

FLORENCE POLICE DEPARTMENT GENERAL ORDER

Subject: SEARCH & SEIZURE	Procedure: General Order 1.2.4 CALEA 1.2.4	Total Pages: 11
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I. POLICY

It is the policy of this Department to protect the rights of all citizens guaranteed under the Constitution of the United States by following all state and federal laws and procedures governing warrantless searches and seizures.

II. PURPOSE

This written order establishes general guidelines and procedures for agency law enforcement personnel to follow in conducting searches that have not been reviewed and authorized by judicial personnel.

III. SCOPE

This written order is applicable to all personnel.

IV. RESPONSIBILITY

It shall be the responsibility of all sworn personnel to comply with this directive.

V. PROCEDURES

- A. **APPLICABILITY OF STATE AND FEDERAL LAWS:** Departmental personnel will conduct all warrantless searches and seizures consistent with current laws and regulations mandated by the state and federal government. All sworn personnel will maintain a working knowledge of principles established by relevant case law.
- B. **GENERAL GUIDE:** The information set forth in this order is intended to be a general guide in the area of search and seizures and in no way is it an in-depth coverage of this subject. In the event of any conflict between this order and any statute, court opinion or other rule of law, the latter will be controlling. Further, in the event any statute, court opinion or other rule of law provides greater authority to a law enforcement officer than is stated in this order; the former will be controlling.
- C. **AUTHORITY FOR SEARCH AND SEIZURE:** Officers have the authority to conduct searches and make seizures without a warrant under certain circumstances. These circumstances include but are not limited to the following:

1. SEARCHES BY CONSENT:

Officers may conduct a search of a person or property by obtaining prior consent. The consent must be voluntarily given, and that voluntary consent must be shown to be unequivocal, specific, and intelligently given uncontaminated by duress or coercion. The consent must be proven that it was given voluntarily by a preponderance of the evidence and is never lightly inferred by the courts. The prior consent must be obtained from the person or persons with authority to give a valid consent. **It is strongly suggested that personnel obtain written consent or ensure consent is recorded using A/V equipment.**

2. STOP AND FRISK INDIVIDUALS:

Officers may stop and frisk a person or persons when the officer has specific and articulable facts that rise to the level of reasonable suspicion that criminal activity has or is about to occur. Generally stated, reasonable suspicion is a less demanding standard than probable cause, and a brief stop and pat down of the person's outer clothing is justified by the substantial law enforcement interests in the detection and prevention of crime as well as the safety of the officers. The officer should identify themselves as police officers when conducting the stop and frisk. The courts permit a brief stop of a person and a pat down search of the person for weapons. Such a search is not meant to discover evidence of a crime and generally is limited to what is necessary to protect the investigating officer. If the pat down goes beyond the frisk of the person and their outer clothing, it will likely be ruled to be invalid as a stop and frisk. However, if a suspected weapon can be felt through the outer clothing, it may be seized. Any further search or intrusion must proceed on the higher standard of probable cause. The frisk or "patting down" **must be limited** to that which is necessary for the discovery of weapons.

3. VEHICLE SEARCHES:

a. Mobility of Vehicles:

Officers may conduct an immediate search of a movable vehicle when the officer has established **probable cause** to believe that contraband or evidence of a crime is present in the vehicle. **The probable cause established must be as sufficient as that which would support obtaining a search warrant. Unless exigent circumstances exist, a warrant should be sought.**

There is a presumption of mobility and exigent circumstances if the vehicle is stopped on a highway or other area open to

the public. In other situations, the officer must demonstrate the mobility and exigent circumstances with specific and articulable facts. The officer does not have to obtain a search warrant when, due to the mobility of the vehicle, an immediate search is necessary. However, articulable probable cause to search exists where the facts and circumstances within the officer's knowledge to warrant a person of reasonable caution to believe that contraband or evidence can be found in a particular place. The United States Supreme Court has ruled that police officers who have legitimately stopped an automobile, and who have probable cause to believe that contraband is concealed somewhere within it, may conduct a warrantless search of the vehicle.

b. Vehicle Search Incident to a Lawful Custodial Arrest:

The courts have long held that persons under a lawful custodial arrest may be searched completely including clothing, purses, wallets, and even extending to containers, premises, and vehicles in certain instances. Recent Supreme Court rulings state:

After Rodney Gant was arrested for driving with a suspended license, handcuffed, and locked in the back of a patrol car, police officers searched his car and discovered cocaine in the pocket of a jacket on the backseat. Because Gant could not have accessed his car to retrieve weapons or evidence at the time of the search, the Arizona Supreme Court held that the search-incident-to-arrest exception to the [Fourth Amendment](#)'s warrant requirement, as defined in [Chimel v. California](#), [395 U. S. 752](#) (1969), and applied to vehicle searches in [New York v. Belton](#), [453 U. S. 454](#) (1981), did not justify the search in this case. We agree with that conclusion.

*Under Chimel, police may search incident to arrest only the space within an arrestee's "immediate control," meaning "the area from within which he might gain possession of a weapon or destructible evidence." 395 U. S., at 763. The safety and evidentiary justifications underlying Chimel's reaching-distance rule determine Belton's scope. Accordingly, we hold that Belton does not authorize a vehicle search incident to a recent occupant's arrest after the arrestee has been secured and cannot access the interior of the vehicle. Consistent with the holding in [Thornton v. United States](#), [541 U. S. 615](#) (2004), and following the suggestion in [JUSTICE SCALIA's](#) opinion concurring in the judgment in that case, *id.*, at 632, we also conclude that circumstances unique to the automobile context justify a search incident to arrest when it is reasonable to believe that evidence of the offense of arrest might be found in the vehicle.*

c. Vehicle Inventory Searches

Officers should conduct an inventory search of impounded vehicles or property. In order for an inventory search to be valid, such impoundment must be justified and consistent with the department's policy on vehicle impoundment. Special attention should be given to the reasonable alternatives to towing:

- 1) When a vehicle is in lawful custody an officer is authorized to inventory the contents of that vehicle so as to protect:
 - a) The owner/operators property; and
 - b) The officer and the department from unfounded claims that may result in liability to owners/operators who say property was taken or damaged while their vehicle was in custody; and
 - c) The officer and others present from dangerous materials.
 - d) A Vehicle Tow-In form is to be completed following vehicle tow-in procedures.
- 2) A vehicle inventory is permitted without a warrant or the consent of the operator/owner of the vehicle. The extent of the inventory depends upon the circumstances which caused the vehicle to be in custody.
 - a) Vehicle inventories should include a cursory survey of areas exposed to "plain view," areas accessible to a thief (e.g. over the sun visor, under seats, unlocked glove boxes, other "unlocked" areas and containers), and items of apparent value.
 - b) If incidental to arrest or criminal investigation, **and keys to the vehicle are present**, in addition to the scope of the cursory survey mentioned above, the inventory should be extended to areas made accessible by keys (i.e. locked glove box and trunk) and any "unlocked" container(s) located therein. In either case, the inventory should be limited to areas where personal items could be stored.

- c) The officer may properly open closed containers when necessary to make a realistic and meaningful inventory.
- d) The officer will not inventory a locked container. When a container is locked, there is a greater expectation of privacy than when an item is left in plain view or is in a closed, but “unlocked” container. **IMPORTANT: The inventory of a vehicle should not be construed as limiting any lawful consent or probable cause search, with or without a warrant.**

4. EMERGENCY SEARCHES:

Officers have a limited privilege to make a warrantless search. Officers may conduct a search of a vehicle or a building when the officer has good reason to believe it is necessary to save life or prevent injury or serious property damage. However, they must have reasonable grounds to believe there is an emergency at hand and have an immediate primarily motivated intent to arrest and seize evidence and there must be some reasonable basis to associate the emergency with the area to be searched.

NOTICE: The exigent search must be for a true emergency and should be used with extreme caution. Although it is a search warrant exception, courts strictly examine its use. The exigent circumstances, granting the privilege to enter and search can NOT be created by the officer or other governmental agency.

5. ABANDONED OR DISCARDED PROPERTY:

Abandonment can occur as to premises, vehicles, or possessions. When a person disclaims ownership, they have no legal standing to later complain of search because any privacy interest has been abandoned with the property. There is a strong public policy argument for the immediate search of abandoned property based on the safety of the general public.

6. SEARCHES INCIDENT TO A LAWFUL ARREST

Officers shall conduct search of a person or persons placed under arrest. The search may extend to the immediate area of the arrestee for weapons, evidence, or means of escape.

A search incident to arrest is permissible after any lawful custodial arrest. The U.S. Supreme Court has ruled that police have two reasons for conducting searches incident to arrest:

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- a. To protect the officer and other persons in the vicinity from any dangerous items in the possession of the person arrested; or
- b. To prevent the destruction of evidence within the reach of the arrestee.
- c. The scope of the search extends to the immediate areas, which the arrestee might obtain a weapon or evidentiary items.

7. STRIP AND BODY CAVITY SEARCHES

a. Strip Searches

- 1) No person arrested for a traffic, regulatory, or misdemeanor offense, except in cases involving weapons or a controlled substance, shall be strip searched unless there is reasonable belief that the individual is concealing a weapon, a controlled substance, or other contraband.

Reasonable belief may be based upon, but is not limited to the following:

- a) The nature of the offense charged;
 - b) The arrestee's appearance and demeanor;
 - c) The circumstances surrounding the arrest;
 - d) The arrestee's criminal record, particularly past crimes of violence and narcotics offenses.
 - e) The discovery of evidence of a major offense in plain view or in the course of a search incident to the arrest, or;
 - f) Detection of suspicious objects beneath the suspect's clothing during a field search incident to arrest.
- 2) Field strip searches of prisoners shall be conducted only in the rarest of circumstances where the life of officers or others may be placed in risk, and only in privacy with the explicit approval of the supervisor in charge.
 - 3) Strip searches may be conducted only in the following:
 - a) By the fewest number of personnel necessary and only by those of the same sex;

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- b) Under conditions that provide privacy from all but those authorized to conduct the search.
- 4) Following a strip search, the officer performing the search shall document the search in his report to include the following:
- a) Date and place of the search;
 - b) Identity of the officer conducting the search;
 - c) Identity of the individual searched;
 - d) Those present during the search;
 - e) A description of the nature and extent of the search, and;
 - f) Any weapons, evidence or contraband found during the search.
- 5) Juveniles
- Field strip searches of juveniles shall be conducted only in the rarest of circumstances with the approval of a supervisor except for circumstances where the life of officers or others may be placed at risk, and only in privacy for the consideration of the juvenile.
- Officers shall NOT conduct strip searches of juveniles unless all of the following criteria are met:
- a) reasonable belief that the juvenile has a weapon and/or contraband hidden underneath the clothing and no less intrusive means exists to take possession of the item(s) that a strip search; and
 - b) the requesting officer has supervisory permission; and
 - c) one other witness of the same sex of the juvenile shall be present in a controlled environment that is not visible to the public or officers not involved in conducting the search to protect the privacy of the juvenile and the safety of all concerned; and
 - d) the searching officers and witnesses are of the same sex as the juvenile.
- 6) Following a strip search of a juvenile, the officer performing the search shall document the search in his/her report to include the following:

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- a) Date and place of the search;
- b) Identity of the officer conducting the search;
- c) Identity of the juvenile searched, pursuant to proper juvenile reporting guidelines outlined in departmental General Orders;
- d) Witnesses present during search;
- e) A description of the nature and extent of the search, and;
- f) Any weapons, evidence or contraband found during the search.

b. Body Cavity Searches

Should visual examination of a suspect during a strip search and/or other information lead an officer to believe that the suspect is concealing a weapon, evidence or contraband within a body cavity, the following procedures shall be followed:

- 1) The suspect shall be kept under constant visual surveillance until a body cavity search is conducted or an alternative course of action taken.
- 2) The officer shall consult with his immediate supervisor to determine whether probable cause exists to seek a search warrant for a body cavity search. The decision to seek a search warrant shall recognize that a body cavity search is highly invasive of personal privacy and is reasonable only where the suspected offense is of a serious nature and/or poses a threat to the safety of officers or others.
- 3) If probable cause exists for a body cavity search, an affidavit search warrant shall be prepared that clearly defines the nature of the alleged offense and the bases for the officer's probable cause.
- 4) On the basis of a search warrant, a body cavity search shall be performed at a hospital only by an authorized physician or by other medically trained personnel at the physician's direction. Body cavity searches shall be conducted within the limits of legal authority, out of public view and with due regard to privacy.
- 5) Following a body cavity search, the officer shall document the search in a report with the following

information:

- a) Date and place of the search;
- b) Identity of the physician/medical personnel conducting the search;
- c) Identity of the individual searched;
- d) Those present during the search;
- e) A detailed description of the nature and extent of the search, and;
- f) Any weapons, evidence or contraband found during the search.

8. PLAIN VIEW SEARCHES

Officers may seize any illegal contraband or evidence of a crime that is in “plain view”. However, each of the following elements must be satisfied before the “plain view” exception is satisfied:

- a. The officer must have the legal right to be in the particular place for view; and
- b. The seized object must be discovered inadvertently; and
- c. The incriminating nature of the object(s) must be immediately apparent to the officer or the officer must have probable cause to believe that the object(s) has/have evidentiary value.

9. OPEN FIELD SEARCHES

Officers may seize any contraband or evidence of a crime from an open field. The contraband or evidence must be located in an “open field”, where it is clear that whoever possesses the items have no reasonable expectation that the items will be free from the public’s view and the possessors can have no reasonable expectation of privacy.

The U.S. Supreme court has stated in numerous cases that “open fields” are not protected by the Fourth Amendment. The courts have distinguished “open field” from a Fourth Amendment protected area known as the “curtilage”. According to the U.S. Supreme Court, “curtilage” is any land immediately surrounding and associated with the home. In order to determine “curtilage”, the officer should consider the factors that determine whether an individual may reasonably expect that an area immediately adjacent to the home will remain private.

NOTE: Although the U.S. Supreme Court authorizes law enforcement to search “open fields” without a search warrant, great

caution should be used. There is no clear definition or boundaries of “open fields” established by the courts. What may appear to be an “open field” to an officer may be considered private by an owner and the courts.

10. CRIME SCENE SEARCHES

Do not search a crime scene without a warrant unless one of the following exceptions exist: consent, exigent circumstances, plain view, open fields, abandoned property, incident to a lawful arrest, or other constitutionally recognized exception.

11. SEIZURE OF COMPUTER EQUIPMENT

Computer equipment can be severely damaged or data lost due to improper shut down or transport procedures. The proper seizure of computer or other electronic equipment is important for continuity of the evidence and to assure that any evidence is not inadvertently altered or destroyed. Therefore, procedures to be followed include, but are not limited to:

- a. Assure legal authority is obtained prior to the seizure. This can either be by means of written or verbal consent; or by search warrant.
- b. When ready to disassemble and transport a machine or system from the search location, care should be taken to assure that no evidence is altered. Any computer system that is “off” shall remain off until it is ready for the forensic examiner in a controlled environment. If the computer system is “on” the proper procedure is to pull the power cord from the back of the physical machine in order to turn it off. This will assure that no back-up power is being used to destroy evidence. If the target is a laptop, the battery should be removed, as well. Evidence tape should be placed on the power supply connector.
- c. Although the forensic evidence that is found usually comes from the hard disk drives of a computer, the complete system should be considered as evidence and wholly collected as such. All items should be clearly marked with evidence tags and tape.
- d. When transporting electronic evidence specific care should be taken. To avoid physical damage, electrical static, and the effects of magnetic fields, the evidence shall not be placed near any radio source, such as the trunk of a patrol vehicle.

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- e. Contact Alabama Department of Forensic Science is further assistance is required.

D. LEGAL ASSISTANCE AND SUPPORT

Assistance and advice regarding search and seizure with a warrant may be obtained from the Lauderdale County District Attorney's Office.

E. KNOWLEDGE OF THE LAW

Sworn personnel are required to remain knowledgeable on all matters that pertain to search and seizure. Information concerning such will be available to all personnel through legal bulletins, in-service training, and roll-call training.