



# BRAINTREE POLICE DEPARTMENT

## Policy and Procedure

### LEGAL PROCESS

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Chief Mark Dubois

Certification Standards:

Accreditation Standards: **74.1.1 a-i; 74.1.2 a-e; 74.1.3 a-f; 74.2.1; 74.3.1; 74.3.2**

Optional Accreditation Standards:

### GENERAL CONSIDERATIONS

Legal processes served by Massachusetts Police Departments are primarily criminal processes consisting of arrest warrants, search warrants, summonses, and subpoenas relating to criminal cases that are issued by any Court of Law within the Commonwealth. Civil processes commonly served by Massachusetts Police Departments consist of abuse orders, harassment orders, extreme risk protection orders, warrants of apprehension (section 35), and involuntary Committal Orders (section 12) ordinarily issued by Massachusetts District Court as well as the Family and Probate Court.

The Judicial System is dependent, in part, on the effective and timely service of court documents. This policy is designed to ensure and record complete and accurate information, timeliness and service.

### POLICY

It is the policy of this department that:

- 1) Legal processes will be documented and reasonable attempts shall be made to serve them promptly;
- 2) Prior to making an arrest on an outstanding warrant, the Braintree Police Department will confirm that the warrant is valid and in effect;

- 3) Reasonable efforts will be made to protect the privacy and confidentiality of any person being served; and
- 4) The Braintree Police Department will make an effort to confer with other involved agencies when appropriate, when serving legal processes.

## **PROCEDURES**

### 1) Management of Legal Processes Documentation

- a) The Shift Commander is responsible for ensuring the dispatcher or officer records all legal processes during their shift.
- b) Types of processes
  - i) Legal processes in the possession of the department where service is to be executed within the jurisdiction of the department;
  - ii) Legal processes forwarded from another agency;
  - iii) Legal processes forwarded to another agency to be served outside the jurisdiction of the department; and
  - iv) Service of Abuse Orders under M.G.L. c. 208, c. 209, c. 209A, and c. 209C.

### 2) Information Recording:

- a) When criminal and civil legal process is received by this department, the following information shall be recorded in the Records Management System (CAD/PAMET):
  - i) Date and time received; **[74.1.1 a]**
  - ii) Type of legal process (criminal or civil); **[74.1.1 b]**
  - iii) Nature of document; **[74.1.1 c]**
  - iv) Source of document (issuing court, etc.); **[74.1.1 d]**
  - v) Name of plaintiff/complainant and/or name of defendant/ respondent; **[74.1.1 e]**
  - vi) Officer assigned for service; **[74.1.1 f]**
  - vii) Date of assignment; **[74.1.1 g]**
  - viii) Court docket number; and **[74.1.1 h]**
  - ix) Date service is due. **[74.1.1 i]**

b) This shall be accomplished with CAD notes, master-card(s) and a scanned copy of the civil process in the external reference file. The computer printout will serve as documentation.

3) Record of Execution and Attempts of Service **[74.1.2]**

a) A record of an attempted or successful service of criminal and civil legal process shall be maintained in the Records Management System (CAD/PAMET). Legal process service records shall contain the following information:

- i) Date and time service was executed or attempted; **[74.1.2 a]**
- ii) Name of officer(s) executing/attempting service; **[74.1.2 b]**
- iii) Name of person on whom legal process was served/executed; **[74.1.2 c]**
- iv) Method of service / reason for non-service: **[74.1.2 d]**
  - (1) Last place of abode
  - (2) Left with a responsible person
  - (3) In hand
  - (4) By mail
  - (5) At place of work
- v) Address of service attempt. **[74.1.2 e]**

b) This shall be accomplished with CAD notes, master-card(s) and a scanned copy of the legal process in the external reference file. The computer printout will serve as documentation.

4) Arrest Warrant and Wanted Persons Information and Files **[74.1.3]**

a) Warrants based on offenses committed within Massachusetts are created and deleted from the Warrant Management System (WMS) by Massachusetts trial court system personnel.

b) The criteria and procedures for entering, receiving, recording, verifying and cancelling warrants, either WMS warrants or those generated in other states and made available through the CJIS/NCIC computer system, are strictly governed by the CJIS/NCIC system user agreement maintained by this agency, and must be followed by all personnel. **[74.1.3 a,b,c,d,e]**

- i) The CJIS agreement is signed and maintained by the Chief of Police.
- ii) 24 hour access to the system is mandatory, and is available to all trained personnel. **[74.1.3 f]**
- iii) Those personnel are required to comply with the CJIS User Agreement and the provisions of department policy.
- iv) The CJIS/NCIC training and operation manuals are available to authorized personnel and are located on line.

c) WMS Warrants

- i) When a printed CJIS notice is received indicating that a warrant has been issued, the dispatcher or station officer should print a copy of the warrant and give it to the Shift Commander. The Shift Commander will assign it to the sector car for service. If it is an out of town residence, dispatch should notify the appropriate police department. **[74.1.3 b, c]**
- ii) If the warrant is unable to be served, the warrant will still be available in the WMS system and we will have a record in CAD/PAMET showing we were aware of the warrant, but were unable to serve it. **[74.1.3 c]**
- iii) All employees have access to CJIS/Single Sign-On allowing viewing or printing of any warrant at any time.
- iv) The Court Prosecutor will maintain a file folder for each person who is the subject of a WMS warrant resulting from court activity generated by the Braintree Police Department in Records. **[74.1.3 c]**

d) NCIC Warrants

- i) Braintree Police Department warrants listed in the WMS system may be entered into the NCIC system. They will remain active until cancelled by a member of our department. **[74.1.3 a]**

e) CJIS Warrants

- i) Braintree Police Department may enter CJIS Temporary warrants into the CJIS system. This occurs when court is closed and a clerk magistrate approves the arrest warrant. Those warrants are valid for only 48 hours or until court opens. They shall be stored in a folder in the dispatch area. **[74.1.3 a]**

f) Arresting on a warrant from other agencies

- i) An active entry in WMS constitutes a confirmation that the warrant is valid. **[74.1.3 d]**
- ii) All warrants from CJIS or NCIC must be confirmed before any action is taken on the warrant. **[74.1.3 b, d]**
- iii) Dispatchers shall transmit a "Hit Confirmation Message (YQ) for all extraditable out-of-state warrants which are received as a result of an inquiry. **[74.1.3 d]**

- iv) A person who is named in an out-of-state warrant may not be arrested in Massachusetts on that warrant. A warrantless arrest shall be made pursuant to M.G.L. 276. §20B, Fugitive from Justice.

g) BPD warrants executed out-of-state

- i) Massachusetts Police Departments may enter extraditable warrants into the NCIC system with the approval of the District Attorney or at the direction of the Trial Court. **[74.1.3 a]**
- ii) No authorization is required from the District Attorney for NOEX (no extradition) warrant entries. NOEX warrants are used to provide officer safety notice to inquiring departments.
- iii) When a printed CJIS notice is received indicating that a warrant has been issued, the dispatcher or station officer should print a copy of the warrant and give it to the Shift Commander. The Shift Commander will assign it to the sector car for service. The Shift Commander will make the determination whether a warrant requires an officer safety notice and if so will instruct the dispatcher or station officer to enter the warrant into NCIC noex.
- iv) Warrants in NCIC are seen by out-of-state departments conducting record checks.
- v) If an out-of-state department contacts us about our extraditable warrant, we are required to confirm the warrant and discuss arrangements for extradition and transportation. **[74.1.3 d]**
- vi) If an out-of-state department arrests a person based on our NCIC warrant, the dispatcher or station officer shall immediately cancel the warrant. **[74.1.3 e]**

h) Warrant Checks

- i) All persons brought to the police station under arrest, in protective custody, or for questioning, or persons applying for licensing (L.T.C., F.I.D. cards, etc.), should be run for outstanding arrest warrants.
- ii) Such checks should be done not only to flag warrants, but also to enable the department to update master records information.

i) Warning Letters

- i) The courts or BPD from time to time may mail out warning letters to persons for whom warrants are outstanding.

5) Execution of Arrest Warrants within Jurisdiction [74.3.1]

a) Warrant Arrests

- i) Arrest warrants shall be executed only by sworn officers. [74.3.1] [74.3.2]
- ii) An officer should not make an arrest on a warrant unless the status of the warrant is confirmed before making the arrest. [74.1.3 d]

b) Warrant Service [74.3.1]

- i) Officers shall report all attempts to serve an arrest warrant to the dispatcher, who will create a log entry for such attempt.
- ii) Each attempt, whether or not successful, shall be entered into the Records Management System (CAD/PAMET).
- iii) All persons arrested pursuant to an arrest warrant shall be processed in accordance with the department policy on ***Detainee Booking and Processing***.
- iv) An officer serving an arrest warrant shall make the proper return by signing and dating the warrant for return to the court.
- v) The Shift Commander shall ensure that the warrant is cancelled (NCIC) or located (CJIS/WMS). [74.1.3 e]

c) Considerations

- i) Warrants that are not served will remain in the WMS file until removed by the court.
- ii) If the accused is encountered or apprehended at a later date, an arrest may be made for that warrant.
- iii) No time limit is imposed on the validity of an arrest warrant.

- (1) However, a delay of service of a warrant on charges for which a defendant has not been arraigned could result in a speedy trial issue. Note: An eight and one-half year delay was too long when the delay was due to government negligence.<sup>i</sup>
- (2) There cannot be unreasonable delay in service of the warrant.<sup>ii</sup> There are no Massachusetts cases which define "unreasonable delay."
- (3) A warrant must be confirmed as valid prior to making the arrest.<sup>iii</sup>

## 6) Criminal Process **[74.3.1]**

- a) Any Warrant, Search Warrants, Summons, or Subpoena which is intended to be served on a Town of Braintree resident, whether issued by the court on behalf of our Department or for another agency, shall only be executed by sworn personnel and shall be handled in the following manner: **[74.3.1]**
  - i) Upon receipt or notification of any arrest warrant, search warrant, summons or subpoena, the court prosecutor, officer or dispatcher who received the legal process will document it in the Record Management System (CAD/PAMET) with all applicable information, including: **[74.3.1]**
    - (1) Date and time received,
    - (2) Person named in the document,
    - (3) Identify the issuing department or court, and
    - (4) Warrant, summons, docket or subpoena number.
  - ii) Search warrants will be documented by the receiving officer in the same manner as outlined above upon receipt or execution of the search warrant.
  - iii) Upon receipt of the document to be served, The Shift Commander will assign an officer(s) to attempt service. The officer assigned will document all service attempts of any legal process by having dispatch make an entry in the Records Management System (CAD/PAMET). This entry will note all applicable information, including:
    - (1) Date and time service was attempted/executed; **[74.1.2 a]**
    - (2) Name of officers(s) executing/attempting service; **[74.1.2 b]**
    - (3) Name of person on whom legal process was served/executed; **[74.1.2 c]**
    - (4) Warrant, summons, docket or subpoena number;
    - (5) Method of service/reason for non-service; and **[74.1.2 d]**
    - (6) Address of service/attempt. **[74.1.2 e]**

- iv) Upon execution of the process, the officer who serves it shall completely fill out the “return of service” required by the court. This will be forwarded to the Shift Commander for Patrol processes or the Detective Supervisor for Detective processes for their review.
- v) If a member of our agency arrests someone for a WMS warrant, our agency must place a ‘locate’ against all WMS warrants for that arrestee.  
**[74.1.3 e]**
- vi) The Shift Commander should ensure a copy of the warrant arrest be placed in the top drawer file cabinet for the Court Prosecutor.
- vii) In the event an officer is unable to serve the process he/she shall take one of the following actions prior to returning the process to the Shift Commander;
  - (1) If no one is at home, hold on to the process and try again if time permits at a later time during the shift;
  - (2) At the end of the shift he/she shall forward the document to the Shift Commander.
- viii) Upon receipt of process that has not been served by an assigned officer the Shift Commander who originally issued it should take one of the following actions:
  - (1) If the officer assigned to serve the process was unable to do so because no one was at home at the within named address, the Shift Commander should notify the oncoming Shift Commander that service of the process is to be reassigned;
  - (2) If any of the officers assigned the service of the process has indicated that service is impossible then the Shift Commander should forward the service to the Court Prosecutor to return the document to court.

7) Warrants of Apprehension **[74.2.1]**

- a) Warrants of apprehension shall be promptly executed when the subject can be immediately brought before a judge of the district court.<sup>iv</sup>

8) Civil Process **[74.2.1]**

- a) There are several types of Civil Processes which may be served by sworn police officers in the Commonwealth of Massachusetts. The following is a list of some of those Processes:

- i) Restraining Order;
  - ii) Harassment Prevention Order;
  - iii) Extreme Risk Protection Order;
  - iv) Warrant of Apprehension,;
  - v) Involuntary Committal Orders (Section 12);
  - vi) Subpoena; and
  - vii) Other Protective Orders.
- b) When serving a Warrant of Apprehension, every effort should be made to have at least two officers present while serving. Prior to service, the officer handling the paperwork will ensure that the date on the warrant is current. The individual should be brought to court without delay. **[74.2.1]**
- c) When serving Section 12's (M.G.L. c. 123, §12A) for mental health, a minimum of two officers should be present. In addition, an ambulance should be available for transport. The Shift Commander should ensure that all necessary paperwork is filled out and current. **[74.2.1]**

#### 9) Service Within Department's Jurisdiction

- a) The process may be mailed, served in hand, or left at the last and usual place of residence.
- b) When the process is served, the return of service shall be filled out and signed by the serving officer and the process forwarded to Shift Commander who shall have the dispatcher update the record in Record Management System (CAD/PAMET). The return of service shall be forwarded to the court of issue.
- c) If the process cannot be served for any reason such as no longer at address or no such person:
  - i) The officer attempting service shall notify the dispatcher who will annotate same in the Records Management System (CAD/PAMET).
  - ii) The officer will complete the appropriate paperwork and return it to Court Prosecutor for return to the court of issue.
- d) A summons or other legal process for a juvenile shall be served to the parent(s) or guardian of the juvenile or both the juvenile and the parent(s) or guardian.

#### 10) Service Outside Department's Jurisdiction

- a) If processes are mailed by officers to the subject's last and usual place of residence an entry shall be made in the Record Management System (CAD/PAMET) indicating that the process was mailed. The name of the officer mailing the service shall be recorded as the officer making the return of service and "mailed" indicated as the method of service. If processes are mailed by records personnel a copy of the signed (signature of record personnel) and dated process is put in the original file.
- b) If circumstances require the process to be delivered in hand, the process shall be preferably faxed or mailed (if no fax) to the police department where the subject is located, so that it may be served in hand. If a faxed process is not returned by the end of the shift, a follow-up shall be undertaken by the officer who faxed and if necessary is should be passed along to the next shift until a service is confirmed.
- c) When the return of service is returned to this department from another police jurisdiction making service, the date of service and the department making the service shall be recorded in the Record Management System (CAD/PAMET). The return of service shall then be forwarded to the court of issue.

#### 11) Abuse and Harassment Orders **[74.2.1]**

- a) Attention by all concerned is necessary upon receipt of a Restraining Order or Harassment Order because of the time factor of the restraining period. Immediate service effort is necessary in order to determine the whereabouts of the within named subject. Officers will be required to be familiar with their duties and responsibilities under C209A, and shall report any service problems forthwith to the Shift Commander so that this service can be accomplished as quickly as possible.
- b) Abuse Orders refer to restraining orders, no contact orders and orders to vacate issued under Mass General Laws:
  - i) Attention should be paid to such court orders to determine:
    - (1) Effective date;
    - (2) Expiration date;
    - (3) Due date for return to court;
    - (4) Any specific instructions as to where or when the orders are to be served or enforced;
    - (5) Information regarding the person(s) named as plaintiff(s);
    - (6) Protected parties; and
    - (7) Other details.

ii) Receipt of Order: When Abuse Orders are received, the following information shall be documented

- (1) Name and address of the defendant;
- (2) Department or court issuing the order;
- (3) LTC determination;
- (4) Warrants, if any;
- (5) Date of court appearance; and
- (6) If mailed or faxed to another jurisdiction, name of department and date mailed or faxed.

iii) Service of Order

- (1) Abuse orders shall be promptly served and the return of service returned to the issuing court.<sup>v</sup>
- (2) The officer assigned to serve an abuse order shall make an attempt(s) to serve the order. Abuse orders must be served in hand unless otherwise authorized by the issuing court.
- (3) If the address is incorrect, the officer shall attempt to obtain a new address and make the service. If the subject is located in another jurisdiction, the order shall be faxed or delivered to that jurisdiction for service.
- (4) Officers who are unsuccessful in serving an abuse order shall, prior to the end of their shift, turn the abuse order into the Shift Commander for further attempts at service.
- (5) Every attempt to serve an abuse order, whether successful or not, shall be documented in the department Records Management System (CAD/PAMET).

iv) Return of Service

- (1) When an abuse order has been served, the officer making service shall make the return on the abuse order.
- (2) The dispatcher or Station Officer on duty shall note in the Records Management System (CAD/PAMET) the date of service and the officer making service. The order shall be returned to the court of issue.

## 12) Forfeiture of Property

- a) When serving legal process, criminal or civil, any property or evidence received or taken by the officer shall be entered into the property screen and secured in an evidence locker.

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<sup>i</sup> *Doggett v. U.S.*, 505 U.S. 647 (1992).

<sup>ii</sup> M.G.L. c. 268, §§22, 23.

<sup>iii</sup> *Com. v. Tisserand*, 5 Mass. App. 383, 363 N.E.2d 530 (1977).

<sup>iv</sup> M.G.L. c. 123, §35.

<sup>v</sup> M.G.L. c. 209A, §7.