

SECTION **10**  
**Search and Seizure**

**10.1 – 10.3**      **COMPETENCY REQUIREMENTS**

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**SECTION 10 SEARCH AND SEIZURE**

Phase 1    Phase 2    Phase 3    Phase 4    Phase 5

Trainee \_\_\_\_\_ FTO \_\_\_\_\_

**10.1 SEARCH CONCEPTS**

**10.1.01 Terminology**  
 The trainee shall review and explain the following terms relative to searches:

A. Consent	E. Instrumentalities of a crime
B. Scope of Searches	F. Contraband
C. Contemporaneous	G. Knock and Notice
D. Probable Cause	H. Container search doctrine

Reference(s):

	Received Instruction		Competency Demonstrated		How Demonstrated?	Remedial Training		How Remediated?
	Signature	Date	Signature	Date		Signature	Date	
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**Comments:**

Incident #: \_\_\_\_\_  
 Case Report #: \_\_\_\_\_  
 (If applicable)

*10.1.01 Additional References / Agency-Specific Information:*

Consent: Search conducted with consent that is voluntary and obtained from a person with the authority to give that consent

Scope of Searches:

Scope of Searches: Extent of the search to be conducted, specifically, a list of the items described in a search warrant

Contemporaneous: Search conducted at or near the time of arrest, although either can precede the other, at or near the place of the arrest, and while the arrestee is still on the scene

Probable Cause: Enough credible information to provide a fair probability that the object the peace officers seek will be found at the place they want to search; requires something less than an absolute or even a near certainty, but something more than a mere hunch or suspicion

Instrumentalities of a Crime: An item that was the means by which a crime was committed (e.g.: vehicle in a hit and run, ski mask in a robbery)

Contraband: Any property that is illegal to produce or possess

Knock and Notice: Before entering a dwelling to serve a search warrant, deputies must give notice to persons inside through certain actions

*Container Search Doctrine: When a warrant authorizes the search of a residence, vehicle or person, it automatically authorizes the search of anything, place or container inside that residence or vehicle or on that person where the object of the search might be located; if, however, the warrant was not for a general area but instead was for a particular container, that container would also have to be described as completely as possible in the warrant*

<b>10.1.02 Circumstances Allowing Legally Authorized Searches</b>								
The trainee shall recognize and explain the circumstances under which the following types of legally authorized searches may be made. These circumstances shall minimally include:								
A. Pat searches for weapons		E. Plain sight						
B. Consent searches		F. Incident to arrest						
C. Probable cause search		G. Exigent circumstances						
D. A search warrant		H. Probation/parole search						
Reference(s):								
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10.1.02 Additional References / Agency-Specific Information: SLTPD Policy Section 322

Pat Searches for Weapons: A strictly limited search for weapons of the outer clothing of a person who has been lawfully detained; this is a search for possible weapons only, not a search for contraband or other evidence

Consent Searches: A search conducted with consent that is voluntary and obtained from a person with the apparent authority to give that consent

**Probable Cause Search:** Having enough facts or information to provide a fair probability or a substantial chance that the item sought is located in the place to be searched

**Search Warrant:** An order in writing signed by a magistrate directed to a peace officer commanding the peace officer to search for an individual(s), thing(s) or personal property in the case of a thing(s) or personal property to bring the same before the magistrate (1523 PC)

**Plain Sight:** Objects in the line of sight of a deputy who has the right to be in that position are subject to seizure without a warrant if the deputy has lawful access to the object(s)

**Incident to Arrest:** A limited authority for a peace officer to conduct a warrantless search of a suspect's person and the property and area immediately within the suspect's immediate control after being lawfully arrested and taken into physical custody

**Exigent Circumstances:** An emergency situation requiring swift action to prevent imminent danger to a person's life or safety, serious damage to property, imminent escape of a suspect or imminent destruction or removal of evidence

**Probation/Parole Search:** A warrantless search of a person who is on probation or parole; search status must be established prior to the search

Whenever practicable, officers are encouraged to contact a supervisor to resolve questions regarding search and seizure issues prior to electing a course of action.

<b>10.1.03 Items Which May Be Legally Searched</b>								
The trainee shall identify items for which an officer may legally search. These items shall minimally include:								
A. Dangerous weapons		D. Contraband		E. Suspects		F. Additional victims		
B. Fruits of the crime		C. Instruments of the crime						
<i>Reference(s):</i>								
	<b>Received Instruction</b>		<b>Competency Demonstrated</b>		<b>How Demonstrated?</b>	<b>Remedial Training</b>		<b>How Remediated?</b>
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10.1.03 Additional References / Agency-Specific Information: SLTPD Policy Section 322

Officers will likely need to conduct searches for evidence and/or persons. Having probable cause and adhering to the parameters of the Fourth Amendment, laws and codes, and a reasonable expectation of privacy, deputies can search for dangerous weapons, fruits and instrumentalities of the crime, contraband, suspects, and additional

<p><b>10.1.04 Limits of Searches</b></p> <p>The trainee shall discuss the limits of searches when conducted with persons, vehicles, and buildings including:</p> <p>A. Protective sweeps                  B. Closed containers                  C. Inventory searches</p>								
Reference(s):								
	<b>Received Instruction</b>		<b>Competency Demonstrated</b>		<b>How Demonstrated?</b>	<b>Remedial Training</b>		<b>How Remediated?</b>
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victims

10.1.04 Additional References / Agency-Specific Information: SLTPD Policy Section 322

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

- (a) Members of this department will strive to conduct searches with dignity and courtesy.
- (b) Officers should explain to the person being searched the reason for the search and how the search will be conducted.
- (c) Searches should be carried out with due regard and respect for private property interests and in a manner that minimizes damage. Property should be left in a condition as close as reasonably possible to its pre-search condition.
- (d) In order to minimize the need for forcible entry, an attempt should be made to obtain keys, combinations or access codes when a search of locked property is anticipated.
- (e) When the person to be searched is of the opposite sex as the searching officer, a reasonable effort should be made to summon an officer of the same sex as the subject to conduct the search. When it is not practicable to summon an officer of the same sex as the subject, the following guidelines should be followed:
  - Another officer or a supervisor should witness the search.
  - The officer should not search areas of the body covered by tight-fitting clothing, sheer clothing or clothing that could not reasonably conceal a weapon.

Adhering to the scope of the search is critical, what is the reason for your search, what are you looking for and could it reasonably be found where you are looking.

<b>10.1.05 Exclusionary Rule</b>								
The trainee shall explain the “exclusionary rule” and its effect upon police action and procedures including:								
A. Court filings B. Prosecution of suspects								
Reference(s):								
	<b>Received Instruction</b>		<b>Competency Demonstrated</b>		<b>How Demonstrated?</b>	<b>Remedial Training</b>		<b>How Remediated?</b>
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10.1.05 Additional References / Agency-Specific Information: SLTPD Policy Section 322

If a court finds a search or seizure is not reasonable and a person’s Fourth Amendment rights have been violated by the government, all items seized during the search could be ruled inadmissible or excluded as evidence at trial. This inadmissible or excluded evidence is often referred to as “the fruit of the poisonous tree.”

<b>10.2 SEIZURE CONCEPTS</b>											
<b>10.2.01 Lawful Evidence Seizure</b>											
The trainee shall review and explain the concept of lawful evidence seizure, including instances where force may be justified, such as:											
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;">A. Preventing a suspect from swallowing evidence</td> <td style="width: 50%; border: none;">C. Extracting blood evidence from a suspect</td> </tr> <tr> <td style="border: none;">B. Inducing a suspect to vomit</td> <td style="border: none;">D. Extracting fingerprint evidence from a suspect</td> </tr> </table>								A. Preventing a suspect from swallowing evidence	C. Extracting blood evidence from a suspect	B. Inducing a suspect to vomit	D. Extracting fingerprint evidence from a suspect
A. Preventing a suspect from swallowing evidence	C. Extracting blood evidence from a suspect										
B. Inducing a suspect to vomit	D. Extracting fingerprint evidence from a suspect										
<i>Reference(s):</i>											
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*10.2.01 Additional References / Agency-Specific Information:*

In order for seizures to be lawful, officers must meet certain requirements before an item in plain view may be seized legally and used as evidence. Officers must have probable cause, a lawful right to be in the location and lawful access to the item (whether through a plain view seizure or with a warrant). Probable cause to search means enough credible information to provide a fair probability that the object or person the officer seeks will be found at the place they want to search. The lawful right to be in the location means that the officer’s location does not violate an individual’s reasonable expectation of privacy. Lawful access to the item is most commonly obtained when a officers’s entry is based on consent, exigent circumstances or some other purpose (e.g., to conduct a parole, probation, administrative or regulatory search).

Occasionally, force is required to seize evidence from a person. The following instances justify when force may be used:

- Preventing a Suspect from Swallowing Evidence
  - o If officers have probable cause to believe there is evidence in a person's mouth, they may use reasonable force to remove it, or to prevent the person from swallowing it.
  - o If only minimal force is necessary to remove an object, the warrantless search and seizure will no doubt be upheld. However, if the person refuses to open his mouth or tries to swallow the evidence, or it appears that he is about to swallow the evidence, a problem can arise.
  - o Officers are permitted to exert minimal pressure on the neck area to prevent swallowing. However, such pressure may not prevent breathing or substantially impair the flow of blood to the person's head. In other words, no "choke holds" may be used, because they are too dangerous.
- Inducing a Suspect to Vomit
- Detain the suspect under controlled conditions and wait until the evidence naturally passes through the suspect’s system.

- If a doctor declares the suspect's life is in danger or the suspect is at risk for serious bodily injury, then the suspect's stomach can be pumped or an emetic can be administered to induce vomiting.
- The suspect may give consent to a stomach pump or emetic, but it should occur under the supervision of a doctor.
- In all other circumstances, it should be assumed that a search warrant would be required to pump a suspect's stomach or administer an emetic to induce vomiting for the recovery of the evidence.
- Extracting Blood Evidence from a Suspect
- Blood samples are considered minimally intrusive.
- The affidavit for a blood sample must demonstrate the following:
  - Probable cause that the test results will show evidence of a crime
  - The removal will be conducted by trained medical personnel in accordance with accepted medical practices.
- If blood is going to be taken without a warrant or consent, officers must have in addition to probable cause to arrest and probable cause to search, exigent circumstances, which typically exist because of the evanescent nature of the evidence.
- Assuming these conditions are met, blood may be taken, even in situations where the suspect is unconscious, or where the officers must apply reasonable force.
- Extracting Fingerprint Evidence from a Suspect
- Officers may obtain fingerprint samples from a person if they have that person's consent or probable cause to believe the person was involved in criminal activity.
- If the person has been placed under arrest, the person has no legal right to refuse a fingerprint examination.
- Officers may use a reasonable amount of force to obtain fingerprints. Care should be taken to prevent smearing or incomplete prints when using force to extract fingerprints.

10.3 WARRANTS								
<b>10.3.01 Obtaining Search and Arrest Warrants</b>								
The trainee shall explain the laws and procedures for obtaining search and arrest warrants, to minimally include:								
A. Probable cause necessity		C. Process for obtaining warrants during and after business hours						
B. Allowable exclusions (including hot pursuit and emergency situations)								
Reference(s):								
	Received Instruction		Competency Demonstrated		How Demonstrated?	Remedial Training		How Remediated?
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10.3.01 Additional References / Agency-Specific Information:

There are exclusions to the need to obtain an arrest or search warrant. Exigent circumstances where there is imminent danger to a person’s life or safety, serious damage to property, imminent escape of a suspect (hot & fresh pursuits), imminent destruction or removal of evidence are instances where a warrant would not be required; however, officers can only act to resolve the exigency. Officers may search only if it reasonable to believe a search is necessary to secure the exigency. Items in plain view can be seized if the item is believed to be contraband or evidence of a crime. Once the exigency is resolved, deputies must vacate the premises within a reasonable amount of time, if applicable, and not reenter unless they obtain a warrant or consent

Probable cause to search means enough credible information to provide a fair probability that the object or person the deputy seeks will be found at the place they want to search.

Warrant template/forms are located on the s drive. In most cases, except DUI blood warrants and EPO's, contact the on call DA first for review, then the on call judge. A list of who is scheduled to be on call is in the Watch Commander Office.

Warrants after hours are submitted electroincaly to the judge and the court. During the day, bring a copy on a usb drive with you to court in case the judge requests minor changes be made.

<b>10.3.02 Serving Search and Arrest Warrants</b>								
The trainee shall describe the process for serving search and arrest warrants, including:								
A. Hours of service for felony arrest warrants		D. Knock and notice for search warrants, and exemptions to						
B. Hours of service for misdemeanor arrest warrants		E. "Signing off" warrants/return						
C. Hours of service for search warrants								
Reference(s):								
	<b>Received Instruction</b>		<b>Competency Demonstrated</b>		<b>How Demonstrated?</b>	<b>Remedial Training</b>		<b>How Remediated?</b>
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<b>Comments:</b>						Incident #: _____ Case Report #: _____ (If applicable)		

10.3.02 Additional References / Agency-Specific Information:

Hours of Service for Felony Arrest Warrants

- Any time of the day or night

Hours of Service for Misdemeanor Arrest Warrants

- 0600 – 2200 Hours, unless the warrant is endorsed for nighttime service

Hours of Service for Search Warrants

- 0700 – 2200 Hours
- If an officer can show good cause, the magistrate will allow the warrant to be served at any time of the day or night.
- Examples of good cause:
  - o Nighttime service will decrease danger to peace officers
  - o A drug sale occurred at the search location at night
  - o Prompt execution might preclude murders
  - o The property sought will likely be gone, sold, or removed by dawn
  - o The stolen items are primarily perishable or easily disposable goods
- A nighttime service request is not necessary for searches that go past 2200 hours as long as the service is executed prior to 2200 hours.

Knock and Notice

- Before entering dwelling to serve a search warrant, deputies must give notice to persons inside by doing the following:
  - o Knock and otherwise announce their presence
  - o Identify themselves as peace officers
  - o State their purpose

- o Demand entry
- o Wait a reasonable amount of time
- o If necessary, forcibly enter the premises
- Exemptions
- o Potential harm to the officers or other individuals (hostages)
- o Destruction of evidence

Signing-off/Returning Warrants

- §1534 PC states that a search warrant shall be executed and returned within 10 days from issuance.
- The 10-day time limit means that peace officers have 10 days within which to execute the warrants, beginning with the day after the warrant is issued and running until midnight of the 10th day, with no exceptions for weekends or holidays.
- If the 10-day period has expired, must obtain a new warrant or resubmit the expired warrant so it may be reissued and revalidated.

<b>10.3.03 Demonstrating Proper Procedures for Obtaining and Serving Warrants</b>								
Given an incident and necessary probable cause that calls for a search or arrest warrant, the trainee shall follow agency procedures for obtaining and serving the appropriate warrant(s).								
<i>Reference(s):</i>								
	Received Instruction		Competency Demonstrated		How Demonstrated?	Remedial Training		How Remediated?
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10.3.03 Additional References / Agency-Specific Information:

Follow the electronic warrant process if after hours.

Contact a DA to review the warrant.

DUI blood warrants completed in a timely manner so as to not lose evidence(lowering BAC.)