

COVINGTON POLICE DEPARTMENT STANDARD OPERATING PROCEDURE

Subject: SEARCH AND SEIZURE

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Purpose

To provide guidelines for search and seizure procedures for patrol and investigative situations.

Statement of Policy

It shall be the policy of the Covington Police Department to conduct searches and seizures pursuant to established state and federal laws and applicable court decisions. The Fourth Amendment guarantees the right for people to "be secure in their persons, houses, papers and effects, against unreasonable searches and seizures". The courts are constantly reinterpreting the Fourth Amendment as it applies to police conduct, so officers must stay current on the latest decisions.

Illegally seized items of evidence will not be admitted in court and may be cause to lose a criminal case. Additionally, an illegal search invites judicial challenges and civil law suits. In order to ensure that Fourth Amendment rights are protected, officers will obtain search warrants based upon probable cause in all appropriate criminal cases except for the following circumstances:

- A. Consent searches.
- B. Emergency searches.
- C. Plain view.
- D. Abandoned property and open fields.
- E. Inventory searches of vehicles.
- F. When executing arrest warrants.
- G. Incident to arrest.
- H. Pat downs of suspicious persons.
- I. Vehicles searches under moveable vehicle exception.

As a rule, no arrest warrant is required for arrests in a public place, as long as probable cause exists.

Definitions

- A. SEARCH - A search is a quest for information. The term "implies some exploratory investigation, or an invasion and quest, a looking for or seeking out...a prying into hidden places for that which is concealed." "A search occurs when 'an expectation of privacy that society is prepared to consider reasonable is infringed.'" *Maryland v. Macon* 472 U.S. 463 (1985).
- B. SEIZURE - The act of taking and removing tangible personal property. "A seizure occurs when 'there is some meaningful interference with an individual's possessory interests' in the property seized." *Maryland v. Macon*.

A seizure also occurs when officers attempt to maintain a status quo until a warrant can be obtained (e.g. officers lock premises, wait inside or outside for the arrival of a warrant).

A seizure of a person occurs not only in the case of an arrest, but also where a person is restrained so that he cannot walk away.

I. Consent

- A. A search warrant is not necessary where a person who has authority or control over the thing or place to be searched consents to the search. The officer doesn't have to have reasonable suspicion or probable cause to make a consent search. The officer may merely ask for permission from someone with control over the premises. If that person grants permission, the search may take place. The sole justification for a consent search is the existence of voluntary consent. It is upon the officer to show that the consent was given voluntarily and without threat or coercion. Verbal consent is valid, but harder to prove it was given voluntarily. Thus, in all cases where written consent may reasonable be obtained, a written consent should be obtained to show that the consent was given voluntarily, freely and willfully without threat or coercion.

Consent searches must observe the following rules:

1. Generally, the person granting consent must use, have access or control over the property.
2. If two people have joint ownership of the property, either may give consent.
3. A landlord, including the hotel/motel manager, cannot consent to a search of a tenant's premises unless the tenant has been evicted or has abandoned the property.
4. A husband or wife, or one member of a cohabiting unmarried couple, may consent to a search of the area of common ownership or use.
5. A parent may consent to a search of premises occupied by a dependent minor child.
6. An employee cannot give valid consent to a search of his employer's premises unless he has been left in custody of the premises.

7. An employer may generally consent to a search of the premises used by employees, except premises used solely by the employee, for example, a locker.

Consent must be given voluntarily. If an officer requests consent from a citizen under circumstances which a reasonable person would have considered coercive, then the officers must seek a warrant. The officers have the burden of demonstrating voluntariness.

A person who initially gives consent may withdraw consent at any time. Officers then shall secure the premises and seek a warrant.

II. Emergency Searches

A search warrant is not necessary in an emergency. An emergency is sometimes referred to as "exigent circumstances".

Ten factors should be considered by the officer in determining whether an emergency or exigent circumstances exist.

- A. A degree of urgency is involved and the time required getting a warrant.
- B. An officer's reasonable belief the contraband is about to be removed or destroyed.
- C. The possibility of danger to others, including the officer left to guard the site while obtaining a warrant.
- D. Information that the possessors of the contraband are aware that the police are on their trail.
- E. Whether the offense is serious or involves violence.
- F. Where the officer has reason to believe the suspect is armed.
- G. Whether the officers have probable cause.
- H. Where the officers have strong reason to believe that the suspects are present on the premises.
- I. The likelihood the suspect will escape.
- J. The suspect's entry onto the premises after hot pursuit.

If officers enter premises with probable cause to believe that critical evidence will be destroyed or removed unless immediate action is taken, they may enter without a warrant, secure premises and obtain a search warrant before proceeding further, unless they have obtained consent to search or new circumstances arise necessitating another warrantless search. However, a search warrant must be obtained once the exigency of the situation has been resolved. No further search may be conducted and anything found subsequent may be suppressed at a later time.

III. Plain View Search / Seizure

A plain view seizure is, technically, not a search. To make a plain view seizure of "property contraband, fruits or instrumentality of the crime", two requirements must be met:

- A. The seizure must take place where the officer has legally observed the property, and it must be immediately apparent to the officer that the items he observed may be evidence in the crime, contraband and otherwise subject to seizure.
- B. The officer may not move the items, look inside or underneath or behind them for serial numbers or other identifying marks. If such movement is necessary, the officer shall obtain a search warrant.

IV. Abandoned Property and Open Fields

A search warrant is not required for property that has been abandoned. To constitute abandoned property, two conditions must apply:

- A. The property was voluntarily abandoned.
- B. Property was discarded outside the area in which someone has reasonable expectation of privacy.

The Fourth Amendment does not protect open fields, but the officer must distinguish them from curtilage, which essentially is a yard where private residences are concerned. Curtilage has no absolute definition that officers can apply under all circumstances. The extent of curtilage of a private residence, for instance, is determined by whether the area is enclosed; the nature of the use of the area; proximity of the area to the home; and the measures taken by the homeowner to protect the area from observation.

V. Inventory Searches of Vehicles

See SOP-P160 Vehicle Impounds

VI. When Executing Arrest Warrants

General Guidance

An officer with a valid arrest warrant may search for the defendant in his or her own home. If probable cause exists that the defendant is at home at the time of the search, the search must be limited to places where the defendant might be found.

Protective Sweep

The U.S. Supreme Court has ruled that officers may undertake a protective sweep of the premises without a warrant following the arrest upon a warrant, however, certain limitations must be observed however:

- A. The purpose of the protective sweep is to discover persons on the premises who might present a danger to other officers.
- B. Incident to arrest, officers may without probable cause, or reasonable suspicion look in the closets or other spaces immediately adjoining the place of arrest or where threatening persons might be located.

- C. In order to extend a protective sweep beyond the closets and adjoining spaces, the officer must have reasonable suspicion for fearing that persons may be on the premises that pose a threat. In such cases, the sweep is limited to examining places where a person might hide. It is important that officers carefully document their reasonable suspicion.
- D. During a protective sweep, evidence discovered in plain view may be seized.
- E. The sweep must cease when officers have dispelled any reasonable suspicion of danger.

VII. Warrantless Vehicles Searches

In recent years, the U.S. Supreme Court has modified and expanded conditions in which officers may search vehicles. Preferably, officers will search vehicles with the authority of warrant whenever there is sufficient time to obtain one. Nevertheless, warrantless searches of vehicles may take place under many conditions and circumstances. It is imperative the officers understand the different types of vehicles searches and their limitations.

Definition

For the purpose of this policy, a motor vehicle is any vehicle operated or capable of being operated on the public streets or highways including trucks, automobiles, motor homes, motorcycles or any other vehicle capable of carrying persons or property. A vehicle that has been immobilized in one location for use as a storage facility, such as a driveway at a private residence, is not a motor vehicle for the purpose of this policy. For the purpose of this policy, a search is an examination of a motor vehicle with an investigative motive; that is, to discover evidence or to examine the vehicle identification numbers to ascertain ownership.

When warrantless searches of vehicles may be performed.

As noted earlier, a search warrant should be obtained in circumstances where feasible; however, no search warrant is ever required to search a vehicle in a public place provided probable cause exists for the search. Additionally, a search warrant is not needed with the driver's consent; when a frisk is being conducted for weapons; when necessary to examine the VIN or otherwise ascertain ownership or under exigent circumstances. Searches may be conducted within the following limitations:

- A. With a warrant, a search may extend anywhere within the vehicle unless limited by the warrant itself.
- B. When probable cause exists, a search may extend to anywhere within the vehicle, unless probable cause is limited to a specific part of the vehicle.
- C. When consent has been obtained from the driver or owner, the officers may search the vehicle subject to limitations specified by the consenting person. Consent should be obtained in writing if all possible. It is the responsibility of the searching officer to ensure the consent was given freely and voluntarily without coercion or threat.
- D. Frisk for weapons shall be confined to the passenger area. Any place not immediately accessible to occupants, such as locked glove compartment, shall not be searched. If the contents of the container are immediately accessible to the subject, that closed container may be searched for weapons. Note that an

officer can order the suspect from the vehicle and frisk the subject and search the vehicle; however, this is solely based on reasonable, articulable suspicion that the person is engaged in criminal activity, and that person may be armed.

- E. An entry into the vehicle to examine the VIN or otherwise determine ownership must be limited to that purpose.
- F. An emergency search of the vehicle may be conducted, but the extent of the search must not exceed whatever is necessary to respond to the emergency.

If initial search above the above conditions gives rise to probable cause that evidence, contraband, fruits or instrumentalities of a crime might be found elsewhere in the vehicle, officers must search areas that might reasonable contain such items.

Containers within the vehicle

As a rule, no container in the vehicle shall be searched unless it might contain the item or items sought.

Procedures for unlocked containers

In a probable cause search, containers may be opened whenever found in a vehicle.

- 1. During a consent search, containers may be opened, if the terms of consent either supplement or reasonably imply permission.
- 2. Containers found in or discarded from a vehicle in circumstances not amounting to probable cause or abandoned property or in connection with a search incident to arrest shall not be searched, but shall be secured until a warrant is obtained if probable cause exists.

Location and time of search

- 1. Whenever possible, searches of vehicles shall be conducted contemporaneously with the stopping of or discovery of the vehicle. As a general rule, vehicle searches shall be conducted as soon as reasonably possible.
- 2. Whenever possible, officers shall avoid damaging a vehicle or its contents, and should minimize the intrusiveness of the search and any inconvenience suffered by the owner or passengers.

This SOP supersedes any SOP previously issued.

BY ORDER OF THE CHIEF OF POLICE

Stacey L. Cotton
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Chief of Police