



CHAPTER 1: LAW ENFORCEMENT ROLE AND AUTHORITY	POLICY # 1.3 ARRESTS AND CITATIONS
<p><i>This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.</i></p>	
Date Implemented: 11/01/2019	Review Date:

POLICY

Arrest and citation of adult offenders follows and complies with the provisions of Chapter 431 of the Kentucky Revised Statutes and the Kentucky Rules of Criminal Procedure.

DEFINITIONS

Arrest – an arrest is made by placing the person being arrested in restraint, or by his submission to the custody of the person making the arrest (KRS 431.025)

Authority to arrest – the power granted to an officer to make arrest based upon a constitutional or statutory provision, or a formally adopted interlocal agreement (KRS 65.210 et seq). Unless otherwise adopted, city police officers have authority to arrest in the county in which the city is located (KRS 95.019).

Probable cause – facts and circumstances known to the officer at the time that supports the individual to be arrested has committed the offense.

PROCEDURE

Effecting an arrest (KRS 431.025)

Officers shall inform the subject about to be arrested of the intent to arrest him and of the offense for which he is being arrested.

The arrest is made by placing the person being arrested in restraint or by his submission to the officer's custody in the presence of the officer.

No unnecessary force or violence shall be used in making the arrest.

Arrest in obedience to a warrant

An officer may arrest in obedience to a warrant (KRS 431.005(1a)); however, since the warrant does order arrest, any non-service of a warrant should only occur under exceptional circumstances.

An arrest warrant may be executed by any peace officer. Officers need not have the warrant in their possession at the time of the arrest, but they must inform the defendant of the offense charged and the fact that a warrant has been issued by notation on the citation (RCr 2.10).

Requests for warrants/wanted persons should be made through LINK/NCIC, via the communications center, and/or the Kentucky E-Warrants System, providing as much identifying information as possible, such as name, date of birth, social security number, operator's license number, physical descriptors, marks, scars, tattoos, and other pertinent identifiers.

Prior to serving a warrant, the officer should verify the warrant is valid.

Upon serving the warrant, the officer is responsible for requesting that the warrant is removed from the E-Warrants System or requesting the communications center remove it from E-Warrants and LINK/NCIC.

The arresting officer will complete the uniform citation.

A copy of the warrant and the complaint pursuant to which it was issued shall be served on the arrested party at the time of his arrest or as soon as practical thereafter (RCr 2.06(4)).

A copy of the citation and the warrant will be delivered to the jail.

Arrest for a felony violation

An officer may arrest without a warrant when a felony is committed in his or her presence (KRS 431.005 (1)(b)).

An officer may arrest without a warrant when he or she has probable cause the person being arrested has committed a felony (KRS 431.005(1c)).

Arrest for a misdemeanor violation

Officers shall arrest with probable cause without a warrant for the following:

- A violation of a condition of pre-trial release (KRS 431.005(5) and KRS 431.064)
- A violation of a stalking restraining order (KRS 431.005(7))
- A violation of a protective order, including an EPO, DVO, FPO, IPO, or TIPO (KRS 431.015(1c))

Officers shall arrest a person who is under the influence of intoxicating beverages or any substance which impairs one's driving ability and is operating a vehicle that is not a motor vehicle anywhere in Kentucky (KRS 189.520)

Officers shall issue a citation for misdemeanor violations that occur in his or her presence if there are reasonable grounds to believe the person being cited will appear in court (KRS 431.015(1a)).

Officers may make an arrest instead of issuing a citation for a misdemeanor committed in his or her presence if the misdemeanor is a violation of

- KRS Chapter 508 (Assault and Related Offenses)
- KRS Chapter 510 (Sexual Offenses)
- KRS Chapter 527 (Offenses Related to Firearms and Weapons)
- KRS 189A.010 (DUI Motor Vehicle)
- KRS 511.050 (Possession of Burglar's Tools)
- KRS 511.085 (Domestic Violence Shelter Trespass)
- KRS 514.110 (Receiving Stolen Property)
- KRS 523.110 (Giving Peace Officer False Identifying Information)
- An offense in which the defendant poses a risk of danger to himself, herself, or another person; or
- An offense in which the defendant refuses to follow the peace officer's reasonable instructions (KRS 431.015(1b))

An officer may make an arrest upon probable cause without a warrant for a violation of KRS 508.060 (Assault 4th Degree) that has occurred in a hospital without the officer's presence. Hospital includes any property owned or used by the hospital, including the parking lot or parking garage (KRS 431.005(1f)).

An officer may arrest without a warrant when he/she has probable cause to believe that the person has intentionally or wantonly caused physical injury to a family member, member of an unmarried couple, or another person with whom the person was or is in a dating relationship, as defined in KRS 403.720 or KRS 456.010 (KRS 431.005(2a)).

An officer may arrest a person without a warrant when the officer has probable cause to believe that the person is a sexual offender who has failed to comply with the Kentucky Sexual Offender Registry requirements based upon information received from the Law Information network of Kentucky (LINK) (KRS 431.005(5)).

An officer may arrest without a warrant any person he has probable cause for believing has committed larceny in retail or wholesale establishments (shoplifting) (KRS 433.236(3)).

Arrest for violation offenses

An officer may arrest without a warrant when a violation of the following has been committed in his or her presence (KRS 431.015(2))

- KRS 189.223 (Measuring or Weighing of Vehicle by Peace Officer)
- KRS 189.290 (Operator of Vehicle to Drive Carefully)
- KRS 189.393 (Complying with Traffic Officer's Signal)
- KRS 189.520 (DUI Non-Motor Vehicle)
- KRS 189.580 (Duty in Case of Accident)
- KRS 235.240 (DUI Boating/Negligently)
- KRS 281.600 (Motor Carrier Safety Regulations)
- KRS 511.080 (Criminal Trespass 3rd Degree)
- KRS 525.070 (Harassment)

An officer may arrest without a warrant upon probable cause when a violation of KRS 189A.010 (DUI Motor Vehicle) or KRS 281A.210 (DUI-CMV) whether the violation has been committed within his or her presence or not.

Citation for misdemeanors occurring outside of officer's presence

A peace officer may issue a citation when he or she has probable cause to believe that the person being issued the citation has committed a misdemeanor outside of his or her presence, if there are reasonable grounds to believe that the person being cited will appear to answer the charge (KRS 431.015(3)).

The citation shall provide that the defendant shall appear within a designated time (Effective 7/14/2018).

Right to an attorney

Persons in custody that are being subjected to interrogation are required to be advised of their constitutional rights (Miranda warnings).

An attorney entitled to practice law in Kentucky shall be permitted to visit a person in custody either at the request of the person in custody or at the request of someone acting in that person's behalf (RCr 2.14.2)

A person in custody shall have the right to make communications as soon as practical for the purposes of securing the services of an attorney (RCr 2.14.1).

Uniform citations/reports

Officers shall use the uniform citation for all felony, misdemeanor, and traffic violations (KRS 431.450(4)). Citations should be filled out as completely as possible and in accordance with the instruction manual.

When a physical arrest is made, the officer shall write the word "ARRESTED" in the place specified for the court appearance date on the citation (KRS 431.015(4)).

When an arrest is made, the post arrest portion of the citation must contain the elements of each offense charged, the arresting officer's signature and the essential facts constituting probable cause in which the arrest is based (RCr 3.02.2)).

A National Incident Based Reporting System (NIBRS) report shall be used for all felony and serious misdemeanor offenses for which a citation alone will not provide enough documentation.

Arrests involving suspected domestic violence and abuse and/or dating violence and abuse shall also be documented on the JC-3 form and filed according to KRS 2019A.120(2).

If a person is arrested on probable cause and further investigation by the arresting officer determines that enough probable cause no longer exists, a supervisor and the prosecutor will be immediately notified. Once determined, the subject must be released. It is imperative that in these situations a detailed report of the arrest is completed outlining the events that led to the probable cause for the arrest.

Exceptions when arrests may not be made

Congressmen or member of the General Assembly during sessions of the legislative body, or while going to or from sessions (except for a felony).

Kentucky National Guardsmen while at, or going to or from, a place of active service (except for a felony).

Voters while in attendance at elections, or while going to or returning from (except for a felony).

Prosecution for misdemeanor and violation offenses must be commenced within one (1) year after it is committed (KRS 500.050(2)).

Prosecution for misdemeanor offenses under KRS 510 (Sexual Offenses), where the victim is under eighteen (18) years of age at the time of the offense must be commenced within five (5) years after the victim attains the age of eighteen (18) years (KRS 500.050(3)).

Recognized diplomats, and potentially their family members, may be immune from arrest. Persons claiming diplomatic immunity may be detained only until verification of such status can be made through the U.S. Department of State's Office of Protocol.

When a non-U.S. citizen is arrested, the officer should ask the arrested if he or she wishes the appropriate consular office to be contacted. Note that through treaty obligations, some countries require that their consular offices be notified. To determine such status, contact the U.S. Department of State (daytime 202-647-1664; evenings and weekends 202-647-7277).

Assisting in another county by request

Certified officers officially requested by a law enforcement agency in another county in Kentucky to assist in a matter within the jurisdiction of the requesting agency shall possess, while responding to and for the duration of the matter for which the request was made, the same powers of arrest in the requesting county as he or she possesses in the county in which he or she is employed (KRS 431.007(1)).

The provisions in the above section do not authorize assistance for the following:

- Any labor dispute or strike
- By a constable or deputy constable
- By a special local peace officer
- By a special deputy sheriff

Pursuit in effecting an arrest

A peace officer in actual pursuit may continue such pursuit across corporate or county lines for the purpose of making an arrest (KRS 431.045).