

TEXARKANA, TEXAS POLICE DEPARTMENT
GENERAL ORDERS MANUAL

<i>Effective Date</i> February 1, 2008		<i>Amended Date</i>		<i>Directive</i> 7.07.1	
<i>Subject</i> Searches Without a Warrant					
<i>Reference</i>					
<i>Distribution</i> All Personnel City Manager City Attorney		<i>TPCA Best Practices Recognition Program Reference</i> 7.07.1 Searches Without a Warrant		<i>Review Date</i> October 16, 2023	
				<i>Pages</i> 5	

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 regulate the scope and authority for searches without a 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 without a warrant. 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 PROCEDURES

A. Searches Incident to an Arrest

1. A search warrant is not required to search a person who has been legally arrested.
2. Arresting officers shall conduct a search of all arrested persons to the extent necessary to protect the officer, the arrestee, and any other person.
3. The parameters of a search incident to a lawful arrest are:
 - a. Officers may conduct a full search of the arrested person regardless of the reason for arrest; however, strip searches and body cavity searches are not permitted except in circumstances outlined in this directive.
 - b. Officers may also search the area within the immediate control of the arrestee for weapons and evidence which may be destroyed.

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4. The officer conducting a search incident to a lawful arrest shall seize the following types of property:
 - a. Weapons or other items which could be used to injure the officer or affect an escape.
 - b. Evidence of the crime for which the arrest is made.
 - c. Instrumentalities used to commit the crime.
 - d. Contraband, the possession of which constitutes an offense.
 - e. Evidence of a crime.
5. Strip Searches
 - a. Strip searches will be conducted only when there is a reasonable and articulable cause to believe that a weapon or contraband is secreted on the arrestee's body and exigent circumstances require the search. The cause shall be articulated in the arrest report and/or case supplemental report.
 - b. A strip search will not be conducted in place of or prior to an exterior pat down search.
 - c. Strip searches will be conducted by officers of the same sex.
 - d. Strip searches shall be conducted as privately as possible and out of view of persons of the opposite sex.
 - e. A supervisor must be present during any strip search, but the person being searched must be out of view of the supervisor when the person to be searched is of the opposite gender.
 - f. Officers conducting a strip search shall not touch the arrestee except for purposes of safety and control.
6. Body cavity searches may only be conducted only on authority of a search warrant and shall be performed by medical personnel in a sanitary environment. A supervisor must approve of the search, and the incident must be thoroughly documented.
7. Only sworn police officers will conduct searches on arrested persons or suspects.
8. Officers will not choke, grab and/or squeeze a person's throat area or place their hands or fingers into the mouth of a person in order to recover possible drugs or contraband.
9. See Section C of this directive for information regarding vehicle searches incident to an arrest.

B. Consent Searches

1. Officers may conduct a search of premises or property after obtaining the voluntary consent of the person who has authority to consent to a search of the premise or property.
2. Officers shall not use coercion, duress, or deceit to obtain consent to search.
3. Officers shall not falsely claim to possess a search warrant in order to obtain consent to search.

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4. When requesting consent to search, officers shall notify the owner or person in control of the premise or property to be searched of the following:
 - a. The right to refuse to consent to the search.
 - b. The right to limit the scope of the search.
5. Officers conducting a consent search shall limit the search to those areas within the scope of the consent and shall immediately terminate the search if consent is revoked.
6. Officers shall obtain written consent prior to conducting a consent search of a residence or a building. Officers should use the Consent to Search form. Vehicle searches do not require written consent, but the officer shall use their audio/video to record the person giving consent when audio/video equipment is available.
7. The person granting consent must remain in a position where they can revoke consent if they so choose.

C. Vehicle Searches

1. An officer may conduct a warrantless search of a motor vehicle if:
 - a. the officer has probable cause to believe that the vehicle contains items subject to seizure, or
 - b. the officer has reasonable suspicion that the vehicle contains weapons which might be used to assault the officer and the suspect is unsecured and near enough to the vehicle to retrieve a weapon.
 - c. upon verbal or written consent of the owner or the person operating the vehicle.
2. Officers may search a vehicle without written consent, but officers shall use their audio/video to record the person giving consent when audio/video equipment is available.
3. The scope of the warrantless search of a vehicle is limited by the object of the search and the places within the vehicle for which there is probable cause to believe that contraband may be found.
4. When a vehicle has been impounded and there is reason to believe the vehicle contains items subject to seizure, officers shall obtain a search warrant prior to searching the vehicle.
5. The contents of an impounded vehicle shall be inventoried by the impounding officer for the purpose of protecting any valuables contained in the vehicle and to protect the officer from a false claim. A routine inventory of an impounded vehicle is not considered a search; therefore any seizable item that is inadvertently discovered during the inventory may be seized without a warrant based on the plain view doctrine. Containers or compartments within the vehicle that are locked shall not be forced open in order to inventory the contents. Containers or compartments shall be inventoried only if they are unlocked or accessible by key.
6. In accordance with the U.S. Supreme Court decision in *Arizona v. Gant*, officers must have a warrant to search the vehicle of someone they have arrested if the person is locked up in a patrol

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vehicle and poses no safety threat to officers. Warrantless searches still may be conducted if a vehicle's passenger compartment is within reach of an unsecured suspect who has been removed from the vehicle or when there is reason to believe evidence will be found of the crime that led to the arrest. As described in the Carroll v. U.S. case, vehicles may also be searched without a warrant upon probable cause to believe a crime has been or is being committed and evidence of the crime may be located in the vehicle.

D. Frisks

1. Stop and Frisk refers to the police practice involving the temporary detention, questioning, and limited frisk or pat down of a person suspected of criminal activity.
2. Stop and Frisk is initiated on a reasonable suspicion of crime amounting to less than probable cause for the purposes of crime prevention, criminal investigation, and protection of the officer.
3. When an officer observes unusual activity which leads to a reasonable conclusion that criminal activity may be occurring or about to occur, and that person with whom the officer is dealing may be armed and presently dangerous, the officer may conduct a limited frisk or pat down of the outer clothing of such person in an attempt to discover any weapons which might be used to assault the officer.

E. Plain View Searches

1. An object is in plain view if an officer has the right to occupy the place from where the observation is made.
2. Officers may, as a result of a prior valid intrusion into a constitutionally protected area, seize certain items of evidence without a warrant which are observed "in plain view" under the following criteria:
 - a. The officer must be in a position in which he has a legal right to be.
 - b. The officer must not unreasonably intrude on any person's reasonable expectation of privacy.
 - c. The officer must actually observe the item of evidence.
 - d. It must be immediately apparent to the officer that the item observed is evidence subject to seizure, and
 - e. The discovery of the item by the officer must be inadvertent.

F. Abandoned Property Seizures

1. Officers may, without probable cause, warrant, or other legal justification, retrieve items of evidence that have been abandoned by their owners.
2. Property is considered to have been abandoned when the owner has voluntarily relinquished all title, possession, or claim to it.

G. Limited search under exigent circumstances

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1. Exigent circumstance exists in an emergency or unforeseen occurrence or combination of circumstances, which require an officer to act immediately. Examples of exigent circumstance might include, but are not limited to:
 - a. Bodily injury or death may occur.
 - b. A dangerous wanted suspect may escape.
 - c. Imminent destruction of evidence.
2. Officers may not intentionally create a situation which causes exigent circumstance to apply.
3. Officers must document the exigent circumstances existing in reporting the incident.
4. In an emergency, an officer may enter a premise or vehicle without a search warrant if the officer has probable cause to believe immediate entry must be made to aid person(s) in immediate danger of death or bodily injury, or to prevent the imminent destruction of evidence or property.
5. Prior to involuntary or forced entry, and within limits allowed by the particular emergency, the officer should reasonably attempt to obtain voluntary admittance to the premises or vehicle. Following entry, the officer may search the premises or vehicle only to the extent necessary to carry out the purposes of the entry and protection of officers.

H. Crime Scene Searches

1. Private Property - Assuming an officer has a right to take control of private premises; initial searches conducted at a crime scene on private property should be limited to obtaining control of the scene. Two situations common for an officer to be able to legally search a private premise without a warrant are exigent circumstances and protective sweeps. Once a crime scene on private property is secured, officers should obtain a warrant or consent before continuing a search. In cases where consent may be challenged, officers should obtain a search warrant. Any items immediately identifiable as evidence found in plain view during the initial search may be seized.
2. Public Places - Officers may conduct searches and seize evidence found in public places without a search warrant. This includes privately owned open fields, parking lots and other common areas of private property that are accessible to the public. If the owner (or his representative) of the private property requests a search be stopped, officers should secure the location and obtain a warrant before continuing with the search.

I. 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.