



## SEARCH AND SEIZURE (WARRANTLESS)

**Directive: 15-111**

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### I. PURPOSE

The purpose of this Directive is to provide all police officers with a workable knowledge and understanding of police practices that meet all constitutional requirements with respect to search and seizure and avoid those actions that may violate individual rights of citizens. This Directive is intended to provide information and guidelines and assist police officers to achieve that objective.

### II. POLICY

It is the policy of DGS-MCP that all searches of people, places, and things will be done in good faith complying with existing laws and will be thoroughly and accurately documented. Seizures of property and items from individuals will only be done as a means to collect and preserve evidence, remove contraband and/or render harmless any weapon.

### III. DEFINITIONS

- A. "In officer's presence" – In determining whether a misdemeanor has been committed in the officer's presence, the term 'presence' denotes that the commission of the misdemeanor is perceptible to the officer's senses, whether they be visual, auditory, or olfactory.
- B. Possession means the exercise of actual or constructive dominion or control over a thing by one or more persons.
- C. Probable cause exists when the facts and circumstances within the knowledge of the officer, based on education, experience, training and information known to the officer at the time of an incident, or reasonable trustworthy information is known, would warrant a reasonable and prudent officer to believe that a suspect has committed or is committing an offense, or that evidence relating to a crime can be found at a particular location.
- D. Strip search of an individual is a search requiring removal or rearrangement of some or all clothing to permit the visual inspection of the genitals, buttocks, anus, or female breasts or undergarments of an arrestee.
- E. Evidence - Testimony, writings, material objects or other things presented to prove the existence or nonexistence of a fact.
- F. Contraband – Any property which is unlawful to produce or possess.

G. Curtilage is the open space associated with the dwelling. Whether an area is within the cartilage depends principally on its closeness to the dwelling, its being within any general enclosure which may surround the dwelling, and its use by the occupants of the dwelling. Examples of places considered to be within the curtilage include:

1. An enclosed backyard of a residence.
2. A farmer's barn separated by a driveway from his house seventy yards away.
3. A trash can under the porch of a house.
4. A closed cupboard in a common hallway leading to the suspect's apartment in his apartment building.

#### **IV. BACKGROUND**

The Fourth Amendment to the United States Constitution provides: "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 Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." The Fourteenth Amendment requires the States to secure these rights.

An officer should always consider the reasonableness of a search and the probable cause that exists to support the search. The Supreme Court of the United States has ruled that a search is considered to be illegal unless the government can establish that the search was reasonable and based on sufficient probable cause. Searches may be conducted pursuant to the authority of a search warrant, upon receipt of proper consent, or in conjunction with the various exceptions to the warrant requirements. Such exceptions include search incident to an arrest, vehicle searches, stop and frisk, abandoned property, etc.

As a general rule, officers are encouraged to obtain search warrants whenever feasible in order to avoid the possibility of having evidence suppressed by the courts. If a search and seizure is made without a warrant, officers should be prepared to explain the justification for the action in terms of one or more of the recognized exceptions accepted by the courts.

#### **V. PROCEDURES**

##### **A. Abandoned Property**

1. If in the course of a lawful arrest, questioning, surveillance, or some other lawful action, a police officer observes someone discard personal property at some place outside his dwelling or its curtilage, the officer may seize such property on the grounds that it has been abandoned.
2. There is no requirement that the person that abandoned the property intended to get rid of the property permanently.
3. If the property is discarded in response to an unlawful arrest or unlawful entry by the police, a seizure of the property is also unlawful.

4. If the property is discarded in the person's dwelling, it cannot be considered abandoned and cannot be seized without a search warrant, notwithstanding one of the exceptions.
5. If property, such as trash, is discarded within the curtilage of a dwelling, it will probably require a search warrant to seize it. However, the Maryland Court of Appeals has ruled that if trash is placed outside, within the curtilage, for collection by sanitation workers at a place that is readily accessible, and thus exposed, to the public, the person has relinquished any reasonable right of privacy. In summarizing the ruling of state courts, the Court of Appeals said that in the "...case of containers left at or near public streets, alleys, or other areas readily accessible to the public, there has been near unanimity in finding no reasonable expectation of privacy, whether or not the containers are technically within the curtilage." *State v. Sampson 2001* (It should be noted that there is no Fourth Amendment violation if a bona fide sanitation worker removes a bag of trash and then gives custody of the refuse to the police. Chain of custody must be maintained.)
6. If property is discarded in the person's hotel room, automobile, or any other area he controls, it cannot be considered abandoned and cannot be seized without a search warrant, notwithstanding one of the exceptions.
7. A dwelling that has been permanently vacated, including a hotel room, rented space, etc., may be searched without a search warrant and without the permission of the previous tenant. The consent of the property owner should be obtained.
8. Examples of Legally Seized Abandoned Property:
  - a. A package of heroin picked up from the street after a scuffle during an arrest in an automobile.
  - b. A package of narcotics which landed in a public courtyard after being thrown out of the window of an apartment by a woman under surveillance.
  - c. An envelope dropped to the floor of the police station by a man under arrest.
  - d. Two small packages dropped to the sidewalk by a narcotics suspect under surveillance.
  - e. An object dropped on the street by a man stepping out of his car for questioning.
  - f. A bag of trash has been placed near an alley or sidewalk, within the curtilage, and is exposed and accessible to the public on trash collection day.
  - g. A bag of trash that has been placed on the ground or sidewalk outside the curtilage of nearby homes and on public property.

#### B. Abandoned/Parked/impounded Vehicles

1. Abandoned vehicles may be searched without a warrant, just as other property that has been abandoned may be seized and searched. Officers should ensure that an apparently

abandoned vehicle is not being stored or abandoned on the property of the owner before conducting a warrantless search.

2. One of the underlying reasons why the Courts allow warrantless searches of vehicles rests with the mobility of the vehicle. If officers have probable cause to search a parked vehicle for evidence or contraband, the vehicle may be searched where it is found. However, the preferable course of action is to remove the vehicle to a secure area and obtain a search warrant prior to conducting the search.
3. Any vehicle that is impounded on the authority of a DGS-MCP police officer, or otherwise brought under the control of the Department, must be inventoried according to established policy and procedure. Police cannot assume custody as a pretext for inventory where such an inventory is not reasonably necessary. Any contraband or evidence that may be observed inside the vehicle may be seized. Any evidence found and seized must be readily identifiable as evidence on sight. If not, a search warrant must be obtained.

#### C. Plain View Seizures

1. Under the plain view doctrine, an object may lawfully be seized if, at the time of the seizure, the object was in plain sight of the officer. This rule is subject to the following requirements:
  - a. The officer must lawfully be in the place or position from which the evidence was first seen.
  - b. The officer must have probable cause to believe that the items observed are contraband or evidence of a crime.
  - c. The incriminating character of the evidence must be immediately apparent. If further investigation is necessary before the incriminating nature of the object becomes apparent, the plain view doctrine does not apply, and a warrant must be obtained before the seizure of any property can occur.

#### D. Exigent Circumstances

1. A police officer may search the premises without a search warrant in the following situations:
  - a. An emergency situation exists and the officer must enter the premises without delay;
  - b. The officer cannot obtain a search warrant without risking the immediate removal or destruction of the evidence or contraband;
  - c. Any other situation that requires by its urgency that an officer enter an area or premises and take immediate action.

## E. Who May Give Consent

1. A valid consent to a search may be given only by the person with a legal, possessory interest in the matter to be searched. Examples include:
  - a. A landlord cannot consent to a search of a tenant's premises, unless the tenant has abandoned the premises or has been legally evicted;
  - b. A host can give consent to a search of premises occupied by a guest. But if a particular area of the premises to be searched has been set aside for a long-term guest's exclusive use, or if the search is of an object which is exclusively the guest's, the consent of the host will not authorize a search. An overnight guest in a home may claim protection of the Fourth Amendment, but one who is merely present for a matter of hours with the consent of the owner may not. *Minnesota v. Carter (1998)*
  - c. A parent can give consent to a search of premises occupied by a dependent underage child.
  - d. A person with custody of personal property belonging to another may consent to its search only if he has been given full control over the property, or if the property has been left on his premises without his authorization. Consent by a person having only conditional custody, such as that given for storage or shipment, is not valid.
2. If two or more persons have equal rights to the occupation of the premises, consent to search may be given by any one of them, but only for the areas of use common to all. It must be understood that consent by one occupant will override the refusal to grant consent given by the other. A legal consent search shall be valid against all occupants, as to the areas of use common to all. Examples include:
  - a. Generally, one spouse can consent to a search of a residence area shared with the other spouse.
  - b. One joint tenant can consent to a search of jointly held areas of the premises.
  - c. A partner can consent to a search of partnership held premises.
  - d. Revocation of Consent

## F. Revocation of Consent

1. Valid consent to search may be presumed to continue until all areas specified in the consent have been searched. Consent may be revoked, however, at any time before the search is completed. If consent is revoked prior to completion of the search, all evidence found prior to the revocation may be seized and retained. This evidence may be used as probable cause for a search warrant or for an immediate arrest and subsequent search incident to an arrest.

## G. Traffic Stops

1. The United States Supreme Court ruled in *Whren v. United States (1996)* that the temporary detention of a motorist upon probable cause to believe that he has violated the traffic laws does not violate the Fourth Amendment's prohibition against unreasonable seizures, even if a reasonable officer would not have stopped the motorist absent some additional law enforcement objective.
2. "Under *Whren*, the law enforcement officer who observes a traffic violation may stop the violator, even though the officer does so out of curiosity as to whether (or in the hope that) the stop will lead to the discovery of other incriminating evidence. The Fourth Amendment permits the forcible stop of a motorist who is observed by a law enforcement officer to be violating a "rule of the road." The Fourth Amendment also permits the forcible stop of a vehicle when there is reasonable articulable suspicion to believe that its occupants are involved in criminal activity. In neither of these situations, however, may the occupants of the vehicle be detained for an extended period of time. In the absence of a justification for continued detention that manifests itself during the period of time reasonably necessary for the officer to (a) investigate the driver's sobriety and license status, (2) establish that the vehicle has not been reported stolen, and (3) issue a traffic citation, the Fourth Amendment prohibits a detention in excess of that period of time." *Pryor v. State (1998)*
3. "Once the purpose of that stop has been fulfilled, the continued detention of the car and the occupants amounts to a second detention. Thus, once the underlying basis for the initial stop has concluded, a police-driver encounter which implicates the Fourth Amendment is constitutionally permissible only if either (1) the driver consents to the continuing intrusion or (2) the officer has, at a minimum, a reasonable, articulable suspicion that criminal activity is afoot." *State v. Green (2003)*
4. "Law enforcement officers do not violate the Fourth Amendment ...merely by approaching individuals on the street or in other public places and putting questions to them if they are willing to listen." *United States v. Drayton (2002)* "Even when the officers have no basis for suspecting criminal involvement, they may generally ask questions of an individual so long as the police do not convey a message that compliance with their request is required." *Ferris v State (1999)* "The Fourth Amendment test for a valid consent to search is that the consent be voluntary." *Ohio v. Robinette (1996)* Courts have ruled that the voluntariness of the consent to search or to continue the encounter with the police has to be decided by the totality of the circumstances.
5. "A consensual encounter has been defined as simply the voluntary cooperation of a private citizen in response to non-coercive questioning by a law enforcement official. Because an individual is free to leave at any time during an encounter, he is not 'seized' within the meaning of the Fourth Amendment." *Ferris v. State (1999)*

6. The Maryland Court of Appeals compiled a list of factors that courts have found useful in determining whether an individual's encounter with police was consensual. "These factors include:
  - a. The time and place of the encounter,
  - b. The number of officers present and whether they were uniformed,
  - c. Whether the police removed the person to a different location or isolated him or her from others,
  - d. Whether the person was informed that he or she was free to leave,
  - e. Whether the police indicated that the person was suspect of a crime,
  - f. Whether the police retained the person's documents, and
  - g. Whether the police exhibited threatening behavior or physical contact that would suggest to a reasonable person that he or she was not free to leave."
  
7. While first priority in conducting traffic stops, street interviews, etc., is officer safety, there are steps that officers can take to demonstrate the voluntariness of the consent given to search the vehicle or the person of one or more individuals, or to continue the encounter with the police after the purpose of the traffic stop has been fulfilled. Whenever feasible, it is recommended that an officer who has made a traffic stop and would like to continue or extend the encounter with the motorist and/or passengers do the following:
  - a. After the officer issues the citation or verbal warning, the officer should return all documents, such as the driver's license, registration, etc., to the motorist;
  - b. The officer should tell the motorist that while he or she is free to leave and doesn't have to answer any further questions, although the officer would like to ask some additional questions;
  - c. Allow the motorist to remain seated behind the wheel and leave the key in the ignition or the vehicle engine running, if the motorist chooses to do so, while engaging in conversation with the motorist (If the officer prefers the motorist to be outside the vehicle, the motorist should be told that they are free to get out of the vehicle if they so desire. A suggestion or offer is preferred to a command.);
  - d. If there are additional officers on the scene whose presence is not necessary for officer safety or other forms of assistance, ask these officers to leave the scene of the stop; and
  - e. Avoid controlling the movements of the motorist unnecessarily or doing or saying anything that would lead a reasonable person to believe that they are being detained and are not free to leave.

8. Courts are particularly suspicious in cases involving searches incident to traffic stops that are made for relatively minor motor vehicle violations. Officers that suspect a person to be involved in criminal activity and utilize the commission of a traffic violation to further their investigation should attempt to substantiate the traffic violation. Such a traffic case might be through the testimony of civilian witnesses, physical evidence, written statement of the suspect, etc.
9. The U.S. Supreme Court has ruled that a dog sniff conducted during a lawful traffic stop that reveals no other information other than the location of a substance that no individual has any right to possess does not violate the Fourth Amendment. *Illinois v. Caballes (2005)* In the absence of a reasonable, articulable suspicion that illegal drugs are present, the vehicle should only be scanned along the outside of the vehicle. It is important that the scan take place within the time frame needed to normally complete the original purpose of the traffic stop. If a violator is detained any longer than necessary to effectuate the purpose of the traffic stop, without his or her consent, or the reasonable articulable suspicion that criminal activity is present, the subsequent detention may be considered a violation of the motorist's Fourth Amendment rights. The Maryland Court of Special Appeals has ruled that the following factors do not give a police officer "reasonable and articulable suspicion" to detain a vehicle for a dog sniff after the driver had been issued a warning ticket for speeding and the purpose of the stop had been fulfilled:
  - a. The driver's lack of eye contact with the officer;
  - b. Nervousness of the driver;
  - c. The motorist was driving on a major interstate route which the officer knew to be a drug route;
  - d. The presence of three air fresheners in the vehicle;
  - e. The driver's refusal to consent to a search of his vehicle. *Snow v. State (1989)*
10. "When a qualified dog signals to its handler that narcotics are in a vehicle, moreover, that is ipso facto probable cause to justify a warrantless Carroll doctrine search of the vehicle." *State v. Funkhouser (2001)*. Thus, if a K-9 handler conveys the information that his dog has given a positive indication for the presence of illegal drugs in a vehicle, the officers may conduct a warrantless search of the vehicle. The United States Supreme Court has ruled that a police officer may not only arrest the driver, but the passengers of a vehicle containing contraband, if the officer has probable cause to believe that the passengers had knowledge of, and exercised dominion and control over the contraband. *Maryland v. Pringle (2003)* Thus, a driver and passenger(s) may be subject to arrest upon a K-9 dog giving a positive indication for the presence of illegal drugs in a vehicle occupied by them.
11. A vehicle may be searched incident to the arrest of one or more of its occupants. The interior of the vehicle, including any packages, containers or property, either open or closed, may be searched. Locked containers should not be searched as this has been interpreted to preclude the arrestee's ability to reach the contents; unless probable cause exists to believe that contraband may be found inside the container.

12. "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 that is as thorough as a magistrate could authorize by warrant. Where police officers have probable cause to search an entire vehicle, they may conduct a warrantless search of every part of the vehicle and its contents, including all containers and packages, that may conceal the object of the search. The scope of the search is not defined by the nature of the container in which the contraband is secreted. Rather, it is defined by the object of the search and the places in which there is probable cause to believe that it may be found." *United States v. Ross (1982)* However, officers who have probable cause to believe that contraband is being transported in the trunk of a vehicle would not be authorized to search the entire vehicle. If officers have probable cause to search for a specific item, and that item is located, the search must cease unless probable cause exists to search for other items.
13. If a police officer has a legal right to search a vehicle and the occupant refuses to allow the officer to proceed, the officer may use whatever force is reasonable and necessary to search the vehicle. However, the use of unreasonable force to stop a vehicle may make the subsequent search of that vehicle illegal.
14. A roadblock may not be established for the purpose of arbitrarily stopping all traffic so that searches may be conducted. However, courts have upheld the use of a roadblock to stop vehicles in order to permit the search of a particularly described automobile, or a vehicle containing particularly described occupants.
15. Officers are reminded that, in the interests of officer safety or some other legitimate law enforcement concern, a police officer may order the driver and passengers out of a vehicle pending completion of the stop. *Maryland v. Wilson (1997)* Officers should never allow their concern over the admissibility of evidence in court to take precedence over reasonable and necessary actions to provide for officer safety. Therefore, it officers need to exercise a degree of control over the driver and passengers of a vehicle in the interests of officer safety that may preclude a voluntary, extended encounter, the officer safety issues take precedence over the possibility of further questioning and investigation.

#### H. Warrantless Searches - Persons

1. A pat down of a person's outer clothing to detect weapons that could be used to harm the officer or others is distinguishable between a complete search of someone for evidence or contraband. The officer conducting a *Terry* frisk does so because reasonable grounds exist to believe that the person is carrying a weapon.
2. A police officer may make a warrantless arrest for a misdemeanor committed in his presence. In the "officer's presence" denotes that the commission of the misdemeanor is perceptible to the officer's senses, whether they be visual, auditory, or olfactory. *Johnson v. State (2002)* For example, the smell of marijuana coming from an occupied vehicle provides the officer with sufficient probable cause to believe that a crime is occurring in his presence.

3. “A police officer is generally required to obtain a search warrant to conduct a valid search of an individual. Nevertheless, there are exceptions to this requirement, such as when the search of an individual is incident to a lawful arrest.” *Colvin v. State (1984)* “Of course, the right to arrest is not equivalent to making an arrest: the record must satisfactorily demonstrate that an arrest was in fact consummated before a warrantless search incident thereto may be found to be lawful.” *State v. Funkhouser (2001)* Officers are reminded that in order for the results of a search incident to an arrest to be admissible in a court of law, the defendant must be lawfully arrested by the officer prior to being searched by the police. Simply having probable cause to arrest the violator does not justify a warrantless search of the defendant. A custodial arrest should be made prior to conducting the search. (A frisk of someone reasonably believed to be in possession of weapons is a separate matter and is not dependent on the existence of probable cause to arrest the person for a crime. An officer need only have reasonable grounds to believe that the person is in possession of the weapon.) When the arrestee is searched, any contraband or other evidence may be seized. Not only may the arrestee be searched, but also a limited portion of the premises which is within the arrestee’s immediate control and from which he might be able to reach a weapon or destructible evidence. The area to be searched may be expanded if there is cause to believe there may be other persons on the premises who may reasonably be expected to interfere with the arrest or attempt to destroy evidence. A search of the surrounding area for such persons may be made. However, the U.S. Supreme Court has stated: “Such a protective sweep, aimed at protecting the arresting officers, if justified by the circumstances, is nevertheless not a full search of the premises, but may extend only to a cursory inspection of those spaces where a person may be found. The sweep lasts no longer than is necessary to dispel the reasonable suspicion of danger and in any event no longer than it takes to complete the arrest and depart the premises.” *Maryland v. Buie (1990)* In the event that an officer should see an item in plain view that is recognizable on sight as evidence, that item may be seized.
  
4. “A strip search is permissible only if the official has an individualized suspicion that an arrestee is hiding weapons or contraband. This suspicion must relate to the ‘individual,’ not a ‘category of offenders,’ such as drug users. Reasonable suspicion may be based on, but is not limited to:
  - 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.
  - f. Detection of suspicious objects beneath the suspect’s clothing during a field search incident to arrest.” *Nieves v. State (2003)*

5. Any strip search that is conducted must be done with the advance authorization of a supervisor. Further, only officers of the same sex as the arrestee may conduct the search in an appropriate, private place, and out of the view of other detainees or officers not involved in the search.
6. A search for things within a body cavity may be conducted upon authority of a valid search warrant or incident to an arrest. If feasible, an Assistant State's Attorney should be consulted before such a search when made incident to an arrest. The following conditions must be met before a search of a body cavity is permitted:
  - a. There must be probable cause to believe that the person has within his body evidence which should be removed;
  - b. The search must be made by a licensed doctor or nurse working under sanitary conditions and in a medically approved way; and
  - c. Force may be used only to the extent necessary to effect submission to the examination and removal of the item.

#### I. Crime Scene Searches

1. Entry and subsequent warrantless search of premises is permitted in emergency situations when there exists reasonable belief that there is within a need for immediate assistance. Further, law enforcement personnel at the scene of a homicide or other serious offense may conduct a warrantless search to locate victims and/or suspects. *Mincey v. Arizona (1978)*
2. The scope of the search is strictly limited by the existence of the emergency exigent circumstances. Evidence and/or contraband observed in plain view during this restricted search may be properly seized.
3. The fact that a crime has occurred at a specific location does not automatically authorize an unlimited search of the premises. Unless the situation meets the existing exceptions to warrant requirements, including the emergency situation, a warrantless search of a crime scene will be unreasonable and any evidence discovered during the search will be inadmissible at trial.

#### J. Search & Seizure in the Workplace

1. The United States Supreme Court decided the case *O'Connor v Ortega* in 1987. Within the text of that decision, the Court stated:
  - a. "Searches and seizure by government employers or supervisors of the private property of their employees are subject to Fourth Amendment restraints.
  - b. Some government offices may be so open to fellow employees or the public that no expectation of privacy is reasonable. Given the great variety of work environments in the public sector, the question whether an employee has a reasonable expectation of privacy must be addressed on a case-by-case basis.

- c. Requiring an employer to obtain a warrant whenever the employer wishes to enter an employee's office, desk, or file cabinets for a work-related purpose would seriously disrupt the routine conduct of business and would be unreasonable.
  - d. The workplace includes those areas and items that are related to work and are generally within the employer's control.
  - e. Within the workplace context, this Court has recognized that employees may have a reasonable expectation of privacy against intrusions by police.
  - f. It has long been settled that one has standing to object to a search of his office.
  - g. The only cases to imply that a warrant should be required involve searches that are not work related or searches for evidence of criminal misconduct. Ordinarily, a search of an employee's office by a supervisor will be 'justified at its inception' when there are reasonable grounds for suspecting that the search will turn up evidence that the employee is guilty of work-related misconduct, or that the search is necessary for a noninvestigatory work-related purpose such as to retrieve a needed file."
2. Unless an exception applies to a particular case, such as search incident to an arrest, exigent circumstances, etc., police officers should obtain a search warrant prior to conducting a search of an employee's office, desk, file cabinets, or other areas where there may be a reasonable expectation of privacy.
  3. In the event that an administrator or supervisor requests the assistance of the DGS-MCP in conducting a warrantless search, the officer will assess the situation to determine if a search warrant would be appropriate before the area is searched by the police. If a search warrant would be appropriate, the officer will explain to the person requesting assistance that the police cannot participate in the search without a warrant, but can be available in case police service is otherwise needed. For example, if the area to be searched is a common area, utilized by a number of employees, or an area that is open to the public, there would most probably not be any reasonable expectation of privacy. In that situation, the officer would be able to assist. A supervisor should be informed prior to any search of significance or one that may take an appreciable amount of time and effort.
  4. An employee cannot consent to the search of an employer's premises, unless he has been delegated general authority to act as the agent of the employer.