

 Kinston Police Department	<u>POLICY: Search & Seizure</u>					<u>POLICY #:</u> 700-2
	<u>NCLEA Standards: 6.03; 9.05;</u>					
	<u>CALEA Standards: 1.2.4; 1.2.8 b</u>					
	<u>NCLM Standards: II.6; II.13;</u>					
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Approval: Chief of Police						

I. PURPOSE AND SCOPE

Both the federal and state constitutions provide every individual with the right to be free from unreasonable searches and seizures. This policy provides general guidelines for Kinston Police Department personnel to consider when dealing with search and seizure issues.

II. POLICY

It is the policy of the Kinston Police Department to respect the fundamental privacy rights of individuals. Members of this agency will conduct searches in strict observance of the constitutional rights of persons being searched. All seizures by this department will comply with relevant federal and state law governing the seizure of persons and property.

The Kinston Police Department will provide relevant and current training to officers as guidance for the application of current law, local community standards, and prosecutorial considerations regarding specific search and seizure situations, as appropriate.

III. SEARCHES (NCLEA 6.03) (CALEA 1.2.4)

The U.S. Constitution generally provides that a valid warrant is required in order for a search to be valid. There are, however, several exceptions to the rule that permit a warrantless search.

Examples of law enforcement activities that are exceptions to the general warrant requirement include but are not limited to searches pursuant to:

Valid Consent

A law enforcement officer may conduct a search and make seizures, without a search warrant or other authorization, if consent to the search is given. The consent needed to justify a search and seizure under state law must be given by the person to be searched, by the registered owner of a vehicle to be searched or by the person in apparent control of its operation and contents at the time consent is given or by a person who by ownership or otherwise, is reasonably apparently entitled to give or withhold consent to a search of premises.

The search may not exceed, in duration or physical scope, the limits of the consent given. Upon completion of the search, the officer must make a list of things seized and must deliver a copy to the person who consented to the search.

Incident To A Lawful Arrest

Legitimate Community Caretaking Interests

If an officer has reason to believe that his safety or the safety of others is in jeopardy at any time during the lawful encounter with an individual, even though the officer does not have grounds to arrest the individual, the officer may search for any dangerous weapons by an external pat-down of the clothing of the suspect.

If, during a legal frisk, an officer feels an object, based on his training and experience, that is immediately apparent (without squeezing, sliding or otherwise manipulating the article) to be an illegal substance, he may legally seize said object.

Vehicle Searches Under Certain Circumstances

Officers may make a limited warrantless search of a vehicle when they need to determine ownership of the vehicle, i.e.: theft, vandalism or abandonment.

The United States Supreme Court has ruled (*Carroll vs. United States*) that a vehicle can be searched without a warrant if there is probable cause to believe it contains contraband or evidence and vehicle is in a public place.

Courts have applied this vehicle exception to uphold warrantless searches of an assortment of vehicles, including a motor home, houseboat and a roomette on a train. The vehicle exception is based on the court's conclusion that the expectation of privacy with respect to one's vehicle is lower than that regarding one's home or office due to the inherent mobility of a vehicle, their periodic inspections and licensing requirements, and the public nature of vehicle travels where both its occupants and contents are in plain view. Under the authority of this ruling, Kinston Police Department Officers may perform warrantless searches of vehicles.

When officers interact with people in or near a vehicle but do not make an arrest, they may search a vehicle for weapons without a warrant if they have reasonable suspicion that the person is dangerous and a weapon may be in the vehicle that could be used to harm them.

Exigent Circumstances

When an officer reasonably believes that doing so is urgently necessary to save life, prevent serious bodily harm, or avert or control public catastrophe, the officer may take one or more of the following actions: enter buildings, vehicles, and other premises; limit

Non-Testimonial Order

A non-testimonial order is an investigative procedure authorized by N.C.G.S. 15A-271 which can be utilized to identify a perpetrator of a crime. It can also be used to exclude an individual from the pool of suspects. Under this article, a solicitor may make application to a judge for an order requiring suspects to submit to certain non-testimonial identification procedures such as: fingerprints, measurements, urine, saliva, and/or hair specimens, voice and/or handwriting samples, photographs, and lineups.

Certain other activities are recognized by federal and state courts and by certain statutes as legitimate law enforcement activities that also do not require a warrant. Such activities may include seizure and examination of abandoned property, and observations of activities and property located on open public areas.

Because case law regarding search and seizure is constantly changing and subject to interpretation by the courts, each member of this department is expected to act in each situation according to current training and his/her familiarity with clearly established rights as determined by case law.

Whenever practicable, officers are encouraged to contact a supervisor to resolve questions regarding search and seizure issues prior to electing a course of action.

IV. STRIP SEARCH / BODY CAVITY SEARCH (NCLEA 9.05)

An officer must obtain a search warrant for a strip and/or body cavity search unless exigent circumstances in which evidence would dissipate while the officer sought a warrant or the failure to immediately obtain evidence would present a serious threat to the safety of any person involved in the search or arrest. When a suspect is in custody, the officer can search the entire body, except body cavities, including clothing and inside pockets. Although highly intrusive, strip and body cavity searches may make it impractical to obtain a warrant; such as, the evidence would be destroyed or sometimes be necessary to protect the safety of officers, civilians, and other prisoners; and to detect and seize evidence of the crime.

1. **Strip Searches** are defined as any search of an individual requiring the removal of all clothing to permit the visual inspections of skin surfaces including genital areas. Strip searches should be conducted only if the officer has a search warrant for the person, or the person is under arrest, or if the subject consents to be strip searched. An officer must have probable cause, articulable and reasonable suspicion, to believe that an individual is concealing contraband or weapons. Strip searches must be authorized by a supervisor and must be conducted out of the public view in a secured room and in a manner that protects the privacy of the person being searched. Only officers of the same gender as the subject may conduct the search and the search may only be viewed by those officers involved in or called in to assist in the search.
2. **Body cavity searches** are defined as any search involving not only visual inspection of skin surfaces but also the internal physical examination of body cavities, such as the rectal or vaginal cavity. If there is probable cause to believe that evidence of a crime or a weapon is being concealed within a body cavity, a search warrant that specifically orders a body cavity search must be obtained. A suspect may consent to the body cavity search. In the case of a body cavity search the following procedures shall be followed:
 - a. A body cavity search shall be performed, pursuant to a search warrant or consent, by qualified physician or other medically trained personnel directed by the physician. Only officers of the same sex as the person being searched will be present when the search is conducted.
 - b. Body cavity searches shall be performed with due recognition and regard for privacy and hygiene concerns.
 - c. The authorized medical personnel conducting the search shall furnish a copy of their report to the police officer serving the search warrant.
 - d. Only officers involved in, or called in to assist in, the search may be present during the search.

- e. Any evidence recovered from a body cavity search and placed in an evidence storage locker must have a hazardous materials tag (red tag) placed on the outside of the evidence locker.

Unless there are exigent circumstances, Juveniles shall not be subject to Strip Searches or Body Cavity Searches without prior approval from the Chief of Police or his/her designee. The Chief of Police or his/her designee shall contact the District Attorney prior to this type of search. **(NCLEA 9.05)**

V. SEARCH PROTOCOL

Although conditions will vary and officer safety and other exigencies must be considered in every search situation, the following guidelines should be followed whenever circumstances permit:

- a. Members of this office will strive to conduct searches with dignity and courtesy.
- b. Officers should explain to the person being searched the reason for the search and how the search will be conducted.
- c. Searches should be carried out with due regard and respect for private property interests 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. In order to minimize the need for forcible entry, an attempt should be made to obtain keys, combinations, or access codes when a search of locked property is anticipated.
- e. Whenever practicable, a search should not be conducted by a single officer. A cover officer should be positioned to ensure safety and should not be 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 summon an officer of the same sex as the subject to conduct the search. When it is not practicable to summon an officer of the same sex as the subject, the following guidelines should be followed:
 - 1. Another officer or a supervisor should witness the search.
 - 2. Body Worn Cameras of each officer on scene should be activated
 - 3. The officer should not search areas of the body covered by tight-fitting clothing, sheer clothing, or clothing that could not reasonably conceal a weapon.

VI. GENDER CLASSIFICATION (NCLEA 9.05) (CALEA 1.2.8 b)

- a. A person's gender will be classified as it appears on the individual's government issued identification card.
- b. In the event the person does not have a government issued identification card available, the officer will respectfully ask if the person has male genitalia.
 - 1. If the arrestee states that they have male genitalia, he will be classified as a male.
 - 2. If the arrestee states he/she does not have male genitalia, she will be classified as a female.
- c. In the event that the officer is uncertain of a person(s) gender classification or the person refuses to identify his/her gender classification, the officer will consult with their supervisor. These occurrences will be documented in a supplemental report.
- d. If the person utilizes a different name than as it appears on their government issued identification card, this name will be documented on the arrest report as an alias.

Searches Involving Transgender Person

e. Definition:

1. Transgender - Any person whose gender identity or expression differs from the one which corresponds to a person's anatomical sex at birth.
2. Gender Identity / Expression - The actual or perceived identity or behavior of a person as being male or female.
3. Sexual Orientation - An individual's enduring romantic, emotional, and/or sexual attraction to individual(s) of a particular gender.

f. Searches:

1. Searches will be conducted by an officer who is the same gender as the arrestee as determined in the policy and is in accordance with both warrantless search and seizure and the search of prisoners. The exception to this policy will be those persons(s) who have undertaken operative procedures for gender reassignment.
 - i. Male to female person(s) will be processed as a female;
 - ii. Female to male person(s) will be processed as a male.
2. A person may request an officer of the same gender identity or expression is present while the search takes place. When reasonable, an officer of the same gender expression as the arrestee will be requested to respond to the incident scene to be present for the field search.
3. If an arrestee objects to being searched by a female or male officer, the officer will inquire the nature of the objection. The officer will consult with their supervisor and document the objection in a supplemental report attached to the arrest, specifically indicating the person's stated preference.
4. Transgender persons will not be subject to more invasive search or pat down procedures than non-transgender persons.
5. Identity related items such as clothing, wigs and other cosmetic items may be temporarily seized:
 - i. Only as necessary to ensure officer safety;
 - ii. Consistent with procedures while processing non-transgender persons; and
 - iii. In accordance with this policy.

VII. DOCUMENTATION

Officers are responsible for documenting any search and ensuring that any required reports are sufficient including, at minimum, documentation of the following:

- Reason for the search.
- Any efforts used to minimize the intrusiveness of any search (e.g., asking for consent or keys).
- What, if any, injuries or damage occurred?
- All steps taken to secure property.
- The results of the search including a description of any property or contraband seized.
- Completion of any inventory and other documentation with service and/or return as required by law (N.C.G.S. § 15A-223; N.C.G.S. § 15A-254; N.C.G.S. § 15A-257).
- If the person searched, is the opposite sex, any efforts to summon an officer of the same sex as the person being searched and the identification of any witness officer.

Supervisors shall review reports to ensure the reports are accurate, that actions are properly documented and that current legal requirements and office policy have been met.