

*Maryland-National Capital Park Police
Prince George's County Division*

DIVISION DIRECTIVE

TITLE FIELD INTERVIEWS & "SEARCH AND SEIZURE"			PROCEDURE NUMBER PG442.0
SECTION Operational Procedures	DISTRIBUTION A	EFFECTIVE DATE 10/15/04	REVIEW DATE 10/15/06
REPLACES PG442.0 "Field Interviews & "Search and Seizures"", issued 02/15/02			
RELATED DIRECTIVES PG404.0	REFERENCES CALEA 1, 41, 42	AUTHORITY Commander Larry M. Brownlee, Sr.- Division Chief	

I. PURPOSE

This directive establishes policy, procedures, and responsibilities concerning field interviews, searches, and seizures conducted by Division officers.

II. POLICY

This Division's policy directs officers to conduct field interviews to prevent and repress crime, identify suspicious persons, and make centralized records of field contacts.

Under the 4th Amendment to the United States Constitution, searches and seizures conducted without benefit of a court issued search and seizure warrant are presumed unreasonable. As a result of specific case law exemptions issuing from decisions of various courts, particularly the Supreme Court, police may conduct valid searches without a warrant under certain very specific and narrow circumstances. It is important for all police officers to be fully knowledgeable of these exemptions to the Constitutional requirements of having a search and seizure warrant. However, even when officers reasonably believe that a search and seizure may be conducted under the authority of one of the exemptions to the warrant requirement, it is preferred by the Division that whenever time permits, a search and seizure warrant be obtained.

III. FIELD INTERVIEWS

A. Field interviews are among the most useful tools available in law enforcement because it is largely through their utilization that the officer prevents and represses criminal activity. Officers are most productive in activities such as arrests when they aggressively make personal contact with people they observe

FIELD INTERVIEWS & "SEARCH AND SEIZURE"

PG442.0

during the course of their patrol duties. Officers should conduct a field interview when they observe people and events that are incongruous with the "norm", taking into consideration the following:

1. Time of day
 2. Location
 3. Suspicious persons and activity
- B. Officers must consider the following factors as general grounds for a temporary detention for a field interview:
1. There must be a reasonable suspicion by the officer that some activity out of the ordinary is occurring or has taken place.
 2. Some indication must exist to connect the person under suspicion with the unusual activity.
 3. There must be some suggestion that the activity is related to crime.
- C. Upon conducting a field interview, the officer shall complete the appropriate Warning/Field Contact Report (Adult or Juvenile).

IV. STOP AND FRISK

- A. 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. This expansion of a constitutionally permissible search, permits a police officer to conduct a carefully limited examination of an individual's outer clothing. The purpose of the examination is the discovery and seizure of offensive weapons, i.e., a handgun, dirk knife, Bowie knife, switchblade, sand club, metal knuckles, razor, nunchuka's, or any other dangerous or deadly weapon(s) concealed upon or about the individual. This search is permitted when:
1. It is reasonably suspected that an individual has committed, is committing, or is about to commit a crime; or
 2. The individual is reasonably suspected to be armed and dangerous and immediate action must be taken to protect the officer or the public.
- B. Both the Stop and the Frisk must be supported by reasonable and articulated suspicion; an unfounded suspicion or "hunch" will not suffice.
- C. The following circumstances may be considered by the officer in determining whether sufficient reasonable suspicion exists to justify a stop. The list is not all-inclusive:

**FIELD INTERVIEWS & “SEARCH AND SEIZURE”
PG442.0**

1. The appearance or demeanor of the suspect.
 2. His/her actions.
 3. The hour.
 4. The neighborhood.
 5. Bulges in the suspect’s clothing may suggest a concealed weapon.
 6. The appearance of objects the suspect may be carrying.
 7. The suspect’s proximity to a known crime scene.
 8. Prior knowledge of the officer including:
 - a. Suspect’s prior record.
 - b. Information from an informant or third party.
 - c. Any overheard conversation.
- D. Once sufficient reasonable suspicion is established and the officer decides to initiate the stop, he/she will:
1. Be clearly identified as a police officer:
 - a. By being in police uniform, or
 - b. If not in uniform, by announcing that they are an officer and simultaneously displaying their badge or other police credentials.
 2. The officer should display courtesy in his/her contact with the suspect.
 3. Every consideration must be shown for the rights of the suspect.
 4. Question the suspect to discover their name, address, and an explanation of the suspect’s actions.
 - a. The suspect may not be compelled to give the answer to these or any other questions.
 - b. If the suspect refuses to answer the officer’s questions or give their identity, they may be questioned further but may not be unduly detained nor may they be deprived of freedom of movement in any significant way unless the officer is prepared to make a formal arrest in accordance with the legal requirements for an arrest.
 - c. The failure or refusal to answer questions, or answers considered unsatisfactory are not alone sufficient to constitute probable cause for an arrest without a warrant—there must be some independent justification. The failure or refusal to answer questions does not bar a frisk, if the officer reasonably suspects danger to his/her own or another’s safety.
- E. In determining whether reasonable suspicion exists sufficient to support the frisking of the suspect, the following factors may be considered:

FIELD INTERVIEWS & “SEARCH AND SEIZURE”

PG442.0

1. The type of crime suspected—whether or not a crime of violence or a crime involving the use of a deadly weapon.
 2. Reasonableness of the officers fears for their safety or the safety of others. Where the officer must deal with more than one suspect, or where the officer does not have help close at hand, the situation may create increased danger.
 3. The hour.
 4. The neighborhood.
 5. Is the suspect known to the officer? Do they have a record? Are they disposed to violence?
 6. The appearance or demeanor of the suspect.
 7. Bulges in the suspect’s clothing may suggest a concealed weapon.
 8. Age and sex of the suspect.
 9. Any other information known by the officer bearing on the suspect’s potential for violence.
- F. When the officer has knowledge or information regarding one or more of the above factors or any other information sufficient to justify reasonable suspicion that the person stopped is presently in possession of an offensive weapon, they may frisk the suspect. The frisk that is permissible is limited to a patting down of the suspect’s outer clothing for the discovery of such weapons and for no other purpose. If the frisk fails to disclose evidence of an offensive weapon, no further search may be made. However, if the frisk indicates reasonable suspicion that the suspect has an object on their person that could be a weapon, the officer is authorized to search that part of the suspect’s clothing containing such object, but they may not search any further.
- G. If the object felt and found in the course of the frisk is in fact an offensive weapon and the evidence is that the possession thereof violates the law, the officer may arrest the suspect committing a crime in their presence. Incident to such a lawful arrest, the officer may make a further, more detailed, search of the suspect and their immediate surroundings. On the other hand, if the officer searches in or beneath the clothing of the suspect in the belief that an object felt in patting him down is a weapon and it turns out not to be a weapon but an item of contraband or evidence of a crime, the object may nevertheless be used to justify arrest of the suspect.

FIELD INTERVIEWS & "SEARCH AND SEIZURE"

PG442.0

- H. 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. The requirement remains that the officer must have a reasonable belief, based on specific and articulable facts that a weapon may be found.
 - 1. The protective search is allowed only after the threat of danger becomes a distinct possibility, i.e. furtive movements within the vehicle, by any occupant, at any time prior to the officer concluding the stop.
 - 2. The search is limited to an area, which was in the immediate control of an occupant, i.e. passenger compartment of a vehicle and containers in the compartment.
 - 3. The area searched could conceivably contain a weapon.
- I. Police officers conducting a Stop and Frisk pursuant to this Section shall, within twenty-four hours after such action, complete the top portion of a Firearms Report, MSP 97, as well as any related field reports necessary as the result of the stop and frisk.
- J. The Firearms Report (MSP Form 97) must be filled out by any officer who conducts a limited search for a handgun pursuant to Criminal Law Article 4-206.
- K. The MSP 97 must be completed regardless of the outcome of the search.
- L. The MSP 97 is not required for any handgun seizures resulting from police actions other than the "Stop and Frisk" situations established in the Limited Search Section (Criminal Law Article 4-206).
- M. The completed MSP Form 97 shall be sent to the Secretary of the Maryland State Police by the Park Police Records Section. A copy of MSP 97 shall be made and retained in Division files.
- N. The Handgun Permit Section of the Maryland State Police shall file the Handgun Search Report, and trace the weapon recovered to its last known owner. The Section shall also verify all applicable handgun permits. Once the search is completed, the Handgun Permit Section of the Maryland State Police shall report their findings to the originating officer.

V. SEARCH INCIDENT TO LAWFUL CUSTODIAL ARREST

- A. Whenever the police have made a lawful custodial arrest of a person, whatever the charge, they are entitled to make a complete 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. The search must be contemporaneous with the arrest in time

FIELD INTERVIEWS & “SEARCH AND SEIZURE”

PG442.0

and place.

- B. The police do not have to show probable cause that the arrested person is in possession of contraband, evidence or fruits of a crime before making the search. The right to search derives directly from making a custodial arrest.
- C. A non-custodial arrest, such as that made with a misdemeanor summons, does not confer the right to make a search incident to arrest.
- D. Areas and things that may be searched include:
 - 1. The person arrested, including the contents of all pockets and may extend to the removal of certain items of clothing such as jackets, sweaters, shirts, belts and footwear.
 - 2. All containers in the possession of the person at the time of arrest, including wallets, purses, items of luggage (locked or unlocked) and boxes (wrapped or open). These containers must be in actual possession at the time of arrest. If a person has secured an item of luggage, package or box in a rental locker just prior to their arrest, police may not recover the item and search it under the cover of a search incident to arrest.
 - 3. 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 destructible evidence, an area within the leaning distance or reach, of the person arrested. This is the so-called “Chimel Rule” as decided by the United States Supreme Court in Chimel v. California.
 - 4. 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 lawful custodial arrest, including containers located within the passenger compartment. This specific extension of what may be searched incident to custodial arrest was decided by the Supreme Court in Belton v. New York.
- E. When officers make a custodial arrest, their reports should always indicate that a search incident to arrest was made. If such a search incident to lawful arrest was extended to the area within the arrestee’s control, containers in possession of the arrestee or the passenger compartment of a vehicle, the report should reflect the extension of the area searched. Items seized from the arrestee as a result of a search incident to arrest should be specifically identified within the report, as well as any statements made by the arrestee.

FIELD INTERVIEWS & “SEARCH AND SEIZURE”

PG442.0

VI. CRIME SCENES

- A. During the initial response to a call for service, there is no requirement for a search warrant where a crime has occurred and the crime scene has been secured for the purpose of processing the crime scene for evidence.
- B. Once police have completed processing a crime scene and relinquished control of it, the location is then subject to all protections granted by the 4th Amendment against unreasonable searches and seizures.

VII. THE VEHICLE EXCEPTION TO SEARCH WARRANT REQUIREMENTS

- A. In regard to mobile vehicles, in particular motor vehicles, the Supreme Court has come closest to eliminating the need for the police to have a warrant prior to making a lawful search and seizure. This lack of a need for a warrant rests on several cases where the Court found 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.
- B. Where police do have probable cause, they may stop and search a vehicle, Carroll v. United States. They 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.
- C. In those circumstances where a vehicle is not readily mobile, the police may not legally conduct a warrant-less search. An automobile parked in the driveway of a private home where the police have already arrested the owner/operator of the automobile may not be searched under what has been called the “Carroll Doctrine”, Coolidge v. New Hampshire. Once a vehicle has been taken into police custody or “impounded” then it is no longer mobile and a search warrant must be obtained for any evidentiary search, State v. Miller (Conn. Appellate Court, 1992). Police must show that the exigent circumstances of mobility or public access to vehicle existed.
- D. Police may not use the broad exceptions to the requirement for a search warrant as a subterfuge to justify the warrant-less search of items such as boxes, trunks, or luggage. Where police have probable cause to believe a container inside a vehicle contains contraband, no search warrant is needed and police can conduct a warrant-less search of the container, California v. Acevedo.
- E. When officers stop a vehicle and conduct a warrant-less search of that vehicle and/or containers within that vehicle, their reports should clearly show the following:

FIELD INTERVIEWS & “SEARCH AND SEIZURE”

PG442.0

1. Facts and circumstances which show probable cause to believe that items subject to seizure could be expected to be found in the vehicle.
2. That the exigent circumstances of mobility existed.
3. That if containers were searched, that the items being searched for could have been found in the container(s) examined.
4. What was seized as a result of the search, vehicle seizures are governed by the provisions of Division Directive PG432.1, “Seizure of Conveyances”.

VIII. HOT PURSUIT OR EXIGENT CIRCUMSTANCES

- A. The U.S. Supreme Court has recognized that emergencies or exigent circumstances will certainly arise which make impractical the obtaining of a search warrant. “The business of policemen and firemen is to act. . . . people could well die in emergencies if police tried to act with the calm deliberation associated with the judicial process”. Exigent circumstances will authorize police to make entry and conduct a search without a warrant.
- B. A warrant-less search conducted due to exigent circumstances is valid only as long as the exigent circumstances last. When the emergency is ended so must all searches conducted by the police. Discoveries made during a warrant-less search under exigent circumstances may be used to establish probable cause for a search warrant.
- C. The Supreme Court has identified certain examples of exigent circumstances. They are:
 1. Hot pursuit of an armed felon (Warden v. Hayden).
 2. Entry into a burning building (Michigan v. Tyler).
 3. Entry to prevent the imminent destruction of evidence (Ker v. California).
 4. Entry to prevent flight of a suspect (Johnson v. United States).
 5. Entry to investigate an emergency (Mincey v. Arizona).

NOTE: These examples should not be construed to mean that there are no other types of exigent circumstances.
- D. A police officer who makes a claim of exigent circumstances to justify a search must substantiate the claim of exigent circumstances. The officer’s report should:

FIELD INTERVIEWS & “SEARCH AND SEIZURE”

PG442.0

1. Give the facts and circumstances which convinced the officer that exigent circumstances existed.
2. Describe the method of entry.
3. Detail the circumstances found upon entry.
4. Describe the extent of the search made and whether a seizure of any item(s) was made.
5. State whether there was a search warrant obtained for further search and seizure based upon probable cause established from the warrant-less search made under exigent circumstances.

IX. PLAIN VIEW DOCTRINE

- A. 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. This is called the “Plain View” doctrine. The key elements of the plain view doctrine are:
 1. The officer must be where he/she is legally.
 2. The discovery of the item seized must be inadvertent.
 3. The requirement of probable cause to believe that the item spotted in plain view is evidence of a crime.
- B. The importance of a valid intrusion to the proper seizure of evidence under the plain view doctrine cannot be over stressed. A police officer cannot use mere observation as a means to justify making a warrant-less intrusion to seize an item. Observation may be used to establish probable cause for a search and seizure warrant.
- C. The Supreme Court has enumerated four circumstances which are considered as being valid intrusions, allowing seizures under the plain view doctrine:
 1. Pursuant to a search warrant for other items.
 2. Pursuant to a valid warrant-less search for other items.
 3. 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.
 4. Following any other valid intrusion.

FIELD INTERVIEWS & “SEARCH AND SEIZURE”
PG442.0

NOTE: There is a very strong correlation between the plain view doctrine and searches made under exigent circumstances. The exigent circumstances justify a warrant-less intrusion, the plain view doctrine justifies the seizure.

D. Warrant-less seizures made as a result of the plain view doctrine, like all warrant-less searches and seizures, should be carefully documented in police reports. In particular, reports concerning seizures made under the plain view doctrine should:

1. Detail the facts and circumstances which justify the intrusion.
2. Specify that the items seized were visible without the use of artificial aids, such as binoculars, cameras, and telephoto lens.
3. That the items seized were inadvertently come upon.

E. Abandoned Property.

Officers may, without a warrant, seize and search property that he or she has good reason to believe has been abandoned.

F. Open Fields.

An officer may enter and search any unoccupied or undeveloped area that lies outside the curtilage of a dwelling. Curtilage is the area around the home to which the home life activity extends.

G. Public Places.

There is no requirement that a warrant be obtained before seizing things brought into public places open to plain view. However, officers must have a good reason to be at the place where the evidence is found.

X. CONSENT TO SEARCH

A. When police obtain consent to conduct a warrant-less search from a person, they are in fact asking the person to give up a constitutionally protected right. The police must show that such consent was given voluntarily and not under duress or intimidation by the police.

B. The police do not have to show probable cause if it can be shown that the search and seizure was done with consent. Nor do exigent circumstances have to be shown to justify the intrusion.

FIELD INTERVIEWS & “SEARCH AND SEIZURE”

PG442.0

- C. Whenever possible, consent to search should be obtained in writing. This will become part of the case file when applicable. If a case file is begun, the officer’s report should clearly state the circumstances under which consent was obtained.
- D. It is necessary for the police to show that the person who gave consent had the authority to do so. The police must show that the person who gave consent had control over the area to be searched and that the person who gave consent commonly entered the area themselves to the same extent that the police intend to intrude.
- E. Any items seized must be recorded on a property record as outlined in Division Directive PG1200.0 - “Evidence”.
- F. The person giving the consent can place any limitation or conditions on the consent search. Consent may be withdrawn at any time and officer(s) shall immediately stop the search.

XI. STRIP/BODY CAVITY SEARCHES

- A. Procedures for strip and body cavity searches to be conducted after arrival at a holding facility are detailed in Division Directive PG1010.0 - “Holding Facility and Processing Procedures”.
- B. Strip searches at the time of arrest shall only be made based on specific factors which give rise to a reasonable suspicion that the prisoner may be concealing weapons or escape implements, thereby presenting an immediate danger. Officers shall follow the same procedures outlined in Division Directive PG1010.0 (above) for the search.
- C. The mouth is the only body cavity that may be searched without a search warrant. If an officer has probable cause to believe that a prisoner is concealing something in their mouth, the officer may use reasonable force to prevent the swallowing of the object and may remove the object. Officers are cautioned to use extreme care and judgment in these circumstances. If officers know that only contraband is being concealed they should consider strongly advising the prisoner of the danger of a possible fatal overdose instead of trying to remove the item(s).

XII. RESPONSIBILITIES

- A. All Officers
 - 1. Shall conduct field interviews in accordance with the provisions of this directive.
 - 2. Shall conduct all searches in accordance with the provisions of this directive.

FIELD INTERVIEWS & "SEARCH AND SEIZURE"

PG442.0

3. Shall complete the appropriate Warning/Field Contact Reports upon conducting a field interview.
4. Shall complete the MSP Form 97 after conducting a "Stop and Frisk".

B. Supervisors

1. Shall review all Warning/ Field Contact Reports and MSP Form 97 forms submitted by officers under their supervision for accuracy and completeness.
2. Shall monitor and respond to all search and seizure incidents involving hot pursuit/exigent circumstances.
3. Shall verify the circumstances involved in plain view seizures and consent searches.
4. Shall respond to all incidents where an officer is requesting permission to conduct a strip search or search of a prisoner's mouth.

C. Operation Duty Officers/Supervisors

Shall make the necessary contacts and inspections to ensure compliance with the provisions of this directive.

D. Records Section

Shall forward all copies of the MSP 97 forms to the Maryland State Police within twenty-four (24) hours of receipt from the reporting officer.

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