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## 41.14 Civil Disputes

A civil dispute is a situation where no crime has occurred, yet there is the need for police presence to maintain the peace and provide safety to individuals and property. When an *officer* receives a complaint which is considered a civil dispute, the *officer shall* assist by maintaining the peace, providing safety, and referring the parties to their own attorneys or to another agency that *may* be able to provide assistance.

People who indicate they need assistance in engaging an attorney *may* be referred to a legal services agency or referral source.


### 41.14.1 **Movers/Department of Agriculture; Division of Weights and Measures and the Department of Public Safety**

Under A.R.S. §28-895, the Department of Public Safety is authorized to adopt and implement a regulatory program for movers who are transporting personal goods within the State of Arizona. In addition, *A.R.S. 44-1611 through 44-1616* provides procedures for assisting with resolving disputes that may arise with household goods movers who are transporting personal goods within the State of Arizona. Generally, much like garages and mechanic liens, the mover is supposed to turn over all the goods if the consumer offers to pay the full price stated in the estimate. The statutes permit a peace officer to take custody of the goods or direct the mover to deliver and unload the goods if the mover unlawfully fails to deliver the goods; such action should not be taken without the approval of a supervisor. In addition, officers may refer victims to the Attorney General's Office for assistance with claims against movers.

### 41.14.2 **Auto Repossessions**

#### A. Self-help repossessions.

1. Under *Arizona law*, a lien holder (the person or bank that lent the money for the purchase) is entitled to exercise self-help to repossess a vehicle when the purchaser is in default (falls behind in payments). This type of repossession *may* take place without a court order.
2. This right to repossession exists only so long as there is no "breach of the peace." If a police *officer* is called to the scene of a self-help repossession before the repossession has been completed, there has been by definition a breach of the peace. If there is a breach of the

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peace, the legal right to repossess without a court order is lost, and the person attempting to repossess the vehicle must leave without the vehicle.

3. If a vehicle has been removed to a private storage lot, the reposessor's office or residence prior to being taken to a storage facility, or the repossession has been accomplished without a breach of the peace, then the owner *must* resort to other civil remedies, such as getting a court order, to regain possession of the vehicle.
4. If the reposessor is on the owner's property and has taken possession of the vehicle (hot-wired it, started it with a key or connected it to a tow truck) and refuses to release it, the *officer may* take a signed stolen *report* and recover the vehicle. The *officer shall* then release the vehicle to the owner, with or without the consent of the reposessor. The *officer shall* not *arrest* the reposessor for auto theft under these circumstances, but *may* submit the case for prosecution.

B. Repossessions with a Court Order (Writ of Replevin)

In some instances a lien holder *will* go to court and obtain a court order for repossession. This order, called a "writ of replevin," allows for recovery of the vehicle in question. Such orders are generally served either by a Constable or by a Sheriff's Deputy. If a person seeking to repossess the vehicle has a valid court order (writ of replevin) that authorizes the repossession of the vehicle, the reposessor is entitled to take the vehicle and the owner has no right to interfere.

#### 41.14.3 Residential Landlord-Tenant Disputes

A. There are three separate statutory enactments that govern landlord-tenant relationships:

1. The Residential Landlord and Tenant Act governs most residential landlord-tenant relationships. Specifically exempted from this act are fraternities and sororities, public housing, residence at an educational/medical/social service provider/ institution, transient occupancy (hotels/motels), manager/custodian and occupancy under a contract for sale. Transient occupants are those persons who are temporarily residing in a hotel or motel for a brief period of time and



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whose permanent residence is elsewhere. Whether or not a person is a transient occupant depends on the facts related to their residency (length of residence, rental payment interval, personal belongings, other permanent residence, and intent) and not whether the establishment calls itself a hotel or motel.

2. The Mobile Home Parks Residential Landlord and Tenant Act governs the relationship between the landlord of a mobile home park with four or more spaces and the tenant who owns the mobile home but is renting the land on which the mobile home is placed. This act does not apply to a mobile home and space if the same person owns both, to public housing or to recreational vehicles.
  3. The Recreational Vehicle Space Rental Act governs the relationship between the manager of a recreational vehicle park or Mobile Home Park and a tenant who rents a recreational vehicle space in the park for more than 180 consecutive days.
- B. Municipal law enforcement *officers* do not have the authority to evict a tenant and *officers shall* not evict, threaten to evict, or assist in evicting a tenant in situations covered by one of these three Acts.
- C. When a landlord or tenant takes some action which clearly violates the landlord-tenant law, the responding *officer will* work with both the tenant and the landlord to educate them concerning the requirements of the law, the appropriate legal remedies each *may* have, and try to persuade them to comply with the law. However, these are not situations in which *officers* have the authority to make *arrests* or otherwise attempt to force compliance with the law; these are civil disputes. If the conflict cannot be resolved, both parties *shall* be referred to their private attorneys or to the courts for resolution of the conflict.
- D. Once a tenant has been properly evicted from a residential dwelling, by the service of a writ of restitution by a constable, the tenant *may* be *arrested* for trespass if the tenant re-enters the property without the express permission of the landlord. *Officers must* verify that a writ of restitution has been served prior to making such an *arrest*.
- E. The rules related to commercial property are very different from those relating to residential property. Essentially, unless the lease provides a different process,



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immediate repossession is allowed once the tenant is in arrears for non-payment of rent for more than five days. In addition, unless the lease provides a different remedy, the commercial landlord *will* have lien against most of the personal property at the site pending the payment of rent. In commercial disputes, the only role for the *officer* is to preserve the peace and refer the parties to their attorneys for assistance. The only exception would be if there is proof the tenant forcibly re-entered leased premises which have been repossessed by the commercial landlord and takes the tenant's property; in this case, it would be appropriate to submit a *report* for theft to the prosecutor.

#### **41.14.4 Hotel and Motel Disputes**

Hotels and motels renting to transient occupants have a lien on the property of guests who do not pay for services rendered. Transient occupants are those persons who are temporarily residing in a hotel or motel for a brief period of time and whose permanent residence is elsewhere. Whether or not a person is a transient occupant depends on the facts related to their residency (length of residence, interval of rental payments, personal belongings, other permanent residence, and intent) and not whether the establishment calls itself a hotel or motel.

Whether a person is a transient occupant or a tenant determines whether a person can be trespassed and forced to leave (transient occupant) or whether the person is a tenant who must be formally evicted and cannot be arrested for trespass. The fact that the place the person rents describes itself as a hotel or motel, or collects rent daily, does not mean that the person is not a tenant. Officers should make inquiries that assist them in making this determination, for example: how long has the person lived there; is this their permanent address; do they receive their mail at that location; do they have all their personal belongings with them, etc. If an officer is uncertain, the person should be treated as a tenant.

An innkeeper *may* keep the property of a transient occupant pending payment; if payment is not made, the property *may* be sold (after four months) to recover the amounts due. Landlords, on the other hand, may not keep the property of a tenant pending payment of past due rent.

#### **41.14.5 Mechanic's Liens on Vehicles**

Under A.R.S. § 33-1022, proprietors of garages, repair, and service stations have a statutory lien on vehicles on which they have worked, allowing them to maintain



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possession of the vehicle until paid, only if there is an agreement for the specific amount to be paid. The agreement need not be in writing, but if it is not, there *must* be agreement by both parties to the terms of any verbal agreement. Where there is no such agreement, the mechanic has no legal right to possession of the vehicle. If the mechanic refuses to release the vehicle, *officers will* handle the situation in the same way as a tow company that refuses to release a vehicle (take a signed stolen vehicle *report*; lawfully recover the vehicle (a *search warrant* may be necessary) and release the vehicle to the owner; submit the *report* for prosecution.

#### 41.14.6 Towed Vehicles

- A. In Arizona, a tow company that has towed a vehicle from public or private property has no right to keep the vehicle until paid (there is no possessory lien on the vehicle), except in two situations:
  - 1. If the tow was directed by a law enforcement *officer*, or
  - 2. If the tow was done by an express agreement between the owner and a garage, repair station or service station
- B. If an *officer* is confronted with a situation in which a tow company refuses to release a vehicle to its owner, the *officer will* first determine if the vehicle was towed under either of the two conditions stated in the section above. If it was, then the owner *must* pay the cost of the towing or storage prior to the vehicle being released. If the *officer* determines that the tow was not pursuant to an agreement with a repair, garage or service station, and was not a law enforcement directed tow, then the *officer will* advise the tow truck driver or tow company that the debt owed is a civil debt and they *must* proceed to recover the money due in a court of law.
- C. If the tow truck driver or company refuses to release the vehicle, the *officer may* take a signed stolen vehicle *report*; lawfully recover the vehicle (a *search warrant* may be necessary) and release the vehicle to the owner; and *may* submit the *report* for prosecution.

#### 41.14.7 Child Custody Legal Decision Making and Visitation (Parenting Time) Issues



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Among the more complex civil situations encountered by *officers* in the field are those in which parents are fighting over child custody (also known as sole or joint "legal decision making" or primary or joint "residential parent") or court-ordered visitation (also known as "parenting time"), presenting various custody orders from the court/legal decision making/residential parent orders from the court (sometimes multiple orders from multiple courts), and demanding that *officers* move children from one location to another. As well as the usual *officer* safety issues, these situations often involve the safety and welfare of the children.

If there are reasonable grounds to believe that taking the child into temporary custody is necessary, *officers should* follow the procedures set forth in G.O. #44.9.

#### **41.14.7.1 Child Custody Matters Where there is no Court Order**

- A. When there is no custody/legal decision making/residential order in place:
  - 1. If the child was born out of wedlock, paternity has not been established, and there is no order concerning custody or access to the child, the mother is generally entitled to sole custody of the child.
  - 2. If the child was born out of wedlock and paternity has been established (by signature on the birth certificate, the signing of a notarized statement, genetic testing or court order), then the party who has had custody for the majority of the past six months is allowed to retain custody of the child.
  - 3. If the parents were married at the time of the child's birth, or at any time within the ten months prior to the child's birth, the parents have joint custody of the child and neither parent is entitled to sole custody. In such a situation, it is unlawful for one parent to take sole custody of a child with the intent to permanently exclude the other parent, even if there is no custody order.
- B. Moving a child from one parent/person to another parent/person should generally not be done in the absence of a custodial arrest of the parent/person for a criminal violation, grounds to take the child into temporary custody under 8-821 (see G.O. 44.9), the direction of DCS, a court order or the direction and approval of the on duty supervisor.



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#### **41.14.7.2 Child Custody when there is a Court Order**

- A. *Officers should* request copies of whatever court orders are alleged to exist regarding the children. Court orders do not need to have a seal to be valid, but they *must* have a date and the judge's signature. *Officers may* verify Superior Court orders by contacting the County Superior Court, Clerk's Office, Monday through Friday between 0800 and 1700.
- B. If both parties agree that a particular court order is the current order in a case, then its validity *may* be presumed. If the parties have opposing or contradictory paperwork, the *officer should* make no *arrests* in the case, but *should* document the situation.

#### **41.14.7.3 Criminal Enforcement of Child Custody and Visitation Orders**

- A. Court orders establishing custody and visitation/parenting time generally do not provide an *officer* with the authority to forcibly relocate a child from one parent to the other; these orders are directed to the parents and require action on the part of the parents, not on the part of the *officer*.
- B. *Officers* do, however, have the authority, and responsibility, to encourage voluntary compliance with such court orders. *Officers may* also enforce Arizona criminal law, using A.R.S. § 13-2810, "Interference with Judicial Proceedings," A.R.S. § 13-1302, "Custodial Interference," or A.R.S. § 13-1305 "Access (visitation or parenting time) Interference," as appropriate under the circumstances.

#### **C. "Pick-up Orders"**

This type of court order directs *officers* to transfer custody of children from one parent to another. Generally referred to as a "pick-up order," the order *will* contain language that specifically authorizes a law enforcement *officer* to relocate a child.

Such orders *shall* be verified prior to acting on them. If verification is not possible, the *officer shall* contact a *supervisor* prior to acting on the order. When an *officer* relies on such an order, the *officer shall* either place a



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copy of the order into evidence, or *shall* include in the police *report* a complete description of the order, including which court issued the order, the docket number and the date of the order. Forcible entry into a residence *shall* not be made unless the court order specifically authorizes the *officer* to use force to enter a house where the child *may* be found.

D. Out of State Courts; Warrant to Take Physical Custody of a Child

1. *Officers shall* not enforce out of state court orders relating to custody. Parents/guardians who present out of state orders for enforcement *should* be referred to Superior Court, where the order *must* be filed in compliance with the Uniform Child Custody Jurisdiction and Enforcement Act.
2. Once an order has been filed and ordered enforced by an Arizona court, the court *may* issue a pick-up order for the child or a warrant for the physical custody of a child. Such a warrant is required to:
  - a. Recite the facts upon which it is based, and
  - b. Direct law enforcement *officers* to take physical custody of the child immediately, and
  - c. Provide for the placement of the child pending final order of the court. Any officer who receives such a warrant should verify the warrant prior to enforcing it.

E. In any incident in which a court order is involved, the court order *should* be documented in the *Case Report*. The documentation *must* include, at a minimum, the name of the court, the case number and the date of the order. If possible, a copy of the order *should* be made and placed into evidence.