



SEARCH OF PERSONS & PROPERTY

Enforcement Division
Policy Number: LE 2.01.00

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POLICY

Certified peace officers (CPOs) will only conduct searches that are reasonable. A reasonable search is supported by probable cause, executed pursuant to a warrant or recognized exception to the warrant requirement, and conducted in a reasonable manner.

This manual contains additional policies and procedures for searches of licensed premises. Refer to *Search of Licensed Premises*, § 2.02.00 of this manual.

RULES

The United States Constitution, 4th Amendment

"The right of the people to be secure in their persons, houses, papers, and effect, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Texas Constitution, Article 1, Section 9

"The people shall be secure in their persons, houses, papers, and possession, from all unreasonable seizures, and 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."

Code of Criminal Procedure Chapter 18, Search Warrants

PROCEDURES

- a. **Determining Whether the Activity Constitutes a Search.** The CPO must decide whether an act constitutes a search. The following acts do not constitute a search and thus do not require a search warrant or the explanation of an exception to the search warrant requirement.
 1. Observing Objects in Plain View. A CPO does not conduct a search of an object when the object is located in a public area, or in an area where the CPO has a right to be. The object must also be where anyone, including the CPO, can plainly see it. CPOs will often observe objects in plain view in public areas as they conduct inspection and other enforcement activities.
 2. Searching Abandoned Property.
 - When a person abandons property, the person gives up his or her expectation of privacy with regard to the property.
 - A CPO will only consider property to be abandoned when:

- (1) the person clearly intended to abandon the property; and
- (2) the person's decision to abandon the property was not made because of CPO misconduct including improper stops, stops made without reasonable suspicion, or any violation of search or seizure laws.

b. **Exceptions to the Warrant Requirement.** If the CPO wants to conduct a search, the CPO must either get a search warrant or be able to explain a warrantless search by describing facts supporting one of the following exceptions.

1. Consent. *

- A CPO may obtain either verbal or written consent to search any person, place, or thing. If the CPO chooses to accept written consent, the CPO will complete the *Consent to Search* form.
- The person giving consent must have the authority to do so.
- The CPO may not coerce the individual into giving consent. The individual must voluntarily give consent.
- The person may withdraw consent at any time.

* *When a person accepts an alcoholic beverage permit or license, he or she consents to inspection of the premises for which he or she accepts the permit or license. See Search of Licensed Premises, § 2.02.00 of this manual, for policies and procedures.*

2. Protective Search.

- A CPO may conduct a protective search following a properly executed investigative detention. See *Investigative Detention*, § 2.05.00 of this manual, for related policies and procedures.
- The CPO must believe, based on specific and articulable facts that he or she is dealing with a person who may be armed or dangerous.
- The CPO will only search those areas for which the CPO believes, based on specific and articulable facts, that the person may be concealing a weapon. These areas include, but are not limited to areas within the person's immediate access and the person's clothing, purse, and car.

3. Search Incident to Lawful Arrest.

- When a CPO arrests a person, the CPO will search that person in order to remove any objects that could be used to escape or resist arrest, or to prevent possible destruction of evidence. Refer to *Warrantless Arrest* and *Arrest with Warrant*, §§ 2.06.00 and 2.07.00 of this manual, for related policies and procedures.
- Once a CPO lawfully arrests a person, the CPO does not need a warrant, probable cause, or reasonable suspicion to search the person—the only requirement is a lawful arrest.

- The CPO may search the person and the area within the person's immediate control.
- The CPO will search a subject at the time of arrest and again immediately before the CPO releases the subject to the detention facility in order to ensure that the subject possesses no weapons.

4. Exigent Circumstances.

- A warrantless search may be made if there is probable cause and exigent circumstances.
- The scope of a search conducted under the exigency exception will be limited by the nature of the exigency.
- Exigent circumstances include situations in which;
 - (1) a person's life is at risk;
 - (2) a person is threatened by serious injury;
 - (3) a felony crime is in progress;
 - (4) CPOs are involved in pursuit; or
 - (5) evidence is at risk of imminent destruction.
- CPOs will be able to explain the circumstances giving rise to the exigency.
- If a CPO conducts a warrantless search because a risk of imminent destruction of evidence, the CPO should be able to explain:
 - (1) the degree of urgency and the amount of time required to obtain a search warrant;
 - (2) the CPOs reasonable belief that the evidence was about to be destroyed or removed;
 - (3) the possibility of danger to CPOs guarding the premises while other CPOs get a search warrant;
 - (4) information showing that the persons in control of the evidence are aware of the CPOs activities; and
 - (5) the ready destructibility of the evidence.

5. The Inventory Search Exception to the Warrant Requirement.

- If a person is arrested and taken to a detention facility, CPOs may search the person's belongings.
- A CPO may search a subject's vehicle if the person was in or near the vehicle at the time of the arrest. Refer to *Vehicle Impoundment and Inventory*, § 2.08.00, for policies and procedures.

c. Conducting the Search

1. A CPO will not attempt a search of a person or property without sufficient personnel to complete the search safely.
2. When searching persons or property, CPOs will treat all individuals related to the search in a professional manner.
3. If the CPO is only conducting a protective search, and does not have reason to execute a full search, the CPO:
 - will not handcuff the subject, unless he or she can articulate why handcuffing is necessary for officer safety;
 - will only search areas in which the CPO reasonably believes, based on articulable facts, that the subject may be concealing a weapon;
 - may conduct a brief pat-down of the subject's outer clothing and any personal articles, such as purses;
 - may search the passenger compartment of a car, limited to areas within the subject's immediate area in which a weapon may be placed or hidden.
4. Other Searches of Persons.
 - The CPO will handcuff the subject securely before performing the search.
 - A CPO of the same sex as the person being searched will conduct the search. If a CPO of the same sex is not present, a CPO of the opposite sex may conduct the search.
 - If possible, a CPO conducting a search of someone of the opposite sex will locate an impartial witness of the same sex as the subject to observe the search.
 - When conducting a search of a person of the opposite sex, the CPO will conduct a frisk search of the person using the backs of his or her hands.
 - If the CPO discovers any illegal items during the search, he or she will seize those items. Refer to *Seizure of Property*, § 2.03.00 of this manual, for related policies and procedures.

FORMS AND EXHIBITS

Consent to Search