

PALM BEACH GARDENS POLICE DEPARTMENT

SEARCH AND SEIZURE

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PURPOSE: To provide detailed responsibilities, procedures, and considerations governing search and seizure and the execution of search warrants to include a warrant pursuant to provisions outlined in chapters 901, 932, 933, and 943, Florida Statutes.

SCOPE: All Sworn Members

REVIEW RESPONSIBILITY: All Bureau Majors

POLICY: This department shall adhere to those procedural laws governed by applicable state and/or federal laws regarding searches that have not been reviewed and/or authorized by court order. This department's sworn personnel shall adhere to the rules of the court where specified by law when obtaining/executing search and seizure actions against persons, houses, or things at certain premises, or when obtaining evidence.

PROCEDURES

1. PROVISIONS ESTABLISHED BY DEPARTMENT

- a. Generally, no search or seizure may be conducted without first obtaining a valid search warrant. The requirement of obtaining a search warrant may be excused under circumstances outlined in this directive. All property seized is documented through department property procedures. This department's policy provisions shall be to:
 - i. provide techniques to accomplish a thorough and legal search,
 - ii. observe the constitutional rights of the person(s) the warrant is being served upon;
 - iii. minimize the level of intrusion experienced by those who are having their premises searched;
 - iv. provide for the highest degree of safety for all persons concerned; and

- b. establish a record of the entire search warrant execution process.

2. PROVISIONS DEFINED BY APPLICABLE LAW

The Fourth Amendment of the U.S. Constitution provides-as follows:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

In order to ensure the efforts of the department will not be overturned by the courts on a legal technicality, it is imperative that every officer thoroughly understand the basic constitutional and statutory provisions involved in searches for and seizure of property to be later submitted to the court as evidence in a criminal case. Failure to comply with these technicalities of the law can result in evidence being declared inadmissible for having been illegally obtained. In carrying out their duties in this regard, officers must fulfill their responsibilities to protect the community they serve and at the same time protect the individual rights guaranteed to every citizen by the U.S. Constitution.

3. CONSENT TO SEARCH

- a. Consent to search without a warrant may be given in writing or orally and is an abandonment of a Constitutional Right and therefore, will be closely scrutinized. The following considerations should be satisfied:
 - i. Consent cannot be presumed from silence.
 - ii. Consent must be specifically and intelligently given.
 - iii. Consent must be given freely, knowingly and voluntarily, free of any coercion, intimidation or threat. Officers must avoid even the appearance of intimidation or duress.
 - iv. Consent must be given by a person who has immediate right of possession and control of the premises or property. If there is any doubt as to who has the immediate right of possession and control of the premises/property, then a search warrant should be obtained.
 - v. Consent must be free of misrepresentation or fraud. Consent obtained by trick, duress or misrepresentation, voids the consent, and makes evidence inadmissible.
 - vi. Consent must be obtained prior to search and after the officers have identified themselves and requested the right to search.
 - vii. Consent must be limited to the area specified and such consent may be revoked at any time. Upon such revocation, the search must cease. Evidence found prior to revocation may be retained and used as a basis for immediate arrest or as probable cause for the issuance of an arrest or search warrant.
- b. Written consent is preferred over oral consent. Do not conduct a search by consent just to avoid obtaining a search warrant.

4. STOP AND FRISK SEARCH (i.e., weapons, contraband, seized objects, etc.)

- a. Pursuant to Florida Stop and Frisk Law, FSS 901.151, *"Whenever any law enforcement officer of this state encounters any person under circumstances which reasonably indicate that such person has committed, is committing, or is about to commit a violation of the criminal laws of this state, or the criminal ordinances of any municipality, or of any county, he/she may temporarily detain such person for the purpose of ascertaining the identity of the person temporarily detained and circumstances surrounding his/her presence abroad which led the officer to believe that he/she had committed, was committing, or was about to commit a criminal offense."*

- i. Stop and Frisk Law is primarily for the protection of police officers, any weapons or contraband found during a lawful stop and frisk may be used in evidence against the subject.
 - ii. Whenever a subject is stopped and the procedure involves temporary detention and questioning, based on something less than probable cause, for the purpose of investigations, crime prevention or crime detection.
 - iii. If at any time after the onset of the temporary detention authorized by this section, probable cause for arrest of subject appears, the subject may be arrested.
 - iv. If, after inquiry into the circumstances which prompted the temporary detention, no probable cause for the arrest of subject appears, the subject must be released.
- b. An officer who possesses an articulable and objectively reasonable belief that a suspect is presently or potentially dangerous may conduct a protective "pat down" search of the area within the suspect's immediate control.
- c. Suspicion of narcotics possession and distribution is a circumstance giving rise to an inference of danger; and to confer authority to conduct a "pat down". Officers are entitled to remove an item found during a "pat down" upon a reasonable belief that the item could be a weapon.

5. WARRANTLESS SEARCHES OF MOTOR VEHICLES

- a. The United States Supreme Court permits the interior of a motor vehicle and any containers found therein to be searched incident to a lawful arrest of an occupant (*New York v. Belton*, 1981) only when it is reasonable to believe that the arrestee might access the vehicle at the time of the search or that the vehicle contains evidence of the offense for which the person is being arrested (*Arizona v. Gant*, 2009). If the person arrested is securely detained at the time of the search and there is no reasonable belief that the vehicle contains evidence of the crime for which the person was arrested, a search warrant would be required to search the vehicle if no other exception applied (e.g., see section "b" below). No search may be made of the luggage compartment incident to an arrest unless there is independent probable cause to conduct such a search.
- b. If there is independent probable cause that the vehicle contains fruits or instrumentalities of a crime or contraband, and there are exigent circumstances (i.e., *Carroll Doctrine*), the entire vehicle including containers may be searched (*United States v. Ross*, 1982).
- c. Based on *Belton*, *Gant* and *Ross*, the rules have emerged and can be stated in a simple and clear fashion as follows:
 - i. A mobile vehicle can be searched without a warrant if the search is based on probable cause (which would be sufficient to justify the issuance of a warrant) that the vehicle contains the items sought.
 - ii. The scope of a warrantless search of a vehicle based on probable cause that the vehicle contains the items sought is the same as that of a vehicle search pursuant to a warrant, that is, all areas or containers in the vehicle that may contain the articles sought may be examined.
 - iii. If probable cause exists that certain articles are contained in a specific container or containers rather than somewhere in a vehicle, a warrant must be obtained to validly open those containers.
 - iv. A vehicle may be searched subsequent to arrest if the arrestee might access the vehicle at the time of the search (does not apply if the suspect is secured at the time of the search) or there is reasonable belief that the vehicle contains evidence of the crime for which the suspect was arrested. This search may only include the passenger compartment of the vehicle and would not include the trunk, unless there is independent probable cause for a search of the trunk.

- d. The expectation of privacy in a motor vehicle is lower than the expectation of privacy in the home. Searches of motor vehicles should be conducted upon probable cause and in accordance with the following:
 - i. If practical, a search warrant is obtained. The issuance of a traffic summons alone is not considered an arrest and would not justify the search incident to arrest of the violator or his/her vehicle.
 - ii. Practical considerations often dictate that a search of a motor vehicle be conducted without a warrant because of moveable vehicle creates the possibility that it might be transported before a warrant can be obtained. A warrantless search of a motor vehicle is authorized when there is probable cause to believe that the vehicle contains evidence of a crime and securing a search warrant is impractical.
 - iii. If probable cause exists to believe that a motor vehicle contains contraband somewhere in the vehicle, but not in any particular place, then the entire vehicle, including closed containers found in the vehicle, may be searched without a warrant.
 - 1. Containers searched must be likely repositories for the item(s) being sought.
 - 2. If the investigation is focused on a particular container that just happens to be in a vehicle, a search warrant is required for a search of the vehicle for that particular container; and
 - 3. Containers may be searched under other exceptions to the warrant requirement, such as exigent circumstances.
- e. If a lawful search of a motor vehicle is conducted without a warrant, anything of evidentiary value is admissible whether or not it is related to the arrest. For example; if an officer is justified in searching an automobile for narcotics, and stolen property is found, such stolen property is admissible in evidence as long as it was found in an area reasonably likely to contain the narcotics originally searched for.
- f. The routine inventory of a motor vehicle in police custody is not considered a search, but rather a legitimate "housekeeping" procedure.

6. AT THE SCENE OF A CRIME

- a. A warrantless search at any incident involving a crime must be based on probable cause that certain articles (i.e., contraband, weapons, stolen goods, objects, etc.) that are in plain view may be subject to seizure as evidence.
- b. If an officer anticipates making an arrest at a subject's home, office, or other premises and he/she wants to conduct a complete search of the entire premises after the arrest, the officer should first obtain a valid search warrant.
- c. When a lawful arrest is made the officer may search the person arrested and the area within the subject's immediate presence without a warrant to discover weapons and evidence and for the purpose of:
 - i. Protecting the officer from attack;
 - ii. Preventing the person from escaping, or;
 - iii. Discovering the fruits of a crime.
- d. An officer making a lawful search without a warrant may seize all instruments, articles, or things discovered on the person arrested or within the person's immediate control, the seizure of which is reasonably necessary for the purpose of:
 - i. Protecting the officers from attack;

- ii. Preventing the escape of arrested person; or, assuring subsequent lawful custody of the fruits of a crime or of the articles used in the commission of a crime.
- e. If the arrest is made inside a house or building and the officer does not have a search warrant; in addition to the above:
 - i. The officer may check the other rooms and closets of the premises for other wanted persons or accomplices, or to protect himself/herself from possible attack.
 - ii. The officer may seize items of evidence that are in plain view in the room where the arrest occurs, or in other rooms entered while looking for the subject or accomplices.
 - iii. The officer may not search other rooms, closets, drawers for evidence. The officer may not conduct a search of files, drawers, suitcases, boxes, and cabinets. The officer may not enter the garage or outlying structures of the subject's auto parked outside.
 - iv. If the suspect is arrested outside his/her premises, the officer may not take him/her inside the premises in order to search the inside of the premises.
 - v. It is still possible to obtain a valid consent to search the premises. The better practice is to secure the premises, obtain a search warrant, return to the scene, execute the search warrant, and conduct the search.

7. WARRANTLESS ENTRY-EXIGENT CIRCUMSTANCES

- a. No court has attempted to formulate a final and comprehensive list of all exigent circumstances which might justify a warrantless entry, but some of those considered relevant have been:
 - i. The degree of urgency involved and the time required to get a warrant.
 - ii. The officer's reasonable belief that contraband is about to be removed or destroyed.
 - iii. The possible dangers to others, including police officers left to guard the site.
 - iv. Information that the possessors of the contraband are aware that the police may be on their trail.
 - v. Whether the offense is serious, or involves violence.
 - vi. Whether officers reasonably believe the suspects are armed.
 - vii. Whether there is, at the time of entry, a clear showing of probable cause.
 - viii. Whether the officers have strong reason to believe the suspects are actually present on the premises.
 - ix. The likelihood of escape if the suspects are not swiftly apprehended.
 - x. The suspect's recent entry into the premises after hot pursuit.
- b. Exigent circumstances which present a compelling need for immediate official action or which present a substantial threat of imminent danger to life or public safety include the need to seize short-lived evidence, such as blood or fingernail scrapings, or the need to search in an emergency, such as a burning fire; but no general emergency exception (such as occupational safety violation, murder scene or extinguished fire).
- c. Exigent/exceptional circumstances include the right to enter and search an enclosure when in hot pursuit of a felon if there is reasonable cause to believe that the felon is inside.
- d. Exigent/exceptional circumstances must exist and be known to the officer prior to the conduct of the search and seizure and not be developed as the search and seizure takes place.
- e. An officer may make a warrantless entry to secure the premises prior to or while seeking a search warrant, if the need to preserve evidence and protect officers outweighs the individual's privacy interest in maintaining the sanctity of the home.
- f. The following three factors must be present for the warrantless entry.

- i. Officers have probable cause to believe evidence is on the premises.
- ii. Delaying entry would create a substantial risk that evidence will be lost or destroyed or the critical nature of the circumstances prevents the use of the warrant procedure (exigency).
- iii. Officers cannot be responsible for creating their own exigencies.

8. SEARCHES OF SEIZED VEHICLES

- a. Vehicles that may be seized for forfeiture or for court proceedings will be inventoried; items of appreciable value properly noted on the vehicle storage report and all personal property shall be removed.
- b. If the vehicle is to be processed and it is determined the vehicle would be contaminated by removing any personal property, the seizing officer may wait until the processing is completed. The seizing officer shall be responsible for insuring the personal property is removed.
- c. Personal property not being held for evidence or seizure shall be returned to the owner. If the owner has been arrested or is otherwise unavailable to take possession of the property, it shall be placed in the property unit to be returned at a later date. The safekeeping receipt shall be completed, including the authorization for release.
- d. Any property seized as evidence shall be packaged and entered into evidence separately from any personal property.
- e. When vehicles are seized for forfeiture, the officer handling the paperwork must ensure that vehicle identification number is obtained from the vehicle itself rather than from a registration check.

9. PLAIN VIEW SEARCHES AND OTHER SITUATIONS

- a. Pursuant to the United States Supreme Court decision involving an important search and seizure issue, the "plain view" exception of the warrant requirement imposed by the Fourth Amendment to the United States Constitution; *Texas v. Brown* 460 U.S. 730 (1983), this case is of importance to all law enforcement officers because of the frequency with which the "plain view" issue arises in the context of routine law enforcement activities.
- b. In certain limited circumstances, a police officer may make a warrantless seizure of objects in plain view. The following conditions, however, must be met before the plain view doctrine is applicable:
 - i. The initial intrusion, which afforded the view, must have been lawful; and
 - ii. The incriminating nature of the evidence must have been immediately apparent.
- c. Whenever an officer lawfully enters upon premises, contraband that he/she observes in plain view may be seized without a warrant. In such cases, the usual requirements of obtaining a search warrant are not necessary because no "search" is conducted. A "search" implies looking into private or hidden places for concealed items, and does not include observation of articles that are open to plain view or obvious to the senses. It is also permissible for an officer to use a flashlight to make such observations.
- d. An observant officer, utilizing the "plain view" doctrine, can often be successful in recovering stolen property, unlawful drugs, or weapons used or intended for use in the commission of a crime. Areas in which a person has no expectation of privacy, such as open fields, streets or roadways, may be searched without a warrant. This does not include the "curtilage", which is defined as the immediate yard or out buildings of a dwelling house.
- e. Search of Abandoned Property

- i. Things thrown away or left in a constitutionally unprotected place may be seized and examined. This includes things dropped or otherwise discarded by a person, but not things temporarily separated from the individual.

10. SEARCH INCIDENT TO ARREST AND INVENTORY

- a. During the arrest and booking process, a routine warrantless search of the arrestee and those areas under the immediate control or reach of the arrestee is authorized.
- b. Those arrestees who are in possession of unsecured property coming into police custody may have such property inventoried under property procedures. Such inventory is not considered a "search" under fourth amendment protection.

11. SEIZURES & FORFEITURES

- a. This department may pursue forfeitures and seizures for items involved in any felonies and certain misdemeanors committed within the City of Palm Beach Gardens as prescribed in policy 4.2.2.14 – Forfeitures.

12. STRIP SEARCHES

- a. No strip search shall occur without obtaining prior written authorization of the supervising officer on duty. The Authorization to Perform Strip Search Form will be completed and filed with the original report.
- b. No person shall be strip searched, except:
 - i. Where authorized by duly issued search warrant.
 - ii. after a traffic arrest, regulatory arrest, misdemeanor offense arrest or arrest on a capias in cases where the underlying charge is violent in nature or involves a weapon and there is probable cause to believe the person arrested is concealing a weapon.
 - iii. Incident to arrest where there is probable cause to believe the individual arrested is concealing a controlled substance or stolen property.
- c. Evidence - No strip search shall occur where the exclusive purpose of the search is to obtain evidence of a crime unless the person requesting the search has a warrant or there exists a lawfully recognized warrantless search exception governing the situation in which the officer wishes to conduct the search.
- d. Performance - In the event a strip search is authorized under sections 1.a. (i-iv) of this policy the following procedure will be strictly adhered to.
 - i. Each strip search shall be performed only by a sworn law enforcement officer.
 - ii. Each strip search shall be performed by a person of the same gender as the person to be searched.
 - 1. In the event a person of like gender is unavailable the search will be delayed until assistance can be obtained from a sworn law enforcement officer of the same gender as the person to be searched.
 - iii. Each strip search shall be witnessed by one, and only one, observer who shall also be of the same gender as the person to be searched.
 - 1. The observer may be:
 - (a) a sworn law enforcement officer
 - (b) a sworn reserve officer
 - (c) a communications officer.

2. The observer shall not be a citizen ride-along.
3. Each strip search shall be conducted in a location that cannot be observed by persons not physically conducting the search.

13. BODY CAVITY SEARCHES

- a. No body cavity search may be conducted without the prior written authorization of the supervising officer on duty. In the event the supervising officer on duty is of an official rank below Sergeant the following will occur:
 - i. Telephone authorization will be obtained from an officer of the rank of Sergeant or higher.
 - ii. Said authorization shall be documented on the Authorization to Perform Strip Search Form including the name and rank of the authorizing officer, and the date and time the authorization was obtained.
 - iii. The form shall be signed by the authorizing officer prior to completion of their next scheduled shift.
- b. No body cavity search shall occur, except:
 - i. A visual inspection of a person's mouth may be conducted where there is probable cause to believe that said person has concealed weapons, or controlled substances, or means of effecting an escape in the mouth, and
 1. Failure to take immediate action will pose a substantial risk of either death, or serious bodily injury to the officer, the suspect or innocent bystanders.
 2. Where authorized by duly issued search warrant.
 3. Where the person to be searched is arrested, and
 - a. there exists probable cause to believe that a weapon or means of effecting immediate escape has been secured in a body orifice.
 - b. there exists probable cause to believe that controlled substances have been secured in a bodily orifice and their immediate recovery is crucial to the prevention of injury to the defendant or the officer.
- c. Performance - in the event a body cavity search is authorized under Section 2 of this policy, the following procedure shall be strictly adhered to.
 - i. Each body cavity search shall be performed under sanitary conditions.
 - ii. Each body cavity search shall be performed only by:
 1. a doctor,
 2. a registered nurse under the immediate supervision of a doctor,
 3. a nurse practitioner,
 - a. In the event the above persons are unavailable, the search shall be delayed until such time as access to one of the above qualified individuals is gained unless immediate intervention and search is necessary to prevent death or serious bodily injury to the person to be searched or the officer or bystanders.
 - iii. Each body cavity search shall be performed in the presence of a sworn law enforcement officer of the same gender as the person to be searched, and all evidence and contraband recovered will be turned over to the officer for logging as evidence.
 - iv. Each body cavity search shall be conducted on premises that cannot be observed by persons not physically conducting the search.

14. GLOSSARY

Strip Search: as used in this section means having a person remove, or arrange all or some of his or her clothing so as to permit a visual inspection of the body, genitals, buttocks, anus, breasts in the case of a female, or undergarments of such person.

Body Cavity Search: as used in this section means an intrusive examination of a person's bodily orifices by manual, visual, or other means.

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APPROVED:

Stephen J. Stepp
Chief of Police

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