

PLANNING AND DEPLOYMENT
TRANSMITTAL OF WRITTEN DIRECTIVE

FOR SIGNATURE OF: James E. White, Chief of Police

TYPE OF DIRECTIVE: Manual Directive 202.2

SUBJECT: SEARCH AND SEIZURE

ORIGINATED OR REQUESTED BY: Planning, Research, and Deployment

APPROVALS OR COMMENTS:

The contents of the above manual directive are pending review. Revisions are indicated with italics. This newly revised directive will rescind the current Search and Seizure Policy, 202.2. Once reviewed, the newly revised directive will then be submitted to the associated Reviewing Office before submission the BOPC.

The recommended changes reflected in this policy are as follows:

1. **202.2 – 3.7 - Search** – This definition was changed to reflect the definition that was used in previous DPD Directive 404.1 "Definitions" for consistency purposes, given that the definition of "search" found in former Directive 404.1 is likely implemented in other DPD Manual Directives.
2. **202.2 – 5.5 – Co-occupant Objection to Consent Searches** – Information was added to incorporate case law (Fernandez v. California) included in Training Directive 19-10 "Search and Seizure."
3. **202.2 – 14.1 – Consent Search** – Information from case law (People v. Mead) was added to this section following correspondence with personnel from Disciplinary Administration. Michigan State Police's Legal Update No. 140 was utilized to incorporate this new legal content.
4. **Related Procedures/Related Forms**– Training Directive 19-10 and Strip Search Authorization Form (DPD 190) – The relevant, updated information from this Training Directive was added to Related Procedures given its implementation subsequent to the currently posted Manual Directive. The Strip Search Authorization Form (DPD 190) was previously referenced within the currently posted Manual Directive but unable to be located for member use on the Department Intranet. Using an archived format of DPD 190 and best practices, a new Strip Search Authorization form was created and has since been approved by the Office of (the) Legal Advisor.

Additional revisions were made following review by 2nd Deputy Chief Ha. These changes are in accordance with 2nd Deputy Chief Ha's recommendations.

APPROVED
JAN 04 2022
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SECOND DEPUTY CHIEF
OFFICE OF LEGAL ADVISOR

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AFTER THE DIRECTIVE IS APPROVED AND SIGNED, PLEASE RETURN TO
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Series 200 Operations	Effective Date	Review Date Annually	Directive Number 202.2
Chapter 202 - Limits on Authority			
Reviewing Office Police Legal Advisor			<input type="checkbox"/> New Directive <input checked="" type="checkbox"/> Revised <small>Revisions are in <i>italics</i></small>
References			

SEARCH AND SEIZURE

202.2 - 1 PURPOSE

To establish guidelines and procedures for conducting searches by *officers* of the Detroit Police Department (DPD) including searches by consent, searches of motor vehicles, searches of persons (e.g., incident to an arrest, detainee inventory, body cavity and strip searches), investigatory stops, stops and frisks, searches under exigent circumstances and other searches authorized by state and federal law.

202.2 - 2 POLICY

Officers shall observe the rights of citizens under the Fourth Amendment to the U.S. Constitution which guarantees the right of people to be free from unreasonable searches and seizures of *their* home, person, and things. Searches shall be accomplished pursuant to a valid search warrant obtained upon probable cause, except in those instances where there is a clearly recognized legal exception to the warrant requirement. Officers conducting a search and/or seizure, with or without a warrant, shall be courteous and show respect for the rights, welfare and property of the citizens involved.

202.2 - 3 Definitions

202.2 - 3.1 Body Cavity Search

A physical intrusion into the interior of the human body not visible by normal observation. The search shall only be conducted by a qualified medical professional and only with a valid search warrant.

202.1 - 3.3 Container

An item capable of holding another item.

202.1 - 3.3 Exigent Circumstances

Circumstances based upon probable cause, which by courts have been determined to include the following: the need to prevent the escape of a fleeing felon; the imminent destruction of evidence; and the risk of danger to police or others.

202.2 Search and Seizure**202.2 - 3.4 Open View**

Situations when there is no reasonable expectation of privacy, it is not a search. *An officer sees what the public could see.*

202.2 - 3.5 Plain View

Involves a situation when the police are lawfully in an area that is protected by the Fourth Amendment. While in the area the police find items that they have probable cause to believe could be evidence or contraband, and it is immediately apparent to them.

202.2 - 3.6 Probable Cause

In the arrest context, a reasonable belief that an individual has committed, is committing, or is about to commit an offense.¹ In the search context, a reasonable belief that the person(s) or items subject to seizure will be found in a place specified at the location.

202.2 - 3.7 Reasonable Suspicion

The specific facts and reasonable inferences drawn from those facts to convince an ordinarily prudent person that criminality is at hand.

202.2 - 3.8 Search

An examination of a person, place or object with the intent of discovering, locating, and securing contraband; evidence of a crime to be used in the prosecution of a criminal action; other property; and/or persons, including suspects.

202.2 - 3.9 Strip Search

A search of a person requiring the removal of a person's clothing to expose underclothing, breasts, buttocks or genitals.

202.2 - 3.10 Vehicle

All vehicles impelled on the public highways by mechanical power, except traction engines, road rollers and such vehicles as run only upon rails or tracks.

202.2 - 4 Procedures**202.2 - 4.1 Search Warrant**

1. An application for a search warrant is presented to a judge for review. It outlines the particular contraband or evidence to be seized that *an officer* believes is present on the premises and why. The document also describes the exact geographical location of the property or place, what the place looks like and how the *officer* learned about these things.
2. If the judge concludes that there is probable cause to support the application (e.g., belief that seizable property exists in a particular place or on a particular person), *they* will issue a search warrant. This document permits police officers to search the property without the owner's permission and seize the items named in the warrant.

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3. After the officer executes the warrant, *they* must file a return or search warrant (within 24 hours) with the court itemizing what (if anything) was seized. (Refer to Directive 202.3 Search Warrants)

¹ It should be noted that the definition of probable cause includes a reasonable belief that a person is "about to commit" a crime. MCL 750.92 requires that "[a]ny person who shall attempt to commit an offense prohibited by law, and in such attempt shall do any act towards the commission of such offense" has committed an *attempted* crime. If a person has not taken any act towards the commission of a criminal offense, there is no probable cause for an arrest. However, an investigative detention (**Terry v. Ohio**, 392 U.S. 1, 1968) is permitted when there exists reasonable articulable suspicion. Reasonable articulable suspicion exists where the facts and reasonable inferences drawn from those facts convince an ordinarily prudent person that criminality is at hand."

202.2 - 4.2 Exceptions to the Warrant Requirement

1. Courts and department policy recognize that some situations may require officers to take immediate action; and, as a result, have exempted officers from the usual requirement of a warrant under some circumstances. The following are circumstances that may exempt an officer from securing a search warrant prior to a search:
 - a. Consent searches;
 - b. Community Caretaking (Emergency Situations) search;
 - c. Exigent Circumstances search;
 - d. Plain view;
 - e. Abandoned personal property;
 - f. Executing arrest warrants;
 - g. *Hot pursuit*;
 - h. Terry Stops and Frisks;
 - i. Searches incident to an arrest;
 - j. Detainee inventory searches; and
 - k. Vehicle searches (in specific instances)

202.2 - 5 Consent Search

202.2 - 5.1 General

1. A search warrant, probable cause, or reasonable suspicion is not necessary to conduct a search where a person, who has authority or control over the thing or place to be searched, consents to the search. An officer may merely ask for permission from someone with authority or control over the premises or the item *they wish* to search. If that person grants permission, the search may take place.
2. Written consent should be obtained whenever possible before conducting a search based on consent by utilizing the Consent to Search Form (DPD675).
3. The sole justification for a consent search is the existence of a knowing, intelligent, and voluntary consent. The legal standard for determining if consent was given voluntarily is an evaluation of the totality of the circumstances. If an officer requests consent from

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a citizen under circumstances which a reasonable person would consider coercive, then the officer must seek a warrant (if probable cause exists) prior to a search.

4. A person need not be told that they have a right to refuse consent. *An officer* may not misrepresent the limits of *their* authority and should accurately answer any questions that are asked.
5. A person may withdraw *their* consent at any time and has the right to limit the scope of *their* consent (e.g., a person can consent to the search of only one room of a house). Revocation of consent does not constitute probable cause that contraband or evidence of a crime will be found.
6. All consent searches must be conducted reasonably. For example, consent to search the trunk would justify the opening of containers, but unless explicitly authorized, it would be unreasonable to believe that general consent would authorize *an officer* to break open and damage locked containers.

202.2 - 5.2 Consent During Traffic Stops

1. Once *an officer* issues a civil infraction or a verbal warning, the officer shall return the license, registration, and certificate of insurance before asking for consent to search the motor vehicle.
2. The officer may advise the driver - *though the officer is not required to do so* - that *they are free to go* before requesting consent to search.

202.2 - 5.3 Third Party Consent

1. One person may not “give up” the constitutional rights of another person.
2. Third party consent recognizes that people have “common authority” over a piece of property or premises at which property is stored and may give consent in *their own* right. Common authority rests “on mutual use of the property by persons having joint access or control for most purposes” (United States v. Matlock, 415 U.S. 164 [1974]).
3. Common authority is not the same as legal ownership. A person can have common authority, but not have legal ownership (e.g. one person who resides with another in the other person’s apartment would have no legal ownership or is the signed contractual tenant, but would have common authority in shared areas).

202.2 - 5.4 Consent by Parents

There is no common rule or guidelines that a parent cannot give valid consent to search a room of an adult son or daughter. Each case depends on the circumstances because the parent may have actual common authority based on joint access or control.

202.2 - 5.5 Co-occupant Objection to Consent Searches

1. In dealing with third party consent where a co-occupant is at the scene and refuses consent, a warrantless search has been deemed unreasonable because of the objecting co-occupant. As a general rule, if one person who possesses common authority to give consent to jointly controlled premises gives consent, but a second

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co-occupant is physically present and refuses to give permission to search, a consent search is not justified (*Georgia v. Randolph*, 547 U.S. 103 (2006)) .

2. However, when an objecting co-resident is removed for objectively reasonable purpose (such as a lawful arrest), the remaining resident may validly consent to search (*Fernandez v. California*, 571 U.S. (2014)).

202.2 - 6 Community Caretaking (Emergency Situations)

A search warrant is not necessary in emergency situations if a person within the dwelling is in need of aid or assistance. Officers must be able to articulate the specific facts that an emergency did exist and that entry was needed to assist. A guiding principle is whether an officer would be derelict in *their* duties for not entering.

202.2 - 7 Exigent Circumstances

The following exigent circumstances would justify a warrantless search:

- a. If officers have a reasonable belief that contraband is about to be removed or destroyed, *they* may conduct a search and seizure, without a warrant, provided probable cause exists, and it can be shown that the search was necessary to prevent the possible imminent destruction of evidence.
- b. If officers are pursuing a felony suspect, and have reason to believe that *they have* entered a particular *premises*, the officers may enter those premises to search for *them*. To justify warrantless entry following the pursuit, the arrest process must have begun away from the premises and the offender is trying to avoid arrest.
- c. *If there is reason to believe risk or danger exists for police or other persons.*

Probable cause must always be an existing factor when considering exigent circumstances. Furthermore, officers must be able to articulate specific facts regarding the totality of the circumstances, given that not all crimes are serious enough to create exigent circumstances (e.g. violent crimes such as felonious assault and arson may create exigent circumstances while lesser offenses such as damage to property may not).

202.2 - 8 Plain View Doctrine

1. A plain view seizure is, technically, not a search. To make a plain view seizure of property (contraband or evidence of a crime) two (2) requirements must be met:
 - a. Officers are lawfully present and observe the contraband; and
 - b. It must be immediately apparent to the officer that the items *they observe* may be evidence of a crime, contraband, or otherwise subject to seizure. An officer may not move an item to look underneath for serial numbers or identifying marks.

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2. From time to time an officer may have a lawful reason to open a vehicle door or enter a vehicle (e.g., to examine the vehicle identification number, check for defective equipment, assist a motorist in moving a disabled vehicle). If the officer's actions are reasonable and are narrowly limited to those necessary to accomplish *their* goal, and if while properly within the vehicle the *officer* sees a weapon carried in violation of the law or contraband, then the officer may seize it.

202.2 - 9 Abandoned Personal Property

A search warrant is not required for personal property that has been abandoned. To constitute abandoned property, two (2) conditions must apply:

- a. The property was voluntarily abandoned; and
- b. The property was discarded outside the area in which someone has a reasonable expectation of privacy (e.g., in a trash receptacle in an alley).

202.2 - 10 Executing Arrest Warrants

1. Officers with an arrest warrant may search for a person in *their* home provided the warrant is valid and there is reason to believe that the suspect is home at the time of the search. The search for the suspect must be limited to places where a person may be found. For example, an officer may not open a dresser drawer if it does not appear that a person is able to hide there.
2. To search for a person in the home of a third party, an officer must have a search warrant.
3. Officers may undertake a "protective sweep" of the premises where the arrest is for a violent crime and the arrest takes place without a warrant. The purpose of the "protective sweep" is to discover persons on the premises who might present a danger to officers. In order to extend a "protective sweep" beyond closets and adjoining spaces, officers 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 places where a person may hide.

202.2 - 11 Hot Pursuit

Hot pursuit provides that an officer who is "on the heels of a felon" in an area open to the public, of a criminal to arrest that criminal, can enter into a home or building, which has a reasonable expectation of privacy, if the criminal should attempt to escape by going into that area. Once inside, if the officer discovers items for which the officer has probable cause is evidence, they can seize those items without a warrant.

The following articulable elements must be met to allow a search under this legal exception:

- a) *Pursuit of a fleeing felon; and*

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b) *Exigent circumstances requiring immediate arrest.*

Officers must have probable cause to arrest the pursued person for a felony and may not make nonconsensual entry into a person’s home or other building for purposes of making a warrantless misdemeanor arrest.

202.2 - 12 Searches and Seizures of Persons

An understanding of this area of the law requires an understanding that courts have classified police interaction with citizens in three (3) categories. Police officers interact with the public in many different ways, only some of which involve the enforcement of criminal laws. Depending on the police conduct, the Fourth Amendment may or may not come into play and whether constitutional restrictions apply depends on the intrusiveness of the police conduct and whether the conduct constitutes either a “seizure” or “search” as those terms are defined by case law. If the Fourth Amendment applies, it may require either reasonable suspicion or probable cause. Obviously, if probable cause is required *but only reasonable suspicion exists*, then the police would be in violation of the Constitution.

202.2 - 12.1 Interactions with Citizens

Law Enforcement and citizen contacts can be broken down in three (3) tiers of conduct, each having different levels of searches and seizures of a person. The following is the three (3) tiers of interactions with citizens and citizens’ legal standards:

Tier 1 - Informational Encounters

Does it constitute a seizure?	No
Does it constitute a search?	No
Is the police conduct covered by the Fourth Amendment?	No
What level of justification must the officer have?	None

Tier 2 - Investigative Detentions (Terry Stop)

Does it constitute a Fourth Amendment seizure?	Yes
Does it constitute a Fourth Amendment search? ²	Yes
Is the police conduct covered by the Fourth Amendment?	Yes
What level of justification is required?	Reasonable Suspicion

² When a frisk is conducted during a Tier 2 Investigative Detention, reasonable suspicion for the frisk is required. *The reasonable suspicion for the frisk is separate from the reasonable suspicion for the stop.* Please see 202.2-11.3.

Tier 3 - Arrests (or equivalent)

Does it constitute a seizure?	Yes
Does it constitute a search?	Yes
Is it governed by the Fourth Amendment?	Yes
What justification is required?	Probable Cause

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202.2 - 12.2 Informational Encounters (Tier 1)

1. The first tier is based on the recognition that not all personal interaction between a citizen and the police rises to the level of either a Fourth Amendment “search” or a Fourth Amendment “seizure.” Therefore, Tier 1 conduct is usually conceived as a “non-seizure.”
2. The Constitution does not forbid the police asking for a citizen agreeing to voluntarily cooperate with the police. “A consensual encounter is simply the voluntary cooperation of a private citizen in response to non-coercive questioning by a law enforcement official.”
3. A person has been seized within the meaning of the Fourth Amendment only if, in view of the circumstances, a reasonable person would conclude that *they were* not free to leave. In some circumstances, it is useful to frame the question as whether the subject of the interaction with the police would reasonably have felt free to terminate the conversation.
4. This is an objective standard. The person’s subjective belief that *they were* not free to leave or to terminate the conversation is not determinative because that person may or may not be a “reasonable person.” Although doing so is a strong indication that the person was not detained, an officer is not required to advise the person that *they are* free to leave or free to decline to cooperate or answer questions. Several factors can be used to determine if an officer/citizen contact is an informational encounter or if it rises to another tier level:
 - a. Language used by the officer;
 - b. Commands;
 - c. Threatening presence of several officers;
 - d. Tone of voice;
 - e. Display of weapon;
 - f. Physical touching;
 - g. Words or actions indicating compliance with the officer’s request might be compelled; or
 - h. Failure to return documents.
5. Simply asking if a person is willing to step aside and talk with the police is a consensual encounter that implicates no Fourth Amendment interest. Cooperation may not be induced by intimidating or coercive means.
6. The officer cannot act (by words or actions) in a manner that would lead a reasonable person to conclude that *they were* required to answer questions or would not be allowed to leave if *they attempted* to do so.

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GUIDELINES FOR INFORMATIONAL ENCOUNTERS

1. It should not be called a “stop” in the report or during testimony because reasonable suspicion is required for the type of Fourth Amendment seizure commonly referred to as a “stop.”
2. Asking a person “would you mind” answering a few questions is advisable.
3. Do not make demands or give instructions. A request for voluntary cooperation must be made in a manner that does not indicate that compliance will be required.
4. Do not frisk without reasonable suspicion or consent.
5. Do not give *Miranda* warnings.
6. Do not use any force.
7. Do not detain the person if *they refuse* to cooperate and attempts to leave. The failure to cooperate does not constitute reasonable suspicion justifying an investigative detention. Likewise, declining to give consent to frisk or search does not constitute reasonable suspicion or probable cause.
8. Do not arrest for refusing to provide a name.
9. Except in appropriate circumstances, do not arrest for providing a false name or false information during an investigative detention. The Michigan Supreme Court has ruled that a person cannot be charged with obstructing a police officer in the performance of duty (MCL 750.479) for giving a false name because that statute was construed to require threatened or actual physical interference. However, MCL 257.324(h) makes it a misdemeanor to furnish a peace officer false, forged, fictitious or misleading verbal or written identification identifying the person as another person, if (and only if) the person is detained for a violation of the motor vehicle code. However, in combination with other circumstances, an attempt to disguise one’s identity might increase reasonable suspicion justifying an investigative detention into an arrest for a crime other than making a false police report. (Refer to Training Directive #12-08 New Law on Providing False Information in Criminal Investigations)
10. Think through the answer if asked on cross-examination by defense counsel “what would you have done, officer, if my client had not cooperated and walked away?” While the duty is always to answer all questions truthfully, the truth may be that the officer had not decided on the course of action that would be followed under various contingencies that never happened. Courts do not ordinarily permit questions that call for speculation. The prosecutor’s objection to the question should also be sustained on another ground.
11. Since the relevant test for a seizure is defined by the objectively reasonable conclusion that would be reached under the circumstances on whether the person is free to leave, the unexpressed intention of the officer to detain the person if *they were* to walk away is not relevant to the custody inquiry.
12. While not legally required, specifically informing the subject that *they are* not being detained and *are* free to leave if *they so choose*, substantially increases the likelihood that a court will categorize the event as an informational encounter.

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202.2 -12.3 Investigatory Detentions (Tier 2)

An officer may stop an individual for the purpose of conducting an investigatory stop only where reasonable suspicion is present. Reasonable suspicion must be more than a hunch or feeling, but need not meet the test for probable cause, sufficient to make an arrest. The officer must be able to point to the specific facts that, when taken together with rational inferences, reasonably warranted the stop. Officers shall, if feasible and if it does not pose a danger to the officer or others, adhere to the following guidelines:

- a. Officers shall be courteous at all times during the contact but maintain caution and vigilance for furtive movements to retrieve weapons, conceal or discard contraband, or other suspicious actions;
- b. If not in uniform, officers shall clearly identify *themselves* as a law enforcement officer, by announcing *their* identity and displaying departmental identification;
- c. Before approaching more than one (1) suspect, individual officers should determine whether the circumstances warrant a request for backup assistance and whether the contact can and should be delayed until such assistance arrives;
- d. Officers shall confine questions to those concerning the suspect's identity and other questions necessary to resolve the officer's suspicions; and
- e. Suspects are not required, nor can suspects be compelled to answer questions posed during an investigatory stop. Failure to respond to an officer's inquires is not, in and of itself, sufficient grounds to make an arrest although it may provide sufficient justification for additional observation and/or investigation.

"Pat-Down" (Frisk)

Although the words "stop" and "frisk" have become synonymous with each other, they involve two (2) distinct acts and require separate justification by officers: the investigatory stop which is a brief detention of a person because of suspected criminal activity and the "pat-down" (frisk) which is a limited search for weapons for officer safety. Not every investigatory stop justifies a "pat-down" (frisk).

- a. A frisk is authorized only when the officer has reasonable suspicion that the person is armed and presently dangerous and the scope of the frisk is narrowly tailored to those specific reasons.
- b. Clearly, not every investigatory stop poses sufficient justification for conducting a "pat-down." An officer must have facts indicating that the person may be armed and presently dangerous (e.g., the type of crime suspected, prior knowledge of the suspect's propensity for violence, any indication that the suspect is armed, etc.). For example, there is an obvious difference between what is allowed during an "investigative stop" of a person sleeping on a park bench after the park has closed, as opposed to a person stopped for possession of narcotics. In the latter case, courts acknowledge that persons who engage in serious criminal conduct commonly carry weapons, so the officer's fear of the person is presumptively reasonable. The person

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- sleeping on the park bench may be frisked only if the officer can articulate reasonable grounds for believing that *they are* armed and dangerous.
- c. If an officer detects an object during a “pat-down” that *they* reasonably *believe* is contraband, the officer may seize it under the “plain feel” doctrine. However, the “plain feel” doctrine applies only if the officer has the right to conduct the “pat down” in the first place (just as the “plain view” doctrine applies only where the police have the right to be in the position from which *they* got the view). In addition, the officer may not conduct the “pat-down” in a manner that exceeds what is necessary to determine whether the person has a weapon.
 - d. During a traffic stop officers shall take reasonable steps to protect themselves. Officers may direct the occupants to step out of the vehicle. If the officer has a reasonable suspicion that the person is armed and dangerous, the officer may conduct a “pat-down.” It is of critical importance that officers be able to state specifically what it was about this situation that made *them* suspicious. It is not enough to say; “I was suspicious.” Officers shall include all details in *their incident* report as to those circumstances that attracted *their* attention to the suspect or the suspect’s vehicle and made *them* suspicious.

Procedures for Performing a “Pat-Down”

When reasonable suspicion exists to perform a “pat-down,” it should be performed with due caution, restraint and sensitivity. If reasonable suspicion exists to perform a “pat-down,” it shall be conducted as follows:

- a. If possible, “pat-downs” should be conducted by at least two (2) officers, one of whom performs the “pat-down” while the other provides protective cover;
- b. Officers are permitted only to externally feel the outer clothing of the suspect. The evidence must be “immediately apparent” to the officer and the fabric cannot be manipulated. Officers may not place *their* hands in pockets unless *they feel* an object that could reasonably resemble a weapon, e.g., firearm, knife, etc.; and
- c. If the external feeling of the suspect’s clothing fails to disclose evidence of a weapon, no further search may be made.
- d. If a weapon is found *and the suspect does not have a valid concealed pistol license*, the officer may make an arrest of the suspect and complete a full custodial search of the suspect. The search shall not be discontinued simply because one (1) weapon has been found.

Recording the Investigatory Stop or Stop and Frisk

1. Officers must check either the “FRISK” or “STOP” box on *their daily activity log*.
2. *Every investigatory encounter and/or detention of this nature shall be documented on the officer’s daily activity log, in electronic format (“Officer Daily Report” found in RMS). Should any technological issues occur which prevent access to the electronic version of the officer’s daily activity log, a hard-copy in paper format may be submitted instead.*

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3. Officers shall articulate and document on *their daily activity log* and *incident* report the precise description of all the facts and circumstances of the initial stop or stop and frisk.
4. All officers shall *submit their daily activity logs* their supervisor by the end of *their* shift.
5. Supervisors shall review *daily activity logs* for all investigatory stops or stops and frisks conducted by *officers* of *their* command. Those unsupported by reasonable suspicion shall be documented on an Investigatory Stop or Stop and Frisk Form (UF-003), within twenty-four (24) hours of receiving the *officer's daily activity log*.

Commander's Review Report

The commander of the precinct and, if applicable, the commander that the specialized unit reports to shall review in writing all reported EXCEPTIONS to this department's investigatory stop and frisk policy. The Commander's Review Report (U-59) shall be completed within seven (7) days of receiving the Investigatory Stop or Stop and Frisk Form (UF-003). The Commander's Review Report shall include an evaluation of the actions taken to correct the EXCEPTION and whether any corrective or non-disciplinary action was taken.

202.2 - 12.4 Arrests (Tier 3)

1. The investigative detention and protective search authorized by Terry v. Ohio is limited. It authorized only a limited detention and a limited search. If the police exceed those limits, the conduct enters Tier 3 and is illegal in the absence of probable cause. Every arrest and/or every seizure having the essential attributes of a formal arrest *unless supported by probable cause is a violation of the Constitution*.
2. A person's mere presence or proximity to criminal activity does not, *in and of itself*, support probable cause to search or arrest that person.

202.2 - 13 Detainee Inventory Searches

1. A search of the arrestee's personal effects, as part of the booking process, is justified as an inventory procedure. An inventory search protects the department from false claims of missing or damaged property and prevents the introduction of contraband into the system.
2. Any contraband or evidence found during a detainee inventory search is admissible in court and can form the basis of new charge(s) being filed against the detainee.
3. *Searches of religious head coverings (e.g. hijabs) shall be conducted in an area where only the officer(s) conducting the search can see the individual being searched once the head covering is removed. In such instances, removal of head coverings in a non-private area is considered a violation of the individual's religious beliefs.*
4. *Every effort possible shall be made to respect the religious tenets of the person being searched, including having an officer(s) of the same sex as the detainee conducting the search, and doing so out of the view of persons not conducting, or necessary to assist with the search, when applicable.*

202.2 Search and Seizure**202.2 - 14 Search Incident to an Arrest**

1. The most common warrantless search is the search of a person under arrest. The major reason for this exemption is to protect the officer from a potential attack. Having to wait for a search warrant could increase the officer's exposure to possible injury from weapons that the arrested person may have.
2. For this exemption to be applicable there must be *the following criteria: the arrest is a lawful custodial arrest; the search is for weapons and evidence located within the immediate control of the arrestee; and the search is conducted contemporaneously (almost immediately) to the arrest.*

202.2 - 14.1 Strip Searches

1. An officer's authority to conduct a strip search incident to a lawful arrest is restricted to persons known or suspected of having committed a felony.
2. A person arrested for a misdemeanor offense shall not be strip searched unless *they are being lodged into a detention facility by order of a court or there exists reasonable cause to believe that the arrested person is concealing a weapon, a controlled substance, or evidence of a crime.*
3. Persons arrested for misdemeanor offenses may be strip searched only after written authorization is documented by preparation of the Strip Search Authorization Form (DPD190). Only the Chief of Police, or designee, (Commander of a precinct or specialized unit, Deputy Chief, Assistant Chief or *Chief Duty Officer*) may give written authorization.
4. Distribution is as indicated on the form. The original shall be given directly to the person being searched. *An incident* report shall also be prepared by the arresting officer to include relative information concerning the search.
5. A person of the same sex as the detainee shall conduct the search out of the view of persons not conducting or necessary to assist with the search. *An officer* assisting in a strip search shall also be of the same sex as the person being searched.

202.2 - 14.2 Body Cavity Searches

1. Under no circumstances shall there be a body cavity search of an arrested person by department personnel.
2. Where there exists probable cause to support a body cavity search, the *officer* shall apply for a search warrant.
3. If a search warrant is granted, the detainee shall be taken *to the closest authorized medical facility*, where a qualified medical professional will conduct the search.
4. Any member of the DPD witnessing the search shall be of the same sex of the person that is being searched.
5. The *officer* of this department that applied for the search warrant shall document the search on the return of search warrant and prepare *an incident* report including the following information:

202.2 Search and Seizure

- a. Name and sex of person subjected to the search;
- b. Name and sex of all persons conducting, assisting and witnessing the search;
- c. Time, date, and place of the search;
- d. Name of Judge authorizing the search warrant;
- e. A list of all items recovered from the person searched; and
- f. Attach a copy of the search warrant and the return of the search warrant to the *incident* report.

202.2 - 15 Vehicle Searches

202.2 - 15.1 General

For Fourth Amendment purposes, the automobile has a lesser expectation of privacy when compared to a dwelling, and therefore, there is a vehicle exception to the search warrant requirement. The vehicle exception is based upon two (2) main rationales:

- a. A vehicle is readily mobile; and
- b. Is subject to a range of police regulations inapplicable to a fixed dwelling (e.g., licensing, etc.)

Consent Search

1. When the owner or driver voluntarily consents to a search of a vehicle, *the* consent must be voluntary and not made under any threat or compulsion. The test for a valid consent search is based on the totality of the circumstances.
2. *Per the ruling of People v. Mead, consent to search property in a vehicle given by a driver who does not have actual or apparent authority over the property is invalid. This ruling overruled People v. LaBelle. Therefore, officers shall adhere to this ruling when considering property belonging to passengers of a vehicle (e.g. backpacks and purses) when conducting vehicle searches.*
3. *Depending on the totality of the circumstances, officers may be authorized to conduct a warrantless search of a container found in a vehicle, including those associated with a passenger, based on another judicially recognized exception to the search warrant rule (see 202.2-4.2) despite the absence of consent or if an individual with actual or apparent authority over the items/containers gives consent.*

Undriveable Vehicles

There are several types of vehicle searches based on varying legal standards and justifications, these are:

- a. With a Search Warrant;
- b. Probable cause search;
- c. Search incident to arrest of driver or occupant; or
- d. Inventory search

202.2 Search and Seizure**202.2 - 15.2 With a Search Warrant**

When searching under a warrant, *officers* may search all areas in which the object of the search warrant could be located.

202.2 - 15.3 Probable Cause Search of a Vehicle

1. If *an officer* has probable cause to search a vehicle, a warrantless search may be made of any area of the vehicle that could conceal the object of the search.
2. The search should take place within a reasonable amount of time. If the time period exceeds what is reasonable, then a search warrant should be obtained.
3. If probable cause exists to search a vehicle, the search may be conducted on the street or the vehicle may be removed to a more convenient location, such as the precinct.
4. Vehicles stored in garages may need a search warrant unless the search is based upon a recognized exception, such as consent or exigent circumstances. The reason for obtaining a search warrant in this case is because a garage is a Fourth Amendment protected premises.
5. The scope of this type of search is anywhere in the vehicle, and any containers, that could hold the object for the probable cause search. *Officers* have the authority to force open any locked containers or compartments if authorized by a search warrant.

Dual Use Vehicles or “Mobile Homes”

Mobile homes can be considered a “dwelling” and a search warrant may be required in order to search a mobile home vehicle. Some factors to consider if the mobile home is a vehicle and not a “dwelling” is:

- a. Is the vehicle mobile with a turn of the key?
- b. Is the mobile home elevated on blocks?
- c. Is the mobile home connected to utilities (e.g., water, electricity, etc.)?
- d. Is the mobile home readily accessible to a road?

202.2 - 15.4 Search of Vehicles Incident to Arrest of Driver or Occupant

1. Under limited circumstances *an officer* has the authority to search the passenger compartment of a vehicle incident to an arrest of an occupant of the vehicle.
2. Based on the court case *Arizona v. Gant* 556 U.S. 332 (2009), a police officer may search the passenger compartment of a vehicle incident to a recent occupant’s arrest only in two (2) circumstances:
 - a. The arrested person is within reaching distance of the passenger compartment at the time of the search; or
 - b. It is reasonable for the officer to believe the vehicle contains evidence that pertains to the offense for which the person is being arrested.

202.2 Search and Seizure

3. The search permitted by a search incident to lawful arrest is confined to the passenger compartment and does not include the trunk. Courts construe the term “passenger compartment” as areas that could be reached by an individual without exiting the vehicle.
4. Unlike a vehicle search justified by probable cause, a vehicle search incident to an arrest must be performed at the location of the arrest.

202.2 - 15.5 Inventory Search

Vehicles seized, taken as evidence, or taken into police custody and towed at the direction of department members shall be inventoried to safeguard the person’s property and to protect the department from false claims of damage or removed property from the vehicle. The following procedures shall be followed when conducting an inventory search:

- a. The impounding officer shall conduct an itemized inventory of the vehicle for personal property and place all property of value into safekeeping;
- b. Any containers found in the vehicle shall be opened, and all contents of such containers shall be inventoried; and
- c. A locked glove compartment, locked trunk or other locked compartment shall be opened and the contents inventoried if the impounding officer has possession of a key to these areas during the inventory.

202.2 - 16 Vehicle “Frisk” for Weapons ³**202.2 - 16.1 General Requirement**

1. Reasonable suspicion to believe a person in the vehicle is about to commit, is committing, or has committed a crime.
2. Reasonable suspicion to believe the person is armed and dangerous (either on the person or in the vehicle).
3. *Officer(s)* must be able to articulate the specific facts and circumstances supporting the objectively reasonable conclusion that the subject was potentially dangerous.
4. *Officer(s)* may remove the subject, frisk the subject, and place the subject in the scout car or away from the vehicle.
5. *Officer(s)* can still “frisk” the passenger compartment (not the trunk) for offensive weapons and open-easily accessible containers, even if the subject is not in the position to get a weapon from inside the vehicle.
6. The scope of the “frisk” or “protective search” of the vehicle is any place in the passenger compartment in which an easily accessible dangerous weapon could likely be placed or hidden.
7. The scope of the “frisk” or “protective search” also includes containers in the passenger compartment that are capable of containing a dangerous weapon and are easily accessible without breaking the container open.

³ Michigan v. Long, 463 U.S. 1032 (1983)

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8. In order to avoid confusion, *officers* must remember that the *Arizona v. Gant* case does not apply in the “frisk” of a vehicle for weapons. Officers are permitted to frisk the passenger compartment of the vehicle (if all of the above requirements are met) on the *premises* that the individual may re-enter the vehicle and have access to a weapon after the investigatory detention is concluded.

202.2 - 17 Searches of Containers - Inside and Outside of a Vehicle

202.2 - 17.1 Container Outside of a Vehicle

1. Closed containers and packages outside of a vehicle cannot be opened and searched without a search warrant.
2. An officer can seize a container or package outside a vehicle if *they have* probable cause to seize the object.
3. In extraordinary circumstances requiring immediate action, courts may excuse the warrant requirement.

202.2 - 17.2 Containers Inside of a Vehicle

1. Probable cause for a search of a lawfully stopped vehicle can be any part of the vehicle and its contents that may conceal the object.
2. A package or container can be searched within a vehicle if the officer has probable cause to search the vehicle. There is no search warrant requirement.
3. However, the container or package must be capable of concealing the object of the search (e.g., officers cannot search a briefcase if *they have* probable cause for a 40-inch television).

202.2 - 18 Searches of Cellular Telephone Devices

1. *Officers* cannot search the digital contents of a cellular telephone device or track any telephonic device **without securing a search warrant**. However, *officers* may examine the physical aspects of a cell phone to ensure that it will not be used as a weapon (e.g. the placement of a razor blade between the phone and the case.)
2. Limited case-specific exceptions to obtaining a warrant to search a cellular device may include the need to prevent the imminent destruction of evidence in individual cases, to pursue a fleeing suspect, or to assist persons who are seriously injured or are threatened with imminent injury.

Related Procedures:

- Directive 202.1 - Arrest
- Training Directive 09-02 Searches of Vehicles Incident to Arrest of Driver or Occupant

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- Training Directive 12-08 New Law on Providing False Information in Criminal Investigations

Related Forms:

- Strip Search Authorization Form (DPD190)
- Investigatory Stop and Stop and Frisk Form (UF 003)
- *Commander's Review Report (U-59, located on bottom portion of UF-003)*
- Consent to Search Form (DPD675)

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