

# Asheville Police Department Policy Manual

**Chapter:** 6 - Search and Seizure

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## Introduction

There are situations where officers may conduct searches of persons, vehicles, or property without first obtaining a warrant. The department is responsible for ensuring that these searches are conducted in full compliance with all constitutional and statutory requirements.

## Policy Statement

It is the policy of the Asheville Police Department (APD) to conduct all warrantless searches in full compliance with all constitutional and statutory requirements.

## Definitions

Real Property: any one or more of the following: land; building or structure on land; a permanent fixture on land; a manufactured home or modular home on land ([N.C. Gen. Stat § 105-164.3](#)).

## Rules And Procedures

### 605.1 Consent Searches

- A. Officers may conduct warrantless searches where consent is freely and voluntarily given by a person with actual or reasonably apparent authority to grant such consent.
- B. In all instances, officers shall inform the person granting consent to search of their right to refuse consent prior to conducting such a search.
- C. Officers should not request consent if they already have probable cause to conduct a search.
- D. If the place to be searched is a vehicle or real property, and consent is the sole basis for the search, officers must obtain the signature of a person with actual or reasonably apparent authority to grant such consent on the APD's [Consent to Search form](#) prior to conducting the search.
  - 1. [However](#), if consent is granted verbally, but the consenting person refuses to sign the Consent to Search Form, the officer will note that fact on the form for statistical tracking. The officer may complete the search, only if the verbal consent is captured on the body-worn camera and documented on the Consent to Search Form.
- E. If consent to search is requested but refused, such refusal will be documented on the Consent to Search Form by the requesting officer. No search will be conducted after the refusal.
  - 1. All Consent to Search Forms will be attached in the Records Management System (RMS) under the incident's main attachment and to be categorized with the same case number as the original stop or investigation in accordance with [SOP 3000 - Case File Documents & Media](#).
- F. A person consenting to a search may limit its scope or duration, and no search based solely on consent may exceed that given scope or duration so long as consent remains the sole basis for the search. The officer should clearly define the area requested to be searched.
- G. The person granting consent may withdraw it at any time. If consent is withdrawn, the officer shall immediately cease the consent search, [absent the development of probable cause](#).

- H. All consent-based searches will be recorded on body-worn cameras until, at a minimum, the search is complete. Recordings and related documentation of consent-based searches will be flagged for supervisory review in the Evidence.com system.

### **605.2 Terry Frisks**

- A. According to the requirements in Terry v. Ohio, an officer may briefly detain a person whom they reasonably suspect is involved in criminal activity and may conduct a limited search for weapons based on a reasonable, articulable suspicion that the person may be armed and dangerous. This is a pat-down for weapons only based on the specific facts related to the suspicion of weapons and is not a full search of the person.
- B. An officer must be able to point to specific and articulable facts that would indicate to a reasonable person that a crime has been, is being, or is about to be committed.

### **605.3 Vehicle Searches**

- A. An officer may conduct a warrantless search of a vehicle any time the officer has probable cause to believe that a crime is being committed in the vehicle or that evidence of a crime exists in the vehicle and the vehicle is on a street, highway, or public vehicular area. Under the motor vehicle exception defined by the United States Supreme Court, a search warrant is only necessary if the vehicle is parked on private property within the curtilage.

### **605.4 Protective Sweeps**

- A. At the scene of a crime on private property, officers may conduct an initial protective sweep for victims and suspects and then secure the scene. Evidence in plain view during this initial sweep may be noted and seized if an exigent circumstance requiring seizure exists. The better practice is to leave the evidence in place, note it, and use the observation to furnish probable cause for a search warrant. Before any further searches or processing of the crime scene can occur, officers must obtain either consent from the person in legitimate control of the property or a search warrant.

### **605.5 Exigent Circumstances**

- A. Officers may conduct warrantless searches of persons or property where exigent circumstances exist and there is not enough time to obtain a search warrant. Officers must have probable cause to obtain a search warrant, but doing

so would result in the destruction or removal of evidence or injury to a person.

Examples of exigent circumstances would be a weapon thrown down on a playground where a child might pick it up, entry into a residence in response to cries for help, etc.

- B. Other situations may arise that require officers to make a warrantless search. Officers should always consider whether probable cause exists for the search and whether there is time to obtain a search warrant. Except for the circumstances noted in this policy, the better practice is to get a search warrant.

By order of:

A handwritten signature in black ink that reads "Robert C. White". The signature is written in a cursive style with a large initial "R" and a distinct "C" and "W".

Robert C. White  
Interim Chief of Police