



GENERAL ORDER

Loudoun County Sheriff's Office

Chapter: Operations

Section: 411.1

Subject: Investigations

Topic: Search and Seizure

Enacted: 7/30/2015

Last Review: 04/11/2024

Review: 01/01/2025

I. PURPOSE

The purpose of this General Order is to establish operational guidelines for [searches](#) and seizures conducted by sworn members of 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 locality. The agency expects its deputies to act with due regard for citizens' civil liberties.

III. PROCEDURE

A. The Fourth Amendment guarantees the right of 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 result in a criminal defendant being found not guilty. Additionally, an illegally conducted search invites civil suits under the Civil Rights Act. To ensure that Fourth Amendment rights are protected, deputies will obtain search warrants based 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 pursuant to a search warrant is assumed reasonable and the burden of proof is on the defendant to show otherwise. It is the prosecution's burden to prove the reasonableness of any search conducted without a search warrant.

B. Search Warrants

1. Search warrants shall be obtained, when possible, even when other means are available, unless delay would articulately interfere with the course of the investigation. The process of obtaining and executing search warrants is found in Virginia Code 19.2-56.
2. "No Knock" Search Warrants are prohibited pursuant to § 19.2-56 B of the Code of Virginia.
 - a. When executing a search warrant, deputies shall be recognizable and identifiable as a uniformed law-enforcement officer.
 - b. Deputies shall audibly announce their presence, authority, and provide the reason for their presence. (i.e., "Sheriff's Office - Search Warrant")
 - c. Deputies shall provide a reasonable amount of time for residents to respond. The size of the residence must be considered when determining the appropriate time to wait.
3. According to the Code of Virginia, night search warrants for any residence or place of abode between the hours of 5:00 p.m. and 8:00 a.m. are prohibited unless the following circumstances exists:
 - a. A judge (or magistrate, if a judge is not available) authorizes the execution of such search warrant at another time for good cause shown by particularized facts in an affidavit.
 - i. Deputies shall make reasonable efforts to locate a judge before seeking authorization to execute the warrant at any time between 5:00 p.m. and 8:00 a.m.
 - b. Prior to the issuance of the search warrant, deputies lawfully entered and secured the place to be searched and remained at such place continuously.
4. Prior to obtaining and executing a search warrant for a physical location (i.e., residence, business, or other private property), approval for the search warrant shall be obtained from a 1st Lieutenant or higher-ranking deputy in a written operation order accompanied by a profile sheet.
 - a. When considering a search warrant for a residence, deputies and

supervisors shall ensure the plan includes a risk assessment and deconflicts with other sections and law enforcement agencies.

- b. Exigent circumstances may be present for the execution of a search warrant without an approved operation order. A 1st Lieutenant or higher-ranking deputy must approve the execution of the search warrant without an operation order.
 - c. All other search warrants should be reviewed by a supervisor or at a minimum a master deputy for accuracy prior to obtaining or executing a search warrant.
5. After entering and securing the place to be searched, and prior to undertaking any search or seizure pursuant to the search warrant, the executing deputy shall give a copy of the search warrant and affidavit to the person to be searched or the owner of the place to be searched or, if the owner is not present, to at least one adult occupant of the place to be searched. If the place to be searched is unoccupied by an adult, the executing deputy shall leave a copy of the search warrant and affidavit in a conspicuous place within, or affixed to, the place to be searched.

C. Consent Searches

1. A search warrant is not necessary where a person who has the authority or control over the thing or place to be searched consents to the search. Note that the deputy 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 spouse 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 any premises occupied by a dependent child provided they have routine access.

- f. An employee cannot give valid consent to a search of his/her employer's premises unless such premises have been left in the custody of the employee.
 - g. An employer may generally consent to a search of premises used by employees, except those premises or items used solely by an employee, e.g., a locker or electronic device.
 - h. Juveniles cannot consent to a search unless they own the 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 (*Schneckloth v. Bustamonte*).
 - 3. A person who initially gives consent may withdraw it at any time through comments or actions and have the immediate ability to do so. 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*, 230 Va. 405 (1985), gave ten considerations in evaluating whether an emergency exists:
 - a. The degree of urgency involved, and the time required to obtain a warrant.
 - b. The law enforcement 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 investigating their activities.
 - 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 to believe a crime has been committed.

- h. Whether the officers have strong reason to believe the suspects are present on the premises.
 - i. The likelihood that the suspect(s) will escape.
 - j. The suspect's entry into a premises after hot pursuit.
- 3. If the deputies 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 the 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 Searches

- 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 he/she 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 a movement is necessary, the deputy must obtain a warrant.

E. Searches of 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.
 - 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 Sheriff's Office 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 in accordance with 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 the safekeeping of private property and to protect the agency from potential liability. To justify an inventory of a vehicle:

1. Deputies must have lawful custody.
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.
4. The vehicle and its closed containers shall not be damaged.

G. Searches When Executing Arrest Warrants

1. General guidance:

A deputy with an arrest warrant may search for the defendant in his or her own home provided that the warrant is valid; the deputy 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 he/she 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 an 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 deputy.
- b. Incident to arrest, deputies may, without probable cause or reasonable suspicion, investigate closets or other spaces immediately adjoining the

place of arrest where threatening persons might be located.

- c. To extend the protective sweep beyond closets and adjoining spaces, deputies must have reasonable suspicion for fearing that persons may be on the premises who pose a threat. In such cases, the sweep is limited to examining 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.
- e. The sweep must cease when deputies have dispelled a reasonable suspicion of danger.

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