

# CHAMPAIGN POLICE DEPARTMENT

## POLICY and PROCEDURE

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SUBJECT: LIMITS OF AUTHORITY

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POLICY:

### 1.2.1 LEGALLY MANDATED AUTHORITY OF SWORN OFFICERS

INDEX AS:

- 1.2.1 LEGALLY MANDATED AUTHORITY OF SWORN OFFICERS
- 1.2.2 AUTHORITY TO CARRY AND USE WEAPONS
- 1.2.3 CONSTITUTIONAL REQUIREMENTS OBSERVED
- 1.2.4 WARRANTLESS SEARCH AND SEIZURE
- 1.2.5 ARREST PROCEDURES WITH OR WITHOUT A WARRANT
- 1.2.6 ALTERNATIVES TO ARREST AND CONFINEMENT, PRETRIAL RELEASE
- 1.2.7 USE OF DISCRETION BY SWORN OFFICERS
- 1.2.8 STRIP SEARCHES
- 1.2.9 BIAS BASED PROFILING
- 1.2.10 PROHIBITION ON ENFORCING FEDERAL CIVIL IMMIGRATION LAWS

PURPOSE:

The purpose of this policy is to define the legally mandated authority vested in sworn officers and to outline the circumstances when sworn officers should exercise alternatives to arrest and confinement. This procedure provides written guidelines that govern the use of discretion by sworn officers, arrest procedures, and to ensure constitutional requirements are observed during investigations.

POLICY STATEMENT:

It is the policy of the Department to enforce all laws, statutes, and ordinances of the State of Illinois and the City of Champaign. An officer's discretionary decision regarding the severity of enforcement action or inaction must not be influenced by malice, vengeance, or prejudice based on status, age, race, ethnic background, religious belief, gender, sexual preference, etc. During the performance of their duties, officers shall make reasonable accommodations for all persons.

DEFINITIONS:

**Strip Search:** Having an arrested person remove or arrange some or all of his or her clothing so as to permit a visual inspection of the genitals, buttocks, anus, female breasts or undergarments of such a person. (Illinois Compiled Statutes 725 ILCS 5/102, paragraph D.)

**Sworn Officer:** For the purpose of this directive, the term "sworn officer" refers to all ranks of police officers having the authority to make a full custodial arrest.

A. The U.S. Constitution, Illinois Constitution, and Illinois Compiled Statutes define the scope and limits of law enforcement authority as it pertains to enforcing laws, statutes, ordinances, and arrests.

1. Illinois Compiled Statutes 65 ILCS 5/11-1-1, et seq., grants the authority to municipalities to create and define police powers.
2. Chapter 2, Section 316, of the Champaign Municipal Code establishes the Champaign Police Department, which shall consist of a Police Chief and other such members as may be provided for by Council.
3. Chapter 2, Section 317, of the Champaign Municipal Code specifies the duties of Champaign Police Officers to include:
  - a. Enforcing all City ordinances and statutes effective in the City;
  - b. Preserving order;
  - c. Preventing law violations; and
  - d. Arresting law violators.
4. Chapter 2, Section 318 of the Champaign Municipal Code specifies that the Police Chief is responsible for the performance of all of the Department's functions and that all members of the Department shall serve subject to the orders of the Police Chief.

B. Arrest Authority (Adults).

1. Sworn officers of the Champaign Police Department have the full authority granted peace officers by Illinois statute, which includes,
  - a. The authority to make arrests, with or without process, of persons found violating any municipal ordinance or any criminal law of the state;
  - b. The authority to commit arrested persons for examination;
  - c. The authority, if necessary, to detain arrested persons in custody in a safe place until they can be brought before the proper court; and

- d. The authority to exercise all other powers as conservators of the peace the corporate authorities may prescribe.
2. Arrest With Warrant: 725 ILCS 5/107-2(1) specifies the arrest authority of police officers and that a peace officer may arrest a person when:
  - a. He has a warrant commanding that such person be arrested; or
  - b. He has reasonable grounds to believe that a warrant for the person's arrest has been issued in this State or in another jurisdiction.
3. Arrest Without Warrant: 725 ILCS 5/107-2(1)(C) specifies that a peace officer may arrest a person when he has reasonable grounds to believe that the person is committing or has committed an offense, which is defined as any penal statute of this State.
4. Warrant From Another State: 725 ILCS 225/14 authorizes a peace officer to make a warrantless arrest of a person on probable cause to believe that the person has been charged with a felony in another state. Upon such warrantless arrest, the arrestee must be taken before a judge without unreasonable delay, and a complaint setting forth grounds for the arrest must be made under oath.
5. Release Without Charge or NTA: 725 ILCS 5/107-6 authorizes a peace officer who arrests a person without requiring him to appear before a court when the officer is satisfied that there are no grounds for criminal complaint against the arrested person.
6. Release by NTA: 725 ILCS 5/107-12 authorizes a peace officer to issue a Notice to Appear to any person in lieu of making an authorized warrantless arrest of such person.
7. Police District Defined: 65 ILCS 5/7-4-7 defines a police district as that territory within the corporate limits of adjoining municipalities within the same county. Urbana and Savoy, together with the City of Champaign, constitute a police district.
8. Authority Within Police Districts: 65 ILCS 5/7-4-8 grants the police in a police district full authority and powers as police officers in any part of the district.
9. Sheriff's Powers Within City Limits: 65 ILCS 5/3.1-15-25 authorizes police officers of a municipality, for purposes of warrant execution within the municipality, to have all the common law and statutory powers of sheriffs. It also authorizes such police officers to execute all warrants for violation of municipal ordinances or state criminal laws.
10. Arrest Outside City Jurisdiction (Excluding Hot Pursuit): 725 ILCS 5/107-4 defines the scope of arrest powers of Illinois Police Officers. Champaign Police Officers will be subject to the following restrictions:
  - a. An officer on duty may make an arrest or conduct a temporary questioning of an individual outside our jurisdiction if:
    - 1) The officer is engaged in the investigation of an offense that occurred in our jurisdiction or becomes personally aware of the immediate commission of a felony or misdemeanor; and
    - 2) Every reasonable effort has been made to include the local department in the arrest.
  - b. If an arrest is made outside of our jurisdiction, immediate notification must be made to the jurisdiction concerned, and a report of the incident shall be prepared and submitted to a supervisor. A copy shall also be sent to the jurisdiction where the arrest was made.
  - c. Officers are not authorized to make arrests for traffic violations observed outside of the City of Champaign unless they are within the police district.
11. While on duty, sworn officers of the Champaign Police Department who are outside of City limits have the full authority granted peace officers by Illinois statute but must be aware of certain statutory provisions and Departmental guidelines affecting the authority to make arrests outside of the village.
  - a. Search Warrant: Officers who possess a search warrant have the authority to execute the warrant anywhere within the State of Illinois (Illinois Compiled Statutes 725 ILCS 5/107-2).
    - 1) Prior to executing the warrant, the local law enforcement agency should be notified of the officer's presence within the jurisdiction.
  - b. "Hot or Fresh Pursuit": Officers have the authority to make an arrest based upon probable cause and without a warrant anywhere in Illinois when the officer is engaged in "hot or fresh pursuit" (People v. Clark, 360 N.E. 2d 1160 {1977}).
  - c. Mutual Aid Assistance: Sworn officers from the Champaign Police Department have full authority as peace officers in another municipality when fulfilling a mutual aid role as provided by statute (Illinois Compiled Statutes 65 ILCS 5/1-4-8 and 65 ILCS 5/11-1-2.1).
  - d. Arrest by Private Person: Officers have the authority to make a warrantless arrest outside the city and police district if the arrest would be valid if made by a private citizen (Illinois Compiled Statutes 725 ILCS 5/107-3).

- e. **Assisting Another Law Enforcement Officer:** Sworn officers from the Champaign Police Department may be summoned outside the city limits to aid another law enforcement officer. Any person assisting a peace officer, under the authority of Illinois Compiled Statutes 725 ILCS 5/107-8, has the same powers of arrest as the peace officer being assisted.

**C. Non-Arrest Custody.**

1. **Alcohol Incapacitation:** 20 ILCS 301/25-15 authorizes a peace officer, upon probable cause to believe that a person is incapacitated by alcohol or other drugs in a public place, to take the person into protective custody for purposes of taking the person to a detoxification facility or for emergency treatment.
2. **Mentally Ill Persons:** 405 ILCS 5/3-606 authorizes a peace officer to take into custody and transport a person to a mental health facility when the officer has reasonable grounds to believe that the person is subject to involuntary admission and in need of immediate hospitalization to protect such person or others from harm.
3. **Person In Need of Medical Treatment:** It has long been recognized and affirmed in court that providing for public safety is a proper exercise of police authority. In this role, officers may come upon persons who have suffered injury and refuse medical treatment. In some cases in which medical treatment is refused, the injured person will not be competent to knowingly refuse treatment due to conditions that may include intoxication, drug influence, or disorientation. Such conditions may be due to age, medical condition, effects of serious injury, or other possible causes.
  - a. In such cases when an officer determines, based upon observation and reasoned judgment, or is made aware by a competent individual possessing the experience or knowledge (i.e., paramedic), that an injured person requires prompt medical attention for a life-threatening injury and the person appears incompetent to make such a knowing decision, the officer is authorized and expected to cause the injured person's transport to a medical facility by ambulance. When an officer is confronted with a serious question as to need, and injuries do not appear to be life-threatening, a supervisor may be consulted for further direction.
    - 1) If an officer causes a person to be transported for medical treatment, either voluntarily or involuntarily, the facts and circumstances shall be documented in a police report.

**D. Off-duty Authority and Responsibility.**

1. An officer, by virtue of his public employment, is vested by law with a duty to maintain public order and to make lawful arrests. An off-duty officer, however, faced with a situation involving criminal conduct, is usually neither equipped nor prepared to handle the situation in the same manner as if he were on duty. Therefore, an off-duty officer confronted with a situation involving criminal conduct should consider contacting the responsible law enforcement agency to take appropriate action. However, in some cases, the exigency of a given situation may call for immediate action by the officer. The off-duty officer should act only after considering the tactical situation with regard to his own safety and the interests of the public and the Department.

**E. Out of State Authority and Responsibility.**

1. Peace officer powers of sworn officers of the Champaign Police Department do not extend beyond this state. When a police matter in the City of Champaign requires police action but is outside the State of Illinois, the appropriate law enforcement agency must be utilized before any enforcement action is taken.

**1.2.2 AUTHORITY TO CARRY AND USE WEAPONS**

- A. Illinois compiled Statutes 720 ILCS 5/24-1, 720 ILCS 5/24-2, and 430 ILCS 65/2 grant the legal authority to sworn officers to carry firearms.
- B. Agency personnel authorized to carry weapons in the performance of their duties shall do so in compliance with the United States Constitution, Federal law, Illinois Compiled Statutes, case law, and Department policy.

**1.2.3 CONSTITUTIONAL REQUIREMENTS OBSERVED**

- A. During the course of a criminal investigation, all officers will ensure that the constitutional rights of persons involved are not violated and shall follow all procedures as outlined in the Illinois Compiled Statutes pertaining to constitutional requirements. Particular attention should be given to protect against:
  1. Coercion or involuntary confessions or admissions during interviews, field interviews, or interrogations.
  2. Failure to inform defendants of their rights, including access to counsel.
  3. Pretrial publicity tending to prejudice a fair trial.
  4. Delay in arraignment.
- B. Officers are prohibited from interfering with or otherwise discouraging persons from taking photographs or recording video or audio in any place where community members are lawfully present.

1. All persons, including the press, have a First Amendment right to observe, take photographs,

and record video or audio in any public place where they are lawfully present.

2. The First Amendment protects the freedoms of speech and of the press, which generally includes the right to gather information through taking photographs and audio and video recordings of others. It also protects the right of people to assemble and petition peacefully, consult for the common good, make their opinions known to their representatives, and seek a resolution for their concerns.
3. Officers responding to a complaint of a subject photographing, video, or audio recording in a public place shall:
  - a. Introduce themselves and acknowledge the subject's right to record or photograph publicly. If the subject is not in a public space, inform the subject that they need to relocate to a public space to continue their activities.
  - b. Explain to employees or individuals involved of the subject's right to record while in a public space. This includes the recording of employees working in public areas and individuals located within the public space.
  - c. Take reasonable action to protect and maintain public order and safety of all involved, and no person shall engage in an activity that violates federal, state, or local law or regulation.
  - d. Subjects who enter a non-public area designated as "Employees Only" or "Authorized Personnel Only" are trespassing. In these instances, they shall be notified and directed to remain in public areas. Areas designated as "No Trespassing" may warrant further enforcement actions.
4. During the photographing, video, or audio recording in a public place, subjects are not legally authorized under the First Amendment to do the following actions:
  - a. Blocking entrances/exits to buildings or pedestrian or vehicular traffic.
  - b. Interfering with a public employee's ability to carry out their job functions or following an employee into a non-public space.
  - c. Disobeying lawful orders given by a police officer.
  - d. Disregarding reasonable time, place, and manner restrictions. In these situations, the officer has the discretion to articulate the circumstances that are not in the best interests of public safety and shall consult with a supervisor to determine the best course of action.

- e. Photographing, audio recording, or video recording in such a manner that would capture, provide access to, or allow the disclosure of private, personal, confidential, sensitive, or privileged information of private third parties. Officers may enforce this by imposing minimum standing or separation distances from areas, stations, desks, counters, or teller windows where private third parties conduct business with government employees.

5. Nothing in this directive prohibits officers from taking enforcement action where appropriate.

#### **1.2.4 WARRANTLESS SEARCH AND SEIZURE**

The specific requirements of this order are delineated in Policy 1.8.

#### **1.2.5 ARREST PROCEDURES WITH OR WITHOUT A WARRANT**

- A. Illinois Compiled Statutes 725 ILCS 5/107-2 provides that a peace officer may arrest a person when he has reasonable grounds to believe that a person is committing or has committed an offense. When a lawful arrest is affected, with or without an arrest warrant, a law enforcement officer may reasonably search the person arrested and the area within such person's immediate presence, or under his immediate control, during or after the arrest for the authorized purpose of:
  1. Protecting the officer from attack.
  2. Preventing the person from escaping.
  3. Discovering fruits of the crime.
  4. Discovering any instruments, articles, or things which may have been used in the commission of the offense.
  5. Discovering any instruments, articles, or things which may constitute evidence of the offense (including contraband).

It shall be recognized that the phrase "arrestee's immediate presence" has been defined by the Supreme Court as the area within the arrestee's immediate control, i.e., that area from which the arrestee might gain possession of or seize a weapon or other things to assault the officer or affect an escape or seize concealable or destructible evidence. All arrestees shall be accorded the protections of the "Rights of Accused" as provided for in the Illinois Compiled Statutes 725 ILCS 5/103, et seq.

- B. Unless otherwise directed by a shift supervisor or superior, the arresting officer will be responsible for preparing the appropriate police reports.

#### **1.2.6 ALTERNATIVES TO ARREST AND CONFINEMENT, PRETRIAL RELEASE**

- A. Officers must exercise discretion in the selection of an appropriate alternative to an arrest. Therefore, it is

important to be aware of the alternatives to arrest and confinement. Alternatives of this nature include:

1. Traffic Citations.

- a. Traffic citations are used for non-felony violations of the Illinois Vehicle Code (Illinois Compiled Statutes 625 ILCS 5) and certain City ordinances.

2. Notices to Appear.

- a. Notices to Appear are used for various non-traffic City ordinance violations.

3. Citation in Lieu of Custodial Arrest

- a. Pursuant to 725 ILCS 5/109-1 (a-1), officers shall issue a citation in lieu of custodial arrest upon proper identification for those accused of any offense that is not a felony or Class A misdemeanor. However, officers can make an arrest when:
  - i. He/she reasonably believes the person poses a threat to the community or any other person.
  - ii. The accused has an obvious medical or mental health issue that poses a risk to the accused's own safety.
  - iii. The criminal activity persists after the issuance of a citation.
- b. Regarding traffic-related offenses, Class A misdemeanors are subject to custodial arrest.
- c. This does not require an arrest in the case of Class A misdemeanor and felony offenses, or otherwise limit existing law enforcement discretion to decline to effect a custodial arrest when appropriate.

4. Written Warnings.

- a. Written warnings are used for minor traffic and ordinance violations. Officers are reminded that voluntary compliance is the goal of minor enforcement actions. Warnings should not be used for major violations or those violations specifically addressed in a written directive.

5. Referral.

- a. Referral is the practice of directing a matter to another Departmental component, City department, governmental agency, or social service organization.

6. Informal resolution.

- a. Informal resolution is the practice of resolving problems without arrest, citation or referral. Problem-solving is a significant measure of an officer and the department's

ability to maintain order. Informal resolution is an excellent method to deal with minor violations, simple disputes, or disagreements, or where the investigating officer determines that inadequate probable cause exists. Officers will seek direction from their supervisor when the appropriate course of action is in doubt.

B. Officers must consider the following factors when exercising alternatives to arrest:

- 1. The presence or absence of probable cause.
- 2. The level of cooperation by the victims and witnesses.
- 3. Existing law and the elements of the offense.
- 4. The severity of the offense.
- 5. Available resources.
- 6. Departmental written directives and orders.
- 7. Mental and emotional state of the person.

**1.2.7 USE OF DISCRETION BY SWORN OFFICERS**

- A. It is unrealistic to expect officers to enforce all laws and ordinances regardless of the circumstances encountered. The proper use of discretion is an important aspect of law enforcement and is predicated on good judgment. The use of discretion requires that an officer make responsible decisions that can withstand scrutiny by the Department, other jurisdictional components of the criminal justice system, and the community.

- 1. Sworn officers are encouraged to exercise discretion when performing their duties. The use of discretion shall always be in accordance with the law and departmental directives. When discretion is employed, it must be reasonable, defensible, and always accomplish a legitimate law enforcement purpose.
- 2. The use of discretion is not permitted when certain activities are mandated by statutes, department directives, or supervisory direction. Officers shall seek direction from their supervisor when the appropriate course of action is unclear.
- 3. An officer's discretionary decision regarding the severity of enforcement action or inaction must not be influenced by malice, vengeance, or prejudice based upon status, age, race, ethnic background, religious belief, gender or sexual preference, etc.

**1.2.8 STRIP SEARCHES**

- A. It shall be the policy of the Champaign Police Department that no person arrested for any offense, whether felony, misdemeanor, traffic, or regulatory, shall be strip searched unless there is a reasonable belief that the individual is concealing a weapon and/or cannabis and/or a controlled substance.

1. No search of any body cavity other than the mouth shall be conducted without a duly executed search warrant. Any warrant authorizing a body cavity search shall specify that the search must be performed under sanitary conditions and conducted either by or under the supervision of a physician licensed to practice medicine in all its branches in this state.
2. All strip searches conducted under this section shall be performed by persons of the same sex as the arrested person and on the premises where the search cannot be observed by persons not physically conducting the search.
3. Any sworn officer or employee of the Champaign Police Department conducting a strip search shall first obtain the written permission of a supervisor for the purposes of authorizing strip searches in accordance with this section.
4. Any sworn officer or employee conducting a strip search shall prepare a report of the strip search. This report shall be forwarded to the Deputy Chief of Operations. The report shall include:
  - a. Written authorization for the strip search.
  - b. Name of the person subject to the search.
  - c. Name(s) of the person(s) conducting the search.
  - d. Time, date, and place of the search.
  - 1) A copy of the report shall be provided to the person subjected to the search. (See appendix "A") [Strip Search Authorization Form](#).

## **1.2.9 BIAS BASED PROFILING**

The specific requirements of this standard are delineated in Policy 1.9.

## **1.2.10 PROHIBITION ON ENFORCING FEDERAL CIVIL IMMIGRATION LAWS**


- A. The Illinois Trust Act, 5 ILCS 805/15, prohibits law enforcement agencies and officials from detaining or continuing to detain any individual solely based on any immigration detainer or civil immigration warrant or otherwise comply with an immigration detainer or civil immigration warrant.
- B. Pursuant to the Illinois Trust Act, 5 ILCS 805/15, officers shall not stop, arrest, search, detain, or continue to detain a person solely based on an individual's citizenship or immigration status.
- C. Officers acting in good faith in compliance with the act who release a person subject to an immigration detainer or civil immigration warrant shall have immunity from any civil or criminal liability that might otherwise occur as a result of making the release, with the exception of willful or wanton misconduct.

- D. The Department may not inquire about or investigate the citizenship or immigration status or place of birth of any individual in the Department's custody or who has otherwise been stopped or detained by the Department.
  1. Nothing in this section shall be construed to limit the ability of an officer, pursuant to state or federal law, to notify a person in the department's custody about their right to communicate with consular officers from their country of nationality or facilitate such communication. Cross reference with Standard Operating Procedure 72.5 Holding Facility: Detainee Rights and Supervision.
  2. Nothing in this section shall be construed to limit the ability of an officer to request evidence of citizenship or immigration status pursuant to the Firearm Owners Identification Card Act, the Firearm Concealed Carry Act, Article 24 of the Criminal Code of 2012, or 18 United States Code Sections 921 through 931.
- E. Unless otherwise limited by federal law, the Department may not deny services, benefits, privileges, or opportunities to an individual in custody or under probation status, including, but not limited to, eligibility or placement in an educational, rehabilitative, or diversionary programs, on the basis of the individual's citizenship or immigration status, the issuance of an immigration detainer or civil immigration warrant against the individual, or the individual being in immigration removal proceedings.
- F. The Department is prohibited from entering into any contract, intergovernmental service agreement, or any other agreement to house or detain individuals for federal civil immigration violations.
- G. Unless presented with a federal criminal warrant, or otherwise required by federal law, the Department may not carry out any of the below activities. However, nothing in this section shall preclude officers from otherwise executing their official duties in investigating violations of criminal law and cooperating in such investigations with federal and other law enforcement agencies, including criminal investigations conducted by federal Homeland Security Investigations to ensure public safety.
  1. Participate, support, or assist in any capacity with an immigration agent's enforcement operations, including any collateral assistance such as coordinating an arrest in a courthouse or other public facility, providing use of any equipment, transporting any individuals, or establishing a security or traffic perimeter surrounding such operations, or any other on-site support.
  2. Give any immigration agent access, including by telephone, to any individual who is in custody.
  3. Transfer any person into an immigration agent's custody.
  4. Permit immigration agents to use agency facilities or equipment, including any agency electronic databases not available to the public, for

investigative interviews or other investigative or immigration enforcement purposes.

5. Enter into or maintain any agreement regarding direct access to any electronic database or other data-sharing platform maintained by any law enforcement agency or otherwise provide such direct access to the U.S. Immigration and Customs Enforcement, United States Customs and Border Protection, or any other federal entity enforcing civil immigration violations.
  6. Provide information in response to any immigration agent's inquiry or request for information regarding any individual in the Department's custody.
  7. Provide any immigration agent with information not otherwise available to the public relating to an individual's release or contact information or otherwise facilitate an immigration agent to apprehend or question an individual for immigration enforcement.
- I. To ensure compliance with the above protocol and pursuant to 5 ILCS 825/25, the Department shall electronically submit an annual report by March 1 to the Attorney General using the provided template, which is located at the Attorney General's Office website.
1. To access a copy of the template and the email address to which the report is sent, refer to <https://illinoisattorneygeneral.gov/rights/ILAG-LEA-Reports.xlsx>.
  2. The Deputy Chief of Operational Support or his designee, who serves as the Department's certifying official regarding U-Visa certifications, is responsible for the completion of the annual report.
- J. The annual report shall include:
1. Any requests from the United States Department of Homeland Security, including, but not limited to, Immigration and Customs and Enforcement, with respect to participation, support, or assistance in any immigration agent's civil enforcement operation and any documentation regarding how the request was addressed, provided that if the department did not receive any such requests during a reporting period, the department shall certify and report that it received no such requests.
  2. All immigration detainees or civil immigration warrants received by the Department, provided that if the Department did not receive any such detainees or warrants during the reporting period, the Department shall certify and report that it received no such detainees or warrants. The reports shall include the below and shall not include names or other personally identifying information in any reports:
    - a. The date when the immigration detainee or civil immigration warrant was received.
    - b. The date and time the individual subject to the immigration detainee or civil immigration warrant posted criminal bail, if applicable.
    - c. Whether the individual subject to the immigration detainee or civil immigration warrant was released or transferred.
    - d. The date and time the individual was released or transferred.
    - e. If the individual is transferred, to which governmental agency's custody.
- K. The Attorney General's Office has the authority to conduct investigations into violations of the Illinois Trust Act, and in doing so, they may require the Department to file a statement or report in writing, under oath or otherwise, as to all information the Attorney General may consider necessary. If there is an investigation, members of the Department will cooperate with the Attorney General's Office.

#### ISSUING AUTHORITY



Timothy T. Tyler  
Police Chief  
Champaign Police Department