




Clayton County Police Department

PROCEDURES

Subject WARRANTLESS SEARCHES (SEARCH & SEIZURE)		Procedure # A11	
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I. PURPOSE

To provide guidelines for the search and seizure of places, persons and things that are consistent with existing laws and constitutional protections.

II. POLICY

It shall be the policy of the Clayton County Police Department to conduct searches of persons, places, and things pursuant to established State and Federal laws governing search warrants and/or warrantless searches and applicable court decisions. Law enforcement officers shall have due regard for the protection guaranteed under the provisions of the Fourth Amendment to the United States Constitution. The following procedures shall address search and seizure policy and shall cite major case law and/or state statutes where applicable.

III. DEFINITIONS

Search: A law enforcement action which infringes upon a person's reasonable expectation of privacy. A search occurs when an expectation of privacy that society is prepared to consider reasonable is infringed. Maryland v. Macon, 472 U.S. 463 (1985)

Search Warrant: A judicial command to search a place or person particularly described in the warrant and to seize the instruments, articles, or things particularly described in the warrant (OCGA § 17-5-23).

Seizure: A seizure occurs when there is some meaningful interference with an individual's possessory interests in the property seized. Maryland v. Macon, 472 U.S. 463 (1985)

IV. SEARCH AND SEIZURE

A. General

1. Whenever an officer executes any phase of the legal process function, the officer will do so in good faith and pursuant to applicable laws and court decisions, and in accordance with departmental procedures and policies.

2. In situations where procedures are not clearly set out by law or policy, the officer will consult with their supervisors, prosecutors, or the Department's legal advisor.
3. Officers will stay abreast of current laws, ordinances and court decisions which may affect their duties on an annual basis. This information will be obtained through independent study, in-service training, *Legal Updates*, specialized training and roll-call training.

B. Search Warrants and Affidavits

1. Only sworn law enforcement officers of the Clayton County Police Department are authorized to search a person, property, or premises pursuant to a valid search warrant.
2. All search warrants must be reviewed and approved by the officer's supervisor, before being presented for judicial review.
3. Once an officer has obtained probable cause to search a person, property or premise, the officer should obtain a search warrant by compiling an affidavit and presenting it to the appropriate judicial officer.
4. Upon the judicial officer signing the search warrant, the original affidavit shall remain with the issuing judge, and the officer shall retain two (2) copies, one (1) of which will be left at the search location, and the other copy will be used when the officer returns the warrant to the issuing, or appropriate judicial officer.
5. The officer obtaining a search warrant shall record the following elements in their report (i.e., *Incident Report* or *Supplemental Report*): officer involved; date and time received; location of service and/or name of the defendant; type of process; nature and source of document; warrant number; and the date service is due by.
6. It will be the responsibility of the officer to execute the search warrant as soon as possible or practical. However, certain situations may call for a delay in the execution of search warrants. If a delay is necessary, it will meet the approval of the officer's supervisor, and in no event will a search warrant be executed after ten (10) days from the date of issuance.

C. No-Knock Search Warrant

1. To gain entrance to any building or dwelling without giving notice, a search warrant must contain a no-knock provision. This provision should be in the body of the affidavit and be authorized by the Division Commander, Chief of Police or authorized designee.
2. A no-knock provision cannot be based upon a mere suspicion, but rather must be predicated upon probable cause from an investigation and/or an informant. The following would be examples of probable cause for a no-knock provision.
 - a. A reliable informant or other source provided information concerning a suspect who kept evidence in a bathroom, such as drugs, and would destroy the evidence when the officer knocked on the door (*Scull v. State*, 122 Ga. App. 696).
 - b. A reliable informant or other source provided information concerning a suspect who kept firearms next to a door, and when an officer knocked on a door, the suspect would shoot through a door in an attempt to kill or harm the officer (*Jones v. State*, 127 Ga. App. 137).
3. Since an officer has a right to use necessary and reasonable force it is also a responsibility of an officer to obtain the correct address and location of property or premises to be searched. Searching the wrong person or premises could lead to prosecution and/or civil liability of an officer.

V. EXECUTION OF A SEARCH WARRANT

A. Legal Requirements of Execution

1. A valid search warrant must meet the following requirements:
 - a. The warrant must be filed in good faith by the officer;
 - b. The warrant must be based on reliable information showing probable cause to search;
 - c. The warrant must be issued by a neutral and detached magistrate; and
 - d. The warrant must state specifically the place to be searched and the items to be seized.
2. A search warrant may be executed at any reasonable time, day or night; a reasonable time depends on the facts in each individual case (OCGA § 17-5-26).
3. A search warrant must be served within ten (10) days from the day of issuance. If the warrant is served, a duplicate copy of the search warrant and a copy of the *Property Receipt* listing the items that were seized under it, shall be left with any person from whom any instruments, articles, or things, were seized; or if no person is available, the copies shall be left in a conspicuous place on the premises from which the instruments, articles, or things were seized. Any search warrant not served within ten (10) days from the issue date shall be void and will be returned to the issuing court (OCGA § 17-5-25).
4. The officer serving or attempting to serve a search warrant shall document the following elements that apply in their report.
 - a. Date and time served;
 - b. Name of officers serving and method of service;
 - c. Defendant's name (or on whom the search warrant was executed);
 - d. Property/evidence seized and its disposition;
 - e. Location of service; and
 - f. If necessary, the reason for non-service.
5. A written return of all instruments, articles, or things seized shall be made without unnecessary delay, before the judicial officer named in the warrant or before any court of competent jurisdiction. An inventory of any instruments, articles, or things seized shall be filed with the return and signed under oath by the officer executing the warrant (OCGA § 17-5-29).

B. Force Used in the Execution of a Search Warrant

1. An officer has a right under a lawful search to use all necessary, reasonable force to enter into any building, dwelling or other area described in a search warrant (OCGA § 17-5-27).
2. Unless the search warrant contains a "no-knock" provision, the officer is required to give verbal notice to the person or persons inside, if any, of the identity of the officer and of the fact that the officer has a search warrant to search the premises (OCGA § 17-5-27).
3. If the person or persons inside refuse to acknowledge the officer's notice, or if an officer cannot determine if anyone is present inside, or if it is unoccupied, an officer then can use reasonable force to gain entrance (OCGA § 17-5-27).
4. Any action taken by an officer (e.g., knocking on the door, identifying their rank, name and agency, announcing they have a search warrant) prior to making forced entry, should be

recorded and/or documented in their report, in case such officer has to testify to the reason(s) for their actions in court. (Jackson v. State, 129 Ga. App. 901; 1973)

5. Whenever force is used in order to gain entry into a premise or place, and any amount of damage that occurs, the officer in charge of the search and/or the officer that used force, shall notify their supervisor, and the officer(s) will ensure that all damage is documented in the appropriate report, and photographs taken, if necessary.

C. Locations/Persons to be Searched Pursuant to a Search Warrant

1. Officers shall be limited to search in areas particularly described by the search warrant.
2. Officers shall also be limited to searching only for those items particularly described in the search warrant.
3. When officers are searching for an individual utilizing a search warrant, officers should obtain as much information as possible to describe such individual listed on the warrant.
4. In the execution of the search warrant, the officer may reasonably detain and/or search any person in the place at the time:
 - a. To protect such officer from attack; or
 - b. To prevent the disposal or concealment of any instruments, articles, or things particularly described in the search warrant (OCGA § 17-5-28).
5. Properties or areas in conjunction with an on-going investigation where the victim is a third party resident, such as a homicide, must be treated as a third party search and a search warrant should be obtained.
6. Officers are justified in staying on the premises only as long as necessary to conduct a reasonable search. Officers must not exceed their authority and should be considerate of the comfort, convenience, and feelings of the occupants.
7. Once the property or area searched is abandoned by law enforcement, the authority of the warrant no longer stands.

D. Search Warrant Execution Protocol

1. To eliminate confusion and disorganization, and to promote thorough and precise execution of search warrants, or processing of any other type crime scene, a chain of command shall be established with particular assignments of tasks or functions to support personnel participating on search warrants.
2. Incident command protocol shall apply, and a supervisor of the Division/Unit handling the investigation, shall coordinate and direct the efforts of all personnel assigned, and shall assign specific personnel to perform specific tasks before, during and after the event. For further information regarding incident command protocol, refer to CCPD SOP *H1: All Hazard Plan (Incident Command System)*.
3. When the execution of a search warrant is necessary, a supervisor of the Division/Unit handling the investigation, in conjunction with the lead officer, shall plan and organize the search as follows:
 - a. Request assistance from the Uniform Division, or specialized unit(s), through the on-duty Shift/Unit Commander, or other supervisor.
 - b. Prepare an *Operational Plan*.

- c. Coordinate with the concerned Shift/Unit Commander(s), or other supervisor(s), the assignments and duties of personnel involved.
4. Specifically named personnel may be assigned as an entry team, others may be assigned the task of searching (only), others may be assigned the task of evidence collection (only), others may be assigned the task of security, and other tasks may be assigned that are essential to the safe and effective execution of the search warrant.
5. This directive is not intended to circumvent normal chain of command protocol, and all events and activities involving personnel of this Department shall be subject to review by the supervisors involved in such event. If necessary, another supervisor involved in the investigation may assume command.

E. Personnel Executing Search Warrants

1. Supervisory Personnel

- a. Prior to the execution of a search warrant, a supervisor should have reviewed the affidavit and warrant and the circumstances of its issuance to ensure that requirements of law are being met and that all the necessary elements are present even though the warrant may have already been signed by the appropriate authority.
- b. When appropriate, the District Attorney's office will be consulted prior to, during and after the service of the search warrant for advice, recommendations, or for any other purpose the officer and/or involved supervisor deems necessary.

Note: All requests for wiretap warrants must be approved in advance by a Division Commander, the Chief of Police, and the District Attorney's Office. The actual written application for interception of wire or oral transmissions by law enforcement officers must be executed by the District Attorney of the circuit wherein a device is to be physically placed, or by the Attorney General. (OCGA § 16-11-64)

- c. A supervisor shall be present at the execution of any search warrant along with other personnel as needed. If possible, the supervisor is to be from the unit involved; if unavailable, a sergeant or higher ranking supervisor from another unit shall be called to assist.
- d. Following the execution of the warrant, the involved supervisor shall ensure that the appropriate follow-up steps are handled expeditiously (i.e., return, inventory).

2. Assigned Officers

All involved personnel shall conduct themselves in a professional manner by:

- a. Restricting their actions in a manner consistent with the scope of the warrant;
- b. Whenever possible, leaving property not seized in an orderly fashion, or as found and ensuring that it is not left in an unreasonable state of disorder or destroyed; and
- c. Ensuring all evidence seized is documented on the *Property Receipt* and forwarded to the Evidence Room and/or Crime Lab, if necessary.

Note: Items considered to be illegal and/or contraband are not to be destroyed without either the appropriate order of the court or, in cases where prosecution is not to follow, by proper documentation. Refer to CCPD SOP *E3: Evidence & Property Control*.

VI. SEARCHES WITH AND WITHOUT A WARRANT

A. Serving Criminal Arrest and Search Warrants

1. Arrest Warrants within the Unincorporated Area of Clayton County: Whenever an officer attempts to serve a criminal arrest warrant at any location within the unincorporated area of Clayton County, the officer will either have a departmental uniform officer present during the warrant execution, or be clearly recognizable as a police officer.
2. Arrest Warrants within the Incorporated Area of the County and Outside Clayton County: Whenever an officer attempts to serve a criminal arrest warrant at any location within an incorporated area of Clayton County or at any location outside of Clayton County, the officer will have uniform officers from the agency responsible for law enforcement within that location present during the warrant execution.
3. Search Warrants within the Unincorporated Area of Clayton County: Whenever an officer attempts to serve a search warrant at any location within the unincorporated area of Clayton County, the officer will have departmental uniform officers present during the warrant execution. A departmental supervisor will also be present during the warrant execution.
4. Search Warrants within the Incorporated Area of the County and Outside Clayton County: Whenever an officer attempts to serve a search warrant at any location within an incorporated area of Clayton County or at any location outside of Clayton County, the officer will have uniform officers from the agency responsible for law enforcement within that location present during the warrant execution.
5. Serving Criminal Arrest Warrants without Uniform Officers: In certain situations, such as using the element of surprise in order to effect an arrest, the execution of criminal arrest warrants may be done, periodically or on a routine basis, without the presence of uniform officers. This practice will be an exception to the rule and will only be done after the approval of a Division Commander and the Chief of Police.

B. Search with a Warrant

The following is required of all search warrant affidavits:

1. Issuance: The warrant must be issued by a judicial officer authorized to hold a court of inquiry (OCGA § 17-5-21). For searches inside the jurisdictional boundaries of Clayton County, officers will use the Clayton County Magistrate's Court or appropriate judicial officer. Outside the jurisdictional boundaries, officers will use the appropriate judicial officer.
2. Probable Cause: The judicial officer must find probable cause that the place to be searched contains items connected with criminal activity. (Berger v. New York, 388 U.S. 41) The officer must swear or affirm under oath that the facts presented for establishing probable cause are true. Probable cause is defined as "what facts and circumstances within an officer's knowledge would lead a reasonable person to believe that an offense has been committed or is being committed and/or that a particular individual has committed or is committing the offense".
3. Description: The warrant must describe with sufficient particularity the person or place to be searched and the items to be seized (OCGA § 17-5-23). If a place can be easily identified by a street number or address, no further information shall be necessary; however, an officer may elect to further describe the place to be searched.

Note: A warrant may be issued based upon an affidavit containing only hearsay, where the reliability of the informant is established and the underlying factual circumstances are described.

C. Search of a Person Incident to Arrest

1. Scope: A search incident to a lawful arrest must be limited in scope to the arrestee's person and the area "within their immediate control". (Chimel v. California, 395 U. S. 752; 1969)
2. When Authorized: Pursuant to OCGA § 17-5-1, when a lawful arrest is effected an officer may reasonably search the person arrested and the area within the person's immediate presence for the purpose of:
 - a. Protecting the officer from attack;
 - b. Preventing the person from escaping;
 - c. Discovering/seizing the fruits of the crime for which the person has been arrested; or
 - d. Discovering/seizing any instruments, articles, or things which are being used or which may have been used in the commission of the crime for which the person has been arrested.

When the officer is in the process of effecting a lawful search, nothing in this Code section (i.e., OCGA § 17-5-1) shall be construed to preclude such officer from discovering or seizing any stolen or embezzled property, any item, substance, object, thing, or matter, the possession of which is unlawful, or any item, substance, object, thing, or matter, other than the private papers of any person, which is tangible evidence of the commission of a crime against the laws of this state.

3. Nature: A search incident to a lawful arrest must be concurrent in time and place with the arrest.
4. Booking Searches: A custodial search of the arrestee's person may be justified as either an administrative search or as an inventory procedure. Once an officer has taken any property discovered during the search into their control, a further non-contemporaneous search is no longer incidental to the arrest.

D. Crime Scene Searches

1. Crime scenes are not, by their nature, an exception to the warrant rule. The seriousness of the offense under investigation does not, in and of itself, create an exigent circumstance.
2. Generally, search warrants are required prior to conducting a crime scene search on/in private property. There are some exceptions to this rule including:
 - a. When the suspect does not possess a reasonable expectation of privacy in the premises, a search warrant is not necessary (e.g., the suspect is a trespasser; no warrant is required).
 - b. When the search is conducted for the purpose of finding dead or injured crime victims or when rendering aid to a victim, no warrant is required.
 - c. When evidence is being protected or photographed during the time it takes to obtain a search warrant, no warrant is required to enter the crime scene.
 - d. No warrant is required to enter the crime scene in order to find the perpetrator who may still be present on the scene.

- e. A crime scene search may be made without a warrant if:
 - 1) It is an emergency and there is reasonable belief that there is imminent danger to a person. In an emergency crime scene search, contraband in plain view may be seized. If evidence is seen that is not contraband, it is best to get a warrant before seizing it.
 - 2) A homicide victim is the sole occupant.
 - 3) The scene is a public place.
- 3. If exigent circumstances do not exist, a search warrant or consent to search is required.

E. Exigent Circumstances

- 1. Justification: A warrantless search is permitted when there is both probable cause and exigent circumstances. The ultimate test is whether there is a compelling necessity for immediate action that proceeding without a warrant is justified.
- 2. Exigent Circumstances Defined: Hot pursuit, a fleeing suspect, imminent destruction of evidence, or other situations in which speed is essential to the accomplishment of lawful police action.
- 3. Hot Pursuit: A suspect may not defeat a lawful arrest by escaping to a private place. A warrantless search for persons and weapons may be valid when an officer is in hot pursuit. The essential elements of hot pursuit are:
 - a. *Continuity of the Pursuit*: The pursuit must be maintained in a continuous manner without any significant break in the action.
 - b. *Immediacy of the Pursuit*: The immediacy of the pursuit will depend on such factors as the nature and severity of the crime, the possible destruction of evidence, and the safety and security of all persons.

Note: The hot pursuit which results in the warrantless entry of someone's home should be for a serious crime. *Welch v. Wisconsin*, 466 U.S. 740 (1984). The Welch case also held that a claim of hot pursuit is unconvincing when there was no immediate or continuous pursuit of the suspect from the scene of crime.

- 4. Searches Where Public Safety is Endangered: Under special circumstances where an officer hears screams, observes an immediate dangerous situation to anyone, or other exigent circumstances exist, an officer may make an emergency search of persons or premises. In *Michigan v. Tyler*, the other courts suggested factors establishing this compelling need to include the gravity of the offense, the totality of the presence of weapons, and the likelihood of escape. The "totality of the circumstances" will be the deciding factor in each case.

F. Stop and Frisk

- 1. Grounds for Stop: To lawfully stop an individual, the officer must have reasonable suspicion the person stopped is involved in criminal activity. In appropriate situations, a report should be completed on stops of suspicious persons and forwarded to the appropriate investigative component, if necessary. A detailed description of the activity and of the person should be included.

2. Grounds for Frisk: To lawfully frisk an individual, the officer must have a reasonable belief that the person stopped is armed and dangerous. In the case of the self-protective search for weapons, the officer must be able to point to particular facts from which such officer reasonable inferred that the individual was armed and dangerous. The frisk must be limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby. (Terry v. Ohio, 392 U. S. 1) Officers are reminded that a frisk is not a "search".
3. Nature of Frisk: The frisk for weapons must be only a limited intrusion of a person (pat-down). Pockets cannot be entered during a pat-down unless the officer feels an object which is consistent with a weapon in its size, shape, or feel.
4. Search after Frisk: Feeling an object which might be a weapon will justify a more extensive intrusion to obtain the suspected weapon. An officer may enter pockets to dispel the alarm a weapon is present.

G. Vehicle Stops

1. Significance of Stop: A "seizure" occurs whenever a vehicle is stopped, even though the purpose is generally limited and the detention quite brief, therefore, the Fourth Amendment applies.
2. Grounds for Stop: There must be an articulable reasonable suspicion to justify an investigatory stop of an individual's vehicle. Officers do not have an unrestricted right to stop people, either pedestrians or drivers.
3. Traffic Safety Road Checks: Vehicles may also be stopped at a traffic safety road check location which serve legitimate law enforcement purposes. If the purpose of the traffic safety road check is legitimate, (e.g., to check driver's licenses, vehicle registrations, proof of insurance and other requirements of the Georgia motor vehicle and traffic code), and if an attempt to stop all vehicles and not randomly stop vehicles, and if evidence of other crimes is discovered, the officer has the right to take reasonable investigative steps. Traffic safety road checks shall be prohibited unless approved by a supervisor.

For further information refer to CCPD SOP D43: *Traffic Safety Road Checks*.

4. Initial Intrusion: Officers may take reasonable action to protect themselves after a lawful stop of a motor vehicle. An officer may prefer to ask the driver of a vehicle to step out of the motor vehicle.
5. Further Intrusion: If the officer has reasonable belief that a person stopped is presently armed and dangerous, the officer may conduct a limited protective search of the vehicle and frisk the person.
6. Vehicle Search Incident to Arrest: In accordance with Arizona v. Gant, a vehicle may be searched incident to arrest, only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe that the vehicle contains evidence of the offense for which the person was arrested.

H. Vehicle Searches

1. Exigent Circumstances: The mobility of vehicles often constitutes exigent circumstances authorizing a warrantless search. The "automatic exception" to the warrant requirement

demonstrates a willingness of courts to excuse the absence of a warrant when spontaneous searches are required of a vehicle. (Gondor v. State, 129 GA. App. 655; 1973)

2. Standard: To search under exigent circumstances, the officer must have probable cause to believe the vehicle contains evidence of a crime, thus, seizeable items.
3. Time and Place of Search: If probable cause and exigent circumstances existed originally, the police may search the vehicle after towing it to the impound lot without securing a search warrant. When probable cause exists without exigent circumstances, a warrant is required. (Caito et al. v. State, 130 GA. App. 83; 1974)
4. Arrest of Occupant: If a person is arrested (taken into custody) after a vehicle stop, the passenger compartment of the vehicle may be searched incident to arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe evidence of the offense (e.g., DUI, illegal drugs, theft, person on person offenses involving weapons) may be located in the vehicle.

I. Container and Luggage Searches

1. Standard: Containers generally may only be searched pursuant to a warrant based on probable cause.
2. Automobile: An officer who has legitimately stopped an automobile and has probable cause to believe contraband is located somewhere within the car may conduct a warrantless search of the vehicle, including compartments and containers within the vehicle whose contents are not in plain view. (U.S. v. Ross, 456 U.S. 798, 31 CrI 3051; 1982)
3. Exceptions: The search incident to arrest and plain view doctrines will generally make unnecessary the need to secure a warrant to search containers. When a lawful arrest has been made, the officer may examine the contents of any container found within a passenger compartment within reach (i.e., area of immediate control) of the arrestee.
4. Inventory: Closed containers may be opened during a personal effects inventory. (Ill. v. Laffayette, 162 U.S. 640, 33 CrI 3183; 1983)

J. Inventory of Vehicles

The U.S. Supreme Court recognized the need for inventory searches in *South Dakota v. Opperman*, 428 U.S. 364 (1976). Inventory searches were developed in response to three (3) distinct needs, to protect the owner's property and to protect police from claims of stolen items as well as potential danger.

1. Seizure of Vehicle: For an inventory to be valid, the police custody of the vehicle must be lawful. **An inventory of a vehicle is not a search.** An inventory is a departmental policy designed to ensure valuable possessions within a vehicle under police custody are accounted for. Any contraband which is found inadvertently during an inventory may be seized.
2. Justification: The inventory must be conducted only to fulfill the police caretaking function of securing the contents of the vehicle.
3. Nature of Inventory: The inventory must be a routine part of standard police procedure for impounding vehicles, rather than a pretext for an investigatory search, and may not extend to locked luggage or other similar repositories of personal effects that are locked. It shall be

standard operating procedure for officers to inventory all impounded vehicles. Accordingly, any vehicle impounded by officers shall be inventoried consistent with CCPD SOP *D31: Vehicle Impounds/Release*. In addition to vehicles, any other property that is seized or taken into custody by officers of this Department shall be inventoried and itemized on a *Property Receipt* form.

K. Plain View Doctrine

In order for the Plain View Doctrine to apply:

1. The officer must be at a location where they have a legal right to be;
2. The seized items must appear on their face to be incriminating; and
3. The items seized must be plainly visible to the officer.

L. Abandonment

1. Act: Abandonment is a voluntary relinquishment of control of property, i.e., disposal of, denying ownership.
2. Implications: Abandoned property is not protected under the Fourth Amendment. Officers may seize abandoned property without probable cause and without a warrant. Whether or not property has been abandoned is a question of intent, which must be shown by clear, unequivocal and decisive evidence.
3. Legitimate Expectation of Privacy: The determination of whether Fourth Amendment protections will be extended to items seized from the curtilage or open fields focuses on whether the person challenging the search has a legitimate expectation of privacy in the place which was searched.

M. Curtilage

1. The Curtilage Doctrine: Curtilage is afforded the same Fourth Amendment protections as is the home. Generally speaking, curtilage has been held to include all buildings in close proximity to a dwelling, which are continually used for carrying on domestic purposes; or such places as are necessary and convenient to a dwelling, and are habitually used for family purposes (e.g., patio, porch, and carport).
2. The Open Field Doctrine: The Fourth Amendment protections do not extend to the "open fields" surrounding the curtilage and the home. The "plain view" exception can apply to an open field situation.
3. Legitimate Expectation of Privacy: The determination of whether Fourth Amendment protections will be extended to items seized from the curtilage or open fields focuses on whether the person challenging the search has a legitimate expectation of privacy in the place which was searched.

N. Consent

1. Voluntariness: The officer obtaining consent has the burden of proving the defendant's consent to a warrantless search was given freely and voluntarily. Consent shall not be obtained by threat of warrant, etc. A person may withdraw consent at any time and the search must cease.
2. Test: The voluntariness of a person's consent is measured by the totality of the circumstances.

3. Consent after Arrest: If the consenting party is in custody, the voluntariness of the consent is still measured by the totality of the circumstances, although courts will analyze the relevant factors more critically.
4. Third Party Consent: Consent for a warrantless search may be given by a third party who shares control of, or has common authority over the premises or items to be searched. Areas belonging exclusively to parties not present or not giving consent shall not be searched. Officers will make every reasonable attempt to get a signed consent to search. Officers are reminded that a verbal consent will be subject to the same scrutiny as a written consent.

O. Greater Intrusion and Strip Searches

1. Exterior Intrusions: Intrusions on the body's surface (e.g., swabbing, hair samples, and retrieval of evidence from the mouth) are governed by the Fourth Amendment. Such searches are permissible as long as they are conducted in a reasonable manner and are justified under the circumstances (i.e., probable cause to search).
2. Interior Intrusions: Certain intrusions into the body (e.g., stomach pumping, surgery) have been found to violate the Fourth Amendment. (*Rochin v. Calif.*, 342 U.S. 165, *Winston v. Lee*, 470 U.S. 753) Hence, only under the most exigent circumstances and only pursuant to a search warrant, shall such a procedure be allowed. However, other more common interior intrusions, such as blood tests, may be conducted without a warrant if the setting and procedures are reasonable, as when blood is drawn by a doctor in a hospital. (*Schmerber v. Calif.*, 384 U.S. 757) **Probable cause must exist in all cases.**
3. Strip Search: Strip searches are typically conducted by jail personnel; the Clayton County Sheriff's Office establishes policy for conducting strip searches inside the Clayton County Jail. Any arrested person may be strip searched if there is articulable reasonable suspicion to believe the suspect is concealing a weapon, evidence, or contraband. Prior to conducting the strip search, the officer must receive approval from their supervisor.

For further information on strip searches and body cavity searches refer to CCPD SOP *D20: Strip & Body Cavity Searches*.

VII. CANCELLATION

- A. This procedure amends and supersedes the following standard operating procedure: *A11: Warrantless Searches (Search & Seizure)*, dated November 2, 2009.