

TEXARKANA POLICE DEPARTMENT

GENERAL ORDERS MANUAL

SUBJECT	Search and Seizure		
NUMBER	1106.06	EFFECTIVE DATE	July 12, 2017
Scheduled Review Date	August 30, 2018	ISSUE DATE	July 12, 2017
Date Reviewed	July 12, 2017	REVISION DATE	July 12, 2017
APPROVED BY		ALEAP Standards	7.09; 10.14; 10.15

I. Purpose and Scope

- A. The purpose of this policy is to provide guidelines and procedures for Texarkana Police Department personnel to follow while conducting searches and seizures that have not been reviewed and authorized by judicial personnel by way of a warrant.

II. Policy

- A. It shall be the policy of the Texarkana Police Department that all searches and seizures conducted by its members be performed in a lawful manner and supported by the provisions governing such conduct contained within the Constitution of the United States and the Constitution of Arkansas.
- B. Pursuant to the reporting standards established by the department, it shall be the policy of the Texarkana Police Department to require its officers to make sure the facts and circumstances surrounding an officer's involvement, participation or knowledge concerning police incidents based upon the guidelines found within this policy are properly documented within an offense report, a supplemental report or an arrest generated and maintained within the police department's Records Management System, commonly referred to as ADSi.
- C. All members of the Texarkana Police Department shall recognize and adhere to the guidelines contained within this policy. Supervisors shall ensure compliance with this policy wherever applicable.

III. Definitions

- A. For purposes associated with this policy, the following definitions as set forth within the Arkansas Rules of Criminal Procedure will apply:
 - 1. Search—Any intrusion, other than an arrest, by an officer under color of authority, upon an individual's person, property, or privacy, for the purpose of seizing individuals or things or obtaining information by inspection or surveillance, if such intrusion, in the absence of legal authority or sufficient consent, would be a civil wrong, criminal offense, or violation of the individual's rights under the Constitution of the United States or this state.
 - 2. Seizure—The taking of any person or thing or the obtaining of information by an officer pursuant to a search or under other color of authority.
 - 3. Search Warrant—An order issued by a judicial officer authorizing a search or a seizure or both.

Page 1 of 9	Number: 1106.06	Effective Date: July 12, 2017
Subject: Search and Seizure		Revision Date: July 12, 2017

4. Officer—A law enforcement officer or other person acting under the color of authority to search and to seize.
5. Individual—A person, to include a corporation.
6. Vehicle—Any craft or device for the transportation of persons or things by land, sea or air.
7. Property—Any real or personal property, including vehicles.
8. Reasonable Cause to Believe—A basis for belief in the existence of facts which, in view of the circumstances under and purposes for which the standard is applied, is substantial, objective, and sufficient to satisfy applicable constitutional requirements.
9. Reasonable Belief—A belief based upon a reasonable cause to believe.

IV. Permissible Objects of Seizure

- A. The following are subject to lawful seizure, in accordance with Rule 10.2 of the Arkansas Rules of Criminal Procedure:
 1. Evidence of or other information except privileged information concerning the commission of a criminal offense or other violation of the law;
 2. Contraband, the fruits of crime, or things possessed in violation of the laws of the State of Arkansas;
 3. Weapons or other things used or likely to be used as a means of committing a criminal offense; and
 4. An individual for whose arrest there is reasonable cause, or who is lawfully held in confinement or other restraint.

V. Stopping and Detaining of Persons

- A. A law enforcement officer lawfully present in any place may, in the performance of his/her duties, stop and detain any person who he/she reasonably suspects is committing, has committed or is about to commit the following types of offenses:
 1. A felony offense; or
 2. A misdemeanor offense involving danger of forcible injury to persons or of appropriation of or damage to property, if such action is reasonably necessary either to obtain or verify the identification of the person or to determine the lawfulness of his/her conduct.
- B. An officer acting under this rule may require the person to remain in or near such place in the officer's presence for a period of time of not more than fifteen (15) minutes or for such time as is reasonable under the circumstances.
 1. At the end of such period the person detained shall be released without further restraint, or arrested and charged with an offense. ^{ARCP 3.1}
- C. Officers who have detained a person shall immediately advise that person of their official identity and the reason for the detention. ^{ARCP3.2}

Page 2 of 9	Number: 1106.06	Effective Date: July 12, 2017
Subject: Search and Seizure		Revision Date: July 12, 2017

1. Due to the nature and purpose of the operations, undercover officers or officers acting as decoys, however, are exempt from identifying themselves until the point that arrest, detention or enforcement actions are being attempted.
- D. Officers may use such non-deadly force as may be reasonable necessary under the circumstances to stop and detain any person for the purpose authorized in Section V, Paragraph A of this policy. ^{ARCP 3.3}
 - E. If an officer has detained a person whom he/she reasonably suspects is armed and presently dangerous to the officer or others, the officer or someone designated by him/her may search the outer clothing of such person and the immediate surroundings for, and seize, any weapons or other dangerous thing which may be used against the officer or others. In no event shall this search be more extensive than is reasonable necessary to ensure the safety of the officer or others. ^{ARCP 3.4}
 - F. Whenever a law enforcement officer has reasonable cause to believe that any person found at or near the scene of a felony is a witness to the offense, he/she may stop that person. After having identified himself/herself, the officer must advise the person of the purpose of the stopping and may then demand of him/her, his/her name, address, and any information he/she may have regarding the offense.
 1. Such detention shall in all cases be reasonable and shall not exceed fifteen (15) minutes unless the person shall refuse to give such information, in which case the person, if detained further, shall immediately be brought before any judicial officer or prosecuting attorney to be examined with reference to his/her name, address, or the information he/she may have regarding the offense. ^{ARCP 3.5}

VI. Consent to Search ^{ALEAP 7.09}

A. Authority to Search and to Seize Pursuant to Appropriate Consent

1. An officer may conduct searches and make seizures without a search warrant or other color of authority if consent is given to the search or to the seizure. ^{ARCP 11.1}
 - a. The state has the burden of proving by clear and positive evidence that consent to a search was freely and voluntarily given and that there was no actual or implied duress or coercion;
 - b. A search of a dwelling based on consent shall not be valid under this rule unless the person giving the consent was advised of the right to refuse consent. For purposes of this subsection, a "dwelling" means a building or other structure where any person lives or which is customarily used for overnight accommodation of persons. Each unit of a structure divided into separately occupied units is itself a dwelling.
2. Prior to conducting a search by consent, officers of the Texarkana Police Department will, whenever possible, have the person consenting to the search endorse a Texarkana Police Department Consent to Search Form.

B. The consent justifying a search or a seizure can only be given, in the case of the following:

1. Search of an individual's person, by the individual in question or, if the person is under fourteen (14) years of age, by both the individual and his/her parent, guardian or a person in loco parentis. ^{ARCP 11.2}
2. Search of a vehicle, by the person registered as the vehicle's owner or by a person who is in apparent control of the vehicle's operation or the vehicle's contents at the time consent is given. ^{ARCP 11.2}

Page 3 of 9	Number: 1106.06	Effective Date: July 12, 2017
Subject: Search and Seizure		Revision Date: July 12, 2017

3. Search of premises, by a person who, by ownership or otherwise, is apparently entitled to give or withhold consent. ^{ARCP 11.2}
- C. Any search based on consent shall not exceed, in duration or physical scope, the limitations of the consent given. ^{ARCP 11.3}
 - D. A consent given may be withdrawn or limited at any point prior to the completion of the search, and if so withdrawn or limited, the search under authority of the consent shall cease or be restricted to the new limits, whatever the case might be. Things discovered and subject to seizure prior to such withdrawal or limitation of consent shall remain subject to seizure despite such change or termination of the consent. ^{ARCP 11.5}
 - E. After making a seizure, the office shall make a list of the things seized, and shall deliver a receipt fairly describing the things seized to the person consenting to the search. ^{ARCP 11.4}

VII. Searches and Seizures Incidental to Arrests

- A. An officer who affects a lawful arrest may, without a search warrant, conduct a search of the person or property of the arrestee for the following limited purposes: ^{ARCP 12.1}
 1. To protect the officer, the arrestee or others;
 2. To prevent the arrestee's escape;
 3. To furnish appropriate custodial care if the arrestee is jailed; or
 4. To obtain evidence of the commission of the offense for which the accused has been arrested or to seize contraband, fruits of crime or other things criminally possessed or used in conjunction with the offense.
- B. Search of Vehicles: Permissible Circumstances
 1. If the accused at the time of arrest is in a vehicle or in the immediate vicinity of a vehicle of which he or she is in apparent control, and if the circumstances of the arrest justify a reasonable belief on the part of the arresting office that the vehicle contains things which are connected with the offense for which the arrest is made, the arresting officer may search the vehicle for such things and seize any things subject to seizure and discovered during the course of the search.
 - a. The search of a vehicle pursuant to this rule shall only be made contemporaneously with the arrest or as soon thereafter as is reasonably practicable. ^{ARCP 12.4}
- C. Search of Premises: Permissible Circumstances, Time and Scope
 1. An arresting officer may search such premises or parts thereof for such things, and seize any things subject to seizure, under the following circumstances occurring at the time of arrest:
 - a. The arrestee is in or on premises all or part of which he or she is apparently entitled to occupy; and
 - (1) Subject to seizure;
 - (2) Connected with the offense for which the arrest is made; and
 - (3) Likely to be removed or destroyed before a search warrant can be obtained and served.

Page 4 of 9	Number: 1106.06	Effective Date: July 12, 2017
Subject: Search and Seizure		Revision Date: July 12, 2017

2. Search of premises pursuant to this section shall only be made contemporaneously with the arrest, and search of building interiors shall only be made subsequent to and as a consequence of entry into a building in order to make an arrest therein.
 - a. In determining the necessity of a search therein and in an effort to define the scope of the search to be undertaken, the officer shall take into account, among other things, the following: the nature of the offense for which the arrest is made; the behavior of the individual arrested and other people who might happen to be on the premises as well; the size and other characteristics of the things which are the target of the search; and whether or not any such things are observed while making the arrest. ^{ARCP 12.5}

D. Custodial Taking of Property Pursuant to Arrest: Vehicles

1. Things not subject to seizure which are found in the course of a search of the person of an accused may be taken from his/her possession if reasonably necessary for custodial purposes. Documents or other records may be read or otherwise examined only to the extent necessary for such purposes, including identity checking and ensuring the physical well-being of the person arrested. For additional information surrounding the taking property for custodial purposes, refer to *General Order 1102.02---Property and Evidence Control*.
2. A vehicle impounded in consequence of an arrest, or retained in official custody for other good cause, may be searched at such times and to such extent as is reasonably necessary for safekeeping of the vehicle and its contents.
 - a. A vehicle inventory will only be undertaken on vehicles which have been taken into “custody” by an officer during the course of police action. For purposes within this section, “vehicles taken into custody” means vehicles that require the officer to initiate towing and or removal from the scene by a wrecker company or a vehicle driven or towed to the police department for further processing.
 - b. For additional information surrounding the towing of vehicles and inventory guidelines, refer to *General Order 1105.08---Vehicle Inventories* as well as *General Order 1105.13---Vehicle Towing*.

E. Vehicle Searches

1. An officer who has reasonable cause to believe that a moving or readily movable vehicle is or contains things subject to seizure may, without a search warrant, stop, detain, and search the vehicle and may seize things subject to seizure discovered in the course of the search where the vehicle is:
 - a. On a public way or waters or other area open to the public;
 - b. In a private area unlawfully entered by the vehicle; or
 - c. In a private area lawfully entered by the vehicle, provided that exigent circumstances require immediate detention, search and seizure to prevent destruction or removal of the things subject to seizure.
2. The officer may search the suspected occupants (except that this subsection shall not apply to individuals traveling as passengers in a vehicle operating as a common carrier) if the officer does not find the things subject to seizure by his search of the vehicle, and if:
 - a. The things subject to seizure are of such a size and nature that they could be concealed on the person; and

Page 5 of 9	Number: 1106.06	Effective Date: July 12, 2017
Subject: Search and Seizure		Revision Date: July 12, 2017

- b. The officer has reason to suspect that one or more of the occupants of the vehicle may have the things subject to seizure so concealed. ^{ARCP 14.1}
- 3. In accordance with the U.S. Supreme Court decision found in *Arizona v. Gant*, officers must have a warrant to search the vehicle of someone who has been arrested if the person is secured inside a patrol vehicle and poses no safety threat to officers. Warrantless searches may still be conducted if a vehicle's passenger compartment is within reach of an unsecured suspect who has been removed from the vehicle or when there is reason to believe evidence will be found of the crime that led to the arrest.
- 4. As provided by the tenets described within the U.S. Supreme Court Decision *Carroll v. U.S.*, vehicles may be searched without a warrant upon probable cause to believe a crime has been or is being committed and evidence of the crime may be located in the vehicle.

F. Emergency Searches

- 1. An officer may, without a search warrant, enter and search such premises and vehicles; and the persons therein, to the extent reasonably necessary for the prevention of death, bodily harm, or destruction, if he/she has reasonable cause to believe that the premises or a vehicle contain:
 - a. Individuals in imminent danger of death or serious bodily harm; or
 - b. Things imminently likely to burn, explode or otherwise cause death, serious bodily harm or substantial destruction of property;
 - c. Things subject to seizure which will cause or be used to cause death or serious bodily harm if their seizure is delayed. ^{ARCP 14.3}

G. Plain-View Searches and Seizures

- 1. An object is considered in *plain-view* if an officer makes his/her observation from a legally established vantage point and/or location. Officers may seize those things subject to seizure that become apparent from *plain-view*. If the item was seized in *plain-view*, no "search" took place.
- 2. Property is in *plain-view* only if it can be seen and recognized as something subject to seizure without undergoing manipulation or otherwise disturbed. For example, rearranging an item to view the serial number is not supported by the *plain-view* doctrine. In addition, it remains irrelevant whether or not the officer was looking for the particular item.
- 3. The plain-view doctrine also applies to searches conducted pursuant to warrants even if the items to be seized are not listed on the warrant. The criteria are as follows:
 - a. *Is the officer lawfully at the location in question; and*
 - b. *Does the officer have reason to believe the item(s) in plain-view is evidence or contraband?*

H. Crime Scene Searches

- 1. Warrantless searches of crime scenes may be permissible, depending upon the circumstances encountered at the particular scene. In certain cases, the expectation of privacy by the property's owner may require the investigating officer to first obtain lawful consent to search from the person authorized to grant such consent, or obtain a search warrant.
 - a. Under most circumstances, officers assigned to the patrol division will be responsible to cordon-off and protect crime scenes, as the CID supervisor and/or crime scene detectives will remain responsible to ensure the necessary guidelines for crime scene entry are satisfied.

Page 6 of 9	Number: 1106.06	Effective Date: July 12, 2017
Subject: Search and Seizure		Revision Date: July 12, 2017

- b. Officers who are in doubt regarding the permissibility for warrantless crime scene searches should contact their supervisor for additional guidance. This section is not intended to prohibit "emergency searches" that would otherwise be allowable under Arkansas law.

I. Limited Search Under Exigent Circumstances

1. Exigent circumstances exist in an emergency or unforeseen occurrence or combination of circumstances, which require an officer to act immediately. While not inclusive of every possible scenario, examples of exigent circumstances might include the following:
 - a. Circumstances that indicate injury or death may occur.
 - b. Circumstances that lead an officer to believe a dangerous wanted suspect may escape.
 - c. Circumstances that indicate the imminent destruction of evidence.
2. Officers may not intentionally create a situation which causes exigent circumstances to manifest.
3. In an emergency, an officer may enter a premise or vehicle without a search warrant if the officer has reasonable cause to believe immediate entry is necessary to facilitate aid to person(s) in immediate danger of death or bodily injury or to prevent the imminent destruction of evidence or property.
4. Prior to involuntary forced entry, and within the limits allowed by the particular emergency, the officer should reasonably attempt to obtain voluntary admittance into the premises or vehicle. Following entry, the officer may search the premises or vehicle only to the extent necessary to satisfy the exigency of the situation and the protection of the officers involved.
5. Officers must ensure all elements surrounding the exigent circumstances are well-documented pursuant to Section II, Paragraph B of this policy.

J. Supervised Probationer / Parolee Warrantless Searches

1. Persons who are placed on supervised probation or those who are released on parole are required to endorse a waiver as a condition of his/her supervised probation or parole.
2. The waiver allows any certified law enforcement officer to conduct a warrantless search of the supervised probationer's or parolee's person, place of residence, or motor vehicle at any time, day or night, whenever requested by the certified law enforcement officer. All warrantless searches based upon a waiver shall be conducted in accordance with A.C.A. § 16-93-106.
3. Notwithstanding the existence of a waiver, the Texarkana Police Department shall require sworn officers to develop an articulable suspicion that leads the officer to believe the supervised probationer or parolee is engaging in criminal behavior or involved in prohibited conduct that violates the terms of his/her supervised release before the officer conducts a search of the supervised probationer or parolee.
 - a. Nothing in this policy prohibits an officer from directly assisting a probation or parole officer engaged in his/her official capacity.
4. Officers employed with the Texarkana Police Department shall confirm the existence of a valid signed waiver whenever the authorization of any search of a supervised probationer or parolee is based in part upon the existence of a waiver described in A.C.A. § 16-93-106. Attempts to validate the existence of a waiver can be facilitated by the following:

Page 7 of 9	Number: 1106.06	Effective Date: July 12, 2017
Subject: Search and Seizure		Revision Date: July 12, 2017

- a. As part of a consensual encounter, a person admits to being on probation or parole, admits that a waiver exists, and consents to search. Under this scenario, no seizure has occurred and the Officer is conducting a search under the consent to search doctrine without having verified that a waiver exists via logical means;
 - b. The officer determines the person is under supervised probation or parole via ACIC and confirms that such a waiver is on-file;
 - c. The officer determines the person is on supervised probation or parole and that a waiver exists either through personal contact with the Departments of Correction or Community Correction or by contacting a community correction officer prior to any warrantless search being conducted.
5. Officers who perform any search of a person on supervised probation or parole shall complete an incident report in ADSi that documents the circumstances of the search.

K. Strip Searches [ALEAP 10.14; 10.15](#)

1. This section applies to members of the Texarkana Police Department and shall be separate from the guidelines contained in operational policies addressing Bi State Jail employees, whether contracted or otherwise.
2. Strip searches will only be conducted when there is a reasonable cause to believe that a weapon or contraband is manifestly secreted upon the arrestee's body and exigent circumstances require the search.
3. Strip searches will only be performed subsequent to a physical arrest based upon probable cause to believe that person has committed or is committing a crime.
4. Strip searches will not take the place of exterior pat down searches, and all strip searches must be superseded by an exterior pat down search. Except for purposes that ensure the safety and control of the search, personnel who conduct strip searches shall not touch the arrestee.
5. Unless exigent circumstances exist that make the search necessary to protect the officer or others from serious bodily harm or death, all strip searches will be performed at the location of detention (Bi State Jail / Miller County Jail).
 - a. Strip searches performed under exigent circumstances require notification of the on-duty supervisor. Notwithstanding any exigency, all strip searches shall be performed out of the view of the public and/or other persons.
6. Strip searches will always be performed by department members who are the same gender as the individual who is the target of the strip search and conducted in an area that remains private and out of view of persons of the opposite sex.
7. Body cavity searches may only be conducted upon the authority of a search warrant and shall be performed by medical personnel in a private, sanitary environment. A CID supervisor must approve the search, and the incident must be thoroughly documented pursuant to Section II, Paragraph B of this policy.
8. Unless exigent circumstances are present, officers will not choke, grab and/or squeeze a person's throat area or place their hands or fingers into the mouth of a person in order to recover possible drugs or contraband.
9. The officer conducting the strip search shall ensure his/her arrest, offense or supplemental report contains, at a minimum, the following information:

Page 8 of 9	Number: 1106.06	Effective Date: July 12, 2017
Subject: Search and Seizure		Revision Date: July 12, 2017

- a. The name of the person searched;
- b. The person who conducted the search;
- c. The supervisor who authorized the search;
- d. The offense the suspect was arrested for;
- e. Facts and circumstances that led the officer to believe that the suspect was hiding weapons or contraband on his or her person;
- f. The manner in which the search was conducted;
- g. The persons who were present during the search;
- h. The location where the search occurred;
- i. The items that were recovered as a result of the search.

Page 9 of 9	Number: 1106.06	Effective Date: July 12, 2017
Subject: Search and Seizure		Revision Date: July 12, 2017