

KANSAS CITY, KANSAS POLICE

GENERAL ORDER

SUBJECT: Search and Seizure

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I. PURPOSE

- A. To familiarize sworn personnel with the legal guidelines governing lawful searches and seizure.

II. GENERAL INFORMATION

- A. All persons are constitutionally guaranteed a reasonable expectation of privacy from government intrusion which varies depending upon the totality of the circumstances and the person, place, or object which may be subject to search or seizure. This order does not intend to cover all possibilities which may arise during the course of duty, but rather to outline certain basic principles pertinent to the subject of search or seizure that may arise frequently and that will affect the admissibility of seized items into evidence at court.
- B. Items that are seized unlawfully are inadmissible in court, regardless of their import, quality, and relevance.
- C. All searches conducted without a warrant are presumed to be invalid. If it is practical to do so given the circumstances, a warrant should be secured based upon probable cause prior to conducting a search. Officers must be prepared to fully articulate their reason(s) for conducting any search without a warrant and should thoroughly describe such reasons in their report(s).

- D. Legal guidelines governing searches and seizure apply to agents of government only, such as police officers, and do not affect items which may have been seen or seized by private persons who are not acting under the color of law. However, citizens acting under the direction of government authority are affected by the same legal requirements as any police officer. Furthermore, citizens are subject to any applicable criminal statutes (e.g. trespass, theft, etc.) for violation of same.

III. OPEN FIELDS

- A. There is generally no reasonable expectation of privacy where open fields and abandoned property are involved. When measures are taken to secure an area or property from the public such as fences or no trespassing signs it becomes more likely that an officer will need probable cause and a warrant to check the area.

IV. PLAIN VIEW SEIZURE OF PROPERTY

- A. No search occurs where plain view is concerned.
- B. Items in plain view that an officer has probable cause to believe are contraband or evidence of a crime may be seized instantly, provided that the officer is lawfully justified to be at the location from which he or she saw such property.
- C. The "Plain Feel" warrant exception allows an officer to seize contraband from a person which is immediately recognizable as contraband to the officer when that officer is conducting a Terry Frisk for weapons. It is important to note that frisks are never conducted for property other than weapons. As an extension of the Plain View doctrine, the governing rule will be whether an officer can articulate his or her justification for the Terry Frisk.

V. TERRY FRISK

- A. The Terry Frisk is a pat down for weapons that is conducted for officer safety based upon an officer's reasonable suspicion, and articulable suspicion, that a subject is armed. It is a limited intrusion performed by feeling over the subjects clothing for a weapon. A weapon discovered in the course of a Terry Frisk may be lawfully seized.
1. The Terry Frisk is not a search.
 2. The Terry Frisk is a limited frisk for weapons only.
 3. Officers may not enter a subject's pockets when conducting a Terry Frisk, unless the officer feels what he or she believes to be a weapon.
 4. When several layers of clothing are worn, such as during cold weather, a Terry Frisk may extend inside the upper layers of clothing.
 5. An officer may search a vehicle, checking the immediately accessible areas for a weapon, based upon articulable suspicion that the occupant is armed.

6. Terry Stops are addressed in General Order 1.08, Arrest Procedures.

VI. SEARCHES BY VALID CONSENT

- A. Consent to search can be obtained from the individual whose property is searched, or from a third party who possesses, or who reasonably appears to possess, common authority over the property. A physically present co-occupant's explicit refusal to permit entry into a home renders a warrantless entry and search unreasonable and invalid even though another present resident consented to the search.
- B. For consent to be valid, two conditions must be met: (1) there must be clear and positive evidence that consent was unequivocal, specific, and freely given and (2) the consent must be given without duress or coercion, express or implied.
- C. The voluntariness of consent is to be determined by the totality of circumstances.
- D. If practical under the circumstances, an officer should use a Consent to Search Form to document consent to search. Officers will only conduct dwelling searches by valid consent after receiving verbal or written consent to search and after receiving approval from a Commanding Officer. Any vehicle that is to be searched pursuant to valid consent will require supervisor notification.
- E. Officers will not enter a residence, dwelling or domicile to conduct a consent to search in the enforcement of a civil agreement.

VII. PROPERTY INVENTORIES

- A. An inventory is not a search.
- B. An inventory of a vehicle or other property shall not be used to subvert the preferred method of securing a warrant based upon probable cause.
- C. Inventories are conducted to secure and account for property that is in an officer's custody, e.g. a vehicle that is going to be towed or an unlocked duffel bag belonging to an arrestee that is going to be placed in the property room for safekeeping.
- D. Vehicle inventories are addressed in General Order 40.08, Tow Procedures.

VIII. SEARCHES INCIDENTAL TO LAWFUL ARREST

- A. When a person is lawfully taken into custody for an offense, a search will be conducted of his or her person at that time for:
 1. Weapons,
 2. Fruits, instrumentalities or evidence of a crime,
 3. Any means of escape. (22-2501)
- B. The area under the arrestee's immediate control may also be searched for the same objects.
- C. Any person arrested shall be searched immediately upon being taken into custody, or, if tactically unsound to do so, at the first practical opportunity.

IX. EXIGENT SEARCHES

- A. Officers may enter a home under emergency circumstances. There is a two part test for when the

emergency doctrine exception for a warrantless search applies.

1. Officers must have reasonable grounds to believe that there is an emergency at hand and that there is an immediate need for their assistance for the protection of life or property; and
 2. There must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched.
- B. The law recognizes that exigency (other than emergency aid) might necessitate entry or search of a home without a search warrant in certain limited cases. When considering exigency, in circumstances involving only a minor crime with no additional emergencies requiring immediate police entry, the Fourth Amendment protections of homes should be strictly enforced.
 - C. Although misdemeanor crimes are not explicitly excluded from this doctrine, officers must consider the factors in Sec. IX (D) that can give rise to exigency that is sufficient to overcome the presumption of unreasonableness that attaches to all warrantless searches.
 - D. An overreaching factor in determining exigency in all cases is the gravity or violent nature of the offense with which the suspect is to be charged. In addition, officers must consider the following non-exclusive list of factors to determine whether a warrantless search was justified by the existence of probable cause and exigent circumstances:
 1. A clear showing of probable cause.
 2. Whether suspect is reasonably believed to be armed.
 3. Strong reasons to believe that the suspect is in the premises.
 4. A likelihood that the suspect will escape if not swiftly apprehended.
 5. The possible loss or destruction of evidence.
 6. The peaceful circumstances of the entry.
 7. Hot pursuit.

X. STRIP SEARCHES

- A. Definition: The removing or rearranging of some or all of a person's clothing, by or at the direction of a law enforcement officer, so as to permit a visual inspection of the genitals, buttocks, anus or female breasts of such person. (K.S.A. 22-2520)
- B. Individuals detained or arrested for traffic violations and other minor offenses of a nonviolent nature shall not be subject to strip searches unless the arresting officer has probable cause to believe that the individual is concealing a weapon or controlled substance.
- C. Field strip searches of individuals shall be conducted only under exigent circumstances with prior supervisor approval.
- D. When authorized by the supervising authority, strip searches will be conducted only in the following manner:
 1. By the fewest number of personnel necessary and only by those of the same sex.

2. Under conditions that cannot be observed by anyone other than those authorized to conduct the search.
- E. When an officer conducts a strip search, that officer will list the following information on an Investigative Report:
1. The name, sex, date of birth, social security number and address of the person searched.
 2. The name and sex of the person conducting the search.
 3. The time, date and place of the search.
 4. The probable cause and what the officer was expecting to find during the search.
 5. A statement of the results of the search. (K.S.A. 22-2521)

- B. Major crime scenes are searched and processed in accordance with the Criminal Investigations Bureau SOP and the Crime Scene Investigations Unit SOP.
- C. Crime scene responsibilities are explained in General Order 40.05, Crime Scenes.

XI. BODY CAVITY SEARCHES

- A. Definition: The touching or probing of a person's vaginal or rectal cavity at the direction of a law enforcement officer. (K.S.A. 2520). The inspection of a suspect or arrestee's mouth is not a body cavity search.
- B. A body cavity search shall be conducted only under the authority of a search warrant specifically authorizing a body cavity search. Application and execution of a search warrant will be approved by a command officer prior to submission and execution. (K.S.A. 22-2522)
- C. Only a licensed physician or registered nurse shall conduct a body cavity search.
- D. Officers may be present during the search, but only those of the same sex as the person on whom a body cavity search is being conducted.

XII. HOT PURSUIT

- A. An officer in hot pursuit of a fleeing felony suspect may make warrantless entry to a constitutionally protected place or structure, and may search any area of the premises where the suspect may be hiding.

XII. PROBABLE CAUSE SEARCHES IN PUBLIC PLACES (CARROLL DOCTRINE)

- A. The courts have recognized that certain situations are exigencies by their very nature. An officer may search a vehicle or personal property in a public place based upon probable cause that particular evidence is in the vehicle or container, and reason to believe that immediate action is necessary to prevent the evidence from being destroyed or moved. The search may extend to any location where the evidence sought can reasonably be hidden. This search is permitted because the mobility of a vehicle or other object makes it impossible to secure a warrant prior to the loss of the evidence sought.
- B. If the vehicle is otherwise going to be towed and impounded or any other container is going to be placed in property, and there is probable cause that evidence is contained inside, then the property should be secured and a warrant should be sought to search the vehicle or object.

XIV. CRIME SCENE SEARCHES

- A. The search of premises in which a crime has occurred, once the emergency situation or exigency at hand is addressed, generally requires either a search warrant or valid consent.