

Germantown Police Department

Policies and Procedures

Number: 2-2
Effective Date: January 1, 2003
Subject: Detention of Suspects
Previous Revisions:

I. PURPOSE

The purpose of this policy is to provide officers with guidelines as to the manner in which persons may be detained.

II. POLICY

It is the policy of the Germantown Police Department to detain or arrest those persons suspected of criminal behavior in accordance with established laws and procedures.

III. PROCEDURE

A law enforcement agency has the right, as well as the duty, to investigate alleged criminal conduct. Consistent with this right, officers have the authority to:

- A. Take a person into custody where they have probable cause to believe that the person is guilty of a criminal offense;
- B. Place the subject in a lineup for the purpose of identification;
- C. Require a subject to give a sample of his/her handwriting;
- D. Photograph the subject;
- E. Fingerprint the subject;
- F. Search the subject; and
- G. Take any action consistent with the right of a department to conduct an investigation.

A subject, once placed in the accusatory position, is entitled to all the rights afforded by Miranda. He/she has the right to expect that the investigative process will be expedited in such

a fashion to either result in a formal charge being placed against him/her or being released where the evidence is insufficient to warrant prosecution. In addition, he/she has a right to make bail once formally charged. The courts must balance the right of the department to conduct an investigation with the right of the defendant to either be released or to make bail once he/she has been charged.

The Miranda warning need not be given during the questioning of a suspect who has not been taken into custody or otherwise deprived of his/her freedom of action in any significant way. If in doubt as to whether the defendant needs to be advised of Miranda rights, give the warnings. Although a defendant has a constitutional right not to make a statement, he/she is required to give such information as is necessary to fill out the front page of the arrest report (name, D.O.B., address, etc.). This information has been held by the courts not to be a confession. A defendant refusing to give this information can be held in custody until he/she gives it.

It is well understood by police officers that once a criminal suspect in custody has "expressed his desire to deal with the police only through (legal) counsel, (he) is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police." Edwards v. Arizona, 101 S.Ct. 1880. Now that concept has been expanded in Michigan v. Jackson, 106 S.Ct. 1401. That case holds that "if police initiate interrogation after defendant's assertion, at arraignment or similar proceeding, of his right to counsel, any waiver of defendant's right to counsel for that police initiated interrogation is invalid." Further, the Court held that while officers conducting the investigation may not know of the defendant's request for an attorney at the arraignment, "one set of state actors (the police) may not claim ignorance of defendant's unequivocal request for counsel to another state action (the Court)."

The effect of this recent decision is to disallow a waiver by the suspect of his right to remain silent, if the police officer, even after advising him of his rights under Miranda, initiates the interview. This does not preclude, however, initiation by the suspect of an interview with the investigating officer who informs him of his rights under Miranda prior to taking his statement.

IV. WARRANTLESS FELONY ARRESTS

A police officer can still make an arrest in a private home without an arrest warrant, but the U.S. Supreme Court has greatly restricted the police in making warrantless entries into the home to make an arrest. Only if there are exigent or emergency circumstances is a warrantless entry to arrest justified. If an officer can make a non-forcible entry into a private home with the valid consent of a person who lives there, it is not necessary that he/she have an arrest warrant in order to make a lawful arrest on the premises. Further, if an officer is in "hot pursuit" of a fleeing felon, it is not necessary that he/she stop at the door and retreat to obtain an arrest warrant. This ruling does not apply to houses other than the defendant's house. Thus, the police could not enter a defendant's home to arrest him without at least an arrest warrant **AND** reason to believe that he/she was at home at that time. The Court held that no search warrant was necessary because an arrest warrant founded on probable cause implicitly carries with it the

limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within.

A determination as to whether a felony arrest is "routine" or whether "exigent circumstances" exist will be based on the reasonableness of the officer's actions in light of the information available to the officer at the time of the arrest.

An arrest warrant, for misdemeanor or felony, empowers the executing officer to search for the individual named in the warrant when the executing officer has:

- A. probable cause to believe that he/she is searching the primary residence of the named individual,

AND

- B. has probable cause to believe that the named individual is at home at that time.

Officers should make every reasonable attempt to leave the matters of executing Shelby County arrest warrants to the Sheriff's Department Fugitive Squad, and advise any officers from other jurisdictions, or bounty hunters, to seek the assistance of that unit.

V. REVIEW PROCESS

An annual review of this policy will be conducted to determine if it should be revised, cancelled or continued in its present form.

This order shall remain in effect until revoked or superseded by competent authority.