

# ELIZABETH POLICE DEPARTMENT GENERAL ORDERS



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**CHAPTER: 5**

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**SUBJECT: SEARCH PROCEDURES**

**EFFECTIVE DATE:**  
January 13, 2021

**ACCREDITATION STANDARDS:**  
3.1.1

**BY THE ORDER OF:**  
Chief Giacomo Sacca

**BY AUTHORITY OF:**  
Police Director Earl J. Graves

**SUPERSEDES ORDER #:**

**PURPOSE** The purpose of this general order is to maintain guidance to personnel in conducting searches and is not intended to supplant more detailed publications of criminal procedure and case law. It is intended to serve as a brief guide to operational decision-making concerning searches in the field. Therefore, all applicable cases will not be represented.

**POLICY** It is the policy of the Elizabeth Police Department to respect and protect the constitutional rights of all persons and to adhere to all law, contemporary criminal procedure, Attorney General's guidelines and directives, and applicable court decisions when conducting searches and seizures.

It is also the policy of the Elizabeth Police Department that, unless impracticable or if an exception to the search warrant requirement applies, personnel should obtain a search warrant in advance of any search.

It is further the policy of the Elizabeth Police Department that personnel should familiarize themselves and remain current on applicable criminal procedures and case law regarding constitutional issues. The execution of all search warrants requires the presence of a bureau or unit supervisor at the search scene.

## PROCEDURES

### I. DEFINITIONS

A. For purposes of this general order:

1. Affidavit is a written sworn statement made under oath or on affirmation in support of a search warrant before an authorized judge and must establish the requisite probable cause to believe that a crime is being, or has been committed, and that a search would discover the fruits of the crime. *If the affiant is not sworn, the search warrant is considered invalid and the search will be considered warrantless.*
2. Curtilage refers to the land immediately surrounding a residence/structure and any outbuildings or structures found upon that land.
3. Exigent circumstance (exigency) includes real emergencies or dangerous situations that require swift and immediate official action. Factors associated with exigency include but, are not limited to:
  - a. Danger to the life or safety of the officer or others;
  - b. Seriousness of the offense;
  - c. The potential loss or destruction of evidence.
4. Incidental to or contemporaneous with means so close in time and location they may be considered a single unit.
5. Probable cause is the facts and circumstances within the officer's knowledge, which are sufficient to permit a prudent person, or one of reasonable caution, to conclude there is a fair probability a criminal offense has been, is being, or is about to be committed, and the suspect is or was a criminal participant.
  - a. Probable cause must exist prior to a search.
  - b. There are unlimited types of information an officer can use to support probable cause, provided the information can be documented that include, but are not limited to:
    - 1) Facts surrounding the incident;
    - 2) Officer's familiarity with the subject;
    - 3) Reports from others – victims, witnesses, informants, officers; and
    - 4) The overall experience of the officer.

6. Reasonable suspicion is the development of specific and explainable facts, by viewing the totality of the circumstances, which leads to an objective basis for suspecting the person to be stopped of being involved in criminal activity. Reasonable suspicion is less than probable cause but, more than mere suspicion.
7. Residence includes single family and multi-family dwellings.
8. Search refers to an examination of a person's house, building, premises, or separately secured portion thereof; or a person or their effects, including electronic devices and databases, for the discovery of contraband, illicit or stolen property, or some evidence of guilt for use in a criminal proceeding.
9. Seizure refers to the confiscation of any goods, effects, including electronic devices and databases, contraband, or other tangible property or things.
10. Span of control is the area, including the person of the arrestee, within a person's immediate control. In a motor vehicle, this includes the passenger compartment and any containers, whether open or closed, found therein.
11. Totality of the circumstances is the view of the entire picture known to the officer at the time the encounter took place.
12. Warrantless searches include but, are not limited to:
  1. Searches by consent;
  2. Protective frisk situations;
  3. Searches of motor vehicles;
  4. Crime scene searches;
  5. Public safety considerations/emergencies and exigencies;
  6. Plain view / plain smell / plain touch;
  7. Open fields;
  8. Searches incidental to arrest;
  9. Protective custody searches;
  10. Abandonment.

## II. GENERAL PROVISIONS

- B. Courts will generally view warrantless searches as unreasonable on their face. The state has the burden to prove that a warrantless search was, in fact, reasonable under the circumstances.
  1. Justification for a warrantless search and/or seizure is **fact sensitive**.

2. All facts and circumstances that lead an officer to make his/her determination to conduct a warrantless search or seizure must be clearly documented on the report of the incident.
  3. Be careful in the choice of words (e.g., protective frisks should not be referred to as searches; an inventory of personal property should not be referred to as a search, etc.)
- C. During any encounter or contact with any individual, officers shall make visual observations for any sign of weapons or evidence of a crime.
- D. If seizures occur, established evidentiary procedures regarding collection, processing, packaging and recordkeeping apply.
- E. When in doubt about any search or seizure issue, contact a supervisor, who may contact the Union County Prosecutor's Office for direction.
- F. In order to provide protection for personnel and the department in general, all searches, whether or not they result in a seizure must be clearly documented on the *Incident Report* of the event that precipitated the search. The report must contain the heightened awareness, reasonable suspicion, probable cause, exigency, and/or other facts and circumstances giving rise to the requisite level of belief supporting the decision to search.
- G. In suspected DWI cases, the courts no longer recognize that the natural dissipation of alcohol justifies the seizure of a defendant's blood without a warrant. In such cases, officers shall contact the desk officer and inform him/her of the circumstances surrounding the request for blood testing.
1. First, seek a breath sample in accordance with standard DWI enforcement guidelines. If refused, charge accordingly.
  2. If a breath sample is impracticable or if a substance other than alcohol is suspected, seek written consent for a blood test or urine test from the suspected drunk/drugged operator.
    - a. Urine testing can only be performed with consent.
    - b. Officers must use only the consent forms mandated by the New Jersey Division of Criminal Justice.
  3. If unable to charge with refusal to take a breath sample, contact a supervisor, who will contact the on-call Union County Prosecutor's Office assistant prosecutor and seek a telephonic search warrant for blood, see subsection IV of this general order.
  4. The detective will provide the assistant prosecutor with adequate information concerning the sought warrant including whether the matter concerns a DWI offense only or if criminal charges are potentially feasible.

5. If the defendant is hospitalized and undergoing treatment, and drawing blood is impracticable, advise the Union County Prosecutor's Office assistant prosecutor (or municipal prosecutor in simple DWI cases) to seek a Dyal Subpoena for any blood or urine test results.

### III. SEARCHES SUPPORTED BY A WARRANT (GENERAL)

- A. NOTE: The search warrant application form and approval process are not required for administrative search warrants or for court orders to enter premises to retrieve weapons, pursuant to N.J.S.A. 2C: 25-21 et seq. when the weapons to be seized are not believed to be contraband, evidence or an instrumentality of a criminal offense.
- B. Affidavit
  1. **If the affiant is not sworn, the search warrant will be invalid and the search will be considered warrantless.**
  2. The affiant must include as many facts as possible on the affidavit to support their belief as to the existence of probable cause. The affiant should describe his/her particular areas of training and expertise, such as forensic computer examinations or sexual assault investigations and how that training and expertise assisted in his/her evaluation of probable cause.
  3. Affiants may use information learned from other sources if they can establish both the credibility of the source and the reliability of the source's information by a totality of the circumstances.
  4. When additional information that detracts from a finding of probable cause comes to the attention of the affiant after the warrant application has been made, but before the search warrant has been executed, the affiant must present these additional facts to the judge under oath.
  5. When preparing the affidavit, the affiant must particularly describe the place to be searched, the items to be seized, the individual or entity possessing the items and the underlying crime/offense.
    - a. Include only current information in the affidavit or relevant older information. If the information is too old, the court will hold that it is stale, and the warrant may fail.
    - b. When using information provided by a confidential informant, include ALL information concerning the informant's credibility or reliability. Do not reveal the informant's identity (e.g., Informant A, Informant B, etc.).
    - c. Include ALL the facts, which indicate how the informant obtained the information.
    - d. Include information, which links the person you wish to search to the criminal activity.

- e. Include information, which links the place to be searched to the criminal activity.
  - f. Include information, which links the person to be searched with the place to be searched.
  - g. If searching a vehicle, include a complete description including make, model, license number, color and VIN.
6. The description should not be general in nature. When listing a specific street address to search, describe the house/building/structure with sufficient specificity.
- a. If the place to be searched is partitioned, such as a multi-family dwelling, apartment building, office building, etc., specifically list and describe the intended target place.
  - b. When a specific premise is to be searched, the description of the premise shall include such items as:
    - 1) Street address;
    - 2) Physical description of the property, including color of the structure;
    - 3) Legal description of the property (lot and block number);
    - 4) Photographs, diagrams, maps, digital images, etc.;
    - 5) If known, identify the owner(s)/occupant(s).
  - c. It is imperative that the affidavit and search warrant describe all of the areas that the officers desire to search. Include specific references to a yard, garage, tool shed, barn, etc. in the warrant description, when such buildings are known to exist (i.e. curtilage). Include potential ingress and egress points.
  - d. When intending to search a structure where a person resides with others (e.g., parents, siblings, children, etc.) be sure and show a connection between the home and the person to be searched. Do not just characterize a residence as a parents' home.

C. Prosecutorial review:

- 1. Detectives applying for a search warrant must first obtain expressed authorization from the designated assistant prosecutor.
- 2. This rule shall apply to applications for a search warrant made in person pursuant to [R. 3:5-3a](#), as well as to applications for a search warrant that are communicated to a superior court judge by telephone, radio or other means of electronic communication pursuant to [R. 3:5-3b](#).

3. The designated Union County assistant prosecutor will determine the appropriate judge before whom the application for a search warrant should be made, and will assist the affiant in contacting the judge.
  - a. In cases involving DWI when a search warrant for blood is indicated and where only motor vehicle offenses are anticipated, the on-call assistant prosecutor will authorize that the telephonic search warrant to withdraw blood be obtained through an appropriately designated municipal court judge.
  - b. In cases involving DWI when a search warrant for blood is indicated and where criminal charges are also anticipated (e.g., death by auto, assault by auto, etc.), the on-call assistant prosecutor will authorize that the telephonic search warrant to withdraw blood be obtained through superior court judge.
  - c. In cases when blood will be withdrawn in a medical facility outside of Union County, the on-call assistant prosecutor will authorize that the telephonic search warrant to withdraw blood be obtained through a superior court judge
  - d. Domestic violence weapons search warrants can be obtained from a municipal court judge
4. The affiant shall submit to the assistant prosecutor a written copy of the affidavit along with a completed and signed search warrant application form. A *Deconfliction Data Entry Form* shall also be completed and faxed to (973) 776-1322 or emailed to [NJHIDTA@usdoj.gov](mailto:NJHIDTA@usdoj.gov). The assistant prosecutor shall be informed of the response received or that there was no response received after 30 minutes.
5. The duty assistant prosecutor is authorized to deny the application, approve the application, amend the application or make approval of the application contingent upon some further investigative step, notification and/or consultation with some other law enforcement officer/agency or such other action to be taken by the affiant as deemed necessary.
6. If the reviewing duty assistant prosecutor declines to approve an application or conditionally approves an application subject to a condition that has not been satisfied, the affiant or any other person representing this agency is prohibited from making an application to any other assistant prosecutor without revealing in the successive application the fact that an application has previously been reviewed by another assistant prosecutor
7. The duty assistant prosecutor may grant approval in writing, electronically (e-mail or facsimile transmission), or orally (by telephone or radio communication).
8. Unless impracticable, the affiant shall submit to the assistant prosecutor a written copy of the affidavit along with a completed and signed application form.

9. When impracticable for the affiant to submit a copy of a written affidavit and completed application form, the assistant prosecutor shall be responsible for making certain that all of the requirements of [Attorney General Directive 2002-2](#) have been satisfied by means of oral communication with the affiant.
  - a. The affiant and the duty assistant prosecutor shall prepare the *Search Warrant Approval Form* as well as documentation related to the application for a search warrant.
  - b. The affiant shall provide a copy of the *Search Warrant Approval Form* to the duty assistant prosecutor on the next business day.
- D. Telephonic Search Warrants – The decision to seek a telephonic search warrant can only be made by a supervisor.
  1. Attempts to obtain telephonic authorization must be approved by an officer of supervisory rank. The supervisor will direct the officer seeking the authorization to contact the duty assistant prosecutor from the Union County Prosecutor's Office. The duty assistant prosecutor will either refer the request to the appropriate superior court judge or otherwise direct the officer as to what actions should be taken. Municipal court judges are not authorized to grant such authorization except in DWI cases. A municipal court judge authorized to do so as designated by the Administrative Office of the Courts can only approve telephonic search warrants for DWI offenses, without any companion criminal charges.
  2. The affiant must suitably identify himself/herself.
  3. He/she must specify the purpose of his request.
  4. He/she must also disclose the basis for the information he intends to impart to the judge and must be placed under oath or affirmation by the judge before presenting any information.
  5. The judge shall also make a contemporaneous record of the application, whether by tape or stenographic recording or by making adequate notes thereof.
  6. The judge shall also make a contemporaneous record or notation of his/her factual determination as to exigent circumstances and probable cause.
  7. The judge shall also memorialize the specific terms of his authorization to search. Promptly after such authorization, the judge shall issue a written confirmatory search warrant and shall file that warrant together with all documents evidencing the oral application and authorization with the clerk of the court.
  8. If the state demonstrates that there were both exigent and probable cause, and that all procedural guidelines were met as described above, the telephonic authorization may be deemed to be the functional equivalent of a written search warrant.

E. Secrecy

1. The events and circumstances surrounding the issuance of a search warrant should proceed with all practicable secrecy, *R. 3:5-4*. This includes:
  - a. The affidavit or testimony upon which the search warrant is based.
  - b. Following execution, the warrant and accompanying supporting documents including electronic recording(s), duplicate original search warrant, return and inventory.
2. The only exception to this secrecy requirement is that the warrant and the accompanying papers are to be made available for inspection and copying by the defendant and by any person claiming to be aggrieved by an unlawful search and seizure upon notice to the Prosecutor's Office.
3. Unauthorized disclosure, prior to its execution, that a warrant has been applied for or issued, except as necessary for its execution may constitute contempt and may result in criminal, civil, and/or administrative sanctions.

F. No knock search warrants:

1. At the time of application, if there is credible information to imply that personnel safety will be endangered or evidence will be destroyed when a knock and announce warrant is executed, the applicant (affiant) shall seek judicial permission to make an unannounced entry (no-knock warrant).
2. The information upon which this request is based shall be included in the affidavit.
3. The applicant (affiant) shall request that the issuing judge indicate on the search warrant itself or on an attached addendum, that he/she is permitting the Elizabeth Police Department to make an unannounced entry.
4. If after a search warrant is obtained, but before the execution is initiated, information is received that an announced entry will jeopardize personnel safety or lead to the destruction of evidence, the attending supervisor or lead detective shall do one of the following:
  - a. If time permits, revise the affidavit to include this request; or
  - b. If time permits, obtain judicial authorization for a no-knock entry; or
  - c. If time does not permit judicial authorization, make the decision for the no-knock entry and fully document the basis for the no-knock entry on a separate report, which will become part of the case file.
5. The emergency service unit (ESU) shall execute all no-knock search warrants and high-risk arrest warrants.

- G. Operations plan and briefing:
1. Prior to executing any search warrant, the lead detective/supervisor shall formulate an operations plan detailing the planned operation. The operations plan should address the following areas:
    - a. Operational overview – included shall be a brief synopsis of the investigation that led to the issuance of the search warrant, type of warrant (knock or no-knock), address and description of the target location, number and identity of probable occupants at target location, number and identity of person for whom arrest warrants have been issued, number and identity of persons to be searched in accordance with the warrant.
    - b. Personnel assignments:
      - 1) Supervisory personnel and the incident supervisor;
      - 2) Entry team (ESU);
      - 3) Search teams;
      - 4) Evidence collection;
      - 5) Photography;
      - 6) Perimeter teams;
      - 7) Arrestee security/transportation.
    - c. Required/authorized equipment and weapons;
    - d. Designated hospitals for injured officers/civilians;
    - e. Designated police radio channels/talk groups (primary and secondary);
    - f. Location of processing/holding facility;
    - g. Special instructions/information.
  2. All operational plans must be submitted to a supervisor for preliminary review and approval. Final review and approval must be made by the Detective Bureau Commander, or in his/her absence, the next highest-ranking officer.
  3. All law enforcement personnel participating in the execution of a search warrant will be instructed to muster at a designated time and location in order to facilitate a complete briefing of the proposed operation. The officer-in-charge or his/her designee (briefing officer) shall conduct the operational briefing.

4. The lead detective/supervisor shall ensure that all participating personnel are properly equipped with and wearing body armor on all pre-planned high-risk entries.
- H. Execution of a search warrant:
1. When issued, search warrants shall:
    - a. Particularly identify the property to be seized; and
    - b. Name or describe the person or place to be searched; and
    - c. Specify the hours when it may be executed; and
    - d. Specify whether the search warrant is a no-knock warrant.
  2. Search warrants must be executed within 10 days and within the hours fixed by the judge and returned to the issuing judge unless otherwise directed by the issuing judge.
  3. Search warrants may be executed only once and personnel cannot remain on the premises longer than is reasonably necessary to conduct the search.
  4. Ordinarily, executing personnel shall ordinarily knock and announce their presence before entry. However, an unannounced entry may be deemed proper if personnel have a reasonable suspicion that knocking and announcing would:
    - a. Present a threat of physical violence (e.g., where the investigator's peril would be increased if knocking preceded the entry); or
    - b. Be futile or a useless gesture (no one home at the target premises, etc.); or
    - c. Result in the loss or destruction of evidence and immediate action is required to preserve the evidence.
  5. Only law enforcement officers shall be present during the execution of a search warrant unless extenuating circumstances exist, and the presence of such non-law enforcement personnel is deemed necessary and has been approved by the Detective Bureau Commander.
  6. Once inside the target premises, locate those persons who are to be searched pursuant to the warrant or who are to be arrested pursuant to arrest warrants.
    - a. Persons' names in arrest warrants shall be handcuffed at the earliest opportunity.
    - b. Generally, a warrant to search a premise does not authorize a search of each person in those premises at the time the warrant is executed.

- c. A warrant to search a premise does not even authorize a frisk of a suspect found in those premises unless there is a reasonable belief that the suspect is armed and presently dangerous.
  - d. However, when the warrant authorizes a search for contraband, occupants of the premises who are not named in either the search or arrest warrants may be detained in handcuffs while the search is being conducted. Questions designed to elicit basic identification information may be asked.
  - e. After searching the persons pursuant to the warrant or incident to their arrest, gather all occupants of the premises at one location and read the search warrant verbatim to the occupants.
- 7. Give a copy of the search warrant to any persons whose premises are to be searched. When no one is at home, a copy must be left in a conspicuous location.
- 8. Read Miranda warnings to all occupants if they are going to be imminently interrogated and make sure all of the persons present understand the warnings.
- 9. While the warrant and Miranda warnings are being read to the occupants, designated officers should photograph and/or digitally video record the premises to mitigate any claims of damage caused by officers during the execution of the search warrant.
- 10. Proceeds of a crime/offense (stolen property, etc.), instrumentalities of a crime/offense (weapons, marks, tape, etc.), and contraband (CDS, etc.) may be seized.
- 11. Personnel shall seize any evidence of criminal conduct including contraband that is inadvertently discovered during a search with a warrant.
  - a. If a search warrant authorizes the search of something specific and executing personnel discover other evidence not related to the original search, then the search for this additional evidence must stop and the search warrant must be amended.
  - b. (Example: while searching for weapons in an assault investigation, CDS is discovered. The inadvertently discovered CDS can be confiscated as a plain view seizure, but no further search for CDS can be conducted without first amending the search warrant.)
- 12. Officers assigned to the search teams shall use care to ensure that the premises and its contents are not unnecessarily damaged as a result of the search.
  - a. To the best of the officers' abilities, any item that is not seized as a result of the search shall be returned to its original location.
  - b. Reckless destruction of property is prohibited and may subject an officer to discipline and/or civil liability.

13. If property is seized under the warrant, the attending supervisor or lead detective shall ensure that the person from whom or from whose premises the property is taken is provided with a copy of the warrant and a receipt for the property taken. The inventory of property taken will also be returned to the issuing judge.
  - a. The person shall be asked to sign the receipt acknowledging exactly what property the officers seized.
  - b. If there are no persons present at the premises during the search, a copy of the receipt form shall be left in a conspicuous location within the premises.
  - c. In situations when the person refuses to sign the receipt or there are no persons present at the premises, a supervisor shall be summoned to verify the accuracy of the receipt and thereafter shall co-sign the receipt to attest to its accuracy.
  
14. The initiating affiant is responsible for following through with the process to ensure that all procedural steps are accomplished in a timely fashion. Promptly after concluding the search, and in a reasonable amount of time, the affiant shall arrange to appear in front of the judge who issued the search warrant. The affiant must deliver to the issuing judge the following documents:
  - a. The original search warrant with inventory;
  - b. The *Return of Search Warrant Form*.
    - 1) The officer shall sign the *Return of Search Warrant Form* in the presence of the duty assistant prosecutor.
    - 2) The judge then signs the *Return of Search Warrant Form* in two places indicated on the form.
  
- I. Completed search warrant approval forms are not discoverable pursuant to R. 3:13-3 and shall not be included for routine discovery packages.

#### **IV. SEARCH BY CONSENT**

- A. A search by consent may be conducted without a search warrant, probable cause or reasonable suspicion, EXCEPT that New Jersey courts require reasonable suspicion before asking for consent to search a motor vehicle. To be considered valid, consent must be voluntarily, specific, freely and intelligently given with knowledge of the right to refuse or to revoke at any time prior to the completion of a search by consent.
  
- B. Officers must alleviate the appearance of coercion by avoiding unnecessary display of weapons, unnecessary personnel or authority, or by implying that a search warrant can be obtained (without the requisite probable cause), or threat of arrest will be lifted as soon as consent is given.

1. Factors that do not negate the voluntariness of a consent to search, but which may be considered by a court or other authority during a review to determine if consent was in fact given voluntarily;
  - a. Individual was already under arrest;
  - b. Consent was obtained despite a denial of guilt;
  - c. Consent was obtained after individual had refused previous requests;
  - d. Search resulted in the seizure of contraband that the individual knew would be discovered.
  
2. Factors that a court will consider that may indicate consent was voluntarily given:
  - a. Individual was not under arrest;
  - b. Individual believed no contraband would be found;
  - c. Individual provided an admission of guilt prior to giving consent;
  - d. Individual knew what was being sought;
  - e. Individual was not restrained;
  - f. Individual was familiar with the officers;
  - g. Individual was familiar with criminal justice system;
  - h. Individual provided access to area to be searched;
  - i. Individual signed a *Consent to Search* form;
  - j. Individual knew he/she had a right to refuse consent;
  - k. Individual knew he/she had a right to be present during the course of the search and stop the search at anytime.
  
- C. Permission to enter a structure, including permitted entry to conduct an interview is not to be a pretext to search or misconstrued as permission to search.
  
- D. Officers should ordinarily complete and submit a *Consent to Search* form whenever such consent is sought and given.
  1. The form must be submitted as part of the case file.
  2. Officers seeking permission to search should avoid unnecessary display of weapons and should make their requests clearly independent of the power and authority represented by their badge. Moreover, permission to enter is not permission to search, whether obtained at the door prior to entry or obtained during entry.

3. Following entry, consent to search must be independently requested and specifically given. The exact words chosen by officers and their expression are important in obtaining truly voluntary consent. The language must convey a request, not a command. Additionally, where the person giving consent is in custody, the burden of proving voluntariness becomes more formidable but not impossible.
  4. A valid consent to search may be given only by the person with the equal rights to the occupation of the premises. If the suspect and another jointly occupy the premises, the latter may be entitled to consent to entry on that portion of the premises jointly occupied and to seize property. Likewise, a spouse may authorize a search of those areas jointly occupied. However, a third party's consent to search will be invalid where a physically present co-occupant of the premises expressly refuses consent. In situations with co-occupants, officers must also take care not to remove the refusing party in order to gain consent of a co-occupant. Once a co-occupant has refused consent, no **consent** search may be conducted at that time.
  5. Generally, a parent or guardian may consent to a search of a child's property. New Jersey Courts have extended this rule to include even the search of an adult child's room if the homeowner parent or guardian consents to the search. If a child refuses to give consent to search common areas of his or her parents' or guardians' home, (e.g. living room, dining room, kitchen) officers may gain consent to search these areas from the parent(s) or guardian(s). New Jersey courts have recognized a certain hierarchy of ownership in these cases; officers must be careful to differentiate between purely co-occupant situations and children residing with parents or other guardians.
  6. An employer cannot consent to the search of non-common premises used by an employee in his/her work.
  7. Because the scope of permissible consent search is determined by the scope of the consent given, officers must make clear in his/her discussions with the consenting party the precise scope of the consent that the consenting party is providing.
  8. An individual with custody of personal property belonging to another may not consent to its search unless he/she has been given full control over the property. Thus, consent by a person having only limited custody, such as for storage or shipment, is not valid.
  9. Consent to search may be revoked or limited in scope at any time prior to completion of the search. When an individual revokes consent, officers are not required to cease their investigation. If the officer develops probable cause during the consent process, file for a warrant.
- E. Because consent is a voluntary act, the consent-giver may condition his/her consent as he/she chooses, such as by agreeing to consent to a search only if he/she is allowed to be present during the search or only after speaking with an attorney. If the conditions required by the consent-giver are unacceptable, for example because they might jeopardize the safety of the personnel conducting the

search, a search warrant should be obtained, but only after probable cause has been established.

- F. When the consent-giver is informed that the search will be for a specific item or items, the scope of the search is limited to places where those items can be found.
- G. Division, bureau, or unit lieutenants, according to individual officers assignments, are required to review all *Consent to Search* forms.

## V. PROTECTIVE FRISK ENCOUNTERS

- A. Officers have the authority to make an investigative detention in any place where they have a right to be including, but not limited to:
  - 1. Any public place;
  - 2. Any place or area that is open to the public;
  - 3. Any private premises entered with a valid warrant, by consent, or under emergent circumstances.
- B. The courts have consistently ruled that there are three components to justify a frisk in these instances:
  - 1. The investigative detention may only be conducted when an officer has an objective reasonable suspicion of criminal activity.
  - 2. The protective frisk of a suspect's outer clothing may be conducted only when the officer is in possession of additional specific and articulable facts from which he/she can reasonably suspect that the person is armed and potentially dangerous.
  - 3. The frisk must be strictly limited in scope; designed solely to uncover hidden weapons. The purpose of this frisk is not to discover evidence of a crime, but to allow officers to pursue their investigations without fear of violence. A frisk cannot be confused as a search for anything other than a weapon.
- C. Detainees of the opposite sex shall be frisked with the backside of the officer's hands unless an officer of the same sex is immediately available. Note: officers are not required to delay any frisk if the facts and circumstances reasonably infer that a subject is armed.
- D. Officers may conduct a protective frisk of the passenger compartment of a motor vehicle during an investigatory detention when they have a reasonable suspicion that the person or persons detained may be armed or able to gain immediate control of a dangerous weapon.
  - 1. If the basis for the belief is movement within the vehicle, officers shall inquire as to the nature of the movement and may only continue with a frisk if the individual provides an unsatisfactory explanation or denies making the movement. When officers have this level of belief, they may search the passenger compartment, limited to those areas where the movement

occurred and closed containers in which a weapon may be placed or hidden within those areas.

2. A vehicle frisk may not be conducted where all occupants have been removed and arrested or where no occupants will be allowed to re-enter the vehicle during the encounter.
- E. The sole justification for these frisks is the protection of the police officers and others nearby.
- F. Officers should avoid the term search in any reports or documents describing a frisk.

## VI. SEARCH OF MOTOR VEHICLES

- A. In accordance with State v. Alston, 88 N.J. 211 (1981) and State v. Witt, 223 N.J. 409 (2015), the automobile exception to the warrant requirement authorizes the at-scene warrantless search of a motor vehicle only:
1. When officers have probable cause to believe that the vehicle contains contraband or evidence of an offense; and
  2. The circumstances giving rise to probable cause are unforeseeable and spontaneous.
- B. Once a motor vehicle is impounded and under the control of the police department the warrantless motor vehicle exception no longer exists and a search subsequent to the impoundment requires a search warrant,
- C. A search under this exception extends to all parts of the vehicle, as well as to all containers that may reasonably be expected to conceal the object of the search until the object of the search is found. If the probable cause extends only to a particular container in the vehicle then a search of the entire vehicle and any other containers may not be justified. This is a fact specific issue and is typically judged on a case-by-case basis using a common sense standard.
- D. In order to conduct an at-scene warrantless search of a motor vehicle, the following requirements must be met:
1. There must be probable cause to believe the vehicle contains contraband or other evidence subject to official seizure; and
  2. Such probable cause must be unforeseeable and spontaneous; and
  3. The motor vehicle must be readily mobile.
- E. Generally, a warrantless search of a stolen vehicle is considered lawful. The courts do not recognize a reasonable expectation of privacy for a stolen vehicle.
- F. A limited search of a vehicle may also be conducted to retrieve ownership credentials (not proof of insurance). Such a search must be limited to those areas where the ownership credentials are normally kept, such as glove compartments, center consoles, and visors. Once the ownership credentials are located the

search must cease. Implicit in this type of search is that there must be a reasonable opportunity for the owner/operator to produce the required documentation. Any further search would require separate probable cause with an exigency or consent.

1. A search for ownership credentials is allowable under the following circumstances:
    - a. The motorist has been asked to provide credentials and has failed to do so; or
    - b. The information provided by the motorist leads to a reasonable belief that the motorist is lying as to his/her identify; or
    - c. To retrieve rental or lease agreements that may prove or disprove the authority to have the vehicle; or
    - d. There is reasonable belief that the motorist is not in lawful possession of the vehicle.
    - e. The search is limited in scope as to where documents are usually located (glove box, visor, console, etc)
  2. Any contraband or items of evidentiary value that are in plain view during the ownership credential search may be seized. Adequately describe the location of all seized items in the investigation report.
  3. When appropriate and supported by probable cause, motorists and/or passengers shall be arrested.
- G. If officers develop probable cause to arrest a vehicle operator for DWI, a search for open containers of alcohol may be conducted if there is probable cause to believe that such containers are present in the vehicle. The search must be confined to areas where an open container may be kept (e.g., center console, cup holders, etc.)

## **VII. CRIME SCENE SEARCHES**

- A. The fact that a crime has been committed does not in and of itself give personnel the right to conduct a warrantless search of the scene. While this does not preclude personnel who are legally present from seizing evidence that is in plain view, it does prohibit unlimited searches.
- B. Generally, there is no impediment to search when the victim of a crime invites personnel to search and/or investigate the crime scene. An example could be a homicide investigation. These searches generally fall under the emergency aid and community caretaking function.
- C. Personnel are permitted to conduct protective victim/suspect fan-out searches of a crime scene to determine the presence of victims or suspects.

- D. However, there may be exigent circumstances that would justify a warrantless search of a crime scene. In the absence of such circumstances, a search warrant or valid consent should be obtained prior to conducting a crime scene search. Officers cannot create the exigency.
- E. General exceptions or circumstances that may justify such a search include, but are not limited to:
  - 1. Degree of urgency involved and the amount of time necessary to obtain a search warrant
  - 2. Reasonable belief that evidence/contraband is about to be removed or destroyed
  - 3. Possibility of danger to personnel securing the scene while a search warrant is being sought
  - 4. Information indicating that suspects in possession of evidence/contraband are aware of immediate or imminent police interdiction
  - 5. Ready destructibility of the evidence/contraband and the knowledge that efforts to dispose of the evidence/contraband and to escape are characteristic behavior of suspects engaged in this type of criminal activity.

#### **VIII. PUBLIC SAFETY CONSIDERATIONS/EMERGENCIES AND EXIGENCIES**

- A. Officers are not required to delay the conducting of an entry or search if to do so would endanger their safety or the safety of others. Therefore, if officers have reasonable grounds to believe that a firearm or other condition exists that poses a severe threat to public safety, that officer may take whatever action deemed appropriate to thwart that threat.
  - 1. Officers who have reasonable cause to believe a place contains substances imminently likely to burn, explode, or otherwise cause death, serious bodily injury, or substantial destruction of property may, without a warrant, enter and search the premises to the extent reasonably necessary for the prevention of such death, serious bodily injury, or destruction.
  - 2. Officers in fresh pursuit of a fleeing dangerous criminal suspect wanted for a serious crime may enter into a structure without a warrant to effectuate the arrest.
  - 3. A warrantless forcible entry into a dwelling for the arrest of a person for a minor offense (e.g., DWI offenses, minor drug offenses, DP & PDP offenses) is considered unreasonable.
- B. Officers who take such action must make every effort to immediately notify their supervisor of the condition and of the action to be taken and those actions subsequently carried out.
- C. Under the emergency aid doctrine, two elements must be met before officers conduct a warrantless search:

1. There must be a reasonable and objective basis to believe that a real emergency exists and immediate action is required to protect or preserve life or to prevent serious injury; and
  2. There must be a connection or nexus between the emergency and the area entered or searched.
- D. Once inside of a premises or area, an officer's conduct must be carefully limited to achieving the objective that justified the entry. If the officer(s) determines that his or her assistance is, in fact, not needed, the officer(s) must depart without exploring further.

#### **IX. PLAIN VIEW / PLAIN TOUCH / PLAIN SMELL**

- A. Officers may seize evidence of a crime or contraband that is in plain view without first obtaining a search warrant when the following conditions apply:
1. Officers must lawfully make the initial intrusion or lawfully be in the viewing area.
  2. Officers must have probable cause to believe that the items observed are evidence of a crime, contraband, or otherwise subject to official seizure.
  3. Plain view may be extended to the recognition of evidence/contraband by any of an officer's senses (i.e., sight, touch, smell). For touch, the initial frisk must be justified, and the item must be immediately identifiable without manipulation or the need to explore further.
  4. When conducting a vehicle stop for any reason, officers are encouraged to visually scan the interior of the stopped vehicle. Use a flashlight if necessary. The initial scan must be conducted from outside of the vehicle.
- B. Officers can lawfully enter a motor vehicle for the sole purpose of retrieving any contraband that is in plain view. See subsection VI *Search of Motor Vehicles* for additional instructions. Adequately describe the location where all seized items were found in the *Incident Report*.
- C. An odor of raw or burnt marijuana on a person can be considered as probable cause to detain, search or arrest. Officers should distinguish between:
1. Raw marijuana – inference that marijuana is physically present; and
  2. Burnt marijuana – strong suspicion of use and additional contraband may be present.
- D. If reasonable suspicion is present, officers should request consent to search the occupant(s) or the vehicle as warranted, see section IV *Search by Consent*.
- E. If officers develop probable cause to search the vehicle, see section VI *Search of Motor Vehicles* for instructions.

- F. Officers can search the person based upon probable cause and an exigency. (The odor of raw or burnt marijuana on a person's clothing provides sufficient probable cause)
- G. Note: An admission by an occupant of a motor vehicle that marijuana was consumed within the vehicle or other contraband is contained within the vehicle will be used as part of the justification to request consent to search or be considered to help establish probable cause to conduct a warrantless motor vehicle search.

## **X. OPEN FIELDS**

- A. Officers are permitted to enter and search an open field without a search warrant. The special and unique safeguards provided by the 4<sup>th</sup> Amendment to people in their persons, houses, papers, and effects, is not extended to open fields. Open fields are not houses, nor can they be considered effects.
- B. An open field is best described as a place that has no protected reasonable expectation of privacy. Examples include, but are not limited to:
  - 1. Common woods;
  - 2. Streets and common alleys;
  - 3. Public parks and playgrounds;
  - 4. Public schoolyards;
  - 5. Fields;
  - 6. Lakes, reservoirs, waterways, marshlands or riverbanks.
- C. Constitutional restrictions may apply in an area immediately surrounding a home, i.e. curtilage. Consult with a supervisor before making this type of search.

## **XI. SEARCH INCIDENTAL TO ARREST**

- A. The search incidental to arrest exception to the warrant requirement has two specific purposes – the protection of agency personnel and the preservation of evidence.
- B. Upon making a lawful arrest, personnel shall conduct a contemporaneous (happening during the same period of time) complete search of the arrested person and the area within that person's immediate control. Immediate control means the area within reach (grapple area) from which the arrested person(s) might gain possession of weapons, destructible evidence, or implements of escape. All objects shall be removed from the arrested person.
- C. Personnel must ensure that the arrest is not a pretext to search.
- D. A search will not be incidental to arrest if it takes place at a different time and place than the arrest.

- E. The area within immediate control includes any packages in the arrested person's possession or control at time of arrest, but once personnel have reduced the personal property not immediately associated with the person of the arrestee to their exclusive control, and there is no longer any danger that the arrestee might gain access to the property to seize a weapon or destroy evidence, a search of that property is no longer incidental to the arrest.
- F. A warrantless search of an automobile based solely on the arrest of a person unable to endanger police or destroy evidence cannot be justified under any exception to the warrant requirement and is unreasonable. If the occupant has been arrested, but not removed and secured, the court will have to determine on a case-by-case basis whether the suspect was in a position to compromise agency personnel safety or evidence to justify resort to the search incidental to arrest exception. (*State v. Eckel*)
- G. If the area within the arrested person's immediate control is a room, the entire room may be subject to search.
  - 1. There is no comparable justification for routinely searching any room other than that in which an arrest occurs or for searching through all the desk drawers or other closed or concealed areas in that room itself.
  - 2. If there is reasonable belief that a person(s) who pose a threat to those present is in the home, a protective sweep of the home is permissible. A protective sweep is a quick and limited cursory visual inspection of places where a person may be hiding.

## **XII. PROTECTIVE CUSTODY SEARCHES**

- A. Officers may search a person taken into protective custody to look for weapons or implements that can be used to injure police personnel, the person in protective custody, or others. Reasons for protective custody include, but are not limited to:
  - 1. A person with mental illness;
  - 2. A person with emotional disorder;
  - 3. A person who is a threat to him/herself or others;
  - 4. A person who is semiconscious or unconscious;
  - 5. A person who is suicidal
- B. The search may disclose medical identification tags, medallions, or bracelets to assist medical personnel in treating the person.
- C. All items taken shall be inventoried and safeguarded for eventual return to the person (except for any contraband seized).

### **XIII. ABANDONMENT**

- A. An individual who abandons property relinquishes a reasonable expectation of privacy in that property. Therefore, there can be no 4<sup>th</sup> Amendment seizure when personnel search the contents of such property after it has been so abandoned.
- B. Note: the New Jersey Constitution recognizes that citizens have a reasonable expectation of privacy in their garbage when discarded in typical opaque bags. (The seizure of the bags is generally considered proper; but the search of the bag requires a warrant.)
- C. Property is considered abandoned when the person who has control or dominion over the property knowingly and voluntarily relinquishes any possessory or ownership interest in the property and there are no other apparent or known owners of the property.

### **XIV. CANINE ALERTS**

- A. Positive canine alerts do not provide the sole basis for a search absent consent to search, probable cause, or a search warrant. Absent consent, probable cause and an exigency must still be established for a warrantless search.