



COTTAGE CITY POLICE DEPARTMENT

GENERAL ORDER

SUBJECT: **SEARCH AND SEIZURES**

NEW REVISED RESCINDS

APPROVED: *GM*
GEORGIA MILTENBERGER
ACTING CHIEF OF POLICE

Effective Date 8/22/2018

I. POLICY

- A. As a general rule, a search must be supported by a valid warrant, but there are limited exceptions to this rule:
 - 1. Searches incident to a valid arrest;
 - 2. Automobile searches made under certain conditions;
 - 3. Searches made under emergency conditions or exigent circumstances; and/or,
 - 4. Searches made with valid consent.
- B. Because criminal activity can be detected or prevented through aggressive patrol and timely, lawful searches and seizures; the Department encourages its officers to conduct "pat-downs," consent searches, "stop and frisk," and other types of searches without warrants, in certain circumstances and in accordance with Constitutional requirements, laws, and Department policies.
- C. Whenever possible, officers will apply for and obtain a Search/Search and Seizure Warrant prior to conducting a search because this allows officers to review their case and it may reveal flaws in evidence that can be corrected before damage is done to the case. However, if it is not possible to obtain a warrant and the search meets one or more of the exceptions governed by this directive, officers may search without a warrant.

II. CONSENT SEARCHES

An officer may conduct a search of a person or property without a warrant or probable cause if the officer has obtained the prior consent of the person who will be affected by the search, or of someone who has the right and the authority to act for the person who will be affected by the search.

- A. Prior to searching a person or their property, the officer must ask the person for consent and must reasonable believe that the person consented clearly, voluntarily, and of his/her own free will.
- B. In order for a consent search to be valid, the consenting person must have, or appear to have, authority over the premises or property.
- C. If the person who was asked for consent does not respond, silence is not considered to be an affirmative answer.
- D. Because a person who earlier consented to a search may change his/her story during a subsequent trial, officers will, whenever possible, furnish, explain, and execute a "Consent to Search" form with the person from whom consent is requested.
- E. Officers will not advise or imply to a person from whom consent is requested that their refusal will result in arrest, nor will officers make any threats or inducements to secure consent.

III. STOP AND FRISK

- A. Officers may stop and frisk a person even though they do not have probable cause to arrest if officers have reasons to fear for their safety.
 - 1. Officers must have knowledge of facts that reasonably lead them to believe that the suspect is involved in criminal activity and may be armed and dangerous.
 - 2. Officers must identify themselves as police officers and make reasonable inquiries as to the suspect's conduct.
 - 3. The person's response to the officer stopping and questioning him/her does not relieve the officer's suspicions and fears of danger to the officer and others.

- B. Stops and frisks usually involve on-going criminal conduct, but officers are permitted to stop and, if appropriate, frisk someone suspected of being involved in an already-committed crime.
 - 1. A stop and frisk is justified if reasonable suspicion is based on specific objective facts and logical conclusions that the officer's experience enables him/her to draw from those facts.
 - 2. Officers may use information to stop and frisk from sources of information other than their own personal observations.
 - 3. A frisk is no more than a limited search of the outer clothing in an attempt to discover weapons.
 - 4. A motorist or pedestrian may be stopped and frisked if the aforementioned criteria are met. If an officer reasonably suspects that a motorist is dangerous and may be able to gain control of a weapon in the vehicle, the officer may conduct a brief search of the vehicle limited to areas where a weapon might be placed or hidden.
 - 5. During a stop and frisk, items cannot be removed from a person's clothing that is not reasonably believed to be weapons, unless identified as contraband or evidence.
 - 6. Stops and frisks should only be done in well-lighted areas that afford the officer the maximum of protection and with another officer present.

IV. SEARCH OF A VEHICLE UNDER THE MOVABLE VEHICLE EXCEPTION

Officers may make a warrantless search of a vehicle which was in motion, or at least mobile when stopped, and which the officers have probable cause to believe contains contraband or evidence of a crime.

- A. The entire vehicle may be searched if there is probable cause to believe the vehicle contains contraband or instrumentalities of a crime even though there is no danger that the vehicle or the evidence may be lost.
- B. To protect against Court challenges, if officers have doubts about whether they have sufficient probable cause to search a vehicle, and officers are certain that they will be able to retain custody of the vehicle until a warrant is issued, officers should obtain a Search Warrant.

- C. If officers do not have or obtain probable cause to search a vehicle after it is no longer mobile, or it has been impounded, a warrant will be obtained before it is searched.
- D. A search of a vehicle based on probable cause may extend to any part of the vehicle, including closed containers found inside in which the object of the search can be concealed.
- E. If an officer's suspicions are focused on a particular container rather than the vehicle as a whole, officers may only seize the container and, absent exigent circumstances, must obtain a search warrant before searching it.
- F. A Consent Search may be conducted of the vehicle pursuant to Section II of this directive.
- G. If the Consent Search or other search of a vehicle results in the vehicle being towed/seized, the officer seizing the vehicle or having it towed will conduct an inventory search of the vehicle pursuant to Section VII of this directive.

V. SEARCHES AT THE CRIME SCENE

A. Limited Sweeps

A home or premises where a lawful arrest has been made may be subjected to a limited "sweep," for the purposes of finding other persons, if circumstances give arresting officers a basis for reasonably believing that there are other persons on the premises who pose a danger to those on the arrest scene.

B. Abandoned Property

Officers may search and seize property that they have good reason to believe is abandoned.

C. Open Fields

Under the so-called "open field" doctrine, officers may enter and search any unoccupied or undeveloped area that lies outside the curtilage of a dwelling.

D. Plain-View

Officers may, without a warrant, seize any contraband or evidence of a crime that is in "plain view" and to which officers have lawful access.

VI. EXIGENT CIRCUMSTANCES AND EMERGENCIES

Officers may make a warrantless search of anything, whether personal belongings, a vehicle, or a building, anytime they have good reason to believe it is necessary to save a life or prevent injury.

- A. Officers may make a warrantless search for evidence if they have probable cause to believe that the evidence is in the place or thing to be searched and they have reason to believe that the evidence will be destroyed before a warrant can be obtained.
- B. As a general rule and policy of the Department, if an officer does not know if exigent circumstances exist, the officer will obtain a search warrant.
- C. Nothing in this section prohibits an officer from conducting a Consent Search, pursuant to the provisions of Section II of this directive. .

VII. INVENTORY SEARCHES OF SEIZED VEHICLES OR OTHER PROPERTY

A. Inventory of Each Vehicle Towed

- 1. It shall be the policy of the Department that officers will inventory each and every vehicle that they seize or have towed, to:
 - a. Protect officers from danger;
 - b. Identify and take possession of valuable property for safekeeping;
 - c. Protect the towing/seizing officer and the Department from claims of lost, stolen, or vandalized property;
 - d. Protect the vehicle's property's owner(s).
- 2. This policy does not include those vehicles that are left parked legally while its driver is taken into custody.
- 3. This policy does not include those vehicles driven or owned by a person who has diplomatic immunity.

B. Elements of a Valid Inventory Search

The elements of a valid inventory search are:

1. There is a lawful basis for taking custody of the vehicle
2. The inventory is of a non-investigatory nature; and,
3. The inventory search is conducted for the purpose of protecting an owner's property while it is in police custody.

C. Procedures

1. Officers shall not conduct an evidence search of a vehicle under the guise of an inventory search. The inventory search is strictly for the purpose of locating and identifying contents and to ensure that any weapons or valuables in the vehicle do not fall into the wrong hands.
2. The scope of the inventory search shall be limited to those unsecured or readily accessible areas within the vehicle. A locked trunk or glove compartment shall be within the scope of the inventory search only if the keys to those areas are in the officer's possession.
3. When a vehicle is inventoried, the inventory's results and all property taken into custody will be accounted for Property Transmittal/ Towed Vehicle Form.

All completed forms will be submitted to the Property/Evidence Officer.

4. Items of value (as determined by the officer conducting the inventory) will be brought to the Cottage City Police facility before the end of the inventorying officer's tour of duty and stored in accordance with policies and procedures governing property for safekeeping.
5. As soon as possible after property has been taken into custody, the inventorying officer will contact the property's owner and advise them of retrieval procedures if the property can be released.
 - a. If the inventorying officer is unsuccessful in locating and notifying the owner, the inventorying officer will notify the Property/Evidence Officer, who will attempt to locate, identify, and notify the owner by mail.
 - b. The notification will indicate the Department's custody of the property, whether it can be released, and the retrieval process.

6. The Property/Evidence Officer will release the property (providing it is not evidence, contraband, or the ownership of which is not in dispute) after checking with the seizing officer, and after the owner provides satisfactory proof of ownership and signs a receipt for it.
7. When practical, the inventory search shall be conducted prior to the towing of the vehicle from the place of impounding or seizure.

D. Other Property

1. Closed containers may be opened only if the officer is unable to determine the contents from an examination of the container's exterior, and as long as it is for the sole purpose of an inventory and not to look for evidence.
2. When a container is inventoried, the results of the inventory and all property taken into custody will be accounted for on a Property Form.

VIII. OTHER SITUATIONS

A. Fatal Traffic Accidents

Pursuant to the provisions of TA 16-205.1, a warrantless search and seizure of a person's blood is permitted for the purpose of laboratory analysis (and for use as evidence) if the person was driving or attempting to drive a motor vehicle while DWI or DUI, and while doing so, was involved in a fatal traffic accident.

B. Maryland's Implied Consent Law

1. Pursuant to TA 16-205.1, in the event a suspected DWI/DUI is transported to the hospital and is unconscious, or otherwise incapable of refusing to submit to a blood test for the purpose of laboratory analysis (and for use as evidence), the officer may order medical personnel to draw blood (using a blood kit), if the withdrawal of blood will not jeopardize the health or well-being of the DWI/DUI.
2. If the suspected DWI/DUI regains consciousness or otherwise becomes capable of refusing to submit to the withdrawal of blood for the purpose of the blood test, the blood test may not be administered, unless the suspected DWI/DUI has been involved in a fatal traffic accident.

C. Summoning Hospital Records

An officer may request from the State's Attorney's Office a Subpoena (to be served on the hospital's records section) to obtain a defendant's hospital records, especially those relating to blood alcohol content, if a DWI/DUI refused to submit to the blood kit, but from whom blood was withdrawn by medical personnel for medical reasons.

IX. FIREARMS SEARCH REPORT

Pursuant to the provisions of CR §4-206, a "Firearms Search Report" (MSP Form #97) will be completed and submitted before the end of an officer's tour of duty by any officer who conducts a limited search for a handgun.

- A. The following are the procedures for use/completion of the form:
 - 1. The form must be completed within 24 hours of the search regardless of search's outcome.
 - 2. It must be sent to the Superintendent of the MSP.
 - 3. It is to be used whenever a "Stop-and-Frisk" is performed, regardless of the outcome.
- B. The form may also be used when:
 - 1. A firearm is located incidental to an arrest; or,
 - 2. A trace of an individual permit or weapon is needed.
- C. When the form is used in the "Stop-and-Frisk" (see Section II of this directive) instance; it will be completed in duplicate by the investigating officer, signed by a supervisor, and submitted to PGPD Records (a photocopy will be retained for Cottage City Police files).
- D. The investigating officer will state in the Event Report that a "Stop-and- Frisk", under CR §4-206, was conducted and an MSP Form #97 was completed and submitted to MSP.
- E. The same procedure is required when submitting the form for firearms located incidental to an arrest, or a trace report.
- F. In an attempt to provide accurate information on the form, officers should make every attempt to obtain driver's license numbers and Social Security Numbers.

X. SEARCHES AND SEIZURES WITH SEARCH WARRANTS

- A. The application for, and execution of, Search and Search and Seizure Warrants is governed by the provisions of CP §1-203, and Maryland Rule 4-601.
- B. Whenever possible, officers will apply for a Search and Search and Seizure Warrant, unless a warrantless search is authorized by law or such a search is consistent with this directive.
- C. A search and Seizure Warrant is a document signed by a Judge that authorizes officer(s) to whom the document is addressed, to search a house, building, structure, vehicle, area, container, or any place or thing therein specified for a person(s), stolen property, contraband, or illicit property and seize it if found during the search.
- D. The life of a Search and Seizure Warrant is 15 days, with the date that the document is signed being counted as day number 1. After the 151 day, the document automatically becomes null and void.
- E. The execution of a Search and Seizure Warrant will be closely supervised and the following procedures will be adhered to:
 - 1. The service of the warrant shall be supervised by a member of this department at the rank of sergeant or higher.
 - 2. The Sergeant will plan for appropriate back-up assistance, such as other uniformed officers, as needed.
 - 3. Using a Pre-Search Checklist, the Sergeant will conduct a Pre-Search Briefing, during which the execution of the warrant will be planned and discussed, and members of the Search Team will be assigned certain tasks, such as Evidence Collector, Recorder, etc.
 - 4. Prior to gaining entry to execute the warrant, the Sergeant will ensure that the Police Communications Supervisor is notified of the search, its location, time of projected execution, and the number of officers involved, and if necessary, will request a Signal 10-3 until entry is gained and the scene is stabilized.
 - 5. After entry has been gained and the scene is stabilized, the Sergeant will ensure that the Police Communications Supervisor is notified.

6. The search will be conducted in a manner that is systematic and maximizes officer safety.
7. Any property seized will be accounted for on the inventory, labeled, and appropriately packaged consistent with accepted packaging techniques and Department policies and will be submitted to the Evidence/Property Custodian consistent with Department policies and procedures.
8. The Sergeant will ensure that the Search Warrant Return is completed and submitted to the issuing Judge within 10 working days of the warrant's execution.
9. If the case in which property of a person was seized pursuant to the warrant is disposed of by way of a nolle prosequi, dismissal, acquittal, or if the State does not appeal such a criminal case or if the time for appeal has expired, all property belonging to the person (except for contraband, other property not recoverable by law, and/or in which ownership is in dispute) will be returned if authorized by the State's Attorney's Office.