

**MARYLAND POLICE AND CORRECTIONAL TRAINING COMMISSIONS  
LESSON PLAN**

**COURSE TITLE:** 2019 Stops, Searches, and Arrests Training

**LESSON TITLE:** Searches, Part 1 (Searches in general, Pat-Down, Arrest)

**PREPARED BY:** BPD Education & Training Staff      **DATE:** June 27, 2020

<b>TIME FRAME</b>	<b>PARAMETERS</b>
Hours: 1.5 Day/Time: Day 2 of 2	Audience: Sworn officers of all ranks Number: 36 Space: Classroom
<b>PERFORMANCE OBJECTIVES</b>	<b>ASSESSMENT TECHNIQUE</b>
<ol style="list-style-type: none"><li>1. Students will be able to identify BPD policy requirements for the following searches to the satisfaction of the instructor:<ol style="list-style-type: none"><li>a. Weapons Pat-Down</li><li>b. Search Incident to Arrest, including strip/body cavity-search</li></ol></li><li>2. Students will be able to analyze the role of police legitimacy for the following searches to the satisfaction of the instructor:<ol style="list-style-type: none"><li>a. Weapons Pat-Down</li><li>b. Search Incident to Arrest, including strip/body cavity-search</li></ol></li><li>3. Students will be able to apply policy requirements to scenarios involving the following to the satisfaction of the instructor:<ol style="list-style-type: none"><li>a. Weapons Pat-Down</li><li>b. Search Incident to Arrest, including strip/body cavity-search</li></ol></li></ol>	<ol style="list-style-type: none"><li>1. Facilitated discussion</li></ol>

**STUDENT MATERIALS NEEDED****INSTRUCTOR EQUIPMENT/SUPPLIED NEEDED****Lecture:**

1 Computer w/PowerPoint and internet access (for group/individual feedback questions).  
(Set the computer up in dual-screen mode so that the interactive portion can be brought over to the projected screen)

1 Projector

1 Projector screen (mirrored screens required for larger audience size)

1 bag of simulated CDS

1 tool resembling folding knife

**STUDENT HANDOUTS**

36 x Central District BWC Case Study (Attachment A)

36 x Scars of Stop and Frisk Case Study (Attachment B)

### METHODS/TECHNIQUES

Lesson will be presented by lecture and discussion with live demonstrations.  
This will be followed by scenario-based practical application of legal concepts discussed.

### REFERENCES

The following books and other materials are used as a basis for this lesson plan.  
The instructor should be familiar with the material in these reference documents to effectively teach this module.

*Draft Baltimore Police Department policies:*

*Policy 906, Traffic Citations*

*Policy 1108, DUI/DWI Arrest Procedures*

*Policy 1106, Warrantless Arrest Procedures and Probable Cause Standard*

*Policy 1104, Arrest Warrants*

*Policy 1013, Strip Searches & Body Cavity Searches*

*Policy 1114, Persons in Police Custody*

*Policy 1002, Securing and Interviewing Witnesses*

*Policy 1105, Custodial Interrogations*

*Policy 1007, Search and Seizure Warrants*

*Policy 1109, Warrantless Searches*

*Policy 1505, Foot Pursuits*

*Policy 317, Fair & Impartial Policing*

*Policy 720, Interactions with LGBTQ Individuals*

*Maryland constitutional and procedural law related to seizures*

*Federal constitutional and procedural law related to seizures*

Partial list of relevant cases:

[Katz v. United States](#), 389 U. S. 347, 357 (1967) (expectation of privacy)

[United States v. Jones](#) 565 U.S. 400 (2012) (trespass theory of 4<sup>th</sup> Amendment search)

Partial list of relevant cases:

Search incident to Arrest

[Arizona v. Gant](#) (2009) (vehicle, limits on Chimel)

Chimel v. California, 395 U. S. 752 (1969)(generally)

New York v. Belton, 453 U. S. 454 (1981)(vehicle SIA)

Frisk

[Arizona v. Johnson](#), (2009) (passenger, gangs)  
[Sibron v. New York](#), 392 U.S. 40, 88 S.Ct. 1889, 20 L.Ed.2d 917 (1968)  
[Graham v. State](#), 146 Md. App. 327, 358-59, 807 A.2d 75 (2002)  
[McDowell v. State](#), 407 Md. 327, 341, 965 A.2d 877 (2009) (extent)  
[State v. Smith](#), 345 Md. 460, 465, 693 A.2d 749 (1997)(scope)  
[Ames v. State](#), Court of Special Appeals (2017)(Moylan overview)  
[State v. Sizer](#) (2016)(frisk of bag)  
[Sellman v. State](#) (list of factors)

#### Frisk of Vehicle

[Michigan v. Long](#), 463 U. S. 1032 (1983)  
[McDowell v. State](#) (2009) Frisk of container in vehicle  
[Cross v. State](#) CoSA (2005) locked glove compartment

#### Probable Cause Search of Vehicle

[United States v. Ross](#), 456 U. S. 798, 820–821 (1982)  
[Wyoming v. Houghton](#), 526 U.S. 295, 301 (1999)

#### Inventory Search

[Colorado v. Bertine](#), 479 U. S. 367, 372 (1987).  
[Florida v. Wells](#), 495 U. S. 1, 4 (1990)



### GENERAL COMMENTS

In preparing to teach this material, the instructor should take into consideration the following comments or suggestions.

*This lesson plan is intended for use with experienced instructors who have significant teaching experience, moderate technology experience, and exceptional knowledge of 4<sup>th</sup> Amendment law.*

# LESSON PLAN

## TITLE: Searches, Part 1

PRESENTATION GUIDE	TRAINER NOTES
<p>Introduction:</p> <p>In yesterday's module on Police Interactions we touched briefly on Weapons Pat-Downs. Now we're going to look more closely at pat-downs and at various types of warrantless searches.</p> <p>To be clear: the new policies allow searches; they just require that we incorporate procedural justice.</p> <p>In the past, we've frequently only looked at whether we are <b>ALLOWED</b> to conduct a search. We also need to look at whether we <b>SHOULD</b> conduct the search and, if so, <b>HOW</b> that search should be conducted.</p> <p>We'll start with a case study from Baltimore PD. Please watch the Central District BWC video and then we'll do a group activity.</p> <p>Here is the context for the video: An officer received information from a citizen that he knew and had reason to trust. The information was that a young black male wearing a red shirt was at a specific public location downtown, on a bench, and he had a gun in a bag/satchel with him. The officer contacted his commander, who organized several officers to respond to the location and investigate. The BWC video that you'll see is from one vantage point, that of the commander.</p> <p>As you watch this video, consider:</p> <ul style="list-style-type: none"> <li>• What level of interaction is this for the primary suspect?</li> <li>• What about the women that were with him?</li> <li>• Were the actions observed justified?</li> </ul>	<p><b>Slide 1</b></p>  <p><b>Slide 2 – 6 minute video</b></p>  <p><b>Group Exercise (26-30 minutes)</b></p> <p>Play the 6-minute video, then have groups discuss the case study and develop answers to questions (Attachment A) for 10 minutes, then have report outs and class discussions for 10 minutes. For report outs, have one group answer Question 1, another group Question 2, etc.</p> <p>After showing the video, ask if anyone heard what the suspect said prior to being arrested (Admitted "I</p>

<p><b>Group Activity</b> Meet in your groups and discuss the case study as a Police Interaction and as a Search. Develop answers to the questions on the handout and be prepared to report out.</p> <p><b>ASK: Was this a voluntary contact? Why or why not?</b></p> <p><b>ASK: Was this a field interview? Why or why not?</b></p> <p><b>ASK: Was this an investigative stop? Why or why not?</b></p> <p><b>ASK: What is the difference between the information officers received here and an anonymous phone call saying that a guy with a red shirt has a gun in Hopkins plaza?</b></p> <p><b>ASK: Was there justification to search the suspect's bag (container)? Why or why not?</b></p>	<p>got a gun”)</p> <p>Expect some discussion about the tactics used by the officers. Their explanation is that they had control of the situation and were confident they could keep the suspect from getting to the gun.</p> <p>Correct answer: No, it was investigative in nature.</p> <p>No, the officers had RAS and the suspect was not free to leave.</p> <p>Yes, the officers had RAS to stop the suspect based on information from a known witness, the suspect matched the description, and the suspect was in the identified location.</p> <p>An anonymous phone call by itself would not supply RAS without confirmation by the officer. Here, the officers had the ability to meet face to face with the complainant and size him up. Additionally, the complainant had previously provided valid information. The officers' observations were also key.</p> <p>Yes. 1) RAS of crime + armed + dangerous. The officers had face-to-face interaction with a first-hand witness who provided him with an accurate and recent description, explained how he knew this information, and was subject to</p>
--	---



**OPTIONAL - What level of interaction was this with the two young women?**

Investigative stop. Test: would a reasonable person feel free to walk away? They were given direction and “held,” told that they could leave after we identified them.

**OPTIONAL - Was there RAS to detain them?**

It's difficult to know based on the video alone. It would depend on the information provided and observations of them not shown on BWC. While it's not illegal to be with someone who illegally has a gun and marijuana, the circumstances might suggest that they were involved.

**OPTIONAL - Did they have to provide ID?**

No. But it may have been reasonable to detain them until they were identified.

**OPTIONAL - What would you do if one of them ran?**

It would depend on the crime for which you believe you had RAS. If you believe that she had another handgun, that would be handled differently than if you believed that she just had marijuana.

The aim of this lesson is to:

- Identify BPD policy requirements for various types of searches.
- Apply BPD policy requirements to various types of searches.
- Understand the potential impact of various types of searches on public trust.

## Slide 3

## Objectives

- Identify BPD policy requirements for various types of searches.
- Apply BPD policy requirements to various types of searches.
- Understand the potential impact of various types of searches on police legitimacy.

## CONTENT

### Searches

The best way to ensure that a search is valid is with a search warrant. However, there are times when a search warrant either can't be obtained or it is unreasonable to obtain one under the circumstances.

That being said, when in doubt about an exception to the Search Warrant requirement, the member should take the time to obtain a Search Warrant. BPD Policy 1007 covers *Search and Seizure Warrants*.

We're going to look at these common search-warrant exceptions in this class, but keep in mind that we're looking at searches in a different way now. Searches aren't a test of doing the most you legally can get away with; they're a way of protecting the community and letting the community know that we're there to protect them.

**ASK: So what is a search?**

**ASK: What are the legal requirements for conducting a search?**

## Slide 4

### When can you conduct a search?

Weapons Pat Down	Arrest
Consent	Exigent
PC Vehicle	Inventory

Requires either:

- A search warrant (preferred)
- OR a recognized exception to the warrant requirement such as:
- Weapons Pat Down
- Search Incident to Arrest
- Consent
- Exigent Circumstances
- PC Search of a Vehicle
- Community Caretaking (inventory searches, etc)

Generally, it's an intrusion into an area where someone has a reasonable expectation of privacy

It can also happen when you trespass on someone's property with the intent to discover evidence (such as when you put a GPS tracker on someone's car)

Search warrant or established exception such as:

- Weapons Pat Down
- Search Incident to Arrest
- Consent
- Exigent Circumstances
- PC Search of a Vehicle
- Community Caretaking (inventory searches, etc)

**ASK: Could a legal search impact public trust and police legitimacy?**

**Prep for case study:**

Watch this short video and then each group will be assigned one question to discuss and share out.

From 2002 to 2011, NYPD dramatically increased the number of frisks it was conducting, going from 97,000 stops in 2002 to over 685,000 stops in 2011.

According to data released by NYPD at <https://www1.nyc.gov/site/nypd/stats/reports-analysis/stopfrisk.page>, they conducted frisks in over 55% of those stops in 2011. Out of those 381,000 frisks, they only recovered firearms in 819 cases. Any kind of

**PREP FOR GROUP**

**ACTIVITY- Have students divide their chart paper into 6 boxes and label them as shown**

Yes, both positively and negatively.

Negatively if the officers conducted the search without “fairness” and “impartiality”

- People expect to be secure in their “houses, papers, and effects.”
- They expect police to operate within the law.
- Remember, it was government intrusion by the British that led Americans to declare their independence and to put the Bill of Rights in the U.S. Constitution.

**Slide 5 – 3 minute video**



**Group Exercise (12 minutes)**

Have the class watch the case study. Break into groups for 3 minutes, assigning one question to each group (Attachment B). Then have the class share out their answers (6 minutes).

weapon (including knives, etc) was recovered in only 2% of frisks (8,263 out of 381,704).

As you watch this video, consider the impact that these searches had on the people searched, the community, and even the officers who were directed to take these kinds of actions.

**ASK: What impact do these frequent searches have on the larger community?**

**ASK: Based on the information in the video, how well did the NYPD actions conform to BPD policy?**

**ASK: How could we do better? (How can officers do their job and perform searches without negatively impacting police legitimacy?)**

Answers could include:

- Negative
- Makes him feel like a target for no legitimate reason
- No respect for police
- No trust in police

Answers could include:

- Negative
- Police as adversaries
- Makes them feel targeted
- Less trust and respect for police

Answers could include:

- Not at all
- Did not conform to law or policy – no RAS
- In fact, they were found to be unconstitutional and NYPD was ordered to cease

Demonstrate fairness and impartiality

Fairness:

- Dignity
- Voice
- Transparency
- Trustworthiness

Impartiality – lack of bias

Before we get into several different types of searches, here are some basic requirements. Officers conducting searches should adhere to procedural justice principles and fully document their actions.

**ASK: Which of these support Dignity?**

**ASK: Which of these support Transparency?**

**ASK: Which of these support Trustworthiness?**

While we're on the topic of gender, it's important to clarify how that affects searches of persons. Whenever possible they should be same-gender, and if not they should be witnessed and documented. Remember, same-gender is based on the person's gender identity, which is what they say their gender is.

Unless there are exigent circumstances, the focus is on what will make the detainee feel safe.

## Slide 6

### Conducting a Search

#### Requirements



- Explain the reason
- Search courteously
- Use professional language
- Minimize disruption
- Return property to pre-search condition to the extent possible
- Document all searches

Group exercise – For each of these requirements, identify the Procedural Justice pillar that it supports.

Search courteously  
Use professional language  
Minimize disruption  
Return to pre-search condition

Explain the reason for the search  
Document searches  
Use BWC

Use professional language  
Minimize disruption  
Return to pre-search condition

## Slide 7

### Searches and Gender



- No cross-gender searches unless there is a safety/exigency concern.
- A cross-gender search depends on gender identity
  - What makes them feel most comfortable/safe?
  - If you don't listen to the person's request, put the reason on BWC
- If you have to do a cross-gender search, have a witness

<p><b>ASK: How would you know what someone's gender identity is?</b></p> <p><b>ASK: What would <u>not</u> be appropriate in determining someone's gender identity?</b></p> <p><b>ASK: Officer Jones is a male officer who is placing Casey Smith under arrest. Smith has stubble on their face, but is wearing feminine clothing. Should Officer Jones conduct the search?</b></p> <p><b>ASK: What would lead Officer Jones to call for a female officer?</b></p> <p><b>ASK: How should an officer perform a search on someone who identifies as one gender but still has the anatomy of the other?</b></p>	<p>If it's important, like in a search, respectfully ask them if you're unsure.</p> <p>Requiring identification, or demeaning them.</p> <p>He needs to resolve Smith's gender identity and ask preference. If Smith prefers a female officer conduct the search, Jones would only search if there were exigent circumstances where failure to search carries an unreasonable risk of injury or destruction of evidence.</p> <p>Again, he needs to resolve Smith's gender identity and preference. If Smith prefers that a female officer conduct the search, then that should be done in most cases.</p> <p>If called on to conduct such a search, perform as trained for cross-gender searches (back of the hand for intimate areas, etc).</p>						
<p><b>Weapons Pat Down</b></p> <p><b>Group Exercise</b></p> <p>Prior to each section, have groups work together to write what they know about that type of search. Groups will teach-out to introduce section.</p> <p>Have Group 1 teach out the Weapons Pat Down portion.</p>	<p><b>Slide 8</b></p> <div data-bbox="971 1402 1435 1661"> <div> <p><b>When can you conduct a search?</b></p> <table border="1"> <tr> <td>Search Incident to Arrest</td> <td>Arrest</td> </tr> <tr> <td>Consent</td> <td>Exigent</td> </tr> <tr> <td>PC Vehicle</td> <td>Inventory</td> </tr> </table> </div> <div> <p>Requires either:</p> <ul style="list-style-type: none"> <li>• A search warrant (preferred)</li> <li>OR a recognized exception to the warrant requirement such as:</li> <li>• <b>Weapons Pat Down</b></li> <li>• Search Incident to Arrest</li> <li>• Consent</li> <li>• Exigent Circumstances</li> <li>• PC Search of a Vehicle</li> <li>• Community Caretaking (inventory searches, etc)</li> </ul> </div> </div> <p>As each type of search is covered in the upcoming slides, ask groups to refer back to what they wrote</p>	Search Incident to Arrest	Arrest	Consent	Exigent	PC Vehicle	Inventory
Search Incident to Arrest	Arrest						
Consent	Exigent						
PC Vehicle	Inventory						

As they do so, ask guiding questions to probe the contours of the below lesson.

Advance to slide once the group has covered the topic and ask instructor questions below to the class and/or group.

As a reminder, this is what is required for a weapons pat-down.

- RAS that the suspect is/has/is-about-to commit a crime AND
- RAS that the suspect is armed AND
- RAS that the suspect is dangerous

**ASK: If you see a person walking down the street and you see an indicator that they are armed, such as “printing” (protrusion of the outline of a gun under their clothing), can you conduct a weapons pat-down?**

**ASK: What would be some circumstances that would provide RAS to stop the person?**

down and reconsider.

### Slide 9

- A minimally intrusive check for weapons
- Requires RAS that:
  - The person is/has/is-about-to commit a crime
  - AND the suspect is armed
  - AND the suspect is dangerous



- First you need RAS to stop them – that they are committing, have committed, or are about to commit a crime (wear/carry/transport is a crime, so that would suffice – keep in mind that lawful possession is a defense that can be figured out after the stop is made and the weapon separated from the person)
- You also need RAS that they are dangerous, though gun + crime may strongly suggest dangerousness.
- Known armed robber
- Person who is known to be prohibited from carrying a gun
- Person walking back and forth in front of a liquor store, appearing to be casing the place for an opportunity to rob it

<p><b>ASK: In the case of a person walking back and forth in front of a liquor store, appearing to be casing the place for an opportunity to rob it, and you can see the outline of a gun under their clothing, can you conduct a weapons pat-down?</b></p> <p><b><u>STUDENT DEMONSTRATION</u></b>  Guidelines- This individual has been pointed out by the victim as having threatened him with a knife that he keeps in his pocket.</p> <p>Safety Guidelines –</p> <p>Start in search position</p> <p>Advise student not to use any force to conduct the search</p> <p><b>ASK: What do you notice about how this pat-down is being conducted?</b></p> <p><b>ASK: Pocket knives like this are legal. Why was the student allowed to remove the folding knife?</b></p> <p><b>ASK: Once you find something the size of a pocket knife in someone's pocket, are you allowed to grip it to make sure it's a weapon before you pull it out?</b></p>	<ul style="list-style-type: none"> <li>• Yes, that would meet all 3 RAS requirements</li> </ul> <p><b>STUDENT DEMONSTRATION</b>  <b><u>Have student demonstrate proper weapons pat-down on an instructor</u></b></p> <p>Instructor has:  1 tool resembling <b>folding pocket knife</b>  and 1 <b><u>BAG</u></b> of simulated CDS in pocket</p> <p>Expected answers:</p> <ul style="list-style-type: none"> <li>- Limited search</li> <li>- Control of suspect</li> <li>- Weapons only</li> <li>- Not manipulating</li> </ul> <p>Because it doesn't matter that the weapon is legal. It matters if it can be used to hurt someone during the stop.</p> <p>Yes. Because that's LESS intrusive than just taking it out, you are allowed/encouraged to do this. But only for things you think might be WEAPONS.</p>
---	---

**ASK: Why was the student not allowed to remove the bag of drugs?**

**ASK: Could the officer grab the bag of CDS to see if it's drugs or not?**

**OPTIONAL – What COULD you do if you feel like it MIGHT be drugs but aren't sure?**

**ASK: What if the suspect was wearing a satchel or fanny pack?**

And these are the guidelines if there is RAS for a weapons pat-down and the suspect has a bag, purse, satchel, or other kind of container.

Notice that it's not automatic. Unless there is RAS specific to the bag, it's a safety issue so if the bag can be safely moved away, the safety issue is resolved.

Refer back to video.

**ASK: In the case study we watched at the beginning of class, where could the officers have placed the bag without there being a safety concern?**

**ASK: What safety issue would there have been in returning the container to the suspect in the case study we watched at the beginning of this class?**

Because there was no way that it was a weapon and it wasn't immediately apparent that it was CDS.

No. The ONLY time you can move something around during a pat down is if you reasonably think it might be a weapon.

Ask them. See if they'll give consent to search.

Expected answer:

- Separate if safe
- Conduct pat-down if not

### Slide 10

**A weapons pat-down may only include a container IF:**



- It's within reach
  - AND it could contain a weapon
  - AND it can't be safely moved somewhere
- OR it can't be safely returned

Note: If you develop RAS that there is a weapon within the container, you may check the interior of the container FOR THE WEAPON ONLY and separate the weapon from the suspect.

There was no safe place to put the bag. They did not have a car nearby and the suspect's friends were in the area.

Also consider: would it have been safe to place the bag outside of his reach and then return it to him?

He had a gun in it which presented a significant safety concern.

A weapons pat-down should be same-gender if that is possible and reasonable. However, since you only do a weapons pat-down based on RAS that the suspect is armed and dangerous, if a same-gender officer is not readily available, you are not required to wait for one to arrive.

Because a weapons pat-down IS a search (it's an intrusion into someone's reasonable expectation of privacy), we have to justify it with more than a citizen contact slip.

It's important to avoid boilerplate language:

- not "he fit the characteristics of an armed person" but "I saw the outline of a gun under his shirt"
- not "he prepared to hit me" but "he clenched his fist and drew his right arm back"
- not "he was suspiciously walking up and down the sidewalk" but "he walked back and forth in front of the liquor store 5 times, looking in the window and appeared to be waiting until all the customers left"

## Search Incident to Arrest

### Group Exercise

Prior to each section, have groups work together to write what they know about that type of search. Groups will teach-out to introduce section.

Have Group 2 teach out the Search Incident to Arrest portion.

As they do so, ask guiding questions to probe the contours of the below lesson.

Advance to slide once the group has covered the topic and ask instructor questions below to the class and/or group.

## Slide 11

### Gender and Weapons Pat-Down



- Same-gender preference
- "Armed and dangerous" suggests waiting for a same-gender officer isn't safe
- Do NOT conduct a weapons pat-down to evaluate gender

## Slide 12

### Weapons Pat-Down Documentation



- Requires a report
  - No boilerplate language
- If not arrested: Provide 309
- If arrested: No Form 309 is required

## Slide 13

### When can you conduct a search?

Weapons Pat Down	Search
Consent	Exigent
PC Vehicle	Inventory

- Requires either:
- A search warrant (preferred)
- OR a recognized exception to the warrant requirement such as:
- Weapons Pat Down
  - Search Incident to Arrest
  - Consent
  - Exigent Circumstances
  - PC Search of a Vehicle
  - Community Caretaking (inventory searches, etc)

Searches incident to arrest are one of the most common types of searches that police make.

**ASK: What's the purpose of a search incident to arrest?**

Make sure that your search incident to arrest is limited to reasonable attempts to uncover these items.

Besides searching the arrested person, you can search the IMMEDIATE area around the suspect

- Anywhere the suspect could immediately reach to grab a weapon or hide/destroy evidence.
- Once the suspect is moved from the area, you can NOT search there incident to arrest


**ASK: If this woman was being placed under arrest, where could you search incident to the arrest?**

As part of an arrest, you are allowed to perform a "protective sweep." This is a check for PEOPLE who might be able to interfere/endanger the arrest. Once the arrest has cleared the area, no protective sweep is allowed.

## Slide 14

- Search pockets
- Search property on the person
- Ok to adjust clothing as long as it doesn't expose private area or undergarments (other than waistband)

### Search Incident to Arrest




Expected answers:

- Look for weapons
- Look for evidence of the crime
- Look for contraband

## Slide 15

### Searching the IMMEDIATE AREA incident to arrest

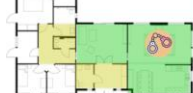


- Anywhere the suspect could immediately reach to grab a weapon or hide/destroy evidence.
- Once the suspect is moved from the area, you can NOT search there incident to arrest.

Her person, in/under couch, around room, on/under tables, on/under chairs, etc.

## Slide 16

### Protective Sweep



Arrest allows a protective sweep in the IMMEDIATE AREA of the arrest.

Beyond that requires RAS that there's a person present who poses a threat.

Remember: A protective sweep is a search for people.

Policy: A search warrant is necessary to seize anything not in plain view.

**ASK: If you arrested an individual where the handcuffs are, where could you do your protective sweep?**

Remember that once someone's moved from an area, you can't generally search that area incident to arrest.

Normally, that's the only consideration. HOWEVER, with vehicles there's a special exception to the search incident to arrest.

Once the driver is secured, you can search the passenger compartment of a vehicle incident to arrest if it's reasonable to believe that evidence **RELATED TO THE ARREST** will be found there. Remember: this search is limited to the passenger compartment only and is only if there's reason to think evidence related to the arrest is in there.

**ASK: So if the driver is handcuffed and in the back of your squad car, can he gain access to his car?**


**ASK: What about if the suspect is handcuffed and seated on the curb?**

**ASK: For which types of crimes might you arrest a driver and reasonably look for evidence in the passenger compartment of the car?**

Immediately adjoining rooms unless you had RAS that there were other people in the house who might interfere  
But only in parts of that room where a person could reasonably be found.

#### Slide 17

**Search of a VEHICLE Incident to Arrest**



Police may search the passenger compartment incident to a recent occupant's arrest **only if**:

- RAS the car contains evidence related to the arrest

OR

- The suspect is unsecured AND in reach of that area

*If students mention inventory search, explain why that is NOT a tool to be used to search for evidence. Further detail on inventory will be provided in part 2.*

No. There's no reasonable chance that he could access his car, so that part of the search incident to arrest doesn't come into play.

Only if it's reasonable to believe he could get up and grab a weapon from that area of the car

Firearm violations, CDS violations, etc.

## Strip Searches

Before we can discuss how and when to conduct a strip search, we need to make sure that everyone understands what the department considers a strip search.

**ASK: A strip search is a special case that requires special limitations and protections. Why?**

**ASK: How is this similar or different from our current definition of a strip search?**

Strip searches must be legally justified, based on probable cause, and reasonable.

“legally justified” means you’re already allowed to search them (incident to arrest, search warrant, etc)

AND you perform the search in a legal way

Must be reasonable considering:

- Scope - How far you’re going
- Manner - How you conduct the search
- Place - Where you conduct the search

balanced against the need to search

**ASK: What are we concerned about regarding the scope of a strip search?**

**ASK: What are we concerned about regarding the manner of the strip search?**

**ASK: What are we concerned about regarding the place of the strip search?**

## Slide 18

Exposing the person's:

- Private area
- Or undergarments

NOT a strip search:

- Medical aid
- Exposing/manipulating waistband of undergarments

### Strip Searches



Expected answer:

It’s an extreme invasion of privacy / bodily integrity.

It now includes exposing undergarments that cover sensitive areas

## Slide 19

**When can a Strip Search be performed?**



- Must be legally justified
- ONLY if you have Probable Cause that a person is concealing:
  - evidence
  - contraband
  - or a dangerous weapon

The degree to which a person’s privacy is being intruded upon

Safety, sanitation, privacy, human decency

Privacy and safety

Preference: secure, private area of

**ASK: What are we concerned about regarding the justification for the strip search?**

A strip search **MUST** be performed in a private area of a police district/facility.

The only exception is:

- where the member has Probable Cause to believe the arrestee is concealing a deadly weapon (ONLY – no field strip searches for CDS, etc).
- the arrestee is a threat to himself or others,
- and the arrestee cannot be transported safely to conduct the Strip Search in a district station or headquarters.

Strip Searches, except the limited category of Field Strip Searches for deadly weapons (next slide), must be approved prior to the search by a permanent-rank supervisor, lieutenant or above.

In seeking approval, members shall state to the permanent-rank supervisor the particularized factual basis for Probable Cause, including identifying the item the person is concealing, and the member shall record the statement on the member's body-worn camera. Members will document the supervisor who provided approval on a Supplemental Report, Form 7.

**ASK: The lieutenant approval requirement goes above the legal requirements for a strip search. What reasons might the department have for adding these protections?**

police station

We shouldn't expose people's sensitive areas without a significant reason

**Slide 20**

**Where can a Strip Search be performed?**




**ONLY** in a private area of a police district/facility  
**UNLESS**

- PC they have a **deadly weapon**
- They pose a threat to self/other
- Can't be transported safely to a police facility for search

**Slide 21**

**Supervisor Approval**



- A strip search can **ONLY** be approved by a permanently ranked LIEUTENANT or above
- You must explain: the Probable Cause to believe they have evidence/ weapon/contraband, including identifying the suspected item
- You must record the statement on BWC
- Document the supervisor who provided approval

History of strip searches in public places and without sufficient supervision / protections for suspect dignity.

A Field Strip Search for anything other than a deadly weapon is not permitted. Members must obtain express approval for any Field Strip Search from a permanent-rank supervisor, lieutenant or above unless taking the time needed to obtain approval would pose an imminent threat to the safety of the arrestee, a member, or the public

Before conducting a strip search – look for alternatives, get approval, and explain to the suspect why you are doing it.

Mirandize the suspect, which is a change from past practice.

**ASK: What do you see here that supports Fair Policing?**

Case Study:

Orlando man was allegedly strip searched incident to arrest for CDS possession at a gas station.

**ASK: Assuming the officer had PC that more CDS was in his underwear, what was the biggest issue here? Scope? Manner? Or Place?**

## Slide 22

### Field Strip Search Approval



Lieutenant or above approval is required UNLESS the time to do so would pose an imminent threat to safety

AND a Field Strip Search is allowed:

- Concealing a deadly weapon
- A threat to himself or others
- AND cannot be transported safely to a private area

## Slide 23

### Before You Conduct a Strip Search



- Try using less intrusive means
- Explain the reason for the search
- If safe, give the suspect a chance to get it themselves
  - If you are going to do this, Mirandize them before letting them retrieve it

These focus on preserving the dignity of the person and giving them as much say as is reasonably possible in what's going to happen to them.

## Slide 24



Place.

This was done out in the open with no apparent regard for the man's

**ASK: If you had PC that the man had CDS in his underwear, what could be done?**

Document the strip search on BWC unless the suspect refuses. In that case document the refusal on the BWC.

#### Cross-gender Strip Searches

Members shall not conduct any Cross-Gender Strip Search. There is one exception to this prohibition: a member may conduct a Cross-Gender Field Strip Search on the rare occasion when (1) the member has Probable Cause to believe the arrestee is concealing a deadly weapon and (2) waiting on a member of the same gender identity as the arrestee, or attempting to transport the arrestee to a district station or

privacy.

Secure arms and transport to district  
Have officers ride with him and transport to district

Is there anything life threatening about CDS in his underwear? If not, there is no need to act immediately.

*Facilitator note: the remaining slides on strip searches and body cavity searches provide important information, but it should be sufficient to key on a few points without covering all the information in detail. Look for any confusion or questions from the class.*

#### Slide 25

##### Strip Search BWC Requirements



- Before beginning the Strip Search:
  - BWC should already be activated
  - Ask if they want the search to be on BWC
  - Comply with the wishes of the person
- If the person doesn't want it recorded, document this using the BWC and end recording
- After the search, **wait 30 seconds** before re-activating

#### Slide 26

##### Cross- Gender Strip Search

- ONLY where:
- PC the arrestee is concealing a deadly weapon
  - AND waiting on a member of the same gender identity or attempting to transport would pose an imminent risk to safety
- Require 95 (Administrative Report) kept with file

headquarters, would pose an imminent risk to the safety of the arrestee, a member, or the public.

The gender identity of the arrestee being Strip Searched may be determined by asking the arrestee being Strip Searched their gender identity.

If the arrestee expresses a preference about the gender identity of the member who will conduct the Strip Search, that request should be honored. In the absence of a stated preference, the gender identity of the arrestee being Strip Searched shall be consistent with the gender identity of the member conducting the Strip Search, except on the rare occasion explained above.

All Cross-Gender Strip Searches shall be documented on an Administrative Report Form 95 and attached to the arrestee's file.

All searches will be documented, but strip searches have special documentation requirements due to the degree of intrusion.

While strip searches are intrusive, body cavity searches are the most intrusive searches. Because of the extreme level of intrusion, even more stringent requirements are in place.

Note the definition of a body cavity search.

## Slide 27

### Documenting a Strip Search



309: Following a Strip Search, provide the arrestee a Form 309

Report: Explain why a strip search was required along with all relevant details

Review: Report must be reviewed by a command level official within 48 hours of the search

## Slide 28

### Body Cavity Search



Any visual or manual inspection of a person's:

- Mouth\*
- Nose\*
- Ear canal\*
- Anus
- Genital region
- Internal organs

\* NOTE: Visual inspection or minor manual manipulation of a person's ear, nose or mouth are exempt from the supervisory approval, warrant and reporting requirements for Body Cavity Searches.

Body cavity searches are performed by medical personnel based on a search warrant. In such a situation, a BPD member should be present to observe the execution of the warrant.

Officers may employ “minor manual manipulation” such as using fingers to move the lips, tongue, or cheek of someone who willingly opens their mouth to allow for closer inspection. However, NO FORCE beyond minor manipulation may be used absent observable and articulable facts that the person's safety is in imminent danger (e.g. choking).

Rather than try to force open the person’s mouth, officers should use de-escalation such as “verbal persuasion and warnings, slowing down the pace of an incident, waiting out the person.” See Policy 1115, pp. 6-7.

**ASK: What should you do if you see someone swallow suspected CDS?**

So far we’ve talked about several aspects of searches incident to arrest:

- Searching the suspect
- Searching the immediate area
- Protective sweep
- Search of a vehicle incident to arrest
- Strip searches

## Slide 29

### Body Cavity Search



- Requires a Search Warrant
- ONLY with PC that a person has attempted to hide evidence of a crime, weapons, or contraband in a Body Cavity
- Conducted by a licensed medical professional under sanitary conditions
- BPD member will be present for execution of warrant

## Slide 30

### Force during Cavity Search




- Force is NOT allowed to recover evidence
- Get medical attention
- NO FORCE beyond minor manipulation may be used absent observable and articulable facts that the person's safety is in imminent danger (e.g. choking)

Call a medic.

Facilitators should remind learners that attempting to force someone’s mouth open to retrieve an object exposes the officer to the risk of injury, and the officer may not be entirely certain that the object is in fact dangerous or poisonous to the person until the officer forcibly removes it.

Check for responses. The objective is just to help them focus their thinking on this one category, search incident to arrest.

<ul style="list-style-type: none"> <li>• Body-cavity searches</li> </ul> <p>Look back at your chart paper and review what you wrote in the Arrest quarter. Add anything that seems to be new or different from past practice and past policy. Any observations based on what we've gone over?</p>	
<p><b>Questions?</b></p>	<p>Resolve any outstanding questions Break before beginning Part 2 <b>Slide 31</b></p> 

## **Attachment A**

### **Central District BWC Case Study**

1. Was this a voluntary contact? Why or why not?
  
2. Was this a field interview? Why or why not?
  
3. Was this an investigative stop? Why or why not?
  
4. Was there justification to search the suspect's bag (container)? Why or why not?
  
5. What did you see in this incident that might affect public trust?
  
6. What if it turned out there was no gun in the bag or on the suspect's person? What should the officers do in that case?

## **Attachment B**

### **Scars of Stop and Frisk Case Study**

1. The basis for a stop is RAS that a crime has been or is being committed. According to Tyquan, what was the basis for his stops?
2. Is it possible that the officers DID have RAS for the stops? If so, what could have been done to let Tyquan know that?
3. The basis for a frisk (weapons pat-down) is RAS that the suspect: has committed a crime, is armed, and is dangerous. According to Tyquan, what was the basis for his frisks?
4. According to Tyquan, he was frequently taken to the police station and held for hours. As best we can tell, what was the basis for these arrests?
5. What impact do these frequent searches have on this youth?
6. What impact do these frequent searches have on the larger community?
7. Based on the information in the video, how well did the NYPD actions conform to BPD policy?