



Clayton County Police Department

PROCEDURES

Subject WARRANTLESS SEARCHES (SEARCH & SEIZURE)		Procedure # A11	
Authorizing Signature Chief Jeffrey Turner	Effective 11-02-2009	<input checked="" type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Rescinds	Total Pages 10

I. Purpose

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

II. Statement of Policy

It shall be the policy of the Clayton County Police Department to conduct searched and seizures pursuant to established state and federal laws and applicable court decisions. The Fourth Amendment guarantees the right of people to “be secure in their person, 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 the court. 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. Stop and frisk of suspicious persons
- C. Vehicle searches under moveable vehicle exception
- D. Crime Scene Searches
- E. Exigent Circumstances
- F. Inventory searches
- G. Other searches authorized by law. Such as: incident to arrest, open fields, abandoned property, plain view, protective sweeps, caretaking, and entering a suspects residence armed only with an arrest warrant.

III. Definitions

- A. SEARCH – “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.

IV. Searches without a warrant

- A. Consent
 - 1. 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 incumbent upon the officer to show that the consent was given voluntarily and without threat or coercion. Verbal consent is valid, but it will be harder to prove it was given voluntarily. Thus, written consent should be obtained when it is reasonable to do so.
 - 2. Consent searches must observe the following rules:

- a) Generally, the person granting consent must use, have access or control over the property.
 - b) If two people have joint ownership of the property, either may give consent. Similarly, if one gives consent but the other expressly denies consent then we cannot search without a warrant or exigent circumstances. (State v. Randolph. 278 Ga. 614.)
 - c) 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 property.
 - d) 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. But remember the Randolph case; if the wife consents to the search but the husband says no, then we do not have consent.
 - e) A parent may consent to a search of premises occupied by a dependent minor child.
 - f) An employee cannot give valid consent to a search of his employer's premises unless he has been left in custody of the premises.
 - g) An employer may generally consent to a search if the premises used by employees, except premises used solely by the employee, for example, a locker.
3. Consent must be given voluntarily. If an officer request 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.
4. A person who initially gives consent may withdraw consent at any time. Officers then shall secure the premises and seek a warrant.

B. Stop and frisk of suspicious person

- 1. "Where a police officer observes unusual conduct which leads him to reasonably conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of

investigating this behavior he identifies himself as a policeman and makes reasonable inquires, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or other's safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in attempt to discover weapons which might used to assault him." *Terry v. Ohio*, 392 U.S. 1(1968).

2. "So long as the officer is entitled to make a forcible stop, and has reason to believe that the suspect is armed and dangerous, he may conduct a weapons search limited in scope to this protective purpose." *Adams v. Williams*, 407 U.S. 143 (1972)
3. The frisk permitted under *Terry v. Ohio* is a search for weapons no evidence. However, evidence recognized through "plan touch" during a frisk is admissible. *Minnesota v. Dickerson*, 508 U.S. 366 (1983).
4. "Frisk" of a vehicle. '[T]he search of the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden, is permissible if the police officer possesses a reasonable belief based on 'specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant' the officer believing that the suspect is dangerous and the suspect may gain immediate control of weapons." *Michigan v. Long*, 463 U.S. 1032 (1983).

C. Vehicle searches under moveable vehicle exception.

1. 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.

2. 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 incidental to the arrest of one or more of the occupants (but only until the person being arrested is under police control and there is not threat that he may lunge after a weapon); when a frisk is being conducted for weapons; when necessary to examine the VIN or otherwise ascertain ownership 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 limitations:
- b) When probable cause exists, a search may extend to anywhere within the vehicle, unless probably cause is limited to a specific part of the vehicle.
- c) When consent has been obtained from the driver or owner, the officer 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) In *New York v. Belton*, 453 U.S. 454 (1981), the US Supreme Court created two exceptions to the 4th Amendment warrant requirement in automobile cases; (1) a search incident to arrest exception for the area where the arrested person could lunge for a weapon and (2) where it is reasonable to believe that evidence relevant to the crime of arrest might be found in the vehicle *Belton's* incident to arrest authority was modified by the holding in *Arizona v. Gant* 129 S. Ct. 1710 (2009). Now, once the scene is secure and there is no likelihood that the arrestee could lunge for weapons in his car, the search incident to arrest authority vanishes for the vehicle.
- e) Frisk for weapons shall be confined to the passenger area. Any place not immediately accessible to occupants, such as locked gloved compartment, shall not be searched. If the contents of the container are immediately accessible to the subject then it 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 the person may be armed.

- f) An entry into the vehicle to examine the VIN or otherwise determine owner ship must be limited to that purpose.
- g) 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.

3. Containers within the vehicle

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

4. Procedures for unlocked containers

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

- a) When the passenger area is searched incident to arrest, containers within the passenger area may be opened.
- b) During a consent either supplement or reasonably imply permission.

5. Location and time of search

- a) 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.
- b) 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.

D. Crime Scene Searches

Mincey v. Arizona 437 U.S. 385 (1978) held that although there is no “murder scene” exception to the Fourth Amendment, officers can make a warrantless entry and search, when they reasonably believe that a person within is in need of immediate aid. Similarly, when police come upon the scene of a homicide, they may make a prompt warrantless search of the area to see if there are other victims, or if the killer still on the premises.

Also, during this search for victims, officers may seize evidence that is in plain view.

E. Exigent Circumstances

1. "The term "exigent circumstances" refers to a situation where the inevitable delay incident to obtaining a warrant must give way to an urgent need for immediate action. Such is the case when resort to a warrant might endanger the police or the public." U.S. v. Burgos, 11th Circuit Court of Appeals, 720 F.2d 1520 (1983).
2. The burden is always on the government to prove the exigent circumstances justified the warrantless search. Some but not all of the emergencies that have been found to be exigent circumstances are:
 - a) Search for victims: "In emergencies, however, law enforcement officers are not motivated by an expectation of seizing evidence if a crime. Rather, the officers are compelled to search by a desire to locate victims and the need to ensure their own safety and that of the public." U.S. v. Holloway, 290 F.3d 1331 (2002).
 - b) Destruction of evidence: "The officer in the present case, however, might reasonably have believed that he was confronted with an emergency in which delay necessary to obtain a warrant, under the circumstances, threatened 'the destruction of evidence'... "This was from Schmerber v. California, 384 U.S.757 (1966) a blood alcohol case.
 - c) Hot pursuit: "[H]ot pursuit' means some sort of chase... The fact that the pursuit here ended almost as soon as it began did not render it any the less a 'hot pursuit' sufficient to justify warrantless entry into Santana's house. ... We thus conclude that a suspect may not defeat an arrest which has been set in motion in a public place ... by the expedient of escaping to a private place. U.S. v Santana, 427 U.S. 38 (1976).

Note: The hot pursuit which results in the warrantless entry of someone's home should be for a serious crime. Welch v. Wisconsin, 466 U.S. 740 (1984).

Note: The Welch case also held that a claim of hot pursuit is unconvincing when there was no immediate or continuous pursuit of the suspect from the scene of crime.

F. Inventory searches

The U.S. Supreme Court recognized the need for inventory searches in *South Dakota v. Opperman*, 428 U.S. 364 (1976). Inventory searches were...“developed in response to three distinct needs: the protection of the owner’s property while it remained in police custody...; the protection of the police against claims or disputes over lost or stolen property...; and the protection of the police from potential danger...”

Accordingly, any vehicle impounded by officers of this department shall be inventoried consistent with SOP D31.

In addition to vehicles, any other property that is seized or taken into custody by officers of this Department shall be inventoried and itemized on a property or evidence form.

G. Other warrantless searches authorized by law

1. Incident to arrest: Subject to a valid custodial arrest, police may search the person being arrested for weapons, instruments of escape, evidence of crime or contraband. *U.S. v. Robinson*, 414 U.S. 218 (1973). *U.S. v. Edwards*, 415 U.S. 800 (1974)
2. Incident to arrest, the area within arrestee’s immediate control: “A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person being arrested. There is ample justification, therefore, for a search of the arrestee’s person and the area ‘within his immediate control’ – construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence. *Chimel v. California*, 395 U.S. 752 (1969).
3. Incident to arrest, the area within immediate control within a vehicle; The Supreme Court’s modification of the *Belton* rule was discussed above. Once a suspect has been secured, for example handcuffed and in the back seat of the patrol car, we cannot search the vehicle incident to arrest as any danger of the suspect lunging for a weapon has been eliminated.
4. Open fields: In *Oliver v. U.S.*, 466 U.S. 170 (1984), the Supreme Court announced that “... an individual has no legitimate expectation that

open fields will remain free from warrantless intrusion by government officers.” According to the majority view in *Oliver* this is true even when the landowner takes steps to protect his privacy such as placing ‘No Trespassing’ signs or erecting a fence. Our own Georgia Court of Appeals has followed the holding in *Oliver* in the case of *Morse v. State*, 288 Ga. App. 725 (2007). This case is an excellent primer on the open-fields concept.

5. Abandoned property: A person has no expectation of privacy to abandoned property. “[T]he question of whether a defendant has abandoned an item of personal property hinges upon his intent, that is whether the person prejudiced by the search had voluntarily discarded, left behind, or otherwise relinquished his interest in the property in question so that he could no longer retain a reasonable expectation of privacy with regard to it at the time of the search. “ *Wolf v. State*, 291 Ga. App. 876 (2008).
6. Plain view: “It is ... an essential predicate to any valid warrantless seizure of incriminating evidence that the officer did not violate the Fourth Amendment in arriving at the place from which the evidence could be plainly viewed. There are, moreover, two additional conditions that must be satisfied to justify the warrantless seizure. First , not only must the items be in plain view, its incrimination character must also be ‘immediately apparent’ ... Second, not only must the officer be lawfully located at a place from which the object can be plainly seen, but he or she must also have a lawful right of access to the object itself. “*Horton v. California*, 496 U.S. 128 (1990).
7. Protective sweeps: “A ‘protective sweep’ is a quick and limited search of a premises, incident to an arrest and conducted to protect the safety of police officers and others. It is narrowly confined to a cursory visual inspection of those places in which a person might be hiding. “We also hold that as an incident to the arrest the officers could, as a precautionary matter and without probable cause or reasonable suspicion, look in closets and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched. Beyond that, however, we hold that there must be articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene. “*Maryland v. Buie*, 494 U.S. 325 (1990).

In *Moorer v. State*, 286 Ga. App.395 (2007) police did a protective sweep of the arrested robber's house because two men were involved in the robbery. The court held: "The officers knew that there were two men involved in the robbery and that both men had guns when they committed the crime. Having located Moorer at the residence, it was reasonable for police to ascertain if the other man involved with the robbery was in the residence as well."

8. Community caretaking exception: In *Love v. State*, 290 Ga. App. 486 (2008), the Court of Appeals recognized the need to protect property as a exigent circumstance. Quoting from that decision: "Contrary to defendant's argument, protection of property as well as persons may justify entry into premises. [E]xigent circumstances can exist even in situations where a dwelling appears to be unoccupied. ...[S]uch circumstances may be found in emergency situations where the police reasonably believe their assistance is required to protect property." This exception was not created to allow a warrantless search for evidence. However, evidence or contraband found in plain view during the sweep can be seized.
9. Entering a suspects home to make an arrest pursuant to an arrest warrant: "...{a}n arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within." *Payton v. New York*, 445 U.S. 573 (1980). How can we establish a reason to believe the suspect is in the home? "The presence of a vehicle connected to a suspect is sufficient to create the inference that the suspect is at home." *U.S. v. Magluta*, 44 F.3d 1530, (11th Cir.) (1995). Surveillance of the residence, lights and TV being on having been used to support a reasonable belief that the person named in the warrant was home.

Note. In *Steagald v. U.S.*, 451 U.S. 204 (1981) the Supreme Court concluded that a search warrant must be obtained absent exigent circumstances or consent to enter the home of a third party.

The preceding list is not exhaustive. Other warrantless searches, such as free air search by police canine, have been authorized by the courts. The best practice is to

always obtain a search warrant when possible. When exigent circumstances require immediate action, carefully articulate all the facts available to you that explain the nature of the emergency and what action you took. Likewise when a search is based on consent, try to obtain written consent or record the consent. The burden is always on the stated to prove the consent was freely and voluntarily given and in the case if exigent circumstances, that the emergency justified the warrantless search.