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Effective Date: June 8, 2011	Revision Date: November 2011
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Meets Accreditation Standard:	1.6

Section 1000.40 Laws of Arrest

Policy

A police officer may make an arrest in obedience to a warrant or without a warrant when a felony is committed in the officer's presence or when there are reasonable grounds to believe that the person being arrested has committed a felony.

KRS 431.015 specifies that an officer **shall** issue a citation instead of making a physical arrest for misdemeanors committed in his/her presence except for offenses where the defendant poses a risk of danger to himself/herself or to another, offenses where the defendant refuses to follow the officer's reasonable instructions, and/or offenses where there are reasonable grounds to believe that the defendant will not appear in court. The option of issuing a citation or making a physical arrest is at the discretion of the officer when an offense is committed in the officer's presence and is covered by one of the following statutes:

KRS Chapter 508 (Assault and related Offenses)

- Assault 4th Degree (KRS 508.030)
- Menacing (KRS 508.050)
- Wanton Endangerment 2nd (KRS 508.070)
- Terroristic Threatening 3rd (KRS 508.080)
- Criminal Abuse 3rd (KRS 508.120)
- Stalking 2nd (KRS 508.150)
- Violation of a Stalking Restraining Order (KRS 508.155)

KRS Chapter 510 (Sexual Offenses)

- Sexual Abuse 2nd (KRS 510.120)
- Sexual Abuse 3rd (KRS 510.130)
- Sexual Misconduct (KRS 510.140)
- Indecent Exposure 1st Degree (1st or 2nd Offense) (KRS 510.148)
- Indecent Exposure 2nd Degree (KRS 510.150)

KRS Chapter 527 (Offenses relating to Firearms and Weapons)

- Carrying Concealed Deadly Weapon (KRS 527.020)
- Defacing a Firearm (KRS 527.030)
- Possession of a Defaced Firearm (KRS 527.050)
- Possession of a Handgun by a Minor (1st Offense) (KRS 527.100)

KRS Chapter 189 (Traffic Offenses)

- DUI of a Motor Vehicle (KRS189A.010)

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- Measurement/Weight Violation of a motor truck/semi-truck or trailer (KRS 189.223)
- Reckless/Careless Driving (KRS 189.290)
- Failure to Comply with a Traffic Officer's Signal (KRS 189.393)
- DUI of a Non-Motorized Vehicle (KRS 189.520)
- Accident-related Responsibilities (e.g. leaving the scene, failure to report) (KRS 189.580)

An officer may also make a physical arrest instead of issuing a citation for certain misdemeanors and violations which fall outside the arrest authority covered in KRS 431.015. These statutes include:

- DUI of a Boat (KRS 235.240)
- Violating Motor Carrier Regulations (Federal or State) (KRS 281.600)
- Criminal Trespass 3rd Degree (KRS 511.080)
- Harassment (KRS 525.070)
- The Authority of an Officer, in uniform, to arrest for all offenses during a declared emergency (KRS 39A.190)
- Violating Motor Vehicle and Boating Offenses (except for offenses that only carry a fine as punishment) (KRS 281.765)
- Alcohol Intoxication (KRS 222.202, KRS 222.203)
- Shoplifting (KRS 433.236(3))
- Cruelty, mistreatment or torture of animals (KRS 436.605(2))
- Violating the terms/conditions of probation, parole or conditional release (KRS 533.050)
- The authority of Fish and Wildlife Officers and all other Peace Officers to arrest for violating any statute in KRS Chapter 235 (KRS 235.310)
- The authority of Fish and Wildlife Officers to arrest or cite persons hunting on private land without permission, at their discretion (KRS 150.092(3))

An officer is allowed to make a physical arrest for the following misdemeanors not committed in the officer's presence when probable cause exists to believe that a subject has committed:

- Assault 4th Degree (Domestic Violence) (KRS 508.030)
- Driving Under the Influence (DUI) (KRS 189A.OI0)
- Violating an Emergency Protective Order(EPO)/Domestic Violence Order (DVO)
- Violating pretrial release conditions
- Shoplifting (KRS 433.236(3))

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Warrant Requirement

A warrant of arrest shall be in writing and in the name of the Commonwealth, shall be signed by issuing officer with the title of his office and shall state the date when issued and the county where issued. It shall name or describe the offense charged to have been committed, specify the name of the defendant, or, if his name is unknown, any name or description by which he can be identified with reasonable certainty and the name of complaining party or parties. The warrant shall direct that the defendant be arrested and brought before the judicial officer issuing it or, he is absent and unable to act, before the nearest available judicial officer.

Execution of Warrants

A warrant of arrest may be executed by any peace officer. The officer need not have the warrant in his possession at the time of the arrest, but in that event, he shall inform the defendant of the offense charged and the fact that a warrant has been issued, and upon request show the warrant, or a copy of it, to the defendant as soon as possible.

Arrest

The officer making an arrest shall inform the person about to be arrested of the intention to arrest him and of the offense for which he is being charged. Any arrest is made by placing the person being in restraint or by his submission to the custody of the person making the arrest. The submission shall be in the actual presence of the arresting officer.

No unnecessary force or violence shall be used in making an arrest.

Right to Search

An officer has the right and duty to search the person arrested for dangerous weapons, stolen property, and other articles, the possession of which is unlawful in itself or for evidence to be used in a trial of the offense charged.

The right to stop and frisk exists where the officer conducting the search has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether the officer has probable cause to arrest the individual for a crime.

Summons-Execution and Service

A summons may be served by any peace officer. It shall be served upon a defendant by delivering a copy to him personally or by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

A summons to a corporation shall be served by delivering a copy to an officer, manager, general agent, or to any other agent authorized by appointment or by law to receive process.

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Citations- Misdemeanor or Violation

Peace officers shall issue a citation for misdemeanors and violations committed in their presence if there are reasonable grounds to believe that the person being cited will appear to answer the charge. The citation will provide that the defendant shall appear within a designated time. A peace officer may not make a physical arrest for a misdemeanor offense or violation unless the authority to arrest falls outside of KRS 431. 015 or one of the following circumstances exists :

- Any offense in which the defendant poses a risk of danger to himself/herself or another person. The arrest citation narrative must contain specific language indicating how the arrestee posed the risk of danger.
- Any offense in which the defendant refuses to follow the officer's reasonable instructions. The arrest citation must contain specific language indicating how the defendant failed to follow the officer's reasonable instructions.
- Any offense where there are reasonable grounds to believe that the defendant, if cited, will not appear in court at the designated time. The arrest citation must contain specific language indicating why there are reasonable grounds to believe that the defendant will not appear in court.

Officers MAY NOT issue a citation for the following misdemeanors. Officers SHALL make a physical arrest for:

- Assault 4th Degree (Domestic Violence)
- Violating any protective order issued pursuant to KRS 403.715 to 403.785
- Violating pretrial release conditions, imposed by the court, for offenses involving assault, sexual offenses or violation of a protective order.
- Alcohol Intoxication.

