	Gastonia Police Department POLICIES AND PROCEDURES	Search and Seizure	Page 1 of 14
		Effective Date: 08/08/2012 Amended Date: 09/23/2021	CALEA, 1.2.4, 1.2.8,
		POLICY # 800.13.05	

I. Purpose


To establish guidelines and procedures for conducting searches of persons, vehicles and property with or without search warrant.

II. Policy

Gastonia Police Department shall conduct all searches and seizures in a lawful manner. Doing so protects the Constitutional rights of citizens, prevents suppression of evidence and serves to maintain public confidence in the Department's mission to carry out the police function in an ethical and legal manner.

III. Definitions

- A. Body Cavity Search: A visual or manual inspection for contraband or weapons of the suspect's rectal or genital body cavities.
- B. Consent Search: A clear and voluntary expression by an individual to allow an officer to search the person or property of the consenting party or property over which the consenting party has apparent control.
- C. Crime Scene: A location where a crime has occurred or where evidence of a crime is located and there is an apparent need for investigative action and/or emergency services. (Examples: homicide scenes, fire scenes, scenes of burglaries or break-ins, etc). Note: The mere presence of contraband or evidence in private premises does not make such premises a "crime scene" for purposes of this definition.
- D. Frisk: Patting down a person's outer clothing when the person has been lawfully detained, and the officer has articulable reasonable suspicion that the person possesses a weapon. A frisk also may be conducted pursuant to consent.
- E. Search: An attempt to locate or secure evidence from a person, vehicle, structure or an area and/or an attempt to apprehend suspects.
- F. Search Incident to Arrest (SITA): The authority of an officer to search a person or vehicle upon arrest.
- G. Search Warrant: A written order, signed by a magistrate or other judicial official, directing a police officer to search a specific location for specified property or persons.
- H. Non-Consensual Entry: An entry into premises, which is made by Officers without first obtaining consent from a person who has lawful authority to give consent. Such an entry may

	Gastonia Police Department POLICIES AND PROCEDURES	Search and Seizure	Page 2 of 14
		Effective Date: 08/08/2012 Amended Date: 09/23/2021	CALEA, 1.2.4, 1.2.8,
		POLICY # 800.13.05	

or may not be accompanied by some degree of force or damage to the premises.

- I. Strip Search:** A search for contraband or weapons by removal or partial removal of a person's clothing for inspection of the skin surface, inspecting the genital area, buttocks or breasts.

IV. Procedures

A. Frisk of persons

1. Requirements

Officers may conduct a frisk of an individual when:

- (a) Officers have a legitimate reason to encounter or confront the person and
- (b) Officers have reasonable suspicion that the person is armed and presents a threat to their safety or the safety of others

2. Scope of frisk

- (a) Officers may pat the outer clothing to determine whether the person has a weapon. If an officer detects a weapon during the frisk, it may be seized.
- (b) Reasonable suspicion to frisk does not authorize a search of a person.


B. Frisk of Vehicles

1. Requirements

- (a) Officers have a lawful justification to be at the location in or near the vehicle; and
- (b) Officers have reasonable suspicion to believe a person is dangerous and that a weapon that could be used to harm them may be in the vehicle.

2. Scope of Vehicle Frisk

- (a) Officers may frisk the interior passenger area of a vehicle and any unlocked containers that are accessible and capable of containing a weapon.
- (b) The frisk may be no more intrusive than is necessary to locate weapons.

	Gastonia Police Department POLICIES AND PROCEDURES	Search and Seizure	Page 3 of 14
		Effective Date: 08/08/2012 Amended Date: 09/23/2021	CALEA, 1.2.4, 1.2.8,
		POLICY # 800.13.05	

C. Protective Sweep in a Premises Where Arrest is Made

1. Structures: Officers may conduct a limited sweep of a place when they are lawfully present in the premises to make an arrest as follows:
 - (a) Incident to a lawful arrest in the premises, officers may, without any further justification such as reasonable suspicion or probable cause, search areas and spaces immediately adjoining the place of arrest from which an attack on them from another person could occur. The purpose of this search is to locate people who may pose a danger, not to look for evidence.
 - (b) Incident to a lawful arrest in the premises, officers may conduct a warrantless sweep of the remainder of the premises **if** they have reasonable suspicion that the premises harbors a person who is a danger to the officers.
 - (c) Incident to a lawful arrest in the premises, officers may make a protective sweep for weapons **if** they have reasonable suspicion that the search is necessary for their protection.

D. Search of Arrestee Incident to Arrest

1. Requirements


The officer has made, or is in the process of making, a lawful custodial arrest.

2. Scope of search

- (a) Officers may search the arrestee's person and any containers on the arrestee's person at the time of arrest.
- (b) Officers may search the arrestee's lunge area when an arrestee is unsecured and within reaching distance of a container at the time of the search.

E. Search of a Vehicle Incident to Arrest of Occupant

1. Police are authorized to search the passenger compartment of a vehicle incident to arrest of an occupant; or recent occupant when

	Gastonia Police Department POLICIES AND PROCEDURES	Search and Seizure	Page 4 of 14
		Effective Date: 08/08/2012 Amended Date: 09/23/2021	CALEA, 1.2.4, 1.2.8,
		POLICY # 800.13.05	


- (a) The arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search; or
- (b) It is reasonable to believe that evidence relevant to the crime of arrest might be found in the vehicle.

F. Consent Search


1. The consent to search a person, vehicle or premises, must be given by:
 - (a) The person to be searched;
 - (b) The registered owner of a vehicle to be searched or by the person in apparent control of its operation and contents at the time the consent is given;
 - (c) A person who by ownership or otherwise is reasonably apparently entitled to give or withhold consent to a search of premises.
2. A search conducted pursuant to consent may not exceed, in duration or physical scope, the limits of the consent given. Consent must be freely and voluntarily given.
3. The person who consents may at any time during the course of the search withdraw that consent. Officers are not required to advise the person of the right to withdraw consent. If consent is withdrawn, the search will cease immediately, unless continuation of the search is otherwise justified as matter of law.
4. Upon completion of the search, the officer must make a list of the things seized, and must deliver a receipt embodying the list to the person who consented to the search and, if known, to the owner of the vehicle or premises searched.

G. Execution of Search Warrants

1. All search warrant affidavits must comply with North Carolina General Statute 15A-244.
2. In preparing the affidavit, the officer will verify addresses, may conduct surveillance and gather other corroborating information, and take other appropriate measures to ensure accuracy of information relied upon in the affidavit.
3. Prior to the service of a search warrant, a meeting is to be held for personnel assigned to execute the search. When a pre-search meeting is conducted, the following will be established:


	Gastonia Police Department POLICIES AND PROCEDURES	Search and Seizure	Page 5 of 14
		Effective Date: 08/08/2012 Amended Date: 09/23/2021	CALEA, 1.2.4, 1.2.8,
		POLICY # 800.13.05	

- (a) The person in charge of the search warrant;
 - (b) The location and/or individual to be searched;
 - (c) Identification of existing hazards;
 - (d) The layout of the buildings, if known; and
 - (e) Assignments of assisting officers, as necessary to:
 - i. Cover front and rear of premises;
 - ii. To guard persons arrested;
 - iii. Search premises;
 - iv. Restrict access to authorized persons; and
 - v. Assign officer to handle any evidence.
4. Search warrant participants will wear conspicuously marked clothing clearly identifying them as police officers, in addition to displayed badges.
5. The officer executing a search warrant must, before entering the private premises, give appropriate notice of his identity and purpose to the person to be searched or the person in apparent control of the premises to be searched. If probable cause exists to believe that the giving of notice would endanger the life or safety of any person, entry may be made without notice.
6. Before undertaking any search or seizure pursuant to the warrant, the officer must read the search warrant order and give a copy of the warrant application and affidavit to the person to be searched, or the person in apparent control of the premises or vehicle. If no one is in apparent and responsible control of the premises or vehicle, the officer must leave a copy of the warrant affixed to the premises or vehicle.
7. The scope of the search may be only such as is authorized by the warrant and is reasonably necessary to discover the items specified therein. Upon discovery of the items specified, the officer must seize them. If in the course of the search the officer inadvertently discovers items not specified in the warrant, which are subject to seizure, he may also take possession of the items so discovered.
8. An officer executing a warrant directing a search of premises not generally open to the public or of a vehicle other than a common carrier may detain any person present for such time as is reasonably necessary to execute the warrant. Additionally, any person present at such a location may be frisked if the search relates to a potentially

	Gastonia Police Department POLICIES AND PROCEDURES	Search and Seizure	Page 6 of 14
		Effective Date: 08/08/2012 Amended Date: 09/23/2021	CALEA, 1.2.4, 1.2.8,
		POLICY # 800.13.05	

dangerous activity.

9. Upon the execution of a search warrant at a public place (for example, a tavern or restaurant), an officer may not automatically frisk a customer who was not named in the search warrant. To frisk such a person, the officer must possess reasonable suspicion that the person is armed and dangerous.
10. The executed search warrant must be returned without unnecessary delay to the Clerk of Court's office together with a written inventory of items seized. The inventory, if any, and return must be signed and sworn to by the officer who executed the warrant. The officer in charge is responsible for:
 - (a) Assuring that all evidence is accounted for;
 - (b) Security of the premises or vehicle; and
 - (c) Submission of all paperwork and evidence.
11. Search warrants must be executed within 48 hours from the time of issuance. Any warrant not served within this time limit is void and must be marked "Not Executed" and returned without unnecessary delay to the Clerk of Court's office.
12. All officers involved in the execution of any search warrant will wear their personal body armor at all times while conducting the entry, search and prisoner transportation.
13. If an officer executing a search warrant discovers that an incorrect person, vehicle, or place has been searched in error, the supervisor in charge of the search will:
 - (a) Explain clearly that the Police Department made an error and, if possible why the error was made;
 - (b) Apologize for any inconvenience;
 - (c) Notify the chain of command in writing;
 - (d) Notify the Police Attorney's Office in writing;
 - (e) Complete a report documenting circumstances; and
 - (f) Have photos taken of any damages.

	Gastonia Police Department POLICIES AND PROCEDURES	Search and Seizure	Page 7 of 14
		Effective Date: 08/08/2012 Amended Date: 09/23/2021	CALEA, 1.2.4, 1.2.8,
		POLICY # 800.13.05	

NOTE: Some of the provisions of this section may not be applicable in certain circumstances, such as when a search warrant is obtained for blood or hair samples, for bank, medical, business records, phone records or any circumstances when the item(s) or record(s) sought are provided voluntarily without the necessity of a search.

H. Searching Premises

1. Officers will make reasonable efforts to conduct the search in a manner so as to leave the premises in the same condition as found based upon the circumstances of the search. Any evidence found by search team members should be noted and left in position. The officer responsible for evidence collection will be notified and may photograph and collect the evidence.
2. All evidence will be handled in accordance with department policy. The officer in charge of evidence collection will complete all required reports before the end of the shift.


I. Inventory of Items Seized Pursuant to Search Warrant

An inventory of items seized will be completed as follows:

1. The officer in charge will write and sign a receipt itemizing the items seized which contains the name of the court which issued the warrant.
2. If items were seized from a person, the receipt must be given to that person.
3. If the items were seized from premises or vehicles, a receipt must be given to:
 - (a) The owner; or
 - (b) The person in apparent control of premises; or
 - (c) If no person is present, the receipt must be left in the premises or vehicle from which the items were taken.


J. Entry on Private Premises to Effect Arrest:

1. Absent consent or exigent circumstances, a Law Enforcement officer may enter private premises to effect an arrest when:
 - (a) The officer has in his possession an original arrest warrant or order for the arrest of a person. Additionally, an officer may rely upon a photocopy of an arrest warrant or order for arrest if the original warrant or order for arrest is

	Gastonia Police Department POLICIES AND PROCEDURES	Search and Seizure	Page 8 of 14
		Effective Date: 08/08/2012 Amended Date: 09/23/2021	CALEA, 1.2.4, 1.2.8,
		POLICY # 800.13.05	

possessed by a member of a law enforcement agency in the county where the officer is employed and the officer verifies with the agency that the warrant or order is valid. An original arrest warrant or order for arrest includes:


- (i) A document first created and existing only in paper form;
 - (ii) A document received and printed through facsimile transmission; or
 - (iii) A document existing in electronic form in the Administrative Office of the Courts electronic repository which has been printed from the electronic form.
 - (b) The officer reasonably believes that the place to be entered is the defendant's residence;
 - (c) The officer has reasonable cause to believe the person to be arrested is present inside the premises; and
 - (d) The officer has given, or made reasonable effort to give, notice of his authority and purpose to an occupant thereof, unless there is reasonable cause to believe that the giving of such notice would present a clear danger to human life.
2. Any criminal process in the Electronic Repository may, at any time and at any place in this State, be printed in paper form and delivered to a law enforcement agency or officer by any judicial official, law enforcement officer, or other authorized person.
- (a) When printed in paper form pursuant to subsection (e) of this section, any copy of a criminal process in the Electronic Repository confers the same authority and has the same force and effect for all other purposes as the original of a criminal process that was created and exists only in paper form.
 - (b) Service of any criminal process in the Electronic Repository may be effected by delivering to the person to be served a copy of the process that was printed in paper form pursuant to subsection (e) of this section.
3. Absent consent or exigent circumstances, before entering the premises or residence of a person other than the defendant, officers must:
- (a) Have in their possession an original arrest warrant or order for arrest as described above, or have in their possession a photocopy of the warrant or order as described above; and

	Gastonia Police Department POLICIES AND PROCEDURES	Search and Seizure	Page 9 of 14
		Effective Date: 08/08/2012 Amended Date: 09/23/2021	CALEA, 1.2.4, 1.2.8,
		POLICY # 800.13.05	

- (b) Have in their possession a search warrant to search the third party's premises for the defendant; and
- (c) Have reasonable grounds to believe that the defendant is present inside the premises.

K. Warrantless Entry (Without Consent) Based Upon Exigent Circumstances

1. Entry to Arrest - Officers may enter private premises without a warrant or consent in order to arrest a person in the premises if:
 - (a) Someone is likely to be killed or seriously injured unless immediate action is taken; or
 - (b) A serious or dangerous criminal offender is likely to escape apprehension unless immediate action is taken; or
 - (c) An arrest has been set in motion outside by a person who then flees to inside the premises; and
 - (d) There is probable cause to arrest the person sought; and
 - (e) There is probable cause to believe that the person sought is physically present in the premises at the time of entry.
 - (f) For (c) through (e) an officer may only pursue a subject suspected of a misdemeanor offense into a residence or its curtilage if the officer can establish an exigency in addition to the misdemeanor's flight (ex. Escape, destruction of evidence, imminent bodily harm to officer or others).
2. Entry to Preserve Evidence - If there is probable cause to believe that critical evidence of a serious and/or dangerous offense is located within private premises and that the evidence is almost certain to be destroyed or removed unless immediate action is taken, the officer may enter without a warrant or consent to secure the premises while awaiting the arrival of a search warrant. Once the premises are secured, no further search shall be conducted unless:
 - (a) A search warrant for the premises is on scene; or
 - (b) Consent to search has been obtained; or

	Gastonia Police Department POLICIES AND PROCEDURES	Search and Seizure	Page 10 of 14
		Effective Date: 08/08/2012 Amended Date: 09/23/2021	CALEA, 1.2.4, 1.2.8,
		POLICY # 800.13.05	


- (c) New or additional emergency circumstances arise necessitating additional warrantless search.

NOTE: Warrantless entries based upon exigent circumstances must be reasonable in order to comply with Fourth Amendment requirements. A warrantless entry based on exigent circumstances is reasonable when the police did not create the exigency by engaging in or threatening to engage in conduct violating the Fourth Amendment.

3. Crime Scenes - Upon arrival at a crime scene in private premises, an officer may enter the premises without a warrant or consent in order to:
 - (a) Locate and secure perpetrators; and/or
 - (b) Provide assistance to injured or others requiring emergency assistance; and/or
 - (c) Locate and secure evidence, which is likely to be destroyed or lost by the passage of time.
4. Once these actions have been completed, no further search shall be conducted unless:
 - (a) A search warrant for the premises is on the scene; or
 - (b) Consent to search has been obtained; or
 - (c) New or additional emergency circumstances arise.
5. Urgent Necessity - Officers may enter private premises without a warrant or consent if it reasonably appears that such action is urgently necessary in order to:
 - (a) Prevent death or serious physical harm; or
 - (b) Avert or control public catastrophe.

L. Forcible Entry or Non-Consensual Entry:

1. An officer may use physical force to enter premises or vehicles with or without consent, if there is reason to believe that:
 - (a) Admittance is being denied or unreasonably delayed; or
 - (b) When necessary to save a life or prevent serious bodily harm; or
 - (c) When the officer is in hot pursuit of a violator for a felony offense.


	Gastonia Police Department POLICIES AND PROCEDURES	Search and Seizure	Page 11 of 14
		Effective Date: 08/08/2012 Amended Date: 09/23/2021	CALEA, 1.2.4, 1.2.8,
		POLICY # 800.13.05	

- (d) When the officer is in hot pursuit of a violator for a misdemeanor offense the officer must articulate a separate exigency other than flight to enter a residence or its curtilage (ex. Escape, destruction of evidence, imminent bodily harm to the officer or others).
2. The term "forcible entry" shall include any entry into any building or vehicle that is made without consent. Forcible entry is entry by force, whether or not any physical damage is incurred to the property.
3. All forcible entries shall be reported to a supervisor and the supervisor shall report the action through his/her chain of command to the Chief of Police by memorandum, which shall contain, at a minimum, the following:
 - (a) Information pertaining to the person sought;
 - (b) The charges against the person sought;
 - (c) Location of occurrence;
 - (d) Damage incurred, if any;
 - (e) Statement of probable cause necessitating the entry; and
 - (f) Reporting supervisor's findings, justification, and recommendations concerning the entry.
4. Photographs should be taken of any damage incurred to the premises, and forwarded with the report.
5. No officer is to make any statement regarding liability for repairs due to any forcible entry. Such determination for repairs will be handled through the Office of the Chief.


M. **SEARCHES OF PERSONS**

On occasion, an officer will possess facts that indicate a strip search or a body cavity search is necessary in order to locate evidence of a crime.

1. Strip Searches
 - (a) A strip search is a search in which a person is asked to remove a portion of that person's clothing for a visual inspection of the person's body and a search of the clothing that has been removed.

	Gastonia Police Department POLICIES AND PROCEDURES	Search and Seizure	Page 12 of 14
		Effective Date: 08/08/2012 Amended Date: 09/23/2021	CALEA, 1.2.4, 1.2.8,
		POLICY # 800.13.05	

- (b) Strip searches should only be conducted if the officer has a search warrant for the person, or if the person is under arrest, or if the person consents to be searched. Consent should be documented. A strip search of a juvenile shall only be conducted if the officer has a search warrant for the juvenile, or if a parent or legal guardian consents in writing.
- (c) Strip searches are to be conducted in a manner that protects the privacy interests of the person to be searched. An officer of the same sex as the subject must conduct the search.
- (d) All strip searches of transgender persons will be performed by an officer of the gender requested by the transgender person. The request shall be documented. If the person refuses or is unable to specify a gender preference, then the search will be performed by an officer of the same gender as the person's apparent gender presentation.
- (e) A strip search is not to be conducted routinely, randomly or at the whim of an officer. Strip searches should only be conducted when the officer can articulate the facts to justify the need for a strip search. Officers should consider all of the facts, circumstances and the officer's experience to articulate why the person is suspected of concealing contraband, weapons, drugs, or some other prohibited substance or property. The nature of the crime being investigated should be considered, particularly if the crime involves weapons or contraband and the suspect has a prior history for concealing evidence on the suspect's body. The mere fact of arrest does not automatically justify a strip search.
- (f) Strip searches should be conducted under conditions that provide privacy from all but those authorized to conduct the search. Field strip searches may be conducted, except for a juvenile, under exigent circumstances only if there is probable cause to believe that the life of officer or others may be placed at risk. A field strip search must be done discreetly and out of the view of the public.
- (g) Before a strip search is conducted the searching officer must obtain authorization from a supervisor.
- (h) After conducting a strip search, the searching officer will complete a supplement articulating reasons for the search; whether the search was incident to arrest, with a search warrant or by consent; the name of the supervisor authorizing the strip search; the location of the search; the manner

	Gastonia Police Department POLICIES AND PROCEDURES	Search and Seizure	Page 13 of 14
		Effective Date: 08/08/2012 Amended Date: 09/23/2021	CALEA, 1.2.4, 1.2.8,
		POLICY # 800.13.05	


in which the search was conducted; name of the officer(s) participating in the search; and whether or not evidence was located.

2. Body Cavity Searches

Should visual examination during a strip search or other information lead an officer to have probable cause to believe that a suspect is concealing a weapon, or evidence of a crime or contraband in a body cavity such as the rectal or vaginal cavity, the following procedures shall be followed:

- (a) The officer shall consult with his immediate supervisor to determine whether probable cause exists to arrest the subject and seek a search warrant for a body cavity search.
- (b) The search shall be conducted by appropriate medical personnel.
- (c) A person can consent to a body cavity search by medical personnel.
- (d) A body cavity search shall be performed pursuant to a search warrant or consent by a physician or appropriate medical personnel at the physician's direction.
- (e) Only an officer of the same sex as the person being searched will be present when the search is conducted. Where the person to be searched is transgender, the observing officer's gender will be determined according to the guidelines in M(1)(d) of this policy.
- (f) Body cavity searches shall be performed with due recognition of privacy and hygienic concerns.
- (g) The physician or appropriate medical personnel at the physician's direction shall furnish a copy of his or her report to the officer serving the search warrant.
- (h) After the search is complete, the officer will complete a supplement articulating the reasons for the body cavity search, including the location of the search, the manner in which it was conducted, and whether evidence was located.

3. Search of Mouth for Ingested Contraband

	Gastonia Police Department POLICIES AND PROCEDURES	Search and Seizure	Page 14 of 14
		Effective Date: 08/08/2012 Amended Date: 09/23/2021	CALEA, 1.2.4, 1.2.8,
		POLICY # 800.13.05	

- (a) A search of a person's mouth is permissible when there is probable cause to believe that the person has placed an illegal substance in their mouth. Exigency is created because of the potential harm to the person and the destruction of evidence. The goal of the officer is to get the person to spit out the illegal substance. Officers should not place their hands or fingers into the person's mouth to retrieve the item.
- (b) If the person is believed to have swallowed the illegal substance, officers will immediately call for medical assistance and a supervisor.
- (c) All actions taken in response to possible ingested contraband shall be documented in a supplemental report.

N. Vehicle Exception

The vehicle exception provides that if an officer has probable cause to believe that a readily mobile vehicle has evidence or contraband located in it, a search of that vehicle may be conducted without first obtaining a warrant.

1. Requirements

- (a) There must be probable cause to believe that evidence of a crime or contraband is located in the vehicle to be searched.
- (b) The vehicle must be located in a public place. The vehicle need not be moving at the time it is encountered, but must be capable of ready movement.

2. Scope of Search

- (a) Every part of the vehicle where the object of the search could be located may be searched including locked and unlocked containers and the trunk.
- (b) A search conducted pursuant to the vehicle exception may be conducted at the scene or at a different location, such as law enforcement facility, if the vehicle is seized.