

Leesburg Police Department  General Orders	Subject: Patrol & Operational Activities		Number: 420
	Effective Date: March 2021	Review Date: December 2025	
	Topic: Search and Seizure		
Chief's Signature: 	<input type="checkbox"/> New Policy <input checked="" type="checkbox"/> Replaces GO 121 <input checked="" type="checkbox"/> Revised		
VLEPSC: ADM.02.02			

I. PURPOSE

The purpose of this General Order is to establish guidelines for search and seizure procedures.

II. POLICY

It is the policy of the Leesburg Police Department (LPD) to ensure that law enforcement actions are conducted in accordance with legal standards and to protect the rights of individuals.

III. PROCEDURE

A. Authority

1. The Fourth Amendment to the Constitution protects the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures. It is the policy of the Leesburg Police Department to conduct consensual encounters, investigative stops and detentions, arrests and searches (referred to hereafter as "Searches and Seizures") in accordance with mandates prescribed under Federal and State law. Detailed guidance on search and seizure is referenced in Virginia Legal Guidelines, Chapters II, IV and V.
2. Officers of the Leesburg Police Department are authorized to conduct lawful searches and seizures within the jurisdiction of the Town of Leesburg as part of authorized investigations and police operations.
3. Searches and seizures outside the jurisdiction of the Town of Leesburg will be executed by officers of those jurisdictions.
4. Searches and seizures are intrusions on the reasonable expectation of privacy that protects:
 - a. A person and his or her clothing.
 - b. A home or residence and its curtilage.
 - c. A place of business.
 - d. A motor vehicle.
 - e. Personal and business records and documents.

- f. Personal and business possessions.
5. The curtilage of a home is defined as that part of the property directly surrounding the house or residence which is used for the intimate activity associated with a person's home and the privacies of life. The yard and driveway of a house are in the curtilage. Open fields surrounding a home are not included in the curtilage.

B. Consensual Encounters

1. Officers may approach any other person in a public place and ask questions of that person. The subject of the consensual encounter must be completely free to terminate the encounter at any time. A consensual encounter is not a seizure.
2. If an encounter begins as an investigatory detention, officers shall inform subjects that they are free to leave in order to terminate the detention and transition to a consensual encounter.
3. Officers with legitimate business may enter the curtilage of a house and approach the front door absent contrary instructions from a person with dominion over the residence (owner or tenant). They may knock on the door and speak with anyone they find until asked to leave by a person with dominion.

C. Investigatory Stops and Detention

1. Officers within their jurisdiction who have reasonable suspicion that a person is involved in illegal activity may conduct investigatory stops on persons or vehicles and detain the persons for a reasonable time while questioning them about that illegal activity. Pursuant to §18.2-250.1, Possession of Marijuana, police officers may not lawfully stop, search, or seize any person, place, or thing solely on the basis of the odor of marijuana.
2. The reasonable suspicion must derive from facts and reasonable inferences from those facts. The facts must be objectively reasonable at the time, taking into account all of the circumstances attendant to the encounter. Reasonable suspicion is a lesser standard than the probable cause standard required to effectuate an arrest.
3. Some factors which may be used, when weighed, balanced, and integrated, to establish the reasonable suspicion for an investigatory stop or detention include:
 - a. Subject's prior criminal record is known to the officer.
 - b. Officer's knowledge that a crime was recently committed in the vicinity.
 - c. Subject's presence in a high crime area.
 - d. Subject's evasive conduct, furtive gestures, or concealment or attempted concealment of identity.
 - e. Time of day or night.
 - f. Information provided by a known informant.
 - g. Anonymous tips.
 - h. Information provided by another law enforcement agency.
 - i. Flight when confronted by police presence.
 - j. Officer's knowledge and experience.

- k. Erratic driving or violation of traffic laws.
4. An investigatory stop or detention is a seizure and the subject is required by law to submit to the officer. If a subject resists a lawful investigatory stop or detention, reasonable force may be used to effectuate the seizure. Continued resistance may escalate the encounter into a formal arrest for obstruction of justice or other criminal offenses.
 5. An investigatory detention shall be conducted in proximity to the location of the stop. Any transportation of the subject to another location while still detained risks elevating the investigatory detention to a de facto arrest.
 6. Investigatory stops and detentions shall be documented for subsequent review by entering CAD notes, completing an incident report, or Field Interview Card.
 7. An investigatory detention which results in the issue of a summons for a violation will conclude when the summons is issued and all administrative tasks involved with the criminal or traffic charge are complete. The subject must then be informed that he or she is no longer being detained and be allowed to leave before the officer can continue the contact as a consensual encounter.
 8. In the case of the investigatory stop and detention of a motor vehicle, an officer may order the driver and any passengers to exit or remain inside the vehicle. The vehicle occupants may be detained outside or inside the vehicle for the duration of the investigatory detention at the officer's discretion. This treatment of the vehicle occupants is not dependent on any additional reasonable suspicion to believe that they are armed or dangerous to the officer.
 9. Officers conducting lawful investigatory stops and detentions may use reasonable measures to control subjects who are uncooperative, disorderly, potentially violent, or who significantly outnumber the officers. These authorized constraints can include the use of handcuffs, placing subjects in the back seats of police vehicles, directing subjects to sit down in specified places, and, in the case of particularly dangerous subjects, directing the subject to lay prone on the ground. The situation may also justify the drawing and display of police weapons and the execution of felony traffic stop procedures.
 10. A lawful investigatory stop or detention does not convey automatic justification to conduct any search. A frisk or pat-down of the subject for weapons is only permissible when the officer has reasonable suspicion that a subject is armed and presently dangerous to the officer or another person.
 11. Subjects of investigatory stops or detentions are not required to answer officer questions. Officers are not required to provide subjects of investigatory stops or detentions "Miranda" warnings.
 12. An investigatory detention which develops into a custodial arrest for a violation requires the officer to provide the arrestee a "Miranda" warning after the subject has been placed under arrest and before asking any further questions.

13. Officers must ensure that non-English speaking persons clearly understand their Constitutional safeguards.
14. Validated drug courier profiles, when combined with other specific conduct by a subject, can establish reasonable suspicion to conduct an investigatory stop or detention.
15. Traffic checkpoints are investigatory stops and detentions which require no individualized reasonable suspicion or probable cause. Traffic checkpoints must be conducted pursuant to a plan embodying explicit, neutral limitations on the conduct of the officers. Specific instructions for the conduct of traffic checkpoints are published in General Order 440, Traffic Enforcement Overview.
16. Officers may temporarily seize and detain items of personal property when they possess a reasonable suspicion that the property is connected with criminal activity. The detention must last no longer than reasonably necessary for the purpose of determining if the item is in fact linked to a criminal endeavor.
17. Officers may temporarily seize a premises and detain the occupants when the officers possess probable cause to search the premises while a search warrant is obtained. The officers may take reasonable measures to ensure that all persons in the premises are detained and that no evidence is being destroyed.

D. Arrests

1. Formal arrest is the most invasive level of detention. Officers are authorized to arrest persons encountered within their jurisdiction on the basis of probable cause to believe that the person has committed a crime or the existence of a valid warrant.
2. A lawful arrest includes taking the arrestee into full custody.
3. Reasonable force may be used to effectuate a lawful arrest.
4. An investigatory stop or detention can evolve into a de facto arrest if:
 - a. The detention lasts longer than is reasonable.
 - b. The level of intrusion is high.
 - c. The level of constraint or force used on the suspect is high.
 - d. The subject is transported in custody to another location.

E. Warrantless Arrests

1. Officers may make warrantless arrests upon probable cause for any felony, whether or not the offense was committed in the officer's presence.
2. Officers may make warrantless arrests for misdemeanors committed in their presence.
3. Officers may make warrantless arrests for misdemeanors not committed in their presence if they have probable cause to believe that the offense occurred and that the arrestee committed the offense in cases of:

- a. Shoplifting/concealment.
 - b. Carrying a weapon onto school property.
 - c. Brandishing a firearm.
 - d. Assault and battery (including domestic assault and battery).
 - e. Destruction of property.
 - f. Larceny of a motor vehicle.
 - g. Driving while intoxicated (at an accident scene or medical treatment facility within three hours of a DWI accident).
4. In the case of warrantless arrests for Class I and II misdemeanors and any other misdemeanor punishable by confinement in jail, the subject will be released on a summons unless one of the following exceptions applies:
 - a. The subject fails or refuses to discontinue the unlawful act.
 - b. The subject is likely to disregard the summons
 1. The subject has no community ties such as a transient or homeless person. Military non-residents with local addresses or stationed in the metropolitan area will not be considered transients.
 2. The subject has no positive means of identification.
 3. The subject attempts to escape or resists arrest.
 4. The subject cannot understand the conditions of the summons requiring future court appearance.
 5. The subject makes a statement indicating an intent to disregard the summons.
 6. The subject refuses to sign the summons.
 7. Previous failures to appear in court by the subject.
 - c. The subject is likely to harm self or others
 1. The subject appears to be under the influence of drugs or alcohol.
 2. The subject exhibits violent or irrational behavior before, during, or after the arrest.
 3. The subject makes statements or exhibits behavior indicating an intent to continue the offense or commit another offense after being released on a summons.
 5. In the case of warrantless arrests for Class III and IV misdemeanors, the subject will be released on a summons unless one of the following exceptions applies:
 - a. The subject refuses to furnish correct name and address.
 - b. The subject refuses to sign summons.
 - c. Violation of VA- 18.2-407 (Remain at the scene of a riot after being told to disperse).
 - d. Violation of VA 18.2-388 (Public intoxication).
 - e. The subject refuses to discontinue the unlawful act.
 6. When the misdemeanor arrestee is released on a summons, a search incident to arrest is not authorized.

F. Arrests Pursuant to a Search Warrant

1. Officers may serve arrest warrants issued anywhere in the Commonwealth of Virginia.
2. Officers may arrest persons confirmed to be wanted in other states with valid extradition authority and charge them as fugitives from justice.

3. Officers serving arrest warrants will positively identify the arrestee as the person named in the arrest warrant.
4. If the original copy of the warrant is not immediately available, officers and communications technicians will confirm the validity of the warrant from the issuing agency before transporting the subject from the scene of the arrest.

G. Emergency Custody Orders

Officers lawfully executing or serving Emergency Custody Orders in accordance with Virginia Code 37.2-808 are authorized to take subjects into custody, transport them to appropriate evaluation and treatment facilities, and detain them for up to eight hours.

H. Juvenile Arrests

Arrest authority over juveniles differs from that over adults. Refer to VA Code 16.1-246 and General Order #434, Juvenile Operations.

1. Officers may arrest a juvenile under authority of a juvenile detention order or arrest warrant.
2. Officers may make warrantless arrests of juveniles upon probable cause for:
 - a. Being in need of services or supervision with clear and substantial danger to life or health of the juvenile or to ensure the juvenile's appearance in court.
 - b. Any felony or misdemeanor committed in the officer's presence and the officer believes that an arrest is necessary for the protection of the public interest
 - c. Misdemeanors committed in or out of their presence in the cases of:
 1. Shoplifting/concealment
 2. Assault and battery
 3. Carrying a weapon on school grounds
 - d. Any felony, whether or not the offense was committed in the officer's presence.
 - e. Being a runaway from a jail or detention facility.
 - f. Being a runaway from a residential child care facility or home in which the juvenile was placed.
 - g. Being a runaway from home.
 - h. Being without adult supervision at night causing danger to the child's welfare.
 - i. Being in need of in-patient treatment for mental illness.
 - j. Truancy.
3. Officers may only issue summonses to juveniles for traffic violations.

V. SEARCH WARRANT

1. In the absence of established exigencies, a search warrant issued by a judge or magistrate is required to search a person, place, or thing over which a person has a legitimate expectation of privacy.
2. An officer having probable cause to believe that a crime has occurred or will occur in the future and that specific evidence pertaining to that crime is located at a specific place may obtain a search warrant from a magistrate or judge.

3. All search warrants will be obtained and executed in accordance with Chapter 5, Search Warrants, of the Code of Virginia (§ 19.2-52, § 19.2-53, § 19.2-53.1, § 19.2-54, § 19.2-55, § 19.2-56, § 19.2-56.1, § 19.2-56.2, § 19.2-57, § 19.2-58, § 19.2-59, § 19.2-59.1, § 19.2-60, § 19.2-60.1)

VI. WARRANTLESS SEARCHES

A. Exigent Circumstances

Officers are authorized to make warrantless entries and searches under the listed exigent circumstances:

1. To prevent the destruction or removal of evidence.
 - a. Officers are authorized to make a warrantless entry and search of a place if they have probable cause to believe that there is evidence inside and have a reasonable belief that evidence is being or is about to be destroyed. The object of the search must be an easily destructible item, and officers must show an objectively reasonable belief that there are persons within the residence capable of immediately destroying or hiding the evidence.
2. To prevent the flight of a suspect.
 - a. Officers are authorized to make a warrantless entry of a place if they have probable cause to believe that a wanted subject is inside and that the subject is an immediate flight risk and has the ability to flee the jurisdiction if not immediately apprehended.
3. To ensure the safety of officers or other persons.
 - a. Officers are authorized to make warrantless entry of a residence if they believe that an occupant is armed and presents a real and immediate danger to officers or other persons. Warrantless entry is also authorized if the officers believe that occupants are engaging in dangerous activities which could result in immediate injury or death.
 - b. Officers are authorized to make warrantless entry into a residence at homicide scenes and conduct a prompt warrantless search of the area to detect other victims or suspects who may be in the premises. A search warrant or valid search consent shall be obtained before conducting a detailed search.
 - c. During a lawful investigatory detention, an officer with a reasonable suspicion that a suspect is armed and presently dangerous to the officer or another person, is authorized to conduct a carefully limited search (Terry pat down or frisk) of the subject's outer clothing to discover weapons. The scope of the search is limited to weapons or other items that could reasonably harm the officer. Weapons and obvious contraband may be seized. Obvious contraband is defined as an object that is clearly not a weapon but whose contour, shape, or mass make its identity immediately apparent as contraband without further manipulation (plain feel doctrine).
 - d. During a lawful traffic stop (which is an investigative detention of all of the occupants of the vehicle) an officer with a reasonable suspicion that any of the occupants of the vehicle is armed and presently dangerous to the officer or another person may search the area of the vehicle that the subject can reach easily (wingspan).

B. HOT PURSUIT

Officers are authorized to directly follow suspects who they have probable cause to believe have committed a felony into a residence to effectuate an arrest without obtaining a search warrant. The pursuit must have initiated immediately following the crime and there must be continuity of pursuit. Any contraband or evidence in plain view may be seized. Hot pursuit warrantless entries are not authorized for misdemeanor offenses.

C. Search Incident to Arrest

1. On making a lawful custodial arrest officers are authorized to completely search:
 - a. The person of the arrestee.
 - b. Strip and body cavity searches are not authorized during search incident to arrest. Detention facility staff can conduct limited strip searches during the booking/intake process. More detailed strip/body cavity searches will require a search warrant.
 - c. The arrestee's clothing and effects.
 - d. Cellular telephones and other personal data devices may not be examined absent emergency circumstances (Riley vs. California, 2014).
 - e. Wallets and other papers may be completely examined.
2. In the case of an arrestee who is an occupant or a recent occupant of a motor vehicle, the passenger compartment of the vehicle may be searched only if:
 - a. The arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search.
 - b. It is reasonable to believe that the vehicle contains evidence of the offense of arrest.

D. Emergency Aid

Officers are authorized to enter a premises without a warrant if they have a reasonable belief that there is an emergency at hand and there is an immediate need for police assistance to protect life and property. The search must not be primarily motivated by an intent to arrest and seize evidence. There must be a reasonable association between the emergency and the premises to be searched. Specific justifications for an emergency aid warrantless search include:

1. To protect individuals in distress.
2. To assist victims of crimes that have just occurred.
3. To investigate suspicious signs of impending danger.
4. To assist persons who are seriously injured or threatened with serious injury.
5. The emergency aid exception includes the right of officers to restore or maintain the status quo during the emergency to control the dangerous or dynamic situation. Officers may:
 - a. Detain individuals.
 - b. Search for weapons to protect themselves.
 - c. Search for injured or missing persons.
6. Firefighters are authorized to make warrantless entries into burning buildings and to seize evidence of arson in plain view. Police officers are authorized to assist firefighters in their duties and seize evidence or contraband in plain view.

E. Consent Searches

1. Officers may search persons, places, and things in accordance with the intentional, deliberate, unambiguous and voluntary consent of a person waiving his or her privacy interest in the area searched. Officers will solicit consent in a non-threatening manner and make allowances for the age, maturity, education, intelligence, and experience of the subject.
2. Consent may be rendered verbally (express consent). Because the burden is on the Commonwealth to prove that the consent was unambiguous and voluntary, officers should (1) use the consent to search form, or (2) record the encounter (audio or video); and/or (3) arrange for a witness whenever practical.
3. Valid consent may be inferred from the conduct or actions of a subject (implied consent). Mere acquiescence with the search does not constitute valid implied consent. Example of valid implied consent: Officer asks subject for consent to search his jacket. Subject hands jacket to officer without saying anything. Officer searches jacket.
4. Third parties, who officers have reasonable belief to possess common authority over or other significant relationship to the premises or effects sought to be searched (standing), may give valid consent to search.
5. If a third party with standing is present at the scene of the search, and contradicts the consent of another party with standing, the consent is not valid. Example of third party contradiction: Wife gives valid consent to search the marital residence. Husband is at the residence and objects to the search. Consent is not valid.
6. Landlords and Hotel Managers cannot give consent to search individual houses, apartments or rooms that are rented and occupied.
7. Officers will not threaten to obtain a search warrant to obtain consent.
8. The scope of a consent search only includes the person, place, or thing for which the subject expressly or implicitly consented. Containers or compartments within the scope of the search may reasonably be searched unless the subject expressly objects and withdraws consent. The subject may expressly limit the scope of the search at the time consent is given and modify it at any time.
9. Officers will document the circumstances of the consent and search in an Incident Report, Field Interview Report, or related case report.

F. Inventory and Booking Searches

Inventory and booking searches are exercises of the officer's caretaking role. These searches are to be conducted in accordance with established routine procedures and are not to be used as ruses to search for incriminating evidence.

1. **Inventory Searches of Impounded or Abandoned Vehicles:** Officers may conduct a warrantless search of a legally impounded or abandoned vehicle and its contents for the purpose of conducting an inventory of the contents. Containers within the vehicle may be opened. The inventory search serves to protect the owner's property from loss, theft, or vandalism and to avoid subsequent unjustified claims of theft. Detailed guidance on the conduct of inventory searches is contained in General Order 444, Abandoned/Towed Vehicles.
2. **Booking Searches of Arrestees:** Officers may conduct a warrantless search of a lawfully arrested person and any containers in his or her possession prior to incarceration. The booking search serves to protect the arrestee's property from

loss, theft, or vandalism, to avoid subsequent unjustified claims of theft, and to protect corrections staff and other inmates from assault. LPD officers will normally conduct a booking search prior to turning a prisoner over to the detention facility staff.

G. Automobile Searches

1. Officers may conduct warrantless searches of motor vehicles if they have probable cause to believe that the vehicle contains contraband or evidence of a crime. All compartments and items located within the vehicle which could reasonably be expected to contain the object of the search may be searched. The vehicle may be searched on the scene or impounded and searched at another location without obtaining a search warrant.
2. An alert from a well-trained narcotics detection dog constitutes probable cause to conduct a warrantless search of the vehicle, its contents, and any container therein which could contain narcotics. No reasonable suspicion or probable cause is required to deploy a dog to sniff the exterior of a lawfully stopped vehicle. The traffic stop may not be extended in order to get the dog to the scene and conduct the exterior sniff unless the officer has developed reasonable suspicion to believe there are narcotics in the vehicle.
3. In accordance with § 18.2-250., Possession of Marijuana, the odor of marijuana cannot be used as a sole basis to establish probable cause to conduct an automobile search.
4. The automobile exception does not extend to searching the persons of the occupants of vehicles.
5. Any search of a motor vehicle, or request to search a motor vehicle, shall be documented by the initiating officer in accordance with this section and department reporting requirements.

H. Consensual Vehicle Searches

Any officer who requests consent to search a motor vehicle from the person in control of the vehicle shall document the request and the outcome, including any items seized or the denial of consent, as applicable.

- a. When consent to search is requested and denied, the officer shall document the request and denial in the appropriate module within the call log narrative/disposition section.
- b. When consent to search is requested and granted, and no property or contraband is discovered, the officer shall document the search, completing an Incident Report (IBR) within the RMS.
- c. When consent to search is requested and granted, and property or contraband is discovered, the officer shall document the search and the disposition of any seized property in a case report within the RMS.

I. Non-Consensual Searches

All non-consensual vehicle searches shall be documented in an Incident Report (IBR) within the RMS. Reports shall include the event classification of "Field Interview" to document the non-consensual search. If a criminal offense occurs during the course of

the search, and property or contraband is discovered, the officer shall document the search and the disposition of any seized property in a Case Report within the RMS. Non-consensual vehicle searches are not considered vehicle inventory searches and shall not be documented as such. Vehicle inventory searches shall be conducted and documented in accordance with the applicable Leesburg Police Department General Order governing the impoundment or seizure of motor vehicles.

J. Implied Consent for DWI Arrests

Officers may take breath or blood samples from subjects lawfully arrested for Driving While Intoxicated. Detailed guidance on the procedures for obtaining such samples is contained in General Order 442, DUI/DWI Enforcement.

I. Plain View Seizure

Officers may seize a piece of evidence observed in a constitutionally protected place that is in plain view. The officer must observe the evidence from a lawful vantage point, have lawful access to the object, and have probable cause to believe that the object is contraband or incriminating evidence.

J. Open View Seizure

Officers may seize a piece of evidence in open view. Open view means that the evidence is located in a place where nobody has a reasonable expectation of privacy.

K. Abandoned Objects

Officers may seize a piece of evidence they reasonably believe to be abandoned. This includes garbage left at the curb or in a dumpster for collection. A person's disclaimer or denial of ownership can be used to demonstrate an intent to abandon the evidence.

L. Arrest Warrant in Hand

Officers having an arrest warrant for a specific person in hand may make a warrantless entry into that person's residence to effectuate the arrest if they have probable cause to believe that the wanted person is inside the residence.

M. Tracking Devices

The Code of Virginia requires that a law enforcement officer must apply for and obtain a search warrant from a judicial officer prior to the installation, maintenance, and monitoring of a tracking device. The Code of Virginia defines a tracking device as an electronic or mechanical device that permits a person to remotely determine or track the position or movement of a person or object. Refer to 19.2-56.2 of the Code of Virginia for the requirements pertaining to the application for and issuance of a search warrant for a tracking device, and the tracking device's installation and use.