


TEXARKANA POLICE DEPARTMENT

GENERAL ORDERS MANUAL

SUBJECT	Use of Discretion		
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APPROVED BY		ALEAP Standards	2.17; 7.30

I. Purpose and Scope

- A. The purpose of this policy is to establish guidelines for the use of discretion during law enforcement contacts by sworn members of the Texarkana Police Department.

II. Policy

- A. It shall be the policy of the Texarkana Police Department that all sworn members utilize discretion in the performance of their duties. Public empathy can be enhanced by the careful use of discretion, and potential antagonism can be avoided between citizens involved in police contacts and officers of the Texarkana Police Department.
- B. Employees shall respect the rights of individuals, and shall not engage in discrimination, oppression, or favoritism. Employees shall maintain a strictly impartial attitude toward all persons with whom they come into contact in an official capacity.

III. Procedure

A. Authority to Arrest Without a Warrant

1. Rule 4.1 of the Arkansas Rules of Criminal Procedure, entitled, Authority to arrest without a warrant, establishes distinct guidelines surrounding warrantless arrests. In accordance with Rule 4.1 of the Arkansas Rules of Criminal Procedure, a law enforcement officer may arrest a person without a warrant if the officer has reasonable cause to believe that person has committed:
 - a. A felony offense;
 - b. A traffic offense involving the death or physical injury to a person, the damage to property and those who are driving a vehicle while under the influence of any intoxicating liquor or drug;
 - c. Any violation of law in the officer's presence;
 - d. Acts which constitute a crime under the laws of this state and which constitute domestic abuse as defined by law against a family or household member and which occurred within four (4) hours preceding the arrest if no physical injury was involved or twelve (12) hours preceding the arrest if physical injury—as defined in A.C.A. § 5-1-102—was involved;

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- e. A private person may make an arrest where he has reasonable grounds for believing that the person arrested has committed a felony;
- f. An arrest shall not be deemed to have been made on insufficient cause hereunder solely on the ground that the officer or private citizen is unable to determine the particular offense which may have been committed; and
- g. A warrantless arrest by an officer not personally in possession of information sufficient to constitute reasonable cause is valid where the arresting officer is instructed to make the arrest by a police agency which collectively possesses knowledge sufficient to constitute reasonable cause.

2. Warrantless Arrest for Gas Theft

- a. In accordance with A.C.A § 16-81-114, notwithstanding the lack of a warrant for the arrest, any person who pumps gas into a vehicle or container, which fuel is the property of a retail business entity that engages in the sale of fuel, and then leaves the premises with the fuel without paying for the fuel shall be subject to arrest during the four (4) hours following the event.
 - (1) Persons arrested without a warrant for gas theft shall be released within twenty-four (24) hours of the arrest unless a warrant for the arrest of the person is issued according to law.

3. Warrantless Arrest for Misdemeanor Battery

- a. In accordance with A.C.A. § 16-81-106 (b)(2)(B), in addition to any other warrantless arrest authority granted by law or court rule, a certified law enforcement officer may arrest a person for a misdemeanor without a warrant if the officer has probable cause to believe that the person has committed battery upon another person, the officer finds evidence of bodily harm, and the officer reasonably believes that there is danger of violence unless the person alleged to have committed the battery is arrested without delay.
 - (1) Under narrowly defined circumstances, this section of Arkansas Law provides officers with the option of making physical arrests for a misdemeanor battery whenever the offense occurs outside of the officer’s presence; however, the process of obtaining a warrant for the offender’s arrest shall remain the preferred method for handling misdemeanor battery cases.

4. Warrantless Arrest for Violation of Interference with Emergency Communication

- a. If a law enforcement officer has probable cause to believe a person has violated A.C.A. § 5-60-124 (Interference with Emergency Communication, 1st Degree) or A.C.A. § 5-60-125 (Interference with Emergency Communication, 2nd Degree), the officer may arrest the person without a warrant even if the incident did not take place in the presence of the officer if the officer has probable cause to believe the person has violated the section within the preceding:
 - (1) Four (4) hours; or
 - (2) Twelve (12) hours in those cases involving physical injury as defined in A.C.A. § 5-1-204(14).

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B. Authority to Arrest With a Warrant

1. In accordance with Rule 4.2 of the Arkansas Code of Criminal Procedure, any law enforcement officer may arrest a person pursuant to a warrant in any county in the state.
2. In accordance with Rule 4.3 of the Arkansas Code of Criminal Procedure, a law enforcement officer need not have a warrant in his/her possession at the time of an arrest, but upon request, he/she shall show the warrant to the accused as soon as possible.
 - a. If the officer does not have the warrant in his/her possession at the time of the arrest, he/she shall inform the accused of the fact the warrant has been issued.

C. Arrest Protocol

1. In accordance with Rule 4.4 of the Arkansas Code of Criminal Procedure, upon making an arrest, an officer of the Texarkana Police Department shall ensure the following actions are taken:
 - a. The officer shall identify himself/herself as a law enforcement officer unless his/her identity is otherwise apparent;
 - b. The officer shall inform the arrested person that he/she is under arrest; and
 - c. As promptly as is reasonable under the circumstances, the officer shall inform the arrested person of the cause of the arrest.
2. In accordance with Rule 4.6 of the Arkansas Code of Criminal Procedure, any person arrested shall be brought promptly to the Bi-State Justice Center, the Miller County Sheriff's Office Jail, the Miller County Juvenile Detention Facility or the nearest appropriate police facility or other similar place of detention. However, the arresting officer may first take the person to some other place under the following circumstances:
 - a. The arrested person requests to be taken some other place; or
 - b. Such action is reasonably necessary for the purpose of having the person identified by a person who is otherwise unlikely to be able to make the identification or by a person near the place of the arrest or near the scene of a recently committed criminal offense.
3. In accordance with Rule 4.5 of the Arkansas Rules of Criminal Procedure, no officer shall question an arrested person if the person has indicated in any manner he/she does not wish to be questioned or those who are arrested who indicates he/she wishes to consult with counsel before submitting to any questioning.

D. Authority to Issue Citations To Appear

1. In accordance with Rule 5.2 of the Arkansas Rules of Criminal Procedure, officers of the Texarkana Police Department shall observe the following guidelines when issuing citations:
 - a. A law enforcement officer in the field acting without a warrant who has reasonable cause to believe that a person has committed any misdemeanor may issue a citation in lieu of arrest or continued custody.
 - b. When a person is arrested for any misdemeanor, the ranking officer on-duty at the place of detention to which the arrested person is taken may issue a citation in lieu of continued custody.

(1) No suspect who has been arrested by a Texarkana Police Officer for an offense related to domestic abuse will be issued a citation in lieu of continued custody.

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- c. Upon recommendation of a prosecuting attorney, the ranking officer on duty at the place of detention to which the arrested person is taken may issue a citation in lieu of continued custody when the person has been arrested for a felony offense.
- d. Although not inclusive, when determining whether to continue custody or issue a citation, the officer shall inquire into and consider the following facts surrounding the accused:
 - (1) The accused person's place and length of residence;
 - (2) The accused person's family relationships;
 - (3) References;
 - (4) The accused person's present and past employment;
 - (5) The accused person's criminal record; and
 - (6) Other factors, such as:
 - (a) Whether the accused person has failed to identify themselves satisfactorily;
 - (b) Whether the accused person refuses to sign a promise to appear pursuant to the citation;
 - (c) Whether the accused person has ties to the jurisdiction which are reasonably sufficient to assure his appearance in the future as well as a substantial likelihood he/she will respond to a citation; and
 - (d) Whether the accused person has previously failed to appear in response to a citation.

IV. Use of Discretion

A. Physical Arrests

- 1. Members of the Texarkana Police Department must understand there are instances when a decision **not to make an arrest** when there are **actual grounds to arrest** is considered an appropriate law enforcement practice.
- 2. If an arrest is not made at the time of the offense, an officer may—if he/she determines it is necessary—obtain a warrant of arrest for the offender at a later date.
- 3. If an officer makes a decision not to arrest, that decision should be based upon, but not limited to, the following elements:
 - a. The arrest would cause greater danger to the public than not attempting to arrest the offender;
 - b. The arrest would cause harm to an offender who poses no threat of danger to the public such as a juvenile offender whose violation could best be handled by a warning or an informal discussion with the parents;
 - c. The officer should always consider the seriousness of the offense and its consequences; and
 - d. Should questions arise concerning a particular incident, the officer involved should discuss it with a supervisor.

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B. Traffic Offense and Citations [ALEAP 7.30](#)

1. While there are no legal defenses for violators who are exceeding the posted speed limit or those who are driving faster than conditions permit, drivers who are stopped for these violations may indicate certain factors occurring prior to the stop and otherwise unknown to the officer that may have contributed to the violation. Officers of the Texarkana Police Department should use discretion when deciding whether to issue warnings and citations.
2. The selection of the appropriate enforcement action will primarily be left to the discretion of the officer. Some of the factors to consider when evaluating issues of discretion include the following:
 - a. Observed speed;
 - b. Posted speed;
 - c. Volume of traffic;
 - d. Condition of the roadway;
 - e. Lighting conditions;
 - f. Time of day;
 - g. Weather conditions; and
 - h. Any other relevant condition or circumstance.
3. The officer's discretion and judgment should guide the level of enforcement action taken for non-hazardous violations by considering those circumstances that exist at the time the violation occurred.

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