

 El Paso Police Department Procedures Manual	Chapter 3: Field Operations, Custody, and Traffic Enforcement
304 Searches	Policy Effective: 09/09/2023 Previous Version: 08/24/2021

304 SEARCHES

304.1 SEARCH WITH CONSENT

- A. A person who has lawful control of a premises, place, vehicle, or his/her worn or carried possessions may give a peace officer voluntary consent to search the same upon waiver of the person's Fourth Amendment rights. The person who has lawful control of a premises, place, vehicle, or other possessions must be identified to determine who has the actual right to consent to a search. Consent to search may be obtained in writing or with an officer assigned body worn camera. The following rules apply to searches with written consent:
1. Officers will complete a detailed number one report articulating all the circumstances present at the time consent was given in their report narrative.
 2. Scan the signed Consent to Search form into the report, the original form will be submitted into evidence in cases where written consent was obtained.
 3. In cases where the consent to search was documented through body worn camera the video will be properly labeled with the case number and appropriate category. Officers will read aloud the consent to search form with the person consenting to the search within view of the BWC. Consent to search forms can be located in the PD Public drive, Reference, Forms, Crime Investigation Forms, Consent to Search forms.
 4. A search requires a minimum of two officers present, unless exigent circumstances exist. (An exigent circumstance, in the criminal procedure law of the United States, allows law enforcement, under certain circumstances, to enter a structure without a search warrant. It must be a situation where people are in imminent danger, evidence faces imminent destruction, or a suspect's escape is imminent).
 5. Consent must be given voluntarily.
 6. Any witnesses present should be identified and listed in the offense report.
 7. The person giving consent to a search may accompany officers during the search.
 8. Any person who has authority to give consent to search a premises may revoke such consent, even if that person was not the person who originally consented to the search.
 9. If a person revokes consent to search at any time the search must be immediately stopped. Any contraband found prior to the consent of search being revoked may be seized.
 10. When the written consent to search incident requires documentation only, the incident report shall be titled Consent/Search.
- B. Abandoned property, public places and open fields do not fall under the Fourth Amendment protections and may be searched lawfully without consent.
- C. When consent to search is obtained and documented through a BWC the officer will complete the following in view of their BWC.
1. Officers will clearly identify any person they are speaking to and will ask the person their full name and date of birth.

2. The officer will ask if they are the owner of the premise or property to be searched or if they have care/custody of the property. If they are not, they will ask who the owner is that left them responsible for the property.
3. The officer will ask “Do you voluntarily give (Officers Name/Partners Name) consent to conduct a search involving the premises or vehicles located at (state the location of premises or vehicle)”. In cases involving a vehicle the officer will describe the vehicle, year, make, model, and license.
4. The officer will state that they can withdraw their consent at any time.
5. Officers may not turn off their camera during the search.

304.2 WARRANTLESS PREMISE SEARCHES DURING EMERGENCY CIRCUMSTANCES

Search Warrants should be obtained whenever possible. When there is a need to conduct a search of a place before a search warrant can be obtained (during exigent circumstances), the officer will consider the following:

- A. Are there grounds to arrest any persons present at the place of arrest so they will not have an opportunity to dispose of evidence while a search warrant is being sought?
- B. Is there some risk that someone might enter and dispose of evidence while a search warrant is being obtained? Can an officer be left to guard the premises while another obtains the search warrant?
- C. Evidence obtained in a search of the premises without a warrant at the time of arrest may be admissible in court if there are justifiable facts showing all of the following circumstances:
 1. There was probable cause for the search (sufficient ground upon which a search warrant could have been obtained).
 2. Special circumstances existed which made it impossible to safeguard the premises while a search warrant was being obtained after the arrest.
 3. Special circumstances existed requiring the making of the arrest before a search warrant could be obtained.
- D. Officers should ensure that they act in good faith, as the courts will examine officer’s actions in order to determine if in fact a search warrant could have been obtained.

304.3 SEARCH OF VEHICLE INCIDENT TO ARREST

Officers may conduct a warrantless search of a motor vehicle incident to arrest under the following circumstances:

- A. Officers have a reasonable belief evidence of the crime for which the driver of the vehicle has been arrested may be located inside the vehicle.
- B. In cases where an unsecured driver is in close proximity of the passenger compartment.
- C. Officers will document the search and any evidence located in a supplemental report.

This procedure should not be confused with Inventory of Vehicles.

304.4 OTHER VEHICLE SEARCHES

Officers may also search vehicles under the following circumstances:

- A. Upon written consent being granted and the Consent to Search Form has been signed.
- B. When exigent circumstances exist.

- C. When failure to do so will endanger public safety.
- D. When failure to do so will result in immediate destruction or loss of evidence.
- E. Upon receipt of a search warrant.
- F. Under any situation authorized by state and federal constitutional provisions.