



# MIDDLETON POLICE DEPARTMENT

DATE  
**June 12, 2013**

POLICY  
**1.7.06**

SUBJECT: **Use of Discretion**

REVIEWED  
December 1, 2017

Refer to:

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## PURPOSE

The purpose of this policy is to govern the use of discretion by officers in the performance of their official duties. It defines the limits of individual discretion and provides guidelines for exercising discretion within those limits.

## POLICY

It is the policy of the Middleton Police Department that all officers shall preserve the public peace, prevent crime, detect and arrest violators of the law, and protect life and property regardless of the citizen’s race, sex, religious affiliation or national origin. All officers are equally responsible for the enforcement of laws and ordinances. It is recognized that police officers exercise discretion in law enforcement duties; however, such discretion will not be based on bias, prejudice or otherwise discriminatory in nature.

## DEFINITIONS

**Discretion** means the use of an officer’s own judgment in the disposition of an enforcement action. Enforcement action dispositions include verbal warning, written warning, 5-day warning, parking ticket, juvenile referral, juvenile apprehension/jSAC, ordinance citation, traffic citation, adult arrest/SAC, and custodial arrests.

## **PROCEDURE**

In areas that are specifically covered by Policy, Operating Procedure or State Statute, discretion will be minimal. In all other areas, common sense and reasonableness shall prevail and discretion shall be the responsibility of the individual officer. With this responsibility comes equal accountability.

In exercising discretion, an officer must be able to assess the situation or incident, analyze the facts or information, and then determine a reasonable and appropriate course of action. These factors include, but are not limited to:

1. Department policy, procedures, mission statement, values, vision, goals, and objectives.
2. Availability of a supervisor or other officers for guidance and/or consultation.
3. Facts and circumstances which will subsequently justify the decision.
4. Range of available alternatives.
5. Seriousness of the incident.
6. Officer safety concerns.
7. Other factors such as staffing availability, impact on the community, humane considerations, and potential for recurrence.

**Warnings** may be utilized for those parking, traffic and ordinance offenses where the facts indicate proper resolution of the event can be achieved without formal charge. Warning notices serve to notify the offender of the violation, forces compliance, and will result in an entry on the subject's contact record. Officers should notify violators of the consequences of failure to comply with a warning notice, and avail themselves to previous warning information when contemplating enforcement actions. When an arrest is not made in verified noise disturbances and animal complaint situations, a warning notice should be issued. This serves to document a pattern of violations and provides an information base for issuance of citations in the future.

The use of warnings may be restricted by the Shift Commander or department in those areas of directed patrol or selective traffic enforcement requiring stricter attention to enforcement, or where community need warrants formal charges. Officers should not use "warnings" to evade resolving the situation properly.

**Parking Tickets** are utilized for violations of parking ordinances and statutes. UTC's may also be utilized for aggravated Section I parking statute violations. Warning tickets (or verbal warnings) shall be used for a reasonable period of time after a new ordinance or seasonal restriction goes into effect and when either because of unclear signage or in cases of a "technical" violation such that no immediate hazard exists, it is not likely the driver consciously committed the violation. Warning tickets shall be used for a 24 hour period prior to issuing a ticket for street storage.

A parking ticket may be voided by the issuing officer if an error is made on the face of the ticket or if the driver returns to the vehicle while the ticket is being issued and corrects the violation (officer discretion). All voided tickets shall be submitted. Once issued, parking tickets may only be withdrawn by a Captain. A parking ticket may be withdrawn at the request of the issuing officer, or when in the judgment of the Captain the ticket was issued in error, contrary to department policy, or when it is in the best interest of the department.

***Uniform Traffic Citations (UTC)*** are utilized for Section I and Section II traffic offenses. For violations of speed restrictions from 1 to 7 miles per hour over the limit, enforcement action is generally inappropriate. For violations of speed restrictions of 8 to 12 miles per hour over the limit, officers should either give written warnings or issue a citation. For speed violations of 13 or more over the limit, officers should issue a Uniform Traffic Citation. Whenever the officer investigating a traffic accident detects a violation of traffic law, whether or not it occurs in the officer's presence, and when evidence exists to satisfy all the elements of that particular offense, enforcement action should be taken for "reportable" accidents. (Officers may use discretion for minor "non-reportable" accidents). On private property only traffic laws relating to Reckless Driving, Hit and Run, Accident Reporting, and Operating While Under the Influence of Intoxicants or Drugs may be enforced.

***Uniform Municipal Court Citations (UMCC)*** should be used for municipal ordinance violations. Many state statutes are adopted by Municipal Ordinance. In these cases, officers have the option of charging under Statute or Ordinance. The preferred course of action is to charge under Municipal Ordinance for minor violations. Where a violation of a statute adopted by ordinance is the probable cause for a stop leading to a criminal charge, both should be charged as statute violations. When contemplating whether or not to charge under Statute or Ordinance consider the following:

- A. Criminal History
- B. Probation/Parole Status
- C. Level of intent
- D. Degree of threat to persons and property
- E. Monetary value of loss or damage which exceeds the deposit amount permitted under ordinance
- F. Continuing pattern of deviant behavior

***Statutory Arrest Complaint (SAC & jSAC)*** cards should be used for all regular criminal (statute) violations, except UTC's are used for Section II traffic offenses.

State law requires officers to arrest and take into custody persons engaged in domestic abuse and for TRO/Injunction violations. Officers may not release a person arrested for a domestic abuse incident until the person has posted bail or appeared before a judge. Officers are prohibited from issuing a citation to a person instead of arresting the person in situations where the officer is required to arrest the person for a domestic abuse incident.