

	<h1>Garner Police Department</h1> <h2>Written Directive</h2>	
	<p>Chapter: 200 – Administration</p> <p>Directive: 210.03 – Limits of Authority and Discretion</p>	
<p>Authorized by: Chief Brandon Zuidema</p>		<p>Effective Date: May 1, 2014</p>
<p>CALEA Standards: 1.1.3, 1.2.1, 1.2.6, and 1.2.7 (5th Edition)</p>		<p>Last Revision: June 1, 1998</p>

210.3.1 - Purpose

The purpose of this directive is to establish Departmental limits of authority and guidelines for imposing accountability on the use of discretion.

210.3.2 - Policy

Integrity and professionalism are valued by the Garner Police Department and require that employees be accountable for the exercise of their authority. Departmental directives, Town of Garner Ordinances, North Carolina General Statutes, and the Constitutions of North Carolina and the United States serve to establish boundaries by which authority may be responsibly used. Laws and policies cannot be written to anticipate every circumstance in which authority may be exercised appropriately.

210.3.3 - Limits of Authority (1.2.1)

- A. North Carolina General Statute 160A-285 authorizes municipal police officers to enforce all state laws, city ordinances, and to serve criminal and civil processes directed to them by the court system.
- B. Local police officers cannot enforce federal laws unless specifically authorized by being sworn in as a federal agent due to their work on a task force or similar assignment.

210.3.4 - Use of Discretion (1.2.7)

- A. Instances of public contact will occur where an arrest may be made but should not be effected due to mitigating circumstances. Generally, it is not the role of law enforcement to decide whether an offender should be prosecuted; that decision lies with the District Attorney.
- B. It is the policy of the Garner Police Department that any decision by a law enforcement officer not to arrest should be made only after careful consideration of the following:
 - 1. The arrest would create a greater risk of harm to the general public than not arresting the offender;
 - 2. The arrest would cause harm to an offender posing no threat of danger to the public, and/or
 - 3. The seriousness of the crime committed suggests another alternative would be more effective given the totality of the circumstances.
- C. A decision not to arrest when there are grounds for arrest is, at times, considered appropriate. Public empathy can be enhanced and the potential for ill will can be avoided by the careful use of discretion.

Should any question arise concerning a particular situation, the officer(s) involved should confer with a supervisor.

210.3.5 - Alternatives to Physical Arrest (1.2.6)

- A. Under the authority of the North Carolina General Statutes and Department policy, officers may exercise discretion in certain situations to the extent that an alternative to arrest may be employed to resolve a situation. Alternatives to arrest must respect the rights of the parties involved and must accomplish a police purpose.
- B. Approved alternatives to arrest include, but are not limited to, the following:
 - 1. Release on Citation - a formal enforcement procedure which constitutes an alternatives to custodial arrest when the officer is confident the defendant will appear in court as directed and a custodial arrest is not warranted or poses a hardship that outweighs the need for an appearance before a magistrate.
 - 2. Warning - officers may exercise discretion in minor violations by delivering oral or written warnings.
 - a. An oral warning may be used in minor traffic, ordinance, or criminal violations.
 - b. A written warning may be used in the case of a minor traffic violation or an ordinance violation.
 - c. Voluntary compliance is the goal when utilizing a warning in lieu of an arrest.
 - 3. Referral (used in lieu of formal action) - may be made to other Departmental components, other law enforcement or governmental agencies, social services agencies, or other organizations better suited to address the problem(s).
 - 4. Informal Resolution - the interests of the parties involved are often satisfied better by a mediated settlement, on the scene, rather than a formal prosecution in court.
 - a. Informal resolution should be by agreement with the affected parties and should not be employed as an excuse for not effecting an arrest.
 - b. Informal resolutions shall be documented by an Incident Report to record the officer's motivation for utilizing this particular alternative to arrest.

210.3.6 - Pretrial Release

- A. To facilitate the successful operation of the pretrial release program, authority and responsibility for the operation of release on recognizance and other pretrial release programs must be clearly stated to ensure the cooperation and participation of judges, attorneys, law enforcement and correctional officials, community leaders and participants.
- B. N.C. General Statute 15A-534 sets out the procedures for determining conditions of pretrial release. Although a judicial official ultimately decides on these conditions, Department personnel should be aware of the guidelines to be used in determining which pretrial release program is appropriate. These guidelines include, but are not limited to, the following:
 - 1. The nature and circumstances of the offense charged;

2. The weight of the evidence against the defendant;
 3. The defendant's family ties, employment, financial resources, character, and mental condition;
 4. Whether the defendant is intoxicated to a degree that he/she would be endangered by being released without supervision;
 5. The length of his/her residence in the community;
 6. His/her record of convictions;
 7. His/her history of flight to avoid prosecution or failure to appear at court proceedings; and
 8. Any other evidence relevant to the issue of pretrial release.
- C. Pursuant to N.C. General Statute 15A-533 and 15A-534, a defendant charged with a non-capital offense must have conditions of pretrial release determined. Whether a defendant charged with a capital offense is entitled to a bail bond is within the discretion of the judge.
- D. If a citation is written to the offender, he/she must appear on the court date specified and answer to the charges, but is under no obligation to post any monetary or other security to ensure his/her appearance. A magistrate or other judicial official may require a cash bond, secured bond, or an unsecured bond for those persons arrested and not simply issued a citation. The type of bond and the amount are within the discretion of that judicial official.

210.3.7 - Diversion Programs (1.1.3)

- A. There are often social service programs in which law enforcement personnel are directly involved. These programs involve both adults and juveniles. Many criminal justice diversion programs are principally designed for juveniles but they apply in certain circumstances to adults as well.
- B. The Police Department's roles in these programs are to ensure that the needs and interests of the criminal justice system are achieved, and to divert individuals to these programs when both the offender and the community will benefit. Department employees may either make referrals to these programs or choose to participate by serving on boards or volunteering their time. Officers will refer only those individuals who are not processed for criminal offenses.
- C. Examples of these programs include, but are not limited to, the following:
1. Alcoholics Anonymous (AA);
 2. Boy Scouts of America;
 3. Garner Police Athletics/Activities League (PAAL);
 4. Garner Police Department Achievement Academy;
 5. Girls Scouts of America;
 6. Healing Place;
 7. Hopeline;
 8. Interact;

9. Narcotics Anonymous (NA);
 10. North Carolina Victim's Assistance Network;
 11. Salvation Army Boy's Club;
 12. Wake County Mental Health and Substance Abuse;
 13. YMCA; and
 14. YWCA.
- D. The Department supports the philosophy of youth interaction and encourages all its employees to volunteer their time by becoming active in community recreational youth programs sponsored by the Garner Parks, Recreation, and Cultural Resources Department, the Garner Police Athletic/Activities League, or other groups.