



Apex Police Department General Order



Title Limits of Authority		Order Number 201-20
Effective Date: July 16, 2020	Amends: General Order 201-16	
CALEA Standard: 1.2.1, 1.2.5, 1.2.6, 1.2.7	Rescinds:	
Reference: NCGS 160A-285-286, 15A-401-402, 15A-501-502, 15A-532-534, 7B-2102	Pages: 9	
Forms:		

Limits of Authority

Purpose

The purpose of this directive is to define the legally mandated authority vested in sworn officers, and outlines circumstances when sworn officers should exercise alternatives to arrest and confinement. This directive establishes general guidelines that govern the use of discretion by sworn officers and arrest procedures.

Policy

It is policy of the Apex Police Department that all sworn officers act within the legal limits of their authority at all times.

Definitions

Probable Cause – As defined by the United States Supreme Court, is the standard of proof necessary at the moment an arrest is made, where the facts and circumstances within the officer's knowledge and of which the officer had reasonably trustworthy information, were sufficient to warrant a prudent person in believing that the defendant had committed or was committing an offense. Probable cause amounts to more than mere suspicion, but less than proof beyond a reasonable doubt. (SOURCE: Arrest, Search, and Investigation in North Carolina (2011), Fourth Edition.)

Procedure

Limits of Authority

Authority (1.2.1)

1. The United States Constitution, the North Carolina Constitution and North Carolina General Statutes define the scope and limits of law enforcement authority as it pertains to the enforcement of laws, statutes, ordinances and arrests. The Apex Police Department has only one category of sworn personnel; whether full time or Limited Service, regardless of rank, sworn personnel have the authority and responsibility of a police officer.
2. Under authority of North Carolina General Statute (NCGS) 160A-285, Apex Police officers will enforce all state laws, city ordinances, and regulations; and will serve criminal and civil processes that may be directed to them by an appropriate judicial official. Under authority of the Town of Apex Code of Ordinances, Chapter 2, the Chief of Police and all sworn officers have the authority to enforce laws and ordinances within the corporate limits of the Town of Apex.
3. The legally authorized jurisdiction of the Apex Police Department is the town limits of Apex, North Carolina; the areas within one mile of the primary corporate limits; and any property owned by the Town of Apex outside the town limits. The enforcement of North Carolina state statutes and the Town of Apex ordinances is authorized in the Town of Apex, unless specifically prohibited or specifically allowed elsewhere by law.

Arrest (1.2.1) (1.2.5)

With a Warrant

1. Under the authority of NCGS 15A, Subchapter IV Article 20, a police officer may arrest a person pursuant to the existence of a valid arrest warrant. Under the cited authority, an officer having a warrant in his/her possession may arrest the person named on or described in the warrant at any time and at any place within the officer's jurisdiction.
2. Under the cited authority, an officer who has knowledge that a warrant for arrest has been issued and has not been executed, but who does not have the warrant in his/her possession, may arrest the person named in the warrant at any time. The officer must inform the person arrested that the warrant has been issued and serve the warrant on the person as soon as possible. This applies even when the arrest process has been returned to the Office of the Clerk of Court.

Without a Warrant

1. In some circumstances, where probable cause exists, an officer may effect an arrest without a warrant. Police officers may arrest, without a warrant, any person who the officer has probable cause to believe has committed:
 - A criminal offense in the officer's presence

Limits of Authority

- A felony or a misdemeanor and will not be apprehended unless immediately arrested, or may cause physical injury to him/herself or others, or damage to property unless immediately arrested
 - A misdemeanor under NCGS 14-72.1, 14-134.3, 20-138.1, or 20-138.2
 - A misdemeanor under NCGS 14-33(a), 14-33(c)(1), 14-33(c)(2), or 14-34 when the offense was committed by a person with whom the alleged victim has a personal relationship as defined in GS 50B-1
 - A misdemeanor under GS 50B-4.1 (a) or has violated a pretrial release order entered under NCGS 15A-534.1 (a) (2)
2. When making an arrest, a law enforcement officer must:
 - Identify him/herself as a law enforcement officer unless his/her identity is otherwise apparent
 - Inform the arrested person that he/she is under arrest
 - Inform the arrested person of the reason for the arrest, unless the cause appears to be evident
 3. An arrest is complete when the person submits to the control of the arresting officer who has indicated his/her intention to arrest, or the arresting officer, with intent to make an arrest, takes a person into custody by the use of physical force. After the arrest is completed, the arresting officer will take the arrestee, without unreasonable delay, before a judicial official. When the arrest is made without a warrant, the officer will obtain a warrant for arrest.
 4. NCGS require that when a law enforcement officer arrests an adult who is supervising minor children, who are present at the time of the arrest, the minor children must be placed with a responsible adult approved by a parent or guardian of the minor children. If it is not possible to place the minor children with a responsible adult approved by a parent or guardian within a reasonable period of time, the law enforcement officer will contact the county department of social services. (**SOURCE:** NCGS Section 15A-401(g))

Immediate and Continuous Flight (1.2.1) (1.2.5)

1. Under NCGS 15A-402, *Territorial Jurisdiction of Officers to Make Arrests*, Apex Police Officers are entitled to all of the powers of a law enforcement officer when in pursuit of an offender who has committed a criminal offense within the officer's jurisdiction for which an arrest could be made, and who then flees outside the corporate or extraterritorial limits of the Town of Apex. The pursuit must be immediate and continuous.

Limits of Authority

Off-Duty Authority and Responsibility (1.2.1)

1. Sworn officers are vested with a duty to maintain public order and to make lawful arrests by virtue of their public employment. However, an off-duty officer faced with a situation involving criminal conduct is usually neither equipped nor prepared to handle the situation in the same manner as if he/she were on duty. Therefore, an off-duty officer confronted with a situation involving criminal conduct should give consideration to notifying the appropriate law enforcement agency, or if in the jurisdiction of the Apex Police Department, contacting an on-duty officer to take action. In some cases, the exigency of a given situation may call for immediate action by the officer. However, the off-duty officer should take action only after considering the situation with regard to his/her own safety, the safety of others, and the interests of the department.

Out-of-State Authority and Responsibility (1.2.1)

1. Sworn officers of the Apex Police Department do not have police authority in any other state or territory. When a police matter of the Apex Police Department requires police action but is located in another state or territory, the appropriate law enforcement agency will be contacted for assistance.

Recording Arrest Information (1.2.5)

Preparing Reports (1.2.5(a))

1. All arrests will be documented in accordance with this General Order, General Order 405 – *Field Reporting and Management*, and any other applicable written directives.
2. The Records Management System (RMS) contains an “Arrest Report Module,” which is designed for recording single or multiple charges on each person arrested. This module is the primary method for documenting the arrest of a person. All other applicable reports will also be completed.
3. When a juvenile has been arrested or otherwise processed by the department and released to the parents, a Juvenile Contact Report (Arrest Report) contained in the Records Management System (RMS) will be completed.
4. Officers conducting an arrest or having a material part in any investigation or arrest will fully document their activities and complete the necessary reports/forms as required by this General Order, General Order 405 – *Field Reporting and Management*, and any other applicable written directives.
5. Specific instructions for completing an arrest report are outlined within the software of the department’s Records Management System (RMS).

Limits of Authority

Fingerprinting, Photographing and DNA Collection (1.2.5 (b)(c))

1. NCGS 15A-502 allows for a person charged with the commission of a felony or a misdemeanor to be photographed and fingerprinted for law-enforcement records only, when that person has been arrested or committed to a detention facility, committed to imprisonment upon conviction of a crime, or convicted of a felony.
2. NCGS 15A-502 identifies the criteria for obtaining fingerprints from arrestees.
3. NCGS 15A-502 identifies the criteria for obtaining photographs of arrestees. This statute does not authorize the taking of photographs or fingerprints when the offense charged is a Class 2 or 3 misdemeanor under Chapter 20 of the General Statute, *Motor Vehicles*. This statute does not prevent the use of photographs, videos, or fingerprints to show a condition of intoxication or for other evidentiary use. NCGS 7B-2102; however, does authorize the taking of photographs and/or fingerprints of juveniles 10 years of age or older who have committed a non-divertible offense as defined in NCGS 78-1701, and are in the physical custody of law enforcement.
4. NCGS 15A-266.3A - ***DNA sample required for DNA analysis upon arrest for certain offenses*** defines the authority and responsibility of law enforcement officers to collect DNA samples from persons arrested for certain crimes ***pursuant to the DNA Database Act of 2010***.
5. The Raleigh/Wake County City County Bureau of Identification (CCBI) is charged with the responsibility of fingerprinting, photographing, and collecting DNA samples from arrestees in the custody of Apex Police Department officers, prior to intake into the Wake County Jail.
6. The Records Management System (RMS) maintains current demographic and descriptive information and photographs of individuals arrested and/or photographed pursuant to an arrest.

Discovery

1. NCGS Relating to Discovery
 - NCGS 15A-501 – *Police Processing and Duties Upon Arrest* – Generally - Upon the arrest of a person, with or without a warrant, but not necessarily in the order hereinafter listed, a law enforcement officer: Number (6) Must make available to the State on a timely basis all materials and information acquired in the course of all felony investigations. This responsibility is a continuing affirmative duty.
 - NCGS 15A-903 (c) – *Disclosure of Evidence by the State – Information Subject to Disclosure* - On a timely basis, law enforcement and investigatory agencies shall

Limits of Authority

make available to the prosecutor's office a complete copy of the complete files related to the investigation of the crimes committed or the prosecution of the defendant for compliance with this section and any disclosure under NCGS 15A 902(a). Investigatory agencies that obtain information and materials listed in subdivision (1) of subsection (a) of this section shall ensure that such information and materials are fully disclosed to the prosecutor's office on a timely basis for disclosure to the defendant.

- NCGS 15A-903 (d) – *Disclosure of Evidence by the State – Information Subject to Disclosure* - Any person who willfully omits or misrepresents evidence or information required to be disclosed pursuant to subdivision (1) of subsection (a) of this section, or required to be provided to the prosecutor's office pursuant to subsection (c) of this section, shall be guilty of a Class H felony. Any person who willfully omits or misrepresents evidence or information required to be disclosed pursuant to any other provision of this section shall be guilty of a Class 1 misdemeanor.
2. Pursuant to this General Order, General Order 401 – *Records Administration*, and any other applicable written directives, all records, reports, statements, evidence, and other documents relating to a case will be submitted in the appropriate manner.
 3. All additional information, evidence, etc. received after the submission of the case file, etc. will be documented according to applicable written directives and will be submitted in the same manner.
 4. Felony Cases – All original documents, records of evidence, video, audio, and other items related to a felony case will be included in the case file and submitted to the Office of the District Attorney in accordance with their procedures.
 5. Misdemeanor Cases - Formal discovery is not required by NCGS in any case other than a felony. However, if the Office of the District Attorney requests paperwork and evidence related to a misdemeanor case, the request will be honored, in a timely manner.
 6. Officers will ensure compliance with applicable regulations relating to discovery.

Alternatives to Arrest (1.2.6)

1. Police officers have the authority to exercise discretion in certain situations to the extent that an alternative to an arrest may be appropriate to resolve the situation.
2. In accordance with the guidelines and circumstances below, citations, summons, warnings, referrals, and informal resolutions may be considered as an alternative to physical arrest.

Limits of Authority

3. Officers should consider the following factors when exercising alternatives to arrest: (1.2.6)

- The level of cooperation by victims and witnesses
- Existing laws and the elements of the offenses
- The severity of the offenses
- Available resources
- Department written directives

4. Alternatives to physical arrest may include, but are not limited to, the following:

- Citations and Summons
 - These are enforcement procedures that constitute alternatives to arrest solely by the fact that they may be used to preclude physical custody or are less severe enforcement options
 - Citations may be used for traffic violations
 - Citations may be used for some misdemeanor criminal violations such as Alcohol Beverage Control violations, Town Code violations, minor assaults, shoplifting, etc.
- Warnings
 - Police officers may exercise discretion in minor traffic and ordinance violations by delivering oral and/or written warnings
 - Police officers are reminded that voluntary compliance is the goal of minor enforcement actions
- Referrals (In Lieu of Formal Action)
 - Referrals may be made to other departmental components, to other police or governmental agencies, to social service agencies, or to other organizations better suited to address and to resolve specific problem(s)
- Informal Resolutions
 - Often, the interests of the parties involved are satisfied better by a mediated settlement on the scene rather than a formal prosecution in court
 - Resolutions of this nature should be by agreement with the affected parties and should not be employed as an excuse for not effecting an arrest
 - As a rule, informal resolutions should be documented by an incident report to record the police officer's reasons for using this particular alternative to arrest

5. Pre-Arrest Confinement

- Officers may take a person into custody subject to a lawful arrest.
- A person under custodial arrest will be taken before a judicial official without unnecessary delay.

Limits of Authority

- Confinement, if any, is at the discretion of the judicial official subsequent to the first appearance (arraignment).

6. Pretrial Release Procedures

- Pretrial release procedures are governed by NCGS Chapters 15A-532 through 15A-535. Only judicial officials, as defined in NCGS 15A-101(5), may determine conditions for pretrial release. Apex Police officers will appear and testify in pretrial proceedings as necessary.

Officer Discretion (1.2.7)

1. A decision not to arrest when there are grounds for arrest is, at times, considered a good law enforcement practice. Many instances of public contact will occur where an arrest may be made, but should not be, due to mitigating circumstances. Generally, it is not the role of law enforcement to decide whether an offender should be prosecuted; that decision rests with the Office of the District Attorney.
2. The following guidelines are outlined for use of discretion by Apex Police Officers.
 - The Apex Police Department encourages all sworn officers to apply professional and impartial discretionary judgment involving investigative and arrest procedures.
 - Sworn officers are vested with a broad range of discretion when deciding whether to make an arrest and while carrying out other police duties and functions. The principal of reasonableness will guide the officer's actions. The officer must consider all surrounding circumstances in determining whether legal action will be taken. Factors to be considered include the seriousness of the crime and the impact upon both the general public and the offender.
 - Sworn officers will use discretion consistently and wisely, based on professional policing competence, to preserve positive relationships and retain the public's confidence.
 - In accordance with applicable laws and regulations, the use of discretion and alternatives to physical arrest are limited in felony situations.
 - The proper exercise of discretion does not relieve the investigating officer of the responsibility to conduct a thorough preliminary investigation of the events that may precipitate an arrest.
 - Should questions arise concerning a particular situation, the officer involved should confer with a supervisor.
 - Officers should effect a custodial arrest in domestic violence situations unless a third party, such as a minor child, would be left in the care of someone deemed unfit and the supervisor makes a determination that the suspect may be charged on a citation.

Limits of Authority

- Officers must be aware of statutes that may require a custodial arrest and ensure compliance with those regulations.

Text in “Green” denotes a significant change in policy

BY ORDER OF:



John W. Letteney
Chief of Police