

CITY OF OAK POINT

DEPARTMENT OF PUBLIC SAFETY POLICE OPERATIONAL POLICIES and PROCEDURES

POLICY: 7.3 ARREST WITH WARRANT

REVISED DATE: 11.19.13

I. POLICY

Short of the application of force, an arrest is the most serious action an officer can undertake. An arrest can cause repercussions throughout a person's life, even if eventually found not guilty or never brought to trial. The most important legal question facing an officer at the moment of an arrest is the existence of probable cause: without probable cause, the arrest is illegal and the evidence of criminality that was obtained because of the arrest is inadmissible. Officers shall accordingly exercise critical judgment in making arrests. Critical judgment includes consideration for bystanders, the time, place, and location of offenses, and the use of force in making the arrests. Officers shall consider alternatives to arrest consistent with their law-enforcement mission.

II. PURPOSE

To define the authority of officers to arrest and the mechanism for making arrests with a warrant.

III. DEFINITIONS

A. Arrest

An arrest is a seizure of a person. An arrest is supported by probable cause.

B. Probable cause

According to the U.S. Supreme Court, "Probable cause exists where the facts and circumstances within [the arresting officers'] knowledge and of which they had reasonable trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed" and that the person to be arrested committed it. An officer must have probable cause to obtain a warrant or make a warrantless arrest.

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IV. DISCRETION

- A. Officers shall demonstrate discretionary judgment. Discretion shall be applied reasonably and shall be guided by the oath of office, the limits of authority as established by law, the decisions and interpretations of the courts, the policies of our department, and the oral instruction provided by field supervisors.
- B. Officers shall not make arrests or take any enforcement action based in whole or in part by a person's sex, race, creed, color, age, general or assumed attitude, ethnic or natural origin, economic status, disabilities, or sexual orientation.

V. ARRESTS WITH A WARRANT

- A. General Procedures for obtaining an Arrest Warrant and Arresting with a Warrant.
 - 1. Obtaining an Arrest warrant will be made pursuant to Chapter 15 of the Texas Code of Criminal Procedure (TCCP). All officers should become familiar with the specific language/laws concerning obtaining arrest warrants found in Chapter 15 of the TCCP. The following are shortened versions of Articles 15.01, 02, 03, and 05. If departmental approval is received, an officer may obtain an arrest warrant by following these requisites:
 - a. (15.01) An arrest warrant is a written order from a magistrate, directed to peace officer commanding the officer to arrest a person accused if an offence, to be dealt with according to law.
 - b. (15.02) A warrant must be issued by a magistrate, in the name of the State of Texas and must specify the name of the person to be arrested or a reasonable, definite description of the person. The warrant must state the person is accused of a crime and name the crime; and must be signed by a magistrate and identify the magistrate's office.
 - c. (15.03) A magistrate in the State of Texas may issue an arrest warrant when a person (the officer) makes an oath

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(affidavit or complaint) that another has committed an offense against the laws of the State of Texas.

- d. (15.05) An officers complaint or affidavit must state the name of the accused or some reasonable definite description of the individual. It must show that the person has committed a crime, either directly, or that there is good reason to believe that the person has committed a crime. The complaint/affidavit must state the time and place of the offense, as definitely as can be done by the affiant, and it must be signed by the affiant.
2. Unless assigned as an investigator or detective, officers will obtain supervisory approval before applying for an Arrest Warrant for any individual.
 3. All members of the department will utilize approved Affidavit and Arrest Warrant forms provided by the department. Upon completion of the affidavit and warrant, all officers shall have the documents reviewed and approved by a supervisor prior to requesting judicial approval.
 4. Warrants will only be carried to the judge of the Municipal Court or to a County or District Court judge for judicial review. If a warrant approval is refused by any judge, the affidavit and warrant shall not be taken to any other judge without substantial additional information proving probable cause being added to the affidavit. Subsequent reviews will be done by the same magistrate unless unavailable.
 5. Except as authorized by the Texas Code of Criminal Procedure, Chapter 14, or Section 18.16, an officer shall not arrest anyone without an arrest warrant.
 6. An officer shall not alter any information on an arrest warrant in any manner after a magistrate has issued it.
 7. An officer shall presume that any arrest warrant, which appears in proper form, is valid. To be in proper form and valid on its face, an arrest warrant shall:

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- a. Issue in the name of "The State of Texas",
 - b. Specify the name of the person whose arrest is ordered, or provide a reasonable description if the name is not known, State that the person is accused of a named offense, and
 - c. Be signed by a magistrate whose office must be named.
8. An officer shall execute a valid arrest warrant as provided by law and departmental policies. If the arrest warrant lacks proper form, the officer shall not execute the warrant, but shall return the warrant to the magistrate who issued it.
9. If an officer has any question about the details or validity of an arrest warrant, he shall attempt to verify the information before making an arrest under authority of that warrant. Whenever practical, an officer shall automatically verify the currency of any arrest warrant issued thirty days or more before the date of execution.
10. Any decision to send Regional or Statewide messages concerning a warrant will be made by a supervisor or the investigator assigned to the case. An officer need not have actual physical possession of an arrest warrant in order to execute it. However, before executing a warrant not in his possession, the officer shall personally determine the location of the warrant and shall ensure that the arrestee sees a copy of the warrant as soon as possible after his arrest.
11. In executing an arrest warrant, whether or not he has the warrant in his possession, an officer shall announce to the person being arrested that the arrest is made pursuant to an arrest warrant. If the officer has the warrant in his possession, he shall show it to the arrestee. If the officer does not possess the warrant, he shall advise the arrestee of the charge, bond and originating agency who issued the warrant.
12. Officers may enter a third party's residence:
 - a. with consent to search from the resident or person having control of the property, or

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- b. With a search warrant for that residence in order to enter and make the arrest, or
- c. While in fresh pursuit of the wanted person.

B. Warrants from other Jurisdictions

1. If an officer has knowledge that another Texas law enforcement agency holds a confirmed and valid arrest warrant for a particular person, the officer may arrest that person. If an officer makes an arrest on a warrant from another Texas law enforcement agency, the officer shall:
 - a. Arrest the defendant, transferring the person to the custody of the Denton County Sheriff's Department as soon as possible.
 - b. No Officer shall make an arrest without a confirmation from dispatch that the warrant is valid.
 - c. An officer shall also execute an arrest warrant telegraphed under the authority of a Texas magistrate.
 - d. No Officer shall arrest on any class "c" warrant without prior approval from a supervisor and the Denton County Jail.

C. Warrants from Other States

1. Whenever any officer has probable cause to believe that a person stands charged of a felony in another state, the officer shall:
 - a. Arrest the person only after the warrant has been confirmed using accepted methods of warrant confirmation. This arrest is made under the authority granted to Peace Officers in the Texas Code of Criminal Procedure, Chapter 51, Fugitives from Justice.
 - b. Book the arrested person directly into the custody of the County Sheriff's Department.
 - c. The existence of a warrant from another state does not provide officers the authority to enter a third person's residence to make the arrest. Officers may only enter a third person's residence in the following circumstances:

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- i. with consent to search from the resident or person having control of the property, or
- ii. With a search warrant for that residence in order to enter and make the arrest, or
- iii. While in fresh pursuit of the wanted person.

D. Chance Encounters

1. Whenever an officer lawfully stops or otherwise detains and identifies a person, he may concurrently initiate a records check to determine whether any arrest warrant is outstanding against that person.
2. To conduct a records check, an officer may detain a person who he has lawfully stopped for a reasonable period of time. For a routine records check by radio, telephone, teletype, or computer terminal, the detention should not exceed a reasonable amount of time. However, detention may be extended, but no longer than necessary, if the officer has a reasonable suspicion that a warrant is outstanding.
3. The person may be required to wait in the officer's vehicle, in his own vehicle, or in some other convenient place.
4. The person may be frisked if the officer can articulate a reasonable fear for his or her safety.

E. Planned Executions of Arrest Warrants

1. Prior to the planned execution of an arrest warrant, the officer in charge shall notify his supervisor.
2. The time of day for executing the arrest warrant shall be based on the following rules:
 - a. Execute during daylight, unless circumstances make this dangerous or impractical.
 - b. Execute when the person named in the warrant is most likely to be present.
 - c. Execute when resistance is least expected and best controlled.

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- d. Minimize the danger or inconvenience to other persons who may be on the premises, unless other circumstances make this impractical.
 - e. Whenever possible, arrests shall be made in a location where the arrest will not pose a threat to the safety of the public (e.g., crowded places where bystanders may be injured should the arrestee offer resistance, particularly resistance involving the use of firearms).
 3. An officer may serve the warrant at any place, public or private, where the individual named is reasonably believed to be located (subject to third party private location rule.)
 4. Officers need not execute the warrant at the first possible opportunity to do so, but may choose the time and place in accordance with these rules. However, an officer shall not select the time and place of arrest solely to embarrass, oppress, or inconvenience the arrestee.
 5. An officer shall not use force to enter private premises to execute a misdemeanor arrest warrant.
 6. In general, when seeking to enter a private premise, an officer shall ring the doorbell or knock on the door, announce his intentions and purpose, and demand admittance. He may then wait, for a reasonable time under the circumstances, to be admitted.
 7. Officers may only enter a third person's residence in the following circumstances:
 - a. with consent to search from the resident or person having control of the property, or
 - b. With a search warrant for that residence in order to enter and make the arrest, or
 - c. While in fresh pursuit of the wanted person.
 8. If the execution of an arrest warrant may involve significant risk to officers, a statement of the circumstances of this risk should be included in the affidavit and the magistrate requested to include a "No Knock" authorization to the warrant. If a "No Knock" provision has not been authorized by the magistrate, and articulable circumstances occur at the time of execution of the warrant (such as efforts to destroy evidence, evade arrest, or endanger officers) an immediate entry may be made without the required notice and waiting period.

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9. If an officer must make a forcible entry, the officer shall enter the premises by the least forceful means possible under the circumstances. Although entry may necessarily include breaking a door or window, an officer must strive to inflict as little damage as possible to the premises.
10. Whenever an officer must forcibly enter private premises to execute a felony arrest warrant, the officer in charge of the operation shall have enough officers present, and take other appropriate measures to protect the safety and security of all persons present. To identify the group as officers, at least one fully uniformed officer should lead the entry into the premises.
11. After forcibly entering private premises to execute a felony arrest warrant, officers shall immediately secure the premises by locating, and controlling the movement of all persons who reasonably appear to present a threat to the safety of the officers. Officers shall also control any object that may be used as a weapon. An officer may frisk any person who the officer reasonably suspects may have a weapon concealed upon his person.
12. An officer shall leave the premises at least as secure as when he entered by leaving it in the hands of a responsible person or by locking all doors and windows. If the premises is left unsecured, a guard will be left until it can be turned over to a responsible party or otherwise secured from illegal entry.

F. Execution of Local Warrants by Other Jurisdictions

1. Whenever another law enforcement agency within Texas holds a prisoner on a warrant from this department, this department shall either pick up the prisoner within twenty-four (24) hours or notify the holding agency to release him.
2. Whenever an out-of-state department notifies this department that the out-of-state department has executed a felony arrest warrant held by this department, and is holding the person arrested, this department shall immediately pursue extradition proceedings.

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VI. LOCAL AGENCY WARRANTS/ARREST

1. Officers will no longer confirm class "C" warrants issued from any outside agency unless required by law to do so or the officer has received approval to arrest from a supervisor.
2. If a situation arises which an officer feels it is in the best interest of the community to confirm a class "C" misdemeanor warrant he must contact a supervisor before doing so. He will also document the circumstances (whether permission is given or denied) after the event on the officers DAR.
3. This agency also will not hold any accused person for any outside agency to arrive to collect them for a warrant below the grade of felony. If an officer is requested to do this they are to respond it is prohibited by policy. If an outside agency arrives while on a traffic stop you are to ask the officer to remain behind your unit while you finish your stop. Finish your business before the outside agency makes contact and under no circumstances are you to become involved in the business of the outside agency. Officers are permitted to remain on scene and provide back-up only if requested. Back-up is not to be offered. If this policy is deviated in any way officers are to notify the director by email with the circumstances of the incident and reasons why, then file a complete report on the incident.

VII. RELEASE FROM ARREST

- A. Officers may encounter a circumstance where probable cause develops to arrest a person for an offense, only to find out shortly thereafter that the person under arrest did not commit a crime, or that the event was not a crime. It is imperative, then, that the officer end the arrest process and release the person as soon as possible.
- B. Procedure
 1. If the arresting officer determines that probable cause no longer exists to arrest a suspect, and the officer is satisfied that the person under arrest either did not commit the crime or that the crime did

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not occur, or a warrant is proven to be invalid then the officer shall release the suspect.

2. When an officer releases a subject from arrest, he or she shall return the person to the place of the arrest, if the location is safe. The officer shall not release the person along the roadside. If a vehicle has been towed, the vehicle shall be returned to the operator/registered owner unless it is required as evidence, or some other legal authority assumes custody of the vehicle.
3. Upon releasing a person in this manner, the officer shall immediately contact the Director and advise him or her of the incident.
4. The officer shall document in an incident report:
 - a. The date and time of arrest.
 - b. The person arrested (name, address, date of birth, race).
 - c. The location of arrest.
 - d. Probable cause for the arrest and the specific charge(s).
 - e. Warrant Number, issuing agency, confirmation, dispatcher giving confirmation (If arrest is due to warrant)
 - f. The location and time of release from arrest and whether the person was transported.
 - g. The reasons or discovery of information which led the officer to release from arrest.
 - h. Any witnesses to the alleged crime, or to the fact the person arrested was allegedly involved.
 - i. Whether force was used in making the arrest, and if so, the nature of any forced used and the consequences (including medical aid).

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VIII. IMMUNITY FROM ARREST

A. Legislative immunity

1. Members of the United States Congress are exempt from arrest when Congress is in session, or when they are en route to or from congressional business, except for traffic summonses.
2. Members of the Texas Legislature are exempt from arrest during a legislative session (or allowing for one day for every 20 miles such member may reside from the place where the legislature meets before the beginning or after the ending of any session) except in cases of treason, a felony, or a breach of the peace.

B. Diplomatic immunity

1. While a person claiming diplomatic immunity may present any number of identification papers, the only one that is indicative of the level of privilege and immunity is a card issued by the U.S. State Department. The holder's level of immunity will be indicated on the card. If a person claiming immunity does not possess this card and the incident involves a criminal offense, officers may detain the person either at the scene or at the department long enough to verify official status.
2. Upon exhibiting proof of diplomatic immunity, persons shall be released upon being stopped for a misdemeanor traffic violation. If questions arise about this procedure, or if an arrest for a felony is necessary, call and advise the U.S. State Department Office of Security (202-647-4415, days, or 202-647-1512, nights and weekends).
3. When encountering a criminal suspect who claims diplomatic immunity, officers shall first take reasonable measures--including pat-downs or other legal searches--to ensure safety to the public or other officers. Verification of the diplomatic claim shall take place after a danger has been neutralized. A criminal investigation shall proceed as if no valid diplomatic immunity claim has been made.

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Interviews, interrogations, seizures of evidence, or issuance of warrants shall proceed per departmental procedure. In a criminal investigation, the Director shall remain in contact with the State Department.

4. Regardless of the claim of immunity, in any case where officers arrest or detain foreign nationals, the suspects shall be advised of their right to have their consular officials notified. In some cases, this notification is mandatory. Note: the list of countries which require mandatory notification of consular officials in the event that one of their citizens has been arrested is extensive. The State Department shall be contacted for guidance.

Approved: *M. Shackleford*
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