



SAN ANTONIO POLICE DEPARTMENT GENERAL MANUAL



Procedure 502 – Warrantless Arrests, Searches, and Seizures

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.01 INTRODUCTION

These guidelines are designed to assist officers of the San Antonio Police Department in determining how and when it is appropriate to enforce the law through warrantless arrests, searches, and seizures.

.02 TERMINOLOGY *(For specific use within this procedure, see Glossary)*

Arrest Exigent Circumstances Probable Cause Reasonable Suspicion Search

.03 POLICY

- A. The authority to arrest without a warrant is entirely statutory. An officer's good faith does not justify an invalid arrest. Any officer who acts outside his authority in making a warrantless arrest may be subject to both civil and criminal liability.
- B. An officer makes a warrantless arrest only if he has enough personal knowledge or reliable information to constitute probable cause upon which an arrest warrant could be issued, if time permitted.
- C. Officers exercise discretion in the use of their authority to arrest without a warrant.
- D. Officers make warrantless arrests only by the authorities listed in Section .04 of this procedure.
- E. Officers make warrantless searches and seizures only by the authorities listed in Section .09 of this procedure.

.04 WARRANTLESS ARREST AUTHORITIES

A. State Statutes

1. Alcohol Beverage Code

- a. Chapter 101, Article 101.02 *Any Violation of Alcohol Beverage Code*

2. Code of Criminal Procedure

- a. Chapter 8, Article 8.04 *Dispersing Riot*

b. Chapter 14

- (1) Article 14.01 *Offense within View*
- (2) Article 14.02 *Within View of Magistrate*
- (3) Article 14.03(a)(1) *Suspicious Places and Circumstances;*
- (4) Article 14.03(a)(2) *Assault - Bodily Injury;*
- (5) Article 14.03(a)(3) *Violation of Protective Order - May Arrest;*
- (6) Article 14.03(a)(4) *Family Violence - Bodily Injury;*



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- (7) Article 14.03(a)(5) *Interference with an emergency call; and*
- (8) Article 14.03(a)(6) *Confession of a felony.*
- (9) Article 14.03(b) *Violation of Protective Order - Shall Arrest.*
- (10) Article 14.04 *Fleeing Felon*
- c. Chapter 18, Article 18.16 *Preventing Consequences of Theft*
- d. Chapter 51, Article 51.13 *Uniform Criminal Extradition Act*
- 3. Health and Safety Code
 - a. Chapter 462, Section 462.041 *Chemically Dependent Person*
- 4. Parks and Wildlife Code
 - a. Chapter 11, Article 11.0191 *Any Violation of Parks and Wildlife Code*
- 5. Transportation Code
 - a. Chapter 543, Section 543.001 *Any Violation of Transportation Code*
- B. Rights of Officers
 - 1. Where an arrest may be lawfully made without a warrant, an officer making an arrest is justified in adopting all the measures which he might adopt in cases of an arrest under a warrant, except the officer making the arrest without a warrant may not enter a residence to make the arrest unless.
 - a. A person who resides in the residence consents to the entry; or
 - b. Exigent circumstances require the officer making the arrest enter the residence without the consent of a resident or without a warrant.

.05 PROBABLE CAUSE

- A. Probable cause to arrest exists when an officer has reason to believe, through personal knowledge or reliable information; a person has committed an offense.
- B. To establish probable cause, the officer does not need the amount of evidence required to prove beyond a reasonable doubt a person is guilty of committing an offense. Only that amount of evidence which reasonably shows a particular person probably or most likely committed an offense is required.
- C. An officer may consider all the lawfully acquired information available to him at the moment of the arrest regardless of its admissibility at a trial.
- D. Though an officer may not rely solely on reasonable suspicion to justify an arrest, he may use this factor as an initial step in establishing probable cause.
- E. When immediate action is required, an officer may make an arrest even though he is unable to determine the particular offense which has been committed. There may be a difference in the reason for arrest and the charge to be filed. An officer is not required to know all the legal matters involved in determining with which offenses the offender is to be charged.



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- F. An officer, making an arrest at the request of another officer is entitled to rely on radio broadcast information and assume the officer requesting the arrest has probable cause for the arrest. When one officer makes an arrest at the request of another officer, its validity is determined by whether the information known to the requesting officer is sufficient to establish probable cause.

- G. When information from an informant is necessary to establish probable cause, an officer:
 - 1. Explains his reason(s) for believing the informant to be reliable and the underlying circumstances from which the informant concluded the offense was committed, and a particular person committed the offense.
 - 2. An officer seeks some confirmation of the information he receives from a victim or witness:
 - a. An officer determines the victim or witness was able to observe and remember what happened;
 - b. Directly observable results of an offense can serve as partial confirmation of the commission of the offense; and
 - c. When the circumstances suggest the victim's or witness' allegations may be untrue, an officer investigates further before making an arrest. The more doubt an officer has about the victim's or witness' veracity, sincerity, or ability to perceive, the more he needs to confirm the information.

.06 SELECTIVE ENFORCEMENT

- A. Under certain circumstances in misdemeanor cases, for good cause consistent with public interest, an officer may decide not to arrest even though probable cause exists. Factors which the officer may properly consider in determining not to arrest are as follows.
 - 1. The victim must positively state he is not interested in prosecuting the offender because:
 - a. He desires restitution only;
 - b. He is in a continuing relationship with the offender (i.e., employer-employee);
 - c. He is in a family-type relationship with the offender; or
 - d. The actual injury done to persons or damage done to property is minimal.
 - 2. The offender can be released to the custody of another agency which specializes in handling the type of case in which he is involved (i.e., Armed Forces Police).
 - 3. The arrest would result in greater harm to the victim than would non-arrest.

- B. When the offense is a felony and circumstances outlined in Subsection .06A of this procedure exist, the officer has the victim and the offender accompany him to Headquarters to contact the investigative unit normally assigned to investigate the particular offense. (*Note: If this occurs from 1900 - 0500 hours, the Night CID Unit is contacted.*) The investigative unit supervisor determines whether the offender is booked or released. If the offender is released, SAPD Form #29, *Complaint Waiver*, is signed by the victim and approved by the investigative unit supervisor.

.07 DELAY IN MAKING AN ARREST

- A. An officer may, in order to avoid the use of force, delay making an arrest until a more appropriate time if by so doing he does not jeopardize the eventual arrest.

- B. An officer obtains a warrant if a misdemeanor is committed in his presence or view and he does not arrest at the time the offense is committed.



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- C. An officer obtains a warrant if a felony is committed in his presence or view and he does not arrest the offender as quickly as is reasonably possible under the circumstances. Delay is reasonable when it avoids the necessity of overcoming resistance by the offender and when it is necessary for the safety of the officer or others.
- D. An officer who has reasonable time and opportunity to obtain an arrest warrant should always do so in accordance with GM Procedure 503, *Obtaining and Executing Arrest Warrants*.
- E. An officer obtains an arrest warrant when the offender is committing a continuing offense and the facts establishing probable cause are known to the officer over a period of time. In all cases where an officer has knowledge of a continuing offense, a warrant of arrest is obtained.
- F. An officer obtains a warrant for a felony or breach of the peace committed out of his presence or view whenever he has reasonable time and opportunity to procure one. Such action is unnecessary when obtaining a warrant would result in:
 - 1. The loss or destruction of evidence;
 - 2. The escape of the offender; or
 - 3. Bodily injury to the officer or others.

.08 INFORMING PERSONS TO BE ARRESTED

- A. Officers shall, under normal circumstances, inform persons about to be arrested of the following:
 - 1. The officer's intention to take the person into custody;
 - 2. The reason for the arrest;
 - 3. The authority for the arrest; and
 - 4. The person's rights as per the Miranda Warning.
- B. When an arrest situation makes it impractical to inform a person of an impending arrest, officers are not required to provide arrest information. Situations where it would be impractical or unnecessary to provide arrest information include:
 - 1. When the person is in the act of committing the offense;
 - 2. When the person is fleeing from the scene of the crime;
 - 3. When the officer or others would be endangered; or
 - 4. When the arrest would be imperiled.
- C. When not in uniform, an officer displays his identification and identifies himself as a police officer as soon as the situation permits.
- D. Officers read SAPD Form #66-E, *Rights Warnings*, to offenders taken into custody, including juveniles, prior to questioning regarding the offense for which they are arrested and in accordance with Chapter 38.22 of the *Texas Code of Criminal Procedure*.
- E. Officers take all persons arrested before a magistrate in compliance with Chapter 15, Articles 15.17 and 15.18, of the *Texas Code of Criminal Procedure*.



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.09 WARRANTLESS SEARCH AUTHORITIES/GUIDELINES

A. Search by Consent

1. A consent search is a warrantless search and occurs when a person voluntarily allows a peace officer to search his body, premises, or belongings.
2. Consent is not voluntary if it is obtained by threat, force, or by falsely claiming the search can be conducted without consent.
3. Upon giving consent to search, the consenting person relinquishes any right to object to the search on constitutional grounds.
4. Officers, prior to conducting a search by consent, will complete and have the consenting person sign SAPD Form #2091-A, *Consent for Search of Private Premises*.

B. Frisk

1. An officer may frisk a person for weapons at any time without a warrant if the officer has reason to fear for his safety.
2. The officer must be able to explain why the person was frisked. The officer need not point to any one thing that would justify the frisk, but should refer to several things, each of which, when taken alone may seem harmless, but when considered together by an officer who is trained or experienced in dealing with criminal suspects, raises a reasonable suspicion the person poses a threat to the officer's safety.

C. Search of a Vehicle Under a Movable Vehicle Exception

1. A vehicle stopped on public property by a peace officer may be searched without a warrant if the peace officer has probable cause to believe the vehicle contains items subject to seizure.
2. The items subject to seizure must be items connected with criminal activity.
3. The officer's determination of probable cause must be based on objective facts that could justify the issuance of a search warrant by a judge or magistrate.

D. Crime Scene Search

1. While at a crime scene, officers may seize any evidence, fruits of the crime, or contraband that falls within the scope of the Plain View Doctrine.
2. Officers may conduct a quick and limited "protective sweep" search for the safety of officers and persons in the area.
 - a. The protective sweep search may be made when an officer reasonably believes the area harbors an individual posing a danger to those at the scene.
 - b. Officers may conduct a limited frisk search of a person for weapons at a crime scene if there are articulable facts indicating a person may be armed.
 - c. Officers may also make a limited search of persons at a crime scene if there are articulable facts a person may be about to destroy evidence.
3. In the absence of the Plain View Doctrine or exigent circumstances, officers shall obtain a warrant to search a crime scene.



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4. A search warrant is not necessary if a crime scene is located in a public place.
- E. Exigent Circumstances - Where the Public Safety is Endangered
1. If exigent circumstances exist, the search warrant requirement is dispensed.
 2. Under exigent circumstances officers may search persons, property, or containers they believe possess or contain some immediately dangerous weapon or instrument.
 3. In situations where the public is in danger, officers may conduct a search of persons, places, or things without a warrant if there would not be a reasonable amount of time to obtain a warrant.
- F. Inventory Searches
1. An inventory search of an impounded or seized vehicle may be conducted without a warrant in accordance with GM Procedure 607, *Impounding Vehicles*. The inventory search is an administrative procedure intended to inventory and secure the contents in a vehicle. The inventory procedure is intended to protect the following:
 - a. The owner's property while it remains in police custody;
 - b. The police against claims or disputes over lost, stolen, or vandalized property; and
 - c. The police and others from potential danger.
 2. If criminal evidence, contraband, or other property subject to seizure is discovered during the inventory of a vehicle, there must be a valid administrative reason for the inventory for the property to be admissible in court.
- G. Other Search Situations Authorized by Constitutional Provisions
1. Any property or items listed in the Texas Code of Criminal Procedure, Article 18.02, that could be seized with a search warrant may be seized without a search warrant under the Plain View Doctrine if an officer:
 - a. Recognizes the property or items as seizable property or items;
 - b. Has a legal right to be in a position to view the property or items; and
 - c. Does not intrude on any person's reasonable expectation of privacy to seize the property or items.
 2. If the property or items are in a place the officer cannot legally enter without a warrant or consent, the property or items cannot be seized without a warrant unless there is danger of imminent destruction or removal of the property.