Lake Worth Police Department

Policy 7.03 – Arrests With and Without A Warrant

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I. POLICY

Short of the application of force, an arrest is the most serious action an officer can undertake. Being arrested can cause repercussions throughout a person's life, even if eventually found not guilty or never brought to trial. It is of paramount importance that officers not undertake an arrest without the utmost care.

There are two important legal questions facing officers making an arrest in Texas. The first deals with the existence of probable cause. Without probable cause, the arrest violates the Fourth Amendment and any evidence that flows from the arrest is inadmissible. Secondly, the state of Texas mandates that any warrantless arrest by an officer must be authorized by statute. See generally Ch. 14, Code of Criminal Procedure. Officers shall accordingly exercise critical judgment in making arrests. Critical judgment includes consideration for bystanders, the time, place, and location of offenses, the presence of probable cause and statutory authority and the use of force that may be required to make the arrest.

Officers shall consider alternatives to arrest consistent with the department's mission and values.

II. PURPOSE

The purpose of this policy is to define the authority of officers to make arrests and to outline the mechanism for making an arrest with and without a warrant.

III. DEFINITIONS

A. Arrest: An arrest is the physical seizure of a person, and it must be supported by probable cause.

B. Probable cause: According to the U.S. Supreme Court, "Probable cause exists where the facts and circumstances within [the arresting officers'] knowledge and of which they had reasonable trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed" and that the person to be arrested committed it.

An officer must have probable cause to obtain a warrant or to make a warrantless arrest. Generally, probable cause has been interpreted to mean – specific and articulable facts and circumstances known to the officer that would cause a reasonable officer to conclude that a specific person has committed a specific offense.

IV. DISCRETION

A. Officers shall demonstrate discretionary judgment. Discretion shall be applied reasonably and shall be guided by the oath of office, the limits of authority as established by law, the decisions and interpretations of the courts, the policies of our department, and any instruction provided by field supervisors.

B. Officers shall not make arrests or take any enforcement action based in whole or in part on a person's sex, race, creed, color, age, general or assumed attitude, ethnic or natural origin, economic status, disabilities, or sexual orientation. The exception to this policy is that race and/or other identifying characteristics listed above may be used to build probable cause if they are relevant factors identifying a suspect.

V. ARRESTS WITH A WARRANT (TBP: 7.02)

A. General Procedures for Obtaining an Arrest Warrant and Arresting with a Warrant.

1. Obtaining an arrest warrant will be made pursuant to Chapter 15 of the Texas Code of Criminal Procedure (TCCP). All officers shall become familiar with the specific language/laws concerning obtaining arrest warrants found in Chapter 15 of the TCCP. The following are shortened versions of Articles 15.01, 02, 03, and 05.

a. (15.01) An arrest warrant is a written order from a magistrate, directed to a peace officer commanding the officer to arrest a person accused of an offence who is to be dealt with according to law.

b. (15.02) A warrant must be issued by a magistrate, in the name of the State of Texas, and must specify the name of the person to be arrested or a reasonable, definite description of the person. The warrant must state that the person is accused of a crime and name the crime. The warrant must be signed by a magistrate and it must indicate the identity of the magistrate's office.

c. (15.03) A magistrate in the State of Texas may issue an arrest warrant when a person (the officer) makes an oath (affidavit or complaint) that another has committed an offense against the laws of the State of Texas.

d. (15.05) An officer's complaint or affidavit must state the name of the accused or some reasonably definite description of the individual. It must show directly that the person has committed a crime or that there is good reason to believe that the person has committed a crime. The complaint/affidavit must state the time and place of the offense, as definitely as can be done by the affiant, and it must be signed by the affiant.

2. Unless assigned as an investigator or detective, officers will obtain supervisory approval before applying for an arrest warrant for any individual.

3. All members of the department will utilize approved affidavit and arrest warrant forms provided by the department. Upon completion of the affidavit and warrant, all officers shall have the documents reviewed and approved by a supervisor prior to requesting judicial approval.

4. Warrants will be presented only to judges with the authority to consider and sign such warrants (Arrest, search, etc.). If a warrant approval is refused by any judge, the affidavit and warrant shall not be taken to any other judge until substantial additional information proving probable cause has been added to the affidavit. Subsequent reviews will be done by the same magistrate unless he/she is unavailable. If the same magistrate is unavailable, the officer shall inform the new magistrate that the original affidavit was refused and provide the reason(s) why it was refused.

5. Except as authorized by the Texas Code of Criminal Procedure, Chapter 14, or Section 18.16, an officer shall not arrest anyone without an arrest warrant.

6. An officer shall not alter any information on an arrest warrant in any manner after a magistrate has issued it.

7. An officer shall presume that any arrest warrant which appears in proper form is valid. To be in proper form and valid on its face, an arrest warrant shall have the following features:

a. Be issued in the name of "The State of Texas"

b. Specify the name of the person whose arrest is ordered, or provide a reasonable description if the name is not known

c. State that the person is accused of a named offense

d. Be signed by a magistrate whose office must be named.

8. An officer shall execute a valid arrest warrant as provided by law and departmental policies.

9. If the arrest warrant lacks proper form, the officer shall not execute the warrant, but shall return the warrant to the magistrate who issued it.

10. An officer who has any question about the details or validity of an arrest warrant shall attempt to verify the information before making an arrest under authority of that warrant.

11. Whenever practical, an officer shall automatically verify the accuracy of any arrest warrant issued thirty days or more before the date of execution.

12. Any decision to send regional or statewide messages concerning a warrant will be made by a supervisor or the investigator assigned to the case.

13. An officer need not have actual physical possession of an arrest warrant in order to execute it. However, before executing a warrant not in his possession, the officer shall personally determine the location of the warrant and shall ensure that the arrestee sees a copy of the warrant as soon as possible after his/her arrest.

14. In executing an arrest warrant, whether or not he/she has the warrant in his/her possession, an officer should announce to the person being arrested that the arrest is made pursuant to an arrest warrant. If an officer has the warrant in his possession, he/she should show it to the arrestee. If the officer does not possess the warrant, he/she should advise the arrestee of the charge, the bond, and the originating agency that issued the warrant.

15. Officers may enter a third party's residence in the following situations:

a. with consent to search from the resident or person having control of the property, or

b. with a search warrant for that residence in order to enter and make the arrest, or

c. while in fresh pursuit of the wanted person in dangerous felony cases only.

B. Warrants from Other Jurisdictions

1. If an officer has knowledge that another Texas law-enforcement agency holds a valid arrest warrant for a particular person, the officer may arrest that person. If an officer makes an arrest on a warrant from another Texas law-enforcement agency, the officer shall do the following:

a. Arrest the defendant.

b. Notify the agency holding the warrant that this department executed the warrant and give the location of the arrestee.

c. Make certain that a supervisor is notified if the defendant is booked into this department so that the defendant can appear before a magistrate within 24 hours of the arrest.

d. An officer shall also execute an arrest warrant telegraphed under the authority of a Texas magistrate.

2. The department shall hold the arrestee as the magistrate prescribes until releasing the arrestee to the custody of the department holding the warrant, or until transferring the person to the custody of the county sheriff's department.

3. If the department holding the warrant cannot take custody of the arrestee within 24 hours after the execution of the warrant, or if that department at any time indicates that it will not take custody of the arrestee, the arrestee may be released from our custody.

C. Warrants from Other States: When any officer has probable cause to believe that a person stands charged of a felony in another state, the officer shall do the following:

1. Arrest the person only after the warrant has been confirmed using accepted methods of warrant confirmation. (Such an arrest is made

under the authority granted to Peace Officers in the Texas Code of Criminal Procedure, Chapter 51, Fugitives from Justice.

2. Book the arrested person directly into the custody of the county sheriff's department.

3. The existence of a warrant from another state does not provide officers the authority to enter a third person's residence to make the arrest. Officers may only enter a third person's residence in the following circumstances:

a. with consent to search from the resident or person having control of the property, or

b. with a search warrant for that residence in order to enter and make the arrest, or

c. while in fresh pursuit of the wanted person in dangerous felony cases only.

D. Chance Encounters

1. An officer who lawfully stops or otherwise detains and identifies a person may concurrently initiate a records check to determine whether any arrest warrant is outstanding against that person.

2. An officer may detain a person whom he/she has lawfully stopped for a reasonable period of time in order to conduct a routine record check by radio, telephone, teletype, or computer terminal. However, detention may be extended, but no longer than necessary, if the officer has a reasonable suspicion that a warrant is outstanding.

3. The detained person may be required to wait in the officer's vehicle, in his/her own vehicle, or in some other convenient place.

4. The person may be frisked if the officer can articulate a reasonable fear for his/her safety.

5. Not all persons who have been detained are not legally required to identify themselves to the police. Drivers of vehicles who have been detained for a violation of a traffic law are required to produce a driver's license. Officers should be aware of circumstances when identification is required, and when it is not.

E. Planned Executions of Arrest Warrants

1. Prior to executing an arrest warrant, the officer in charge shall notify his/her chain of command.

2. The time of day for executing the arrest warrant shall be based on the following rules:

a. Execute during daylight, unless circumstances make this dangerous or impractical.

b. Execute when the person named in the warrant is most likely to be present.

c. Execute when resistance is least expected and best controlled.

d. Execute so as to minimize the danger or inconvenience to other persons who may be on the premises, unless other circumstances make this impractical.

e. Whenever possible, arrests shall be made in a location where the arrest will not pose a threat to the safety of the public, as it might in, e.g., crowded places where bystanders may be injured should the arrestee offer resistance, particularly resistance involving the use of firearms.

3. An officer may serve the warrant at any place, public or private, where the individual named is reasonably believed to be located (subject to the third- party, private-location rule.)

4. Officers need not execute the warrant at the first possible opportunity but may choose the time and place in accordance with these rules.

5. An officer shall not select the time and place of arrest solely to embarrass, oppress, or inconvenience the arrestee.

6. An officer shall not use force to enter private premises to execute a misdemeanor arrest warrant.

7. In general, when seeking to enter a private premise, an officer shall ring the doorbell or knock on the door, announce his/her intentions and purpose, and demand admittance. He/she then may then wait for a reasonable time under the circumstances to be admitted.

8. Officers may only enter a third person's residence in the following circumstances:

a. with consent to search from the resident or person having control of the property, or

b. with a search warrant for that residence in order to enter and make the arrest, or

c. while in fresh pursuit of the wanted person in dangerous felony cases only.

9. If the execution of an arrest warrant may involve significant risk to officers, a statement of the circumstances of this risk should be included in the affidavit with a request that the magistrate include a "No Knock" authorization to the warrant. If a "No Knock" provision has not been authorized by the magistrate, and articulable circumstances occur at the time of execution of the warrant (such as efforts to destroy evidence, evade arrest, or endanger officers) an immediate entry may be made without the required notice and waiting period.

10. An officer who must make a forcible entry shall enter the premises by the least forceful means possible under the circumstances. Although entry may necessarily include breaking a door or window, an officer must strive to inflict as little damage as possible to the premises.

11. When it is necessary to forcibly enter private premises to execute a felony arrest warrant, the officer in charge of the operation shall have enough officers present, and take other appropriate measures, to protect the safety and security of all persons present. To identify the group as officers, at least one fully uniformed officer should lead the entry into the premises.

12. After forcibly entering private premises to execute a felony arrest warrant, officers shall immediately secure the premises by locating and controlling the movement of all persons who reasonably appear to present a threat to the safety of the officers. Officers shall also control any object that may be used as a weapon. An officer may frisk any person whom the officer reasonably suspects may have a weapon concealed upon his/her person.

13. Officer shall leave the premises at least as secure as when they entered by leaving it in the hands of a responsible person or by locking all doors and windows. If the premises are left unsecured, a guard will

remain until the site can be turned over to a responsible party or otherwise secured from illegal entry.

F. Execution of Local Warrants Issued by Other Jurisdictions

1. When another law-enforcement agency within Texas holds a prisoner on a warrant from this department, this department shall either pick up the prisoner within twenty-four (24) hours or notify the holding agency to release him/her.

2. When an out-of-state department notifies this department that the out-of-state department has executed a felony arrest warrant held by this department and is holding the person arrested, this department shall immediately pursue extradition proceedings.

G. No-Book Warrant Procedures (During business hours)

1. For Class C warrants issued by this city, an officer may allow a violator to pay fines in full rather than booking the violator into the holding facility.

2. Officers who wish to serve Class C municipal warrants without booking the defendant into the holding facility should follow these procedures:

a. Confirm that the warrant matches the identity of the person detained.

b. Confirm that the defendant has a sufficient amount of cash to pay the full amount of the fine(s) or he/she can obtain the cash quickly.

c. If the defendant has the cash necessary or can obtain the cash quickly, the officer should ascertain if the defendant has transportation. The officer should follow the defendant to the municipal court.

d. Upon arrival at the municipal court, the officer should obtain the original warrant and complete the officer's return on the warrant.

e. The officer should complete an arrest report.

f. The violator will pay the complete amount of all fines to the clerk assigned to the municipal court. Officers are prohibited from handling any of the cash during any part of this transaction.

g. The officer should ensure that the defendant is provided a receipt for the payment.

h. If after a reasonable time has elapsed as determined by the officer or the officer's supervisor, the defendant is unable to pay the fine the defendant should be arrested and booked into the holding facility.

i. The officer should turn in his/her arrest report and the original warrant to his/her supervisor. The supervisor will forward the warrant to the municipal court for a final disposition and removal from the local warrant database.

VI. ARREST WITHOUT A WARRANT (TBP: 7.03)

A. Federal and state constitutions protect individuals from unreasonable searches. Further, officers must have probable cause to believe that a crime has been committed, and that the person to be arrested has committed the crime.

B. When warrantless arrests may be made

1. The Texas Code of Criminal Procedure, in Chapter 14, gives officers the authority to make warrantless arrests, supported by "probable cause," as follows:

a. Officers may arrest persons found in suspicious places and under circumstances that establish probable cause that such persons have been guilty of a felony or breach of the peace, violation of Ch. 42 of the Penal Code or threaten or are about to commit an offense against the laws.

b. An officer who has probable cause to believe that a person has committed an assault resulting in bodily injury to another, and there is probable cause to believe there is danger of further bodily injury to the victim, may arrest that person.

c. An officer who has probable cause to believe that the person has committed an offense involving family violence may arrest the violator.

d. If a person prevents or interferes with an individual's ability to place an emergency telephone call as defined in the Penal Code, an officer may arrest the violator.

e. Officers shall arrest a person who violates a valid protective order when the violation is committed in the officer's presence.

f. Officers may arrest a person who violates a valid protective order if the offense is not committed in the officer's presence or view.

g. Officers may arrest an offender for any offense committed within the officer's presence or view, including traffic violations.

h. Officers may arrest at the direction of a magistrate when a felony or breach of the peace has been committed.

i. Where it is shown by satisfactory proof to a peace officer, upon the representation of a credible person, that a felony has been committed, and that the offender is about to escape, so that there is not time to procure a warrant, said officer may, without warrant, pursue and arrest the accused.

j. Officers may arrest a person who confesses to a felony crime, provided the confession complies with state law regarding the admissibility of confessions.

2. Warrantless Arrests Outside Officer's Jurisdiction:

a. Although officers are discouraged from making arrests outside their jurisdiction, officers may make warrantless arrests in compliance with state law. [Municipal police officers who are outside their jurisdiction may arrest for any offense committed in their presence or view. These officers may only arrest for violations of Subtitle C, Title 7 of the Transportation Code if the violation occurs in the county or counties in which the officer's municipality is located.] Non-municipal Officers, who are outside their jurisdiction, may arrest, without warrant, a person who commits an offense within the officer's presence or view, if the offense is a felony, breach of the peace, or violation of Chapter 42 or 49 of the Texas Penal Code.

b. Any officer making a warrantless arrest outside his/her jurisdiction shall notify the law-enforcement agency of proper

jurisdiction. The law-enforcement agency shall take custody of the prisoner and arraign the prisoner before a magistrate in compliance with state law.

VII. POST-ARREST PROCEDURES

A. Injury before or during arrest

If a person receives an injury before or during an arrest and either requests medical attention or, in the officer's judgment, medical attention is needed, officers shall transport the suspect or arrange a medical examination before booking.

B. Processing of paperwork

1. Outline here the procedure for documenting arrests. Include a provision for supervisory review and approval of reports. Processing and routing procedures should be outlined concerning:

a. Offense reports.

b. Booking forms.

c. Fingerprint cards.

d. Photographs.

e. CCRE reports.

f. Copies of summonses.

g. Copies of warrant.

h. Bond papers.

i. Jail committal forms.

j. In the case of juvenile offenders:

k. Petitions.

l. Detention orders.

C. Mirandizing Arrestees

1. Arrestees shall be advised of their Miranda rights before any questioning.

2. A waiver of the Miranda rights must be obtained before any questioning of an arrestee.

3. If the arrestee has not waived his or her Miranda rights, no questioning shall be conducted beyond that necessary to accomplish the booking procedure (name, address, etc.).

4. If the arrestee declines to waive his or her Miranda right to counsel or right to remain silent, or if the arrestee, after waiving that right, elects to reassert it, questioning must cease immediately, and no further questioning may be conducted unless

a. An attorney representing the arrestee is present, or

b. The arrestee voluntarily initiates a further interview.

c. Any legally mandated waiting period has expired.

5. If the arrestee has not waived his/her Miranda rights, officers shall refrain from engaging in conversation among themselves in the presence of the arrestee that is calculated to elicit incriminating statements or admissions from the arrestee, even if the conversation does not contain questions.

6. All custodial interrogations of arrested persons shall comply with the requirements found in state and federal law.

VIII. RELEASE FROM ARREST

A. Officers may encounter a circumstance where probable cause develops to arrest a person for an offense only to find out shortly thereafter that the person under arrest did not commit a crime or that the event was not a crime. It is imperative, then, that the officer end the arrest process and release the person as soon as possible. Releasing a person who has been arrested incorrectly is not to be confused with releasing a person who was correctly arrested, but is to be released for convenience or medical purposes.

B. Procedure

1. If the arresting officer determines that probable cause no longer exists to arrest a suspect, and the officer is satisfied that the person under arrest either did not commit the crime or that a crime did not occur, the officer shall release the suspect and immediately notify the officer's supervisor.

2. An officer who releases a subject from arrest shall return the person to the place of the arrest, if the location is safe. The officer shall not release the person along the roadside. If a vehicle has been towed, the vehicle shall be returned to the operator/registered owner unless it is required as evidence, or some other legal authority assumes custody of the vehicle.

3. Upon releasing a person in this manner, the officer shall immediately contact the on-duty supervisor and advise him/her of the incident.

4. The officer shall document the following in an incident report:

a. The date and time of arrest.

b. The person arrested (name, address, date of birth, race).

c. The location of arrest.

d. Probable cause for the arrest and the specific charge(s).

e. The location and time of release from arrest and whether the person was transported.

f. The reasons or discovery of information that led the officer to release from arrest.

g. Any witnesses to the alleged crime, or to the fact the person arrested was allegedly involved.

h. Whether force was used in making the arrest, and if so, the nature of the force used and the consequences, including medical aid.

IX. IMMUNITY FROM ARREST

A. Legislative immunity

1. Members of the United States Congress are exempt from arrest when Congress is in session, or when they are en route to or from congressional business, except for traffic summonses.

2. Members of the Texas Legislature are exempt from arrest during a legislative session (or allowing for one day for every 20 miles such member may reside from the place where the legislature meets before the beginning or after the ending of any session) except in cases of treason, a felony, or a breach of the peace.

B. Diplomatic immunity

1. While a person claiming diplomatic immunity may present any number of identification papers, the only one that is indicative of the level of privilege and immunity is a card issued by the U.S. State Department. The holder's level of immunity will be indicated on the card. If a person claiming immunity does not possess this card and the incident involves a criminal offense, officers may detain the person either at the scene or at the department long enough to verify official status.

2. Upon exhibiting proof of diplomatic immunity, persons shall be released upon being stopped for a misdemeanor traffic violation. If questions arise about this procedure, or if an arrest for a felony is necessary, call and advise the U.S. State Department Office of Security (202-647-4415, days, or 202-647-1512, nights and weekends).

3. When encountering a criminal suspect who claims diplomatic immunity, officers shall first take reasonable measures--including pat-downs or other legal searches--to ensure safety to the public and other officers. Verification of the diplomatic claim shall take place after any danger has been neutralized. A criminal investigation shall proceed as if no valid diplomatic immunity claim has been made. Interviews, interrogations, seizures of evidence, or issuance of warrants shall proceed per departmental procedure. In a criminal investigation, the Chief shall remain in contact with the U.S State Department.

4. Regardless of the claim of immunity, in any case where officers arrest or detain foreign nationals the suspects shall be advised of their right to have their consular officials notified. In some cases, this notification is mandatory. Note: The list of countries that require mandatory notification of consular officials in the event that one of its citizens has been arrested is extensive. The State Department shall be contacted for guidance. (TBP 10.22)