


The Tarrant County College District Police Department

GENERAL ORDER

	SUBJECT	GENERAL ORDER NUMBER
	SEARCH AND SEIZURE WITHOUT A WARRANT	306.00
	CALEA STANDARDS	EFFECTIVE DATE
	1.2.4., 1.2.8.	May 1, 2015
	APPROVAL	REVISION DATE
	Shaun Williams, Chief of Police	PAGES
		10

Policy Statement - Few areas of the law cause more confusion and uncertainty among law enforcement officers than questions about when a warrant is or is not needed to conduct a search. Officers must keep in mind that the rules that apply to searches differ from the rules applicable to arrests. An arrest and a search are two entirely separate and distinct law enforcement procedures. Subject to certain statutory or state constitutional restrictions, an officer may arrest an individual for a crime without a warrant as long as the officer has sufficient facts establishing probable cause. For searches, however, the general rule is that every search must be based on a warrant. There are exceptions to this general rule. No arrest or search shall be made without a warrant unless authorized by law, and all arrest or search and seizure activity shall be conducted in the manner provided by law and enumerated in this directive. In making searches and seizures, officers shall observe the Constitutional Rights of persons being searched or arrested.

Procedure - Police officers are issued a copy of *The Texas Code of Criminal Procedure* and are expected to be familiar and comply with the statutory provisions relating to:

1. Procedures for execution of arrests and/or searches without warrant and for arrests and/or searches and seizures pursuant to warrant.

The provisions of this directive are to be read and observed in conjunction with statutory and constitutional rules relating to arrest and/or search and seizure.

306.01 - DEFINITIONS

Access Area - The area into which a person might reach in order to grab a weapon; synonymous with area of immediate control.

Armed - Carrying a weapon or other object capable of inflicting death or serious bodily injury.

Arrest - The intentional seizure of a person, whether actual or constructive, by an officer who is acting under real or assumed legal authority to do so, for the purpose of bringing the person before a court to answer for the commission of an offense or for such other purpose as may be authorized by law.

Curtilage - The yard and buildings surrounding a residence or dwelling place, generally including any fenced-in areas around the house, any garages, sheds, out-houses, driveways, barns, etc. Curtilage does not include open fields surrounding residences, vehicles, or commercial business structures. It does not include fire escapes, lobbies, or common hallways of apartment or mini-unit dwellings.

Exigent Circumstances - A narrow case law exception to the warrant requirement in cases of emergency, unforeseen occurrence or combination of circumstances that calls for immediate action when need for a warrant could not have been anticipated or the circumstances preclude obtaining a warrant in a timely manner. Exigent circumstances may exist when there are reasonable grounds to believe that a wanted suspect may escape, bodily injury may occur to any person, important evidence will be lost or destroyed, or serious damage may occur to real or personal property. In determining whether exigent circumstances exist, an officer must properly consider information acquired through personal observation, through official channels, or from informants. Factors to consider include:

- degree of urgency
- time to obtain warrant
- reasonableness of exigency belief
- danger pending warrant
- suspect's knowledge of presence of officer(s)
- destructibility of evidence
- time and place
- nature of any offense involved
- actions and numbers of any persons involved
- natural and physical conditions
- availability of equipment, tools, personnel, reinforcements, and other resources.

Field Interview - The stopping and questioning of a person by a law enforcement officer because the officer: 1) has reasonable suspicion that the subject may have committed, may be committing, or may be about to commit a crime; 2) believes the subject may be a hazard; and/or 3) believes the interview may have a preventive effect.

Frisk - Refers to a weapon search of a person and is limited to a pat-down of outer clothing to ensure the safety of the officer.

Informed Consent - A voluntary agreement to participate in an activity and/or allow an activity or procedure to be performed based upon availability of all pertinent information and the ability to understand the consequences of the agreement decision.

In The Presence Of - When a police officer is aware, through the use of some or all of his five senses, that an offense is being committed, even though he may not see it; the offense occurs in his presence.

In The View Of - When an officer observes an offense being committed, it is within the officer's view.

Non-Suspect - A person who an officer has no reasonable suspicion to believe is involved in any criminal activity.

Probable Cause - That set of facts or circumstances based on reliable information or personal knowledge or observation by an officer which reasonably shows and would warrant an ordinary prudent person in believing that a particular person has committed, is threatening, or is about to commit some offense against the law; or that certain items are connected with a crime and are therefore seizable under the law and that these items are in the place to be searched.

Protected Area - A place protected by the Fourth Amendment guarantee against unreasonable searches and seizures.

Reasonable Suspicion - That set of articulable facts and circumstances short of probable cause which lead an officer to conclude that a person possibly is involved in past, present, or future criminal activity or is possibly armed. An officer's rational belief, based on credible and articulable

information and circumstances, that something may be true, for example, that an offense may have occurred or that a particular person may have committed an offense. The facts or circumstances the officer knows, or should know, are such to cause an ordinary and prudent person to act or think in a similar way under similar circumstances.

Seizable Items - All items listed in *The Texas Code of Criminal Procedure, Article 18.02*, including but not limited to, weapons, contraband, evidence, instrumentalities, or fruits of a crime.

Stop - A temporary investigative inquiry, generally including limited field questioning of a suspect.

Suspect - A person who an officer reasonably suspects of involvement in criminal activity.

306.02 - EXCEPTIONS TO THE SEARCH WARRANT REQUIREMENT

A. **Search of Abandoned Property.** Abandoned property may be seized without a warrant. A person who discards or abandons personal property no longer has a reasonable expectation of privacy in the property. **A 1.2.4 g.**

1. Officers must fully document their justification for believing that seized "abandoned" items are abandoned.

B. **Property In Open View.** Any item listed in *The Texas Code of Criminal Procedure, Article 18.02*, that could be the subject of a search warrant may be seized without a warrant if: **A 1.2.4 g.**

1. The officer recognizes the item as seizable property;
2. Sees it from a lawful vantage point; and
3. Both the observation and seizure can be made without unreasonably intruding on anyone's reasonable expectation of privacy, that is, the property is in plain sight or open view.
4. If the items are in a place the officer cannot enter legally without a warrant or consent, they cannot be seized without a search warrant unless there is danger of imminent destruction or removal of the items. Officers may guard a property until a search warrant can be obtained. If an area or property cannot be sealed or secured, and there is danger of imminent destruction of a seizable item an officer has seen in plain view from a lawful vantage point, entry can be made without a warrant. In this circumstance, a search warrant should be obtained as quickly after entry as possible.

C. **Search Incident to Custodial Arrest.** When making a lawful full custody arrest, an officer shall search the person arrested and the area under his immediate control or within his reach. **A 1.2.4 d.**

1. **Limits on Search Beyond Access Area.** Search beyond the arrestee's access area is limited to what is necessary to protect the officer(s) from possible harm by others on the premises through locating and containing movement of persons who present a threat to the safety of the officer(s). Any object that may be used as a weapon shall also be controlled.
2. **Obtaining Search Warrant for Location After Arrest.** An officer who is lawfully in a place to make an arrest may not go into other rooms or parts of the premises solely to look for items that could be seized under the open view doctrine. If an officer has probable cause to believe such items may be in a location where an

arrest has been made, a search warrant is to be obtained. If there are reasonable grounds to believe other persons are present who might conceal, remove or destroy the items while a search warrant is being obtained, an immediate general inspection of the location may be made for such persons. Seizable items observed in plain view during the general inspection may be seized.

- a. While a search warrant is being obtained, an officer may refuse to admit any person who does not own the premises or reside therein.
- b. Persons believed capable of concealing, removing, or destroying seizable items may be asked to leave the premises or to allow an officer to remain inside the premises for up to two hours while a search warrant is obtained. If they fail to comply with either request, the officer may search for the seizable items.

3. **Search Beyond Body Surface.** The search of a person incident to arrest may not extend beyond the body surface unless there is probable cause to believe that evidence is concealed within the body. Reasonable force may be used to recover evidence and prevent apparent attempts to swallow it if there is probable cause to believe a person has evidence concealed in the person's mouth. Searches beyond the body surface require a search warrant and can only be conducted by a physician in a medically approved manner under sanitary conditions. A 1.2.8

- a. Strip searches are not permitted, **except** as required by the agency assuming custody of the prisoner and then only by that agency after the Tarrant County College Police Personnel have transferred custody and in no case on Tarrant County College District property. A 1.2.8

4. **Time/Place Choice.** An officer shall not choose a time and place of arrest solely in order to create the opportunity to conduct a search incident to the arrest.

5. **Combination Search and Arrest Warrant.** If there is probable cause to believe seizable items will be found at an expected place of arrest, or if the expected place of arrest is a location that is not under control of the person to be arrested, when officers obtain an arrest warrant they will also obtain a search warrant.

- D. **Jail Booking Search.** A prisoner shall be searched during the booking process to remove items that might be used to escape or to injure the prisoner, to inventory and protect the prisoner's property from damage or theft, and to discover contraband or items of seizable property. A 1.2.4 g.

306.03 - SEARCH OR ENTRY BASED ON PROBABLE CAUSE WITH EXIGENT CIRCUMSTANCES

A 1.2.4 e.

- A. An officer may enter any premises without a search warrant when the officer:
 1. Reasonably believes immediate entry is necessary to aid persons in danger of death or serious bodily harm; or
 2. Has probable cause to obtain a search warrant but loss, destruction, or removal of seizable property or evidence will result before a warrant can be obtained and the premises cannot be secured until a warrant can be obtained; or
 3. Is in fresh pursuit of a fleeing offender who committed a felony or breach of the peace in the officer's presence or view.

- B. The scope of search that may be made after warrantless entry based on exigent circumstances is limited to a restricted search of the premises to locate the suspect. Case law does not permit a “search walk-through” of the premises unless reasonable grounds exist to believe persons are there who are armed and dangerous.

306.04 - CONSENT TO SEARCH A 1.2.4 a.

- A. In the absence of any exception to the search warrant requirement or a warrant, consent to search may be sought from any person who has authority over the thing or place an officer wishes to search. Persons must be advised that they have a right to refuse consent and that anything found may be seized as evidence. All consent searches must be documented by the signature of the consenting person on the department form.
 - 1. **Limitation / Withdrawal of Consent Permitted.** Consent may be limited or revoked at any time. The search must then be stopped or restricted to the new limits. Seizable items discovered before withdrawal or limitation of consent will be seized.
 - 2. **Invitation to Enter not Consent to Search.** An invitation to enter the premises does not give the officer consent to search.
 - 3. If a party with apparent co-equal authority over the premises objects to a search consented to by another, officers should not rely on the consent.
 - 4. Consent to search can only be given to a sworn officer.

306.05 - SEARCH OF VEHICLES AND OCCUPANTS A 1.2.4 c.

- A. **Stopped Vehicles.** When there is reasonable suspicion that a person in a lawfully stopped vehicle is armed, officers may require the person to exit the vehicle and submit to a frisk. Officers may also frisk access areas of the vehicle to discover weapons.
- B. **Incident to Full Custody Arrest.** When a person in a vehicle is taken into custody from a vehicle and searched, access areas of the vehicle that are within reach of the person after arrest, including containers within the passenger areas, may be searched at the scene of the arrest for evidence or weapons. When a person in a vehicle is to be issued a citation and released, neither the person nor the vehicle may be searched unless there is reasonable suspicion to believe the person is armed or there are weapons in the vehicle that threaten officer safety.
- C. **Containers.** Unless there is consent to search or probable cause as specified in D. below, a search warrant is required to open closed containers in passenger areas where there is no full custody arrest. The same rule applies to open closed containers in the trunk or locked containers in the passenger area or trunk even if there is a full custody arrest.
- D. **Warrantless Search Based on Probable Cause Not Known Before Arrest.** Where there was no prior notice of the probable cause and there was insufficient time to obtain a warrant, an officer who has probable cause to believe that a vehicle contains contraband, evidence, instrumentalities, or fruits of a crime may search the vehicle without a warrant.
 - 1. Search under this provision is limited to those areas of the vehicle that could physically contain the seizable items sought.

2. Where arrest is made and the vehicle is not to be impounded, a search authorized by this section, should occur at the scene of the arrest when anyone arrested is in secure custody. It is not necessary where safety dictates otherwise, but it is desirable to keep arrestees near the area of the vehicle during the search. When it is not practical to conduct a search under this section at the scene of the arrest because of a hostile crowd, bad weather, traffic conditions, lack of needed equipment, delay in order to obtain a search warrant, or unavailability of keys, the vehicle must be secured in police custody at all times until it is searched. If the vehicle is removed from the scene, a search warrant is required.
 3. The search authorized in this section may be conducted regardless of whether an arrest has been made or a search incident to that arrest has been conducted.
- E. **Unoccupied Vehicles.** Limited entry and search of areas reasonably likely to contain evidence of ownership may be made of illegally parked vehicles, those that are otherwise blocking traffic or are believed to have been involved in an accident, or those believed to have been the subject of burglary, tampering, or theft.
- F. **Avoiding Vehicle Damage.** Vehicles will not be disassembled unless approved by a supervisor of the rank of lieutenant or above. Whenever possible, an officer shall open a locked trunk or glove compartment by means of a key rather than by force.
- G. **Consent to Vehicle Search.** Search of a vehicle not otherwise authorized is permissible if the person in control of the vehicle voluntarily gives consent to a search. Consent is not voluntary if it is obtained by threat or force or by claiming that search can be conducted without consent. Persons from whom consent is sought must be told that they do not have to give consent, but if they do, any evidence seized may be used against them. Arrested persons must also be told that they have a right to consult an attorney before deciding whether or not to consent. Vehicle consent searches require the consenting person's signature on the department form as depicted in Appendix B.

306.06 - IMPOUND INVENTORY A 1.2.4 f.

- A. Where an arrest is made and the vehicle is to be impounded, an Impoundment Inventory shall be conducted. The Tarrant County College Police Department Vehicle Impoundment Procedure is contained in Appendix A, as found in The Tarrant County College General Orders Manual.

306.07 - FRISKS A 1.2.4 b.

- A. Tarrant County College Police Officers may frisk a suspect they lawfully stop only if the officers can reasonably articulate they suspect that the subject is armed and dangerous.
- B. Before an officer frisks a suspect, he must be able to describe specific factors which produce a reasonable suspicion that the suspect is armed and dangerous. The following factors may contribute toward justifying a frisk:
1. The suspected crime involved the use of a weapon;
 2. The suspect has a bulge in his clothing that resembles a weapon or attempts to conceal an object; or
 3. The officer has received information the suspect customarily or occasionally carries a weapon.

- C. When practical, before an officer begins a frisk, he should have the suspect set aside any hand carried or similar item (e.g., packages, purses, parcels, shoulder bags, knapsacks, backpacks, briefcases, etc.). These items shall not be returned until the interview is completed.
- D. An officer shall end the frisk as soon as he no longer reasonably suspects the subject is armed and dangerous.
- E. When appropriate under the circumstances, an officer who has lawfully stopped a suspect may order that suspect to exit his vehicle or otherwise move a reasonable distance to a safer location (e.g., away from a crowd; out of a dark area) before frisking him. An officer may make a limited weapons search of the suspect's access area if the officer reasonably suspects that the access area contains a weapon which endangers the officer or others.
- F. While conducting a frisk, should an officer reasonably suspect an object he feels or otherwise discovers is a weapon, he may remove that object for a closer examination.
 - 1. If the removed object is a weapon and the suspect has no exemption which permits him to carry a weapon, the officer shall arrest the suspect, inventory the weapon as evidence, and conduct a full search of the arrestee.
 - 2. If the removed object is contraband or other seizable property, the officer shall arrest the suspect, inventory the seized property as evidence, and conduct a full search of the arrestee.
 - 3. Removed objects legally possessed by the suspect shall be returned at the conclusion of the interview.
- G. Whenever an officer stops and frisks a person in accordance with this *General Order (306.00)*, he shall submit an Incident Report directed to the Chief of Police detailing his actions. The report should contain minimally the following information:
 - 1. The facts that lead the officer to believe that the person was armed;
 - 2. The area(s) frisk; and,
 - 3. Whether a weapon, contraband or evidence was found.



APPENDIX A **A1.2.4 f.**

**OFFICE OF THE CHIEF
THE TARRANT COUNTY COLLEGE POLICE
GENERAL ORDERS MANUAL**



Title: IMPOUNDING AND INVENTORY OF PERSONAL PROPERTY		
Policy Number: C-5	Effective Date: MARCH 1, 2015	Rescinds / Amends:
Related Laws: Autran v State, Harris v U. S.		Related Standard(s) / Rule(s): IACLEA 23.1.1, 23.1.5, 23.1.7: CALEA 84.1.1, 84.1.5, 84.1.7; UTS 23.1.1., 23.1.5, 23.1.7

I. PURPOSE:

To establish a uniform procedure to be used when personal property is impounded and to define certain instances in which vehicles may be impounded.

II. POLICY:

The Chief of Police or his/her designee of each campus is responsible for the safekeeping of all impounded property and for the proper disposition of those items, including any such items used as evidence.

Officers are to be reminded that inventories are not searches and are conducted for the purpose of protecting property and police personnel from harm.

Officers are to be reminded that the process of impounding and inventorying a vehicle cannot be used in lieu of obtaining a search warrant in a situation where probable cause exist and there is time to obtain a search warrant.

III. DEFINITIONS:

A. Impounding - taking into police custody for safekeeping

B. Inventory - compiling an itemized list of personal property

IV. VEHICLES:

A. Vehicles may be impounded in the following circumstances:

1. When the person with responsibility for the care, custody and control of the vehicle is arrested and impounding is reasonable and necessary to safeguard the vehicle and its contents
2. When the vehicle is recovered as stolen or wanted
3. When the vehicle has been abandoned on Tarrant County College District property
4. When the vehicle is illegally parked and blocking other traffic
5. As otherwise directed by the Chief of Police and/or his/her designee

- B. All vehicles impounded in conjunction with a custodial arrest will be inventoried and the following rules shall apply:
1. The inventory should be conducted by the officer handling the case.
 2. The person who had physical custody of the vehicle at the time of impoundment or a witness should be present during the inventory.
 3. The inventory will be conducted as soon as practical following the impoundment.
 4. The trunk compartment may be inventoried only if there are keys available or entry may be gained by less than destructive force.
 5. Opaque containers may not be opened for the purpose of inventorying their contents (this includes consoles, glove compartments, back packs, etc).
 6. During the inventory, a list will be made of all valuable items found in the vehicle, along with a description of any and all visible damage to the vehicle.
 7. All other vehicle impounds will be conducted in accordance with component institution and/or police department policy.

V. PERSONAL ITEMS:

- A. All personal items which come into police custody will be inventoried for the purpose of locating the owner, protecting the property and protecting the officer and/or the police department from claims of theft, damage, or injury as a result of impounding the property. Examples:
1. Abandoned property
 2. Found property
- B. In the event the property is a locked or secured container, an officer should consult with a supervisor before using force to open the container.

APPROVED
Shaun Williams
Chief of Police

REVIEWED BY OFFICE OF GENERAL COUNSEL:

APPROVED:
Angela Robinson
Vice Chancellor Administration & General Counsel

APPENDIX B

Case # _____

I, _____ having been informed of my Constitutional Right not to have a search made of the premises and/or vehicle hereafter described without a search warrant and of my absolute right to refuse to consent to such a search, knowing that if any incriminating material is found in can be used against me in court, do hereby authorize _____, Agent (s) of the Tarrant County College Police Department, to conduct a complete search of my premises and/or vehicle described as _____
_____.

The above named agents (s) are authorized by me to take from my premises and/or vehicle any letters, papers, materials or other property which they may desire.

This written permission is given by me to the above agent (s) voluntarily and without threats or promises of any kind.

(Signed)

(Date and Location)

WITNESS(S):

(Name, Title, Date and Location)