

TEXARKANA, TEXAS POLICE DEPARTMENT
GENERAL ORDERS MANUAL

<i>Effective Date</i> February 1, 2008		<i>Amended Date</i> November 1, 2015		<i>Directive</i> 7.03.1	
<i>Subject</i> Arrests without a Warrant					
<i>Reference</i>					
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				<i>Pages</i> 6	

This Operations Directive is for internal use only and does not enhance an officer's civil or criminal liability in any way. It should not be construed as a creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this Operations Directive, if proven, may only form the basis for a complaint by this Department, and only in a non-judicial administrative setting.

SECTION 1 PURPOSE

The purpose of this policy is to regulate arrests made without a warrant.

SECTION 2 POLICY

The administration of criminal justice consists of the identification, arrest, and prosecution of law violators. Once a crime has been committed, it is the duty of the department to initiate the criminal justice process by identifying and arresting the perpetrator, obtaining evidence, and cooperating in the prosecution of the case. Therefore, it is the policy of this department to diligently strive to investigate and solve all reported crimes and to bring the perpetrators to justice.

SECTION 3 PROCEDURES

A. ARRESTS WITHOUT WARRANT

1. Arrests with a Warrant will be made pursuant to Chapter 14 of the Texas Code of Criminal Procedure.
2. An officer who has reasonable time and opportunity to obtain an arrest warrant shall do so. An officer shall not make a warrantless arrest except as provided further in these rules or otherwise expressly authorized by statute.

B. PROBABLE CAUSE FOR WARRANTLESS ARRESTS

1. No officer shall make an arrest without first establishing probable cause. Officers must rely on special training, skills and experience in determining whether probable cause exists.
2. An officer may make an arrest without a warrant when requested to do so by another officer, provided the arresting officer has no reason to doubt the requesting officer has established probable cause to make that arrest.

C. OFFENSES COMMITTED IN THE OFFICER'S PRESENCE

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An officer acting within his jurisdiction may, without a warrant, arrest an offender for any offense committed in the presence of that officer with the exception of the open container statute and speeding in which cases the officer must afford the violator the opportunity to sign a citation. While outside his jurisdiction but within the State of Texas, an officer may arrest a person without a warrant for a felony or a breach of the peace which is committed in the presence of that officer.

D. FRESH PURSUIT AND WARRANTLESS ARREST

The procedures set forth below address "fresh pursuit" as a concept and must be applied in accordance with Departmental Policy that governs vehicle pursuits.

1. A Peace Officer may, in accordance with Texas Code of Criminal Procedure, pursue an offender and make an arrest without a warrant even:
 - a. If the officer is outside his normal jurisdiction and/or
 - b. After the offense has occurred.
2. An officer may, without a warrant, pursue an offender who is escaping from the officer's presence only under the following circumstances:
 - a. When the officer has probable cause to believe that the offender has committed a felony, or
 - b. When the offender has, in the presence of an officer, committed a felony or misdemeanor that involves a breach of the peace, and a recurrence or continuation of the offense is likely.
3. An officer may use fresh pursuit in order to arrest an offender anywhere within the State of Texas or in Texarkana, Arkansas pursuant to existing Interlocal Agreements and legal authorizations.
4. Officers will, however, temper their pursuits to ensure compliance with Directive 7.13.1 Vehicle Pursuits.

E. OFFENSES OUT OF THE OFFICER'S PRESENCE

1. An officer shall obtain an arrest warrant whenever he/she has reasonable time and opportunity to obtain one.
2. An officer is authorized to make a warrantless arrest when:
 - a. Verbally ordered by a magistrate,
 - b. The officer finds a person in a suspicious place and under circumstances that give the officer probable cause to believe that such person:
 - 1) Has committed a felony.
 - 2) Has committed an offense which is a breach of the peace and which will likely continue.
 - 3) Threatens or is about to commit some offense against the law.

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- 4) Has committed an assault resulting in the bodily injury to another person and believes there is danger of further bodily injury to that person.
 - 5) Has committed a violation of a court order (P.C. 25.07) not in the officers' presence. The Code of Criminal Procedure 14.03 mandates an arrest when the offense occurs within the officers' presence.
 - 6) Persons who an officer has probable cause to believe have committed an offense involving family violence.
 - 7) Persons who an officer has probable cause to believe have prevented or interfered with an individual's ability to place a telephone call in an emergency, as defined by Section 42.062(d), Penal Code, if the offense is not committed in the presence of a peace officer.
- c. The officer is informed by a credible person that a particular person has committed a felony and:
- 1) The offender is about to escape, and
 - 2) There is insufficient time to obtain a warrant.

F. SELECTIVE ENFORCEMENT

1. Except as to felonies and family violence, an officer does not have to make an arrest every time he/she has probable cause to do so. In some circumstances, and consistent with the public interest, he may decline to arrest.
2. When an officer declines to make an arrest, despite probable cause, he/she should inform the suspect:
 - a. That his conduct has come to official attention.
 - b. He will be arrested if he continues or repeats such conduct, and
 - c. That a warrant may be filed for the previous conduct if probable cause exists.
3. An officer shall be able to articulate the reason(s) for his decision not to arrest, despite the presence of probable cause.
4. In determining whether to arrest, the officer shall not consider the race, creed, religion, or any other arbitrary classification of the suspect or victim.

G. DELAY IN MAKING AN ARREST

1. An officer shall obtain an arrest warrant in order to arrest someone who committed a misdemeanor in the presence of that officer, if that officer did not immediately make the arrest:
 - a. At the time the misdemeanor occurred, or
 - b. While there was a continuing danger of a renewal of the misdemeanor, if it was a breach of the peace.

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2. An officer shall obtain an arrest warrant if a felony is committed in his presence and he fails to arrest the offender at that time, under the circumstances, after the offense occurred. A delay in making the arrest is reasonable when:
 - a. Necessary to overcome resistance by the offender,
 - b. Necessary for the safety of the officer or others, or
 - c. The officer is in fresh pursuit of the offender.

H. MIRANDA WARNINGS

When an officer makes an arrest, with or without a warrant, the officer interrogating the arrested person will ensure that the arrested person is read his "Miranda Warning" prior to any custodial interrogation and so note the warning and time in the offense report.

I. MAGISTRATE'S WARNING

As soon as is practical after the arrest, and without unnecessary delay, the arresting officer will arrange to have the arrested person brought before a magistrate for proper warnings in accordance with the Texas Code of Criminal Procedure.

J. DUTY TO INFORM ARRESTEE

1. The officer making the arrest will ensure that the person arrested knows that he is being placed under arrest and the reason for the arrest, if circumstances permit.
2. The officer may place an unconscious, mentally ill, or injured person under arrest even though such person is incapable of understanding that he is under arrest.

K. DUTY TO IDENTIFY

When not in uniform, an officer making an arrest shall display his badge or police identification and state that he is a police officer.

L. DUTY TO SEARCH

1. Upon the arrest of any person, the arresting officer shall thoroughly search the person(s) arrested and remove all contraband, evidence, and weapons or potential weapons.
2. When a person operating a motor vehicle has been arrested, it may be necessary to search the vehicle for contraband, firearms, narcotics, or other evidence. Whenever it is possible to obtain a search warrant, then the officer shall obtain a search warrant if the vehicle is no longer mobile and the exception to the warrant requirement no longer exists.

M. USE OF PHYSICAL RESTRAINTS

All persons arrested for any offense shall be properly handcuffed.

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N. TRANSPORTATION OF ARRESTEE

1. Prior to transporting an arrestee, the arresting officer shall:
 - a. Search the compartment of the vehicle designated for the transportation of prisoners for contraband.
 - b. Secure the arrestee in the rear seat of the transport vehicle. Seat belts should be used on the arrestee unless impractical due to arrestee's combativeness.
 - c. Advise the dispatcher they are transporting a prisoner to the jail.
 - d. Advise the dispatcher upon arrival at the jail.
 - e. If the transport vehicle does not have functioning video equipment, the beginning and ending mileage shall be provided to the dispatcher.
 - f. Search the compartment of the vehicle where prisoner was located for contraband.
2. Unless circumstances dictate otherwise, all such transports should be undertaken in a marked patrol unit equipped with a cage which separates the officer from the arrestee.
 - a. Detectives occasionally transport non-violent arrestees from one location to another. In those instances, the arrestee may be transported in an unmarked unit provided the individual is, at a minimum, handcuffed and secured with the seatbelt. If the person has indicated by word or actions an intent to use violence against the transporting officer(s), the officer should consider transporting the arrestee in either a marked unit with a cage or a jail transport vehicle.

O. ARRESTING UNDOCUMENTED CITIZENS / ILLEGAL ALIENS

1. In the arrest of undocumented aliens, officers may not arrest an alien without a warrant, solely upon suspicion that he/she has entered the country illegally. An arrest without a warrant can be effected only when a state or local misdemeanor offense occurs within the officer's presence, or if the requirements of Articles 14.03 and 14.04 of the Code of Criminal Procedure with regard to felony violations, are satisfied.
2. When an officer legally takes a person into custody, and the officer suspects that the arrested person may be in this country illegally, the officer will contact the United States Immigration and Customs Enforcement (ICE). The Dallas Duty Agent for ICE can be reached 24-hours a day through the ICE dispatch office at 1-800-973-2867. Officers are encouraged to contact ICE any time questions arise concerning an arrest of any person who is suspected of being an illegal alien.
3. When a person who is a citizen of another country is arrested, then it is the responsibility of the arresting officer to check the list of countries to determine the proper procedure for Consular notification. Some countries have mandatory notification and some countries require that you ask the arrestee if he/she wishes to have their Consular notified. The Consular Notification and Access list is prominently posted on the board in the patrol room.
4. The jail registration card will indicate that the suspect is to be held for the Immigration and Customs Enforcement. The form must have the authorizing agent's name entered as the detaining authority.

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5. It is the policy of this Department to hold persons suspected of being undocumented aliens for a period not to exceed 48 hours. If, after this period of time, all other charges have been disposed of and the Immigration and Customs Enforcement has not taken custody of these persons, they will be released. However, if it can be satisfactorily shown that the Immigration and Customs Enforcement will take custody of these persons in a reasonable length of time, they may be detained an additional 24 hours with approval of the Chief of Police. Under no circumstances will these persons be detained longer than 72 hours from the time they are booked into jail.

P. DISPOSITION OF INJURED/ILL ARRESTEE

1. In accordance with Directive 6.07.1 officers must summon medical aid for any arrestee who is ill or who sustains injury prior to, during or after arrest. If, after examination by EMS personnel, transportation to the hospital is necessary, the prisoner will be taken either by ambulance or patrol car. Prisoners who refuse to be taken to the hospital will be instructed by EMS personnel to sign a refusal statement. The attending officer should obtain a copy of pertinent EMS records pertaining to the prisoner and forward to CRC along with all other related paperwork. A written medical release, signed by the attending physician, must be obtained by the officer or any prisoner taken to a medical facility for treatment. This release must be obtained before the prisoner can be placed in the Bi-State jail. If, in the attending physician's opinion, the arrestee must remain in the hospital, the arresting officer will notify his supervisor immediately.
2. A supervisor may determine, after review of the charge and fact situation that continued detention is not in the best interest of the prisoner and the department. If this is the case, the supervisor shall cause the prisoner to be released and insure that proper release documentation is made. Warrant(s) on the released prisoner may be obtained at a later date. The supervisor shall document the release by supplemental report or memo to the Chief of Police via the chain of command.
3. Upon the supervisor making the decision to release a prisoner for medical reasons, who has been arrested under the direction of a magistrate (warrant), it shall be the responsibility of that supervisor to ensure that the issuing magistrate has been contacted and permits the release of the prisoner.

Q. PROBABLE CAUSE AFFIDAVITS

A Probable Cause Affidavit must be completed by the officer for all custody arrests made without a warrant. These affidavits must have the CCN number written at the top of the affidavit, and the affidavit must be forwarded to CRC along with all other paperwork related to the arrest.

R. RESPONSIBILITY

1. All members of the Department shall know and comply with all aspects of this directive.
2. All Division Commanders and supervisory personnel are responsible for ensuring compliance with the provisions and intent of this directive.