



Graham Police Department

Standard Operating Policies and Procedures

Policy 47 Search & Seizure

DEPARTMENT POLICY

It is the policy of the Graham Police Department to provide its members with basic guidelines needed to conduct searches and seizures and inventory and seize property as described by law. The Fourth Amendment of the Constitution of the United States regulates searches and seizures of persons and property. The procedures for search and seizure, with or without a warrant, are governed by North Carolina General Statutes 15A, Subchapter II, Articles 9-15. It is necessary that searches be conducted in a reasonable manner, in order to comply with applicable law and policies of this department.

PURPOSE

To provide general guidelines and procedures for agency personnel to follow in conducting searches.

- I. Search by Consent - An officer may conduct a consent search by following these guidelines:
 - A. Officer must have a reasonable belief that the person is entitled to give consent.
 - B. The person who consents must express his/her consent verbally or through articulable expression.
 - C. The consent must be voluntary. Two ways to help establish this would be by written consent or by using a witness.
 - D. Officers do not have to give Miranda warnings, or advise the consenting party that they have a right to refuse the search, although the person's knowledge of the right to refuse may be a factor in determining whether consent was voluntary.
 - E. Officers must accept limitations to the consent search and a person may stop the search at any point by revoking consent.
 - F. While searching with consent, officers may seize any evidence they see in plain view, for which they have probable cause to believe is evidence of a crime, even if it is not related to the evidence they are looking for.
 - G. Evidence found during a consent search provides probable cause to search further without

having to rely on the consent-to-search justification. If probable cause exists for alternative justifications for a search other than consent, consider applying for a search warrant or exigent circumstances may justify the search.

- H. During a traffic stop, an officer may request consent to perform a quick pat down of the individual's external clothing for weapons to help ensure officer safety. However, a request for consent to search more broadly without additional reasonable suspicion is an unlawful extension of the stop.
- I. North Carolina statutory law requires officers who conduct consent searches to make an inventory of all property seized and to provide a copy both to the consenting party and owner (if known) of the place searched. The owner's copy may be mailed instead of hand delivered and may be given to the owner's agent.

II. Searches with a warrant

- A. In [State v. Winchester](#) citing [State v. Arrington](#), the North Carolina Supreme Court held that a "search warrant affidavit must contain sufficient information to establish probable cause 'to believe that the proposed search for evidence probably will reveal the presence upon the described premises of the items sought and that those items will aid in the apprehension or conviction of the offender.'" All search warrant affidavits must comply with [North Carolina General Statute 15A-244](#) and contain the following:

1. Name and title of the applicant
2. A statement that there is probable cause to believe that items, which are subject to seizure under [North Carolina General Statute 15A-242](#), may be found in or upon the designated or described place, vehicle, or person.

In preparing the affidavit, the officer shall verify addresses, conduct surveillance, or other corroboration, and take other appropriate measures to ensure the accuracy of the information.

3. Details and facts supporting the probable cause statement must be supported by one or more affidavits specifically setting forth the facts and circumstances establishing probable cause to believe that items are in the places or in the possession of the individual(s) to be searched.
4. A request that the courts issue a search warrant directing a search for and the seizure of the items in question.
5. All officers must have their completed search warrant approved by their Sergeant, or someone of higher rank, prior to presenting it to a judicial official for approval. This review process should ensure that proper investigative techniques were completed to

establish the probable cause outlined in the affidavit and to ensure that the search warrant was completed in the appropriate format and on the appropriate form. If the applying officer is above the rank of Corporal this approval must be sought from a Lieutenant or someone of higher rank. Search Warrants for blood related to a DWI investigation and submitted on an [AOC-CR-155 “Search Warrant for Blood or Urine in DWI Cases”](#) are exempt from this requirement.

6. The reviewing supervisor will complete [GPD Form 81 “Supervisor Authorization of Search Warrant”](#). The case officer will add this form to the case file in RMS.

B. Time Limitations:

1. Search warrants must be executed within 48 hours of issuance. If a warrant is not executed, it must be marked "not executed" and returned to the clerk of the issuing court.
2. After executing a warrant, the officer must, without unnecessary delay, return the warrant with a written inventory of the items seized.

C. Special Considerations

1. If the investigation has identified that a vulnerable person(s) (i.e., children under the age of 16, persons over 65, handicapped persons, etc.) are likely to be present inside the structure when the search warrant is served, a division commander level review and approval of the warrant and operations plan for execution is required. Attention will be given to minimize impact during service of the warrant in these situations.
2. “No knock” search warrants must be completed according to statutory guidelines and must be approved by the division commander of the lead investigating officer or the assistant chief. They may only be served by the SWAT team. Execution of the service will be planned and carried out by SWAT based on the criteria outlined in [Graham Police Department Policy 73: Tactical Team](#).
3. Any other search warrant execution where known physical barriers, threats or expected resistance that meets the threat assessment criteria for activation of SWAT will be handled according to the guidelines established in [Policy 73](#) mentioned above.
4. If the execution of the search warrant results in:
 - a. Injury to person(s) and/or
 - b. Damage to property other than the entry door/ frame or other damage associated with forced entry and/or
 - c. The use of destructive distraction devices or techniques and /or
 - d. Activation of SWAT,

Then the supervisor in charge of units responsible for the issuance and execution of the warrant will be required to complete an “After Action Report”.

5. All officers present and participating in the execution of a search warrant must be wearing attire that identifies them as police officers.
6. Operational Plans
 - a. When at all possible and appropriate or feasible an “ops” plan shall be completed by the supervisor or lead investigator executing a search warrant and must be reviewed and approved by the aforementioned procedures in this policy.
 - b. The following responsibilities and issues should be addressed in the plan:
 - i. Intel gathered from any surveillance
 - ii. Supervisory control over the search
 - iii. Locations, items and individuals to be searched
 - iv. The existence and nature of any known hazards
 - v. The physical layout of the structure if available
 - vi. Officer assignments, to include but not limited to;
 - 1) Cover on front and rear of premises
 - 2) Guard for persons arrested
 - 3) Those assigned to search and secure structure/ area
 - 4) Officer to restrict access to the site
 - 5) Collection of evidence.
7. The supervisor is responsible for ensuring adequate personnel are assigned to the search warrant execution while also ensuring there are adequate personnel available for calls for service.

III. Stop and Frisk - The United States Supreme Court has ruled in [Terry v. Ohio](#) that officers may make a limited search (frisk) to protect themselves when they confront a person that may be armed and dangerous, even though they do not have grounds to arrest the suspect.

A. Officers may frisk a person when;

1. They are confronting the person for a legitimate reason and;
2. They have a reasonable suspicion that the person is armed and presents an immediate danger to their safety or the safety of others.

B. The facts that a court may consider in determining whether officers had reasonable suspicion to frisk are:

1. The crime for which the person was stopped.
2. Whether officers knew on their own, or based on information from others, including informants, that the person was armed and dangerous.

3. The behavior of the person frisked.
4. Whether there was a bulge in the person's clothing or an observation of an object there which through the officer's training and experience leads the officer to believe that the object may be a weapon.
5. The person's prior criminal record and history of dangerousness.

C. Conducting a Frisk

A frisk is the patting down of the outer clothing to determine whether the person has a weapon; it is not an extensive full search of the type permitted during a search incident to an arrest. During the pat-down, officers may search more thoroughly if they believe that a weapon or illegal contraband is located in a particular place on a person's body.

D. Discovery of Evidence During a Frisk

If the frisk indicates that a weapon or illegal contraband is present, officers may reach into the suspects clothing or possessions and seize the weapon to neutralize the danger to themselves or others. If officers find a weapon, they may have probable cause to arrest the person for carrying a concealed weapon, and then they may conduct a search incident to an arrest. Officers may seize evidence of a crime that they may discover during a frisk.

IV. Search of a Vehicle

- A. The Carroll Doctrine supports a warrantless, probable cause-based search of a vehicle for the purpose of securing evidence of a crime for prosecution. When officers have probable cause to search a vehicle for evidence of a crime and the vehicle is in a public place and is operable, they may seize the vehicle, whether moving or parked without a search warrant. Officers may then search the vehicle at the location of seizure or have it taken to a facility and search it there without a search warrant. Thus, a warrantless search may be conducted later at another place, even though officers have complete control over the vehicle and could obtain a search warrant without any risk that the vehicle or evidence inside might disappear. Officers need exigent circumstances to justify their warrantless seizure of a vehicle only if they enter, without consent, a place where the defendant has a reasonable expectation of privacy. Once a vehicle has been legally seized, a warrantless search may be conducted.
- B. Search of a Vehicle Incident to Arrest of Occupant - Police are authorized to search the passenger compartment of a vehicle incident to arrest of an occupant; or recent occupant when:

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

V. Search of a Crime Scene

Officers may enter premises without a warrant to save life, prevent injury, or to protect property. When a crime has occurred such as an assault or homicide in a home, officers may enter without a warrant to determine the victim's condition and to call for appropriate medical assistance. Officers may also search the home without a warrant to determine if there are other victims or suspects there. While undertaking these actions, they may seize any evidence of a crime they see in plain view. However, the United States Supreme Court has ruled that once officers have completed these actions, they may search further only with a search warrant or with consent. If evidence may dissipate or be destroyed while a search warrant is being sought, a warrantless search or seizure of that evidence is permissible.

VI. Exigent Circumstances Where Public Safety is Endangered

North Carolina law attempts to control public disorders by defining certain conduct as always being unlawful, rioting and disorderly conduct, for example. Governments may impose when a state of emergency exists, thus giving law enforcement officers expanded power to frisk and use warrants to search vehicles near riots or other areas for any dangerous weapons or substances. A declared state of emergency must be proclaimed by the governor or an appropriate municipal official. This declaration may be made when public authorities are unable to maintain adequate protection for lives or property because of a public crisis, disaster, riot, catastrophe, or similar emergency.

- A. Frisk of People Close to Riots - Officers may frisk a person and inspect personal belongings to discover whether the person has any dangerous weapons or substances if:
1. They have reasonable grounds to believe that the person is or may become unlawfully involved in an existing riot or;
 2. The person is close enough to the riot that he/she could become immediately involved in it.

B. Frisk of Curfew Violators

Officers may frisk a person and inspect personal belongings for dangerous weapons or substances if the person is violating a curfew proclaimed during a state of emergency or civil disorder. If the person is in a vehicle, it also, may be inspected.

VII. Inventory Searches of Seized Vehicles or Other Property

A. Impounding Vehicles

Officers may impound a vehicle:

1. When a person is arrested and impoundment is necessary to safeguard the vehicle and its contents.
2. When a vehicle is illegally parked and towing is permitted, or the illegally parked vehicle is a traffic hazard.
3. At any other time when it is reasonably necessary to protect the vehicle, other property, or people.

B. Under North Carolina law, officers impounding a vehicle are required to notify the registered owner that the police authorized the vehicle to be towed. A departmental form is available for this purpose, and it may be mailed or hand delivered.

C. Inventorying Vehicles and Containers within vehicles

1. Inventorying of a vehicle is justified by a need to:
 - a. Protect the owner's property while it remains in officer's custody.
 - b. Protect the officers and agency from claims or disputes about lost, damaged, or stolen property.
 - c. Protect officers or the public from potential danger from property, such as dangerous weapons, that may be in the vehicle.
2. An inventory of a vehicle may include all areas within the interior of the vehicle to include consoles, glove compartment, and the trunk.
3. Closed containers such as luggage, briefcases and the like, may be opened, if the contents of the container cannot be determined by an exterior examination.
4. Officers should not break open locked containers to inventory them; they should simply state the fact that it was locked on the inventory form. An example would be "One locked, sealed briefcase."

VIII. Other Search and Seizure Situations Authorized by State and Federal Constitutional Provisions.

A. Search incident to arrest - A search incident to an arrest is justified by the need to prevent

an arrested person from using weapons or destroying evidence. A search incident to arrest is justified regardless of how minor the offense was, how harmless the arrestee was, or the unlikelihood that the arrestee will destroy evidence.

- B. Search and Inventory of Arrestee's Possessions Before entering a Detention Facility - An arrestee who cannot meet the conditions for pretrial release normally is committed to a detention facility. Before entering the detention facility officers or jailers may examine all of an arrestee's possessions while conducting this inventory.

IX. STRIP AND BODY CAVITY SEARCHES

Officers of the Graham Police Department have the authority to conduct strip and body cavity searches under certain conditions that are necessary to protect the safety of officers, civilians and other prisoners; and to detect and secure evidence. Such searches shall be conducted only with proper justification and in accordance with the procedural guidelines for conducting such searches as outlined in this policy.

A. Strip Searches

1. 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.
2. 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.
3. A strip search is not to be conducted routinely or randomly. Strip searches should only be conducted when the officer articulates 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.
4. Strip searches are to be conducted in a manner and under conditions that protects the privacy interests of the person to be searched from all but those authorized to conduct the search. An officer of the same gender as the subject must conduct the search. Strip searches of transgender or transsexual persons may be conducted by department personnel of the gender requested by the subject/arrestee. Officers will take into

account all of the known circumstances, including the arrestee's gender expression and statements, to determine how to proceed with a search.

5. Field strip searches may be conducted 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. Officers should not conduct a field strip search on a juvenile.
6. Before a strip search is conducted, the searching officer must obtain authorization from a supervisor.
7. After conducting a strip search, the searching officer will complete an incident report or 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 in which the search was conducted; name of the officer(s) participating in the search; and whether or not evidence was located.

B. Body Cavity Searches

Body cavity searches are defined as any search involving not only visual inspection of skin surfaces, but also internal examination/inspections of body cavities, such as the rectal or vaginal cavity.

1. A body cavity search shall be performed pursuant to a search warrant or consent, and should be executed by a physician or other medically trained personnel at the physician's direction.
2. Only an officer/member of the same gender as the person being searched will be present when the body cavity search is conducted.
3. The authorized medical personnel conducting the body cavity search will furnish a copy of their report to the officer serving the search warrant. All details of the investigation, including the medical report, will be fully documented in the officer's Incident Report.