



GENERAL ORDER

Loudoun County Sheriff's Office

Chapter: Operations	Section: 411.1	
Subject: Investigations	Topic: Search and Seizure	
Accreditation: N/A	Revised:	Reaffirmed:
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I. PURPOSE

The purpose of this General Order is to establish operational guidelines for searches and seizures for the Loudoun County Sheriff's Office.

II. POLICY

The U.S. Constitution and the Bill of Rights guarantees every citizen certain safeguards from government intrusion into their lives. These safeguards have become the cornerstones for the application of criminal justice services in America. Consequently, these safeguards have placed limitations on the authority of police to enforce the laws of the nation, state and the County of Loudoun. The agency expects its deputies to act with due regard for citizens' civil liberties.

III. DEFINITIONS

- A. Police action is termed a search where (1) there is a prying into hidden places by the police officer which (2) the person whose premises or person is being searched has a reasonable expectation of privacy.
- B. For the purpose of this General Order, an emergency is sometimes termed "exigent circumstances."

IV. PROCEDURE

The Fourth Amendment guarantees the right for people to be free from unreasonable searches and seizures of their homes, persons and things. The Supreme Court is continuously interpreting the Fourth Amendment as it applies to law enforcement. Illegally seized items of evidence will not be admitted in court and may be cause for a lost criminal case. Additionally, an illegally conducted search invites civil suits under the Civil Rights Act. In order to ensure that the Fourth Amendment rights are protected, deputies will obtain search warrants upon probable cause in all appropriate criminal cases except for the following circumstances:

- 1. Consent searches
- 2. Emergency searches
- 3. Plain view

4. Abandoned property and open fields
5. Inventory searches of vehicles
6. When executing arrest warrants
7. Incident to arrest
8. Pat-downs of suspicious persons

Note: When considering the necessity of obtaining a search warrant, it is imperative to remember that any search conducted under a search warrant is assumed reasonable and the defense has the burden to prove otherwise. Any search conducted under an exception to the search warrant rule are the prosecutions burden to prove reasonable.

B. CONSENT

1. A search warrant is not necessary where a person who has the authority or control over the thing or places searched consents to the search. Note that the officer does not need to have either reasonable suspicion or probable cause to make a consent search: he or she may merely ask for permission from someone with control over the premises. If that person grants permission, the search may take place. The sole justification for a consent search is the existence of voluntary consent.

Consent searches must observe the following rules:

- a. Generally, the person granting consent must use, access, or control the property
- b. If two people have joint ownership of property, either may give consent
- c. A landlord, including a hotel or motel manager, cannot consent to a search of a tenant's premises, unless the tenant has been evicted or has abandoned the property
- d. A husband or wife, or one member of a cohabiting unmarried couple, may consent to a search of areas in common ownership or use
- e. A parent may consent to a search of premises occupied by a dependent child provided they have routine access
- f. An employee cannot give valid consent to a search of their employer's premises unless they have been left in custody of the premises
- g. An employer may generally consent to a search of premises used by

employees, except premises used solely by an employee, e.g. a locker

- h. Juveniles cannot consent to a search unless they own property
- 2. Consent must be given voluntarily. If a deputy requests consent from a citizen under circumstances that a reasonable person would consider coercive, then the deputy must seek a warrant. The deputy may have the burden of demonstrating the consent was entirely voluntary (*Schnecklock v. Bustamonte*).
- 3. A person who initially gives consent may withdraw it at any time by comments or actions. Deputies may then secure the premises and seek a search warrant.

C. EMERGENCY SEARCHES:

- 1. A search warrant is not necessary in an emergency.
- 2. The Virginia Supreme Court, in *Verez v. Commonwealth*, 337 S.E. 2d 749, 1985, gave ten considerations in evaluating whether an emergency exists:
 - a. The degree of urgency involved and the time required getting a warrant
 - b. Officer's reasonable belief that contraband is about to be removed or destroyed. (Note that not all crimes are serious enough to create exigent circumstances. See (e.) below.)
 - c. The possibility of danger to others including officers left to guard the site
 - d. Information that the possessors of contraband are aware that the police are on their trail
 - e. Whether the offense is serious or involves violence
 - f. Whether officers reasonably believe the suspects are armed
 - g. Whether the officers have probable cause
 - h. Whether the officers have strong reason to believe the suspects are present on the premises
 - i. The likelihood that the suspects will escape
 - j. The suspect's entry onto the premises after hot pursuit
- 3. If the officers enter premises with probable cause to believe that critical

evidence may be destroyed or removed unless immediate action is taken, they may enter without a warrant, secure premises, and obtain a search warrant before proceeding further unless they have obtained consent to search, or some new circumstances arise necessitating another warrantless search.

D. PLAIN VIEW:

1. A plain view seizure is, technically, not a search. To make a plain view seizure of property (contraband, fruits or instrumentalities of the crime), two requirements must be met:
 - a. The seizure must take place where the deputy has legally observed the property
 - b. It must be immediately apparent to the deputy that the items they observed may be evidence of a crime, contraband, or otherwise subject to seizure

The deputy may not move items, look inside or underneath or behind them for serial numbers or other identifying marks. If such movement is necessary, the deputy shall obtain a warrant.

E. ABANDONED PROPERTY AND OPEN FIELDS:

1. A search warrant is not required for property that has been abandoned.
2. To constitute abandoned property, two conditions must apply:
 - a. Property was voluntarily abandoned and
 - b. Property was discarded outside the area in which someone has a reasonable expectation of privacy
3. Open fields are not protected by the Fourth Amendment, but deputies must distinguish them from curtilage, which essentially is a yard where private residences are concerned. Curtilage has no absolute definition that deputies can apply under all circumstances. The extent of curtilage of a private residence, for instance, is determined by whether the area is enclosed or maintained; the nature and use of the area; the proximity of the area to the home; and any measures taken by the owner to protect the area from observation.

F. INVENTORY SEARCHES OF VEHICLES:

The agency requires deputies to inventory any lawfully impounded vehicle, or a vehicle removed from the street and placed in police custody. Any evidence or

contraband found during the inventory may be used to formulate probable cause for a subsequent search or arrest. Vehicles shall be inventoried per General Order 408.1, which requires an inventory of the interior of the vehicle and areas that can be readily entered without the use of force. The purpose of an inventory is to ensure safekeeping of private property and to protect the agency from liability. To repeat, in order to justify an inventory of a vehicle:

1. Deputies must have lawful custody of it
2. The inventory shall be conducted pursuant to General Order 408.1
3. The scope of the inventory shall be limited to those parts of a vehicle likely to conceal important or valuable property. Closed containers may be examined if they are likely to contain valuable property and
4. The vehicle and its closed containers shall not be damaged

G. WHEN EXECUTING ARREST WARRANTS:

1. General guidance:

An officer with an arrest warrant may search for the defendant in his or her own home provided that the warrant is valid; the officer searches the defendant's home (and not someone else's); and probable cause exists that the defendant is home at the time of the search. The search for the defendant must be limited to places where they might be found.

2. Protective sweep:

The U.S. Supreme Court recently ruled (*Maryland v Buie*) that officers may undertake a protective sweep of premises, without a search warrant, following the arrest upon a warrant. Certain limitations must be observed, however:

- a. The purpose of the protective sweep is to discover persons on the premises who might present a danger to the officer
- b. Incident to arrest, officers may, without probable cause or reasonable suspicion, look into closets or other spaces immediately adjoining the place of arrest where threatening persons might be located
- c. In order to extend the protective sweep beyond closets and adjoining spaces, officers must have reasonable suspicion for fearing that persons may be on the premises that pose a threat. In such cases, the sweep is limited to examine places where a person might hide. Deputies shall carefully document their reasonable suspicion

- d. During a protective sweep, evidence discovered in plain view may be seized and
- e. The sweep must cease when officers have dispelled a reasonable suspicion of danger

(Note: With a search warrant, a protective sweep is always justified.)