

**LANCASTER POLICE DEPARTMENT  
GENERAL ORDERS MANUAL**

<i>Effective Date</i> August 26, 2015		<i>Amended Date</i>		<i>Directive</i> 7.06.1	
<i>Subject</i> Search and Seizure Warrants					
<i>Reference</i>			<i>Approved</i>  Chief of Police		
<i>Distribution</i> All Personnel City Manager City Attorney		<i>TPCA Best Practices Recognition Program Reference</i>  7.06		<i>Review Date</i>  December 12, 2017	
				<i>Pages</i>  10	

This Operations Directive is for internal use only and does not enhance an officer's civil or criminal liability in any way. It should not be construed as a creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this Operations Directive, if proven, may only form the basis for a complaint by this Department, and only in a non-judicial administrative setting.

**SECTION 1 PURPOSE**

The purpose of this policy is to provide guidance to all department personnel on when and how to obtain a search warrant, how to execute a search warrant, and how to return a search warrant.

**SECTION 2 POLICY**

Both federal and state constitution's guarantee every person the right to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. U. S. Supreme Court decisions regarding search and seizure place the responsibility on the police to ensure that every person's fourth amendment rights are protected.

Officers shall scrupulously observe constitutional guidelines when conducting searches, and they will always remain mindful of their lawful purpose. Unlawful searches can result in harm to members of the community, put officers at risk, and possibly damage the department's image in the community.

Search warrants are one of the most valuable and powerful tools available to law-enforcement officers. Officers of this department shall have a thorough knowledge of the legal requirements involved in obtaining and executing search warrants.

**SECTION 3 DEFINITIONS**

- A. **Briefing:** The pre-operation meeting, either at the police station or staging area, of all officers participating in the execution of the search warrant.
- B. **Curtilage:** The yard and buildings which relate to a domestic activities and surround a residence or dwelling place, generally including garages, sheds, outhouses, driveways, barns, fenced-in areas around the house, and the like. It does not include vehicles, commercial business structures or open fields surrounding a residence. For apartments or multi-unit dwellings, it also does not include fire escapes, lobbies or common hallways.
- C. **Exigent (Urgent) Circumstances:** An emergency of unforeseen occurrence or combination of circumstances which require an officer to act immediately.

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- D. **High Risk Warrant:** A pre-planned operation in which there is a good reason to believe that the person(s) involved may be armed and/or intent on resistance. This includes the serving of felony arrest warrants and the serving of search warrants for controlled substances when a supervisor believes the operation is High Risk in nature.
- E. **Initial Entry/Internal Security Team:** The team responsible for initially entering the operation location after announcing the police presence, knocking on the entry door, and identifying the police purpose in the operation where required. The team also responsible for moving through the location to search for occupants and items of immediate danger.
- F. **Inner Perimeter Security:** The officers assigned to provide close-in cover and security around the building which is the object of the operation.
- G. **Mere Evidence:** Property or items (but not contraband or a fruit or instrumentality of a crime) constituting evidence of an offense or tending to show that a particular person committed an offense.
- H. **Nexus:** Probable cause which, by connecting mere evidence to an offense, permits an officer to seize mere evidence even if the search warrant does not describe it.
- I. **Outer Perimeter Security:** The officers assigned to provide secondary cover/security around the building which is the object of the operations; also responsible for continued covert surveillance during the operation, as needed.
- J. **Probable Cause:** Facts and circumstances, more than mere suspicion that would lead a reasonable and prudent person to believe that a crime has been or is being committed.
- K. **Reasonable Suspicion:** An officer's rational belief, based on credible and articulable information and circumstances, that something may be true.
- L. **Search Warrant:** A written order, issued by a magistrate (on a showing of probable cause) and directed to a peace officer, commanding him to search for any property or thing and to seize the same and bring it before such magistrate.
- M. **Search Warrant Supervisor:** The supervisor who approved the warrant or his designee will be designated as the Search Warrant Supervisor and be responsible for conducting the briefing of the search warrant. If the warrant is determined to be a "High Risk Warrant" then the SURGE Team Leader or designee will become the Search Warrant Supervisor. In the event that the SURGE Team Leader becomes the Search Warrant Supervisor, he or she will maintain control of the operation until the location and individual(s) are secured. At that time the supervisory responsibility will again become that of the supervisor who approved the warrant.
- N. **Lead Detective or Officer:** The officer primarily responsible for the investigation, and preparing, planning, and implementing the search warrant.
- O. **SRRG-SRT Commander:** The officer responsible for planning and supervising tactical operations to include dynamic entry and other tasks requiring special weapons and tactically trained officers who are members of the Southwest Regional Response Group – Special Response Team (SRRG-SRT).

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- P. **Protective Sweep:** Quick and limited search of premises incident to an arrest or service of a warrant performed in order to identify weapons or other dangers to officers or others. Officers must be able to articulate a reasonable basis for conducting a protective sweep.
- Q. **Special Operations Plan:** A written plan detailing brief summary for operation, officer assignments, target location, target suspects and vehicles, officer safety concerns, operations channel, designated hospital.

**SECTION 4 PROCEDURES**

**A. STATE LAW**

1. Chapter 18, Texas Code of Criminal Procedure controls the use of search warrants in Texas. It states that a judge or magistrate may issue a search warrant if the following circumstances exist:
  - a. there is probable cause to do so; and
  - b. there is a complaint on oath supported by an affidavit
2. Search warrants may be issued for the search of or for specified places, things or persons, and seizure there from of the following things as specified in the warrant:
  - a. weapons or other objects used in the commission of a crime;
  - b. articles or things the sale or possession of which is unlawful;
  - c. stolen property or the fruits of any crime;
  - d. any object, thing, or person including documents, books, records, paper, or body fluids constituting evidence of a crime

**B. GENERAL DUTIES**

1. Unless permitted under the rules of a warrantless search and seizure, an officer shall never conduct a search or seize property without a search warrant.
2. An officer shall never alter the information on any search warrant in any manner.
3. An officer shall presume that any search warrant, which appears in proper form, is valid. To be in proper form and valid on its face a search warrant must:
  - a. run in the name of "The State of Texas";
  - b. identify the property to be seized and the person, place, or thing to be searched;
  - c. command any peace officer of the proper county to conduct the search immediately; and
  - d. be dated and signed by the magistrate

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4. An officer shall execute a valid search warrant as provided by law and by this order.
5. If the search warrant lacks proper form, the officer shall not execute it but shall return it to the magistrate who issued it. A warrant lacks "proper form" if it appears on its face to be incorrect or if it contains significant errors in identifying the place to be searched or the property to be seized.
6. Whenever an officer executes a search warrant, he shall bring it with him to the scene and exhibit it to the person, if any, in charge of the premises.
7. In order to obtain consent to search, or otherwise, an officer shall never falsely represent to any person that a search warrant has been issued or that the officer can obtain a search warrant.
8. Duty assignments will be made during the search warrant briefing by the Search Warrant Supervisor. Personnel will remain at their assigned positions until directed otherwise by the Search Warrant Supervisor.

**C. TIME OF SEARCH**

1. A search warrant must be executed no later than the third day after issuance as provided in Article 18.06, Texas Code of Criminal Procedure; or fifteen (15) days for a warrant that is issued solely to obtain DNA evidence from a specific person.
2. The time of actual execution is determined by when:
  - a. the property to be seized will likely be present;
  - b. a targeted suspect will be at the search location;
  - c. the least resistance is expected or resistance can be best controlled; and
  - d. it is most tactically advantageous and safe to execute the warrant

**D. OBTAINING A SEARCH WARRANT (TPCA 7.06a)**

1. Prior to obtaining a search warrant, officers should consult a departmental supervisor for review of the probable cause and approval to seek a search warrant. This review may be conducted by telephone if necessary. If the supervisor approves the warrant application, the supervisor shall notify the Chain of Command immediately and inform them of the circumstances surrounding the offense and the need for the warrant.
2. The approving supervisor will be in charge of the warrant execution. While the lead detective or officer may develop the case information, construct the affidavit, obtain the warrant and seek assistance from SRRG-SRT if needed, the approving supervisor is responsible for the proper and safe execution of the warrant including compliance with this policy.
3. Essential legal requirements:

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- a. To obtain a search warrant, an officer must show probable cause to believe that specific evidence, contraband, or fruits of a crime may be found at a particular place.
- b. The officer shall carefully document in an affidavit specific facts that constitute probable cause. Two kinds of facts must be considered:
  - i. the facts from which the officer concluded that the person or thing is probably located at the place to be searched; and/or
  - ii. the facts which address the reliability of the source of the officer's information
- c. The court considers only those facts presented in the warrant and affidavit. Conclusions and suspicions are not facts. Facts must be recent.
- d. Apart from the officer's personal knowledge or observations, facts may derive from a reliable informant.
- e. Reliability of facts is established by:
  - i. personal observation or knowledge by an officer;
  - ii. eyewitnesses who have first-hand knowledge;
  - iii. informants (if proven reliable or corroborated by personal observation of an officer)

**E. AFFIDAVITS**

1. The accuracy of the affidavit is vital to the validity of the search warrant. On the designated form, officers shall provide the information listed below. Article 18.01, Texas Code of Criminal Procedures requires officers to swear to the facts of the affidavit before a judge or magistrate.
2. The affidavit shall include the following elements:
  - a. a detailed description of the place, thing, or person to be searched;
  - b. a description of the things or persons to be searched for;
  - c. a substantial allegation of the offense in relation to which the search is to be made;
  - d. an allegation that the object, thing, or person to be searched constitutes evidence of the commission of the offense;
  - e. material facts which would show that there is probable cause for issuing the search warrant;
  - f. facts that establish probable cause and that the item to be seized is at the location to be searched

**F. LANGUAGE OF THE WARRANT**

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1. Only the things specified in the search warrant can be seized with the exception of items that are contraband, fruits or instrumentalities of a crime. The warrant shall specify the areas to be searched shall be precisely stated. If officers wish to search a home and its surroundings, the affidavit must specify a "premises" search and its curtilage and must identify outbuildings, garages, as appropriate.
2. If motor vehicles to be searched are on the premises, the warrant shall so specify.
3. If searches of specific persons (other than frisks) are to be included during the search, the warrant shall so specify. If the warrant states that all persons present shall be searched, then probable cause to do so must be justified in the affidavit.
4. The items to be searched for shall be precisely described. If an item to be searched for may be dismantled (e.g., firearms), then the warrant must specify the search for parts, pieces, or components of the item.
5. If officers anticipate searching for and seizing computers or similar, complex technology, then experts must be consulted to determine the appropriate language to list in the affidavit and for outlining appropriate guidelines in the warrant for seizure of hardware and software.
6. If time and opportunity permit, the affidavit and warrant should be reviewed by a supervisor prior to presenting it to a magistrate.
7. If officers believe it is in the best interest of officer safety or that evidence may be destroyed if advanced warning is given and wish to utilize a "no-knock" warrant execution, the reasons for that belief should be clearly explained in the affidavit. The magistrate should be requested to review and authorize the no-knock entry.

**G. EXECUTING A SEARCH WARRANT (TPCA 7.06b)**

1. A departmental supervisor or designee will be required to execute the warrant and prepare a Special Operations Plan. Upon obtaining an arrest or search warrant, the officer will notify their immediate supervisor. The Search Warrant Supervisor will conduct a briefing to clarify duties of each officer's assignments and to determine needed equipment.
2. The on-duty patrol supervisor and communications supervisor will be notified of the intent to execute the warrant, and after proper notifications are made, personnel will proceed to the site of the intended warrant execution. (See special procedures for High Risk Warrants for additional notification and use of SRRG-SRT.)
3. No department personnel will participate in the execution of the warrant other than those specifically assigned to the operation, and no persons other than peace officers, member of the fire department medic team, and members of the district attorney's office will be permitted to accompany officers in the execution of any warrant unless approved by the Chief of Police.

**H. ENTRY**

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1. Officers shall knock to announce their identity and demand admission to private premises. They shall then wait to be admitted, unless exigent circumstances prevent such, and explain their purpose if so requested.
  2. Entry of the premises will be accomplished by the least forcible means possible under the circumstances.
  3. When entering a building or other premises, an initial entry/internal security team shall enter first and locate and control the movements of all persons who might pose a threat to safety, and all items which might be used as weapons. This may include, but is not limited to:
    - a. Frisking any person found who the officer reasonably suspects may have a weapon concealed on their person;
    - b. No greater force than is necessary shall be used to secure the premises. Use of threat of force shall be terminated when it is clear that any potential resistance has been controlled;
    - c. An officer shall as soon as possible explain fully the reasons for the officer's presence and display the warrant;
    - d. After securing the location the Search Warrant Supervisor has the sole discretion as to who and how many officers will be needed to enter the location to complete the interior search; and
    - e. As soon as the building has been secured any members, at the determination of the Search Warrant Supervisor, who are no longer needed shall leave the area.
  4. Forcible entry may be made in order to execute a felony arrest after officers have demanded entry and been refused. Forcible entry under this section may not be made for a misdemeanor arrest.
  5. Where unforeseen and exigent circumstances exist, officers may enter after waiting a short, but reasonable period of time, for admission. If in the view of the supervisor in charge, circumstances exist that would unduly jeopardize the safety and security of the officers or persons in the area of the items sought, officers may use the most efficient means possible, including force, as necessary to enter the premises, while inflicting as little damage as possible to the premises.
- I. EXCEPTION: (No Knock)
1. If there is just cause to believe that by announcing entry:
    - a. that such announcement could jeopardize the safety of the officers or occupants of the premises; or
    - b. that such announcement could result in the destruction of the evidence sought; and
    - c. the escape of the person to be searched or arrested

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2. If circumstances require a no-knock or exigent entry, then the first officer to cross the threshold into the premises shall announce that law-enforcement officers are executing a warrant. Officers shall also command the occupants to take the appropriate action to ensure their safety, such as **"Police, search warrant, get down."**

J. HIGH RISK WARRANTS

1. Prior to executing a high risk warrant the supervisor or his designee will consult with the SRRG-SRT Commander to determine if SRRG-SRT should execute the warrant. If it is determined that SRRG-SRT will be utilized, the SRRG-SRT Commander will prepare an operational plan.
2. Except as extraordinary, exigent, or life threatening circumstances may dictate, investigative personnel shall not participate as part of the initial entry team unless they are also SRRG-SRT Members and perform dual functions. They shall limit their participation to inner or outer security as needed, internal security immediately following the initial entry team and post entry arrest.
3. All personnel functioning as internal security or inner perimeter security shall be present during the pre-operation briefing to maximize the recognition and identification of investigators during the operation.
4. All personnel conducting surveillance on the target location during the pre-operation warrant briefing who are not present at the briefing shall not join the entry or internal security teams except as extraordinary, exigent, or life threatening circumstances may dictate. Their role shall be limited to surveillance and outer perimeter security.
5. All personnel participating in the execution of the search warrant shall display the police badge in a conspicuous manner or shall be clearly identified as law enforcement officers by a distinctive jacket or some other conspicuous indicator of office. This requirement does not apply to undercover officers present at the location in an undercover role. However, in such cases, the identity and presence of any undercover officers must be made known by the officers obtaining the warrant and/or the officer's supervisor to those participating in the operation prior to execution of the warrant.
6. All personnel involved in the execution of a high risk warrant shall wear body armor.

K. SEARCH TEAM

1. When the premise has been secured, a search team will enter and conduct the search and subsequent arrests.
2. Reasonable effort should be made to minimize damage to the property. The need to destroy, disorder, or disarray property should be based solely on the need to do so.
3. As a general rule, two officers should be assigned to search a single room or area.
4. A record shall be kept during the course of the search as to indicate which areas have been examined, by whom, the nature of any item seized, and where it was found.

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5. All reports relating to the execution of the search warrant shall be factual and complete. Any action taken outside the scope of the warrant must be documented in a written report. A list of the names of all the officers who participated will be included in the report.

**L. HANDLING ITEMS/PROPERTY FOUND**

1. All items seized will be turned over to a single officer, designated as the Evidence Collection Officer along with the record of the search. The Evidence Collection Officer shall make a receipt for all items seized to the person from whose possession or control they were taken or who was in control of the premises.
2. The Evidence Collection Officer will be designated by the Search Warrant Supervisor and be responsible for making and leaving a receipt and an inventory of the property seized.
3. All items seized shall be properly marked and placed into evidence storage pursuant to department evidence procedures without undue delay.

**M. LEAVING COPY OF WARRANT/INVENTORY**

1. Any time after the search begins, but before leaving the scene, the officer executing the warrant must present a copy of the warrant to the owner of the place, if the owner is present. If the owner is not present, but a person who is present is in possession of the place, the officer shall present a copy of the warrant to that person.
2. Before the officer takes property from the place, the officer must prepare a written inventory of the property to be taken. The officer's name must be legibly endorsed on the inventory. A copy of the inventory must be presented to the owner or other person in possession of the property.
3. If neither the owner nor a person in possession of the property is present when the officer executes the warrant, the officer shall leave a copy of the warrant and the inventory at the place.

**N. LEAVING AND SECURING PREMISES AFTERWARDS**

1. A second search is not permitted under the warrant once officers leave the premises, unless a second warrant is obtained.
2. Before leaving the scene after executing the search warrant, officers will attempt to secure the premises to the extent that is reasonably possible.

**O. RETURNING SEARCH WARRANT (TPCA 7.06c)**

1. After a search warrant has been executed, the warrant and the inventory must be returned to the magistrate who issued the warrant, in accordance with Article 18.10, Texas Code of Criminal Procedure.
2. Unless otherwise instructed by the Search Warrant Supervisor, the officer who obtained the warrant shall be responsible for its return.

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3. Although there is not a statutory requirement for a time period in which the return must be made, the return should be completed within five (5) business days of the warrant execution, unless the magistrate requires a sooner return.

**P. SEARCH WARRANTS AND AFFIDAVITS ARE PUBLIC DOCUMENT**

1. Except as provided by Article 18.011, Texas Code of Criminal Procedure, the affidavit is public information once the warrant is executed.
2. Article 18.011, Texas Code of Criminal Procedure, authorizes the attorney representing the state to request a district judge or judge of an appellate court to seal the affidavit if the attorney can establish that public disclosure would have one or more of the adverse impacts listed under Article 18.011.

**Q. SCOPE OF RESPONSIBILITY**

1. All members of the department shall know and comply with all aspects of this directive.
2. All Division Commanders and supervisory personnel are responsible for ensuring compliance with the provisions and intent of this directive.