
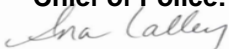
	<h1 style="margin: 0;">ELGIN POLICE DEPARTMENT</h1> <p style="margin: 0;">151 Douglas Avenue Elgin, Illinois 60120</p>			
Effective Date: 06/17/02	STANDARD OPERATING PROCEDURE	Revised Date: 11/05/24		
Chief of Police: 	Limits of Authority, 1.2			
<table border="1" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> Cross Reference: SOP 42.2, Criminal Investigations: Operations SOP 42.5, Responding to Persons with Mental Illness SOP 61.4, Traffic Ancillary Services SOP 71.1, Transportation of Detainees SOP 83.1, Physical Evidence: Administration SOP 83.2, Physical Evidence: Operations SOP 83.3, Evidence Handling SOP 111.1, Discriminatory Profiling 5 ILCS 805/10 5 ILCS 805/15 65 ILCS 5/1-4-8 65 ILCS 5/3.1-15-25 625 ILCS 5/7-4-7 625 ILCS 5/7-4-8 65 ILCS 5/11-1-2.1 430 ILCS 65-2 720 ILCS 5/24-1 720 ILCS 5/24-2 720 ILCS 5/31-1 725 ILCS 5/107-2 725 ILCS 5/107-3 725 ILCS 5/108-1 725 ILCS 5/108-6 725 ILCS 5/109-1 725 ILCS 5/107-8 725 ILCS 225/14 </td> <td style="width: 50%; vertical-align: top;"> Policy Sections: 1.2.1 Legally Mandated Authority of Sworn Police Officers 1.2.2 Authority to Carry and Use Weapons 1.2.3 Constitutional Requirements Observed 1.2.4 Warrantless Searches and Seizures 1.2.5 Arrest Procedures with or Without a Warrant 1.2.6 Alternatives to Arrest 1.2.7 Use of Discretion by Sworn Police Officers 1.2.8 Prohibition on Enforcing Federal Civil Immigration Laws 1.2.9 Strip Searches 1.2.10 Biased Based Profiling </td> </tr> </table>			Cross Reference: SOP 42.2, Criminal Investigations: Operations SOP 42.5, Responding to Persons with Mental Illness SOP 61.4, Traffic Ancillary Services SOP 71.1, Transportation of Detainees SOP 83.1, Physical Evidence: Administration SOP 83.2, Physical Evidence: Operations SOP 83.3, Evidence Handling SOP 111.1, Discriminatory Profiling 5 ILCS 805/10 5 ILCS 805/15 65 ILCS 5/1-4-8 65 ILCS 5/3.1-15-25 625 ILCS 5/7-4-7 625 ILCS 5/7-4-8 65 ILCS 5/11-1-2.1 430 ILCS 65-2 720 ILCS 5/24-1 720 ILCS 5/24-2 720 ILCS 5/31-1 725 ILCS 5/107-2 725 ILCS 5/107-3 725 ILCS 5/108-1 725 ILCS 5/108-6 725 ILCS 5/109-1 725 ILCS 5/107-8 725 ILCS 225/14	Policy Sections: 1.2.1 Legally Mandated Authority of Sworn Police Officers 1.2.2 Authority to Carry and Use Weapons 1.2.3 Constitutional Requirements Observed 1.2.4 Warrantless Searches and Seizures 1.2.5 Arrest Procedures with or Without a Warrant 1.2.6 Alternatives to Arrest 1.2.7 Use of Discretion by Sworn Police Officers 1.2.8 Prohibition on Enforcing Federal Civil Immigration Laws 1.2.9 Strip Searches 1.2.10 Biased Based Profiling
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PURPOSE

The purpose of this policy is to define the legally mandated authority vested in sworn police officers and outline the circumstances when sworn police officers should exercise alternatives to arrest and detainment. This procedure provides written guidelines which govern the use of discretion by sworn police 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 Elgin. A sworn police officer's discretionary decision regarding 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. During the performance of their duties, sworn police officers shall make reasonable accommodations for all persons.

DEFINITIONS

Arrestee's Immediate Presence: Defined by the U.S. Supreme Court as that 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 a sworn police officer or effect an escape or seize concealable or destructible evidence.

Civil Immigration Warrant: Pursuant to 5 ILCS 805/10, means any document that is not approved or ordered by a judge that can form the basis for an individual's arrest or detention for a civil immigration enforcement purpose. This includes Form I-200 "Warrant for the Arrest of Alien," Form I-203 "Order to Detain or Release Alien," Form I-205 "Warrant of Removal/Deportation," Form I-286 "Notice of Custody Determination," any predecessor successor form, and all warrants, hits, or requests contained in the "Immigration Violator File" of the FBI's National Crime Information Center (NCIC) database. Civil Immigration Warrant does not include any criminal warrant.

Exigent Circumstance: A situation that demands unusual or immediate action that may allow a sworn police officer based on probable cause to make an arrest, search, or seizure.

Frisk Search: A cursory search, for the protection of a sworn police officer, designed to discover weapons during temporary questioning of a suspect. The search may be conducted pursuant to Illinois Compiled Statutes 725 ILCS 5/108-1.01 and *Terry v. Ohio*, 392 U.S. 7 (1968). Also known as a “Stop & Search,” “Pat Down Search,” or “Terry Stop.”

Immigration Agent: Pursuant to 5 ILCS 805/10, means an agent of federal Immigration and Customs Enforcement, Federal Customs and Border Protection, or any similar or successor agency.

Immigration Detainer: Pursuant to 5 ILCS 805/10, means a request to a state or local law enforcement agency to provide notice of release or maintain custody of an individual based on alleged violation of civil immigration law, including detainers issued under Sections 1226 or 1357 of Title 8 of the United States Code or 287.7 or 236.1 of Title 8 of the Code of Federal Regulations.

Motor Vehicle Exception: Due to the mobility of motor vehicles, they do not share the same expectations of privacy as a home. It impractical to require sworn police officers to obtain a warrant. The existence of probable cause alone justifies the exception which permits a sworn police officer to search any portion of the vehicle or its contents where there is probable cause to believe evidence or contraband may be located. This is known as “the Carroll Doctrine” (*Carroll v. U.S.*, 45 S.Ct. 280 (1925)).

Plain Feel Doctrine: Authorizes a sworn police officer to seize evidence while conducting a frisk search if the sworn police officer discovers contraband in which the nature of evidence is “immediately apparent” to the sworn police officer based on a feel of the object through the subject’s clothing during the pat-down. *Minnesota v. Dickerson*, 508 U.S. 366 (1993).

Proper Identification: For purposes of this policy, is defined as a person’s driver’s license, state identification card, REAL ID compliant identification card having the security marking approved by the United State’s Department of Homeland Security, U.S. Immigration Card, temporary state issued driver’s license, temporary visitors driver’s license, passport, booking photograph from a law enforcement agency or identification based upon the sworn police officer’s prior contacts with the person.

Search by Consent: A search performed after the subject of the search, or the person having (standing) rights to the location, consents to a search freely and intelligently. Consent may be given orally or documented in writing. Consent, to be valid, “must be given unequivocal, specific, and intelligently given, uncontaminated by any duress or coercion. *U.S. v. McCaleb*, 552 F.2nd 717, 721 (6th Cir. 1977).

Sworn Police Officer: For the purpose of this directive, the term “sworn police officer” refers to all ranks of police officers with the authority to make a custodial arrest.

PROCEDURES

1.2.1 LEGALLY MANDATED AUTHORITY OF SWORN POLICE OFFICERS

- A. The U.S. Constitution, Illinois Constitution and Illinois Compiled Statutes define the scope and limits of law enforcement authority as it pertains to the enforcement of laws, statutes, ordinances, and arrests.
 - 1. Illinois Compiled Statutes 65 ILCS 5/11.1, grants the authority to municipalities to create and define police powers.
 - 2. Elgin City Municipal Code, Chapter, 2.52.030, establishes the powers of the Chief of Police.
- B. On-duty authority and responsibility.
 - 1. While on-duty, inside the city limits, sworn police officers of the department have the full

authority granted to sworn police officers by the Illinois statute, which includes:

- a. The authority to make warrantless arrests, serve arrest warrants, and serve search warrants as granted by the Illinois Compiled Statutes which indicate the following, in part as it relates to the execution of a warrant. Refer to the statutes to view information in its entirety.
 1. 65 ILCS 5/3.1-15-25 – *provides that all warrants for the violation of municipal ordinances or the State criminal law, directed to any person, may be served and executed within the limits of a municipality by any sworn police officer or marshal of the municipality. For that purpose, sworn police officers and marshals have all the common law and statutory powers of sheriffs.*
 2. 725 ILCS 5/108-6 – *provides that a warrant shall be executed within 96 hours from the time of issuance. Any warrant not executed within such timeframe shall be void and shall be returned to the court of the judge issuing the same as “not executed.”*
 3. 725 ILCS 5/107-2. – *provides that a sworn police officer who executes a warrant of arrest in good faith beyond the geographical limitation of the warrant shall not be liable for false arrest.*
 4. 725 ILCS 5/107-9 – *provides that the warrant of arrest or summons shall specify any geographical limitation placed on the execution of the warrant, if any, but such limitation shall not be expressed in mileage.*
 - b. The authority to make an arrest of an individual without a warrant based upon reasonable information that the individual to be arrested has been charged with a felony in the courts of another state and is wanted by that state. Illinois Compiled Statutes 725 ILCS 225/14.
2. While on-duty, outside of the city limits, sworn police officers of the department have the full authority granted to sworn police officers by Illinois statute but must be aware of certain statutory provisions and departmental guidelines affecting the authority to make arrests outside of the city.
 - a. Sworn police officers who possess a search warrant or arrest warrant have the authority to execute the warrant anywhere within the State of Illinois, Illinois Compiled Statutes 725 ILCS 5/107. Prior to executing a search warrant or arrest warrant, the local or county law enforcement agency shall be notified.
 - b. Sworn police officers have the authority to make, based upon probable cause and without a warrant, an arrest anywhere in Illinois when the sworn police officer is engaged in “hot or fresh pursuit.” *People v. Clark*, 360 N.E. 2d 1160 (1977). The local law enforcement agency should, whenever feasible, be notified of the sworn police officer’s presence within the jurisdiction.
 - c. A sworn police officer may make an arrest based upon probable cause and without a warrant anywhere within the geographic boundaries of the City of Elgin, Illinois Compiled Statutes 65 ILCS 5/7-4-7 and 5/7-4-8.
 - d. Sworn police officers from the department have full authority as sworn police officer 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).
 - e. Sworn police officers have the authority to make a warrantless arrest outside the city if the arrest would be valid if made by a private citizen, Illinois Compiled

Statutes 725 ILCS 5/107-3. When the matter is not of direct concern to the City of Elgin, sworn police officers should make a reasonable effort to bring about the appropriate action by the responsible law enforcement agency.

- f. Under the authority of Illinois Compiled Statutes 725 ILCS 5/107-8, sworn police officers making a lawful arrest may command the aid of persons over the age of 18 to assist in any reasonable conduct in such a manner as to have the same powers as a sworn police officer.

C. Off-duty authority and responsibility.

A sworn police officer, by virtue of public employment, is vested by law with a duty to maintain public order and to make lawful arrests. An off-duty sworn police 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 they were on duty. Therefore, an off-duty sworn police officer confronted with a situation involving criminal conduct should give consideration to causing the responsible law enforcement agency to take appropriate action. In rare cases the exigency of a given situation may call for immediate action by the sworn police officer. The sworn police officer may, in such circumstances, take action only after considering the totality of the circumstances with regard to safety and interests of the public.

- D. Illinois sworn police officer powers do not extend beyond the state borders. When a police matter requires action, but is outside the State of Illinois, the appropriate law enforcement agency shall be notified.

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 police officers to carry firearms.
- B. Agency personnel authorized to carry weapons 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, sworn police officers will ensure that the applicable constitutional rights of persons involved are not violated and shall follow all procedures as set forth in the Illinois Compiled Statutes pertaining to constitutional requirements. Accommodations will be made to ensure that all constitutional rights and safeguards are provided to non-English speaking and hearing-impaired persons in a manner that is clearly understood.
- B. Sworn police officers are prohibited from interfering with or otherwise discouraging a member of the public from taking photographs or recording video or audio in any place in which members of the public are lawfully present.
 - 1. Members of the public, 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, audio, and video recording of others. It also protects the right of people to assemble and petition in a peaceful manner, to consult for the common good, to make known their opinions to their representatives and seek a resolution for their concerns.
 - 3. Sworn police 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

- in a public space. 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 constitutes a violation of federal, state, 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 sworn police officer.
 - d. Disregarding reasonable time, place, and manner restrictions. In these situations, the sworn police officer has discretion to articulate the circumstances that are not in the best interests of the community 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. Sworn police officers may enforce this by imposing minimum standing or separation distances from areas, stations, desks, counters, or teller windows at which private third parties conduct business with government employees.
5. Nothing in this directive prohibit sworn police officers from taking enforcement action where appropriate.

1.2.4 WARRANTLESS SEARCH AND SEIZURE

It is the policy of the department to accomplish searches of people, places and things in a manner that provides protection of constitutional rights, minimizes intrusion, preserves evidence and provides for safety for all parties. If possible, a search warrant should be obtained and signed by a local judge. Warrantless searches include the following:

A. Search by Consent.

A search performed after the subject of the search, or the person having (standing) rights to the location, consents to a search freely and intelligently. For a consent to be valid, "must be given unequivocal, specific and intelligently given, uncontaminated by any duress or coercion." *U.S. v. McCaleb*, 552 F.2nd 717, 721 (6th Cir. 1977). It is preferable to document the subject's verbal or written consent, along with witnesses present for the consent, using the sworn police officer's body worn camera.

B. Frisk Search.

A cursory search, for the protection of a sworn police officer, designed to discover weapons during temporary questioning of a suspect. The search may be conducted pursuant to Illinois Compiled Statutes 725 ILCS 5/108-1.01 and *Terry v. Ohio*, 392 U.S. 7 (1968). Also known as a "Stop & Search," "Pat Down Search" or "Terry Stop."

1. A frisk search is not intended to discover evidence of a crime. However, evidence may be discovered based on the "plain feel doctrine" and become the basis of an arrest.
2. Prior to conducting a frisk search, a sworn police officer must have a reasonable suspicion that the person being stopped is committing, is about to commit, or has committed a criminal offense.
3. Sworn police officers who initiate a frisk search must be able to articulate the reason(s) for suspecting that any person, including but not limited to, themselves or any other sworn police officer are in immediate danger. This information may be drawn from sources including, but not limited to training, education, and prior experience in similar situations.

C. Motor Vehicle Exception.

Vehicles do not share the same expectations of privacy as a home or other personal items. A vehicle's mobility would make it impractical to require the police to first obtain a warrant. Sworn police officers do not actually have to prove that a vehicle might or would be gone if a warrant were obtained before making the search. The existence of probable cause alone justifies the exception. The exception permits a sworn police officer to search any portion of the vehicle or its contents where there is probable cause to believe evidence or contraband may be located. This is also known as "the Carroll Doctrine" (*Carroll v. U.S.*, 45 S.Ct. 280 (1925)).

D. Crime scene searches of a property or location fall into several areas of warrantless searches, which include, but are not limited to:

1. Search by consent.
2. Motor vehicle.
3. Plain View.
4. Exigent circumstances, if other exigency separate from the seriousness of the crime exists.
5. If a sworn police officer discovers a crime scene during the course of his duties, the sworn police officer will:
 - a. A cursory search for victims and/or suspects.
 - b. Render assistance to the injured.
 - c. Attempt to locate, identify, and arrest the offender at the scene.
 - d. Secure the area and keep it in the same physical condition as it was left by the offender.
 - e. Notify a supervisor if not already on the scene.
 - f. Attempt to identify witnesses and victims.
 - g. Yield responsibility to follow up investigators and or evidence collection personnel.

- h. Write a police report pursuant to the department's Report Writing Manual and any applicable departmental Standard Operating Procedures.
 - i. Follow additional procedures as outlined in SOP 42.2, Criminal Investigations: Administration; SOP 83.1, Physical Evidence: Administration; SOP 83.2, Physical Evidence Operations, and SOP 83.3, Handling Evidence.
- E. An exigent circumstance is a situation that demands unusual or immediate action that may allow a sworn police officer, based on probable cause, to make an arrest, search, or seizure. A sworn police officer may affect an arrest, search, or seizure to prevent evidence from being destroyed, escape of a subject or the preservation of human life. Factors to consider in determining if exigency exists:
 - 1. The gravity of the offense committed.
 - 2. Whether the subject of the search may reasonably be considered armed and/or dangerous.
 - 3. More than a minimum of probable cause exists that the subject committed the offense.
 - 4. There exists strong reason to believe that the subject is on the premises.
 - 5. There is a likelihood that the subject will escape if not immediately apprehended.
 - 6. The circumstances of entry and time delay.
 - 7. The aforementioned factors will contribute to the "totality of the circumstances".
 - 8. An additional widely recognized emergency circumstances search is the well-being check. These are situations in which the health and well-being of a person are involved.
 - a. In most cases, there is no reason for police to suspect criminal activity.
 - b. Entries are made into private premises solely to determine the well-being of the resident or occupants.
- F. During an inventory search, the property to be searched must have come lawfully into the possession of the sworn police officer. Inventory searches of property seized by sworn police officers have been justified for three reasons:
 - 1. Protects the property of the owner.
 - 2. Protects the law enforcement agency against claims the property has been lost or stolen.
 - 3. Allows sworn police officers to discover any potential danger that may exist because of the contents of the property itself.
- G. Seized vehicles incident to an arrest must be inventoried and documented on the general incident report. A Tow Receipt and Notice of Vehicle Seizure shall be completed and issued to the appropriate person. If a vehicle is inventoried, all containers and possessions in the vehicle shall be searched. When no key is available, a supervisor or designee may, when appropriate, authorize the opening of a locked container by a lock smith for the completion of the inventory search.

Additional items of property subject to an inventory search include:

 - 1. Found property.
 - 2. Property turned over by citizens for safe keeping.

3. Property turned in by citizen for destruction, e.g., firearms, ammunition, other weapons.
 4. Abandoned property.
- H. Search incident to arrest is the most widely used exception to the search warrant requirement. The Illinois Compiled Statutes 725 ILCS 5/108-1 provides for this type of search upon making a valid arrest. Application of this section is typically applied to situations involving custodial arrests. Sworn police officers may reasonably search the person arrested and the area within that person's immediate control, to include vehicles, for the purpose of:
1. Protecting the sworn police officer and others from attack.
 2. Preventing person(s) from escaping.
 3. Discovering fruits of the crime.
 4. Discovering any instruments, articles, or things which may have been used in the commission of, or which may constitute evidence of, an offense.
 5. In searches incident to an in-home arrest, a protective sweep is allowed for areas where other persons may be found and cannot last any longer than is necessary to dispel the reasonable suspicion of danger. *Maryland v. Buie*, 494 U.S. 325, 110 S.Ct. 1093 (1990).
 6. In the 2009 U.S. Supreme Court case decision of *Arizona v. Gant*, 556 U.S. ___, 129 S.Ct. 1710, 173 L.Ed.2d 485, the court held that the Fourth Amendment to the United States Constitution requires sworn police officers to demonstrate an actual and continuing threat to their safety posed by an arrestee, or a need to preserve evidence related to the crime of arrest from tampering by the arrestee, in order to justify a warrantless vehicular search incident to arrest conducted after the vehicle's recent occupants have been arrested and secured. Furthermore, the court held that sworn police officers may search the passenger compartment of a vehicle incident to a recent occupant's arrest only if it is *reasonable* to believe that the arrestee might access the vehicle at the time of search or that the vehicle contains evidence of the offense of arrest. When these justifications are absent, a search of the arrestee's vehicle will be held unreasonable.
 7. Prior to placing a prisoner into a police vehicle, a sworn police officer shall conduct a thorough search of the prisoner and outer garments. Cross reference Standard Operating Procedure 71.1, Transportation of Detainees.
 - a. Sworn police officers shall take and maintain custody of purses or bags carried by prisoners, checking for weapons.
 - b. The interior of the police vehicle shall be searched prior to and after transporting a prisoner.
- I. Plain view searches have been upheld by courts as long as the sworn police officer was legitimately on the premises and had probable cause to believe the property was evidence or contraband.
1. Limitations on plain view searches:
 - a. There must be no pre-observation intrusion that violated constitutional rights.
 - b. The item(s) must have been discovered inadvertently.
 - c. Artificial devices that aid in or enhance the ability of the sworn police officer's view are not considered "plain view." A flashlight, however, is generally acceptable, provided the sworn police officer has a right to be where he is when using the light source.

- d. Moving items or rearrangement of items to note serial numbers, for example, is not supported by the “plain view” doctrine.
- 2. The “plain view” doctrine also applies to warrant searches, even if the item to be seized was not noted on the search warrant. The test is:
 - a. The sworn police officer has the authority to be at the location.
 - b. The sworn police officer has probable cause to believe the item in the open is evidence or contraband.
- J. In regard to open field searches, the U.S. Supreme Court has held that the home and its curtilage are not necessarily protected from inspection that involves no physical invasion. What a person knowingly exposes to the public, even in his own home or office, is not subject of Fourth Amendment protection. *Katz v. United States*, 389 U.S. 347, 351 (1967). Sworn police officers may see what may be seen, “from a public vantage point where they have a right to be” (476 U.S. at 13). Areas outside the curtilage include the woods, pastures and grassland.
- K. Nighttime security checks are another form of a warrantless search held by the court.
 - 1. These searches are permissible only in a business and only if the sworn police officer’s intent is to determine if any unauthorized people are inside.
 - 2. The sworn police officer may also check for owner information so notification can be made.

1.2.5 ARREST PROCEDURES WITH OR WITHOUT A WARRANT

- A. 725 ILCS 5/107-2 provides that a sworn police officer may arrest a person when there are 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 sworn police officer may reasonably search the person arrested and the area within such person’s immediate presence, or under his/her immediate control, during or after the arrest for the authorized purpose of:
 - 1. Protecting the sworn police officer and/others from attack.
 - 2. Preventing the person from escaping.
 - 3. Discovering the 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.
- B. Pursuant to 720 ILCS 5/31-1, a person who knowingly resists arrest or obstructs the performance by one known to the person to be a sworn police officer within their official capacity commits a Class A misdemeanor.
 - 1. Furthermore, 720 ILCS 5/31-1(d) provides that a person shall not be subject to arrest for resisting arrest unless there is an underlying offense for which the person was initially subject to arrest.
 - 2. For a person to be arrested for obstructing, there does not need to be an underlying offense.

1.2.6 ALTERNATIVES TO ARREST

A. Sworn police 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. Department written directives and orders.
7. Mental and emotional state of person. Reference Standard Operating Procedure 42.5, Responding to Persons with Mental Illness.

B. Sworn police officers must exercise discretion when considering an appropriate alternative to an arrest. Alternatives of this nature include:

1. Informal Resolution and Warnings

The practice of resolving minor violations, simple disputes or disagreements without the use of law enforcement powers. Whereas written and verbal warnings may be utilized for minor traffic and ordinance violations, these may not be used for major violations or those specified in a written directive.

2. Referral

The practice of directing a matter to another departmental component, city department, governmental agency or social service organization.

3. Administrative Adjudication

Provides sworn police officers and other city departments with the ability to issue citations for minor city ordinance violations without criminally charging the person. Citizens are provided with an opportunity to contest the citation.

4. Traffic citations

Used for violations of the Illinois Vehicle Code (625 ILCS 5) and corresponding city ordinances.

5. Notices to Appear

6. Citation in Lieu of Custodial Arrest

a. Pursuant to 725 ILCS 5/109-1 (a-1), sworn police 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 sworn police officers can make an arrest when:

1. He/she reasonably believes the person poses a threat to the community or any other person.
2. The accused has an obvious medical or mental health issue that poses a risk to the accused's own safety.

3. The criminal activity persists after the issuance of a citation.

b. As it relates to traffic-related offenses, Class A misdemeanors are subject to custodial arrest.

1.2.7 USE OF DISCRETION BY SWORN POLICE OFFICERS

- A. The proper use of discretion is an important aspect of law enforcement and is predicated on good judgment. The use of discretion requires that a sworn police officer make responsible decisions which can withstand scrutiny by the department, other jurisdictional components of the criminal justice system and the community itself.
- B. Sworn police officers exercise discretion when dealing with many of their duties. The use of discretion must be soundly based upon law, departmental directives, experience, and training. Therefore, sworn police officers must correctly interpret laws and department directives. The use of discretion is not permitted when certain activities are mandated by statutes, department directives or supervisory direction. Sworn police officers shall seek direction from their supervisor when the appropriate course of action is in doubt.
- C. A sworn police officer's discretionary decision regarding 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 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 on the basis of 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, sworn police officers shall not stop, arrest, search, detain, or continue to detain a person solely based on an individual's citizenship or immigration status.
- C. Sworn police officers acting in good faith in compliance to 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 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 a sworn police 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 a sworn police 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 activities below. However, nothing in this section shall preclude sworn police 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 in order 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 use of agency facilities or equipment, including any agency electronic databases not available to the public, for investigative interviews or other investigative or immigration enforcement purpose.
 - 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 to any immigration agent information not otherwise available to the public relating to an individual's release or contact information, or otherwise facilitate for an immigration agent to apprehend or question an individual for immigration enforcement.
- H. In order 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 Community Engagement Lieutenant who serves as the department's certifying official in regard to U-Visa certifications is responsible for completion of the annual report. Refer to Standard Operating Procedure 41.8 Immigrant Crime Victim Certification (U-Visa) for more information. A copy of the completed report shall be provided to the Strategic Initiatives Commander to ensure completion and submitted to the Office of the Chief of Police to be saved to the department's electronic compliance file.
 - 3. The Attorney General's Office provides periodic training webinars to ensure agencies understand the annual reporting deadlines and guidance on completing and submitting the reports. The Strategic Initiatives Commander shall ensure this training is completed.

I. 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 detainers or civil immigration warrants received by the department, provided that if the department did not receive any such detainers or warrants during the reporting period, the department shall certify and report that it received no such detainers 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 detainer or civil immigration warrant was received.
 - b. The date and time the individual subject to the immigration detainer or civil immigration warrant posted criminal bail, if applicable.
 - c. Whether the individual subject to the immigration detainer 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.

J. 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.

1.2.9 STRIP SEARCHES

The specific requirements of this standard are delineated in Standard Operating Procedure 71.6 Strip Searches.

1.2.10 BIAS BASED PROFILING

The specific requirements of this standard are delineated in Standard Operating Procedure 111.1. Discriminatory Profiling.