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302.1 PURPOSE

Both the federal and state Constitutions provide every individual with the right to be free from unreasonable searches and seizures. This policy provides general guidelines for Bothell Police Department personnel to consider when dealing with search and seizure issues. It is the policy of the Bothell Police Department to respect the fundamental privacy rights of individuals. Members of this department will conduct searches in strict observance of the constitutional rights of persons being searched. All seizures by this department will comply with relevant federal and state law governing the seizure of persons and property. Whenever practicable, officers are encouraged to contact a supervisor to resolve questions regarding search and seizure issues prior to electing a course of action.

302.2 STOP AND FRISK

Stop and frisk applies to persons in vehicles as well as on foot. If sufficient reasonable suspicion to believe there are **readily accessible** weapons existing within the vehicle, the officer may search the vehicle. The officer may not search a locked or inaccessible area of the vehicle, but may check for weapons in areas readily accessible to person(s) and seize objects in plain view.

302.2.1 STOP

An officer may temporarily detain a person for the purpose of determining the circumstances surrounding the person's presence which led the officer to believe that the person may be involved in a crime that was committed, was being committed, or was about to be committed. Crime does not include a non-traffic civil violation.

Specifically, the officer may use police authority to stop and:

- Identify a person (Persons may lawfully refuse to identify themselves)
- Request an explanation of the person's actions
- Establish probable cause to arrest through questioning. Miranda warnings are not required during the stop and frisk. Warnings will become necessary if an arrest is made and the person is taken into custody and questioned. All arrested persons shall be informed of their right to counsel, even if no questioning occurs.

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- Gather information that may create probable cause at a later date
- Determine whether or not a crime has been committed to which the officer may link the person's suspicious activity
- Prevent the commission of a crime
- Resolve suspicions about the person

Officers will not make random stops for identification. A stop must be based on **reasonable suspicion of criminal activity** in the past, present, or immediate future. Pretext stops are not permitted.

If not in uniform, the officer conducting a stop will identify him/herself as a police officer as soon as practical and safe to do so. It is recommended that when a stop is to be made, a uniformed officer be called to make the stop.

An officer conducting a stop will use the least forceful means necessary to detain the person. The officer will first use verbal orders when possible then progress to the use of physical restraint only if necessary to prevent the person from leaving.

An officer may detain a person for only the minimum amount of time needed to conduct the interview and check the person's actions.

302.2.2 VEHICLE STOP

Driver

If an officer has probable cause to stop a car for a traffic infraction, the officer may, incident to such stop, take whatever steps necessary to control the scene, including ordering the driver to stay in the vehicle or exit it, as circumstances warrant.

Passenger

An officer does not have the same authority over an uninvolved passenger. The Officer must have an articulable objective rationale based on specific safety concerns for officers, vehicle occupants or other citizens, for ordering a passenger to stay in the vehicle or exit the vehicle. Factors warranting an officer's direction to a passenger at a traffic stop may include the number of officers, the number of vehicle occupants, the behavior of the occupants, the time of day, the location of the stop, the traffic at the scene, affected citizens, or officer knowledge of the occupants.

An officer conducting a stop of a vehicle may order all occupants out of, or require them to remain in the vehicle to maintain a level of officer safety.

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302.2.3 FRISK

An officer may conduct a frisk of any person contacted on a valid stop only if the officer has reasonable suspicion that the person contacted may be armed.

Factors that may establish reasonable suspicion include, but are not limited to:

- Reason for the contact - does the officer's reason for the contact involve a serious and/or violent offense? What is the threat potential?
- Time of day - is the contact at night?
- Location - is the area known for criminal activity? Is the officer unlikely to receive immediate assistance if assaulted?
- Prior knowledge - does the officer know the person to have prior police contacts with weapons or dangerous behavior such as assaults on police officers?
- Companions - are there numerous suspects and is there reason to suspect a companion(s) possess a weapon?
- Person's appearance - does the person's clothing bulge in a manner suggesting the presence of any object capable of inflicting injury?
- Person's actions - is the person cooperative? Did the person's physical movements suggest hiding a weapon as the officer approached? Are the person's words or actions threatening?

302.3 SEARCHES

Absent a warrant, all searches are unreasonable unless shown to be within one of the following exceptions to the warrant requirement:

a) Incident to Arrest

- The basic rule for this exception is set forth in the Arrest with/without Warrants policy.

b) Consent

- A consensual search is valid if all persons present with authority over the premises consent to it. A person sharing control over any area may give permission to search the area if he or she is the only person of authority present. If other persons with control over the premises are present at the time the police are about to conduct the search, their consent is required. When

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one party consents to a warrantless search but another who has equal use and control of the premises objects, the consent is invalid.

- When seeking entry into a home for the purpose of obtaining consent to a warrantless search of the home, officers must inform the person from whom consent is sought he or she may 1) lawfully refuse to consent to the search, 2) they can revoke at any time the consent given and 3) can limit the scope of the consent to certain areas of the house. (Ferrier Rule). PFA-0302(a) Written Consent Form.

c) Plain View

- A plain view exception to the warrant requirement applies when fruits of a crime come into view of the officers lawfully searching in connection with another crime or for another purpose, or who otherwise has a right to be where they are.
- The fruits of a crime located in plain view may be retained and used in prosecution of the crime to which they relate if the officer is already lawfully in the constitutionally protected area.

d) Exigent Circumstances

- Police must have specific and articulable facts along with reasonable inferences to believe an exigency exists, such as destruction or removal of evidence or perhaps preparation to violently resist, normally based upon:
- Prior information reasonably leading to the belief that a suspect has resolved to act in a manner which would create the need to enter without waiting, or
- Confrontation with some sort of sound or activity alerting police to the possible existence of an exigency justifying immediate entry

Search Warrants

Department members should use templates the Prosecutor's Office has vetted for format and precise technical wording. Department members will ensure they genuinely comprehend the template's wording before submitting them for approval. In cases where the item to be searched is a vehicle, phone, backpack, or other small item, they will complete these warrants in a timely manner. It is understood that these types of warrants are a basic investigative step and that no supervisor approval is needed. When the place to be searched is a residence or a dwelling where a person may reside, the investigating officer shall ensure these basic steps are completed before serving the warrant, when applicable: WISN deconfliction, threat analysis, consultation with SWAT if appropriate, operations plan, and supervisor approval. The supervisor shall advise the appropriate captain before serving the warrant.

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To make an arrest in criminal actions, the officer may break open any outer or inner door, or windows of a dwelling house or other building, or any other enclosure, if, after notice of his or her office and purpose, he or she be refused admittance. **An officer may not seek and a court may not issue a search or arrest warrant granting an express exception to the requirement for the officer to provide notice of his or her office and purpose when executing the warrant (RCW 10.31.040).**

After serving a search warrant, the officer taking property under the warrant must give to the person from whom or from whose premises the property is taken a copy of the warrant and a receipt for the property taken. If no such person is present, the officer may post a copy of the search warrant and receipt.

The return must be made promptly and must be accompanied by a written inventory of any property taken. The inventory must be made in the presence of the person from whose possession or premises the property is taken, or in the presence of at least one person other than the officer.

302.4 WARRANTLESS SEARCH OF AN INDIVIDUAL

When circumstances require that a physical search of an individual be conducted, a thorough “hands on” search for weapons, evidence, contraband, etc., will be performed.

Verbal requests of an individual to “empty their pockets” or “visual searches” will not suffice as a search in this context.

For purposes of officer and prisoner safety, evidence integrity, and accurate reporting requirements, it shall be understood that when a physical search of an individual has taken place, and is so communicated verbally or in written form, a physical search will have been performed.

302.5 PAT-DOWN/FRISK FOR WEAPONS

The narrow scope of the Terry exception permits the officer to briefly detain, for limited questioning, a person whom they reasonably suspect of criminal activity and to frisk the person for weapons if they have reasonable grounds to believe the person to be armed and presently dangerous. **There is no automatic right to do a pat-down/frisk; there must be a reasonable suspicion of weapons or danger.**

The suspicion of dangerousness must focus particularly on the individual to be searched, not simply on the area in which the individual is found.

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A pat-down protective search may be made before placing or transporting any person in a patrol vehicle. An arrest is not necessary.

302.6 PROTECTIVE SWEEP

A protective sweep during an in-home arrest is allowed **when** the searching officer possesses a reasonable belief based on specific and articulable facts which, taken together with rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest sweep.

A protective sweep extends only to a cursory inspection of those spaces where a person may be found, lasting 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.

302.7 VEHICLE SEARCHES

Arrested Person

After officers have made a custodial arrest of a motor vehicle occupant – including searching the arrestee's person – and have secured the arrestee in handcuffs in a patrol car, and while the vehicle is still at the scene of the arrest, officers may not automatically search the vehicle. A vehicle search may only be conducted if it is pursuant to a search warrant or justified under an exception to the search warrant requirement.

Non-arrested Occupants of the Vehicle

Even if there is a lawful custodial arrest of one of the occupants of the vehicle, the officer may not search the possessions of any non-arrested occupants if the officer knows the items belong to non-arrested occupants, unless there is an independent, objective, and articulable basis that a non-arrested occupant is dangerous.

302.7.1 VEHICLE INVENTORY SEARCHES

All property in a stored or impounded vehicle should be inventoried and listed on the Tow/Impound and inventory Record Form (PFA-0806A). A locked vehicle trunk should not be opened, even if it may be opened without a key from an accessible area of the passenger compartment. Locked or closed containers located within the passenger compartment should be inventoried as a sealed unit, absent exigent circumstances. Officers conducting inventory searches should be as thorough and accurate as practical

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in preparing an itemized inventory. These inventory procedures are for the purpose of protecting an owner's property while in police custody, to provide for the safety of officers, and to protect the Department against fraudulent claims of lost, stolen, or damaged property.

302.8 RESIDENTIAL ENTRY - PRESERVATION OF EVIDENCE

If there is probable cause to believe that critical evidence of a serious felony offense is located within a private residence and that the evidence is almost certain to be destroyed or removed unless immediate warrantless action is taken, an officer may enter to secure the residence and seize evidence in open view. Once the residence is secured, no search shall be conducted unless or until:

- A search warrant for the residence is on scene; or
- Lawful consent to search has been obtained; or
- New or additional emergency circumstances arise necessitating a warrantless search

302.8.1 RESIDENTIAL CRIME SCENES

A residential crime scene is a private residence where a crime has recently occurred and where there is an apparent need for immediate investigative action and/or for the provision of emergency services. Examples include, but are not limited to, homicide scenes, domestic violence scenes, fire scenes and burglaries.

The mere presence of contraband or evidence in a private residence does not make the residence a crime scene.

Upon arriving at the crime scene in a private residence the officer may enter without a warrant in order to:

- Locate and secure suspects of a serious criminal offense; and/or
- Provide assistance to injured persons or others requiring emergency assistance; and/or
- Ensure the present safety and well-being of occupants; and/or
- Locate and secure evidence of a serious and/or dangerous crime which is in open view and likely to be lost or destroyed; and/or
- Prevent substantial property damage

Once the actions described above are completed, no search will be conducted unless or until:

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- A search warrant for the residence is on scene; or
- Lawful consent to search has been obtained; or
- New or additional emergency circumstances arise necessitating a warrantless search

302.9 SEARCH PROTOCOL

Although conditions will vary and officer safety and other exigencies must be considered in every search situation, the following guidelines should be followed whenever circumstances permit:

- Members of this department will strive to conduct searches with dignity and courtesy.
- Officers should explain to the person being searched the reason for the search and how the search will be conducted.
- Searches should be carried out with due regard and respect for private property interests and in a manner that minimizes damage. Property should be left in a condition as close as reasonably possible to its pre-search condition.
- In order to minimize the need for forcible entry, an attempt should be made to obtain keys, combinations or access codes when a search of locked property is anticipated.
- Officers are responsible to document any search and to ensure that any required reports are sufficient including, at minimum, documentation of the following:
 - Reason for the search
 - Any efforts used to minimize the intrusiveness of any search (e.g., asking for consent or keys)
 - What, if any, injuries or damage occurred
 - All steps taken to secure property
 - The results of the search, including a description of any property or contraband seized
 - If the person searched is the opposite sex, any efforts to summon an officer of the same sex as the person being searched and the identification of any witness officer
 - Supervisors shall review reports to ensure the reports are accurate, that actions are properly documented and that current legal requirements and department policy have been met.
- When the person to be searched is of the opposite sex as the searching officer, a reasonable effort should be made to summon an officer of the same sex as the subject

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to conduct the search. When it is not practicable to summon an officer of the same sex as the subject, the following guidelines should be followed:

1. Another officer or a supervisor should witness the search.
2. The officer should not search areas of the body covered by tight-fitting clothing, sheer clothing or clothing that could not reasonably conceal a weapon.

302.10 GUIDELINES FOR STRIP SEARCHES AND BODY CAVITY SEARCHES

302.10.1 GENERAL PROVISIONS

Strip and/or body cavity searches may be necessary for agency safety and security or to seize evidence of criminal activity. These searches are highly intrusive and will be conducted within the limits of legal authority, out of public view, and with due regard for human dignity.

- Strip searches and body cavity searches will be conducted in a professional manner which protects the prisoner's dignity to the extent possible.
- A strip search or body cavity search, as well as pre-search undressing or post-search dressing, will occur at a location made private from the observation of persons not conducting the search.
- A strip search or body cavity search will be performed or observed only by persons of the same sex as the person being searched, except for licensed medical professionals as indicated below, or when necessary to conduct the search or to assure the safety of the prisoner or any person conducting the search.
- All visible injuries will be photographed.
- Persons conducting a strip search or body cavity search will not touch the person being searched except as reasonably necessary to effectuate the search of the person.

Personal Protective Equipment should be utilized as a precautionary measure.

302.10.2 STRIP SEARCH

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No strip search will be conducted unless there is reasonable suspicion that the person has on his or her person evidence of a crime, contraband, fruits of a crime, things otherwise criminally possessed, a weapon, or other things by means of which a crime has been or reasonably appears about to be committed.

No strip search will be authorized or conducted unless a thorough pat down search, a thorough metal detector search, and a thorough clothing search, where appropriate, do not satisfy the safety, security or evidentiary concerns of the Department.

Written Report

A written record of any strip search will be maintained with the crime/arrest report concerning the person strip searched and will contain the following information:

- a) The name and personnel number of the officer conducting the strip search and of all others present or observing any part of the strip search; and
- b) The time, date and place of the strip search; and
- c) Any weapons, criminal evidence, other contraband, or health condition discovered as a result of the strip search;
- d) The name of the supervisor authorizing the strip search; and
- e) The specific facts constituting reasonable suspicion to believe the strip search was necessary

302.10.3 BODY CAVITY SEARCH

Search warrant and authorization will be required.

No body cavity search will be conducted except pursuant to a valid search warrant.

No search warrant for a body cavity search will be sought without prior approval of the division commander.

Before any body cavity search is authorized or conducted, a thorough pat down search, a thorough electronic metal detector search, and a thorough clothing search, where appropriate, must be used to search for and seize any evidence of a crime, contraband, fruits of crime, things otherwise criminally possessed, weapons, or other things by means of which a crime has been committed or reasonably appears, about to be committed.

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No body cavity search will be authorized or conducted unless these other methods do not satisfy the safety, security, or evidentiary concerns of the Department.

Only licensed medical personnel may conduct body cavity search/conditions.

Any body cavity search will be performed at a medical facility under sanitary conditions and conducted by a physician, registered nurse, or registered physician's assistant, licensed to practice in the state, who is trained in the proper medical process and the potential health problems associated with a body cavity search.

Observer

When a body cavity search is conducted by a licensed medical professional of the opposite sex, an observer of the same sex as the prisoner will be present. Whenever possible a police officer of the same sex as the prisoner shall observe for evidentiary purposes.

A person upon whom a body cavity search is to be performed may have a readily available person of his/her choosing present at the time the search is conducted. However, the person chosen will not be a person being held in custody.

Written Report

The officer requesting the body cavity search will prepare and sign a report, which will include:

- a) A copy of the warrant and any supporting documents required; and
- b) The name and sex of all persons conducting or observing the search; and
- c) The time, date, place, and description of the search; and
- d) A statement of the results of the search and a list of any items removed from the person as a result of the search.
- e) The body cavity search report will be maintained with the crime/arrest report concerning the person searched