



# Clayton County Police Department PROCEDURES

Subject <b>CIVIL DISPUTES</b>		Procedure # <b>D28</b>	
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## I. PURPOSE

To provide employees with guidance for addressing conflicts between persons when no criminal investigation or enforcement action is warranted (e.g., civil matters), with the goal of minimizing any potential for violence or criminal acts.

## II. POLICY

The Clayton County Police Department (CCPD) recognizes that a law enforcement presence at a civil dispute can play an important role in the peace and safety of the community. Subject to available resources, officers will assist at the scene of civil disputes with the primary goal of safeguarding persons and property, preventing criminal activity and maintaining the peace. When handling civil disputes, officers shall maintain a calm presence, give consideration to all sides, remain impartial, and refrain from giving legal or inappropriate advice.

## III. DEFINITIONS

Civil Law: The body of laws dealing with the rights of private citizens. The laws are concerned with private relations between community members rather than criminal, military, or religious affairs. It is a body of rules that establishes private rights and remedies, and governs disputes between people in such areas as contracts, property and family law. It is distinct from criminal law.

Criminal Law: Those statutes dealing with crimes against the public that specifically prohibit certain conduct and set punishment for violations of the statutes.

Disturbance: A breach of the peace that does not include any allegations of family violence.

Stand-By Situation: Any incident in which a person and/or party requests the presence of a police officer at a specific location while the person and/or party obtains or removes personal property.

## IV. PROCEDURES

### A. General Considerations

1. When appropriate, officers handling a civil dispute should encourage the involved parties to seek the assistance of resolution services or take the matter to the civil courts. Officers must not become personally involved in disputes and shall at all times remain impartial.
2. When handling civil disputes, officers should give considerations to the following:
  - a. Civil disputes can be confrontational and officers should be alert that they can quickly escalate to violence. De-escalation techniques shall be used when appropriate.
  - b. Officers will not dismiss alleged or observed criminal violations as a civil matter and will initiate the appropriate investigation and report when criminal activity is apparent.
  - c. Officers shall not provide legal advice, however, when appropriate, officers should inform the parties when they are at risk of violating criminal laws.
  - d. Officers are reminded that they will not enter a residence or other non-public location without legal authority including valid consent.
  - e. Officers shall not take an unreasonable amount of time assisting in these matters and will notify a supervisor when efforts may take an extended period of time.

### B. Responding to Calls

1. Generally, officers will respond without delay (Priority 2) to disturbance calls involving civil disputes. The response may be upgraded dependent upon the alleged and/or known circumstances of the incident. Refer to CCPD SOP *D1: Patrol Operations for the Clayton County Police Department Signals, Status Codes, Service Codes and Priority Codes*.
2. Generally, a minimum of two (2) officers shall be dispatched to such calls. If only one (1) officer is available at the time of dispatch, a supervisor may respond as the second officer.
3. When responding to the scene, the officer will first determine whether it is a civil or criminal matter. Once the matter has been determined to be civil in nature, the responding officer is to assist the complainant within the scope of their official capacity. If it is not within the scope of the officer's capacity, the complainant should be so informed and directed where to receive the type of assistance that they are requesting.
4. Officers responding to a call for standby assistance to retrieve property should meet the complainant at a neutral location to discuss the process, if possible. Depending on the complainant's request, officers may accompany them to the location of the property.

### C. Stand-By Situations

1. Officers may be requested on stand-by situations to assist a person with the removal of personal articles such as clothing.
2. The responsibilities of officers during stand-by situations is to safeguard persons and property, prevent criminal activity and maintain the peace.
3. Officers shall limit stand-by-calls to a reasonable time period.
  - a. Officers shall explain to the complainant that stand-by-calls will only allow them to remove small amounts of property from the premises.

- b. When large amounts of property need to be removed from the premises, and/or other type of time consuming removal is needed, officers shall inform the complainant to make arrangements with the Clayton County Sheriff's Office (CCSO).
4. When entry into private property and/or the removal of property is denied by the lawful occupant(s) of the property, the following procedures shall be used:
  - a. Officers shall not order the other party to allow entry and/or the removal of any items.
  - b. Officers shall explain to the complainant that access and/or claims to personal property will not be enforced by the CCPD, and that they will need to make arrangements with the CCSO, for any court order pertaining to the removal of personal property.
  - c. Claimants may not trespass upon the property of another for the purpose of removing or recovering property without a court order empowering them to do so, or consent.
  - d. If a confrontation between two (2) or more persons develops into a breach of the peace, officers shall enforce state law(s) to maintain order and all disputants may be subject to arrest.

#### D. Neighbor Disputes

Common disputes between these parties include, noise complaints, shared amenities, animal issues, boundary disputes, etc. Officers should encourage the involved parties to seek the assistance of resolution services, or speak with their attorney when applicable.

#### E. Parental Custody Involving Children

When responding to a call involving parental custody rights, the officer's actions should be one of neutrality, unless the proper court documents are at the scene.

#### F. Court Orders/Conditions of Bond

1. Officers shall enforce current orders of the courts which specifically directs the Clayton County Sheriff or the CCSO's duly-constituted deputies and/or police officers to execute an order of judgment. Because disputes involving court orders can be complex, officers should consult with a supervisor if there appears to be a more immediate need for enforcement action and/or prior to making an arrest, if possible.
2. The Department's *Family Violence* policy will address specific legal mandates related to domestic violence court orders. For further information on conditions of bond and other court orders refer to CCPD SOP *D18: Family Violence*.

#### G. Guest Not a Tenant

1. A guest is present at the invitation of the person in possession (e.g., owner, renter) which can be revoked at any time. Bona fide house guests, known as invitees, have no rights under Georgia law and they do not have to be evicted. If the person in possession wants such guest to leave, they should give a trespass warning, in the officer's presence, and if the guest fails to leave they can be arrested for Criminal Trespass.

Since the distinction between guest status and tenant status is crucial on these types of calls, officers shall determine if all of the elements are there to indicate that a tenancy was created, if so, officers shall not issue a Criminal Trespass warning and/or make an arrest for such offense.

## 2. Determining the Legal Status of a Guest

Georgia courts have inferred a tenancy as little as two (2) weeks after a house guest moved in and there was an intention to pay rent. A written lease is not needed to create a landlord-tenant relationship. Paying just a few dollars a week towards groceries or performing chores (e.g., taking out the trash, yard-work, babysitting) will turn the guest into a tenant in most cases. In actual fact, the guest may not have to part with any money. As long as there's an intention to pay rent or provide services, the courts may decide that a legal tenancy was created.

## H. Tenancy-at-will

Even if a landlord does not charge rent, a landlord-tenant relationship might be created when the landlord gives someone the right to stay at the property. If the landlord did not set out a specific end date, there might be a tenancy-at-will. If there is a tenancy-at-will, the landlord must give the tenant sixty (60) days' notice telling them to leave. If the landlord is willing to allow the tenant to remain but wishes to begin charging rent, the tenant must be given sixty (60) days' notice to start a new tenancy-at-will requiring rent payments.

## I. Landlord-Tenant

1. Types of disputes include, alleged trespassing by a landlord into the tenant's residence, failure to pay rent, removal of the tenant's contents from the residence, etc. Although both parties may insist that the officer take actions against the other, a criminal charge is often questionable. Landlords or tenants who cannot resolve a dispute need to use the courts, either directly or through a lawyer, to enforce their legal rights.

2. Basically, there are four (4) ways to occupy property:

Owner: Has the most superior right to occupy the property, but this right may be limited by contract with their tenant.

Tenant: Once a landlord gives someone the right to stay at the property, a tenant has exclusive possession, and, within the rules of the lease, can do whatever they want within the home, as long as it is legal. The only way to involuntarily remove a tenant is with dispossessory proceedings.

Guest: Right to occupy the land is subject to permission of the owner or tenant, who invited the guest. This right can be revoked at any time.

Trespasser: Has no right to occupy.

3. Title 44, Chapter 7 of the Official Code of Georgia Annotated (OCGA) controls landlord and tenant relationships.

4. Landlords cannot kick tenants out of or prevent access to the residence without first going through the court dispossessory (eviction) process. Tenants can be evicted for non-payment of rent, for lease violations, or for staying beyond the lease term. Self-help evictions are illegal, even if the tenant has violated the lease. During the eviction process, the tenant is allowed to remain in the property until there is a court decision. During this time, the landlord cannot cut off utilities either.

5. Dispossessory Proceedings

Under State law, dispossessory proceedings are the exclusive remedy by which a tenant can be summarily and forcibly evicted. *Ralls v E.R. Taylor Auto Co.*, 202 Ga. 107 (1947)

## 6. Writ of Possession

- a. Pursuant to OCGA § 44-7-49, A “writ of possession” means a writ issued to recover the possession of land or other property and such writ shall not contain restrictions, responsibilities, or conditions upon the landlord in order to be placed in full possession of the land or other property.
- b. OCGA § 44-7-55(c) provides that a writ of possession authorizes the landlord to remove the tenant and the tenant’s personal property from the premises. The tenant’s personal property is set out on the landlord’s land or some other property approved by the executing officer.
- c. Once the landlord obtains a writ of possession and after the writ is properly executed.
  - 1) The former’s tenant’s right to occupy the premises has expired and they would be trespassing if they were to enter onto such land without express permission.
  - 2) The former tenant’s personal property is considered abandoned, and the County can remove the evicted property to the landfill after forty-eight (48) hours, pursuant to Clayton County Ordinance Sec. 62-206(b).

## J. Hotel-Motel Guests

1. Title 43, Chapter 21 of the OCGA governs Innkeepers.
2. Traditional hotels and motels provide temporary accommodations to the traveling public. Because this is a temporary stay, Georgia’s Inn Keeper laws treat these patrons as guests of the hotel or motel. This is not a landlord-tenant relationship.
3. Unlike landlord-tenant law, the right of a guest at a hotel or motel is limited. If the guest pays the fee for the room, they do have a right to occupy the room for so long as they abide by the Innkeeper’s rules. Failure to abide by the rules, allows the Innkeeper to evict the person for cause. Eviction for cause removes the person’s right of possession. If the person has been evicted for cause, and fails to leave the property when commanded to do so by the Innkeeper and in the presence of an officer, such person can be arrested for Criminal Trespass. Refer to OCGA § 43-21-3.1(b).
4. A person who fails to pay the fee for a room is not a guest under the law, *State v. Delvechio* 301 Ga. Ap. 560 (2009). They can be evicted by the Innkeeper. If the person has been evicted for cause, and fails to leave when commanded to do so by the Innkeeper and in the presence of an officer, such person can be arrested for Criminal Trespass.
5. Hotel-Motel Right to Retain Property
  - a. Pursuant to OCGA & 43-21-5, the Innkeeper shall have a lien on all personal property brought into the hotel or motel by any guest or patron of the same who has title to such property, or by an agent who has legally acquired possession of such property for the purpose of dealing therewith for the benefit of the owner and in and about the business of the owner, to secure the payment by such guest or patron of all sums due for food, lodging, or other accommodation.
  - b. The person’s only legal recourse in recovering their property is to pay the fees for the room or go to court and seek an order for the return of such property.

The officer's duty is to keep the peace. If the person fails to leave when commanded to do so by the Innkeeper and in the presence of an officer, they can be arrested for Criminal Trespass.

#### K. Extended Stay Hotels and Motels

1. Extended stay hotels and motels are a hybrid because they pay the State's hotel tax for their patrons only for the first ninety (90) days of the stay. After ninety (90) days they can stop paying the tax for that patron, forming a landlord-tenant relationship, not innkeeper-guest. *Efficiency Lodge, Inc. v. Neason*, 363 GA. App. 19, Docket Number A21A1263
2. Some individuals who live in extended stay hotels and motels have tenant rights and should not be forced to move out without an eviction order from the court.
  - a. Once a resident has lived in a hotel or motel for more than ninety (90) days, the hotel or motel is no longer an "innkeeper" under Georgia law because they do not have to pay innkeeper taxes or sales taxes anymore. See O.C.G.A. § 48-8-2(31) (B).
  - b. The resident then becomes a "tenant" under Georgia law, and the landlord of such hotel or motel should utilize the court eviction process to force the tenant to move out, regardless of whether rent has been paid. See O.C.G.A. § 44-7-50(a).
  - c. A hotel or motel in this situation that forces a tenant to move out without obtaining an eviction order from the Court first may be liable for breaking the law.
3. Officers handling calls at an extended stay hotel or motel shall refer the Innkeeper to court for individuals who have been staying there more than ninety (90) days and let the court decide if they are going to issue a warrant.
4. For stays under ninety (90) days, officers should not make an arrest without a warrant. Officers may document all of the facts on a *Warrant Application* and explain them to a Judge. By doing so, a Judge can decide to issue an *Arrest Warrant* for Criminal Trespass, or determine if the extended stay needs to seek eviction through the courts.

#### L. Vehicles and Personal Property

1. Officers may encounter disputes regarding possession or ownership of vehicles or other personal property. Officers may review documents provided by parties or available databases, but should be aware that legal possession of vehicles or personal property can be complex.
2. Generally, officers should not take any enforcement action unless a crime is apparent. The people and the vehicle or personal property involved should be identified and the incident documented.
3. Self-Help Repossession
  - a. OCGA § 11-9-609 does authorize a secured lender to take possession of the collateral without judicial process (self-help repossession) "if it proceeds without breach of the peace".
  - b. *Hopkins v. First Union Bank of Savannah*, 193 Ga. App. 109, 110 (1) (387 S.E.2d 144) (1989), defines "breach of the peace".
  - c. Officers shall not assist with self-help repossession. If an officer is called to the scene, the self-help repossession must end if there has been a breach of the peace.

- d. Unequivocal oral protest of the defaulting debtor is enough under the law to end the repossession. The creditor or their agent needs to leave if a breach of the peace has occurred. They can obtain a court order to allow the CCSO to assist them with obtaining the collateral.

#### M. Contract Disputes

1. OCGA § 13-1-1 defines a contract as an agreement between two (2) or more parties for the doing or not doing of some specified thing.
2. The requisites of an explicit contract are a meeting of the minds of the parties, mutuality and the clear expression of the terms of the agreement. *Jackson v. Easters, 190 Ga. App. 713 (1989)*
3. A contract is enforced in the courts. Officers have no authority to enforce their contract. Officers can offer to mediate as a neutral party if the parties agree. But any resolution must be theirs not the officer. Officers have no authority to enforce their resolution. Their remedy is to reach a formal agreement or go to court.
4. When handling such calls officers need to ensure the incident does not involve a crime (e.g., Theft by Deception, Theft of Services, Theft by Conversion). Officers shall determine if all of the elements of the crime are there and/or provable.

#### N. Liens

1. Refer to OCGA § 44-14-361 for the creation of liens; property to which lien attaches; and items to be included in lien.
2. Mechanics Lien
  - a. The lien holder has the right to retain the property until the lien is satisfied.
  - b. When one (1) person receives possession of an automobile for the purpose of making repairs and holds the vehicle in assertion of a special lien for making the repairs, the holder's refusal to deliver the vehicle upon demand does not constitute a conversion. *Boatright v. Padgett Motor Sales, Inc. 117 Ga. App. 578 (1968)*
  - c. A mechanic can hold a vehicle that was taken in for repair until the bill is paid. The only remedy the vehicle owner has is to pay the bill or seek a court action.

#### O. Conflict Resolution

As part of an officer's role as keeper of the peace, they can attempt to help the parties resolve their conflict. As a neutral party, officers may be able to get the parties to negotiate a settlement to their dispute. The solution must be theirs and officers cannot use their inherent powers to force a solution upon the parties or enforce their agreement. Their remedy is to take the matter to court if they cannot reach a mutually agreeable solution.

#### P. Reporting Disputes/Disturbances

All *Incident Reports* completed for civil disputes/disturbances shall be in compliance with departmental procedures on field reporting. Refer to CCPD SOP *D9: Field Reporting*.

### V. CANCELLATION

This procedure amends and supersedes the following standard operation procedure: *D28 – Disturbances, General & Civil*, dated June 8, 2017.