

ELGIN POLICE DEPARTMENT POLICY MANUAL - PART 5



5/1.03.00 ARREST PROCEDURES AND DECLARATION OF ARREST

5/1.03.01 Arrest Without A Warrant

It is the policy of this Department that warrant-less felony or misdemeanor arrests will be limited to the most serious charge(s) arising from a single set of circumstances. Misdemeanor arrests will be limited to the single most serious offense and generally will not be combined with a felony or misdemeanor arrest. (See procedure for further instructions.) This policy does not apply to arrests made pursuant to warrants.

PROCEDURE

The incident report, complaint, and affidavit will be used for all adult arrests, excluding misdemeanor citation arrests. When an arrest is made on a warrant, the incident report details the circumstances of the arrest and the reasonable cause that exists to believe the person arrested is the one named on the warrant.

All pertinent reports connected to the arrest should be completed before the officer completes his/her shift. Shift supervisors are responsible for ensuring the reports are completed and the quality of the report is acceptable. Upon approval from a supervisor, officers may release a subject if the validity of the arrest is in question.

- *Arresting Officer*
 1. Investigates the situation and determines which law(s) have been violated.
 2. If practical in misdemeanor cases, issues citation(s).
 3. If arrest is necessary,
 - a. Administers declaration of arrest
 - b. Secures subject per training (handcuff & double locked)
 - c. Provides Miranda warning (if applicable)
 - d. Transports the arrestee to the EPD temporary detention area to complete processing and booking paperwork or.
 - e. books into the appropriate detention/holding facility for the most serious felony or misdemeanor offense(s) or the single most serious misdemeanor offense. Suspects will not be booked for any Class "C" misdemeanors when being booked for any felony or other class misdemeanor (with the exceptions listed below).
 - f. Exceptions to the above are as follows:
 - i. Suspects committing those offenses may be booked on crimes against the officer in addition to any other offense(s).
 - ii. When arrest is mandated by statute for certain misdemeanors.
 - iii. When the charge results in a search leading to a felony or misdemeanor arrest. (i.e., a suspect is arrested for public intoxication and the subsequent search reveals possession of a controlled substance. In this case, the suspect can be booked for the felony and misdemeanor.)
 4. Completes the complaint and affidavit listing the probable cause for all charges. Only that information necessary to establish probable cause, including the elements of the crime and the actions of the defendant constituting the charge are to be included in the affidavit. Complaints and affidavits must have an original signature.
 5. Transports the arrestee from the EPD temporary detention area to the appropriate county detention facility.
 6. Provides complaint/affidavit and booking sheet to the detention booking officials prior to leaving the detention facility.
 7. Completes all other reports connected to the arrest.
 8. Turns in reports to supervisor no later than the end of the shift.
 9. Emails the appropriate magistrate, court clerk and supervisor the signed complaint/affidavit, booking sheet and any applicable documents (EPO, Warrants, etc.) by the end of the officer's shift.
- *Supervisor*

ELGIN POLICE DEPARTMENT POLICY MANUAL - PART 5



1. Reviews all arrest-related documents for:
 - a. Sufficient justification for multiple charges on felony or misdemeanor arrests.
 - b. Adequate probable cause.
 - c. Adequate explanation of the actions of the defendant constituting the charge; each element of the crime is sufficiently addressed.
 - d. Applicability of the crime charged.
 - e. The presence of evidence to support the allegation (charge).
 - f. The quality of the report.
 2. Determines that all reports connected to the arrest have been submitted and/or completed.
 3. Approve and sign reports.
- *Police Records Section*
 1. Transcribes, copies and request documents/reports as needed.
 2. Ensures a copy of the criminal case packet is prepared and forwarded to the district or county attorney's office in its entirety and ensures the original criminal case packet is complete and retained in the report management system.
 - a. The quality of the report.
 3. Determines that all reports connected to the arrest have been submitted and/or completed. Ensures that all handwritten notes, photographs, videos, sketches and audio recordings are attached to the electronic report management system.

5/1.03.02 Arrest Without A Warrant For Domestic Violence

APPLICABLE STATUTES

Chapter 14 of the Code Of Criminal Procedure (CCP):

1. CCP 14.01 (B) – This section provides that a police officer “may arrest an offender without a warrant for any offense committed in his presence or within his view.”
2. CCP 14.03 (A) (2) – This section provides that an officer may arrest without a warrant “persons who the peace officer has probable cause to believe have committed an assault resulting in bodily injury to another person and the peace officer has probable cause to believe that there is danger of further bodily injury to that person.”
3. CCP 14.03 (A) (4) – This section provides that an officer may arrest without a warrant “persons who the peace officer has probable cause to believe have committed an assault resulting in bodily injury to a member of the person’s family or household.” If the requirement of bodily injury is satisfied, along with the other basic requirements, officers may make a warrant-less arrest of the suspect; they are not required to believe that there is danger of further bodily injury.

POLICY

1. This Department desires to recognize domestic violence as a crime and to provide all domestic violence calls with a high priority response. In determining the appropriate course of action in domestic violence situations, the primary concerns of the officer are:
 - a. Protection of all potential victims from further violence,
 - b. Safety of law enforcement personnel,
 - c. The making of a lawful arrest.
2. This Department investigates instances of domestic violence in such a way as to develop a case that does not depend on the participation of the victim in the prosecution of the case.
3. This Department effects a lawful arrest as the preferred law enforcement response to domestic violence.
4. Officers who investigate incidents of domestic violence:
 - a. Provide emotional support to the victim(s) and refer the victim(s) of domestic violence to professional agencies for counseling;

ELGIN POLICE DEPARTMENT

POLICY MANUAL - PART 5



- b. Assist the victim(s) of family violence and abuse in obtaining medical treatment, including the summoning of emergency medical services response to the scene when necessary;
- c. Immediately advise the victim of rights and services available (hand out CCP, Art. 504 “notice to adult victims of family violence” in English and in Spanish; the CCP, Art. 56.07 “written notification to victims of crime”; and
- d. Provide victim with a current Texas Crime Victims Compensation Brochure and application for benefits in English and in Spanish.

PROCEDURE

- *Responding Officer(s)*

Officers promptly respond to the reported incident of domestic violence. Officers should abide by the following procedures:

1. Whenever possible, more than one officer responds to domestic violence incidents.
2. The use of sirens/emergency lights (headlights at night) should be left to the discretion of the officer. The officer should take into consideration the safety of potential victims and the safety of law enforcement personnel.
3. Officers park in a “safe” zone near the scene.
4. Officers conduct an external assessment of the premises.
5. Prior to knocking on the door, officers observe and listen (and may even peer through a window to obtain additional information such as the lay-out of the premises, number of persons present, potential risk from weapons, etc. if possible).
6. Officers stand to one side of the door while knocking, expecting the unexpected.
7. Officers identify themselves as police officer, give an explanation as to why they are there, and request entry into the location. If entry is refused, officers again request entry and explain their desire to enter the location to ensure there are no injured persons inside. If officers have a reasonable belief that a person inside is in need of immediate aid, the officers make entry without permission and without a warrant to conduct a limited search by looking for potential victims in places where they reasonably could be found.
8. Once inside, officers establish control, separate the parties and assess the need for and obtain emergency medical treatment if necessary.
9. Officers interview parties separately as to the circumstances of the incident. If two or more officers are present, officers always try to maintain eye contact with one another.
10. Officers determine existence and status of outstanding warrants and/or protective orders.
11. Officers interview other persons who may be witnesses, including children.
12. Officers collect and record evidence of the crime to support an arrest and enhance prosecution by doing the following:
 - a. Note all observations made upon arrival to the scene including if the altercation was still in progress, what was heard on approach, what had to be done to quell the
 - b. disturbance, the physical appearance of those involved, the physical appearance of the scene, etc.
 - c. Conduct detailed victim/witness interviews and record all statements. Statements made at the scene are especially important when the victim fails to cooperate in the prosecution. The officer should describe the victim’s demeanor when making the statement.
 - d. Gather physical evidence such as weapon(s) used or threatened to be used, damaged property, torn or bloodstained clothing, etc.
 - e. Take color photographs of victim’s injuries, clothing and the crime scene, including damaged property. If photos are not taken, officers advise the victim of the need for photos of the injuries (especially within a day or two as bruises begin to appear), and the need for medical treatment and appropriate documentation in medical records of injuries which resulted from the domestic violence incident.
13. When an arrest is made, officers who investigate a domestic violence incident or who respond to a disturbance call that involves domestic violence shall file the following additional reports:
 - a. Magistrate’s family violence offense booking information sheet

ELGIN POLICE DEPARTMENT POLICY MANUAL - PART 5



- b. Texas Department of Public Safety family violence report
14. When officers respond to domestic violence calls where there is evidence of mutual violence, officers:
 - a. Determine if one party has reasonably acted in self-defense; if so that party is not arrested;
 - b. If neither party has acted in self-defense, decide if one party was the principal aggressor and arrest that person if probable cause exists; and
 - c. If it is clear that mutual combat occurred and the officer is unable to determine, after a thorough investigation, which party was the principal aggressor, it is within the officer's discretion to arrest both parties if probable cause exists.
15. If probable cause exists that an assault resulting in bodily injury has occurred, an arrest for domestic violence shall be made. Officers shall not consider the following in making an arrest:
 - a. The intimate or legal relationship of the parties or the fact that the crime occurred in a private place.
 - b. The verbal assurances by either or both parties that violence has not occurred when evidence suggests otherwise;
 - c. The claim by the alleged perpetrator that the victim provoked the assault;
 - d. The alleged injury is minor or not visible;
 - e. There have been numerous prior calls to the location (i.e. chronic complainer);
 - f. The officer feels that the victim may not cooperate in subsequent proceedings;
 - g. That adverse financial consequences may occur to either party as a result of the arrest of the alleged perpetrator;
 - h. The influence of alcohol or drugs on either party;
 - i. The racial, cultural, social, political, professional position or sexual orientation of either the victim or the alleged perpetrator.
16. If no protective order is in effect, the officer shall make a warrant-less arrest if:
 - a. An offense is committed in the presence or view of the officer or magistrate;
 - b. There is probable cause to believe that a felony has been committed and the offender is about to escape;
 - c. There is probable cause to believe that an assault with bodily injury occurred and probable cause to believe that the victim is in danger of further injury;
 - d. There is probable cause to believe that an assault resulting in bodily injury to a family member or member of the household has been committed, or other circumstances which merit a warrant-less arrest under Texas law. (see TCCP Sec. 14.01 - .03)
17. An officer who is outside his jurisdiction may arrest, without warrant, a person who commits an offense within the officer's presence or view if the offense is a felony or a breach of the peace.
18. The officers' duty is to enforce state law regardless of whether the victim wishes to cooperate.
19. When possible, at the victim's request, officers may transport or arrange transportation to an alternative household or family violence shelter.
 - a. Officers should initiate contact between the victim and a local shelter, or the appropriate victim's assistance service.
20. If a protective order is in effect, see the section, *Protective Orders And Emergency Orders*.

CRIMINAL INVESTIGATIONS

PURPOSE

Criminal offenses relating to Family Violence are typically handled at the patrol level. However, some cases could require follow up at times in order to serve the victim in a more proficient and complete manner. A complete criminal case and family history might need to be obtained for the County or District Attorney's Office. This will assist them in their efforts to successfully prosecute these cases.

The Criminal Investigations Division will review all Family Violence cases. Their duties would include but not be limited to:

ELGIN POLICE DEPARTMENT

POLICY MANUAL - PART 5



1. The identification of possible witnesses after the fact, such as a former spouse, children or neighbors.
2. Follow up photographs of the victims' injuries, medical records and supplemental report.
3. Follow up phone calls to the victim by Victim Services that might reveal additional criminal offenses such as violation of a protective order, harassment, retaliation or stalking.
4. Schedule interviews for child witnesses in the home that may be required at the Children's Advocacy Center.
5. Acting as a liaison with the County or District Attorney's Office, outside law enforcement agencies and other related agencies.
6. Conducting in house training for law enforcement on the investigation of family violence.

PROCEDURE REGARDING MINOR CHILDREN

When officers respond to domestic violence calls where the arrest of one or more parties results in a minor child being left home alone, officers shall:

1. Locate the available parent/guardian or other appropriate adult caretaker;
2. If no caretaker can be located, contact the Texas Department of Protective and Regulatory Services (Child Protective Services).

5/1.03.03 Protective Orders And Emergency Orders

APPLICABLE STATUTES

- Texas Penal Code, Sec. 25.07 - Violation of Protective Order or Magistrate's Order

This section criminalizes several behaviors, among them family violence, stalking, communication in a threatening manner, and going to or near a described location, e.g. school of children of protected family member, residence or work location of protected family member.

- Code Of Criminal Procedures (CCP), 14.03 (A) (3)

This section provides that an officer may arrest without a warrant "persons who the peace officer has probable cause to believe have committed the offense defined by Section 25.07, Penal Code. This section does not require that the offense be committed in the officer's presence to justify a warrant-less arrest; nor does the arrest have to be affected at the scene of the violation.

- CCP 14.03 (B)

This section provides that (A) "peace officer shall arrest, without a warrant, a person the peace officer has probable cause to believe has committed an offense under Section 25.07, Penal Code, if the offense is committed in the presence of the peace officer."

- CCP 17.292 – Magistrate's Order for Emergency Protection

This section provides that when someone has been arrested for either stalking or family violence, the magistrate who sets bond may issue an order for emergency protection. a defendant who violates such an order commits a Class A Misdemeanor under PC. Sec. 25.07 if the violation consists of a new act of assault or stalking, the offense is a third-degree felony.

- Texas Family Code, Sec. 6.504 or Freestanding Under Chapter 85

These orders are enforceable only by contempt of court; violation is not a criminal offense.

POLICY

It is the policy of this Department that an arrest will be made when there is a violation of a protective order or emergency magistrate's protective order.

PROCEDURE

PROTECTIVE ORDER IS IN EFFECT

1. Officers arrest for the criminal offense of "Violation Of Protective Order" (TPC, Sec 25.070).

ELGIN POLICE DEPARTMENT POLICY MANUAL - PART 5



2. Reconciliatory actions or agreements made by the protected person (applicant) and/or the perpetrator (respondent) do not affect the validity of the order or the duty of the peace officer to enforce the order.
3. A peace officer investigating conduct that may constitute a violation of a protective order may not arrest a person protected by that order for a violation of that order. However, an officer may arrest the protected person if probable cause exists that the protected person committed a separate criminal offense.
4. If a person has committed some other offense in addition to “violation of protective order,” officers may arrest and also file charges for the additional offense(s).
5. Officers accept a “certified copy” of an original or modified agreed or final protective order as proof of its validity, and it is presumed the order remains valid unless:
 - a. The order contains a termination date that has passed;
 - b. It is more than two years after the date the order was issued; or
 - c. The officer has been notified by the clerk of the court that vacated the order that the order has, indeed, been vacated (CCP, Art. 5.05).

EMERGENCY MAGISTRATE’S PROTECTIVE ORDER IS IN EFFECT

1. Officers arrest for the criminal offense of “Violation Of Protective Order” (CCP 25.07)
2. Reconciliatory actions or agreements made by the protected person (applicant) and/or the perpetrator (respondent) do not affect the validity of the order or the duty of a peace officer to enforce the order.
3. A peace officer investigating conduct that may constitute a violation of a protective order may not arrest a person protected by that order for a violation of that order. An officer may arrest the protected person if probable cause exists that the protected person committed a separate criminal offense. However, this should only happen on rare occasions.
4. If a person has committed some other offense in addition to “violation of protective order,” officers may arrest and also file charges for the additional offense(s).

A TEMPORARY EX PARTE PROTECTIVE ORDER IS IN EFFECT

A violation of a “temporary ex parte protective order” is a criminal offense. An officer shall arrest for a violation of a “temporary ex parte protective order” as it can be enforced per the Texas Family Code.

If a violation of a “temporary ex parte protective order” has occurred, the officer shall inform the respondent that he/she is in violation of the order and shall make an arrest per policy.

If the preliminary investigation establishes probable cause that an assault resulting in bodily injury to a member of the persons family or household has occurred, then the offender is arrested as soon as the offender is located, regardless of whether a warrant has been issued (CCP, Art. 2.13; CCP Art. 14.03 (A) (4)).

5/1.03.04 Warrant-Less Entry Into Private Premises

ENTRY TO ARREST

Officers may enter private premises without a warrant or consent in order to arrest someone in the premises only if they have reason to believe that:

1. Someone is likely to be killed or injured unless immediate warrant-less action is taken; or
2. A serious and/or dangerous criminal offender is likely to escape apprehension and/or prosecution unless immediate warrant-less action is taken; and
3. There is probable cause to arrest the person sought, and there is probable cause to believe that the person to be arrested is physically present in the premises at the time of the entry.
4. Exigent circumstances exist, such as a “hot pursuit.”

ENTRY TO PRESERVE EVIDENCE

ELGIN POLICE DEPARTMENT POLICY MANUAL - PART 5



If there is probable cause to believe that critical evidence of a serious offense is located within the private premises, and that the evidence is almost certain to be destroyed or removed unless immediate warrantless action is taken, the officer may enter without a warrant or consent for the purpose of securing the premises while awaiting the arrival of a search warrant. Once secured, no further search of the premises shall be conducted unless or until a search warrant arrives.

CRIME SCENES

For the purposes of this order, a “crime scene” is a location where a crime recently has occurred and where there is an apparent need for investigative action and/or emergency services. (Examples: homicide scenes, fire scenes, burglary or sexual assault scenes, etc.) Note: the mere presence of contraband or evidence in private premises does not make those premises a “crime scene.” Upon arriving at a crime scene in private premises, the officer may enter the premises without a warrant or consent in order to:

1. Locate and secure perpetrators; and/or
2. Provide assistance to injured or others requiring emergency assistance; and/or
3. Locate and secure evidence that is likely to be lost or destroyed by the mere passage of time.
4. Once the actions described above are completed, no further search shall be conducted unless or until:
 - a. A search warrant for the premises is on scene; or
 - b. Consent to search has been obtained; or
 - c. New or additional emergency circumstances arise necessitating further search.

OTHER EMERGENCIES

Officers may enter private premises without a warrant or consent if it reasonably appears that such action is urgently necessary in order to:

1. Prevent death or injury; or
2. Provide needed emergency medical assistance; or
3. Guard against the imminent threat of substantial property damage.

Signed Original Maintained in the Office of the Chief

John C. Noble