
	MESQUITE POLICE DEPARTMENT
	223.00 CIVIL STANDBY, PROTECTIVE ORDERS, COURT ORDERED ASSISTANCE
	Effective Date: August, 2011
	Approved: _____ <div style="text-align: center;">  Chief of Police </div>

- I. Purpose
To give officers guidance and instruction in the laws applicable to protective orders and other similar court orders and to establish procedures governing law enforcement assistance and civil standby activities in order to ensure that an officer's actions will be consistent with applicable laws.
- II. Definitions
Civil Standby: Civil standby is the procedure whereby police officers accompany a victim of domestic violence to the residence the victim shared with their assailant while the victim retrieves his or her personal property and/or a child or the property of a child in his or her custody from the residence.
Court Ordered Law Enforcement Assistance: Court ordered law enforcement assistance is the procedure whereby police officers, in response to a court order, accompany an applicant to the residence named in the order to inform the respondent of the temporary ex parte or final protective order that excludes the respondent from the residence and to protect the applicant.
Personal Property: Personal property includes clothing, toiletries, prescription drugs and other such items of a personal nature.
- III. Policy
 - A. Mesquite police officers will perform law enforcement assistance when ordered by a court of competent jurisdiction.
 - B. Mesquite police officers may perform non-court-ordered civil standby when deemed necessary by a command level officer, or in the absence of a command level officer, by a police supervisor. Factors to be considered in determining necessity will be:
 1. The legality of conducting the standby in the manner requested;
 2. Whether the specific item(s) sought through the standby are essential to the life functions of the complainant;
 3. The time required by the complainant to remove the item(s) from the location of the standby; and
 4. The availability of manpower.
- IV. Liability and Duties of Peace Officers
 - A. Article 5.045 Code of Criminal Procedure - Standby Assistance; Liability
 1. Attorney General Opinion No. JC-0112, September 22, 1999, states that Article 5.045 was expressly intended to protect law enforcement officers who accompany victims of domestic (family) violence to their residences for collecting personal property after those victims have vacated the premises. The opinion states that the police shall not escort the perpetrator of family violence, to or near the residence because it is not contemplated by article 5.045 and may violate the terms of the protective order.
 2. Neither Article 5.045 nor the AG opinion addresses removal or retrieval of children, only the property of a child in the care of the victim of family violence. Unless otherwise required by law, Mesquite police officers will not intervene in the removal of children from the premises. An exception may occur in a case where the victim's departure from the premises immediately preceded their request for help from the police, their departure was a result of them leaving to

escape imminent harm, and the intervention is approved by a command level officer or a supervisor.

- B. Title 4, Family Code – All Chapters
 - 1. Chapter 86 Law Enforcement Duties Relating to Protective Orders
 - a) Section 86.003. Court Order for Law Enforcement Assistance Under Temporary Order (Ex Parte)
 - b) Section 86.004. Court Order for Law Enforcement Assistance Under Final Order
 - c) Section 86.005. Protective Order From Another Jurisdiction (Foreign Order)
 - 2. Chapter 88 Family Code
 - a) Chapter 88. Uniform Interstate Enforcement of Protective Orders Act (selected law enforcement related portions)
 - b) Sec. 88.004. Non-judicial Enforcement of Order.
 - c) Sec. 88.006. Immunity.

V. Court Orders

The listed court orders are those generally encountered by police officers in the course of their duties in connection with civil standby, court ordered law enforcement assistance and related activities.

- A. Peace Bond: A peace bond is an order issued by a Justice of the Peace providing for a monetary fine to the named party who fails or refuses to comply with the order. It is criminally enforceable only after the Justice of the Peace issues an arrest warrant for failure to comply with the order.
- B. Restraining Order: A restraining order is an order issued by a County or District Court Judge directing the named party to comply with the terms of the order. It is criminally enforceable only after the issuing Judge issues an arrest warrant for failure to comply with the order.
- C. Protective Order: A protective order is an order issued by a County or District Court Judge, or, in the case of an Emergency Protective Order, a Magistrate as defined in §2.09 of the Code of Criminal Procedure, directing the named party to comply with the terms of the order. The law requires copies of protective orders be sent to the chief of police in the municipality where the protected person resides.
 - 1. Temporary (Ex Parte) Order: A temporary ex parte order is an order made by a court upon finding there is a clear and present danger of family violence and is made without further notice to the alleged violator and without a hearing. A temporary ex parte order is criminally enforceable if the order has been served.
Final Protective Order: A court makes a final protective order after conducting a hearing on an application for protective order. A final protective order is criminally enforceable under Chapter 25 of the Penal Code. The order may prohibit a person from taking specified actions relating to persons or property, award a party use and possession of specified property, give exclusive possession to a party and direct one or more parties to vacate a residence and make orders concerning the parent -child relationship. A protective order is valid for the period stated in the order not to exceed two years unless the court subsequently orders expiration on an earlier date. If the person to whom the order applies is confined or imprisoned on the expiration date of the order the order shall continue to be effective until the first anniversary of the individuals release from confinement or imprisonment.
 - 2. Emergency Protective Order: An emergency protective order (CCP 17.292) is criminally enforceable. The order is issued by a Magistrate to a defendant who has been arrested (and is still incarcerated) for family violence or stalking (PC 47.072). The order is valid for at least 31 days not to exceed 61 days after

issuance. To the extent that a condition imposed by an emergency protective order conflicts with an existing court order granting possession of or access to a child, the provisions of the emergency protective order prevail for its duration.

D. Court Order for Law Enforcement Assistance.

1. Temporary Ex Parte Protective Order: Excludes the respondent from the residence covered by the order and orders the sheriff, constable or chief of police to provide a law enforcement officer to accompany the applicant to the residence covered by the order, inform the respondent that the court has ordered that the respondent be excluded from the residence, protect the applicant while the respondent vacates and the applicant takes possession of the residence, and protect the applicant if the respondent refuses to vacate the residence while the applicant takes possession of the applicant's personal property.
2. Final Protective Order: Same as the Temporary Ex Parte Protective Order, except if the respondent refuses to vacate the residence, the law enforcement officer is ordered to arrest the respondent for violating the court order.
With either the Temporary Ex Parte Order or the Permanent Order, the respondent who vacates the residence may take their necessary personal property.

E. Foreign Protective Order: A protective order issued by a court or agency of a state other than Texas.

VI. Procedural Guidelines

On any civil standby the primary role of Mesquite police officers is to prevent violence and preserve the peace. These guidelines are designed to provide a foundation to ensure continuity of civil standby activities. While other factors may arise, these steps will provide the groundwork for civil standby response.

A. Non-Court-Ordered Civil Standby

This procedure assumes that there is no emergency protective order, final protective order or foreign protective order prohibiting the non-requesting party from going to or near the residence of the requested civil standby. In such an instance, the non-requesting party who is at or near the residence may be arrested for violation of the emergency or final order. Arrest under a Foreign Order will need to be determined by the content of the order. In addition, this procedure further assumes that there is no court order for law enforcement assistance affecting the parties as defined in Section V.D. and discussed in Section VI. B.

1. Upon receipt of a request for civil standby, a determination as to whether or not the requested civil standby is necessary shall be made in accordance with the Policy set forth in section III. B. of this Directive.
2. If it is determined that the police department cannot assist the person requesting civil standby ("the requestor"), the officers should, in a sympathetic, courteous and considerate manner, explain to the complainant why the request must be denied.
3. If it is determined that a civil standby is necessary, two officers, (one of whom shall be the primary officer), shall meet with the requestor at a location other than the location of the requested civil standby ("the location"). The officers will then accompany the requestor to the location.
Upon arrival at the location, while the requestor waits off the property, the officers will attempt to meet separately with the person at the location ("non-requesting person"), to explain why the police have responded to the situation.
4. If the non-requesting person agrees to allow the requestor to enter the property to take custody of personal property and/or children, the officers will stay at the location while the requestor enters and retrieves the necessary personal property and/or children. The officers shall not attempt to assist the requestor with the

- retrieval. In addition, the officer shall not assist in making any decisions regarding the ownership or division of property.
5. Mesquite police officers will not assist a complainant in gaining forced entry into any premises. Mesquite police officers will allow the exchange of property or custody of children only if all relevant parties agree to the exchange.
 6. Should the non-requesting person, owner or person in charge of the premises refuse to agree to the retrieval of children or property from the premises and ask/order the officers to leave, the officers will leave and advise the requestor to also leave the premises.
 7. If a disturbance erupts or an assault occurs, the situation will be treated in the same manner as if the officers were dispatched to a disturbance call.
- B. Court Ordered Law Enforcement Assistance.
1. When the department is contacted by an applicant in possession of a protective order that orders the Chief of Police to provide a law enforcement officer to accompany the applicant to the residence covered by the order, a police supervisor will inspect the order to verify its validity. Validity shall be determined by accessing the department's information relating to protective orders sent to the department by the clerk of the issuing court, contacting the court directly or where appropriate, determining the validity on the face of the order.
 2. Once the validity of the order has been ascertained, two officers will be assigned to meet with the complainant and proceed as follows:
 - a) Temporary (Ex Parte) Protective Orders
 - (1) The police officers will meet with the applicant, preferably at a location other than the one named in the order. The officers will explain to the applicant in a professional, unbiased and courteous manner that while they will accompany the applicant to the location on the order and take all required actions, the order is not criminally enforceable.
 - (2) In accordance with the requirements of Section 86.003 of the Family Code, the officers will accompany the applicant to the residence covered by the order. The officers will make every attempt to meet with the respondent separately and will inform the respondent that the court has ordered that the respondent be excluded from the residence. If the respondent agrees to vacate the residence, the officers will provide protection to the applicant while the applicant takes possession of the residence. If necessary, the respondent will be allowed a reasonable amount of time to take possession of necessary personal property prior to vacating the residence. In a professional, unbiased and courteous manner, the respondent will be informed to obtain legal representation to assist in determining his right to remove other items left in the residence. If the respondent refuses to vacate the residence, (except in an instance where the respondent asks/orders the police officers to leave the property), the officers will provide protection to the applicant while the applicant takes a reasonable amount of time to remove necessary personal property from the residence. The applicant will be informed in a sympathetic, courteous and considerate manner that no enforcement action will be taken and that the applicant should contact their legal representative or the issuing court about the respondent's refusal to abide by the court's order.

- (3) Should the respondent refuse to vacate the residence and asks/orders the officers to leave, the officers will leave and advise the applicant to also leave the premises. The applicant will be informed in a sympathetic, courteous and considerate manner that no enforcement action will be taken and that the applicant should leave the residence and contact their legal representative or the issuing court about the respondent's refusal to abide by the court's order.
 - (4) Should a disturbance erupt or an assault occurs, the situation will be treated in the same manner as if the officers had been dispatched to a disturbance call.
- b) Final Protective Orders
 - (1) Two police officers will meet with the complainant, preferably at a location other than the one named in the order.
 - (2) In accordance with section 86.004 of the Family Code, Mesquite police officers will accompany the applicant to the residence covered by the order. The officers will inform the respondent that the court has ordered that the respondent be excluded from the residence. The officers will provide protection to the complainant while the complainant takes possession of the residence and the respondent takes possession of the respondent's necessary personal property. The respondent will be allowed a reasonable amount of time to remove necessary personal property. If the second party refuses to vacate the residence, the officers will remove and arrest that party for violating the court order.

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