

1.09 LEGAL PROCESS



LEGAL PROCESS

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Kenneth M. Paulhus		October 18, 2016	
Chief Kenneth M. Paulhus			

I. GENERAL CONSIDERATIONS AND GUIDELINES

Legal processes served by Massachusetts police departments are primarily criminal processes consisting of arrest warrants, search warrants, summonses, and subpoenas relating to a criminal case which are issued by any Court of Law within the Commonwealth. The only civil processes normally served by Massachusetts police departments are abuse orders, ordinarily issued by Massachusetts District Court as well as the Family and Probate Court.

It is an underlying assumption of these Policies and Procedures that police should concentrate primarily on making arrests on warrants for serious offenses, arrests of multiple or potentially dangerous offenders, and other situations meriting the loss of one's personal liberty which an arrest entails.

In less critical cases, police resources, at least initially, may be directed toward warning citizens of outstanding warrants for their arrest by providing these citizens with a reasonable opportunity to go to court to have the warrant revoked. (See Appendix A.)

II. POLICY

It is the policy of this department that:

- A.** Legal processes will be documented and every reasonable attempt shall be made to serve them promptly.

1.09 LEGAL PROCESS

- B.** Prior to making an arrest on an outstanding arrest warrant, it must be confirmed that the warrant is valid and in effect.

III. PROCEDURES

A. Management of Legal Processes Documentation

1. The court officer is responsible for processing and recording all legal processes for the department.
2. THESE PROCESSES ARE DESCRIBED BELOW:
 - a. Legal processes in the possession of the department where service is to be executed within the jurisdiction of the department;
 - b. Legal processes forwarded from another agency;
 - c. Legal processes forwarded to another agency to be served outside the jurisdiction of the department; and
 - d. Service of Abuse Orders under General Laws c. 209A, 209C, 208, and 209.

B. Information Recording: When legal process is received by this department, the following information shall be recorded in the records management system (RMS):

1. Date and time received; [74.1.1(a)]
2. Type of legal process (criminal or civil); [74.1.1(b)]
3. Nature of document; [74.1.1(c)]
4. Source of document (issuing court, etc.); [74.1.1(d)]
5. Name of plaintiff/complainant and/or name of defendant/respondent; [74.1.1(e)]
6. Officer assigned for service; [74.1.1(f)]
7. Date of assignment; [74.1.1(g)]
8. Court docket number; and [74.1.1(h)]
9. Date service is due. [74.1.1(i)]

C. Record of Execution and Attempts of Service [74.1.2]

1. A record of an attempted or successful service of legal process shall be maintained in the records management system. Legal process service records shall contain the following information:
 - a. Date and time service was executed or each attempt was made; [74.1.2 (a)]

1.09 LEGAL PROCESS

- b. Name of officer(s) executing/attempting service; [74.1.2(b)]
- c. Name of person on whom legal process was served/executed; [74.1.2(c)]
- d. Method of service/reason for nonservice: [74.1.2(d)]
 - 1) Last place of abode
 - 2) Left with a responsible person
 - 3) In hand
 - 4) By mail
- e. Address of service attempt. [74.1.2(e)]

D. Arrest Warrants [74.3.1]

1. SOURCES OF WARRANTS

- a. Warrants issued by Massachusetts courts are entered by the court under the Warrant Management System (WMS). Active entry in WMS constitutes a confirmation that the warrant is valid.
- b. Warrants issued by other state and federal jurisdictions are available through NCIC. Prior to taking action on an NCIC warrant, it must be confirmed that the warrant is active. For further information on warrant confirmation, see the department policy on ***Communications***.

2. WARRANT CHECKS OF SUSPECTS, OTHERS

- a. **All persons brought to the police station under arrest, in protective custody, or for questioning, or persons applying for licensing (L.T.C., F.I.D. cards, etc.), should be run for outstanding arrest warrants.**
- b. Such checks should be done not only to flag warrants, but also to enable the department to update master records information.

E. Prioritizing Arrest Warrants

1. WARRANT CATEGORIES

- a. All warrants received by this department shall be reviewed and assigned to one of three priority categories by the duty sergeant or OIC.
- b. HIGH PRIORITY
 - 1) Warrants for serious crimes (e.g., violent crimes, sex offenses, operating under the influence (OUI), violations of the Abuse Law, or crimes involving repeat serious offenders);

1.09 LEGAL PROCESS

- 2) Warrants for offenders with multiple serious offense warrants;
- 3) Warrants for persons wanted by police for other important reasons.

c. MEDIUM PRIORITY

- 1) Warrants for persons with multiple warrants for less serious offenses;
- 2) Warrants for persons with more than a minimal amount in fines due.

d. LOW PRIORITY: All other warrants.

2. WARRANT ACTION

- a. Communications officers or police officers will print a list of WMS warrants for persons listed as living in the jurisdiction.
 - 1) The list will be made available to dispatchers and sworn officers to facilitate execution of outstanding arrest warrants.
 - 2) Warrants must be confirmed prior to service.
- b. Supervisor will assign warrants for service when staffing levels and call volume allow.

3. WARNING LETTERS

- a. A Warning Letter may be mailed out to persons for whom warrants are outstanding (see Appendix A for a Sample Warning Letter).
- b. Duty sergeant or OIC will review warrants to determine which persons may be notified by mail. The following criteria should be considered:
 - 1) Nature of the charges for which the warrant was listed;
 - 2) Need for immediate arrest, if any;
 - 3) Criminal history;
 - 4) Likelihood of flight; and
 - 5) Whether such a notice would negatively impact the police mission.
- c. The subject should be advised of the following:
 - 1) An active arrest warrant is in effect.
 - 2) The police department is aware of the warrant.
 - 3) The warrant may be cleared by the subject reporting to the court of issue and turning him/herself in.

1.09 LEGAL PROCESS

- 4) The subject must clear the warrant by a specific date.
- 5) Prior to clearing the warrant, the subject is in jeopardy of being arrested on the warrant.
 - a) Although the police do not plan to seek the subject of the warrant, an encounter with the police of this agency will probably result in the person's arrest for the warrant.
 - b) An encounter with another police agency will very likely result in their arrest for the warrant.

F. Execution of Arrest Warrants within Jurisdiction [74.3.1]

1. WARRANT ARRESTS GENERALLY

- a. Arrest warrants shall be executed only by sworn officers. [74.3.2]
- b. An officer should not make an arrest on a warrant unless [s]he confirms the status of the warrant immediately before making the arrest.

2. WARRANT SERVICE

- a. Officers shall report all attempts to serve an arrest warrant to the dispatcher, who will create a log entry for such attempt.
- b. Each attempt, whether or not successful, shall be entered into RMS.
- c. All persons arrested pursuant to an arrest warrant shall be processed in accordance with the department policy on **Arrests**.
- d. An officer serving an arrest warrant shall make the proper return by signing and dating the warrant for return to the court.
- e. **The officer-in-charge shall ensure that the warrant is cancelled (NCIC) or located (CJIS/WMS).**

3. If the officer cannot locate the accused at the given address, [s]he may leave a Warning Card (see Appendix C for sample Warning Card):

- a. At the person's last known address;
- b. With a competent person who answers the officer's call and who acknowledges that the accused does live there; or
- c. In a manner which reasonably ensures that the accused will get it.

4. CONSIDERATIONS

- a. Warrants which are not served will remain in the WMS file until removed by the court.

1.09 LEGAL PROCESS

- b. If the accused is encountered or apprehended at a later date, an arrest may be made for that warrant.
- c. No time limit is imposed on the validity of an arrest warrant.
 - 1) However, a delay of service of a warrant on charges for which a defendant has not been arraigned could result in a speedy trial issue.

Note: An eight and one-half year delay was too long when the delay was due to government negligence.¹
 - 2) There cannot be unreasonable delay in service of the warrant.² There are no Massachusetts cases which define "unreasonable delay."
 - 3) A warrant must be confirmed as valid prior to making the arrest.³

G. Warrants for Persons outside the Department's Jurisdiction [74.3.1]

- 1. LEAPS/NCIC
 - a. Active arrest warrants are entered by the court and reside in WMS.
 - b. Warrants for which rendition is authorized are entered in NCIC by the department. For further information, see the department policy on ***Communications***.
- 2. IMMEDIATE SERVICE OF WARRANTS
 - a. The case officer or officer-in-charge shall contact the police department having jurisdiction where the subject of the warrant is located and request service be attempted on the warrant.
 - b. If service is made, this department may pick up and transport any person arrested to this department unless the subject is otherwise bailed.

H. Warrants of Apprehension

- 1. Warrants of apprehension shall be promptly executed when the subject can be immediately brought before a judge of the district court.⁴
- 2. For further information, see the department policy on ***Protective Custody***.

1.09 LEGAL PROCESS

I. Summonses and Subpoenas [74.2.1]

1. SERVICE WITHIN DEPARTMENT'S JURISDICTION

- a. The process may be mailed, served in hand, or left at the last and usual place of residence.
- b. When the process is served, the return of service shall be filled out and signed by the serving officer and the process forwarded to the communications officer who shall update the record in RMS. The return of service shall be forwarded to the court of issue.
- c. If the process cannot be served for any reason (no longer at address, no such person, etc.):
 - 1) The officer attempting service shall notify the dispatcher who will annotate same in the incident log.
 - 2) The officer will complete the appropriate report and return it to the Court officer for return to the court of issue.
- d. A summons or other legal process for a juvenile shall be served to the parent(s) or guardian of the juvenile or both the juvenile and the parent(s) or guardian.

2. SERVICE OUTSIDE DEPARTMENT'S JURISDICTION

- a. Process shall be mailed to the subject's last and usual place of residence and an entry made in the RMS system indicating that the process was mailed. The name of the employee processing the service shall be recorded as the officer making the return of service and "mailed" indicated as the method of service.
- b. If circumstances require the process to be delivered in hand, the process shall be mailed or faxed to the police department where the subject is located, so that it may be served in hand. If the process has not been returned in a prescribed period of time, a follow-up shall be undertaken.
- c. When the return of service is returned to this department from another police jurisdiction making service, the date of service and the department making the service shall be recorded in the RMS system. The return of service shall then be forwarded to the court of issue.

J. Abuse Orders [74.2.1]

1. GENERALLY

- a. Abuse Orders refer to restraining orders, no contact orders and orders to vacate issued under GL:

1.09 LEGAL PROCESS

- 1) Chapter 208;
 - 2) Chapter 209;
 - 3) Chapter 209A; or
 - 4) Chapter 209C.⁵
- b. Careful attention should be paid to such court orders to determine:**
- 1) Effective date;**
 - 2) Expiration date;**
 - 3) Due date for return to court;**
 - 4) Any specific instructions as to where or when the orders are to be served or enforced;**
 - 5) Information regarding the person(s) named as plaintiff(s);**
 - 6) Protected parties; and**
 - 7) Other details.**
- c. For further information, see the department policy on ***Domestic Violence***.
2. RECEIPT OF ORDER: When Abuse Orders are received, the following information shall be documented in the CAD system.
- a. Name and address of the defendant;
 - b. Department or court issuing the order;
 - c. Violation;
 - d. Date of court appearance; and
 - e. If mailed or faxed to another jurisdiction, name of department and date mailed or faxed.
3. SERVICE OF ORDER
- a. Abuse orders shall be promptly served and the return of service returned to the issuing court.⁶
 - b. The officer assigned to serve an abuse order shall make a concerted attempt to serve the order. Abuse orders must be served in hand unless otherwise authorized by the issuing court.
 - c. If the address is incorrect, the officer shall attempt to obtain a new address and make the service. If the subject is located in another jurisdiction, the order shall be faxed or delivered to that jurisdiction for service.

1.09 LEGAL PROCESS

- d. **Officers who are unsuccessful in serving an abuse order shall, prior to the end of their shift, turn the abuse order into the officer-in-charge for further attempts at service.**
 - e. Every attempt to serve an abuse order, whether successful or not, shall be documented in the department RMS system.
4. RETURN OF SERVICE
- a. When an abuse order has been served, the officer making service shall make the return on the abuse order.
 - b. Communications officer shall note in the RMS system the date of service and the officer making service. The order shall be returned to the court of issue.

K. MGL, Chapter 123, section 12 temporary involuntary hospitalization [74.2.1]

- 1. Authorization of temporary involuntary hospitalization orders shall be promptly executed if the subject shall be transferred to the hospital.
- 2. Officers serving the order shall secure the scene, conduct a thorough search on the subject for weapons or contraband, and shall make arrangements for the subject to be transported by ambulance.

¹ *Doggett v. U.S.*, 505 U.S. 647 (1992).

² M.G.L. c. 268, §§22, 23.

³ *Com. v. Tisserand*, 5 Mass. App. 383, 363 N.E.2d 530 (1977).

⁴ M.G.L. c. 123, §35.

⁵ M.G.L. c. 208, §§18, 34B, 34C; M.G.L. c. 209, §32; M.G.L. c. 209A, §§3, 4, 5; M.G.L, §§15,20

⁶ M.G.L. c. 209A, §7.

1.09 LEGAL PROCESS

APPENDIX A

SOUTHBOROUGH POLICE DEPARTMENT

WARNING OF YOUR ARREST

TO: _____
(Name)

DATE: _____

1.09 LEGAL PROCESS

(Address)

(City/Town)

(Zip)

This is to notify you that we have a warrant for your arrest from the _____ Court. The warrant number is _____. The offense is _____.

If the warrant is removed or otherwise canceled, notify the police department in person immediately. If this warrant is not removed or canceled, you will continue to be subject to arrest without further notice. Your failure to notify the police that this warrant has been removed or canceled may result in your being arrested unnecessarily.

1.09 LEGAL PROCESS

APPENDIX B

LEGAL PROCESS SERVICE REPORT

Name of Person Subject to Legal Process: _____

Warning Letter Mailed on: _____

Results of Letter: _____

Attempts to Serve:

1st Attempt

Date: _____ Time: _____ Address: _____

Officer: _____

Results/Suggestions: _____

Warning Card left where/with whom: _____

2nd Attempt

Date: _____ Time: _____ Address: _____

Officer: _____

Results/Suggestions: _____

Warning Card left where/with whom: _____

1.09 LEGAL PROCESS

3rd Attempt

Date: _____ Time: _____ Address: _____

Officer: _____

Results/Suggestions: _____

Warning Card left where/with whom: _____

Arrest Made: Date: _____ Officer: _____

Arrest Report Number: _____

APPENDIX C

WARNING OF YOUR ARREST

TO: _____ DATE: _____
(Name)

(Address)

(City/Town) (Zip)

From the _____ Police Department

An attempt was made to serve a warrant for your arrest at the date and time noted above. The warrant was issued by the _____ Court. The warrant number is _____.

Please notify the police department* before you go to court to have this warrant removed or otherwise canceled. **If the warrant is removed or otherwise canceled, notify the police in person immediately.** If the warrant is not removed or canceled, you will continue to be subject to arrest without further notice. Your failure to notify the police that the warrant has been removed or canceled may result in your being arrested unnecessarily.

1.09 LEGAL PROCESS

¹ *Doggett v. U.S.*, 505 U.S. 647 (1992).

² M.G.L. c. 268, §§22, 23.

³ *Com. v. Tisserand*, 5 Mass. App. 383, 363 N.E.2d 530 (1977).

⁴ M.G.L. c. 123, §35.

⁵ M.G.L. c. 208, §§18, 34B, 34C; M.G.L. c. 209, §32; M.G.L. c. 209A, §§3, 4, 5; M.G.L. §§15, 20.

⁶ M.G.L. c. 209A, §7.