



GOVERNMENT OF THE DISTRICT OF COLUMBIA OFFICE OF POLICE COMPLAINTS

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PCB POLICY REPORT #22-1: Warrantless Misdemeanor Arrests

Summary of Issue:

In recent years, investigators with the Office of Police Complaints (OPC) noticed several complaints involving unlawful warrantless misdemeanor arrests made by members of the Metropolitan Police Department (MPD) that are inconsistent with D.C. Code § 23–581, Arrests Without Warrant by Law Enforcement Officers.¹ This report examines the warrantless misdemeanor arrest issues and specifically looks at two examples raised by community members in their OPC complaints.²

Applicable Directive or Law:

Under *Atwater v. City of Lago Vista*, police officers may arrest suspects for any misdemeanor offense without a warrant if the arrest is based on probable cause.³ However, in Washington, D.C. police officers' authority to make warrantless misdemeanor arrests is limited by statute. Under D.C. Code § 23–581, Arrests Without Warrant by Law Enforcement Officers, a police officer may only arrest a suspect for a misdemeanor if the officer has probable cause to believe that the suspect "has committed or is committing an offense" in the officer's presence.⁴ D.C. Code § 23–581 also provides a list of limited and narrowly construed exceptions for situations when an officer has not witnessed the offense, but has probable cause to believe that a suspect has committed or is about to commit the crimes of assault, unlawful entry, malicious burning, voyeurism, theft of property valued less than \$250, receiving stolen property, shoplifting, attempted theft of property valued less than \$250, attempted unauthorized use of vehicles, unauthorized disposal of solid waste, or illegal construction, and "unless immediately arrested, may not be apprehended, may cause injury to others, or may tamper with, dispose of, or destroy evidence."⁵

In addition to the preceding exceptions, the statute also provides limited exceptions for situations when a police officer has not witnessed the offense, but has probable cause to believe that a

¹ Available at <https://code.dccouncil.us/us/dc/council/code/sections/23-581.html>.

² The Police Complaints Board (PCB) is issuing this report pursuant to D.C. Code § 5-1104(d), which authorizes the Board to recommend to the District of Columbia Mayor, Council, MPD Police Chief, and the Director of District of Columbia Housing Authority reforms that have the potential to improve the complaint process or reduce the incidence of police misconduct.

³ *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001).

⁴ D.C. Code § 23–581, Arrests Without Warrant by Law Enforcement Officers (2015)

⁵ *Id.*

suspect committed the misdemeanor crimes of aggravated reckless driving, fleeing from the scene of an accident, operating or physically controlling a vehicle when under the influence of intoxicating liquor or drugs, and operating a motor vehicle when the operator's permit is revoked or suspended and the officer reasonably believes that "unless the person is immediately arrested, reliable evidence of alcohol or drug use may become unavailable or the person may cause personal injury or property damage."⁶

Lastly, the statute carves out limited and narrowly construed exceptions for situations when a police officer has not witnessed the offense, but has probable cause to believe that a suspect has committed any of the following misdemeanors: an intrafamily offense, panhandling, defacing public property, defacement of certain symbols or display of certain emblems, unlawful entry of a motor vehicle, tampering with a detection device, engaging in an unlawful protest targeting a residence, misdemeanor sexual abuse, misdemeanor sexual abuse of a child or minor, lewd, indecent, or obscene acts, sexual proposal to a minor, stalking, presenting fraudulent identification documents for the purpose of entering an establishment serving alcohol, and violation of a stay way order.

Other than D.C. Code § 23-581, the only other published guidance for MPD officers with respect to arrest procedures are MPD General Orders 201.26, 304.10, and 702.01. Yet, these general orders do not address warrantless misdemeanor arrests and only enumerate procedures for felony arrests, MPD officers' conduct during an arrest, arrest procedures for transportation of prisoners, handcuffing, safekeeping of property, phone calls, medical attention, searches, identification, custodial interrogation, uses of force, examples of probable cause, and procedures for application and service of arrest warrants.

Case Examples:

Example 1: In September 2021, the complainant visited a convenience store and became involved in a verbal dispute with an employee. During the incident the complainant allegedly told the employee that he would return to "teach [him] a lesson" and "beat the shit out of [him]." The complainant then left the store but returned twenty to thirty minutes later after he realized that he left his debit card on the floor during the incident. When the complainant returned to the store, one of the three subject officers detained him across the street before he could enter the property. None of the three subject officers, who held the ranks of officer, sergeant, and lieutenant, witnessed the incident or the alleged threat. Nevertheless, after discussing their options they decided that the proper course of action was to place the complainant under arrest for threats to do bodily harm, which is a misdemeanor under D.C. Code § 22-2407.⁷ Threats to do bodily harm is not one of the misdemeanor offenses listed in D.C. Code § 23-581 that are arrestable without a warrant.

Example 2: In October 2021, the complainant visited a restaurant and became involved in a verbal altercation with members of the staff. While the staff members attempted to physically remove the complainant from the premises, he threatened to harm one of the restaurant managers. When interviewed by the two subject officers, the complainant admitted to telling the

⁶ *Id.*

⁷ Available at <https://code.dccouncil.us/us/dc/council/code/sections/22-407.html>.

manager, “If you put your hands on me, you’re going to get hurt,” and, “If you continue to put your hands on me, I’m going to murder you.” The restaurant staff corroborated the complainant’s admission during separate interviews with the subject officers. The two subject officers did not witness the incident or the threats the complainant made to the manager. After the subject officers discussed the matter with a sergeant, who advised them to arrest the complainant, they arrested him for misdemeanor threats to do bodily harm.

Policy Concerns:

In the preceding examples it is indisputable that the subject officers possessed adequate probable cause to reasonably believe the suspects committed the crime of misdemeanor threats to do bodily harm. In fact, in one of the cases the suspect confessed to threatening another community member and his account was corroborated by witnesses. Nevertheless, D.C. Code § 23-581 limits a police officer’s ability to conduct a warrantless misdemeanor arrest to situations when the officer actually and contemporaneously witnessed the incident or to situations in which the incident falls into one of the limited and narrowly construed statutory exceptions. The fact that the law was not properly applied by the subject officers in these cases even after discussions with supervisors who held the ranks of sergeant and lieutenant is particularly concerning. Equally concerning is the fact that MPD provided additional training to its members on the topic of warrantless misdemeanor arrests as recently as 2019 at the annual professional development training.⁸ Yet, despite the additional training the subject officers and the supervisors in the preceding examples were unable to properly apply the statute when these incidents occurred two years later in 2021. This appears to indicate that there is a defect in MPD’s training process which results in confusion among the ranks of MPD with respect to how apply the District’s warrantless misdemeanor arrest statute. In both examples, the subject officers should have been instructed to seek a warrant before arresting the complainants because they did not contemporaneously witness the incidents and threats to do bodily harm is not listed as one of the statutory exceptions for warrantless misdemeanor arrests under D.C. Code § 23-581.

The two cases discussed in this report are not the only examples observed by OPC involving MPD officers who misapplied or misconstrued D.C. Code § 23-581. They are merely the most recent and are emblematic of a larger trend observed by OPC over the past decade. For instance, in 2019 a complaint examiner sustained a harassment allegation against an MPD officer after determining that the subject officer misapplied D.C. Code § 23-581 and subsequently conducted an unlawful arrest of the complainant.⁹ In 2017 OPC referred a subject officer to policy training after determining that he misconstrued D.C. Code § 23-581 while making a warrantless misdemeanor arrest.¹⁰ In fact, as far back as 2013 a complaint examiner sustained a harassment allegation against an MPD officer after finding that the subject officer unlawfully arrested the complainant without a warrant for misdemeanor threats to do bodily harm.¹¹ The latter example is particularly significant because it resulted in the complainant filing a lawsuit that could have

⁸ In a letter dated May 5, 2022, MPD acknowledged that its members received additional training on this topic during the 2019 annual professional development training.

⁹ OPC Complaint No. 19-0100

¹⁰ OPC Complaint No. 17-0707

¹¹ OPC Complaint No. 13-0331

been avoided if the subject officer would have sought a warrant prior to arresting the complainant.

When police officers decide to exercise their power to deprive community members of their freedom by placing them under arrest, they should take steps to ensure that the arrest is proper and legal. If not, it erodes community trust and could possibly result in liability for the department and the District in the form of lawsuits for false arrest or false imprisonment.

Recommendations:

To help improve and facilitate better relations and increase trust between MPD officers and community members, the PCB recommends that:

1. MPD should issue additional guidance for its members with respect to warrantless misdemeanor arrest procedures. MPD can accomplish this by, for example, updating General Order 201.26: Duties, Responsibilities and Conduct of Members of the Department and/or General Order 304.10, Field Contacts, Stops, and Protective Pat Downs to reference D.C. Code § 23-581, Arrests Without Warrant by Law Enforcement Officers, and include the statute's main points. In the alternative, MPD should issue a comprehensive standalone general order exclusively devoted to all arrest procedures and ensure that it includes guidance for warrantless misdemeanor arrests.
2. Updated training should be provided for all MPD members to ensure they are familiar with the law and regulations for warrantless misdemeanor arrests and the changes that are made to General Order 201.26, General Order 304.10, or the standalone general order so that the members can perform their duties in accordance with current law. In addition, MPD should ensure that supervisor members are properly trained to advise officers when they are making decisions regarding a warrantless arrest.
3. MPD should encourage its members to review D.C. Code § 23-581 using their Mobile Data Terminals or their department issued cellular phones prior to making the decision to arrest any suspect for a misdemeanor that they did not contemporaneously witness. Specifically, MPD should advise its members to verify that the crime is an arrestable offense under D.C. Code § 23-581 prior to making any warrantless misdemeanor arrest. This can be accomplished with roll call training.