

# FREDERICK POLICE DEPARTMENT GENERAL ORDER

**Section 7:** Force, Detention, and Arrest  
**Topic:** WARRANTLESS SEARCH AND SEIZURE  
**Approved:** 05/09/19  
**Review:** Annually in May by the Criminal Investigations Division Commander  
**Supersedes:** G.O. dated 03/06/17

**Order Number:** 742  
**Issued by:** Chief of Police

## .01 PURPOSE:

To provide general guidelines and procedures for officers to follow in conducting warrantless searches

## .02 CROSS-REF:

G.O. [270](#) "DWI/DUI Enforcement"  
G.O. [290](#) "Vehicle Towing and Impound Procedures"  
G.O. [743](#) "Search and Seizure Warrants"  
G.O. [750](#) "Citizen Contacts and Detentions"  
G.O. [775](#) "Searching of Prisoners"  
G.O. [860](#) "Interviews and Interrogations"  
G.O. [880](#) "Secure Vehicle Storage"  
Form OSB-012 Consent to Search and Seizure  
Form OCP-008 Report Dissemination Form

## .03 DISCUSSION:

Under the Fourth Amendment to the United States Constitution, searches and seizures conducted without benefit of a court issued search and seizure warrant are normally presumed unreasonable. However, as a result of specific case law exemptions from decisions of various courts, police may conduct valid searches without a warrant **under certain very specific and narrow circumstances.**

## .04 POLICY:

1. It is the policy of the Frederick Police Department that its personnel will be knowledgeable of the **exceptions** to the constitutional requirements pertaining to search and seizure warrants. The Department encourages its officers to conduct "pat-downs," consent searches, and other types of searches without warrants, *only when appropriate and in accordance with constitutional requirements, laws, and Department policies.*
2. When appropriate, and in accordance with applicable laws and constitutional requirements, officers will apply for and obtain a search and seizure warrant **prior to** conducting a search.

## .05 DEFINITIONS:

**EXIGENCE:** Demand, want, need, imperativeness; emergency; something arising suddenly out of the current of events; any event or occasional combination of circumstances, calling for immediate action or remedy; a pressing necessity; a sudden and unexpected happening or an unforeseen occurrence or condition. Something arising suddenly out of circumstances calling for immediate action or remedy, or where something helpful needs to be done at once, yet not so pressing as an emergency. (As defined in Black's Law Dictionary).

## .10 GENERAL:

As a general rule, a search must be supported by a valid warrant, but there are limited exceptions to this rule which will be discussed in individual sections below. Officers encountering a situation concerning searches may search if the search meets one or more of the exceptions governed by this general order.

## .15 CONSENT SEARCHES:

1. In order for a consent search to be valid, the consenting person must have, or appear to have, authority over the premises or property.
2. An officer may conduct a search of a person or property without a warrant or probable cause, if the officer has obtained the **prior** consent of a person who has the right and the authority to consent to the search.
3. An officer(s) cannot extend the length of a detention or a traffic stop to ask for a consent search or to conduct a consent search beyond the amount of time necessary to complete the investigation or enforcement action taken as a direct result of the original reason for the detention or the traffic stop. A lone officer, completing his traffic stop, must complete the traffic stop, and inform the driver that he is free to go, prior to asking for a consent search, if the consent search is not part of the reasonable articulable suspicion for the stop. If the officer conducting the stop is proceeding with the business of the stop with all due speed, another officer may simultaneously ask the detainee for consent to search, as long as this does not extend the length of the stop.
4. Unless the officer has a valid search warrant or another valid warrantless search exception exists, the officer must ask the person for consent and must reasonably believe that the person consented clearly, voluntarily, and of his own free will prior to searching a person or his property,
  - A. When conducting a consent search of a vehicle, the officer will ask the consenting party to sign an informed consent form, (OSB-012) which indicates the search is being made freely and voluntarily.
    - (1) If the person consents to the search, but refuses to sign the form, the consent search is still valid and can be conducted; however, it should not be presumed that a verbal consent alone will be accepted unconditionally in a court of law.
    - (2) If the person consents but refuses to sign the form, the officer conducting the search will have other officers (if available) witness the verbal consent and incorporate any statements made by the officer(s) or suspect in the incident report and/or Statement of Charges.
  - B. When requesting voluntary consent to obtain a DNA sample via buccal swab, officers will ask the consenting party to sign an informed consent form, (OSB-012). If the person consents to the collection but refuses to sign the form, the officer will utilize the same procedures as enumerated above.
  - C. A person who has given consent may place any limitation or condition on the consent, and may withdraw the consent at any time and the search must stop.
  - D. It is the officer's discretion to use the consent form (OSB-012) for any other consent search except for vehicles, which is mandatory Departmental policy.
5. If the person who was asked for consent does not respond, *silence alone is not considered to be an affirmative answer.*
6. Officers will not advise a person from whom consent is requested that their refusal will result in arrest, nor will officers make any threats, promises, or inducements in an effort to secure consent.
7. Requests for consent directed to persons who have been arrested will be handled in compliance with [G.O. 860, "Interviews and Interrogations."](#)

## .20 SEARCH INCIDENT TO ARREST:

1. Whenever an officer makes a lawful arrest of a person, the officer is entitled to make a field search of the person, the area within the control of the person arrested, and containers in the possession of the person at the time of arrest, regardless of the charges placed. The search must be contemporaneous with the arrest in time and place. The officer does not have to show probable cause for the search, only probable cause for the arrest. The right to search derives directly from making a custodial arrest. A non-custodial arrest, such as a criminal summons, does not confer the right to make a search incident to arrest.
2. The Supreme Court, in *Chimel v. California*, gave officers the right to search the area within the immediate control of the person arrested. This area is defined to mean the area from which the person might gain possession of a weapon or destroy evidence.
3. The Supreme Court, in *Belton v. New York*, decided if the subject of a lawful custodial arrest was an occupant of a motor vehicle at the time of arrest, the passenger compartment of the vehicle may be searched incident to the arrest, including containers located within the passenger compartment because it is within an area which an arrestee might reach in order to grab a weapon or evidentiary item.
4. The Supreme Court, in *Arizona v. Gant*, limited the circumstances that allow a valid search of a motor vehicle under the "search incident to arrest" warrantless exception. Officers will only conduct a search of a motor vehicle incident to the arrest of an occupant of the motor vehicle if it is reasonable to believe that an arrestee might access the vehicle at the time of the search or that the vehicle contains evidence of the offense of arrest. Examples of appropriate motor vehicle searches incident to arrest would include:
  - A. The officer is unable to control the arrest scene due to the number of arrestees with direct access to the motor vehicle versus the number of police officers present.
  - B. The arrestee is arrested for a crime where it is reasonable for the arrestee to have discarded additional evidence in the reach, lunge, or grab area of the vehicle.

## .25 STOP AND FRISK:

In 1968, the Supreme Court ruled, in *Terry v. Ohio*, that under certain circumstances, a police officer could stop a person for the purpose of investigating possible criminal behavior even though there was no probable cause for arrest. If the police officer has a *reasonable belief* that the person stopped is armed and dangerous, the officer may conduct a limited search for weapons - a "frisk" or "pat down." In *Michigan v. Long*, the Supreme Court extended the limited pat down for weapons to include the passenger compartment of a vehicle and any container in the passenger compartment where a weapon could reasonably be found. The requirement remains that the officer must have a reasonable belief, based on specific and articulable facts, that a weapon may be found.

1. A "frisk" or "pat down" is no more than a *limited* search of the *outer clothing* in an attempt to discover weapons. Officers conducting a "Terry" frisk are entitled to seize any items whose contour, shape, or mass make its identity *immediately* apparent as a weapon. The officer must be able to *instantly* tell from feeling the item that the item is a weapon.
2. Officers may stop and frisk or pat down a person *if* they have reasonable suspicion, **based on articulable and objective facts**, that a person is involved in a criminal activity and that the person may be armed and dangerous. Reasonable suspicion consists of concrete, articulable facts that, within the totality of the circumstances, lead an officer to reasonably suspect that criminal activity has been, is being, or is about to be committed.
3. Officers must identify themselves as police officers and make reasonable inquiries as to the suspect's conduct. If the person's response to the officer stopping and questioning him does

not relieve the officer's suspicions and fears of danger to the officer and others, a frisk is authorized.

4. A motorist or pedestrian may be stopped and frisked if the aforementioned criteria are met.
5. If an officer reasonably suspects that a motorist is dangerous and may be able to gain control of a weapon in the vehicle, the officer may conduct a brief search of the vehicle **limited to areas where a weapon might be placed or hidden**. Items such as handbags, briefcases, bags, knapsacks, etc., may **not** be searched except as incidental to an arrest but may be felt if they are made of soft material conducive to a frisk. (1983 - Michigan v. Long)
6. During a stop and frisk, items cannot be removed from a person's clothing that are not reasonably believed to be weapons, unless an officer can articulate that the items are contraband or evidence and that the nature of the item is immediately apparent. If "plain touch" reveals the presence of an object that the officer has probable cause to believe is contraband, the officer may seize the object. The Court has viewed this situation as analogous to that covered by "plain view" - obvious contraband may be seized, but a search may not be expanded to determine whether an object is contraband.
7. The "Maryland Criminal Code" (4-206) allows an officer, who in light of his observation, information, and experience, has a reasonable belief that a person may be wearing, carrying or transporting a handgun in violation of 4-203 of the Code to conduct a "frisk" or "pat down" for his protection and others under exigent circumstances and to determine the handgun is being carried legally.
  - A. The officer will identify himself as an officer upon approach; request identification and registration, if appropriate; and ask questions or require explanations for the carrying of the handgun.
  - B. If the person does not give an explanation that dispels the reasonable belief that the officer has, the officer may pat the subject down.
  - C. If a handgun is discovered, the officer may demand that the person produce evidence that he is entitled to wear, carry, or transport the handgun pursuant to the law. If the person is unable to do so, the officer may seize the handgun and arrest the person.
  - D. 4-206(c) of the Code requires completion of MSP-97 form within 24 hours after conducting the frisk of the person, regardless of the outcome of the search. A copy of the report shall be sent to the Secretary of the State Police by the Records Section.

### **.30 EXIGENT CIRCUMSTANCES AND EMERGENCIES (HOT PURSUIT):**

1. The U. S. Supreme Court has recognized that emergencies or exigent circumstances will arise which makes it impractical to obtain a search warrant. Exigent circumstances will authorize police to make entry and conduct a search without a warrant. **When the emergency is ended, so must all searches conducted by the police.** Discoveries made during a warrantless search under exigent circumstances may be used to establish probable cause for a search warrant.
  - A. As a general rule and policy of the Department, if an officer does not know if exigent circumstances exist, the officer will obtain a search warrant.
  - B. Officers may make a warrantless search of anything, whether personal belongings, a vehicle, or a building, anytime they have good reason to believe that the search is necessary to save a life or prevent injury.

- C. Officers may make a warrantless search for evidence if they have probable cause to believe that the evidence is in the place or thing to be searched and they have reason to believe that the evidence will be destroyed **before** a warrant can be obtained.
  - D. Nothing prohibits an officer from conducting a consent search pursuant to Sec. 15 of this directive.
2. The U. S. Supreme Court (Warden V. Hayden) recognized “Hot Pursuit” as an exception to the warrant requirement for in home arrests. The court held that if police were in “hot pursuit” of a fleeing suspect they were entitled to make a warrantless entry into the home to make the arrest if they had probable cause to believe the suspect committed a felony, and they believed he entered a specific dwelling. However, in Welsh V. Wisconsin the court held this exception was almost always inapplicable when the suspect committed a misdemeanor, traffic offense, or other non-jailable or minor infraction. When determining if exigency exists officers should consider:
- A. The seriousness of the crime at issue;
  - B. Whether there is an immediate threat to the safety of others; and
  - C. The prevention of the destruction of evidence.

**.35 SEARCH OF A VEHICLE UNDER THE MOVABLE VEHICLE EXCEPTION (CARROLL DOCTRINE):**

The Supreme Court has ruled that the mobility of a vehicle is, in and of itself, an exigent circumstance dictating immediate police action. Police must have probable cause that item(s) subject to seizure are located within the vehicle to be searched. Where police do have probable cause, they may stop and search a vehicle (Carroll v. United States) and may also search the trunk and containers located in the vehicle provided the item for which the vehicle is being searched could reasonably be expected to be found in the container (United States v. Ross).

- 1. Under the *movable vehicle exception*, officers may make a warrantless search of a vehicle that **was in motion**, or at least **capable of movement** and which the officers have probable cause to believe contains contraband or evidence of a crime.
- 2. In those circumstances where the vehicle is not readily mobile, the police may not legally conduct a warrantless search. To protect against court challenges, if officers have doubts about whether they have sufficient probable cause to search a vehicle, and officers are certain that they will be able to retain custody of the vehicle until a warrant is issued, *officers should obtain a search warrant*.
  - A. A search of a vehicle based on probable cause may extend to any part of the vehicle, including closed containers found inside in which the object of the search can be concealed.
  - B. Moving the vehicle to another location to perform the search is permissible provided it is being done for safety reasons and that the search is contemporaneous. (Chambers v. Maroney)
  - C. The warrantless search of a vehicle does NOT extend to a search of the passengers, but because passengers in an automobile have no reasonable expectation of privacy in the interior area of the vehicle, a warrantless search of the glove compartment and the spaces under the seats which results in evidence implicating passengers may be admitted. A passenger in a vehicle, by their mere presence in a suspected vehicle, does not lose their Fourth Amendment Rights.

*(United States v. Di Re; Ybarra v. Illinois)*

3. A consent search may be conducted of a vehicle pursuant to Sec. 15 entitled "Consent."
4. Officers will adhere to [G.O. 290 "Vehicle Towing and Impound Procedures"](#) and [G.O. 880 "Secure Vehicle Storage"](#) if the vehicle is seized/towed.
5. A canine (K-9) scan of a vehicle is not considered a "search" because it is non-intrusive. Once a trained canine (K-9) alerts on a vehicle, it gives the officer probable cause to search without a warrant.

**.40 INVENTORY OF SEIZED VEHICLES:**

1. Officers will inventory each and every vehicle they seize pursuant to [G.O. 290 "Vehicle Towing and Impound Procedures."](#)
2. In order for an inventory to be valid, there must be a lawful basis for taking custody of the vehicle, the inventory is of a non-investigatory nature, and the inventory search is conducted for the purposes of protecting:
  - A. An owner's property while it is in police custody; and
  - B. The police from potential danger, or against claims or disputes over lost or stolen property.
3. Officers will not conduct an evidence search of a vehicle under the guise of an inventory.
4. The scope of the inventory will be limited to those unsecured or readily accessible areas within the vehicle. A locked trunk or glove compartment will be within the scope of the inventory only if the keys to those areas are in the officer's possession.
5. When practical, the inventory search will be conducted prior to the towing of the vehicle from the place of impounding or seizure.

**.45 INVENTORY OF OTHER PROPERTY:**

1. Closed containers may be opened only if the officer is unable to determine the contents from an examination of the container's exterior, and as long as it is for the sole purpose of an **inventory** and not to look for evidence.
2. When a container is inventoried, the results of the inventory and all property taken into custody will be accounted for following departmental property procedures.

**.50 SEARCHES AT THE SCENE OF A CRIME:**

1. There is no general Fourth Amendment exception governing crime scenes. If the warrantless exceptions normally linked with crime scenes, such as "exigency" or "plain view," are not present, or are no longer present, then a search and seizure warrant must be applied for to continue a search in all areas where a reasonable expectation of privacy exists. Crime scenes are subject to all the protections granted by the Fourth Amendment against unreasonable searches and seizures. For example, if an officer is on the scene of a homicide in which a husband is suspected of killing his wife in their residence with a handgun, the officer cannot look through closets, dresser drawers, etc., for the handgun. The officer would need to secure the premises and seek a search warrant. If, however, the handgun is laying on the floor next to the deceased wife, the handgun may be taken into evidence because it is in "plain view."
2. LIMITED or PROTECTIVE SWEEPS - A home or premises where a lawful arrest has been made may be subjected to a *limited* sweep for the purpose of finding other persons, if

circumstances give arresting officers a basis for reasonably believing that there are other persons on the premises who pose a danger to those on the arrest scene.

**.55 ABANDONED PROPERTY:**

Officers may search and seize property that they have reason to believe is abandoned. There is no reasonable expectation of privacy in abandoned property.

**.60 OPEN FIELDS:**

Under the so-called "open fields" doctrine, officers may enter and search any unoccupied or undeveloped area that lies *outside the curtilage of a dwelling*. The curtilage is the area around the home to which the home life activity extends.

**.65 PLAIN VIEW:**

1. When a police officer sees items such as contraband, the officer may seize those items provided the officer has a right to be in the position to have that view. The key elements of the plain view doctrine are:
  - A. The officer must legally be present;
  - B. The discovery of the items seized must be inadvertent;
  - C. Upon discovery, it is readily apparent that the item is stolen/evidence/contraband.
2. The Supreme Court has enumerated four circumstances which are considered as being valid intrusions, allowing seizures under the plain view doctrine:
  - A. Pursuant to a search warrant to search for other items;
  - B. Pursuant to a valid warrantless search for other items;
  - C. During a search incident to an arrest made inside a protected area, i.e., an arrest made inside a person's home, an application of the "Chimel" rule;
  - D. Following any other valid intrusion.
3. There is a strong correlation between the plain view doctrine and searches made under exigent circumstances. The exigent circumstances justify a warrantless intrusion, the plain view doctrine justifies the seizure.

**.70 LAWFUL INSPECTION:**

Certain businesses, such as liquor stores, bars, gun dealers, auto dealers, etc., must be licensed in order to operate. Certain rights under the Fourth Amendment are forfeited as a result of the license. Officers are allowed to enter the business during regular hours and inspect the area for violations of the license requirements.

**.75 SITUATIONS INVOLVING DUI/DWI AND TRAFFIC ACCIDENTS:**

1. Maryland's Implied Consent Law - Pursuant to the provisions of Transportation Article 16-205.1, a warrantless search and seizure of a person's blood is permitted for the purpose of laboratory analysis and for use as evidence, if the person was driving or attempting to drive a motor vehicle while DUI/DWI, and while doing so, was involved in a traffic accident involving life threatening injuries or a fatality.
2. Additionally, a warrantless search and seizure of a person's blood is permitted for the purpose of laboratory analysis and for use as evidence, if the officer determines that a driver, arrested for DUI/DWI, is unconscious or otherwise incapable of refusing to take a test. If the suspected DUI/DWI person regains consciousness or otherwise becomes capable of

refusing to submit to the withdrawal of blood for the purposes of the blood test, the blood test may not be administered, unless the suspect has been involved in a traffic accident involving serious injuries or a fatality at which point it becomes mandatory, or unless the suspect consents to the test.

3. An officer may request a subpoena from the State's Attorney's Office, which is served on the hospital's records section to obtain a defendant's hospital records, especially those relating to blood alcohol content if the DUI/DWI person refused to submit to the blood kit, but from whom blood was withdrawn by medical personnel for medical *reasons*.

#### **.80 REPORTING OF WARRANTLESS SEARCHES:**

1. Whenever a warrantless search is conducted, officers will fully document in an incident report the circumstances surrounding the situation, regardless of whether or not an arrest was made. If an arrest was made, details of the incident will be incorporated into an incident report and/or Statement of Probable Cause for the arrest. All seizures will be documented and the items seized will be placed into property following departmental procedures.
2. To ensure the Department is not violating a citizen's Fourth Amendment's Rights, whenever an arrest is NOT made involving a warrantless search or seizure, the incident report will also be forwarded to the Office of the Chief, via chain of command, on a Report Dissemination Form (OCP-008) for their information. After review through the chain of command, reports will go to the Professional Services Division (PSD) for filing. (Refer to [G.O. 750, "Citizen Contacts and Detentions"](#)).