

Bowie State University Police Department

General Order



<i>Subject:</i> Warrantless Searches	<i>Number:</i> 4
<i>Effective Date:</i> January 1, 1996	<i>Rescinds:</i> Art. 6.9
<i>Approved:</i> Capt. B. S. Biscoe	

This article contains the following sections:

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 - 4.2** *Search of Premises Incidental to Arrest*
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4.1 **Warrantless Searches: General Rules**

4.1.1 Search of premises without a warrant may be conducted under the following situations:

- a. Emergency: An officer may search if there is not time to obtain a warrant and the situation requires immediate action, e.g., when he/she hears a scream from inside a premises followed by a gunshot.
- b. Bomb threat, where the search is solely based on locating a suspected bomb.
- c. Hot pursuit: The officer may search if he/she is chasing an escaping suspect or is about to catch up with one who is ready to flee.
- d. Contraband: The officer may search if he/she knows that contraband is threatened with immediate removal or destruction as a result of a delay.

4.2 **Search of Premises Incidental to Arrest**

4.2.1 In the course of a lawful arrest, an officer may search not only the arrestee's person, but also that limited portion of the premises which is within the arrestee's immediate control and from which the subject might be able to reach a weapon or destructible evidence. The sole justification for such a search is to find and seize:

- a. Any weapons the arrestee may seize to resist the arrest or to effect an escape;

and

- b. Any evidence the arrestee might try to conceal or destroy.

4.2.2 If there is cause to believe that there may be other persons on the premises who might reasonably be expected either to interfere with the arrest by force or to attempt to destroy evidence, a search of the surrounding area for such persons may be made.

4.2.3 If, while making a lawful arrest or making a protective search for other persons on the premises, evidence of any crime is seen lying in open view, it may be seized even though it is beyond the arrestee's immediate control.

4.2.4 If an arrest is effected at a certain place or time as a subterfuge to conduct a search of those premises, the search may be invalid.

4.2.5 Since a search incident to an arrest is very limited in scope, it is better to secure a search warrant at the same time that the arrest warrant is issued, if a detailed search is to be conducted.

- a. When it is not possible to obtain a search warrant or when a warrantless arrest is made, a search warrant should be applied for immediately after the arrest.
- b. It is proper to allow an officer to guard the premises to prevent the destruction of evidence while the warrant is being secured.

4.2.6 In all situations other than those listed above, a warrant is needed to make a physical search of a dwelling or its curtilage. However, unless the language of the warrant permits, the search shall not include the area beyond the curtilage (open spaces surrounding the dwelling).

4.3 Vehicle Searches: General Rules

4.3.1 The same rule that recommends the use of a warrant to search persons or premises also applies to the search of vehicles. The law does, however, permit significantly more latitude in searching vehicles without a warrant than is permitted for the warrantless search of either persons or premises.

4.3.2 A warrantless search may be made of a vehicle, which was in motion or at least mobile when seized, even it is in police custody:

- a. If probable cause exists that it contains contraband or evidence of a crime,
and
- b. If taking time to obtain a search warrant would result in the loss or

destruction of that contraband or evidence.

4.3.3 The rationale for permitting a vehicle search is based on the mobility of the vehicle and the fact that it contains that which is seizable under the law.

4.4 Search of Vehicles Incidental to Arrest

4.4.1 The search of a vehicle incidental to the arrest of one of its occupants must have:

- a. A definite objective;
- b. Be limited to legitimate objects of search; and
- c. Bear a rational connection between the item or items searched for and the criminal behavior for which the arrest is made.

4.4.2 Legitimate objects of an incidental search are limited to:

- a. Weapons which the arrestee may use against the officer or themselves; and
- b. Destructible evidence related to the crime for which the arrest was effected.

4.4.3 The arrest must take place in or near the vehicle in order for an incidental search to be justified.

- a. The further removed the vehicle search is from the place of the arrest, the less likely the search may be considered valid by the courts.
- b. If an arrest is maneuvered to the vehicle in order to provide a pretext to search, the court may hold the search invalid.

4.4.4 The search must be contemporaneous with the arrest. However, in circumstances where an immediate search is impractical or dangerous, the search may properly be delayed. Examples of such circumstances include an arrest made:

- a. By a single officer who must forego an immediate search in order to control an arrest situation;
- b. In a location where, due to insufficient lighting or other problems, an immediate search would not be practical; or
- c. In a hostile environment or when reason dictates that the search should be removed, in time and place, from the place of arrest.

4.4.5 Generally, vehicle searches incidental to arrests for traffic offenses are prohibited. Among the recognized exceptions are:

- a. Arrests for operating under the influence of alcohol or drugs; and
- b. Arrests for traffic offenses when certain behavior on the part of the arrestee or his companions, or other circumstances, give the officer reasonable grounds to believe that they are engaged in some type of substantial criminal activity other than the routine traffic offense for which the arrest was made.
 - (1) The existence of a traffic violation shall not be used as an excuse to search for evidence of another crime; such a search would be invalid.
 - (2) A search for weapons, however, is still permissible.

4.5 Search of Vehicles Based on Probable Cause

4.5.1 The authority to make an immediate search of a vehicle that was mobile at the time police obtained custody of it, without first obtaining a warrant, exists independent of the authority to search it incidental to an arrest.

4.5.2 When probable cause exists, a warrantless search of an automobile may be made at the place where it is first stopped or where custody was first taken, or it may be moved by the officer to some other place and searched there.

4.5.3 This requires that the search be made as soon as possible after the vehicle was seized. Where a prompt warrantless search cannot be made, a warrant should be secured.

4.6 **Consent Searches**

4.6.1 One's consent to a search of his person or property under his control by an officer acts as a waiver of his Fourth Amendment right to be free from a search without a warrant. Therefore, a search based on consent is lawful, even where there is no other justification for the search, if:

- a. The consent is made with the knowledge that the person is not required to consent to a search;
- b. The consent is voluntary, i.e., freely given without duress or coercion; and
- c. The consent is clear and explicit.

4.6.2 Any waiver of a constitutional right will be examined carefully by the courts. Therefore, before evidence discovered as a result of a consent search will be admitted at trial, the State will have to show by "clear and convincing" evidence that the consent was, in fact, freely and voluntarily given by a person who was aware of his right not to consent.

4.6.3 The officer must explain to the person that he has a right to refuse to consent to a search without a warrant. If the person indicates that he would like to consult with an attorney or anyone else before deciding whether to consent, he/she should be given an opportunity to do so.

4.6.4 The courts will examine the circumstances of each case to determine if the individual was aware of his rights.