

LIMITS OF AUTHORITY

STANDARD NO(S):

DATE:

March 6, 2009

REVIEWED: 05/17/2017

REFER TO:

John Cleere

I. OBJECTIVE

To define the legally mandated authority vested in members of the Seneca County Sheriff's Office (SCSO) and to provide guidelines for the use of discretion and the exercise of alternatives to arrest by such members.

II. POLICY

It shall be the policy of the SCSO that members having law enforcement responsibilities shall neither exceed the limits of their legal authority nor abuse the exercise of legitimate police discretion while in the conduct of official business on behalf of the Seneca County Sheriff.

III. DETAILS

- A. Sheriff as a Constitutional Officer - Article 13, Section 13 of the Constitution of the State of New York, as amended, identifies the Sheriff of each county outside of New York City as a law enforcement officer to be elected by the people to a definite term of office, which, in Seneca County, is four years.
- B. General Duties of the Sheriff - Section 650 of the County Law of the State of New York provides that "The sheriff shall perform the duties prescribed by law as an officer of the court and conservator of the peace within the county. He shall perform such additional and related duties as may be described by law and directed by the board of supervisors or the county legislature."
- C. Deputy Sheriffs as Police Officers - Section 652 of the County Law provides for the appointment by the Sheriff of regular Deputy Sheriffs. In McMahon v. Michaelien, 1971, 30 N.Y.2d 60, the court held that the Sheriff's power to appoint deputies does not invalidate local law placing such positions into the classified civil service. In Attorney General's Opinion 245, 1980, it was held that a regular Deputy Sheriff appointed pursuant to this section is a Police Officer.

Section 1.20 of the Criminal Procedure Law, paragraph 34 (b), defines the geographical area of employment of "Police Officer: Sheriffs, Undersheriff and Deputy Sheriffs of counties outside of New York City" as the employing county.

- D. Correction Officers - Section 652(2) of the County Law provides for the appointment by the Sheriff of male and female Correction Officers who are authorized to perform correctional duties and have completed training mandated by the State Commission of Correction.

The appointment of an individual as a Correction Officer simultaneously confers the status of a Peace Officer, pursuant to Section 2.10 (25) of the Criminal Procedure Law. In order to maintain this dual status, each member must pass both the Municipal Police Training Council (MPTC) Basic Course for Peace Officers with Firearms and the New York State Commission of Correction's Basic Course for Corrections Officers. The aforementioned courses have been fully integrated into a new course entitled "Basic Course for Peace Officers with Firearms" under the auspices of the New York State Office of Public Safety.

- E. Special Patrol Officers - Section 209-v of the General Municipal Law provides for the employment of retired former members of police or sheriff's departments, retired former members of the division of state police, or retired former corrections, parole, or probation officers as special patrolmen for publicly owned property within such political subdivision, including property of a school district, in order to protect the property or persons on such premises. Persons so employed will have all the powers of Peace Officers, as set forth in section 2.20 of the Criminal Procedure Law, when performing the duties set forth in subdivision one of the General Municipal Law.

Section 2.10 of the Criminal Procedure Law, paragraph 37, provides that nothing shall be deemed to authorize those persons appointed pursuant to Section 209-v of the General Municipal Law to carry, possess, repair or dispose of a firearm unless the appropriate license therefore has been issued pursuant to section 400.00 of the penal law.

- F. General Duties of SCSO Members - When assigned to law enforcement responsibilities, SCLEC members have the authority to enforce the laws and statutes of New York State, as well as local laws and ordinances devised by the legislative bodies of the municipalities within the County of Seneca.
- G. Police Discretion - The very nature of policing permits and requires some latitude in the exercise of judgment, commonly referred to as "police discretion." Police discretion is defined as a choice among alternative actions, or no action at all, the use of which will usually occur in unsupervised situations and must at all times be defensible. The member must realize that the greater the seriousness of a situation, the less likely it is that discretion would be considered appropriate. Simply stated, when encountering a critical event, the member shall be guided by whatever directives are applicable. When encountering a less significant matter, the member could opt to dispose of the matter by using warning, counseling, or referral even though police intervention is warranted.

Crucial to the use of police discretion is the necessity for the member's awareness of what the community's expectations are likely to be in a given situation. For example, if a neighborhood has been plagued by speeders creating a real hazard in their streets, it would be difficult to defend a member's use of discretion in letting a first offender speeder off with a warning to drive more slowly. When a member does elect to choose a course of action other than arrest for an illegal act, the member must be prepared to state their reasons clearly so that it cannot be concluded that they were acting capriciously (for example, simply because the shift was nearly over and the member was anxious to get home).

- H. Alternatives to Arrest - For purposes of this directive, it is understood that "arrest" means a custody arrest whereby the arrestee's liberty is significantly restricted and remains so until they are brought before a magistrate for arraignment.
1. As noted in paragraph III (E)(9) of "Criminal Process," in the LEMOI, one alternative to the custody arrest is the appearance ticket as provided for in Article 150 of the Criminal Procedure Law (CPL). Although authorized for all violations, misdemeanors, and certain "E" felonies, the issuance of an appearance ticket will not be appropriate under any of the following circumstances:
 - a. The offender requires medical care or is unable to provide for their own safety
 - b. The offender cannot or will not offer satisfactory evidence of their identity
 - c. It can be established that there is process outstanding for the offender
 - d. The offender can be identified as having been previously cited for a similar offense
 2. Section 100.10 of the CPL provides for the issuance of simplified information's for violations and/or misdemeanors relating to traffic or other non-felony charges pursuant to the Parks and Recreation Law, the Navigation Law, or the Environmental Conservation Law.

All of these combine the designation of the offense with an invitation for the offender to appear at a specified court on a specified date to answer the charge(s). As such, they are alternatives to a custody arrest. In the case of the Uniform Traffic Ticket, this document may also be used for certain violations and/or misdemeanors relating to the Tax Law and the Transportation Law.
 3. Section 849-b of the New York State Judiciary Law provides for the establishment and administration of community dispute centers which are empowered to conciliate, mediate, arbitrate or offer other

forms and techniques of dispute resolution. The center serving Seneca County in this capacity is:

The Center for Dispute Settlement (CDS)
48 West William Street, 2nd Floor
Waterloo, New York 13165
Telephone: 315-539-4570
Hours of Operation: M/F – 8:30 AM – 4:30 PM

As an alternative to arrest in cases involving disputes between family members or neighbors, even if the facts would support a misdemeanor charge under the Penal Law, members shall consider the option of referral to CDS using the form (RP-001) provided for this purpose.

4. Diversion, as an alternative to referring a person into the Juvenile Justice System, is frequently an option. Agencies equipped to render services in such a situation are listed in “Juvenile Operations,” in the LEMOI.
- I. Warnings - Consistent with the guidelines relative to the use of police discretion under paragraph E above, a member of the SCSO may issue a verbal warning to an offender in a case where it is appropriate and it can be reasonably anticipated that such warning will bring about a change in the offender's behavior. This method may be especially useful in the case of a person who can be released into the custody of their parents with the assurance that parental discipline will ensue.
- J. Pre-Arrest Confinement - Except for the provisions of Section 210.10 of the CPL and 500-A of the Correction Law, which refer to the procedures to be used following the arrest of a person on the basis of a warrant issued by a superior court [See "**Legal Process**", paragraph III (E) (1) (I) LEMOI], members of the SCSO have no authority for pre-arrest confinement. Following arrest, a person may be confined in the Seneca County Correctional Facility only after arraignment and upon the order from the arraigning magistrate for such confinement in lieu of or without bail.