

# Instructor Resource Guide



## **Intermediate Arrest, Search, and Seizure**

Course ID# 2108

Continuing Education Requirement

June 2024

# ABSTRACT

The Intermediate Arrest, Search, and Seizure Course is designed to provide additional information on this subject area. This course is one of the seven required for Intermediate certification.

## **Instructor Resource Guide:**

This is an Instructor Resource Guide (IRG), not a lesson plan. The purpose of the IRG is to outline the minimum state requirements of what must be taught for a course to be considered compliant and receive TCOLE credit. The learning objectives provided in this IRG are the minimum state requirements for the training and must not be changed or altered.

- A qualified instructor **shall** develop the IRG into a lesson plan that meets their organization and student needs and must be kept in a training file for auditing purposes.

**Please note: It is the responsibility of the Academy and/or Contractual Training Provider to ensure the IRG is developed into a complete lesson plan based on the requirements outlined in the IRG for a particular topic.**

## **Lesson Plan:**

Each organization is charged with creating their own lesson plan for how the organization will disseminate the information in the IRG.

- The IRG is designed to assist the instructor/subject matter expert in developing comprehensive lesson plans. The use of current statistics, best practice models, and scenario-based training should also be included in the lesson plan development. Instructors are encouraged to add additional activities.
- The institutions and instructors will determine how much time is spent on each topic/module, how many/what kind of examples or exercises are used during their presentation, and how in-depth they review each topic in the course they present.
- Any activity that is **suggested** is just that, an example or suggestion, and is not mandated for inclusion.
- Anything that is **required** must be included in the instructor's lesson plan.

## **Note to Trainers:**

**It is the responsibility of the Academy and/or Training Coordinator to ensure this curriculum and its materials are kept up to date. Refer to curriculum and legal resources for changes in subject matter or laws relating to this topic as well as the Texas Commission on Law Enforcement website at [www.tcole.texas.gov](http://www.tcole.texas.gov) for edits due to course review. Training providers must keep a complete training file on all courses reported for TCOLE credit.**

## **Student Prerequisites:**

- None

**Instructor Prerequisites:**

An instructor must be a subject matter expert in the topic and must have documented knowledge/training/education and provide an instructor's biography that documents subject matter expertise. It is the responsibility of the training academy/training coordinator to select qualified instructors. A TCOLE instructor certification does not certify someone to teach any topic.

- If a documented subject matter expert does not hold a TCOLE instructor certification, the instructor must be approved in writing by the department's training coordinator or chief administrative officer and kept in the training file for the course.

**Length of Course:**

It is the training coordinator's responsibility to ensure the minimum hours are being met. Students are required to attend all classroom hours as listed in this instructor resource guide, there is no 10% attendance rule. TCOLE Rule 218.1 (C)(4) states that failure to meet the minimum course length may be grounds for denial of training. This course shall be taught the minimum hours that are listed in this guide and the student shall attend the entire class to receive credit.

- 16 hours, minimum.

**Assessment:**

- Training providers are responsible for creating student assessments and documenting the mastery of all objectives in this course using various testing assessment opportunities.
  - Assessment opportunities include oral or written testing, interaction with instructor and students, case study and scenario, and other means of testing student's application of the skills taught as the instructor or department deems appropriate.
- The minimum passing score shall be 70%.

## Unit 1 Probable Cause, Detention, and Arrest

### 1.1 Identify where the requirements for probable cause to arrest and search are contained.

- A. Fourth Amendment, U.S. Constitution
- B. Texas Code of Criminal Procedure § 1.06
- C. The Texas Constitution § 1.9

### 1.2 Define terminology associated with arrest.

- A. Penal Code § 2.01 - Proof Beyond Reasonable Doubt
- B. Probable Cause
  - i. There are two separate definitions of probable cause, one for search and one for arrest, because different types of information are required to establish probable cause in each instance:
    - 1. Probable Cause to Arrest
      - a. *Brinegar v. United States*, 338 U.S. 160 (1949): Probable cause exists where the facts and circumstances within the officer's knowledge, and of which they have reasonable trustworthy information, are sufficient in themselves to warrant a belief by a person of reasonable caution that a crime is being committed.
    - 2. Probable Cause to Search
      - a. *Carroll v. United States*, 267 U.S. 132, (1929): Probable cause to search exists when "the facts and circumstances within their [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that [seizable property would be found in a particular place or on a particular person]."
- C. The probable cause test, then, must show that the facts and circumstances of the officer's knowledge are sufficient enough to warrant a reasonable person to believe a suspect has committed, is committing, or is about to commit a crime.
- D. Reasonable Suspicion
  - i. Reasonable suspicion is based upon the totality of the circumstances and is less burden than probable cause.
    - 1. *US v. Sokolow*, 490 US 1 (1989)
  - ii. Mere suspicion
    - 1. A hunch or the feeling of intuition. Although intuitively knowing something is undoubtedly a skill that serves law enforcement officers well, mere suspicion is insufficient proof of any fact in a court of law. (Criminal Procedure for the Law Enforcement Professional, 11th edition, Ferdico, Fradella, and Totten, Wadsworth Cengage Learning, 2013).

2. Cortez v. U.S., 101 S.Ct. 690 (1981)
3. Moses v. State, 464 S.W.2d 116 (Tex. Crim. App. 1971)
4. Hernandez v. State, 523 S.W.2d 410 (Tex. Crim. App. 1975)
5. Cases on Suspicion:
  - a. Florida v. Royer, 103 S.Ct 1319 (1983)
  - b. Eisenhauer v. State, 678 S.W.2d 947 (Tex. Cr. App. 1984)
  - c. Meeks v. State, 653 S.W.2d 6 (Tex. Cr. App. 1983)
  - d. Brown v. Texas, 99 S.Ct 2637 (1979)
  - e. Brown v. State, 617 S.W.2d 196 (Tex. Cr. App. 1981), reversed 103 S.Ct. 1535, on remand 657 S.W.2d 797 (Tex. Cr. App. 1983)
- E. Exception
  - i. Texas Penal Code § 2.02
- F. Reasonable Belief
  - i. Texas Penal Code § 1.07(a)(42)
- G. Brown v. State 481 S.W. 2d 106 (1972)
- H. Henry v. U.S., 361 U.S. 98 (1959)
- I. Brinegar v. United States, 338 U.S. 160 (1949)
- J. Carroll v. United States, 267 U.S. 132, (1929):
  - i. Other cases:
    1. Beck v. Ohio, 379 U.S. 89, (1964)
    2. McCray v. Illinois, 386 U.S. 300, 87 S.Ct. 1056 (1967)
    3. Coffman v. State 782 S.W.2d 249 (Tex. App. 1989)
    4. Brown v. Illinois, 422 U.S. 590 (1975)

**INSTRUCTOR NOTE:** Review cases below from the Texas Law Enforcement Handbook Sections 1.2 and 2.3 (b).

- Amores v. State 816 S. W. 2d 407 (1991)
- Illinois v. Gates, 462 U.S. 23, 103 S.Ct. 2317 (1983)
- Bower v. State, 769 S.W.2d 887 (1989)

**1.3 Identify valid indicators that serve as building blocks of probable cause.**

- A. Building blocks of probable cause:
  - i. Flight
  - ii. Furtive Movements
  - iii. Hiding

- iv. Attempt to destroy evidence
- v. Resistance to officers
- vi. Admissions or confessions
- vii. Evasive answers
- viii. Unreasonable explanations
- ix. Latent print identifications
- x. Hair follicle identifications
- xi. Handwriting comparisons
- xii. Fabric comparisons
- xiii. Identification of suspects by witnesses
- xiv. The emergency setting - crime zone
- xv. The emergency setting - automobile
- xvi. Ballistics evidence
- xvii. Contraband or weapons in plain view
- xviii. Criminal record
- xix. Hearsay information - informant
- xx. Hearsay information - fellow officer
- xxi. Hearsay information - general
- xxii. Expert police opinion
- xxiii. Police corroboration
- xxiv. Unusual or suspicious conduct
- xxv. Fact of crime or felony
- xxvi. Police computerized information (NCIC, etc.)
- xxvii. Police radio broadcasts
- xxviii. Use of drug-detecting dogs
- xxix. Voice print identifications
- xxx. Blood tests

xxxi. Electronically obtained evidence

**1.4 Discuss the three classifications of interactions between peace officers and persons.**

A. Consensual Encounters

- i. Peace officers are free to approach and ask questions of persons so long as officers recognize that those persons can refuse to identify themselves, refuse to cooperate, refuse to answer questions, and simply walk away.

1. Florida v. Royer, 460 U.S. 491 (1983)

- ii. Investigatory Stops/Detentions

1. The temporary seizure of a person for investigation based on an officer's reasonable suspicion of criminal activity.

- a. Terry v. Ohio, 392 U.S. 1 (1968)

- iii. Arrests

1. Take persons into custody for purposes of charging them with a crime based on an officer's establishment of probable cause

- a. U.S. v. Mendenhall, 446 U.S. 544 (1980)

B. See Appendix A for a list of other temporary detention cases

**1.5 Identify actions a law enforcement officer can take having "mere suspicion."**

A. Continued surveillance

B. Computer checks

C. Approach suspect and ask questions

- i. Officers can initiate a police-citizen encounter so long as the officer understands the persons approached do not have to identify themselves or answer the officer's questions and are free to walk away at any time.

D. Avoid commands

- E. When enough facts are developed to establish a reasonable suspicion, a temporary detention may be in order.

**1.6 Identify the necessary conditions for a lawful arrest.**

A. Authority

- i. The peace officer's arrest must be made under real authority. This means the officer is authorized by law to make an arrest and the arrest is supported by probable cause.

B. Actual seizure

- i. The person arrested is taken into custody either by physical force or by submission to assertion of authority.

C. Understanding

- i. By the person to be arrested of the officer's intention to arrest.

1. Define Investigative Detention (Terry v. Ohio, A.S.S. Outline and IRG)
  2. Define when a person is arrested – Code of Criminal Procedure § 15.22
  3. Define Constructive Custody – Code of Criminal Procedure § 11.21
  4. Define Restraint – Code of Criminal Procedure § 11.22
  5. Define Custody – Penal Code § 38.01
  6. Duties of Arresting Officer and Magistrate – Code of Criminal Procedure § 15.17
  7. Offense Within View – Code of Criminal Procedure § 14.01
- D. Limited conditions to be met for either a peace officer or “any other person” to make a warrantless arrest and the conditions for only peace officers to make a warrantless arrest.
- i. Within View of Magistrate – Code of Criminal Procedure § 14.02
  - ii. Identify Authority of Peace Officers – Code of Criminal Procedure § 14.03
- E. Peace officers must be able to articulate specific facts and circumstances to justify an arrest regarding “suspicious places” and “circumstances”. See Dyar v. State, 125 SW3d 460 (Tex. Crim. App. 2003) which provides a detailed explanation of the statute.
- i. Options in Lieu of Arrest for Public Intoxication – Code of Criminal Procedure § 14.031
  - ii. Discuss When Felony Has Been Committed – Code of Criminal Procedure § 14.04
  - iii. Identify Rights of Officer – Code of Criminal Procedure § 14.05
- F. See Payton v. New York, 100 US 1371 (1980); (absent exigent circumstances, a peace officer may not make a warrantless entry into a suspect’s home to make a routine felony arrest)
- i. Discuss Arrest by Peace Officer From Other Jurisdiction – Code of Criminal Procedure § 14.051
  - ii. Discuss Must Take Offender Before Magistrate - Code of Criminal Procedure § 14.06
  - iii. Identify Mandatory Arrest Authority - Code of Criminal Procedure § 14.03(b)
  - iv. Discuss Violation of a Protective Order in the officer’s presence. § 14.03(c)
  - v. Discuss Preventing the Consequences of Theft – Code of Criminal Procedure § 18.16
  - vi. Discuss Uniform Criminal Extradition Act - Code of Criminal Procedure § 51.13, Sec. 14
  - vii. Discuss Diplomatic Immunity- 22 USC 254 Diplomatic Relations Act
  - viii. Discuss Privilege of Legislators - Code of Criminal Procedure § 1.21
- G. See Texas Law Enforcement Handbook Section 1.1



- H. Arrest Cases
  - i. U.S. v. Maldonado, 735 F.2d 809 (5th Cir. 1984)
  - ii. Eisenhauer v. State, 678 S.W.2d 947 (Tex. Cr. App. 1984)
  - iii. Michigan v. Chesternut, 486 U.S. 567, 108 S. Ct. 1975, 1979, (1988)
- I. Custody Cases
  - i. Berkemer v. McCarty, 104 S.Ct. 697 (1984)
  - ii. Eisenhauer v. State, 678 S.W.2d 947 (Tex. Cr. App. 1984)
- J. Texas Law Enforcement Handbook Section 1.1 & Section 11.2(b)(1)

**1.7 Recognize the point at which information gathered to establish probable cause or suspicion to justify the officer's initial action can no longer be augmented.**

- A. Once an arrest power has been invoked, i.e., force, search, seizure, or restraint the justification or probable cause must have been present before the power is invoked.
- B. At the moment of arrest, probable cause ceases to build. Any after-the-arrest, guilt-laden facts that develop will not be considered by the courts as part of the facts necessary to justify the arrest. They can be used as evidence of guilt if probable cause is upheld.
- C. Texas Law Enforcement Handbook Section 1.1

**1.8 Identify the amount of information necessary to make an arrest based upon information communicated from another officer.**

- A. The test of probable cause where an officer requests that another officer arrest a person is based upon information known to the requesting officer.
- B. If the requesting officer possesses sufficient knowledge to constitute probable cause for an arrest without warrant, they do not need to detail such information to the arresting officer but only such information as is necessary for the arresting officer to know who is wanted.
- C. Green v. State, 470 S.W.2d 901 (Tex. Cr.App.1971)
- D. Weeks v. State, 417 S.W.2d 716, U.S. cert. denied 389 U.S. 996 (1967)
- E. McDuff v. State, 431 S.W.2d 547 (Tex. Crim. App. 1968)
- F. Piper v. State, 484 S.W.2d 776 (Tex. Crim. App. 1972)
- G. Williams v. State, 621 S.W.2d 609 (Tex. Crim. App. 1981)
- H. Fugitt v. State, 623 S.W.2d 471 (Tex. App. 1981)
- I. Volanty v. State, CCApp, 663 S.W.2d 897, (Tex. App. 13 Dist. 1983) U.S. cert. denied 105 S.Ct. 790
- J. Woodward v. State, 668 S.W.2d 337, (Tex. Cr. App. 1982) U.S. cert. denied 105 S.Ct 939
- K. Whiteley v. Warden, 401 U.S. 560, 91 S.Ct 1031 (1971)
- L. Astran v. State, 799 S. W. 2d 761 (1990)

M. Texas Law Enforcement Handbook Section 1.2

**1.9 Explain the reasons that obtaining a search warrant is the best course of action when no emergency exists.**

- A. An arrest warrant provides an impartial judicial determination that probable cause exists for an arrest.
- B. By requiring probable cause under oath, it provides protection to both the citizen and the officer from the consequences of mistakes.
  - i. Code of Criminal Procedure §§ 15.03-15.05
  - ii. Malley v. Briggs, 38 Cr.L.3169 (3-5-86)
- C. Texas Law Enforcement Handbook Section 1.3
- D. Code of Criminal Procedure § 15.01

**INSTRUCTOR NOTE:**

The instructor should be familiar with Code of Criminal Procedure § 15.05: Requisites of Complaint and provide at least one example of a complaint before activity.

- Barnes v. Texas, 390 S.W.2d 266 (Tex. Crim. App. 1965)
- Knox v. State, 586 S.W.2d 504 (Tex. Crim. App. 1979)
- Lowery v. State, 499 S.W.2d 160 (Tex. Crim. App. 1973)
- Madden v. State, 630 S.W.2d 380 (Tex. App. 1982)
- Bellah v. State, 641 S.W.2d 641 (Tex. App. 1982) and 653 S.W.2d 795 (Tex. Cr. App. 1983)
- Aguilar v. Texas, 378 U.S. 108, 84 S.Ct. 1509 (1964)
- Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317 (1983)

**REQUIRED ACTIVITY:**

- The student will be able to write a complaint that is sufficiently complete to allow a magistrate to issue an arrest warrant.
  - The student will observe a scenario in the classroom, on film, and/or on videotape or read a scenario in the class and write a complaint that is sufficiently complete to allow a magistrate to issue an arrest warrant.
  - Alternatively, students may be presented with various scenarios and sample complaints, allowing them to select the most appropriate option.

**Unit 2 Search Warrants**

**2.1 Identify advantages of obtaining a search warrant.**

- A. Warrantless searches are presumed unreasonable by the courts, putting the burden on the prosecution to prove otherwise.

- B. Searches conducted under a warrant are presumed valid, putting the burden on the defense to prove otherwise.
- C. Use of the warrant means that evidence is less likely to be ruled inadmissible and more convictions should result.
- D. Without a warrant an officer is more likely to spend time at evidence suppression hearings.
- E. Evidence obtained by an officer "acting in objective good faith reliance upon a warrant" may be admissible.

**INSTRUCTOR NOTE:**

Good faith exception is not as broad in Texas. The underlying warrant must contain probable cause for this exception to apply. See Code of Criminal Procedure § 38.23.

**2.2 Identify three major components of search warrant documentation.**

- A. Affidavit
  - i. Code of Criminal Procedure § 18.01(a)
- B. Search Warrant
  - i. Code of Criminal Procedure § 18.01(b)
- C. Return
  - i. Not later than three whole days after executing a search warrant, officer shall return the warrant, state the manner in which it was executed, and deliver a copy of the inventory of property taken into possession.

**INSTRUCTOR NOTE:**

The instructor should present documentation examples used in the local jurisdictions. If students are from multiple jurisdictions, encourage them to bring samples from their jurisdiction.

**2.3 Describe the basic criteria for search warrant.**

- A. Search warrant - Code of Criminal Procedure § 18.01
- B. Sealing of Affidavit – Code of Criminal Procedure § 18.011
- C. Grounds for Issuance - Code of Criminal Procedure § 18.02
- D. Issuance of Search Warrant to Photograph Injured Child - Code of Criminal Procedure § 18.021
  - i. See also Family Code § 58.002
- E. Search Warrant May Authorize Arrest - Code of Criminal Procedure § 18.03
- F. Contents of Warrant - Code of Criminal Procedure § 18.04
- G. Warrants for Fire, Health, and Code Inspections - Code of Criminal Procedure § 18.05
- H. Execution of Warrants - Code of Criminal Procedure § 18.06
- I. Days Allowed for Warrant to Run - Code of Criminal Procedure § 18.07

- J. Power of Officer Executing Warrant - Code of Criminal Procedure § 18.08
- K. Shall Seize Accused and Property - Code of Criminal Procedure § 18.09
- L. Seizure of Circuit Board of Gambling Device, Equipment, or Paraphernalia - Code of Criminal Procedure § 18.095 (revised 2/2010)
- M. How Return Made - Code of Criminal Procedure § 18.10
- N. Custody of Property Found - Code of Criminal Procedure § 18.11
- O. Testing for Communicable Diseases Following Certain Arrests - Code of Criminal Procedure § 18.22
- P. Criminal Code of Procedure §§ 18.01-18.04, 18.021
- Q. See Appendix A for a list of case decisions dealing with search warrants

**REQUIRED ACTIVITY:**

- The student will be able to write an acceptable probable cause affidavit for a search warrant. The instructor should provide at least one example of an affidavit.
  - The student will observe a scenario in the classroom, on film, and/or on videotape which may include written material and reports, the student will be able to write an acceptable probable cause affidavit for a search warrant.
  - Alternatively, students may be presented with various scenarios and sample probable cause affidavits, allowing them to select the most appropriate option.

**Unit 3 Exceptions to Search Warrant Requirements**

**3.1 Identify situations in which exceptions to obtaining a search warrant exist for conducting limited searches.**

- A. Emergency
  - i. A warrantless search or seizure may be conducted when an officer has probable cause to believe that a life-threatening or substantial property threatening situation exists, and there is no time to obtain a search warrant.
  - ii. The emergency exception to the search warrant requirement is most likely to be upheld by the courts in cases where you inadvertently discover evidence while dealing with:
    - 1. An unconscious person
    - 2. An incoherent person
    - 3. A medical aid situation
    - 4. Shots fired
    - 5. Fight noises or screams
    - 6. Fires, explosions, or natural disasters
  - iii. Confine searching and seizing activities to places where emergency activities are warranted by a law enforcement officer and cease searching once the emergency ends.

- iv. If additional searches are necessary and you have time, obtain a search warrant if no other exception allows you to extend the search.
- B. See Texas Law Enforcement Handbook Section 3.3
  - i. *Mincey v. Arizona*, 437 U.S. 385 (1978)
    - 1. There is no general “crime scene” exemption to the warrant requirement.
    - ii. See Appendix A for a list of emergency search cases
  - C. Officer protection/stop and frisk
    - i. A frisk is a limited patting of the outer surfaces of a person's clothing in an attempt to find weapons.
    - ii. A protective frisk is not an investigative technique.
    - iii. A frisk can only be used by an officer when they justifiably stop someone and has a reasonable fear for their safety and the safety of the public.
    - iv. The protective frisk cannot be used as a subterfuge to search for incriminating evidence - it may only be used to protect the officer from harm.
    - v. The scope of a protective frisk is limited to persons and places within arm's reach of a concealed weapon, or to which the subject might lunge.
      - 1. Person
        - a. Pat down outer clothing
      - 2. Vehicle
        - a. Area under immediate control of person(s) feared.
      - 3. Briefcase, purse, or container possessed by person.
      - 4. Only potential weapons may be seized unless evidence in plain view is discovered.
      - 5. Contraband discovered by the sense of touch, the identity of which is immediately apparent, may also be seized.
    - vi. Factors which may contribute to reasonable fear for a protective frisk include:
      - 1. Darkness
      - 2. Remote location
      - 3. Outnumbered officer
      - 4. Relative physical size of the officer and other person
      - 5. Reason for the contact
      - 6. Encountered hostility
      - 7. Excess clothing (heavy coat on a warm day)
      - 8. Visible bulges in clothing
      - 9. Excess nervousness or excited state
      - 10. Torn or bloodstained clothing

- 11. Quick, sudden movements
- 12. Apparent efforts to adjust clothing or conceal something
- 13. Known record of violence
- 14. Reports that the suspect is armed or dangerous
- vii. See Appendix A for a list of frisk cases
- D. Vehicle searches based on probable cause
  - i. An officer may conduct a warrantless search of a readily movable vehicle (automobile, mobile home, boat, or airplane) if they have probable cause to believe that seizable items are inside, and that they cannot safely delay the search in order to obtain a warrant.
  - ii. The search should be made immediately.
  - iii. Passengers may only be searched if they are being arrested or if the officer has probable cause, except they may frisk if they have a reasonable fear for their safety. They must articulate specific safety concerns for each person frisked.
  - iv. If the vehicle is parked and unoccupied and circumstances permit, consider obtaining a warrant.
  - v. Officers may search any area of a readily movable vehicle where they have probable cause to believe seizable items will be found.
  - vi. If the peace officer has or develops probable cause to believe a person possesses evidence of a crime or contraband, on or about their person, including a vehicle the person is occupying, the person or vehicle and all containers that might hold that evidence may be lawfully searched.
    - 1. Carroll v. U.S., 267 U.S. 132, 45 S.Ct. 280 (1925)
    - 2. U.S. v. Ross, 456 U.S. 798, 102 S.Ct. 2157 (1982)
    - 3. California v. Acevedo, 500 U.S. 565, 111 S.Ct. 1982 (1991)
  - vii. The searching officer is not obligated to determine ownership of the various containers preceding the search.
    - 1. Officer may not enter a home or its curtilage to search a vehicle under the automobile exceptions. Collins v. Virginia, 584 U.S. \_\_\_\_ (2018).
  - viii. See Appendix A for a list of vehicle search cases
  - ix. See 3.5 of Texas Law Enforcement Handbook.
- E. Search incidental to arrest
  - i. Whenever an officer has sufficient probable cause to arrest someone for an offense that permits the officer to take the suspect into physical custody, and arrests that person, they may search the arrested person to protect the officer, to prevent the destruction of evidence, and to prevent escape by the person arrested.

- ii. The arrest must be lawful. If for any reason the arrest is unlawful, the evidence obtained will be suppressed.
- iii. The arrested person may be searched for weapons, contraband, fruits and instrumentalities of crimes, and evidence connected with any offense.
- iv. The search must be made immediately or as soon as possible after the arrest.
- v. The scope of the search should include:
  - 1. A complete search of the person.
  - 2. A search of the objects in the actual possession of the arrested person.
  - 3. A search of areas within the person's immediate control.

**INSTRUCTOR NOTE:**

Once a person has been arrested, the vehicle may only be searched incident to arrest if there is probable cause evidence related to what the person was arrested for will be located in the vehicle, for example, drugs or a DWI. A person arrested on a traffic violation or warrant out of vehicle does not permit the searching of the vehicle incident to arrest. *Arizona v. Gant*, 556 U.S. 332, 129 S.Ct. 1710 (2009).

- vi. See Appendix A for a list of search after arrest cases
- vii. See Appendix B for case details on *Arizona v. Gant*

**F. Hot pursuit**

- i. An officer in lawful fresh pursuit of a fleeing felon, may make a warrantless entry into any place where they seek refuge and may conduct a warrantless search and seizure of the suspect, their clothing, and the area under his immediate control.
- ii. The search authority and scope is as limited as a protective search and a search incident to lawful arrest.
- iii. The more serious the crime and the shorter the time interval in an interrupted pursuit, the more likely the warrantless entry and search will be upheld.
- iv. The more harmless the offense and the greater the interruption of the pursuit, the more likely a warrantless entry and search will not be upheld.
- v. Whenever circumstances and public safety permit obtain a warrant once the pursuit has been substantially interrupted. Usually this means more than a half hour depending on the circumstances.
- vi. Hot pursuit cases
  - 1. *Chapman v. U.S.*, 365 U.S. 610, 81 S.Ct. 776
  - 2. *Warden v. Hayden*, 387 U.S. 294, 87 S.Ct. 1642 (1967)
  - 3. *U.S. v. Santana*, 427 U.S. 38, 96 S. Ct. 2406 (1976)
  - 4. *Payton v. New York*, 445 U.S. 573, 100 S. Ct. 1371 (1980)
  - 5. *Welsh v. Wisconsin*, 466 U.S. 740, 104 S.Ct. 2091 (1984)

6. Parker v. State, 372 S.W.2d 320 (Tex. Cr. App. 1963)

G. Imminent destruction of evidence

- i. An officer may make a warrantless entry and search if it reasonably appears necessary to prevent the imminent destruction of evidence.

**INSTRUCTOR NOTE:** Officers should check local policy on these types of cases.

- ii. The officer cannot create the situation to avoid search warrant requirements.
- iii. The search must end when the threat of destruction has been neutralized.
- iv. Texas courts have very clearly ruled on this issue. Probable cause to believe there is contraband in the residence and occupants' awareness that police are present is insufficient to justify warrantless entry without specific facts to raise exigency.

1. Turrubiate v. State, 399 S.W.3d 147 (2013).

v. Imminent destruction of evidence cases.

- 1. U.S. v. Jeffers, 342 U.S. 48
- 2. Chapman v. U.S., 365 U.S. 610, 81 S. Ct. 776 (1961)
- 3. Vale v. Louisiana, 399 U.S. 30, 90 S. Ct. 1969 (1970)
- 4. Cupp v. Murphy, 93 S.Ct. 2000 (1973)
- 5. U.S. v. Shima, 545 F.2d 1026 (5th Cir. 1977)
- 6. Gonzalez v. State, 588 S.W.2d 582 (Tex. Cr. App. 1979)
- 7. Nesloney v. State, 653 S.W.2d 582 (Tex. App. 14 Dist. 1983), affirmed 711 S.W.2d 636 (Tex. Cr. App. 1986)
- 8. Kentucky v. King, 563 US 452, 131 S. Ct. 1849 (2011)

vi. Texas Law Enforcement Handbook Section 3.3(a)

H. Border inspections

- i. Coast guard, customs officers, border patrol officers, and other officials of the Immigration and Naturalization Service and the Treasury Department have increased search-and-seizure powers over persons and property coming into the country.
- ii. If an officer gets word of incoming contraband, it may be useful to contact one of these federal agencies to obtain their assistance in using their inspection powers.

I. Consent searches

- i. A legally valid consent to search is a waiver of a person's Fourth Amendment rights to be searched and have property seized only on the authority of a lawful search warrant.
- ii. A valid consent search requires that consent be given voluntarily and knowingly by a person with the authority and capacity to grant consent.
- iii. The scope of the search is limited by the scope of the authorized consent.



- iv. Consent is not voluntary if it is obtained by means of expressed or implied threats, or if it merely amounts to a peaceful submission to authority.
- v. Consent is not knowing if the person who gives it does not understand the consequences of his consent and their right to refuse.
- vi. General guidelines on who may consent to a search:
  - 1. Generally, any adult who normally has regular unrestricted access to a place can usually grant consent for a search of that place, but not for a search of personal storage places of another.
  - 2. Spouse
    - a. Either spouse can consent to a search of shared premises, but not to legally separate property.
    - b. If both parties with joint possession are present and one party does not consent, a search cannot take place. Asserting the right to not have a search controls over other party waiving that right.
    - c. *Georgia v. Randolph*, 547 U.S. 103 (2006).
  - 3. Parent/child
    - a. A child cannot usually give valid consent for the search of his parents' property.
    - b. A parent can usually give valid consent for the search of his resident child's property.
    - c. There are exceptions to this based upon privacy expectations.
  - 4. School official/student
    - a. A teacher, principal or other school official who retains combinations to students' lockers can consent to a search of these lockers.
    - b. Since students do not have exclusive control over lockers, they do not have an absolute right to privacy.
  - 5. Landlord/Tenant
    - a. A landlord cannot consent to the search of a paying tenant's premises.
  - 6. Roommates
    - a. One person can consent to the search of commonly-shared portions of the premises, but not to a roommate's personal rooms, furniture or effects.
  - 7. Host/Guest
  - 8. The host can consent to a search of his non-paying guest's room, but not to closed personal effects such as luggage, etc.
  - 9. Employer/Employee
    - a. An employer can consent to a search of his employee's work area, but not of the employee's desk drawers, locker, or personal toolbox.

- b. An employee can only consent to a search of his employer's premises if they are in charge of the premises during a substantial period of time, such as a:
  - Manager
  - Superintendent
  - Director
- c. The authority of an employer to search an employee's desk, locker, etc. may be granted depending on the wording of any relevant policy.
- vii. The person who validly consents to the search can limit the areas of search and can revoke their consent at any time.
- viii. Consent searches are the most difficult to prove in court.
- ix. Documentation of the consent can be helpful in court.
  - 1. Written consent should be obtained where possible.
    - a. The prosecutor's office may have sample forms they want used.
  - 2. Use available officers and citizens as witnesses.
  - 3. Another option is audio and/or video tape recording.
- x. Procedural steps to obtain a valid consent to search. Local agency policy and procedures may vary.
  - 1. Advise the person whose consent is being sought of the general nature of the investigation if able and the purpose for the search.
  - 2. Advise the person whose consent is being sought that under the Fourth Amendment of the U.S. Constitution the right exists to be searched only on the authority of a search warrant issued by a judge.
  - 3. Do not claim authority to search.
  - 4. Be sure to advise the person from whom consent is being sought that they can refuse to permit the search.
  - 5. Avoid any show of force or anything that could be interpreted as even the mildest or slightest coercion.
    - a. It is essential that consent be freely and voluntarily given.
  - 6. Get consent from the right person.
    - a. Consent must be obtained from the person who has a right to privacy in the area to be searched or against who the incriminating search is directed, or from a person who has a valid and equal right to privacy in the area to be searched.
  - 7. Obtain a written consent in preference to an oral consent whenever possible.
- xi. See Appendix A for a list of consent to search cases
- xii. Texas Law Enforcement Handbook Section 3.6

### **3.2 Identify situations in which a search warrant is not necessary to obtain evidence because there is no expectation of privacy.**

#### **A. Objects in plain view**

- i. A seizure of contraband or instrumentalities of a crime in plain view is not a violation of the Fourth Amendment when the officer has a lawful right to be where they are to observe the contraband, etc.
  - 1. Item must be readily apparent as contraband or evidence without further search or manipulation.
  - 2. *Arizona v. Hicks*, 480 U.S. 321 (1987).
- ii. A person who exposes an item to open view does not have a reasonable expectation of privacy.
- iii. See Appendix A for a list of plain view cases
- iv. Texas Law Enforcement Handbook Section 4.3

#### **B. Abandoned property**

- i. *United States v. Colbert*, 474 F.2d 174 (5th Cir. 1973)
  - 1. Abandonment is primarily a question of intent, and intent may be inferred from words spoken, acts done, and other objective facts. All relevant circumstances existing at the time of the alleged abandonment should be considered.
- ii. A person who has abandoned property can no longer claim a reasonable expectation of privacy to that item.
- iii. When property is abandoned, no one has any further privacy right in it and it may be seized by law enforcement officers without probable cause or a search warrant.
- iv. If unlawful police activity causes a person to abandon property, the evidence may be excluded.
- v. Abandoned property cases
  - 1. *Hawkins v. State*, FWApp, 644 S.W.2d 764 (Tex. App. 1982)
  - 2. *U.S. v. Williams*, 569 F.2d 823 (5th Cir. 1978)
  - 3. *U.S. v. Colbert*, 474 F.2d 174 (5th Cir. 1973)
  - 4. *Abel v. U.S.*, 362 U.S. 217, 80 S.Ct. 683 (1960)
  - 5. *U.S. v. Beck*, 602 F.2d 726 (5th Cir.)
  - 6. *Sullivan v. State*, 564 S.W.2d 698 (Tex. Crim. App. 1978)
- vi. Texas Law Enforcement Handbook Section 4.4

#### **C. No standing to complain**

- i. A person has no standing to assert violations of another's rights, or to complain about the search or seizure of property not under his lawful control or possession.
  - ii. If a person does not own or have legitimate custody of an item, they cannot claim a reasonable expectation of privacy in it.
  - iii. If the arrestee does not have a reasonable expectation of privacy in the place searched or the thing seized, he does not have standing to object to a search.
  - iv. Cases dealing with no standing to complain.
    - 1. Sullivan v. State, 564 S.W.2d 698 (Tex. Crim. App. 1978)
    - 2. Rakas v. Illinois, 439 U.S. 128, 99 S.Ct. 421 (1978)
    - 3. U.S. v. Salvucci, 448 U.S. 83, 100 S.Ct. 2547 (1980)
    - 4. Wilson v. State, 692 S.W.2d 661 (Tex. Cr. App. 1984)
- D. Open fields
- i. Open fields begin where the curtilage ends.
  - ii. Curtilage is generally considered to be that area of open space surrounding a dwelling which is so immediately adjacent to the dwelling that it is considered part of the house.
  - iii. Criminal activity conducted in an open field that is not part of the curtilage of a house is not protected by the Fourth Amendment.
  - iv. Obtain a search warrant if there is time or there is any question that the activity is occurring in the curtilage.
  - v. Extent-of-curtilage questions should be resolved with particular reference to the following four factors, at least to the extent that they bear upon whether the area claimed to be curtilage is so intimately tied to the home itself that it should be placed under the home's umbrella of protection:
    - 1. The proximity of the area to the home.
    - 2. Whether the area is within an enclosure surrounding the home.
    - 3. The nature and uses to which the area is put.
    - 4. The steps taken by the resident to protect the area from observation by passers-by.
  - vi. See Appendix for a list of open fields case decisions

### **3.3 Identify when evidence may be seized during an inventory.**

- A. An inventory is a legitimate law enforcement activity that is not a search, which sometimes incidentally results in the discovery of evidence.
- B. During booking of an arrested person, a standard inventory inspection of the arrestee's clothing and personal property should be made to document items being kept by the jail for safe-keeping. These inventories should be uniformly conducted in accordance with an agency's written procedures.

- i. Performed at the jail.
- ii. Performed by the same person such as:
  - 1. Arresting officer
  - 2. Booking officer
  - 3. Property officer
- iii. Listing inventoried items on the agency's standard form.
- iv. Storing inventoried property in a separate place from evidence.
- C. When an automobile is to be towed or impounded an officer may conduct a standard inventory inspection for the protection of the owner, the officer, and the department.
- D. Inventories should be conducted consistently according to the agency's written directives that clearly spell out the agency's legitimate government interest in conducting this administrative activity.
- E. See Appendix A for a list of inventory cases
- F. Texas Law Enforcement Handbook Section 3.4

**REQUIRED ACTIVITY:**

- The student will be able to write a report that documents the officer's actions in a way that justifies the given warrantless search and seizure scenario.
- The instructor should provide at least one example of an effective report.
  - Give students a scenario in the classroom, on film and/or videotape which may include written material and reports, the student will be able to write a report that documents the officer's actions in a way that justifies the given warrantless search and seizure scenario. Reports should include a detailed, objective account of the facts and a subjective account of the officer's conclusions made from his viewpoint of the facts.
  - Alternatively, students may be presented with various scenarios and samples of effective reporting, allowing them to select the most appropriate option.

**Unit 4 Suppression Hearing and Civil Liability**

**4.1 Identify the unique elements of a pretrial suppression of evidence hearing as it relates to officer testimony.**

- A. If a search warrant was not used to gather the evidence, the burden of proving the search as reasonable rests with the State.
  - i. The State must prove a valid, recognized exception to the warrant requirement.
- B. If a search warrant was used to gather the evidence, the defense has the burden of proving a fatal defect in the affidavit, the warrant, or the execution of the warrant.
- C. Hearsay testimony is admissible in a suppression hearing on the issue of probable cause for arrest or search.

- D. Reasonable inferences and opinions may also be admissible on the issue of probable cause.
- E. The officer should not understate their probable cause, and should include all the details, no matter how small, because they add up and can tip the scales in favor of probable cause.
  - i. Affidavits are a matter of public record once the warrant has been executed.
  - ii. Code of Criminal Procedure § 18.01(b)
- F. A pre-hearing meeting with the prosecutor is a must.
- G. A post-hearing meeting with the prosecutor could be valuable for future hearings.
- H. Exclusionary Rule
  - i. If there is a factual dispute about whether the evidence was obtained lawfully, the jury gets to decide that dispute under Code of Criminal Procedure § 38.23.
    - 1. Applies to civilians and peace officers.
  - ii. Code of Criminal Procedure Article 38.23 (State exclusionary rule)
  - iii. Mapp v. Ohio, 367 U.S. 643 (1961) (Federal exclusionary rule)
  - iv. Utah v. Strieff, 579 U.S. \_\_\_ (2016)
  - v. Navarette v. California, 572 U.S. 393 (2014)
  - vi. Texas Law Enforcement Handbook Chapters 9 and 10

**4.2 Identify the possibility of personal and/or agency liability for improper arrest, search, and seizure actions.**

- A. The most common court action for improper arrest, search, and seizure actions is to exclude the evidence from the prosecution of the individual—"the exclusionary rule."
- B. An illegal arrest, search, and seizure that violates the Fourth Amendment is a constitutional violation.
- C. Violation of someone's civil or constitutional rights exposes the officer and their agency to the possibility of a lawsuit under Title 42 Section 1983 of the United States Code Annotated.
- D. Vicarious liability for the agency requires a showing that an agency or local policy maker established or acquiesced to a policy, custom, or practice that resulted in the violation of the plaintiff's civil rights.
- E. Other types of potential liability are tort suits filed in state court to redress an injury or a criminal suit against the officers where either the Texas Penal Code or federal penal statutes have been violated.
  - i. Texas Penal Code Chapter 39
- F. Officers individually have access to a good faith defense if they believe their conduct was lawful and if that belief was reasonable.
  - i. Local governments cannot use a good faith defense.

- G. See Appendix A for a list of case decisions concerning civil rights liability
- H. See Texas Law Enforcement Handbook Chapter 14 for new cases.

#### **4.3 Explain the bail procedure.**

- A. Definition of “Bail” – Code of Criminal Procedure § 17.01
- B. Release on Bond of Certain Persons Arrested Without a Warrant - Code of Criminal Procedure § 17.033
- C. Rules for Fixing Amount of Bail - Code of Criminal Procedure § 17.15
- D. Denial of Bail for Violation of Certain Court Orders or Conditions of Bond in a Family Violence Case – Code of Criminal Procedure § 17.152
- E. Denial of Bail for Violation of Condition of Bond Where Child Alleged Victim – Code of Criminal Procedure § 17.153
- F. Bail in Misdemeanor - Code of Criminal Procedure § 17.20
- G. Bail in Felony - Code of Criminal Procedure § 17.21
- H. May Take Bail in Felony - Code of Criminal Procedure § 17.22
- I. Accused Liberated - Code of Criminal Procedure § 17.29
- J. Further Detention of Certain Persons - Code of Criminal Procedure § 17.291
- K. Magistrate’s Order for Emergency Protection - Code of Criminal Procedure § 17.29
- L. Crime Victims’ Rights - Code of Criminal Procedure §§ 56A.051, 56A.052

### **Unit 5 Juvenile Justice Procedures**

#### **5.1 Identify the kinds of juvenile offenses and how to deal with offenders.**

- A. Status Offense (See Title 3, Texas Family Code, § 51.02 for statutory references)
  - i. Truancy
  - ii. Running away from home
  - iii. Failure to attend school
  - iv. Violation of standards of student conduct
  - v. Curfew violation
  - vi. Alcoholic Beverage Code violation
- B. CINS (“child in need of supervision”) (See Title 3, Texas Family Code, § 51.03 for statutory references)
  - i. Public intoxication
  - ii. Offense punishable by fine only – other than traffic offense
  - iii. Truancy
  - iv. Runaway
  - v. Inhalant abuse

- vi. Expulsion from school
- vii. Violation of a reasonable and lawful court order
- B. Delinquent Conduct (See Title 3, Texas Family Code, § 51.03 for statutory references)
  - i. Felony or jailable misdemeanor
  - ii. Violation of probation
  - iii. Contempt of court
  - iv. DWI
  - v. Third offense DUIA as minor
- C. Procedures and limits for treatment of offenders (See Title 3, Texas Family Code, Chapter 52 for statutory references)
  - i. Status Offenders
    - a. Holding room - unlocked, multi-purpose, non-residential
    - b. Handcuffing
    - c. Limit to holding time
    - d. Restrictions to finger printing and photographing
    - e. Continuous visual supervision
    - f. Six-hour rule
  - ii. Sight and sound separation for holding
  - iii. Texas Family Code, Title 3, Chapters 51–60
    - a. General provisions
    - b. Proceedings before and including juvenile court referral
    - c. Proceedings prior to judicial proceedings
    - d. Judicial proceedings
    - e. Children with mental illness or mental retardation
    - f. Appeal
    - g. Victims' rights
    - h. Records
    - i. Progressive sanction guidelines



- j. Uniform interstate compact on juveniles

**5.2 Identify the issues in making law enforcement contacts at a school.**

- A. Contact with school personnel
- B. Contact with juvenile offenders in a school setting

**5.3 Identify the issues in identifying and making law enforcement contacts with juveniles engaged in organized crime activity.**

- A. See Texas Penal Code Chapter 71 and Code of Criminal Procedure Chapter 67
  - i. Identifying juvenile gang members
  - ii. Making law enforcement contacts with juvenile gang members
  - iii. State-wide reporting of juvenile gang information

# APPENDIX A

## Arrest, Search and Seizure Court Cases

### **Unit 1 - Learning Objective 1.4**

#### Other temporary detention cases:

Baity v. State, 455 S.W.2d 305 (Tex. Crim. App. 1970), U.S. cert. denied 400 U.S. 918

Armstrong v. State, 550 S.W.2d 25 (Tex. Crim. App. 1977)

Johnson v. State, 658 S.W.2d 623 (Tex. Crim. App. 1983)

Shaffer v. State, 562 S.W.2d 853 (Tex. Crim. App. 1978)

Petty v. State, 696 S.W.2d 635 (Tex. App. 5 Dist. 1985)

Brown v. Texas, 443 U.S. 357, 99 S.Ct. 2637 (1979)

Howard v. State, 617 S.W.2d 191 (Tex. Cr. App. 1979)

U.S. v. Hensley, 469 U.S., 105 S.Ct., 36 Cr.L 3085 (1985)

Ramirez v. State, 672 S.W.2d 480 (Tex. Cr. App. 1984)

Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330 (1977)

Michigan v. Long, 463 U.S. 1032, 103 S.Ct. 3469 (1983)

Adams v. Williams, 407 U.S. 143, 92 S. Ct. 1921, 32 L. Ed. 2d 612 (1972)

McDougald v. State, 547 S.W.2d 40 (Tex.Cr.App.1977)

Ybarra v. Illinois, 444 U.S. 85, 100 S.Ct. 338 (1979)

U.S. v. Place, 462 U.S. 696, 103 S.Ct 2637 (1983)

U.S. v. Sharpe, 105 S.Ct. 1568 (1985)

Eisenhauer v. State, 678 S.W.2d 947 (Tex. Cr. App. 1984)

Hayes v. Florida, 105 S.Ct 1643 (1985)

Meeks v. State, 653 S.W.2d 6 (Tex. Cr. App. 1983)

Schwartz v. State, 635 S.W.2d 545 (Tex. Cr. App. 1982)

Texas Law Enforcement Handbook Section 1.1

Hilla v. State, 832 S.W.2d 773 (Houston [1<sup>st</sup> Dist.] 1992 pet. Ref'd)

Texas Law Enforcement Handbook Section 8.1

### **Unit 2 - Learning Objective 2.3**

#### Case decisions dealing with search warrants:

Aguilar v. Texas, 378 U.S. 108, 84 S.Ct. 1509 (1964)

Spinelli v. U.S., 393 U.S. 410, 89 S.Ct. 584 (1969)

Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317 (1983)

U.S. v. Ventresca, 380 U.S. 102 (1965)

Jones v. State, 579 S.W.2d 240 (Tex. Crim. App. 1979)  
Sherlock v. State, 632 S.W.2d 604 (Tex. Cr. App. 1982)  
Spencer v. State, 672 S.W.2d 451 (Tex. Cr. App. 1984)  
Olivas v. State, 631 S.W.2d 553 (Tex. Cr. App. 1982)  
Haynes v. State, 475 S.W.2d 739 (Tex. Crim. App. 1972)  
Cantu v. State, 557 S.W.2d 1207  
Gurleski v. U.S., 405 F.2d 253 (5th Cir.)  
Phenix, v. State, 488 S.W.2d 759 (Tex. Crim. App. 1973)  
Stanford v. Texas, 379 U.S. 476, 85 S.Ct. 506 (1965)  
James v. State, 139 S.W.2d 587  
White v. State, 45 S.W.2d 225  
Bentley v. State, 178 S.W.2d 521 (Tex. Crim. App. 1944)  
Hernandez v. State, 255 S.W.2d 219  
Heredia v. State, 468 S.W.2d 833 (Tex. Crim. App. 1971)  
Massachusetts v. Sheppard, 104 S.Ct. 3424 (1984)  
U.S. v. Leon, 104 S.Ct. 3405 (1984)  
Acosta v. Beto, 425 F.2d 963 (5th Cir.); Acosta v. State, 403 S.W.2d 434, U.S. cert. denied 400 U.S. 928  
U.S. v. Bell, 457 F.2d 1231 (5th Cir.)  
U.S. v. Rajewich, 470 F.2d 666 (5th Cir.)  
Wetherby v. State, 482 S.W.2d 852 (Tex. Crim. App. 1972)  
Abercrombie v. State, 528 S.W.2d 578 (Tex. Crim. App. 1975)  
Wright v. State, 646 S.W.2d 460 (Tex. Cr. App. 1983)  
Kemp v. State, 464 S.W.2d 141 (Tex. Crim. App. 1971)  
Peltier v. State, 626 S.W.2d 30 (Tex. Cr. App. 1981)  
Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674 (1978)  
Ramsey v. State, 579 S.W.2d 920 (Tex. Crim. App. 1979)  
Longoria v. State, 636 S.W.2d 521 (Tex. App. 1982)  
Gentry v. State, 629 S.W.2d 77 (Tex. App. 1982)  
Jones v. U.S., 362 U.S. 257, 80 S.Ct. 725 (1960)  
U.S. v. Plemmons, 336 F.2d 731 (6th Cir. 1964)  
Garcia v. State, 459 S.W.2d 839 (Tex. Crim. App. 1970)  
Stoddard v. State, 475 S.W.2d 744 (1972)  
U.S. v. Jackson, 41 Cr.L. 2215 (5th Cir. 5-20-87)  
Heitman v. State, 815 S.W. 2d 681, 682 (Tex. Crim. App. 1991)

### **Unit 3 - Learning Objective 3.1**

#### Emergency search cases:

Created: June 2024

Michigan v. Tyler, 436 U.S. 499, 98 S.Ct. 1942 (1978)  
Tijuina v. State, 578 S.W.2d 415 (Tex. Crim. App. 1979)  
Perez v. State, 514 S.W.2d 748 (Tex. Crim. App. 1974)  
Corbett v. State, 493 S.W.2d 940 (Tex. Crim. App. 1973), U.S. cert. denied 414 U.S. 1131  
Broadnax v. State, 666 S.W.2d 83 (Tex. App. 14 Dist. 1984)  
Green v. State, 666 S.W.2d 291 (Tex. App. 14 Dist. 1984)  
Bray v. State, 597 S.W.2d 763 (Tex. App. 1980)  
U.S. v. Jeffers, 342 U.S. 48 (1951)  
Schmerber v. California, 384 U.S. 757 (1966)  
Janicek v. State, 634 S.W.2d 687 (Tex. Cr. App. 1982)  
Mincey v. Arizona, 437 U.S. 385, 98 S.Ct. 2408 (1978)  
Arizona v. Hicks, 40 Cr.L 3320 (3-3-87)  
Brigham City, Utah v. Stuart, 547 U.S. 398, 126 US 1943 (2006)

Frisk cases:

Terry v. Ohio, 392 U.S. 1, 88 S.Ct. (1968)  
Sibron v. New York, 392 U.S. 40, 88 S.Ct. 1889  
Ramirez v. State, 672 S.W.2d 480 (Tex. Cr. App. 1984)  
Adams v. Williams, 407 U.S. 143, 92 S.Ct. 1921 (1972)  
Peters v. U.S., 88 S.Ct. 1889  
U.S. v. Tharpe, 536 F.2d 1098 (5th Cir. 1976)  
Michigan v. Long, 463 U.S. 1032 (1983)  
Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330 (1977)  
Britton v. State, 578 S.W.2d 685 (Tex. Crim. App. 1979), U.S. cert. denied 444 U.S. 955  
Crawford v. State, 544 S.W.2d 163 (Tex. Crim. App. 1976)  
Hull v. State, 613 S.W.2d 735 (Tex. Cr. App. 1981)  
Lippert v. State, 664 S.W.2d 712 (Tex. Cr. App. 1984)  
Ybarra v. Illinois, 444 U.S. 85, 100 S.Ct. 338 (1979)  
Lawson v. Kolender, 103 S.Ct. 1855 (1983)

Vehicle search cases:

Brinegar v. U.S., 338 U.S. 160 (1949)  
Brown v. State, 481 S.W.2d 106 (1972)  
Dyke v. Taylor Implement Mfg. Co., 391 U.S. 216 (1968)  
California v. Carney, 37 Cr.L.303333 (5-13-85)  
Glass v. State, 681 S.W.2d 599 (Tex. Cr. App. 1984)  
Texas v. White, 423 U.S. 67, 96 S.Ct. 304 (1975)

Chambers v. Maroney, 399 U.S. 42, 90 S.Ct. 1975 (1969)  
Michigan v. Thomas, 458 U.S. 259, 102 S.Ct. 3079 (1982)  
U.S. v. Chadwick, 433 U.S. 1, 97 S.Ct. 2476 (1977)  
New York v. Belton, 453 U.S. 454, 101 S.Ct. 2860 (1981)  
Osban v. State, 726 S.W.2d 107 (Tex. Cr. App. 1986)  
Barber v. State, 611 S.W.2d 67 (Tex. Cr. App. 1981)  
Stoddard v. State, 475 S.W.2d 744 (Tex. Crim. App. 1972)  
Coolidge v. New Hampshire, 403 U.S. 443, 91 S.Ct. 2022 (1971)  
Arkansas v. Sanders, 442 U.S. 753, 99 S.Ct. 2586 (1979)  
Pace v. Beto, 469 F.2d 1389 (5th Cir. 1972)  
U.S. v. Edwards, 441 F.2d 749 (5th Cir. 1971)  
U.S. v. Polk, 433 F.2d 644 (5th Cir. 1970)  
Hudson v. State, 588 S.W.2d 348 (Tex. Crim. App. 1979)  
Araj v. State, 592 S.W.2d 603 (Tex. Cr. App. 1979)  
Robbins v. California, 453 U.S. 420, 101 S.Ct. 2841 (1981)  
Soto v. State 4-88-660 (TX App. -San Antonio 12-13-89)

Search after arrest cases:

U.S. v. Robinson, 414 U.S. 218, 94 S.Ct. 467 (1973)  
Gustafson v. Florida, 414 U.S. 260, 94 S.Ct. 488 (1973)  
U.S. v. Edwards, 415 U.S. 800, 94 S.Ct. 1234 (1974)  
Harding v. State, 500 S.W.2d 870 (Tex. Crim. App. 1973)  
Snyder v. State, 629 S.W.2d 930 (Tex. Cr. App. 1982)  
Linett v. State, 647 S.W.2d 672 (Tex. Cr. App. 1983)  
U.S. v. Chadwick, 433 U.S. 1, 97 S.Ct. 2476 (1977)  
U.S. v. Johnson, 588 F.2d 147 (5th Cir. 1979)  
Stewart v. State, 611 S.W.2d 434 (Tex. Cr. App. 1981)  
Mincey v. Arizona, 437 U.S. 385, 98 S. Ct. 2408 (1978)  
Warden v. Hayden, 387 U.S. 294, 87 S.Ct. 1642 (1967)  
Chimel v. Calif., 395 U.S. 752 (1969)  
New York v. Belton, 453 U.S. 454, 101 S.Ct. 2860 (1981)  
Haynes v. State, 475 S.W.2d 739 (Tex. Crim. App. 1972)  
Steagald v. U.S., 451 U.S. 204, 101 S.Ct. 1642 (1981)  
Vale v. Louisiana, 399 U.S. 30, 90 S.Ct. 1969 (1970)  
Washington v. Chrisman, 455 U.S. 1, 102 S.Ct. 812 (1982)  
Christian v. State, 592 S.W.2d 625, (Tex. Cr. App. 1980), 731 F.2d 1196, U.S. cert. denied 446 U.S. 984  
Patterson v. State, 598 S.W.2d 265 (Tex. Cr. App. 1980)

Brent v. White, 398 F.2d 503 (5th Cir. 1968) U.S. cert. denied 393 U.S. 1123)  
Escamilla v. State, 556 S.W.2d 796 (Tex. Cr. App. 1977)  
Schmerber v. California, 384 U.S. 757, 86 S.Ct. 1826 (1966)  
Smith v. State, 557 S.W.2d 299 (Tex. Cr. App. 1977)

Consent to search cases:

Bumper v. North Carolina, 391 U.S. 543, 88 S.Ct. 1788 (1968)  
Vale v. Louisiana, 399 U.S. 30, 90 S.Ct. 1969 (1970)  
Schneckloth v. Bustamonte, 412 U.S. 218, 93 S.Ct. 2041 (1973)  
Coolidge v. New Hampshire, 403 U.S. 443, 91 S.Ct. 2022 (1971)  
U.S. v. Matlock, 415 U.S. 164, 94 S.Ct. 988 (1974)  
U.S. v. Mendenhall, 446 U.S. 544, 100 S.Ct. 1870 (1980)  
Papskar v. State, 484 S.W.2d 731 (Tex. Crim. App. 1972)  
Zeoeda v. State, 638 S.W.2d 542 (Tex. App. 1982)  
Clemons v. State, 605 S.W.2d 567 (Tex. Cr. App. 1980)  
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# APPENDIX B

## Criminal Law – Body Cavity Searches

CRIMINAL LAW - CONSTITUTIONAL LAW - EVIDENCE - FOURTH AMENDMENT - SEARCH AND SEIZURE - SEARCH WARRANT - STRIP SEARCH - BODY CAVITY SEARCH

People v. More, 2002 N.Y. Int. 0020 (Feb. 19, 2002)

[http://www.law.cornell.edu/ny/ctap/I02\\_0020.htm](http://www.law.cornell.edu/ny/ctap/I02_0020.htm)

### ISSUE & DISPOSITION:

Issue(s)

Whether, during a warrantless strip search conducted incident to an arrest, a police officer may ordinarily conduct a body cavity search or seize potential evidence protruding from a body cavity.

Disposition

No. Absent certain exigent circumstances, a search warrant is required in order to conduct a body cavity search incident to an arrest, and, accordingly, evidence discovered in a body cavity without such a warrant is inadmissible under the Fourth Amendment of the United States Constitution.

### SUMMARY:

Police officers arrested Defendant in an apartment upon suspicion of drug possession. Police performed a "quick pat-down" search of Defendant and discovered no weapons. Police then performed a strip search of Defendant in a bedroom of the apartment. Police saw part of a plastic bag protruding from Defendant's rectum and removed the bag, which was filled with cocaine. Defendant submitted a motion for suppression of the drugs seized from his person on the grounds that the police officers had no probable cause for the arrest or the body cavity search and no warrant or emergency to justify the body cavity search. The County Court denied the motion. The Appellate Division affirmed. The Court of Appeals reversed.

Following the U.S. Supreme Court's analysis in *Schmerber v. California*, 384 U.S. 757 (1966), the Court held that the police were not justified in requiring Defendant to submit to a body cavity search incident to his arrest. Absent a search warrant or an emergency, the search was unreasonable under the Fourth Amendment of the United States Constitution. The Court noted that the considerations of disarming a suspect or preserving evidence, which justify a "full search" incident to an arrest, have little applicability to searches which intrude beyond the body's surface. To perform a more invasive search, the Court found that there must be a "clear indication," and not just a chance, that the desired evidence will be found. Moreover, even with such a "clear indication," a search warrant will ordinarily be required to perform a body cavity search absent an emergency. An emergency in this context consists of a reasonable belief by a police officer that the delay of obtaining a search warrant would pose a threat to the officer's personal safety or cause the destruction of evidence. The Court held that in the instant

case, given the ability to fully restrain and place Defendant under surveillance while obtaining a search warrant, no exigent circumstances existed to justify dispensing with such a warrant.

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Decisions of the New York Court of Appeals are archived in full text at <http://www.law.cornell.edu/ny/ctap/>

# APPENDIX C

## Arizona v. Gant

Synopsis of Arizona v Gant retrieved from FLETC June 8, 2009

Arizona v. Gant, 556 U.S. 332, 129 S.Ct. 1710 (2009)

On Tuesday, April 21, 2009, the Supreme Court decided the case of Arizona v. Gant dealing with the circumstances permitting the search of a vehicle incident to the arrest of an occupant. Below is the FLETC LGD review of the decision and its practical impact on law enforcement, authored by Jenna Solari, Senior Instructor.

### **Case Note:**

Police may search the passenger compartment of a vehicle incident to arrest of an occupant or recent occupant only if it is reasonable to believe that the arrestee might access the vehicle at the time of the search or that the vehicle contains evidence of the offense of arrest.

### **FACTS:**

Gant was arrested for driving on a suspended license. Gant was handcuffed and locked in a patrol car before officers searched the passenger compartment of his car and found a firearm and cocaine. In his motion to suppress the evidence, Gant argued that it was not possible for him to access the vehicle to gain control of a weapon or evidence, and therefore the search of his vehicle was not a reasonable “search incident to arrest.”

### **HELD:**

Police are authorized to search the passenger compartment of a vehicle incident to arrest of an occupant or recent occupant only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search. Additionally, officers may search the passenger compartment following the arrest of a recent occupant when it is reasonable to believe that evidence relevant to the crime of arrest might be found in the vehicle.

### **DISCUSSION:**

Prior case law: Chimel, Belton, and Thornton. The Supreme Court first established the search incident to arrest (“SIA”) exception to the Fourth Amendment’s warrant requirement in Chimel v. California, 395 U.S. 752 (1969). Chimel held that police may, incident to arrest, search the arrestee’s “lunging area,” which is defined as the area from within which the arrestee might gain possession of a weapon or destructible evidence. The purposes of this exception are to protect arresting officers and safeguard evidence of the offense that an arrestee might conceal or destroy. The Court was asked to define the scope of a vehicle SIA in New York v. Belton, 453 U.S. 454 (1981). In Belton, the Court held that when an SIA of a vehicle is justified, the entire compartment and any containers therein may be searched. In Thornton v. U.S., 541 U.S. 615 (2004), the Court added that an SIA of a vehicle may be justified even if an occupant has gotten out of the vehicle, closed the door, and walked a short distance away before being arrested. The question

remaining, however, was whether the Belton and Thornton rules authorized an SIA of the vehicle regardless of the arrestee's ability to access the passenger compartment following the arrest.

Clarification: arrestee within reaching distance. The majority opinion in *Arizona v. Gant* has answered that question, holding that prior case law authorizes police to search a vehicle incident to arrest when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search. The Court noted that "it will be the rare case in which an officer is unable to fully effectuate an arrest so that a real possibility of access to the arrestee's vehicle remains." In such a rare case, however, an SIA of the passenger compartment would be reasonable under the Fourth Amendment.

An additional justification: offense-related evidence. Even if the arrestee can no longer access the vehicle's passenger compartment, the Court held that an SIA will also be permitted "when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle." In many cases, such as arrests for traffic violations, there will be no reasonable basis to believe that the vehicle contains relevant evidence. In other cases, however, such as arrests for possession of controlled substances, the basis of the arrest will supply an acceptable rationale for searching the arrestee's passenger compartment and any containers inside.

Other vehicle search exceptions remain available. The Court noted that other established exceptions to the search warrant requirement remain available to safeguard evidence and protect the safety of officers. If an officer has a reasonable suspicion that a passenger or recent occupant of a vehicle – whether arrested or not – is dangerous and may gain access to a weapon, he may frisk the passenger compartment for weapons. (This exception is known as a Terry frisk of the vehicle.) If the officer has probable cause that the vehicle contains evidence of criminal activity, the officer may conduct a thorough search of any area of the vehicle in which the evidence might be found. (This exception is called the "mobile conveyance exception" or the Carroll Doctrine.) Finally, if an officer conducting an arrest reasonably suspects that a dangerous person is hiding in a nearby vehicle, he may conduct a protective sweep of the vehicle by looking in places where such a person might be concealed. Although not specifically mentioned by the Court, and not a criminal search tool, an inventory of a vehicle's contents following a lawful impound is another exception to the search warrant requirement. This administrative exception, however, may not be used as a pretext for a criminal search. Consent remains a viable option as well.

The bottom line. To justify a search incident to arrest of a vehicle's passenger compartment, an officer must articulate that either (1) the officer was unable to sufficiently restrain the arrestee during the search, so that it was reasonable to believe the arrestee might have been able to access the vehicle, or (2) there was a reasonable basis to believe that evidence of the crime for which the occupant of the vehicle was arrested might be found in the passenger compartment at the time of the search.

#### **APPLICATION TO FIELD OFFICERS AND AGENTS:**

Prepare to articulate! The Court noted that "[w]hen asked at the suppression hearing why the search was conducted, [the officer in this case] responded, 'Because the law says we can do it.'" That answer did not – and will not – meet the government's burden. While searches of vehicles incident to arrest have been considered "automatic" for 28 years, the holding of *Gant* states that more is required. Officers must be prepared to articulate facts establishing one of the permitted justifications.

Don't look for the loophole; it's already closed. Some may suggest the holding in *Gant* encourages an unsafe practice of leaving arrestees unsecured in a nearby area to justify a search incident to arrest. Justice Scalia, however, in his concurring opinion in *Thornton v. U.S.*, has already anticipated and answered that argument. He wrote, "if an officer leaves a suspect unrestrained nearby just to manufacture authority to search, one could argue that the search is unreasonable precisely because the dangerous conditions justifying it existed only by virtue of the officer's failure to follow sensible procedures."

**Unanswered questions:**

The Court held that an SIA will also be permitted "when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle." Is this a lower standard than probable cause applicable only to evidence of the crime of arrest?

Can an officer SIA a vehicle when persons other than the already secured arrestee are in the area who might gain access to the vehicle?

Does this ruling, reemphasizing the original *Chimel* basis for SIA, extend beyond the context of SIA of a vehicle to apply to all SIA of "lunging areas?"

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