

PARKER POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL

3.3	EFFECTIVE: August 3, 2012	James Tsurapas, Chief of Police
	REVISED: February 15, 2021	
SUBJECT: SEARCH AND SEIZURE		
CALEA: 1.2.3; 1.2.4; 1.2.9		PAGE: 1 of 9

3.3.1 PURPOSE

The purpose of this policy is to provide commissioned officers general guidelines and procedures in conducting searches that have not been reviewed and authorized by judicial personnel. The United States Supreme Court has ruled the Fourth Amendment of the U.S. Constitution allows commissioned officers to conduct warrantless searches under certain limited circumstances.

3.3.2 POLICY

It is the policy of the Department to diligently protect the constitutional rights of all persons with whom we come into contact, specifically those rights pertaining to arrest, search, seizure, self-incrimination, access to counsel and due process. To this end, every commissioned officer will have thorough knowledge of Colorado Revised Statutes Title 16, Article 3, Parts 1, 2, 3 and 4 as well as Title 24, Article 31, Section 309 and act in accordance with these laws.

3.3.3 PROCEDURE

A. Enforcement Contacts

1. The Department takes a proactive approach to the delivery of Department services. We will investigate suspicious persons and circumstances and actively enforce motor vehicle laws recognizing that citizens should only be stopped or detained when there exists a legal basis for the contact, to include, but not limited to, reasonable suspicion or probable cause to believe that they have committed, are committing or are about to commit an infraction of the law.
2. Per Colorado Revised Statutes, a “contact” is defined as an interaction with an individual, whether or not the person is in a motor vehicle, initiated by a peace officer, whether consensual or nonconsensual, for the purpose of enforcing the law or investigating possible violations of the law. “Contacts” do not include routine interactions with the public at the point of entry or exit from a controlled area.
3. The Department does not condone or promote the use of any bias-based profiling system in its enforcement programs. It is recognized that criminal elements exist in virtually every racial, ethnic, national, religious, tribal and cultural group. Every person is entitled to equal protection under the law and to be free from unreasonable searches and seizures by government agents. Any commissioned officer, whose enforcement contacts are based solely on gender, racial or ethnic characteristics, or any other common trait of a group, may be subject to disciplinary action and possible prosecution in State and Federal court.
<1.2.9>

4. In this regard and in accordance with C.R.S. § 24-31-309, as amended, commissioned officers who contact any person for the purpose of enforcing the law or investigating possible violations of the law, but do not issue a citation or make an arrest shall provide to that person a business card without it being requested. The business card shall contain the commissioned officer's name, ID number, the main telephone number to the Department in which people may call in their commendations or complaints regarding the commissioned officer's conduct during the contact, as well as information about how to file a complaint related to the contact.
5. The Department members shall receive initial and ongoing training in proactive law enforcement strategies and tactics to include officer safety, courtesy, cultural diversity and interpersonal communication skills. Training will also address the Department member's ability to articulate facts that lead to reasonable suspicion and probable cause in support of arrest or search and seizure. In addition, management and supervisors will provide oversight to these activities with specific attention to potential unconstitutional, illegal or unethical actions.
6. Constitutional law, and specifically Fourth Amendment law, does undergo changes based upon court decisions and amendments to statutes. The Department will strive to keep its Department members updated regarding such changes; however, it is the responsibility of commissioned officers to keep themselves abreast of significant changes in the law. A commissioned officer has the responsibility not to violate constitutional rights of which a reasonable officer would have known.

B. Search and Seizure Without a Warrant <1.2.4>

A warrantless search must demonstrate that probable cause existed to justify the search. Commissioned officers should rely on their training and experience in conducting searches that meet the legal requirements for evidence to be admissible in court.

C. Search Incident to Lawful Arrest

When a person is placed under custodial arrest by a commissioned officer, incident to that lawful arrest, a search should be performed of the arrestee's person of any items in the arrestee's immediate possession at the time of arrest. If appropriate, a search may be performed of the area immediately around the arrestee, which includes the area within his or her reach, lunge or grasp, immediately after formal arrest while the arrestee is still present and should not extend beyond the area within the arrestee's immediate control at the time of arrest.

D. Consent Searches

During an incident in which the commissioned officer obtains consent to search a premise, vehicle or other item, the commissioned officer should take into account:

1. whether the person consenting to the search has legal standing to do so; and
2. whether the consent was given freely, voluntarily and with the understanding the person had the right to refuse to consent.

3. Consent may be granted to the commissioned officer orally, but ideally, the consent should be in writing and documented on the Department's Voluntary Consent to Search and Seize form.
- E. Frisk Search is known by other names which include: "Stop and Search," "Pat Down Search," or a "Terry Stop;" however, they all stem from *Terry v. Ohio* (a United States Supreme Court decision) which, in summary, says that a commissioned officer, under certain circumstances, may conduct a cursory pat down designed to discover weapons.
1. Pursuant to C.R.S. § 16-3-103(2), as amended, a commissioned officer may frisk a person for weapons if the commissioned officer has stopped a person for temporary questioning and reasonably suspects that his or her personal safety requires it.
 - a. The right to search for and seize weapons is for the limited purpose of allowing a commissioned officer to protect himself or herself and others.
 - b. The authority is clearly not for the purpose of searching for and seizing evidence, although during the course of a frisk, evidence may be discovered and become the basis for an arrest.
 - c. The "plain feel" doctrine is spelled out in *Minnesota v. Dickerson*. In this case, the United States Supreme Court found that a commissioned officer may seize evidence other than a weapon if, in conducting the frisk, the contraband nature of the evidence is "immediately apparent" to the commissioned officer based on his or her feel of the object through the subject's clothing during the pat down.
 2. Any commissioned officer who initiates a frisk must be able to articulate the reason(s) for suspecting that he/she or others in the immediate area are in danger. This information may be drawn from:
 - a. Observation
 - b. training;
 - c. education; and
 - d. prior experience in similar circumstances.
- F. Vehicle Searches <1.2.4>
1. The United States Supreme Court has ruled the mobility of vehicles provides an exigent circumstance, wherein warrantless vehicle searches are justified if probable cause exists to believe that a vehicle contains evidence or contraband. Commissioned officers who have legitimately stopped a vehicle and who have probable cause to believe contraband is concealed somewhere within it, may conduct a warrantless search of the vehicle.
 2. Where commissioned officers have probable cause to search an entire vehicle, they may conduct a warrantless search of every part of the vehicle and its contents, including all containers and packages that may conceal the object of the search. The scope of the search

is not defined by the nature of the container in which the contraband is hidden. Rather, it is defined by the object of the search and the places in which there is probable cause to believe it may be found.

3. A search of a vehicle incident to lawful arrest of a recent occupant can be justified only if the arrestee was unrestrained and within reaching distance of the passenger compartment at the time of the search, or if it was reasonable for the arresting commissioned officer to believe that evidence relevant to the crime of arrest might be found in the vehicle.
4. Reasonable to believe is defined as, a degree of articulable suspicion commensurate with that sufficient for limited intrusions like investigatory stops.
5. A vehicle may be searched at the scene of a crime if probable cause exists indicating the vehicle is related to the crime and is believed to contain evidence.

G. Motor Vehicle Exception <1.2.4>

There are two reasons given for allowing the search of a vehicle with probable cause, but no warrant.

1. Vehicles do not share the same expectations of privacy as a home or other personal items.
2. Obvious mobility of an automobile would make it impractical to require the police to first obtain a warrant.
 - a. Commissioned officers do not have to actually prove that a vehicle might or would be gone if they obtained a warrant before making the search.
 - b. The existence of probable cause alone justifies the exception.
3. The vehicle exception allows a commissioned officer to search the entire vehicle when the commissioned officer has probable cause to believe the vehicle contains contraband or evidence of a crime.
 - a. If probable cause is limited to a certain area, then the commissioned officer cannot go beyond the scope of that search.
 - b. This type of search should not be confused with a search incident to arrest where immediate control becomes an issue.

H. Vehicle Inventory Searches

Inventory searches of a vehicle are justified if they are:

1. pursuant to a lawful impoundment or seizure; and
2. part of the normal routine and standard practice of the Department.

I. Crime Scene Searches <1.2.4>

1. The "plain view doctrine" provides that if a commissioned officer is legally present at a location, then any contraband and/or evidence that is clearly visible to that commissioned officer may be seized.
2. An entry into and subsequent warrantless search of the premises is generally discouraged, but is permitted under a number of exceptions. All commissioned officers should be familiar with these exceptions. They include:
 - a. appropriate consent;
 - b. contraband or evidence that is in plain view;
 - c. hot pursuit;
 - d. a protective sweep;
 - e. the eminent destruction of evidence; and
 - f. the eminent need to protect the lives and safety of the commissioned officers or others when the search is not motivated by an attempt to arrest or seize evidence.
3. Any search outside of the immediate confines of an identified crime scene may be closely reviewed by the courts. Generally, in situations other than those indicated above, and where there is sufficient time and opportunity, a search warrant should be used.

Legal considerations regarding search warrants apply when a search is conducted without the consent of the owner/occupant of a premises or vehicle.

4. If a commissioned officer discovers a crime scene during the course of his or her normal and legal duties, he/she should:
 - a. secure the area or place and keep it in the same physical condition as it was left by the perpetrator;
 - b. render assistance to the injured;
 - c. attempt to identify witnesses and victims;
 - d. attempt to locate, identify and arrest the offenders if they are still at the scene;
 - e. notify the shift supervisor if they are not already on the scene; and
 - f. yield responsibility to follow-up investigators and/or evidence collection Department members.

J. Exigent Circumstances <1.2.4>

This exception allows a commissioned officer to make a warrantless search under situations where the commissioned officer recognizes there is not time to obtain a warrant and that if he/she does not conduct a search immediately, the evidence may be lost forever.

1. Additional factors in determining if exigent circumstances exists:
 - a. there exists strong reason to believe that the suspect is on the premises;
 - b. it is reasonable to consider the suspect is armed and therefore dangerous;
 - c. more than a minimum of probable cause exists that the suspect committed the offense;
 - d. there is a likelihood that the suspect will escape if not immediately apprehended;
 - e. the gravity of the offense committed; and
 - f. the circumstances of entry and time delay.
2. The aforementioned factors will determine the “totality of the circumstances.”
3. One recognized exigent circumstance is that of a welfare check. This involves a situation where the health and welfare of a person is involved.
 - a. In most cases there is no reason for police to suspect criminal activity.
 - b. Entries are made into private premises solely to determine the welfare of an occupant.
 - c. A commissioned officer must have an objectively reasonable basis for believing that an occupant is seriously injured, ill or imminently threatened with such injury in order to enter without a warrant.

K. Inventory of Property Seized by Commissioned Officers

Inventory of property seized by commissioned officers may be justified for the following reasons:

1. An inventory protects the property of the owner and it protects the Department against claims that property has been lost or stolen.
2. It allows police to discover any potential danger that may exist because of the contents of the property.
3. Limitations on these searches include:
 - a. The property to be inventoried must have lawfully come into the possession of the commissioned officer.

- b. The inventory must be conducted pursuant to standard operations and policies provided by the Department.
- 4. Seized vehicles involved in an arrest, *i.e.*, D.U.I. tows, must be inventoried and recorded on a Vehicle Impound Report. When a vehicle is inventoried, all compartments of the vehicle may be searched.
- 5. Additional items of property subject to an inventory search include:
 - a. found property;
 - b. property turned over to the Department by a citizen for safekeeping, destruction, evidence, etc.; and
 - c. abandoned property.

L. Search Incident to Arrest <1.2.4>

Search incident to arrest is the most often used exception to the search warrant requirement.

- 1. Commissioned officers may reasonably search the person arrested and the area within such person's immediate control for the purpose of:
 - a. protecting the commissioned officer from attack;
 - b. preventing the person from escaping;
 - c. discovering the fruits of the crime; and
 - d. discovering any instruments, articles or things which may have been used in the commission of or which may constitute evidence of an offense.
- 2. The only justification needed for this search incident to arrest is that a valid arrest occurred.

M. Plain View Observations <1.2.4>

Plain view observations have been upheld by courts as long as the commissioned officer is legitimately on the premises and has probable cause to believe the property is evidence or contraband.

- 1. Limitations do exist:
 - a. there must be no pre-observation intrusion that violated constitutional rights;
 - b. the item must have been discovered inadvertently;
 - c. artificial devices that aid in or enhance the ability of the commissioned officer's view are not considered "plain view;" however, a flashlight is generally acceptable, provided

the commissioned officers have a right to be where they are when using the light source; and

- d. moving items or the rearrangement of items to note serial numbers, for example, is not supported by the “plain view” doctrine.
2. The “plain view” doctrine also applies to warrant searches, even if the item to be seized was not noted on the search warrant. Again, the test would be:
 - a. Does the commissioned officer have a right to be there?
 - b. Does the commissioned officer have probable cause to believe the item in the open is evidence or contraband?

N. Open Field Searches

Open field searches typically involve marijuana cultivation. Areas surrounding buildings and homes should not be considered “open field;” instead, the courts have usually viewed this land as “curtilage” and is essentially equivalent to a yard.

1. Areas outside the “curtilage” include:
 - a. woods;
 - b. pastures; and
 - c. grassland.
2. If an owner has taken any step(s) to protect the area from trespass or observation, it may not be considered “open field.”

O. Night-Time Security Checks <1.2.4>

Night-time security checks are another form of a warrantless search held allowable by the courts.

1. These searches are permissible only in a business and only if the commissioned officer’s intent is to determine if any unauthorized people are on said premises.
2. The commissioned officer may also check for owner information so notification may be made.

P. Constitutional and legislated Requirements <1.2.4>

1. When performing their duties, commissioned officers should be conscious of the fact that the courts will scrutinize their actions. It is incumbent upon each Department member to stay abreast of court decisions and changes in the law that relate to police duties as it relates to legislated conduct referenced under the "Enforcement Contacts" section of this Policy.

2. Commissioned officers will follow all established constitutional and Colorado Revised Statute guidelines and requirements pertaining to arrests, interrogations, search or seizure. No Department member will refuse a suspect the right to counsel, when requested, during any investigation or interrogation. Commissioned officers and noncommissioned members shall not engage in activity which they know or reasonably should know is contrary to established legal precedent or statutory law. <1.2.3 c.>
3. Commissioned officers shall complete a report detailing any unannounced entry into a residence to include;
 - a. The date, time and location of entry,
 - b. the purpose of the entry,
 - c. the perceived or actual demographic information of the subject of the entry, and
 - d. whether the officer unholstered a weapon or discharged a firearm during the unannounced entry.
4. Commissioned officers must comply with all reporting obligations and obtain all necessary information as required by both Department policy and Statute for any contact, regardless of whether a citation was issued, or an arrest was made.