



**Enforcement Division**  
**Policy Number: LE 2.06.00**

# EXECUTING AN ARREST

**Effective Date: 2/1/08**  
**Revision Date: 8/4/09**

## **POLICY**

Certified peace officers (CPOs) will execute arrest warrants according to the Code of Criminal Procedure and TABC policies and procedures.

A certified peace officer (CPO) may arrest a person without a warrant if the CPO:

- (1) observed a violation of the Alcoholic Beverage Code or Commission Rules or observed a criminal violation and can justify the arrest under Article 14 of the Code of Criminal Procedure; and
- (2) has probable cause to arrest.

Upon arresting an individual, the CPO assumes primary responsibility for the health, safety, and welfare of the individual until the CPO releases the individual to a detention facility.

CPOs will not engage in pursuit, make traffic stops, make emergency calls, or drive in an erratic manner when transporting a subject to a detention facility unless an immediate threat of serious bodily injury or death exists and no other law enforcement unit is available.

## **PROCEDURES**

### **a. Basis for the Arrest.**

#### 1. Warrantless Arrest.

- A. A CPO will not arrest a subject without probable cause.
- B. A CPO may arrest a subject without a warrant when authorized by the Alcoholic Beverage Code, Code of Criminal Procedure, or other applicable law.

#### 2. Arrest with Warrant.

- A. A sergeant or supervisor will generally assign a CPO the duty of executing an arrest warrant. CPOs may, without sergeant or supervisor approval, execute outstanding arrest warrants when they are discovered during other enforcement activities.
- B. The CPO will attempt to identify the location of the subject of the arrest warrant. If the individual is located outside of the district, the CPO, upon sergeant or supervisor approval, will contact a sergeant or supervisor in the field office closest to the individual and request that a CPO in that office execute the warrant.
- C. Before making contact with the individual, the CPO will attempt to find out if the subject of the arrest warrant is armed or dangerous. The CPO may request the assistance of additional CPOs and local law enforcement as necessary.
- D. The CPO does not need physical possession of an arrest warrant to execute it, but

---

must know the location of the warrant and its current status.

- The subject of the arrest warrant must be informed of the existence of the warrant, the offense for which the warrant was issued, and the issuing magistrate.
- The CPO will confirm the continued validity of the arrest warrant by communicating with local law enforcement before transporting the subject to a detention center.
- The CPO must show the arrest warrant upon request of the person identified in the warrant as soon as practical after arrest.

**b. Warrantless Arrest: Considering Alternatives to Transporting the Subject to a Detention Facility.**

1. Prior to transporting a subject to a detention facility, the CPO will consider citing and releasing the person.
2. Reasons that the option to release a person is not available may include, but are not limited to the following:
  - A. The person presents a public safety threat to himself, herself or others.
  - B. Evidence suggests that the person presents a flight risk.
3. Subject Accused of Public Intoxication. Before transporting a subject accused of public intoxication to a detention facility, a CPO will consider citing and releasing the person to an adult who meets the following requirements:
  - A. the adult is willing and capable of assuming responsibility for the individual; and
  - B. the adult agrees to transport the individual to a safe place.
4. Subject Accused of a Violation Listed in Code of Criminal Procedure § 14.06(c). Before transporting subject accused of a violation listed in Code of Criminal Procedure § 14.06(c) to a detention facility, a CPO will consider citing and releasing the person according to Code of Criminal Procedure § 14.06(c).

**c. Executing the Arrest.**

1. The CPO will restrain the subject and follow the guidelines of the Use of Force Policy if confronted with a threat or resistance.
2. If possible the CPO will identify himself or herself and will explain to the individual the reason for the arrest.
3. Miranda Warnings. If the CPO intends to conduct a custodial interrogation, the CPO must read the subject his or her *Miranda* rights.
4. The CPO will conduct a search of the subject. Refer to *Search of Persons & Property*, § 2.01.00 of this manual.

**d. Securing the Subject's Property.**

1. If possible, the CPO will allow the subject to secure his or her property, including a vehicle.
2. If the CPO allows the subject to release property to another individual, the CPO must obtain the appropriate identifying information of the person to whom the property is released and include it in the *Offense / Arrest Report*.
3. If the subject was in or close to his or her vehicle at the time of the arrest, the CPO may allow the subject to release his or her vehicle to a responsible adult or may impound a vehicle and its contents. Refer to *Vehicle Impoundment & Inventory*, § 2.07.00 of this manual.

**e. Transporting the Subject to a Detention Facility.**

1. The CPO will transport the subject to a detention facility as soon as possible.
2. The number of CPOs and subjects in the vehicle determines the proper arrangement of persons inside the vehicle.
  - A. One CPO and One or Multiple Subjects: The CPO places the subject in the front passenger seat and secures the subject with the seat belt. The Agent may place additional subjects in the rear seat, securing each subject with a seatbelt.
  - B. Two CPOs, One Subject: The CPO places the subject in the right rear seat and secures the subject with the seat belt. One CPO drives while the other sits directly behind the driving CPO.
  - C. Two CPOs, Multiple Subjects: The CPO places one subject in the front passenger seat and secures the subject with a seatbelt. The CPO places the second subject in the right rear seat and secures the subject with a seatbelt. One CPO drives while the other sits directly behind the driving CPO.
3. The CPO will search the subject again to ensure that the subject does not possess any weapons.
4. The CPO will process charges at the detention facility and will notify detention facility personnel of any potential danger.
5. Special Requirements for Transporting a Subject of the Opposite Sex.
  - A. Before leaving the scene, the CPO will contact the local dispatcher to communicate his or her intent to transport a subject of the opposite sex.
  - B. The CPO will describe his or her physical location or address and intended destination.
  - C. The CPO will give the dispatcher his or her odometer reading.
  - D. Upon arrival at the detention facility, the CPO will contact the local dispatcher again to report his or her arrival and give the name of the detention facility.
  - E. The CPO will give the dispatcher his or her odometer reading.
  - F. When transporting a member of the opposite sex, it is advisable to use a voice-recording device, if available.

**f. Submitting Reports.**

1. Before the end of the CPO's shift, the CPO will complete *Offense and Arrest Reports* for each person arrested and taken to a detention facility during that shift.
2. The CPOs will enter the *Offense and Arrest Reports* into the agency computer system before the end of the next work shift. If the CPO will be on leave during the next normal work shift, the CPO must enter the *Offense and Arrest Reports* into the agency computer system during the current work shift.

---

**RULES**

---

**Alcoholic Beverage Code § 101.02. Arrest Without Warrant.**

A peace officer may arrest without a warrant any person he observes violating any provision of this code or any rule or regulation of the commission.

**Alcoholic Beverage Code § 103.04. Arrest of Person in Possession.**

A peace officer may arrest without a warrant any person found in possession of:

- (1) an illicit beverage;
- (2) any equipment designed for use in or used in manufacturing an illicit beverage; or
- (3) any material to be used in manufacturing an illicit beverage.

**Code of Criminal Procedure Art. 14.01. Offense Within View.**

- (a) A peace officer or any other person, may, without a warrant, arrest an offender when the offense is committed in his presence or within his view, if the offense is one classed as a felony or as an offense against the public peace.
- (b) A peace officer may arrest an offender without a warrant for any offense committed in his presence or within his view.

**Code of Criminal Procedure Art. 14.03. Authority of Peace Officers.**

- (a) Any peace officer may arrest, without warrant:
  - (1) persons found in suspicious places and under circumstances which reasonably show that such persons have been guilty of some felony, violation of Title 9, Chapter 42, Penal Code, breach of the peace, or offense under Section 49.02, Penal Code, or threaten, or are about to commit some offense against the laws;
  - (2) 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) persons who the peace officer has probable cause to believe have committed an offense defined by Section 25.07, Penal Code (violation of Protective Order), or by Section 38.112, Penal Code (violation of Protective Order issued on basis of sexual assault), if the offense is not committed in the presence of the peace officer;

- (4) persons who the peace officer has probable cause to believe have committed an offense involving family violence;
  - (5) persons who the peace officer has probable cause to believe have prevented or interfered with an individual's ability to place a telephone call in an emergency, as defined by Section 42.062(d), Penal Code, if the offense is not committed in the presence of the peace officer; or
  - (6) a person who makes a statement to the peace officer that would be admissible against the person under Article 38.21 and establishes probable cause to believe that the person has committed a felony.
- (b) 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 (violation of Protective Order), or Section 38.112, Penal Code (violation of Protective Order issued on basis of sexual assault), if the offense is committed in the presence of the peace officer.
- (c) If reasonably necessary to verify an allegation of a violation of a protective order or of the commission of an offense involving family violence, a peace officer shall remain at the scene of the investigation to verify the allegation and to prevent the further commission of the violation or of family violence.
- (d) A peace 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, a violation of Chapter 42 or 49, Penal Code, or a breach of the peace. A peace officer making an arrest under this subsection shall, as soon as practicable after making the arrest, notify a law enforcement agency having jurisdiction where the arrest was made. The law enforcement agency shall then take custody of the person committing the offense and take the person before a magistrate in compliance with Article 14.06 of this code.
- (e) The justification for conduct provided under Section 9.21, Penal Code, applies to a peace officer when the peace officer is performing a duty required by this article.
- (f) In this article, "family violence" has the meaning assigned by Section 71.004, Family Code.
- (g)
- (1) A peace officer listed in Subdivision (1), (2), or (5), Article 2.12, who is licensed under Chapter 1701, Occupations Code, and is outside of the officer's jurisdiction may arrest without a warrant a person who commits any offense within the officer's presence or view, other than a violation of Subtitle C, Title 7, Transportation Code.
  - (2) A peace officer listed in Subdivision (3), Article 2.12, who is licensed under Chapter 1701, Occupations Code, and is outside of the officer's jurisdiction may arrest without a warrant a person who commits any offense within the officer's presence or view, except that an officer described in this subdivision who is outside of that officer's jurisdiction may arrest a person for a violation of Subtitle C, Title 7, Transportation Code, only if the offense is committed in the county or counties in which the municipality employing the peace officer is located.
  - (3) A peace officer making an arrest under this subsection shall as soon as practicable after making the arrest notify a law enforcement agency having jurisdiction where the arrest was made. The law enforcement agency shall then take custody of:
    - (A) the person committing the offense and take the person before a magistrate in

- compliance with Article 14.06; and
- (B) any property seized during or after the arrest as if the property had been seized by a peace officer of that law enforcement agency.

**Code of Criminal Procedure Art. 14.031. Public Intoxication.**

- (a) In lieu of arresting an individual who commits an offense under Section 49.02, Penal Code, a peace officer may release an individual if:
- (1) the officer believes detention in a penal facility is unnecessary for the protection of the individual or others; and
  - (2) the individual:
    - (A) is released to the care of an adult who agrees to assume responsibility for the individual; or
    - (B) verbally consents to voluntary treatment for chemical dependency in a program in a treatment facility licensed and approved by the Texas Commission on Alcohol and Drug Abuse, and the program admits the individual for treatment.
- (b) A magistrate may release from custody an individual arrested under Section 49.02, Penal Code, if the magistrate determines the individual meets the conditions required for release in lieu of arrest under Subsection (a) of this article.
- (c) The release of an individual under Subsection (a) or (b) of this article to an alcohol or drug treatment program may not be considered by a peace officer or magistrate in determining whether the individual should be released to such a program for a subsequent incident or arrest under Section 49.02, Penal Code.
- (d) A peace officer and the agency or political subdivision that employs the peace officer may not be held liable for damage to persons or property that results from the actions of an individual released under Subsection (a) or (b) of this article.

**Code of Criminal Procedure Art. 14.04. When Felony Has Been Committed.**

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 no time to procure a warrant, such peace officer may, without warrant, pursue and arrest the accused.

**Code of Criminal Procedure Art. 14.05. Rights of Officer.**

In each case enumerated where arrests may be lawfully made without warrant, the officer or person making the arrest is justified in adopting all the measures which he might adopt in cases of arrest under warrant, except that an officer making an arrest without a warrant may not enter a residence to make the arrest unless:

- (1) a person who resides in the residence consents to the entry; or
- (2) exigent circumstances require that the officer making the arrest enter the residence without the consent of a resident or without a warrant.

**Code of Criminal Procedure Art. 14.06. Must Take Offender Before Magistrate.**

- (a) Except as otherwise provided by this article, in each case enumerated in this Code, the person making the arrest or the person having custody of the person arrested shall take the person arrested or have him taken without unnecessary delay, but not later than 48 hours after the person is arrested, before the magistrate who may have ordered the arrest, before some magistrate of the county where the arrest was made without an order, or, to provide more expeditiously to the person arrested the warnings described by Article 15.17 of this Code, before a magistrate in any other county of this state. The magistrate shall immediately perform the duties described in Article 15.17 of this Code.
- (b) A peace officer who is charging a person, including a child, with committing an offense that is a Class C misdemeanor, other than an offense under Section 49.02, Penal Code, may, instead of taking the person before a magistrate, issue a citation to the person that contains written notice of the time and place the person must appear before a magistrate, the name and address of the person charged, and the offense charged.
- (c) If the person resides in the county where the offense occurred, a peace officer who is charging a person with committing an offense that is a Class A or B misdemeanor may, instead of taking the person before a magistrate, issue a citation to the person that contains written notice of the time and place the person must appear before a magistrate of this state as described by Subsection (a), the name and address of the person charged, and the offense charged.
- (d) Subsection (c) applies only to a person charged with committing an offense under:
- (1) Section 481.121, Health and Safety Code, if the offense is punishable under Subsection (b)(1) or (2) of that section;
  - (2) Section 28.03, Penal Code, if the offense is punishable under Subsection (b)(2) of that section;
  - (3) Section 28.08, Penal Code, if the offense is punishable under Subsection (b)(1) of that section;
  - (4) Section 31.03, Penal Code, if the offense is punishable under Subsection (e)(2)(A) of that section;
  - (5) Section 31.04, Penal Code, if the offense is punishable under Subsection (e)(2) of that section;
  - (6) Section 38.114, Penal Code, if the offense is punishable as a Class B misdemeanor; or
  - (7) Section 521.457, Transportation Code.

---

**DOCUMENTS, FORMS AND EXHIBITS**

---

***Use of Force Policy****Offense Report, Form 4-44.1**Arrest Report, Form 4-44.2**Vehicle Impound and Inventory Record, Form 4-95*

---

**REVISION HISTORY**

---

**08-04-09:** The policy was revised under the Executing the Arrest section to reference the guidelines outlined in the Use of Force Policy.

---