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PREAMBLE

The Fourth Amendment to the U.S. Constitution guarantees the right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. This policy is intended to assist Deputies in making reasonable searches.

POLICY

It is the policy of the Douglas County Sheriff's Office (DCSO) that citizens of Douglas County will not be subjected to unreasonable searches and seizures as set forth by the United States Constitution under the Fourth Amendment. DCSO Deputies will conduct all searches in accordance with all applicable laws and DCSO policies and procedures.

DEFINITIONS

Anticipatory search warrant: A search warrant that is issued on the basis of an affidavit showing probable cause that evidence of a certain crime will be located at a specific place in the future. Most anticipatory warrants subject their execution to some condition precedent other than the mere passage of time - a so-called "triggering condition." For instance, that the execution of a search warrant would not occur unless and until specific contraband had been received by a person(s) and had been physically taken into the residence.

Articulate Facts: Facts that Deputies can verbalize which give rise to a reasonable suspicion or probable cause that a person has committed, is committing, or is about to commit a crime.

Body Cavity Search: A search involving not only a visual inspection of skin surfaces but the internal physical examination of body cavities, and, in some instances, organs such as the stomach cavity.

Custodial Search: A search for weapons, evidence, instruments, and/or contraband incident to a lawful arrest.

Frisk: A search within the meaning of the Fourth Amendment but is limited in purpose to the detection of concealed weapons.

Gender: The state of being male or female in relation to the social and cultural roles that are considered appropriate for men and women.

Gender Expression: External appearance of one's gender identity, usually expressed through behavior, clothing, body characteristics or voice, and which may or may not conform to socially defined behaviors and characteristics typically associated with being either masculine or feminine. Others perceive a person's gender through these attributes.

Gender Identity: One's innermost concept of self as male, female, a blend of both or neither – how individuals perceive themselves and what they call themselves. One's gender identity can be the same or different from their sex assigned at birth.

Probable Cause: Probable Cause exists where facts and circumstances within the officer's knowledge are more probable than not to warrant a belief that the suspect has committed, or is in the process of committing a crime.

Probable Cause is established by two building blocks: 1) an awareness of the articulated facts, and 2) a gathering of supportive evidence.

Reasonable Suspicion: Specific, reasonable, inferences which the Deputy is entitled to draw from the facts in light of their experience. Reasonable suspicion is something less than the probable cause standard and will not support an arrest. Reasonable Suspicion is established by three building blocks: 1) Specific articulated facts, 2) Rational inferences, and 3) Plausible conclusions.

Search Warrant: Written court order, issued by a magistrate or judge, commanding a law enforcement officer to search a specific place or person for the purpose of recovering specific property.

Sex: The different biological and physiological characteristics of males and females, such as reproductive organs, chromosomes, hormones, etc.

Stop: A temporary seizure of a person short of an arrest.

Strip Search: A search of an individual requiring a person to remove or arrange some or all clothing to permit an inspection of genitals, buttocks, female breasts, or undergarments.

PROCEDURE

I. Fourth Amendment

- A. The Fourth Amendment guarantees the right of people to be free from unreasonable searches and seizures of their home, person, and things.
- B. Illegally conducted searches may result in civil suits under the Civil Rights Act, and illegally seized items of evidence will not be admitted in court and may cause the dismissal of a criminal case.
- C. Search and seizure laws as they apply to police conduct are continually evolving. DCSO sworn members will be provided with training on current rulings and laws in regards to Search and Seizure and may seek additional information from outside sources including:
 - 1. The Douglas County Attorney's Office.
 - 2. Current case law updates.
- D. Plain View Doctrine
 - 1. The Plain View Doctrine allows a Deputy to seize, without a warrant, evidence and contraband that is found in plain view during a lawful observation.
 - a. The Deputy must be legally where he or she can discover fruits, instruments, evidence, or contraband, and the seizure must be inadvertent.
 - b. The property must be recognized as fruits, instruments, evidence of a crime, or contraband.

II. Stop and/or Frisk (1.2.4)

- A. Generally, a Deputy who has Reasonable Suspicion, based on their own observations or authenticated information that a crime was or is about to be committed may Stop and/or Frisk a person (Terry v. Ohio).

1. In a Stop and/or Frisk situation, justification of a pat down (frisk) is based on a Deputy's belief that the individual presents a potential danger to the Deputy.
- B. Deputies may make an investigatory stop when there is reasonable suspicion supported by specific articulable facts that a crime has been or is about to be committed by the person stopped. (Neb. Rev. Stat. § 29-829)
1. The courts have ruled that the maximum time limit for investigative detention is approximately 30 minutes.
 2. In accordance with Neb. Rev. Stat. §13-330 and §69-2445 individuals carrying a firearm, openly or concealed, may be acting legally. Deputies must be able to articulate facts beyond just carrying of a firearm to support the reasonable suspicion that a crime has been or is about to be committed. Deputies should consider reasonable concerns for their safety and the safety of persons in the area.
 3. While carrying a firearm, openly or concealed, may be legal in most instances there are still situations where it remains illegal. Deputies should consider that:
 - a. Firearms remain prohibited in certain locations (schools - Neb. Rev. Stat. §§ 28-1204.04;
 - b. Concealed handguns are prohibited in certain locations (police or sheriff stations, etc. Neb. Rev. Stat. § 28-1202.01);
 - c. No person may possess any firearm or other dangerous weapon in the courtroom or in any public area adjacent to it without permission of the court (State of Nebraska Judicial Branch Court Rule §6-1511);
 - d. Certain firearms remain unlawful to carry openly or concealed (short shotguns and machine guns - Neb. Rev. Stat. § 28-1203);
 - e. Certain persons may be prohibited from possessing handguns (Juveniles under 18 – unless armed forces member - Neb. Rev. Stat. § 28-1204);
 - f. Certain persons are still prohibited from carrying a concealed weapon (minors under 21 – unless armed forces member Neb. Rev. Stat. § 28-1202);

-AND-

 - g. Prohibited persons are prohibited from possessing firearms (convicted felons, fugitive from justice, or conviction for misdemeanor crime of domestic violence in last 7 years Neb. Rev. Stat. § 28-1206).
 4. In accordance with Neb. Rev. Stat. §28-1202.04 persons carrying a concealed handgun who have contact with a Deputy, must immediately inform the Deputy that they are carrying a concealed handgun. This does NOT apply to the transportation of a handgun in a vehicle or to or from a vehicle, so long as the handgun is unloaded, in a case, with the ammunition kept separate from the handgun.
 - a. Contact means personally stopping, detaining, questioning, or addressing a person for an official purpose or in the course of the Deputy's official duties.
 - b. Once notified that an individual is carrying a concealed weapon, the Deputy may secure the handgun for the duration of the contact if the Deputy determines that

that it is necessary for the safety of any person present. The Deputy must return the handgun at the end of the contact if there is no other legal reason why it should not be returned.

- c. No person has the right to refuse the request of a Deputy to surrender a concealed handgun in accordance with the provisions in Neb. Rev. Stat. §§28-1202.04.
- d. If a Deputy secures the handgun for the duration of the contact, the Deputy may run the firearm as part of standard data checks. If the Deputy runs the firearm, the Deputy will document that a data check was run and document the make, model, and serial number of the firearm in an F.I. Card.

NOTE: Deputies will NOT extend the duration of a contact for the sole purpose of obtaining firearm information.

- C. A Frisk is used for Deputy safety and to search for weapons only.
 - 1. The Frisk is not a search for evidence. Its sole objective is to determine if the individual who has been stopped possesses a weapon.
 - 2. Deputies will have reasonable suspicion that their safety or that of another person in the vicinity is in danger because a particular person might be carrying a weapon or dangerous instrument to conduct a Frisk.
- D. The following are required for a legal Frisk:
 - 1. The Deputy must make a lawful stop.
 - 2. The Deputy must reasonably believe that the person stopped may be armed and presently dangerous.
 - 3. The Deputy must identify themselves as a law enforcement officer.
 - 4. The Deputy must make reasonable inquiries.
 - 5. The Deputy's concern for their own safety or the safety of others is not dispelled by the inquiries.
- E. A Frisk will consist of a thorough pat down, but only over exterior clothing to include the waistband, checking pockets, and outer garments. Deputies may only go inside heavy clothing when necessary for an effective frisk.
- F. If during a legal Frisk, a Deputy feels an item other than a weapon that the Deputy has probable cause to believe is evidence of a crime, the Deputy may seize that evidence.
 - 1. The incriminating nature of the item must be immediately apparent to the Deputy.
 - a. The incriminatory nature of the item is immediately apparent if the Deputy at that moment has probable cause to associate the item with criminal activity (contraband, stolen property, or useful as evidence of a crime).
 - 2. The Deputy will not manipulate the item in order to ascertain the incriminating character where it is not immediately apparent to the Deputy.

G. Deputies will thoroughly articulate the reasons for the Stop and/or Frisk in all applicable reports.

H. Sex and Gender Identity

1. Frisks

a. Due to the exigent nature of a frisk, frisks will not be delayed until a Deputy of the same sex or preferred gender is located.

(1) However, when possible, persons will be frisked by a Deputy of the same sex if such a Deputy is on-scene.

(2) If a person notifies a Deputy that the person's gender identity differs from the person's listed sex, Deputies will document the person's gender identity in accordance with the DCSO "Report Writing" policy.

b. When conducting a frisk of a suspect of a different sex or gender identity, Deputies will adhere to the following procedures:

(1) If a camera is readily available and within immediate proximity, the Deputy should attempt to conduct the frisk within view of the camera.

(2) If another Deputy is on-scene, the second Deputy should witness the frisk if possible.

(3) Deputies will note whether the frisk was recorded, the camera it was recorded with, and the name/S Number of any other Deputies present during the frisk.

I. Frisks of juveniles will be conducted in accordance with standard procedures.

III. Custodial Search (1.2.4)

A. A custodial search is a search for weapons, evidence, instruments, and/or contraband and is used in the field incident to a lawful arrest.

B. When a Deputy has made a lawful physical arrest where the statutes of the State of Nebraska and the policies of the Douglas County Sheriff's Office dictate the physical custodial incarceration of the violator the Deputy may make a thorough search of the person and the surrounding area under the person's direct control.

1. Immediately following placing a person into handcuffs, and prior to conducting a custodial search, the Deputy will conduct a sweep of the waistline and/or pockets for weapons.

2. A Custodial Search will consist of a full search of the clothing and personal property in the person's actual possession (e.g., briefcase, suitcase, or other items within the person's reach such as a desk drawer if they are sitting at a desk).

3. Incident to an arrest, Deputies may, as a precautionary measure and without probable cause or reasonable suspicion, look in closets and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched.

- a. A protective sweep, aimed at protecting the arresting Deputies, is NOT a full search of the premises, but may extend only to a cursory inspection of those spaces where a person may be found.
 - b. A protective sweep will last no longer than is necessary to dispel the reasonable suspicion of danger and shall, in all cases, last no longer than it takes to complete the arrest and depart the premises.
 - c. The above criteria does NOT apply to searches of vehicles incident to arrest if the person was in the car when they got arrested. See section V, I below for criteria to search vehicles incident to arrest in accordance with Arizona v. Gant.
4. Incident to an arrest, the U.S. Supreme Court permits a broader sweep when the searching officer possesses a reasonable belief based on specific and articulable facts that the area to be swept harbors an individual posing a danger to those on the arrest scene.

C. Sex and Gender Identity

1. When possible, persons will be searched by a Deputy of the same sex if such a Deputy is on-scene or can arrive within a reasonable amount of time.
 - a. A Deputy may rely on available documentation to determine a person's sex. However, if a person notifies a Deputy that the person's gender identity differs from the person's listed sex AND the person requests to be searched accordingly, the Deputy will request that a Deputy of the identified sex be present for the search if such a request can be reasonably and expeditiously accommodated without risk to Deputy safety.
 - (1) Deputies will document the person's noted gender identity in accordance with the DCSO "Report Writing" policy.
2. Under exigent circumstances, including but not limited to the existence of reasonable suspicion of imminent threat of bodily harm or escape, any Deputy may conduct a custodial search of a person regardless of the sex or gender identity of the person. In such circumstances, the search will not be delayed until a Deputy of the same/preferred sex is located.
3. Deputies will adhere to the following procedures when searching a suspect of a different sex or gender identity:
 - a. Deputies will conduct the search in view of a camera when feasible.
 - b. If no camera is available a second Deputy will be present to witness the search.
 - c. Deputies will note whether the search was recorded, the camera it was recorded with, and the name/S Number of any other Deputies present during the search.
 - d. Searches conducted under these circumstances, as with all searches, shall be conducted with proper decorum and due consideration for the privacy of the individual.
4. Searches of Suspects Being Booked into DCDC

- a. If needed, Deputies will attempt to locate a Deputy of the same or requested sex who can search the suspect or be present for the search in accordance with Section C, 1 above upon arrival at DCDC, if such Deputy can arrive within a reasonable amount of time.
- b. If no such Deputy is available, the transporting Deputy may conduct a search of a suspect of a different sex or gender identity within the predesignated booking area in accordance with the procedures listed in Section 3 above.
- c. After the initial search has been conducted in the booking area, the suspect will be processed through the body scanner by DCDC staff.
 - (1) If the body scan indicates an item is present after the initial search, DCDC will direct the deputy on where to focus a subsequent search based upon the scan.
 - (2) Regardless if the second search yields the item, DCDC will scan the arrestee a second time. If the item is no longer visible, the booking process may continue.
 - (3) If the item is still visible on the second scan, DCDC will conduct a strip search in pre-book if the deputy is a different sex than the arrestee. The Deputy will stand by out of line of sight for security purposes.
 - (a) If a Deputy of the same sex is available within a reasonable amount of time, the strip search would be conducted by the DCSO in accordance with DCSO procedures (see Section IV below).
 - (4) If the strip search fails to yield the item, DCDC will provide a photo of the scan to the deputy to take to the hospital and will have the deputy take the arrestee for evaluation and medical clearance.
 - (5) The arrestee may be booked in after being medically cleared.

5. Searches of Inmates Held at DCDC Prior to Transport

- a. Inmates who state they identify as anything other than their listed sex who cannot be searched by a Deputy of the same listed sex, will be scanned by the DCDC full body imaging machine prior to being transported.
 - (1) Only trained DCDC personnel will operate the imaging machine. Deputies will notify DCDC booking personnel when the imaging machine is needed to scan an inmate prior to transport.
 - (2) If the inmate cannot be scanned by the imaging machine AND refuses to be searched by a Deputy of the same listed sex, the Deputy will notify their Supervisor.
 - (a) The Supervisor will work with the applicable judge to determine the appropriate next steps.
 - (b) If the judge determines that the inmate will not be transported, the transporting Deputy will complete a Court Incident Report in accordance with the "Prisoner Transport – ITI Transport Orders" policy and note the inmate's stated gender identity in the report.

- (3) If the inmate cannot be scanned by the imaging machine but ultimately agrees to be searched by a Deputy of the same listed sex, the Deputy will note that the inmate agreed to be searched, along with the inmate's stated gender identity on the Prisoner Transport Sheet.

D. Custodial searches of juveniles will be conducted in accordance with standard procedures.

IV. Strip/Body Cavity Searches

- A. The use of strip searches and body cavity searches may, under certain circumstances, be necessary to ensure the safety of Deputies, civilians and detainees.
- B. The purpose of this type of a search is to detect and secure evidence of criminal activity and to safeguard the security and safety of the detention and holding facilities.
- C. Strip and/or body cavity searches may be conducted only with proper authorization and justification, and with the utmost regard for the dignity of those being searched.
- D. Strip Searches

1. Strip Searches performed after booking the suspect will be conducted by Douglas County Department of Corrections (DCDC) in accordance with DCDC procedures.
 - a. If the Deputy believes that the suspect should be strip searched they will notify DCDC during the booking process. The arresting Deputy will inform the DCDC staff of why a strip search is needed and what item(s) they reasonably believe can be found on the individual's person.

2. If a Deputy believes that a strip search needs to be conducted prior to booking the suspect into DCDC the following procedures will be followed: (1.2.4)

- a. A Command Officer at the rank of Lieutenant or above must approve all strip searches not pursuant to a search warrant. (1.2.8a)

EXCEPTION: A Sergeant, on custodial narcotics arrests may approve strip searches.

- b. Field strip searches of prisoners will be conducted only when exigent circumstances exist.
- c. Individuals arrested for traffic violations and other minor offenses of a nonviolent nature will not be subject to strip searches unless the arresting Deputy has an articulable, probable cause to believe that the individual is concealing contraband or weapons. Probable cause may be based upon, but is not limited to the following:

- (1) The nature of the offense(s) charged.
- (2) The arrestee's appearance and demeanor.
- (3) The circumstances surrounding the arrest.
- (4) The arrestee's criminal record, particularly past crimes of violence and narcotics offenses.

- (5) The discovery of evidence of a major offense, either in plain view or in the course of a search incident to arrest.
 - (6) Detection of suspicious objects beneath the suspect's clothing during a field search incident to arrest.
- d. When authorized by the supervising authority, strip searches may be conducted only as follows:
 - (1) Strip searches will be conducted by members who are familiar with the process.
 - (2) Strip searches will be conducted in conformance with hygienic procedures and professional practices.
 - (3) Strip searches will be conducted under conditions that provide privacy from all but those authorized to conduct the search. (1.2.8b)
 - (a) Strip searches will be conducted in a place that is not accessible to the public where general access is restricted, preferably in detention.
 - (b) There will be at least two members present during the strip search, however, only the fewest number of members necessary.
 - (4) Gender, Gender Identity, and Gender Expression (1.2.8b)
 - (a) Strip searches conducted by DCSO Deputies will be conducted by Deputies of the same sex as the suspect.
 - (b) If the suspect states to the Deputy that they identify as a gender other than their documented sex, the following procedures will be followed:
 - i. Two Deputies of the same sex as the suspect will always conduct the strip search regardless of the suspect's gender identity.
 - ii. If the suspect states that they would prefer to have a male or female Deputy present during the strip search, the request will be granted if feasible. This third Deputy will not be part of conducting the strip search.
 - iii. If requested, and a Deputy of the suspect's preferred sex is available, the third Deputy will be present nearby, but not have line of sight of the suspect being searched.
 - (5) Juveniles (1.2.8c)
 - (a) Strip searches of juveniles will only be conducted in exigent circumstances.
 - (b) Strip searches will be conducted at a Temporary Detention or higher grade facility.

E. Body Cavity Searches

1. The DCSO recognizes that body cavity searches are highly invasive of personal privacy and are reasonable where the suspected offense(s) is of a serious nature and/or poses a threat to the safety of Deputies or others and/or the security of the Douglas County Department of Corrections (DCDC).
2. Should visual examination of a suspect during a strip search and/or other information lead a Deputy to believe that the suspect is concealing a weapon, evidence or contraband within a body cavity, the following procedures will be followed:
 - a. A warrant will be required to obtain a body cavity search. Deputies will obtain the approval of a Lieutenant or above to seek a warrant for a body cavity search. (1.2.4 & 1.2.8a)
 - (1) Probable cause must exist for a body cavity search. The affidavit for a search warrant will clearly define the nature of the alleged offense and the basis for the Deputy's probable cause.
 - b. If circumstances warrant, the Deputy will advise the suspect of their Miranda rights and ask questions to determine the nature and location of the contraband. This approach may influence the suspect to voluntarily remove the evidence or contraband.
 - c. Body cavity searches will be conducted by a trained medical professional in a medical facility. Deputies will not conduct body cavity searches. (1.2.8b)
 - (1) A Deputy will be present during the body cavity search to document if any evidence/contraband is recovered.
 - d. The suspect will be kept under constant visual surveillance until a body cavity search is conducted or an alternative course of action taken.
 - e. The body cavity search will be conducted as soon as practical after the warrant is received.
 - f. Gender, Gender Identity, and Gender Expression (1.2.8b)
 - (1) A Deputy of the same sex of the suspect will be present during the body cavity search.
 - (2) If the suspect states to the Deputy that they identify as a gender other than their documented sex, the Deputy will ask if the suspect would prefer to have a male or female Deputy present during the Body Cavity Search as well when feasible.
 - g. Juveniles (1.2.8c)
 - (1) Body cavity searches of juveniles will only be conducted in exigent circumstances.
 - (2) Body cavity searches will be conducted by a medical professional at Methodist Children's Hospital.

3. If DCDC requires a body cavity search prior to booking based on the results of a scan conducted by the DCDC imaging machine, the following procedures will be followed in addition to the standard procedures above:
 - a. A warrant will still be required to obtain a body cavity search. (1.2.8a)
 - (1) The warrant will include a request for a scan at the hospital in addition to the request for a body cavity search.
 - b. Upon receipt of a warrant, the Deputy will obtain a copy of the scan from DCDC and provide it to the medical facility conducting the body cavity search and ask the facility to scan the suspect prior to conducting the search.
 - c. If the hospital scan shows no weapons, evidence, or contraband in the body cavity then the Deputy will request a copy of the scan and notify their Supervisor.
 - (1) The Deputy's Supervisor will notify a Corrections Supervisor.
 - (2) The suspect will be returned to DCDC without having a body cavity search conducted and a copy of the hospital's scan will be provided to DCDC if possible.
 - d. If the hospital scan does show possible weapons, evidence, or contraband in the body cavity, then a body cavity search will be conducted in accordance with standard procedures.

V. Vehicle Searches (1.2.4)

- A. Deputies will not search vehicles solely on the basis of a traffic infraction nor request permission to search a vehicle on a random basis absent any articulable suspicion of a crime.
- B. During a traffic stop, Deputies may conduct a preliminary investigation of the vehicle's driver and passengers reasonably related to the stop. Deputies may request identification, check vehicle information, and run data checks.
 1. The driver is required to provide an operator's license or identification, vehicle registration, and/or proof of ownership and insurance.
 2. An adult, front seat passenger who is not wearing a vehicle restraint is required to provide identification.
 3. A Deputy may request identification from any other passengers in a vehicle, however, it is not required that the passengers comply unless there is probable cause or reasonable suspicion that the passenger violated the law.
 4. Passengers may be ordered from the vehicle during a search of the vehicle or if they interfere with the investigation.
 5. If the passenger is in close proximity to contraband in plain view, the Deputy has probable cause to arrest the passenger.
- C. Expanded Inquiry
 1. Further detention is justifiable when articulable reasonable suspicion of criminal activity exists.

2. Deputies are allowed to detain a person stopped for a traffic offense in order to obtain additional information regarding the Deputy's observations and/or suspicions. However, Deputies may not detain a motorist beyond the time reasonably required to complete the traffic stop without reasonable suspicion (US v. Rodriguez).
3. If Deputies do not have additional articulable reasonable suspicion, continued detention of the motorist is prohibited.

D. Plain View Doctrine

1. The "Plain View" doctrine allows Deputies to seize any item without a warrant which they observe in plain view or open view (including items observed by using a flashlight) within a vehicle even if the occupants have been removed from the vehicle.
 - a. Deputies must have probable cause to believe that the item is a weapon, contraband, stolen, or was used in the commission of a crime, or other evidence of a crime.
 - b. Deputies must have the legal right to be in the area where the item was spotted.

E. Movable Vehicle Exception

1. Motor vehicles, by nature of their mobility, may be searched without a warrant under certain circumstances. (Carroll Doctrine)
2. A Deputy may conduct a warrantless search of a vehicle if they have probable cause to believe that the vehicle contains evidence of a crime or contraband and there are exigent circumstances that would make obtaining a search warrant impractical.
3. Deputies may search the entire vehicle, trunk, closed containers, or any place that the items to be seized could be kept, for which the Deputy has probable cause to believe are in that place in the vehicle.
4. Deputies will document any evidence of a crime or contraband that is discovered during the search.

F. Deputies may search a vehicle if they receive consent if the consent is voluntary and without force or coercion and in accordance with Section VI of this policy.

G. Probable Cause Vehicle Searches

1. Deputies may search a vehicle without a warrant if there is articulable probable cause to believe that the vehicle contains fruits, or evidence of a crime or contraband.
2. Probable cause searches may extend to all areas of the vehicle, unless the probable cause is limited to a specific area of the vehicle.
3. Deputies will not search areas of the vehicle that could not contain the fruits or evidence of a crime or contraband being sought.

H. Vehicle Searches Incident to an Arrest (Arizona v. Gant)

1. Deputies will only search a vehicle incident to a recent occupant's arrest 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 of arrest.
2. When these justifications are absent, a search of an arrestee's vehicle will not be made without a warrant or probable cause to believe that the vehicle contains fruits, or evidence of a crime or contraband.

VI. Consent Searches (1.2.4)

- A. Consensual searches are permitted if consent is given voluntarily by someone who has the authority to relinquish that right.
- B. Deputies will get a written release on a Consent to Search form (OSF-13) whenever practical.
- C. Deputies will be mindful that the individual can stop the search at any time.
- D. If a person revokes consent Deputies will stop the search absent probable cause. If Deputies can articulate probable cause they can continue the search.

NOTE: Revocation of consent alone does not establish probable cause.

VII. Warrantless Searches and Seizures (1.2.4)

- A. Crime Scenes
 1. A warrantless search at a crime scene may be made when exigent circumstances exist, evidence is in plain view, or with consent (the Consent to Search form should be used whenever practical).
 2. At the "Scene of a Crime" the U.S. Supreme Court has ruled there are no exceptions to the Fourth Amendment for crime scene searches. However, in responding to a homicide or serious assault scene, Deputies may:
 - a. Make warrantless entry where they reasonably believe a dead body or injured person will be found. A suspected dead body may still be alive and entry is justified under the Emergency Doctrine.
 - b. Examine the body itself.
 - c. Search the premises for other victims or suspects.
 - d. Seize any evidence in plain view while inside the residence pursuant to any of the above permissible activities.
- B. Exigent (Emergency) Circumstances
 1. Exigent circumstances exist when there is an emergency situation requiring swift action to prevent imminent danger to life or serious damage to property, or to forestall the imminent escape of a suspect or destruction of evidence.
 2. Absent exigent circumstances, Deputies are prohibited from making a warrantless and nonconsensual entry into a private residence in order to make an arrest.

- a. Both the United States and Nebraska Supreme courts have held that “absent exigent circumstances, the threshold may not reasonably be crossed without a warrant.”
 3. Emergency (exigent) entry is allowed only to prevent destruction/loss of evidence or when there is danger to the public.
- C. Abandoned Property
1. Deputies may search and seize abandoned property without a warrant after it has been reasonably determined that the property is abandoned.
 2. Deputies must articulate in their reports how they came to the determination that the property was abandoned.

VIII. Search Warrants (74.3.1c)

- A. Deputies seeking a search warrant will first complete an Affidavit and Application for Issuance of a Search Warrant and an actual Search Warrant documenting probable cause for the search.
1. Deputies will gather all reports regarding the incident and copies of arrest histories of all individuals associated with the location or item to be searched to form a Search Warrant Application Packet.
 2. The Affidavit and Application for Issuance of a Search Warrant will include (NSS §29-814.01):
 - a. Justification for the search warrant.
 - b. Person or place to be searched.
 - c. Person or property to be seized.
- B. No knock search warrants will be approved by the Operations Chief Deputy or Sheriff prior to execution. Approval may be provided verbally in exigent circumstances. (74.3.1d)
1. No knock warrants are restricted to cases where evidence may be destroyed or where Deputies lives or members of the public may be unnecessarily endangered without surprise entry.
- C. Deputies will make the following copies prior to presenting the search warrant to a judge for approval:
1. Two additional copies of the search warrant will be made, for a total of three. One copy of the search warrant will be served on the person in question at the time of the execution. The Deputy will maintain the other copy and the original.
 2. One copy of the Affidavit and Application for Issuance of a Search Warrant will be made, for a total of two. The Deputy will maintain both during the execution.
 3. After a judge signs all five documents (search warrant and two copies along with affidavit and copy) the Deputy may execute the search warrant.
- D. Deputies will attempt to execute the warrant the following day, but must execute and return of the search warrant to the judge within ten days of the date of signing. (NSS §29-815)

1. The search warrant will provide the time (day vs night) and manner (announced vs no knock) in which the search warrant will be executed.
- E. Deputies may request assistance from FSD if needed in accordance with the DCSO "Collection and Preservation of Evidence" policy.
- F. Deputies conducting a search warrant will adhere to the following procedures:
1. Deputies will ensure that the place or person listed on the warrant is accurate.
 2. Extreme caution will be used when approaching a search site.
 - a. All likely exits should be covered, and if a uniformed Deputy is necessary, he/she should be highly visible. Surprise and quick action is important.
 - b. Deputies should attempt to minimize exposure at windows and doors.
 3. When searching a location or structure, search teams should consist of the following:
 - a. A coordinating investigator.
 - b. An evidence collection Deputy.
 - c. An interviewing Deputy.
 - d. Search Deputies.
 4. When executing an announced search warrant, the coordinating investigator or assigned search team member should announce in a clear, loud voice his/her identity and intention to serve the warrant.
 - a. The premises may be forcibly entered in a manner causing the least amount of damage. When practical, a key should be obtained.
 5. When executing no-knock warrants it is imperative to use a uniformed Deputy for entry.
 6. When conducting a search warrant of a location/structure a preliminary search should be conducted for persons who may be hiding inside.
 - a. All persons located should be taken to one room or location and guarded by a Deputy designated by the coordinating investigator.
 - b. Communication between suspects will be restricted. Suspects or potential suspects will be handcuffed and placed in separate rooms if possible.
 7. A copy of the warrant should be furnished to the resident/owner of the property or other person in charge of the premises/property.
 8. When conducting a search warrant of a location/structure, the areas to be searched should be assigned by the coordinating investigator with each Deputy of the search team responsible for a room or area.
 - a. The search should be conducted in a systematic and orderly fashion.

- b. Any property found by a team member that should be seized will be marked by that team member.
 - c. Once the search of the assigned area is complete, team assignments should be exchanged so that a second Deputy will search an area already searched. Any additional property found will then be seized by that team member.
- 9. All seized property and evidence will be documented and entered into the Property and Evidence Division in accordance with the DCSO "Property and Evidence" policy.
- G. The coordinating investigator will complete an overall synopsis of the scene, search, property seized, the involved Deputies and assignments as well as the disposition of the property and arrests within the Case Folder. Reports should reflect a complete history of the search including the basis for the warrant, time of entry of premises, circumstances of entry, identities of the search team and of persons on the premises, and an outline of the actions of each Deputy.
- H. Deputies will submit the return and inventory to the judge/magistrate who authorized the search warrant.
- I. Deputies will send the original packet and a copy of the return and inventory to the Records Division. A copy will be scanned and attached to the Case Folder in RMS.

IX. Reporting (1.2.8d)

- A. Deputies will document frisks and searches as follows:
 - 1. Frisks and searches that result in Deputies locating contraband and/or weapons.
 - 2. Frisks and searches conducted by a Deputy of the opposite sex/gender identity of the suspect.
 - 3. Frisks and searches that Deputies believe should be documented based on their training and experience (e.g., frisk or search that they believe may result in a complaint).
- B. When documenting a frisk or a search Deputies will complete all applicable reports based on the circumstances and document, at a minimum, the following:
 - 1. Deputies will articulate the reasonable suspicion, probable cause, exigent circumstances, or consent of the subject that led to the frisk/search.
 - 2. Identity of the Deputy conducting the frisk/search.
 - 3. Identity of the approving authority when applicable.
 - 4. Date, time and place of the frisk/search.
 - 5. Identity of the individual frisked/searched.
 - 6. Identity of those present during the frisk/search.
 - 7. A detailed description of the nature and extent of the frisk/search.
 - 8. Any weapons, evidence, property, or contraband found during the frisk/search.

REFERENCES

I. Laws

- A. U.S. Constitution, Amendment 4.
- B. *Terry v. Ohio*, 392 U.S. 1, 21, (1968); *Chimel v. California*, 395 U.S. 752, 89 S. Ct. 2034, 23 L. Ed. 2d 685 (1969); *U.S. v Steward*, 2016 WL 7017258, *2 (D. Neb. 2016); and *Maryland v. Buie*, 494 U.S. 325, 110 S. Ct. 1093, 108 L. Ed. 2d 276 (1990).

II. Previous DCSO Orders

- A. Previous General Orders include: #40-2023, #39-2022, #32-2019, #24-2018, #27-2012, #22-2012, and #7-2007.

III. CALEA Accreditation Standards

- A. Relevant CALEA standards include: 1.2.4, 1.2.8, and 74.3.1.

IV. Review Schedule

- A. Quadrennial.