

# BATON ROUGE POLICE DEPARTMENT

General Order  
No.319

Effective Date  
12-01-1995

Revised Date  
02-01-2001

---

Subject: Warrantless Searches

Reviewed 9/1/16

---

## POLICY

It is the policy of the Department to conduct searches that are both legal and thorough. The 4th Amendment to the Constitution of the United States prohibits unreasonable searches and seizures. There is a legal presumption of unreasonableness where there is a warrantless search.

Searches are to be conducted in strict observance of the constitutional rights of the owner and occupants of any place to be searched. Whenever feasible, a warrant will be obtained for searches of places or vehicles where the owner or occupants have a reasonable expectation of a right to privacy. Any officer of the Baton Rouge Police Department who conducts a warrantless search will be required to articulate both in writing and orally (courtroom testimony) his/her reason(s) for conducting the search.

This general order is not applicable to search of person(s), inventory search, or search warrants which are addressed elsewhere in the Policies and Procedures Manual of the Baton Rouge Police Department.

## DEFINITIONS

**Search** - An examination of all or a portion of a place (movable or immovable) with an investigatory motive (i.e., for the purpose of discovering fruits, instrumentalities, or evidence of a crime, or contraband).

## EXCEPTIONS TO THE SEARCH WARRANT REQUIREMENT

### **I. Consent to Search**

- A. Searches based on consent are to be conducted only when:
  - 1. The person whose consent is sought has apparent authority over the area sought to be searched.
  - 2. Consent is voluntarily given.
- B. The scope of a consent search depends on the terms of the consent itself and the person giving the consent.
  - 1. A person can only consent to a search of places over which he has control. Thus, one roommate cannot consent to a search of the bedroom of another roommate.
  - 2. Consent of a vehicle includes closed containers unless the consentor specifically excludes them from the scope of the search.
  - 3. A search may not exceed the terms of the consent.
  - 4. If, during the course of a search based upon consent, that consent is withdrawn, the search must end.

# BATON ROUGE POLICE DEPARTMENT

General Order  
No.319

Effective Date  
12-01-1995

Revised Date  
02-01-2001

---

Subject: Warrantless Searches

Reviewed 9/1/16

---

- C. Consent should be made in writing unless the situation makes this inconvenient. The department has made available to officers a written consent to search form in English and Spanish.

## II. Plain View

- A. The most important factor in examining the legality of the plain view search is whether the officer had a legal right to be where he was in order to seize the item in plain view (whether or not the officer used vision aids such as flashlight, binoculars, etc.), and had a lawful right of access to the object.
- B. The evidentiary nature of the item must be immediately apparent. The test of "immediately apparent" would include whether or not the item required further inspection as opposed to being easily identified as contraband on first view.

## III. Abandoned Property

- A. Premises that have been obviously abandoned by the owners have been held not to afford a reasonable expectation of privacy.
- B. Examination of a vehicle that has been abandoned on a public thoroughfare is technically not a search. If an officer can determine in advance that the vehicle has been abandoned, examination of the interior of the vehicle will be conducted only in accordance with the provisions of departmental policies and the law.
- C. If contraband was abandoned before a physical seizure of a person by a police officer, there is no 4th Amendment issue. If the abandonment occurred after seizure, the officer must articulate his/her reasons why the physical seizure of the person was justified. The reasons can include reasonable suspicion, as in a stop and frisk situation, or probable cause, as in an arrest.

## IV. Crime Scene Searches

There is no "crime scene exception" to the search warrant requirement for residences. However:

- A. Police presence after a crime inside a home is almost always upon the invitation or consent of the victim(s) residing in the home. Gathering of evidence is done based on this invitation. Consent forms are not generally required.
- B. In cases involving the injury or death of someone in a home and no one is available to give consent, the public safety exception to the warrant requirement gives the police the right to enter (i.e., a neighbor informs police that shots were fired inside the home, or a body is discovered and exigent circumstances require the immediate investigation without waiting for a warrant).

**BATON ROUGE POLICE DEPARTMENT**

General Order  
No.319

Effective Date  
12-01-1995

Revised Date  
02-01-2001

---

Subject: Warrantless Searches

Reviewed 9/1/16

---

**V. Exigent Circumstances**

A. Public Safety Exception

1. Whenever an officer has probable cause to believe a person inside a house (or other structure) or car may be in danger, the public safety exception justifies entry without a warrant, consent, or any other exception to the warrant requirement.
2. If the circumstances for the public safety exception no longer exist, officers must obtain a search warrant to conduct any further searches.
3. Whenever an officer uses the public safety exception he/she should clearly articulate the reasons for doing so in his/her report and be prepared to defend those reasons in court.

B. Situations where speed is essential in gathering evidence. Police officers who possess probable cause to believe that items to be seized are at a certain location may search without a warrant if:

1. They have reason to believe the delay will result in a destruction of evidence.
2. They are in hot pursuit of a fleeing suspect.

C. Protective Sweeps

1. When officers make an in-home arrest, as a precautionary matter and without cause or suspicion, they may look in closets and other spaces immediately adjoining the place of arrest from which an attack could be launched.
2. When officers do possess a reasonable belief based on specific facts that there might be other people in the house who could pose some danger, they are justified in going through the house performing a cursory inspection of those spaces where a person could be found.

*\*Note: In the absence of a voluntary consent or exigent circumstances to conduct a warrantless search, officers of this department are to secure the suspect(s)/evidence and obtain a search warrant.*

**VI. Vehicles**

A. Because a person has a lesser expectation of privacy in a vehicle than in a residence, courts have adopted, as an exception to the general rule requiring search warrants, a vehicle exception.

1. In order to search a vehicle, police must have probable cause to believe that it contains items to be seized.
2. Probable cause exists if, given the totality of the circumstances, there is a fair probability that the car contains contraband or evidence.

# BATON ROUGE POLICE DEPARTMENT

General Order  
No.319

Effective Date  
12-01-1995

Revised Date  
02-01-2001

---

Subject: Warrantless Searches

Reviewed 9/1/16

---

- B. The vehicle exception is not limited to a search at the time the car is discovered to probably contain seizable items; if probable cause and exigent circumstances (i.e., mobility or ability of others to retrieve evidence or contraband from the car before a warrant can be executed) existed originally, the police may move and/or search the vehicle at a later time without a warrant.
- C. Where police officers have probable cause to search an entire vehicle, they may conduct a warrantless search of every part of the vehicle and its contents, including all containers and packages, which may conceal the object of the search.
  - 1. The scope of the search is not defined by the nature of the container in which the contraband is found. Rather, it is defined by the object of the search and the places in which there is probable cause to believe that it may be found. *United States V. Ross* 102 S. Ct. 2157 (1982).
  - 2. Police officers do not have to separately request permission to search each container found in a vehicle since a reasonable person may be expected to know that narcotics are generally carried in some form of container. *Florida v. Jimeno*, 111 S. Ct. 1801 (1991).
- D. Consent to run a narcotic detector dog around the exterior of the vehicle is not necessary, as this is not considered a search.
  - 1. If consent is given to search the vehicle then the dog does not necessarily need to be utilized, unless to specifically pinpoint the location or area of alert. Consent freely given allows for a complete search of the vehicle.
  - 2. A dog alert, from a reliable dog constitutes probable cause to search. Therefore, a search warrant is not needed.

## VII. Search Incident to Arrest

- A. A limited search is permissible without a warrant at the time of arrest in order to remove weapons that the arrestee might seek to use to resist arrest or to escape, and to seize any evidence in order to prevent its concealment or destruction.
- B. The search is limited to the arrestee's person and the area within his/her immediate control. The search may be conducted even though the arrestee may be in handcuffs.

## VIII. Evidence Handling and Reporting

- A. Any evidentiary items discovered in the course of a warrantless search will be collected, handled, packaged, marked, transported, and stored in accordance with departmental policies and procedures.
- B. Where appropriate and feasible, itemized receipts for seized property will be given to the owner and/or occupants or left in the premises if they are unavailable.

**BATON ROUGE POLICE DEPARTMENT**

General Order  
No.319

Effective Date  
12-01-1995

Revised Date  
02-01-2001

---

Subject:       Warrantless Searches

Reviewed 9/1/16

---

- C. It will be the responsibility of the officer's supervisor to ensure that the warrantless searches are conducted in accordance with this policy.
  
- D. The officer(s) who conducted the search will also be responsible for making any other reports regarding the search that may be required by law, policy or procedure. The report(s) should include:
  - 1. Why the officer(s) directed his/her investigation at the place searched (dispatched, follow-up, called upon by a citizen, officer noted suspicious activity).
  - 2. The reasons (in language that addresses the issue) that led the officer to believe that the place searched contained the evidence/contraband.
  - 3. Where the officer(s) searched, what the officer(s) was searching for, and what the officer(s) found (noting where in the place searched it was found).
  - 4. When the search began and ended.
  - 5. Who was present, who gave the consent (if applicable, and include a copy of the completed consent form), and who assisted in the search.