

	<b>ROSENBERG POLICE DEPARTMENT</b>	
	<b>General Order 7.03 Arrests With and Without a Warrant</b>	
	<b>Effective Date: 05-13-2013</b>	<b>Replaces: N/A</b>
	<p style="font-size: 1.5em; color: blue;">[Signature]</p> <b>Approved:</b> Chief of Police	
<b>Reference: TBP 7.02, 7.03, and 7.04</b>		

## 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 and without 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.

#### **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** (TBP: 7.02)

- 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 (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. 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.
5. An officer shall not alter any information on an arrest warrant in any manner after a magistrate has issued it.
6. 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:
  - 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.
7. 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.
8. 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.
9. 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.
10. 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.
11. Officers may enter a third party's residence:

- 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.

#### B. Warrants from other Jurisdictions

1. If an officer has knowledge that another Texas law enforcement agency holds a 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. Notify the agency holding the warrant that this department executed the warrant and give the location of the arrestee.
  - b. Make certain that a supervisor is notified if the defendant is booked into this department so that the defendant can appear before a magistrate within 24 hours of the arrest.
  - c. The department shall hold the arrestee as the magistrate prescribes, until releasing the arrestee to the custody of the department holding the warrant, or until transferring the person to the custody of the County Sheriff's Department.
  - d. If the department holding the warrant cannot take custody of the arrestee within 24 hours after the execution of the warrant, or if that department at any time indicates that it will not take custody of the arrestee, the arrestee may be released from our custody.
  - e. An officer shall also execute an arrest warrant telegraphed under the authority of a Texas magistrate.

#### 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:
    - 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 executing an arrest warrant, the officer in charge shall notify his/her chain of command.
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.
  - 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.
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.
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.

#### 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.

## **VI. ARREST WITHOUT A WARRANT** (TBP: 7.03)

A. Federal and state constitutions protect individuals from arbitrary and oppressive interference with privacy by law enforcement officials. Further, officers must have probable cause that a crime has been committed, and that the person to be arrested has committed the crime.

B. When warrantless arrests may be made

1. The Texas Code of Criminal Procedure, in Chapter 14, gives officers the authority to make warrantless arrests, supported by “*probable cause*”, as follows:
  - a. Officers may arrest persons found in suspicious places and under circumstances which reasonably show that such persons have been guilty of some felony or breach of the peace, or threaten, or are about to commit some offense against the laws.
  - b. If an officer has *probable cause* to believe that a person has committed an assault resulting in bodily injury to another and believes that there is danger of further bodily injury to that person, the officer may arrest the violator. If an officer has probable cause to believe that the person has committed an offense involving family violence, the officer may arrest the violator.
  - c. If a person prevents or interfered with an individual’s ability to place an emergency telephone call related to family violence, an officer may arrest the violator.
  - d. Officers shall arrest a person in violation of a valid protective order when committed in the officer’s presence. Officers may arrest an offender for any offense committed within the officer's presence or view, including traffic violations.
  - e. Officers may arrest at the direction of a Magistrate, when a felony or breach of the peace has been committed.
  - f. Where it is shown by satisfactory proof to a peace officer, upon the

representation of a *credible* person, that a felony has been committed, and that the offender is about to escape, so that there is not time to procure a warrant, said officer may, without warrant, pursue and arrest the accused.

g. Officers may arrest a person who confesses to a felony crime.

2. Warrantless Arrests Outside Officer's Jurisdiction:

a. Although officers are discouraged from making arrests outside their jurisdiction, officers may make warrantless arrests in compliance with state law. Officers who are outside their jurisdiction may arrest, without warrant, a person who commits an offense within the officer's presence or view, if the offense is a felony, breach of the peace, or violation of Chapter 42 or 49 of the Texas Penal Code.

b. Any officer making a Warrantless arrest outside his/her jurisdiction shall notify the law enforcement agency of proper jurisdiction. The law enforcement agency shall take custody of the prisoner and arraign the prisoner before a magistrate in compliance with state law.

## **VII. POST-ARREST PROCEDURES**

### **A. Injury before or during arrest**

If a person receives an injury before or during an arrest and either requests medical attention or, in the officer's judgment, medical attention is needed, officers shall transport the suspect or arrange for his or her transportation to the hospital for an examination before booking.

B. Officers shall complete all necessary Offense Reports, including any Use of Force forms, Evidence Submissions, and all other paperwork associated with the arrest. Arrestees shall be booked and processed as outlined in G.O. 10.1.

### **C. Mirandizing Arrestees**

1. Arrestees shall be advised of their Miranda rights before any questioning.
2. A waiver of the Miranda rights must be obtained before any questioning of an arrestee.
3. If the arrestee has not waived his or her Miranda rights, no questioning shall be conducted beyond that necessary to accomplish the booking procedure (name, address, etc.).

4. If the arrestee declines to waive his or her Miranda right to counsel, or if the arrestee, after waiving that right, elects to reassert it, questioning must cease immediately and no further questioning may be conducted unless
  - a. An attorney representing the arrestee is present, or
  - b. The arrestee voluntarily initiates a further interview.
  - c. If the arrestee has not waived his or her Miranda rights, then even though the arrestee is not being directly questioned officers shall refrain from engaging in conversation among themselves in the presence of the arrestee that is calculated to elicit incriminating statements or admissions from the arrestee

## **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. Interviews, interrogations, seizures of evidence, or

issuance of warrants shall proceed per departmental procedure. In a criminal investigation, the chief 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. (TBP 10.22)