



# Herndon Police Department GENERAL ORDERS

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## **LAW ENFORCEMENT ROLE AND AUTHORITY**

### **I. POLICY**

The Herndon Police Department provides continuous police service to the Town of Herndon by enforcing state and local laws and ordinances, responding to calls for service, investigating crime and complaints, and apprehending criminals. The department will ensure these services are within their role and authority and comply with law and constitutional protections.

### **II. TERMINOLOGY**

- Arrest – To seize by legal authority and take a person into custody for a crime or certain offense, and whose freedom is restricted.
- Bias-based Policing – Unlawful or improper application of personal bias, based on actual or perceived characteristics of an individual or a group, in providing police services or enforcement action.
- Exigent Circumstances – An emergency requiring swift action to prevent imminent danger to life, serious damage to property, destruction of relevant evidence, or immediate escape of a suspect.
- Investigative Detention – The brief detention of an individual, based on reasonable suspicion of a crime, for investigative purposes.
- Probable Cause – Sufficient, articulable evidence, facts, or circumstances leading a reasonable person to believe that a crime has been, is being, or will be committed and is a requirement of the Fourth Amendment that must be met before an arrest is made, a search conducted, or a warrant obtained.
- Reasonable Suspicion – The reasonable likelihood, based on an officer's training and experience, that a crime has been, is being, or will be committed, and should be reinforced with diligent, active investigation.



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### **III. ROLE**

Law enforcement is a necessary element of the criminal justice system and police officers are bound by a sworn oath to uphold the law before undertaking their duties. All department members are expected to serve in an ethical manner and abide by the Town of Herndon's standards of conduct.

#### **A. Oath of Office <1.1.1>**

Herndon Police Department officers shall take and subsequently abide by an oath of office as prescribed by the Code of Virginia, prior to assuming sworn police status. The oath of office shall be administered by the Town Clerk or the Clerk of the Fairfax County Circuit Court.

#### **B. Code of Ethics <1.1.2>**

Department members must commit to upholding the highest ethical standards in their professional and private lives. Ethical standards support the department's mission, promote good order, and help to instill trust in community/police relationships. Biennial training will be provided. All department members will be held accountable for the following:

1. To be truthful and forthright, not practicing deceptive conduct or statements that omit material facts and not engaging in deliberate acts of dishonesty.
2. To respect others' property and personal effects and not engage in theft, vandalism, or misuse.
3. To act with integrity and maturity in the exercise of authority and discretion, with reverence and respect for the dignity of all persons and the sanctity of human life, practicing self-control and being mindful of the welfare of others.
4. To be cooperative, respectful, considerate, and fair, never ridiculing or engaging in cruel, harassing, or degrading treatment of any person.



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5. To honor their oath, position, and the law to determine appropriate actions, obey rules and authority, and accept personal responsibility.
  6. To be kind and compassionate, serving others' needs without ill motive or seeking personal gain.
- C. Bias in Policing
1. The department is committed to fair and objective policing that respects the rights and dignity of all persons and promotes the core tenets of community policing. Officers shall maintain professionalism, integrity, and accountability in all contacts with the public to preserve the trust of the community. Officers are expected to:
    - Be courteous, polite, and professional.
    - Greet an individual appropriately and explain the reason for the stop as soon as practical, unless providing this information compromises the safety of officers or other persons.
    - Ensure that the length of the contact or detention is necessary to gather appropriate information or take appropriate action for the known or suspected purpose.
    - Answer any questions the person may have, including explaining options for the dispositions of related enforcement action.
    - Provide the officer's name and badge number when requested.
    - Be able to provide an explanation for credible, reliable, or relevant information that led to the stop or contact when no enforcement action is taken, and/or it is determined that reasonable suspicions were unfounded.
  2. Officers shall always provide fair and objective law enforcement services regardless of race, ethnicity, national origin, religion, sex, sexual orientation, gender, gender identity or expression, economic status, age, group, or disability, etc., without discrimination toward any individual or group.
  3. Bias-based policing is strictly prohibited and inconsistent with the mission of the department. However, officers may consider characteristics of a specific suspect or suspects in combination with credible, reliable, timely, or distinct information that links a person or a group to a particular criminal incident or to a specific series or pattern of unlawful activity. Officers must be able to articulate specific facts,



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circumstances, and conclusions that support consent, reasonable suspicion, or probable cause. **<1.2.9a>**

4. Training and Review for Sworn

- a. Initial training will be provided on bias-based policing issues, including legal aspects, prior to assignment. **<1.2.9c>**
- b. In-service training on cultural diversity and legal standards must be maintained according to DCJS training standards. **<1.2.9d>**
- c. A review of the “bias in policing” policy must be documented annually. **<1.2.9b>**

5. All complaints of bias will be investigated in a supervisory review, or in an administrative investigation if warranted, to ensure a complete examination of facts and circumstances relevant to an allegation. Any officer found to be involved in inappropriate bias-based policing will be subject to disciplinary action and possible criminal and civil liability. Remedial training may be mandated based on the findings of the investigation. **<1.2.9d>**

6. The Support Services Division commander will be responsible for completing a written annual administrative review, to the Chief of Police, of activities with the potential for bias to include traffic and field contacts, asset forfeiture efforts, and complaints, along with any corrective measures taken. **<1.2.9e>**

IV. **AUTHORITY <1.2.1>**

The Code of Virginia, §15.2-1704 and Town of Herndon Code, Part II, Sec. 38-36, specifically conveys police power and legal authority to Herndon officers. Authority in civil matters is prohibited, except for executing and serving certain preliminary, temporary, and emergency orders, and executing and serving warrants in the town. Authority is further clarified in the following:

1. Authority to Arrest

Under the provisions of the Code of Virginia, §19.2-76 and §19.2-100, only sworn police officers may execute arrest warrants and pursuant to the Code of Virginia, §19.2-81 and §19.2-81.3, legal authority to effect warrantless arrests is outlined.



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2. Authority to Use/Carry Weapons

Pursuant to Code of Virginia 9.1-102, and as authorized by the Chief of Police, officers who have successfully completed training approved by the Virginia Department of Criminal Justice Services can carry and use weapons in accordance with the directives of this department.

3. Town Property Authority

In accordance with the Code of Virginia, §15.2-1725 and §15.2-1124, Herndon police officers are empowered to enforce laws on any town-owned property located outside the boundaries of the town. This authority extends to all property within the town including that which is owned and operated by any other county, city, or town.

4. Authority to Enforce State Laws beyond Boundaries

Pursuant to Code of Virginia, §19.2-250, officers are empowered to enforce state laws up to 300 yards beyond the boundaries of the town. Offenses occurring within this 300-yard zone must be prosecuted under state law. Such enforcement should be limited to situations where there is an immediate need to act. **Traffic infractions are not extended under this authority.**

5. Authority to Pursue Escapees

Pursuant to Code of Virginia, §19.2-77, when a person in the custody of an officer escapes or flees from an officer attempting to arrest them, the officer with or without a warrant may pursue the person anywhere in the State of Virginia and when actually in close pursuit may arrest the person where they are found. In addition, if the person is arrested in an adjoining county, city, or town, the arresting officer may return the person before a magistrate of the county, city, or town from which the person fled. Otherwise, the person must be taken to a magistrate located in the jurisdiction where the arrest is accomplished.

6. Authority to Execute Warrant/Capias Outside Jurisdiction

Under provisions §19.2-76 of the Code of Virginia, when a person is arrested on a warrant or capias in a jurisdiction other than the jurisdiction of the offense, the arresting officer in that jurisdiction may bring the person before a magistrate in the



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jurisdiction of the arrest or where the charge is to be tried or turn the person over to the custody of an officer from the jurisdiction where the charge is to be tried.

7. Emergency Custody and Temporary Custody Orders

Pursuant to Code of Virginia, §15.2-1724 and §37.2-808, a law enforcement officer may go or be sent beyond the territorial limits of the town, within the Commonwealth of Virginia, for the purpose of executing an emergency or temporary custody order.

V. ARRESTS <1.2.5>

A. Officers are empowered to execute felony and misdemeanor arrests, with or without a warrant, pursuant to Code of Virginia Title 19.2, Chapter 7. Arrests must comply with a valid arrest warrant or meet legal criteria to arrest without a warrant. (Also refer to the Juvenile Investigations General Order regarding juvenile arrest decisions.) An arrest can be executed as follows:

1. When any crime has been committed in the officer's presence,
2. When probable cause exists that a felony has been committed,
3. When probable cause exists that an offender has committed:
  - a. A violation pertaining to the operation of a motor vehicle while intoxicated (within three hours of the event). If this violation also includes an accident, pursuant to §19.2-73(B) and §19.2-81(D), officers may release an offender on a summons for misdemeanor violations of §18.2-266 and §18.2-268.3 anywhere in the Commonwealth at the conclusion of the investigation, but only if the accused is already admitted at a hospital and committed there for medical purposes.
  - b. A violation of a protective order (mandatory arrest).
  - c. A violation of assault and battery against a family or household member (mandatory arrest).



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4. With the reasonable complaint of a person who observed the alleged offense of:
    - Shoplifting
    - Weapon on school property
    - Assault and battery
    - Brandishing a firearm
    - Destruction of property
  5. Upon knowledge of the existence of a warrant.
- B. Persons placed under arrest shall be taken without delay before a magistrate having jurisdiction to issue a warrant or summons, as appropriate.
- C. In all cases where an arrested person is taken before a magistrate, the arresting officer shall initiate a VCIN/NCIC wanted check on that person. If the wanted check returns with an active warrant, the arresting officer is responsible for ensuring that notification of custody to the originating agency is accomplished.
- D. Arrest Processing  
All persons arrested for the following offenses shall be processed under CCRE reporting procedures pursuant to Virginia Code §19.2-390, including, but not limited to:
- Treason
  - Any felony
  - Any Class 1 or 2 misdemeanor under Code of Virginia, Title 18.2, 19.2 or Herndon Code of Ordinances
  - Any misdemeanor under Code of Virginia, Title 54.1
1. Persons arrested for misdemeanors that are reportable to the CCRE, but are released on a summons, shall not be processed until after a disposition of guilt is entered in court.
  2. Officers effecting arrests which require CCRE processing must contact the Communications Section to determine if the arrestee has been previously assigned a system generated arrest number or if an initial number must be assigned.



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3. All persons taken into custody for a CCRE reportable offense shall be processed using the LIVESCAN system. The arresting officer shall complete:
  - One Arrestee Information Worksheet for each arrestee
  - One IBR Information Sheet for each CCRE charge
  - The IBR Information Sheet and a copy of the LIVESCAN disposition sheet shall be attached to the LIVESCAN FBI card

### **E. Summonses**

Officers are empowered to issue a summons (Virginia Uniform Summons) in lieu of a physical arrest for certain misdemeanors pursuant to Code of Virginia §19.2-73 and §19.2-74, and for traffic infractions pursuant to Title 46.2, **unless exceptions apply.**

1. The issuance and subsequent release on a summons for misdemeanor violations are applicable unless:
  - a. Specific exceptions apply,
  - b. The violator continues the unlawful act after the summons is issued,
  - c. Proper identification cannot be established, or
  - d. The summons is combined with a separate charge or requirement that necessitates an arrest.
2. The issuance and subsequent release on a summons for traffic infractions are applicable with or without the violator's signature on the summons. If a violator refuses to sign, the officer shall advise of the time/place of the hearing and note the refusal on the summons.

### **F. Discretion**

Officers are provided with training that, when coupled with experience, provides an ability to apply discretionary judgment in certain cases. Discretion or alternatives to arrest shall align with their oath of office, the limits of authority as established by law, decisions and interpretations of the courts, and departmental policy. Available options utilizing





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discretionary authority include: no arrest, an informal resolution of the incident or problem, issuance of a warning or summons, or arrest.

1. Not executing an arrest or the use of informal resolutions generally results in referrals to other agencies, mediating agreements between two or more parties, or issuing a warning. Such action is the least coercive of all enforcement measures and shall be applied when stricter enforcement methods are unnecessary or inappropriate under the circumstances.
2. The decision to utilize discretionary methods must be reasonably based on the totality of the circumstances.
3. Supervisors shall review each incident report to ensure that proper action or discretion was taken under the circumstances.

### **G. De-Arrest**

If an officer executes an arrest based on probable cause but subsequently determines that probable cause ceases to exist, the person under arrest did not commit a crime, the event was not a crime, or the magistrate fails to issue an arrest warrant, then the officer must terminate the arrest process immediately. If an officer determines that they must de-arrest a person in custody, the officer shall notify their supervisor immediately and work with the supervisor to ensure that the person is restored to the same or improved location or position occupied before the arrest. The de-arrest shall be documented in an incident report and a memorandum summarizing the event and actions taken shall be sent to the Chief of Police through the chain of command.

## **VI. CONSTITUTIONAL RIGHTS AND PROTECTIONS**

Officers must act in accordance with constitutional guidelines and restrictions while affording all individuals encountered with the clearly established constitutional and statutory rights to which they are entitled, as interpreted through case law precedents, or as affirmed by the Code of Virginia. (Refer to the Criminal Investigations and Juvenile Investigations General Orders for additional guidance related to investigations, and the Warrants and Legal Process General Order regarding obtaining and executing search warrants.)



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**A. Freedom of Speech (First Amendment)**

1. Individuals have first amendment rights to free speech, which at times may be directed at police in the form of offensive gestures or names, harsh language, or hostile rhetoric. Such speech is generally protected, and officers must effectively perform their duty to enforce the law while exercising a higher degree of restraint towards such behavior. Speech that causes imminent lawless action is not protected.
2. Audio or video recording or taking photographs of people or things in public by individuals, which includes police officers carrying out their duties, is a protected right. In such situations, officers must continue to effectively enforce the law unless this activity interferes with the performance of their duty.

**B. Search and Seizure (Fourth Amendment right against unreasonable searches and seizures) <1.2.4>**

1. It is a constitutional right for people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. Proper searches and seizures are essential to withstand admissibility into court and maintain the public's assurance that they are secure and protected from unreasonable intrusion. To ensure the protection of rights, officers shall obtain search warrants, based upon probable cause, unless a search and seizure without a warrant provision applies. (Refer also to Warrants and Legal Process General Order regarding obtaining and executing search warrants).
2. Officers shall conduct searches, with or without a warrant, as legally applicable. The following are practical guidelines for conducting searches; however, officers should consult a supervisor if further clarification is needed.
  - a. Officer safety and other exigencies must be considered in every search situation and should be conducted as legally applicable and within policy guidelines.
  - b. If practical, officers should explain to the person being searched the reason for the search and how the search will be conducted.



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- c. Searches should be carried out with due regard and respect for private property and in a manner that minimizes damage. Property should be left in a condition as close as reasonably possible to its pre-search condition.
- d. If practical, an attempt should be made to obtain keys, access codes, etc., when a search of locked property is anticipated, to minimize the need for forcible entry.
- e. A search should not be conducted by one officer. A cover officer should be positioned to ensure safety while not involved in the search.
- f. When the person to be searched is of the opposite sex as the searching officer, a reasonable effort should be made to have an officer of the same sex as the subject conduct the search. When not practical, another officer or supervisor should witness the search.

### **C. Miranda Warnings (Fifth Amendment right against self-incrimination) <1.2.3>**

Interviews and interrogations are necessary in the furtherance of an investigation. Officers conduct preliminary and follow-up interviews with victims, witnesses, or others to gather facts and details of an incident to aid them in identifying a suspect or substantiating probable cause. Individuals interviewed are not under arrest, are free to leave at any time, and are not compelled to answer questions. However, Miranda warnings must be advised in conjunction with an arrest or custodial questioning of a suspect, as follows:

- 1. Miranda warnings shall convey to the subject their rights to remain silent, to have an attorney present during questioning, and to have an attorney appointed if they cannot afford one.
- 2. Following a Miranda warning, the officer shall ensure that these rights are understood by asking the question, "Do you understand each of these rights as I have explained them to you?" When practical, Form HP811 – Miranda Warning, can be utilized to document the subject's understanding of their Miranda rights, and maintained with the case file.



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3. Miranda rights can be invoked at any time during questioning, even if initially waived. If the subject requests an attorney, questioning shall cease. The subject must make a clear, unambiguous, and unequivocal request for an attorney to invoke their right to an attorney. (See also the Criminal Investigations and Juvenile Investigations General Orders for further guidance on interviews and interrogations.)

### **V. SEARCH AND SEIZURE WITHOUT A WARRANT**

#### **A. Consent Search**

Officers may request consent to search a person, place, or thing from someone who has authority to give consent; however, such search shall be based on articulable and reasonable suspicion. If consent is granted, it must be voluntary, and not explicitly or implicitly coerced, threatened, or otherwise forced. Consent can be withdrawn at any time, and if withdrawn, the search must cease until a search warrant is obtained unless other legal authority to continue the search applies. If conducting a consent search, a written consent form should be signed (form HP813), if feasible, to indicate the voluntary nature of the consent. If written consent is not feasible, the search must be documented in a report and should be documented in the field on audio or video recording.

#### **B. Search Incident to Arrest**

1. A search incident to an arrest consists of the suspect's area within their "immediate control" to check for weapons, harmful objects, evidence, and contraband. This includes a thorough search of the suspect's clothing and pockets, removal of coats, jackets, or outer garments, and may include a contemporaneous vehicle search if the arrested person is within reaching distance of the passenger compartment at the time of the search, or if reasonable belief exists that crime-related evidence is present in the vehicle near where the suspect was located.

#### **2. Fingerprint Identification Search**

Mobile AFIS "Automated Fingerprint Identification System" devices perform rapid precursory searches of automated fingerprint files accessible through NOVARIS and may be a useful tool in verifying the identity of a person. Consent must be obtained from an individual prior to conducting a mobile AFIS query, except when used to confirm the identity of a subject placed under arrest.



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### **C. Investigative Detentions (Terry Stops)**

1. A "Terry stop" constitutes a seizure due to the temporary restriction of a person's freedom. It is justified by reasonable suspicion that a crime has occurred, is occurring, or is about to occur; or, the officer reasonably suspects that a person is illegally carrying a concealed weapon in violation of Code of Virginia, §18.2-308. The stop must be reasonably related in scope to the suspicion of the crime.
2. If, during a Terry stop, a person's conduct, gestures, or movements lead an officer to believe that the person is armed and could be dangerous, the officer can conduct a frisk (pat-down), which is a superficial, outer clothing search of a person for weapons. Frisks do not justify a full search, like reaching inside the person's pockets or purse, unless a weapon is detected during the frisk. All Terry stops do not justify a frisk, and officers will need separate and reasonable facts to conduct frisks or pat downs.
3. The following factors may be considered in building a justification for a Terry stop (all the factors need not be present):
  - The officer has valid knowledge that a person has a prior felony record,
  - A person fits the description of a wanted bulletin or lookout,
  - A person has exhibited furtive conduct such as attempting to conceal an object from the officer's view, or intentionally reaching for something,
  - Clothing worn by a person is similar to the suspect's clothing described in a lookout for a known offense,
  - A person exhibits unusual behavior, such as staggering or appearing in need of medical attention,
  - The area and time of day, such as a person observed in a public area which has a history of recurring crime during the same time period as the time of the stop,
  - Hearsay may cause an officer to conduct a Terry stop, and the use of such information is dependent upon the information known by officers and its degree of reliability. Officers must corroborate some of the information provided by individuals or from anonymous tips when developing reasonable suspicion to conduct an investigative stop.



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### D. Vehicle Searches

#### 1. Consent Search

Officers may request consent to search a vehicle based on reasonable suspicion, and the reasons must be articulated in a report. If consent is granted, it must be voluntary and not explicitly or implicitly coerced, threatened, or otherwise forced. Consent can be withdrawn at any time, and if withdrawn, the search must be discontinued until a warrant is obtained unless other legal authority to continue the search applies.

#### 2. Canine Search

An officer may request a canine to conduct a search of a vehicle in conjunction with a traffic stop. The officer shall notify their immediate supervisor at the time of the request along with the articulable reason for the search and include this information in a report along with any findings. The request and subsequent canine search must not unreasonably prolong the stop beyond the time required to complete the objective of the stop and to establish probable cause. Canine officers must document all searches in a report along with any findings.

#### 3. Warrantless Search (Carroll Doctrine)

A warrantless search of a vehicle can be conducted if an officer has probable cause, or evidence of a crime or contraband is inadvertently discovered due to “plain view, plain smell, or plain feel” and is immediately recognizable as “fruits, instrumentalities or evidence of a crime, and/or contraband”. The scope of the search is defined by the object of the search, and where probable cause would lead an officer to believe that the object may be found. If probable cause justifies a search or limited search for an object, an officer may search the vehicle and any containers in the vehicle which may conceal the object of the search.

As a reminder, pursuant to Virginia Code § 4.1-1302, no officer may lawfully stop, search, or seize any person, place, or thing solely on the basis of the odor of marijuana and no evidence discovered or obtained, including evidence discovered or obtained with the person's consent, shall be admissible in any trial, hearing, or other proceeding.



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### **4. Inventory**

Officers shall conduct an inventory, on Form 6143, of a vehicle subject to lawful impoundment prior to towing for the purpose of documenting and securing the owner's property and to guard against claims of lost or stolen property. Conducting an inventory is not intended to be a search to discover incriminating evidence, but rather as a necessary means to document the contents of a towed vehicle. However, if contraband or items of evidence of a crime are found during an inventory, it can be seized for investigation or prosecution.

### **E. Search in Exigent Circumstances**

An exigent search may be conducted due to emergency circumstances to save life, property, or evidence of a crime. An emergency must exist, and the primary motive of the search must be to protect persons, property, or evidence, and the area searched must be associated with the emergency.

## **VI. SEARCH WARRANTS**

Search warrants must be obtained for a specified search of a person, place, or thing for evidence associated with a crime, and pursuant to constitutional protections. A search warrant and affidavit, based on probable cause, must be presented to a judge or magistrate, to authorize the specified search. The following guidance is provided in preparing and executing search warrants.

### **A. Preparation/Approval for Search Warrants**

1. Officers must consult with and obtain authorization from a supervisor prior to preparing a search warrant and affidavit to ensure compliance with all legal requirements. For searches related to administrative warrants, such as banking, medical, or cell phone records, cell phones, DNA collection, or blood draws, officers may proceed in the normal course of duty without supervisory authorization.
2. Officers are prohibited from using artificial intelligence systems to prepare the search warrant and the affidavit's statement of facts, which must be specifically detailed based on human judgment, case documentation, and to meet the legal requirement for objective reasonableness.



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3. The supervisor will review the facts of the case, severity of the crime, the fragility or exigency of the evidence sought, or whether it involves a place of abode. If a search warrant is sought for a place of abode, the supervisor must also evaluate whether a need exists to execute the search warrant outside of the hours of 0800 and 1700. If the evidence sought at the place of abode necessitates the issuance of the search warrant outside of these hours, an officer shall make reasonable efforts to locate a judge before seeking authorization to execute the warrant, pursuant to the provisions of 19.2-56, in which case the officer may seek such authorization from a magistrate without first making reasonable efforts to locate a judge. Such reasonable efforts shall be documented in an affidavit and submitted to a magistrate when seeking such authorization.
4. Search warrants must be executed on places of abode between the hours of 0800 and 1700, unless a legal exception is authorized pursuant to Code of Virginia 19.2-56, or the following conditions apply:
  - a. If the search extends beyond the restricted timeframe, but the initial lawful entry was made within the prescribed hours of service, the site was secured, and officers remained at such place continuously.
  - b. If lawful entry is made due to exigent circumstances or by consent pending a search warrant.
5. Once the supervisor approves the intended action, the officer will prepare the affidavit and search warrant, consulting with the Criminal Investigations Section supervisor as needed.
6. The Criminal Investigations Section supervisor will be responsible to coordinate planning and service of search warrants for places of abode or searches that are categorized as higher risk, and will be involved in deconfliction, threat review, operational planning, briefing, and debriefing.
7. A *Threat Assessment* form shall be completed by the officer seeking the search warrant. The officer and the approving supervisor, or another designated supervisor, shall personally observe the site of the search before the warrant is issued or obtained. All reasonable measures shall be taken to establish the ownership, occupancy, interior, and exterior description of the search site, as well as other factors of the search. The assessment shall be reviewed by the Criminal





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Investigations Section supervisor and submitted to a division commander for review and risk assessment prior to service.

**B. Operational Plan**

1. Search warrants are valid for 15 days and should be served within this time unless evidence ceases to exist to support probable cause for the warrant.
2. The supervisor and officer responsible for obtaining the search warrant shall prepare an operational plan, approved by a division commander, and conduct a briefing prior to executing the warrant. The following factors shall be presented at the briefing:
  - a. Level of threat,
  - b. Review of site characteristics and other logistical information,
  - c. Description of potential occupants and any associated dangers they may pose,
  - d. Description of items sought at the search site and any indication of their possible locations,
  - e. Assignment of roles and responsibilities for members involved,
  - f. Review of the facts of the case.
3. The division commander shall determine, prior to execution, if the search warrant requires assistance from the Fairfax County Police Tactical Unit or other specialized resources. The Tactical Unit will be requested when circumstances are such that their special expertise is required to make a safe entry of the search location. If the Tactical Unit is involved, no member of the search team shall enter the location to be searched until authorized to do so by the Tactical Unit supervisor.

**C. Executing the Search Warrant**

1. Pursuant to § 19.2-56, a search warrant for any place of abode authorized under this section, shall require that a law enforcement officer be recognizable and identifiable as a uniformed law enforcement officer and provide audible notice of their authority and purpose reasonably designed to be heard by the occupants of such place to be searched prior to the execution of such search warrant.
2. Prior to entry, members of the executing team shall:
  - a. Knock,
  - b. Announce presence and identity as a police officer,



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- c. Indicate the reason for the presence,
  - d. Allow a reasonable time for response, depending on the articulable and specific circumstances or factors of each case.
3. After entering and securing the place to be searched, and prior to undertaking any search or seizure pursuant to the search warrant, the executing law enforcement officer shall give a copy of the search warrant along with a copy of the affidavit (unless affidavit is sealed pursuant to 19.2-54) to the person to be searched, or the owner of the place to be searched, or if the owner is not present, to any occupant of the place to be searched. If the place to be searched is unoccupied, the executing law enforcement officer shall leave a copy of the search warrant and affidavit within or conspicuously affixed to the place to be searched.
4. Vacant Search Sites  
When entry into a vacant site is expected, the search team should seek entry with a key when possible. A copy of the search warrant, with affidavit attached, shall be placed conspicuously in view at the site.
5. Permissible Search of Persons within Premises  
There must be sufficient reason to search a person within the premises. Officers must articulate facts or circumstances within the search warrant affidavit that provides probable cause to support the action taken. The affidavit must identify the persons to be searched by name and the basis for such search.
6. Arrests  
Probable cause to arrest a person at the search site may arise during the execution of a search warrant. In such an event, a search incidental to that arrest, and independent of the warrant, may be conducted.
7. Permissible Frisk of Persons  
Any person within the premises at the time the search warrant is executed or any person that voluntarily enters the premises after the search has commenced may be frisked, for officer safety, if the officer has reasonable suspicion to believe that such person may have a concealed weapon or dangerous instrument. **Mere presence at the search site is not a sufficient reason to frisk a person within the premises.** The officer must be able to articulate facts or circumstances that provide reasonable suspicion to support the action taken.



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8. Restricting Movement of Persons

Officers must be sensitive to the safety risks of all persons involved with the search. Depending on circumstances and facts present, it may be appropriate to restrict movements of any or all persons present, including those who may not be the subject of a warrant or suspected in the case. This restriction is essential to prevent interference with the search and to safeguard the search team and other persons involved. Officers must be mindful that only reasonable force may be used, and weapons should be displayed no longer than reasonably necessary, in accordance with policy. As soon as it can be determined that an individual is not subject to the scope of a warrant and that no further reasonable suspicion or safety concerns exist to justify further detention, the person should be promptly released. Officers should, when and to the extent reasonable, accommodate the privacy and personal needs of persons who have been detained.

9. Seizure of Items Inadvertently Found

If contraband items are found, but not listed in the search warrant, they may be seized when the item could logically be seen within an area authorized by the search warrant.

10. Items Seized

All items lawfully seized under the authority of the search warrant shall be described and listed on the search warrant return and listed on the owner's copy of the search warrant as well.

11. Post Search Action

The supervisor in charge at the scene shall inspect the property for any potential damage associated with the warrant service. All damage and/or injuries will be documented with pictures taken. Pictures may be taken of the property to document the lack of damage to dispute any future claims of damage or subsequent litigation.

12. Warrant Return

The responsible officer shall ensure the return of the warrant to the issuing authority as soon as practical, and within the 3-business daytime limit as required by law. The officer shall swear under oath to a copy of the list of items seized, and such facts shall be stated on the inventory sheet prior to the return to the court.



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If nothing is seized, a statement to that effect shall be filed with the court within 3 business days.

### **13. Return of Property**

When non-contraband items seized during the execution of a search warrant are no longer needed for prosecution, they may be returned to the owner, as approved by legal authority.

### **D. Outside Agencies and Cross-Jurisdictional Search Warrants**

1. A division commander must be notified when officers participate with another agency in a search warrant to ensure compliance with existing mutual aid agreements or other memorandums of understanding to mitigate risks including, but not limited to, the following:
  - Identity of team members
  - Roles and responsibilities
  - Familiarity with equipment, if any
  - Rules of engagement
  - Asset forfeiture procedures
  - Deconfliction
2. Any outside agency requesting assistance in the service of a search warrant within the Town of Herndon should be referred to a division commander. The division commander, or designee, should review and confirm the warrant, including the warrant location, and should discuss the service with the appropriate supervisor from the outside agency. The division commander should ensure that department members are utilized appropriately. Any concerns should be brought to the attention of the Chief of Police. The actual service of the search warrant will remain the responsibility of the agency requesting assistance.
3. If an officer intends to serve a search warrant in an outside jurisdiction, the division commander should provide reasonable advance notice to the applicable agency, request assistance as needed, and work cooperatively on operational planning and the mitigation of risks. Officers will remain subject to departmental policies when assisting outside agencies or serving a search warrant with an outside jurisdiction.



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### VII. STRIP AND BODY CAVITY SEARCHES

#### A. Strip Search <1.2.8>

1. A strip search is an intrusive search as it requires a person under arrest to arrange some or all of their clothing in order to permit a visual inspection of the genitals, buttocks, anus, female breasts, or undergarments for the purpose of searching for a concealed weapon or contraband.
2. Strip searches may be conducted on any person in custody if there is reasonable cause to believe that the individual being searched is **concealing a weapon** in such a manner that it may not be discovered by a normal search incident to arrest.
3. Strip searches for contraband may **ONLY** be conducted if there is reasonable cause to believe that the individual being searched is concealing contraband **AND** the person in custody is charged with a Class 1 or 2 misdemeanor or above (no traffic infractions). **No juvenile shall be subject to a strip search for contraband.**
4. The following shall also apply to any strip search conducted:
  - a. A supervisor shall provide authorization and approval to conduct the search based on consideration of the nature of the crime, circumstances of the arrest, juvenile status, subject's history, acts of violence, and findings of the search incident to arrest.
  - b. Pursuant to Code of Virginia, 19.2-59.1, the strip search must be conducted by an officer of the same gender as the person in custody. If a same gender officer is not available, a request shall be made to the neighboring jurisdiction to provide assistance.
  - c. Whenever feasible, strip searches on a person in custody shall be conducted at a detention facility unless such search needs to be conducted prior to transport for safety reasons.



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- d. The strip search shall be conducted on premises where the search cannot be observed by persons not physically conducting the search. If this search must be conducted in the field prior to transport, reasonable efforts shall be made to ensure the search is not visible by others.
  - e. Strip searches at a detention facility shall be conducted by their personnel and in accordance with their established procedures and state law.
  - f. The details of any strip search conducted by a Herndon Police Department officer shall be fully documented in an incident report to include the justification for the search, location conducted, what clothing was rearranged, and the results of the search.
5. The reasonableness of a strip search under the Fourth Amendment is evaluated through a four-prong approach pursuant to *United States v. Lamar Meyers*, (2019):
- a. Officer's justification for conducting the strip search – is there a compelling safety justification for conducting the search immediately.
  - b. Place in which the search was conducted – can the search be conducted in privacy outside the view of non-involved parties.
  - c. Scope of the particular intrusion – is the scope of the search confined to the area where the officer has reason to believe the weapon or contraband is located.
  - d. Manner in which the search was conducted – is the search conducted in a manner that does not pose unnecessary risk of harm to the person being searched and officers make reasonable efforts to minimize its intrusiveness.
- B. Body Cavity Search <1.2.8>
- Other than the mouth, a visual or manual body cavity search shall be conducted pursuant to a search warrant, conducted either by or under the supervision of



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medically trained personnel at the detention center or authorized medical facility. The search and results shall be documented.