



RISK MANAGEMENT INFORMATION  
**MISDEMEANOR ARRESTS – SELECTED TOPICS**

*\*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 Tracie Chamberlin at tchamberlin@lmc.org or 651-281-1210.*

**Introduction:**

Misdemeanor arrests are one of the most common aspects of police work. But the laws and rules controlling misdemeanor arrests are always changing and can be complicated. This lesson of PATROL focuses on both the requirements for making misdemeanor arrests and recent changes to the law that officers should be aware of.

**The presence requirement:**

The most basic rule for making misdemeanor arrests is the “presence requirement” – the rule that officers can make a custodial misdemeanor arrest only if the offense occurs in their presence.<sup>1</sup> The presence requirement applies to all non-felony offenses, and includes both simple misdemeanors and gross misdemeanors.<sup>2</sup> However, a number of statutory exceptions exist that cover crimes such as domestic assault or DWIs.<sup>3</sup> In these special instances, the presence requirement has been waived and officers can, under certain circumstances, make custodial arrests for these crimes even if they were not committed in the officer’s presence.<sup>4</sup>

**The police team exception:**

The “police team” exception is an exception to the presence requirement that allows one officer to make a misdemeanor arrest based on information supplied by another officer.<sup>5</sup> The police team exception makes it possible for officers to work together and share their collection observations and knowledge to satisfy the presence requirement.<sup>6</sup> For the exception to apply, officers need to

<sup>1</sup> *City of St. Paul v. Webb*, 256 Minn 210, 215, 97 N.W. 638, 641 (1959).

<sup>2</sup> *Id.*

<sup>3</sup> Minn.Stat. § 169.121, subd. 1(a) (DWI); Minn.Stat. § 629.341, subd. 14(b) (Domestic Abuse).

<sup>4</sup> *Id.*

<sup>5</sup> *State v. Jensen*, 351 N.W.2d 29, 32 (Minn. Ct. App. 1984); *State v. Mikkalson*, 2008 WL 5215866 \*4 (Minn. Ct. App. Dec. 16, 2008).

<sup>6</sup> *Jensen*, 351 N.W.2d at 32.

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Consult your attorney for advice concerning specific situations.

ensure that they are communicating detailed and factual information to each other.<sup>7</sup> Failing to do could result in a court deeming the arrest to be illegal.<sup>8</sup>

### **The completed misdemeanor rule:**

The “completed misdemeanor” rule prohibits an officer from arresting a suspect for a non-felony offense that was completed long before the officer arrived.<sup>9</sup> However, courts have not drawn a clear line as to when exactly a crime is considered to be “completed” under the rule.<sup>10</sup> For example, courts have held that officers can still make misdemeanor custodial arrests when the crime occurred in the “very recent past.”<sup>11</sup> A recent unpublished Minnesota Court of Appeals decision suggests that the “very recent past” means an hour or less.<sup>12</sup> However, it should be noted that the case was unpublished and other courts are not bound to follow it.

### **Hot pursuit:**

The “hot pursuit” doctrine allows peace officers to make a warrantless entry into a private premise when pursuing a suspect for a crime committed in public.<sup>13</sup> The hot pursuit exception reflects the idea that a person should not be able to defeat an arrest that was *started in motion* in a public place by simply running to a private place.<sup>14</sup>

Whether or not an officer can use the “hot pursuit” exception to justify entering someone’s private home for a misdemeanor crime depends on the “gravity of the offense.”<sup>15</sup> Courts have held that minor traffic offenses *do not* justify hot pursuit into someone’s home.<sup>16</sup> However, if an officer has probable cause that a person has committed a DWI, or is fleeing a police officer on foot, the Minnesota Court of Appeals has held that officers are justified in making a warrantless entry in hot pursuit.<sup>17</sup>

### **Rule 6.01(a) and custodial arrests:**

Peace officers always have the authority to make a custodial arrest for *gross misdemeanors*, but Minnesota Rule of Civil Procedure 6.01(a) governs when peace officers can make a custodial

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<sup>7</sup> *State v. Conaway*, 319 N.W.2d 35, 40 (Minn. 1982).

<sup>8</sup> *Id.* (“Should, however, the police network fail to have sufficient collective information to establish probable cause...then the arrest is illegal.”)

<sup>9</sup> *Blaisdell v. Comm’r of Pub. Safety*, 375 N.W.2d 880 (Minn. Ct. App. 1985) (cited with approval in *State v. Dobinski*, 2007 WL 738688 (Minn. Ct. App. Mar. 13, 2007).

<sup>10</sup> Compare *Blaisdell*, 375 N.W.2d at 882, n.2 with *State v. Angeski*, 2005 WL 3289447 (Minn. Ct. App., Dec. 6, 2005).

<sup>11</sup> *Blaisdell*, 375 N.W.2d at 882 n.2.

<sup>12</sup> *State v. Angeski*, 2005 WL 3289447 (Minn. Ct. App. Dec. 6, 2005).

<sup>13</sup> *State v. Morin*, 736 N.W.2d 691, 696 (Minn. Ct. App. 2007); *State v. Koziol*, 338 N.W.2d 47, 48 (Minn. 1983).

<sup>14</sup> *Morin*, 736 N.W.2d at 696; *Koziol*, 338 N.W.2d at 48.

<sup>15</sup> *Morin*, 736 N.W.2d at 695.

<sup>16</sup> See *Haase v. Comm’r of Pub. Safety*, 679 N.W.2d 743, 747 (Minn. Ct. App. 2004) (crossing center line); *State v. Daniel*, 2009 WL 3077891 (Minn. Ct. App. Dec. 23, 2009) (speeding and rolling through a stop sign).

<sup>17</sup> *State v. Paul*, 548 N.W.2d 260, 266-67 (Minn. 1996) (DWI); *Morin*, 736 N.W.2d at 695 (fleeing officer on foot)

arrest for simple misdemeanors.<sup>18</sup> Rule 6.01 states that officers *shall* issue citations for misdemeanors *unless* it is “reasonably apparent to the officer” that arrest is necessary:

- to prevent bodily harm to the accused or another person;
- to prevent further criminal conduct;
- or that there is a substantial likelihood that the accused will fail to respond to a citation.<sup>19</sup>

Recognizing these criteria is vitally important to law enforcement because lawful custodial arrests allow officers to search arrestees incident to arrest – which often yields further evidence.<sup>20</sup>

However, if a misdemeanor custodial arrest is determined to be invalid under Rule 6.01, courts will not hesitate to suppress any evidence found during the search incident to (the erroneous) arrest.<sup>21</sup>

Tracie Chamberlin 060110

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<sup>18</sup> Minn. R. Crim P. 6.01(a).

<sup>19</sup> *Id.*

<sup>20</sup> *See, e.g., State v. Fila*, 2010 WL 1286702 (Minn. Ct. April 6, 2010) (lawful search incident to arrest for misdemeanor led to discovery of methamphetamine).

<sup>21</sup> *State v. Halverson*, 2005 WL 2850737 (Minn. Ct. App. Nov. 1, 2005) (affirming lower courts suppression of evidence found during a search incident to arrest when the officer lacked authority under Rule 6.01 to make a custodial arrest).