THURMONT POLICE DEPARTMENT

GENERAL ORDER	*Date Issued:* January 15, 2014	*Effective Date: January 15, 2014*	*Order No:* Chapter 1.2
Authority: Chief of Police Gregory L. Eyler			*Manual Page No:*
Subject: **Warrantless Search and Seizure**			*Replaces Page No:*
Accreditation Standard: Chapter 1.2	*Distribution:* **ALL**	*Amends:*	*Number of Pages: 12*
Related Documents:			*Rescinds:* New Policy

This Directive is for internal use only, and other than as contraindicated here this Directive does not create or enlarge this Department's, governmental entity's, any of this Department's officers, and/or any other entities' civil, criminal, and/or other accountability in any way. This Directive is not to be construed as the creation of a standard of safety or care in any sense, with respect to any complaint, demand for settlement, or any other form of grievance, litigation, and/or other action. Deviations from this Directive, if substantiated, can only form the basis for intra-Departmental administrative action(s) (including discipline and/or termination).

I. Purpose:

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

II. 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**.

III. Policy:

It is the policy of the Thurmont 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 departmental policies.*

1. 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.

IV. 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).

V. 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 expectations governed by this general order.

A. 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. Prior to searching a person or their property, the officer must ask the person for consent and must reasonably believe that the person consented clearly, and of his own free will.

    a. When conducting a consent search of a vehicle, the officer will ask the consenting party to sign an informed consent form, which indicates the search is being made freely and voluntarily.

        i. If the person consents to the search, but refused to sign the form, the search is technically legal and can be conducted.

        ii. 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 statement made by the officer(s) or suspect in the incident report and/or the Statement of Charges.

        iii. 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.

    b. It is the officer's discretion to use the consent form for any other consent search except for vehicles, which is mandatory Departmental policy.

4. If the person who has asked for consent does not respond, *silence alone is not considered to be an affirmative answer*.

5. 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.

6. Consent to Search forms must be used for vehicle consent searches and may be used for other consent searches.

7. All Consent Search forms will be submitted with the case file when a report is generated. (Refer to section M. when a report is not required.)

B. Search Incident to Arrest:

Whenever an officer makes a lawful arrest of a person, the officer is entitled to make a field search, as defined in Section 1.2.8(B), 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.

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.

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.

Arizona v. Gant Case Law

The below Supreme Court Case ruling was decided on 4/21/09. This will cause a significant change in our policy concerning "search incident to arrest" of an arrestee who was an occupant of an automobile. However, based on this decision, please abide by the following changes:

1. Officers will continue to conduct a Terry Frisk of a motor vehicle, if the two prongs for a Terry Frisk are present. (RAS of a crime and RAS occupant is armed)
2. Officers will continue to conduct an appropriate search incident to arrest of an arrestee's person.
3. Officers will conduct a search incident to arrest of the area of reach, lunge, or grab of a motor vehicle contemporaneous to the arrest of an occupant of the motor vehicle, if:

"It is reasonable to believe that the 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:

1. 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.
2. 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.

Please don't confuse a "search incident to arrest" with a probable cause search of a motor vehicle combined with the exigency of mobility as explained in the Carroll Doctrine. The following examples are still lawful searches of a mobile motor vehicle:

1. Plain view of contraband in a vehicle
2. Positive K-9 alert of a motor vehicle
3. Officer detection of an odor of illegal drugs from a motor vehicle
4. Probable cause that a motor vehicle contains other evidence or contraband

Reference the below link to the Supreme Court Case for further details…

07-542 **Arizona v. Gant** (4/21/2009)

Respondent Gant was arrested for driving on a suspended license, handcuffed, and locked in a patrol car before officers searched his car and found cocaine in a jacket pocket. The Arizona trial court denied his motion to suppress the evidence, and he was convicted of drug offenses. Reversing, the State Supreme Court distinguished New York v. Belton, 453 U. S. 454—which held that police may search the passenger compartment of a vehicle and any containers therein as a contemporaneous incident of a recent occupant's lawful arrest—on the ground that it concerned the scope of a search incident to arrest but did not answer the question whether officers may conduct such a search once the scene has been secured. Because Chimel v. California, 395 U. S. 752, requires that a search incident to arrest be justified by either the interest in officer safety or the interest in preserving evidence and the circumstances of Gant's arrest implicated neither of those interests, the State Supreme Court found the search unreasonable.

Held: Police may search the passenger compartment of a vehicle incident to a recent occupant's arrest only if it is reasonable to believe that the arrestee might access the vehicle at the time of the search or that the vehicle contains evidence of the offense of arrest.

This Court rejects a broad reading of Belton that would permit a vehicle search incident to a recent occupant's arrest even if there were no possibility the arrestee could gain access to the vehicle at the time of the search. The safety and evidentiary justifications underlying Chimel's exception authorize a vehicle search only when there is a reasonable possibility of such access. Although it does not follow from Chimel, circumstances unique to the automobile context also justify a search incident to a lawful arrest when it is "reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle." Thornton v. United States, 541 U. S. 615, 632 (SCALIA, J., concurring in judgment). Neither Chimel's reaching-distance rule nor Thornton's allowance for evidentiary searches authorized the search in this case. In contrast to Belton, which involved a single officer confronted with four unsecured arrestees, five officers handcuffed and secured Gant and the two other suspects in separate patrol cars before the search began. Gant clearly could not have accessed his car at the time of the search.

An evidentiary basis for the search was also lacking. Belton and Thornton were both arrested for drug offenses, but Gant was arrested for driving with a suspended license—an offense for which police could not reasonably expect to find evidence in Gant's car. Cf. Knowles v. Iowa, 525 U. S. 113, 118. The search in this case was therefore unreasonable. Pp. 8–11.

(c) This Court is unpersuaded by the State's argument that its expansive reading of Belton correctly balances law enforcement interests with an arrestee's limited privacy interest in his vehicle. The State seriously undervalues the privacy interests at stake, and it exaggerates both the clarity provided by a broad reading of Belton and its importance to law enforcement interests. A narrow reading of Belton and Thornton, together with this Court's other Fourth Amendment decisions, e.g., Michigan v. Long, 463 U. S. 103, and United States v. Ross, 456 U. S. 798, permit an officer to search a vehicle when safety or evidentiary concerns demand. Pp. 11–14.

(d) Stare decisis does not require adherence to a broad reading of Belton. The experience of the 28 years since Belton has shown that the generalization underpinning the broad reading of that decision is unfounded, and blind adherence to its faulty assumption would authorize myriad unconstitutional searches.

C. 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 Handgun Law" (Criminal Law Article 4-203) 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 the above Article to conduct a "frisk" or "pat down" for his protection and others under the exigent circumstances and to determine the handgun is being carried legally.

    a. The officer will identify himself as an office 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 which dispels the reasonable belief which 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. Exigent Circumstances and Emergencies (Hot Pursuit):

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 the warrantless search under exigent circumstances may be used to establish probable cause for a search warrant.

1. 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.

2. 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.

3. 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.

4. Nothing prohibits an officer from obtaining consent to search pursuant to Sec. A of this Policy.

E. 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 which ***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 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. A entitled "Consent."
4. 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. However, a vehicle may not be detained for the purpose of obtaining a canine scan beyond the normal time it takes to prepare a citation.

F. Inventory of Seized Vehicles:

1. Officers will inventory each and every vehicle that is seized or impounded.

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:

    d. an owner's property while it is in police custody; and,

    e. the police from potential danger, or against claims or disputes over lost or stolen property.

3. 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.

4. When practical, the inventory will be conducted prior to the towing of the vehicle from the place of impounding or seizure.

5. Authorized towing firms assume liability for the vehicle and any personal property which is in the vehicle if the vehicle is towed to the firm's storage lot. Prior to towing, the owner/operator of a vehicle may authorize a passenger or other person of his/her choice who is present at the scene to secure any non-evidentiary personal property which is in the vehicle. In the event an arrestee claims that there is an item of significant value in the vehicle, the officer requesting tow service shall conduct an inventory of the vehicle's contents and retrieve any item(s) which the officer reasonably believes are of significant value. These item(s) will be processed as property, utilizing the Property Held Form in addition to the Departmental Tow Form, and secured in the Property/Evidence room for safe-keeping until released back to the owner.

6. Inventory of Other Property:

a. Closed containers may be opened only if the officer is unable to determine the contents from an examination of the container's exterior, as long as it is for the sole purpose of an inventory and not to look for evidence.

b. When a container is inventoried, the results of the inventory and all property taken into custody will be accounted for following departmental property procedures.

G. Searches at the Scene of a Crime:

1. There is a Fourth Amendment exception governing crime scenes. Once police have completed processing at the scene and relinquished control of it, the location is then 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 would need to secure the premises and seek a search warrant. If, however, the handgun is lying 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 premise where a lawful arrest has been made may be subject 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 premise who pose a danger to those on the arrest scene.

H. 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.

I. Open Fields:

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

J. 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 object's incriminating character must be "immediately apparent" and the officer must have a lawful right to access the object at the time of the seizure (Horton v. California, 496 U.S. 128 (1990));

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;

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.

K. 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.

L. Situations Involving DWI/DUI and Traffic Accidents:

1. Maryland's Implied Consent Law – Pursuant to the provisions of Transportation Articles 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 DWI/DUI, and while doing so, was involved in a traffic accident involving life threatening injuries or fatality. If the suspected DWI/DUI 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 and exigency can be articulated. **(Officers must consult with the State's Attorney's Office prior to withdrawing blood from a person based on exigent circumstances. New case law may require the officer to apply for a Search Warrant.)**

2. An officer may request a "Summons in Aid for Information" 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 DWI/DUI person refused to submit to the blood kit, but from whom blood was withdrawn by medical personnel for medical reasons.

M. Reporting of Warrantless Searches:

Whenever a warrantless search is conducted, and an arrest was made, details of the incident will be incorporated into an Incident Report, Accident 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. Whenever a warrantless search is conducted, and an arrest was not made, no report will be required unless other circumstances arise during the search which would be in the best interest if documented in an Incident Report.

When conducting a Warrantless Search of a Person, vehicle other than a traffic stop, residence, or any other property, and no report is required, officers may close out the Call for Service – Code 71, **but must request the Dispatcher to add, or self add, the following comment to the Notes Section:**
"Search Conducted."

Consent searches of a Vehicle during a traffic stop in which no evidence is located, will be
captured in DELTA through the ETIX software, and may also be closed out – Code 71, **but the**
officer must request the Dispatcher to add, or self add, the following comment to the Notes Section:
"Search Conducted."

<u>For TPD Statistical DATA, ALL SEARCHES, whether a report was generated or not, must have the "Search Conducted" comment added to the notes section of the Call for Service page.</u>

ATTACHMENTS :

DOCUMENT DATES :

Amended Date: September 29, 2015

Review Date:
Review Date:

Review Date:

Rescinds:

Order Written By: Lt. P.A. Droneburg
Order Edited and Approved By: Chief Gregory L. Eyler

Accreditation Standards Included in this Order
CHAPTER