



<b>Policy Manual</b>	
<b>Standard Operating Procedure</b>	
<b>SOP Number:</b> 10-01a	<b>Subject:</b> Search and Seizure
<b>Authorized by:</b> Chief Teresa Crocker	<b>Effective Date:</b> February 15, 2012
<b>Signed:</b> Teresa Crocker	<b>Date signed:</b> 01/30/12

Table of contents

1. PURPOSE ..... 1

2. POLICY ..... 1

3. RESPONSIBILITIES ..... 1

4. ACTION ..... 2

    4.1 General Provisions ..... 2

    4.2 Legal Basis for a Search Warrant ..... 2

    4.3 Affidavit Preparation ..... 3

    4.4 Search Warrant Execution ..... 4

5. DEFINITIONS ..... 13

6. CANCELLATION ..... 14

7. REFERENCE ..... 14

1. PURPOSE

This standard operating procedure provides guidance for the search and seizure of persons, places, papers, and effects by officers of the Georgia Tech Police Department (GTPD).

2. POLICY

GTPD officers must have a sound knowledge of the legal requirements associated with conducting a search and with seizing property. Properly obtaining a search warrant prevents suppression of evidence, supports the Constitutional rights of citizens, and maintains public confidence in this agency's mandate to function in an ethical and legal manner.

3. RESPONSIBILITIES

3.1 The Investigation Division commander will ensure that assistance is provided to Departmental employees seeking a search warrant.

3.2 Department employees will comply with this policy in carrying out their duties.

- 3.3 The Administrative Division commander will ensure that sworn employees receive case law changes pertinent to search and seizure in annual in-service training, and any significant changes to search and seizure case law will be communicated to all sworn employees immediately after the changes occur.
- 3.4 Department supervisors will implement this directive and ensure officers under their respective commands comply with it.

#### 4. ACTION

##### 4.1 General Provisions

4.1.1 Searches and seizures in general are permitted by the United States Constitution, United States Supreme Court rulings, Georgia court rulings, and O.C.G.A. Title 17, Chapter 5. Nothing contained in this directive will be construed as authorizing a search or seizure in violation of federal or state law. If any portion of this directive is in conflict with federal or state law, that portion is null and void.

4.1.2 Officers may conduct two types of searches:

1. Search with a warrant, and
2. Search without a warrant.

4.1.3 When an officer is in the process of effecting a lawful search, nothing in this directive will be construed to preclude him or her from discovering and/or seizing any contraband or tangible evidence of a crime.

4.1.4 Generally, search warrants for GTPD cases should be initiated by investigators of the Investigation Division as part of the follow-up investigation of the crime.

4.1.5 Officers from other divisions should request assistance from the Investigation Division when it is necessary for them to obtain a search warrant.

##### 4.2 Legal Basis for a Search Warrant

4.2.1 In order to obtain a search warrant, an officer must be able to show probable cause to believe that specific evidence, contraband, or fruits of a crime may be found at a particular location.

4.2.2 Specific facts establishing probable cause will be set forth with clarity and specificity. Officers will not rely solely upon personal opinion or

unauthenticated third-party information or hearsay. Such facts may be based on:

1. personal observation/knowledge of the officer; or
2. information from a reliable source.

4.2.3 When informants are used-particularly confidential informants-the reliability of the informant and information provided will be specified. Whenever possible, officers will corroborate informant information.

#### 4.3 Affidavit Preparation

4.3.1 An affidavit supporting application for a search warrant will be prepared on the designated court form. The accuracy of the affidavit is vital to the validity of the search warrant; thus, officers will ensure that the following information is clearly and completely specified:

1. The offense will be described with reference to the criminal code section when possible;
2. The place or thing to be searched will be described with specificity, and officers will ensure that the warrant includes the specific reference(s). Where premises are to be searched, in addition to street number and apartment number if appropriate, references should include:
  - a. physical description of the premises;
  - b. legal description of the premises;
  - c. name of owner or occupant;
  - d. geographical location of the property;
  - e. map coordinates or distances from given reference points; and
  - f. photographs, maps or diagrams that help to specify the location in question.

4.3.2 Scope of the search. Only those things described in the search warrant can be the object of the search. Any additional contraband and/or evidence found during the execution of the search warrant may be seized and/or charged, if the contraband/evidence is discovered within the scope of the search warrant. Therefore, the affidavit will specify, and officers will ensure that the warrant includes the following:

1. All areas that officers desire to search will be designated. In cases where officers wish to conduct a complete search of a building, the affidavit should specify a "premises" search. If officers need to search the building's surroundings, the affidavit should specify a "premises" search and its "curtilage" and should identify any outbuildings such as garages, tool sheds, or barns, where appropriate;
2. Motor vehicles known to be on the premises that need to be searched should be specified;
3. Searches (other than frisks for weapons) of specific persons on the premises will be referenced in the affidavit, by name if possible;
4. If a warrant to search "all persons present" is sought, probable cause must be specified to believe that such persons have evidence of criminal activity on their person;
5. The specific items to be searched for will be detailed. Where the item may be dismantled (e.g. a firearm or computer system), the warrant should authorize search for parts, pieces or components of that item.
6. Officers anticipating search of computers and related high-technology equipment will consult an expert for appropriate language to use in the affidavit and procedures for seizure of hardware and software. If necessary, see the Investigation Division commander for assistance in identifying an appropriate expert.

4.3.3 The need for a no-knock warrant will be clearly specified in the application and affidavit for a warrant.

4.3.4 Review of the Warrant. Officers will review search warrants issued by judicial authorities to ensure that they include all pertinent information set forth in the affidavit accurately and completely, and that the warrant has been properly signed. Officers will not attempt to serve any warrant that is known to contain substantive or administrative errors.

#### 4.4 Search Warrant Execution

4.4.1 A search warrant must be executed within 10 days from the time of its issuance. If the warrant is not executed within the 10-day period, it is void and must be returned to the court of issuance (O.C.G.A. 17-5-25).

- 4.4.2 Search warrants may be executed at any reasonable time within the 10-day period (O.C.G.A. 17-5-26).
- 4.4.3 Only sworn, POST-certified officers may execute a search warrant (O.C.G.A. 17-5-24).
- 4.4.4 When a search warrant is executed on a residence, business, or other occupied structure, at least one uniformed police officer should accompany the initial contact or entry team, in order to help assure the occupants as to the validity of the warrant and the identity of the officers serving the warrant.
- 4.4.5 If the location to be searched is outside the jurisdictional boundaries of the GTPD, the officer executing the warrant will contact the law enforcement agency having primary jurisdiction over the location. The officer will notify the agency of intent to execute the warrant and request a uniformed officer from that agency to assist with the execution of the warrant. Once the scene is safe, evidence collection and seizure will be completed by the GTPD, to preserve the chain of custody.
- 4.4.6 If the location to be searched is on the Georgia Tech campus or property, the duty supervisor will notify the Deputy Chief prior to the execution of the warrant. As soon as practical after the execution of the warrant, the duty supervisor should notify Georgia Tech Communications and Marketing.
- 4.4.7 If another law enforcement agency requests assistance in executing a search warrant on the Georgia Tech campus or property, the duty supervisor will ensure that at least one uniformed officer accompanies the agency executing the warrant. The duty supervisor should verify the address on the warrant is within GTPD jurisdiction. If possible, the Deputy Chief will be notified prior to the execution of the warrant. As soon as practical after the execution of the warrant, the duty supervisor should notify Georgia Tech Communications and Marketing.
- 4.4.8 Unless the search warrant has a "No knock" clause, officers executing the warrant on a residence or business will "knock and announce" when serving the search warrant. Officers will announce their identity and their intention to execute the warrant to the occupant. Officers should attempt to gain the cooperation of the occupant in serving the warrant, but reasonable force may be used to effect entry if:
1. Entry is refused;

2. The occupants refuse to acknowledge the verbal announcement of the officers, or the presence of persons in the building is unknown to the officers; or
  3. The building or property is not occupied at the time of the warrant execution.
- 4.4.9 After knocking on the door and announcing their presence and intention, if there is no response from inside the building, officers will wait a reasonable period of time before forcing entry. According to the courts, a reasonable amount of time will depend on the totality of circumstances. For example, if the warrant is being executed at a time when the occupants can reasonably be expected to be asleep, then more time should be given for them to answer the door than would be necessary if the warrant was being executed in the middle of the day.
- 4.4.10 Once entry has been effected, officers may search only the specific location listed in the warrant, and only areas and containers that could reasonably be expected to conceal the item(s) specifically listed in the warrant. This is considered the scope of the search warrant.
- 4.4.11 During the search, one officer will compile an inventory of everything the officers seize. He or she will also inventory everything seized on a supplement report, including a description, where it was found, and by whom. The officer responsible for the warrant will, during the return of the warrant, enter the inventory into the Electronic Warrant System (EWI).
- 4.4.12 After the search is completed, a copy of the search warrant, listing the items seized, must be left with the occupant. If no occupant is present, the search warrant copy should be left in a conspicuous location where the returning occupant should easily find it. The officer will then return to the Fulton County Jail and file a search warrant return on the Electronic Warrant System without unnecessary delay. A copy of the warrant should be placed in the investigation file.
- 4.4.13 If force is used to effect entry into an unoccupied building or a home without adult supervision, reasonable efforts must be made to secure the building once the search is completed. If the property belongs to Georgia Tech, Georgia Tech Facilities or Housing Department may be called to assist in securing the property. If a minor without supervision is present at the home, take appropriate action to ensure his or her well-being.

#### 4.5 Search Without a Warrant

CALEA 6<sup>th</sup> ed. Standard 1.2.4

4.5.1 The Fourth Amendment of the United States Constitution requires that a warrant be issued for searches. However, there are certain exceptions to the warrant requirement. Each of these warrant exceptions has its own requirements in order to be legally valid. Officers may conduct the following types of searches without a warrant:

1. Consent search,
2. Search incident to arrest,
3. Certain limited motor vehicle searches,
4. Exigent circumstances or emergency searches.

#### 4.5.2 Consent Searches

1. In obtaining a consent to search, officers may ask to search, but may not threaten, coerce, deceive, or promise rewards in exchange for consent. A consent to search must be completely voluntary on the part of the subject giving consent. Otherwise, the courts may rule the consent invalid and the search illegal.
2. Courts have ruled very strictly in the area of consent searches. The officer conducting the search must adhere to the scope of the consent search. For example, if the officer has been given permission to search a garage, that consent does not extend to a vehicle parked inside the garage. The officer must obtain a separate consent to search the vehicle.
3. A consent to search is not a consent to seize. In the absence of a warrant specifically describing what is to be seized, during a consent search an officer may only seize what he or she has probable cause to believe is evidence or contraband.
4. In order for the consent search to be valid, the person giving the consent must have lawful possession of the property that is the object of the search. That person does not have to be the owner, as long as he or she has lawful possession. An example would be someone driving a friend's car. Though not the owner, a driver is considered to have lawful possession of the car, provided that the vehicle is not stolen. However, lawful presence by itself does not constitute lawful possession. For example, a guest spending the weekend at a friend's

house does not have lawful possession of the house and therefore could not give valid consent to search.

5. Where two or more persons jointly possess a property, such as roommates in a dormitory or apartment, one person may give consent to search the areas that are commonly possessed. That consent does not extend to the areas not commonly possessed, such as the other person's bedroom. Spouses are another example of persons jointly having lawful possession, but a spouse generally has lawful possession over the entire property. In either case, if both people are present, consent by one person does not overrule a refusal by the other person. If one person refuses, officers have not obtained a valid consent search, even if one person consents.
6. If a valid consent to search has been given to an officer, but later withdrawn during the search, the officer must end the search as soon as the person makes it known that he or she has withdrawn consent. Any evidence or contraband discovered to that point may still be seized.
7. When possible and practical, a Consent to Search (form 230) will be completed by the officer and signed by the person granting consent to search. Additionally, when possible, a person's verbal consent to search should be audio and/or videotaped and/or witnessed. The incident or supplemental report should indicate how consent was given, if it was documented with a waiver form, and who witnessed it.

#### 4.5.3 Search Incident to Arrest

1. Following the arrest of a suspect, officers should search his or her person and the area within his or her immediate reach or control. See also SOP 9-01, "Prisoner Transportation," section 4.3.1. This search is for the purpose of discovering weapons that may be used to harm the officer or others, or for discovering evidence of the crime for which the suspect has been arrested. The search must be conducted at the same time and place as the arrest. For example, an officer may not search a vehicle several hours after the driver is arrested. If a significant amount of time has elapsed since the driver was arrested, a warrant must be obtained before searching the vehicle again.
2. An officer performing a search incident to arrest should conduct a thorough search of the suspect, to include all clothing, waistbands,



pockets, purses, or bags carried by the suspect. The search should be detailed in the incident or supplement report.

3. Closed containers that are not considered portable (e.g. a safe, filing cabinet, etc) generally may not be searched incident to an arrest. If there is reasonable suspicion that it may contain evidence, it may be seized, but not searched until a warrant has been obtained.

#### 4.5.4 Search of a Motor Vehicle

1. Because of the mobility of a motor vehicle, under the Carroll Rule there are certain circumstances in which the courts allow warrantless searches of vehicles. If an officer has probable cause to believe a motor vehicle might contain contraband or other evidence of a crime, he or she may stop the vehicle and if it is impractical to obtain a warrant, may conduct a warrant-less search of the vehicle. The probable cause must be such that would support a search warrant, were there adequate time to obtain one. The specific evidence or contraband must be known before the stop is made, and the search can only encompass those areas of the vehicle in which the evidence or contraband could reasonably be hidden.
2. If an officer is conducting a valid warrantless search of a motor vehicle under the Carroll Rule, closed containers and compartments in the vehicle may be searched, if the object of the search could reasonably be hidden within the container or compartment.
3. When stopping a suspicious motor vehicle for an investigative detention, the vehicle cannot be searched under the Carroll Rule if there was not prior probable cause of evidence or contraband. Only a search in the scope of a protective sweep may be performed.
4. If officers arrest a person within a motor vehicle, a search incident to arrest may be conducted of all areas within the immediate control of the arrestee. This may include the entire passenger compartment and/or any containers located therein such as open or closed glove compartments, consoles, luggage, bags or clothes. In order to justify a search of an automobile as incident to arrest, the initial arrest must be valid. In *Arizona v. Gant*, the United States Supreme Court held: "Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest. When these justifications are absent, a search of an arrestee's vehicle will be

unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies."

5. If any of the containers in number 4 above are locked or sealed, it may not be searched without a warrant.
6. If an officer arrests a suspect from a vehicle and impounds the vehicle, he or she must conduct an inventory of the vehicle. Refer to SOP 16-02 for guidance.
7. A motor vehicle found on the open road or other public place may be searched without a warrant, consent, or arrest when officers have probable cause to believe the vehicle contains contraband or other evidence of a crime and it would be impractical to obtain a search warrant.

#### 4.5.5 Exigent Circumstances or Emergency Searches

1. Under certain exigent circumstances, officers may enter premises without a warrant in order to protect life or property. The officer must have a reasonable belief that there is an emergency at hand and an immediate need for his or her assistance, and taking the time to obtain a warrant would jeopardize life or property. An example would be an officer responding to a report of someone injured in a dormitory, or a report of a burglar inside a business. In these types of circumstances, an officer may enter the premises without a warrant in order to mitigate the emergency. While mitigating the emergency, an officer may conduct a protective sweep of the area for other victims or threats. Searches unrelated to those two aforementioned purposes are not allowed without a warrant. Refer to Section 4.6.1.
2. Under certain other exigent circumstances, officers may conduct searches for evidence or contraband without a warrant. In order for this type of evidence search to be valid, the officer must have probable cause sufficient to support a search warrant if there had been time to obtain one. Courts closely scrutinize these types of searches and officers should avoid conducting them if possible. The

validity of these types of searches will be judged on the totality of circumstances and include, but are not limited to:

- a. the degree of urgency involved and the amount of time necessary to obtain a warrant,
- b. reasonable belief that the contraband is about to be removed,
- c. the possibility of danger to the officers guarding the site of the contraband while a search warrant is sought,
- d. information indicating the possessors of the contraband are aware that the police are on their trail, and
- e. the ready destructibility of the contraband.

4.5.6 Pat-Down Search: Refer to SOP 9-04 for guidance.

#### 4.6 Crime Scene Search

4.6.1 An officer responding to a crime scene generally may enter that crime scene without a warrant, based on the criteria discussed under Exigent Circumstances in Section 4.5.5 of this directive. Officers entering a crime scene should perform a protective sweep of the area to look for victims or threats. Once the exigent circumstances are no longer present (i.e. the victim is transported to the hospital, the suspect is in custody, etc.), the crime scene must be secured and a search warrant obtained before a search can begin. See SOP 15-01 "Crime Scene Processing."

#### 4.7 Plain View Doctrine

4.7.1 Under the Plain View Doctrine, an officer may seize evidence or contraband that is observed by the officer in "plain view" without a warrant, as long as the officer had a legal right to be in the position he or she was in when the evidence and/or contraband was observed. The legal right to be there may be created by circumstances such as a legal protective sweep, an impounded vehicle inventory, an exigent circumstance, or simply an invitation by the occupant to enter a dwelling.

#### 4.8 Abandoned Property

4.8.1 Abandonment is defined as voluntary relinquishment of possession and control of property (i.e. disposing of, denying ownership). An individual who abandons property does not retain any expectation of

privacy that is constitutionally protected; therefore, an officer may search and/or seize abandoned property.

#### 4.9 Physical Intrusion Searches

CALEA 6<sup>th</sup> ed. Standard 1.2.8

4.9.1 Searching and extracting from the body's surface (swabbing, hair samples, retrieval of evidence from the mouth, etc.) are governed by the Fourth Amendment and may only be conducted pursuant to a warrant or consent of the subject.

4.9.2 Interior intrusions into the body (blood tests, stomach pumping, surgery, etc.) are permitted by the Fourth Amendment if they are conducted pursuant to a warrant, consent of the subject, or if emergency circumstances exist and there is a clear indication the desired evidence will be found.

#### 4.9.3 Strip Searches

1. Field strip searches of prisoners will be conducted only in the rarest of circumstances under exigent circumstances where the life of officers or others may be placed at risk, and only in privacy with the explicit approval of the duty watch commander, and in compliance with this directive.
2. Individuals arrested for traffic violations and other minor offenses of a nonviolent nature will not be subject to strip searches unless the arresting officer has articulable, reasonable suspicion to believe that the individual is concealing weapons. Reasonable suspicion may be based upon, but is not limited to the following:
  - a. The nature of the offense charged;
  - b. The arrestee's appearance and demeanor;
  - c. The circumstances surrounding the arrest;
  - d. The arrestee's criminal record, particularly past crimes of violence and narcotics offenses;
  - e. The discovery of evidence of a major offense in plain view or in the course of a search incident to the arrest;
  - f. Detection of suspicious objects beneath the suspect's clothing during a field search incident to arrest.

4. Where articulable, reasonable suspicion exists to conduct a strip search, and when authorized by the duty watch commander, strip searches may be conducted only as follows:
  - a. in a restroom at GTPD headquarters or another room specifically authorized by the duty watch commander for this purpose;
  - b. in conformance with approved hygienic procedures and professional practices;
  - c. by the fewest number of personnel necessary and only by those of the same sex;
  - d. under conditions that provide privacy from all but those authorized to conduct the search.
5. Following a strip search, the officer performing the search will submit a written report to the duty supervisor that details, at a minimum, the following:
  - a. date and place of the search;
  - b. identity of the officer conducting the search;
  - c. identity of the individual searched;
  - d. those present during the search;
  - e. a detailed description of the nature and extent of the search;
  - f. any weapons, evidence, or contraband found during the search.

#### 4.9.4 Body Cavity Searches

1. GTPD officers are prohibited from performing body cavity searches.
2. If visual examination of a suspect during a strip search and/or other information leads an officer to believe that the suspect is concealing a weapon, evidence, or contraband within a body cavity, the officer must notify the Fulton County Jail intake officer of this information. The intake officer will decide on a course of action to be taken by that agency.

## 5. DEFINITIONS

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.

Protective sweep: Search of the area immediately around the crime scene, the subject to be questioned, or the arrestee, and the path, walk, or hallways directly to and from him or her and the entrance to the residence. The purpose of a protective sweep is to ensure the security of law enforcement officers. The protective sweep must be limited to a cursory inspection of places where a person may hide, and last no longer than is necessary to dispel the reasonable suspicion of danger.

Search Warrant: A written order signed by a magistrate or other judicial authority, directing a peace officer to search for specified personal property and bring it before the magistrate.

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, breasts, and buttocks.

## 6. CANCELLATION

This directive cancels Chapter 10, "Search and Seizure."

## 7. REFERENCE

Arizona v. Gant, the United States Supreme Court

O.C.G.A 17-5-24, 17-5-25, 17-5-26, 17-5-29

SOP 9-01, "Prisoner Transportation"

SOP 9-04, "Interviews and Interrogations"

SOP 15-01, "Crime Scene Processing"

SOP 16-02, "Vehicle Impoundment and Inventory"

CALEA 6<sup>th</sup> edition standards 1.2.4, 1.2.8