



RISK MANAGEMENT INFORMATION
MISDEMEANOR ARRESTS AND RELATED MYSTERIES

**This information was originally developed in conjunction with the League of Minnesota Cities Insurance Trust's PATROL program (Police Accredited TRaining OnLine). For information on PATROL, contact Laura Honeck at patrol@lmc.org or 651-281-1280. For questions about the material in this memo, contact Ann Gergen at agergen@lmc.org or 651-281-1291.*

Introduction:

This course has taken an in-depth look at misdemeanor arrests and searches incident to arrest. Peace officers need to be aware of the law in these areas for two reasons. First, officers have civil liability for making unlawful arrests.¹ Knowing when you have and don't have the authority to make a custodial arrest reduces the potential for liability. Second, officers have the legal authority to search a person incident to arrest when they make a full custodial arrest.² A search incident to arrest may uncover evidence of other crimes.

Basic concepts:

Since different agencies may use the term "arrest" differently, it is necessary to establish the legal definition of an "arrest" used by Minnesota courts. Legally speaking, an arrest means taking someone into custody for purposes of transporting them to a jail, sheriff's office, or police station, even if they will be released shortly after getting there.³ However, officers need to be aware that even if they don't intend to take someone to the station, the arrestee may still be in custody for purposes of *Miranda*.⁴

The presence requirement:

In general, the misdemeanor arrest rule requires a crime to be committed in an officer's presence before an officer can make a misdemeanor or gross misdemeanor arrest.⁵ Presence means that the officer perceived the offense through his or her senses, usually through direct observation.⁶

¹ *Walker v. City of Pine Bluff*, 414 F.3d 989, 993 (8th Cir. 2005).

² *State v. Bauman*, 586 N.W.2d 416, 420 (Minn. Ct. App. 1999).

³ See *U.S. v. Hrasky*, 453 F.3d 1099, 1102 (8th Cir. 2006) (quoting *U.S. v. Robinson*, 414 U.S. 218, 235 (1973)); See also MINN. R. CRIM. P. 6.01(1)(b) (person arrested for misdemeanor shall be released on citation from jail or police station under certain circumstances).

⁴ *State v. Heden*, 719 N.W.2d 689, 695 (Minn. 2006) (quoting *State v. Staats*, 658 N.W.2d 207, 211 (Minn. 2003)).

⁵ *State v. Jensen*, 351 N.W.2d 29, 31-32 (Minn. Ct. App. 1984); Minn. Stat. § 629.34, subd. 1(c)(1) (2006).

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Consult your attorney for advice concerning specific situations.

The purpose of the presence requirement is to prevent people from being arrested for minor offenses based on information provided by witnesses, victims, or informants.⁷ However, there is a very important exception to the general presence rule: the police team exception.

The police team exception:

Under the police team exception, officers can rely on information provided by other officers when making an arrest for a misdemeanor or gross misdemeanor.⁸ In other words, officers are viewed as a single entity for presence requirement purposes.⁹ For example, if an offense was committed in the presence of Officer A, who then relays that information to Officer B, Officer B can legally make an arrest as if the offense was committed in his presence.¹⁰

The completed misdemeanor rule:

There is an important timing aspect that is implicit in the presence requirement – if an officer was not there at the time the crime was committed, the presence requirement is not satisfied.¹¹ Under the completed misdemeanor rule, officers cannot make an arrest – or an investigatory stop – for a completed misdemeanor or gross misdemeanor offense that is days old.¹²

However, courts have also carved out an exception for crimes that have been completed “in the very recent past.”¹³ When an officer arrives on the scene within moments after the crime was completed, courts still give officers the authority to stop the individuals who committed the crime and make an arrest.¹⁴

Minnesota courts have yet to precisely decide the duration of “the very recent past exception,” but do offer some guidelines. For example, in one case, the court held that “very recent past” rule would allow an arrest for a misdemeanor one hour after the offense.¹⁵

Minnesota Rule of Criminal Procedure Rule 6.01:

Under Minnesota law, officers have authority under to make custodial arrests for felonies and gross misdemeanors.¹⁶ Additionally, Rule 6.01 of the Rules of Criminal Procedure defines three situations when officers can make custodial arrests for misdemeanors. First, an officer can make a

⁶ *State, Lake Minnetonka Conservation District v. Horner*, 617 N.W.2d 789, 795 (Minn. 2000).

⁷ *State v. Jensen*, 351 N.W.2d 29, 32 (Minn. Ct. App. 1984).

⁸ *Henry v. Commissioner of Public Safety*, 357 N.W.2d 121, 122 (Minn. Ct. App. 1984).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *See State v. Pitt*, No. A03-1908, 2004 WL 23812156 at *5 (Minn. Ct. App. Oct. 20, 2004).

¹² *See Id.*; *see also Blaisdell v. Comm’r of Public Safety*, 375 N.W. 880, 884-85 (Minn. Ct. App. 1985).

¹³ *State v. Stich*, 399 N.W.2d 198, 199 (Minn. Ct. App. 1987).

¹⁴ *Id.*

¹⁵ *State v. Angeski*, No. A05-105, 2005 WL 3289447 (Minn. Ct. App. Dec. 6, 2005)

¹⁶ MINN. R. CR. P. 6.01

custodial arrest if they feel that an arrest is necessary to prevent to prevent bodily harm.¹⁷ For example, a court found that an officer was justified in making a custodial arrest of a suspect that officers found peering into a terrified neighbor's window at night.¹⁸

Additionally if an officer feels that the suspect will engage in further misconduct, they can make a full custodial arrest.¹⁹ For example, the Minnesota Court of Appeals held that officers were allowed to make a full custodial arrest when they arrested a woman for disorderly conduct after repeated requests that she leave a school administration building.²⁰ Finally, officers can make a full custodial arrest if there is a substantial likelihood that the accused will not respond to a citation.²¹ For example, a court held that officers were allowed to make a full custodial arrest of a suspect with multiple failure to appears.²²

It is very important that officers properly apply the Rule 6.01, because courts routinely refer to this rule in deciding whether an officer had the authority to conduct a search incident to arrest.²³ If an officer does not have authority under the rules to make a custodial arrest, then the officer cannot conduct a search incident to arrest.²⁴ If a court finds that an officer did not have proper authority to search under Rule 6.01, any evidence that stems from the arrest and subsequent search will likely be suppressed.²⁵

Remember, when officers make a full custodial arrest for a misdemeanor crime, the prosecution has two burdens – proving guilt *and* that the arrest was proper under Rule 6.01. Therefore, it is crucial for officers to fully document their reasons for making a custodial arrest.

New developments on searches incident to arrest – the *Bauman* case:

Under the *Bauman* rule, officers do not need to *actually* make a custodial arrest in order to conduct a search incident to arrest.²⁶ It doesn't matter whether or not officers end up taking the person to the station or to jail as long as they had the lawful authority to do so.²⁷

However, officers should be careful when applying the *Bauman* rule to simple misdemeanors. While officers have the automatic authority to make full custodial arrests for felonies and gross misdemeanors, attempting to apply this rule to arrests for simple misdemeanors is likely to lead to problems. It would difficult for the prosecution to argue that officers believed a defendant posed a risk to others, searched him, but decided not to take the suspect to jail.

¹⁷ *State v. Soules*, No. A04-2325, 2005 WL 2077365 (Minn. Ct. App. Aug. 30, 2005)

¹⁸ *Id.*

¹⁹ *In re the Welfare of T.L.S.*, 713 N.W.2d 877, 881-82 (Minn. Ct. App. 2006).

²⁰ *Id.*

²¹ *State v. Brown*, 345 N.W.2d 233 (Minn. 1984) (cited with approval in *State v. Varnado*, 582 N.W.2d 886, 893 (Minn. 1998)).

²² *Id.*

²³ *See, e.g., State v. Powell*, No. C6-02-1498, 2003 WL 139431 (Minn. Ct. App. Jan. 21, 2003).

²⁴ *See State v. Varnado*, 582 N.W.2d 886 (Minn. 1998).

²⁵ *See Id.*

²⁶ *State v. Bauman*, 586 N.W.2d 416, 421-22 (Minn. Ct. App. 1999)

²⁷ *Id.* at 422.

Conclusion:

Prosecutors and defense lawyers have waged many battles over officers authority to make full custodial arrests for misdemeanor offenses. For this reason, officers need know when they have the authority to do so. Knowing when they have the authority will allow officers to conduct searches they otherwise might not conduct and avoid the liability that comes with making an unlawful arrest.

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