

I. PURPOSE

To provide guidelines to deputy sheriffs of this agency in the constitutional requirements of search and seizure.

II. POLICY

It is the policy of the Fairfax County Sheriff's Office that citizen's Fourth Amendment rights against illegal search and seizure will not be compromised.

III. PROCEDURE

A. Search Warrants

1. Deputies will obtain search warrants upon probable cause in all appropriate criminal cases except for the following circumstances:
 - a. Consent searches.
 - b. Emergency searches.
 - c. Plain view.
 - d. Abandoned property and open fields.
 - e. Inventory search of vehicles.
 - f. When executing arrest warrants.
 - g. Incident to arrest.
 - h. Pat-downs of suspicious persons.
2. [Virginia Code § 19.2-52](#) states that a judge or magistrate may issue a warrant if:
 - a. There is a reasonable and probable cause to do so.
 - b. There is a complaint on oath supported by an affidavit.
3. [Virginia Code § 19.2-53](#) states that warrants may be issued for the search of specified places, things, or persons, and seizure there from the following things as specified in the warrant:
 - a. Weapons and other objects used in the commission of a crime.
 - b. Articles of which the sale or possession is unlawful.
 - c. Stolen property or the fruits of any crime.
 - d. Any object constituting evidence of a crime.
4. Search warrants must be obtained in the jurisdiction where the place or person to be searched is located. Virginia Code § 19.2-52 states that search warrants may be obtained from any of these sources:
 - a. Any judge.
 - b. Any magistrate; or
 - c. Any other person having the authority to issue criminal warrants.
5. The officer to whom the warrant is delivered shall be the only person permitted to be present during or participate in the execution of the warrant to search a place except:
 - a. the owners and occupants of the place to be searched when permitted to be present by the officer in charge of the conduct of the search; and

- b. persons designated by the officer in charge of the conduct of the search to assist or provide expertise in the conduct of the search
6. [Virginia Code § 19.2-56](#) states that:
- a. No law-enforcement officer shall seek, execute, or participate in the execution of a no-knock search warrant.
 - b. A search warrant authorized under this section for a place of abode shall require that a law enforcement officer be recognizable and identifiable as a uniformed law enforcement officer and provide audible notice of his authority and purpose reasonably expected to be heard by occupants of such place to be searched prior to the execution of such search warrant.
 - c. Search warrants authorized under this section for a place of abode shall be executed only in the daytime unless:
 - 1) a judge or magistrate, if a judge is not available, authorizes the execution of such search warrant at another time for good cause shown.
 - 2) A search warrant for the withdrawal of blood may be executed at any time of day.

B. Types of Searches

- 1. Consent - A search warrant is not necessary when a person who has authority or control over the thing or place searched consents to the search. This consent must be given voluntarily and the person who gives the consent may withdraw it at any time. If the consent is withdrawn, deputies will then secure the premises and seek a warrant.
- 2. Emergency Searches - A search warrant is not necessary in an emergency. An emergency is sometimes termed "exigent circumstances." If deputies enter a premises with probable cause to believe that critical evidence may be destroyed or removed unless immediate action is taken, they may enter without a warrant, secure the premises, and obtain a search warrant before proceeding further unless they have obtained consent to search, or some new circumstances arise necessitating another warrant-less search.
- 3. Plain View - This is technically not a search. To make a plain view seizure of property (contraband, fruits, or instruments of the crime) the deputy must follow these requirements.
 - a. The seizure must take place where the deputy has legally observed the property; and
 - b. It must be immediately apparent to the deputy that the items he or she observes may be evidence of a crime, contraband or otherwise subject to seizure.
 - c. The deputy may not move items, look inside, underneath, or behind them for serial numbers or other identifying marks. If such movement is necessary, the deputies will obtain a warrant.

**FAIRFAX COUNTY SHERIFF'S OFFICE
STANDARD OPERATING PROCEDURE**

**SOP NUMBER: 033a
SUBJECT: SEARCH AND SEIZURE**

4. Stop and Frisk - A law enforcement officer may temporarily detain a person in a public place if reasonable suspicion exists that a felony has been committed, is being committed, or is about to be committed; or the deputy reasonably suspects that a person is illegally carrying a concealed weapon in violation of [Virginia Code § 18.2-308](#).
 - a. Stop - The detention of a subject for a brief period of time. In order to make the stop, the deputy must have reasonable suspicion to believe that criminal activity is afoot and the individual to be stopped is involved.
 - b. Frisk - Should the deputy reasonably believe that the person stopped intends to do him bodily harm or is carrying a concealed weapon, the deputy may conduct a limited search of the person's outer clothing.



**STACEY A. KINCAID
SHERIFF**

**03/10/99
EFFECTIVE DATE**

**04/27/2021
DATE APPROVED**

Revised: October 2020, April 2021, June 2021