

	<b>SEARCH AND SEIZURE</b>	<b>Operations Order 1.8.00</b>
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## 1. OVERVIEW OF SEARCH AND SEIZURE

- A. Orders and regulations concerning the subject of search and seizure are difficult to set forth as hard and fast rules.
- B. The guidelines in this order address the basic rules of search and seizure; no attempt is made to address every conceivable search and seizure issue, because each situation involving search and seizure is different and must be judged on its own facts; the application of these guidelines must not be arbitrary.
- C. Officers will adhere to these guidelines as closely as possible, keeping in mind the variations inherent in search and seizure and that court decisions frequently change their application.
  - (1) The Legal Unit is available to provide assistance concerning legal interpretation of search and seizure rules and procedures.
  - (2) Under emergency conditions and after business hours, a Department legal advisor may be contacted with the permission of a supervisor.

## D. Definitions

<b>(1) Criminal Profiling</b>	An investigative method in which police officers, through observation of activities and environment, identify suspicious people and develop legal grounds to stop them for questioning.
<b>(2) Bias-Based Profiling</b>	Stopping an individual based on a common trait of the group; this includes, but is not limited to race, color, religion/creed, sex/gender, ethnic or national origin, age, sexual orientation, gender identity or expression, disability, or economic status; this is commonly referred to as "racial profiling."
<b>(3) Daytime</b>	Any time between 6:31 a.m. and 9:59 p.m., inclusive.
<b>(4) Frisk</b>	Pat-down of person's exterior clothing to check for weapons.
<b>(5) Nighttime</b>	Any time between 10 p.m. and 6:30 a.m., inclusive.
<b>(6) Open View</b>	A circumstance where an officer sees an item that he/she has probable cause to believe is crime related (evidence) from a vantage point outside a constitutionally protected area (a place where a person has a reasonable expectation of privacy); a search warrant is required for a lawful search and seizure unless exigent circumstances exist; under the open view doctrine, a seizure is not automatically allowed, without more, such as exigent circumstances.
<b>(7) Plain View</b>	A circumstance when the officer is lawfully positioned to see the object; the object's incriminating character is immediately apparent; and the officer has a lawful right of access to the object.
<b>(8) Probable Cause to Arrest</b>	Facts and circumstances, and any rational inferences therefore, that would lead a reasonable and prudent police officer to believe a crime has been or is being committed, and the subject to be arrested committed the crime; an officer may arrest based on probable cause.
<b>(9) Probable Cause to Search</b>	Facts and circumstances, and any rational inferences therefore, that would lead a reasonable and prudent police officer to believe a crime has been committed and evidence thereof will be found in the place to be searched.
<b>(10) Protective Sweep</b>	A quick and cursory search for persons posing an immediate danger to officers or others at the scene of an arrest. The sweep should occur at the time of the arrest or shortly thereafter.
<b>(11) Racial Profiling</b>	The reliance on race, skin color, and/or ethnicity as an indication of criminality, including reasonable suspicion or probable cause, except when part of a suspect description.
<b>(12) Reasonable Expectation of Privacy</b>	Two necessary elements: (1) the person must have an actual expectation of privacy (subjective), and (2) the expectation of privacy must be one that society recognizes as reasonable (objective).

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1. D. Definitions: (Continued)

<b>(13) Reasonable Suspicion</b>	Facts and circumstances, and any rational inferences therefore, that would lead a reasonable and prudent police officer to believe crime is/was afoot (has been, is being, or is about to be committed); the officer need not know the exact nature of the crime; an officer may stop or detain a person based on reasonable suspicion but may not arrest or search.
<b>(14) Search</b>	An infringement upon a person's reasonable expectation of privacy; usually involves a physical intrusion for the purpose of seeking evidence.
<b>(15) Search Warrant</b>	An order in writing issued in the name of the state, signed by a magistrate, and directed to peace officers, commanding them to search for personal property, persons, or items described therein <a href="#">Arizona Revised Statute (ARS) 13-3911</a> .
<b>(16) Seizure</b>	A person has been seized if, under a totality of the circumstances, a reasonable person would believe that he/she was not free to go; property has been seized when there is some meaningful interference with an individual's/possessors interest in that property.
<b>(17) Standing</b>	A person has standing to object to a search or seizure if that person has a reasonable expectation of privacy in the place to be searched or item to be seized; some factors used to determine if a person has standing to object include whether the person owns, leases, controls, lawfully occupies, rightfully possesses, or has an interest in the premises or property.
<b>(18) Stop</b>	A temporary detention of a person for investigation (a temporary detention is considered a seizure of a person and is, therefore, governed by the Fourth Amendment); a stop occurs when a reasonable person under the circumstances would believe that he/she is not free to go; a stop must be based on at least reasonable suspicion; a person is stopped when such person submits to a show of authority or physical force.

2. **REASONABLE SEARCH AND SEIZURE**

- A. The Fourth Amendment to the United States Constitution, the Arizona Constitution (Article 2, Section 8), and court decisions interpreting the constitutional provisions and statutes protect all persons and their property against unreasonable search and seizure.
- B. The most common legal courses of action available to officers for conducting a reasonable search and seizure are listed below:
  - A valid search warrant
  - An arrest based on probable cause
  - A valid arrest warrant
  - Incidental to a lawful arrest
  - Exigent circumstances (probable cause exists, but no time to obtain a warrant)
  - Investigative detention/stop and frisk
  - Vehicle exception
  - Plain view
  - Consent
  - Protective sweep
  - Inventory
  - Curtilage/open fields
  - Abandoned property

**NOTE:** Searches relating to prisoners or bookings are found in the orders relating to those issues.

3. **SEARCH WARRANTS**

- A. A search warrant will be issued only on probable cause and must be supported by an affidavit describing particularly the property or person to be seized and the persons and/or premises to be searched.
  - All searches and seizures conducted pursuant to a search warrant are presumed reasonable.

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B. Administrative Guidelines Concerning Obtaining a Search Warrant

<b>(1) Search Warrant</b>	<ul style="list-style-type: none"> <li>• A search warrant may be issued for the following purposes: <ul style="list-style-type: none"> <li>* To recover property that has been stolen</li> <li>* To seize property used as a means of committing a public offense (instrumentalities)</li> <li>* To seize property, the mere possession of which is a violation of law (contraband)</li> <li>* To seize property in the possession of any person who intends to use it as a means to commit a public offense, or in the possession of another to whom it may have been delivered for the purpose of concealing or preventing it from being discovered</li> <li>* To seize property or things that constitute any evidence that tends to show a particular offense has been committed, or tends to show a particular person has committed an offense (items of evidentiary value only)</li> <li>* To search for the subject of an arrest warrant in a third party's residence (absent of consent or exigent circumstances)</li> <li>* Valid administrative/inspection search</li> </ul> </li> <li>• If the officer possesses a valid arrest warrant, a search warrant is not necessary to enter the suspect's own residence; however, the officer must have probable cause to believe the suspect may be in the residence. <ul style="list-style-type: none"> <li>* A suspect's residence is considered the place where the suspect resides (as opposed to being a temporary guest or visitor).</li> </ul> </li> <li>• The knock and announce provisions of <a href="#">ARS 13-3891</a> must be complied with to give the suspect the opportunity to surrender.</li> </ul>
<b>(2) Affidavit for Search Warrant</b>	<ul style="list-style-type: none"> <li>• The affidavit for search warrant presented to a judge should be based on the following: <ul style="list-style-type: none"> <li>* Personal knowledge of the applicant</li> <li>* Another peace officer</li> <li>* Information received from a reliable informant whose reliability should be established prior to the time the warrant is issued</li> </ul> </li> <li>• In rare cases, the judge may find probable cause based on the totality of the circumstances, even though the information source is anonymous or otherwise is not a past proven reliable informant.</li> <li>• Affidavits lacking sufficient facts for a magistrate to exercise the necessary judgment, even though the warrant is issued, will likely lead to the suppression of the evidence seized on the warrant.</li> <li>• Officers must be extremely careful to describe exactly those premises to be searched, especially those composed of apartments, duplexes, or any places where more than one family lives.</li> <li>• If a vehicle is to be searched, it will be described as accurately as possible.</li> <li>• Each item that is the object of the search will be specifically described.</li> <li>• A warrant to search premises does not automatically extend by itself to include the search of persons present. Independent probable cause must exist to search the person.</li> <li>• If probable cause exists to search the occupants of the premises prior to the issuance of the warrant, they will be described particularly in the affidavit and the search warrant.</li> <li>• When drafting an affidavit specifically requesting a nighttime search, the officer must be able to allege good cause for searching at night, rather than waiting until daytime.</li> <li>• The officer who completes the warrant affidavit need not be present during execution of the warrant.</li> <li>• Officers attempting to obtain a search warrant will submit the affidavit to their supervisor, or another supervisor in their unit, for review prior to contacting a magistrate.</li> </ul>

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3. B. Administrative Guidelines Concerning Obtaining a Search Warrant: (Continued)

<b>(3) Obtaining a Search Warrant</b>	<ul style="list-style-type: none"> <li>• A search warrant may be obtained from any magistrate in the State of Arizona, including the following: <ul style="list-style-type: none"> <li>* Supreme Court</li> <li>* Court of Appeals</li> <li>* Superior Court judges</li> <li>* Justices of the peace</li> <li>* City and town magistrates</li> </ul> </li> <li>• Officers will first attempt to obtain a search warrant from the justice of the peace where the search warrant is to be served. <ul style="list-style-type: none"> <li>* If this judge is not available, any other justice of the peace may be contacted.</li> <li>* If no justice of the peace is available, a City magistrate may be contacted.</li> </ul> </li> <li>• During <u>non-business hours</u>, if none of the above listed judges are available, a Superior Court judge, Criminal Department commissioner, or Initial Appearance (IA) Court commissioner (Intake, Transfer, Release (ITR) may be contacted, but only if one or more of the following criteria exist: <ul style="list-style-type: none"> <li>* <u>Court of Record Requirement</u> - The incident involves a federal case or Federal/State Task Force Investigation. City courts and justice courts are not courts of record.</li> <li>* <u>High-Profile Case</u> - The incident involved a high-profile case, such as the Bolles Case or Temple Murders.</li> <li>* <u>A True Emergency Situation Exists</u> - The individual is leaving the jurisdiction, loss or deterioration of evidence is imminent.</li> </ul> </li> <li>• The Information Services Unit (ISU) may be contacted for the work and home phone numbers of individuals who can refer officers to the nearest available Superior Court judge.</li> </ul>
<b>(4) Presentation to The Judge</b>	<ul style="list-style-type: none"> <li>• A completed affidavit for search warrant and the completed two-page search warrant will be presented to the judge who, if satisfied probable cause exists, will sign the warrant.</li> <li>• In determining probable cause, the judge can only consider the facts as sworn to in the affidavit, and any sworn oral testimony, prior to the issuance of the warrant.</li> <li>• Any communication in support of the affidavit, whether verbal or written, must be made under oath.</li> <li>• The telephonic search warrant procedure is an authorized method for obtaining a warrant. The Violent Crimes Bureau (VCB) may be contacted to obtain procedures for a telephonic search warrant.</li> </ul>
<b>(5) Court Jurisdiction</b>	<ul style="list-style-type: none"> <li>• A search warrant may be served by a Phoenix police officer anywhere in the State of Arizona.</li> <li>• A search warrant may be obtained from any magistrate (town magistrate, city magistrate, justice of the peace, superior court judge, or higher).</li> <li>• Such magistrates have jurisdiction to issue search warrants for any location in the State.</li> </ul>
<b>(6) Returning A Search Warrant To The Judge</b>	<ul style="list-style-type: none"> <li>• A search warrant must be executed within five calendar days from its issuance and returned to a magistrate within three court business days after the warrant is executed.</li> <li>• Upon expiration of the five day period, the warrant is void unless the time is extended by a magistrate.</li> <li>• Any unnecessary delay in executing the warrant might weaken the credibility of the information source and render the search invalid.</li> <li>• A written list of all property seized as the result of the warrant will be returned to the issuing magistrate along with the warrant.</li> <li>• At the time the warrant is returned, the officer should indicate whether the warrant will be unsealed immediately or five days after the return.</li> <li>• If indefinite sealing is desired, the officer should contact the Department's legal advisor.</li> </ul>

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3. B. Administrative Guidelines Concerning Obtaining a Search Warrant: (Continued)

<b>(6) Returning A Search Warrant To The Judge</b> (continued)	<ul style="list-style-type: none"> <li>• A copy of the search warrant, affidavit, and inventory of seized property, with the Incident Report (IR) number listed on each form, will be scanned and inserted into the records management system (RMS) Incident module using the "Doc" (document) viewer. <ul style="list-style-type: none"> <li>* An entry will be made by the investigator in the RMS Case Management module, "Activity" tab, indicating the search warrant has been scanned and inserted into the RMS.</li> </ul> </li> <li>• Officers who submit cases for prosecution involving the execution of a search warrant must immediately forward a copy of the affidavit and search warrant to the appropriate investigative bureau's Court Liaison Detail.</li> </ul>
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4. **SEARCH WARRANT/SURVEILLANCE/INVESTIGATION NOTIFICATION REQUIREMENTS**

- A. The purpose of the Rocky Mountain Information Center (RIMIN), [Regional Information Sharing System \(RISS\)](#), RISS Officer Safety Event Deconfliction System (RISSafe) is to improve communication and safety between law enforcement agencies conducting investigations, surveillance, and search warrants to prevent incidents of conflict with other law enforcement officials, mistaken identity, and doubt of credibility, or other situations of misunderstanding.
- Staff members of the RISSafe Watch Center are responsible for assisting officers, entering events, and notifying affected parties of conflicts.
- B. Law enforcement officials from any agency can contact RISSafe 24/7 and provide suspects' addresses, names, and/or vehicles that they are investigating.
- (1) RISSafe staff enter the provided information into the RISSafe database to:
- Determine if there is a conflict with another agency or officer that is investigating the same person/s, place/s, and/or vehicles/s.
  - Advise of other investigations in the immediate area.
- (2) RISSafe assigns each inquiry a RISSafe tracking number and then notifies any other law enforcement agency that documented their involvement with the address, person, and/or vehicle.
- RISSafe's main goal is officer and public safety through deconfliction.
- C. RISSafe will be used by Phoenix officers during any investigation that involves:
- Undercover officers and confidential informants
  - Service of a search warrant and knock and talks
  - Surveillance and fugitive apprehension
  - Seizure of large amounts of illegal drugs, precursor chemicals, and/or clandestine labs
- D. RISSafe is available for contact 24-hours a day, seven days a week at 602-220-9958, 623-587-8201, or 1-800-821-0640 (after business hours).
- (1) When involved in an investigation, and when possible, officers should contact RISSafe at least four (4) hours prior to any operation.
- (2) The following information **must be** provided to be assigned a RISSafe tracking number:
- Officer information (name, serial number, squad, precinct, and contact number)
  - Supervisor name and contact number (secondary contact)
  - Incident information (incident type, location, date, and start and end times)

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4. D. (3) In the event of conflicting operations, RISSafe personnel will not issue a tracking number but will contact all conflicting officers and/or agencies.
- (a) If contact cannot be made, the next highest-ranking on-duty supervisor will be contacted to resolve the conflict.
  - (b) It will be the involved officer's and/or agency's responsibility to make contact with each other and resolve operational conflict.
  - (c) Once resolved, the officer will call RISSafe to report the details of the resolution and RISSafe will assign a tracking number.

E. Investigative Operation Notification Requirements

<b>(1) During Normal Business Hours (Monday through Friday, 8 a.m. to 5 p.m.)</b>	<ul style="list-style-type: none"> <li>The responsible supervisor for the service of a search warrant, buy bust, or reversal, will notify the Communications Bureau radio supervisor and shift commander of the precinct in which the investigation is to be executed. <ul style="list-style-type: none"> <li>* Notifications of the impending investigation/execution will be made on the day of service, prior to execution of the warrant, buy bust, or reversal.</li> <li>* The shift commander will notify the precinct or duty commander on duty.</li> <li>* The radio supervisor will again be notified at the actual time of the execution of the warrant, buy bust, or reversal.</li> <li>* If the warrant, buy bust, or reversal is not executed, the radio supervisor will be notified of this as soon as practical.</li> </ul> </li> <li>The radio supervisor will be responsible for logging and reviewing the following information: <ul style="list-style-type: none"> <li>* Date and time of notification</li> <li>* RISSafe number (if one has not been obtained, one will be required before the service of any investigative operation)</li> <li>* Location of warrant service, buy bust, or reversal investigation</li> <li>* Suspect information, name (if known), nature of the warrant or investigation, such as narcotics or property</li> <li>* Time warrant is signed</li> <li>* Date/time warrant served or buy bust or reversal executed</li> <li>* Notification logs (to ensure there is not a conflict, such as two bureaus serving search warrants at the same address)</li> </ul> </li> <li>The Communications Bureau will maintain search warrant logs for one year and make them available to other bureaus/precincts upon request.</li> </ul>
<b>(2) Other Than Normal Business Hours</b>	<ul style="list-style-type: none"> <li>The supervisor responsible for service of the warrant, buy bust, or reversal investigation, will notify the radio supervisor as during normal business hours.</li> <li>The radio supervisor will notify the duty commander and appropriate dispatcher.</li> <li>The radio supervisor will log and review the same information as listed for normal business hours.</li> </ul>
<b>(3) Outside the City</b>	<ul style="list-style-type: none"> <li>The jurisdiction in which the warrant, buy bust, or reversal investigation is to be served will be notified and a request will be made for the presence of a local officer at the execution of the warrant.</li> </ul>

- F. During normal business hours when an employee of the Department is advised by another law enforcement agency of that agency's intention to execute an investigative operation within the City, the employee will notify a supervisor.

- (1) The supervisor will then notify the shift commander and Communications Bureau radio supervisor.
- (2) After normal business hours, the radio supervisor will be notified and will, in turn, notify the duty commander.



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4. F. (3) If another law enforcement agency notifies the Communications Bureau of an investigative operation that fits RISSafe criteria, the radio supervisor will gather the required information and transfer that agency to the RISSafe system for entry of the incident and assignment of a RISSafe number.

## 5. **SEARCH WARRANT EXECUTION**

A. A sworn supervisor will be in charge of all search warrant executions.

- (1) The supervisor is expected to be in attendance and in approved uniform or Department jumpsuit for the duration of the search warrant process.
- (2) If it is not possible for a plainclothes detail supervisor to be in uniform, any uniformed supervisor of the Department may be assigned to accompany the officers with the approval of the shift commander.
  - The uniformed supervisor and other officers may be used as situations dictate, but they will return to their regular duty assignments after the initial entry and contact of the person served has been made.
- (3) Supervisors in charge of search warrant service will consider using the Special Assignments Unit (SAU) to make entry when any of the following circumstances exist:
  - Occupants are known to be armed or evidence strongly suggests occupants are armed
  - Occupants are known or believed to be members of a street or prison gang
  - Occupants are suspects in a violent crime
  - Occupants are known to be a suicide risk
  - Location is fortified to the degree that special breaching equipment is needed
  - Manpower needs are extensive due to the size of the location
  - Manpower needs are not met with existing resources
  - Any other circumstances exist that would deem the entry as “high risk”
- (4) Search warrant locations known or believed to involve cooking drug labs (clandestine labs) will be referred to DEB who will request the Department of Public Safety (DPS) to serve the warrant.

B. The supervisor in charge of search warrant execution will be responsible for the following:

- (1) All notifications
- (2) Warrant information review, procedure (including compliance with the applicable provisions of ARS 13-3911 through 13-3921), conduct, and security
- (3) Appropriate memoranda
- (4) Digital recordings of the procedure
- (5) Other tactical or administrative procedural details
- (6) Personally handing the search warrant to the person upon whom it is served and explaining its purpose
- (7) Leaving the search warrant copy in a visible position if the location is unoccupied
- (8) Coordinating with supervisors of other agencies, if any are involved, to ensure the directives of this chapter are met

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5. C. Even though the first officer at the door of the house or building will be a supervisor in uniform, other officers present and in view should also be in uniform if circumstances so dictate (for instance surrounding the building or at the back door).
  - (1) Uniformed officers will be assigned as necessary to ensure that persons inside the building are aware that police officers are initiating the action.
  - (2) Officers who must be present to further the investigative process may enter the scene without imprinted jacket, vest, or cap after the on-scene supervisor has declared the scene non-hostile and has authorized the entry.
  - (3) Undercover officers whose dress and appearance are not conventional for law enforcement personnel will not be involved in the actual execution of a search warrant unless their particular training and knowledge is necessary for the execution of the search.
    - (a) In any event, they will not be among the first officers to enter the premises.
    - (b) These undercover officers will not be in view of any persons inside the premises until entry has been accomplished.
      - Body armor will be worn by all officers involved in the initial entry.
      - Supervisors may permit exceptions to this requirement.
- D. If a search warrant execution involves plainclothes officers from another agency, the Department's on-site supervisor will:
  - (1) Meet with the on-site supervisor from the other agency before executing the search warrant to discuss assignments.
  - (2) Provide appropriate notifications.
  - (3) Ensure that all plainclothes officers involved will be wearing adequate apparel to provide immediate recognition as officers.
  - (4) Coordinate a group assembly of involved personnel to promote recognition between participants and review tactical considerations.
    - (a) Involved plainclothes personnel from other agencies are expected to wear garments that are conspicuously marked to provide immediate recognition as an officer.
    - (b) If the other agency's tactical event plan does not meet the reasonable expectations or requirements of Department policy (inadequate manpower, safety concerns, or absence of an agency supervisor on site), the Department supervisor will inform the other agency of the inadequacies.
      - They will not allow further involvement by Department personnel until the inadequacies are corrected.
- E. Audio Recording
  - (1) One officer will be assigned to record, as completely as possible, all conversations surrounding the execution of the warrant.
  - (2) Special attention should be given to the statement of authority and reason for the search.



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5. E. (3) Officers will use a formatted digital media card to record a search warrant execution.
- The recording will be properly marked, sealed in an envelope, and impounded as evidence.

F. Building Entry

- (1) The amount of force used to enter a building in compliance with the search and arrest laws and procedures must be reasonable under the circumstances.
- (2) Officers and their supervisor may be held civilly liable when the use of unreasonable force results in the destruction of property.
- (3) When the supervisor of the detail executing the search warrant anticipates forcing entry into an occupied structure and/or using force against the occupants, they will comply with the following:
  - (a) Determine and make provisions for communication and specialized equipment needs
  - (b) Coordinate required assistance from specialized support units
  - (c) Consider availability of medical resources
  - (d) Develop strategies and tactics for approaching, entering, securing and leaving the structure
  - (e) Discuss with all members of the entry and search teams the threat potential and anticipated necessity for using force and making arrests
  - (f) Review the plan of execution with the immediate superior to evaluate effectiveness and approve the necessary action if the potential for violence is imminent or considered significant
- (4) Any deviation from the execution of search warrant procedures will be cleared through the highest ranking supervisor of the bureau/precinct involved in the investigation prior to notifying the precinct or duty commander.
- (5) Photographs will be taken of any damage and processed/stored as outlined in [Operations Order 5.8.05, Photographs and Audio/Video Procedures](#).
  - (a) A damage report will be completed in BlueTeam and photographs will be linked to the report by using the URL from WebXtender.

G. Seizure of Property

- (1) Although several officers may engage in the search, one officer should be designated the finder so that one officer is responsible for documenting the circumstances of the search and seizure of property.
- (2) Officers executing a search warrant are not necessarily limited to seizing only the items described on the warrant.
  - (a) During the execution of the warrant, officers may seize the following items even though such property is not named on the warrant:
    - Contraband
    - Items of property the officer has probable cause to believe are stolen
    - Instrumentalities of a crime
    - Items of evidentiary value

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5. G. (2) (b) The items listed above in 5.G.(2)(a) may be seized only if they have been found within the course and scope of a proper search under the warrant, such as plain view.

**EXAMPLE:** <sup>1</sup>A warrant for a stolen television set would not justify the seizure of a pistol found in a small dresser drawer.

<sup>2</sup>A warrant for marijuana would justify the seizure of the same pistol.

- (c) When an officer seizes property during the execution of a search 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 in a conspicuous place at the location where the property was found.
- Any officer present and participating in the search may sign the receipt.

#### H. Information Sources

- (1) When information leading to the request for a search warrant has been supplied by an information source, the underlying circumstances demonstrating the source is credible or reliable, and the underlying circumstances that led the source to conclude the items to be seized (contraband, fruits and instrumentalities of a crime, or items of evidentiary value) would be where it is claimed to be, must be stated in the affidavit.

- (2) When informant information is used to establish probable cause and the informant must remain confidential, the reason will be substantiated in the affidavit.

- (a) When possible, the officer who is using the informant should be the affiant for the search warrant.

- (b) The officer will make certain the informant is not present when the search or undercover buy takes place; if the informant becomes a material witness to the crime charged, the court will order the informant's identity disclosed.

- (3) Refer to [Operations Order 8.3.00, Information Sources](#), for additional policies governing the use of information sources.

6. **OBTAINING PHYSICAL EVIDENCE FROM A PERSON** - The County Attorney has made the following recommendations regarding obtaining physical evidence, such as fingerprints, photographs, handwriting samples, blood samples, and urine samples.

<b>A. Pre-Arrest</b>	<ul style="list-style-type: none"> <li>• <a href="#">ARS 13-3905</a> provides for the issuance of a court order for the temporary detention of a subject to obtain evidence of identifying physical characteristics when there is no probable cause to arrest.</li> <li>• Reasonable cause to believe a crime punishable by at least one year in prison has been committed is required to obtain this court order.</li> <li>• Must show that procurement of the evidence may contribute to the identification of the person who committed the crime.</li> <li>• A showing must be made that such evidence cannot otherwise be obtained by the investigating officer from the Department or DPS.</li> <li>• There must be a reasonable connection between the subject to be detained and the crime charged.</li> <li>• The person to be detained has the right to counsel during temporary detention; officers are not obligated to advise the person of this right.</li> <li>• This court order must be signed by a magistrate.</li> <li>• The court order is valid for 15 days maximum and must be returned to the magistrate within 30 days from the date of issue.</li> <li>• The subject may be detained for a maximum of three hours.</li> </ul>
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6. **OBTAINING PHYSICAL EVIDENCE FROM A PERSON** - (Continued)

<b>B. Post-Arrest/Pre-Indictment</b>	<ul style="list-style-type: none"> <li>• A search warrant may be used in accordance with ARS <a href="#">13-3912</a> and <a href="#">ARS 13-3913</a> to obtain personal physical evidence so long as no unreasonable intrusion of the person's body occurs.</li> <li>• An officer must establish probable cause that the thing to be seized tends to show a crime has been committed, tends to show a particular person committed the crime, or is evidence of a crime.</li> <li>• The following is recommended: <ul style="list-style-type: none"> <li>* The defendant be allowed to contact an attorney, if requested.</li> <li>* The attorney will be allowed to be present during the taking of the exemplar if this can be timely and reasonably accomplished without hindering the process.</li> </ul> </li> </ul>
<b>C. Post-Indictment; Information or Complaint</b>	<ul style="list-style-type: none"> <li>• <a href="#">Rule 15.2(a)</a> of the Rules of Criminal Procedure, permits the prosecutor, upon written request to the defendant, to obtain certain evidence (such as to appear in a line-up; physical characteristics evidence, handwriting exemplars, voice comparison, try on clothing, submit to reasonable physical or medical inspection of defendant's body).</li> <li>• Officers choosing not to use <a href="#">Rule 15.2(a)</a> in post-indictment situations should consult with the case prosecutor prior to taking any action.</li> <li>• Defendants have the right to have their lawyer present when evidence is taken under <a href="#">Rule 15.2(a)</a>; the prosecutor should notify the defendant's attorney prior to obtaining evidence under this rule.</li> </ul>

7. **SEARCH INCIDENT TO LAWFUL ARREST**

A. Warrantless searches incidental to a lawful arrest are valid for the following reasons:

- (1) To seize weapons or other articles that might be used to attack the officer
- (2) To seize the means suspects might use to affect their escape
- (3) To prevent the destruction of fruits, instrumentalities, or evidence of any crime

B. The Person

- (1) Immediately upon a full custody arrest, an officer may lawfully search the person of the arrestee, items under the arrestee's immediate control (such as a backpack or wallet and the area within the arrestee's reach).
- (2) The officer needs no further justification for the search other than the lawful arrest.

**NOTE:** See section below if the subject is to be cited and released (not booked).

C. Within Reach

- (1) Search beyond the person must be limited to those areas that remain within the reach of the arrestee.
- (2) Reach is not confined to arm's length, but includes the area reachable by the person if a lunge or quick move were made to gain possession of a weapon or evidence.
- (3) If it is necessary for the person arrested to move about after arrest to put on clothing or assemble belongings, those areas where the person still has access may also be searched for weapons or evidence.

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7. D. Searching the Premises - Officers may not search the premises where an arrest is made simply based on the fact of the arrest.

- In extremely rare circumstances, officers may search the premises at the time of arrest without a search warrant if there are justifiable facts showing **all** the following circumstances:
  - \* There was probable cause for the search (sufficient grounds upon which a search warrant could have been obtained).
  - \* Special circumstances existed that would make it impossible to safeguard the premises while a search warrant was being obtained after the arrest.
  - \* Special circumstances existed that required making the arrest before a search warrant could be obtained.

**NOTE:** If possible, officers should secure the location and obtain a search warrant.

E. Search Incident to Arrest When Issuing an Arizona Traffic Ticket and Complaint (ATTC)

- (1) If an officer observes a criminal violation (including criminal traffic) and intends to cite and release the subject from the start of the incident, the suspect being issued the ATTC **will not** be searched incident to arrest.
  - Officers **will not** search anyone incident to arrest unless they book the subject into jail or transport for further investigation.
- (2) Officers may still conduct a limited frisk of the outer clothing of the suspect for the purpose of discovering weapons that might be used to assault the officers, if there is reasonable suspicion to believe the person is armed and a danger to officers or others.
- (3) A search of the subject may also be conducted based on probable cause the subject possesses evidence, contraband, fruits of the crime, instrumentalities, and/or items subject to lawful seizure, on their person, even though they will be cited and released.

## 8. SEARCH BASED ON EXIGENT CIRCUMSTANCES (NO WARRANT)

- A. A search warrant to enter is not required when exigent circumstances exist, these circumstances may include:
  - Response to an emergency (such as medical, fire, or bomb scare)
  - Hot pursuit of a felony suspect
  - Possibility of violence (such as hostage/barricade, domestic violence, or sexual assault)
  - Probability of destruction of evidence
- B. Whenever there is a need to conduct a search of a place (even the location of an anticipated arrest) and if an arrest does not have to be made immediately, the proper procedure is to obtain a search warrant before the arrest so it may be executed at the time of arrest.
- C. Whenever there is a need to conduct a search of premises for which a search warrant is ordinarily required, but it becomes necessary to make an arrest before the search warrant can be obtained to preclude the suspect's escape or the loss of evidence, or prevent harm to persons, officers may be left to secure the premises from the outside while another obtains the search warrant.
  - (1) Officers may enter the premises without a search warrant to secure it from within (protective sweep) if exigent circumstances are present.
  - (2) The following factors shall be considered in establishing exigent circumstances:
    - (a) Whether probable cause existed to search

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8. C. (1) (b) Whether probable cause existed to believe someone was inside the premises who was aware of the items to be seized, and the person inside was aware of the imminent police search, and the person inside was involved in the criminal activities to the extent the person would have destroyed the evidence

(c) Whether the officer's tactics or conduct created the exigent circumstances

- D. When reporting facts in an IR pertaining to a search and seizure based upon exigent circumstances, officers should articulate the specific circumstances that caused them to take immediate action, for example:

- (1) The reliable information that caused the officer to believe the suspect was armed
- (2) The exact nature of the emergency, such as a fire or medical emergency
- (3) Seriousness of the offense
- (4) The likelihood of evidence being destroyed or removed

9. **SEARCH AND SEIZURE OF A VEHICLE WITHOUT A WARRANT**

- A. A vehicle may be stopped for investigation if the officer has a reasonable suspicion to believe the driver or occupants are involved in criminal activity or committed a traffic offense.

- (1) The driver and passengers may be ordered out of the vehicle or to remain within the vehicle.
- (2) The passenger compartment of the vehicle may be searched for weapons if the officer has reasonable suspicion the person associated with the vehicle is dangerous and the person may gain immediate access to weapons in the vehicle; the search is limited to areas where a weapon might be placed or hidden.
- (3) The trunk may be searched only pursuant to probable cause, by vehicle inventory prior to release or tow, or by consent with authority or by apparent authority.

- B. Vehicles and other conveyances (cars, trucks, RVs, or airplanes) may be completely searched without a search warrant when there is probable cause to believe the vehicle contains items that may be seized and the vehicle is mobile or readily capable of becoming mobile.

- (1) The warrantless search may extend anywhere in the vehicle, including closed and locked containers, where the items being searched for may be found.
- (2) If probable cause exists to search a vehicle that was in a mobile condition when it came into the custody of an officer, the vehicle may be moved to another location, such as the police station, out of the rain, and searched without a warrant.

- C. If probable cause exists to search a container that is in a vehicle in a mobile condition, a search warrant is not necessary to search the container, even though there is no probable cause to search the entire vehicle.

D. **Search Incidental to Arrest Made from a Vehicle**

- (1) Vehicle searches incidental to arrest are governed by *Arizona v. Gant*
- (2) When an officer has made a lawful custodial arrest of an occupant of a vehicle, a search incident to arrest can only be conducted in one of two circumstances:
  - (a) When the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search

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9. D. (2) (b) When it is reasonable to believe evidence relevant to the crime of arrest may be found in the vehicle

(3) The search incident to arrest should commence while the arrestee is still at the scene.

(4) This search does not extend to the trunk.

(5) If an arrest is made as a result of a stolen vehicle stop, and a search incident to arrest is completed, the vehicle will be inventoried (including the trunk) prior to tow, release to owner, or if the vehicle is locked and left legally parked at the owner's request.

- An inventory search will be conducted as listed below in section 9.E. of this order.

E. Vehicle Inventories

(1) All vehicles that are to be towed that come under the control of officers will be inventoried prior to the tow.

(a) The purpose of an inventory is to protect the owner's property while it remains in police custody, to protect the officers against claims or disputes over lost or stolen property, and to protect the officer and others from potential danger.

(b) The purpose is not to find evidence.

(c) Officers will look in all areas where valuables or dangerous items could reasonably be located.

(d) Closed containers will be opened for the purposes of an inventory when the contents cannot be determined from examining the container's exterior.

(2) Officers will document the results of the inventory in the following manner:

(a) If an IR is completed, the procedures for documenting property in this order will be followed.

(b) If nothing of value was located, this will also be documented in the IR.

(c) Officers will document the search of a vehicle and the inventory of a vehicle as separate events in the IR.

(3) When an owner/driver of a vehicle requests the vehicle be locked and left legally parked, officers will inventory the vehicle.

(a) Officers will inform the owner/driver the vehicle will be inventoried for the protection of the owner/driver as well as the Department.

(b) If the vehicle cannot be locked, and the owner/driver insists it be left at the scene, officers will discuss the potential for loss or damage with the owner/driver, such as a high crime area or potential for thefts.

(c) If the owner/driver acknowledges responsibility and still insists the vehicle be left at the scene, the vehicle will be legally parked and left.

(d) Officers will document the following information in the IR (if completed) or Field Interview (FI).

- Disposition of the vehicle
- Owner/driver's knowledge of potential for loss or damage
- Owner/driver's acknowledgment of responsibility for the vehicle

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9. E. (3) (e) If a responsible party is present who is willing (with the owner/driver's permission) to take responsibility for the vehicle, no inventory will be conducted.

10. **PERSONAL INVENTORY**

A. The purpose of an inventory is to protect the owner's property while it remains in police custody, to protect the officers against claims or disputes over lost or stolen property, and to protect the officer and others from potential danger.

- The purpose is not to find evidence.

B. **Personal Effects**

(1) Upon the full custody arrest of a subject, officers shall inventory all personal effects in the person's possession prior to booking.

(2) As part of the inventory, officers shall look inside all containers, locked or unlocked.

11. **PLAIN VIEW AND OPEN VIEW**

A. Officers may lawfully seize items in plain view.

(1) If during a valid frisk or pat down, an officer feels something the officer immediately recognizes as being crime-related, the officer may seize the item without a warrant.

(2) The officer must be able to articulate the probable cause to believe the item was contraband or otherwise seizable as being crime-related, such as training or experience.

B. Officers may not immediately seize items they see in "open view," unless exigent circumstances develop, or another exception to the warrant requirement applies, officers must obtain a search warrant before they seize items in "open view."

12. **CONSENT TO SEARCH (WITHOUT A WARRANT)**

A. Any consent search must be voluntary, without force, threats, or promises.

(1) The voluntariness of a person's consent is determined by the totality of the circumstances, using a reasonable person standard.

(2) A person who gives consent for the search waives the requirement for both a warrant and probable cause.

B. The person giving consent must have the authority to give such consent.

(1) A person has authority to consent if such person has common access or control over the area to be searched.

(2) If under the circumstances, the officer reasonably believes the person granting consent has such authority, the consent will be valid, even if later it is found the person lacked the authority to consent.

(3) Examples of persons who may have authority to consent are:

- Spouse
- Parent
- Host
- Employer
- Roommate (common areas)
- Child of suitable age and discretion (determined on a case by case basis)



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12. C. If persons against whom the search is directed consent to the search of their persons or property, a search may be made and any fruits of a crime, instrumentalities of a crime, or contraband articles may be seized.

**EXCEPTION:** Officers **will not** conduct a search for evidence if a person that has joint access and control is **present** and refuses to consent to the search, even if another person with joint access and control is present and consents to the search.

- This does not mean officers cannot enter and search pursuant to a search warrant or under exigent circumstances: for example, domestic violence situations where police are entering to protect the possible victim and are not searching for evidence of an unrelated crime.

D. The scope of a consent search is determined under the reasonable person standard.

- (1) An officer may search based upon consent only in places a reasonable person under the circumstances would have believed were included in the consent.
- (2) When the officer's presence on the premises is based solely on lawful consent, the officer may not search the entire premises unless the search is within the scope of the consent: for example, officers may have consent to search the basement but not the bedroom.

E. Consent may be withdrawn at any time and, should this occur, the search must be terminated, unless probable cause has been developed.

F. If challenged, the officer has the burden to show the consent was purely voluntary and not the **product of coercion**.

G. **Knock and Talks** – A special type of consent search with additional procedures that must be followed to ensure the admissibility of any evidence obtained.

- For guidance and information concerning "Knock and Talks" contact DEB.

### 13. **PROTECTIVE SWEEP**

- A. The purpose of a protective sweep is to protect the officers and others on the scene of an arrest from an immediate danger. Officers may look in places where a person could hide.
- B. Officers may look in closets, under beds, and other places a person could hide in the immediate room where the arrest occurs. No reasonable suspicion or probable cause is necessary
- C. To go beyond the immediate room or location of the arrest, officers must be able to articulate facts which, taken together with rational inferences from those facts, would warrant a reasonably prudent police officer in believing the area to be searched harbors an individual posing a danger to those on the arrest scene.

### 14. **CURTILAGE AND OPEN FIELDS**

- A. **Curtilage** - Although curtilage is difficult to define, it generally is the area around the home a person would reasonably expect to remain private.
- B. A person has a reasonable expectation of privacy in the curtilage of the home.

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14. C. The following are four factors to consider when determining whether the area to be searched or entered is part of the curtilage:

- The area's proximity to the home
- Whether the area is included within an enclosure surrounding the home
- Whether the area is being used for the intimate activities of the home
- The steps taken by the resident to protect the area from observation by passersby

D. Open Fields - Defined as any unoccupied or undeveloped area outside of the curtilage of the home.

(1) A person has no reasonable expectation of privacy in an open field.

(2) "Open field" is not to be taken literally; it could be a forest, desert area, or field.

(3) An officer may enter an "open field" without a search warrant and seize any evidence in plain view.

**NOTE:** A person may have a reasonable expectation of privacy in buildings, structures, or other property located in an "open field" and a search warrant or an exception thereto may be required before officers may search or seize evidence.

#### 15. **ABANDONED PROPERTY**

A. Abandonment is the voluntary relinquishment of control of property.

B. A person who abandons property does not have an expectation of privacy in the property and there is no Fourth Amendment violation if the property is seized and searched.

C. Examples of Abandoning Property

- Subject throws a paper bag down and walks away from it
- Trash that is set out on curb for garbage collection
- Subject denies luggage checked in at the airport
- Subject checks out of hotel

#### 16. **FIELD INTERVIEW AND INVESTIGATIVE DETENTION (STOP AND FRISK)**

A. The decision to detain and question a person will be determined by the individual situation.

(1) Officers must be able to articulate specific facts to show the detention was based upon a founded suspicion and was not done arbitrarily or for the purpose of harassment.

- Officers **will not** stop an individual based on race, color, religion/creed, sex/gender, ethnic or national origin, age, sexual orientation, gender identity or expression, disability, or economic status, unless part of a suspect description.

(2) What is suspicious cannot be set forth in these orders.

(3) Each officer must use personal knowledge, experience, training, and observations to determine what situations appear suspicious.

(4) Officers will be courteous and use a professional demeanor when questioning a person.

(5) If satisfied the subject is not involved in any suspicious or illegal activity, or is of no concern to any Department detail, an FI will not be required.

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16. A. (6) Officers are not prohibited from contacting persons and engaging them in conversation.
- (a) The person need not cooperate with the officer.
  - (b) If officers lack a reasonable suspicion to detain the person, officers shall not stop or detain the person merely based on their desire to speak with the person.
  - (c) When questioning individuals for personal information, the Federal Privacy Act of 1974 requires officers to advise persons that providing their social security number is voluntary and used for keeping and collecting accurate records and identification.
- B. Warrant checks will be made during the detention and interrogation, via the Mobile Data Computer (MDC), police radio, or telephone whenever possible.
- NOTE:** Officers will not wait until the end of shift to make records checks.
- (1) If a City of Phoenix warrant hit is received, officers will telephone ISU as soon as possible to verify the warrant.
    - All other warrants will need to be verified by the issuing agency.
  - (2) If the Arizona Crime Information Center (ACIC) or the National Crime Information Center (NCIC) system is down, officers will contact the Maricopa County Sheriff's Office (MCSO) to verify local felony warrants.
  - (3) When a warrant check reveals a BOLO (Be On Look Out), officers will call ISU for further information
    - If a telephone is unavailable, officers will ask the Communications operator to obtain the information from ISU and relay it to them.
- C. The subject's name and physical description, vehicle description, and purpose of the contact will be entered via the MDC screen and routed to the detail most concerned with the subject, such as Robbery or Auto Theft.
- D. An officer may stop a person for investigative detention if the officer has a reasonable suspicion to believe that crime is afoot (suspicious circumstances indicating criminal activity).
- (1) The stop is limited to such period of time as is reasonably necessary for the accomplishment of the purpose of the stop.
    - (a) This will be determined on a case-by-case basis.
    - (b) Officers must diligently pursue their investigation to confirm or dispel their suspicion.
  - (2) Twenty minutes is the rule of thumb for determining the reasonable amount of time necessary to investigate.
    - (a) Under the circumstances, a reasonable amount of time could be more or less than 20 minutes.
    - (b) The longer the detention, the greater the need for compelling circumstances.
- E. During an investigative detention, an officer may frisk or pat down the person's outer clothing if the officer has a reasonable, articulable belief the person is armed or dangerous.

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16. E. (1) The following should be considered:
- (a) The frisk is to check for weapons.
  - (b) The purpose of the frisk is to protect the officer.
  - (c) Suspicious activity alone will not allow a frisk for weapons, contraband, or other evidence.
- (2) Persons Carrying Objects
- (a) If the person is carrying an object (a purse, shopping bag, or briefcase), an officer may remove such object from the person's control if the officer reasonably believes under the circumstances the object may contain a weapon or dangerous instrument.
  - (b) If the officer cannot determine whether such object contains a weapon without opening it, the officer may look inside the object and briefly examine its contents.
- F. Generally, a person detained for investigation should not be handcuffed, confined in a police car, or transported from the location of the stop without their consent.
- (1) If the person presents an articulable safety or escape risk, the officer may restrain or confine the person during the stop.
  - (2) A person detained for investigation may be transported a few blocks for identification by witnesses. The better practice is to bring the witnesses to the person's location.
- G. If, during an investigative detention, probable cause is developed to arrest the person detained, the person may be handcuffed, confined in a police car, or transported from the scene.

<b>Last Organizational Review:</b>