

# Greer Police Department General Order 120.1

## Limits of Authority/Discretion

This order consists of the following numbered sections:

- I. LEGALLY MANDATED AUTHORITY
- II. USE OF DISCRETION
- III. ALTERNATIVES TO ARREST AND/OR PRE-ARRAIGNMENT CONFINEMENT
- IV. SEARCH AND SEIZURE WITHOUT A WARRANT

By order of: *Matt Hamby*  
Chief of Police

**May 31, 2024**

CALEA 1.1.3, 1.2.1; 1.2.2; 1.2.4, 1.2.5, 1.2.6, 1.2.7

**I. LEGALLY MANDATED AUTHORITY: Class I Officer**

- A. The Federal Constitution, South Carolina Constitution and the Code of Laws of South Carolina define the scope and limits of law enforcement authority as it pertains to the enforcement of laws, statutes and ordinances.
- B. The South Carolina Constitution, Article VIII, Section 9, states, "The structure and organization, powers, duties, functions and responsibilities of the municipalities shall be established by general law...."
- C. The Code of Laws of South Carolina, Section 5-7-30, states, " All municipalities of the State shall, in addition to the powers conferred to their specific form of government, have authority to enact regulations, resolutions and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of such powers in relation to roads, streets, markets, law enforcement, health and order in such municipalities or respecting any subject as shall appear to them necessary and proper for the security, general welfare and convenience of such municipalities or for preserving health, peace, order and good government therein...."  
  
The Code of Laws of South Carolina, Section 5-7-110 states, "Any municipality may appoint or elect as many police officers, regular or special, as may be necessary for the proper law enforcement in such municipality and fix their salaries and prescribe their duties
- D. The City of Greer is an incorporated municipality within the State of South Carolina. The City has adopted the Council form of government.
- E. Chapter 50, Section 50-1, of the Code of the City of Greer, South Carolina states, "There shall be a police department headed by a chief of police. He/she shall be responsible to the city for the enforcement of state laws, this Code, and other City ordinances, protection of life and property, preservation of law and order, traffic control, investigation of crimes, apprehension and custody of criminals and the suppression of vice and the prevention and control of juvenile delinquency. The chief of police shall act as the chief investigative officer and supervise the investigation of crimes.
- F. Section 23-23-40 provides for the requirement of qualified certification as a law enforcement officer as defined by the South Carolina Training Council. All sworn officers of the Greer Police Department are employed as Class 1 Law enforcement officers unless otherwise specified.

**LEGALLY MANDATED AUTHORITY: Class III Advanced Officer**

The Greer Police Department utilizes a South Carolina Criminal Justice Academy designated Advanced Class III officer for the purposes of Animal Control. The SCCJA Certified Class III officer may carry a firearm and issue arrest warrants and Uniform Traffic tickets for violations of State Statutes and Ordinances related to animal control.

Detention officers may also obtain Advanced Class III certification as needed and in order to fulfill their duties and those as defined in Order 2021-LETC-002.

## II. USE OF DISCRETION

- A. Greer police officers are granted discretionary power.
- B. Discretionary power is the power of free decision or latitude of choice within certain legal bounds. When this power is poorly exercised, it may be viewed by the public as favoritism, bias or corruption.
- C. It is imperative, therefore, that when exercising discretionary power, officers take into consideration the mission, goals and objectives of the Department, the best interest of the public they serve, and any mitigating circumstances as well as the volatility of the situation at hand.
- D. Greer Police Officers should not exercise discretion in instances which allow a violation of the law to continue.
- E. Generally, officers may exercise discretion of alternatives to arrest in misdemeanor offenses where a warrant has not yet been issued. Discretion is not allowable in felony offenses or in crimes of violence where probable cause exists.
- F.. Officers should seek guidance from established procedures or assistance from a supervisor when unsure if applying discretion is applicable.

## III. ALTERNATIVES TO ARREST AND/OR PRE-ARRAIGNMENT CONFINEMENT

- A. The power of arrest granted to police officers is one of the alternatives available to them under circumstances that require some form of police action. Additional alternatives that are effective and still allow an officer an alternative to arrest and/or pre-arraignment confinement are issuing a State Uniform Summons in lieu of arrest for certain enumerated criminal offenses and traffic violations and the issuance of Greer City Uniform Ordinance Summonses for violations of City Ordinances.
  - 1. Section 56-7-10 of the Code of Laws of South Carolina authorizes the use of the Uniform Traffic Summons by all law enforcement officers for all traffic offenses and certain enumerated criminal charges.
  - 2. Section 2-212 of the Code of the City of Greer created and authorized the use of a Uniform Ordinance Summons by all law enforcement and code enforcement officers for charging violations of the City's Code except for ordinances which regulate the use of motor vehicles on the public roads. The section specifically prohibits a physical arrest when the Uniform Ordinance Summons is issued.
- B. In lieu of formal action, an officer may exercise discretion and choose informal action to solve the problem, such as referral, informal resolution and warning.
  - 1. **Referral-** The officer may offer referrals to other agencies and organizations when in his/her judgment it is the most reasonable alternative for the offender and the violation.
  - 2. **Informal Resolution-** An officer, at his discretion, may offer informal resolutions to situations and conflicts when in the officer's judgment they can be adequately resolved by brief on-scene counseling; informing the proper agency or organization;

advising parents of juvenile activity, etc.

3. **Warnings-** A warning may be given by an officer when, in his/her discretionary judgment, it is the most reasonable alternative for the offender and the violation. .
  - a. **Release without charges-** If an individual is arrested on probable cause and further investigation by the arresting officer determines probable cause no longer exists, the individual must be immediately released and a supervisor notified. Additionally, the arresting officer will prepare a detailed incident report outlining the events surrounding the arrest and subsequent release.

#### IV. SEARCH AND SEIZURE WITHOUT A WARRANT

It is the policy of the Greer Police Department to conduct search and seizure in compliance with the provisions of the U.S. Constitution, State Constitution, State law and applicable court decisions. This policy applies equally to all warrant less searches and includes the following:

##### A. Consent Searches

1. While not preferred, a search made with the voluntary consent of one authorized to give it is lawful as an exception to the warrant requirement. A Consent is a relinquishment of Fourth Amendment protection by the consenting party and thus is reasonable even in the absence of probable cause and where officers cannot particularly describe the materials being sought.  
searching
2. The critical issue in any consent search is whether or not the consent is voluntary; that is, whether it is the result of free and unconstrained choice. The sum total of surrounding circumstances will be used to determine voluntariness and may include:
  - a. number of officers present.
  - b. time of day.
  - c. manner of request.
  - d. display of weapons.
  - e. physical or mental condition of the consentor.
  - f. whether the consentor is in custody.
  - g. whether the consentor is a juvenile.
3. A second consideration is that only a person in lawful possession may give consent. This is the person who currently possesses the premises or personal property to the exclusion of others. Ownership is not the equivalent of lawful possession where the owner has temporarily yielded his right to possess. Examples are landlord/tenant and innkeeper/guest.
  - a. Lawful presence is not the same as lawful possession. A guest or invitee, while lawfully present, could not consent to a search of the premises.
  - b. When an Officer requests consent to search a residence where co-tenants reside and are present, if one tenant objects to the search and one tenant allows the search, the Officer may not search. If only one co-tenant is

present and gives consent, Officers may search. This does not affect emergency searches or changes entries not based on consent.

- c. As a general rule, parents may consent to the search of a family dwelling directed against children residing therein and being supported by the parents.
4. There is no requirement to provide a warning of Fourth Amendment rights before requesting the consent. Officers should, however, inform individuals from whom consent is sought that they have a right to withhold consent since it is a factor bearing on the voluntariness of the consent.
5. Consent to search requests must be recorded on the officers BWC as required in General Order 510.9 IIIB.1.p. BWC files containing consent to search requests will be stored according to the appropriate requirements of General Order 510.9. The Consent to Search forms will be utilized in instances in which the officer is aware that the BWC is inoperable or is not available. These forms, when used, will be turned into the applicable Division Commander by the end of the shift.

#### B. Stop and Frisk

1. An officer may stop a person for investigative purposes based on specific and articulable facts which, taken together with rational inferences from those facts reasonably warrant suspicion of criminal conduct on the part of the person, that the person may be armed and the officer has reason to fear for his safety. The officer must be able to state the reasons for his actions in order to justify a stop and frisk.
2. The frisk is a pat down only and not a full scale search. It is intended only to check for weapons.
3. The frisk will be limited to the person's outer clothing. If, however, an object is located that reasonably appears to be a weapon, the officer can then search further in order to retrieve the weapon.
4. The search may be extended to include unlocked and unsealed hand carried items where the size and design permits easy access to possible weapons, companions of the suspect, and vehicles if the facts justify such action (Michigan v. Long 463 U.S. 1032, (1983)).
5. The stop and frisk is derived from the Terry Doctrine, established by the United States Supreme Court.

#### C. Search of a Vehicle

1. 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 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 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.
- g. GPS (Global Positioning System) "tracking device" means an electronic or mechanical device which permits the tracking of the movement of a person or object.

2. 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 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 his or her suspicion that criminal activity is occurring and the occupant(s) of the vehicle are 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.
  - 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 contact
- has no power to force compliance with his or her attempt to in the consent situation.
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- b. When a law enforcement officer stops a driver for a violation of the motor vehicle laws, he shall present his law enforcement badge or other appropriate identification to the driver immediately upon approaching him before questioning.
  - c. Ordering Persons from a Vehicle: An officer may order any occupant of a lawfully stopped vehicle to exit the vehicle during a lawful stop.
  - d. 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 in the passenger compartment capable of holding a weapon.
  - e. 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 may search the vehicle incident to arrest subject to the following limitations:
    1. The arrest must be lawful and must be a full-custodial arrest. This type of search cannot be conducted if the officer is going to issue a ticket as the arrest in lieu of a custodial arrest.
    2. The search must take place at the time of the arrest.
    3. A search incident to arrest may not take place once the arrestee is secured in handcuffs or secured in a police vehicle unless the officer has reasonable grounds to believe that the vehicle contains evidence of the particular crime for which the subject was arrested.
    4. The search incident to arrest is limited to the arrestee's immediate area of control (passenger compartment only) but is a thorough search.
    5. Unlocked containers within the vehicle may be searched irrespective of who the containers belong to.
    6. The person of other occupants may not be frisked or searched simply because another person in the vehicle has been arrested.
  - f. 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 subject to the following limitations:
    1. The Consent must be voluntary
    2. The consent must be documented on the the officers BWC as required in General Order 510.9 IIIB.1.p. BWC files containing consent to search requests will be stored according to the appropriate requirements of General Order 510.9. The Consent to Search forms will be utilized in instances in which the officer is aware that the BWC is inoperable or is not available. These forms,

when used, will be turned into the applicable Division Commander by the end of the shift.

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.
  5. An officer may not, in any way prolong the stop beyond what justified the stop at the outset in order to gain consent. i.e. returning documents to the driver and then asking one more question.
- g. 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.
- h. 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 on the vehicle, the officer has probable cause and may probable cause search of the vehicle.
  3. Putting a canine inside a vehicle is a search for 4<sup>th</sup> Amendment purposes and must not be done unless the officer can support the

alerts  
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contraband. search by probable cause to believe the vehicle contains

i. Inventory Searches: An inventory search is not a search for evidence or contraband and is not a search with an investigative purpose. The primary objective of these searches 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. Inventory searches 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 on the tow sheet 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 extreme value is located within the vehicle and is removable, the officer shall take the item for safekeeping and either turn the item over to the owner or, when that is not possible, take the item to the department to be held for safekeeping in accordance with the provisions of the property and evidence policy.

j. Community Caretaking Search: Where officers have reason to suspect that a vehicle contains a dangerous item, which, if left unattended will endanger public safety, the officer may search the vehicle to remove the dangerous item for safekeeping. An officer removing such an item should protect the owner's property interest by ensuring that the item is stored in accordance with department procedures relating to property and evidence.

k. Use of GPS/Tracking Device: Prior to installing GPS/Tracking Device or obtaining data from a factory installed GPS system to obtain data related to a citizen's vehicle location, an order shall be obtained in accordance with 17-30-140 shall be obtained for the installation and/or retrieval of data unless there are articulable exigent circumstances which would justify the immediate installation or retrieval of data, i.e., kidnapping suspect vehicle. The application for an order can be made by the attorney general or any solicitor.

1. The application for the order shall include:
  - a. Statement of the identity of the applicant;
  - b. Certification by the applicant that probable cause exists to believe that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by SLED or any law enforcement entity of a political

subdivision of the State which may provide evidence relating to any offense or any evidence of any conspiracy or solicitation to commit any violation of the laws of this State;

- c. Statement of the offense to which the information likely to be obtained relates and;
  - d. Statement whether it may be necessary to use and monitor the mobile tracking device outside the jurisdiction of the court from which the authorization is being sought.
2. Upon application made, the court, upon a finding that the certification and statements required as part of the order have been made in the application and probable cause exists, must enter an ex parte order authorizing the installation and use of a mobile tracking device. The order may authorize the use of the device within the jurisdiction of the court and outside that jurisdiction but within the State of South Carolina if the device is installed within the jurisdiction of the court.
  3. A court may require greater specificity or additional information beyond that which is required by the policy as a requisite for issuing an order.
  4. The standards established by the United States Supreme Court for the installation and monitoring of mobile tracking devices  
  
apply to the installation and use of mobile any device as authorized by this section.
  5. The applicant seeking the order should ask the judge to seal the application in order to protect the integrity of the investigation.
  6. The judge shall be notified within ten days of the activation of the GBS that the device has been activated.

#### D. Crime Scene Searches

1. Crime scenes may not present such exigent circumstances that will permit a warrant less search of the entire premises.
2. Officers may respond to the emergency and seize evidence in plain view but any extended search of premises directed against the person possessing Fourth Amendment protection in that premises, must be done under a search warrant or with the consent of the person in lawful possession.

#### E. Emergency Searches

1. The delay necessary to procure a search warrant may sometimes place the safety of people in jeopardy or defeat the purpose of the warrant by permitting disposal of evidence. The law recognizes that under certain emergency circumstances, the requirement of a search warrant is waived and an officer may properly make a warrant less entry and search of a place protected by the Fourth Amendment.

2. Immediate warrant less entry is justified in the following circumstances:
  - a. To protect the life and safety of persons.
  - b. To arrest a fugitive while in hot pursuit.
  - c. To preserve evidence from being destroyed or removed.

F. Miscellaneous Searches

1. Supervisory Searches

The warrant less search of an employee's desk or file cabinet by a supervisor is reasonable if made for non-investigatory work-related purposes or to investigate work-related misconduct.

2. School Searches

The US Supreme Court has approved the search of a public school student by school officials by balancing the need to maintain safety, order and discipline against the student's right to privacy. If requested by school officials, officers may observe the search and take appropriate enforcement action.