

# MAYFLOWER POLICE DEPARTMENT

## *Public Bulletin*

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### **SO, YOU WANT TO HAVE SOMEONE ARRESTED?**

Many times I've had Officer's recommend that some information be put out to the public that will explain and help them understand the criminal procedures and processes that we must follow when investigating complaints and seeking to ultimately file charges against and arrest an offender. The procedures law enforcement must use and follow in criminal matters is found in various places. These include the United States and Arkansas Constitutions, Arkansas Code Annotated (Titles 3, 5, 8, 16, and 27, among others), the Arkansas Rules of Criminal Procedure (Supreme Court Administrative Procedure Rules), and the policies and procedures of each law enforcement agency, as well as precedents established by case law in the various appellate courts. These are complex and often difficult to interpret or understand. Sometimes regulations from one source will be contradicted by regulations from a different source. Law Enforcement Officers must take all of these regulations and procedures into account when asked to make an arrest by a member of the public or on their own initiative.

### **HOW DOES THE PROCESS BEGIN?**

The most common way in which an investigation is commenced is with the filing of an incident report or complaint by a citizen. These reports and complaints are received in many different formats. They are received by phone, in person, by letter, by email, and sometimes from third parties. Sometimes the complaining party is making a direct complaint against another person known to them, wanting the Police Department to arrest that person for whatever the alleged crime might be. Usually the complaining party makes himself or herself known, but sometimes the complaints are from anonymous parties. Whether the complainant is known or anonymous makes a big difference in how far an Officer can go with the information provided. Anonymous complaints basically serve one purpose only.

They can be used to alert an Officer or an Agency to a potential problem or suspected criminal activity. Anonymous complaints, in and of themselves, cannot be used as the basis for an investigative stop, detention, arrest, or search. They are only useful from an intelligence angle, which will prompt the Officer or Agency to try and develop useful, verifiable information from other known sources or the Officer's own personal observations or knowledge. We strongly encourage anonymous tips or complaints, which provide us with much useful information, although we cannot act solely upon them. Formal complaints begin with the generation of an internal Incident/Offense report that the assigned personnel will either take in person or by phone from a complainant. Many complaints, particularly those involving traffic offenses, were taken by phone and the information logged by communications personnel without a formal report being generated by an Officer. Most reports involve alleged criminal activity, but many involved that of which law enforcement labels as "Civil Matters", which I will discuss in more detail below.

## CRIMINAL MATTER VS. CIVIL MATTER:

A substantial number of complaints and Incident/Offense reports taken by the Mayflower Police Department end up involving circumstances that are deemed to be “Civil”, rather than “Criminal” in nature. The Chief of Police and his Officer’s are referred to as “Conservators of the Peace” in the Arkansas Code. It is this statute that gives the Chief of Police his authority to keep the peace and enforce the criminal laws of the state. However, if a criminal law matter is not involved with the complaint, then neither the Chief of Police, nor any other law enforcement officer, has authority under the law or any legal justification to intervene in the matter, which we commonly refer to as a “Civil Matter”.

A civil matter is basically a private matter between two or more individuals over which the executive branch of the government (in the form of the Chief of Police in this example) has no authority or right to interfere with. These include debt collections, property settlements, contract disputes, and probate/estate issues, enforcement of protective covenants over real estate, property-line disputes, and other such issues that are non-criminal in nature. As a public service, we will generally take a non-criminal Incident report simply to document these allegations if requested to by one of the parties, but will not take any other action. The parties involved will be referred to a private attorney for advice or perhaps to civil court to seek the remedy or relief they are looking for.

## WHAT HAPPENS NEXT?

This initial report will include all known information about the alleged criminal activity, victims, suspects, witnesses, location, dates, times, and etc. which is taken/received by the Patrol Officer. This report, if of a criminal nature, will be later be assigned to an Investigator for follow-up. The investigator will review the report and may re-contact the complainant or any other parties listed on the report. The investigator will determine, or verify, whether a criminal act (as defined under the Arkansas code) has, in fact, been committed. There are a set of specific identifiable “elements” to each statutory crime that must be present before the crime has actually been committed. For example, what a lay person considers to be a Theft of Property may not actually fit the definition of a Theft crime under the Criminal Code.

The investigator will determine whether a reasonable and fair amount of investigative effort will likely result in a suspect upon which a criminal charge can be filed against. The public must understand that incoming reports are prioritized both by the seriousness of the alleged offense and by the likelihood of an arrest being eventually made. Although each complainant considers their complaint to be of the utmost importance, which is understandable from their viewpoint, Investigators are forced to handle their caseloads by established priorities. I know it can be frustrating, because in reality it may be several days after someone makes a complaint report before any meaningful follow-up can be conducted on their case, depending on how it was prioritized. The public should also understand that when the case involves nothing more than the word of one person against the word of another, with no other evidence available, then there is not going to be enough there for a criminal prosecution to commence, absent a confession by the accused.

There has to be more. **IMPORTANT FACTOR:** Even if a law enforcement officer makes an arrest in the field without a warrant, whether for a felony or a misdemeanor, Prosecuting Attorney’s Office has the final say as to whether or not formal charges are filed and prosecution takes place against the offender. The Prosecutor has absolute independent discretion and authority in making that decision. That is the reason why a great many times we must tell complainants/victims that we must first obtain a decision on prosecution from the Prosecuting Attorney’s Office before determining whether we will make an arrest on their complaint. Even though we can make an arrest on our own authority

if we have sufficient evidence, it serves little purpose to make an arrest if the Prosecuting Attorney declines to file a charge and commence with prosecution in court

### HOW MUCH EVIDENCE DOES THERE HAVE TO BE TO MAKE AN ARREST?

I can answer this by saying that there needs to be a fairly substantial amount of evidence to arrest and charge someone with a crime, and there needs to be a great deal more evidence present in order to convict the person of that crime in court. As required by the Fourth Amendment to the United States Constitution, Officers must have “probable cause” before any arrest, search, or seizure can take place. I have read many varying definitions of the term “probable cause”, and many varying interpretations as to how much evidence is enough to meet the “probable cause” threshold. I consider that the “probable cause” threshold of the investigation has been reached when I, as an Officer, based on facts and circumstances known to me, believe it is more probable than not that the suspect has committed a criminal act. When officers have gathered enough evidence to their own satisfaction to establish that belief, then I believe there is enough to make that arrest or conduct that search.

Whether that arrest or search can then be conducted without first obtaining a warrant from a Judge depends again upon the circumstances of the case, which I will comment further on below. Everyone needs to remember (Officers included), however, that even though enough evidence exists to make that arrest or conduct that search, the Officer still may not have enough evidence to convict in court at trial. The burden of proof at trial is not “probable cause”, rather it is “beyond a reasonable doubt”, which is a much, much higher burden for the Officer and the prosecution to meet. The entire burden of proving the case rests with the government. The defendant does not have to prove he is innocent, another common misconception. The defendant does not have to testify, and refusing to do so cannot be held against him. The government must prove its own case, beyond a reasonable doubt, or the case will be lost.

### WHAT KIND OF EVIDENCE IS NEEDED TO MEET THESE BURDENS?

Evidence comes in a great many forms. There are eyewitnesses who provide testimonial evidence, forensic evidence, documentary evidence, physical evidence at a crime scene, and other varieties. Without evidence, there can be no arrest or prosecution. Third party statements constitute “hearsay” and cannot be used to prove a case. The value of testimony from eyewitnesses is dependent entirely upon the credibility of the witness. Does the Judge or Jury believe what the witness is saying? Is the witness biased? Is the documentary evidence legitimate and verifiable? You can bet that almost every bit of evidence the government tries to introduce at trial will be objected to by the defense. Another extremely important element to consider is whether the evidence was properly and legally gathered, seized, stored in evidence, analyzed, and etc. Any evidence not properly and lawfully obtained will be subject to being suppressed and tossed out in court under what is called the “Exclusionary Rule”. This is a court-created sanction against the government when it makes an illegal search or seizure. This comes from the Mapp vs. Ohio case from the 1960’s. Every officer conducting investigations is all too familiar with the exclusionary rule.

## MYTHS AND MISUNDERSTANDINGS ABOUT EVIDENCE:

A popular misconception is that fingerprints can be lifted from practically any surface and they can easily solve a crime. In reality, fingerprints can be useful in solving a crime, but only if there is sufficient detail on the prints or partial prints left behind for classification purposes, and then only if the prints belong to someone who has already been previously arrested and fingerprinted to make a comparison match. Otherwise, they are of no immediate value. How about confessions of the accused? Confessions are, indeed, of great value when they can be legally obtained. However, they must be freely and voluntarily given, and then only after the accused has been advised of his constitutional rights per the Miranda ruling. The accused is not required to make, and cannot be compelled to make, confessions or admissions of any kind, nor can they be questioned without a lawyer present if they ask for one.

Many victims also suggest, or even demand, that polygraph or CVSA (voice stress analysis) tests be administered to an accused to learn the truth. An accused suspect cannot be forced or be compelled to take either of these tests; however they may do so voluntarily if they choose. The results of these tests cannot be used against an offender in court, whether pass, fail, or undetermined. These tests are primarily useful to law enforcement because they help investigators determine if their investigation is proceeding in the right direction. They serve to eliminate suspects from further consideration. It is also useful to point out that when dealing with forensic evidence (blood samples, hair samples, etc.), this must be processed and sent to the Arkansas State Crime Laboratory in Little Rock to be analyzed. It may take several weeks, or even months, before the results of the analysis are returned to the Police Department, resulting in delays in the investigation.

## SO WE GATHER SUFFICIENT EVIDENCE, THEN HOW AND WHEN IS THE ARREST MADE?

Depending on the circumstances of the incident, an Officer may make an arrest without a warrant, or he may wait first to obtain a warrant of arrest from a Judge. There are three (3) classifications, or categories, of criminal offenses in Arkansas. There are felonies, misdemeanors, and violations. Under Arkansas law, any officer who has "probable cause" that a person has committed a crime which would constitute a felony (serious offense) under the law may arrest that person without a warrant and deliver him to the Jailer. In practice, however, unless the offender is found at or near the crime scene when officers arrive, Investigators will generally prepare an affidavit after their investigation is complete, setting forth their evidence, and submit it to a Judge to obtain an arrest warrant before tracking down the offender and making the arrest. When dealing with a crime classified as a misdemeanor (minor offense), Officers may generally make an arrest without a warrant if the crime is committed in their presence.

Exceptions to this rule would be Domestic Violence situations, offenses involved with motor vehicle traffic accidents, shoplifting cases, theft of motor fuel cases. If the crime was not committed in the presence of an Officer, then generally a warrant of arrest must be procured before the offender can be arrested. In practice, the majority of misdemeanor arrests, with the exception of those for such crimes as hot check violations, some thefts, and harassing phone calls, are made by an officer who is witnessing those crimes take place. Examples include DWI, Disorderly Conduct, Criminal Trespassing, Public Intoxication, Obstructing Governmental Operations, and other similar crimes the officer responds to complaints about or observes in the field while on duty. The third category of offenses is called violations. Violations are generally for minor traffic offenses or ordinance infractions that result in the issuance of a citation to appear in court rather than the physical, custodial arrest of the offender.

## EXTRADITION ON WARRANTS:

Often times after we procure a warrant, the person named in the warrant (the offender) cannot be immediately located, usually because the person knows their arrest is imminent and is seeking to avoid arrest. Sometimes, the offender will cross the state line to try and avoid being arrested. If the warrant is for a misdemeanor offense only, then crossing the state line is an effective means of avoiding arrest. However, if the warrant is for a felony, then we may seek to extradite the offender from out of state and return him to Faulkner County/City of Mayflower to face his or her charges. Usually an offender arrested in another State on a felony warrant will waive extradition, and we can go there to pick him or her up. Other times the offender refuses to waive extradition, which causes us to seek a Governor's Extradition Warrant for the return of the offender.

## SO AN ARREST IS MADE, WHAT HAPPENS AFTERWARDS?

The offender (also known alternately as suspect, arrestee, violator, or defendant) is booked into the Detention Center, and a bond amount is set. Most offenders are able to make bond. Some are not. Those who make bond are given a court date to appear for first appearance and/or an arraignment in either District Court (misdemeanors) or Circuit Court (felonies). Those who were arrested without a warrant and cannot make their bond will either make a required appearance before any Judge within forty-eight (48) hours of the time they were arrested or, if that is not possible because no Judges are available, will be released on their own recognizance with a future court date given.

## THE NEXT STEP: COURT:

Offenders will make a first appearance in court. It is at this first appearance that the offender officially becomes a "defendant" in the case. In District Court particularly, the first appearance is sometimes combined with the arraignment (entering a plea to the charge) as well. Defendants who plead guilty or no contest may be sentenced at the same time, or the Judge may set sentencing for a future time if he needs more information regarding injuries to victims, restitutions amounts, etc. If the defendant pleads not guilty, then a trial date will be given. It is at the trial date when victims, witnesses, officers, and others involved in the case must appear and be prepared to testify and offer evidence in the case. If the defendant is found not guilty following trial, then the case is concluded. The constitutional prohibition against "double jeopardy" prevents the defendant from ever being tried again for the same crime, even if additional evidence were to become available at a later time.

If the defendant is found guilty following trial, then punishment may either be assessed immediately or delayed until a later time. The defendant may file an appeal of the conviction to a higher court within thirty (30) days of the guilty decision, and then may appeal even further up through the court system for months or years to come. This is particularly frustrating to victims who are owed restitution for injuries or damages, but cannot begin to collect while appeals are underway. I will point out that victims of crime have an absolute right to be present in court during any and all aspects of the proceedings, and they have a right to be heard by the Judge prior to any sentencing or punishment being handed down. Victims are formally represented in court proceedings by the Prosecuting Attorney's Office, but still have the right to be heard personally during sentencing proceedings. The procedures in Circuit Court are similar, but more formalized and drawn out.

## WHAT TO EXPECT AFTER COURT IS OVER:

Court proceedings have been concluded. Appeals have been exhausted. Now, how can the restitution to crime victims be enforced and collected? Most defendants who owe restitution to crime victims are placed on supervised probation with either the District or Circuit Court Probation Departments. Those officials are responsible with assuring that the defendants obey all court orders and judgments in their cases. A pay sheet is prepared showing the breakdown of fines, court costs, and any restitution ordered. The judgment will specify exactly how much money, per month, that the defendant must pay toward these amounts. By law, any payments received must first go toward restitution, then court costs, and finally to paying off the fines. We expect defendants to pay the amount they are ordered to pay by the Judge.

Although we may accept a lesser amount at the front counter, the defendant is still considered delinquent and not in compliance with the judgment unless the mandated amount is paid each month. If the defendant was sentenced to prison, then he has sixty (60) days after his release before he must start paying toward his fines, costs, or restitution. Action to suspend driver licenses, levy upon income tax returns, and seek contempt of court warrants for those persons who become delinquent do occur as they default on the judgment's they are bound by. In conclusion, I just want to say that it is our goal at the Mayflower Police Department to actively investigate and follow-up on all citizen complaints that are criminal in nature, with the ultimate goal of identifying an offender against whom a criminal charge can be filed, in both felony and misdemeanor cases.

Many times this goal is achieved. Unfortunately, many times it is not, whether due to lack of evidence, victims or witnesses failing to cooperate with the investigation, or other factors. Our Investigators each have a heavy case load, and they have to work on many cases simultaneously throughout the day. But they do, and will, actively pursue any leads and follow-up on each case to the best of their ability. Anyone with questions concerning a complaint or incident report they have filed should feel free to contact the Mayflower Police Department and ask to speak to the Investigator whom has been assigned their case and inquire as to its current status.