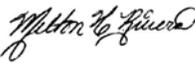


	<b>PALACIOS POLICE DEPARTMENT</b>	
	<b>Policy 7.4 Search Incident to Arrest and Other Searches Without a Warrant</b>	
	<b>Effective Date: 1/04/2021</b>	<b>Replaces: 02/07/2006</b>
	<b>Approved:</b>  <b>Milton Rivera, Chief of Police</b>	
	<b>Reference:</b> TBP: 7.07, 10.14, and 10.15	

## I. POLICY

In order to ensure that constitutional rights are protected, officers will obtain search warrants upon probable cause in all appropriate criminal cases except for the following circumstances. (Search warrants are discussed under Policy 7.5.)

Searches without a judicial warrant are strictly limited to those circumstances where the courts have granted officers limited exceptions. One of those exceptions was described in Policy 7.2, where, if during an investigative stop (detention), an officer has reasonable suspicion that an individual may be armed, and is able to articulate that suspicion, the officer may conduct a limited pat-down of the individual's outside clothing to protect the officer. Other exceptions to the search warrant requirement are provided in this policy.

## II. PURPOSE

The purpose of this policy is to establish guidelines for searches incident to arrest and other searches without a warrant.

## III. SEARCH INCIDENT TO LAWFUL ARREST

- A. The general rule is that a reasonable search may follow a valid arrest. The officer has the authority to make a search that may extend to articles carried by the suspect and to the suspect's immediate surroundings. The purpose of this search is to remove any weapons from the arrested person that could be used against the officer while in custody, to remove any items that might facilitate an escape, and to prevent the destruction of any evidence by the arrested person.
- B. A search incident to an arrest must occur in such a way that it and the arrest are part of a continuous, uninterrupted transaction. Two conditions are necessary for this to occur:
  1. The search must be made as soon as practical after the arrest.
  2. The search must be made at or near the place of the arrest.

- C. An officer making a search incident to an arrest may search only the following places:
  - 1. The entirety of the person being arrested.
  - 2. The area within the wingspan or physical arm's reaches of the person being arrested where the suspect might reach for a weapon or for evidence.
- D. Accessories, such as a purse or a backpack, carried by the suspect may be searched incident to a full custodial arrest for they are within the area in which the defendant might reach to grab a weapon or an item of evidence.
- E. Vehicles may be searched contemporaneous with the arrest of the occupant or driver only in the following circumstances:
  - 1. The arrested vehicle occupant is unsecured and within arm's reach of the passenger compartment at the time of the search and the officer can articulate a safety concern, or
  - 2. The officer has a reasonable belief that evidence related to the crime for which the arrest was made is located within the passenger compartment.
  - 3. Once an occupant has been arrested and secured and is unable to effectively reach the passenger compartment, the authority to search the vehicle for safety reasons is removed.
- F. Strip searches
  - 1. Strip searches shall not be conducted of persons arrested for traffic violations, or for Class C or B misdemeanors unless the officer has an articulable, reasonable suspicion that the person is concealing a weapon or contraband. Reasonable suspicion may be based on, but is not limited to, the following criteria.
    - a. Nature of the offense.
    - b. Arrestee's demeanor and appearance.
    - c. Circumstances of the arrest or evidence of a major offense in plain view or during the course of the arrest.
    - d. Arrestee's criminal record, particularly a history of violence or of narcotics offenses.
    - e. Detection of suspicious objects beneath the suspect's clothing during a search incident to an arrest.
  - 2. Strip searches shall be performed by persons of the same sex as the person arrested and at the jail or lock-up where the search cannot be observed by persons not physically conducting the search.
  - 3. No strip searches will be conducted in the field.
  - 4. In every case, the on-duty or on-call supervisor must review the need and expressly authorize the strip search.

5. When authorized by the supervising authority, strip searches may be conducted only under the following conditions:
  - a. In conformance with approved hygienic procedures and professional practices.
  - b. In a room specifically authorized for this purpose.
  - c. By the fewest number of personnel necessary and only by those of the same sex.
  - d. Where conditions provide privacy from all but those authorized to conduct the search.
6. Following a strip search, the officer performing the search shall submit a written report to the supervisory authority that details, at a minimum, the following:
  - a. Date and place of the search.
  - b. Identity of the officer conducting the search.
  - c. Identity of the individual searched.
  - d. Those present during the search.
  - e. The identity of the approving supervisor.
  - f. A detailed description of the nature and extent of the search.
  - g. The results of the search.

#### G. Body-cavity searches

1. Department personnel do not conduct body cavity searches other than an individual's mouth. If an officer has reasonable cause to believe a body-cavity search is needed to detect weapons, drugs, or other contraband, the following procedures apply:
  - a. The on-duty police supervisor is notified.
  - b. A search warrant is secured.
  - c. The detainee is transported to an appropriate medical facility.
  - d. The search is conducted by the on-duty emergency room physician, while officers stand by to take control of any evidence and provide security to the physician conducting the search.
  - e. ***Absent emergency circumstances cavity searches will not be conducted on City of Palacios premises.***
  - f. Body cavity searches are documented in the officer's arrest report, which will detail the officer's justification for such search, the approving supervisor's name, the location and persons present during the search, and the results of the search. A copy of the report and the warrant are forwarded to the Chief of Police for review and filing.
2. Prior to transporting the prisoner to the medical facility, the officer shall inform the prisoner of his or her intention to conduct a body-cavity search, thus giving the prisoner the opportunity to voluntarily surrender the suspected contraband.

## IV. CONSENT SEARCH

### A. Consent Searches

A search warrant is not necessary where a person who has authority or control over the thing or place to be searched consents to the search. Note that the officer is not required to have reasonable suspicion or probable cause to request a consent search. He or she may merely ask for permission from someone with control over the item or premises. If that person grants permission, the search may take place. The sole justification for a consent search is the existence of knowing, intelligent, and voluntary consent.

1. Consent searches must observe the following rules:
  - a. Generally, the person granting consent must use, access, or control the property. A person having use, access, or control of only a part of a jointly owned property can give consent for a search only of that part.
  - b. If two people have joint ownership of property, either may give consent where only one of the owners is present. If possible, officers should have all the consenting parties present sign a written permission-to-search form.
  - c. If both or multiple parties with joint ownership are present and any party refuses to consent to the search, the search cannot be performed.
  - d. A landlord, including a hotel or motel manager, cannot consent to a search of a tenant's premises unless the tenant has been evicted or has abandoned the property.
  - e. A husband or wife, or one member of a cohabiting unmarried couple, may consent to a search of areas in common ownership or use where only one is present. If both or multiple parties with joint ownership are present and any party refuses to consent to the search, the search cannot be performed.
  - f. A parent may consent to a search of premises occupied by a child under the age of majority if the parent also has access to the premises. If a dependent child is present and is over the age of majority, he or she may legally object to the search of an area that is jointly owned or possessed.
  - g. An employee cannot give valid consent to a search of his/her employer's premises unless he/she has been left in custody of the premises.
  - h. An employer may generally consent to a search of premises used by employees, except premises used solely by another employee (e.g., a locker).

- i. Consent must be given voluntarily. If an officer requests consent from a person under circumstances which a reasonable person would consider coercive, the search would not be consensual and the officers should seek a warrant. The officer has the burden of demonstrating that the consent was given voluntarily.
- j. A person who initially gives consent may withdraw it at any time. Officers shall then secure the premises and seek a warrant if probable cause exists.
- k. Refusal to give consent, in itself, cannot justify further law-enforcement action.
- l. The scope of a consent search is limited to the area for which consent has been given, and within this area officers may search only into areas where the objects sought could reasonably be hidden.

## 2. Documentation of Consent Searches

- a. Although verbal consent is valid, police officers will carry and use the Voluntary Consent to Search form. The form should be completed and signed by the consenting parties. All Consent to Search Forms shall be forwarded to the records unit for filing.
- b. If a person gives verbal consent but refuses to give written consent, police officers should consider the severity of the case along with viable options (e.g., obtaining a search warrant or some other exception to the search warrant requirement) before proceeding with the search.
- c. A police officer who is equipped with a body camera or dash camera shall record the request for consent and the person's response. The recording shall be preserved as evidence should evidence or contraband be discovered, or other enforcement action result from the search.
- d. A police officer who proceeds to search on verbal consent should remember that the burden of proof is always on the government.
- e. Police officers will not only have to prove the consent was voluntary, but that it was actually given (officer's word against defendant). Officers should attempt to take additional steps to eliminate this argument. For example, they could have an impartial third party witness the consent by signing the form.
- f. Police officers should make every effort to minimize conditions that could be offered as "threat or intimidation," such as the following:
  - i. Number of police officers present (especially in uniform)
  - ii. Amount of force used to detain or arrest, e.g., displaying firearms, use of handcuffs, etc.
  - iii. Language and tone of voice used in requesting consent
  - iv. Other non-verbal communications.

## **V. EMERGENCY SEARCH**

An emergency search is a search in which an officer makes a warrantless nonconsensual entry into a residence or building in order to protect someone's life or render emergency life-saving assistance to an occupant. This search is not based in criminal law enforcement principles; rather it is to save life. Examples of emergency searches include, but are not limited to:

1. Fire
2. Shouts for help
3. Unconscious person
4. Welfare checks, if the information known to the officer gives rise to a reasonable concern for the well-being of an occupant
5. Sounds of a fight coming from inside the residence

Officers should understand that once entry is made and the emergency has been rendered safe his or her authority to be in the residence has expired. Additionally, entry pursuant to an emergency does not then give the officer authority to search the residence for evidence of a crime.

The test for the validity of an emergency search will be whether a reasonable officer, under the same circumstances, would have believed there was a threat to life or limb of an occupant.

## **VI. MOTOR VEHICLE SEARCH BASED ON PROBABLE CAUSE**

- A. In recent years, the U.S. Supreme Court has modified and expanded the conditions under which officers may search vehicles. Preferably, officers shall search vehicles under the authority of a warrant, although it often happens that there is not sufficient time to obtain one. However, warrantless searches of vehicles may take place under a number of conditions and circumstances. It is imperative that officers understand the different types of vehicle searches and their limitations.

NOTE: With a warrant, a search may extend anywhere within the vehicle unless the warrant itself imposes limits.

### **B. Definitions**

1. For the purposes of this section, a motor vehicle is any vehicle operating or capable of being operated on public streets or highways, from trucks to automobiles to mobile homes. A vehicle that has been immobilized in one location for use as a storage facility or home is not a motor vehicle for fourth amendment purposes.
2. For the purposes of this section, a search is an examination of a motor vehicle with an investigative motive, that is, to discover evidence or to examine the vehicle identification number (VIN) to ascertain ownership.

A motor vehicle may be searched without a warrant if the following conditions are present:

1. The officer has probable cause to believe the motor vehicle is being used to transport contraband
2. The motor vehicle is mobile or readily mobile

The scope of a motor vehicle search is the entire motor vehicle, including containers in the motor vehicle in which the suspected contraband could fit.

If contraband is located by way of a lawful frisk or search of an occupant of the motor vehicle, the officer may rely upon this as probable cause to search the motor vehicle for additional contraband. The reverse is not the case. The discovery of contraband in a motor vehicle will not automatically authorize a search of the occupants of the motor vehicle. Officers must be able to articulate individualized probable cause to search the occupants.

An entry into the vehicle to examine the VIN or otherwise determine ownership must be limited to these purposes. An emergency search of the vehicle may be conducted but the extent of the search must not exceed whatever is necessary to respond to the emergency.

Note: If the initial search under the above conditions gives rise to probable cause that evidence, contraband, fruits of a crime, or instrumentalities of the crime might be found elsewhere in the vehicle, officers may search those areas that might reasonably contain such items.

#### A. Containers within the vehicle

1. As a rule, no container within a vehicle shall be searched unless it might contain the item(s) sought.
2. Procedures for unlocked containers
  - a. In a probable cause search, containers may be opened wherever found in the vehicle.
  - b. When the passenger area is searched incident to an arrest, containers within the passenger area may be opened.
  - c. During a consent search, containers may be opened provided that the terms of the consent either permit the search or reasonably imply permission.
  - d. Containers found in or discarded from a vehicle under circumstances not amounting to probable cause or in connection with a search incident to an arrest shall not be searched but shall be secured until a warrant is obtained.
  - e. The abandonment doctrine does apply to containers thrown from a vehicle by a suspect.
3. Procedures for locked containers
  - a. Under most conditions, locked containers shall be opened under a warrant unless one of the following circumstances has been met:
    - i. Consent has been given.

- ii. Probable cause exists to search the vehicle and the object of the search might be found in the container. (Even in this circumstance, a warrant is preferred.)
- iii. Inventory, only if a key is present.

**B. Conduct of the vehicle search**

- 1. When possible, searches of vehicles shall be conducted contemporaneously with the stopping or discovery of the vehicle. As a general rule, vehicle searches shall be conducted as soon as reasonably possible.
- 2. When possible, officers shall avoid damaging a vehicle or its contents, and shall minimize the intrusiveness of the search and any inconvenience suffered by the passengers or owner.

As vehicles may contain sharp or pointed objects, and perhaps even syringes or other materials with body fluids on them, officers shall take precautions to minimize exposure to communicable diseases.

**VII. INVENTORY OF A MOTOR VEHICLE**

When an officer has decided to lawfully impound a motor vehicle the officer shall inventory the contents of the motor vehicle pursuant to Policy 7.16 Vehicle Impoundment and Inventory. An inventory is not considered a search – it is an administrative caretaking procedure to protect to department from false claims.

Prior to impounding a motor vehicle an officer shall consider reasonable alternatives to impounding the vehicle. Those alternatives include:

- 1. Leaving the vehicle at the scene, or
- 2. Releasing the vehicle to a licensed driver at the scene

Officers shall follow Policy 7.16 Vehicle Impoundment and Inventory when impounding motor vehicles.

**VIII. FRISK**

**A. PERSONS:**

A frisk is a limited search for weapons. A frisk, by definition, occurs during a lawful detention. Officers shall not frisk a person during a consensual encounter unless the circumstances escalate to the point where the officer has reasonable suspicion to detain and can articulate a fear for his or her safety. A frisk of a person during a consensual encounter will most likely turn the consensual encounter into a seizure. Officers should conduct a full search of a person who has been arrested.

Officers do not have the authority to automatically frisk a person who has been detained. Officers shall articulate and document specific facts and circumstances that caused the officer to fear for her or his safety.

A frisk is conducted by patting down the outer clothing for weapons. If an officer detects contraband during a frisk the officer may proceed under the plain touch doctrine.

## **B. MOTOR VEHICLES**

A motor vehicle may also be frisked. The following requirements must be met:

1. It must be a lawful detention
2. Facts and circumstances must be present to cause a reasonable officer to fear for her or his safety from an occupant of the vehicle
3. The occupant causing the concern must be frisked first
4. The officer must intend to release the detainee and allow the person back into the car, e.g. a traffic citation as opposed to an arrest
5. The officer may frisk the area in the passenger compartment that is immediately accessible to the detained person once returned to the vehicle.

## **IX. PLAIN TOUCH**

The plain touch doctrine authorizes an officer to go into a detainee's pocket to retrieve contraband if the officer detects the contraband through the sense of touch during a lawful frisk.

Extensive manipulation of the item to ascertain its nature is not permitted.

If the officer detects a solid container of some sort the plain touch doctrine does not authorize the officer to open the container to ascertain its contents. The officer will have to have another search warrant exception to open the opaque container.

## **X. IMMINENT DESTRUCTION OF EVIDENCE**

An officer is authorized to make a warrantless, nonconsensual entry into a residence or building to prevent the imminent destruction of evidence:

1. It must be the type of evidence that can be easily lost or destroyed
2. The destruction of the evidence must be imminent
3. The attempted destruction cannot be prompted by police misconduct

Once the evidence that was the subject of the attempted destruction is secured officers shall secure the residence and obtain a search warrant to search the residence for additional evidence or contraband.

## **XI. ENTRY INTO A RESIDENCE TO EFFECT ARREST**

Both state statutes and federal case law regulate entry to make an arrest. The primary focus of any entry to make an arrest is the safety of the officers executing the warrant and the occupants of the residence. Knocking on the door affords the occupants time to answer the door and comply with the officer's orders.

A. WITH ARREST WARRANT

Officers may force entry to execute an arrest warrant subject to the following rules:

1. Felony warrant
2. Officer is entering the residence where the person named in the warrant resides
3. Denied admittance after knocking and announcing
4. Knocking and announcing may be waived under the following circumstances: knocking and announcing will prompt an escape attempt, place the officer(s) in danger, or the suspect is already aware of the officer's presence.

B. WITHOUT ARREST WARRANT – SUSPECT OBSERVED OUTSIDE RESIDENCE

When officers observe a dangerous felon in a public place and are authorized to arrest without a warrant, officers may pursue and force entry into a residence to arrest the dangerous felon without an arrest warrant. The following requirements must be met:

1. The offense must be a dangerous felony. A dangerous felony can best be characterized as one that involves a component of violence or threatened violence
2. The officer must already have probable cause to effect the arrest
3. There must be a true exigency to justify the entry e.g. escape, danger to occupants

C. WITHOUT ARREST WARRANT – OFFENSE OCCURS INSIDE RESIDENCE WITHIN OFFICER'S VIEW

1. Police officers who observe criminal activity occurring inside a private place from outside the private place may not always be able to secure a proper warrant in a timely manner and will adhere to the following guidelines:
  - a. If the offense is a misdemeanor, police officers will not enter except under the following circumstances:
    - i. Valid consent is given by a person with authority to grant such permission and who lives at the residence.
    - ii. There is reason to believe someone inside the residence is in immediate danger of life or limb
    - iii. The officer reasonably believes the destruction of contraband or other evidence is imminent if it is not immediately recovered.
  - b. If the offense is a felony, police officers will not enter except under the following circumstances:
    - i. Valid consent is given by a person with authority to grant such permission and who resides at the location.

- ii. The officer reasonably believes the destruction of contraband or other evidence is imminent if it is not immediately recovered.
- iii. There is reason to believe someone inside the residence is in immediate danger of life or limb.

## **XII. PLAIN VIEW**

Plain view. A plain-view seizure is, technically, not a search. To make a plain-view seizure of property, such as contraband, fruits of a crime, or instrumentalities of a crime, the following two requirements must be met:

From a lawful vantage point, the officer must observe contraband left in open view.

2. It must be immediately apparent to the officer that the items he or she observes may be evidence of a crime, contraband, or otherwise subject to seizure.

## **XIII. OPEN FIELDS, CURTILAGE, ABANDONMENT**

A search warrant is not required for property that has been abandoned.

1. For property to be considered abandoned the following three conditions must apply:
  - a. The property was voluntarily abandoned.
  - b. The abandonment was not a result of police misconduct.
2. Open fields are not protected by the Fourth Amendment, but officers must distinguish them from curtilage, searches of which require a warrant. Curtilage is the area of a dwelling that is necessary, convenient, and habitually used by the family for domestic purposes. The extent of curtilage of a private residence is determined by the following:
  - a. Whether the area is enclosed, but an enclosure is not required to establish curtilage.
  - b. The nature and use of the area.
  - c. The proximity of the area to the home.

Note that under some circumstances surveillance (e.g., aerial surveillance) of activities within curtilage may take place without a warrant.