Lincoln Police Department

Standard Operating Procedures

Integrity, Competency, Fairness

Subject:	**Warrantless Search & Seizure**	**Policy #**	**O-17**
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MLEAP:	**7.09**		
	Rescinds All Previous Policies Related To This Current Policy		
Issuing Authority:	**Chief of Police Lee Miller**		

I. POLICY

Searches of people, places, and things must be accomplished to protect constitutional rights, minimize intrusion, preserve evidence or fruits of a crime, and ensure the safety of all parties involved in searches.

Law enforcement searches and seizures are governed by the principles of the Fourth and Fourteenth Amendments to the U.S. Constitution and by corresponding provisions of the Maine Constitution.

Officers shall remain current on applicable case law and guidelines and must only conduct searches pursuant to a search warrant or a recognized exception to the search warrant requirement, including, but not limited to, incident to a lawful arrest, with permission or consent, exigent/emergent circumstances, or as part of a motor vehicle inventory.

A search or seizure made without a warrant is considered unreasonable on its face.

If a court determines that a search was unconstitutional, the exclusionary rule may apply, meaning that any direct or derivative evidence (i.e., the "fruits from the poisonous tree") may be excluded as evidence.

Also, the officer and/or agency may be held civilly or administratively liable for violations of an individual's constitutional rights.

II. PURPOSE:

To outline general guidelines and procedures that officers of the Lincoln Police Department should follow when performing searches without a warrant pursuant to a recognized exception to the warrant requirement.

III. DEFINITIONS:

Consent: Voluntary permission given by a person having a reasonable expectation of privacy in a particular property, e.g., a vehicle, a residence, a suitcase, etc.

Exigent Circumstances: An emergency that requires immediate law enforcement action under circumstances in which officers do not have sufficient time to obtain a warrant.

Probable Cause: The facts and circumstances within the officers' knowledge, and of which they have reasonably trustworthy information, are sufficient, in themselves, to warrant a belief, by a person of reasonable caution, that a crime is being committed.

Search: Access to an area in which an individual has a reasonable expectation of privacy.

Search Warrant: A written judicial order, based upon sworn affidavits, establishing probable cause, that commands authorized officers to search a particular person or place for specific items of contraband and/or evidence and/or a specific location for persons.

Seizure: *Property* is seized when a law enforcement officer meaningfully interferes with the owner's possessory interest in the property and the owner's reasonable privacy interest in the property is intruded upon. In the case of *intangible property* (e.g., a journal, log, telephone call, or computer entry), a seizure occurs when a copy is obtained or the reasonable privacy interest of the owner is invaded or intruded upon by government action. A *person* is seized when a reasonable person would believe that he or she was not free to terminate the encounter and go about his or her business due to the officer's application of force or assertion of authority to which the person submits.

IV. WARRANTLESS SEARCHES: MLEAP 7.09

A. Automobile Searches:

1. Due to their inherent mobility and lowered expectation of privacy, when probable cause exists to search a mobile vehicle (or one readily capable of being made portable), and the vehicle is located in a public place, it may be searched without a warrant.
2. Probable cause to search a vehicle does not give officers the right to search people who are within the vehicle. Officers should consider other warrant exceptions that would allow them to search such people (e.g., consent, a "Terry" frisk, incident to arrest, etc.).
3. It is not necessary for the automobile search to be conducted at the same time or same place as the seizure. When justifiable reasons of officer safety (e.g., suspect/bystander interference or traffic conditions) or to further an ongoing investigation, a vehicle may be seized and transported elsewhere to undergo a search based on probable cause. A supervisor should be notified of any such action; however, an application for a search warrant should be considered. Every effort should be made to search the vehicle before the seizing officer's tour of duty ends.
4. The scope of a warrantless search of a vehicle is as broad as the scope that a warrant could have authorized. The scope is always based upon the officer's probable cause and is limited to only those places where the items/property being sought could reasonably be located or concealed.
5. A lawful, reasonable automobile search may result in damage to the vehicle if the damage is reasonably necessary to gain access to a specific area where officers have probable cause to believe that the object(s) of their search is located. It is advisable to seek a search warrant for any automobile search in which an officer believes the search will result in significant damage to the vehicle (e.g., disassembly, extensive upholstery damage, etc.).

B. Search Incident to Arrest:

1. A lawful arrest generally gives law enforcement officers the authority to search the arrestee's person as well as the area within the arrestee's immediate control (i.e., the location from which the subject might gain possession of a weapon or destroy evidence). This may include;

a. The body, clothing, and personal effects of the arrestee;
b. The area into which an arrestee might reach to grab a weapon or evidence, i.e., "wingspan" or "lunging distance;"
c. A place which the officer intends to allow the arrestee to enter or reach into (e.g., a bureau, closet, etc.);
d. The passenger compartment of an automobile from which an occupant is arrested, to include any containers found therein, but only:

    i. If the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search; or
    ii. It is reasonable to believe that the vehicle contains evidence related to the offense for which the subject is being arrested.

2. The purpose of this type of search is to protect the arresting officer(s) and safeguard any evidence related to the offense of the arrest. Therefore, during the course of an authorized search, officers may remove weapons, including items that could be used as weapons, that the arrestee might use to resist arrest or escape, and/or seize evidence, contraband, instruments used to commit the crime, or other fruits of criminal activity, in order to prevent its concealment or destruction.
3. If possible, the search should be conducted by the arresting officer and/or the officer who is transporting the arrestee in a law enforcement vehicle.
4. A search incident to a lawful arrest must be conducted contemporaneously with the arrest, and the arrestee should be present so long as officer safety is not compromised. If there is a delay, it must be reasonable.
5. Officers may conduct limited searches of companions of the arrested person who are in the vicinity, consistent with the stop and frisk "pat down" guidelines described below in section F.

C. Plain View Searches:

1. The "plain view" doctrine is a rule of criminal procedure that allows an officer to seize evidence of a crime without a warrant when the evidence is clearly visible and the item's incriminating nature is apparent. The doctrine portends only a seizure, not a search.
2. The scope of a plain view search is three-pronged:
    i. The officer must be lawfully in a position to view an object.
    ii. The object's incriminating character must be readily apparent,
    iii. The officer has the lawful right of access to the object.
3. The "apparent incriminating character" of an object means that before the object may be seized, the officer must have probable cause that it is subject to seizure without conducting some further searching or examination or manipulation of the object to determine its incriminating nature.
4. The officer's "lawful right to access" the object means that the seizure must be made without intruding into a constitutionally protected area. In other words, the officer must be in a position to physically reach out and seize the object.

D. Consent Searches:

1. A search may be conducted if an officer has the voluntary consent of the person having the authority to give consent or when the circumstances surrounding the consent would lead a reasonable officer to believe that the person has the authority to provide consent. If more than one person is present and has the authority to provide/deny consent, either may object, if present. In any such instance, unless another exception to the warrant requirement exists, a search warrant should be sought if probable cause exists.

Conversely, if more than one person has authority over the property, the person present can provide consent, with or without the concurrence of the person who is not present.
2. The scope of a consent search is limited to those areas that fall within the scope of the consent. The person granting consent may limit that scope and may also revoke consent at any time. Any items found or observed in plain view during the initial consent search may be used to establish probable cause for the application of a search warrant to further the search/investigation.
3. Because the burden is on the state to show that consent was voluntarily given, the officer's report should note the circumstances surrounding the consent, including, but not limited to, the names of any witnesses, the age, education, intelligence, mental/physical condition (i.e., sobriety) and authority of the consenting person, as well as whether the consent was written or verbal and whether the person granting consent was in custody or not. Although not required, it is for these reasons that written consent is recommended.

E. Conditions of Release / Bail Searches:

1. Searches may be conducted consistent with active bail conditions imposed by any state of Maine court or bail commissioner. Current bail conditions may be accessed through METRO and may include the person who has agreed to submit to searches of their person, vehicle, or residence, with or without articulable suspicion or probable cause, for items such as alcohol, illegal drugs, and weapons.
2. Unless other exigencies or exceptions to the search warrant requirement exist, officers shall not force entry into a person's residence based solely upon that person's failure to submit to a search of the person, vehicle, or residence in violation of the person's conditions of release. In any such instance, the officer should notify a supervisor and consider an application for a search and/or arrest warrant.

F. Stop and Frisk:

1. If an officer has articulable suspicion to believe that a person has committed, is committing, or is about to commit a crime, the person may be briefly seized and detained for investigation. Such detentions must be reasonable in their duration and scope.
2. An officer may frisk or pat down a person if the officer has reason to believe that the suspect poses a danger to the officer's safety or that of others. The purpose of the frisk is to discover weapons that may be used to inflict harm. The frisk must initially be limited to a pat-down of the person's outer clothing.
3. During a lawful frisk for weapons, if it is immediately apparent that an item which is felt is contraband or a weapon, the item may be seized, i.e., "plain feel."
4. Additionally, roadside encounters are especially hazardous, and danger may arise from the possible presence of weapons in the area surrounding a suspect. Therefore, the search of the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden, is permissible if the officer possesses a reasonable belief that the suspect is dangerous and may gain immediate control of weapons.

G. Protective Sweeps:

1. A protective sweep is a *brief search* of premises most often made in conjunction with a lawful arrest, or pending a search warrant. It must be limited to a search for persons that may pose a danger to the officers making the arrest (or engaging in another lawful law enforcement activity).
2. The scope of a protective sweep must be restricted to areas of the premises where a person could be or could be concealed. Officers may not, therefore, search rooms for weapons, contraband or evidence, but may seize any such items found in plain view. Such observations may also be used to justify securing the premises and applying for a search warrant to further the search/investigation.

3. Once the person(s) who pose(s) a threat to officer safety is secured, the sweep must end.

H. Emergency Aid:

1. Officers may enter a residence, or other protected places, without a warrant if they have an objectively reasonable basis, approximating probable cause, that there is a person within the premises who is possibly deceased, or who is seriously injured or imminently threatened with such injury that swift action is required within the place on the officer's part in order to prevent such harm or safeguard human life.
2. A report of a crime, or missing/endangered person, and the circumstances surrounding such reports may not only provide an officer with sufficient probable cause but may also create an exigency based upon public safety, crime control, and community caretaking that would allow officers to enter protected areas without a warrant.
3. If an exigency does exist, officers may enter a protected area without a warrant and conduct a prompt warrantless search to determine the following:

    a. If there are any victims present.
    b. If emergency aid is needed.
    c. If a suspect is still on the premises.
    d. If any evidence needs to be secured to prevent its destruction or concealment.

4. Once those functions are completed, the exigency ends. Further general searches for evidence require a search warrant or the existence of some other exception to the warrant requirement.
5. In such circumstances, officers should first attempt to obtain the concurrence of a supervisor and the property owner. If such notification is impracticable, the officers shall notify a supervisor of the entry before securing the protected area.
6. In any instance in which such entry is made, the supervisor shall;
    a. Ensure the protected area is secured, to the extent possible and feasible.
    b. Ensure that officers complete an incident report detailing the reason for the entry and documenting any damage.
    c. Forward the related reports to the Chief of Police through the chain of command.
    d. Ensure that the owner of the protected area is notified of the reason for the entry and any findings.