



# FAIRBURN GEORGIA POLICE DEPARTMENT OPERATIONS MANUAL



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## CHAPTER 9 Search and Seizure

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## **I. PURPOSE**

- A Establishes Agency guidelines controlling search and seizure of property and persons consistent with existing law.
- B Establishes a standard operating procedure for the execution of search warrants against property (for persons see Chapter 8 - Arrest).
- C Establishes a standard operating procedure for male officers searching female suspects and prisoners.

## **II. DEFINITION**

- A **SEARCH WARRANT** - A judicial command to "search the place or person particularly described in the warrant and to seize the instruments, articles, or things particularly described in the warrant".

## **III. RULES AND REGULATIONS**

### **A Search Warrants**

#### **1. Contents of a Valid Search Warrant Include:**

- a) Time and date of issuance;
- b) Person who is to execute the warrant;
- c) A command to search the place or person particularly described in the warrant;
- d) A command to seize the instruments, articles, or things described in the warrant; and
- e) The signature of the issuing judicial official.

- 2. **Obtaining a Search Warrant** - A search warrant may only be issued upon application of an officer of the State or its political subdivisions charged with the duty of enforcing the criminal laws. The warrant must be issued by a neutral and detached judicial officer authorized to hold a preliminary hearing. The judicial officer must find probable cause that a crime is being, or has been committed, or that contraband or evidence exists in a specific place, and it must particularly describe who or what is to be searched and what is to be seized.

A search warrant can only be obtained and served by a certified peace officer. A warrant may be issued based on an affidavit containing only hearsay where:

- a) The information is current.
- b) Under the totality of the circumstances, the information is deemed reliable. "Totality of the circumstances" normally includes facts about the reliability of the informant as well as facts about the reliability of the information. The less that is known and shown about the

informant's reliability, the more that must be shown about the reliability of the information itself.

- c) The information must be detailed enough that the judicial officer will know it is not based on mere rumors, and the officer should independently verify as much of the informant's statement as possible. The officer should include the results of the investigation in the affidavit as well as, in general terms, the circumstances under which the informant obtained the information; and
  - d) The identity of the informant should not be listed in the affidavit for a search warrant.
3. Executing a Search Warrant - When conducting the search, an officer may seize any items specifically named in the warrant. The officer may also seize any stolen or embezzled property, contraband, or tangible evidence of another crime (other than private papers) if he/she comes across such items unexpectedly while making the search required by the warrant. Private papers mean "privileged papers" (e.g., attorney client). See *Sears v. State* 262 Ga. 1993.

For the protection of the officer and to prevent the destruction or concealment of evidence, individuals may be restrained during the execution of the warrant.

Unless there is independent justification, a person not named in a warrant shall not be searched.

## B Exceptions to the Search Warrant Requirement

1. Consent Search - The right against unreasonable search and seizure may be waived by an individual who voluntarily consents, either orally or in writing, to a search. In addition, a consent search may be authorized by a third party who shares common control or authority of the premises or items to be searched. However, the prosecutor has the burden of proving that the defendant's consent to a warrantless search was given freely and voluntarily. The voluntary nature of a person's consent will be determined by an examination of the totality of circumstances at the time of search. A person may withdraw consent at any time and the search must cease.
2. Plain View Doctrine - Mere observation of contraband by an officer does not constitute a search within the scope of the Fourth Amendment. However, the seizure of such contraband is governed by the Fourth Amendment principles, and for the evidence to be admissible under the Plain View Doctrine:
  - a) The officer must have the right to be at the location from which the items were viewed;
  - b) No action can be taken by the officer to bring the items into plain view;
  - c) The incriminating nature of the seized object(s) must be apparent from their appearance

3. The Open Field Doctrine - Fourth Amendment protection does not extend to the "open fields" surrounding the curtilage and the home.
4. Curtilage - Generally speaking, curtilage has been held to include all buildings near a dwelling, which are continually used for carrying on domestic employment, or such places as are necessary and convenient to a dwelling and are habitually used for family purposes (including a patio). Curtilage is afforded the same Fourth Amendment protection as is the home.
5. Legitimate Expectation of Privacy - The determination of whether Fourth Amendment protection 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.

There is no reasonable expectation of privacy for trash deposited in a public place for collection and no Fourth Amendment violation occurs when such trash is searched/seized. See *California v. Greenwood*, 486 US 35.

6. Exigent Circumstances - Exigent circumstances are defined as those circumstances under which a suspect is fleeing, or instrumentalities of a crime are being destroyed. Under these circumstances, if an officer has probable cause to believe that an instrumentality or evidence of a crime will be found and it is not practical for the officer to obtain a warrant, the officer may conduct a warrantless search.

Officers cannot create the exigency which would justify the warrant exception.

## C Warrantless Searches of Persons

### 1. Frisk

- a) 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 the officer reasonably 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.
- b) Nature of Frisk - The search for weapons must be limited to a pat-down of the person's outer clothing. If an object is felt and the officer believes it may be a weapon, the officer may search more extensively to confiscate it.

### 2. Search of a Person Incident to Arrest

- a) The search incident to arrest may be conducted to:
  - (1) Protect the officer from attack;
  - (2) Prevent the arrested person from escaping;
  - (3) Discover/seize fruits of a crime for which the person has been arrested; or

(4) Discover and seize any instruments, articles, or things which may have been used in the commission of the crime for which the person has been arrested.

b) Once the arrest has occurred the officer may conduct a search without additional cause. For the search incident to arrest to be legal, the arrest must be legal. The search must be conducted at the time of arrest and be limited to the arrestee's person and the area "within his immediate control." A search of an arrested individual at the detention facility may be justified as a search incident to arrest.

#### D More Intrusive Searches of Persons

1. Searches of the Body's Surface - Intrusions on the body's surface (swabbing, taking hair samples, retrieving of evidence from the mouth, etc.) are governed by the Fourth Amendment and can only be made pursuant to a warrant.
2. Searches of Bodily Fluids and Organs - Intrusions into the body (blood tests, stomach pumping, surgery, etc.) are permitted by the Fourth Amendment if they are conducted pursuant to a warrant, if exigent circumstances exist and there is a clear indication the desired evidence will be found. This is limited to those intrusions that are "reasonable" and safe for the suspect.
3. Strip and Body Cavity Searches - A strip search is to be conducted only if it is reasonable considering the circumstances. The strip search of suspects/detainees is prohibited unless performed by jail personnel.

Removal of contraband incident to a body cavity search can only be performed by medical personnel.

#### E Vehicle Stops

1. Significance of Stop - Because a "seizure" occurs whenever a vehicle is stopped, there must be reasonable suspicion to justify an investigatory stop of a vehicle. During a vehicle stop, an officer may take reasonable steps to protect himself / herself. At the officer's discretion, the officer may direct the driver to step out of the vehicle. If the officer has reasonable belief that the person is armed and dangerous, the officer may conduct a frisk search.
2. Vehicle Safety Checkpoints - Vehicles may also be stopped at general roadblocks which serve legitimate law enforcement purposes. If evidence of a crime is observed, an officer has the right to take reasonable investigative steps.
3. Exigent Circumstances - The mobility of motor vehicles often constitutes exigent circumstances authorizing a warrantless search. The "automobile 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. To conduct a warrantless search, the officer must have probable cause to believe the vehicle contains contraband or other seizable items and that the vehicle will be moved if time is taken to obtain a warrant. A warrant is needed to search a vehicle that the officers can legally control without fear

of it being moved. (See US v Johns, 469 US 478 and California v. Acevedo, 49 CrL 2210.)

4. Arrest of Occupant - If a person is arrested after a vehicle stop, the interior portions of the vehicle may be inventoried if the vehicle is impounded. The driver must be afforded an opportunity to have the vehicle removed through their own devices prior to impound. Also reference SOP 9-2.

#### F Container and Luggage Searches

1. Standard - When there is probable cause that contraband will be found somewhere inside of a vehicle, combined with exigent circumstances such that it is not possible to obtain a warrant, officers may open containers in the vehicle to seek the contraband. However, the automobile exception normally will not justify a warrantless search of specific containers. Where there is probable cause as to specific containers, the containers should be secured until a search warrant is obtained to open them.
2. Exceptions - The Search Incident to Arrest and Plain View Doctrines may 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 the arrestee's immediate area of control; i.e., the passenger compartment.
3. Inventory - Locked containers may not be opened under the rationale of inventory, without a warrant.

#### G Inventory

1. Seizure of Vehicle - For an inventory of a vehicle to be valid, the law enforcement custody of the vehicle must be lawful and conducted as part as a standard operating procedure to protect the contents of the vehicle (see S.O.P. 13-2 Vehicle Impound/Inventory). An inventory shall be conducted on any vehicle impounded or seized by this agency. The inventory does not extend to locked luggage.
2. Other Property – All inventories of other property must be lawful and conducted as part as a standard operating procedure. All inventories will be indicated on an inventory/property sheet.
3. Booking Searches - A custodial search of the arrestee's personal effects may be justified as either a delayed search incident to arrest or as an inventory procedure. Once an officer has taken the property into his/her control, a further search is no longer incidental to the arrest.

H Abandonment - Abandonment is a voluntary relinquishment of control of property (e.g. disposing of or denying ownership).

An individual who abandons property does not retain any expectation of privacy.

1. Seizure of Property - All property received by the Agency pursuant to a court order will be accounted for in the agency records. Only those officers who are sworn and POST certified will perform any seizure of property. Records to be maintained should include:

- a. Date and time property was received;
- b. A description of the property;
- c. Identification numbers or serial numbers when applicable;
- d. Name of the person or company from whom the property was received;
- e. Name of officer who received the property

2. Disposition of Property and Evidence - (See SOP Chapter 13-1)



**STANDARD OPERATING PROCEDURE  
EFFECTIVE: 05/19/2008**

**S.O.P. 9-1 SEARCH AND SEIZURE, RESIDENCES**

**I. PURPOSE**

The purpose of this policy is to direct officers and supervisors with respect to home entries.

**II. POLICY**

The policy of this agency is to protect and serve the constitutional rights of all citizens when conducting home entries while balancing the needs of law enforcement in solving crime for the protection of the community.

**III. DEFINITIONS**

- A Probable Cause: (search): Facts and circumstances based upon observations or information that would lead a reasonable law enforcement officer to believe that evidence of crime exists and that the evidence exists at the place to be searched.
- B Exigent Circumstances Entry: Entry of a dwelling without a warrant due to some existing emergency that would not allow an officer time to get a warrant.
- C Search Incident to Arrest: A search of the arrestee and their immediate area of control that is allowed whenever a custodial arrest is made.
- D Consent: The voluntary granting of permission for an officer to enter an area that is protected by the 4th Amendment, by a person who has a reasonable appearance of authority over that area.
- E Dynamic Entry: The utilization of a special team i.e. SWAT, ERU etc. when executing a high-risk warrant, entering to control a barricaded subject, or similar high risk event.

**IV. PROCEDURE**

At the outset officers are directed that there are only three lawful methods upon which he or she may enter a person's dwelling. These methods include a warrant (arrest or search-with differing rules for each), exigent circumstances, or consent.

- A Knock and Announce: Prior to considering a forced entry into a dwelling, officers must knock at the entrance and announce their identity and purpose unless one of the following circumstances exist:
  - 1. The officer's purpose is already known to the occupant.
  - 2. When the personal safety of the officer or others would be jeopardized by the announcement.
  - 3. When the delay caused by the announcement may enable the suspect to escape.

4. When a prisoner has escaped and retreated to any home or business.
5. When the announcement may cause evidence to be destroyed.

In determining how long an officer must wait before forcing entry following the knock and announcement, officers should consider the nature of the item sought and how long it would take to destroy the item. The United States Supreme Court found 15-20 seconds to be a reasonable amount of time in a drug warrant case.

**B Arrest Warrant – Felony or Misdemeanor:** Officer may enter the home of the subject of an arrest warrant in cases where the officer also has probable cause to believe the subject is home.

1. Knock and Announce Rules Apply
2. Search Incident to Arrest - 3 Zones
  - a) Officers may, at the time of the arrest, search the room the subject is arrested in once a lawful arrest is made.
  - b) Officers may, at the time of arrest, also look into, but not go into, areas adjoining the room of arrest, from which an attack could be launched.
  - c) Officers may conduct a protective sweep, limited to those places where a person could be, in cases where the officers have reasonable suspicion to believe someone else on the premises poses a danger to the officer.
3. Officers must obtain a search warrant before entering the residence of a third party in order to search for the subject of an arrest warrant unless exigency or consent exists.

**C Search Warrants-** Officers must have probable cause to believe that evidence of a crime exists and must have probable cause to believe it will be located at the place to be searched.

1. Knock and Announce Rules Apply: all necessary and reasonable force may be used to affect an entry into any building or part thereof to execute a search warrant if, after verbal notice or a good faith attempt at verbal notice by the officer executing the warrant which states the officer's authority and purpose:
  - a) He or she is refused admittance;
  - b) The person or persons on the premises refuse to acknowledge the verbal notice or the presence of persons inside the building is unknown to the officer;
  - c) The building or property is unoccupied.
  - d) Where the officer has reasonable grounds to believe that the announcement will place the officer in greater peril or lead to the immediate destruction of evidence, the officer may dispense with the knock and announce requirement.

## 2. No-Knock Search Warrant

- a) 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.
  - b) A no-knock provision cannot be based on mere suspicion, but rather must be founded upon probable cause from an investigation or an informant.
  - c) Since an officer has a right to use necessary and reasonable force it is also the 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 the officer(s).
3. The search warrant itself must particularly describe the place to be searched and must also particularly describe the items to be seized.
4. The scope of a search warrant is limited by information (i.e. information developed indicates that items are stored in a specific location). Scope may also be limited by the size of the item; (i.e. if looking for a stolen piano, one would not open a bureau drawer).
5. All search warrants must be executed in a reasonable manner.
- a) Search warrants shall be executed within ten (10) days of issuance. If the warrant is not executed within ten (10) days from the time of issuance it shall be void and shall be returned to the court of judicial who issued it as “not executed.”
  - b) Search warrants may be executed at any time.
  - c) A duplicate copy of the warrant and the items seized shall be left with any person from whom items are seized or if no one is present, a copy shall be left in a conspicuous place at the residence.
6. Detention and Search of Persons on the Premises: When executing a search warrant, the officer may reasonably detain, frisk and/or search any person in the place at the time under the following limitations (these limitations apply even in cases where the warrant calls for the “search of any person present”):
- a) Frisk-To protect him or herself from attack when the officer has reasonable suspicion, based upon specific facts, to believe that the individual present is armed and poses a threat.
  - b) Search: To prevent the disposal or concealment of any item particularly described in the warrant where there is probable cause, based upon specific facts, to believe the person to be searched is in possession of said item.
  - c) Detain: Officers may detain any person who is present at the scene of a residence where officers are executing a search warrant. Where

officers are executing a dangerous search warrant, all persons present may be handcuffed while officers conduct their search. If at any time it is determined that the person restrained in handcuffs does not pose a threat, the handcuffs should be removed.

D Consensual Entry - Officers may, without reasonable suspicion or probable cause, enter a dwelling based upon the consent of a person who appears to have authority over the premises. This applies to Knock and Talk events.

1. Consent must be voluntary.
2. Consent need not be in writing, but written documentation will assist officers in proving that the consent was voluntary.
3. Officers may not enter a dwelling in a case where a co-occupant is present and objecting to the entry.
4. The scope of a consensual entry and search rests with the consenting party who controls both how long the entry and search may last as well as what locations within the residence may be searched.
5. Officers should not rely on the consent of a juvenile under the age of fifteen (15).

E Exigent Entry- An officer may enter a home based on emergency circumstances when any of the following circumstances exist:

1. Hot pursuit of a fleeing felon.
2. Imminent destruction of evidence for any jailable offense.
3. Need to prevent suspect's escape.
4. Risk of danger to police or others inside or outside the dwelling.
5. Officers may enter a home without a warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such an injury.

Once exigency has ended, officers should secure the scene and obtain a search warrant.

The fact that an area is a crime scene does not create automatic exigency - There is not crime scene exception to the warrant requirement.

F Dynamic Entry

Whenever entering a residence in a manner designed to anticipate a potential deadly force encounter, a specially trained team should be utilized to ensure the safety of all persons involved.

Due to the nature of executing this high-risk entry, extreme care must be utilized in order to ensure that only the proper residence is entered. When considering the use of a dynamic entry, the following precautions must be followed:

1. A supervisor must be present and take responsibility for reviewing and approving the warrant as well as the affidavit prior to the execution of the warrant.
2. If the warrant involves narcotics, ensure that a purchase has been made or contraband observed within the seventy-two (72) hour period preceding the execution of the warrant.
3. If utilizing an informant for a narcotics purchase, an investigator must ensure that the informant has been observed at all possible times.
4. The officer supervising the special team will conduct a drive-by of the location with the lead investigator using the legal description on the warrant to locate the residence to ensure that the residence to be entered is verified with the warrant. If any discrepancies exist or if the house cannot be located by the description on the warrant, the warrant shall not be served.
5. Prior to execution of the warrant, all available data bases will be checked (telephone, electric, real estate etc.) to ensure that the residence matches the suspect of the investigation.
6. A written operations plan will be prepared identifying the specific mission for the team, intelligence considered, a description of the targeted subjects and location, and the specific tasks assigned to each member of the entry team.
7. The lead investigator will accompany the special team during the execution of the warrant and direct officers to the doorway of the residence to ensure that the correct residence is entered.

## G Execution of Search Warrants

### 1. Supervisory Personnel

- a) Prior to the execution of a search warrant, an officer of supervisory rank should have reviewed the affidavit and warrant and the circumstances prior to its issuance to ensure requirements of law are being met and all necessary elements are present even though the warrant may have already been signed by the appropriate judge. All search warrants and affidavits obtained by any officer should, if possible, be reviewed prior to a judge's signature.
- 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 deems necessary.
- c) All requests for wiretap warrants must be approved in advance by the Chief of Police, and the actual warrant must be applied for by the District Attorney's Office.

### 2. Assigned Officers

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

(1) Restricting their actions in a manner consistent with the scope of the warrant.

(2) Whenever possible, leaving property not seized in an orderly fashion and ensuring it is not left in an unreasonable state of disorder or destroyed; and

(3) Ensuring all evidence seized is documented on the inventory and forwarded to the Property & Evidence Room.

### 3. Search Warrant Execution Protocols

a) To eliminate confusion and disorganization, and to promote thorough and precise execution of search warrants (or processing of any other type of crime scene), a chain of command shall be established with assignments of tasks or functions to support personnel participating on search warrants, raids, and major crime scenes.

b) Incident command protocol shall apply and the case officer and/or affiant of the warrant shall assume incident command. Incident commander 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.

c) 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 others may perform tasks of diagramming, sketching, photography, or such other tasks essential to the safe and effective execution of the search warrant.

d) 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 pre-event review by the supervisors and/or staff of the department. If potential errors are detected, a supervisor may assume command of the event.

e) This directive will not apply to search warrants executed online via an internet/web-based portal, nor for search warrants for bodily fluids, or blood draws for DUI's for example.

**STANDARD OPERATING PROCEDURE  
EFFECTIVE: 05/19/2008**

**S.O.P. 9-2 SEARCH AND SEIZURE, MOTOR VEHICLES**

**I. PURPOSE**

The purpose of this policy is to direct officers in their contacts with motor vehicles.

**II. POLICY**

The policy of this agency is to protect and serve the constitutional rights of all citizens when conducting vehicle stops and searches while balancing the needs of law enforcement in solving crime for the protection of the community.

**III. DEFINITIONS**

- A Motor Vehicle: Any motorized vehicle that is capable of movement to include motor homes.
- B Probable Cause: (search): Facts and circumstances based upon observations or information that would lead a reasonable law enforcement officer to believe that evidence of a crime exists and that the evidence exists at the place to be searched.
- C Probable Cause: (arrest): Facts and circumstances based upon observations or information that would lead a reasonable law enforcement officer to believe that a crime has been or is being committed and the person to be arrested is the one who is committing or has committed the crime.
- D Reasonable Suspicion (temporarily detain): Facts and circumstances based upon observations or information, short of probable cause, but based upon articulated facts, that would lead a reasonable law enforcement officer to believe that criminal activity is afoot.
- E Reasonable Suspicion (frisk): Facts and circumstances based upon observations or information, short of probable cause but based upon articulated facts that would lead a reasonable law enforcement officer to believe that a person who is lawfully stopped is in possession of a weapon.
- F Frisk (weapon): A limited type of search, the limit being to those areas capable of holding a weapon and located within the subject's immediate area of control.

**IV. PROCEDURES**

- A Vehicle Stops - Vehicles may be lawfully stopped under the following circumstances:
  - 1. Reasonable Suspicion Based Stop - where an officer has articulated facts that support a belief that criminal activity is occurring and that a vehicle is involved the officer may stop the vehicle to investigate further. The stop may continue as long as the officer diligently investigates to confirm or dispel the suspicion that criminal activity is occurring, and the occupant(s) of the vehicle is involved.

2. Probable Cause based Stopped -Traffic Violation - where an officer has probable cause to believe that a violation of the motor vehicle code has occurred may stop the vehicle and detain the vehicle for a reasonable amount of time while the citation is completed. If the violation is an arrestable offense-refer to section below.
  3. Probable Based Stop - Arrest/Search - where an officer has probable cause to believe that a person in a vehicle has committed a crime or probable cause to believe that a vehicle contains evidence of a crime or contraband, the officer may stop the vehicle to arrest the occupant (in the arrest situation) or stop the motor vehicle to search the vehicle in the search scenario.
  4. Consensual Contact - An officer may approach any stopped vehicle (a vehicle which is stopped by the operator's own volition prior to police contact) and attempt to speak to person(s) in the vehicle. The officer has no power to force compliance in the consent situation.
- B Ordering Persons from a Vehicle: An officer may order any occupant of a lawfully stopped vehicle to exit the vehicle during a lawful stop.
- C Frisk of a Vehicle: An officer who has reasonable suspicion to believe that a lawfully stopped vehicle contains a weapon may search the vehicle subject to the following limitations:
1. The search is limited to subject's immediate area of control which would be the passenger compartment of the vehicle.
  2. The search is limited to those areas or containers, not locked, in the passenger compartment which are capable of holding a weapon.
- D Search Incident to Arrest (Vehicle): Following the lawful arrest of a subject from a vehicle or who had exited the vehicle just prior to arrest, officers shall search the vehicle incident to arrest subject to the following limitations:
1. The arrest must be lawful and must be a full-custodial arrest.
  2. The search must take place at the time of the arrest.
  3. The search incident to arrest is limited to the arrestee's immediate area of control (passenger compartment only) but is a thorough search.
  4. Unlocked containers within the vehicle may be searched irrespective of who the containers belong to.
  5. The person of other occupants may not be frisked or searched simply because another person in the vehicle has been arrested.
- E Consent Search of Vehicle: An officer may ask the person in control of any lawfully stopped vehicle or a vehicle that is not moving at the time of a consensual contact for consent to search the vehicle. Consent searches are subject to the following limitations:
1. The Consent must be voluntary



2. Written consent is not required under federal law; however written authorization or a mobile video recording that documents consent will assist in proving the voluntary nature of the consent.
3. The scope of the search is within the control of the person granting consent, thus, the consenting party can direct the area which an officer is allowed to search as well as how long the search may last.
4. Under the rules of consent there is no requirement that officers inform a person of their right to refuse the officer's request, however a person who is told of their ability to refuse will be less likely to make out a claim that their consent was not voluntary.

F Probable Cause Searches of Vehicles (*Carroll Doctrine/Motor Vehicle Exception to the Warrant Requirement/Mobile Conveyance Exception*) An officer may, without a warrant, search a motor vehicle when the officer can articulate probable cause to believe that the vehicle contains evidence of a crime or contraband subject to the following limitations:

1. In cases where the vehicle was stopped or parked prior to contact by the police, the area where the vehicle is parked is not private property such that officers would have to obtain a warrant to gain access to the property itself.
2. The vehicle is capable of movement. This does not mean that the vehicle is occupied; it simply means that the vehicle could be started and driven off with the turn of a key.
3. Officers may search the entire vehicle unless the information known to the officer indicates that the evidence or contraband is located in a specific place within the vehicle in which case the scope of an officer's search would be limited to the specified area.
4. Officers may only search those areas within the vehicle capable of containing the item being sought. For example, an officer looking for stolen stereo equipment would exceed the scope of a probable cause search if he or she were to search the ashtray for the stolen equipment.

G Drug Sniffing Canine: Where officers have a lawfully stopped vehicle, they may utilize a drug-detection canine to sniff the exterior of the vehicle as long as the sniff occurs within the duration from a time standpoint of the purpose that justified the stop to begin with. For example, if the vehicle was stopped for speeding, the canine would have to arrive and conduct the sniff in the time it would take to write the citation.

1. If the stop must be prolonged beyond its justification to wait for the canine to arrive, the vehicle must be released, and the canine cancelled.
2. If the canine conducts a sniff in accordance with this policy and alerts on the vehicle, the officer has probable cause and may conduct a probable cause search of the vehicle.
3. Putting a canine inside a vehicle is a search for 4th Amendment purposes and must not be done unless the officer can support the search by probable cause to believe the vehicle contains contraband.

H Inventory: An inventory is not a search for evidence or contraband and is not a search with an investigative purpose. The primary objective of the inventory is to protect the property of persons whose vehicles are towed at the direction of law enforcement. These searches also have the objective of protecting law enforcement from false claims with respect to vehicles that are towed at the direction of law enforcement. Inventories are subject to the following limitations.

1. All vehicles towed at the direction of an officer of this agency, irrespective of the reason for the tow, shall be inventoried in accordance with this policy.
2. Officers will note in the report any items of value that are within the vehicle.
3. All compartments in the vehicle which the officer has access to, including those areas which the officer can open with a key or by activating a lock to the unlock position, without causing damage shall be searched. This includes, the trunk, glove compartment or containers of any type that are present within the vehicle at the time of the tow.
4. If an item of value is located within the vehicle and is removable, the officer has three options that must be notated in the department incident report:
  - a) shall take the item for safekeeping and turn the item over to the owner or individual on-scene at the request of said owner or,
  - b) when that is not possible, take the item to the agency to be held for safekeeping in accordance with the provisions of the property and evidence policy
  - c) keep property within the vehicle if vehicle is impounded; item shall be noted on the vehicle inventory log sheet

**STANDARD OPERATING PROCEDURE  
EFFECTIVE: 05/19/2008**

**S.O.P. 9-3 OFFICERS SEARCHING SUSPECTS/PRISONERS OF OPPOSITE GENDER**

**I. INTRODUCTION**

Laws governing searches are general and apply to juveniles as well as to adult males and females. Officers can conduct a reasonable search of anyone arrested. When conducting a search, whether of a male or female, the officer shall maintain a professional attitude without becoming personally involved. The following sections outline specific procedures to be followed when an officer must search a suspect or prisoner of the opposite gender.

**II. OVERVIEW**

- A Guidelines for search of a suspect of the opposite gender allow an officer to seize any contraband from the suspect if there is a possibility he/she may be able to dispose of it before an officer of same gender can conduct the search;
- B If a weapon or evidence is visible, it must be seized;

**III. PROCEDURES**

- A Notify the suspect that a search will be conducted;
- B If a female officer is present and the suspect is female, the male officer shall remain in attendance to assist as needed;
- C If a female officer is not present, male officer must ensure search is captured on body worn camera;
- D Have the suspect remove any coat or jacket, and search these outer garments;
- E Always start at the head and systematically work down to the soles of the shoes;
- F Minimize physical contact by having the prisoner pull clothing tight against the body. Any concealed object should show as a bulge;
- G If something is seen that appears to be a weapon, it shall be removed;
- H When physical contact is necessary, the edge or back of the hands shall be used if officer and suspect are of opposite gender;
- I After the search of the suspect is complete, the suspects personal effects should be searched, e.g., purse; and
- J The officer is to notify the Communications Center of the starting mileage and clarify (if necessary) the location when transporting suspect/prisoner(s) of the opposite gender.

**STANDARD OPERATING PROCEDURES**  
**EFFECTIVE: 05/19/2008**

**S.O.P. 9-4 FIELD INTERVIEWS AND PAT-DOWN SEARCHES**

**I. INTRODUCTION**

The purpose of this policy is to assist officers in determining when field interviews and pat-down searches are warranted and the way they must be conducted.

The field interview is an important point of contact for officers in preventing and investigating criminal activity. But even when conducted with respect for involved citizens and in strict conformance with the law, it can be perceived by some as a means of police harassment or intimidation conducted in a discriminatory manner against groups or individuals. In order to maintain the effectiveness and legitimacy of this practice and to protect the safety of officers in approaching suspicious individuals, law enforcement officers shall conduct field interviews and perform pat-down searches in conformance with procedures set forth in this policy.

**II. DEFINITIONS**

**FIELD INTERVIEW:** The brief detainment of an individual, whether on foot or in a vehicle, based on reasonable suspicion for the purposes of determining the individual's identity and resolving the officer's suspicions.

**PAT-DOWN SEARCH:** A "frisk" or external feeling of the outer garments of an individual.

**REASONABLE SUSPICION:** Articulable facts that, within the totality of the circumstances, lead an officer to reasonably suspect that criminal activity has been or is about to be committed.

**III. PROCEDURES - FIELD INTERVIEWS**

A Justification for Conducting a Field Interview - Law enforcement officers may stop individuals for the purpose of conducting a field interview only where reasonable suspicion is present. Reasonable suspicion must be more than a hunch or feeling but need not meet the test for probable cause sufficient to make an arrest. In justifying the stop, the officer must be able to point to specific facts which, when taken together with rational inferences, reasonably warrant the stop. Such facts include, but are not limited to, the following:

1. The appearance or demeanor of an individual suggests that he is part of a criminal enterprise or is engaged in a criminal act;
2. The actions of the suspect suggest that he is, or has very recently been, engaged in criminal activity;
3. The hour of day or night is inappropriate for the suspect's presence in the area;
4. The suspect's presence in a neighborhood or location is inappropriate;
5. The suspect is carrying a suspicious object;

6. The suspect's clothing bulges in a manner that suggests he is carrying a weapon;
7. The suspect is in proximate time and place to an alleged crime; or
8. The officer has knowledge of the suspect's prior criminal record or involvement in criminal activity.

## B Initiating a Field Interview

Based on observance of suspicious circumstances or upon information from investigation, an officer may initiate the stop of a suspect if he has articulable, reasonable suspicion to do so. The following guidelines shall be followed when making an authorized stop to conduct a field interview.

1. When approaching the suspect, the officer shall clearly identify himself as a law enforcement officer, if not in uniform, by announcing his identity and displaying Agency identification.
2. Officers shall always be courteous during the contact but maintain caution and vigilance for furtive movements to retrieve weapons, conceal or discard contraband, or other suspicious actions.
3. Before approaching more than one suspect, individual officers should determine whether the circumstances warrant a request for backup assistance and whether the contact can and should be delayed until such assistance arrives.
4. Officers shall confine their questions to those concerning the suspect's identity, place of residence and other inquiries necessary to resolve the officer's suspicions. However, in no instance shall an officer detain a suspect longer than is reasonably necessary to make these limited inquiries.
5. Officers are not required to give suspects Miranda warnings in order to conduct field interviews unless and until additional information is available and sufficient to establish probable cause for arrest.
6. Suspects are not required, nor can they be compelled, to answer any questions posed during field interviews. Failure to respond to an officer's inquiries is not, in and of itself, sufficient grounds to make an arrest although it may provide sufficient justification for additional observation and investigation.

## PROCEDURES - PAT-DOWN SEARCHES

- A Justification for Conducting Pat-Down Searches - A law enforcement officer has the right to perform a pat-down search of the outer garments of a suspect for weapons if he has been legitimately stopped with reasonable suspicion and only when the officer has a reasonable fear for his own or another person's safety. Clearly, not every field interview poses enough justification for conducting a pat-down search. Following are some criteria that may form the basis for establishing justification for performing a pat-down search. Officers should note that these factors are not all-inclusive -- there are other factors that could or should be considered. The existence

of more than one of these factors may be required in order to support reasonable suspicion for the search.

1. The type of crime suspected -- particularly in crimes of violence where the use or threat of use of deadly weapons is involved.
2. Where more than one suspect must be handled by a single officer.
3. The hour of the day and the location or neighborhood where the stop takes place.
4. Prior knowledge of the suspect's use of force and/or propensity to carry deadly weapons.
5. The appearance and demeanor of the suspect.
6. Visual indications which suggest that the suspect is carrying a firearm or other deadly weapon.
7. The age and gender of the suspect. Whenever possible, pat-down searches should be performed by officers of the same sex.

**B** Procedures for Performing a Pat-Down Search - When reasonable suspicion exists to perform a pat-down search, it should be performed with due caution, restraint and sensitivity. These searches are only justifiable and may only be performed to protect the safety of officers and others and may never be used as a pretext for obtaining evidence. Under these circumstances, pat-down searches should be conducted in the following manner.

1. Whenever possible, pat-down searches should be conducted by at least two officers, one of whom performs the search while the other provides protective cover.
2. Because pat-down searches are cursory in nature, they should be performed with the suspect in a standing position or with hands placed against a stationary object and feet spread apart. Should a weapon be visually observed, a more secure search position may be used, such as the prone position.
3. In a pat-down search, officers are permitted only to externally feel the outer clothing of the suspect. An officer may not place his/her hands in pockets unless he/she feels an object that could reasonably be a weapon, such as a firearm, knife, club or other item.
4. If the suspect is carrying an object such as a handbag, suitcase, briefcase, sack or other item that may conceal a weapon, the officer should not open the item but may treat the item in the same manner as an outer layer of clothing. Regardless, the item should be placed out of the reach of the suspect during the encounter.
5. If the external feeling of the suspect's clothing fails to disclose evidence of a weapon, no further search may be made. If evidence of a weapon is present, an officer may retrieve that item only. If the item is a weapon the possession

of which is a crime, the officer may make an arrest of the suspect and complete a full-custody search of the suspect.

C. Reporting - If after conducting a field interview there is no basis for making an arrest, the officer shall record the facts of the interview and forward the documentation to the appropriate reporting authority as prescribed by Agency procedure.

**STANDARD OPERATING PROCEDURES  
EFFECTIVE: 05/19/2008**

**S.O.P. 9-5 STRIP AND BODY CAVITY SEARCHES**

**I. INTRODUCTION**

It is the purpose of this policy to provide officers with guidelines for determining if and under what conditions the use of strip searches and body cavity searches are legally permissible and to establish guidelines for the appropriate conduct of such searches.

The Agency recognizes that the use of strip searches and body cavity searches may, under certain conditions, be necessary to protect the safety of officers, civilians and other prisoners; to detect and secure evidence of criminal activity and to safeguard the security, safety and related interests of the Agency's prisoner detention and holding facilities. Recognizing the intrusiveness of these searches on individual privacy; however, it is the policy of the Agency that such searches shall be conducted only by jail personnel with proper authority and justification.

**II. DEFINITIONS**

- A **STRIP SEARCH:** Any search of an individual requiring the removal or rearrangement of some or all clothing to permit the visual inspection of any or all skin surfaces including genital areas.
- B **BODY CAVITY SEARCH:** Any search involving not only visual inspection of skin surfaces but the internal physical examination of body cavities and, in some instances, organs such as the stomach cavity.

**III. PROCEDURES**

- A Strip Searches (Jail Personnel Only)
  - 1. Individuals arrested for traffic violations and other minor offenses of a nonviolent nature shall not be subject to strip searches unless the arresting officer has an articulable, reasonable suspicion to believe that the individual is concealing contraband or weapons. Reasonable suspicion may be based upon, but is not limited to, one or more of the following criteria:
    - a) Must be approved by the on duty supervisor;
    - b) The nature of the offense charged;
    - c) The arrestee's appearance and demeanor;
    - d) The circumstances surrounding the arrest;
    - e) The arrestee's criminal record, particularly past crimes of violence and narcotic offenses;
    - f) The discovery of evidence of a major offense in plain view or in the course of a search incident to the arrest; and/or
    - g) Detection of suspicious objects beneath the suspect's clothing during a field search incident to arrest.



2. Field strip searches of prisoners are prohibited.
3. Where articulable, reasonable suspicion exists to conduct a strip search, the arresting officer shall make a request for such action to the detention supervisor or other designated authority that clearly defines the basis for suspicion.
4. When authorized by the supervising authority, strip searches may be conducted only:
  - a) By jail personnel;
  - b) In conformance with hygienic procedures and professional practices;
  - c) In a room authorized for this purpose;
  - d) By the least number of personnel necessary and only by those of the same sex; and
  - e) Under conditions that provide privacy from all but those authorized to conduct the search.
5. Following a strip search, the officer requesting the search shall submit a written report that details the following:
  - a) Date and place of the search;
  - b) Identity of the officer conducting the search;
  - c) Identity of the individual searched;
  - d) Identity of those present during the search;
  - e) A detailed description of the nature and extent of the search; and
  - f) Any weapons, evidence or contraband found during the search.

**B Body Cavity Searches** - Should visual examination of a suspect during a strip search and/or other information lead an officer to believe that the suspect is concealing a weapon, evidence or contraband within a body cavity, the following procedures shall be followed.

1. The officer shall consult with his immediate supervisor to determine whether probable cause exists to seek a search warrant for a body cavity search. The decision to seek a search warrant shall recognize that a body cavity search is highly invasive of personal privacy and is reasonable only where the suspected offense is of a very serious nature or poses a threat to the safety of officers or others.
2. If probable cause exists for a body cavity search, an affidavit for search warrant shall be prepared that clearly defines the nature of the alleged offense and the basis for the officer's probable cause. The statement should include why a body cavity search is deemed necessary.

3. On the basis of a search warrant, a body cavity search shall be performed only by an Agency authorized physician or by the other medically trained personnel at the physician's direction.
4. For safety and security reasons, the search shall be conducted at the Agency's detention facility or other authorized facility and in a room suitable for this purpose.
5. Body cavity searches shall be performed with due recognition of privacy and hygienic concerns previously addressed in this policy.

**STANDARD OPERATING PROCEDURE  
EFFECTIVE: 05/01/2023**

**S.O.P. 9-6 ASSET FORFEITURE**

**I. PURPOSE**

The purpose of this policy is to standardize the procedures used in seizing, maintaining and forfeiting assets and to ensure that such property is seized and maintained in an efficient and lawful manner. The provisions contained in this policy are intended to serve as guidelines for this agency in the seizure and forfeiture of property.

**II. POLICY**

The Official Code of Georgia Annotated § 16-13-49 authorizes the forfeiture of certain property used in or derived from violations of the Georgia Controlled Substances Act (GCSA). It is the policy of this agency to utilize these forfeiture provisions to the fullest extent possible in order to accomplish the remedial goals of forfeiture, which are the removal of unlawfully obtained proceeds of and the instrumentality's used in criminal activity. Law enforcement is the principal objective of forfeiture. Potential revenue must not be allowed to jeopardize the effective investigation and prosecution of criminal offenses, officer safety, the integrity of ongoing investigations, or the due process rights of citizens. The practice of racial or ethnic profiling by any member of this agency will not be condoned or tolerated.

**NOTE: TYPES OF PROPERTY SUBJECT TO SEIZURE** - Anything of value, or any interest in anything of value including real property and any fixtures thereon, and tangible and intangible personal property, including but not limited to currency, instruments, securities, or any other kind of privilege, interest, claim or right.

\*Federal seizures will follow federal guidelines.

**III. PROCEDURES/RULES AND REGULATIONS**

**A. Statutory Basis for Seizure**

1. This agency may seize property for forfeiture if the agency determines there is probable cause to believe that the property falls within any of the following categories:

- a) All property which is, directly or indirectly, used or intended for use in any manner to facilitate a violation of the GCSA, or any proceeds derived or realized there from;
- b) All property located in this state which was, directly or indirectly, used or intended for use in any manner to facilitate a violation of the GCSA or of the laws of the United States;
- c) All weapons possessed, used or available for use in any manner to facilitate a violation of the GCSA or of the laws of the United States;
- d) Any interest, security, claim, or property or contractual right of any kind affording a source of influence over any enterprise that a person has

established, operated, controlled, conducted, or participated in the conduct of, in violation of the GCSA or any of the laws of the United States;

e) All monies, negotiable instruments, securities, or other thing of value which are found in close proximity to any controlled substance or marijuana or other property which is subject to forfeiture under Section 2 of the GCSA.

2. Seizure of property subject to forfeiture may be made without prior judicial approval if there is probable cause to believe the property is subject to forfeiture under the GCSA, or the seizure is incident to arrest to search pursuant to a search warrant or to an inspection under an inspection warrant.

3. Property not seized pursuant to an arrest warrant, inspection warrant, or legally recognized exception to a warrant requirement, which property is located on private premises, should be seized pursuant to a seizure warrant issued by a Superior Court Judge in the circuit in which the property is presently located.

4. A property interest shall not be subject to forfeiture under GCSA for a violation involving one gram of cocaine or less, or four ounces of marijuana or less, unless said property was used to facilitate a transaction in, or a purchase of, or sale of, a controlled substance, cocaine, or marijuana.

5. A rented or leased vehicle shall not be subject to forfeiture.

6. When the property that was used in violation of the GCSA has been removed from the jurisdiction of this agency, before the seizure is to take place, then the seizure should be done jointly with an officer having jurisdiction in the area where the property is located. This agency remains as the primary investigating component since investigation began within Fairburn jurisdiction.

## B. Training

All officers who may be involved in the seizure of property, including those even incidentally involved, will receive training on the legal bases for the seizure of the property, and what information needs to be obtained in order to successfully forfeit the property.

## C. Actions to Be Taken by Seizing Officers

Only upon approval and review by the Deputy Chief of Police will any request for seizure action be permitted. After approval, the seizure packet will be given to the Investigations Division Commander for submission to the appropriate court system.

1. When property is seized pursuant to Georgia Controlled Substance Act, the fact of the seizure shall be reported immediately to the Deputy Chief of Police through the Chain of Command in writing, and within 15 days to the District Attorney's Office.

2. No later than 15 days from the date of seizure, this agency shall conduct an inventory and estimate the value of property seized, and shall provide a copy of the inventory and appraisal to the District Attorney. This should be done as soon

as possible to provide the District Attorney with information needed to properly evaluate the case.

3. If not done through pre-seizure planning, the case agent shall make a diligent effort to determine ownership of the property, including the identification of registered owner(s), title holder(s), and bona fide lien holders, if any.

4. The agent will evaluate the case from all aspects, including the economic feasibility of proceeding with a forfeiture action. This should be done in consultation with the District Attorney.

a) All seized property will be listed on a Report of Seizure/Inventory Form.

b) All seized property shall be evaluated for condition, value, and usability. It is the decision of the District Attorney to file forfeiture action.

c) All seized property shall be properly maintained and stored in order to ensure its protection and value. No seized property shall be used for any purpose before forfeiture.

d) If the District Attorney's office does not file a forfeiture action, then all seized property shall be promptly returned to the owner or his agent, or a valid lien holder, upon the District Attorney obtaining an order of release from the Court.

e) The care and maintenance of any vehicle and all other property that has been seized and is pending litigation is the responsibility of this agency, and all seized property will be properly cared for and maintained.

f) The Investigations Commander shall be responsible for recording the following information in the designated log for the service of this civil process:

i. date and time received;

ii. type of legal process (log will be labeled "Civil Process");

iii. nature of document;

iv. source of document;

v. name of defendant/respondent;

vi. officer assigned for service;

vii. date of assignment;

viii. court docket number; and

ix. date service is due.

#### D. Additional Policies

The following policies will apply to the seizure of any personal property seized under the

authority of the GCSA. All seizures shall be based on probable cause as required by law.

1. Currency – All monies shall be placed in evidence following established policies. The officer placing the monies into evidence shall fill out the proper property form and a forfeiture form. The forfeiture form shall be submitted to the detectives by the next working day.

a) If feasible, a supervisor and two officers each will count the money at one sitting, in the presence of each other. After each officer has made an individual count, the three officers will compare results, thus identifying any possible counting errors. When there is a discrepancy in the count, recounts must be made until all counters agree on the amount of currency. During the money count process the number of people in the immediate area, i.e., the counting room, should be minimized. Counting of currency shall always be accomplished with at least two officers and clearly recorded on body worn cameras.

b) Supplements, property sheets, and property envelopes listing money amounts should be specific, listing money by groups in which located, by number of bills for each denomination, and by total for each denomination with the grand total listed.

Example: Location # A - (Trunk) 50 X \$50 = \$2500  
Location # B - (Glove box) 25 X \$50 = \$1250  
Location # C - (Nightstand) 15 X \$10 = \$ 150  
                                  19 X \$20 = \$ 380  
                                  Total Amount # C \$530  
                                  Grand Total \$4280

Note: Specify the Location of where money is found i.e., Glove box, Trunk, Dining Room Table, Kitchen Refrigerator freezer, etc.

c) The seizing officer, or his designee, will list all currency on a separate (from any other property), property sheet.

d) Seized currency will be placed in a sealed property bag with the item, date, and case number noted on the bag along with the initials of all officers who counted the money. Only actual counters of monies should sign the property bag(s) containing those monies, and only after agreeing that the amounts listed match their figures.

e) Each officer will document in supplement his findings, including the amounts counted by him personally. Only those who actually counted the monies should include amounts in supplements.

f) The seizing officer will prepare an investigative report as soon as practicable.

g) After completion of evidentiary tests, if any, all seized currency will be placed into evidence handled in accordance with established procedures for the processing of evidence.

2. Vehicles – Any vehicles, regardless of value or lien, shall be seized and towed

to this agency's secured public safety lot.

a) The keys of any seized vehicle shall be placed in the Evidence Room. The vehicle will be locked after being placed in the secure public safety lot, provided the keys are available. Valuable property and evidence will be removed, inventoried, and placed into evidence.

b) All documents relating to ownership status will be checked into evidence with the keys to the vehicle.

c) A complete inventory of the seized property and all containers, open or closed, found therein will be completed at the time of the seizure or as soon as practicable after the seizure. A good faith attempt will be made to release to the lawful owner all personal property seized with items impounded pursuant to the GCSA and not being retained as evidence or for forfeiture. If the owner is unknown, has been arrested, or is otherwise unavailable to take possession of the property, such items will be placed in a secure area, to be released to the owner at a later date. Perishable foods may have to be destroyed; (i.e., milk, meat, etc.), and should not be left in a car that may be stored for several weeks. If any food is destroyed, it must be documented in a supplement report.

d) Any personal property seized as evidence will be packaged, stored separately, and handled in accordance with established procedures for the processing of evidence.

e) Reasonable attempts shall be made to maintain the property in the same condition at the time of seizure. Seized items will not be used for any purpose until the property is forfeited and all the rights, interests, and title are transferred to the State pursuant to court order. This section does not prohibit use of operation reasonably necessary for the proper maintenance of seized property.

f) The vehicle and all contraband or evidence should be photographed in positions in which they were found, if possible.

g) When possible the driver should be detained at the scene until ownership can be reasonably proved or disproved.

h) All paperwork related to the seizure of the vehicle will be forwarded to the scene for purposes of determining ownership. The impound sheet, statements, search warrants, and other paperwork involved in the seizure shall be included in these reports.

3. Miscellaneous Property – All property including jewelry, furniture, tools, electronics, and other personal property shall be placed in evidence and marked "HOLD FOR FORFEITURE". Likewise, property that will be needed as evidence should have a written notation "HOLD FOR EVIDENCE" in addition to the written notation "HOLD FOR FORFEITURE".

a) The seizing officer will complete the forfeiture form and submit the form to the detectives by the next working day. The investigative report including property sheets, statements, search warrants, and any other paperwork involved in the seizure should be submitted as soon as

practicable.

b) Any personal property seized as evidence will be packaged, stored separately, and handled in accordance with established procedures.

c) Reasonable attempts will be made to maintain the property in the same condition as at the time of seizure. Seized items will not be used for any purpose until the property is forfeited and all rights, interest, and title to the seized property are transferred to the State pursuant to court order. This policy does not prohibit use or operations reasonably necessary for the proper maintenance of seized property.

4. Real Property - The standard procedure for preserving real estate prior to forfeiture will be the District Attorney filing a forfeiture lien against the real property in the Superior Court of the county in which it is located, and the possible execution of an occupancy agreement. Only in rare circumstances, for good cause shown, and with the approval of the District Attorney, will real property be seized prior to forfeiture.

5. Substituted or Derived Assets – Because of the uniqueness, special needs, and legal complexities of such property, any consideration or contemplation of seizure of such property shall require consultation with the District Attorney's office.

6. Weapons – All weapons will be placed in evidence following established policies, and the evidence form shall be marked "HOLD FOR FORFEITURE". The seizing officer shall check the serial number of the weapon through GCIC/NCIC and shall include a hard copy of the result with the forfeiture form.

#### E. Management and Supervisory Personnel

All asset forfeiture actions must be forwarded through the chain of command to the Deputy Chief of Police for approval. All personnel are reminded to consult with a supervisor or the District Attorney if any problems arise with the seizure or anticipated seizure of property. All required seizure forms and investigative reports shall be promptly completed and immediately thereafter forwarded to the Deputy Chief of Police for final approval. All items that were seized shall clearly be identified in these reports. All required affidavits and statements, and other necessary documents, shall be completed within the time prescribed by law or by the date requested. Failure to provide these items may result in the dismissal of a forfeiture case.

#### F. Release of Seized Property

1. If at the conclusion of the judicial process the claimant prevails, the seized property shall be released to the owner(s) immediately upon the presentation of an order from a Superior Court. Under no circumstances will there be towing charges, storage fees, administrative costs, or maintenance costs assessed against the claimant unless such costs are included in a court order.

2. In all circumstances, if a seized vehicle is to be released to the lawful owner(s), there MAY be assessed against the owner(s) the actual cost of towing, storage and maintenance of the seized property. Absent settlement, all administrative costs that do not reflect actual expenses will NOT be assessed.



3. Only the investigating officer or the Deputy Chief of Police, or his/her designee, may release a hold on a vehicle that initially was sought for forfeiture. If a forfeiture packet has already been submitted to the courts, notification to the appropriate contact at court shall be made if a vehicle is being released before court disposition has been made.

#### G. Ethical Considerations

1. No sworn law enforcement officer's employment or salary shall be made to depend upon the level of seizures or forfeitures the officer achieves.

2. Any forfeited property retained by the agency for official law enforcement use is subject to internal controls applicable to property acquired through the normal appropriations process.

3. Forfeiture proceeds shall be maintained in a separate fund or account subject to appropriate accounting controls and annual financial audits of all deposits and expenditures.

4. This property shall avoid any appearance of impropriety in sale or acquisition of forfeited property. Any property that is legally seized by the Agency that is of no applicable use may be sold at the sole discretion of the Chief of Police. The seized property will be sold only through an approved company directed by the Chief of Police, with the accompanying court paperwork. A supplement to the original case will also be completed documenting the sale.

5. No legally obtained seized property will be sold to any individual person, officer or citizen.

#### **IV. STATE STATUTES OF CRIMES**

The following list of statutes can form the basis of forfeiture. If the crime is not on the list below, then property may only be sized for evidentiary purposes.

OCGA § 16-5-44.1. Forfeiture of any property used or intended for use in hijacking a motor vehicle.

OCGA § 16-5-46. Forfeiture of any property used or intended for use in human trafficking.

OCGA §§ 16-6-13.2, 16-6-13.3. Forfeiture of property relating to keeping a place of prostitution, pimping, and/or pandering.

OCGA § 16-8-85. Forfeiture of property related to a chop shop.

OCGA § 16-12-100. Forfeitures of property related to sexual exploitation of children.

OCGA § 16-14-7. Forfeitures of all property related to R.I.C.O. violations.

OCGA § 16-15-5. Forfeitures of property related to criminal street gangs.

OCGA § 16-16-2. Forfeitures of property related to home invasion, burglary or armed robbery.

OCGA §§ 17-5-51 & 52. Forfeiture of weapons used in the commission of crime; or the possession or carrying of which constitutes a crime or delinquent act.

OCGA § 7-1-916. Forfeitures of property related to illegal transactions under Georgia's money

laundering statutes; R.I.C.O.

OCGA § 16-7-95. Forfeitures of property related to bombs, explosives and chemical & biological weapons.

OCGA § 16-8-5.2. Forfeiture of any property constituting proceeds derived or realized through Retail Property Fencing.

OCGA § 16-8-60. Forfeiture of the unlawful reproduction of recorded material.

OCGA § 16-8-106. Forfeiture of all real and personal property used or intended for use in violation of the Georgia Residential Mortgage Fraud Act.

OCGA § 16-9-4. Forfeiture of property used or intended for use in manufacturing, distributing and selling false identification documents.

OCGA § 16-12-32. Forfeitures of property related to illegal gambling.

OCGA § 16-13-30.1. Forfeitures of property related to non-controlled substance violations.

OCGA § 16-13-30.2. Forfeitures of property related to imitation controlled substance violations.

OCGA §§ 16-13-32 & 32.1. Forfeitures of drug-related objects.

OCGA § 40-6-390.1. Forfeiture of motor vehicle operated by habitual violator of reckless stunt driving, i.e., drag racing, laying drags.

OCGA § 40-6-391.2. Forfeitures of automobiles driven by habitual violator.

OCGA § 40-11-20. Forfeitures of motor vehicles or motor vehicle parts with altered, removed, defaced or destroyed identification numbers.

### **MISCELLANEOUS PROVISIONS**

OCGA § 17-5-50. Establishes requirements and procedures for law enforcement agencies upon seizing stolen, embezzled or otherwise unlawfully obtained property.

OCGA § 17-5-54. Provides for procedure to dispose of property in law enforcement custody which was the subject of a crime, abandoned, or otherwise seized.