



Chapter: Searches
Subject: 08-03 – Searches After Arrest
Effective: April 19, 2022
Supersedes: Official Order 14, Section 14.5.1B, dated April 29, 2021
Distribution: Department Members

PURPOSE: This Order establishes department policy related to searches after an arrest.

08-03-1 SEARCH ON ARREST

- A. [MCL 764.25](#) mandates that any person making an arrest shall take from the person arrested all offensive weapons or incriminating articles that the person may have about their person.
- (1) Members shall exercise discretion in searching a person of another sex. If possible, a member of the same sex as the person being searched shall conduct the search. If it appears that delaying a search would endanger the enforcement member, an immediate search shall be made.
 - (2) Prisoners shall be handcuffed before searching.
- B. The United States and Michigan courts have interpreted their respective Constitutions to require the government to obtain a search warrant before conducting a search. The courts have also recognized that as a matter of public policy there must be exceptions to this so-called "search warrant rule." One of the judicially recognized exceptions is the "Search Subsequent to Arrest" exception.
- (1) When using this exception, an enforcement member must show that the following four elements are present.
 - a. First, it must be shown there was a lawful custodial arrest;
 - b. Second, that the search was conducted for offensive weapons and/or evidence;
 - c. Third, that the search was contemporaneous with the arrest;
 - d. Fourth, the area of the search was within the control of the arrested person at the time of the arrest.
- C. While a non-custodial arrest standing by itself does not provide the basis for a search by using either the statute or the search subsequent to an arrest exception, other exceptions to the search warrant rule can sometimes be used. Most notably, the "Stop and Frisk" and "Probable Cause Plus Exigent Circumstances" exceptions are often applicable.

- (1) The "Stop and Frisk" exception requires that an enforcement member prove there is a reasonable suspicion that a crime has been or is being committed and that the suspect is potentially dangerous (armed).
- (2) To use the "Probable Cause Plus Exigent Circumstances" exception, the enforcement member shall be able to adequately justify probable cause to conduct a search in such a manner that will later satisfy a neutral detached magistrate that the item searched for was in the place searched, and that exigent circumstances existed which would allow destruction or loss of evidence.

DIRECTOR

Annual Review Responsibility: Transparency and Accountability Division

Accreditation Standards: CALEA 1.2.4 and 70.1.1