

# Probable Cause Arrests

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## **Policy Statement**

A deputy sheriff may lawfully effectuate an arrest without a warrant as provided in [Section 10.31.100](#) of the Revised Code of Washington. Sheriff's Office employees must perform related duties with due regard for the responsibility that comes with this important public safety function.

## **Persons Affected**

- All commissioned personnel
- Records Division

## **Definitions**

**Arrest** – The use of legal authority to deprive a person of his or her freedom of movement<sup>1</sup> [Temporary *detentions* (e.g., *Terry* stops) are not the same as arrests.]

**Probable Cause** - A requirement found in the Fourth Amendment of the United States Constitution that must usually be met before police make an arrest or obtain an arrest warrant

Courts usually find probable cause when there is a reasonable basis for believing that a crime may have been committed and the person to be arrested committed it. Persons arrested without a warrant are required to be brought before a competent authority shortly after the arrest for a prompt judicial determination of probable cause.<sup>2</sup> Persons who are booked into jail are promptly taken to a judicial officer for such a determination as required by Washington State law.

### **Probable Cause Affidavits:**

- **Active** – Probable cause affidavits on which deputies may act by arresting named suspects
- **Inactive** – Probable cause affidavits on which deputies should not normally act unless they possess specific knowledge that the probable cause is still valid (e.g., detectives working closely with a prosecutor on a case)

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<sup>1</sup> Legal Information Institute, Arrest, available at <https://www.law.cornell.edu/wex/arrest> (last visited on February 19, 2016)

<sup>2</sup> Legal Information Institute, Probable Cause, available at [https://www.law.cornell.edu/wex/probable\\_cause](https://www.law.cornell.edu/wex/probable_cause) (last visited February 10, 2016)

## **Arrest Authority**

Nothing in this policy is intended to prevent law enforcement deputies from making lawful arrests based on probable cause per [RCW 10.31.100](#), nor is it intended to remove from these deputies the well-reasoned discretion they are normally granted in determining if and when to make arrests.

Corrections deputies are authorized to make probable cause arrests while on duty in a Whatcom County corrections facility or courthouse, or as directed by the sheriff or his or her designee, pursuant to:

- Active probable cause posted by a Whatcom County Sheriff's Office law enforcement deputy
- Probable cause that a person is a fugitive from justice from another state per [RCW 10.88.330](#).

## **Acting on Probable Cause**

It is the policy of the Sheriff's Office to seek out persons who violate the law and bring them before the courts. Law enforcement deputy sheriffs who become aware of violations of criminal statutes should under appropriate circumstances attempt to identify and **arrest** culpable suspects or ensure investigations are referred to the Prosecuting Attorney for a charging decision.

In determining how quickly arrests should take place and the amount of resources that should be used to locate and arrest a suspect, deputies should consider factors such as:

- Ongoing danger to the victim(s) and the general public
- The severity of the crime
- The nature of the investigation (e.g., immediate arrest may compromise investigation)
- The flight risk of the suspect
- Other priorities and availability of resources
- The policy of the Prosecuting Attorney as to whether certain minor offenses will be prosecuted

Deputies should notify a supervisor whenever they have probable cause to arrest a suspect but do not plan or are unable to arrest the suspect within a reasonable period of time.

Supervisors should review active probable cause listings each shift and use available resources to locate and arrests suspects when practicable.

## **Probable Cause Affidavit and Booking Forms**

These forms:

- Allow prosecutors to successfully advocate and make decisions for the State at the suspect's first appearance
- Provide appropriate personnel with the means to contact and make notifications to victims, either in-person or by telephone
- Help corrections deputies properly book the suspect into jail
- Brief Sheriff's Office supervisory personnel on a key Sheriff's Office mission

### **When Required**

Deputies who have probable cause to believe a suspect has committed crimes for which the suspect should be *arrested and booked into jail* will prepare one of the following forms:

- [Probable Cause Affidavit & Booking](#)
- [Probable Cause Affidavit & Booking DV](#) – for domestic violence cases
- [Probable Cause Affidavit & Booking DUI](#) – for driving under the influence, physical control and minor operator cases going to Whatcom County District Court

### **Briefings**

Deputies will electronically brief supervisory personnel on their investigations in a timely manner in accordance with the [Probable Cause – Briefing Job Aid](#).

### **Probable Cause Narrative**

The narrative section of the form must clearly articulate the elements of each crime on which the suspect will be booked. It must provide enough summary detail of a case to allow the reader (e.g., prosecutors reading to judges) to understand the basic context in which the incidents occurred but be succinct enough so as not to relate all the details normally included in an incident report.

## **Probable Cause Accountability System**

Many employees play a part in ensuring that probable cause information in agency records remain accurate. The following sections describe key functions employees must perform when posting probable cause for a suspect's arrest and thereafter to ensure that information about whom the Sheriff's Office seeks to arrest on probable cause remains current at all times.

See [quick reference table](#) on how each function is reflected and accomplished in the Spillman system.

### **Posting**

Deputies who have probable cause to believe a suspect has committed a crime and intend to arrest and book the suspect into jail but are unable to locate the suspect should:

- Prepare a probable cause affidavit and booking form.
- Communicate the existence of probable cause to arrest the suspect to other deputies, local law enforcement agencies and dispatch via appropriate means (see [Probable Cause – Posting](#) ).
- Send the probable cause statement to their supervisor for final approval.

A deputy who posts probable cause is responsible for:

- Making and documenting reasonable attempts to arrest the suspect until:
  - A supervisor assigns the case to another investigator (e.g., refers the case to the Detective Division), or
  - The probable cause becomes [inactive](#).
- Notifying a supervisor when a case should be routed to the Prosecutor's Office with a request for an arrest warrant (i.e., when reasonable attempts have failed to locate a suspect, when there is reason to believe the suspect has fled to another jurisdiction).

### **Reviewing**

Supervisors will promptly review:

- Probable cause affidavit and booking forms submitted by deputies (see [Probable Cause – Reviewing](#)).
- Requests from deputies to [route](#) cases to the Prosecutor's Office for a warrant.

### **Serving**

The deputy who serves probable cause on a suspect (i.e., arrests and books the suspect) will file a supplemental report and adjust agency records accordingly (see [Probable Cause – Serving](#)).

### **Routing**

Supervisors are responsible for routing cases to the Prosecutor's Office, whether with a supplemental report requesting a warrant or for other reasons (see [Probable Cause – Routing](#)).

**Once routed to the Prosecutor's Office, a probable cause affidavit becomes inactive. Unless they are working closely with a prosecutor, deputies should check with the Prosecutor's Office before making arrests based on inactive probable cause affidavits.**

## Other Inactivations

### Insufficient Evidence or Changes in Circumstances

Supervisors may inactivate probable cause affidavits when necessary (see [Probable Cause – Review](#)) including:

- They review a probable cause affidavit and find that there is insufficient evidence to establish probable cause to arrest a suspect.
- The circumstances of a case have changed and it is not appropriate to have active probable cause posted in agency records systems at that time.

### Warrant Replaces Probable Cause

When a records clerk receives an arrest warrant from a court for entry into A Central Computerized Enforcement Service System (ACCESS) that replaces a probable cause affidavit, the clerk will make the appropriate changes to agency records (see [Probable Cause – Warrant Received](#)).

### Prosecutor Declines

Any deputy who learns that the Prosecutor's Office...

- (a) Has reviewed a case in which probable cause has been posted, and
- (b) Declines to seek an arrest warrant or file charges

...will document this in a supplemental report and make the appropriate change to agency records (see [Probable Cause – Declined](#)).

## Communicating with Other Agencies

There is no formal "confirmation" process for probable cause affidavits.

The Whatcom County Sheriff's Office maintains information in its records management system about suspects whom it has probable cause to arrest. This information is available to other Washington State agencies either by direct access to the system or via What-Comm dispatchers.

Employees or dispatchers who learn that another agency has located, or may have the ability to locate, suspects wanted by the Whatcom County Sheriff's Office should refer that agency to the duty law enforcement supervisor so that the two agencies may share information necessary to determine the best course of action in each situation.

## Quick Reference Table

The following table describes the various dispositions that affect whether probable cause for a suspect’s arrest remains [active](#) or [inactive](#) once it is posted by a deputy and contains links to job aids that contain actions required of personnel in each case:

Status	Spillman Disposition Code	Spillman Name	Job Aid	Description	Responsible Person
Active	PCA	PC Active	<a href="#">Probable Cause – Posting</a>	Entered and suspect should be arrested	Authoring deputy
Active	PCA	PC Active	<a href="#">Probable Cause – Reviewing</a>	Reviewed and approved	Supervisor
Inactive	PCI	PC Inactive	<a href="#">Probable Cause – Reviewing</a>	Reviewed and needs revision or Circumstances change making PC inactive	Supervisor
Inactive	PCS	PC Served	<a href="#">Probable Cause - Serving</a>	Suspect arrested and booked	Arresting deputy
Inactive	PCP	PC Routed to Pros	<a href="#">Probable Cause - Routing</a>	Routed to Prosecutor’s Office for warrant	Supervisor
Inactive	PCW	PC Warrant	<a href="#">Probable Cause – Warrant Received</a>	Received arrest warrant that replaces PC	Records clerk
Inactive	PCD	PC Declined	<a href="#">Probable Cause - Declined</a>	Prosecutor declined to file charges	Any deputy