



# Fitchburg State University Police Department

<b>Subject: ARREST ALTERNATIVES</b> (DISCRETION AND STUDENT REFERRAL)	
Reference: <b>IACLEA:</b> 2.2.3; 13.2.6 <b>MPAC:</b> 1.2.6,1.2.7	
<b>Effective Date:</b> December 16, 2019	<b>Review Date:</b> December 15,2021
<b>By Order of:</b> Michael J. Cloutier, Chief of Police	

## General Order

# 2.2.3

**PURPOSE:**

The purpose of this order is to set forth guidelines concerning the use of discretion by sworn personnel of the Fitchburg State University Police Department and to define the authority, guidelines, and circumstances in which said personnel should exercise alternatives to arrest, referral, and pre-arraignment confinement, as well as the granting of pretrial release.

**POLICY:**

It is the policy of the Fitchburg State University Police Department to offer sworn members of the department the ability to use discretion in certain situations to the extent that an alternative to an arrest may be best employed to resolve the situation. Warnings, referrals, informal resolutions, summonses, and citations shall be considered approved alternatives to arrest.

**Procedure**

Although police officers must always be guided by the intent and purpose of the law, there are limited circumstances in the discretion of the officer involved when the public interest would be better served by not making an arrest, even though there is a legal justification for such action. Alternatives to arrest must respect the rights of the parties involved and must accomplish a police purpose.

**I. DISCRETION**

- A. Definition - Discretion means a power or right conferred upon police officers to act officially in certain circumstances according to the dictates of their judgment and conscience, uncontrolled by the judgment and consciences of others.

- B. General - The use of discretion by police officers in the course of their duties is often misunderstood. Equal enforcement of the law is vitally important if public confidence in the police is to be expected.
- C. However, police officers must not be held to such a high degree of equal enforcement that discretion would not be allowed. The result would be harsh, unrelenting enforcement by police officers who are left without the ability to use common sense and compassion in the administration of justice.
- D. Limits of Discretion - A police officer's discretion is limited to some extent by State and Federal Laws, department training, Department General Orders, or other directives that may mandate courses of action the officer may take

## II. ALTERNATIVE TO ARRESTS

- A. It is the department policy that decisions for officers to arrest or not arrest suspects should be made after consideration of the circumstances that may include, but are not limited to:
  - 1. Whether arrests would cause greater risks of harm to the public, than not arresting offenders;
  - 2. Whether arrests would cause harm to offenders who pose no threat of danger to the public; and
  - 3. The seriousness of the crimes involved.
  - 4. If the arrestable action(s) will continue if an arrest was not made.
- B. Officers may seek alternatives to physical arrest when hazards to the community, victims, or suspects are not likely to result. Officers may use discretion within the guidelines of agency standards, statutory and case law, and to some extent, prevailing community standards.
  - 1. Officers are encouraged to make necessary or appropriate referrals to public and private agencies that can provide services to address or solve underlying problems that cause incidents. These agencies include but are not limited to:
    - a. Fitchburg State University Offices and Departments:
      - 1) Student Conduct / Community Standards
      - 2) CARE Team (Community Assessment and Risk Evaluation)
      - 3) BIRT Team (Bias Incident Response Team)
      - 4) Human Resource
      - 5) Title IX
    - b. UMass Hospital Leominster
    - c. Department of Probation who may be responsible for the supervision of the involved party.

2. Officers should refer students to the Fitchburg State University Office of Student Conduct / Community Standards for any offense whether or not it is prosecuted criminally if it is a violation of state law, and/or a violation of student conduct regulations. See **Section III Referral to Student Conduct** below.
    - a. Officers are encouraged to utilize the Office of Student Conduct and Mediation in those criminal matters which are considered minor (i.e., 1<sup>st</sup> alcohol offense, 1<sup>st</sup> minor narcotics offense). While officers are given discretion, they should consider the impact of a criminal record of the offender versus the nature of the offense. The nature of the offense should play a major part in the determination of which option is utilized.
  3. Officers will have the discretion to summons for criminal motor vehicle offenses in accordance with Massachusetts General Law Chapter 90, except when the particular offense is more effectively prosecuted by arresting the suspect. i.e. Operating Under the Influence (alcohol/drugs) M.G.L. c.90 s.24.
  4. If the suspect is not placed under arrest for a criminal motor vehicle offense, officers must ensure that the suspect will not continue to violate the law, e.g., operating after suspension.
- C. Alternatives to arrest may include, but are not limited to, the following:
1. **Citations and Summons:** These are enforcement procedures that constitute alternatives to arrest solely by the fact that they may be used to preclude physical custody or are less severe enforcement options. Citations may also be used as an enforcement option for motor vehicle and marijuana violations.
  2. **Warnings:** Police officers may exercise discretion in minor traffic, parking, and statute/ordinance violations by delivering oral and/or written warnings. Police officers are reminded that voluntary compliance is the goal of minor enforcement actions.
  3. **Referrals (In Lieu of Formal Action):** Referrals may be made to other departmental components, to other police or governmental agencies, to social service agencies, to the University's Student Conduct Office, or to other organizations better suited to address and to resolve specific problem(s).
  4. **Informal Resolutions:** Often, the interests of the parties involved are satisfied better by a mediated settlement on the scene rather than a formal prosecution in court. Resolutions of this nature should be by agreement with the affected parties and should not be employed as an excuse for not affecting an arrest. As a rule, informal resolutions should be documented by an Incident Report to record the police officer's motivation for using this particular alternative to arrest.
    - a. In cases involving students and or employees, documentation of the informal resolution can serve to address any history unknown to the department at the time of the encounter. Documentation also allows members of the University CARE Team to address other underlying issues that may have led to the police encounter.

- b. In cases involving juveniles, it is acceptable, and at times recommended, to release a juvenile to their parents or guardian.
  - c. Transient persons who need shelter and food may be better served being referred to social service organizations rather than taken into custody for minor or non-violent offenses.
  - d. A decision not to arrest when there are grounds for arrest is, at times, considered good law enforcement practice. Public empathy can be enhanced by the careful use of discretion and potential ill will can be avoided.
5. **Circumstances where alternatives to arrest may be appropriate** include the following:
- a. When an arrest could aggravate community conflict or possibly precipitate a serious disorder.
  - b. When there is a greater priority to respond to a more serious crime or to an urgent public emergency.
  - c. In “quality of life” issues and minor disturbances of the peace where no serious crime has been committed and the officer can successfully act as a mediator.
  - d. In minor juvenile offenses where a warning and a talk with the parents can avoid a court appearance. (**See GO 8.4.1 Juvenile Operations**)
  - e. In other minor offenses where a summons can effectively accomplish the intended purpose.
  - f. Minor motor vehicle offenses.
6. Should questions arise concerning a particular situation, the police officer involved should confer with a supervisor.

IACLEA 2.2.3

### III. REFERRAL TO STUDENT CONDUCT

- A. **Referrals by the Fitchburg State University Police Department to the Student Conduct or Human Resources** office are key to ensuring a timely and appropriate institutional response to violations of law or university policy. Administrative disciplinary bodies typically have the authority to remove students or employees from the campus for policy violations and therefore play an important role in campus safety. Administrative referrals should normally not be delayed in lieu of criminal proceedings.

In instances, where other members of the university community in their official capacity submit documentation for an incident that they jointly responded to with the University Police Department an officer should still complete a report. An officer's written statement, in the form of a referral report, stands as a crucial document for assisting with the administrative hearing, provides an impartial account of what occurred, and can assist in any future dispute.

1. Each Arrest Report (AR) that is completed should be marked with the Record Management System (RMS) as Judicial Referral.
2. The Detective Sergeant, or a designee, will review each referral to ensure that it is complete and contains the necessary information. S/He will also be the liaison with those university departments and offices as a case is being reviewed and may require additional information of follow-up by FSUPD  
*IACLEA 13.2.6 a*
3. Referrals can be made to one or more of the following departments or offices on campus:
  - a. Student Conduct / Community Standards
  - b. CARE Team (Community Assessment and Risk Evaluation)
  - c. BIRT Team (Bias Incident Response Team)
  - d. Human Resource
  - e. Title IX*IACLEA 13.2.6 c*
4. The following incidents should be forwarded to the Dean of Student's Office as a Judicial Referral:
  - a. Any violations of the Student Handbook;
  - b. Any violations of the University Code of Conduct;
  - c. Any violations of either State or local law;
  - d. Students with behavioral issues;*IACLEA 13.2.6 b*
5. The following incidents should be forwarded to the Office of Human Resources as a Judicial Referral:
  - a. Any violations of the Employee Handbook;
  - b. Any violations of the University Code of Conduct;
  - c. Any violation of either State or local law;
  - d. Employees with behavioral issues.*IACLEA 13.2.6 b*
6. Violations of Title IX matters should be forwarded in the same manner to the Office of Title IX compliance as well as to either the Director of Community Standards or Human Resources.  
*IACLEA 13.2.6 b*
7. Referral reports should include the following information:
  - a. Name of the alleged suspect(s).
    - 1) Indicating whether they are resident students, commuter students, employees, etc.
  - b. Name of the reported victim(s).
    - 1) Indicating whether they are resident students, commuter students, employees, etc.
  - c. Articulated pertinent facts

- 1) How was it reported
  - 2) Who was involved
  - 3) Action Taken
  - 4) Resources provided
  - 5) Follow up requested
- d. Photos of evidence
  - e. Witness statements
  - f. Relevant forms
- IACLEA 13.2.6 d*
8. Command Staff shall be copied on all emails for any referrals.
    - a. Email should contain redacted reports free of SSN and DOBs.
    - b. Email should also be marked as Confidential in the subject line, when dealing with confidential information such as Domestic, Sexual Offenses, or Juveniles.
  9. Referrals should be submitted to Student Conduct on the next business day following an incident.
    - a. If situation may warrant immediate intervention by the institution a copy of the report should be forwarded as soon as completed

## **B. Student Conduct Process**

The goal of the student conduct system is to support the educational mission of the university by ensuring that an atmosphere of acceptance, curiosity, and integrity is maintained on the campus.

1. **Overview:** Student Affairs receives a report (Housing, CARE Team, UPD, etc.)
  - a. The case manager then decides who is best to address the matter.
  - b. Assigned to hearing officer for disposition
  - c. Assigned to hearing officer for further review
  - d. Assigned to the CARE Team for review
  - e. Assigned for alternative dispute resolution
  - f. Closed- no further action taken
2. **The Hearing Officer** is assigned to investigate the report and/or hear the case based on the origin of the report and the nature of the alleged violation. The investigation may refer the case for a hearing, alternative dispute resolution (informal resolution), and/or conclude that no further action is warranted.
3. If the matter is referred for a hearing, the hearing officer feels that a possible violation may have occurred based on the information provided (probable cause), s/he will arrange to meet with the student(s)/student organization, a hearing, to discuss the situation. This meeting may result in:
  - a. The student/student organization being found not responsible;
  - b. The student/student organization being found responsible;

- c. The imposition of Sanctions;
  - d. An FYI/No-Finding being entered.
4. **Philosophy of Sanctioning:** The Office of Student Affairs takes an educational approach to all conduct cases, not a punitive one. When students are found responsible for the allegations, it is an opportunity to educate the student/student organization on the effects of his/her/their behavior and to affect a change in the student's behavior for the future.
  5. **Sanctions:** Any one or more of the following sanctions may be imposed, deferred, or held in abeyance by the administrative hearing officer or conduct board. A student shall not be considered in good conduct standing while they are on any type of conduct probationary status.
  6. Officers should be mindful, that as in criminal prosecutions, officers should not make any recommendation for disposition. Any recommendation for university sanctions should be by the Chief of Police or designee.
  7. All reports should be forwarded to the appropriate department and or office on campus by the next business day. Although the criminal process and the university's administrative process are separate, a report may be held back from a referral in limited situations, so to not compromise an ongoing investigation. It will be at the discretion of the Chief of Police which reports are held back, who may consult with the department where the report would otherwise be referred, as to the base course of action and what information needs to be shared.

IACLEA 13.2.6 e

Approval:

  
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Chief of Police

12/15/21  
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Date