



**CHEVY CHASE  
VILLAGE  
POLICE  
DEPARTMENT**

*John Fitzgerald*  
Police Chief: John Fitzgerald

**GENERAL ORDER: 5-33 SEARCHES AND SEIZURES WITH AND WITHOUT WARRANTS**

DATE: 6/27/2012    Pages: 6    ◇ New ◇ Amended ◆ Revised 5-33

CALEA: 1.2.4, 61.1.5-a, 61.1.11, 84.1.1-b-f-g

**I. POLICY**

- A. As a general rule, a search must be supported by a valid warrant, but there are several well-recognized exceptions to this rule. Those exceptions include (the below list is not all-inclusive):
1. Consent searches;
  2. Pat downs ('frisks') for weapons when the officer has reasonable suspicion to believe that the person is armed and dangerous;
  3. Searches incident to a valid arrest;
  4. Automobile searches conducted under certain circumstances;
  5. Searches conducted in emergencies (otherwise known as 'exigent circumstances')
  6. Abandoned property;
  7. Inventories of lawfully seized ('impounded') vehicles
- B. Because criminal activity can be prevented or detected through the use of a variety of operational strategies, the Department encourages its officers to:
- Remain current with Department policies and with search and seizure law;
  - Remain alert while performing their duties;
  - Investigate suspicious circumstances;
  - When practical, attempt to **utilize consensual interactions first** (voluntary conversations, consent searches, etc.) to determine if persons are involved in criminal activity;
  - If consent is not granted, conduct non-consensual searches and seizures only when supported by the appropriate standard of proof (reasonable suspicion for investigative detentions and pat downs ('frisks'); probable cause for arrests and most other searches), and only when consistent with Constitutional requirements, laws and Department policies.

- C. If an officer encounters circumstances in which a lawful warrantless search or seizure may be conducted, officers may act without a warrant. Whenever an officer encounters a situation where he/she is uncertain whether or not a warrant should be obtained prior to taking action, the officer should contact a supervisor immediately. If a supervisor is not immediately available, the officer will assume that a warrant is required, and will **not** take police action without a warrant.
- D. All searches and seizures will be documented in the Department's incident reporting system.

**II. CONSENT SEARCHES (see also G.O. 5-21.1)**

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 authority to consent to the search. Officers should be able to articulate the rationale for requesting consent to search; in other words, officers must not randomly or arbitrarily request consent to search. (CALEA 1.2.4)

- A. Prior to searching a person or their property, officers must ask for consent and must reasonably believe that the person consented voluntarily and freely, without coercion. Silence on the part of the person asked is NOT considered to be an affirmative answer.
- B. Officers will not advise or imply to a person from whom consent is requested that their refusal will result in arrest, nor will officers make any threats or inducements to secure consent.
- C. The person who grants consent must have the authority to do so, and it is the officer's responsibility to diligently inquire into the facts and circumstances to determine if the person has authority to consent.
- Examples:
- A homeowner/parent/leaseholder may give consent to the police to search all common areas of their house, as well as areas that they exclusively control;

- A parent can give consent to search a child's room in their house if the facts indicate that the parent has access to the room;
- Neither a landlord of a leased premises, nor a manager or employee of a hotel or motel has the authority to grant consent to search a tenant's apartment or guest's room.

- D. The person granting consent to search may place limitations or conditions on the consent search, and they may withdraw consent at any time. Officers must honor any such limitations or conditions, and if consent is withdrawn, officers must stop searching immediately (unless another lawful reason to search exists other than consent). Items seized as a result of the consent search must be documented on an Incident Report.
- E. Because a person who earlier consented to a search may change his/her story during a subsequent trial, officers will, whenever practical, execute a "Consent to Search" (CCV 501) form with the person from whom consent is requested.

### III. INCIDENT-TO-ARREST SEARCHES

- A. **Lawful Custodial Arrest is the Only Requirement.** A search incidental to arrest may only be made when a lawful custodial arrest is made. An arrest is the seizure of the person by any act that indicates an intention to take him into custody and that subjects him to the actual control and will of the person making the arrest. The historical rationale for the "search incidental to arrest" exception to warrant requirement are summarized below:
1. To protect the arresting officer from harm—especially from a weapon possessed by the person arrested.
  2. To prevent the destruction of evidence.
  3. To prevent the defendant's escape.

*U.S. v. Robinson, 94 S. Ct. 467 (1973)*, states that a custodial arrest involves "danger to an officer" because of "the extended exposure which follows the taking of the suspect into custody and transporting him to the police station."

**When an officer affects a lawful custodial arrest, the officer is permitted to conduct a contemporaneous search of the person of the arrestee. No additional justification for this search is required.** Before a search incidental is deemed valid, the arrest itself must be lawful. An officer's intent whether to take the person into custody is a factor to consider.

- B. **No Search "Incident-to-Citation"** A full custodial arrest is required for an incident-to-arrest search to be lawful. An officer **CANNOT** conduct a search incidental to the mere issuance of a criminal, civil or traffic citation. **If the officer is not making a full custodial arrest (handcuffs, transport to CPU), the officer CANNOT conduct a search incidental to arrest.**

Examples:

- You stop an individual for speeding. As you approach the car you observe CDS paraphernalia in plain view. At this point you can make either a full custodial arrest or you can merely issue a criminal citation. If you only issue a criminal citation, you **CANNOT** conduct an incident-to-arrest search
- You develop probable cause to charge a person with solicitation without a permit, and you issue a civil citation. You have no authority to make an arrest for a civil offense, and you certainly have no authority to conduct a search incidental to arrest in this scenario.

### IV. INVESTIGATIVE DETENTION (*Terry* Stop) and PAT DOWN FOR WEAPONS (*Terry* Frisk)

#### A. The Standard of Reasonable Suspicion

Reasonable suspicion includes not only specific objective and articulable facts, but also logical conclusions that an officer's training and/or experience enables him/her to draw from those facts.

#### B. Investigative Detention

1. An officer is permitted to stop and detain an individual for investigative purposes when the officer has a reasonable suspicion, based on objective and articulable facts, that the individual *was very recently/is currently/is about to be* involved in criminal activity. If a person refuses to comply with an officer's lawful effort to conduct a *Terry* stop, an officer may lawfully use reasonable force to stop the person.
2. The duration of the stop is limited to that period of time that the officer (or assisting officials) is actively working to confirm or dispel the suspicion that crime is afoot and the individual detained is involved.
3. Reasonable suspicion that justifies an investigative detention may not justify a pat down for weapons.

4. Officers must identify themselves as police officers, and must inform the person stopped of the reason for the detention.
5. Nothing in this section prohibits an officer from engaging in a voluntary conversation with any person if the person is willing to do so.

### C. Pat Down for Weapons (*Terry* Frisk)

1. A pat down or frisk is a *limited* search conducted by patting a person’s outer garments in an attempt to confirm or dispel suspicions that the person seized and being frisked is armed and dangerous. A lawful pat down may also extend to the area within the person’s immediate control such as:
  - Unlocked purses, bags or other objects near or carried by the person;
  - The passenger compartment of a car that the suspect is occupying (excluding the trunk of the car and any locked containers); and
  - Any area within the suspect’s lunging distance or ‘wingspan.’
2. An officer may conduct a frisk of a person during an investigative detention when the officer has reasonable suspicion, based on articulable and objective facts, that the individual may be armed and dangerous. (CALEA 1.2.4)
3. Absent exigent circumstances, officers must identify themselves as police officers and make a reasonable inquiry about the person’s conduct prior to conducting a frisk.
4. A person may voluntarily consent to a pat down, and nothing in this section prohibits an officer from requesting consent to conduct a voluntary pat down. Officers must remember, however, that pat downs for weapons—whether they are done with the person’s consent or not—are potentially hazardous, so officers should make officer safety a priority.
5. A motorist or pedestrian may be stopped and frisked if the above requirements are satisfied. 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’s interior limited to areas where a weapon might be quickly obtained by the suspect.
6. During a pat down, items cannot be removed from a person’s clothing that are not reasonably believed to be weapons, unless, while conducting a pat down, *the officer instantly is able to*

*articulate probable cause to believe that the item(s) are contraband or evidence of crime that would support the physical arrest of the person being patted down.*

### D. Firearms Search Report

If an officer conducts a pat down for a handgun—whether or not a handgun is found—§4-206 of the Criminal Law Article of the Annotated Code of Maryland requires an officer to complete a written report within 24 hours after the pat down. The completion of a Firearms Search Report (MSP 97) will fulfill this requirement when conducting a limited search (patting or frisking) of a person for a handgun when an officer reasonably believes that a person may be wearing, carrying, or transporting a handgun.

#### Procedures:

1. The MSP 97 will be used when a “patting or frisking” of a person for a handgun is performed regardless of the outcome of the search. The patting or frisking may extend beyond a suspect’s clothing to a bag or container that is within reach of the suspect.
2. The MSP 97 when used, will be completed in duplicate by the officer, signed by a supervisor, and submitted to the MCP Records Section. The investigating officer will state in the Event Report that a limited search, seizure, and arrest, under CR 4-206 was conducted and an MSP 97 was completed and submitted to MSP. Additionally, an MCP 723, “ATF Firearms Trace Request Form” will be completed on every handgun recovered (refer to MCP FC 723, “ATF Firearms Traces”). Officers will make every effort to obtain driver’s license and Social Security numbers before forwarding the form to MSP.
3. The MCP Records Section will mail the original MSP 97 to the Superintendent of the Maryland State Police and file a copy at MCP Headquarters.
4. The Handgun Permit Section of the MSP will file the handgun search report and trace the weapon recovered to its last known owner and verify any/all applicable handgun permits. Once the search is completed the MSP Handgun Permit Section will report its findings to the originating officer.

### V. SEARCH OF A VEHICLE UNDER THE MOBILE VEHICLE EXCEPTION

- A. The rationale for this exception is grounded in the exigent circumstances created by the inherent mobility of vehicles and the somewhat lessened expectation of privacy in one’s vehicle. Under this exception to the warrant requirement, officers may conduct a warrantless search of a motor vehicle which is

capable of being in motion (even if the vehicle is currently unoccupied) when probable cause exists to believe that the vehicle contains contraband or evidence of crime. (CALEA 1.2.4)

- B. Under the circumstances described immediately above (probable cause + an inherently mobile vehicle), officers may search, without a warrant, the entire car (including the trunk) and any container within (including locked containers) where the objects of the search (the contraband or evidence in question) might be found. The scope of this type of search is the same as if a warrant had been issued beforehand.
- C. The entire vehicle may be searched if there is probable cause to believe the vehicle contains contraband or instrumentalities of a crime even though there is no danger that the vehicle or evidence may be lost.
- D. If an officer has doubts about whether probable cause to search a vehicle exists, the officer should retain custody of the vehicle and immediately seek to obtain a search warrant to search the vehicle. A supervisor must be notified prior to impounding a vehicle for this purpose.
- E. Nothing in this section prohibits an officer from requesting consent to conduct a search of a vehicle pursuant to Section II of this general order.
- F. If the search of a vehicle results in the vehicle being towed, the officer seizing or towing the vehicle will conduct an inventory of the vehicle pursuant to Section VIII of this general order.

## VI. OTHER SEARCHES (CALEA 1.2.4)

- A. **Limited Sweeps**  
A home or **premises where a lawful arrest has been made** may be subjected to a limited “sweep,” for the purpose of finding other persons, if circumstances give arresting officers a basis for reasonably believing that there are **other persons on the premises who pose a danger to those on the arrest scene.**
- B. **Abandoned Property**  
Officers may search and seize property that they have reason to believe is abandoned.
- C. **Open Fields**  
Under the so-called open fields doctrine, officers may enter and search any unoccupied or undeveloped area that lies outside the cartilage of a dwelling.
- D. **Plain View Seizures**  
Officers may, without a warrant, seize any contraband or evidence of a crime when the following two factors are satisfied:
  - 1. The officer is legally present in the same space

- as the contraband or evidence, and
- 2. It is apparent to the officer that the item is contraband or evidence of crime. that is in “plain view” and to which officers have lawful access.

## VII. EXIGENT CIRCUMSTANCES AND EMERGENCIES

Officers may make a warrantless search of anything, whether personal belongings, a vehicle, or building anytime they have probable cause to believe it is necessary to save a life or prevent injury. (CALEA 1.2.4)

- A. 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.
- B. 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.
- C. Nothing in this section prohibits an officer from conducting a consent search, pursuant to the provisions outlined in this general order.

## VIII. INVENTORY SEARCHES OF SEIZED VEHICLES OR OTHER PROPERTY

- A. It is the policy of the Department that officers will conduct a non-investigative inventory of vehicles that they seize or tow in order to:
  - Identify and take possession of valuable property for safekeeping;
  - Protect the towing/seizing officer and the Department from claims of lost, stolen, or vandalized property;
  - Protect officers from danger.
- B. **Exceptions:** This policy does not apply to those vehicles that are parked legally while the driver is taken into custody or to vehicles driven or owned by a person who has diplomatic immunity. (See G.O. 5-43)
- C. Elements of a valid inventory search:
  - There is a lawful basis for taking custody of the vehicle (e.g. the driver has been arrested and the vehicle is not legally parked; the vehicle is causing a hazard; the vehicle must be moved to restore the efficient flow of traffic; the vehicle is evidence or contains evidence); and

- The inventory is of a non-investigatory nature; and
- The inventory search is conducted for the purpose of protecting an owner's property while it is in police custody.

#### D. Procedures

1. The scope of the inventory search shall be limited to those unsecured or readily accessible areas within the vehicle. **Note:** A locked trunk or glove box shall be within the scope of the inventory search *only* if the keys to those areas are in the officer's possession.
2. When a vehicle is inventoried, the inventory's results and all property taken into custody will be accounted for on a Property Transmittal/Towed Vehicle form. All completed forms will be submitted to the Sergeant.
3. Items of value (as determined by the officer conducting the inventory) will be brought to the Village Police facility before the end of the inventorying officer's tour of duty for that day and stored in accordance with agency policies and procedures governing property for safekeeping. (CALEA 84.1.1-b)
4. As soon as practical after property has been taken into custody, the inventorying officer will contact the property's owner and advise him of retrieval procedures and if the property can be released. (CALEA 84.1.1-f)
  - If the inventorying officer is unsuccessful in locating and notifying the owner, the officer will notify the Sergeant, who will attempt to locate, identify, and notify the owner by mail.
  - The notification will indicate the Department's custody of the property, whether it can be released, and the retrieval process.
5. The Sergeant (Property/Evidence Officer) will release the property (providing its ownership is not in dispute, and it is not evidence or contraband) after checking with the seizing officer and after the owner provides satisfactory proof of ownership and signs a receipt for it. (CALEA 84.1.1-g)
6. When practical the inventory search will be conducted prior to the towing of the vehicle from the place of impounding or seizure.

### IX. OTHER SITUATIONS

#### A. Serious Traffic Collisions

Pursuant to the provisions of TA §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 or DUI, and, while doing so, was involved in a traffic collision involving life threatening injuries or a fatality. (CALEA 1.2.4, 61.1.5-a, 61.1.11)

#### B. Maryland Implied Consent Law

1. Pursuant to TA 16-205.1, in the event a suspected DWI/DUI is transported to the hospital and is unconscious, or otherwise incapable of refusing to submit to a blood test for the purpose of laboratory analysis and for use as evidence, the officer may order medical personnel to draw blood using an authorized blood kit which most hospitals have on hand, if the withdrawal of the blood will not jeopardize the health or well-being of the DWI/DUI patient.
2. If the suspected DWI/DUI 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 will not be administered unless the suspected DWI/DUI has been involved in a fatal traffic collision.

#### C. Summoning Hospital Records

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

### X. SEARCHES AND SEIZURES WITH SEARCH WARRANTS

- A. A *search and seizure warrant* is a document signed by a judge that authorizes officers to whom the document is addressed to search a specific person, place or thing (an individual, a house, building, structure, vehicle, areas, container, etc.) to find specific items (contraband, evidence of crime, etc.) and to seize those items if found during the search.
- B. The life of a search and seizure warrant is 15 days with the date that the document is signed being counted as day number one. After the 15<sup>th</sup> day, the document automatically becomes null and void.
- C. Before an officer takes an application for a search warrant to a judge, it is the officer's responsibility to

ensure that the application is reviewed by the Chief of Police. In circumstances where the Chief is not immediately available and the warrant must be served without delay, the application should be reviewed by a Montgomery County Police executive officer (rank of lieutenant or higher).

- D. The execution of a search and seizure warrant will be closely supervised and the following procedures must be adhered to:
1. Prior to the warrant's execution, the officer/applicant (or the sergeant) will notify the Chief of Police. The Chief (in consultation with other police agencies as appropriate) will determine which agency will supervise the execution of the search warrant.
  2. If another agency will be supervising the execution of the search warrant, the CCVPD will defer to that agency and their policies.
  3. If the CCVPD will be supervising the execution of the search warrant, the following procedure applies:
    - a. The Sergeant will plan for appropriate back up assistance as needed including additional uniformed officers.
    - b. Using a Pre-Search Checklist, the Sergeant will conduct a pre-search briefing during which the execution of the warrant will be planned and discussed, and members of the search team will receive their assignments, etc.
    - c. Prior to gaining entry to execute the warrant the Sergeant will ensure that the ECC Supervisor is notified of the search, its location, time of projected execution and the number of officers involved, and if necessary request emergency radio transmissions only until entry is gained and the scene stabilized.
  4. After entry has been gained and the scene stabilized, the Sergeant will ensure that the ECC Supervisor, MCP Car 1, and the Chief are notified.
  5. The search will be conducted in a manner that is systematic and maximizes officer safety.
  6. Any property seized will be photographed, accounted for on the inventory, labeled, and appropriately packaged consistent with accepted packaging techniques and Department policies and then submitted to the Sergeant (Evidence/Property Officer) consistent with agency poli-

cies.

7. The Sergeant will ensure that the search warrant return is completed and submitted to the issuing judge within 10 working days of the warrant's execution.
8. Property will be returned by the Evidence/Property Officer if:
  - The case has reached final disposition; and
  - The property is not contraband, and
  - The property is recoverable by law, and
  - The ownership of the property is not in dispute. (CALEA 84.1.1-g)