

Intermediate Arrest, Search, & Seizure



Course Number 2108

Texas Commission on Law Enforcement

Revised September 2001

Instructor's Note:

You may wish to teach this course in conjunction with Asset Forfeiture and/or Racial Profiling because of the overlapping subject matter and applicability of the three courses. Please see the corresponding course instructor guides for the minimum objectives for those courses.

They must be reported separately at this time because of requirements from the 77th

Legislature in SB 563 and SB 1074 for FY 2002 and FY 2003.

All officers are required to have training in Asset Forfeiture prior to September 1, 2002.

All officers are required to have training in Racial Profiling prior to September 1, 2003.

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**TEXAS COMMISSION ON LAW ENFORCEMENT
OFFICER STANDARDS AND EDUCATION**

LEARNING OBJECTIVES

UNIT I

1.0 PROBABLE CAUSE, DETENTION, AND ARREST

THIS GUIDE IS DESIGNED TO ASSIST THE INSTRUCTOR IN DEVELOPING AN APPROPRIATE LESSON PLAN OR PLANS TO TEACH THE LEARNING OBJECTIVES, WHICH ARE REQUIRED AS MINIMUM CONTENT OF THE INTERMEDIATE PEACE OFFICERS COURSE. THE FOLLOWING METHODS AND REFERENCE MATERIALS ARE PRESENTED AS SUGGESTIONS.

METHODS:

- Lecture
- Class Discussion
- Small group discussion, assignment, problem solving
- Case presentations
- Audio Visual
- Written exercises, examinations
- Handout material
- Homework or library research assignments

REFERENCE MATERIALS:

Black's Law Dictionary

J. Shane Creamer, The Law of Arrest, Search and Seizure, 3rd Edition, Philadelphia: W.B. Saunders Co., 1980.

James A. Worrell, Stop and Frisk, Oklahoma City: Jackson Press, 1986.

Larry E. Holtz and Warren J. Spencer, Texas Law Enforcement Handbook. Gould Publications of Texas, 2001.

Paul J. McClung, Lawyer's Handbook for Texas Criminal Practice. Ft. Worth: McClung Law Books, Inc., P.O. Box 12542, Ft. Worth, Texas 76121, Revised Ed., 1986.

Model Rules for Peace Officers: A Resource Manual for Police Discretion and Rulemaking. Austin: Texas Advisory Commission on Intergovernmental Relations, 1980 (Supplement 1982).

Wayne LaFave, Search and Seizure: A Treatise on the Fourth Amendment, 2nd Edition. St. Paul, Minnesota: West Publishing Company, 1987. 4 Volumes.

John Wesley Hall, Jr., Search and Seizure, Lawyers Co-operative Publishing Co.: Rochester, N.Y., 1982. Cumulative Supplement, 1986.

Rolando V. del Carmen, Criminal Procedure for Law Enforcement Personnel, 5th Edition. Belmont, California: Wadsworth Publishing Company, 2000.

Michele G. Hermann, Search and Seizure Checklists, 2000 Edition. St. Paul, Minnesota: West Publishing Company, 2000.

Jade Meeker, Elements of a Crime, 2001 Edition. Austin, Texas: CLEAR, 2001.

Jade Meeker, Arrest and Search Without a Warrant, 3rd Edition. Austin, Texas: CLEAR, 2001.

Jade Meeker, Search Warrant Manual, 4th Edition. Austin, Texas: CLEAR, 2001.

Case Reporters

Vernon's Annotated Texas Code of Criminal Procedure

Gerald S. Reamey, A Peace Officer's Guide to Texas Law, Austin: Texas Police Association, 1987.

1.0 PROBABLE CAUSE, DETENTION, AND ARREST

FUNCTIONAL AREA: This section will cover probable cause, detention, and arrest. The student will be able to choose a proper course of action when presented with fact situations on a test to determine reasonable suspicion for detention or probable cause for arrest. The student will be able to write an acceptable complaint for issuance of an arrest warrant. The student will be able to demonstrate on a written examination an understanding of this area to a specified percentage.

1.1 LEARNING OBJECTIVE: The student will be able to summarize the Fourth Amendment to the U.S. Constitution.

1.2 LEARNING OBJECTIVE: The student will be able to identify where the requirements for probable cause to arrest and search are contained.

- A. Fourth Amendment, U.S. Constitution
- B. Article 1.06 Texas Code of Criminal Procedure
- C. Article 1, Section 9, Texas Constitution

1.3 LEARNING OBJECTIVE: The student will be able to define probable cause to arrest.

- A. Black's Law Dictionary: "an apparent state of facts found to exist upon reasonable inquiry, (that is, such inquiry as the given case renders convenient and proper) which would induce a reasonably intelligent and prudent man to believe, in a criminal case, that the accused person had committed the crime charged."
- B. Brown v. State 481 S.W. 2d 106: "Probable cause for an arrest exists where, at the moment, the facts and circumstances within the knowledge of the arresting officer and of which he has reasonably trustworthy information would warrant a reasonable and prudent man in believing that a particular person has committed or is committing a crime."
- C. Henry v. U.S., 361 U.S. 98: "Probable cause exists if the facts and circumstances known to the officer would warrant a prudent man in believing that the offense has been committed."
- D. Other cases:
 - 1. Beck v. Ohio, 379 U.S. 89, 85 S.Ct. 223
 - 2. McCray v. Illinois, 386 U.S. 300, 87 S.Ct. 1056
 - 3. Coffman v. State #14-88-890 (TX. App-Houston Searching Student) [unpublished opinion: 1998 WL 724013]
 - 4. See Section 1.2 of Texas Law Enforcement Handbook (specifically, Amores v. State 816 S. W. 2d 407 (1991) for the test for determining probable cause in Texas) for cases that develop situational responses and how various courts have responded concerning probable cause.

5. See Section 2.3(b) of Texas Law Enforcement Handbook. Illinois v. Gates, 462 U.S. 23, 103 S.Ct. 2317 (1983) Development of “totality of the circumstances” test for probable cause. More specifically, see also Bower v. State, 769 S.W.2d 887 (1989) for Texas application of “totality of the circumstances, also in section 2.3(b).

1.4 LEARNING OBJECTIVE: The student will be able to identify valid indicators that serve as building blocks of probable cause.

A. Courts throughout the country have recognized the following facts as building blocks of probable cause.

1. Flight
2. Furtive Movements
3. Hiding
4. Attempt to destroy evidence
5. Resistance to officers
6. Admissions or confessions
7. Evasive answers
8. Unreasonable explanations
9. Latent print identifications
10. Hair follicle identifications
11. Handwriting comparisons
12. Fabric comparisons
13. Identification of suspects by witnesses
14. The emergency setting -- crime zone
15. The emergency setting -- automobile
16. Ballistics evidence

17. Contraband or weapons in plain view
18. Criminal record
19. Hearsay information -- informant
20. Hearsay information -- fellow officer
21. Hearsay information -- general
22. Expert police opinion
23. Police corroboration
24. Unusual or suspicious conduct
25. Fact of crime or felony
26. Police computerized information (NCIC, etc.)
27. Police radio broadcasts
28. Use of drug-detecting dogs
29. Voice print identifications
30. Blood tests
31. Electronically obtained evidence

1.5 LEARNING OBJECTIVE: The student will be able to define suspicion, identify examples of suspicious circumstances, and identify appropriate responses.

A. Definitions of suspicion:

1. Black's Law Dictionary: "The act of suspecting, or the state of being suspected; imagination, generally of something ill; distrust; mistrust; doubt. The apprehension of something without proof or upon slight evidence. Suspicion implies a belief or opinion based upon facts or circumstances which do not amount to proof."

2. Webster's Dictionary: "to imagine one guilty, or culpable on slight evidence without proof."

B. Appropriate responses to suspicious activity

1. Continued observation
2. Computer checks
3. Approach suspect and ask questions
4. When enough facts are developed to establish a reasonable suspicion, a temporary detention may be in order.
5. Avoid commands

C. Cortez v. U.S., 101 S.Ct. 690 (1981)

D. Moses v. State, 464 S.W.2d 116 (____)

E. Hernandez v. State, 523 S.W.2d 410

F. Cases on Suspicion:

1. Florida v. Royer, 103 S.Ct 1319 (1983)
2. Eisenhauer v. State, 678 S.W.2d 947 (Tex. Cr. App. 1984)
3. Meeks v. State, 653 S.W.2d 6 (Tex. Cr. App. 1983)
4. Brown v. Texas, 99 S.Ct 2637 (1979)
5. 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)

1.6 LEARNING OBJECTIVE: The student will be able to define temporary detention and the elements required for lawful temporary detention.

A. Definitions:

1. Black's Law Dictionary: "Temporary" defined as, that which is to last for a limited time only, as distinguished from that which is indefinite, in its duration.
 2. Black's Law Dictionary: "Detention" defined as, the act of keeping back or withholding, either accidentally or by design, a person or thing.
 3. Consolidating these definitions: Holding a person for a limited time, but who, as yet, is not answerable to a criminal offense.
- B. Elements required for temporary detention.
1. Reasonable suspicion by a peace officer that some activity out of the ordinary is or has taken place.
 2. Some indication to connect the person, to be detained, with the suspicious activity.
 3. Some indication the suspicious activity is related to a specific offense.
- C. Temporary Detention Cases
1. Baity v. State, 455 S.W.2d 305, U.S. cert. denied 400 U.S. 918
 2. Armstrong v. State, 550 S.W.2d 25
 3. Johnson v. State, 658 S.W.2d 623 (Tex. Cr. App.)
 4. Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868
 5. Shaffer v. State, 562 S.W.2d 853
 6. Petty v. State, 696 S.W.2d 635 (Tex. App. 5 Dist. 1985)
 7. Brown v. Texas, 443 U.S. 357, 99 S.Ct. 2637
 8. Howard v. State, 617 S.W.2d 191 (Tex. Cr. App. 1979)
 9. Florida v. Royer, 460 U.S. 491, 103 S.Ct. 1319 (1983)
 10. U.S. v. Hensley, 469 U.S., 105 S.Ct., 36 Cr.L 3085 (1-8-85)

11. Ramirez v. State, 672 S.W.2d 480 (Tex. Cr. App. 1984)
12. Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330
13. Michigan v. Long, 463 U.S. 1032, 103 S.Ct. 3469
14. Adams v. Williams, 407 U.S. 143, 92 S.Ct. 1921
15. McDougald v. State, 547 S.W.2d 40
16. Ybarra v. Illinois, 444 U.S. 85, 100 S.Ct. 338
17. U.S. v. Place, 462 U.S. 696, 103 S.Ct 2637 (1983)
18. U.S. v. Sharpe, 105 S.Ct. 1568 (1985)
19. Eisenhauer v. State, 678 S.W.2d 947 (Tex. Cr. App. 1984)
20. Hayes v. Florida, 105 S.Ct 1643 (1985)
21. Meeks v. State, 653 S.W.2d 6 (Tex. Cr. App. 1983)
22. Schwartz v. State, 635 S.W.2d 545 (Tex. Cr. App. 1982)
23. See section 1.1 of Texas Law Enforcement Handbook. Hilla v. State, 832 S.W.2d 773 (Houston [1st Dist.] 1992 pet. ref'd)
24. See Chapter 8 of Texas Law Enforcement Handbook. Specifically, sections 8.1.

- 1.7 LEARNING OBJECTIVE: The student will be able to identify circumstances when an officer has the authority to conduct a frisk.
- A. A frisk is a mere patdown of the outer clothing or container to which a detained person may have immediate access.
 - B. A lawful frisk can only be initiated when the officer has first made a lawful detention.
 - C. The sole justification for the frisk is the protection of the officer and others nearby.

- D. These are some, but not all, of the reasons an officer would have to suspect the person stopped might possess a weapon:
1. Type of crime for which person was stopped.
 2. Furtive movements.
 3. Appearance of person stopped (bulge, etc.)
 4. Time and place stopped.
 5. Proximity to recent crime scene.
 6. High-crime area.
 7. Reputation of subject.
 8. Officer's experience.
 9. Description of wanted vehicle or person.
- E. The companion of a detainee should only be frisked when the officer has a reasonable suspicion the companion is in possession of an offensive weapon.
- F. The objective of the frisk is to locate weapons that could be used against the officer or others nearby.
- G. Normally, an officer cannot put his hands under the suspect's outer clothing until the officer feels something which he reasonably believes is a weapon.
- H. Any patdown must be justified by specific articulable facts establishing the reason for detention and the safety issues.
- I. Any deviation from the normal patdown must be related in scope to those facts justifying the deviation.
- J. Packages, purses, briefcases and other containers should not be searched, but can be separated from the suspect and frisked during the stop. Any deviation must be justified by articulable facts.

- K. The officer may seize any evidence he observes under the plain view doctrine or the plain touch doctrine. (See learning objective 2.1)
- L. Officers can conduct a frisk limited to those areas in which a weapon may be placed or hidden, if the officer possesses a reasonable belief based on "specific" and articulable facts which taken together with the rational inferences from those facts, that the suspect is dangerous and may gain immediate control of weapons.
- M. See Section 2.5(c) of Texas Law Enforcement Handbook on frisk during warrant execution.
- N. Frisk Cases
 - 1. Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868
 - 2. U.S. v. Sink, 586 F.2d 1041 (5th Cir. 1978), cert. denied, 443 U.S. 912
 - 3. U.S. v. Ullrich, 580 F.2d 765 (5th Cir. 1978)
 - 4. Michigan v. Long, 463 U.S. 1032, 103 S.Ct. 3469 (1983)
 - 5. U.S. v. Tharpe, 536 F.2d 1098 (5th Cir. 1976)

1.8 LEARNING OBJECTIVE: The student will be able to list elements necessary to constitute a lawful arrest.

- A. An arrest is the apprehending or restraining of an individual in order to bring the person before the proper legal authority to answer for an alleged crime.
- B. Elements of a lawful arrest:
 - 1. Authority - Arresting person must possess the authority to make arrest.
 - 2. Intent - There must be an intent on the part of the arresting person to take the subject into custody for the purpose of bringing him before a court.
 - 3. Seizure of the person - There must be a seizure or taking possession of the person.

4. Understanding - The person being arrested must understand that he is being arrested.
- C. The mere denial of intent to make an arrest by the officer will usually be insufficient to negate the existence of an arrest in court if the facts support the conclusion that a reasonable person would believe that he or she was under arrest.
 - D. Article 11.21, 11.22 and 15.22 Code of Criminal Procedure.
 - E. See Section 1.1 of Texas Law Enforcement Handbook.
 - F. Arrest Cases
 1. U.S. v. Maldonado, 735 F.2d 809
 2. Eisenhauer v. State, 678 S.W.2d 947 (Tex. Cr. App. 1984)
 3. Michigan v. Chesternut, 486 U.S. 567, 108 S. Ct. 1975, 1979, (1989)
- 1.9 LEARNING OBJECTIVE: The student will be able to define when a person is under arrest, in constructive custody, and under restraint.
- A. Article 15.22 CCP
 - B. Article 11.21 CCP
 - C. Article 11.22 CCP
 - D. Courts will probably construe constructive custody as an arrest.
 - E. Custody Cases
 1. Berkemer v. McCarty, 104 S.Ct. 697 (1984)
 2. Eisenhauer v. State, 678 S.W.2d 947 (Tex. Cr. App. 1984)
 - F. See Section 1.1 & Section 11.2(b)(1) of Texas Law Enforcement Handbook.
- 1.10 LEARNING OBJECTIVE: The student will recognize that once an arrest, search, or detention has been made, the information being gathered to establish

probable cause or the articulable reasonable suspicion to justify the officer's initial action cannot be added to.

- 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. Section 1.1 of Texas Law Enforcement Handbook

1.11 LEARNING OBJECTIVE: The student will be able to 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. If the requesting officer possesses sufficient knowledge to constitute probable cause for an arrest without warrant, he does 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. (Example: fleeing armed robber)
- B. Green v. State, 470 S.W.2d 901
- C. Weeks v. State, 417 S.W.2d 716, U.S. cert. denied 389 U.S. 996 (1967)
- D. McDuff v. State, 431 S.W.2d 547
- E. Piper v. State, 484 S.W.2d 776
- F. Williams v. State, 621 S.W.2d 609 (Tex. Cr. App. 1981)
- G. Fugitt v. State, 623 S.W.2d 471 (Tex. App. 1981)
- H. Volanty v. State, CCAp, 663 S.W.2d 897, (Tex. App. 13 Dist. 1983) U.S. cert. denied 105 S.Ct. 790
- I. Woodward v. State, 668 S.W.2d 337, (Tex. Cr. App. 1982) U.S. cert. denied 105 S.Ct 939

- J. Whiteley v. Warden, 401 U.S. 560, 91 S.Ct 1031
 - K. Astran v. State, 799 S. W. 2d 761 (1990)
 - L. Section 1.2 of Texas Law Enforcement Handbook
- 1.12 LEARNING OBJECTIVE: The student will recognize that obtaining an arrest warrant is the best course of action except when an 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 (Art. 15.03, 15.04, 15.05). (See Malley v. Briggs, 38 Cr.L.3169 (3-5-86))
 - C. Section 1.3 of Texas Law Enforcement Handbook
- 1.13 LEARNING OBJECTIVE: The student will observe a scenario in the classroom, on film, and/or on video tape or read a scenario in the class and write a complaint that is sufficiently complete to allow a magistrate to issue an arrest warrant.
- A. Article 15.05 CCP
 - B. The instructor should provide at least one example of a complaint.
 - C. Barnes v. Texas, 390 S.W.2d 266
 - D. Knox v. State, 586 S.W.2d 504
 - E. Lowery v. State, 499 S.W.2d 160
 - F. Madden v. State, 630 S.W.2d 380 (Tex. App. 1982)
 - G. Bellah v. State, 641 S.W.2d 641 and 653 S.W.2d 795 (Tex. Cr. App. 1983)5
 - H. Aguilar v. Texas, 378 U.S. 108, 84 S.Ct. 1509
 - I. Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317

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LEARNING OBJECTIVES

UNIT II

2.0 EXCEPTIONS TO SEARCH WARRANT REQUIREMENTS

THIS GUIDE IS DESIGNED TO ASSIST THE INSTRUCTOR IN DEVELOPING AN APPROPRIATE LESSON PLAN OR PLANS TO TEACH THE LEARNING OBJECTIVES, WHICH ARE REQUIRED AS MINIMUM CONTENT OF THE INTERMEDIATE PEACE OFFICERS COURSE. THE FOLLOWING METHODS AND REFERENCE MATERIALS ARE PRESENTED AS SUGGESTIONS.

METHODS:

- Lecture
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- Case presentations
- Audio Visual
- Written exercises, examinations
- Handout material
- Homework or library research assignments

REFERENCE MATERIALS:

J. Shane Creamer, *supra*.

LaFave, *Supra*.

Hall, *Supra*.

Holtz and Spencer, *supra*.

Paul J. McClung, *supra*.

DeVallis Rutlege. The Search and Seizure Handbook for Law Officers, 2nd Ed. Costa Mesa, CA: Custom Publishing Co., 1986.

Model Rules for Peace Officers: A Resource Manual for Police Discretion and Rule Making. Austin: Texas Advisory Commission on Intergovernmental Relations, 1980 (Supplement 1982).

Practice Exercises in Search and Seizure, Austin: Texas Commission on Law Enforcement Officer Standards and Education, 2nd.

James A. Worrell, *supra*.

Rolando V. del Carmen, *supra*.

Michele G. Hermann, *supra*.

Case reporters.

Reamey, *Supra*.

2.0 EXCEPTIONS TO SEARCH WARRANT REQUIREMENTS

FUNCTIONAL AREA: This section will cover exceptions to search warrant requirements. The student when given a fact situation on a test will be able to determine if a search may be conducted without a warrant and what limitations may apply. The student will be able to write a report that adequately documents and justifies a warrantless search. The student will be able to demonstrate on a written examination an understanding of this area to a specified percentage.

2.1 LEARNING OBJECTIVE: The student will be able to identify situations in which exceptions to obtaining a search warrant exist for conducting limited searches.

A. A search is defined in Black's Law Dictionary as the prying into hidden places for that which is concealed. A more specific definition states that a search is an intrusion by the government into an area where there is a reasonable expectation of privacy. The courts in Texas have determined that a search may in fact be performed by any person, not just members of the government.

B. Emergency

1. 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.

2. 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:
 - a. An unconscious person
 - b. An incoherent person
 - c. A medical aid situation
 - d. Shots
 - e. Fight noises or screams
 - f. Fires, explosions, or natural disasters
3. Confine searching and seizing activities to places where emergency activities are warranted by a law enforcement officer and cease searching once the emergency ends.
4. If additional searches are necessary and you have time, obtain a search warrant if no other exception allows you to extend the search.
5. See Chapter 3 of Texas Law Enforcement Handbook
6. Emergency Search Cases
 - a. Michigan v. Tyler, 436 U.S. 499, 98 S.Ct. 1942
 - b. Tjuina v. State, 578 S.W.2d 415
 - c. Perez v. State, 514 S.W.2d 748
 - d. Corbett v. State, 493 S.W.2d 940, U.S. cert. denied 414 U.S. 1131
 - e. Broadnax v. State, 666 S.W.2d 83 (Tex. App. 14 Dist. 1984)
 - f. Green v. State, 666 S.W.2d 291 (Tex. App. 14 Dist. 1984)

- g. Bray v. State, 597 S.W.2d 763 (Tex. App. 1980)
- h. U.S. v. Jeffers, 342 U.S. 48
- i. Schmerber v. Calif., 384 U.S. 757
- j. Janicek v. State, 634 S.W.2d 687 (Tex. Cr. App. 1982)
- k. Mincey v. Arizona, 437 U.S. 385, 98 S.Ct. 2408
- l. Arizona v. Hicks, 40 Cr.L 3320 (3-3-87)

C. Officer Protection/Stop and Frisk

1. A frisk is a limited patting of the outer surfaces of a person's clothing in an attempt to find weapons.
2. A protective frisk is not an investigative technique.
3. A frisk can only be used by an officer when he justifiably stops someone and has a reasonable fear for his safety and the safety of the public.
4. The protective frisk cannot be used as a subterfuge to search for incriminating evidence - it may be used only to protect the officer from harm.
5. 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.
 - a. Person - patdown outer clothing
 - b. Vehicle - area under immediate control of person(s) feared
 - c. Briefcase, purse, or container possessed by person
 - d. Only potential weapons may be seized unless evidence in plain view is discovered.

- e. Contraband that was discovered by the sense of touch, the identity of which is immediately apparent, may also be seized.
6. Factors which may contribute to reasonable fear for a protective frisk include:
- a. Darkness
 - b. Remote location
 - c. Outnumbered officer
 - d. Relative physical size of the officer and other person
 - e. Reason for the contact
 - f. Encountered hostility
 - g. Excess clothing (heavy coat on a warm day)
 - h. Visible bulges in clothing
 - i. Excess nervousness or excited state
 - j. Torn or bloodstained clothing
 - k. Quick, sudden movements
 - l. Apparent efforts to adjust clothing or conceal something
 - m. Known record of violence
 - n. Reports that the suspect is armed or dangerous
7. Frisk Cases
- a. Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868
 - b. Sibron v. New York, 392 U.S. 40, 88 S.Ct. 1889
 - c. Ramirez v. State, 672 S.W.2d 480 (Tex. Cr. App. 1984)

- d. Adams v. Williams, 407 U.S. 143, 92 S.Ct. 1921
- e. Peters v. U.S., 88 S.Ct. 1889
- f. U.S. v. Tharpe, 536 F.2d 1098 (5th Cir. 1976)
- g. Michigan v. Long, 463 U.S. 1032, 103 S.Ct. 3469
- h. Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330
- i. Britton v. State, 578 S.W.2d 685, U.S. cert. denied 444 U.S. 955
- j. Crawford v. State, 544 S.W.2d 163
- k. Hull v. State, 613 S.W.2d 735 (Tex. Cr. App. 1981)
- l. Lippert v. State, 664 S.W.2d 712 (Tex. Cr. App. 1984)
- m. Ybarra v. Illinois, 444 U.S. 85, 100 S.Ct. 338 (1979)
- n. Lawson v. Kolender, 103 S.Ct. 1855 (1983)

D. Vehicle Searches Based on Probable Cause

1. An officer may conduct a warrantless search of a readily movable vehicle (automobile, mobile home, boat, or airplane) if you have probable cause to believe that seizable items are inside, and that you cannot safely delay the search in order to obtain a warrant.
2. The search should be made immediately.
3. Passengers may only be searched if they are being arrested or if the officer has probable cause, except he may frisk if he has a reasonable fear for his safety. He must articulate specific safety concerns for each person frisked.
4. If the vehicle is parked and unoccupied and circumstances permit, you should consider obtaining a warrant.
5. You may search any area of a readily movable vehicle where you have probable cause to believe seizable items will be found.

6. If the peace officer has or develops probable cause to believe a person possesses evidence of a crime or contraband, on or about his person, including a vehicle the person is occupying, the person or vehicle and all containers that might hold that evidence may be lawfully searched.
 - a. Carroll v. U.S., 267 U.S. 132, 45 S.Ct. 280 (1925)
 - b. U.S. v. Ross, 456 U.S. 798, 102 S.Ct. 2157
 - c. California v. Acevedo, 500 U.S. 565, 111 S.Ct. 1982 (1991)
7. The searching officer is not obligated to determine ownership of the various containers preceding the search.
8. Vehicle Search Cases
 - a. Brinegar v. U.S., 338 U.S. 160
 - b. Brown v. State, 481 S.W.2d 106
 - c. Dyke v. Taylor Implement Mfg. Co., 391 U.S. 216
 - d. California v. Carney, 37 Cr.L.303333 (5-13-85)
 - e. Glass v. State, 681 S.W.2d 599 (Tex. Cr. App. 1984)
 - f. Texas v. White, 423 U.S. 67, 96 S.Ct. 304
 - g. Chambers v. Maroney, 399 U.S. 42, 90 S.Ct. 1975 (1969)
 - h. Michigan v. Thomas, 458 U.S. 259, 102 S.Ct. 3079 (1982)
 - i. U.S. v. Chadwick, 433 U.S. 1, 97 S.Ct. 2476
 - j. New York v. Belton, 453 U.S. 454, 101 S.Ct. 2860 (1981)
 - k. Osban v. State, 726 S.W.2d 107 (Tex. Cr. App. 1986)
 - l. Barber v. State, 611 S.W.2d 67 (Tex. Cr. App. 1981)
 - m. Stoddard v. State, 475 S.W.2d 744

- n. Coolidge v. New Hampshire, 403 U.S. 443, 91 S.Ct. 2022
 - o. Arkansas v. Sanders, 442 U.S. 753, 99 S.Ct. 2586
 - p. Pace v. Beto, 469 F.2d 1389 (5th Cir.)
 - q. U.S. v. Edwards, 441 F.2d 749 (5th Cir.)
 - r. U.S. v. Polk, 433 F.2d 644 (5th Cir.)
 - s. Hudson v. State, 588 S.W.2d 348
 - t. Araj v. State, 592 S.W.2d 603 (Tex. Cr. App. 1979)
 - u. Robbins v. California, 101 S.Ct. 2841
 - v. Soto v. State 4-88-660 (TX App. -San Antonio 12-13-89)
9. See 3.5 of Texas Law Enforcement Handbook.

E. Search Incidental to Arrest

1. 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, he/she may search the arrested person to protect the officer, to prevent the destruction of evidence, and to prevent escape by the person arrested.
2. The arrest must be lawful. If for any reason the arrest is unlawful, the evidence obtained will be suppressed.
3. The arrested person may be searched for weapons, contraband, fruits and instrumentalities of crimes, and evidence connected with any offense.
4. The search must be made immediately or as soon as possible after the arrest.
5. The scope of the search should include:
 - a. A complete search of the person

- b. A search of the objects in the actual possession of the arrested person
 - c. A search of areas within the person's immediate control
 - d. The passenger compartment of a vehicle if the person is arrested out of the vehicle
6. Search After Arrest Cases
- a. U.S. v. Robinson, 414 U.S. 218, 94 S.Ct. 467
 - b. Gustafson v. Florida, 414 U.S. 260, 94 S.Ct. 488
 - c. U.S. v. Edwards, 415 U.S. 800, 94 S.Ct. 1234
 - d. Harding v. State, 500 S.W.2d 870
 - e. Snyder v. State, 629 S.W.2d 930 (Tex. Cr. App. 1982)
 - f. Linett v. State, 647 S.W.2d 672 (Tex. Cr. App. 1983)
 - g. U.S. v. Chadwick, 433 U.S. 1, 97 S.Ct. 2476
 - h. U.S. v. Johnson, 588 F.2d 147 (5th Cir.)
 - i. Stewart v. State, 611 S.W.2d 434 (Tex. Cr. App. 1981)
 - j. Mincey v. Arizona, 437 U.S. 385
 - k. Warden v. Hayden, 387 U.S. 294, 87 S.Ct. 1642
 - l. Chimel v. Calif., 395 U.S. 752
 - m. Haynes v. State, 475 S.W.2d 739
 - n. New York v. Belton, 453 U.S. 454, 101 S.Ct. 2860 (1981)
 - o. Steagald v. U.S., 451 U.S. 204, 101 S.Ct. 1642
 - p. Vale v. Louisiana, 399 U.S. 30, 90 S.Ct. 1969
 - q. Washington v. Chrisman, 455 U.S. 1, 102 S.Ct. 812 (1982)

- r. Christian v. State, 592 S.W.2d 625, (Tex. Cr. App. 1980), 731 F.2d 1196, U.S. cert. denied 446 U.S. 984
- s. Patterson v. State, 598 S.W.2d 265 (Tex. Cr. App. 1980)
- t. Brent v. White, 398 F.2d 503 (5th Cir. 1968) U.S. cert. denied 393 U.S. 1123)
- u. Escamilla v. State, 556 S.W.2d 796 (Tex. Cr. App. 1977)
- v. Schmerber v. California, 384 U.S. 757, 86 S.Ct. 1826 (1966)
- w. Smith v. State, 557 S.W.2d 299 (Tex. Cr. App. 1977)

F. Hot Pursuit

1. An officer in lawful fresh pursuit of a fleeing felon, may make a warrantless entry into any place where he seeks refuge and may conduct a warrantless search and seizure of the suspect, his clothing, and the area under his immediate control.
2. The search authority and scope is as limited as a protective search and a search incident to lawful arrest.
3. 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.
4. 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.
5. Whenever circumstances and public safety permit obtain a warrant once your pursuit has been substantially interrupted. Usually this means more than a half hour depending on the circumstances.
6. Hot Pursuit Cases
 - a. Chapman v. U.S., 365 U.S. 610, 81 S.Ct. 776
 - b. Warden v. Hayden, 387 U.S. 294, 87 S.Ct. 1642

- c. U.S. v. Santana, 427 U.S. 38
- d. Payton v. New York, 445 U.S. 573 (1980)
- e. Welsh v. Wisconsin, 104 S.Ct. 2091 (1984)
- f. Parker v. State, 372 S.W.2d 320 (Tex. Cr. App. 1963)

G. Imminent Destruction of Evidence

1. An officer may make a warrantless entry and search if it reasonably appears necessary to prevent the imminent destruction of evidence. (Officers should check local policy on these types of cases.)
2. The officer cannot create the situation in order to avoid search warrant requirements.
3. The search must end when the threat of destruction has been neutralized.
4. Texas courts have not clearly ruled on this situation.
5. Imminent destruction of evidence cases.
 - a. U.S. v. Jeffers, 342 U.S. 48
 - b. Chapman v. U.S., 365 U.S. 610
 - c. Vale v. Louisiana, 399 U.S. 30
 - d. Cupp v. Murphy, 93 S.Ct. 2000 (1973)
 - e. U.S. v. Shima, 545 F.2d 1026 (5th Cir. 1977)
 - f. Gonzalez v. State, 588 S.W.2d 582 (Tex. Cr. App. 1979)
 - g. Nesloney v. State, 653 S.W.2d 582 (Tex. App. 14 Dist. 1983), affirmed 711 S.W.2d 636 (Tex. Cr. App. 1986)
6. See Chapter 3.3(a) of Texas Law Enforcement Handbook

H. Border Inspections

1. 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 person and property coming into the country.
2. If an officer gets word of incoming contraband, it may be useful to contact one of these federal agencies in order to obtain their assistance in using their inspection powers.

I. Consent Searches

1. 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.
2. A valid consent search requires that consent be given voluntarily and knowingly by a person with the authority and capacity to grant consent.
3. The scope of the search is limited by the scope of the authorized consent.
4. 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.
5. Consent is not knowing if the person who gives it does not understand the consequences of his consent and his right to refuse.
6. General guidelines on who may consent to a search:
 - a. 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.
 - b. Husband - wife. Either spouse can consent to a search of shared premises, but not to legally separate property.
 - c. Parent - child. A child cannot usually give valid consent for the search of his parents' property. A parent can usually give valid consent for the search of his resident child's

property. There are exceptions to this based upon privacy expectations.

- d. School official - student. A teacher, principal or other school official who retains combinations to students' lockers can consent to a search of these lockers. Since students do not have exclusive control over lockers, they do not have an absolute right to privacy.
 - e. Landlord - Tenant. A landlord cannot consent to the search of a paying tenant's premises.
 - f. Roommates. 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.
 - g. Host - Guest. The host can consent to a search of his non-paying guest's room, but not to closed personal effects (luggage, etc.).
 - h. Employer - Employee. An employer can consent to a search of his employee's work area, but not of the employee's desk drawers, locker, or personal tool box. An employee can only consent to a search of his employer's premises if he is in charge of the premises during a substantial period of time (manager, superintendent, director). The authority of an employer to search an employee's desk, locker, etc. may be granted depending on the wording of any relevant policy.
- 7. The person who validly consents to the search can limit the areas of search and can revoke their consent at any time.
 - 8. Consent searches are the most difficult to prove in court.
 - 9. Documentation of the consent can be helpful in court.
 - a. Written consent should be obtained where possible. Your prosecutor's office may have sample forms they want you to use.
 - b. Use available officers and citizens as witnesses.
 - c. Another option is audio and/or video tape recording.

10. Procedural steps to obtain a valid consent to search (local agency policy and procedures may vary).
 - a. Advise the person whose consent is being sought of the general nature of the investigation if you can and the purpose for the search.
 - b. 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.
 - c. Do not claim authority to search.
 - d. Be sure to advise the person from whom consent is being sought that they can refuse to permit the search.
 - e. Avoid any show of force or anything that could be interpreted as even the mildest or slightest coercion. It is essential that consent be freely and voluntarily given.
 - f. Get consent from the right person. 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.
 - g. Obtain a written consent in preference to an oral consent whenever possible.
11. Consent to Search Cases
 - a. Bumper v. North Carolina, 391 U.S. 543, 88 S.Ct. 1788
 - b. Vale v. Louisiana, 399 U.S. 30, 90 S.Ct. 1969
 - c. Schneckloth v. Bustamonte, 412 U.S. 218, 93 S.Ct. 2041 (1973)
 - d. Coolidge v. New Hampshire, 403 U.S. 443, 91 S.Ct. 2022 (1971)
 - e. U.S. v. Matlock, 415 U.S. 164, 94 S.Ct. 988

- f. U.S. v. Mendenhall, 446 U.S. 544, 100 S.Ct. 1870
- g. Papskar v. State, 484 S.W.2d 731
- h. Zeoeda v. State, 638 S.W.2d 542
- i. Clemons v. State, 605 S.W.2d 567 (Tex. Cr. App. 1980)
- j. Kolb v. State, 532 S.W.2d 87
- k. Gurleski v. U.S., 405 F.2d 253 (5th Cir.), U.S. cert. denied 395 U.S. 977
- l. Beaupre v. State, 526 S.W.2d 811, U.S. cert. denied 423 U.S. 1037
- m. Swinney v. State, 529 S.W.2d 70
- n. Gonzalez v. State, 588 S.W.2d 355 (Tex. Cr. App. 1979)
- o. DeVoyle v. State, 471 S.W.2d 77
- p. Sorenson v. State, 478 S.W.2d 532
- q. Stoner v. California, 376 U.S. 483, 84 S.Ct. 889
- r. Powers v. State, 459 S.W.2d 847
- s. Martin v. State, 610 S.W.2d 491 (Tex. Cr. App. 1981)
- t. U.S. v. White, 401 U.S. 745, 91 S.Ct. 1122
- u. Stephenson v. State, 494 S.W.2d 900
- v. Jefferson v. State, 452 S.W.2d 462
- w. Johnson v. U.S., 358 F.2d 139 (1966)
- x. Swift v. State, 509 S.W.2d 586
- y. Frazier v. Cupp, 394 U.S. 731 (1969)

- z. Moffett v. Wainwright, 512 F.2d 496 (5th Cir. 1975)
- aa. Eisenhauer v. State, 678 S.W.2d 947 (Tex. Cr. App. 1984), 684 S.W.2d 782 (Tex. App. 1 Dist. 1984)

12. See 3.6 of Texas Law Enforcement Handbook.

2.2 LEARNING OBJECTIVE: The student will be able to 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

- 1. A seizure of contraband or instrumentalities of a crime in plain view is not a violation of the 4th Amendment when the officer has a lawful right to be where he is to observe the contraband, etc.
- 2. A person who exposes an item to open view does not have a reasonable expectation of privacy.

3. Plain View Cases

- a. Coolidge v. New Hampshire, 403 U.S. 433, 915 S.Ct. 2022
- b. Warden v. Hayden, 387 U.S. 294
- c. Chimel v. California, 395 U.S. 752
- d. Harris v. U.S., 390 U.S. 234
- e. Payton v. New York, 445 U.S. 573, 100 S.Ct. 1371
- f. Bailey v. State, 629 S.W.2d 189 (Tex. App. 1982)
- g. Texas v. Brown, 460 U.S. 730, 103 S.Ct. 1535 (1983) on remand 657 S.W.2d 797 (Tex. Cr. App. 1983)
- h. Howard v. State, 599 S.W.2d 597 (see Curren v. State, 656 S.W.2d 124, 128 & Texas v. Brown, supra)
- i. Sullivan v. State, 626 S.W.2d 58 (Tex. Cr. App. 1982)
- j. Miller v. State, 667 S.W.2d 773 (Tex. Cr. App. 1984)

- k. Washington v. Chrisman, 455 U.S. 1, 102 S.Ct. 812
- l. Boyd v. State, 621 S.W.2d 616 (Tex. Cr. App. 1981)
- m. Gonzales v. State, 388 F.2d 145 (5th Cir.)
- n. Katz v. State, 389 U.S. 34, 88 S.Ct. 507

4. See 4.3 of Texas Law Enforcement Handbook.

B. Abandoned Property

- 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." (United States v. Colbert, 474 F.2d 174)
- 2. A person who has abandoned property can no longer claim a reasonable expectation of privacy to that item.
- 3. 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.
- 4. If unlawful police activity causes a person to abandon property, the evidence may be excluded.

5. Abandoned Property Cases

- a. Hawkins v. State, FWApp, 644 S.W.2d 764 (Tex. App. 1982)
- b. U.S. v. Williams, 569 F.2d 823 (5th Cir. 1978)
- c. U.S. v. Colbert, 474 F.2d 174 (5th Cir. 1973)
- d. Abel v. U.S., 362 U.S. 217, 80 S.Ct. 683
- e. U.S. v. Beck, 602 F.2d 726 (5th Cir.)
- f. Sullivan v. State, 564 S.W.2d 698

6. See 4.4 of Texas Law Enforcement Handbook.

C. No Standing to Complain

1. 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.
2. If a person does not own or have legitimate custody of an item, he cannot claim a reasonable expectation of privacy in it.
3. 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.
4. Cases dealing with no standing to complain.
 - a. Sullivan v. State, 564 S.W.2d 698
 - b. Rakas v. Illinois, 439 U.S. 128, 99 S.Ct. 421
 - c. U.S. v. Salvucci, 448 U.S. 83, 100 S.Ct. 2547
 - d. Wilson v. State, 692 S.W.2d 661 (Tex. Cr. App. 1984)

D. Open Fields

1. Definitions:
 - a. Open fields begin where the curtilage ends.
 - b. 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.
2. Criminal activity conducted in an open field that is not part of the curtilage of a house is not protected by the Fourth Amendment.
3. Obtain a search warrant if there is time or there is any question that the activity is occurring in the curtilage.

4. 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:
 - a. The proximity of the area to the home;
 - b. Whether the area is within an enclosure surrounding the home;
 - c. The nature and uses to which the area is put; and
 - d. The steps taken by the resident to protect the area from observation by passers-by.

5. Open Fields Cases
 - a. Oliver v. U.S., 466 U.S. 170, 35 Cr.L. 3011 (4-17-84)
 - b. U.S. v. Dunn, 674 F.2d 1093, on remand 766 F.2d 880, recalled 781, F.2d 52, reinstated 782 F.2d 1226, reversed S.Ct. 40 Cr.L. 3313 (3-3-87)
 - c. Atwell v. U.S., 414 F.2d 136 (5th Cir. 1969)
 - d. Wheeler v. State, 659 S.W.2d 381 (Tex. Cr. App. 1982)
 - e. Hurwitz v. State, 673 S.W.2d 347, U.S. cert. denied 106 S.Ct. 884
 - f. U.S. v. Holmes, 521 F.2d 859, 869-70, See rehearing 537 F.2d 227, 233-34 (5th Cir.)
 - g. Ochs v. State, 543 S.W.2d 355, U.S. cert. denied 429 U.S. 1062
 - h. Ebarb v. State, 598 S.W.2d 842 (Tex. Cr. App. 1980)
 - i. Dow Chemical Co. v. U.S., 106 S.Ct. 1819 (1986)
 - j. California v. Ciraolo, 106 S.Ct. 1809 (1986)
 - k. Katz v. U.S., 389 U.S. 347 (1967)

1. U.S. v. Cuevas - Sanchez, 41 Cr.L. 2311 (5th Cir. 6-29-87).

6. See 4.2 of Texas Law Enforcement Handbook

2.3 LEARNING OBJECTIVE: The student will be able to 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.
 - 1. Performed at the jail.
 - 2. Performed by the same person, i.e., arresting officer, booking officer, or property officer.
 - 3. Listing inventoried items on the agency's standard form.
 - 4. Storing inventoried property in a separate place from evidence.
- C. When an automobile is to be towed or impounded (to remove a traffic hazard, due to parking violations, ect.) 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. Inventory Cases
 - 1. Backer v. State, 656 S.W.2d 463 (Tex. Cr. App. 1983)
 - 2. Stephen v. State, 677 S.W.2d 42 (Tex. Cr. App. 1984)
 - 3. Kelley v. State, 677 S.W.2d 34 (Tex. Cr. App. 1984)

4. Benavides v. State, 600 S.W.2d 809 (Tex. Cr. App. 1980)
5. South Dakota v. Opperman, 428 U.S. 364, 96 S.Ct. 3092
6. Cooper v. California, 386 U.S. 58
7. Cady v. Dombrowski, 413 U.S. 433
8. Harris v. U.S., 390 U.S. 234
9. Gilmore v. State, 666 S.W.2d 136
10. Guillett v. State, 677 S.W.2d 46 (Tex. Cr. App. 1984)
11. Duncan v. State, 680 S.W.2d 555
12. U.S. v. Piatt, 576 F.2d 659 (5th Cir. 1978)
13. Collin v. State, 630 S.W.2d 890
14. Wallis v. State, 636 S.W.2d 1
15. Daniels v. State, 600 S.W.2d 813
16. Smyth v. State, 634 S.W.2d 721 (Tex. Cr. App. 1982)
17. U.S. v. Adams, 424 F.2d 175 (5th Cir. 1970)
18. U.S. v. Pennington, 441 F.2d 249 (5th Cir. 1971), U.S. cert. denied 404 U.S. 854)
19. Illinois v. Lafayette, 462 U.S. 640, 103 S.Ct. 2605 (1983)

F. See 3.4 of Texas Law Enforcement Handbook.

2.4 **LEARNING OBJECTIVE:** Given a scenario in the classroom, on film, and/or videotape concerning a search and seizure case without warrant, the student will be able to write a report that documents the officer's actions in a way that justifies the warrantless search and seizure.

A. 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.

- B. The instructor should provide at least one example of an effective report.

**TEXAS COMMISSION ON LAW ENFORCEMENT
OFFICER STANDARDS AND EDUCATION**

LEARNING OBJECTIVES

UNIT III

3.0 SEARCH WARRANTS

THIS GUIDE IS DESIGNED TO ASSIST THE INSTRUCTOR IN DEVELOPING AN APPROPRIATE LESSON PLAN OR PLANS TO TEACH THE LEARNING OBJECTIVES, WHICH ARE REQUIRED AS MINIMUM CONTENT OF THE INTERMEDIATE PEACE OFFICERS COURSE. THE FOLLOWING METHODS AND REFERENCE MATERIALS ARE PRESENTED AS SUGGESTIONS.

METHODS:

- Lecture
- Class Discussion
- Small group discussion, assignments, problem solving
- Case Preparation
- Audio Visual
- Written Exercises, Examinations
- Handout Material
- Homework or Library Research Assignments

REFERENCE MATERIALS:

J. Shane Creamer, *supra*.

Hall, *supra*.

Holtz and Spencer, *supra*.

LaFave, *supra*.

Paul J. McClung, *supra*.

Gerald S. Reamey, *supra*.

Devallis Rutledge, *supra*.

Model Rules for Peace Officers: A Resource Manual for Police Discretion and Rulemaking. Austin: Texas Advisory Commission on Intergovernmental Relations, 1980 (supplement 1982).

Practical Exercises in Search and Seizure, supra.

Rolando V. del Carmen, supra.

Jade Meeker, supra.

Michele G. Hermann, supra.

Case Reporters

Vernon's Annotated Texas Code of Criminal Procedure

3.0 SEARCH WARRANTS

FUNCTIONAL AREAS: This section will cover the principles of preparing valid search warrants. The students will be able to identify advantages of search warrants, preparation of proper cause affidavit. The student will be able to write an acceptable probable cause affidavit. The student will be able to demonstrate on a written examination an understanding of this area to a specified percentage.

3.1 LEARNING OBJECTIVE: The student will be able to 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. Article 38.23 CCP.

3.2 LEARNING OBJECTIVE: The student will be able to identify three major components of search warrant documentation.

- A. Affidavit
- B. Search Warrant
- C. Return

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.

3.3 LEARNING OBJECTIVE: The student will be able to identify essential components of an affidavit for the issuance of a search warrant.

- A. CCP Articles 18.01, 18.02, 18.021, 18.03
- B. Description of the place to be searched
 - 1. Describe the person, place, or vehicle in sufficient detail that any person executing the warrant will be sure to search the right target.
 - a. When the target is a person, include everything you know about his/her description, including name, aliases, sex, eyeglasses, hearing aids, beards, mustaches, deformities, tattoos, habitual jewelry, habitual dress and mannerisms, other unusual or characteristic features or traits, and the vehicle or location where he/she is likely to be found, together with the time, if known.
 - b. When the target is a vehicle, include the color, year, make, model, license number, vehicle identification number (VIN) and probable location.
 - c. If the place to be searched is a residence, be sure your description shows whether it is a house, part of a house, a duplex (triplex, etc.), an apartment, a hotel/motel room, a cabin, a mobile home, etc. Include all places where you want to search.

- d. If the place to be searched is a commercial building or office, be sure to specify and describe all places you need to search.
 2. See Chapter 2 of Texas Law Enforcement Handbook in general and 2.4 specifically for descriptive requirements.
- C. Description of Property to be Seized
1. Describe "with particularity" the things you want to seize. Failure to do so may lead the courts to hold the search warrant to be a general, exploratory warrant.
 2. Limit the items to be searched for to those things you have probable cause to believe will be found.
 3. Be as specific as possible. Do not say "narcotics and dangerous drugs" - when you expect to find heroin and seconal - state "heroin and seconal."
- D. Description of Owner or Occupant
1. Even though the Code of Criminal Procedure, U.S. Constitution, and Texas Constitution do not specifically state such a requirement, it would be wise to name the owner or occupant of the premises, if known. This will enhance the sufficiency of the warrant.
- E. Officer Identification and Expertise
1. The officer must identify himself in the affidavit by name and a detailed account of his experience in investigating the kind of crime associated with the search warrant.
 2. Establishing expertise is especially important if the officer is going to include his opinions concerning the significance and relevance of some of the facts comprising the probable cause.
- F. Probable Cause for the Search
1. The affidavit must include the officer's probable cause to believe that the items sought will be found at the place where he wants to search.

2. This probable cause may come from the officer's observations or other reliable sources (including hearsay).
3. The information establishing probable cause must be fresh, factual, and reliable.
4. Information should be stated factually not in a conclusionary fashion.
5. The source of any information should be stated. It is necessary sometimes to protect an informant by not using his name or other personally identifying information in the affidavit. The reasons for this should be spelled out.
6. Stale or old information cannot be used by itself to establish probable cause that contraband is at a location without fresh verification or corroboration.
7. The reliability of information within the affidavit is established by showing that it comes from trust-worthy sources.
 - a. Another police officer
 - b. Responsible and credible person
 - c. Reliable informant
 - d. Police records
 - e. Other trustworthy sources
8. Reliability is enhanced by corroboration by some independent means.

G. Container Searches

1. If the place to be searched is a closed or locked trunk, suitcase, strong box, toolbox, jewelry box, handbag, duffel bag, hatbox, showbox, or any other kind of container or compartment, an officer should prepare the affidavit according to the same guidelines as for any other place.

H. Concluding Statement

1. After the narrative statement of probable cause, the officer should conclude with a declaration of his belief that the evidence sought will be found.

I. Affidavit Under Oath

1. The Fourth Amendment demands "probable cause under oath."
2. It is a fatal flaw if the officer obtaining the warrant is never placed under oath.

J. Three Cardinal Rules of Preparing Search Warrant Affidavits

1. Be brief
2. Be specific
3. Be persuasive

K. Case decisions dealing with Search Warrants

1. Aguilar v. Texas, 378 U.S. 108, 84 S.Ct. 1509
2. Spinelli v. U.S., 393 U.S. 410, 89 S.Ct. 584
3. Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317
4. U.S. v. Ventresca, 380 U.S. 102
5. Jones v. State, 579 S.W.2d 240
6. Sherlock v. State, 632 S.W.2d 604 (Tex. Cr. App. 1982)
7. Spencer v. State, 672 S.W.2d 451 (Tex. Cr. App. 1984)
8. Olivas v. State, 631 S.W.2d 553 (Tex. Cr. App. 1982)
9. Haynes v. State, 475 S.W.2d 739
10. Cantu v. State, 557 S.W.2d 1207

11. Gurleski v. U.S., 405 F.2d 253 (5th Cir.)
12. Phenix, v. State, 488 S.W. 2d 767
13. Stanford v. Texas, 379 U.S. 476, 85 S.Ct. 506
14. James v. State, 139 S.W.2d 587
15. White v. State, 45 S.W.2d 225
16. Bentley v. State, 178 S.W.2d 521
17. Hernandez v. State, 255 S.W.2d 219
18. Heredia v. State, 468 S.W.2d 833
19. Massachusetts v. Sheppard, 104 S.Ct. 3424 (1984)
20. U.S. v. Leon, 104 S.Ct. 3405 (1984)
21. 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.
22. U.S. v. Bell, 457 F.2d 1231 (5th Cir.)
23. U.S. v. Rajewich, 470 F.2d 666 (5th Cir.)
24. Wetherby v. State, 482 S.W.2d 852
25. Abercrombie v. State, 528 S.W.2d 578
26. Wright v. State, 646 S.W.2d 460 (Tex. Cr. App. 1983)
27. Kemp v. State, 464 S.W.2d 141
28. Peltier v. State, 626 S.W.2d 30 (Tex. Cr. App. 1981)
29. Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674
30. Ramsey v. State, 579 S.W.2d 920
31. Longoria v. State, 636 S.W.2d 521 (Tex. App.)

32. Gentry v. State, 629 S.W.2d 77 (Tex. App.)
33. Jones v. U.S., 362 U.S. 257, 80 S.Ct. 725
34. U.S. v. Plemmons, 336 F.2d 731
35. Garcia v. State, 459 S.W.2d 839
36. Stoddard v. State, 475 S.W.2d 744 (1972)
37. U.S. v. Jackson, 41 Cr.L. 2215 (5th Cir. 5-20-87).
38. Heitman v. State, 815 S.W. 2d 681, 682 (Tex. Crim. App. 1991)

3.4 LEARNING OBJECTIVE: Given a scenario in the classroom, on film and/or videotape which may include written material and reports, the student will be able to write an acceptable probable cause affidavit for a search warrant.

A. The instructor should provide at least one example of an affidavit.

**TEXAS COMMISSION ON LAW ENFORCEMENT
OFFICER STANDARDS AND EDUCATION**

LEARNING OBJECTIVES

UNIT IV

4.0 SUPPRESSION HEARINGS AND CIVIL LIABILITY

THIS GUIDE IS DESIGNED TO ASSIST THE INSTRUCTORS IN DEVELOPING AN APPROPRIATE LESSON PLAN OR PLANS TO TEACH THE LEARNING OBJECTIVES, WHICH ARE REQUIRED AS MINIMUM CONTENT OF THE INTERMEDIATE PEACE OFFICERS COURSE. THE FOLLOWING METHODS AND REFERENCE MATERIALS ARE PRESENTED AS SUGGESTIONS.

METHODS:

- Lecture
- Class Discussion
- Role Play
- Case Presentations
- Audio Visual
- Handout Material

REFERENCE MATERIALS:

J. Shane Creamer, *supra*.

Holtz and Spencer, *supra*.

LaFave, *supra*.

Devallis, Rutledge, *supra*.

Case Reporters

Title 42 Section 1983 United State Code Annotated

Isidore Silver. Police Civil Liability. New York: Mathew Bender & Co.: 1986.

Rolando V. del Carmen, *supra*.

4.0 SUPPRESSION HEARINGS AND CIVIL LIABILITY

FUNCTIONAL AREA: This section will cover the uniqueness of the pretrial suppression hearing and possible civil liability for improper arrests, searches, and seizures. The student will be able to demonstrate on a written examination an understanding of this area to a specified percentage.

4.1 LEARNING OBJECTIVE: The student will be able to 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.
- 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 his 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. Note, however, that affidavits are a matter of public record once executed.
- 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, "Poisonous fruit doctrine."
 - 1. Article 38.23 CCP (State exclusionary rule)
 - 2. Mapp v. Ohio, 367 U.S. 643 (1961) (Federal exclusionary rule)
 - 3. See Chapters 9 & 10 of Texas Law Enforcement Handbook.

- 4.2 LEARNING OBJECTIVE: The student will be able to 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 his agency to the possibility of a lawsuit under Title 42 Section 1983 of the United States Code Annotated.
 - D. The agency is named because they have "the deep pockets" which can be reached through the theory of vicarious liability and because of Title 42 Section 1988 requirements.
 - E. 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 plaintiffs civil rights.
 - F. 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. See Section 39.03, Penal Code, for an example.
 - G. Officers individually have access to a good faith defense if they believed their conduct was lawful and if that belief was reasonable.
 - H. Local governments cannot use a good faith defense.
 - I. Case Decisions Concerning Civil Rights Liability.
 - 1. Diamond v. Maryland, 395 F.Supp 432
 - 2. Mapp v. Ohio, 367 U.S. 643 (1961)
 - 3. Monell v. New York City Department of Social Services, 436 U.S. 658
 - 4. Malley v. Briggs, 106 S.Ct. 1092 (1986)

5. Harlow v. Fitzgerald, 457 U.S. 800 (1982)
6. Pierson v. Ray, 386 U.S. 547 (1967)
7. Owen v. City of Independence, Missouri, 445 U.S. 622 (1980)
8. Bivens v. Six Unknown Named Federal Agents, 403 U.S. 388, 91 S.Ct. 1999
9. Monroe v. Pape, 365 U.S. 167, 81 S.Ct. 473
10. Baker v. McCollan, 443 U.S. 137, 99 S.Ct. 2689
11. Durison v. Kmart, 559 F.2d 1274 (1977)
12. Lamb v. Cartwright, 393 F.Supp 1081 (1975), affirmed 524 F.2d 238
13. Sexton v. Gibbs, 327 F.Supp 134 (1970), affirmed 446 F.2d 904, U.S. cert. denied 404 U.S. 1062
14. Hampton v. U.S., 96 S.Ct. 1648, 425 U.S. 484
15. Hunter v. Clardy, 558 F.2d 290 (1977)
16. Mundy v. State of Ga., 586 F.2d 507 (1978)
17. Reeves v. City of Jackson Miss., 608 F.2d 644 (1979)
18. Vela v. White, 703 F.2d 147 (1983)
19. Vasquez v. Snow, 616 F.2d 217 (1980)
20. Duncan v. Barnes, 592 F.2d 1336 (1979)
21. Creamer v. Porter, 754 F.2d 1311 (1985)
22. Bodzin v. City of Dallas, 768 F.2d 722 (1985)
23. Reimer v. Short, 578 F.2d 621 cert. denied 99 S.Ct. 1425, 440 U.S. 947 (1978)
24. Taylor v. Gibson, 529 F.2d 709 (1978)

25. Burton v. Waller, 502 F.2d 1261 (1974), cert. denied 95 S.Ct. 1356, 420 U.S. 964
 26. Cronen v. Nix, 611 S.W.2d 651 (App. 1 Dist. 1980) RNRE, U.S. cert. denied 454 U.S. 833 (1981)
 27. Wanger v. Bonner, 621 F.2d 675
 28. Roberts v. Bohac, 574 F.2d 1232 (5th Cir. 1978)
 29. Baskin v. Parker, 602 F.2d 1205 (5th Cir. 1979)
 30. Anderson v. Creighton, 41 Cr.L. 3396
- J. See Chapter 14 of Texas Law Enforcement Handbook for new cases.

**TEXAS COMMISSION ON LAW ENFORCEMENT
OFFICER STANDARDS AND EDUCATION**

LEARNING OBJECTIVES

UNIT V

5.0 JUVENILE JUSTICE PROCEDURES

THIS GUIDE IS DESIGNED TO ASSIST THE INSTRUCTOR IN DEVELOPING AN APPROPRIATE LESSON PLAN OR PLANS TO TEACH THE LEARNING OBJECTIVES, WHICH ARE REQUIRED AS MINIMUM CONTENT OF THE INTERMEDIATE PEACE OFFICERS COURSE. THE FOLLOWING METHODS AND REFERENCE MATERIALS ARE PRESENTED AS SUGGESTIONS.

METHODS:

- Lecture
- Class Discussion
- Small group discussion, assignments, problem solving
- Case Preparation
- Audio Visual
- Written Exercises, Examinations
- Handout Material
- Homework or Library Research Assignments

REFERENCE MATERIALS:

Course materials, Juvenile Justice Procedures Course: A project funded by the State of Texas Office of the Governor, Criminal Justice Division, Center for Initiatives in Education, Southwest Texas State University, 1999.

Model Rules for Peace Officers: A Resource Manual for Police Discretion and Rulemaking. Austin: Texas Advisory Commission on Intergovernmental Relations, 1980 (supplement 1982).

Vernon's Annotated Texas Code of Criminal Procedure

5.0 JUVENILE JUSTICE PROCEDURES

FUNCTIONAL AREA: This section will cover juvenile justice procedures. The student will be able to demonstrate on a written examination an understanding of this area to a specified percentage.

5.1 LEARNING OBJECTIVE: The student will be able to identify the kinds of juvenile offenses and how to deal with offenders.

A. Status Offense

(See Title 3, Family Code, Section 51.02 for statutory references.)

1. Truancy
2. Running away from home
3. Failure to attend school
4. Violation of standards of student conduct
5. Curfew violation
6. Alcoholic Beverage Code violation

B. CINS ("child in need of supervision")

(See Title 3, Family Code, Section 51.03 for statutory references.)

1. Public intoxication
2. Offense punishable by fine only – other than traffic offense
3. Truancy
4. Runaway
5. Inhalant abuse
6. Expulsion from school
7. Violation of a reasonable and lawful court order

C. Delinquent Conduct

(See Title 3, Family Code, Section 51.03 for statutory references.)

1. Felony or jailable misdemeanor
2. Violation of probation

3. Contempt of court
 4. DWI
 5. Third offense DUIA as minor
- D. Procedures and limits for treatment of offenders
(See Title 3, Family Code, Chapter 52 for statutory references.)
1. 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
 2. Sight and sound separation for holding
 3. 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 LEARNING OBJECTIVE: The student will be able to 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

5.4 LEARNING OBJECTIVE: The student will be able to identify the issues in identifying and making law enforcement contacts with juveniles engaged in organized crime activity. (See Chapter 71, Penal Code, and Chapter 61, Code of Criminal Procedure.)

- A. Identifying juvenile gang members
- B. Making law enforcement contacts with juvenile gang members
- C. State-wide reporting of juvenile gang information