

<b>Accreditation Standards:</b> <b>1.2.4, 1.2.5; CFA 15.14</b>  <b>Revisions:</b> 08/97; 9/99; 11/06; 10/10; 10/13; 02/15; 10/16; 1/24  <b>References:</b> <b>FSS 847, 901, 933; DSD 5070</b>	<b>University of Florida Police Department</b>    <b>Department Standards Directive</b>	<b>Responsibility: Administration</b>  <b>Pages: 8</b>  <b>Related Documents: None</b>
<b>TITLE: ARRESTS, SEARCHES, AND SEIZURES</b>		

## **1035 Arrests, Searches, and Seizures**

**1035.1 Purpose.** The purpose of this directive is to govern the actions of agency personnel during arrests, searches, and seizures.

**1035.2 Discussion.** There are no areas in law enforcement that cause greater difficulty for police officers than those involving Fourth Amendment issues. In making arrests and seizing evidence or property, it is critical that officers adhere to established case law and Department policy.

**1035.3 Policy.** It shall be the policy of the University of Florida Police Department to comply with the provisions of the U.S. Constitution, Florida Statutes, and Department policy in every aspect governing arrests, searches, and seizures.

**1035.4 Procedure.** The Department procedures pertaining to arrests, searches, and seizures are presented in the following subsections. This directive also addresses exigent circumstances and a number of U.S. Supreme Court decisions pertaining to the Fourth Amendment.

- A. Method of Arrest by Officer Without Warrant, FSS 901.17.** The law provides that a peace officer making an arrest without a warrant shall inform the person to be arrested of his authority and the cause of arrest. Informing the person is not required when the person flees or forcibly resists or when giving the information will imperil the arrest.
- B. Searches and Seizures Without a Warrant.** A search warrant should always be obtained unless there are exigent circumstances. In any warrantless search, the burden is on the police to prove that the search and subsequent seizure, if any, were lawful.
  - 1. Search and Seizure Incident to an Arrest.** Once a lawful arrest has been made, the arrestee will be searched. If an on-scene officer is of the same gender or gender identity as the subject to be searched, that officer should be requested to conduct the search. A search of the arrestee's premises can also be made but only that part of the premises that is within the immediate control of the arrestee.
    - a.** Searches must be contemporaneous with the time and place of arrest and for the following reasons:

- (1) Officer safety.
  - (2) To prevent the destruction or loss of evidence and/or fruits of a crime.
  - (3) To prevent escape.
- b. Items discovered during a search incident to arrest may be seized.
  - c. A search incident to arrest may be conducted when the arrest is a: felony, misdemeanor, criminal traffic, or criminal city/county ordinance.
2. **Search and Seizure by Consent.** Consent must be freely, voluntarily, and knowingly given by the person. When practical, officers should obtain a signed consent form to minimize any questions as to the legality of the search. If a person consents to a search and then withdraws that consent before or during the search, any search in progress shall cease immediately. If the person lawfully entitled to possession of the place to be searched waives his/her Fourth Amendment rights and gives consent, the search is held to be lawful and reasonable if:
- a. The consent is intelligently given, and the person knows that they are waiving their constitutional rights freely and voluntarily and that they do not have to waive those rights.
  - b. The consent is clear and explicit.
3. **Stop and Frisk.** The purpose of a stop and frisk is to investigate a crime, prevent a crime, or detect a crime. The decision to stop and frisk may be based on something less than probable cause. No person may be temporarily detained longer than is reasonably necessary to accomplish the purposes outlined in the statute.

The stop and frisk procedure is primarily for the protection of police officers. It is not meant to be a way to increase convictions. If proper procedures are followed, any weapons or contraband found during a lawful stop and frisk may be used as evidence against the stopped subject.

- a. The authority for a police officer to "stop and frisk" under Florida law is found in FSS 901.151. Police officers, during the course of a proper "stop" of a subject, may conduct a limited search of an individual for weapons. They must have a reasonable belief, supported by articulable facts and from which inferences can be drawn, that the subject may be dangerous and may gain immediate control of weapons. Any part of the recently occupied passenger compartment of a vehicle where a weapon could be concealed may also be searched.
- b. An officer may conduct a limited "protective search" of the area around a person.
- c. Although the person being questioned may be handcuffed and placed in the police vehicle, any such actions taken in this regard by Department personnel must be justified based on articulable safety concerns.

- d. The person being questioned should not be removed from the immediate area without their consent.
- 4. Field Show-up.** A show-up is a single suspect viewed by a victim or witness immediately following the commission of a crime for the purpose of identifying or eliminating the suspect as the perpetrator. Courts recognize that show-up procedures can be suggestive but acknowledge show-ups have benefits for both public safety and innocent suspects. Please refer to 6130- Interviews and Interrogations for more information on performing show-ups.
- 5. Search of a Vehicle.** Searches of vehicles without a warrant may be made by the police only when they have probable cause to believe that someone in the vehicle has committed a crime or that the vehicle contains contraband or the fruits of a crime. The warrantless search of a vehicle is based on the Supreme Court's recognition that police must act immediately or not at all when confronted with vehicle searches.
- a. If probable cause exists that certain articles are inside a locked container or containers inside a vehicle, a warrant must be obtained to validly open those containers.
  - b. *Arizona v. Gant* maintains that police may search the passenger compartment of a vehicle incident to a recent occupant's arrest only if it is reasonable to believe that the arrestee might access the vehicle at the time of the search or that the vehicle contains evidence of the offense of arrest.
- 6. Inventory Search.** A vehicle that has been seized by the police shall be inventoried. The United States Supreme Court has held three justifications allowing police to make routine inventory searches of vehicles. They are: (1) to protect police against claims of lost or stolen property, (2) to protect police from potential danger, and (3) to determine if the vehicle has been stolen.
- a. The inventory shall include all areas of the vehicle including inside compartments such as the glove box, under seats, ashtray, and all containers therein, all exterior containers (boxes, truck beds, etc.), and the engine compartment. When reasonable, the inventory will be conducted in the presence of the operator or owner.
  - b. If money, jewelry, or other precious items are being inventoried, they should be inventoried in the presence of the suspect, if possible. The presence of another officer should be requested to either assist or witness the inventory, when feasible.
  - c. While following standard police procedures, a seized vehicle may be inventoried. Additionally, when a vehicle is towed and held as evidence, the Property and Evidence module will be completed.
  - d. When a vehicle remains upon any street or parking lot in such a manner as to constitute a hazard or obstruction to the flow of traffic, Department members will cause the vehicle to be

towed to the appropriate compound. Department members shall complete the Vehicle Tow/Impound module.

**7. Search and Seizure at the Scene of a Crime.** When a police officer is summoned or comes upon what he or she believes to be the scene of a crime, he or she is obligated to investigate. The search and seizure of evidence or fruits of a crime at the scene are to:

- a. Ensure subsequent lawful custody.
- b. Reconstruct the criminal occurrence.
- c. Find evidence of what occurred.
- d. Assist in the successful prosecution of the person who committed the offense.

**8. Search and Seizure/Exigent Circumstances.** The "exigent circumstances" exception to the search warrant requirement confers a limited privilege to make warrantless searches. For example, a burning building, a call for assistance involving a suicide threat, or other situations involving death or great bodily harm.

Officers must have a reasonable belief that there is an emergency, and there must be an immediate need for police assistance for the protection of life or property. When there is an urgent need for immediate action and there is no time to obtain a search warrant, the police may enter and search. The police response to cries for help from within a house would be an example of this exception.

**9. Fresh or Hot Pursuit.** Police officers may make a warrantless entry into a dwelling when they reasonably believe that a felon may be therein when they are in hot pursuit of that felon, *Warden V. Hayden*, 387 U.S. 294 (1967). Hot pursuit, as defined by this agency, is a pursuit during which one or more officers involved:

- a. Is in actual pursuit of the suspect.
- b. Has reason to believe that the suspect is aware of the pursuit.
- c. Observes the suspect enter a residence or other building.
- d. Is in such close pursuit as to be able to enter the residence or other building immediately after the suspect.

**C. Method of Arrest by Officer by a Warrant, FSS 901.16.** A peace officer making an arrest by a warrant shall inform the person to be arrested of the cause of arrest and that a warrant has been issued, except when the person flees or forcibly resists before the officer has an opportunity to inform him or her, or when giving the information will imperil the arrest. The officer need not have the warrant in his or her possession at the time of arrest but on request of the person arrested shall show it to him or her as soon as practicable.

**D. Arrests, Searches, and Seizures with a Warrant.** There are two types of search warrants: those for premises, including vehicles, and those for persons. Generally, in a warrant for a premise, only the premise can be searched. In searching premises, any part of the structure where the items to be seized could be found can be searched. It would be wise to include the curtilage in the application for the warrant, if appropriate. The time and day of the week of the warrant's execution must also be included in the warrant application. If officers are executing a search warrant for a person, they may search only the person named in the warrant absent any other extenuating circumstances.

- 1. General Considerations.** When proper affidavits are made, a judge may issue a search warrant under the provisions of FSS 933.02.
- 2. Statutory Authority.** Officers shall follow the provisions of FSS 933 when seeking a search warrant. Whenever an officer determines the need to obtain a search warrant, the shift supervisor and/or shift commander shall be notified. The assistance of the Investigations Division may be obtained. Officers most familiar with the investigation should consult with the Office of the State Attorney for assistance.
- 3. Warrant Issuance.** A search warrant may be issued only upon probable cause, supported by oath or affirmation particularly describing the place or person to be searched and the person or thing to be seized. A sworn application must be executed prior to the issuance of any search warrant. The application, accompanied by affidavits, depositions in writing, or testimony by sworn witnesses must set forth the facts establishing probable cause.
- 4. Warrant Service.** A search warrant shall be served by the officer(s) named in the warrant. All such warrants shall be returned within ten days, with the inclusion of actions taken, if any, after issuance.
- 5. Duplicate Copy of Warrant.** A search warrant shall be issued in duplicate and when served, a copy shall be delivered to the person named in the warrant. In the absence of the person named in the warrant, the warrant shall be delivered to some person who is present or living on the premises. If no person is present on the premises, a copy of the warrant shall be left in a prominent place along with a copy of the property inventory, even if no property was removed from the premises.
- 6. Description of Property.** Each item of property seized shall be described thoroughly along with the location where it was discovered. If no property was seized, it shall be so indicated.
- 7. Scope of the Search.** Under the authority of a search warrant, sworn officers have the authority to make a complete and thorough search of the entire premises described in the warrant. The only restriction is that the search must be consistent with the type of property indicated in the warrant. For example, a search of desk drawers cannot be made under the authority of a search warrant for stolen television sets.

- 8. Items to be Seized.** As long as the search is consistent with the property being searched for, any property connected with any crime, even though not described, or listed in the search warrant, may be legally seized. If found in good faith while executing a search warrant, contraband, stolen property, instrumentalities of crimes, or evidentiary property connected with a crime may be seized.
- 9. Other Jurisdiction.** If the warrant is to be served outside the jurisdiction of the Department, the agency having jurisdiction shall be notified prior to execution and an officer from that agency shall be requested to be present. When the University of Florida Police Department is made aware that another law enforcement agency is serving a search warrant on the University of Florida campus, UFPD will provide an officer to act as a liaison. The assistance provided to the outside agency will be documented in an incident report.
- 10. Entry of Premises.** If after due notice of their authority and purpose, admittance to said house or access to anything therein is denied, Florida law permits police to break open any outer door, inner door, or window of a house, or any part of a house or anything therein, to execute the warrant. The search warrant may include a "no knock" feature authorized by the issuing judge.
- a. The premises will be secured before entry. Prior notification as to the time and location of the search warrant shall be provided to the Communications Section.
  - b. If intelligence information indicates any significant hazards such as armed or especially dangerous persons, then the securing of the area, premises, and/or entrance should be done by those officers trained to do so.
  - c. Under the direction of the officer in charge, officers shall announce themselves as "police officers," display their badges, and advise they have a search warrant for the premises.
  - d. Force may be used to enter if, while waiting for the door to open, there is an indication that the occupants are taking flight, destroying evidence, or taking some action that may jeopardize the safety of the officers or others.
  - e. The disruption caused by the service of a search warrant will be kept to a minimum. Any property damage incurred will be documented and photographed.
  - f. Search execution will include the following:
    - (1) A protective sweep of the premises.
    - (2) Each occupant within the premises shall be identified and brought into one designated room or area.
    - (3) The officer named in the warrant will read the warrant to all persons present.
    - (4) An orderly and thorough search will be conducted. If practical, a photographic record will be made of all articles found and seized during the search. When possible, property

items will be photographed in the location where they are found. Recovered and seized property will be tagged and marked appropriately.

(5) A property inventory sheet shall be completed. A copy of the property inventory shall be left at the premise.

**11. Time of Entry.** Florida law authorizes either daytime or nighttime execution, as exigent circumstances may demand or require. Additionally, a search warrant may be specific as to being served on a Sunday.

**12. Final Documentation.** Within ten days, one of the original, signed search warrants, along with a copy of the property inventory sheet, shall be returned to the court.

**13. Student Records.** The University of Florida Police Department will follow all laws related to the Family Educational Rights and Privacy Act (FERPA) when handling student records.

**E. Relevant Court Cases.** A number of cases decided by the United States Supreme Court have addressed law enforcement activities under the Fourth Amendment. Sworn personnel should be familiar with landmark and current case law, as it is ever evolving.

## **1035.5 Glossary.**

**Exigent** – A call for immediate action or attention, urgent, pressing needs, demands, or requirements.

**Frisk** – A carefully limited search of the outer clothing. A pat down. The only legal justification for a "frisk" is the officer's concern for safety.

**Probable Cause** – A combination of facts or apparent facts, viewed through the eyes of an experienced police officer, which would lead a man of reasonable caution to believe that a crime is being or has been committed.

**Transgender Person** – A person who utilizes or identifies as a gender other than that assigned at birth.

JJS 10/95 Filed: Arrests, Searches, and Seizures 1035

Approved: \_\_\_\_\_  
**Bart Knowles, Chief**

Effective Date: July 10, 2024