

ELGIN POLICE DEPARTMENT POLICY MANUAL - PART 4



4/2.03.00 SEARCHES

4/2.03.01 Searches And Pat Downs Of Persons

This Department recognizes that the use of pat downs, searches, strip searches and body cavity searches may be necessary under certain conditions to protect the safety of officers, civilians, and other prisoners.

The purpose of such searches is to detect and secure evidence of criminal activity and to safeguard the security, safety, and related interests of any prisoner and holding facility. Recognizing the intrusiveness of these searches on individual privacy, however, it is the policy of this Department that such searches shall be conducted only with proper authority and justification. Searches shall be conducted with due recognition and deference for the human dignity of those being searched and in accordance with the procedural guidelines for conducting such searches as set forth in this policy. Detainees will be searched by their biological gender regardless of their external appearance or their perceived identity.

DEFINITIONS

- Persons

For the purposes of this policy, persons are defined as adults and juveniles.

- Pat Down

This is a frisk prior to arrest that – based on reasons that can be articulated that the person may be armed and dangerous – may be conducted and includes squeezing the outer clothing for any weapons that may place the officer in danger.

- Search Incident To Arrest

A complete search of the subject after arrest and consists of going into pockets, etc., in search of weapons, evidence or contraband.

- Strip Search

Any search of an individual requiring the removal of clothing to permit the visual inspection of private areas of the body not generally exposed to the public.

- Body Cavity Search

Any search involving the internal physical examination of body cavities and, in some instances, organs such as the stomach cavity, performed by a physician or other medically trained personnel.

- Gender

A social construct used to classify a person as man, woman, both or neither. Gender encompasses all relational aspects of social identity, psychological identity and human behavior. This concept includes a person's gender identity and gender expression.

- Gender Identity

An individual's sense of being either male, female, both or neither. This may be different from what is traditionally associated with the individual's assigned sex at birth.

- Gender Expression

Gender-related traits that may or may not be consistent with those traits typically associated with a person's assigned sex at birth. External manifestations of gender, expressed through one's name, pronouns, clothing, haircut, behavior, voice or body characteristics.

- Transgender (Individual)

An umbrella term for persons whose gender identity, gender expression or behavior does not conform to that typically associated with the sex assigned at birth.

- Gender Variant

A person whose gender identity or gender expression does not conform to socially defined male or female norms.

- Nonbinary (Individual)

An umbrella term for people with gender identities that fall somewhere outside of the traditional conceptions of strictly either female or male. People with nonbinary gender identities may or may not use more specific

ELGIN POLICE DEPARTMENT

POLICY MANUAL - PART 4



terms to describe their genders – such as agender, genderqueer, gender fluid, two spirit, bigender, pangender, gender nonconforming or gender-variant.

- **TGN**

An acronym for Transgender, Gender-Variant, and/or Nonbinary person. TGN is utilized for ease of reading this policy and for consistency in communication within the Department.

4/2.03.02 Interactions with Transgender, Gender-Variant and Nonbinary Individuals

Department members shall treat individuals in a manner that is appropriate to the individual's gender presentation. Members will address individuals by their preferred name, if it is different from their legal name and use personal pronouns appropriate to the person's gender identity.

CONTACTS

Officers shall not use gender identity or gender expression as the sole basis for initiation a contact or in determining whether reasonable suspicion or probable cause exist to conduct a warrantless search, seek a search warrant or affect an arrest. Officers should not stop an individual on the assumption that the person is engaged in a crime based only on physical appearance or the manner in which the individual expresses their gender identity.

SEARCHES

Officers are justified in conducting a frisk of a person when the officer reasonably believes that the subject may possess a weapon.

1. A search or frisk shall not be performed for the sole purpose of determining an individual's anatomical gender.
2. Transgender individuals shall not be subject to more invasive search or frisk procedures than non-transgender individuals.
3. A valid Texas Driver License or any other government-issued form of identification (e.g., passport, birth certificate) shall be acceptable as initial proof of gender identity in the absence of self-identification by the subject.
4. When a situation arises that involves questionable gender identification the member shall inquire how the individual wishes to be addressed (e.g., Sir, Miss, Ms.) and the name by which the individual wishes to be addressed. This name shall be noted as an alias (aka) if it differs from the individual's legal name.
5. Members shall not require proof of an individual's gender or inquire about intimate details of the individual's anatomy to determine gender.
6. When a frisk or search is required, the officers shall follow all applicable policies within the Department Manual.
7. The removal or appearance-related items – such as wigs, prosthetics and cosmetics – for TGN individuals will be conducted in the same manner as it would for non-transgender and gender-conforming persons.

ARREST

In the case of an arrest, a TGN individual should be informed that standard law enforcement protocol requires that a search be conducted on everyone who is arrested and that handcuffs will be applied prior to being placed in a transport vehicle.

In general, it is recommended that TGN persons should not be automatically designated as “at risk” in reports unless they or the officer indicate that the individual ay be subject to harassment or hostility at a holding facility. This information should accompany the transporting officer and be provided to the booking staff.

STRIP SEARCHES

ELGIN POLICE DEPARTMENT

POLICY MANUAL - PART 4



Individuals arrested for traffic violations and other minor offenses of a nonviolent nature shall not be subject to strip searches unless the arresting officer has articulable, reasonable suspicion to believe that the individual is concealing contraband or weapons. Reasonable suspicion may be based upon, but is not limited to, one or more of the following criteria:

1. The nature of the offense charged
2. The arrestee's appearance and demeanor
3. The circumstances surrounding the arrest
4. The arrestee's criminal record, particularly past crimes of violence and narcotics offenses
5. The discovery of evidence of a major offense in plain view or in the course of a search incident to arrest
6. Detection of suspicious objects beneath the suspect's clothing during a pat-down prior to arrest, search incident to arrest, or during the booking process

Where reasonable suspicion that can be articulated exists to conduct a strip search, the arresting officer will request the search by contacting a supervisor and clearly defining the basis for his/her suspicion. Following a strip search, the arresting officer will include the following details in the offense report:

1. Justification for requesting the search
2. Date and place of the search
3. Identity of the officer conducting the search
4. Identity of the individual searched
5. Those present during the search
6. A detailed description of the nature and extent of the search
7. Any weapons, evidence or contraband found during the search.

Field strip searches of prisoners shall be conducted only in the rarest of circumstances where the life of officers or others may be placed at risk – and only with the explicit approval of a field supervisor.

When authorized by the supervisor, strip searches will only be conducted:

1. In conformance with approved hygienic procedures and professional practices;
2. By the least number of personnel necessary; and
3. In conditions that provide privacy from all but those authorized to perform the search.

BODY CAVITY SEARCHES

A search warrant must be obtained to conduct a body cavity search. The decision to seek a search warrant shall recognize that a body cavity search is highly invasive of personal privacy and is reasonable only where the suspected offense is of a serious nature and/or poses a threat to the safety of officers or others, and/or the security of the holding facility.

Members will ensure that a suspect on whom a search warrant is being obtained is held in an isolated area and under the continuous supervision of an officer. Investigative personnel attempting to obtain the search warrant will do so in a timely manner and ensure the supervisor is informed of the progress of the warrant.

When a search warrant is obtained, the suspect will be transported by the investigating officer to the appropriate hospital, where the search can be performed by a physician or other medically trained personnel. The person conducting the search will be requested to provide a report to the Department describing the details of the search and outlining the findings. If such a report cannot be obtained from the physician or other person conducting the search, the investigating officer will ensure any information made available to him/her is included in an offense report.

4/2.03.03 Motor Vehicle Searches

ELGIN POLICE DEPARTMENT

POLICY MANUAL - PART 4



It is the Department's policy to conduct motor vehicle searches that are both legal and thorough. Searches are conducted in strict observance of the vehicle owner and occupants' constitutional rights and with due regard for the safety of all officers, citizens, and property involved.

DEFINITIONS

- Motor Vehicle

Any vehicle operating or capable of operating on public streets or highways, including automobiles, trucks, trailers, recreational vehicles, mobile homes, motor homes, and any other type of vehicle, whether self-propelled or towed. This procedure does not apply to vehicles that have been immobilized in one location for use as a temporary or permanent residence or storage facility, or which are otherwise classified by the law as residences or buildings.

- Vehicle Search

An examination of all or a portion of a vehicle with either an investigatory motive (i.e., for the purpose of discovering fruits, instrumentalities, evidence of a crime, contraband, or to enter the vehicle to examine the vehicle identification or determine ownership of the vehicle), or done without an investigatory motive as in inventories of personal property conducted in conjunction with an impoundment of the vehicle.

SEARCHES WITH A WARRANT

When searching with a warrant, officers may search all areas of the vehicle that could possibly contain the focus of their warrant, and may continue the search until all items are found.

CONSENT SEARCHES

Neither probable cause nor reasonable suspicion is necessary for a valid consent search. Consent must be freely and voluntarily given and not the result of duress or coercion either expressed or implied (note: telling a person "if you do not consent, I will just get a warrant" could invalidate the citizen's consent). The person giving consent must be the vehicle operator or a person who has dominion and control over it and, thereby, has an expectation of privacy in it. If the consent is limited to specific areas of the vehicle, officers may search only portions of the vehicle covered by the consent. A person may withdraw their consent at any time. Consent may be oral, but written consent is preferable.

Officers should be aware that overuse of the consent search can negatively impact the Department's relationship with our community and only request a consent search when they have an articulable reason why they believe the search is necessary and likely to produce evidence related to an investigation.

- *Search Incident To Arrest*

The authority to conduct a search incident to arrests derives from the need to disarm the defendant and prevent evidence from being destroyed.

- *Frisk For Weapons*

If an officer has suspicion – that can be articulated – that the passenger area of the vehicle contains a weapon, the passenger area of the vehicle may be frisked to recover the weapon for the officer's safety. This frisking is confined to the passenger area of the vehicle. Areas, such as locked glove compartments or other locked containers, not immediately accessible to the vehicle's occupants may not be frisked.

- *Entries To Examine Vehicle Identification Numbers*

Federal law requires vehicles to carry a vehicle identification number (VIN) visible from the outside of the vehicle. Where a vehicle is lawfully stopped, and the VIN is not visible from the outside, an officer may enter the vehicle to look for and examine the VIN number or determine ownership of the vehicle. The intrusion must be limited to actions reasonably necessary to accomplish these goals.

- *Emergencies*

The emergency or exigent circumstances exception to the warrant involves balancing a number of factors including the probability that evidence will be destroyed, suspects will escape or persons will be injured, the probability of weapons being present, and the need for prompt action.

ELGIN POLICE DEPARTMENT

POLICY MANUAL - PART 4



An emergency search must be timely and within the scope of the emergency. At the time when the emergency is no longer a factor the search must stop. The proper extent of this search must, therefore, be determined by the facts of each specific situation, but in no event will the extent of the search exceed that which is necessary to respond properly to the emergency.

- *Inventories*

An inventory is not a search for evidence of crime, but is justified to protect an owner's property while it is in custody of the police, to ensure against claims of lost or stolen property, and to guard the police from danger.

When a vehicle is lawfully impounded, an officer shall conduct an inventory of that vehicle and containers found therein and report all personal property on the EPD towed vehicle report. If the inventory is part of a vehicle seizure, the personal property will be impounded and placed in the evidence vault.

The impound/inventory involves two levels of decision-making and action by the officer. There is the impoundment of the vehicle and the inventory search itself. Both of these two actions must be done pursuant to standardized criteria that limit the discretion of the officer and ensure that impoundment/inventory are legally performed and not a guise for a general exploratory search.

CONTAINERS FOUND IN VEHICLE

1. In an impound/inventory, all containers within the vehicle must be inventoried for the above-stated policy reasons and their contents must be inventoried also.
2. When a search is pursuant to probable cause, consent or exigent circumstances, any container within the vehicle, whether locked or not, which might harbor the object of the search may be searched for the item sought.
3. Containers discovered during a consent search of the vehicle may be opened provided that the terms of the consent expressly permit or reasonably imply that the particular container may be opened.
4. When the passenger compartment of a vehicle is being frisked incident to an arrest, unlocked containers found in the passenger compartment may be opened if they are accessible to the passengers of the vehicle.

CONDUCT OF THE SEARCH

Vehicle searches shall be conducted so as to minimize the intrusiveness of the search and inconvenience to vehicle owners, occupants and other persons involved, giving due concern to the legal justification for and objects of the search. Where possible, damage to the vehicle or other property during the search should be avoided. Where unavoidable, damage should be confined to that reasonably necessary to carry out a safe and thorough search.

4/2.03.04 Preparation Of Search And Arrest Warrants

The Fourth Amendment of the Constitution of the United States regulates searches and seizures of persons and property. It is the policy of this Department that searches, seizures, and arrests by Department personnel are conducted in a reasonable manner to comply with the constitution.

DEFINITIONS

- Non-Consensual Entry

Any entry into a building, home or structure except by permission of an authorized person. An entry may be non-consensual whether or not physical damage is incurred in the property. Damage shall mean any damage, regard-less of whether it can be estimated or repaired. Classes of non-consensual entry are:

Class 1: suspects do not have a history of violence; minimal or no force entry is anticipated; and suspects are not likely to be armed.

ELGIN POLICE DEPARTMENT

POLICY MANUAL - PART 4



Class 2: suspects have no history of violence, but some describable suspicion exists that they may have access to unknown weapons; minimal or no force is anticipated; and supervisors believe the risk to officers is greater than Class 1.

Class 3: suspects have a history of violence or when there is a good reason to believe that suspects will resist with violence, are armed or barricaded. SWAT will be utilized for Class 3 entries.

The routine checking of an abandoned or condemned house or building shall be considered consensual entry. Entry by invitation is a consensual entry.

- High-Risk Entry

A Class 3 entry. Involves a search or arrest warrant (or without a warrant under exigent circumstances) where there is a reasonable belief that a danger exists to the lives and safety of the officers involved, the occupants of the place to be searched, or the citizens in the immediate vicinity.

- Magistrate

A judge authorized by law to issue a warrant of arrest or search warrant. For evidentiary search warrants, the judge must preside over a court of record.

- No-Knock Warrant

A search warrant that is served by officers by immediately making a forced entry into a building or other structure without first knocking or otherwise identifying themselves and making their purpose known.

OBTAINING SEARCH AND ARREST WARRANTS

An investigating officer for a case involving a search or arrest warrant shall be responsible for the execution of the warrant, under the direct review and control of the first line supervisor. Search warrants will not be obtained without the knowledge and approval of the supervisor. A representative of the district attorney's office may be consulted to assist in the preparation of affidavits and search warrants.

Search warrants and applications for search warrants will be approved by the supervisor prior to being presented to a judge for review and signature. If a judge refuses to grant a search warrant, the submitting officer will not make any attempt to find another judge ("judge shopping"). The officer will immediately notify the supervisor who approved the warrant. The officer will make necessary corrections and re-submit the application, or will continue their investigation to develop more probable cause. All search warrants and affidavits in support of search warrants must comply with CCP Chapter 18, be signed and sworn to in front of a judge, and contain:

1. The name and title of the applicant;
2. A statement that there is probable cause to believe that the specific items subject to seizure under the Texas revised statutes may be found in or upon a specific designated or described place, person, or thing;
3. Allegations of fact supporting the statement, specifically setting forth the facts and circumstances establishing probable cause to believe that items are at the places, persons, or things to be searched; and
4. A request that the court issue a search warrant directing search for and seizure of the items in question.

In preparing both the search warrant and affidavit in support of the search warrant, investigating officers will verify the address and detailed description of the place to be searched. Officers will conduct surveillance and/or use other means to corroborate the accuracy of the information to support probable cause.

PREPARATION FOR SERVICE OF SEARCH AND ARREST WARRANTS

Prior to the execution of any search warrant, the supervisor or officer in charge will prepare a tactical operations plan and conduct a briefing with all of the persons involved in the operation. The following factors shall be presented at the briefing:

1. A review of the site characteristics;
2. Descriptions of potential occupants, animals, and any associated dangers they pose;

ELGIN POLICE DEPARTMENT

POLICY MANUAL - PART 4



3. Assignments and responsibilities for the persons involved in the operation;
4. Descriptions of items sought at the search location and any indications of possible storage or hiding places at the location;
5. A review of the facts surrounding the case;
6. A check that members are properly equipped with necessary equipment, including ballistics vests, police identification jackets, duty firearms, etc.; and
7. Coordination with uniformed officers to be present during the initial search.

When the potential for violence is imminent or “high risk,” the supervisor or officer in charge will review the plan of execution with his/her supervisor. Any time officers plan on serving a search or arrest warrant, the supervisor or officer in charge will conduct a risk assessment. This does not include unplanned warrant service in the course of normal patrol duties. The supervisor or officer in charge will also review the plan of execution with his/her supervisor. If a regional tactical team is to be utilized the department personnel planning a warrant service with heightened risk factors shall complete a risk assessment and consult with the tactical team leader prior to serving any Class 2 or 3 warrant. When confirmed as a Class 3 entry by the supervisor, a tactical team will be required to perform this entry or an operations plan that removes risk factors will be developed. In the event a tactical team is utilized, they will take part in the team briefing, assume command of the entry, and relinquish command when the scene has been stabilized.

Search warrants must be served without unnecessary delay. Search warrants are valid for three (3) days excluding the date of issuance and date of execution. Any warrant not executed within this time must be marked “not served” and returned to the judge who signed it without unnecessary delay.

A copy of an unserved search warrant, affidavit, offense report (explaining why the warrant was not served and the disposition), and other documents will be entered into the department’s report writing system.

SERVICE OF WARRANTS

Officers executing warrants must, before entering the premises, give appropriate notice of their identity and purpose to the person(s) to be searched or the person(s) in apparent control of the premises to be searched. If it is unclear whether anyone is present at the premises, officers must give the notice in a manner to be heard by anyone who is present.

A trick or ruse (to avoid danger and/or destruction of evidence) that causes the occupants to open the door and/or exit the premises is lawful and reasonable so long as:

1. Officers announce their authority (search or arrest warrant) and identify themselves before entering, and;
2. It does not endanger the occupants or create the impression that they are endangered.

Officers may break and enter any premises when necessary for the execution of the warrant if they have previously announced their identity and purpose, and reasonably believe that:

1. Admittance is being denied or unreasonably delayed;
2. The premises are unoccupied; or there is probable cause to believe that giving further notice would endanger the life or safety of any persons; and
3. An entry authority exists under the law.

Officers may also break and enter into any premises without first identifying themselves when:

1. Executing a “no-knock” search warrant authorized by the magistrate issuing the warrant;
2. Executing an arrest warrant when there is good reason to believe that knocking and announcing would unnecessarily risk the safety of officers, innocent persons or suspects; or
3. If the officer’s presence and intentions are compromised during their approach or other tactical considerations require immediate entry to preserve evidence or the safety of officers, innocent persons or suspects.

ELGIN POLICE DEPARTMENT

POLICY MANUAL - PART 4



All forcible entries will be investigated by the supervisor. The supervisor authorizing forced entry is responsible for ensuring the completion of an offense report documenting:

1. The names of parties arrested, if any;
2. The offense/incident;
3. The location of incident;
4. A completed list/description of damage(s), including photographs; and
5. A full statement of elements or justifications for use of forced entry.

A copy of the offense report will be forwarded to the Division Commander of the involved unit.

No member shall make any statement regarding liability for repairs due to forced entry. Any such determination for subsequent repairs shall be handled through the Chief of Police.

SEARCHES OF PERSONS (ON PREMISES NOT OPEN TO THE PUBLIC)

With due regard for the safety and dignity of all persons on or about the premises, officers will conduct themselves in a professional manner. Restrictions may be placed on the movement of any persons at the search site. This restriction is essential to prevent the interference with the search, and to safeguard the search team and other persons present. The restriction shall be limited to the time needed to assure safety and security. Persons not under arrest shall be permitted movement as soon as practical after no security interest is in jeopardy.

Any person(s) within the premises at the time of the search warrant execution, or any person that voluntarily enters the premises after the search has commenced, may be given a "pat-down," if there is reasonable suspicion to believe that such person(s):

1. Has a concealed weapon or in possession of a dangerous weapon, or
2. Poses a threat to safety of any personnel present, or
3. May destroy, dispose of, or conceal any evidence.

Nothing in this section shall be construed as limiting the initial entry team personnel from conducting a "pat-down" of those persons already present to ensure their own safety and safety of others present.

Probable cause to arrest a person at the search site may arise during the execution of the search warrant. A full search incidental to that arrest shall be conducted.

SEARCHES OF THE PREMISES

The supervisor, or officer in charge, will be present on all searches of the premises. Any damages to property during the search will be brought to the supervisor's attention, documented, and photographed.

Each room will be searched twice and any evidence found by the search team members will be left in position and the designated officer in charge of impounding will be notified and will record the location and the name of the finding officer. Evidence will be photographed and/or diagrammed in its found position when deemed necessary for the investigation. The designated officer will be responsible for collecting all evidence, so that the chain of custody is maintained. All evidence collected will be handled in accordance with accepted scientific procedures.

The officer in charge of the search warrant will make sure that a property return form listing all items confiscated during the search is left:

1. If items are taken from a person, a copy of the form must be given to that person.
2. If items are taken from a premises, a copy of the form must be given to:
 - a. The owner of the premises, or
 - b. The person in control of the premises.
3. If a person is not present, the copy will be left at the premises with a copy of the signed search warrant.

ELGIN POLICE DEPARTMENT

POLICY MANUAL - PART 4



CONCLUSION OF THE SEARCH

Upon the conclusion of the search, the supervisor, or officer in charge, will ensure that:

1. A copy of the search warrant and the property return form have been delivered to the parties or premises (when an affidavit has been sealed to protect confidential information, a copy of the order sealing affidavit will be substituted for the affidavit);
2. Photographs of any damages have been taken;
3. All evidence and/or confiscated property has been collected by the search teams;
4. Reasonable efforts are made to properly secure the premises if no one is present or responsible;
5. All reports are completed by the officers in a timely manner in accordance with their division's internal procedures;
6. Copies of the search warrants, affidavits in support of search warrants, and search warrant returns are sent to the police records section for placement in the case file (the event number must be included on all information); and
7. The search warrant and attached property return form shall be returned to the judge who signed the warrant within the allocated timeframe as stated in the TX-Code of Criminal Procedure (18.10).

4/2.03.05 Vehicle Search Warrants

Holds on impounded vehicles to obtain search warrants must be approved by the appropriate on-duty supervisor.

Approval may be granted by radio, telephone or in person. The approving officer's name shall be indicated in the "remarks" section of the vehicle impound form.

4/2.03.06 Warrant-Less Search And Seizure

Officers are allowed to conduct warrant-less searches when the search is reasonable and the officer has consent; a reasonable suspicion; or probable cause to arrest, search, and investigate.

CONSENT SEARCHES

Neither probable cause nor reasonable suspicion is necessary for a valid consent search. Consent must be freely and voluntarily given and not the result of duress or expressed or implied coercion. For example, telling a subject, "if you do not consent, I will just get a warrant" could invalidate the citizen's consent. If consent is limited to specific areas, officers may search only the areas covered by the consent. A person may withdraw their consent at any time. Consent may be oral, but written consent is preferable.

The following persons may give consent to search:

1. Persons in joint possession of the premises or property;
2. Persons in possession of a vehicle;
3. A parent or guardian of a minor;
4. Any other person that may give a lawful consent to search.

Officers should be aware that overuse of the consent search can negatively impact the Department's relationship with our community and only request a consent search when they have an articulable reason why they believe the search is necessary and likely to produce evidence related to an investigation.

SEARCH INCIDENT TO ARREST

The authority to conduct a search incident to arrests derives from the need to disarm the defendant and prevent evidence from being destroyed.

STOP AND FRISK OF INDIVIDUALS

ELGIN POLICE DEPARTMENT

POLICY MANUAL - PART 4



Officers may “stop and frisk” an individual whenever the officer has reasonable suspicion that the person is committing, has committed, or is about to commit a crime; and the officer has articulable reasons to fear for their safety or the safety of a third party.

Officers are justified in conducting a frisk of a person when the officer reasonably believes that the subject may possess a weapon. The search must be limited for a pat-down search of the person’s outer garments for the discovery of weapons. Any contraband discovered is subject to seizure as evidence of a crime.

Officers should not detain a person longer than is necessary to determine the person’s identity or maintain the status quo while obtaining additional relevant or necessary information.

CRIME SCENE SEARCHES

When a crime is reported to the police by a person who owns or controls the place where the police are summoned, and the person either suggests or states that the crime was committed by another person, the reporting person implies consent to a search of the place that is reasonably related to a routine investigation of the crime and identification of the person who committed it. As long as the reporting person is not a suspect in the case or does nothing to indicate a lack of consent, the officer may search the place for investigative purposes. Implied consent is valid only for the initial investigation conducted at the scene and does not apply to future searches of the place.

EXIGENT CIRCUMSTANCES

The general rules governing search and seizure are subject to the exception of hot pursuit or emergency situations. The reasonableness of an entry by the police upon private property is measured by circumstances then existing.

If the police can show the presence of exigent circumstances, officers have the right to enter and investigate in an emergency, such as:

1. Hot pursuit of a fleeing felon;
2. Possible destruction of evidence;
3. Homicide, fire or family violence; or
4. When the public safety is endangered.

Officers may seize evidence found in plain view during the course of the officer’s legitimate emergency activities.

When the emergency ceases to exist, officers must obtain consent to search or a warrant.

OTHER SITUATIONS

- *Licensed Premises*

Officers may search at any time without a warrant premises covered by a license issued by the Alcoholic Beverage Commission as permitted by state statute.

- *Abandoned Property*

Officers may search and seize abandoned property, including garbage, without a warrant.

- *Electronic/Covert Recording*

It is not a search to overhear or record a conversation between persons when it is done with the consent of one of the parties to the conversation. If a third person secretly overhears or records a conversation between persons who reasonably expect their conversation is private and without the consent of a party to the conversation, this is a search and seizure. Persons detained or arrested have no expectation of privacy in a police vehicle.

Requests for interception of wire, oral, or electronic communication are directed to the Texas Department of Public Safety or the appropriate federal authority.

ELGIN POLICE DEPARTMENT POLICY MANUAL - PART 4



The use of pen registers, trap-and-trace devices or tracking devices require a court order, except in exigent circumstances where there is a reasonable belief that an immediate life-threatening situation exists.

- *Personal Conversations (Body Microphone)*

Officers are allowed to record conversation between two parties with the use of a recording device hidden on the body.

Officers can use a receiving device to listen to conversations between two persons where a transmitter is concealed on the body of one of the parties to the conversation.

Recorded and/or monitored conversations are conducted in compliance with Department policy.

- *Public School Students*

Searches by public school officials and teachers at school are not required to have probable cause or a warrant but must be lawful under the Texas Education Code.

- *Plain View Doctrine*

Seizure of contraband or evidence of a crime in plain view is not a search. If time and circumstances permit, officers are encouraged to obtain a search warrant.

Signed Original Maintained in the Office of the Chief

John C. Noble