

**TYLER POLICE DEPARTMENT  
GENERAL ORDER  
[CALEA 1.2.4; 1.2.5;  
1.2.6; 1.2.7; 1.2.8]**

**ARREST, SEARCH & SEIZURE**

**12.400**

**REVISED 07/25/10**

**EFFECTIVE 12/01/90**

**12.401 PURPOSE/DEFINITIONS - [CALEA 1.2.4]**

- A. The purpose of this directive is to establish guidelines for the exercise of arrest and/or search and seizure authority by Department members and for the conduct of actions pursuant to such authority to assure compliance with constitutional and statutory requirements as well as maximum safety of officers and citizens, minimal property damage, and successful arrests and searches.
1. Officers are expected to be familiar and comply with the statutory provisions relating to:
- a. The authority and jurisdiction of police officers;
  - b. required contents of arrest and/or search warrant affidavits and warrants; and
  - c. procedures for execution of arrest and/or searches without warrant and for arrests and/ or searches and seizures pursuant to warrant.
- B. 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.
- C. The following definitions apply to the terminology used in this directive:
1. Access Area. The area into which an arrestee might reach in order to grab a weapon or evidence; synonymous with area of immediate control.
  2. Area of Immediate Control. See Access Area.
  3. Arrest. The intentional seizure of a person, whether actual or constructive, by an officer or other person who is acting under real or assumed legal authority to do so.
  4. Bodily Injury. Physical pain, illness, or any impairment of physical condition.
  5. Breach of the Peace. An act causing consternation or alarm which disturbs the peace and quiet of a community or tends to incite violence or provoke or incite others to breach the peace.
  6. Continuing Offenses. An offense, which occurs over a period of time during which there is no intermission.
  7. Crime of Violence. An offense in which an instrument capable of inflicting serious bodily injury is used or in which serious bodily injury results.
  8. Curtilage. The yard and building 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 apartments or multi-unit dwellings.
  9. Exigent Circumstances. Emergency, unforeseen occurrence or combination of circumstances which calls for immediate action; exigent circumstances may exist when there is a possibility:
    - a. That a wanted suspect may escape;
    - b. of bodily injury to any person;
    - c. that important evidence may be lost or destroyed; or
    - d. of serious damage to property, real or personal.
  10. In determining whether exigent circumstances exist, an officer may properly consider any relevant information, including but not limited to:

- a. time and place;
  - b. nature of any offenses involved;
  - c. actions and numbers of any persons involved;
  - d. natural and physical conditions;
  - e. availability of equipment, tools, personnel, reinforcements, and other resources; and
  - f. information acquired through personal observation, through official channels, or from informants.
11. Felony. An offense so designated by law or punishable by death or confinement in a penitentiary or state jail facility.
  12. Frisk. A search of a person limited to a pat-down of the outer clothing or the search of nearby access areas to discover if the person is armed.
  13. Misdemeanor. An offense so designated by law or punishable by fine, confinement in jail or both.
  14. Offender. A person who an officer has reasonable suspicion to believe a person has committed an offense or has probable cause to arrest.
  15. Element of Offense. The forbidden conduct; the required culpability; and required result; and the negation of any exception to the offense.
  16. In the Presence of. When a police officer is aware that an offense is being committed through some or all of the five senses, based on training and experiences even though the officer cannot see it, the offense occurs in the officer's presence.
  17. Probable Cause. The sets 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 been guilty of, 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. Based upon the totality of the circumstance from above.
  18. Protected Area. A place protected by the Fourth Amendment and Article 1 Section 9 of the Texas Constitution guarantee against unreasonable searches and seizures, or any location whereby a person might reasonably have an expectation of privacy.
  19. Reasonable Suspicion. The set of articulate 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. Based upon the totality of the circumstance from above.
  20. Seizable Items. All items listed in Texas Code of Criminal Procedures Chapter 18 and Chapter 59, including but not limited to, weapons, contraband, evidence, instrumentalities, or fruit of a crime.
  21. Serious Bodily Injury. Bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of any bodily member or organ.
  22. In The View Of. When an officer observes an offense being committed, it is within the officer's view.

12.402 ARREST AND/OR SEARCH WITHOUT WARRANT - [CALEA 1.2.4; 1.2.6; 1.2.7; 1.2.8]

- A. Chapter 14 of the Texas Code of Criminal Procedure specifies those circumstances in which a peace officer may arrest without a warrant. In addition, an officer may, in order to prevent the consequences of theft, seize stolen property and arrest the alleged offender if there are reasonable grounds to suppose the property is stolen pursuant to Section 18.16 of the Code of Criminal Procedure. Proximity to the scene and time of the offense, however, is critical to overcome the assumption that there was sufficient time to obtain a warrant. A person may also submit to arrest

and waive any warrant requirements. The submission must be voluntary and the waiver must be recorded on the appropriate Department form.

1. Officers are expected to use discretion in the exercise of their authority to arrest without warrant. Except in situations involving crimes of violence, an officer is not obliged to make an arrest without a warrant in every instance where the officer would otherwise be authorized to do so.
  - a. Among the factors an officer may properly consider in determining not to arrest are:
    - (1) If the victim is not seriously interested in prosecution because the victim desires restitution only or the victim is in a continuing relationship with the offender (Note exception in domestic violence cases, where Tyler Police officers will arrest pursuant to appropriate law);
    - (2) if the offense arose out of some illegal activity engaged in by the offender and the victim;
    - (3) if the offender is an informant or willing to become one and Supervisory approval is obtained.
    - (4) If the offender can be referred to another agency, which is better equipped to deal with the problem;
    - (5) if the actual damage done to property is minimal;
    - (6) whether arrest would result in unnecessary harm to the victim or offender, which would outweigh the risk of non-arrest.
    - (7) The offender's physical condition.
  - b. An officer may arrest an offender despite the presence of one or more of the facts listed above. Before releasing as permitted above, the following should be considered:
    - (1) If the offender is under investigation for another offense and an in-custody investigation is desirable;
    - (2) if the offense involves excessive or substantial loss or damage to property;
    - (3) if arrest is necessary to safeguard witnesses or evidence;
    - (4) if arrest is necessary to prevent the offender from warning other conspirators;
    - (5) where arrest is necessary to promote compliance with the law.
  - c. In determining whether or not to arrest, the officer shall not consider the race, creed, religion, or any other arbitrary classification of the offender or victim.
  - d. An officer must articulate the reason(s) for making the arrest or for not making an arrest in the narrative of the report.
  - e. All class C traffic offenses must have supervisor approval prior to custodial arrest.
2. An officer may delay making an arrest to avoid the use of force against an offender if so doing will not jeopardize the arrest.
3. An officer shall insure that the person arrested is aware that the person is being placed under arrest.
  - a. When not in uniform, the officer shall display their badge and identification and state their name and that they are an officer with the Tyler Police Department,

unless circumstances so prohibit.

- b. The person shall be informed of the officer's intention to take the person into custody and the reason for the person's arrest unless:
    - (1) The person is in the act of committing the offense;
    - (2) the person is fleeing from the scene of the crime;
    - (3) the officer is endangered; or
    - (4) the arrest would be imperiled.
  4. An officer may place an unconscious, insane, or injured person under arrest even though such person is incapable of understanding that the person is under arrest.
  5. At the time of arrest or thereafter, if an arrestee asserts mistaken identity or plausible alibi, mistake, or defense, a reasonable investigation will be made to clarify, confirm, or refute it.
  6. The authority for a Tyler Police Officer to arrest without a warrant outside of his jurisdiction will be governed by the Code of Criminal Procedure Article 14.03 (d) & (g), and Article 18.16 or hot pursuit.
- B. An officer may conduct a search and/or seize property without a warrant only in those circumstances specified below:
1. An officer may without a warrant seize any seizable property if:
    - a. The officer lawfully occupied the officer's vantage point when the officer observed the property;
    - b. the officer can observe and seize the property without unreasonably intruding on any persons's reasonable expectation of privacy (without making an entry);
    - c. the officer actually observes the property through the senses;
    - d. the property actually observed lies in open view;
    - e. the property is immediately recognizable as contraband.
  2. When practical, and if the imminent destruction or removal of the property appears unlikely, a search warrant should be obtained; if necessary and practical, an officer may guard the property until the search warrant can be executed. If exigent circumstances exist making likely destruction or removal and the area or property cannot be sealed or secured, entry and/or seizure may be done; if appropriate, a search warrant should then be obtained.
  3. An officer who is lawfully outside a protected area in which the officer observes seizable items may, if meeting the standard specified in the immediately preceding section:
    - a. Make a warrantless entry to effect an arrest for a crime being committed in the officer's presence provided the officer has probable cause for such an arrest and exigent circumstances preclude obtaining a warrant; or
    - b. make a warrantless entry on a vessel or vehicle provided exigent circumstances are present (See Rules on Searches of Vehicles and Occupant).
  4. An officer may conduct a search incident to a lawful custody arrest. Such search shall be confined to the person arrested and the area under the person's immediate control or within the person's reach at the time of arrest.
    - a. An officer may search beyond the arrestee's access area only if the officer has reason to believe that such an expanded search is necessary to protect the officer(s) present from possible harm by other persons on the premises. The expanded search shall be limited to locating and containing the movements of all

persons who present a threat to the safety of the officer(s). Any object, which may be used as a weapon, shall also be controlled.

- (1) Any officer lawfully in any place in order to effect an arrest may not go into other rooms or parts of the premises solely for the purpose of looking for seizable items; however, if an officer has probable cause to believe that there are seizable items on the premises, the officer may make an immediate general inspection of the premises where an arrest has just been made if the officer has reasonable grounds to believe there are persons on the premises who are likely to conceal, remove, or destroy the items while a search warrant is being obtained. Seizable items observed in plain view during this general inspection may be taken into custody.
- (2) While a search warrant is being obtained, an officer may refuse to admit any person who does not own the premises or reside therein.
- (3) If the officer has probable cause to believe that:
  - (a) There are seizable items on the premises; and
  - (b) persons on the premises might conceal, remove or destroy these items; and
  - (c) the discovery is inadvertent they may ask such persons to leave the premises or to allow an officer to remain inside the premises for a reasonable period of time while a search warrant is obtained. If such persons fail to comply with either request, the officer may take reasonable measures to protect the items from removal or destruction.

b. The search of a person incident to arrest may not extend beyond the person's immediate control.

- (1) In the absence of an emergency, a search warrant is required for a search extending beyond the person's immediate control. An emergency exists when the officer reasonably believes that the evidence might be destroyed due to the delay necessary to obtain a warrant.
- (2) In order to conduct a body cavity search the officer must first obtained a signed voluntary consent to search form or have issued a search warrant detailing the probable cause to authorize the search. A search of body cavities shall be conducted by a physician in a medically approved manner under sanitary conditions. Officers should be aware that the physician may decline to conduct the search at which point an x-ray of the individual may be considered. A strip search is only allowed when there is a reasonable belief the prisoner is carrying weapons, controlled substance or any other item thought to be evidence. All strip searches necessitate the approval of a lieutenant or higher who will be required to write a supplement report detailing the justification for the strip search. Two officers of the same gender in a secure and private location will conduct any authorized strip search. Every effort will be made to minimize the discomfort and embarrassment of the prisoner during the search. Incidents involving a strip or body cavity search will be documented in the official police report.
- (3) When an officer has probable cause to believe that a person has evidence in the person's mouth, the officer may use reasonable force to

recover the evidence and to prevent apparent attempts to swallow it. Reasonable force **DOES NOT** include any type of choke hold to the neck or throat area, any form of grabbing the throat or neck, any form of neck restraint, or carotid restraint. Reasonable force options **DO** include verbal commands to the suspect, advising the suspect of the consequences and hazards of swallowing narcotics, the use of O.C. spray, as instructed in the proper use of O.C., or pressure points to the area around the mouth, i.e. the chin. When narcotics are recovered from the suspect's mouth, an on-duty supervisor will be notified. If the above listed reasonable force options fail, and the suspect is believed to have swallowed narcotics, the suspect will either be transported to the hospital or an ambulance will be called to the scene.

- c. An officer shall obtain a search warrant whenever the officer obtains an arrest warrant if time permits and has probable cause to believe that seizable items will be found at the expected place of arrest.
  - d. An officer shall obtain a search warrant whenever the officer obtains an arrest warrant and plans to arrest (or later discovers that the subject will be arrested) in premises not controlled by the subject or in the case of a misdemeanor warrant and there is no consent to enter.
5. A prisoner may be searched during the booking process in order to:
- a. Remove items, which the prisoner might use to escape;
  - b. remove items, which the prisoner might use to injure themselves;
  - c. inventory and protect the prisoner's property from damage or theft while the prisoner is incarcerated; and
  - d. discover contraband or items of seizable property.
6. Search Based on Probable Cause with Emergency Circumstances.
- a. An officer may make a search without a warrant when the officer has probable cause to believe an emergency exists.
  - b. An officer may enter any premises or vehicle without a search warrant whenever the officer reasonably believes that immediate entry is necessary to:
    - (1) Aid persons in immediate danger of death or serious bodily harm; or
    - (2) prevent the imminent destruction of seizable property and there is lack of time to obtain a warrant.
- Extreme caution should be exercised on such entries, as legal authority is not consistent.
7. An officer may without a warrant search for and seize seizable items, where the officer's presence is permitted by law.
8. An officer may without a warrant search and seize any abandoned property, if the officer's presence is legally authorized.
9. When an officer wants to make a search, which is not authorized by these rules and for which the officer cannot obtain a warrant, the officer may request consent to search from any person who has authority over the thing or place to be searched. Should more than one person have the same degree of authority over the thing or place, then consent must be obtained from each person. A refusal by one or more of the persons prevents consent from being given.

- a. The officer may advise the person whose consent is sought that the person has the right to refuse to consent and that anything found may be seized as evidence.
- b. An officer shall not conduct a consent search unless the person consenting signs the Department consent form, except in those situations where the person will give oral consent and is incapable or refuses to sign the consent form. Provided however that where oral consent is given there should be one other witness. Any oral consent will be documented.
- c. Consent may be limited or revoked at any time. If this is done, the officer must immediately stop the search or restrict it to the new limits. Seizable items discovered prior to the withdrawal or limitation of consent shall be seized.
- d. An invitation to enter the premises does not give the officer consent to search.
- e. An officer who seeks consent to search from a person who is in custody or under arrest may inform the person that the person has the right to refuse to give consent, that anything found may be seized and used as evidence against that person, and that the person has the right to consult with an attorney before deciding whether or not to consent.

10. Search of Vehicles and Occupants.

- a. When a vehicle is stopped and there is reasonable suspicion that a person in that vehicle is armed, officers may require that person to exit the vehicle and submit to a frisk. In such circumstances, officers may also frisk access areas of the vehicle in order to discover weapons. When searching a vehicle, driver or occupants of a vehicle as a result of a traffic stop special attention should be paid to the Procedures portion of the Bias-Based Profiling policy listed in General Order 12.604.
- b. When any person in a vehicle is to be subjected to a full custody arrest for any offense, that person shall be fully searched prior to any transport, including any bags, luggage or any other belongings that are to go with the arrested. Any other searches or inventories will be conducted in accordance with state and federal law. When a person in a vehicle is to be issued a citation for a traffic violation and released, the person may not be subjected to a full search unless the authorizations of Section a. above apply.
- c. Where an officer has probable cause to believe that a vehicle contains contraband, evidence, instrumentalities, or fruits of a crime, the officer may obtain a search warrant for the vehicle, except where it appears at the time that to obtain a warrant would cause such delay as to result in the likely destruction, removal, or disappearance of the evidence; in such case, a search warrant need not be obtained.
  - (1) An officer searching under this section may search only those areas of the vehicle, which could physically contain the seizable items sought.
  - (2) A search authorized by this section, where an arrest is made and the vehicle is not to be impounded, should occur at the scene of the arrest as soon as everyone 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 being searched.
  - (3) When it is not practical to conduct a search under this section at the scene of the arrest, for such reasons as hostile crowd, bad weather, traffic conditions, lack of needed equipment, delay in order to obtain a search warrant, or unavailability of keys, the vehicles must be secured in police custody at all times until it is searched. While a search may be permissible after removal from the scene, it is preferable that a search warrant be obtained. The search should be conducted as soon as

practical.

(4) Factors to be considered in determining whether a search without a warrant is appropriate under this section should include:

- (a) Whether the vehicle is in such condition that it could be easily removed from the jurisdiction;
- (b) whether any person might obtain access to the evidence believed to be contained in the vehicle;
- (c) whether the nature of the evidence is such that it is likely to be destroyed by the passage of time or exposure to the elements; or
- (d) the likelihood that any person would know of the intended search who would have access to the vehicle and would be inclined to remove or destroy the evidence.

(5) 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.

- d. When an arrest is made and the vehicle is to be impounded, an Impound Inventory shall be conducted prior to any search with or without warrant authorized by these rules.
- e. Where an arrest is not made, permissible search, if any, should be made at the scene.
- f. Where new facts are developed through inventory or search, appropriate changes in the dispositions of the subjects and vehicle are permitted.
- g. When an officer has grounds under section d above to search a vehicle, the officer may either conduct the search at the place where the vehicle is located, or, where justification exists as set forth in section 12.402 B 10 c (3) above remove the vehicle to more convenient location. When the search is made under section 12.402 B 10 b above, it must be conducted at the time and place of arrest.
- h. If an officer has probable cause to believe that a vehicle has been the subject of burglary, tampering, or theft, the officer may make a limited entry and investigation without a search warrant of those areas the officer reasonably believes might contain evidence of ownership.
- i. If an unoccupied vehicle is parked in an illegal location or is otherwise blocking traffic, an officer may search those areas the officer reasonably believes might contain evidence of ownership. If the vehicle is impounded, an inventory will be made.
- j. There will be no disassembly of a vehicle without the approval of a Supervisor.
- k. Whenever possible, an officer shall open a locked truck or glove compartment by means of a key rather than force.
- l. Whenever an officer wishes to make a vehicle search not otherwise authorized by these rules, the officer may do so if the person(s) in control of the vehicle voluntarily gives consent. The officer shall not coerce consent by threat or force or by claiming that the officer could conduct the search without consent, and the officer must obtain the written consent on the Department consent form except as provided in 12.402 B 9 b above.

#### 12.403 PROBABLE CAUSE

- A. An officer who has reasonable time and opportunity to obtain an arrest/search warrant should do so. No warrantless arrest or search or seizure shall be made except on determination of the



existence of probable cause in compliance with the terms of this directive or any other appropriate standard of law.

- B. The officer shall employ the special training, skills, and experience as a peace officer in determining whether probable cause exists.
- C. The officer may consider all the lawfully acquired information available to the officer at the moment of the arrest or search regardless of its admissibility at trial.
- D. The officer shall record all the facts surrounding circumstances available to the officer at the time of the arrest or search.
- E. Mere suspicion may be used as an initial step to establish reasonable suspicion for temporary detention or probable cause for arrest but may not be used for arrest or search or detention. In order to establish probable cause, an officer may further investigate their suspicions.
- F. Probable cause to arrest/search exists when an officer has reason to believe:
  - 1. For an arrest, that:
    - a. A person has committed an offense, although the officer does not know precisely what offense has been committed; or
    - b. a person has committed a particular offense, the method of which is uncertain.
  - 2. For a search, that;
    - a. a person possesses seizable items; or
    - b. a place contains seizable items.
- G. When existence of probable cause is in doubt, the officer shall investigate further before making an arrest or search. Arrest for investigation is not authorized.
- H. The officer's good faith, in the absences of probable cause, will not justify an invalid arrest or search.
- I. When information from an informant is necessary to establish probable cause, the officer must be able to articulate:
  - 1. The reason(s) for believing the informant to be reliable; and
  - 2. the underlying circumstances from which the informant concluded that the offense was committed and that a particular person committed it (in the case of arrest) or that the seizable items existed and were present on a person or at a particular place (in the case of search); or
  - 3. the observed details which verify the informant's information.

In most cases, all three should be articulated; however, in special circumstances where the evidence is strong, informant reliability and the verifying details may be used in combination to bolster and supplement a case where the underlying circumstances are lacking, and underlying circumstances and observed details may be used in combination to bolster and supplement a case based on an informant whose reliability has not been sufficiently established.
- J. An officer shall seek some confirmation of information that is received from a victim or witness.
  - 1. The officer shall determine that the victim or witness was able to observe and remember

- what happened.
2. Directly observable results of an offense or details consistent with the information received can serve as a partial confirmation of the commission of the offense.
  3. Where circumstances suggest that the victim/ witness's allegations may be untrue, the officer shall investigate further before making an arrest or search.
  4. The more doubt an officer has about the victim/witness's veracity, sincerity, or ability to perceive, the more the officer will need to confirm the information.
- K. An officer may make an arrest when requested to do so by another officer. It is not necessary that the arresting officer have probable cause to make the arrest; however, the requesting officer must have had probable cause.
- L. An officer who is in hot pursuit of a fleeing felon may pursue the felon into a vehicle or premises in order to arrest the felon. Following entry the officer may search the premises only to the extent necessary to locate the suspect and protect the officer or other officers present. Once the suspect is arrested, any further searching can only be done in compliance with rules specified elsewhere in this directive or any other appropriate standard of law.

Approved: 07/25/10

A handwritten signature in black ink, appearing to read "Anthony J. Scudlark". The signature is written in a cursive style with a large initial "A" and "S".