

DEPARTMENT GENERAL ORDER 07-06

OFFICE of the CHIEF OF POLICE
REPLACES: General Order 04-24/04-24A
SOP 501.75.00

DATE: January 9, 2007

SEARCH AND SEIZURE

I. PURPOSE.

To establish guidelines assuring compliance with applicable constitutional requirements relative to search and seizure.

II. GENERAL.

Sworn members of the department may be called upon to conduct a variety of searches during any given tour of duty. Each distinct type of search is governed by varying rules and circumstances under which they may be lawfully conducted. Officers shall be required to be knowledgeable of the various distinctions in search and seizure requirements and comply with same.

III. CONSENT SEARCH.

A peace officer may conduct a search of a vehicle, residence or other premises where they have received verbal consent to perform such a search. However, the consent must be rendered voluntarily and be issued by a person with the lawful authority to waive the normal requirements for a search. While verbal consent satisfies the basic legal requirement for a lawful search, a "Permission to Search Form" is available for use by members of this department. This shall be completed in regard to consent searches of all private dwellings, except for those consent searches conducted under emergency circumstances. Usage of the form shall be optional where a consent search of a vehicle is sought and/or performed.

Prior to conducting a consent search the officer(s) involved are required to advise the owner, driver, etc. of the type of contraband they will be searching for.

Once permission to conduct a consent search has been received, the search shall be valid only to the point where the owner, driver, etc. objects to further search. At that point, the officer(s) shall be required to cease any further search activity and determine what other legal recourse (search incident to arrest/search warrant) may be available to continue the search.

A vehicle owner or driver may give consent to search an automobile. A parent may give consent to search a child's room, where the room is commonly and regularly open and accessible to the parents, and an integral part of the residence. In instances of shared ownership or authority, consent to search may be given by either party. However, in the case of shared ownership or authority, if the bedroom (or another room) used by one of the tenants is routinely closed and/or access is restricted, the remaining tenant may not legally grant permission to search the space. Similarly, apartment building owners and hotel/motel managers cannot lawfully grant consent to search a leased apartment or rented guest room on property they own or control. Such consent may only come from the tenant.

Should evidentiary items or contraband be located during a consent search, the items may lawfully be seized and shall be inventoried and packaged in accordance with department procedures. At the conclusion of a consent search, and dependent upon the results of same, the officer(s) involved may elect to immediately affect an arrest or delay such proceeding until further investigation may be conducted. The discretion shall lie with the officer.

Completed Consent to Search Forms shall be attached to the original incident report and upon completion of administrative processing, be entered into the report file.

IV. STOP AND FRISK.

In those instances where an officer stops and detains an individual for brief investigative questioning, the officer may frisk the person if he/she reasonably believes the individual to be armed with a weapon or otherwise pose a danger to himself or others. Such a frisk may not be a full search. Instead, it must be a carefully limited search of the suspect's outer clothing; aimed at discovering weapons.

Should an object be detected that feels as though it may be a weapon, the frisking officer may seize the item. However, an officer's authority to conduct a frisk on reasonable suspicion does not extend to removing items from a suspect's clothing which do not feel like a weapon. The exception to this limitation shall be in those instances where an officer's sense of touch makes it immediately apparent that an object discovered within the recesses of an individual's clothing is contraband (ex. syringe, pill bottle, bag of marijuana), and as such same may be seized.

If probable cause to arrest arises as a result of a frisk, an apprehension and a search incident to arrest may be conducted at that time.

V. SEARCH INCIDENT TO ARREST.

Upon initiating a full custodial arrest, an officer may conduct a full search of the suspect's clothing, packages or bags they may be carrying or have in their possession, and the immediate surrounding area for evidence and/or contraband. Such a search must be conducted at or near the time the arrest is initiated. In the event evidence or contraband may be discovered during a search, the item(s) shall be seized and properly marked and packaged.

Should a suspect be female, and the arresting officer male, a search incident to arrest shall be conducted by an on-duty female officer. Should a Clayton female officer be unavailable, the on-duty supervisor will direct a request be made to an adjoining agency for assistance. Again, if no female officer is available, the female prisoner will be conveyed to the St. Louis County Justice Center where the arresting officer will enlist the aid of a matron in conducting a search. The following guidelines will apply during the course of female prisoner searches by female officers:

- A. A male officer shall remain directly outside the door of the room being used to conduct a search and shall respond immediately should there be any indication that the female officer may be encountering a problem. This shall include the officer entering the room, if necessary, to assist in re-establishing control over the prisoner and/or situation.
- B. The arresting officer shall remove purses, bags, or any other non-essential items from female prisoners prior to their being escorted to a search area.
- C. Female search officers shall not permit women prisoners to close the stall door in restroom facilities, or in any way lose direct sight of the prisoner or their activities.
- D. The safety and well-being of both the officer conducting the search and that of the female prisoner involved, may preempt the obligation of male officers to respect a prisoner's modesty during a female search or bathroom escort.

In the event a prisoner is male and the arresting officer female, the female officer may conduct routine pat-down searches to ensure her own safety. Should a more extensive search be deemed necessary, a male officer shall be enlisted to conduct a search in accordance with the guidelines listed above.

VI. STRIP/CAVITY SEARCH.

Strip and body cavity searches are considered to be highly intrusive and shall not be performed without proper justification.

A. Strip Searches

Any commissioned member of this department who arrests, or is in custodial care of a prisoner charged with a felony, misdemeanor, or traffic charge may request that a strip search be performed on the prisoner. However, as strip searches shall not be conducted as a matter of routine, the officer requesting the search must have probable cause to believe the prisoner is concealing a weapon, evidence from the commission of a crime, or contraband. The on-duty supervisor must approve such a search prior to the initiation of same.

Strip searches conducted by members of the department shall be performed by persons of the same sex as the prisoner being searched, and shall be conducted in an area or room where the search cannot be observed by any person other than the officer(s) physically conducting the search. Should the individual slated to be searched request an additional department employee monitor the procedure as an observer, the request shall be granted unless overriding circumstances dictate otherwise.

Department employees, both male and female, shall wear rubber gloves when conducting a strip search.

B. Cavity Searches

No search of any body cavity (other than a visual inspection of the mouth) shall be conducted by a member of this department without a duly executed search warrant. Should a cavity search of a prisoner be approved by a magistrate, the search shall subsequently be conducted or directly supervised by a physician licensed to practice medicine in the State of Missouri.

Should evidence or contraband be discovered during the course of a cavity search, same shall be handled in accordance with department procedures.

VII. VEHICLE SEARCH.

An officer may make a warrantless search of a vehicle which was in motion, or at least mobile, when seized, and probable cause exists to believe that the vehicle contains contraband or evidence of a crime. Should an individual be in the vehicle at the time of the arrest or seizure, officers on the scene may lawfully search the interior passenger compartment of the car/truck and open such containers where the contents are immediately accessible to the occupant(s) and under their control. Such a search may be

conducted at the scene, or in the event the vehicle is impounded, at the department or impound lot. However, in the case of the latter situation, the vehicle must have been mobile at the time it was seized.

In the event evidence or contraband are discovered during the course of a search, the items shall be seized and subsequently handled in accordance with department procedures.

VIII. INVENTORY SEARCH.

In those instances where a sworn member of this department takes possession of a vehicle and is responsible for the vehicle being towed (ex. derelict/abandoned auto, accumulation of parking tickets, illegally parked), an inventory search of the vehicle shall be conducted. The officer requesting the tow, or an assisting officer, shall itemize the contents of the passenger compartment and the trunk of the car, to include those items which may be out of sight within closed containers. However, the officer conducting the inventory may not forcibly enter the vehicle or any portion of the vehicle to carry out an inventory search. Similarly, an officer may not force open any sealed container within the vehicle. Should a vehicle be locked at the time of the tow, the officer shall conduct a visual survey of the interior of the vehicle only and then record his observations on the tow form.

In situations where a tow truck driver may open/unlock a vehicle to facilitate a tow, the officer shall conduct a proper inventory search of those areas which have been rendered accessible.

Sworn members of the department will complete a Missouri Department of Revenue, "Crime Inquiry and Inspection Report/Authorization to Tow" form at the time an inventory search is conducted and shall list and provide a brief description of all items of value or substance noted to be contained in a vehicle prior to its being towed. The form shall then be attached to the original incident report and following administrative processing, placed into the appropriate report file.

Should evidence or contraband be discovered during an inventory search, the item(s) shall be seized, packaged, and documented in accordance with department procedures.

IX. EMERGENCY SEARCH.

Under situations where the safety of an officer or the general public is believed to be at risk, an officer may conduct an emergency search for weapons irrespective of the gender of the individual involved, or the location in which the contact has occurred. However, a search under emergency conditions must be limited to dealing with the emergency. It should also be noted that in the aftermath of an emergency search, officers shall be required to clearly articulate the facts supporting such exigent circumstances in the text of their incident report.

X. EXECUTION OF SEARCH WARRANT.

In those instances where a search warrant is required to further an on-going criminal investigation, the investigating officer(s) will, upon approval of their Bureau Commander, contact the St. Louis county Prosecuting Attorney's Office in regard to the drafting of an affidavit. This shall set forth the probable cause necessary for a search warrant to be issued. The information contained in an affidavit shall be of a timely nature and describe in detail the person or place to be searched and the items to be seized. Once the affidavit has been completed, the investigating officer will sign the document as the affiant, while the assist officer shall sign as the co-affiant.

Should a confidential informant be the primary source of information behind an attempt to obtain a search warrant, the informant must accompany the officer to the prosecuting attorney's office unless otherwise excused for personal safety reasons or some other mitigating factor.

The signed affidavit shall then be conveyed before a magistrate and it shall be his/her responsibility to determine if adequate probable cause exists to support the issuance of a search warrant. Should a magistrate elect to approve a search warrant, it must be executed promptly.

Where the place to be searched is a private dwelling or other type of real property, a search team shall be formed in advance of the execution of the warrant. The team shall be headed by a supervisor or commander and will be comprised of as many officers as is deemed necessary. One officer shall be designated as the seizing officer and it shall be his/her responsibility to collect and document all items of evidence and/or contraband found during the search. The seizing officer or another team member will photograph each and every item seized. All officers shall be required to wear a protective vest during the execution of a search warrant.

In the event the premises to be searched is located outside of the City of Clayton, the commander of the search team or his designate will contact the appropriate police agency having jurisdiction, advise them of the planned execution of the warrant, and request that one or more marked police units assist with the proposed entry.

Upon arrival at the scene, officers executing the search warrant will identify themselves and state their purpose before effecting entry, except in those instances where to do so may place the officer's safety in jeopardy. Should information exist to indicate that a proposed entry may be considered high risk, the St. Louis County Police TACT Unit may be requested to effect entry and secure the scene prior to officers from this command entering the premises. However, a request for assistance of this type must originate with either the Chief of Police, a command rank officer, or in their physical absence, upon their verbal approval.

Where a premises may be unoccupied at the time a search warrant is executed, the commander of the search team will direct the application of such force as is necessary to gain entry to the premises.

All persons occupying a dwelling or other type of premises that is the subject of a search warrant shall be gathered and held in one central location for the full duration of the search.

At the completion of the search, the original copy of the completed search warrant and a copy of the inventory and return sheet will be provided to the property owner or such other occupant as might be present upon the premises. In the event a premises be unoccupied, the documents referred to above shall be posted in a conspicuous place prior to the officer's departure.

The completed second and third copies of the warrant and return sheet, along with the photographs or copies of the photographs, shall be returned to the issuing magistrate within ten (10) days from the original date of issue. When possible, these documents shall be hand-delivered to the judge or his court clerk by the officer who initially secured the search warrant.

Evidence or contraband seized during the execution of a search warrant shall be handled in accordance with department procedures.

XI. DOCUMENTATION.

The facts and circumstances to support reasonable suspicion or probable cause for a warrantless search must be properly documented. Such information shall be stated in the narrative section of the police report. Emphasis shall be given to all details surrounding the circumstances preceding the search. Details would include personal observations by the officer(s), statements, physical evidence, or other information that the officer used as justification to conduct the search. The police investigative report shall also include a description of the area searched and the results of the search.

BY ORDER OF:

THOMAS J. BYRNE
Chief of Police

TJB:dld

CALEA Reference: 1.2.4/1.2.8