

University of Chicago Police Department

GENERAL ORDER

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Approved By: Michael B. Kwiatkowski, Interim Chief of Police		Signature: Signed Original on File in Accreditation Office	

508.1 PURPOSE

The purpose of this order is to provide guidelines and procedures to police personnel in conducting searches which, by meeting criteria established by statute or case law, can be accomplished without a warrant.

508.2 DEFINITION

Officer: For the purpose of this directive, refers to all ranks of police officers with the authority to make a full custody arrest.

508.3 POLICY

It is the policy of the University of Chicago Police Department to accomplish searches of people, places and things in a manner that provides protection of constitutional rights, minimizes intrusion, preserves evidence or the fruits of a crime, and provides for the safety of all parties.

508.4 WARRANTLESS SEARCH AND SEIZURE

Warrantless searches include the following:

- A. Search by Consent is a search performed after the subject of the search, or the person having (standing) rights to the location, vehicle or property consents, provided the consent is freely and intelligently given. Consent may be given orally, or documented in writing. Consent, to be valid, "must be unequivocal, specific and intelligently given, uncontaminated by any duress or coercion." (U.S. v. McCaleb, 552 F.2d 717, 721 [6th Cir. 1977].) Generally, if the person has ownership, control and use of the property, they have standing. Landlords and hotel managers do not have standing to consent to a search of rooms, apartments or homes which are lawfully rented and in which the renter has a reasonable expectation of privacy. Even parents or roommates may not have standing in certain areas of a residence if those areas are under exclusive control of another. A non-owner driver of a vehicle may have standing to consent to a search of the passenger

compartment (where they have access) but not the trunk or locked glovebox (if they don't have access). Before performing any consent search, personnel shall determine whether the person has standing.

- B. Frisk Search (Terry v. Ohio, 392 U.S. 7 [1968].) The frisk search stems from Terry v. Ohio which authorizes that an officer may conduct a cursory pat-down designed to discover weapons. The first factor necessary to perform a frisk is reasonable suspicion. Pursuant to Illinois Compiled Statutes 725 5/107-14, Temporary Questioning without Arrest, officers may temporarily stop individuals for the purpose of conducting field interviews when there is insufficient probable cause for arrest, provided that the officer has reasonable suspicion (or reasonably infers from the circumstances) that the person is committing, has committed, or is about to commit a violation of the law. This reasonable suspicion is required for any Terry Stop. Absent reasonable suspicion, a frisk cannot be done without consent.
1. Pursuant to Illinois Compiled Statutes 725 ILCS 5/108-1, an officer may frisk an individual for weapons if the officer has stopped that person for temporary questioning and reasonably suspects that he/she or another is in danger of attack.
 - a. The authority to search for and seize weapons is for the limited purpose of protecting the officer and others.
 - b. The authority is clearly not for the purpose of searching for and seizing evidence. During the course of a frisk, however, evidence may on occasion be discovered and become the basis for an arrest.
 - c. The "plain feel" doctrine authorizes an officer to seize evidence other than a weapon if, in conducting the frisk, the contraband nature of the evidence is "immediately apparent" to the officer based on a feel of the object through the suspect's clothing during the pat-down. "Plain feel" must be based on the initial feel of the item. Repeated feeling and/or manipulation of the item is not allowed in establishing "plain feel". Officers must have probable cause to believe that the item was crime-related at the time it was felt. Officers should rely on their training and experience to establish this probable cause.
 2. Any officer who initiates a frisk must be able to articulate the reasonable suspicion justifying the Terry Stop and the reason(s) for suspecting that he/she or others in the immediate area are in danger. This information may be drawn from sources including, but not limited to:
 - a. Training.
 - b. Education.
 - c. Prior experience in similar situations.

3. Pursuant to Illinois Statute 725 ILCS 5/107-14, the officer shall provide the person with a stop/frisk receipt at the conclusion of the stop involving a frisk.
 4. A frisk of a vehicle may also be done if the same criteria are met: reasonable suspicion and reason to suspect that the person may attack the officer or others (Michigan v. Long, 463 US 1032 (1983)).
 - a. A vehicle frisk is also only for weapons.
 - b. A vehicle frisk may only be done in the areas immediately accessible to the person (i.e. reaching distance).
- C. Movable Vehicle Exception. There are two reasons given for allowing the search of a vehicle with probable cause, but no warrant. Vehicles do not share the same expectations of privacy as a home or other personal items. In addition, obvious mobility of an automobile would make it impractical to require the police to first obtain a warrant.
1. Officers do not actually have to prove that a vehicle might or would be gone if a warrant were obtained before making the search.
 2. The existence of probable cause alone justifies the exception.
 3. The movable vehicle exception allows an officer to search any portion of the vehicle or its contents where there is probable cause to believe evidence or contraband may be located.
 4. This type of search should not be confused with a search incident to arrest or inventory search.
- D. Crime Scene Searches may fall into several areas of warrantless searches, which include Consent (Section A), Movable vehicle (Section C), Plain view (Section H), Search incident to arrest (Section G), and/or Exigent circumstances, if other exigency separate from the seriousness of the crime exists (Section E).
1. If an employee discovers a crime scene during the course of his or her duties, the employee will immediately summon sworn personnel. An officer discovering, or summoned to, a crime scene will:
 - a. Secure the area and keep it in the same physical condition as it was left by the offender.
 - b. Render assistance to the injured.
 - c. Attempt to identify witnesses and victims.
 - d. Attempt to locate, identify, and arrest the offender at the scene.

- e. Notify a sworn supervisor if not already on the scene.
 - f. Yield responsibility to follow-up investigators and/or evidence collection personnel.
 - 2. A search warrant may be required to maintain access to the crime scene. If a person with standing (not an arrestee) does not consent to police presence, a search warrant should be sought.
- E. The Exigent Circumstances exception allows an officer to make a warrantless search in situations where the officer recognizes there is not time to obtain a warrant.
- 1. Factors to consider in determining if exigency exists:
 - a. If a search is not conducted immediately, evidence will be destroyed.
 - b. The gravity of the offense committed.
 - c. Is the suspect reasonably to be considered armed and therefore dangerous?
 - d. Probable cause exists that the suspect committed the offense.
 - e. There exists strong reason to believe that the suspect is on the premises.
 - f. There is a likelihood that the suspect will escape if not immediately apprehended.
 - g. The circumstances of entry and time delay.
 - 2. The aforementioned factors will contribute to the "totality of the circumstances."
 - 3. An additional, widely recognized exigent circumstances search is the well-being check. These are situations in which the health and well-being of a person are involved.
 - a. In most cases, there is no reason for police to suspect criminal activity.
 - b. Entries are made into private premises solely to determine the well-being of the resident.
- F. Inventory Searches of property seized by police personnel. Inventory searches have been justified for three reasons: an inventory protects the property of the owner, it protects the law enforcement agency against claims the property has been lost or stolen, and it allows police to discover any potential danger that may exist because of the contents of the property itself.

1. Limitations on these searches include:
 - a. The property to be searched must have come lawfully into the possession of the police employee.
 - b. The inventory must be conducted pursuant to standard operations and policies prescribed by the Department.
2. Seized vehicles involved in an arrest must be inventoried and recorded on a towing report.
 - a. If a vehicle is inventoried, all containers and possessions in the vehicle shall be searched. When no key is available, locked containers will be opened in a manner which minimizes the risk of damage. The Shift Supervisor or a designee may authorize the opening of a locked container by a locksmith for completion of the inventory search.
 - b. Procedures for vehicle inventory are located in General Order 505, Vehicle Towing Procedures.
3. Additional items of property subject to an inventory search include:
 - a. Found property.
 - b. Property turned over by citizens for safekeeping.
 - c. Property turned in by a citizen for destruction, e.g., firearms, ammunition, other weapons.
 - d. Abandoned property.

G. Search Incident to Arrest is an exception to the search warrant requirement. The Illinois Compiled Statutes 725 ILCS 5/108-1 provides for this type of search upon making a valid arrest.

1. Officers may reasonably search the person arrested and the area within that person's immediate control (lunge area) for the purposes of:
 - a. Protecting the officer from attack.
 - b. Preventing the person from escaping.
 - c. Discovering the fruits of the crime.
 - d. Discovering any instruments, articles, or things which may have been used in the commission of, or which may constitute evidence of, an offense.

2. Searches of motor vehicles incident to arrest will comply with *Arizona v. Gant* (556 U.S. ___, 129 S.Ct. 1710, 173 L.Ed.2d 485).
3. In searches incident to an in-home arrest, a protective sweep is allowed for areas where other persons may be found and cannot last any longer than is necessary to dispel the reasonable suspicion of danger (*Maryland vs. Buie*, 494 U.S. 325, 110 S. Ct. 1093, 1099, 108 L.Ed. 2d 276 [1990]).
4. The only justification needed for a search incident to arrest is that a valid arrest occurred. Officers making an arrest, will immediately announce that the person is under arrest, and the charge(s) for which the person was placed under arrest.
5. Prior to placing a prisoner into a police vehicle, an officer shall conduct a thorough search of the prisoner and outer garments.
 - a. Officers shall take and maintain custody of purses or bags carried by prisoners, checking for weapons and contraband.
 - b. The interior of the police vehicle shall be searched prior to and after transporting a prisoner.
6. **Strip searches** will conform to the requirements of Illinois Compiled Statutes 725 ILCS 5/103-1. No person arrested for a traffic, regulatory, or misdemeanor offense, except in cases involving weapons or a controlled substance, shall be strip searched unless there is a reasonable belief that the individual is concealing a weapon or controlled substance. (Cannabis is not a controlled substance. Refer to 720 ILCS 570/206, Controlled Substances Act, Enumeration, Schedule II.)
 - a. All strip searches shall be performed by persons of the same sex as the arrested person and on premises where the search cannot be observed by persons not physically conducting the search.
 - b. Every sworn officer or employee of the University of Chicago Police Department conducting a strip search shall:
 - 1) Obtain written permission of the Commander designated for authorizing strip searches in accordance with this section.
 - 2) Prepare a report of the strip search. The report shall include:
 - a. The written authorization required by paragraph (1) of this subsection.
 - b. The name of the person subjected to the search.
 - c. The names of the persons conducting the search.

- d. The time, date, and place of the search.
 - e. A copy of this report shall be provided to the person subject to the search.
 - c. Transgender detainees shall be given the option as to the gender of the officer(s) conducting the search, including the option of both a male and female to be present. If the transgender detainee does not specify a preference, then the search will be done by one female and one male.
 - d. Gender expression alone, inconsistent with gender or gender identity, will not be a determining factor in the gender of the officers conducting the search. Gender expression may be transient, changing from moment to moment.
 - e. Strip searches of juvenile detainees.
 - 1) Strip searches of juvenile detainees shall always be conducted by two (2) officers, one to observe and one to conduct the search.
 - 2) At least one of the officers shall be a Juvenile Officer.
 - 3) Officers conducting a strip search of a juvenile must not touch the juvenile.
 - 4) The parent or guardian of the juvenile shall be notified of the search and its results.
 - f. **No search of any body cavity, other than the mouth, shall be conducted without a duly executed search warrant.** Any warrant authorizing a body cavity search shall specify that the search must be performed under sanitary conditions and conducted either by or under the supervision of a physician licensed to practice medicine in all of its branches in the State of Illinois. Any police employee present for a non-mouth body cavity search shall be of the same gender as the person being searched, and shall ensure that persons not conducting the search cannot view the search.
- H. Plain View Discovery has been upheld by courts as long as the officer was legitimately on the premises and had probable cause to believe the property was evidence or contraband. Limitations on plain view discovery:
 - 1. There must be no pre-observation intrusion that violated constitutional rights.
 - 2. The item(s) must have been discovered inadvertently.

3. Artificial devices that aid in or enhance the ability of the officer's view are permitted by the constitution. Use of field glasses or a flashlight to make the observation of seizable goods triggers no Fourth Amendment protection.
 4. Moving items or the rearrangement of items to note serial numbers, for example, is not supported by the "plain view" doctrine.
 5. The "plain view" doctrine also applies to warrant searches, even if the item to be seized was not noted on the search warrant. The test is:
 - a. Does the officer have a right to be where he or she is?
 - b. Does the officer have probable cause to believe the item in the open is evidence or contraband?
- I. Open Field Searches typically involve marijuana cultivation. The Supreme Court has held that the home and its curtilage are not necessarily protected from inspection that involves no physical invasion. "What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection." (Katz vs. United States, 389 U.S. 347, 351 [1967]). Police officers may see what may be seen, "from a public vantage point where they have a right to be." (476 U.S. at 213) Areas outside the "curtilage" include:
1. Woods.
 2. Pastures.
 3. Grassland.
- J. Night-time Security Checks are another form of a warrantless search held to be Constitutional by the courts.
1. These searches are permissible only in a business and only if the officer's intent is to determine if any unauthorized people are inside.
 2. The officer may also check for owner information so notification can be made.