused immediately, this must be done as soon as practical.

E. *Arrest without a warrant, mandatory.* Arrests, absent an arrest warrant, by police officers shall be made in the following instances with noted exceptions:

1. The principle aggressor in a domestic violence assault situation (except in situations resulting in death) must be arrested, whether the offense is a felony or misdemeanor, where there is probable cause the offense occurred within the previous 12 hours, unless express permission not to make an arrest is obtained from a prosecutor from the jurisdiction in which the incident under investigation took place. [AS 18.65.530(a)(1)]
2. An arrest must be made where there is probable cause a person violated a term of a domestic violence protective order within the previous 12 hours, unless express permission not to make an arrest is obtained from a prosecutor from the jurisdiction in which the incident under investigation took place.. [AS 18.65.530(a)(2); AS 11.56.740(a)(1)]
3. An arrest must be made where there is probable cause a person violated a term of a stalking or sexual assault protective within the previous 12 hours, unless express permission not to make an arrest is obtained from a prosecutor from the jurisdiction in which the incident under investigation took place.. [AS 18.65.530(a)(2); AS 11.56.740(a)(2)]
4. An arrest must be made where there is probable cause a person violated a condition of bail release imposed in a domestic violence case within the previous 12 hours, unless express permission not to make an arrest is obtained from a prosecutor from the jurisdiction in which the incident under investigation took place.. [AS 18.65.530(a)(3); AS 12.30.027]
5. An arrest must be made where there is probable cause a person violated a condition of bail release imposed in a non-domestic violence stalking case within the previous 12 hours, unless express permission not to make an arrest is obtained from a prosecutor from the jurisdiction in which the incident under investigation took place.. [AS 18.65.530(a)(3); AS 12.30.016(e)]
6. An arrest must be made where there is probable cause a person violated a condition of bail release imposed in a sexual assault, sexual abuse of a minor, incest, online enticement, unlawful exploitation of a minor, or indecent exposure within the previous 12 hours, unless express permission not to make an arrest is obtained from a prosecutor from the jurisdiction in which the incident under investigation took place.. [AS 18.65.530(a)(3); AS 12.30.016(f)]

F. *Arrest without a warrant, permissive.* Arrests, absent an arrest warrant, by police officers may be made in the following instances:

CHAPTER 223 ARREST

1. An arrest may be made for any crime – felony or misdemeanor- committed or attempted in the presence of the law enforcement officer making the arrest. [AS 12.25.030(a)(1)]
2. An arrest may be made where there is probable cause a felony offense was committed by the person to be arrested. [AS 12.25.030(a)(2) & (3)]
3. An arrest may be made where there is probable cause a person committed misdemeanor stalking. [AS 12.25.030(b)(3)(A)]
4. An arrest may be made where there is probable cause a person violated a term of bail release in any felony or misdemeanor case. [AS 12.25.030(b)(3)(A)]
5. An arrest may be made where there is probable cause the person to be arrested committed the offense of driving under the influence within the previous 8 hours. [AS 12.25.033]
6. An arrest may be made where there is probable cause the person to be arrested committed any misdemeanor offense, that it is likely personal injury or property damage will occur absent an immediate arrest, and there is no judicial officer within 25 miles of the place of arrest. [AS 12.25.035]
7. An arrest may be made in order to retake an escaped prisoner. [AS 12.25.120]
8. An arrest may be made where there is probable cause a person violated the offense of being a person under 21 years of age in possession, control, or having consumed an alcoholic beverage, in violation of AS 04.16.050 or a municipal ordinance having similar elements. If the person is under 18 years of age and there is no justification for further detention following arrest, the person is to be cited for the offense and released to the person's parent, guardian, or legal custodian. [AS 12.25.030(b)(3)(B)]

G. *Alternative to Arrest.* An officer may, at the officer's discretion or in consultation with the DAO, deliver a person to a crisis stabilization center, crisis residential center, evaluation facility, or treatment facility or decline to arrest the person under the following instances:

1. The arresting officer believes in good faith that the person is suffering from an acute behavioral health crisis and the person volunteer agrees to be taken to a crisis stabilization center, crisis residential center, evaluation facility, or to promptly seek outpatient mental health treatment. [AS 12.25.031(a)(1)(2)]
2. The arresting officer may take a person into emergency custody under AS 47.30.705 and deliver the person to crisis stabilization center, a crisis residential center, or an evaluation facility. [AS 12.25.031(b)]
3. Taking a person to a crisis stabilization center, a crisis residential center, or an evaluation facility for examination as outline in (1) does not constitute an involuntary commitment or an arrest. [AS 12.25.031(c)]

4. An officer may not require a person to stipulate to any facts regarding the alleged criminal activity as a prerequisite to participation in a mental health treatment alternative as a part of the agreement to participate in outpatient treatment or to be taken to a crisis stabilization center, a crisis residential center, or an evaluation facility. The fact that the person participated in a mental health alternative to arrest may not be used in any criminal or civil proceeding. The persons participation in a mental health alternative to arrest does not create immunity from prosecution for the alleged criminal activity. A report will be written, and where applicable charges will be referred to the DAO. [AS 12.25.031(f)]
5. When an officer learns that a person violated the agreement to be delivered to a crisis stabilization center, a crisis residential center, or an evaluation facility, the original charges may be filed or referred to the prosecutor. [AS 12.25.031(g)(2)]
6. When an officer takes a person to a crisis stabilization center, a crisis residential center, or an evaluation facility as an alternative to arrest they shall provide the officer's, the post's and dispatch contact information to the crisis stabilization center, the crisis residential center, or the evaluation facility.
7. If the officer, the post, or dispatch are notified of a planned release of the person, the officer, the shift's supervisor or designee, shall make reasonable efforts to inform the victim of the crime committed of the planned release.
8. If the officer, the post, or dispatch are notified that the person violated their agreement to participate with the alternative to arrest with the crisis stabilization center, a crisis residential center, or an evaluation facility, the officer, the shift's supervisor or designee, shall make reasonable efforts to inform the victim of the crime committed of the violation.

H. *Avoidance of double jeopardy.* A person cannot be charged with a second offense arising from the same course of conduct. Officers must pay particular attention to this issue when considering misdemeanor charges in cases where the conduct could also support felony charges. If the person is convicted of the misdemeanor charges they cannot later be charged with a felony for the same conduct ([Grady v. Corbin](#)). This situation arises most often in traffic accidents where there has been a serious injury or death and where a plea to a misdemeanor DUI charge prevents a later assault or manslaughter charge based on the same circumstances. Contact the DA for advice in these situations.

223.310 RESPONSIBILITIES OF OFFICER MAKING ARREST

A. *Force authorized only as in OPM 107.* The use of force used in making an arrest must be in compliance with policy set out in chapter 107.

B. *Prisoner transport provisions apply upon arrest.* Upon arrest of a person the provisions of OPM 216 apply. Particular attention must be paid to 216.330 dealing with escort responsibilities, restraint of prisoners, and search of prisoners.

C. Arresting officer responsible to secure defendant's property. It is the responsibility of the arresting officer to secure personal property in the possession of the arrested person. Officers are also responsible for securing real property or vehicles when encountered during an arrest.

D. Defendant has right to contact attorney. A defendant must be given reasonable opportunity to call an attorney upon request [Ref AS 12.25.150 and Criminal Rule 5(b)]. The defendant may make local calls on Department phones; however, any long distance calls must be made collect. An officer can use reasonable means to prevent the transmission of information by the defendant that could cause evidence to be destroyed prior to search or the issuance of warrants. Attorneys are allowed to immediately visit with a person in custody at the request of the defendant or the defendant's family or friends.

E. Defendant to be arraigned within 24 hours. Defendants must be brought before a judge or magistrate within 24 hours of the arrest. Prior to the arraignment, a criminal complaint must have been filed alleging the criminal violation. Depending upon local custom, either the officer or the District Attorney's office prepares the complaint for signature before a judge or magistrate prior to arraignment.

223.320 CITATIONS IN LIEU OF ARREST

A. Officer may issue citations for certain misdemeanors. AS 12.25.180 provides that an officer may issue a citation for a misdemeanor offense, except the officer may arrest if:

1. The person does not furnish satisfactory evidence of identity,
2. The officer has reasonable and probable cause to believe the person is a danger to self and others,
3. The crime is one involving violence or harm to another person or to property,
4. The person asks to be taken before a judge or magistrate, or
5. The peace officer has probable cause to believe the person committed a crime involving domestic violence as defined under AS 18.66.990.

B. Officer to give five-day notice of court appearance. Officers who cite persons for misdemeanor offenses are required to give that person an appearance date that shall be at least five working days after the issuance of the citation. [Ref AS 12.25.190]

C. Defendant must accept a copy of the citation. AS 12.25.190 requires that for the misdemeanor citation to be valid the defendant must accept a copy of the citation(s).

D. Citations must be on AUC. An Alaska Uniform Citation will be the only form that will be used to cite persons for misdemeanors.

223.330 NOTIFICATION TO PARENTS OF JUVENILES CITED - MISDEMEANORS & VIOLATIONS

Parental involvement with juveniles involved in minor criminal misbehavior can be critical to preventing escalating criminality among the young. Notification of the parents of juveniles cited, especially for alcohol or drug violations, is a positive way that DPS can encourage such parental involvement.

A. *Notice required when juveniles cited for alcohol or drug violations.* An officer issuing a citation or summons to a juvenile who has been involved in an alcohol or drug activity is responsible to make a reasonable attempt to contact the juvenile's parents. . The officer may make the notification personally or through dispatch.

At a minimum the notice to the parent will include the circumstances of the contact, the alleged violations, whether a citation to appear in court was issued, and an explanation of why and to whom the juvenile was released.

B. This notice requirement does not apply to routine traffic citations. Officers issuing non-alcohol or drug related citations or summons to juveniles are encouraged, but not required to make parental contact.

C. *Notice by dispatch to include officer contact information.* If dispatch makes the parental notification, the officer's name will be given as a point of contact in the event the parent has any questions. If the parent would like to speak with the officer at that time, dispatch will relay that information to the officer or shift supervisor, and as soon as practical, the officer will make a follow-up phone call to the parent to answer any questions.

D. *Release of intoxicated juveniles.* If it is determined that a juvenile is intoxicated (a reading of .08 or higher by a certified breath test instrument), the juvenile will only be released to a parent, guardian, or responsible adult.

223.340 PRIVATE PERSONS ARRESTS

A. *DPS to respond to citizen's arrest cases.* Whenever practical, DPS will respond to reports of arrests made by private persons.

B. *Officer responsible for confirming probable cause.* When an officer is confronted with a person who wishes to make a private person arrest, the officer will determine that the private person has probable cause for felony and misdemeanor offenses and that if the crime is a misdemeanor that the crime was committed in their presence.

The determination of probable cause may include confirming investigations, such as field sobriety or PBT testing, by the officer. The decision to arrest or not is made by the investigating officer.

C. *Persons to be released if arrest unlawful.* If the officer determines that the arrest was unlawful or if they are unable to confirm the existence of probable cause, they will insure that the person detained is released.

D. *Person making arrest must sign form.* All persons who make a private persons arrest must complete and sign an "[Arrest by Private Person](#)" form and provide a written statement detailing the probable cause for any stop and arrest for the investigating officer.

223.350 ARREST OF MILITARY PERSONNEL

A. *Press release information can be released to military.* When a request for information is made by the military concerning the arrest of a military service member, they may be granted full access to any press release that has been prepared concerning the incident.

B. *Case reports disseminated per OPM 206.* Copies of case reports concerning military personnel will be released as provided under chapter 206. Requests for reports where prosecution is pending shall be made to the appropriate District Attorney who may release a copy of the report to the Military Police upon request. When prosecution is not pending, DPS will provide a copy of the report to the Military Police upon request per chapter 206.

223.360 ARREST OF INJURED PERSONS

A. *DPS pays cost of medical treatment.* DPS is required to pay for the treatment of injured or ill prisoners under the provisions of AS 33.30.071(c) which states that, "Medical services for a prisoner who is unconscious or in immediate need of medical attention before admission to a correctional facility or commitment by a court to the custody of the commissioner of corrections shall be provided by the law enforcement agency having custody of the prisoner. The law enforcement agency may require the prisoner to compensate the agency for the cost of medical services provided for a pre-existing medical condition not arising out of the prisoner's arrest."

B. *Officers shall consider not detaining or arresting injured person.* Officers shall carefully consider the necessity of detaining or arresting a person who is injured or in need of immediate medical treatment. If the person does not present a danger to others and is not a flight risk, the officer shall consider not further detaining or arresting until after the person is released from a medical facility. When possible, officers shall consult their supervisor before detaining or arresting injured persons.

C. *Arraignment of person confined to medical facilities.* A magistrate will have to conduct hearings, either telephonically or by coming to the facility, if an arrested person is confined to the medical facility.

Once the arraignment is complete, all guard costs are the responsibility of the local jail or Department of Corrections who shall be notified so they can send a guard to the facility to relieve the officer.

D. *Actions when injuries caused by DPS.* If the prisoner's injuries were caused by an officer's actions, or occurred while the prisoner is in department custody, the officer shall immediately notify their supervisor of the prisoner's injuries and follow up with a memorandum explaining the circumstances involved in the prisoner receiving the injuries.