

	Houston Independent School District Police Department Directives	DIRECTIVE: 440-003
		EFFECTIVE DATE: July 16, 2013
	SUBJECT: Search and Seizure	REVISED DATE: January 28, 2022

POLICY

Both the federal and state constitutions provide every individual with the right to be free from unreasonable searches and seizures. This policy provides general guidelines for HISD Police Department personnel to consider when dealing with search and seizure issues.

It is the policy of the HISD Police Department to respect the fundamental privacy rights of individuals. Members of this Department will conduct searches in strict observance of the constitutional rights of persons being searched. All seizures by this department will comply with relevant federal and state laws governing persons and property seizure.

As appropriate, the department will provide relevant and current training to officers as guidance for applying existing law, local community standards, and prosecutorial considerations regarding specific search and seizure situations.

This directive applies to all HISD Police Department employees.

SEARCHES

The United States Constitution generally provides that a valid warrant is required for a search to be valid. There are, however, several exceptions that permit a warrantless search.

Examples of law enforcement activities that are exceptions to the general warrant requirement include, but are not limited to, searches pursuant to the following:

- a) Valid consent
- b) Incident to a lawful arrest
- c) Legitimate community caretaking interests
- d) Vehicle searches under certain circumstances
- e) Exigent circumstances

Certain other activities are recognized by federal and state courts and by specific statutes as legitimate law enforcement activities that do not require a warrant. Such activities may include seizure and examination of abandoned property and observations of activities and property located on open public areas.

Because case law regarding search and seizure is constantly changing and subject to interpretation by the courts, each department member is expected to act in each situation according to current training and their familiarity with clearly established rights as determined by case law.

Whenever practicable, officers are encouraged to contact a supervisor to resolve search and seizure issues before selecting a course of action.

GENERAL RESPONSE TO RESISTANCE PRINCIPLES

The consent to search a person or property under his control is lawful if the consent is:

- a) Made with the knowledge that he need not consent to a search.
- b) Given freely and voluntarily without duress or coercion, and;
- c) Is clear and explicit.

The court will examine any waiver, and the state will have to show clear and convincing evidence that the consent was freely and voluntarily given by a person who was aware of his right not to consent.

The officer should explain that they have 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 should be allowed to do so.

Consent to search must be given freely and voluntarily. Any coercion or intimidation, actual or implied, will invalidate the consent. An officer who threatens to “go get a search warrant” would probably have any resulting consent ruled invalid.

Before an officer relies upon consent to search, he must be sure the person gives consent to the search. Consent to enter is not consenting to search. But after legal entry, whatever evidence is in open view may be seized.

Whenever practicable, written consent should be obtained on a “Voluntary Consent to Search Form” A signed and witnessed waiver provides the best proof of explicit and voluntary consent.

The person may only give valid consent to search with a right to occupy the premises. Examples would include, but are not limited to:

- a) A landlord cannot consent to a search of a tenant’s premises unless the tenant has been evicted or abandoned.
- b) A host can give consent to a search of premises occupied by a guest, but if a particular area of the premises to be searched has been set aside for the long-term guest’s exclusive use, or if the search is of an object which is exclusively the guest’s, the consent of the host may not authorize a search.
- c) A parent can consent to search premises occupied by a dependent child unless the child is paying rent.
- d) An employee cannot consent to the search of an employer’s premises unless he has been delegated general authority to act as the employer’s agent. An employer may generally agree to a search of premises used by an employee in his work unless it is a particular area set aside for its exclusive use.

If two or more persons have equal rights to the occupation of the premises, consent to search may be given by any one of them, but only for the areas common to all. It must be understood that the refusal to consent by one occupant may override the consent given by the other. Examples may include, but are not limited to:

- a) Generally, one spouse can consent to a search of a residence shared with the other spouse.
- b) One joint tenant can consent to a search of joint-held premises.
- c) A partner can consent to a search of partnership premises.

Valid consent to search may be presumed to continue until all areas specified in the consent have been searched. Consent may be revoked at any time before the search is completed. All evidence found before the revocation may be retained if consent is withdrawn before completing the search. This evidence may be used as probable cause for a subsequent warrant or an immediate arrest and incidental search.

INCIDENT TO ARREST

An officer may search a person and the immediate area within reach of the person being arrested upon a lawful arrest to:

- a) Protect the officer and others.
- b) Prevent escape or suicide.
- c) Seize fruit, instrumentalities, and contraband relating to the arrest.
- d) Prevent the destruction of evidence.

If practical, the arresting officer should search, and the search must be conducted soon as practical after the arrest. If it is not feasible to search immediately after making the arrest, the officer should do so as soon after the reason for the delay has passed.

Even though a prisoner has been previously searched, when he is transferred from the custody of another officer, a subsequent search may be done to protect the receiving officer. Generally, anything in possession of the person being searched may be subject to seizure, whether for evidence, the officer's protection, safekeeping, fruits of the crime, fruits of another crime, contraband, etc.

If an arrestee is concealing something in his mouth, the officer may use reasonable force to prevent the person from swallowing the evidence and to remove the object.

VEHICLE SEARCHES

Carroll v. United States, a warrantless search of a readily mobile motor vehicle by a police officer who has probable cause to believe the vehicle contains items subject to seizure is not unreasonable under the Fourth Amendment.

The controlling consideration in the warrantless search is probable cause to believe the vehicle contains items connected with criminal activity and is thus subject to seizure. The object of the search will always determine the scope of the search. Suppose probable cause establishes that a vehicle contains a specific item. In that case, the reasonableness and scope of the search will be determined by the nature of the object sought and where it might be concealed.

For example, an officer who has probable cause to believe that a shotgun is in the vehicle, looking in the glovebox for the shotgun, would be outside the scope of the search.

Whenever possible, the search should be conducted immediately at the scene where the vehicle is stopped. If the surrounding circumstances make a quick search on the highway unsafe or impractical, the vehicle may be moved to a more convenient or appropriate location.

Vehicles that come into the department's custody will be inventoried as to their contents to protect the owner against property loss, avoid a claim of destruction, and protect the police against any hidden danger. The inventory must be carried out as part of the established agency policy.

SCHOOL SEARCHES

Upon the authority of a search warrant, an officer may only search that part of the school premises described in the search warrant, and school officials should cooperate in performing the search. The search may not include a pupil's assigned locker unless specified in the search warrant.

Officers may search the premises of a school in any case where the search is essential to prevent imminent danger to the safety or welfare of the pupil or other persons or school property.

Officers may search a pupil not under arrest only when the officer reasonably suspects that the pupil is concealing a weapon that poses a danger to others. Officers may not request a school official to search a pupil.

Officers shall make every effort to conduct searches to minimize the disruption of the normal school routine and embarrassment to pupils affected.

STOP AND FRISK

'Stop and Frisk' is not an arrest; it is a "stop." The search permits an officer to conduct a carefully limited examination of an individual's outer clothing. The purpose of the examination is to discover and seize offensive weapons, handguns, dirk knives, bowie knives, switchblades, metal knuckles, razors, nunchaku, or any other dangerous or deadly weapon(s) concealed upon or about the individual.

This search is permitted when:

- a) It is reasonably suspected that an individual has committed, is committing, or is about to commit a crime; or;
- b) The individual is reasonably suspected to be armed and dangerous, and immediate action must be taken to protect the member or the public.
- c) Both the "stop" and the "frisk" must be supported by reasonable and articulable suspicion. A mere hunch will not suffice. The Supreme Court in *Terry v. Ohio* said: "Would the facts warrant a man of reasonable caution in the belief the action taken was appropriate?"

An officer may stop a subject when he observes unusual conduct, which leads him to reasonably believe that criminal activity may be in progress considering his experience and training. Once sufficient reasonable suspicion is established, and the officer decides to initiate a stop, the officer will:

- a) Identify himself as a police officer.
- b) Question the individual to discover his name, address, and explain his actions.
- c) The suspect is not compelled to supply the answer to these or any other questions.
- d) If the suspect refuses to answer the officer's questions or identify himself. In that case, he may be questioned further. Still, he may not be unduly detained nor deprived of his freedom of movement in any significant way unless the officer is prepared to make a formal arrest.
- e) The failure to answer questions or answers considered unsatisfactory is not alone sufficient to constitute probable cause for an arrest without a warrant.
- f) Failure to answer questions does not bar a "frisk" if the officer reasonably suspects danger to their safety or the safety of another.

The permitted frisk is limited to patting down the suspect's outer clothing to discover weapons and for no other purpose. No further search may be done if the frisk fails to disclose an offensive weapon. Suppose the frisk indicates reasonable suspicion that the suspect has an object on his person that could be a weapon. In that case, the officer is authorized to search that part of the suspect's clothing containing such an object, but he may not search further.

If the object felt and found during the frisk is an offensive weapon and possession thereof violates the law, the officer may arrest the suspect committing a crime in his presence. Incident to such a lawful arrest, the officer may make a further, more detailed search of the suspect and his immediate surroundings. On the other hand, if the officer searches in or beneath the suspect's clothing, the belief that an object felt in patting him down is a weapon. It turns out not to be a weapon but an item of contraband or evidence of a crime; the object may nevertheless be used to justify the suspect's arrest.

HIGH-RISK SEARCH

Prisoners who must be immediately transported out of the area for an officer's safety shall be handcuffed behind the back and searched for weapons. The search shall include the outer garments, waist, groin, hip areas, ankles, and feet. Immediately upon reaching a safer environment, the officer shall stop and thoroughly search the prisoner.

STRIP SEARCH

Strip searches may be conducted only after an arrest when there is reasonable suspicion a suspect is concealing weapons, contraband, or evidence that may not be detected or recovered by the usual search techniques. Permission to perform a strip search shall be obtained from a supervisor before the search. Strip searches shall be conducted:

- a) Discreetly and with the utmost respect for the suspect's privacy and dignity.
- b) By an officer of the same sex as the prisoner.

- c) In a private and secure room.

Public strip searches are prohibited. The minimum number of police personnel necessary shall be present during the strip search, and nonpolice personnel should be present only as an extreme necessity.

Following a strip search, an incident or supplement report shall be generated and must include the search result and every name and any identifiers of anyone who witnessed the search.

BODY CAVITY SEARCH

Body cavity searches may be conducted only after an arrest when there is probable cause to believe that weapons, contraband, or other evidence of a crime have been concealed in a body cavity. Only medical personnel at medical facilities shall conduct body cavity searches.

A supervisor shall be notified of the necessity to conduct a body cavity search before the search. Upon approval from the supervisor, the prisoner shall be transported to the closest available hospital. The supervisor shall ensure that all necessary documents (e.g., consent form, search warrant) are presented to medical personnel with the prisoner.

If the need for a body cavity search is discovered after the prisoner enters a jail facility, an on-duty supervisor shall be notified. The prisoner shall be brought to the jail clinic for evaluation and sent to the closest available hospital for the search.

A police officer must accompany the prisoner to the hospital and take possession of any weapons, contraband, or evidence discovered during the search. The prisoner shall be returned to the jail by the police officer when the search is completed.

Body cavity searches shall be conducted privately and with the suspect's dignity as a consideration. A minimum number of jail, medical, and police personnel shall be present.

Whenever a body cavity search is conducted, an incident report shall be initiated or supplemented containing the following information:

- a) The name of the supervisor who authorized the search.
- b) The probable cause for the search.
- c) The date, time, and location of the search.
- d) The name and any identifiers of anyone who witnessed or participated in the search.

SUSPECTS WHO INGEST CONTRABAND

The department's primary objective in dealing with suspects who have ingested narcotics or other contraband is to preserve life and the officer's safety. The secondary objective is to preserve and recover evidence whenever possible.

Officers are prohibited from choking and restricting the airway of a suspect in an attempt to extract contraband from the suspect's mouth. Officers using reasonable force to extract contraband from a suspect's mouth should be aware of the risks and dangers of putting the officer's hands in or near the suspect's mouth.

When an employee reasonably believes that a suspect has ingested narcotics or other contraband, which could present a health hazard, the employee shall immediately summon emergency medical personnel to provide assessment and treatment without delay. If, after medical evaluation, medical personnel releases the prisoner back to the officer, the officer shall:

- a) Transport the prisoner immediately to the appropriate jail facility.
- b) Document on the booking blotter that the prisoner "possibly ingested narcotics/contraband."
- c) Notify jail personnel of the incident.

Employees should be aware of and look for potential signs of distress following ingestion, which could include, but are not limited to, loss of consciousness, trouble breathing, non-responsiveness, profuse sweating, choking, loss of mobility, and vomiting.

When a suspect who is in custody has been transported to a medical facility after ingesting narcotics or other contraband, the arresting officer shall:

- a) Notify a supervisor as soon as practical.
- b) Respond to the medical facility and advise the attending physician of the situation, including an estimate of the time elapsed since the ingestion and, if possible, the type, quantity, and packaging of the item(s) ingested.
- c) Generate an incident report or supplement that includes a detailed statement of the incident, medical treatment received (if known), and any actions taken by those on the scene.

Employees are advised that when a suspect ingests narcotics or other contraband and evidence is destroyed, they are to consult with the appropriate district attorney's office to discuss the acquisition of a search warrant, if necessary, and the possibility of filing all applicable charges, including, but not limited to, tampering with evidence.

SEARCH PROTOCOL

Although conditions will vary and officer safety and other difficulties must be considered in every search situation, the following guidelines should be followed whenever circumstances permit:

- a) Protect the officer and others.
- b) Members of this Department will strive to conduct searches with dignity and courtesy.
- c) Officers should explain to the person being searched the reason for the search and how the search will be conducted.
- d) Searches should be carried out with due regard and respect for private property interests and in a manner that minimizes damage. Property should be left in a condition as close as reasonably possible to its pre-search condition.

- e) To minimize the need for forcible entry, an attempt should be made to obtain keys, combinations, or access codes when a search of the locked property is anticipated.
- f) Whenever practicable, a lone officer should not search. A cover officer should be positioned to ensure safety and not be involved in the search.
- g) When the person to be searched is of the opposite sex as the searching officer, a reasonable effort should be made to summon an officer of the same sex as the subject to search. When it is not practicable to call an officer of the same sex as the subject, the following guidelines should be followed:
 - 1. Another officer or a supervisor should witness the search.
 - 2. The officer should not search body areas covered by tight-fitting clothing, sheer clothing, or clothing that could not reasonably conceal a weapon.

ANNUAL ANALYSIS REPORTS

Reports Officers are responsible for documenting any search and ensuring that any required reports are sufficient, including, at minimum, documentation of the following:

- a) Reason for the search
- b) Any efforts used to minimize the intrusiveness of any search (e.g., asking for consent or keys)
- c) What if any injuries or damage occurred?
- d) All steps are taken to secure property
- e) The results of the search, including a description of any property or contraband, seized
- f) If the person searching is the opposite sex of the suspect being searched, any efforts to summon an officer of the same sex as the person being searched and the identification of any witness officer

Supervisors shall review reports to ensure accurate descriptions, that actions are properly documented, and that current legal requirements and department policy have been met.

Approved By


Pedro Lopez Jr., Chief of Police