


<p>RABUN COUNTY SHERIFF'S OFFICE</p>  <p>General Order Number: 5.01</p>	<p>Date of Issue</p> <p>2/23/2016</p>	<p>Effective Date</p> <p>2/23/2016</p>	<p>Revision Date</p>
<p>Subject: AUTHORITY, DISCRETION & ARRESTS</p>	<p>Amends:</p>	<p>Rescinds:</p>	
<p>Index as:</p> <ul style="list-style-type: none"> Arrests Authority Criminal Procedure/Process Discretion 	<p>State Certification Standards: 1.8, 1.9, 3.12, 4.1, 4.2, 4.6, 5.30, 5.31</p>		

PURPOSE

The purpose of this General Order is to prescribe the policies and procedures of the Rabun County Sheriff's Office regarding an officer's authority, use of discretion, and powers of arrest.

STATEMENT OF POLICY

It shall be the policy of the Rabun County Sheriff's Office that departmental employees exercise their authority as defined in statute law of the state of Georgia and in accordance with the guidelines as outlined in departmental policies and procedures; will protect the Constitutional rights of all persons; and will take actions that are appropriate and reasonable under the circumstances of the situation.

DEFINITIONS

ARREST — The restraint of a person's liberty to come or go as she/he pleases, no matter how slight, regardless of whether formal words of arrest are used. An arrest is complete when the person voluntarily submits or gives in on the condition that she/he will only be allowed his/her freedom of movement under the direction of the officer.

ARREST WARRANT — A written judicial command to bring a particular person promptly before the magistrate issuing the warrant or other appropriate judicial officer.

DETENTION — The act of temporarily holding an individual while conducting a field investigation to determine if a crime has been, or is about to be committed. A detention may or may not be a full custodial arrest.

Foreign National – means a foreign national is any person who is not a citizen of the United States. This includes those who may have a resident alien registration card, commonly referred to as a "green card" or those who may be in the country illegally.

O.C.G.A. — The Official Code of Georgia Annotated

PROBABLE CAUSE — A belief that is based upon the facts and circumstances within their knowledge and of which they have reasonably trustworthy information which would lead a reasonable and prudent person to believe that a crime has been or is being committed and that a particular person is committing or has committed the offense.

REASONABLE BELIEF OR SUSPICION — That which is less than probable cause, but more than a mere "hunch." The facts and circumstances leading to reasonable suspicion must be able to be articulated.

I. SOURCES OF AUTHORITY

- A. Article 9, Section I, Paragraph III to the Georgia Constitution prescribes that the Sheriff is an elected State Constitution officer...and has such qualifications, powers, and duties as provided by general law. Title 15, Chapter 16, Section 10 to the O.C.G.A. prescribes the duties of the Sheriff. These include:
 - 1. All common law duties and powers, except as modified by statute;
 - 2. To keep custody of criminal defendants, pending their trial;
 - 3. To enforce criminal laws;
 - 4. To enforce traffic regulations;
 - 5. To ensure for the safety of the court; and
 - 6. To execute the processes and orders of the courts.
- B. Title 15, Chapter 16, Section 23 to the O.C.G.A. authorizes the Sheriff to appoint individuals to the position of deputy sheriff, to prescribe their duties, and to establish their conditions of employment.
- C. The authority of sworn personnel is based upon the Official Code of Georgia Annotated as follows:
 - 1. The Sheriff and Deputy Sheriffs have the authority to execute an arrest in any county in the State of Georgia. (O.C.G.A. 17-4-25)
 - 2. The jurisdiction of the Sheriff and Deputy Sheriffs is generally limited to the geographical boundaries of Rabun County. (O.C.G.A. 15-16-10)
 - 3. Civil processes shall be served by the Sheriff or his deputy of the county where the civil action is brought or where the defendant is found. (O.C.G.A. 9-11-4(c))
 - 4. Deputies are authorized to use deadly and non-deadly force in making an arrest in accordance with departmental policy and procedures. (O.C.G.A. 17-4-20)

5. No officer will arrest any person with a warrant unless she/he reasonably believes the warrant is valid and that the person described in the warrant is before him/her. No officer will make a warrantless arrest without probable cause nor will any officer use any force that is not reasonable under the circumstances of the situation.

II. DISCRETION

- A. An officer's discretion in exercising his/her statutory authority to arrest is an essential element of effective law enforcement and will be used in accordance with departmental policy and procedures. Normally, an officer has the discretion to take that action deemed appropriate based upon the circumstances of the situation.
- B. What is reasonable in terms of appropriate law enforcement action or what constitutes probable cause varies with each situation. Different facts may justify an interview, investigative detention, a search, an arrest, or no action at all. In some instances a report will be taken, a citation issued, or, in the case of minor offenses, a verbal warning or referral to another agency may be issued. However, in every case, deputies must act reasonably within the limits of their authority, as defined by statute or judicial interpretation. In deciding on what action to take, deputies should consider the following:
 1. The seriousness of the offense;
 2. The degree and extent of physical injuries and/or property damage;
 3. The offender's intent and behavior;
 4. The victim's willingness to press charges EXCEPT in family violence situations;
 5. If the offender is a juvenile and the child is involved in a relatively minor status offense; and
 6. The presence of other influencing circumstances.

III. ALTERNATIVES TO ARREST

- A. Unless an arrest is made, deputies are authorized to use individual discretion based upon their professional judgment as to which other form of action is to be taken. Follow-up action will be appropriate for each violation of the law. This will be accomplished in a fair, impartial, courteous, and professional manner, without regard to a violator's race, national origin, sex, religion, or color, by using one of the following options:
 1. Citation;
 2. Referral to another agency;
 3. Informal resolution;
 4. Warning; or
 5. Release of juvenile to parent or guardian.
- B. County Ordinate Violations will normally be referred to the County Marshal for appropriate action. (O.C.G.A. 15-10-63)

IV. OFFICIAL CONTACTS WITH CITIZENS

- A. During their official duties, law enforcement deputies engage in many different forms of contacts with citizens. Such contacts are based upon the facts and circumstances of the situation and, in some

cases, have legal consequences under the Fifth Amendment that states persons shall not be compelled in a criminal case to be a witness against themselves.

1. Since these contacts are based on the presumption that the citizen is not under any reasonable suspicion of criminal activity, an officer will adhere to the following guidelines:
 - a. Persons contacted may not be detained in any manner against their will or frisked unless reasonable suspicion is established during the course of the contact to believe they present a danger to the officer or that they have committed, are committing or are about to commit a crime;
 - b. An officer may not use force or coercion to require a citizen to stop or respond to questions or directions absent any other legal reason;
 - c. Deputies will ensure that their actions and requests of the citizen are not an unreasonable restraint on his or her freedom to leave, therefore deputies should:
 - (i) Introduce themselves and explain the reason for making the contact;
 - (ii) Act in a courteous and restrained manner;
 - (iii) Establish rapport;
 - (iv) Avoid gruffness, officious attitudes or requests that sound like commands;
 - (v) Phrase requests using optional words such as "may" or "would you mind";
 - (vi) Keep the length of the contact as brief as possible; and
 - (vii) Do not create a physical or other barrier to the citizen's ability to leave, such as keeping a driver's license or by creating a physically imposing and intimidating presence.
 2. If citizens ask whether they must respond to questions or must remain in the officer's presence, they shall be informed that they need not answer any questions and are free to leave at any time.
 3. Where citizens refuse or cease to cooperate during a contact, they must be permitted to leave.
 4. Refusal of the citizen to cooperate with the officer, for example, through silence (i.e. not answering questions), by refusal to provide personal identification, or by a refusal to account for his or her presence in a public place alone, cannot be used as the basis for turning the contact into an investigative detention.
- B. An **investigative detention** (Terry Stop) is a contact based upon a officer's reasonable suspicion of criminal activity which must be grounded upon specific and articulable facts, whereby an individual is stopped, questioned and it is determined if probable cause exists to make an arrest or to dispel the suspicion. Such an encounter is not voluntary, but is a limited interference with a person's movement until the detention is completed. Other characteristics of the stop are:
1. The detention must be temporary and last no longer than is necessary;

2. Reasonable force may be used for officer protection, to include the use of handcuffs, drawing and/or pointing a weapon at a suspect, blocking a suspect's path of travel, and other protective measures; and
 3. The investigative methods used must be the least intrusive means available to verify or dispel the officer's suspicion.
 4. If used, protective measures taken during an investigative stop may develop into a "in custody" suspect interview therefore requiring that a suspect be advised of his/her Miranda rights before questioning begins.
- C. An "in custody" suspect interview is an attempt to obtain written or verbal information from a suspect concerning his/her involvement in a criminal offense. Before any statement, confession, or admission can be admitted in court, it must not be based on coercion, deprivation of counsel or other improper means. All constitutional precautions must be taken and documented if the suspect interview is to be used later in court. Whether the accused person cooperates is left entirely up to that individual.
- D. The Miranda warning is only required to be given before questioning a suspect placed under arrest, taken in custody, or otherwise deprived of his/her freedom of action in any significant way. When possible the officer will advise the suspect of his Miranda Rights using a department provided card or Advice of Rights form.
1. If the suspect knowingly and voluntarily waives his/her rights, the investigating officer will preferably have the suspect sign an Advice of Rights form indicating the suspect understands his Miranda Rights and agrees to speak with the officer. Audio or video taping this contact with the suspect is recommended whenever possible, but not required.
 2. If the suspect at any time declines to waive his/her right to remain silent and/or requests to speak with a lawyer, all questioning will stop. Questioning cannot be resumed unless an attorney is present or if the accused knowingly and voluntarily re-initiates the questioning. If this occurs, the request of the suspect must be documented.

V. ACCESS TO COUNSEL

Once a suspect requests an attorney questioning of the suspect will immediately cease and he will be booked in on his/her criminal charge, returned to his/her place of incarceration, or released if no criminal charges are pending. Access to counsel must be provided to any suspect in custody who desires to consult with an attorney either before or during questioning. Such counsel can either be of the suspect's choosing or if she/he cannot afford an attorney, one will be provided free of charge. When an attorney is requested, the following procedures will apply if the officer desires to question the suspect with an attorney present:

- A. If the suspect knows of an attorney, she/he will be permitted to make contact and arrange for representation;
- B. Should the suspect not know of an attorney, a local phone book will be provided so that she/he can make a selection; or
- C. If the suspect indicates she/he cannot afford an attorney, contact will be made with Pre-Trial Services at the Rabun County Courthouse Complex for assistance.

VI. ARREST WITH A WARRANT

- A. Whenever possible, deputies will make an arrest with a valid warrant.
- B. A valid arrest warrant should contain specific information as required by statute, court decisions, and the Uniform Rules of the Superior, State, and Magistrate Courts and may include:
 - 1. The authority under which the warrant is issued;
 - 2. Identification of the person who is to execute the warrant, generally addressed: "To any sheriff, deputy sheriff, coroner, constable, marshal, or police officer;"
 - 3. Identification of the person to be arrested;
 - 4. The name of the offense(s) committed;
 - 5. The date and place of occurrence of the offense;
 - 6. Identification of the victim;
 - 7. A description of the offense, including all of the elements of the offense, and, when the offense is a theft, the warrant should contain:
 - a. A description of the property stolen;
 - b. Identification of the property's owner;
 - c. The value of the property; and
 - d. The person from whose possession it was taken.
- C. When possible the arresting officer should have the warrant in his/her physical possession at the time of the arrest or near at hand, so it can be exhibited upon demand. If physical possession of an arrest warrant is not possible, confirmation of the arrest warrant should be made thru Rabun County Central Communications or the Rabun County Jail.
- D. An officer may forcibly enter the house or enter private property where an offender is concealed in order to serve a felony warrant. (O.C.G.A. 17-4-3)
- E. A forced entry may be made if there is reason to believe the defendant is in the dwelling after the officer first knocks and properly identifies him/herself. The use of a backup officer is recommended in this type situation as officer safety is of the utmost importance. However, exigent circumstances may dictate an officer must take reasonable steps to arrest a defendant without backup being readily available.
- F. Forced entry into a residence to serve a misdemeanor arrest warrant or other type of civil process is prohibited unless a voluntary, non-coerced consent is given to enter.
- G. A search warrant is necessary to justify entry into a third party's property unless consent is given by a person at the address who the officer reasonably believes has the authority to give consent to enter the property, or specific and articulable exigent circumstances exist to make entry.

VII. SEARCH OF PERSON(S) ARRESTED

- A. All persons placed under arrest will be searched incident to the arrest before being transported. (O.C.G.A. 17-5-1)
- B. The search will also include the area within the person's immediate control or within his/her lunging area.
- C. All searches following an arrest must be performed immediately after the individual is brought under control.

VIII. AFTER AN ARREST IS MADE WITH A WARRANT

- A. Adult offenders shall be brought to the Rabun County Jail for processing.
- B. Juvenile offenders, charged with an act which would be a felony if committed by an adult, other than those status offender crimes as defined in O.C.G.A. 15-11-2, will be transported to the Rabun County Jail for processing in accordance with the facility's policies and procedures. (O.C.G.A. 15-11-60)
- C. Other juvenile offenders will be detained at Law Enforcement Center or the Front of the Jail and the Juvenile In-Take Officer contacted for disposition instructions and authorization to bring the juvenile to the Regional Youth Jail (RYDC).
- D. Following processing, adults will either be placed in confinement or released if the subject can comply with the existing bond schedule.
- E. Juveniles will be placed in confinement at the RYDC ONLY when directed by the Juvenile In-Take Officer or Juvenile Court Judge.
- F. All individuals arrested and who remain in custody must be brought before a judicial official within 72 hours after the arrest.

IX. ARREST WITHOUT A WARRANT

- A. All arrests without a warrant will be based upon probable cause and only if one of the following circumstances has occurred: (O.C.G.A. 17-4-20)
 - 1. When the offense is committed in the officer's presence or within his/her immediate knowledge;
 - 2. When the offender is attempting to escape;
 - 3. If there is likely to be a failure of justice for want of an officer to first obtain a warrant;
 - 4. When an act of family violence has been committed; (O.C.G.A. 19-13-1) or
 - 5. To prevent the commission of a felony when the criminal act is imminent.

- B. Information from other agencies within or outside Georgia: (OCGA 17-13-34) NCIC/GCIC information is sufficient basis for a warrantless arrest for felony and/or misdemeanor charges for information received from other agencies in or out of Georgia. Confirmation of NCIC/GCIC information must first be made to verify the validity of the warrant by calling the issuing agency.
- C. The authority to arrest without a warrant does not extend to offenses that occurred in the distant past because there has been sufficient time to obtain a warrant.
- D. Normally, deputies do not have the authority to arrest beyond the boundaries of Rabun County UNLESS they are involved in a "hot pursuit" situation whereby the attempt to bring the offender to a stop was continuous and uninterrupted.
- E. In all cases when an arrest is made without a warrant, the offender must be brought before a judicial officer within 48 hours of the arrest or released from custody. (OCGA 17-4-62)

X. OFF-DUTY RESPONSIBILITIES

- A. Because of the risk of personal injury, the confusion to on-duty law enforcement deputies arriving at the scene, and the possibility of civil liability, off-duty personnel must exercise extreme caution when attempting to intervene or to make an arrest and will only do so as authorized below.
- B. While off-duty, it is the responsibility of all deputies to immediately report any suspected or observed criminal activities to the nearest law enforcement agency having jurisdiction over the offense.
- C. As a general rule, off-duty personnel will not intervene by taking direct action to enforce relatively minor violations such as traffic offenses, disorderly conduct, littering, preventing or disrupting meetings, use of profane language, public drunkenness, obstructing streets or sidewalks, gambling, or county ordinance violations. When such situations occur, the officer will immediately notify on-duty personnel to respond to the situation.
- D. When a direct intervention or arrest is necessary and justified, employees will abide by all departmental policies and procedures and they must be in possession of issued badge and photo identification.
- E. When off-duty, deputies may make an arrest only when:
 1. The off-duty officer is either a "third party" witness to the situation or actually becomes a victim of a crime;
 2. There is an immediate need for the prevention of a crime or apprehension of a suspect;
 3. The crime is chargeable as a jailable offense requiring a full custodial arrest; or
 4. When requested by an on-duty law enforcement officer to provide assistance.
- F. In all instances, on-duty deputies will be notified as soon as possible following the arrest.
- G. Deputies will not make an arrest while off-duty:

1. When engaged in off-duty employment of a not-law enforcement nature and the actions are only to further the interest of the private employer, such as when employed as a theater usher or food server and the manager requests that a disorderly person be arrested;
2. When the situation only involves a minor traffic violation; or
3. When the arresting officer is personally involved in the incident underlying the arrest in a manner that furthers the officer's own interests. This includes situations where the off-duty officer, a family member or a friend becomes engaged in a dispute or incident with the person to be arrested.



By Order of the Sheriff: **Chad K. Nichols**
Sheriff, Rabun County