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|  | Houston Independent School District Police Department Directives | DIRECTIVE: 440-004 |
| | | EFFECTIVE DATE: August 22, 2013 |
| | SUBJECT: Use of Discretion by Sworn Officers | REVISED DATE: March 11, 2022 |

PURPOSE

The purpose of this directive is to describe HISD Police Department policies relating to the use of discretion by sworn officers. This directive applies to all Houston Independent School District police officers.

POLICY

It is the policy of the Houston Independent School District Police Department to grant broad discretion to employees in determining what level of action is required of them in the performance of their duties. The use of discretion is based on written guidelines, training, and supervision. Furthermore, we recognize that other problem-solving avenues exist in the criminal justice system, and employees are encouraged to utilize these alternative avenues. Actions taken shall include matters not specifically enumerated by a policy or procedure.

DECISION-MAKING PROCESS

During their duties, police officers shall utilize sound judgment and factor the totality of the circumstances with due regard for the following:

- a) Current state statutes and local ordinances.
- b) HISD and Department policy and procedure.
- c) HISD protocol, practice, procedures.
- d) Officer safety.
- e) Maintaining a safe learning environment.

USE OF DISCRETION BY SWORN OFFICERS

HISD Board Policy, HISD Police Department directives, local ordinances, statutes of the State of Texas, and the United States Constitution establish boundaries in which police officers are expected to work within their respective authority. However, laws and policies cannot be written to anticipate all situations police officers encounter.

Officers of the HISD Police Department are accountable for using their authority and any failure to exercise legitimate authority when it would be necessary to fulfill their responsibilities. Authority shall be exercised in accordance with the laws and policies governing HISD police officers when the laws or policies apply to a particular situation. However, when neither laws nor policies provide clear guidance as to how to handle a particular situation, officers may be required to use discretion and good judgment in choosing what action to take or whether to take any action at all.

A situation requiring the use of discretion does not give an officer absolute freedom of choice regarding how to act. The use of discretion requires that an officer make responsible decisions that can stand up to post-incident review by competent officials, either in or out of the department.

There are many factors in each situation that officers should consider in making decisions. Among these factors are:

- a) The seriousness of the offense.
- b) The culpable mental state of the offender.
- c) Past criminal record when known to the officer.
- d) Whether weapons were involved.
- e) The relative danger to the officer.
- f) Current state and federal Laws.

In short, police discretion results from experience and training governed by best practices and conduct. Therefore, each officer will use their experience and training in conjunction with the governing departmental directives and best practices in decisions where discretion is applicable.

DISCRETION

Procedures outlined in this policy and others are not designed to dictate to an officer a specific response to every situation encountered, but rather, what protocol exists and what guidelines should be followed.

The use of discretion shall be governed by departmental and institutional written directives, including the Code of Ethics and quality training. The use of discretion shall not be utilized as a form of discrimination, violence, or other abusive practice.

The officer must use discretion as a tool to achieve a satisfactory result based on facts, variables, attitudes, and behavior known at the time. Officers shall be corrected for inappropriate discretion use through instructional material, training, and effective supervision.

Except for violent crimes, domestic violence cases, family violence protective orders violations, and driving while intoxicated, an officer does not have to make a warrantless arrest every time the law authorizes it. For a good cause consistent with the public interest, the officer may decline to arrest upon confirmation with a supervisor.

ALTERNATIVES TO ARREST

Any student who engages in conduct that is prohibited by the rules and regulations of HISD or by federal, state, and local law or regulations is subject to disciplinary action regardless of whether such conduct takes place on or off school campus or whether civil or criminal penalties are also imposed for such conduct.

Among acceptable reasons not to arrest are:

- a) The complainant declines prosecution.
- b) Referral to another agency.
- c) Arrest would result in unnecessary harm to the victim or offender that outweighs the risk of non-arrest.

- d) Element(s) of the offense are not met.
- e) When an arrest warrant is the best alternative.
- f) Legal mandates set forth by state or federal law.

Despite the presence of one or more of the factors listed above, the arrest should be made if:

- a) The complainant decides to prosecute.
- b) The offender is under investigation for another offense, and an in-custody investigation is desirable.
- c) The offense involves excessive or substantial loss or damage to property.
- d) The arrest is necessary to safeguard witnesses or evidence or prevent the offender from warning other conspirators.
- e) When required by law.
- f) To control a situation where officer safety or public safety is an issue.

An officer must articulate the reason(s) for making or not making an arrest. An arrest may be delayed avoiding the use of extraordinary force if the delay will not jeopardize the arrest. Delay of arrest for an offense committed in view of the officer requires that an arrest warrant be obtained to make the arrest.

OTHER ALTERNATIVES TO ARREST

Officers may utilize verbal warnings on offenses where the facts indicate proper resolution of the event can be achieved without a formal charge. The supervisor or department administration may restrict this discretionary action in those areas of directed patrol or selective traffic enforcement requiring stricter attention to enforcement or where the community's needs warrant formal charges.

Verbal Warnings

Officers should not use verbal warnings to evade resolving the situation properly. Supervisors will ensure that each incident response and resolution by the police officer will be properly documented.

Alternatives to Arrest/Pre-arraignment Confinement

Under certain circumstances, officers are faced with situations where an arrest and pre-arraignment confinement will not be possible. In this case, officers may elect to exercise certain alternatives such as issuing summonses, referral to a social service agency, or simply verbal warning. Examples of the circumstances include:

- a) Mentally or emotionally disturbed persons.
- b) Domestic non-violent situations where counseling may be appropriate.
- c) Juvenile offenders.
- d) Transient persons who need shelter and food.

Officers often deal with situations where social service agencies or crisis and professional organizations would better serve the public interest.

REFERRAL TO LOCAL, STATE, OR FEDERAL AGENCIES FOR SOCIAL SERVICE ASSISTANCE.

The Houston ISD Police department has a role in utilizing local, state, or federal agencies for social service assistance. Officers may refer offenders to local, state, or federal agencies for social service assistance when the situation warrants. Examples of these referrals include, but are not limited to:

- a) Women's Shelter.
- b) Mental health organizations.
- c) Drug abuse diversion programs.
- d) Criminal justice diversion programs principally designed for juvenile delinquents but may apply to others with whom the department may be involved, and;
- e) Programs within the HISD and the Juvenile Court System.
- f) When, in the officer's judgment, a better solution to the problem may be achieved using alternatives to enforcement action, they should refer that person.

TRAINING

Each year all sworn personnel will be required to attend training provided by the department about any updates pertaining to current law, statutes, and City ordinances.

Approved By


Pedro Lopez Jr., Chief of Police