

# Search and Seizure

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## I. Purpose

The purpose of this directive is to provide guidelines and procedures for agency personnel to follow in conducting searches, including consent searches, vehicle searches, and Searches based on exigent circumstances.

## II. Policy

Under the 4<sup>th</sup> Amendment to the United States Constitution, searches and seizures conducted without benefit of a court issued search and seizure warrant are presumed unreasonable. As a result of specific case law exemptions issuing from decisions of various courts, particularly the Supreme Court, a deputy sheriff may conduct valid searches without a warrant under certain very specific and narrow circumstances. It is the policy of the Office of the Sheriff to uphold the United States Constitution, and follow the principles set forth under the 4<sup>th</sup> Amendment as well as subsequent case law decisions.

## III. Guiding Principles

A. The Office of the Sheriff will not use race or ethnicity as a factor for the development of policies for stopping, detaining, or searching persons.

B. Deputies and officers operating in concert with or under the direction of the Office of the Sheriff will not utilize bias-based profiling as a consideration in determining whether to stop, detain, or search persons.

C. Deputies will not participate in the use of any bias-based profiling as a cause for stopping, detaining, or searching persons.

D. Nothing in this directive precludes deputies from relying upon race as part of a description where a specific suspect is sought.

E. All deputies will receive initial and periodic training in bias-based profiling issues, which promote and encourage impartial policing and prevent the creation, adoption or use of inappropriate stereotypes. Applicable training may include, but is not limited to,

officer safety, courtesy, cultural diversity, search and seizure issues and legal aspects, asset seizure and forfeiture, interview techniques, interpersonal communication skills, constitutional and case law, field contacts and motor vehicle stops.

F. Biased-based profiling in traffic contacts, field contacts, asset seizures, and all law enforcement actions are prohibited and may lead to disciplinary action.

## IV. Stop and Frisk

A. The Supreme Court ruled in Terry v. Ohio that under certain circumstances a person could be stopped for the purpose of investigating possible criminal behavior even though there was no probable cause for arrest.

B. The deputy must have reasonable suspicion, which will be articulated in the Offense/Incident Report, that the person:

1. Has been engaged in criminal activity;
2. Is currently engaged in criminal activity; or
3. Is about to engage in criminal activity.

C. If the deputy has a reasonable belief that the person stopped is armed and dangerous, the deputy may conduct a limited search for weapons. The deputy's belief that the person is armed must have been drawn from a particular set of facts. This search, or frisk, is limited to outer garments and is for weapons only.

D. In Michigan v. Long, the Supreme Court extended the limited pat down for weapons to include the passenger compartment of a vehicle and any container in the passenger compartment. The requirement remains that the deputy must have a reasonable belief, based on specific facts, which can be articulated that a weapon may be found.

1. The protective search is allowed only after the threat of danger becomes a distinct possibility; and

2. The search is limited to an area, which was within the immediate control of a subject (i.e., passenger compartment of a vehicle and/or containers in the compartment, to include purses or bags); and

3. The area searched could conceivably contain a weapon.

E. When a deputy conducts a search for weapons, either of a person (pat down), vehicle, or both, the deputy will include within the Offense/Incident Report the fact that a search was conducted. The report will include:

1. The reason(s) why contact was initiated with the person;

2. Any actions or statements made by the person, or observations by the deputy which could give rise to a suspicion that the person was armed, to include a description of their clothing; and

3. The results of the search/pat down (i.e., type of weapon found, no weapon found, etc.).

#### **V. Search Incident To Arrest**

A. When a deputy makes a lawful custodial arrest of a person, whatever the charge, they are entitled to conduct a search of the person, the area within the control of the person arrested, and containers in the possession of the person at the time of arrest. The search must be contemporaneous with the arrest in time and place.

B. The deputy does not have to show probable cause that the arrested person is in possession of contraband, evidence, or fruits of a crime before making the search. The right to search derives directly from making a custodial arrest.

C. A non-custodial arrest, such as that made through the service of a summons, does not confer the right to make a search incident to arrest.

D. Areas and things to be searched include:

1. The person arrested including the contents of all pockets, and may extend to the removal of items of clothing such as jackets, sweaters, shirts, belts and footwear.

2. All containers in the possession of the person at the time of arrest, including wallets, purses, items of luggage (locked or unlocked) and boxes (wrapped or open). These containers must be in actual possession at the time of arrest. If a person has secured an item of luggage in a rental locker just prior to their arrest, a deputy may not recover the luggage and search it within the parameters of a search incident to arrest. However, there may be enough information to support a search and seizure warrant.

3. The area within the immediate control of the person arrested. This area is defined as the area from which the person might gain possession of a weapon or destructible evidence, an area within the leaning distance or arm span, of the person arrested (Chimel v. California).

4. If the subject of a lawful custodial arrest was an occupant of a motor vehicle at the time of arrest, the passenger compartment of the vehicle may be searched incident to lawful custodial arrest, as long as the deputy is looking for fruits of the crime.

E. When a deputy makes a custodial arrest, the Offense/Incident Report will indicate that a search incident to arrest was made, and what if anything was found.

#### **VI. Crime Scenes**

A. A search warrant is not required in every incident where a crime has occurred, and the crime scene has been secured for the purpose of processing the scene for evidence.

B. Once processing of the crime scene is completed and control of the scene has been relinquished, the location is then subject to the protections granted by the 4<sup>th</sup> Amendment against unreasonable searches and seizures.

#### **VII. Vehicle Exception To Search Warrant Requirements**

A. In regard to mobile vehicles, in particular motor vehicles, the U.S. Supreme Court has found the mobility of a vehicle is, in and of itself, an exigent circumstance dictating immediate law enforcement action. However, a deputy must have probable cause to believe that item(s) subject to seizure are located within the vehicle to be searched.

B. Where a deputy has probable cause, he/she may stop and search a vehicle (Carroll v. United States). The deputy may also search the trunk and containers located in the vehicle provided the item for which the vehicle is being searched could reasonably be expected to be found in the container (i.e., If a deputy has probable cause to believe an automobile contains a stolen rifle he/she may stop and search it for the rifle, but could not search the glove box because it is unreasonable to expect to find a rifle in such a size container (United States v. Ross).

C. In those circumstances where a vehicle is not readily mobile, a deputy may not legally conduct a search without a warrant. An automobile parked in the driveway of a private home where a deputy has already arrested the owner/operator of the automobile may not be searched (Coolidge v. New Hampshire). Once a vehicle has been impounded or taken into custody it is no longer mobile, and a search warrant must be obtained for any evidentiary search (State v. Miller, Conn. Appellate Court, 1992). A deputy must show the exigent circumstances of mobility or public access to the vehicle existed.

D. Where deputies have probable cause to believe a container inside a vehicle contains contraband, no search warrant is needed and a search without a warrant of the container is permitted (California vs. Acevedo).

E. When a deputy stops a vehicle and conducts a search of the vehicle, and/or containers within the vehicle, without a warrant the Offense/Incident Report must indicate the following:

1. The facts and circumstances which show probable cause to believe, that those items subject to seizure could be expected to be found in the vehicle.
2. Exigent circumstances of mobility existed.
3. If containers were searched, the items being searched for could have been found in the container(s) examined.
4. Any items seized as a result of the search.
5. If the vehicle was or was not seized, and

why. The seizure of the vehicle itself is normally justifiable only when it can be shown that it was instrumental in the commission of a criminal offense. Such instrumentality may be shown if the vehicle was used to reach and escape the scene of a crime, used to transport the fruits of a crime, or used in the transport of contraband.

### **VIII. Exigent Circumstances**

A. Emergencies or exigent circumstances will certainly arise which make impractical the obtaining of a search warrant. Exigent circumstances will allow a deputy to make entry and conduct a search without a warrant. However, extreme caution should be used when conducting a search based on exigent circumstances, as the necessity for such will be highly scrutinized.

B. A search without a warrant conducted due to exigent circumstances is valid only as long as the exigent circumstances exist. When the emergency has ended, so must all searches conducted by the deputy. Discoveries made during a search under exigent circumstances may be used to establish probable cause for a search warrant.

C. The Supreme Court has identified certain examples of exigent circumstances. They include:

1. Hot Pursuit of an Armed Felon (Warden v. Hayden).
2. Entry into a Burning Building (Michigan v. Tyler).
3. Entry to Prevent the Imminent Destruction of Evidence (Ker v. Calif.).
4. Entry to Prevent Flight of a Suspect (Johnson v. United States).
5. Entry to Investigate an Emergency (Mincey v. Arizona).

Deputies are encouraged to review these and other court cases as they relate to searches.

### **IX. Plain View Doctrine**

A. When a deputy sees items such as contraband those items may be seized, provided the deputy has a legal right to be in the position to have that view. This is called the "Plain

Viewö doctrine. The key elements of the Plain View Doctrine are:

1. The deputy sheriff must be present legally.
2. The discovery of the item seized must be inadvertent.
3. The requirement of probable cause to believe the item spotted in plain view is evidence of a crime.

B. A deputy will not use an observation as a means to justify making an intrusion without a warrant to seize an item. The observation may be used to establish probable cause for a search warrant. For example, a deputy is standing on a public sidewalk and sees what appears to be a marijuana plant in an apartment window. The deputy may not legally enter the apartment and seize the plant. However, the deputy may use his/her observation to establish probable cause for a search and seizure warrant.

C. The Supreme Court has enumerated four circumstances considered intrusions, allowing seizures under the plain view doctrine:

1. Pursuant to a search and seizure warrant when searching for other items.
2. Pursuant to a valid search without a warrant for other items.
3. During a search incident to an arrest made inside a protected area (i.e., an arrest made inside a person's home).
4. Following any other lawful intrusion.

**X. Abandoned Property**

A deputy may, without a warrant, seize and search property that he/she has reason to believe has been abandoned.

**XI. Open Fields**

A deputy may enter and search any unoccupied or undeveloped area lying outside the curtilage

of a dwelling. Curtilage is the area around the home to which the home life activity extends.

**XII. Public Places**

There is no requirement that a warrant be obtained before seizing things brought into public places open to plain view. However, a deputy must have reason to be at the place where the evidence is found.

**XIII. Consent Search**

A. To obtain consent to conduct a search without a warrant from a person, the deputy must show that such consent was given voluntarily and not under duress or intimidation.

B. The deputy does not have to show probable cause if it can be shown that the search and seizure was done with consent. Nor do exigent circumstances have to be shown to justify the intrusion.

C. Consent searches should be obtained in writing whenever possible.

D. The deputy to show that the person who gave consent had the authority to do so. The deputy must show that the person who gave consent had control over the area to be searched.

E. The person giving the consent to search can place any limitation or conditions on the consent search.

**XIV. CALEA References:** 1.2.4a, 1.2.4b, 1.2.4c, 1.2.4d, 1.2.4e, 1.2.4f & 1.2.4g.

**XV. Proponent Unit:** Criminal Investigations Unit

**XVI. Cancellation:** None

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Sheriff R. Gery Hofmann III