Rockville City Police Department
GENERAL ORDER

Subject **SEARCH & SEIZURE**		Procedure **G.O. # 4 - 3**
Authorizing Signature 	**Effective: 11-01-05** **Revised: 05-19-25**	**Total Pages** **10**

I. POLICY

Under the 4th 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, police may conduct valid searches without a warrant under certain very specific and narrow circumstances. All law, rules and policies regarding search and seizure apply to adults and juveniles congruently. It is important for all police officers to be fully knowledgeable of these exceptions to the Constitutional requirements of having a search and seizure warrant. However, even when officers reasonably believe that a search and seizure may be conducted under the authority of one of the exceptions to the warrant requirement, it is preferred by the Rockville City Police Department that whenever time permits, a search and seizure warrant be obtained.

II. STOP AND FRISK

A. In 1968 the Supreme Court ruled in Terry v. Ohio that under certain circumstances a police officer could stop a person for the purpose of investigating possible criminal behavior even though there was no probable cause for arrest.

B. The police officer must have reasonable, articulable suspicion that the person:

1. Has been engaged in criminal activity.

2. Is currently engaged in criminal activity.

3. Or is about to engage in criminal activity.

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

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

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

possibility.

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 containers in the compartment.

3. The area searched could conceivably contain a weapon.

E. When an officer makes a frisk for weapons, either of a subject, subject's vehicle, or both, the officer will include within any report written the fact that a frisk was conducted. The report should include:

1. A description of the physical surroundings.

2. Environmental factors: time of day, lighting, weather, etc.

3. The reasons why contact was initiated with the subject.

4. Actions or statements made by the subject or observations of the officer, which could give, rise to a suspicion that the subject was armed.

5. Results of the frisk, weapons found and the type.

F. Criminal Law Title 4, subsection 206, of the Annotated Code of Maryland requires the completion of the Firearms Search Report when conducting a limited search for a firearm ("stop and frisk").

1. The MSP-97 will be utilized when a stop and frisk is performed for a handgun, regardless of the outcome of the search. **The "stop and frisk" may extend beyond a suspect's clothing to a bag or container that is within the reach of the suspect.**

2. When the MSP-97 is used in the "stop and frisk" instance, it will be completed in duplicate by the investigating officer, signed by a supervisor, and submitted for processing with the shift paperwork. The investigating officer will state in any incident report that is written that a stop and frisk, under Criminal Law Title 4, subsection 206, was conducted and forwarded and an MSP-97 was completed and submitted to the MSP. The same procedure is required when submitting the MSP-97 for firearms located incidental to an arrest or a trace report. Officers should make every effort to obtain driver's license and Social Security numbers before forwarding the form for processing. If the investigating officer desires a copy of the MSP-97 for a case file, it should be made before the report package is submitted.

3. ATF / MCPD requirements and role: The seizing officer will complete the ATF Firearms Trace Request Form (MCP 723) and submit it along with the weapon and property forms to a MCP 1st District Temporary Property Locker. The MCP Technical Services Section

will forward the trace report to the ATF who will trace the weapon recovered to its last known owner. The section will also verify any/all applicable handgun permits. Once the search is completed, the ATF will report their findings to the originating officer.

III. SEARCH INCIDENT TO LAWFUL CUSTODIAL ARREST

A. Whenever the police have made a lawful custodial arrest of a person, whatever the charge, they are entitled to make a complete 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 police do 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 with a misdemeanor summons, does not confer the right to make a search incident to arrest.

D. Areas and things that may be searched include:

1. The person arrested, including the contents of all pockets and may extend to the removal of certain 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, police may not recover the luggage and search it under the cover of a search incident to arrest.

3. The area within the immediate control of the person arrested. This area is defined to mean the area from which the person might gain possession of a weapon or destructible evidence, an area within the leaning distance or wingspan, of the person arrested. This is the so-called "Chimel Rule" as decided by the United States Supreme Court in 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, including containers located within the passenger compartment. This specific extension of what may be searched incident to custodial arrest was decided by the U.S. Supreme Court in Belton v. New York.

E. When officers make a custodial arrest, their case reports will always indicate that a search incident to arrest was made. If such a search incident to lawful arrest was extended to the area within the

arrestee's control, containers in possession of the arrestee or the passenger compartment of a vehicle, the case report should reflect the extension of the area searched. Items seized from the arrestee as a result of a search incident to arrest should be specifically identified within the report, as well as any statements made by the arrestee.

IV. CRIME SCENES

A. During the initial response to a call for service, there is no requirement for a search warrant where a crime has occurred and the crime scene has been secured for the purpose of processing the crime scene for evidence.

B. Once police have completed processing a crime scene and relinquished control of it, the location is then subject to all the protections granted by the 4th Amendment against unreasonable searches and seizures.

V. THE VEHICLE EXCEPTION TO SEARCH WARRANT REQUIREMENTS

A. In regards to mobile vehicles, in particular motor vehicles, the U.S. Supreme Court has come closest to eliminating the need for the police to have a warrant prior to making a lawful search and seizure. This lack of a need for a warrant rests on several cases where the Court found that the mobility of a vehicle is, in and of itself, an exigent circumstance dictating immediate police action. Police must have probable cause that item(s) subject to seizure are located within the vehicle to be searched.

B. Where police do have probable cause, they may stop and search a vehicle, Carroll v. United States. They 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, United States v. Ross, (i.e. police have probable cause to believe an automobile contains a stolen rifle. They may stop the automobile and search it for the rifle, but could not search the glove box of the automobile because it is unreasonable to expect to find a rifle in such a size container.)

C. In those circumstances where a vehicle is not readily mobile, the police may not legally conduct a warrantless search. An automobile parked in the driveway of a private home where the police have already arrested the owner / operator of the automobile may not be searched under what has been called the "Carroll Doctrine", Coolidge v. New Hampshire. Once a vehicle has been taken into police custody or impounded then it is no longer mobile and a search warrant must be obtained for any evidentiary search, State v. Miller (Conn. Appellate Court, 1992). Police must show that the exigent circumstances of mobility or public access to vehicle existed.

D. Police may not use the broad exceptions to the requirement for a search warrant as a subterfuge to justify the warrantless search of items such as boxes, trunks or luggage. Where police have probable cause to believe a container inside a vehicle contains contraband, no search warrant is needed and police can conduct a warrantless search of the container, California vs. Acevedo.

E. When officers stop a vehicle and conduct a warrantless search of that vehicle and / or containers within that vehicle, any report prepared should clearly show the following:

1. Facts and circumstances, which show probable cause to believe those items subject to seizure, could be expected to be found in the vehicle.

2. That the exigent circumstances of mobility existed.

3. That if containers were searched, that the items being searched for could have been found in the container(s) examined.

4. What was seized as a result of the search.

5. Was the vehicle itself seized? 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 or used to transport the fruits of a crime or used in the transport of contraband.

VI. HOT PURSUIT OR EXIGENT CIRCUMSTANCES

A. The U.S. Supreme Court has recognized that emergencies or exigent circumstances will certainly arise which make impractical the obtaining of a search warrant. "The business of policemen and firemen is to act. . . . people could well due in emergencies if police tried to act with the calm deliberation associated with the judicial process". Exigent circumstances will authorize police to make entry and conduct a search without a warrant.

B. A warrantless search conducted due to exigent circumstances is valid only as long as the exigent circumstances last. When the emergency is ended so must all searches conducted by the police. Discoveries made during a warrantless 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 are:

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).

NOTE: These examples should not be construed to mean that there are no other types of exigent circumstances.

D. A police officer that makes a claim of exigent circumstances to justify a search must substantiate the claim of exigent circumstances. The officer's report will:

1. Give the facts and circumstances, which convinced the officer that exigent circumstances existed.

2. Describe the method of entry.

3. Detail the circumstances found upon entry.

4. Describe the extent of the search made and whether a seizure of any items was made.

5. State whether there was a search warrant obtained for further search and seizure based upon probable cause established from the warrantless search made under exigent circumstances.

VII. PLAIN VIEW DOCTRINE

A. When a police officer sees items such as contraband, the officer may seize those items provided the officer has a right to be in the position to have that view. This is called the "Plain View" doctrine. The key elements of the plain view doctrine are:

1. The officer must be where he / she is legally.

2. The discovery of the item seized must be inadvertent.

3. The requirement of probable cause to believe that the item spotted in plain view is evidence of a crime.

B. The importance of a valid intrusion to the proper seizure of evidence under the plain view doctrine cannot be over stressed. If a police officer sees an item that he / she recognizes as contraband, he / she may not use his / her observation as a means to justify making a warrantless intrusion to seize the item. The observation may be used to establish probable cause for a search warrant. For example, an officer sees what he / she recognizes to be a marijuana plant in an apartment window. The officer is standing on the public sidewalk. The officer may not legally enter the apartment and seize the plant. He / she may use his / her observation to establish probable cause for a search and seizure warrant.

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

1. Pursuant to a search warrant to search for other items

2. Pursuant to a valid warrantless search 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, an application of the Chimel rule.

4. Following any other valid intrusion. .(IE: traffic stop)

NOTE: There is a very strong correlation between the plain view doctrine and searches made under exigent circumstances. The exigent circumstances justify a warrantless intrusion; the plain view doctrine justified the seizure.

D. Warrantless seizures made under the plain view doctrine, like all warrantless searches and seizures, should be carefully documented in police reports. In particular, police reports concerning seizures made under the plain view doctrine will:

1. Detail the facts and circumstances, which justify the intrusion.

2. Specify that the items posted were visible without the use of artificial aids, such as binoculars, cameras, and telephoto lens.

3. That the items seized were inadvertently come upon.

E. Abandoned Property

Officers may, without a warrant, seize and search property that he or she has good reason to believe has been abandoned.

F. Open Fields

1. An officer may enter and search any unoccupied or undeveloped area that lies outside the curtilage of a dwelling.

2. Curtilage is the area around the home to which the home life activity extends.

G. Public Places

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

evidence is found.

VIII. CONSENT TO SEARCH

A. When police obtain consent to conduct a warrantless search from a person, they are in fact asking the person to give up a constitutionally protected right. The police must show that such consent was given voluntarily and not under duress intimidation, and no promises made by the police.

B. The police do 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. Whenever possible, consent to search should be obtained in writing. This will become part of the case file when applicable. If a report is written, the officer's report will clearly state the circumstances under which consent was obtained.

D. It is necessary for the police to show that the person who gives consent had the authority to do so. The police must show that the person who gave consent had control over the area to be searched and that the person who gave consent commonly entered the area himself or herself to the same extent that the police intend to intrude. For example, a homeowner / parent may give consent to the police to search all common areas of a house. For the parent to give consent to search a child's room the police must inquire if the parent has unrestricted access to the room or whether the parent and child have an agreement of privacy for the child for the room. Officers should look for items in the room indicating use by other members of the family, which indicates lack of exclusive use. Neither in most instances can a landlord give consent for a tenant, a motel manager for a registered guest, etc.

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

IX. STRIP SEARCHES

A. The decision to strip search must be based on specific factors which give rise to a reasonable suspicion that the prisoner may be concealing weapons, escape implements, contraband, or evidence.

B. Strip searches will be conducted only with supervisory approval.

C. The search will be conducted by an officer of the same gender, gender identity and/or gender expression and observed by a witness officer of the same gender, gender identity and/or gender expression.

D. The search will be carried out in an area that cannot be observed by persons not involved in the search.

E. The prisoner will not be required to remain unclothed any longer than is absolutely necessary.

F. The mouth is the only body cavity that may be searched without a warrant. If an officer has probable cause to believe that a prisoner is concealing something in their mouth, the officer may use reasonable force to prevent the swallowing of the object and may remove the object.

G. Under no circumstances will civilian employees of the Rockville City Police Department be used to conduct or assist with a strip search.

H. The primary officer involved in a strip search will note the following in the narrative section of the incident report.

1. The fact that a strip-search was conducted.

2. The names of the approving supervisor and the witness officer.

I. Supervisors must consider the following factors before approving a strip search.

1. The type of crime for which the person was arrested.

2. The age of the defendant.

3. Prior arrest record (example- known drug offender).

4. Circumstances of the arrest.

5. The specific factors giving rise to the belief that the item(s) sought are concealed somewhere on/in the prisoner's body.

X. BODY CAVITY SEARCHES

A. Applications for search warrants for body cavity searches will be made only with supervisory approval.

B. Body cavity searches (except for searches of the mouth) will be conducted only on the strength of a search warrant.

C. All body cavity searches will be performed by a licensed physician at a local hospital.

D. Force may be used to the extent necessary to effect a body cavity search.

E. Body cavity searches will be witnessed by at least one officer of the same sex as the prisoner. The

officer will immediately take custody of the item(s) recovered in the search.

F. The primary officer involved in a body cavity search will include the following information in the event report.

1. The fact that a body cavity search was conducted.

2. The names of the approving supervisor, the witness officer, the judge signing the search warrant, and the physician conducting the search.

G. Supervisors must consider the following factors before approving an application for a search warrant of a body cavity.

1. The type of crime for which the person was arrested.

2. The age of the defendant.

3. Prior arrest record (example- known drug offender).

4. Circumstances of the arrest.

5. The specific factors giving rise to the belief that the item(s) sought are concealed somewhere on/in the prisoner’s body.