
ADMINISTRATIVE DIRECTIVE – 112.018
SEARCHES

EFFECTIVE DATE: September 9, 1996
REVIEW DATE:
AFFECTS: All Personnel

REVISION DATE: September 28, 2017

I. PURPOSE

This Administrative directive establishes Department guidelines controlling the search and seizure of property and persons.

II. POLICY

To prevent the suppression of evidence, support the Constitutional rights of citizens, and maintain public confidence in police operations, all officers must have a sound working knowledge of legal requirements.

III. DEFINITIONS

Consent to Search – a search conducted pursuant to consent, made without a warrant and without probable cause to obtain a warrant. The consent must be freely and intelligently given by an **appropriate party** and the search must be limited to the specified terms of the consent. A consent search may be authorized by a third party who shares common control or authority of the premises or items to be searched.

IV. PROCEDURES

A. Voluntary Consent to Search

1. When an officer believes the search of a specific person, area, vehicle, etc. is appropriate but probable cause to obtain a search warrant does not exist, the officer may choose to request a voluntary consent to search. The consent may be verbal or written.
2. The voluntary nature of a person's consent to search is based on the totality of the circumstances at the time of the request. The officers involved and the prosecutor for the case(s) has the burden of proving that consent to search was given voluntarily, knowingly and intelligently.

3. Required Notifications

The officer must inform the person being asked to consent that he or she has the right to refuse to grant permission for the officer to conduct the search.

4. Limitations of Use

- a. A search being conducted based on a voluntary consent to search will immediately cease if the consent is withdrawn. Seizable items discovered during the search, but before withdrawal of consent, should be seized.
- b. A search being conducted based on a voluntary consent to search will immediately cease or will be confined to newly established limited areas if conditions of consent change before or during the search. Seizable items discovered during the search, but before limitations of consent should be seized.
- c. While conducting the search, officers shall ensure that the physical proximity of the person granting consent does not deny him or her the opportunity to request the search cease or to redefine limitations of the search.

5. Form Routing

- a. If a search is conducted with a signed voluntary consent to search form (FM601.087) and **NO EVIDENCE IS CONFISCATED AND NO INCIDENT NUMBER IS GENERATED**, the completed form is forwarded to Records Unit for filing.

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- b. If a search is conducted with a signed voluntary consent to search form and the EVIDENCE FOUND RESULTS IN AN ARREST REPORT AND/OR ASSOCIATED NUMBERED PAPERWORK, the completed consent to search form is submitted as evidence.

B. Stop and Frisk

A frisk or pat down for officer safety is considered a limited search in the context of the Fourth Amendment. Therefore, officers must meet certain constitutional standards in effecting this type of search. A frisk may be based upon articulable reasons justifying a concern for officer safety during the course of a lawful detention, or a person may consent to a frisk.

1. Frisk During a Lawful Detention

- a. The officer shall first establish reasonable suspicion to support the underlying detention of the individual to be frisked.
- b. Once reasonable suspicion has been established and the detention is lawful, the officer must articulate specific facts and circumstances that establish a reasonable concern for the officer's safety. Such facts and circumstances must be related to the particular situation or the particular individual to be frisked. Examples include, but are not limited to:
 - (1) a confrontational posture by the detainee;
 - (2) the officer is investigating a violent crime;
 - (3) the detainee is known to be violent or carry weapons;
 - (4) threats directed at the officer; or
 - (5) bulges in clothing which could conceal a weapon.

2. Frisk Based On Consent

- a. This type of frisk will be analyzed by the same standards as other consensual searches.
- b. There is no exact sequence of events or wording which will guarantee that a court will agree that a suspect gave consent for a search, but the officer shall consider the following: (This is not an exhaustive list of relevant consent issues)
 - (1) the age of the person giving consent;
 - (2) the mental capacity of the person giving consent;
 - (3) the presence, or absence, of any coercive measures by the officer or other officers present; or
 - (4) was the person giving consent informed of his or her option to decline.
- c. Officers conducting a frisk under either justification shall specifically articulate the facts and circumstances surrounding the decision to frisk in the report completed.

C. Search of a Vehicle Under Movable Vehicle Exception

- 1. The officer must be able to articulate probable cause that the motor vehicle is being used to transport contraband. For example, an officer sees a partially smoked marijuana cigarette in the ash tray when the officer approaches the vehicle on a traffic stop. This would establish probable cause for the officer to believe the motor vehicle is being used to transport contraband, to wit: marijuana.

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2. Once the officer has probable cause to search the vehicle for a particular contraband, the officer may search the entire motor vehicle, and any container in the motor vehicle, in which the suspected contraband would fit. For example, an officer has probable cause to believe the motor vehicle is being used to transport stolen rocket launchers, the officer would not be authorized to open a small pill bottle found in the console. During a search for an object, the officer may come across a second type of contraband; the officer may expand the search to include searching for the second, possibly smaller type contraband.
3. Officers need not establish ownership of containers within a car prior to searching the container under this warrantless exception. However, officers will still need to establish affirmative links between the seized contraband and any person to be arrested for its possession.

D. Search at the Scene of a Crime

In this section a crime scene search means the processing of a crime scene for evidence. It is understood there may be times when entry into a crime scene is necessitated by an exigent circumstances (see E., below). Crime scene searches of a dwelling require a search warrant. Consent to search will be acceptable if given by a person with the authority to grant consent to search the dwelling. Consent for this type of search must be in writing. Crime scene searches of public places do not require a search warrant. Search of an automobile as a crime scene should be done pursuant to warrant when time constraints so permit. This is particularly the case when the interior of the automobile is to be searched for DNA, fibers, etc.

E. Exigent Circumstances

Warrantless searches are strictly controlled by U.S. Supreme Court case law. A warrantless search of a dwelling based upon an exigent circumstance is a valuable law enforcement tool. Officers shall comply with the following ground rules when conducting this type of search.

1. Fourth Amendment Issues

A primary function of the Fourth Amendment is to protect homes from warrantless searches by government agents. In this light, the U.S. Supreme Court has established over the years certain exceptions to the warrant requirement to permit officers to enter a dwelling without a warrant and without the consent of the owner of the dwelling.

2. Emergencies

- a. This exception applies to threats to the life or limb of the occupants of the dwelling. The concern for the occupant's safety must be reasonable at the outset, or the entry will be deemed unlawful.
- b. Emergency exceptions may include the following:
 - (1) Fire
 - (2) Gunshots
 - (3) Screams for help
 - (4) Unconscious persons
 - (5) Persons in need of medical attention

3. Imminent Destruction of Evidence

- a. This exception permits an officer to enter a dwelling to prevent the imminent destruction of evidence.

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- b. There are two requirements:
 - (1) the evidence must be of the type that is easily lost or destroyed, and
 - (2) the attempt to destroy the evidence cannot be prompted by police misconduct.
- 4. Hot Pursuit
 - a. This exception permits an officer to go into a dwelling to search for and arrest a person.
 - b. The U.S. Supreme Court has limited this exception to certain conditions:
 - (1) the officer must already have probable cause to arrest the person prior to entering the dwelling;
 - (2) the officer must be in pursuit of a person who has committed a dangerous felony.
 - c. The State of Texas acknowledges this exception in Articles 14.04 and 14.05 of the Code of Criminal Procedure. Officers shall review those arrest statutes and comply with the restrictions therein.
- F. Inventory Searches of Seized Vehicles and Property

An inventory is not considered a search. Rather, it is an administrative caretaking procedure designed to protect the Department from false claims. If the vehicle is to be seized and forfeited, officers shall adhere to the following:

 - 1. The inventory of the vehicle's contents shall be documented in the Vehicle Inventory Form (FM620.012).
 - 2. Inventories of this type shall be performed consistently, i.e. on each and every vehicle to be forfeited.
 - 3. The inventory shall be in compliance with Administrative Directive 112.038 specifying how the inventory is to be conducted.
- G. Other Situations
 - 1. Search incident to lawful arrest – pursuant to a lawful arrest of an individual the officer shall perform a full and complete search of the prisoner (this does not include strip searches or body cavity searches). If the arrest is made of an occupant of a motor vehicle, the arresting officer shall perform a search of the vehicle when lawful to do so. If the arrest is made in a dwelling, the officer shall search the area within the immediate reach and grasp of the arrested person.