



Peoria Police Department Policy and Procedure Manual	
Policy 7.03	Legal Process



I. POLICY

It is the policy of the Peoria Police Department to become involved in civil matters only to the extent necessary to preserve the peace. The Peoria Police Department will not become involved in the service of Civil Court Orders except as mandated by law, and outlined in this policy. When questions arise concerning the legal process surrounding civil matters, contact the legal department of the City of Peoria.

II. CIVIL PROCESS PROCEDURE

A. Civil Court Orders

1. Orders of Protection are court orders which may prohibit a person from committing an act of domestic violence or prohibit their presence at a particularly named location.
2. Injunction Prohibiting Harassment is a court order which prohibits a person from committing acts of harassment or preventing the person from coming on or near a particularly named location.
3. Restraining Orders are orders issued by a court to prohibit persons or businesses from taking specified actions.
4. Orders of Protection and Injunctions Prohibiting Harassment are good for a period of one year from the date of service on the Defendant.
5. Restraining Orders are orders that concern civil matters in which no police action is required. A crime need not be committed before a Restraining Order can be issued.

B. Service of Court Orders (74.2.1)

1. The Peoria Police Department is mandated by law, to serve Orders of Protection and Injunctions Prohibiting Harassment involving dating relationships, issued by any municipal court, upon request of the Plaintiff, if the Defendant can be served within the city limits of the City of Peoria.
2. Justice of the Peace Orders of Protection the Plaintiff will be referred back to the Constable for the issuing court or the Sheriff's Office.
3. Superior Court Orders of Protection the Plaintiff will be referred to the Maricopa County Sheriff's Office, Civil Division for service.
4. All Injunctions Against Harassment, except those arising out of a dating relationship or where the service was waived by the court, issued by a City Court the Plaintiff will be referred to a civil process server. Those issued out of Justice Court will be referred back to the respective Constable and those issued out of Superior Court will be referred to the Sheriff's Office.
5. When court orders are received/served, the following procedure will be followed:
 - a. Receipt of Court Orders: The court order will be received by the Records Section during normal duty hours. A Police Services Officer or the on-duty Communications Supervisor or their designee (in that order of availability) will receive the court order after-hours. The receiving employee will annotate the following elements in the respective log:
 - (1) Date/time received. (74.1.1.a)
 - (2) Type of legal process (criminal or civil). (74.1.1.b)

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- (3) Nature of document. (74.1.1.c)
 - (4) Source of document. (74.1.1.d)
 - (5) Name of plaintiff or defendant. (74.1.1.e)
 - (6) Officer assigned for service. (74.1.1.f)
 - (7) Date forwarded for service. (74.1.1.g)
 - (8) Court/case number. (74.1.1.h)
 - (9) Date service due. (74.1.1.i)
 - (10) Date/s and Time/s of Service Attempts.
- b. Orders of Protection and Injunctions Against Harassment arising out of a dating relationship or the service fee has been waived, issued by the Peoria City Court, where the defendant resides outside of the city limits will still be received by the Records Section. The Records section will:
- (1) Advise the Plaintiff that they will fax a copy of the order to the respective police department as a heads-up followed by the original being mailed or that the Plaintiff may hand deliver it themselves.
 - (2) Regardless of the Plaintiff's choice, the Records Clerk will then log the order into to the respective log documenting the Plaintiff's choice.
 - (3) If the Plaintiff desires to have the Records Section fax the order to the respective police department, they will do so. Upon completion of the fax, the Records Section will forward the original order to the respective agency via the mail.
- c. Service Fee: Per Arizona State Statute, a fee shall not be charged for filing a petition or for service of process on Orders of Protection or Injunctions Against Harassment involving a dating relationship.
- d. The receiving employee will advise the plaintiff to call the respective police department if they wish to know if the order was served.
- e. The court order will be forwarded to a uniformed officer for service.
- f. Service: Officers will make every attempt to serve the appropriate court order in a timely manner.
- g. Distribution: The assigned officer serves the defendant the pink copy of the order, returns the yellow plaintiff copy and white court copy if attached, to the completed report basket.
- h. Certificate of Service: The serving officer fills out the Certificate of Service and signs the form, and returns it with any copies. The Certificate of Service, along with any attached forms will be sent back to the originating court by the Records Section. If the officer is unable to complete the service, the officer will note in an appropriate space on the Certificate of Service the dates of attempt and the reason for non-service. The Certificate of Service should contain at a minimum the following information:
- (1) Date/time service was executed/attempted. (74.1.2.a)
 - (2) Name of Officer(s) executing/attempting service. (74.1.2.b)
 - (3) Name of person on whom legal process was served. (74.1.2.c)
 - (4) Method of service/reason for non-service. (74.1.2.d)
 - (5) Address of service/attempt. (74.1.2.e)

- i. Orders that can not be served: If the order cannot be served, the officer will return all paperwork to the on-duty patrol supervisor, who will pass the paperwork onto the oncoming shift supervisor for service. If every reasonable attempt has been made to serve the order, then the supervisor will return the paperwork to the Records Section.
 - j. If the order cannot be served, the Records Section will mail all paperwork back to the issuing court.
 - k. If appropriate, officers should refer all parties back to the issuing court for additional orders and/or amendments.
- C. Emergency Orders of Protection (See Department Policy 4.12)
- D. Violation of Orders of Protection
- 1. The subject shall be arrested and booked into jail based upon the following procedure:
 - a. Probable Cause: When an officer responds to a violation of an Order of Protection and probable cause exists to believe that the defendant committed the violation.
 - b. City Court Orders: If the Order of Protection is issued by Peoria City Court, the officer will confirm the validity of the Order and the conditions with Communications.
 - c. Other Courts: For Orders of Protection issued by other jurisdictions, the officer will have communications confirm the validity of the Order with the Maricopa County Sheriff's Office.
 - d. Confirmation: If for any reason the officer is not able to confirm the validity and conditions of the Order through the above means and the Plaintiff has a signed and stamped copy of the Order along with the Certificate of service, this will suffice. However, unless exigent circumstances exist which would provide probable cause to believe that the Plaintiff's safety was in jeopardy, the case will be submitted to the Prosecutors Office requesting that a complaint be issued.
 - e. To assist the involved parties, officers should refer to and distribute the Peoria Police Department's Order of Protection/Injunction Citizen Information Card.
 - 2. If an allegation is made by a victim stating that the defendant violated an Order of Protection (or an Injunction Prohibiting Harassment), the officer shall complete an Incident Report. This will allow the Police Department and the City Prosecutor ample time to evaluate whether charges should be filed.
 - a. Officers shall not send the victim to the City Court to request an Order to Show Cause or Contempt Hearing.
 - b. Adjudication: A violation of an Order of Protection or an Injunction Prohibiting Harassment shall not be adjudicated by a municipal court or justice of the peace unless a complaint has been filed by the prosecutor or there is a referral from the prosecuting agency.
 - c. Vacating an Order: Only the court can vacate an order. Merely because the defendant violated the terms of an order and the petitioner did not notify the police does not mean the order is no longer valid. Both orders and Injunctions are valid for a period of one year.
- E. Violation of Injunction Prohibiting Harassment – The officer will follow the same procedure as outlined for violation of Orders of Protection. However, the officer will evaluate the situation and take the necessary enforcement action to include citation in lieu of detention, if it is not domestic violence related.
- F. Right to Access: When an Order of Protection or an Injunction Prohibiting Harassment forbids a person from entering a particular residence or place of business, an officer should not accompany the person and "stand by" while that person enters the residence to obtain personal effects or for any other reasons. When such a request is received, the party will be referred back to the court.
- G. Law Enforcement Action for Violations of Restraining Orders: Officers will not take any enforcement action unless a separate criminal offense is in progress or has occurred. The complainant will be advised to contact the judge who signed the order so that a summons or warrant may be issued since Restraining Orders concern civil matters in which no police action is required.

- H. Out of State Court Orders: Court Orders from other states are not enforceable in Arizona until they have been registered with a Superior Court in Arizona except for civil or criminal domestic protective orders issued by the courts of one state or Indian Tribe, which is consistent with protective orders as described in the statute. They shall be accorded full faith and credit by the courts of another state or tribe, and are to be enforced as if it were the order of the court of the second state or tribe. (Title 18 U.S.C.2265 Full Faith and Credit.)
- I. Civil Court Orders and Evictions (74.2.2)
1. Writ of Restitution: Officers will not arrest persons who refuse to obey a Writ of Restitution. Should officers come into contact with constables of the justice courts requesting aid in service of a Writ of Restitution, and the subject refuses to obey the Writ, officers will refer the constable back to their issuing courts for an arrest warrant to be issued in the name of the violating party.
 2. Referral: Officers who are requested to enforce a Writ of Restitution will advise the requesting party to contact the Maricopa County Sheriff's Office, Civil Division for enforcement.
 3. Civil Court Orders for Seizure of Property (74.4.1): Officers will not seize any property, personal or otherwise, pursuant to a court order. The plaintiff will be instructed to contact the Maricopa County Sheriff's Office, Civil Division, for execution of these orders.
 4. Serving Court Orders on the Mentally Ill (See Policy 4.24)
- J. Assist Civil Process Servers: It is the policy of the Peoria Police Department to refrain from getting involved in situations with civil process servers, other than to keep the peace. When an officer is dispatched to assist a process server, the officer will prevent any breach of the peace.
1. Process servers act as officers of the court but they do not possess any greater authority than the normal citizen.
 2. They are not authorized to force entry into private residences. They may not commit a trespass, engage in an act of violence or engage in activity that would not be appropriate for any private person to engage in.
 3. The process servers may peaceably enter upon private property, walk up sidewalks and driveways, knock on doors, or otherwise engage in activity that may legitimately be carried out by other delivery persons.
 4. Process servers may carry firearms in the course of their employment but the weapon may not be concealed except as allowed by law.
- K. Miscellaneous Civil Matters
1. Repossession of Property: When a person buys an article, such as furniture on a time payment plan, the agency lending the money for purchase may retain a security interest in the article until the loan is fully repaid. Unless otherwise agreed, if the purchaser does not make payments on the loan when due, the lending agency has the right to take possession of the item on the strength of this interest without court action, i.e., repossession of collateral.
 - a. Along with the right to repossess property is the right for the lending agency to enter the premises of the person owing the debt for the purpose of taking the property.
 - b. The lending agencies may only repossess when the repossession can be accomplished without a breach of the peace.
 - c. If a breach of the peace appears to be imminent or actually occurs (i.e., fighting, challenging to fight, etc.), the officer will inform the agent of the lending company that the right to repossess by private individual is terminated and that the agency must now proceed by contacting the Maricopa County Sheriff's Office, Civil Division.
 - d. Officers may take appropriate enforcement action against any party who commits a criminal offense.
 - e. If the agents persist in their attempt to repossess after being advised that the right has been terminated, they may be arrested for trespassing or any other offense they may commit.

2. **Self-Service Storage Lockers:** Owners of self-service storage locker facilities have the right to withhold personal property stored in locker spaces if rent is unpaid and due. If rent payments are 30 days past due, the storage locker owner may sell the property. These rights only apply if the rental agreement contains warnings to the tenant that the storage locker owner has these rights. Violation of this statute is not a crime. Complainants should be advised to contact a private attorney.
3. **Mechanic's Lien:** When the owner of a vehicle and the owner of a business have entered into an agreement regarding repairs to a vehicle and the fee to be charged, the owner of the business shall hold a lien on the vehicle and can hold the vehicle until the charge for services on the vehicle has been paid.
 - a. Verbal agreements are binding. Once their customer agrees verbally to have work completed, the customer is expected to question the fee and pay once the work is completed.
 - b. If business owners give up possession of the vehicle, they also give up the lien.
 - c. Mechanic's liens do not apply to towing situations where the owner of the car has not given consent for the tow.
 - d. Matters involving mechanics' liens are civil matters, and officers will take no enforcement action, except to preserve the peace.
4. **Boundary Disputes:** Officers will not make arrests as the result of a boundary dispute. If a criminal violation has occurred, the appropriate enforcement action will be taken. Parties will be advised that this is a civil matter and that any physical or criminal damage by either party may result in criminal charges, regardless of which party originally committed the civil wrong.
5. **Damage by Children or Dogs:** While some elements of a criminal violation may be present in damage to property by small children or dogs, the Department will not act as a collection agency to recover damages. The parties will be advised:
 - a. Parents may be financially liable for each civil wrong committed by their children.
 - b. Arrangements for restitution may be made through either juvenile authorities or Superior Court or that they may pursue civil action.
 - c. If a dog is involved, the owner will be reminded of the licensing and leash laws. If the problem is aggravated or recurring, the complainant will be advised to contact the Police Services Officer assigned to Animal Control.
6. **Landlord Tenant Act:** Under the Landlord Tenant Act, disputes between a tenant and a landlord are civil in nature. This act provides in part:
 - a. A landlord cannot take the personal property of a tenant for non-payment of rent, i.e., tools, clothing etc., with the exception when a Writ of Restitution or Writ of Execution is executed, then the landlord may hold the tenant's personal property up to 60 days, after which the landlord may administer the personal property as provided by law.
 - b. A landlord cannot lock out a tenant for non-payment of rent unless the landlord possesses a Writ of Restitution or similar court order.
 - c. When officers observe violations of this act, they will not take enforcement action.
 - d. The Landlord Tenant Act does not include transient occupancy in hotels or motels. Innkeepers may utilize such techniques as lock out, seizure of personal property, etc.
 - e. Many leases contain a right of entry clause which allows a landlord to inspect the tenant's premises for a number of reasons. When disagreements regarding this occur, officers should advise the tenant to check their lease. If this does not resolve the difficulty, participants will be advised to consult an attorney for civil remedies.
 - f. Abandonment of personal property means absences of the tenant from the dwelling unit, without notice to the landlord, for at least seven days. If rent for the dwelling unit is outstanding and unpaid for ten days and there is no

reasonable evidence other than the presence of the tenant's personal property that the tenant is occupying the residence, the following is in effect:

- (1) The landlord shall send the tenant a notice of abandonment by certified mail, return receipt requested, to the tenants last known address and any other known addresses.
 - (2) The landlord shall also post a notice of abandonment on the door to the dwelling unit or any other conspicuous place on the property for five days.
 - (3) Five days after the notice, the landlord may retake the dwelling unit. If personal property remains in the dwelling, the landlord may remove the personal property and shall notify the tenant of the location.
 - (4) If the tenant notifies the landlord in writing on or before the date the landlord sells or otherwise disposes of the personal property that the tenant intends to remove the personal property, the tenant has five days to reclaim the personal property.
 - (5) To reclaim the personal property the tenant must only pay the landlord for the cost of the removal and storage for the period the tenant's personal property remained in the landlord's safekeeping.
7. Civil Standby: Officers shall not become involved in court ordered civil standbys, unless otherwise specified by a sworn supervisor. Sworn supervisors shall grant exceptions only for medicine or essential items and to maintain the peace or to protect individuals and property.
- a. When officers are called for a court ordered civil stand-by for one party to retrieve specific personal property from a residence, the following guidelines shall be adhered to:
 - (1) Officers shall not offer opinions as to the interpretation of the judge's order.
 - (2) If one of the parties is resisting the order, the officer shall complete an IR and refer the complaint to the issuing court.
 - (3) The officer will take the appropriate enforcement action if any criminal activity (i.e., disorderly conduct) arises from the civil stand-by. The officer should attempt to warn the violator, if appropriate, that their actions could result in their arrest.
 - (4) If the order sets forth a particular item or items to be relinquished, and the defendant does not release the property, the officer shall advise the complainant that an order to show cause will need to be requested from the court.
 - b. In cases where there is a dispute over property and no court order exists over the specific property, the officer shall refer the parties to the appropriate Magistrate, Justice, or Superior Court for resolution. At all times, officers shall preserve the peace but not provide an opinion as to the ownership of the property being disputed.
 - c. In cases involving the property of non-custodial children, the officers shall refer the parties to the appropriate Magistrate, Justice, or Superior Court for resolution.
 - d. In the case of a mechanic's lien, the officer shall refer the parties to the appropriate Magistrate, Justice, or Superior Court for resolution.
 - e. In cases where there is a dispute over property and the parties cannot resolve the matter between themselves, they shall be referred to the appropriate court having jurisdiction over the matter. In any case, the officers shall not offer opinions or attempt to give legal advice to the parties.
 - f. In any cases where the matter cannot be resolved between the parties, or a court order is not honored by the defendant or complainant, an IR shall be completed.
 - (1) Officers will remain at the scene for only fifteen (15) minutes on non-court ordered standbys. If additional time is required, the party will be instructed to contact the court for a Court Ordered Standby.

(2) On Court Ordered Standbys in excess of thirty (30) minutes, the officer will contact the on-duty supervisor for instruction.

8. Child Custody Dispute: Custody of children generally rests with either of the natural parents, and only a Court of Record can take a child from their custody except in child abuse cases. When a dispute over custody arises and the police are summoned the responding officer will:

a. When a court orders a child into the custody of one parent and the other seizes the child, the violation is generally contempt of civil court. However, charges of custodial interference or access interference may be submitted for review if the following conditions exist:

(1) Charges of Custodial Interference may be filed against the non-custodial parent if the certified court order lists the specific dates and times the child is to be returned to the custodial parent.

(2) Charges of Access Interference may be filed against the custodial parent if the certified court order lists the specific dates and times the child is to be given to the non-custodial parent for visitation.

(3) In those cases in which the court order is vague and ambiguous on the dates and times for the visitation/return, the parties are to be referred back to the court for clarification.

(4) If a certified copy of a court order is produced and an Incident Report is taken, both parties must be questioned regarding the issuance of any subsequent court orders and annotated in the report.

b. If it appears a child is in no danger as to health and morals, the complaining party will be advised to contact an attorney to commence a civil contempt action.

c. If physical violence is threatened or committed, or when the non-custodial parent is present at the victim's location or is believed to be en route to the victim's location, officers will be dispatched and take whatever action is appropriate to protect the child and to preserve the peace.

L. Labor Disputes

1. All uniformed employees of this Department will not enter any buildings, structures or premises in which a labor dispute is in progress unless such entry is necessary to perform the duties of a police officer.

2. Sworn officers at the scene of a labor dispute will remain strictly impartial.

3. In cases involving a labor dispute, the participants (employees) of the grievance may picket in, on and around the private property of the subject (business) of the labor dispute. The management may not prohibit these activities on their premises as the participants are protected by Federal Law.

4. Exceptions to federal protection under this section:

a. The participants block the flow of traffic entering and exiting the property or driveways or traffic isles needed to access parking spaces.

b. The participants are prohibited by a valid court order/injunction prohibiting such actions.

c. Illegal violent behavior such as assault, threats, intimidation, misconduct involving weapons and other offenses that would be a breach of the peace. In such instances where a crime is committed law enforcement action may be taken.

5. Any questions or concerns regarding this policy or labor disputes should be forwarded, through the chain of command, to the Office of the City Attorney.

M. Receipt and distribution of subpoenas (See Policy 8.02.)

III. CRIMINAL PROCESS PROCEDURE (74.3.1)

A. Execution of the criminal process of warrants to be executed. (See Policy 1.01.B.2.c.)

- B. Procedures for the issuance of summons in lieu of arrest. (See Policy 1.01.B.3.)
- C. Standards for the use of force in executing an arrest warrant. (See Policy 1.03.A.1.)
- D. Provisions respecting immunity from arrest. (See Policy 1.01.B.4.)
- E. Only sworn officers shall affect a physical arrest during the execution of an arrest warrant. Arizona Law does not allow for private citizens to make warrant arrests. (74.3.2)

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