



Warrantless Search and Seizure

.01 Policy

The policy of the Bladensburg Police Department is to respect constitutional rights in making warrantless searches and seizures, to comply with all applicable law, and ensure the admissibility of evidence in criminal proceedings.

.02 Terms

.03 Governing Legislation and Reference

Governing Legislation:

U.S. Const. amend. IV.

Carroll v. United States, 267 U.S. 132 (1925).

Arizona v. Gant, 2009 U.S. LEXIS 3120; slip op. 07-542 (2009).

California v. Carney, 471 U.S. 386 (1985).

Chambers v. Maroney, 399 U.S. 42 (1970).

Colorado v. Bertine, 479 U.S. 367 (1987).

Florida v. Meyers, 466 U.S. 380 (1984).

Florida v. Wells, 495 U.S. 1 at 3 (1990).

Maryland v. Dyson, 527 U.S. 465 (1999).

Mapp v. Ohio, 367 U. S. 643 (1961).

Michigan v. Thomas, 458 U.S. 259 (1982).

New Jersey v. TLO, 469 US 325 (1985).

Pennsylvania v. Labron and Pennsylvania v. Kilgore, 518 U.S. 938 (1996).

South Dakota v. Opperman, 428 U.S. 364 (1974).

State v. Duncan, 253 Ga. App. 830, 560 S.E. 2d 720 (2002).

State v. Lejeune, 276 Ga. 179, 576 S.E. 2d 888 (2003).

State v. Massa, 273 Ga. App. 596, 615 S.E. 2d 652 (2005).

Texas v. White, 423 U.S. 67 (1975).

Thornton v. U.S., 541 U.S. 615 (2004).

United States v. Ross, 456 U.S. 798 (1982).

Riley v. California, 134 S. Ct. 999 (2014).

Forms:

Consent to Search (Form 638).

Consent to Search, Spanish (Form 639).

.04 Procedure

A. Search by Consent

An officer is authorized to make a warrantless search when consent to search has been knowingly, intelligently, freely and voluntarily given by a person having control over the area to be searched. A request for consent should be specific as to the place or item to be searched.

Consent to search can be given verbally, but the burden to prove that it was granted without coercion rests with the officer. When feasible, officers should obtain written consent.

A third party who has common authority over the premises can consent to a search. Common authority depends upon joint access or control. For example, both spouses normally have common authority over the marital home. On the other hand, a landlord does not have common authority over a tenant's apartment. Likewise, a hotel employee does not have common authority over a guest's room.

A joint occupant can provide sufficient authority for an officer to search, by consent, only if others having shared authority over the premises are not immediately available, or are available and do not object to the warrantless search.

A minor the courts deem to be of adequate maturity and intelligence, and who enjoys access and authority over the home, may provide sufficient authority for an officer to search the premises without a warrant.

The burden to prove that consent was freely and voluntarily given is not satisfied by a showing of mere submission to authority. For example, a person's failure to object to an officer's request to "look around" does not constitute valid consent. Consent cannot be conferred by silence.

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Officers should not claim that they can make a search regardless of consent. Consent which follows such a claim is invalid.

B. Stop and Frisk

A "frisk" is a pat-down of a person's outer clothing for the purpose of detecting a weapon which may injure the officer. The purpose of a frisk is not to discover evidence of a crime, but rather to allow an officer to safely continue their investigation.

In order to temporarily detain an individual, an officer must have a "founded suspicion" that the person was, is, or is about to be involved in criminal activity. To frisk the individual, the officer must have a "founded suspicion" that the person is armed and dangerous.

Officers are authorized to frisk an individual who is being temporarily detained if the officer has a "founded suspicion" that the person is armed and dangerous.

C. Search Incident to Arrest

Officers are authorized to search a person incident to their lawful arrest to prevent harm to officers or the destruction of evidence.

Officers may examine the physical aspects of a cellular telephone to ensure it cannot be used as a weapon; however, the examination of digital data requires a search warrant.

D. Search of Cellular Telephone

Officers can seize and secure cell phones recovered in searches incident to arrest to prevent destruction of evidence. The limitation, however, is that, at the same time, officers must seek a warrant to search the phone's contents.

"remote wiping" of data can be prevented by disconnecting a phone from the network. This can be done in at least two ways: turning the phone off or removing its battery. As to data encryption, officers can leave the phone powered on and place it in an enclosure that isolates the phone from radio waves. Such devices are commonly called "Faraday bags" (essentially sandwich bags made of aluminum foil).

E. Search of Motor Vehicle

Officers are authorized to conduct a warrantless search of a motor vehicle in police custody based upon probable cause (which would be sufficient to justify the issuance of a search warrant) that the vehicle contains

evidence or contraband. All areas or containers in the vehicle which could contain the particular evidence or contraband may be searched.

If probable cause exists that evidence or contraband is contained within a specific container in a motor vehicle, then the container may be seized, and a search warrant should be obtained before the container is opened.

When an officer has lawfully stopped a motor vehicle and has a reasonable suspicion that it contains a weapon, the officer may conduct a "protective search" of the passenger compartment of the vehicle. The search must be limited to those areas in which a weapon could be hidden.

F. At the Crime Scene

Unless conducted during an authorized protective sweep, an officer is not authorized to conduct a frisk, or search of a person merely because that person is present at the scene of a crime or the execution of a search warrant.

G. Exigent Circumstances

Officers are authorized to conduct a warrantless search when "exigent circumstances" exist.

"Exigent circumstances" may exist where a fleeing suspect is pursued from a public place into a private one, e.g., the suspect's home. The following factors are relevant in determining whether "exigent circumstances" exist:

- The gravity of the offense committed;
- The belief that the suspect is armed;
- The likelihood that the suspect will escape in the absence of swift police action; or,
- The safety of the public is endangered.

Officers in "hot pursuit" of a fleeing suspect must comply with the "knock and announce" statute, unless to do so would be a useless gesture.

The imminent destruction, removal, or concealment of evidence is another "exigent circumstance" which may justify a warrantless entry into a building. However, the seriousness of the underlying offense, by itself, does not create an "exigent circumstance". When it is known that there is no one present inside a building, the building should be secured by guarding the entrances while a search warrant

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is obtained.

H. Inventory of Seized Vehicles or Other Property

Officers are authorized to conduct an inventory of a motor vehicle or other property which is being impounded or seized. Such an inspection extends to the entire motor vehicle and any containers found therein.

A motor vehicle inventory is an administrative measure designed to protect motor vehicles and their contents while in police custody; to protect the agency against claims of lost, stolen or damaged property; and to protect departmental personnel and the public against injury or damaged property due to hazardous materials or substances that may be in the vehicle for the purpose making a record of contents.

I. Plain View/plain Feel Searches

Officers are authorized to seize evidence in "plain view". In order for evidence to be in "plain view", the officer must be in a place where they have a legal right to be. Further, for an item to be in "plain view", it must be immediately apparent that it is evidence of a crime.

Officers are authorized to search a motor vehicle when contraband is observed in plain view. Such contraband may be lawfully seized and a search for additional contraband conducted, regardless of whether an arrest has been made.

J. Searches of Public School Students

The warrantless searches of public school students during school is one of the more controversial types of warrantless search. The Supreme Court defined many of the aspects of the warrantless search of students in *New Jersey v. T.L.O.* The court found the Fourth Amendment to apply to searches conducted by public school officials because "school officials act as representatives of the State, not merely as surrogates for the parents." The court did, however, recognize, "the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject." The court ruled that neither the warrant requirement or the probable cause standard applied, rather a reasonableness standard is used. In order for the search to be valid "reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school." Additionally searches must, "not be excessively intrusive in light of the age and sex of the student and the nature of the infraction" or discriminatory on the basis of age, sex, or race.

Administrative searches are conducted by school officials and solely under school direction upon reasonable suspicion that the student has violated school standards of conduct or the law. Officers shall not participate in administrative searches except in any of the following instances:

- To handle and process any contraband;
- To provide security; or,
- To protect students and staff.

Officers may conduct appropriate searches based on probable cause to believe that evidence of a crime or contraband exists. Frisks for weapons are justified based on reasonable suspicion.

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HISTORY: Adopted January 1, 2014

This General Order supersedes all other orders and memoranda in conflict therewith.

Authority:

A handwritten signature in black ink, appearing to read "Charles L. Owens". The signature is written in a cursive style with large, looping letters.

Charles L. Owens
Chief of Police