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CHAPTER 10

**Conducting Apprehensions**

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**M**military police must be prepared to take immediate, coordinated action at the scene of a crime. This action sometimes involves apprehension. MP must be familiar with standing operating procedures, laws of apprehension, use of deadly force, handling and custody of evidence, and crime scene protection. In cases involving felony crimes, procedures are prearranged for notifying the USACIDC office and other law enforcement agencies. Prompt investigation can often aid in the swift apprehension of offenders.

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**AUTHORITY TO APPREHEND**

MP and civilian guards or police employed by the Army have the same authority to apprehend. Their authority is derived from the installation commander's inherent authority to maintain order on the installation. AR 600-40 affirms that—

- All members of the military have the ordinary right of private citizens to assist in maintenance of the peace. This includes the right to apprehend offenders. Citizen's arrest power is defined by local law. In exercising this power, care should be taken not to exceed the right granted by law. Service members also must be familiar with the limits imposed upon military personnel by the Posse Comitatus Act.
- The restraint of the person imposed under the provisions of AR 600-40 will not exceed that reasonably necessary, nor extend beyond the time required to dispose of the case by transfer of custody to civil authority or otherwise, under the law.

The laws of most jurisdictions are relatively clear on the arrest authority of peace officers. They are also somewhat obscure on the authority of private individuals. The SJA should be asked to conduct a survey of local laws relating to

citizen's arrest on and off the installation. As the authority for the citizen's arrest is the law of the local jurisdiction and not AR 600-40, any variance between it and AR 600-40 should be made clear to all concerned.

Limited authority exists to apprehend persons not subject to the UCMJ. This does not mean these offenders go unpunished. If administrative measures are not sufficient, action may be taken as provided in AR 27-40, which sets forth procedures for filing complaints with US magistrates.

In applying the law authorizing apprehensions in the capacity of a private person, the following terms must be understood:

- A felony is any offense punishable by death or imprisonment for more than one year.
- A misdemeanor is any offense not a felony.
- A breach of the peace is a public offense where violence or the threat of violence is causing or likely to cause an immediate disturbance of public order. Any act which involves the use of force or the threat of immediate use of force towards the person or property of another is a breach of the peace.

- A private person is any person other than a peace officer or police officer, whether he is or is not a citizen of a particular state or area or resident therein. The authority of a private person to make an apprehension may be broadened under local law.

Generally, it is restricted to felonies and breaches of the peace.

- The phrase “in his presence” means that an act occurs within range of any of the person’s five senses.

## APPREHENSION OF JUVENILES

Juveniles may be apprehended under the conditions set forth in AR 600-40. Upon apprehension, MP will follow normal apprehension procedures and SOPs and will notify juveniles of their legal rights and the offense for which apprehended.

The authority of MP on an installation, as far as juveniles not subject to military law are concerned, is derived from the installation commander’s inherent authority to maintain order on the installation.

The general authority placed upon the installation commander by Army regulations gives that commander broad powers to create policies and publish regulations governing the conduct on post of civilian and dependent juveniles. The installation commander may authorize the MP to make a citizen’s arrest when more serious criminal offenses are committed on a military reservation by a juvenile. Since state laws may vary regarding citizen’s arrest power, the SJA is consulted for guidance.

Immediately upon arrival at the MP station, the offender’s parents or guardians must be notified of the apprehension. Parents or guardians must also be told of the juvenile’s rights and the offense for which apprehended.

The initial interview of a juvenile is normally done by the MP immediately after apprehension. During the initial interview, the parents are read the youth’s legal rights, acquainted with the facts of the suspected offense, and given an appointment to meet with the juvenile officer as soon as is practicable. After the MP duty officer or duty investigator has conducted the initial interview, the youth will be released to the parents. If a major offense such as rape or armed robbery is involved, the initial interview is deferred to the appropriate authorities who have jurisdiction. The juvenile will be released to civil authorities for detention upon completion of the initial interview. See FM 19-20 for more detailed discussion of interviewing juveniles.

Juveniles may be referred to legal state juvenile courts. An MPI may refer a juvenile whom he apprehends in the course of unlawful activity, takes into custody via a complaint, or apprehends as a result of an ongoing investigation.

DA Form 3997 will not list names of juvenile subjects, their parents or sponsors, or the juvenile victims of such offenses as rape or child molestation. Refer to AR 190-45 for detailed procedures. The desk blotter must indicate that the person is a minor with protected identity.

## MEANS OF APPREHENSION

The need to apprehend an offender can occur with little warning. It can happen at any time. Speed in erecting barricades, redeploying patrol units, and performing similar actions are necessary for rapid

apprehension. A plan of action for each type of apprehension is immediately available to the desk sergeant. The plan considers the placement of temporary roadblocks, checkpoints, and methods of alerting patrol

units. It considers decisions on when to use lights and sirens. It considers traffic control in the operations area. It considers location and employment of specialized equipment and communications requirements. It considers evacuation of bystanders and the apprehension of offenders at the scene of the crime. It considers the pursuit of armed suspects and area searches for suspects and witnesses. It considers coordinating with other military, federal, and civil law enforcement agencies. And it considers securing crime scenes for investigators.

### **CORDON**

Patrols converging on the scene of a crime may establish a hasty cordon. Reserve personnel, temporary barricades, and other devices are used by MP to complete the encirclement of the area. All personnel stationed along the cordon prevent entry of unauthorized persons. A separate force is normally used to accomplish the actual apprehension. All cordon MP are given a description of the person, vehicle, or property sought. Action is not delayed to await accurate, detailed descriptions.

Checkpoints and barricades are used when fugitives are known to be proceeding along a definite route or in a definite direction. This helps to block their escape.

### **PURSUIT**

Formal written arrangements between military and local civilian police are required for "hot pursuits." These agreements set forth procedures to be followed and limitations imposed on hot pursuits. These agreements provide for mutual assistance during pursuits. MP must not leave their jurisdiction without written arrangements. Hot pursuit is a direct, continuing pursuit with the immediate probability of apprehension. When apprehended, the same search may be made as is authorized for any lawful apprehension.

Because of the danger involved in high-speed pursuits, specific guidance is provided. MP policy specifies types of offenses that justify

a high-speed pursuit. Pursuit of an armed robbery suspect is normally warranted. The dangerous pursuit of traffic violators is much less justified. Lights and sirens are always used in pursuits. Normally only one vehicle will use a siren. When two emergency vehicles approach the same intersection from different directions, the sound of each siren tends to mask that of the other. This increases the chances of the vehicles colliding.

Emergency and pursuit vehicles are exempt from most traffic regulations. A pursuit is never carried to the extent that the safety of bystanders or the MP is endangered. MP do not operate military vehicles in a reckless manner during pursuits or participate in unlawful pursuits. If necessary, the pursuit is terminated.

Pursuit cutoff speeds are set based on local policy. The same speed on a range road would be excessive in a housing area. Other vehicles are not passed on the right. If a driver does not see the MP vehicle approach until it is very close, he may instinctively pull to the right to allow it to pass. This could cause a serious accident. Intersections must be approached with caution as not everyone hears or heeds warning lights and sirens.

MP never fire weapons from a moving vehicle. Bystanders could be hit with missed shots and ricochets. MP in pursuing vehicles keep the MP station constantly advised of their location and direction of travel. This will allow a multiunit pursuit to be initiated and coordinated.

### **CONTACTS AND STOPS**

An MP or commander must conclude that an apprehension or stop is justified. If not, communication with a person begins with a contact. Contacts and stops are similar actions but have differences. (See Chapter 5.)

MP must stop any person they reasonably suspect has committed, is committing, or is about to commit a crime. This action must be in a place the MP has a right to be. Both

pedestrians and occupants of vehicles can be stopped. If a soldier who is stopped is a suspect and is to be questioned, the MP must read him his Article 31 rights.

The term “reasonable suspicion” cannot be precisely defined. The stop must be based on more than a hunch. The MP must be able to state specific facts for his decision to stop the individual. Factors to be used in determining reasonable suspicion are—

- Personal appearance. Does the person generally fit the description of the person wanted for a known offense? Does he appear to have a recent injury? Does he appear to be under the influence of alcohol or drugs?
- Actions. Is he running away from an actual or possible crime scene? Is he otherwise behaving in a manner to indicate possible criminal conduct?
- Prior knowledge of the person. Does the person have an arrest or conviction record? What is the person’s reputation on post or in the unit?
- Demeanor during contacts. Does the person act evasive or suspicious or knowingly give false information when questioned? This behavior may be a basis for a stop after the initial contact.
- Area of the stop. Is the person near an area known for the commission of certain crimes? Is it a high crime area?
- Time of day. Is it a very late hour? Is it usual for people to be in the area at this time of day? Is it the time of day when criminal activity of the kind suspected usually occurs?
- Police training and experience. Does the MP making the stop have the training to determine if the pattern of conduct sets a *modus operandi* for that type of crime?
- Source of the information. Can sources of information be used to establish probable cause?

## EXECUTION OF AN AUTHORIZATION TO APPREHEND

MP must have a search warrant to enter a third party’s residence to execute an apprehension. When MP are not authorized to apprehend there must be an emergency situation or consent must be given before MP may enter private quarters, bachelor officers’ quarters (BOQ), and bachelor enlisted quarters (BEQ), on or off post, to apprehend. Authorization is not needed to apprehend in barracks; however it is encouraged.

A commander, military judge, or magistrate may authorize an apprehension at private quarters, BOQ, or BEQ. The authorizing official must have jurisdiction to order such apprehension. There is no requirement to have both an apprehension and a search warrant unless the authorizing official has found both probable cause to search and probable cause to apprehend. There is probable cause to apprehend when there are reasonable grounds to believe that an offense has been committed. There also is probable cause to apprehend when it is

believed that the individual to be apprehended has committed the offense. All commissioned officers, warrant officers, petty officers, noncommissioned officers, and DOD police officers and guards may apprehend persons when there is probable cause for such apprehension.

Timeliness of the information is a key factor in proving probable cause. For example, we may have reliable information from an informant who has proven reliable in the past. He obtained his information 30 days ago by personal observation. The fact that the offense was committed 30 days ago and was based on personal observation from a reliable informant gives us probable cause to apprehend. It does not give probable cause to search an area under the exclusive control of the offender. If a small quantity of drugs was seen in the offender’s possession 30 days ago in the company billets, this would not give probable cause to search the billets today. There would be no basis to

believe that the drugs are still present. However, a basis for apprehension and for a search incident to the apprehension still exists. Additionally, both the basis of

knowledge test and reliability test must be satisfied in determining the existence of probable cause.

## SEARCH IN RELATION TO AN APPREHENSION

During an apprehension the suspect is subject to a full search of his person. The search is lawful only if there is probable cause for making the apprehension. Any search has both time and geographical limits. During the apprehension, or immediately afterwards, the MP must tell the suspect he is being apprehended and state the specific offense. The apprehending MP may search not only the suspect but also the area immediately around the suspect. Searches are limited to the area in which a person can reach a weapon or destroy evidence. This includes any distance from which a weapon could be reached by a sudden lunge, leap, or dive from where the suspect is.

If a driver or passenger in an automobile is placed under apprehension, a search of the closed and locked trunk is not justified as incident to that apprehension. But the MP may search the passenger compartment of the automobile. This includes all containers found in the passenger compartment. ("Containers" denotes any object capable of holding another object.) This search may also include closed or open glove compartments or consoles. Other receptacles located anywhere within the passenger compartment, such as luggage, boxes, bags, clothing, and so forth, are subject to search.

Normally, MP do not make a full search of a traffic offender. However, if the offender leads MP to believe he may be armed or a threat to the MP's safety, the person may be frisked. If MP believe the offender is concealing evidence of a crime, then MP have probable cause to search the offender and the offender's car.

If a person is stopped for speeding and MP see him make a motion to place something under the front seat or grab something from under the front seat, it is permissible to frisk the person and check the immediate area. If, when issuing a traffic citation or making an apprehension, MP view items in plain view that they believe are evidence of a crime, they may seize, these items even though they are not on the person or in the immediate area.

Prior knowledge of past violent behavior may provide justification for searching an individual. Under unusual circumstances, search of the individual and the immediate area can be made at a different time or place. One reason for doing this is that a potentially unruly crowd may have gathered where the initial apprehension took place. The search could not be conducted at the time and place of apprehension for security reasons or for crowd control reasons. Lighting conditions are another valid reason.

Information gathered at the time of apprehension may indicate that seizable items are on the premises and in immediate danger of destruction, concealment, or removal. In this case the MP may immediately search for and seize these items.

When an apprehension is made at a person's on-post quarters, the apprehending MP makes a cursory view of the premises to see if other people are present who may impede the apprehension. If, while making the cursory view, other items come into plain view that would aid in a criminal prosecution, these items are also seized.

A person who is apprehended at his quarters or place of business may have to obtain wearing apparel or a change of clothing for a stay at the detention cell. If the apprehended person requests permission to gather other things to bring with him, the MP may search the immediate area where the additional materials are located. This is done to protect the apprehending MP and to prevent the destruction of evidence. The MP may not, however, move the suspect throughout the home simply in order to search other rooms.

When an apprehended person has no reasonable expectation of privacy, the apprehending MP may make an inspection of the entire area. For example, an MP is investigating a break-in of the auto crafts shop. He finds the door jimmied and enters to find an individual in the garage. The MP can inspect the entire crafts shop, looking for other evidence of a crime. This is because the suspect cannot have an expectation of privacy in the crafts shop.

When there has been a lawful apprehension and the person has been taken to the MP station or the person consented to go to the MP station, the following actions may be compelled:

- Fingernail scrapings if there is probable cause to believe that such scrapings will aid in a criminal prosecution.
- Fingerprints.
- Voice exemplars.
- Handwriting exemplars.
- Bite plates to identify teeth marks when there is probable cause to believe that such evidence will aid in a criminal prosecution.

The rights warning is not required to take these actions as the individual is not being interrogated and is not being asked to make a statement. The Fifth Amendment only covers “testimonial communication” and not the physical display of the body or similar actions.