
	ITHACA POLICE DEPARTMENT POLICY AND PROCEDURE GENERAL ORDER	Distribution ALL PERSONNEL	General Order Number 4.04
		Original Issue Date 06/09/21	Reissue/Effective Date
Order Title: OFF DUTY ACTION		Accreditation Standard: NY 2.2; 2.7; 14.1; 20.1; 20.5; 21.1; 21.2; 32.3; 40.2; 40.3; 55.4	Section 4
		Section Title DISCIPLINARY PROCESS	
Rescinds: General Order 309 issued by Chief Barber December 2015		 John Joly, Acting Chief of Police	

This General Order is for departmental use only and does not apply in any criminal or civil proceeding. This General Order should not be construed as creation of a higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this General Order will only form the basis for departmental administrative sanctions. Violations of law will form the basis for civil and criminal sanctions in a recognized judicial setting

I. PURPOSE

The purpose of this policy is to provide guidelines to Ithaca Police Department officers regarding acceptable criteria for making off-duty arrests, and appropriate behavior for ensuring safety during off-duty enforcement actions.

II. POLICY

Out-of-uniform, off-duty officers may confront criminal activity to which they should take, or must decide whether to take, enforcement action. When engaged in off-duty enforcement of this type, non-uniformed officers' risk being mistaken as criminal suspects by responding officers. The following protocols are intended to define when off-duty, non-uniformed enforcement action is authorized, and how it should be conducted in order to reduce the potential of officer-on-officer shootings and related injuries. This policy is also intended to limit unnecessary enforcement action by off-duty officers.

III. DEFINITIONS

Arrest: The intentional deprivation, whether actual or constructive, of a person's freedom by legal authorities using forcible restraint, seizure, or otherwise taking the individual into custody, especially in response to a warrant or a suspicion based on probable cause that the person being arrested has committed a crime. The person making the arrest must have the present power to control the person being arrested. Furthermore, the intent to make an arrest must be communicated to the individual who is being detained and that person must understand that the seizure or detention is an intentional arrest.

An arrest may occur (1) by the touching or putting hands on the arrestee; (2) by any act that

indicates an intention to take the arrestee into custody and that subjects the arrestee to the actual control and will of the person making the arrest; or (3) by the consent of the person to be arrested. There is no arrest where there is no restraint, and the restraint must be under real or pretended legal authority. However, the detention of a person need not be accompanied by formal words of arrest or a station house booking to constitute an arrest.

Challenged Officer: An out-of-uniform officer or undercover officer, who is mistaken for a criminal suspect by another officer during an off-duty enforcement encounter (may also be referred to as the confronted officer.)

Challenging Officer: An officer who confronts or challenges an individual believed to be a suspect without knowledge, or reasonable suspicion to believe that the individual is a law enforcement officer (may also be referred to as the confronting officer.)

Force: Any physical strike or instrumental contact with a person, any intentional attempted physical strike or instrumental contact that does not take effect, or any significant physical contact that restricts the movement of a person. The term includes the discharge of a firearm, use of chemical spray, or hard hands; taking of a subject to the ground; or the deployment of a canine; or the pointing of a firearm at a human being. The term does not include escorting or handcuffing a person with minimal or no resistance. Use of force is lawful if it is objectively reasonable under the circumstances, and the minimum amount of force that is necessary to effect an arrest, or protect the officer or other person, is used.

Investigative detention: Temporary detention for investigative purposes of a person based upon reasonable suspicion that the person has committed, is committing, or is about to commit a crime, under circumstances that do not amount to probable cause for arrest (also known as a *Terry stop*).

Officer: All sworn law enforcement personnel/peace officers employed by, or assigned to, the Ithaca Police Department.

Out-of-uniform/Non-Uniformed: Officers wearing clothes commonly worn while off-duty; also referred to as civilian attire or street clothes.

Official action or official capacity: Includes any act, process, or procedure that, when taken, would constitute a police officer's regular or expected duty.

Off-duty incident includes:

- Any incident in which a Department officer, while in an off-duty capacity, is involved in, or takes, official action.
- Any incident in which a Department officer is involved as a witness, complainant, defendant, or suspect in a criminal or quasi-criminal matter, in this or any jurisdiction; or

- Any incident in which a Department officer provides assistance in an official capacity, to a police officer agency, or citizen.

Personally Involved: An off-duty officer is deemed personally involved when assisting a family member or a friend who becomes engaged in a personal dispute or incident. This does not apply to situations where the police officer, family member, or friend is a crime victim.

Probable Cause: Probable cause is more than mere reasonable suspicion, but less than proof beyond a reasonable doubt. Probable cause exists if based on the facts and circumstances, a reasonable person would believe that criminal activity has occurred, is occurring, or is about to occur.

Serious crimes: When used in this policy, serious crimes include: assault, rape, murder, robbery, arson, burglary, larceny-theft crimes, or motor vehicle theft, and acts of domestic violence.

IV. PROCEDURES

A. Liability Protection

1. Officers have liability protection for on- and off-duty performance of an official action. This protection does not extend to those actions that the officers knows, or reasonably should know, are in conflict with law or established policies of the department.
2. Officers have police powers twenty-four (24) hours a day throughout the jurisdiction. As such, officers may choose to carry departmentally authorized firearms when out of uniform in an off-duty status. However, when armed, officers shall carry their badge and credentials with them at all times. *(See Department Firearms Policy, G.O. 3.07.*

B. Authorized Off-Duty Arrests

When off-duty and within the legal jurisdiction of this department, an off-duty officer may make an arrest when:

1. There is an immediate need to prevent a serious crime, or apprehend a suspect connected with a serious crime;
2. The crime requires a full custodial arrest; and
3. The arresting officer is adequately prepared and equipped to handle the situation.

C. Use of Force

1. Absent exigent circumstances, off-duty officers shall notify on-duty officers before taking official actions which may result in the use of force, so that they may respond with appropriate personnel and resources to handle the problem.

D. Reporting Off-Duty Incidents

1. Off-duty officers are responsible for reporting any suspected or observed criminal activity to the authorities responsible for the jurisdiction in which the activity occurred.
 - a. This may include a call to 9-1-1 or to the jurisdiction's regular telephone number. Officers are permitted to participate in an off-duty incident except to the restrictions delineated in this policy.
2. The officer involved in an off-duty incident within the City of Ithaca that requires police action, response, or investigation shall immediately report the incident to the On-Duty Lieutenant either in person, by radio, or by telephone, or via 9-1-1, of the incident, who will ensure that a supervisor has been dispatched to the scene. At a minimum, the following shall be provided:
 - a. Type of incident;
 - b. Date and time incident occurred;
 - c. Type and degree of officer involvement; and
 - d. Location where the incident occurred.
3. Any off-duty department employees who become involved in an incident outside of the City of Ithaca that requires police action, response, or investigation shall immediately report the incident to the on-duty Lieutenant or on-duty shift commander in the absence of an on-duty Lieutenant. If the employee is a rank of Lieutenant, he or she shall immediately notify a Deputy Chief of the incident. If the employee involved is a Deputy Chief, he or she shall immediately report the incident to the Chief of Police. If the Chief of Police is involved in an incident outside the City of Ithaca, he or she shall immediately report the incident to the Mayor.
4. Any supervisor who receives notification that an off-duty employee's involvement in an incident as described above shall:
 - a. Evaluate the incident and circumstances;
 - b. Notify the appropriate command personnel in a timely manner.
 - c. If the incident is within the City of Ithaca, ensure that a supervisor responds to the scene and all necessary police action if taken; and
 - d. Document the incident via Spillman and an "Unusual Occurrence Report" and/or a "Special Investigative Report."

5. The on-duty supervisor notified must assess the incident to determine if further immediate departmental notifications are necessary. Serious or sensitive incidents will usually require an immediate command level notification. Off-duty incidents requiring immediate command notifications include, but are not limited to:
 - a. When an off-duty incident results in death or injury to any party;
 - b. When an off-duty incident involves a crime;
 - c. When an off-duty incident involves the use of force by the involved officer;
 - d. When an off-duty arrest involves a custodial arrest of any party; or
 - e. When an off-duty incident has the potential for high publicity.
6. All officers participating in an off-duty incident (in accordance with this policy) must submit the applicable reports thoroughly documenting the incident. (*See Reporting and Investigating Force Policy, G.O. 3.05*)

E. Out-of-Uniform Officer Recognition

Effective recognition is an essential component of ensuring safety for out-of-uniform officers during enforcement actions. As such, officers out of uniform shall do the following:

1. Conspicuously display their badges and any other recognizable police clothing whenever it is necessary to be prominently identified. A police raid jacket displaying the department's badge, patch, or both should also be worn when readily available. Baseball caps with department insignia alone are not an authorized form of identification.
2. When reasonably possible, direct departmental communications to inform responding uniformed personnel that a non-uniformed officer is responding and provide a description of the officer for relay to uniformed responders.

F. Challenging Officer (on-duty officers)

1. Officers shall use extreme caution when confronting persons in casual clothes who they suspect or who claim to be law enforcement officials. A position of advantage (cover) should be attained whenever reasonably possible prior to issuing a challenge.
2. Officers shall challenge in a loud clear voice. The same challenge command shall be used in all situations for simplicity and uniformity.
3. Officers should exercise their judgment in determining whether to protect the identity of a recognized officer in street clothes by treating him or her as a suspect in the presence of others.

4. Once the situation is controlled, the challenging officer shall request full identification from the challenged individual.

G. Challenged Officer (off-duty or undercover officer)

1. An on-duty officer(s) in or out of uniform assumes primary authority and control of any enforcement situation involving off-duty plain clothes officers until otherwise directed by a supervisor. Off-duty or undercover officers shall obey the commands of the challenging officer, whether or not the officer is in uniform. This may include submission to the use of restraints or even arrest.
2. When directed by a challenging officer to raise their hands, to drop their firearm, or to take any other action, off-duty or undercover officers in street clothes shall immediately comply, regardless to whom they believe the command is addressed.
3. The challenged officer shall take no action, such as attempting to show identification, unless and until directed to do so. Instead, if and when circumstances permit, the officer shall announce the location of his or her identification and badge to the challenging officer.
4. Challenged officers shall announce in a loud voice that they are law enforcement officers and shall repeat this until it is reasonable to believe that it is heard by the challenging officer.
5. Challenged officers shall scrupulously avoid the common tendency to turn toward the voice of the challenging officer, as it has been identified as a primary cause of death or serious injury in police-on-police shootings.
6. Officers should ask the challenging officer to repeat any directions or questions that are unclear and should never argue with the challenger or show resistance.
7. Challenged officers shall warn challenging officers of hazardous or potentially dangerous circumstances.

V. TRAINING:

The Department's Training Coordinator shall establish protocols, including, but not limited to, signs, challenge commands, signals, or clothing for recognizing off-duty officers in civilian clothes so as to reduce the potential of misidentification of such personnel during enforcement encounters. Such protocols shall be reviewed periodically during firearms qualification training.