



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

Search & Seizure Issues




Sharon N. Pruitt,
Asst. Attorney General
Juvenile Crime Intervention Section
Criminal Prosecutions Division



What Does the Constitution Say?

- “The right of **the people** to be secure in their persons, houses, papers, and effects, against **unreasonable searches and seizures**, shall not be violated...” *4th Amendment, U.S. Constitution*
- “**The people** shall be secure in their persons, houses, papers and possessions, from all **unreasonable seizures or searches...**” *Art. I, § 9, Texas Constitution*



The Exclusionary Rule

Evidence obtained after

illegal stop,
illegal search or
illegal seizure

Is excluded from evidence in court
Tex CCP 38.23



The Family Code

Evidence illegally seized or obtained is inadmissible in an adjudication hearing.

Texas Family Code §54.03(e)



Lawfully in Custody

§52.01 Texas Family Code

- ▶ Pursuant to a court order
- ▶ Directive to apprehend
- ▶ **Probable cause arrest**
- ▶ On-sight arrest
- ▶ On-sight violation of probation
- ▶ A probation officer may take a child into custody upon probable cause of a violation of probation or a condition of release





What Is a “Seizure”?

A government official interfering with a person’s freedom of movement

Or

possessory interest in property.

Includes: traffic stops, shoplifting detentions.



“The Terry Stop”

Terry v. Ohio, 392 U.S. 1 (1968)

Officer observes 2 men suspected of casing a store

Officer detains 2 to investigate suspicions

Officer pats down for weapons

HELD: Based on totality of circumstances, officer had reasonable suspicion that criminal activity was occurring.



“The Terry Stop”

Terry v. Ohio, 392 U.S. 1 (1968)

“Particular facts & inferences rationally drawn from those facts that, when viewed under the totality of circumstances and in light of the officer’s experience, create a reasonable suspicion that criminal activity is afoot.”



Texas Courts

Interpreting “Reasonable Suspicion”

Woods v. State, 956 S.W.2d 33 (Tex.Crim.App. 1997)

Standard: “Totality of the Circumstances Test.” An officer has specific articulable facts, which taken together with rational inferences from those facts, lead the officer to conclude that the person is, has been, or soon will be engaged in criminal activity.



Restraint of Freedom

Brendlin v. Cal., 127 S. Ct. 2400 (2007)

Officers stopped a car to check its registration **without reason to believe it was being operated unlawfully.**

Officer recognized **passenger** as a parole violator; arrested & searched him.

Argued: No probable cause to stop the vehicle.

Held: A passenger is seized & entitled to challenge action when officers, by force or a show of authority, terminate or restrain the person's freedom of movement.

A reasonable person as a passenger would not feel free to terminate police interaction.



Stop & Frisk

Arizona v. Johnson, 129 S. Ct. 781 (2008)

Officers stopped a car on traffic in Crips neighborhood.

Officer noticed passenger's clothing & bandana & a scanner was in Johnson's pocket.

Officer asked **passenger** to step out & patted him down.

Officer felt butt of gun in Def's waistband.

Held: A passenger is seized when a vehicle is stopped for investigation of a traffic violation. Officers who conduct routine traffic stops may perform a patdown of a driver and any passengers **upon reasonable suspicion that they are armed and dangerous.**



In Custody?





Routine Traffic Stop

R.A., Unpub'd, No. 03-04-00483-CV, (Austin 2005)

- ▶ Stopped for traffic; officer smelled a strong odor of MJ; told R.A. that he smelled MJ, and that "if he had any MJ that I could be lenient and issue a citation."
- ▶ R.A. pulled out a container with MJ residue & a pill bottle of Xanax.
- ▶ **HELD:** This (case-by-case) routine traffic stop was "presumptively temporary and brief" & the questions asked were not custodial interrogation.



Pre-Text Stops

Whren v. U.S., 517 U.S. 806 (1996)

"The constitutional reasonableness of traffic stops does not depend on the motivation of the officers involved. If objectively valid reasons can be given to support a stop, subjective intent is not relevant."



What Is a "Search?"

Conduct by a gov't official that intrudes into a protected privacy interest.

"Peeking", "poking" or "prying" into places or items shielded from public view.

"Frisks" or "pat-downs" by officials.

Includes: lockers, desks, purses, handbags, backpacks, briefcases, folders, books, containers, or articles of clothing.

Includes: Reading material in a book, journal, diary, letter, note, cell phone, or an appointment calendar.



Weapons Frisk

Terry v. Ohio, 392 U.S. 1 (1968)

Person must be **lawfully detained**

Officer must articulate

Reasonable concern **based upon facts**

Not SOP

Not blanket words: "for officer safety"

That person is armed & dangerous

Allows officer to investigate w/o fear of violence



Weapons Frisk

Michigan v. Long, 463 U.S. 1032 (1983)

Where officer is standing at driver's open door & observes large hunting knife, officer conducted brief **weapons sweep of psgr area.**

"If officers have a reasonable belief a weapon is in vehicle (based upon articulable facts) officers may search the passenger area of vehicle where weapon could be placed or hidden."



Search Incident to Arrest

Arizona v. Gant, 129 S. Ct. 1710 (2009)

Where officer arrests Gant for driving with a suspended license, handcuffed & placed in patrol car, then officer searches vehicle parked in a driveway: a gun & cocaine recovered.

Why? "Because the law says we can do it."

HELD: Police may search a vehicle incident to a recent occupant's arrest **only if** the arrestee is within reaching distance of the passenger compartment (officer safety) or it is reasonable to believe the vehicle contains evidence of the offense of the arrest.



Probable Cause

Articulate facts & circumstances that make it **more likely than not**

that a person committed or is committing an offense

or

that contraband is located in a particular place (in order to search the place).



Probable Cause Searches

Carroll v. U.S., 267 U.S. 132 (1925)

Probable cause contraband is in mobile vehicle presents exigent circumstances to prevent obtaining a warrant.

Birth of the automobile exception to warrant.

May be based upon personal knowledge or Reliable sources (dog sniffs, other LEO).



Probable Cause Searches

US v. Ross, 456 U.S. 798 (1982)

Probable cause contraband is in vehicle.

No need for separate finding of exigent circumstances.

If officer believes contraband is in veh, every container & cavity of veh may be searched that is reasonably capable of concealing contraband.



Probable Cause Searches

Pa. v. Labron & Kilgore, 518 U.S. 938 (1996)

Probable cause contraband is in **readily mobile vehicle**.

Court **clarifies automobile exception** is based upon mobility & no additional exigency needed to justify warrantless search.

Both drug cases where **officer observed** Def drug dealing from vehicle & carrying drugs from truck to house.



Probable Cause Searches

State v. Guzman, 959 S.W.2d 631 (Tex. Crim. App. 1998)

No need for additional exigent circumstances where PC existed & police took custody of veh & conducted extensive search.

Where officer has reasonable suspicion, gets consent to search truck (not gas tank), moves to K-9 who alerts, moves to shop to remove bed & chisel thru tank = 39 lbs mj.



Probable Cause Searches

Maryland v. Dyson, 527 U.S. 465 (1999)
Probable cause contraband is in vehicle.

Court says for 4th time **No need for separate finding of** exigent circumstances.

Where CI gives tip of drugs being transported in specific car, LP, driver. Verified rental info to known drug dealer. Stopped veh & search = 23 g cocaine in trunk.



Is it a Search?

L.J., Unpub'd, No. 03-04-00807-CV
(Austin 2005)

- Facts: officer conducting an investigative “knock & talk”, juvenile opens the door with a string of twisted plastic wrap hanging from her blouse which officer reaches out & grabs.
- Held: “Reaching a hand across the threshold of house was warrantless search” but reasonable & justified by probable cause and the exigent circumstances.





Reasonable Sniff Search

Illinois v. Caballes, 543 U.S. 405, 2005

Vehicle stopped for speeding= individualized suspicion
Canine unit shows up & walks the car while 1st officer writes warning ticket

Dog alerts; search leads to MJ in trunk

HELD: A dog sniff conducted during a lawful stop that reveals no information other than the location of an illegal substance does not violate 4th Amendment protections.

Doesn't authorized ALL sniffs; still focuses on SCOPE of search.



Consent to Search





When is Consent Valid?

Must be Knowing and Voluntary

- By a person with authority to consent.
- No duress or coercion, either express or implied.
- Avoid a “coercive atmosphere.”
- Consensual search is limited by the consent.
- Courts use **“totality of the circumstances”** test.
- Written or recorded consent helpful, but not required.



When is Consent Valid?

Joint Authority to Consent

- U.S. v. Matlock*, 415 U.S. 164 (1974)
- “common authority over premises”
- Consent by co-tenant **valid against the absent** non-consenting tenant where shared bedroom & effects
- Georgia v. Randolph*, 547 U.S. 103 (2006)
- Co-tenant’s consent **not valid against present & objecting tenant**



Voluntary

Factors considered by Courts:

- Show of force or authority by officers
- Threats to get a warrant or canine unit
- Maturity, mental or emotional state of individual
- Prior or subsequent refusal by individual
- Knowledge of Constitutional rights



Consent to Search

D.G., 96 S.W.3d 465 (Austin 2002)

- ▶ SRO rec'd a tip that a high school student was selling crack concealed in the hood of his sweatshirt.
- ▶ He approached D.G. at a gas station, asking if he had anything that he shouldn't have. Student said "No."
- ▶ SRO asked for permission to search and student said "Go ahead." Student placed his hands on the wall.
- ▶ Pat-down revealed crack in the hood of his sweatshirt.
- ▶ **Held:** Stop was reasonable and D.G. voluntarily consented to the search.



Consent to Search

L.C., UNPUB'D No. 03-02-070-CV(Austin 2003)

- ▶ 15 year old who said "ok" or "all right" as he held out his arms to be searched by police gave valid consent.
 - ▶ Re-affirms In re:D.G.
- Valid consent must be:**
- Voluntary;
 - Freely given;
 - Positive and unequivocal;
 - Not coerced by implied threat or covert force; and
 - Not a mere acquiescence to a claim of lawful authority.



Consent to Search

In re: R.S.W., No. 03-04-00570-CV (Austin 2006)

- Officer dispatched re: "juveniles smoking mj".
- 11:30 pm sees RSW on hike & bike trail; dusk to dawn curfew; dark area; warm night, yet long-sleeved hooded red sweatshirt; RSW appeared "nervous, shaking w/ hands in shirt".
- Asked RSW to remove hands from shirt, frisked; felt something in pocket; asked RSW to remove item; tried to hide it; asked "what is it?" RSW: "it's weed."
- **HELD:** Search was based upon voluntary consent.



Voluntary Consent?

In re R.J., Unpub'd, No. 12-03-00380-CV (Tyler 2004)

- Routine traffic stop, juvenile **signs citation**, Officer asks for consent to search, juvenile refuses, so Officer explains about canine sniffs & now juvenile consents
- **HELD**: not a voluntary consent; voluntary consent must not be due to either physical *or psychological* pressure
- Factors reviewed: age, no prior experience w/ law enf, unfamiliar with 4th Amd rights, canine sniff & subsequent search appeared inevitable



Coercive Atmosphere

Jones v. Latexo ISD, 499 F.Supp. 223(E.D. Tex 1980)

- ▶ H/S students were **incapable of exercising** unconstrained **free will** when asked to empty pockets or open cars for search because **accustomed to receiving orders & obeying orders from school officials**.
- ▶ Students were repeatedly **“threatened”** with calls to mom and getting a warrant if they d/n cooperate.



School Searches





What Rights do Students Have?

According to the U.S. Supreme Court...

- Students do not “shed their constitutional rights... at the schoolhouse gate.” *Tinker v. Des Moines*
- The 4th Amendment does apply to students while on school grounds. *New Jersey v. T.L.O.*
- School officials need not follow strict procedures that govern police-initiated searches. *New Jersey v. T.L.O.*
- The nature of students’ rights depends on what is appropriate for children in school. *Vernonia SD v. Acton*



The Balancing Test

New Jersey v. T.L.O., 469 U.S. 325 (1985)

- ▶ U.S. Supreme Court established that the 4th Amendment applies to students in public schools in a diminished capacity.
- ▶ School officials must answer **two questions**:
 - Was the search reasonable at its inception? **and**
 - Was the search reasonable in its scope, duration, and intensity?
- ▶ **Held:** Although the student enjoyed an expectation of privacy, the search of her purse was reasonable under the circumstances.



Off-Duty Police Officer Acting as School Security Guard

Salazar v. Luty, 761 F.Supp. 45 (S.D.Tx. 1999)

- ▶ Off-duty policeman working for a public school discovered that a student was selling drugs at school.
- ▶ The case was handled as a school disciplinary matter and not as a criminal case.
- ▶ **Held:** The officer’s status was the same as any district employee and the extent to which he was allowed to be involved was contingent upon the general rule that the school act reasonably.



Coronado v. State, 835 S.W.2d 636 **(Tex.Crim.App. 1992)**

- ▶ V.P. was told a student was leaving school to attend his grandfather’s funeral, but grandfather had not died.
- ▶ Student denied driving to school, but pat down revealed car keys.
- ▶ Search of car revealed drugs and a weighing scale commonly used in the drug trade.
- ▶ VP had **reasonable grounds** to believe student violating rules, thus “pat-down” for keys was justified.
- ▶ However, vehicle search was **not reasonably related in scope** to the circumstances which initially justified the student’s detention, namely his attempt to skip school.



Probable Cause on Campus

Sloboda v. State, 747 S.W.2d 20 (S.A. 1988)

- ▶ Student was seen tossing an empty beer can to the side of his car at a high school football game.
- ▶ He was detained and unopened beers were seen in plain view in the back seat of his locked car.
- ▶ Inside the car, the officer smelled marijuana, which justified a search of the entire vehicle for drugs.
- ▶ **Held:** The marijuana was admissible. Officer had probable cause to detain/arrest student, and probable cause to search student’s car for marijuana.



Tip & Reasonable Suspicion

In re: A.T.H., 106 S.W.3d 338 (Austin 2003)

- Anonymous caller told SRO that 4 juveniles were smoking marijuana near an Austin H.S.
- One was ID’d as a B/M wearing a D Sanders football jersey. SRO found the student, did a patdown for weapons as student removed a plastic baggie from his pocket.
- **Held:** The SRO had no reasonable suspicion to conduct a weapons frisk. The tip was not corroborated by independent observations giving rise to reasonable suspicion that any criminal activity was afoot.



School Officials & Anonymous Tips

K.C.B., 141 S.W.3d 303 (Austin 2004)

- ▶ Middle school hall monitor rec'd anonymous tip from student that K.C.B. had marijuana in his underwear.
- ▶ Vice Principal asked K.C.B. to lift his shirt, extended the elastic on his shorts and observed a plastic bag containing marijuana in his waistline.
- ▶ **Held:** "The presence of drugs... does not tip the balance far enough for the search in this case to be deemed justified at its inception. Immediacy of action is not as necessary as could be found with a tip regarding a weapon."



Pocket Search

Wilcher v. State, 876 S.W.2d 466 (El Paso 1994)

- ▶ School official asked an SRO to bring a student to the office on a report he was carrying a gun at school.
- ▶ Student was brought in the next day and the SRO asked him to empty his pockets, producing a pager, lighter, over \$1,000 cash and 2 bags of marijuana.
- ▶ **Student:** SRO only had authority to do a "pat down."
- ▶ **Held:** (1) Search was reasonable from its inception; and (2) Reasonable in scope due to the circumstances.



Reasonable Search of Book Bag

Coffman, 782 S.W.2d 249 (14th Dist. 1989)

- ▶ Asst. Principal saw Coffman in the hall during class.
- ▶ Coffman ignored the request for a hall permit.
- ▶ When confronted, he clutched his book bag, kept walking, and became "excited and aggressive."
- ▶ Student opened the bag only after the threat to call law enforcement. A gun was inside the bag.
- ▶ **Held:** There was a **reasonable suspicion** that he was doing something illegal and was trying to hide it.



Unreasonable Search of Backpack

Burnham v. West, 681 F.Supp. 1160 (E.D. Va. 1987)

- Middle school principal noticed graffiti at school.
- Students' bookbags, pocketbooks, and pockets were searched for prohibited magic markers.
- Students have a **reasonable expectation of privacy** in bookbags as personal articles.
- **Held:** Searches were "conducted in an atmosphere devoid of individualized suspicion."



Reasonable Locker Search

Shoemaker, 971 S.W.2d 178 (Beaumont 1998)

- ▶ Teacher's wallet stolen from closet in her office.
- ▶ Student was only person in the office before theft.
- ▶ Teacher searched locker and found 3 credit cards.
- ▶ **Test:**
 - (1) Search was justified at its inception.
 - (2) Search was reasonably related in scope to the circumstances justifying the search to begin with.
- ▶ **Held:** Student w/o reasonable expectation of privacy in locker under school's locker policy.



Valid Search of Journal at School

Goldberg v. State, 95 S.W.3d 345 (1st Dist. 2002)

- ▶ Goldberg committed a brutal murder by slicing and stabbing a woman to death, asking: "Do you like it?"
- ▶ 3 years earlier a Houston ISD officer had searched Goldberg at school, along with a notebook containing violent drawings and writings.
- ▶ Was reading the notebook an illegal search?
- ▶ **Held:** No. The officer conducted a legal search of the notebook for drugs and had the right to read the passages to determine if they constituted a threat.



Search of Probationer at School

In re: D.D.B., Unpub'd, No. 03-99-00030-CV(Austin 2000)

- ▶ DDB was on probation & attended public school.
- ▶ Two residential treatment officers (not JPOs) rec'd a tip that he was selling marijuana at school.
- ▶ They went to DDB's school, conducted a search and found cash and a powdery substance = cocaine.
- ▶ **Held:** Probationer with diminished expectation of privacy. "School checks are a reasonable intrusion into student probationers' privacy because they are attending a public school, and the need to protect the other students justifies this intrusion."



Searches with Drug-Detecting Dogs





Reasonable Sniff Search

Dow v. Renfrow, 475 F.Supp. 1012 (N.D.In. 1979)

- ▶ Dogs have a long history in police work and better sense of hearing and smell than humans.
- ▶ Sniff of locker or car is not a search, but rather a "public smell" not subject to privacy interest.
- ▶ **Held:** School-wide drug inspection with dogs sniffing the classroom aisles was reasonable, as well as search of students' pockets when dogs alerted.
- ▶ Strip search, however, was unreasonable without articulable facts to show that student possessed contraband.



Unreasonable Sniff Search

Horton v. Goose Creek ISD, 690 F.2d 470 (5th Cir. 1982)

- ▶ Classroom sniff by trained dogs walking aisles.
- ▶ Dogs “alerted” by scratching & barking at students.
- ▶ The sniffing of individual students was a search.
- ▶ **Held:** “The intrusion on dignity and personal security that goes with the type of canine inspection of the student’s person involved in this case cannot be justified by the need to prevent abuse of drugs and alcohol when there is **no individualized suspicion...**”



Random Drug Testing





Reasonable Drug Testing

Vernonia SD v. Acton, 515 U.S. 646 (1995)

- ▶ School district adopted a policy of random urinalysis to test all student-athletes.
- ▶ Supreme Court balanced students’ privacy interest and gov’t interest in deterring student drug use.
- ▶ Supreme Court noted that student-athletes enjoy a reduced expectation of privacy.
- ▶ **Held:** School district’s policy was reasonable under these limited and specific circumstances.



Reasonable Drug Testing

Bd Education v. Earls, 122 S.Ct. 2559 (2002)

- ▶ Okla. ISD required all middle & high school students to consent to drug testing to participate in any extra-curricular activities like choir, band, FHA.
- ▶ **Held:** The policy is a reasonable means of furthering the school's interest in preventing and deterring drug use among students and does not violate the 4th Am.
- These students have a limited expectation of privacy.
- The invasion on students' privacy is not significant.



Strip Searches





Reasonable Strip Search

Widener v. Frye, 809 F.Supp. 35 (S.D.Ohio 1992)

- ▶ Teacher smelled strong odor on Widener's person and referred him to the administration.
- ▶ A high school security guard also noticed that student acted "sluggish" and "lethargic."
- ▶ Pat-down and search of pockets revealed nothing.
- ▶ Limited strip search was conducted by the guards.
- ▶ **Held:** Officials had reasonable grounds to suspect a violation and search was reasonable in scope given the nature of the infraction.



Reasonable Strip Search

Cornfield v. CHSD, 991 F.2d 1316 (7th Cir. 1993)

- ▶ Teacher observed unusual bulge in student’s crotch area and thought he was carrying drugs.
- ▶ Student and mother refused consent to search.
- ▶ Strip search conducted in boys’ locker room by 2 male teachers standing 15’ away from student.
- ▶ No drugs or contraband found.
- ▶ **Held:** Both *T.L.O.* prongs satisfied: (1) search was justified at inception and (2) permissible in scope.



Unreasonable Strip Search

Oliver v. McClung, 919 F.Supp. 1206 (N.D.In. 1995)

- ▶ 2 female students reported \$4.50 missing from the gym locker room.
- ▶ Principal decided to search all students & lockers.
- ▶ Students were strip searched because money could be hidden in bras.
- ▶ **Held:** Strip search *possibly* justified for weapons or drugs, but not for the **“grand sum of \$4.50.”**



Unreasonable Strip Search

Konop v. NWSD, 26 F.Supp.2d 1189 (N.D.S.D. 1998)

- ▶ \$200 from cheerleading candy sales was missing from locker in the girls’ locker room.
- ▶ Principal ordered strip searches of all 8th grade girls in gym class to check their shoes and bras.
- ▶ Underwear was pulled away from the girl’s bodies.
- ▶ **Held:** The search was too intrusive given the nature of the alleged infraction., i.e., the theft of \$200.



“Schools to Pay for Search”

Poplar Bluff, Missouri

- ▶ “A southeast Missouri school district has agreed to pay **\$7,500 each** to the families of eight junior high girls who were strip-searched over missing money, the district superintendent said. The seventh-and eighth-graders, ages 12 to 15, were searched Jan. 6 **after \$55 disappeared** from a teacher’s desk.”



Are Police Liable for Unconstitutional Search?

Beard v. Whitmore, 402 F.3d 598, (6th Cir. 2005)

- **Prom money stolen** during co-ed gym class; called police & began searching: gym, lockers, all backpacks & began **strip searching** the boys.
- Police arrive during boys strip search & **suggest** a claim of gender discrimination if the girls aren’t treated the same, **so girls strip searched**.
- **HELD: A strip search without individualized suspicion is unconstitutional.** (officer can be held liable if action is clearly unconstitutional).



Safford United S.D. v. Redding

- ▶ 4 RX pain relief pills & 1 OTC pain reliever found in search of another student; said pills came from Savana; bra & panties searched; no more pills located.
- ▶ 13-year old Savana questioned & backpack searched by consent
- ▶ When nothing was found, girl was taken to school nurse for clothing search--remove all clothes to bra & panties, then extend bra & panties away from body: no pills.



Safford v. Redding 557 U.S. ____

“The content of the suspicion failed to match the degree of intrusion.”

“In sum, what was missing from the suspected facts that pointed to Savana was **any indication of danger to the students** from the power of the drugs or their quantity, and any reason to suppose that Savana was carrying pills in her underwear.”

HELD: Unreasonable search.

“We think that the combination of the deficiencies was fatal to finding the search reasonable.”



What about JJAEPs?

Texas Administrative Code, Title 37, §348.110(g)

- ▶ “Searches shall be conducted according to written policies limited to certain conditions. All students entering the JJAEP shall, at a minimum, be subjected to a **pat-down search or a metal detector screening on a daily basis. JJAEP staff shall not conduct strip searches.**”
- ▶ Code authorizes administrative searches to enter JJAEP’s.



What about an Alternative Learning Center?

O.E., UNPUB’D No. 03-02-516-CV (Austin 2003)

- ▶ O.E. was adjudicated on a drug charge and ordered to attend Austin’s ALC as a condition of probation.
- ▶ The ALC’s security policy: all students must pass thru a metal detector, submit to a pat down, empty their pockets, and remove their shoes for inspection.
- ▶ An AISD officer found marijuana in O.E.’s shoe.
- ▶ **Held:** “Administrative search” and part of ALC’s daily screening process. Less privacy at the ALC.



Administrative Search

P.P.III, Unpub'd No. 04-08-00634-CV (S.A. 2009)

- ▶ P.P. was adjudicated on POM-DZ.
- ▶ The AEP's security policy: all students must take off shoes, socks, belt and submit to a pat down.
- ▶ An officer felt a bulge in P.P.'s pocket, swiped his finger in the pocket & removed a baggie of marijuana.
- ▶ **Held:** "Administrative search" and part of AEP's daily screening process. Parents and students attended orientation reviewing search policies. Less privacy at the AEP.



Cell Phone Searches





Possession of Paging Devices

- ▶ § 37.082 Texas Education Code
- ▶ Local districts **may adopt a policy prohibiting** a student from **possessing a paging device** while on school property or attending a school-sponsored or related activity on or off school property.
- ▶ The policy may establish disciplinary measures and **may provide for confiscation** of the device.



Possession of Paging Devices

- ▶ § 37.082 Texas Education Code
- ▶ The policy may provide for the district to:
 - (1) **dispose of a confiscated paging device** w/ 30 days' prior notice. The notice shall include the serial number of the device and may be made by telephone, telegraph, or in writing; **and**
 - (2) **charge the owner of the device or the student's parent** an administrative fee not to exceed \$15 before it releases the device.



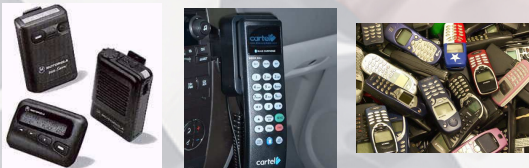
Possession of Paging Devices

- ▶ § 37.082(c) Texas Education Code
- ▶ **“Paging device”** means a telecommunications device that **emits an audible signal, vibrates, displays a message,** or otherwise summons or delivers a communication to the possessor.
 - The term does not include an operator who holds an amateur radio station license issued by the FCC.



AG Opinion

- ▶ JM-1225 (1990)
- ▶ May schools prohibit “car phones”?
- ▶ Yes. See 37.082 TEC
- ▶ The issue is whether the “device” is used to **summon or deliver** communication to recipient.





Reasonable Cell Phone Search

U.S. v. Finley, 477 F.3d 250, 5th Cir. (2007)

Finley was arrested following a meth delivery by his passenger.
Officers removed business cell phone from his pocket and searched text messages and call logs.
Finley: “illegal search of closed container”.
State: “no standing because business phone”.
Remember: Search incident to arrest?



Reasonable Cell Phone Search

U.S. v. Finley, 477 F.3d 250, 5th Cir. (2007)

“Police officers are not constrained to search only for weapons or instruments of escape on the arrestee’s person; they may also, without any additional justification, look for evidence of the arrestee’s crime on his person in order to preserve it for use at trial.”
The permissible scope of a search incident to a lawful arrest extends to containers found on the arrestee’s person.
Held: Although Finley has standing to challenge the retrieval of the call records and text messages from his cell phone, we conclude the search was lawful.



Contact Information

- ▶ Sharon N. Pruitt
- ▶ Assistant Attorney General
- ▶ P.O. Box 12548
- ▶ Austin, Tx. 78711
- ▶ (512) 936-6406
- ▶ sharon.pruitt@oag.state.tx.us