

TEXARKANA, TEXAS POLICE DEPARTMENT  
GENERAL ORDERS MANUAL

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<i>Subject</i> <b>Search and Seizure Warrants</b>					
<i>Reference</i>					
<i>Distribution</i> <b>All Personnel City Manager City Attorney</b>		<i>TPCA Best Practices Recognition Program Reference</i> <b>7.06.1 Search and Seizure Warrants</b>		<i>Review Date</i> <b>October 12, 2023</b>	
				<i>Pages</i> <b>5</b>	

**This Operations Directive is for internal use only and does not enhance an officer's civil or criminal liability in any way. It should not be construed as a creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this Operations Directive, if proven, may only form the basis for a complaint by this Department, and only in a non-judicial administrative setting.**

**SECTION 1 PURPOSE**

The purpose of this policy is to provide guidance to all department personnel on when and how to obtain a search warrant, how to execute a search warrant, and how to return a search warrant.

**SECTION 2 POLICY**

The law governing search and seizure is based upon guarantees embodied in the United States Constitution and Texas Constitution. Article 1.06 of the Texas Code of Criminal Procedure states, "The people shall be secure in their persons, houses, papers, and possessions from all unreasonable seizures or searches. No warrant to search any place or to seize any person or thing shall issue without describing them as near as may be, nor without probable cause supported by oath or affirmation." It is the responsibility of every officer of this Department to be familiar with and abide by the law when conducting a search or making a seizure in the performance of official duties. It is the policy of the Department to encourage the use of search warrants even under circumstances that do not legally require a warrant, if circumstances permit the acquisition of a warrant without risking loss or destruction of seizable property.

**SECTION 3 DEFINITIONS**

**Mobile Tracking Device** – An electronic or mechanical device that permits tracking the movement of a person, vehicle, container, item, or object.

**Probable cause** - The facts and circumstances within an officer's knowledge and of which he has reasonably trustworthy information that are sufficient in themselves to warrant a person of reasonable caution in the belief that seizable property can be found in a particular place or on a particular person.

**Reasonable Suspicion** - Reasonable suspicion is a legal standard of proof in United States law that is less than probable cause, the legal standard for arrests and warrants, but more than an "inchoate and unparticularized suspicion or 'hunch'"; it must be based on "specific and articulable facts", "taken together with rational inferences from those facts", and the suspicion must be associated with the specific individual.

**Search Warrant** - A written order, issued by a magistrate and directed to a peace officer, commanding him to search for any property or thing and to seize the same and bring it before such magistrate.

TEXARKANA, TEXAS POLICE DEPARTMENT  
GENERAL ORDERS MANUAL

*Directive*  
**7.06.1**

*Subject*  
**Search and Seizure Warrants**

**SECTION 4 SEARCH WARRANT PROCEDURES**

**A. OBTAINING A SEARCH WARRANT**

1. In order to obtain a search warrant, an officer must be able to show probable cause to believe that specific evidence, contraband or fruits of a crime may be found at a particular location.
2. Specific facts establishing probable cause shall be set forth with clarity and specificity. Officers shall not rely solely upon opinion or unauthenticated third-party information or hearsay. Supporting facts may be based on:
  - a) personal observation/knowledge of the officer; or
  - b) information from a reliable source.
3. When informants are used, particularly confidential informants, the reliability of the informant shall be established. Whenever possible, officers shall corroborate informant information.

**B. AFFIDAVIT REQUIREMENTS**

1. An affidavit supporting application for a search warrant shall be prepared in an approved format.
2. The offense should be described by referencing the Penal Code Statute section number when possible.
3. The place or thing to be searched shall be described as near as possible with specificity and the affidavit should include specific references as to where officers intend to search. References should include:
  - a) the street number and apartment number if appropriate.
  - b) a physical description of the premises.
  - c) a legal description of the premises.
  - d) the name of owner or occupant.
  - e) the geographical location of the property, and
  - f) photographs, maps or diagrams that help to specify the location in question (if necessary).
4. The affidavit shall specify the scope of the search requested and officers shall ensure the warrant includes the following:
  - a) all areas the officers desire to search shall be named or described and in cases where officers wish to conduct a complete search of a home and its surroundings, the affidavit should specify a "premises" search and its "curtilage" and should identify any outbuildings such as garages, tool sheds or barns, where appropriate.
  - b) motor vehicles known to be on the premises that may be searched should be specified.

TEXARKANA, TEXAS POLICE DEPARTMENT  
GENERAL ORDERS MANUAL

<i>Directive</i> <b>7.06.1</b>	<i>Subject</i> <b>Search and Seizure Warrants</b>
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- c) searches (other than frisks for weapons) of specific persons on the premises shall be referenced in the affidavit by name if possible.
  - d) the specific items to be searched for shall be detailed and where the item may be dismantled (e.g. firearms) the warrant should authorize search for parts, pieces or components of that item.
- C. The officer should have the affidavit reviewed by a supervisor whenever possible before presenting it to a magistrate for issuance of the search warrant. The affidavit for the warrant is to be presented to the magistrate of a court of competent jurisdiction for review, approval and issuance of a warrant. Officers should contact Central Records and Communications for a magistrate's contact information and get supervisor's approval before contacting a magistrate after hours in the event that a warrant is needed.
- D. Officers conducting a search where any party has a reasonable expectation of privacy in the thing or place being searched, shall have a valid search warrant authorizing the search or be able to justify the search as an exception to the search warrant requirement.
- E. The officer who obtains a search warrant shall be responsible for executing the warrant within three days from the time of its issuance, exclusive of the day of its issuance and of the day of its execution.
- F. Execution of search warrants shall be coordinated by a supervisory officer of the rank of sergeant or above. A sufficient number of officers shall be present to ensure the safety of the officers and other persons and to prevent the destruction or removal of evidence.
- G. In accordance with the United States Supreme Court's decision in *Wilson V. Layne*, third parties are strictly forbidden to participate in the execution of a search warrant. The U.S. Supreme Court has stated that participation in any search by a third party such as a media representatives or a civilian ride-along violates the Fourth Amendment. This ruling applies to both searches with a warrant and consensual searches.
- H. Upon conducting a warrant authorized search, a copy of the warrant will be presented to the owner or person in possession of the place or thing to be searched, if he/she is present. If the owner or other person in possession is not present, a copy of the warrant will be left in a conspicuous location at the place searched.
- I. The officer in charge of the search should ensure that photographs or video are taken of all areas to be searched before and after the execution of the search warrant. (This does not include tactical/dynamic entries.)
- J. During the execution of a search warrant, property shall not be unnecessarily damaged or destroyed. Any property damaged or destroyed during a search shall be reported to the appropriate Division Commander by the officer in charge of the search.
- K. If any property is seized during the execution of the search warrant, the officer in charge of the search shall ensure that a written inventory of the seized property is made. A copy of the inventory will be given to the owner or person in possession of the property. If the owner or other person is not present, a copy of the inventory will be left at the place in a conspicuous location along with a copy of the search warrant.
- L. The officer who obtains a search warrant is responsible for ensuring the proper return of the warrant. The warrant shall be accompanied by a copy of the inventory of property seized pursuant to the warrant.

TEXARKANA, TEXAS POLICE DEPARTMENT  
GENERAL ORDERS MANUAL

<i>Directive</i> <b>7.06.1</b>	<i>Subject</i> <b>Search and Seizure Warrants</b>
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**SECTION 5 ELECTRONIC SURVEILLANCE PROCEDURES**

A. Authorization Procedures for Electronic Surveillance

1. In those instances where an individual has granted consent for a tracking device to be installed on their person or property, that legally valid consent shall be properly documented.
2. When informants are used, particularly confidential informants, their reliability shall be established. Whenever possible, officers shall corroborate informant information by other means.

B. AFFIDAVIT REQUIREMENTS

1. An affidavit supporting the application for a tracking order shall be prepared in an approved format.
2. The offense should be described by referencing the applicable statute when possible.
3. The person or thing to be tracked shall be specifically described as near as possible, and the affidavit should include these references:
  - a) Name, department, agency of the affiant;
  - b) Identification of the vehicle, container, or item to which, in which, or on which the mobile tracking device is to be attached, placed, or otherwise installed;
  - c) Name of the owner or possessor of the vehicle, container, or item described;
  - d) Judicial jurisdictional area in which the vehicle, container, or item described is expected to be found; and
  - e) The facts and circumstances that provide the affiant with probable cause that criminal activity has been, is being, or will be committed; and that the installation and use of a mobile tracking device will likely produce information that is material to an ongoing investigation that is targeting that criminal activity.
4. The application must be signed and affirmed before the district judge who has jurisdictional authority as provided in 18B Subchapter "E", CCP.
  - a) The district judge may issue an order for the installation and use of a mobile tracking device within the judge's judicial district and only upon the request of an authorized peace officer. The order may authorize the use of a mobile tracking device outside the judge's judicial district but within the state if the device is installed within the district.
  - b) Within 72 hours after the mobile device is activated on or within the targeted vehicle, container, or item, the affiant shall notify the judge who issued the original order that the mobile tracking device has been installed.

C. Authorization Procedures for Electronic Surveillance

TEXARKANA, TEXAS POLICE DEPARTMENT  
GENERAL ORDERS MANUAL

<i>Directive</i> <b>7.06.1</b>	<i>Subject</i> <b>Search and Seizure Warrants</b>
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1. The judge's order expires not later than the 90<sup>th</sup> day after the date that the mobile tracking device was activated on or within the targeted vehicle, container, or item. The judge may grant an extension for an additional 90-day period if good cause can be shown.
2. Once the authorization period has expired, the affiant shall remove or cause to be removed the mobile tracking device as soon as practicable. If removal is not practicable, monitoring of the device shall cease upon expiration of the authorization order.

**D. NOTE:**

1. These procedures do not apply to a global positioning or similar device that has been installed in or on an item of property by the item's owner or with the consent of the owner of the property. Such devices may be monitored by a private entity in an emergency. (Article 18B.207, CCP)

**SECTION 6 RESPONSIBILITY**

1. All members of the Department shall know and comply with all aspects of this directive.
2. All Division Commanders and supervisory personnel are responsible for ensuring compliance with the provisions and intent of this directive.