



LAW ENFORCEMENT OPERATIONS POLICY AND PROCEDURES

Chapter 13: Search and Seizure

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I. PURPOSE:

Establish guidelines for the officers of all Law Enforcement Agencies of the Technical College System of Georgia in controlling the search and seizure of property and persons through an overview of existing laws.

II. POLICY:

It is the policy of the Technical College System of Georgia that all TCSG Law Enforcement Officers will conduct searches of persons, places, and things pursuant to established state and federal laws governing search warrants and/or warrantless searches. Law enforcement officers shall have due regard for the protection guaranteed under the provisions of the Fourth Amendment to the U.S. Constitution.

III. DEFINITIONS:

Search Warrant - A judicial command to "search the place or person particularly described in the warrant and to seize the instruments, articles, or things particularly described in the warrant" (OCGA 17-5-23).

IV. SEARCH AND SEIZURE:

A. Search Warrants and Affidavits (**GLECP Standard 5.10**)

Sworn TCSG Law Enforcement Officers may search a person, property, or premises pursuant to a valid search warrant.

Once a law enforcement officer has probable cause to search a person, property, or premise, the officer should obtain a search warrant by compiling an affidavit and presenting it to the appropriate judicial officer. Upon the judicial officer signing the search warrant, it will be the officer's responsibility to execute it as soon as possible or practical.

If a delay is necessary, it will meet with the approval of the officer's supervisor, and in no event will a search warrant be executed after ten (10) days from the date of issuance.

B. Procedure

Officers serving search warrants must prepare a report that includes the following elements:

1. Date and time served
2. Name of officers serving and method of service
3. Person's name on whom the search warrant was executed
4. Address/property on which the search warrant was executed
5. Property/evidence seized and its disposition
6. Location of service
7. When necessary, the reason for non-service

C. Obtaining and Execution of a No-Knock Search Warrant (**GLECP 5.10**)

A search warrant must contain a no-knock provision to gain entrance to any building or dwelling without notice. A no-knock provision cannot be based upon mere suspicion, rather it must be predicated upon probable cause from an investigation and/or informant.

TCSG law enforcement officers shall not apply for no-knock warrants without the express permission of the Chief of Police or their designee.

V. EXECUTION OF A SEARCH WARRANT:

- A. O.C.G.A 17-5-21(d) states, "a certified peace officer employed by a university, college, or school, which search warrant will be executed beyond the arrest jurisdiction of a campus policeman pursuant to Code Section 20-3-72, the execution of such search warrant shall be made jointly by the certified peace officer employed by a university, college, or school and a certified peace officer of a law enforcement unit of the political subdivision wherein the search will be conducted."

Therefore, all TCSG officers will request assistance from the local jurisdiction when attempting to serve a search warrant at a location outside of the jurisdiction of the

TCSG law enforcement agency. The warrant shall only be served if an officer from the local jurisdiction accompanies the TCSG officer.

B. Legal Requirements of Execution

A search warrant may be executed at any reasonable time, per OCGA 17-5-26. A reasonable time depends on the facts in each case. A search warrant must be served within ten (10) days from the date of issuance. If the warrant is served, a "duplicate copy shall be left with any person from whom any instruments, articles, or things are seized; or if no person is available, the copy shall be left in a conspicuous place on the premises from which the instruments, articles, or things were seized." Any search warrant not served within ten (10) days from the date of issuance shall be void and will be returned to the court of the judicial officer who issued the warrant (OCGA 17-5-25)."

A written return of all instruments, articles, or things seized shall be made without unnecessary delay before the judicial officer named in the warrant or before any court of competent jurisdiction. An inventory of any instruments, articles, or things seized shall be filed with the return and signed under oath by the officer executing the warrant. (OCGA 17-5-29).

Upon application of the search warrant, the officer shall obtain three copies. After the warrant is approved, the first copy shall be left with the magistrate. The second copy shall be left pursuant to paragraph A mentioned above, and the final copy shall be returned to the Magistrate's Court upon completion of the search.

C. Force Used in the Execution of a Search Warrant

1. Per OCGA 17-5-27:

All necessary and reasonable force may be used to effect an entry into any building or property or part thereof to execute a search warrant if, after verbal notice or an attempt in good faith to give verbal notice by the officer directed to execute the same of his authority and purpose:

A. He is refused admittance;

B. The person or persons within the building or property or part thereof refuse to acknowledge and answer the verbal notice, or the presence of the person or persons therein is unknown to the officer; or

C. The building or property or part thereof is not then occupied by any person.

2. Any action taken by the officer should be recorded as to each action taken prior to making a forced entry, such as: "... knocked on the door, identified myself by position and advised I have a search warrant for the premises, and no one responded to my call, and so entrance was gained". The purpose of the record is that the officer will have to testify in court concerning the reason for their actions. (Jackson v. State, 129 Ga. App. 901;1973).

3. Whenever force is used to gain entry into a premise or place, and any damage occurs, the superior officer in charge of the search shall ensure that all damage is documented, and photographs are taken if necessary.
4. The appropriate amount of time that the officer should allow before using force will depend on the conditions of each search.

D. Locations/Persons to be Searched Pursuant to a Search Warrant

1. Officers shall be limited to search in areas that the search warrant describes.
2. Officers shall also be limited to searching only for those items particularly described in the search warrant.
3. When officers are searching for an individual(s) utilizing a search warrant, officers should have more descriptive information than "a male," "a white female," etc., to describe an individual(s) listed on the warrant.
4. In the execution of the search warrant, the officer executing the same may reasonably detain and/or search any person in the place at the time:
 - a. To protect himself from attack; or
 - b. To prevent the disposal or concealment of any instruments, articles, or things particularly described in the search warrant (**OCGA 175-28**).

E. Personnel Executing Search Warrants

1. Supervisory Personnel

- a. Prior to the review and approval of a magistrate, the College Chief of Police or their designee will review the warrant and the circumstances of its issuance to ensure that the requirements of the law are being met and that all the necessary elements are present,
- b. When appropriate, the District Attorney's Office will be consulted prior to, during, and after the service of search warrants for advice, recommendation, or any other purpose the officer deems appropriate (e.g., preparation for prosecution).
- c. The College Chief of Police or their designee should be present at the execution of any search warrant on a building, residence, or dwelling.

2. Assigned Officers

All personnel are to conduct themselves professionally by:

- a. Restricting their actions in such a manner as is consistent with the scope of the warrant.

- b. Whenever possible, leave property not seized in an orderly fashion (or as found) and ensure that it is not left in an unreasonable state of disorder or destroyed.
- c. Ensuring all evidence seized is documented on the inventory and forwarded to the Evidence Room and/or Crime Lab.

VI. SEARCHES WITHOUT A WARRANT:

A. Search of a Person Incident to Arrest

1. The search incident to arrest may be conducted to:
 - a. Protect the officer from attack;
 - b. Prevent the arrested person from escaping;
 - c. Discover/seize fruits of the crime for which the person has been arrested; or
 - d. Discover and seize any instruments, articles, or things that may have been used in the commission of the crime for which the person has been arrested.
2. Once the arrest has occurred, the officer may search without additional cause. The arrest must be legal for the search incident to be legal. The search must be conducted at the time of arrest and be limited to the arrestee's person and the area "within their immediate control." A search of an arrested individual at the detention facility may be justified as a search incident to arrest.
3. Booking Searches
A custodial search of the arrestee's person may be justified as either an administrative search or an inventory procedure. Once an officer has taken any property discovered during the search into their control, a further non-contemporaneous search is no longer incidental to the arrest.

B. Consent Search (GLECP 5.1a)

1. Voluntariness
The law enforcement officer obtaining consent to search has the burden of proving that the defendant's consent to a warrantless search was given freely and voluntarily. A person may withdraw consent anytime, and the search must cease. The totality of the circumstances measures the voluntariness of a person's consent.
2. Consent After Arrest
If the consenting party is in custody, the voluntariness of the consent is still measured by the totality of the circumstances, although courts will analyze the relevant factors more critically.
3. Third-Party Consent

Consent for a warrantless search may be given by a third party who shares control of (or has common authority over) the premises or items to be searched. Areas belonging exclusively to parties not present or not giving consent shall not be searched.

NOTE: TCSG Law Enforcement Officers will obtain a signed consent to search form for any voluntary consent to search when possible.

C. Stop and Frisk (**GLECP 5.1b**)

1. Grounds for a Stop

To lawfully stop an individual, the law enforcement officer must have specific and articulable facts, which, together with rational inferences from those facts, reasonably warrant the intrusion rather than a subjective, unparticularized suspicion or hunch.

2. Grounds for a Frisk

In *Terry v. Ohio*, 392 U.S. 1, the Supreme Court decided that an officer is authorized to stop and frisk an individual whenever the law enforcement officer has a 'reasonable suspicion' that the subject is committing, has committed, or is about to commit a crime and the officer has real, articulate reasons to fear for their safety. Since the scope of the search in *Terry* is limited to weapons, the search may not be intrusive and beyond the scope of looking for weapons. However, contraband discovered in such searches is subject to seizure and may be admissible into evidence. When the officer is no longer in fear for their safety, the exception to warrantless search and seizure under *Terry* no longer applies.

3. Nature of A Frisk

The frisk for weapons must be only a limited intrusion through patting down a person's outer clothing. Such a protective search must be strictly limited to that which is necessary for the discovery of weapons that might be used to harm the officer or others nearby; if the protective search goes beyond what is needed to determine if the suspect is armed, the search is no longer valid, and its fruits will be suppressed. (*Minnesota v. Dickerson*, 508 U.S. 366)

4. Search After a Frisk

Feeling an object, which might be a weapon based on its size, shape, and/or feel or which is immediately recognizable as contraband will justify a more extensive intrusion to obtain the suspected weapon or contraband. An officer may enter pockets to dispel the alarm that a weapon is present or to seize the contraband.

D. Vehicle Searches (**GLECP 5.1c**)

1. Exigent Circumstances

The mobility of motor vehicles often constitutes exigent circumstances authorizing a warrantless search. The "automobile exception" to the warrant requirement demonstrates a willingness of courts to excuse the absence of a warrant when spontaneous searches are required of a vehicle. (*Gondor v. State*, 129 GA. App.665; 1973)

2. Standard

To conduct a warrantless search under exigent circumstances, the police officer must have probable cause to believe the vehicle contains items that may be seized. In addition, a warrant is needed to search a vehicle that the officer can legally control without fear of being moved. (See U.S. v. Johns, 469 US 478 and California v. Acevedo, 500 US 565)

3. Times and Place Search

If probable cause and exigent circumstances existed originally, the police might search the vehicle after towing it to the impound lot without securing a search warrant. When probable cause exists without exigent circumstances, a warrant is required. (Caito et al. v. State, 130 GA. App.83; 1974)

4. Arrest of Occupants

If a person is arrested after a vehicle stop, the passenger compartment of the vehicle may be searched incident to the arrest if the circumstances of the custodial arrest fall within the guidelines outlined in Arizona v. Gant, 556 U.S. 332 (2009). Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search OR it is reasonable to believe the vehicle contains evidence of the offense of arrest. When these justifications are absent, a search of an arrestee's vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies.

E. Plain View Doctrine

Mere observation of contraband by an officer does not constitute a search within the scope of the Fourth Amendment. However, the seizure of such contraband is governed by the Fourth Amendment principles, and for the evidence to be admissible under the Plain View Doctrine:

1. The law enforcement officer must have the right to be at a location where they have a legal right to be;
2. The discovery of seized items must be inadvertent;
3. The seized items must appear on their face to be incriminating, and,
4. The items seized must be plainly visible to the law enforcement officer.

F. Crime Scene Searches (**GLECP 5.1d**)

Generally, search warrants are required prior to conducting a crime scene search on/in private property. However, there are some exceptions to this rule, including:

1. When the defendant does not possess a reasonable expectation of privacy on the premises, a search warrant is not necessary. (The defendant is a trespasser; no warrant is required)
2. When the search is conducted to find dead or injured crime victims or when rendering aid to a victim, no warrant is required.
3. When evidence is being protected or photographed during the time it takes to obtain a search warrant, no warrant is required to enter the crime scene.
4. No warrant is required to enter the crime scene to find the perpetrator, who may still be present on the scene.

5. A crime scene search may be conducted without a warrant if:
 - a. It is an emergency, and there is a reasonable belief that there is imminent danger to a person. In an emergency crime scene search, contraband in plain view may be seized. If evidence is seen that is not contraband, it is best to get a warrant before seizing it.
 - b. A homicide victim is the sole occupant.
 - c. The scene is a public place.

G. Exigent Circumstances (**GLECP 5.1e**)

1. Justification

A warrantless search is permitted when there is probable cause and exigent circumstances. The ultimate test is whether there is such a compelling necessity for immediate action that proceeding without a warrant is justified.

2. Exigent Circumstances Defined

Hot pursuit, a fleeing suspect, the imminent destruction of evidence, or other situations in which speed is essential to accomplishing lawful police action are examples of exigent circumstances.

- a. "Hot Pursuit" Warrantless pursuits into the offender's home - In *United States v. Santana*, the Supreme Court ruled that hot pursuit justifies forcible entry into the offender's home without needing a warrant. The court said, "We thus conclude that a suspect may not defeat an arrest that has been set in motion in a public place... by the expedient of escaping into a private place." To justify this arrest, the three elements of hot pursuit must be satisfied: (1) the arrest process has begun; (2) the offender knows he is being placed under arrest; (3) the offender takes action to avoid the arrest. However, under the restrictions imposed by the Supreme Court case of *Payton v. New York*, officers may not enter an individual's home or dwelling without a warrant. Therefore warrantless probable cause arrests, permissible in a public place, do not justify access to the sanctity of an offender's home.
- b. Searches where public safety is endangered - Under special circumstances where an officer hears screams, observes an immediately dangerous situation to anyone, or other exigent circumstances exist, an officer may search persons or premises. In *Michigan v. Tyler*, the court specified the "compelling need for official action and no time to secure a warrant." Various other courts suggested factors establishing this compelling need to include the gravity of the offense, the presence of weapons, and the likelihood of escape. The "totality of the circumstances" will be the deciding factor in each case.

H. Inventory of Vehicles (**GLECP 5.1f**)

1. Seizure of Vehicle

For an inventory of a vehicle to be valid, the police custody of the vehicle must be lawful. An inventory of a vehicle is not a search. An inventory is a departmental policy designed to account for valuable possessions within a vehicle under police custody. Any contraband found inadvertently during an inventory may be seized.

2. Justification
The inventory must be conducted only to fulfill the police caretaking function of securing the vehicle's contents.
3. Nature of Inventory
The search must be a routine part of standard police procedures for impounding vehicles rather than a pretext for an investigatory search and may not extend to locked luggage or other similar repositories of personal effects. It shall be the standard operating procedure for TCSG police officers to inventory all impounded vehicles.

I. Vehicle Stops

1. Significance of a Stop
A "seizure" occurs whenever a vehicle is stopped, even though the purpose is generally limited and the detention brief; therefore, the Fourth Amendment applies.
2. Grounds for a Stop
There must be reasonable suspicion to justify an investigatory stop of an individual vehicle. Law enforcement officers do not have an unrestricted right to stop people, either pedestrians or drivers.
3. License Checks
Vehicles may also be stopped at general license checks, which serve legitimate law enforcement purposes. If the purpose of the roadblock is legitimate (i.e., to check driver's licenses) and not randomly stop vehicles, and if evidence of other crimes is observed, the officer has the right to take reasonable investigative steps. License checkpoints must be approved by the Chief of Police or their designee.
4. Initial Intrusion
Law enforcement officers may take reasonable action to protect themselves after a lawful stop of a motor vehicle. For example, an officer may prefer to ask the driver of a vehicle to step out of the vehicle. However, before asking anyone to step out of their vehicle, law enforcement officers may consider external factors such as weather, crowds, etc.
5. Further Intrusion
If the police officer reasonably believes that a person stopped is presently armed and dangerous, he may conduct a limited protective search of the vehicle and frisk the person.

6. Vehicle Searches

If a person is arrested after their vehicle is stopped, areas of the vehicle accessible to him may be searched incident to the arrest. The courts have construed this area to include the vehicle's passenger compartment.

Police may search a vehicle incident to a recent occupant's arrest only if the

arrestee is within reaching distance of the passenger compartment at the time of the search, OR it is reasonable to believe the vehicle contains evidence of the offense of arrest. When these justifications are absent, a search of an arrestee's vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies. *Arizona v. Gant*, 556 U.S. 332 (2009).

Included in the category of vehicles are vans and recreational vehicles, which are used primarily for transportation and not kept in an area, indicating that the vehicle's purpose is for use as a residence.

J. Containers and Luggage Searches

1. Standard

When there is probable cause that contraband will be found somewhere inside a vehicle, combined with exigent circumstances such that it is not possible to obtain a warrant, officers may open containers in the vehicle to seek the contraband. However, the automobile exception normally will not justify a warrantless search for specific containers. Where there is probable cause as to specific containers, the containers should be secured until a search warrant is obtained to open them.

2. Automobiles

A law enforcement officer who has legitimately stopped an automobile and has probable cause to believe contraband is located within the car may conduct a warrantless search of the vehicle, including compartments and containers within the vehicle whose contents are not in plain view. (*U.S. v. Ross*, 456 U.S. 798, 31 CrI 3051; 1982)

3. Exceptions

The Search Incident to Arrest and Plain View Doctrines may make securing a warrant to search containers unnecessary. When a lawful arrest has been made, the officer may examine the contents of any container found within the arrestee's immediate area of control, i.e., the passenger compartment. (Area of immediate control)

4. Inventory

Closed containers may be opened during a personal effects inventory. (*Ill. v. Lafayette*, 162 U.S. 640, 33 CrI 3183; 1983)

K. Abandonment

1. Act

Abandonment is a voluntary relinquishment of property control (i.e., disposing of, denying ownership).

2. Implications

The Fourth Amendment does not protect abandoned property. Officers may seize abandoned property without probable cause and a warrant. Whether or not the property has been abandoned is a question of intent, which must be shown by clear, unequivocal, and decisive evidence.

L. Curtilage

1. The Curtilage Doctrine

Curtilage is afforded the same Fourth Amendment protections as the home. Generally speaking, curtilage has been held to include all buildings in close proximity to a dwelling, which are continually used for carrying on domestic purposes, or such places as are necessary and convenient to a dwelling and are habitually used for family purposes (including a patio).

2. The Open Field Doctrine

The Fourth Amendment protections do not extend to the "open fields" surrounding the curtilage and the home.

3. Legitimate Expectation of Privacy

The determination of whether Fourth Amendment protections will be extended to items seized from the curtilage or open fields focuses on whether the person challenging the search has a legitimate expectation of privacy in the place that was searched.

M. Greater Intrusion Searches

1. Exterior Intrusion

The Fourth Amendment governs the intrusions on the body's surface (swabbing, hair samples, retrieval of evidence from the mouth, etc.). Such searches are permissible as long as they are conducted reasonably and are justified under the circumstances (i.e., probable cause to search).

2. Interior Intrusion

Certain intrusions into the body (i.e., stomach pumping, surgery) have been held to violate the Fourth Amendment (*Rochin v. California*, 342 U.S. 165, *Winston v. Lee*, 470 U.S. 753). Hence, only under the most exigent circumstances and pursuant to a search warrant could such a procedure be allowed. However, other more common interior intrusions, such as blood tests, may be conducted without a warrant if the setting and procedures are reasonable, as when blood is drawn by a doctor in a hospital (*Schmerber v. California*, 384 U.S. 757). **Probable cause must exist in all cases.**

VII. CONDEMNATION PROCEDURES:

A. Purpose

The TCSG Law Enforcement Agencies may seek the condemnation of real and personal property whenever possible by authority of **OCGA 16-13-49** relating to forfeitures and **OCGA 40-6-391.2** relating to the seizure and forfeiture of motor vehicles operated by habitual violators.

B. Procedure

1. The responsibility for filing forfeitures with the proper legal authority and maintaining condemnation files is vested with the Chief of Police. All seizures for condemnation shall follow the guidelines established in this procedure for properly forwarding a condemnation request.

2. The purpose of this procedure is to establish guidelines to determine the following:
 - a. What can be seized?
 - b. Under what circumstances can property be seized?
 - c. Who can seize property?
 - d. Duties of supervisor.
 - e. What documentation should be completed and forwarded?
 - f. What, if any, preliminary investigation should be conducted by the seizing officer?
 - g. Proper storage of seized property.

3. The procedures outlined will deal primarily with the seizure of currency, weapons, and motor vehicles. Questions concerning requests for the seizure of other items for forfeiture, including intangible assets, personal property, residences, and real property, shall be forwarded to the Chief of Police on a case-by-case basis.

VIII. Items That Can Be Seized:

1. **OCGA 16-13-49** allows for the seizure of anything of value. This includes, but is not limited to currency, bonds, stocks, weapons, motor vehicles, boats, airplanes, real property, residences, and personal property of any kind.

2. **OCGA 40-6-391.2** allows for the seizure of any motor vehicles.

IX. Circumstances Under Which a Seizure May be Allowed:

1. **OCGA 16-13-49** allows for the seizure of the above-listed types of property under the following conditions:
 - a. Any property used to facilitate the commission of a violation against the Georgia Substance Act is subject to seizure. An example would be the motor vehicle from which drugs were sold or electric scales used to weigh them. Note that any item, such as a motor vehicle or a residence used to store drugs, can be assumed to have been used to facilitate a violation. In addition, the property's proximity to contraband, i.e., currency or a firearm, can be evidence that the item was used to facilitate a violation.

 - b. All proceeds which are derived from the violation of the Georgia Controlled Substance Act are subject to seizure. An example would be the currency from selling an illegal drug or an item purchased with these proceeds.

2. **OCGA 40-6-391.2** allows for the seizure of motor vehicles if **ALL** of the following circumstances are present.
 - a. The subject operating the vehicle must have been arrested for a violation of **OCGA 40-6-391**, Driving Under the Influence, at the time of the seizure of the motor vehicle.
 - b. The subject must have a revoked driver's license.

- c. Subject must have been declared a habitual violator based on at least three (3) past **convictions** for **OCGA 40-6-391** (within five years) Driving Under the Influence Of Alcohol Or Drugs.

X. Who Can Seize:

1. Any law enforcement officer of this State or one of its political subdivisions may seize properties subject to Condemnation.
2. Property that is subject to forfeiture under **OCGA 16-13-49** may be seized without process if there is probable cause to believe that the property is subject to forfeiture and said seizure takes place in close proximity to the arrest of the defendant, or absent an arrest, if the officer has possession, either actual or constructive, and probable cause exists to believe that the property is subject to forfeiture.
3. Motor vehicles seized under **OCGA 40-6-391.2** should be seized at the time of arrest of the defendant. The arresting officer will make all attempts to determine the violator's driver's license status.
 - a. When the driver is arrested for D.U.I., and it is determined that they are a habitual violator, the vehicle will be towed to the impound lot by the appropriate rotational/contract wrecker service contracted by the TCSG Law Enforcement Agencies.
 - b. If the officer cannot determine the driver's license status at the scene but the officer suspects that the driver may be a habitual violator, then the vehicle will be towed to the impound lot by the appropriate rotational/contract wrecker service. The tow truck will be followed to the impound lot, and the keys will be picked up and entered into evidence.
 - c. Should an individual be arrested for D.U.I. and it is not determined until later that they meet the pre-existing conditions for the seizure of the vehicle, then all paperwork should be completed and forwarded to the Chief of Police, and the vehicle can be seized at a later date.
 - d. If the vehicle was towed to the wrecker service impound lot then notify the impound lot to place a HOLD on the vehicle by taking a Vehicle Hold/Release Form to the wrecker service. Also note the "Hold" on the inventory sheet.

XI. Seizure of Property:

If circumstances indicate probable cause exists to believe the item is subject to forfeiture, then the officer shall seize the property. The seizing officer shall immediately notify their supervisor of the seizure. Upon notification, the supervisor shall decide the validity of the seizure using the following guidelines:

1. Violation of **OCGA 16-13-30**.
 - a. Currency
 - (a) Must be five hundred dollars (\$500.00) or more,
 - (b) Must meet the criteria established above:
 - i. Proximity to contraband,
 - ii. Circumstances indicate that it proceeds from a violation of 16-13-30.

- iii. Presence of contraband,
 - (i.) The defendant is not employed,
 - (ii.) The subject cannot explain the origin of cash.

b. Vehicles

- (a) If cocaine, there must be at least one gram or more, or evidence exists that a sale has occurred or was about to occur.
- (b) If marijuana, there must be at least four ounces or more;
- (c) No weight requirement on other controlled substances (i.e., Methamphetamine, Heroin, LSD, etc.)
- (d) Pharmaceutical and prescription drugs that are obtained through fraud or forgery.

- i. Before seizing a motor vehicle, the officer must show a relationship between the seized contraband and the vehicle's owner. If the occupant of the vehicle is arrested but is not the owner of the vehicle, then the seizing officer must show that the owner holds the property jointly, in common, or in community with the person whose conduct gave rise to its forfeiture (**16-13-49 (E)(2)**). Circumstances to consider when establishing this relationship include but are not limited to:

- The presence of contraband and locations within the vehicle relative to the owner.
- The owner is the sole occupant of the vehicle.

- ii. Other circumstances indicate that the owner should have known the contraband was in the vehicle.

2. Violation of **OCGA 40-6-391.2**

- a. If the seizure of a motor vehicle is made pursuant to **OCGA 40-6391.2**, then it must meet the requirements set out earlier in this procedure.
- b. The person arrested for D.U.I. must also be the owner or spouse of the vehicle's owner.

XII. Documentation Once Validity is Established:

- 1. Upon establishing the validity of the seizure for a violation of **OCGA 16-13-49**, the seizing officer shall document all pertinent information on a Notice of Seizure and Forfeiture supplement. The supplement should contain, at a minimum, the following information:

- a. Date and time of the offense and seizure.
- b. Location of the offense and seizure.
- c. The offenses being charged

- d. Description of the property to be seized.
- e. Defendant's name, address, and telephone number.
- f. Type and quantity of drug seized if any.
- g. Name of arresting officer.

- h. Complete name and address of everyone associated with the seizure.
 - i. The specific location of the contraband in relation to the defendant and items to be seized.
- 2. Upon establishing the validity of the seizure of a vehicle under **OCGA 40-6- 391.2**, the following documents will be forwarded to the Criminal Investigations Unit.
 - a. Copy of the Incident Report.
 - b. Copy of the Arrest Report.
 - c. N.C.I.C. printout of the Tag Query.
 - d. N.C.I.C. printout of the Title Query.
 - e. N.C.I.C. printout of defendant's driving history.
- 3. Within ten (10) days of the date of seizure, the forfeiture paperwork must be received by the District Attorney's Office. A copy of the signed affidavit is to be returned to the Criminal Investigations Unit to be placed in the case file.

XIII. Storage of Seized Property:

- 1. All property seized for condemnation shall be tagged and stored as evidence. Under the "Remarks" section on the Evidence Sheet, enter "HOLD FOR CONDEMNATION."
- 2. Vehicles seized for condemnation shall be impounded and held in the wrecker impound lot.

XIV. Preliminary Investigations Regarding Motor Vehicles:

The seizure of motor vehicles presents unique legal and practical hurdles that must be overcome regarding ownership and equity.

1. Ownership

The seizing officer must be able to establish a relationship between the contraband and the owner of the motor vehicle seized. Therefore, the seizing officer must take steps at the moment of seizure to establish ownership.

- a. Ask the driver and occupants who owns the vehicle.
- b. Check the glove box for documentation of ownership. If found, seize and tag as evidence separate from the motor vehicle.
- c. If the subject is buying the vehicle from someone, get their name and address.
- d. Check tag and VIN through N.C.I.C.

2. Equity

When vehicles with liens are seized for forfeiture, it becomes the responsibility of the TCSG Law Enforcement Agencies to assume the lien on the motor vehicle. For this reason, the seizing officer should make every effort to determine the amount of money, if any, owed on a motor vehicle so the Chief of Police can determine whether to proceed with the forfeiture proceedings. The following steps should be completed at the time of the seizure:

- a. Ask the driver or occupants who the owner is and how much money is owed on the vehicle, then include the name and address of the lien holder.

- b. Check the glove compartment for documents relating to lien holders and if found, seize them as evidence and tag them separately from the motor vehicle.
- c. Check N.C.I.C. Title Query for liens.

These inquiries should be made of all vehicles regardless of whether they are seized for violation of **OCGA 16-13-49 or 40-6-392.1**. Questions concerning circumstances not covered by this procedure shall be addressed to the Chief of Police.

SPECIAL INSTRUCTIONS: GEORGIA LAW ENFORCEMENT CERTIFICATION PROGRAM (GLECP) STANDARDS INCLUDED: 5.1a, 5.1b, 5.1c, 5.1d, 5.1e, 5.1f, and 5.10.

This policy is for the Law Enforcement Agencies of the Technical College System of Georgia use only and does not apply to any criminal or civil proceeding. The policy shall not be construed as creating a higher standard of safety or care in an evidentiary sense concerning third-party claims. Violations of this policy will form the basis for departmental administrative sanctions only. Violations of law will form the basis for civil and criminal sanctions in a recognized judicial setting.