

GENERAL ORDER 1.2.2

Use of Discretion

GENERAL ORDER CROSS-REFERENCE: 1.3.1, 1.3.3.

SUMMARY

Dictates the use of discretion by Department members and circumstances requiring alternatives to physical arrest.

DISCUSSION

Police officers are sworn to uphold the Constitutions of the United States and the State of Oregon, and to enforce municipal, state and federal criminal laws. These duties require that officers be empowered to use discretion within the limitations imposed by law and Departmental policy.

POLICY

I

Discretion is defined as the freedom to act or judge on one's own. It is an integral part of every member's duty to use discretion to resolve certain problems. Discretion should be used as consistently as possible.

When resolving an incident wherein it can be established a violation of law has occurred, police officers and other members of the Department with enforcement authority (i.e. animal control and Community Service Officers) should take enforcement action. However, members may use discretion. Generally, the more significant or serious an incident is, the less discretion should be exercised by members. Instead, stricter application of the law or Department policy should prevail.

A member's use of discretion may be limited by training, education, experience, laws, ordinances, Department directives and supervisors' instructions.

II

ORS 133.045 allows the use of a citation in lieu of custody for all violations, most misdemeanors and felony charges which may be deemed a misdemeanor after sentencing (citations are not authorized in lieu of custody for assaults occurring during a domestic disturbance incident, ORS 133.055, or violation of restraining orders, ORS 133.310.)

Officers shall consider the following criteria prior to issuing a citation in lieu of custody:

- A) The necessity for prevention of injury to other persons or property, or criminal conduct by the arrested person.
- B) The probability of the arrested person appearing in court. Factors affecting this include the residence, community standing and satisfactory identification of the arrested person.
- C) The necessity of having the arrested person available for further investigations, and his/her reliability as evidenced by police records, outstanding warrants and compliance with past pretrial release.
- D) The ability of the person to care for him/herself.

ORS 133.450 directs officers serving arrest warrants to take the defendant before the magistrate issuing the warrant or before the nearest and most accessible magistrate. ORS 133.055(1) authorizes a police officer to issue a citation in lieu of arrest to the defendant to appear at the court of the magistrate who issued the arrest warrant. Simply stated, ORS 133.055(1) does allow officers to issue citations in lieu of physical custody when serving an arrest warrant and still be in compliance with ORS 133.450.

The following guidelines shall be adhered to when issuing a citation in lieu of physical custody when serving an arrest warrant:

- A) After receiving supervisor approval, officers may issue a citation in lieu of serving an arrest warrant if circumstances (i.e., the physical or mental condition of the person to be arrested) are such that incarceration is impractical.
- B) Citations shall not be issued in lieu of serving arrest warrants for agencies outside Lane County.

III

Oregon law differentiates between violations (infractions) and crimes. All traffic and criminal violations must be resolved by citation or warning. A person may not be taken into custody for a violation. Springfield police officers are authorized to use verbal warnings to resolve minor traffic and criminal violations.

IV

In addition to this directive, there are other Department general orders that include guidelines related to the use of discretion. Members are authorized to exercise discretion as permitted by these various general orders.

Richard L. Lewis
Chief of Police