

# Germantown Police Department

## Policies and Procedures

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**Number:** 2-6  
**Effective Date:** January 1, 2003  
**Subject:** Affidavits of Complaint and Charging Instruments  
**Previous Revisions:**

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### I. PURPOSE

The purpose of this policy is to establish guidelines for department personnel when preparing Affidavits of Complaint.

### II. POLICY

It is the policy of the Germantown Police Department for officers to complete an affidavit of complaint when such document is required under the rules of criminal procedure. It is also the policy of this department that affidavits of complaint will be complete, accurate, and submitted in a timely manner as established by the City Prosecutor.

### III. BACKGROUND

The Rules of Criminal Procedure have established the requirement that every arrest is made by a law enforcement officer be supported by an official warrant, which serves as a formal charging document to commence a criminal prosecution. If a judge of any Tennessee court issues an arrest warrant, then the warrant serves as the charging instrument, and when the defendant is arrested on that warrant, no further document is needed.

### IV. PROCEDURE

- A. The Affidavit will contain the necessary element(s) to substantiate the charge(s) being placed. The language in the Affidavit should be consistent with the Criminal Statute. Officers should use the language in the statute as a guide. Miscellaneous information such as transport/booking information should not be in the Affidavit.
- B. All Affidavits will be signed in the presence of the Court Clerk or a judicial official.
- C. When a defendant is arrested without a warrant for either a felony or a state misdemeanor, an Affidavit of Complaint is required and serves as an arrest warrant for purposes of formally commencing the criminal prosecution. **UNDER THE RULES OF CRIMINAL PROCEDURE, THE COURT CLERKS ARE**

DESIGNATED AS MAGISTRATES FOR PURPOSES OF DETERMINING PROBABLE CAUSE FOR THE AFFIDAVIT OF COMPLAINT. THE CLERK, BY STATUTORY AUTHORITY, IS ACTING AS A JUDICIAL OFFICER AND IS RESPONSIBLE FOR REVIEWING THE ARREST TO ENSURE THAT PROBABLE CAUSE EXISTS.

D. Affidavit Content

The body of the affidavit must contain the necessary elements to substantiate the charge(s) being placed. The affidavit should contain the probable cause for the arrest. The affidavit should not contain miscellaneous information such as transport mileage, booking information, etc.

The terminology used in the body of the affidavit should be consistent with that found in the appropriate Tenn. Code Ann. charge(s).

E. Affidavits Pertaining to Shoplifting Arrests

1. On shoplifting arrests, officers should use the charge of Theft Over/Under \$500. If the suspect does not meet the criteria for the issuance of a Misdemeanor Citation or the value of the merchandise is over \$500, a physical arrest will be made. On felony arrests, the officer will be the affiant. On misdemeanor arrests, the complainant wishing to prosecute (usually a security officer or manager) will have to sign the Affidavit in the presence of a Court Clerk or judge (unless the officer is a witness to the theft, then he/she could be the affiant).
2. The Affidavit will contain the necessary elements for the charge(s) being placed. The value of the merchandise and the items stolen will be listed in the Affidavit.
3. See Tenn. Code Ann. 40-7-118. Also see Chapter 2, Section 4 – Misdemeanor Citations.

The procedure for other misdemeanor offenses not witnessed by the officer will be to have the victim/witness sign the affidavit in the presence of the court clerk/judge (except accidents involving D.U.I. (Tenn. Code Ann. 40-7-103, domestic assault).

Any defendant who makes his first appearance in court for whom there is no charging instrument will be automatically dismissed. It is important for each officer's own protection against a false arrest allegation that the Affidavit of Complaint be filled out accurately and immediately (within 24 hours).

**V. REVIEW PROCESS**

An annual review of this policy shall 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.