

**MARIN COUNTY SHERIFF'S OFFICE
GENERAL ORDER**

CHAPTER 5 - OPERATIONS
GO-05-04
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DATE
03/04/03

PRIVATE PERSON ARRESTS

POLICY

It is the policy of the Marin County Sheriff's Office to carefully and objectively evaluate private person arrests, and where it is lawful to do so, accept and properly process the person arrested.

DEFINITIONS

PRIVATE PERSON: A person not employed as a peace officer, or who, if it happens to be a peace officer, is not acting in the official capacity as a peace officer conferred upon him/her by statute.

ARREST: Taking a person into custody, in a case and in the manner authorized by law.

PUBLIC OFFENSE: A crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments:

- Death
- Imprisonment
- Fine
- Removal from office or,
- Disqualification to hold and enjoy any office of honor, trust or profit in this state.

PROCEDURE

Deputy Sheriff's presented with a situation in which someone wishes to make a private person arrest should be aware of the following provisions of law:

- Penal Code 837 provides (in part) that a private person may arrest another for a public offense committed or attempted in his presence."
- However, notwithstanding this provision of state law, officers must also be aware that under federal interpretations of the Fourth Amendment to the United States Constitution, any action by an officer in which a person is taken into custody, - i.e., deprived of their liberty - must be supported by probable cause to believe that a public offense has occurred and that the person being taken into custody committed that offense.

Deputy Sheriff's presented with a situation in which a private person expresses the desire to place another person under arrest, pursuant to the authority of Penal Code Section 837, shall, prior to accepting custody of the private person arrestee, make reasonable efforts to obtain all information relevant to the issue of whether a criminal offense has occurred and whether the person to be arrested is the one who committed that offense.

Where it appears from the objective circumstances and evidence that there is probable cause to

believe a criminal offense occurred and the person to be arrested is the one who committed that offense, the deputy shall do the following:

- Accept custody of the arrestee; and
- Process the arrestee accordingly, i.e., citation release, booking and release, incarceration, etc.
- Complete a report detailing all of the allegations, facts, circumstances and evidence bearing on the deputy's determination to accept custody.
- Obtain the private person's written statement.
- Complete Section 1, "Consent/Waiver Report" (refer Appendix I)

Where it appears from the objective circumstances and evidence that there is no probable cause to believe a criminal offense has occurred, the deputy shall:

- Carefully explain to the person wishing to make the private person arrest that the legal requirement to the acceptance of custody by the officer requires the presence of probable cause to arrest, as well as the facts and circumstances that indicate to the officer an absence of probable cause;
- Seek the consent and cooperation of the person wishing to make the arrest to have the matter handled by submission of a crime report for further investigation and/or evaluation of criminal charges by the District Attorney;
- Refuse to accept custody of the arrestee if the person insists on making the arrest.
- Complete a report detailing all of the allegations, facts, circumstances and evidence bearing on the deputy's determination to refuse to accept custody.

Deputies should seek advice from a supervisor or the Watch Commander when there is any question in the mind of the deputy as to how to proceed regarding a private person arrest.

RELATED STANDARDS:

Penal Code §15, 16 142 and 837
"Private Person Arrest," Vol. 18, No. 2, Martin J. Mayer

AFFECTED DIVISIONS:

All.

DATE OF REVISIONS:

02/27/03

APPENDIX:

"Consent/Waiver Report" - Section 1: Private Person Arrest

By order of:



ROBERT T. DOYLE
SHERIFF



MARIN COUNTY SHERIFF'S OFFICE
CONSENT/WAIVER REPORT

Report No.

Table with 4 columns: Type of Crime and Code, CC, Reporting Officer, and Page of. It includes rows for Victim (V) and Suspect (S) with sub-columns for Name, Date of Birth, Address, and Phone.

#1) I hereby certify that I have placed under arrest _____ on the charge of _____, committed or attempted in my presence this _____ day of _____ at _____ AM/PM, and hereby place this defendant in the custody of the Sheriff or Deputy Sheriff of the County of Marin.

#2) I, the undersigned Parent/Guardian of _____ hereby authorizes the Marin County Sheriff's Office permission to release and/or use photographs and descriptive information of this person in Missing Children bulletins and posters.

#3) I am a Parent/Guardian/Next of Kin to _____ and I hereby authorize the release of all dental records to assist law enforcement agencies in locating this missing person.

#4) This will authorize _____ to release to the Marin County Sheriff's Office any and all information contained in the Medical/Psychiatric records relating to my Medical/Psychiatric treatment provided on _____. The question of privacy between my doctor/therapist and myself is waived.

#5) You are requested to view a series of photos and/or subject(s) to determine if you can identify anyone as being involved in the offense you witnessed. It is not known if the person who committed the offense is shown, only you will know. Do not feel obligated to identify anyone, but do so only if you recognize the offender.

IDENTIFICATION: Positive: _____ Possible: _____ None: _____ Photo number: _____

#6) The undersigned, residing at _____ does hereby voluntarily authorize _____ and other Officers he/she may designate to assist him/her to search my residence (or other real property) located at _____ and my motor vehicle, namely my (year) _____ and (make) _____ bearing license plate number _____ of the State of _____ presently parked at or located at _____ and I further authorize said officers to remove from my residence, real estate and/or motor vehicle whatever documents or items of property whatsoever which they deem pertinent to their investigation.

I understand the authorization and/or consent that I have indicated above. Waiver #: _____

(PRINT NAME)

(SIGNATURE)

Date: _____ Time: _____ Witness: _____