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1.5 ***Search and Seizure***

- A. The 4TH Amendment to the U.S. Constitution guarantees people the right to be secure in their persons, houses, papers, and effects against unreasonable *searches* and *seizures*. In addition, *Article 2, § 8 of the Arizona Constitution* provides: "No person *shall* be disturbed in his private affairs, or his home invaded, without authority of law." Arizona and *United States Supreme Court* decisions regarding *searches* and *seizures* place the responsibility on the police to ensure that a person's 4TH Amendment rights are respected and not violated.
- B. *Officers shall observe constitutional guidelines*, as interpreted by the U.S. Supreme Court, the 9th Circuit Court of Appeals and the Arizona courts, when making *seizures* of persons or property and when conducting *searches* of persons or property. The law of *search* and *seizure* is announced by court decision and continues to develop. The guidelines in this policy are intended to assist *officers* in their application of the law; *officers* are required to maintain current training and are expected to stay informed in the area.

1.5.1 ***Reasonable Suspicion***


An officer may stop a person based on reasonable suspicion. The *officer* must be able to articulate the specific factors that provide the justification for the *stop*. The elements of *reasonable suspicion* include:

Facts and circumstances that would lead a reasonable police *officer* to suspect that some criminal activity is taking, *will* take, or has taken place, and facts and circumstances connecting the person under suspicion with the suspected criminal activity.

Reasonable suspicion may arise out of a contact, or it *may* exist independently of a contact.

1.5.2 ***Probable Cause***

An *officer may* also stop a person based on *probable cause*; the *officer must* be able to articulate the specific facts that comprise *probable cause* to *stop* or *arrest* a person. *Probable cause to arrest* is defined as:

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Facts and circumstances, and reasonable inferences from those facts and circumstances, that would lead a reasonable person to believe a crime is being, has been or *will* be committed and that the person to be *arrested* is committing, has committed or *will* commit that crime.

To have *probable cause* to *stop* or *arrest* someone is to have facts sufficient to demonstrate a "fair probability" that the person has committed or was involved in the crime.

1.5.3 Seizures of Persons

The 4TH Amendment prohibits unreasonable *seizures* of persons or property. With regard to *seizures* of persons, the *United States Supreme Court* has determined that an *officer may seize* a person when the *officer* has *reasonable suspicion* or *probable cause* to believe that the person is engaged in criminal activity.

1.5.3.1 Contacts (Voluntary) and Stops (Not Voluntary)

- A. An *officer may* initiate a voluntary contact at anytime, for any lawful reason and in any place the *officer* has a right to be. A contact is not a *seizure*, *stop* or *arrest*, but rather is a consensual interaction between an *officer* and a person.
- B. Persons contacted *shall* not be detained against their *will* or *searched* without their voluntary consent. An *officer may* not use force or coercion in initiating a contact or in attempting to obtain cooperation once the contact is made. *Officers shall* act in a professional and courteous manner. A person who does not respond to the *officer's* greeting or approach *must* be allowed to go on their way. Restraining the person in any manner converts the contact into a *stop*.
- C. A *stop* is considered a *seizure* under the 4TH Amendment and occurs whenever a person is detained by a police *officer*. An *officer may stop* a person if the *officer* has *reasonable suspicion* or *probable cause* that the person has committed, is committing, or is about to commit a crime. *Officers shall* make all *stops* in an objectively reasonable manner, which may include a verbal request, an order, or the use of *physical force*.



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- D. Vehicles *may* also be *stopped* based on *reasonable suspicion* or *probable cause*. A vehicle *may* be *stopped* for investigation if the *officer* has *reasonable suspicion* or *probable cause* to believe the driver or occupants are involved in criminal activity or have committed a traffic offense. The driver and passengers *may* be ordered out of the vehicle or ordered to remain within the vehicle.
- E. A marked vehicle *should* make all vehicle *stops* unless none is available or the time required for the marked unit to respond would be excessive, or if waiting for a marked unit would jeopardize an *arrest* or investigation. Generally, *officers* driving unmarked police vehicles while not wearing a police uniform *will* not attempt to make vehicle *stops*.

1.5.3.2 Conduct During a Stop

- A. Every phase of a stop will be considered in the determination of whether the *stop* was reasonable and therefore lawful.
- B. A person *may* be detained at or near the scene of a *stop* for a reasonable period of time. The length of a *stop may* not exceed the time necessary to determine whether or not a crime or traffic offense has been committed and whether the person *will* be *arrested* or released. A stop becomes unlawful if it is prolonged beyond the time reasonably required to complete the reason for the stop, unless separate reasonable suspicion of criminal activity justifies the continued seizure. This applies to both stops of individuals and stops of vehicles.
- C. *Officers shall* act professionally and courteously toward the person *stopped*. *Officers* not in uniform making *stops shall* identify themselves as law enforcement *officers* as soon as practical. *Officers shall* explain the reason for the *stop*.
- D. *Officers may* question a detained person for the purpose of obtaining name, address, and an explanation of presence and conduct. The person may not be compelled to answer those or any other questions. See G.O. #1.5.3.6 regarding when the failure to state one's true full name or to produce identification may result in a person's arrest under Arizona law.



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- E. *Officers shall not search a subject who has been stopped based solely on reasonable suspicion of criminal activity except when there is justification to perform a frisk or when the person consents to a search.*

1.5.3.3 Requesting Social Security Number Information

- A. The *Federal Privacy Act of 1974* requires that before requesting a person's social security number (SSN), the person *must* be provided with all of the following information:

1. whether providing their SSN is voluntary or mandatory,
2. the statutory authority for making the request, and
3. the purpose for which the information *will* be used.

- B. Completion of the Arizona Traffic Ticket and Complaint form requires the driver's social security number. Persons who are being cited for violations of *A.R.S. § Title 28* shall be advised that:

1. providing their SSN is required by *Arizona law* and Arizona Supreme Court Rule, and
2. the SSN is used to ensure accurate record keeping in the administration of driver's license and vehicle registrations systems.

The social security number *shall* not be entered on the copy of the citation provided to the person.

- C. Before requesting an SSN for any citation issued for violations other than *A.R.S. § Title 28* statutes, the person *shall* be advised that:

1. providing their SSN is voluntary and requested as a matter of *Department* policy, and
2. the SSN is used to ensure accurate record keeping.



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- D. No action *shall* be taken against a person who refuses to provide a social security number, even if it is required for a A.R.S. § Title 28 violation as described above. If a person refuses to provide a social security number, the *officer shall* write "refused" in the space provided for the number on the form or *report*.


1.5.3.4 Field Interviews

The purpose of a field interview is to assist in the investigation and prevention of crime.

- A. *Officers shall* conduct a field interview whenever a *stop* is made and *may* conduct a field interview when a consensual contact is made. A field interview *shall* be conducted with professionalism and courtesy. Reasonable questions posed by a citizen *shall* be answered. The *officer shall* explain the reason for the contact or *stop* if asked to do so. *Officers* not in uniform *should* fully identify themselves as police *officers* and *shall* exhibit their badges or credentials prior to initiating any field interview. All *officers*, whether or *not in uniform*, *shall* furnish a person with their name and identification number upon request. Required *Department* documentation *shall* be completed.
- B. If an individual asks for a copy of the field interview *report*, the *officer shall* provide the person, in writing, the date, time and location of the field interview. The person *shall* be advised that he/she can present that information to the Records Section and a copy of the *report*, if one is made, *will* be made available to him/her in accordance with the existing records release protocols.

1.5.3.5 Arrests

An *arrest* is a *seizure* and occurs when a person is taken into custody for the purpose of criminal prosecution or interrogation, and is not free to leave. An *arrest must* be based upon *probable cause*. See G.O. #1.6 for additional information on *arrests*.

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1.5.3.6 Requesting and Requiring Identification

- A. Arizona law provides that, when an officer has reasonable suspicion that a person has committed a criminal offense, the person must state the person's true full name. If the person refuses to do so, the law requires the officer to advise the person that his or her refusal to answer is unlawful. If the person continues to refuse to provide his/her true full name, he/she is subject to arrest for a violation of A.R.S. §13-2412.
- B. When the person has been operating a vehicle, the officer may demand to view certain documents (such as operator's license and vehicle registration). The statutory requirement in Arizona law to provide identification applies only to those who are operating a motor vehicle. A.R.S. 28-1595.B (28-1595.C has been held unconstitutional and currently cannot be enforced).
- C. Officers may request a person to produce identification, but people are not required to carry or produce identification (with the exception of the 2 statutes above). When an officer asks a passenger/s in a lawfully stopped vehicle their name or to see their identification and the person/s refuses, ignores or otherwise does not comply with the request, the officer should not prolong the stop to determine the identity of the passenger/s unless there is RS or PC of criminal activity for the passenger/s.

1.5.4 Seizures of Property

- A. Property *may* be *seized* pursuant to a *search warrant* that particularly describes the place to be *searched* and the item to be *seized*, and provides authority for the item's *seizure*.
- B. Property that is contraband, *evidence* of a crime, or any item subject to *seizure*, *may* be *seized* by an *officer* without a warrant if the property is in plain view and if the *officer* is in a place the *officer* has the right to be. This *seizure* is lawful because a person has no right of privacy in an item that is in plain view.
- C. In order to be considered an item in plain view, the item *must* be immediately apparent to the *officer* as subject to *seizure* simply by looking at the item. In other words, the *officer must* have *probable cause* to believe the item constitutes *evidence* or contraband. An *officer may* not manipulate the item or move it in any way; doing so is a *search* under the 4TH Amendment.



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1.5.5 *Searches*

- A. The 4TH Amendment requires a *search warrant* prior to any *search* performed by a law enforcement *officer*, or an *officer's* agent, of a person, or of an area or item in which a person has a reasonable expectation of privacy. It is also a *search* under the 4th Amendment when the government physically occupies private property for the purpose of obtaining information (such as placing a GPS device on a vehicle or taking a trained drug-sniffing canine onto the porch of a home to search for drugs).
- B. No *search may* be performed without a warrant, unless the *search* can be justified by one of the exceptions to the warrant requirement. A *search warrant* is the preferred manner in which to conduct a *search*, but *searches* conducted pursuant to an exception to the warrant requirement are lawful and admissible.

1.5.5.1 Reasonable Expectation of Privacy

It is a *search* under the 4TH Amendment when an *officer* examines those things or areas in which a person has a reasonable expectation of privacy. The examination of an item or area in which a person has no reasonable expectation of privacy is not a *search* under the 4TH Amendment and is not regulated by the 4TH Amendment. Examples of areas/items in which there is no expectation of privacy include:

1. **Garbage:** When a person places garbage by the curb, or discards garbage into a communal dumpster, there is no longer any reasonable expectation of privacy in that garbage. Therefore, no 4TH Amendment protection is implicated by a *search* of that garbage.
2. **Abandoned Property:** A person who abandons property by voluntarily relinquishing control has surrendered any privacy interest the person *may* have had in the property. Such property is subject to *search* by an *officer* without a warrant.
3. **Open Fields:** An open field is any unoccupied or undeveloped area outside of the curtilage of a home. The area that is considered an open field is not subject to a reasonable expectation of privacy. A *search* of an open field is not governed by the 4TH Amendment.



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4. **Personal Characteristics:** A person has no reasonable expectation of privacy in those items that the person subjects to the plain view of others. Examples include a person's voice, handwriting or personal appearance. Personal characteristics that are not subject to public examination (blood content, scrapings under a person's fingernails, etc.) are items in which a person has a reasonable expectation of privacy.
5. **Dog or Human Sniff:** Sniffing the air around a person or property that is in a public place or a place open to the public is not considered a *search*, as there is no reasonable expectation of privacy in the air. This does not extend to using a canine to search within the curtilage of a home for drugs, as a physical occupation of private property by the government for the purpose of obtaining information is considered a search.

1.5.5.2 Searches Not Subject to 4TH Amendment Protection

Not every examination of a person or their property is a considered a *search*. For example:

1. **Visual Aids or Photographic Equipment:** The use of flashlights or photo surveillance to view or examine property that is otherwise open to public view is not considered a *search*, as it simply enhances the *officer's* senses using equipment that is generally available to the public. Use of specialized equipment not generally available – the use of heat sensing equipment on a residence, for example – is considered a *search*, and is subject to the 4TH Amendment.
2. **Plain View:** This is not a *search* issue, but rather a *seizure* issue, since no *search* is performed. When a police *officer* sees an object in "plain view" and there is *probable cause* it is *evidence*, contraband, or otherwise subject to *seizure*, the *officer may seize* it, as long as the *officer* can do so without reaching into an area in which the *officer* has no right to be and as long as the *officer* does not move or manipulate the item to establish the *probable cause*.
3. **Search by Non-Government Agent:** The 4TH Amendment does not provide protection against actions of private persons. Property *seized* by private persons, in a manner that would otherwise be illegal if *seized* by a


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government agent, *may* be used by an *officer* in a criminal investigation. However, an *officer* *may* not use a non-officer as an “agent” to *search* if the *officer* would not be authorized to conduct the *search*.

1.5.6 Search Warrants


(Note – see G.O. #1.5.6.4 for tracking device search warrants and G.O. #1.5.6.5 for cell phone tracking device search warrants)

- A. A *search warrant* *may* only be issued based upon *probable cause* and *must* be supported by an affidavit naming and describing particularly the property or persons to be *seized* and the persons and/or premises to be *searched*. When applied to *search warrants*, the *probable cause* inquiry is focused on two separate questions:
 1. First, is there *probable cause* to believe that the items sought are subject to *seizure* (*evidence*, *contraband*, *instrumentalities*, or *fruits of the crime*)?
 2. Second, is there *probable cause* to believe that the items sought *will* be found at the location to be *searched*?
- B. By statute, a *search warrant* *may* be issued to:
 1. recover stolen or embezzled property,
 2. seize property used as a means of committing a public offense,
 3. seize property in the possession of any person who intends to use it as a means to commit a public offense,
 4. seize property in the possession of another to whom it *may* have been delivered for the purpose of concealing or preventing it from being discovered,
 5. seize property that shows or tends to show that a particular offense has been committed, or that a particular person has committed an offense,
 6. seize a person who is the subject of an outstanding *arrest* warrant,

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7. *search* and inspect property when done so by an appropriate official in the interest of public health, safety, or welfare as part of an inspection program authorized by law.
- C. The affidavit for a *search warrant* presented to a magistrate *shall* be based on the personal knowledge of the applicant or another peace *officer*, reliable information from a person who is named in the *search warrant*, and/or information received from a confidential informant whose reliability has been established at the time the warrant is issued. The *officer/affiant shall* document facts that amount to *probable cause* for each location, item, and person to be *searched* or *seized*.
 - D. The *officer/affiant shall* precisely ("particularly") describe those premises to be *searched*, especially those composed of apartments, duplexes, or any places where more than one family or unrelated people live. The affiant should always list the address, unit/apartment number, etc., if available. The description should be detailed enough that another officer can find the location without the address.

If there is *probable cause* that a vehicle on the premises contains an item(s) subject to *seizure*, the vehicle *must* be listed and described as specifically as possible given the information known to the *officer*. A warrant to *search* premises does not automatically extend to include the *search* of outbuildings or a person at the premises at the time of the *search*. If *officers* have *probable cause* to *search* certain persons who *may* be present at the premises, the *officers shall* include those persons and the *probable cause* to *search* them in the affidavit and warrant. If a person is named in the warrant, he/she should be specifically described. When a description is fairly generic or when multiple people at the location could match the description, officers should attach a photograph (if available) and/or list the officers who will be present who have seen the named person(s) and can identify the named person(s).
 - E. When drafting an affidavit specifically requesting a nighttime *search*, the *officer must* be able to establish that there is good cause for *searching* then, rather than waiting until daytime. Daytime is anytime between 0630-2200 hours.
 - F. An *officer* seeking a no-knock warrant *must* specifically articulate, in the affidavit, the reasons a no-knock entry is necessary and have the judge approve a no-knock entry in the *search warrant*. The affidavit *must* include facts demonstrating

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that an unannounced entry would endanger the safety of any person or would result in the destruction of any of the items described in the *search warrant*.

All no-knock warrants must be approved by the Chief of Police.

- G. A no-knock entry *may* be conducted without the judge pre-approving a no-knock entry in the *search warrant*. This *should* only be done when the justification for the no-knock entry was not known at the time the warrant was signed. The reasons for an unannounced entry are that an announced entry would endanger the safety of any person or that it would result in the destruction of *evidence*.
- H. The *officer* drafting an affidavit to obtain a *search warrant* *shall* submit the completed affidavit to the *officer's supervisor* for review and approval prior to submission to the magistrate.

1.5.6.1 Obtaining a Search Warrant

- A. A *search warrant* *may* be obtained from any magistrate in the *State of Arizona*, including Supreme Court Justices, Court of Appeals and Superior Court Judges, Justices of the Peace and Magistrates. A completed Affidavit for *search warrant* and *search warrant* *shall* be presented to the magistrate who, if satisfied that *probable cause* exists, *will* sign the warrant. Only sworn testimony, in addition to the affidavit, can be appropriately considered by the magistrate prior to the issuance of the warrant. Therefore, any communication in support of the affidavit, whether verbal or written, *shall* be made under oath. Verbal communication, including the oath, *must* be electronically recorded and transcribed for later submittal to the court.
- B. By statute, applications for a warrant *may* be submitted in person, by facsimile, or by telephone and in jurisdictions where authorized, they may be submitted electronically.

1.5.6.2 Telephonic Faxed and Electronic Search Warrants

- A. Telephonic, faxed and electronic (not available in all jurisdictions) *search warrants* *may* be used under the same circumstances as a standard *search warrant* and *may* be used whenever time is of the essence.



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B. Faxed Warrant Procedure

1. Prepare the affidavit and *search warrant* as usual.
2. Fax the affidavit and *search warrant* to a magistrate.
3. If approved, the magistrate *will* sign the *search warrant* and fax it back to the *officer*.
4. The faxed *search warrant* with the magistrate's signature is deemed to be a valid *search warrant*.

C. Telephonic Warrant Procedure

1. Prior to making the call, *officers should* prepare notes outlining the presentation they plan to make to the magistrate to establish *probable cause*.
2. Equipment *should* be prepared to record the phone call, which is required.
3. The call to the magistrate *may* be placed from any telephone, but *should* be placed from an area where there is little or no background noise.
4. As a courtesy, the magistrate *shall* be called and told that the *officer* would like to obtain a telephonic *search warrant*. The *officer should* offer to call back in a few minutes, to allow the magistrate time to prepare for the call if necessary.
5. When the magistrate is prepared to begin, the recording equipment *must* be started, and these procedures followed:
 - a. If possible, another *officer shall* be present to serve as a witness to the conversation.
 - b. The requesting *officer shall* give name, rank, *Department*, and identifying number to the magistrate. The purpose of the call *shall* be stated to the magistrate.



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- c. Prior to reciting any facts pertaining to *probable cause*, the magistrate *must* place the *officer* under oath. The failure to give an oath *will* invalidate the warrant.
- d. After stating the date and time, the *officer shall* then begin to recite the facts that constitute *probable cause*. Upon completion, the *officer shall* ask the magistrate if there are any questions.
- e. If the magistrate finds that *probable cause* exists, the *officer must* read verbatim the previously completed Standard Arizona Duplicate Original *Search Warrant* to the magistrate.
- f. The magistrate *will* then direct the *officer* to sign the duplicate original warrant. The warrant *shall* be signed by the *officer* for the magistrate, the magistrate's name *shall* be listed, and both the *officer* and witness *shall* sign, indicating their name, rank, identifying number and *Department*.
6. When all these procedures are completed, and just prior to disconnecting the call, the *officer shall* state the time at which the conversation with the magistrate is finished. The *officer should* then check the recording to ensure it worked.
7. After authorizing a signature on a duplicate original *search warrant* for the requesting *officer*, the magistrate is required by law to make an original *search warrant*, with the time of issuance of the duplicate warrant entered upon the original.
8. When the magistrate authorizes the *officer* over the telephone to sign a *search warrant* in the magistrate's name, the duplicate original *search warrant* has the same authority as a *search warrant* signed by the magistrate.
9. The Duplicate Original *Search Warrant shall* be executed in the same manner as an original *search warrant*. In addition, the exact

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time of the execution of the warrant *must* be entered on the face of the warrant by the *officer* executing it.

D. Electronic Warrant Procedure

1. Not all Superior Court systems in Arizona have implemented systems that permit application for search warrants through a secure Internet connection. The system has, however, been implemented in Maricopa County Superior Court and may be implemented by other courts in the near future.
2. The electronic system permits the completion of search warrant requests, oaths, orders, returns and signatures to be done online.
3. Officers shall be trained in the use of the electronic system prior to using it.

1.5.6.3 Executing a *Search Warrant*

- A. A sworn *supervisor* shall be in charge of all *search warrant* executions. The *supervisor* is responsible for all notifications and de-confliction, warrant information review, warrant procedure conduct and security, appropriate memos, making sure that the entry and all interviews are recorded, and other tactical or administrative details regarding the procedures. All *officers* involved in the initial entry shall wear *body armor*. *Supervisors* may permit exceptions to this requirement when appropriate (for example, when the entry is being done through use of a ruse).
- B. A uniformed *supervisor* shall be in attendance for the duration of the *search warrant* procedure when a search warrant is executed in the Town of Paradise Valley. A uniformed *supervisor*, or uniformed *officer* when no *supervisor* is available, shall be requested for the duration of the *search warrant* procedure from the agency of jurisdiction when a search warrant is executed outside the Town of Paradise Valley. Uniformed patrol *supervisors* and *officers* will be used as situations dictate but will be returned to their regular duty assignments as soon as reasonably practical.



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- C. Undercover/plain clothes *officers* whose dress and appearance are not conventional for law enforcement *personnel will* not be involved in the *search warrant* entry team and normally *will* not be in view of any persons inside the premises until entry has been accomplished and the premises secured.
- D. *Search warrant* locations known or believed to involve drug laboratories or other hazardous scenarios *will* be, when feasible, referred to *officers* or units with training in handling such scenes.
- E. The following *shall* be done before execution of a warrant.
1. In all instances in which a forced entry *may* be necessary, a briefing *shall* be held. This briefing *shall* include raid and *arrest* operations planning which outlines at a minimum:
 - a. all *personnel* involved and their assignments,
 - b. diagrams, sketches, photographs and/or maps of the target location,
 - c. special equipment needed or utilized such as body transmitters, recording devices, and video equipment.
 2. One *officer will* be assigned to record, as completely as possible, all conversations surrounding the execution of the warrant. Special attention *should* be given to the announcement of presence and authority.
 3. As soon as practical after a *Department employee* concludes that a *search warrant may* be executed, a surveillance of the target location *shall* be implemented, unless the premises are already secured.
 4. If the warrant is to be served outside the *Department's jurisdiction*, the law enforcement agency for the jurisdiction in which the warrant is to be served *will* be notified.



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5. A threat assessment will be completed prior to the service of each search warrant and reviewed with a supervisor.

F. Knock and Announce

Officers are to knock and announce prior to all entries to serve *search warrants* unless a magistrate has authorized an unannounced entry in the issuance of a warrant, or a *supervisor* has approved the unannounced entry as authorized in A.R.S. § 13-3916. The *supervisor* granting the approval *shall* prepare a police report completely documenting the facts and circumstances that justified the “no-knock” entry.

1. When knocking and announcing, *officers shall* announce, in a voice loud enough to be heard by occupants inside, that they are police *officers* and they have a *search warrant* for the premises. The knock and announcement as well as the entry *should* be recorded. The only exception to this paragraph is service on an individual or property already in police custody.
2. A.R.S. § 13-3916 provides that an *officer may* break into a building, premises, or vehicle or any part thereof, to execute a warrant when:
 - a. after notice of the *officer's* authority and purpose, the *officer* receives no response within a reasonable time.
 - b. after notice of the *officer's* authority and purpose, the *officer* is refused admittance
 - c. a magistrate has authorized an unannounced entry.
 - d. the particular circumstances and the objective articulable facts are such that a reasonable *officer* would believe that giving notice of the *officer's* authority and purpose before entering would endanger the safety of any person or result in the destruction of *evidence*.

G. Serving the Warrant



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1. When the *supervisor* of the detail executing the *search warrant* anticipates forcing entry into an occupied structure and/or using force against the occupants, the *supervisor shall*:
 - a. determine and make provisions for communications and specialized equipment needs,
 - b. coordinate required assistance from specialized support units, (e.g., SWAT),
 - c. consider availability of medical resources,
 - d. develop strategies and tactics for approaching, entering, securing, and leaving the structure,
 - e. discuss the threat potential and the anticipated necessity for using force and making *arrests* with all those involved in the entry and *search* teams,
 - f. When the potential for violence is imminent or considered significant, review the plan of execution with the *supervisor's* immediate superior to evaluate effectiveness and approve the necessity of the action.
2. Photographs *shall* be taken of any damage caused by the execution of the warrant, the damage *shall* be documented and a memo, with the *report* number included, *shall* be forwarded to the Professional Standards Unit.
3. The *supervisor*, or *officer* designated to do so by the *supervisor*, *should* have possession of the *search warrant*, hand it directly to the person upon whom the warrant is served, and explain its purpose as soon after entry as feasible. It is not legally required that the person be shown the affidavit to the *search warrant*, but this is permissible. If the location is not occupied, the *search warrant* copy *shall* be left at a visible location within the *searched* area.



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4. Deviation from these procedures *must* be lawful, based on sound judgment, and cleared through the *supervisor* responsible for the *search warrant*. A *sworn supervisor* will be in charge of all *search warrant* executions.

H. *Seizure of Property*

1. Although several *officers* may engage in the *search*, one *officer* shall be designated the "finder." That *officer* is responsible for documenting the circumstances of the *search* for and *seizure* of all property. Another *officer* shall be designated as the "recorder" and be responsible for marking, sealing, photographing, and recording the *evidence*.
2. *Officers* may *search* only in those places where the *evidence* they are authorized to seek may reasonably be found. For example, an *officer* may not *search* for a sawed off shotgun in a matchbox.
3. During the execution of the warrant, *officers* may *seize* those items described in the warrant, as well as any items which the *officer* has *probable cause* to believe are subject to seizure, including contraband, evidence, instrumentalities, fruits of the crime, etc., even though such items are not named in the warrant. Such items may be *seized* only if they have been found within the course of a proper *search* under the warrant.
4. When an *officer* *seizes* property under the warrant, a detailed receipt for the property *seized* will be given to the person from whom it was taken or in whose possession it was found. If the property is *seized* when a person is not present, a receipt will be left at the location where the property was found. Any *officer* present and participating in the *search* may sign the receipt. Delaying the provision of a receipt may be permitted, under specific circumstances, with the prior approval of the court. See A.R.S. §13-3919.

I. *Returning the Search Warrant*



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A warrant *shall* be executed within five calendar days. If necessary, the time for execution *may* be extended by five additional days, with the written authority of the magistrate. The warrant shall be returned to the issuing magistrate within three business days after the warrant is executed. The return *shall* include a written list of all property *seized* as the result of the warrant, along with the warrant. A return *shall* be filed even if no property is *seized*.

When property such as a computer is seized, it shall be included in the return just as other property is included. If there is additional forensic work to be done on the computer at the time the return is filed, that fact should be noted on the search warrant return. (A new warrant may be required for the search of the computer).

1.5.6.4 Search Warrants for Tracking Devices

- A. The policies set forth in G.O. #1.5.6 that apply to general search warrants apply to search warrants for tracking devices except as provided in A.R.S. 13-4291 through 4293.
- B. A tracking device search warrant may be issued on any of the following grounds:
 - 1. When the object to be tracked was used, is being used or is about to be used as a means of committing a public offense.
 - 2. When the object to be tracked is in the possession of a person who has committed, is committing or is about to commit a public offense.
 - 3. When the object or person to be tracked constitutes any evidence that tends to show that a particular public offense has been, is being or is about to be committed or tends to show that a particular person has committed or is committing the public offense.
 - 4. When the person to be tracked is the subject of an outstanding arrest warrant.
- C. The tracking device warrant shall authorize use of the device at any time of day or night, on public or private property, and shall specify the length of time the device



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may be used. That time may not exceed sixty days, unless an extension of the time period is ordered by the court.

- D. Installation, maintenance and removal of the device are authorized by the warrant.
- E. The tracking device must be installed and/or delivered within ten calendar days after issuance of the warrant (may be extended by the court) and must be returned within three business days after expiration. The return must include the time and date of initiation and the time period during which the tracking occurred.
- F. The person who was tracked, or whose property was tracked, must be notified within ninety days after the tracking device's use ends.

1.5.6.5. Cell Site Simulator Device Search Warrants.

- A. The policies set forth in G.O. #1.5.6 that apply to general search warrants also apply to cell site simulator device search warrants, except as provided in A.R.S. 13-4291 and 13-4294.
- B. A cell site simulator device search warrant may be issued on the following grounds:
 - 1. When the communications device to be identified is in the possession of a person who has used the communications device, is using the communications device or is about to use the communications device as a means of committing a public offense.
 - 2. When the communications device to be identified constitutes any evidence that tends to show that a particular public offense has been committed or tends to show that a particular person has committed or is committing the public offense.
- C. The cell site simulator device warrant shall authorize use of the device at any time of day or night and shall specify the length of time the device may be used. That time may not exceed sixty days, unless an extension of the time period is ordered by the court.
- D. The cell site simulator device warrant must be initiated within ten calendar days after issuance of the warrant (may be extended by the court) and must be returned within

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three business days after expiration. The return must include the time and date of initiation and the time period during which the tracking occurred.

- E. The person who was tracked, or whose property was tracked, must be notified within ninety days after the tracking device's use ends. Delay may be allowed as prescribed in A.R.S. 13-3919.
- F. A cell site simulator device may not be used to intercept, obtain or access the content of any stored oral, wire or electronic communication unless the interception or access is authorized by statute. A cell site simulator device may be used to track a communications device pursuant to A.R.S. section 13-4293.
- G. If the cell site simulator device is used to locate or track a known communications device, all non-target data must be destroyed within sixty court business days after the return of the search warrant to the court.
- H. If the cell site simulator device is used to identify an unknown communications device, all non-target data must be destroyed within sixty court business days after the return of the search warrant, unless the court orders the non-target data to be preserved.

1.5.7 Consent Searches

- A. Consent is more than just an exception to the warrant requirement. Consent is a waiver, not only of the warrant requirement, but also of the *probable cause* or *reasonable suspicion* requirement.
- B. The person giving consent *must* have common access or control over the item or area. If, under the totality of the circumstances, the *officer* ascertains facts that make it reasonable to believe that the person granting consent has authority, the consent *will* be considered valid.

Refer to G.O. 1.5.11.4 regarding consent searches of a residence in which there is more than one occupant.

- C. Consent must be voluntary. The standard for determining voluntariness is clear and convincing evidence under the totality of the circumstances. Some of the factors that are considered in determining voluntariness include:



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1. knowledge of the right to refuse. While *officers* are not required to inform the person of the right to refuse, it is helpful to do so.
2. assistance of the subject in conducting the *search*.
3. whether the subject was cooperative or uncooperative.
4. the subject's prior *arrest* record, which *may* demonstrate knowledge and experience with police procedures.
5. whether the consent is given in writing, verbally or inferred through actions of the person.
6. the length of time during which consent was sought (be brief).
7. any threat of consequences if consent is not given.
8. the surrounding circumstances, i.e., the number of *officers* present, drawn weapons, and detention in handcuffs.
9. whether the subject is in custody or investigative detention. Consent is most likely to be found voluntary if the subject is free to leave; least likely to be found voluntary if the subject is under *arrest*.
10. ability to understand the request for consent. If the subject does not speak English, the consent *shall* be sought in the subject's native language.
11. age, education, and intelligence of the subject.
12. physical condition of the suspect – intoxicated, injured, etc.
13. whether force was previously used against the subject. If force was used and it is feasible to do so, *officers* other than the ones who used the force *should* seek the consent.


1.5.7.1 Scope

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The extent of the *search* is limited by the consent given. The subject can stop the *search* at any time, or restrict the scope of the *search* at any time. It is recommended that a *Consent to Search Form* be completed, signed by the subject and witnessed by the *officer* or that the person's consent be recorded.

1.5.8 Frisks and Pat-Downs

- A. Under the Supreme Court's decision in *Terry v. Ohio*, a stop and a frisk are separate concepts that require separate legal justifications, though occasionally the same facts may justify both (such as when officers have reasonable suspicion to stop a person they believe just committed an armed robbery).
- B. An officer may stop a person for the purpose of investigating criminal activity when the officer has reasonable suspicion, based on specific articulable facts (facts that can be documented or listed in a police report), and taking into account their training and experience that the person to be stopped has, is, or will be involved in criminal activity. See section G.O. #1.5.3.1 above.
- C. An officer may frisk or pat-down a person for weapons when the officer has lawfully detained the person and the officer has reasonable suspicion, based on specific articulable facts that the person is presently both armed and dangerous. This does not require that the officer see something that appears to be a weapon.
 1. A frisk or pat down consists of a carefully conducted and limited touching of the outer clothing of the suspected person for the purpose of discovering weapons which might be used to assault the officer. A frisk may be extended beyond the outer clothing to areas that the available information indicates might hold weapons. For example, this would apply when the person is wearing bulky clothing where the officer cannot feel the contents or when an officer sees or feels a bulge in some part of the person's clothing, which bulge might be a weapon.
 2. Suspicious activity alone does not allow a frisk. Officers do not have a right to frisk people solely for officer safety reasons. The only lawful justification for a frisk is reasonable suspicion, based on the totality of the circumstances, that a person may be presently both armed and dangerous.

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3. An officer may not frisk a person during a consensual encounter unless:

- a. The officer has developed reasonable suspicion of criminal activity and reasonable suspicion that the person is both armed and dangerous, or
- b. The person consents to a frisk or search.

D. The reasonable belief that a person is armed and dangerous may be based on facts such as:

1. the person's appearance, including clothing that bulges in a manner suggesting the presence of objects capable of inflicting injury or statements or actions suggesting the possibility that the subject is armed.
2. the person's actions, including furtive movement as if to hide or reach for a weapon when the officer approached; words or actions that are threatening.
3. in combination with other facts, prior knowledge of the person, including whether the person has an arrest record for weapons or other violent offenses, or whether the person has a reputation in the community for carrying weapons or for assaultive behavior.
4. in combination with other facts, location of the incident, including whether the area is known for criminal activity, is a high crime area, or is in a remote area.
5. in combination with other facts, time of day and whether the encounter is taking place in a well-lit area, or whether the area is dark.
6. the police purpose for the stop, including whether the officer can articulate facts and circumstances that lead the officer to believe that the person stopped may have been involved, or be about to become involved, in a serious and violent, or armed, offense.



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7. companions, including whether the officer has frisked a companion of the suspect that revealed a weapon and whether the officer has immediately available assistance to be able to safely interact with the number of subjects that have been stopped.

1.5.8.1 Scope

The frisk *shall* be confined in scope to an intrusion reasonably designed to discover guns, knives, clubs, or other weapons that might be used to assault the officer.

The purpose of this limited search is not to discover evidence of crime, but to allow the officer to pursue the investigation without fear of violence. A frisk is generally limited to a pat-down of the outer garments of a suspect, particularly those areas most likely to contain a weapon. The frisk *may* be extended to areas which information indicates might hold potentially lethal weapons. For example, a commonly justified extension of a frisk beyond the pat-down search occurs when an officer sees or feels a bulge in some part of the person's clothing, which bulge might be a weapon.

1.5.8.2 Procedure

The frisk *may* be conducted immediately upon making the stop or at any time during the stop, but *should* be made as soon as the officer develops a reasonable belief that the person stopped is presently armed and dangerous and the frisk can be safely accomplished.

If the frisk discovers a seizable item, the officer *shall* seize it and consider it in determining if *probable cause* exists to arrest the person.

Persons frisked but not *arrested* *shall* have any objects taken from them returned to them upon completion of the contact, unless the objects constitute contraband or evidence of a crime.

1.5.8.3 Securing Separable Possessions

If the person is carrying an object immediately separable from the person (e.g., a purse, shopping bag, backpack, briefcase) the object *shall* be removed from the person's control.



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In the absence of articulable facts indicating that the object contains a weapon, *officers shall* not look inside the object, but *shall* place it in a secure location out of the person's reach for the duration of the *stop*. If *officers* have *reasonable suspicion* indicating that the object contains a weapon, it *may* be searched for the weapon. In addition, if something occurs during the *stop* that causes the *officer* to reasonably suspect the possibility of harm if the object is returned unexamined, the *officer may* briefly inspect the interior of the item before returning it.

1.5.8.4 Plain Feel During a Frisk

If while conducting a "frisk," an *officer* feels an object whose contour or mass makes its identity as a weapon immediately apparent or gives the *officer* *probable cause* to believe the item is contraband, this item *may* be seized. If, however, the *officer* reasonably concludes this item is not a weapon, but is unsure whether it is contraband, the *officer may* not squeeze or manipulate the item in order to identify it.

1.5.8.5 Documentation

- A. Proper documentation of *stop* and frisk activity serves to ensure the proper exercise of law enforcement authority and enhance an *officer's* ability to reconstruct those factors that authorized the *stop* or frisk, and what took place during the contact. It also serves to protect the *officer* from allegations of wrongdoing.
- B. *Officers* who have *stopped* or frisked any person *shall* document the event as required by *Department* procedures.
- C. If the *stop* or frisk was based in whole or in part upon an informant's tip, the *officer* making the *stop* or frisk *will* attempt to obtain and record the identity of the informant, and record the facts concerning the tip (e.g., how it was received, the basis of the informant's reliability, and the origin of the informant's information) in a *report*.

1.5.9 Searches Incident to Arrest

A search incident to *arrest* of a person is permissible in only two situations:



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- A. After a full custodial *arrest* and prior to transport to jail, police station, or DUI checkpoint or van,
- B. After an *arrest*, even when a person is to be released, to *search* for *evidence* related to the offense with which the person has been charged.

1.5.9.1 Scope

An officer has the authority to conduct a full search of the person of an arrestee following a full custodial arrest and prior to transport.

The search incident to arrest of an arrestee who will be released is limited to a search for evidence related to the offense with which the person is charged. For example, a person arrested for shoplifting may be searched for additional stolen merchandise prior to being released.

Cell phones in the possession of an arrestee may not be searched based solely on the fact that the person has been arrested. If the officer has probable cause to support the issuance of a search warrant, the officer should seize the phone and proceed to seek a warrant for its search.

No warrant is necessary to search a cell phone if the person voluntarily consents to a search of the phone ([see G.O. #1.5.7](#)) or if there are exigent circumstances which require an immediate search of the phone (for example, facts suggest that a person who has abducted a child may have information on his phone that could be immediately accessed relevant to locating the abducted child).

1.5.9.2 Strip Searches

No *officer shall* perform a *strip search* of a suspect without the express permission of a Sergeant or *shift supervisor* and a *search warrant* or facts demonstrating a clearly articulated danger requiring immediate action by the *officer*. A strip search must be done outside the view of unnecessary persons and no opposite sex personnel shall be present, unless unavoidable. Strip/body cavity *searches shall* be conducted by medical or jail staff utilizing medical or jail facilities to ensure safety and privacy for the individual. In every case, the *search shall* be documented in a *report*.



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1.5.10 Community Caretaking

- A. Warrantless *searches* of persons that are done in response to *emergency* situations involving an injured or unconscious persons requiring aid, rather than as a *search* in a criminal investigation, are considered lawful.
- B. The scope of an *emergency search* of a person is limited to the extent necessary to effectuate the purpose. *Officers must* be able to demonstrate that the *emergency* presented by the injured or unconscious person was readily apparent and there was a need to intrude upon the privacy interests of that person for one or more of the following reasons:
 - 1. identification of the person in order to contact relatives or friends.
 - 2. determination of the need for specific medication, i.e., medical bracelet, necklace, or card, or evidence of medication.
 - 3. discovery of the nature of the injury or problem by examination.

1.5.11 Searches of Residences

Searches of a person's residence without a warrant are presumed to be unreasonable. *Officers must* be prepared to justify, in detail, any entrance to a residence that is not authorized by a warrant, whether entry is gained by consent or via exigent circumstances.

1.5.11.1 Abandoned Premises

- A. A person has no reasonable expectation of privacy (and therefore no 4TH *Amendment* rights) in a residence or other premise that the person has intentionally or constructively abandoned.
- B. The most common application of this concept would be in an abandoned rental property. The tenant who abandoned the property would no longer have a reasonable expectation of privacy, so a *search* of the premises could not violate the tenant's 4TH *Amendment* rights. However, the landlord would have a right to privacy in the premises. In such an



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instance, the *officer must* seek consent from the landlord to *search* the premises.

Intent to abandon *will* not be presumed. Whether abandonment has occurred *will* be determined by reference to the Arizona Landlord and Tenant Act and a review of all circumstances.

1.5.11.2 Open Fields and Curtilage

- A. The "open fields" around a residence are defined as the unoccupied or undeveloped area outside of the curtilage. The *U.S. Supreme Court* has determined that there is no reasonable expectation of privacy in the open fields around a home and, therefore, a *search* of open fields does not raise a *constitutional* issue. However, areas within the curtilage of a home are treated as a part of the residence and are subject to the *4TH Amendment*.
- B. "Curtilage" is normally defined as the area around the home to which the activity of home life extends. To determine curtilage, the *U.S. Supreme Court* considers:
1. the proximity of the area to the home,
 2. whether the area is included within an enclosure surrounding the home,
 3. the nature of the uses to which the area is put. Intimate activities similar to those usually conducted in the home make the area more likely to be considered curtilage, and
 4. the steps taken to protect the area from observation by people passing by.
- C. Curtilage generally *will* include the back yard and front yard, as well as the private portion of a driveway. In the absence of a warrant, consent or exigent circumstances, *officers may* enter the front yard using only the sidewalk or pathway that is meant for the public to use to approach the main door of the residence.



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1.5.11.3 Aerial Views

Naked-eye aerial observation of areas around a home, even within the curtilage, does not constitute a *search*. As long as the observations are made with the naked eye and from a public vantage point where the *officers* have a right to be, the surveillance *will be constitutional*. A fly over of the property for surveillance is lawful if it does not interfere with the person's use of the property or reveal intimate details connected with the home or curtilage. For example, a flight so low that the downdraft or noise would interfere with the reasonable use of the property might be considered *unconstitutional*.

1.5.11.4 Consent *Search* of a Residence

- A. The totality of the circumstances will be considered in determining whether or not consent is voluntary. Consent *may* only be granted by someone who the *officer* reasonably believes has the authority to grant consent. Officers must make a reasonable inquiry as to a person's authority to grant consent prior to relying on that person's consent (in other words, just because a person answers the door at a home does not mean the person has authority to consent to a search of the home).
- B. When there is more than one occupant in a residence, officers are to comply with the following direction from the United States Supreme Court:
 - 1. Officers may search jointly occupied premises without a search warrant if one of the joint occupants consents to the search.
 - 2. Officers may not search jointly occupied premises without a search warrant based on consent if one of the physically present occupants refuses to consent (even if another occupant consents).
 - 3. If a joint occupant who has denied consent for a search is removed by an officer, as long as the removal is objectively reasonable, another joint occupant may consent to the search.



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Removal is objectively reasonable if it was the result of a valid detention or valid arrest.

- C. The extent of the *search* is limited by the consent given. The subject can stop the *search* at any time, or restrict the scope of the *search* at any time.
- D. *Officers shall* not perform a consent *search* on a residence unless the person consenting signs the Department *Consent to Search Form* or unless their consent is recorded and the *officer* is satisfied that the person voluntarily consented.

1.5.11.5 Public Safety or *Emergency Search* of a Residence

- A. This exception to the warrant requirement generally relates to factual situations in which it appears that a fight is in progress, or a person *may* be hurt or in need of immediate medical assistance. Examples include welfare checks, *domestic violence* situations where the crime reasonably appears to be ongoing, and entry into the home of a mentally ill person who is a danger to self or others or is in need of immediate aid.
- B. This exception is based upon the need for immediate aid, not on the need for investigation or the seriousness of an offense. The reasonableness of an *officer's* entry under the *emergency* aid exception is a question of fact for the trial court. *Officers shall* document specific facts warranting the necessity for the immediate entry including that:
 - 1. there *must* be *probable cause* to believe an *emergency* is at hand and that there is an immediate need for assistance for the protection of life or property.
 - 2. there *must* be a reasonable basis to associate the *emergency* with the area or place to be *searched*.
 - 3. the *search may* extend only to those areas where it would be reasonable, in light of the nature of the *emergency*, to *search*.

1.5.11.6 Protective Sweep



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- A. Officers making an arrest *may*, when they reasonably perceive an immediate danger to their safety, make a warrantless, protective sweep of a residence. Protective sweeps are authorized in only two circumstances, both involving the place of arrest. They are:
1. The area "immediately adjacent" to the place of *arrest*. Officers *may search* this area for a person who *may* present a danger to them, without any *reasonable suspicion* to believe a person is present.
 2. Other areas, near but not adjacent to the place of *arrest*. To do a lawful protective sweep of such an area, an *officer must* have a reasonable belief, supported by specific and articulable facts, that the area harbors someone who could pose a safety threat.
- B. The protective sweep exception to the warrant requirement does not authorize *officers* to *search* a residence simply because they are interviewing an occupant, either at the threshold or within the residence. *Officers must* be making a contemporaneous arrest in order to lawfully perform a protective sweep of a residence.
- C. The *search* is limited to those areas in which a person *may* be found.

1.5.11.7 Hot Pursuit Entry into a Residence or other Building

To justify entering a building or home when in hot pursuit, the pursuit *must* be ongoing and the *officer must* have been in pursuit of the subject usually all the way from the scene of the crime. Although an *officer* need not be in sight of the fleeing suspect at all times, the *officer* or another person *must* be in active pursuit of the fleeing suspect if this exception is to be applied.

By statute in Arizona, this exception is limited to felony offenses (A.R.S. 13-3891). Once the *officer* enters the building, the *search* is limited to those areas in which the person *may* be hiding.

1.5.11.8 Entry to Stop the Destruction of *Evidence*



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This exception applies to residential and commercial buildings, and to vehicles. To justify entering to stop the destruction of *evidence*, there *must* be facts indicating the ongoing destruction, or the immediate danger of destruction, of contraband or crime-related *evidence*. The *search* is limited to those actions necessary to preserve the *evidence* until a *search warrant* can be obtained.

Per A.R.S. 36-2852.C "notwithstanding any other law, the odor of marijuana or burnt marijuana does not by itself constitute reasonable articulable suspicion of a crime. this subsection does not apply when a law enforcement officer is investigating whether a person has violated section 28-1381." The odor of marijuana may be a used as a factor, along with others to provide reasonable suspicion or probable cause.

1.5.11.9 Search of a Residence Incident to an Arrest

If an *officer* is lawfully in a home and makes a lawful *arrest*, the *officer may* do a *search* incident to that *arrest*. The *search* is limited to the areas under the immediate control (or "wingspan") of the arrestee at the time of *arrest* and areas where the suspect requests to go and is allowed to go by the *arresting officer*.

1.5.11.9 Community Caretaking Exception

The community caretaking exception to the warrant requirement does not apply to an officer's entry into a residence.

1.5.12 Vehicle Searches

1.5.12.1 Consent Searches

As in all consent *searches*, the main issue is the voluntariness of the consent. The owner or the person with apparent authority over the vehicle (the driver) *may* consent to its *search*. A third party *may* give consent, if that person has joint access to or control over the vehicle, as long as no one objects who has equal or greater access or control.

Neither *reasonable suspicion* nor *probable cause* is required. The extent of the *search* is limited by the consent given. The subject can stop the *search* at any



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time, or restrict the scope of the *search* at any time. It is recommended that a *Consent to Search Form* be completed, signed by the subject and witnessed by the *officer*, or that the person's consent be recorded.

1.5.12.2 **Search of Vehicles Incident to Arrest**

If the arrestee was a recent occupant of the vehicle and was *arrested* in close proximity to a vehicle, the vehicle *may* be *searched* incident to *arrest* without a warrant or other exception to the warrant requirement only under the circumstances listed below:

- A. When it is reasonable to believe that *evidence* relevant to the crime for which the person is being *arrested* *may* be found in the vehicle, or
- B. When the person being *arrested* is unsecured and within reaching distance of the passenger compartment at the time of the *search*.

If the arrestee has been secured and there is no reason to believe the vehicle contains *evidence* relevant to the crime for which the person is being *arrested*, the vehicle *may* not be *searched* incident to *arrest*. *Officers* *may* not delay securing the arrestee for the sole purpose of justifying a *search* of the vehicle.


Officer safety *will* justify a *search* of a vehicle incident to a custodial *arrest* only when *officers* can document facts that demonstrate that their safety was jeopardized by bystanders or other occupants of the vehicle who are present, confronting the *officers*, and in a position to obtain a weapon from the vehicle.

The scope of the *search* of the vehicle incident to *arrest* does not include a *search* of the trunk of the vehicle and includes only the passenger compartment and all containers, locked or unlocked, within the passenger compartment.

1.5.12.3 **Vehicle Contains *Evidence* or Contraband**

A vehicle *may* be *searched* without a warrant if an *officer* has *probable cause* to believe there is contraband, *evidence* or any item subject to *seizure* in the vehicle. Examples of facts that are considered *probable cause* include:

- A. A reliable drug dog alerts on the vehicle.

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B. An *officer* sees contraband in plain view in the vehicle.

C. The suspect vehicle from a bank robbery is *stopped* within 2 minutes of the robbery and only a half mile from the scene.

If *probable cause* exists only for a single item (for example, all that was taken from the home during the burglary was the flat screen television), the *search must cease* once that item is found (the TV is in the back seat of the vehicle). If *probable cause* exists for contraband or *evidence* generally (the proceeds of a home burglary), the *search may* continue throughout any portion of the vehicle which *may* contain the items subject to seizure, including all containers, locked and unlocked, as well as the trunk.

1.5.12.4 Vehicle Frisk

For a vehicle to be frisked, the *officer must* have made a lawful *stop* based upon *reasonable suspicion* or *probable cause* and the *officer must* have a *reasonable suspicion* that the vehicle contains weapons or ammunition that poses a danger to the *officer*.

The scope of a vehicle frisk is limited to those areas in the passenger compartment of the vehicle in which a weapon *may* be placed or hidden.

1.5.12.5 Vehicle Inventory

Prior to tow or release, *officers will* inventory any vehicle required to be inventoried under G.O. #61.8.2.

1.5.12.6 Vehicle Searches; Other Issues

A. Opening Locked Containers - When possible, *officers shall* open a locked vehicle, container, trunk, or glove compartment with a key or combination rather than by force. If keys are unavailable, and time permits, *officers shall* contact a locksmith to respond and open the vehicle or container. If time does not permit, the *officers shall* explain to the owner or person in possession, if the *officer* is in contact with that person, that the item *will* be opened with force if the key or combination is not provided.



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- B. Location of *search* - In those cases where it is not feasible to conduct the *search* at the scene of the incident, and there is *probable cause* to *search* the vehicle or consent to move the vehicle, the vehicle *shall* be secured in police custody at all times until it is *searched*. The *search shall* be conducted as soon as practicable.
- C. *Search* for Vehicle Identification Number (VIN) - The VIN is normally visible through the windshield. If the vehicle is unlocked, an *officer may* move items on the dashboard of a vehicle that are blocking the view of the public VIN from the outside of the vehicle. When checking the registration of a vehicle, the *officer may* compare the VIN on the registration with the VIN on the vehicle.
- D. Motor Home/Mobile Home - A motor home or mobile home, if apparently mobile, is treated the same as a motor vehicle for the purposes of warrantless *searches*. Motor homes and mobile homes that are apparently affixed to a location, e.g., water hookups, skirts, lack of wheels, *shall* be treated as residences, not as vehicles.
- E. Aircraft and watercraft - Aircraft and watercraft are subject to the same exceptions to the warrant requirement as are automobiles.
- F. Abandoned Vehicle - If a vehicle is truly abandoned, there is no need for a *search warrant* or other exception to the warrant requirement, as there would be no reasonable expectation of privacy in the vehicle. This does not mean a vehicle that is dismantled, or possibly junked on a person's private property, is abandoned. Any time a person would have a reasonable expectation of privacy in the vehicle, it is not abandoned.
- G. Registration - A *search* for registration in a vehicle can be done without a warrant only if the *officer* has *reasonable suspicion* to believe the vehicle is stolen.
- H. Forfeiture - An *officer* does not need a warrant to *seize* a vehicle in a public place if there is *probable cause* to believe it is subject to forfeiture. Otherwise, the vehicle that is to be *seized* for forfeiture *must* be lawfully *seized* as part of a criminal case or subject to a court order.



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1.5.13 Physical Characteristics Orders

- A. A.R.S. § 13-3905 provides that a court *may* issue an order authorizing an *officer* to take a person suspected of committing an offense into custody for the purpose of obtaining *evidence* of identifying physical characteristics. "Identifying physical characteristics" is defined in the statute as including, but not being limited to, the fingerprints, palm prints, footprints, measurements, handwriting, hand printing, sound of voice, blood samples, urine samples, saliva samples, hair samples, comparative personal appearance or photographs of an individual.
- B. The application *must* include a proposed order and an affidavit. The *officer's* affidavit, when requesting any identifying physical characteristic other than a blood sample, *must* include:
1. *probable cause* that a felony has been committed,
 2. reasonable cause that procurement of *evidence* of identifying physical characteristics will contribute to the identification of the person responsible for the offense,
 3. that the *evidence* cannot be acquired from the *officer's* own agency or the *Department of Public Safety*, and

When the request is made for a blood sample, the affidavit must include a statement of probable cause (rather than reasonable cause) to believe that procurement of evidence of identifying physical characteristics will contribute to the identification of the person responsible for the offense.

C. The proposed order is required to specify the following information:

1. the alleged criminal offense that is the subject of the application,
2. the specific type of identifying physical characteristic *evidence* that is sought,
3. the relevance of the *evidence* to the particular investigation,



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4. the identity or description of the individual who is to be detained for obtaining the *evidence*,
5. the name and official status of the investigative *officer* authorized to detain the individual and obtain the *evidence*,
6. the place at which the *evidence will* be obtained,
7. the time that the *evidence shall* be taken, except that no person *may* be detained for a period of more than three hours for the purpose of taking *evidence*,
8. the period of time, not exceeding fifteen days, during which the order *shall* continue in force and effect. If the order is not executed within fifteen days and is not extended by the magistrate, a new order *may* be issued pursuant to this section. The magistrate *may* extend the time for execution of the order for no longer than fifteen days.

Collections of physical characteristics, (e.g., buccal cells, blood, urine and semen) *may* also be procured with a *search warrant* if prior to indictment, or an order under Arizona Rules of Criminal Procedure Rule 15.2 if after indictment. If the person has been indicted, no action *should* be taken prior to consultation with the Deputy County Attorney handling the case.

1.5.13.1 Procedures to Follow to Obtain a Court Order

To obtain a court order for physical characteristic *evidence*, the investigating *officer shall* prepare both a court order and an affidavit in support of the court order. An order *may* be obtained in person or by telephone, radio or other means of electronic communication, in the same manner as a *search warrant*.

1.5.13.2 Execution of the Court Order

The court order to *seize* physical characteristic *evidence must* be executed at the time and place specified in the order, or as soon afterwards as possible if the suspect cannot be found on the date specified in the order. The order is valid for 15 days; if not executed within 15 days it *may* be extended for an additional 15



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days by the magistrate. The person *may* be held for no more than three hours, beginning from the moment the person is first detained.

The *officer* executing the order *may* use a reasonable amount of force to take the *evidence* specified in the order. If the nature of the physical characteristic *evidence* requires the cooperation of the suspect (e.g., giving a voice or handwriting sample), and there is no cooperation, the suspect *will* be in violation of the court order and can be held in contempt of court for failure to comply with the order or *arrested* for A.R.S. § 13-2810.

The order *must* be returned not later than thirty (30) days after its issuance. The return *shall* include a sworn statement indicating the type of *evidence* taken, if any.

