

CITY OF OAK POINT

DEPARTMENT OF PUBLIC SAFETY POLICE OPERATIONAL POLICIES and PROCEDURES

POLICY: 7.2 WARRANTLESS ARREST, SEARCH AND SEIZURE

REVISED DATE: 11.19.13

I. PURPOSE

This order establishes a guide for warrantless arrests, searches and seizures of persons, places and things.

II. POLICY

It is the policy of this department that all warrantless arrests, searches and seizures shall be conducted lawfully, in compliance with the Constitutions and laws of the United States and the State of Texas.

III. WARRANTLESS ARRESTS:

An officer shall only arrest without a warrant when the arrest is authorized by statute and supported by probable cause.

A. **Statutory Authority.** Prior to making a warrantless arrest, an officer shall determine whether there is statutory authority for the arrest without a warrant. An officer may only arrest without a warrant in those instances authorized by statute.

B. **Probable Cause.** Prior to making a warrantless arrest, an officer shall determine whether probable cause exists to believe that the person to be arrested has committed a violation of law. No person shall be arrested without a warrant except upon probable cause that the person to be arrested has committed a criminal offense.

“Probable cause exists where the police have reasonably trustworthy information sufficient to warrant a reasonable person to believe a particular person has committed or is committing an offense.” *Guzman v. State, 955 S.W.2d 85,*

“In Texas, warrantless arrests are authorized only if (1) there is probable cause with respect to the seized individual, and (2) the arrest falls within one of the exceptions set forth in Chapter 14 of the Code of Criminal Procedure.” *Covarrubia v. State, 902 S.W.2d 549, 553 (Tex. App. 1995) (citing Stull v. State, 772 S.W.2d 449, 451 (Tex.Crim.App.1989)).* *“A police officer may arrest an individual without a warrant only if (1) there is probable cause with respect to that individual and (2) the arrest falls within one of the statutory exceptions.”* *State v. Steelman, 93 S.W.3d 102,*

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107 (Tex. Crim. App. 2002). In addition to being unlawful, an illegal arrest cannot, under most circumstances, provide further admissible evidence. For example, a confession following an unlawful arrest is generally inadmissible. The courts also concluded that "A confession obtained through custodial interrogation after an illegal arrest should be excluded unless intervening events break the causal connection between the illegal arrest and the confession" Townsley v. State, 652 S.W.2d Likewise, evidence discovered during any search that is the result of an unlawful arrest will be inadmissible. (See footnote 11 below.)

2 Heath v. Boyd, 175 S.W.2d 214, 215 (Tex. 1943). ("Our courts, both civil and criminal, have consistently said that the arrest of a citizen without a warrant is an unreasonable seizure of his person, unless it is expressly authorized by statute.") [Emphasis added.]; Chapter 14, Texas Code of Criminal Procedure;

The statutory authority of peace officers to arrest without warrant is located primarily in Chapter 14 of the Texas Code of Criminal Procedure. "The three most common provisions arising in the caselaw are: Article 14.01(b), which authorizes:

A warrantless arrest for an offense committed in the officer's presence or within his view; Article 14.03(a)(1), which authorizes a warrantless arrest of 'persons found in suspicious places and under circumstances which reasonably show that such persons have been guilty of some felony';

*Article 14.04, V.A.C.C.P., which authorizes a warrantless arrest 'where it is shown by satisfactory proof to a peace officer, upon the representation of a credible person, that a **felony** has been committed, and that the offender is about to escape.'*

These statutory provisions require the legal equivalent of constitutional probable cause.'" Amores v. State, 816 S.W.2d 407, 413 (Tex. Crim. App. 1991).

3 "The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." In conformity with the rule at common law, a warrantless arrest by a law officer is reasonable under the Fourth Amendment where there is probable cause to believe that a criminal offense has been or is being committed." Devenpeck v. Alford, 543 U.S. 146, 152, 125 S. Ct.

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588, 593, 160 L. Ed. 2d 537 (2004) (citing United States v. Watson, 423 U.S. 411, 417-424, 96 S.Ct. 820, 46

L.Ed.2d 598 (1976); Brinegar v. United States, 338 U.S. 160, 175-176, 69 S.Ct. 1302, 93 L.Ed. 1879 (1949)).

87 (Tex. Crim. App. 1997). Warrantless arrests are authorized only if there is probable cause with respect to seized individual and arrest falls within one of the statutory exceptions. Covarrubia v. State 902 S.W.2d 549

(App. 1 Dist. 1995), (See Copy in Tab 1). In order for police officers to make warrantless arrest or search, the state

must show existence of probable cause at time of arrest or search and existence of circumstances which made the

procuring of warrant impracticable. Jefferson v. State 830 S.W.2d 320 (App. 3 Dist. 1992). "In reviewing

warrantless arrest to determine existence of probable cause, court looks to facts known to the officers at the time of

the arrest, and subsequently discovered facts or later-acquired knowledge cannot retrospectively serve to bolster

probable cause at the time of the arrest." Amores v. State, 816 S.W. 2d 407 (Tex. Crim. App. 1991)(See Copy in

Tab 2). "[T]o effectuate a valid arrest, an officer must at that time have "probable cause to believe that a

criminal offense has been or is being committed" by the person in question." Baldwin v. State, 278 S.W.3d

367, 371 (Tex. Crim. App. 2009), reh'g denied (Nov. 4, 2009). The Supreme Court, in "Brown v. Illinois, 422

U.S. 590, 95 S.Ct. 2254, 45 L.Ed.2d 416 (1975), . . . [specifically] disapproved arrests made for "investigatory"

purposes on less than probable cause. . . . [where the arrest was] . . . 'for investigation' or for 'questioning.' . . ."

Dunaway v. New York, 442 U.S. 200, 215-16, 99 S. Ct. 2248, 2258, 60 L. Ed. 2d 824 (1979) (citations omitted).

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IV. INVESTIGATIVE DETENTIONS

An officer shall only detain a person for investigation if the officer can articulate reasonable suspicion that criminal activity is afoot and that the person detained is involved in the criminal activity.

- A. **Investigative Detention “Terry Stop”.** Prior to detaining a person even momentarily, an officer shall determine whether there is reasonable suspicion to believe that criminal activity is afoot and whether the person to be detained is involved in the criminal activity. In making an investigatory detention, an officer shall not detain a person longer than is necessary to effectuate the purpose of the stop, and shall not, absent probable cause to arrest, transport the person detained from the scene of the stop without the person’s consent.
- B. **Search for Weapons.** If an officer detains a person based upon reasonable suspicion that criminal activity is afoot, and the officer has reason to believe that the person may be armed and dangerous, the officer may perform a brief search of the person and his immediate surroundings as is necessary to discover weapons.

V. WARRANTLESS SEARCHES

An officer shall not conduct a search of any place where a person has a reasonable expectation of privacy without a warrant unless an exception to the warrant requirement exists and the officer acts in compliance with the law regarding the exception.

- A. **Well-delineated exceptions to the warrant requirement include:**
 - 1. **Motor Vehicle Searches.** An officer may search a motor vehicle without first obtaining a search warrant if the officer has probable cause to believe that the motor vehicle has evidence of a crime or contraband. The search is limited to those areas of the motor vehicle, including closed containers therein, that could contain the evidence or contraband the officer has probable cause to believe the motor vehicle contains.
 - 2. **Exigent Circumstances.** An officer may conduct a search without a warrant if the search is immediately necessary: 1) to protect or preserve life or avoid serious injury or 2) to prevent the immediate destruction of evidence of a crime. In accordance with the law, the

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search should be limited to the extent necessary to render aid or prevent the destruction of evidence of a crime.

3. **Search Incident to Arrest.** An officer may, without a warrant, conduct a search of an arrestee's person incident to the person's arrest. In addition, when it is reasonable to believe evidence relevant to the crime of arrest might be found, an officer may conduct a search of the area within the immediate control of the arrestee prior to the arrest. The search of the area within the immediate control of the arrestee is limited to a search for evidence relevant to the crime of arrest.
4. **Inventory of Lawfully Impounded Property.** An officer may conduct an inventory of the contents of lawfully impounded vehicles. The purpose of the inventory is not to search for evidence of any crime or contraband but, rather, to inventory the contents of the vehicle to protect the vehicle and the property in it, to safeguard the officer and others from potential danger and to insure against claims of lost, stolen, or vandalized property. Locked containers should be inventoried as a locked container and should not be opened without a warrant absent consent of the owner.

B. Instances where a search warrant is unnecessary because no privacy interest is implicated:

1. **Plain View.** An officer may seize evidence and contraband found in plain view if it is immediately apparent that the items constitute evidence of a crime or contraband. For an item to be seized in plain view: 1) an officer must lawfully be present in the place where the evidence is viewed, and 2) it must be immediately apparent that the items seized are evidence of a crime or contraband.
2. **Consent.** An officer may conduct a search without a warrant if the person having a privacy interest in the area to be searched voluntarily consents to the search. To be voluntarily, consent must not be coerced by explicit or implicit means or by implied threat or covert force. The consent search is limited to the area for which consent is given. The consent search must cease if consent is withdrawn during the search.

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3. **Abandoned Property.** An officer may search and seize property which has been voluntarily abandoned by its owner. Property is abandoned if it is dispossessed by its owner with the intent that owner relinquish all claims to the property including the intention to later reclaim ownership.

VI. ENTRY INTO PRIVATE RESIDENCES

An officer shall not, without the consent of the owner or other person having control over the residence, enter a private residence without a warrant unless an exception to the warrant requirement applies.

Well-delineated exceptions to the warrant requirement include:

- A. **Exigent Circumstances.** An officer may enter a private residence without a warrant only if it is immediately necessary: 1) to protect or preserve life or avoid serious injury or 2) to prevent the immediate destruction of evidence of a crime. An officer shall only remain in the residence as long as is necessary to preserve or protect life or exclude such persons from the residence as is necessary to prevent the destruction of evidence. Thereafter, officers shall not enter the residence until a warrant is obtained.
- B. **Hot Pursuit.** An officer may enter a private residence without a warrant when in immediate and continuous pursuit of a person fleeing from a public place into the residence to evade arrest for an offense above the level of a C misdemeanor. A person who intentionally flees from a person he knows is a peace officer attempting to lawfully arrest or detain him commits a Class B misdemeanor, or a felony if it involves a vehicle and or injuries to another person.

With respect to any nonconsensual entry of a private residence without a warrant, officers should be mindful of safety concerns for the officer(s) and other(s), and should carefully weigh the nature of the circumstances involved in the nonconsensual warrantless entry along with potential hazards at the location prior to entering the residence.

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VII. PRIOR ORDERS:

From and after the effective date of issuance of this order, it shall be in full force and shall govern the operations of this department with regard to its subject matter. Former orders, policies, directives and memoranda relating to the subject matter are hereby specifically revoked and they shall be of no force and effect from and after the date of issuance of this order.

Approved: *M. Shackelford*
M. Shackelford