

COVINGTON POLICE DEPARTMENT

STANDARD OPERATING PROCEDURE

Subject: SEARCH AND SEIZURE

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I. Purpose

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

II. Statement of Policy

It shall be the policy of the Covington Police Department to conduct searches and seizures pursuant to established state and federal laws and applicable court decisions. The Fourth Amendment guarantees the right for people to "be secure in their persons, houses, papers and effects, against unreasonable searches and seizures". The courts are constantly reinterpreting the Fourth Amendment as it applies to police conduct, so officers must stay current on the latest decisions.

III. Definitions

A. **SEARCH** - A search is a quest for information. The term "implies some exploratory investigation, or an invasion and quest, a looking for or seeking out...a prying into hidden places for that which is concealed." "A search occurs when 'an expectation of privacy that society is prepared to consider reasonable is infringed.'" *Maryland v. Macon* 472 U.S. 463 (1985).

B. **SEIZURE** - The act of taking and removing tangible personal property. "A seizure occurs when 'there is some meaningful interference with an individual's possessory interests' in the property seized." *Maryland v. Macon*.

A seizure also occurs when officers attempt to maintain a status quo until a warrant can be obtained (e.g. officers lock premises, wait inside or outside for the arrival of a warrant).

A seizure of a person occurs not only in the case of an arrest, but also where a person is restrained so that he cannot walk away.

IV. **Rules and Regulations**

Illegally seized items of evidence will not be admitted in court and may be cause to lose a criminal case. Additionally, an illegal search invites judicial challenges and civil lawsuits. To ensure that Fourth Amendment rights are protected, officers will obtain search warrants based upon probable cause in all appropriate criminal cases.

- A. Search with a warrant
- B. No-knock search warrants
- C. Execution of search warrants
- D. Force to be used in execution of search warrant
- E. When a search warrant can be executed

Exceptions to search warrants may be made for the following circumstances:

- F. Consent searches.
- G. Emergency searches.
- H. Plain view.
- I. Abandoned property and open fields.
- J. Inventory searches of vehicles.
- K. When executing arrest warrants.
 - Incident to arrest.
 - Pat downs of suspicious persons.
- L. Vehicles searches under moveable vehicle exception.
- M. Containers within the vehicle

As a rule, no arrest warrant is required for arrests in a public place, as long as probable cause exists.

A. Search with a Warrant

The following is required of all search warrants and search warrant affidavits:

1. Issuance: The warrant must be issued by a judicial officer authorized to hold a court of inquiry (O.C.G.A. 17-5-21). For search warrants within Covington, officers shall use the Municipal, State or Superior Court. For areas outside Covington, officers shall use the appropriate judicial officer from that jurisdiction.

2. Probable Cause: The magistrate must find probable cause that the place to be searched contains items connected with criminal activity (*Berger v. New York*, 388 U.S. 41). The officer must swear or affirm under oath the facts presented for establishing probable cause are true.
3. Description: The warrant must describe with sufficient particularity the person or the place to be searched and the items to be seized (O.C.G.A. 17-5-23). In executing a warrant, officers may not exceed its scope. A lawful search extends to all areas and containers in which the object of the search may be concealed.
4. If a place can be easily identified by a street number or address, then no further information shall be necessary, however, an officer or investigative component may elect to further describe the place to be searched.

A warrant may be issued based on an affidavit containing only hearsay where the reliability of an informant is established, and the underlying factual circumstances are described.

B. No-Knock Search Warrants

1. To gain entrance to any building or dwelling without giving notice, a search warrant must contain a no-knock provision. Approval must be obtained from the Chief of Police, or his designee prior to a request for a no-knock provision in any search warrant. This provision should be in the body of the affidavit.
2. A no-knock provision cannot be based upon a mere suspicion, but rather must be predicated upon probable cause from an investigation and/or informant. The following would be examples of probable cause for a no-knock provision:
 - a. A reliable informer or other source provided information concerning a suspect who kept evidence in a bathroom, such as drugs, and would destroy the evidence when the officer knocked on the door (*Scull v. State*, 122 Ga. App. 696);
 - b. A reliable informer or other source provided information concerning a suspect who kept firearms next to a door, and when an officer knocked on a door, the suspect would shoot through a door in an attempt to kill or harm the officer (*Jones v. State*, 127 Ga. App. 137); or
3. Since an officer has a right to use necessary and reasonable force, it is also a responsibility of an officer to obtain the correct address and location of property or premises to be searched. Searching the wrong person or premises could lead to prosecution and/or civil liability of an officer.

D. Execution of Search Warrants

1. All search warrants and affidavits should be reviewed by a supervisor prior to review and approval by a magistrate.
2. All requests for wiretap warrants must be approved in advance by the Chief of Police, and the District Attorney's Office. (The actual written application for interception of wire or oral transmissions by law enforcement officers, must be executed by the District Attorney of the circuit wherein a device is to be physically placed, or by the Attorney General O.C.G.A. 16-11-64)
3. An officer of supervisory rank shall be present at the execution of any search warrant along with other personnel as needed. If possible, the supervisor is to be from the Unit concerned; if unavailable, a sergeant or higher-ranking officer from another unit shall assist.
4. Following the execution of the warrant, the designated supervisor shall ensure that the appropriate follow-up steps are handled expeditiously (i.e., return, inventory, arrest warrant).
5. Officers Involved in Executing Search Warrants: All involved personnel shall conduct themselves in a professional manner by:
 - a. Restricting their actions in such a manner as is consistent with the scope of the warrant.
 - b. Ensuring all evidence seized is documented on the inventory and forwarded to the Property and Evidence Section and/or Crime Lab.

Items considered to be illegal and/or contraband, are not to be destroyed without either the appropriate order of the court, or, in cases where prosecution is not to follow, by proper documentation.

E. Force to be Used in Execution of a Search Warrant

1. An officer has the right under a lawful search warrant to use all necessary and reasonable force to get into any building, dwelling, or other area described in a search warrant (O.C.G.A. 17-5-27).
2. Unless the search warrant contains a no-knock provision, an officer is required to give oral notice to the person or persons inside, if any, of the identity of the agency, and of the fact that the officer has a search warrant to search the premises (O.C.G.A. 17-5-27).
3. If the person or persons inside refuse to acknowledge an officer's notice, or if an officer cannot determine if anyone is present inside, or if it is unoccupied, an officer can then use reasonable force to gain entrance (O.C.G.A. 17-5-27).

4. Any action taken by the officer should be documented prior to making a forced entry, such as "knocked on door, identified myself by position and advised I held a search warrant for the premises, and no one responded to my call".
5. Whenever force is used in order to gain entry into a premise or place, and any amount of damage occurs, the superior officer in charge of the search shall insure that all damage is documented and photographed.
6. The appropriate amount of time that the officer should allow will depend on the conditions of each search.

F. When a Search Warrant Can be Executed

1. The search warrant may be executed at any reasonable time, day or night; a reasonable time depends on the facts in each individual case (O.C.G.A. 17-5-26).
2. A search warrant must be served within ten days from the date of issuance. If the warrant is served, a "duplicate copy shall be left with any person from whom any instruments, articles, or things are seized; or, if no person is available, the copy shall be left in a conspicuous place on the premises from which the instruments, articles, or things were seized". Any search warrant not served within ten days from the date of issuance, shall be void and will be returned to the court of the judicial officer who issued the warrant (Ga. O.C.G.A. 17-5-25).
3. "A written return of all instruments, articles, or things seized shall be made without unnecessary delay before the judicial officer named in the warrant or before any court of competent jurisdiction. An inventory of any instruments, articles, or things seized, shall be filed with the return and signed under oath by the officer executing the warrant" (O.C.G.A. 17-5-29).
4. Upon application of the search warrant, the officer shall obtain two copies. The original copy shall be left with the magistrate after the warrant is issued. The second copy shall be left pursuant to paragraph 2, mentioned above. A final copy shall be placed in the case file, upon completion of the search.

G. Consent

1. A search warrant is not necessary where a person who has authority or control over the thing or place to be searched consents to the search. The officer doesn't have to have reasonable suspicion or probable cause to make a consent search. The officer may merely ask for permission from someone with control over the premises. If that person grants permission, the search may take place. The sole justification for a consent search is the existence of voluntary consent. It is upon the officer to show that the consent was given voluntarily and without threat or coercion. Verbal consent is valid, but harder to prove it was given voluntarily. Thus, in all cases where written consent may reasonable be obtained, a written consent should be obtained to show that the consent was given voluntarily, freely, and willfully without threat or coercion.

Consent searches must observe the following rules:

- a. Generally, the person granting consent must use, have access or control over the property.
 - b. If two people have joint ownership of the property, either may give consent.
 - c. A landlord, including the hotel/motel manager, cannot consent to a search of a tenant's premises unless the tenant has been evicted or has abandoned the property.
 - d. A husband or wife, or one member of a cohabiting unmarried couple, may consent to a search of the area of common ownership or use.
 - e. A parent may consent to a search of premises occupied by a dependent minor child.
 - f. An employee cannot give valid consent to a search of his employer's premises unless he has been left in custody of the premises.
 - g. An employer may generally consent to a search of the premises used by employees, except premises used solely by the employee, for example, a locker.
2. Consent must be given voluntarily. If an officer requests consent from a citizen under circumstances which a reasonable person would have considered coercive, then the officers must seek a warrant. The officers have the burden of demonstrating voluntariness.

A person who initially gives consent may withdraw consent at any time. Officers then shall secure the premises and seek a warrant.

H. Emergency Searches

1. A search warrant is not necessary in an emergency. An emergency is sometimes referred to as "exigent circumstances". Ten factors should be considered by the officer in determining whether an emergency or exigent circumstances exist.
 - a. A degree of urgency is involved, and the time required getting a warrant.
 - b. An officer's reasonable belief the contraband is about to be removed or destroyed.
 - c. The possibility of danger to others, including the officer left to guard the site while obtaining a warrant.
 - d. Information that the possessors of the contraband are aware that the police are on their trail.
 - e. Whether the offense is serious or involves violence.

- f. Where the officer has reason to believe the suspect is armed.
 - g. Whether the officers have probable cause.
 - h. Where the officers have strong reason to believe that the suspects are present on the premises.
 - i. The likelihood the suspect will escape.
 - j. The suspect's entry onto the premises after hot pursuit.
3. If officers enter premises with probable cause to believe that critical evidence will be destroyed or removed unless immediate action is taken, they may enter without a warrant, secure premises, and obtain a search warrant before proceeding further, unless they have obtained consent to search or new circumstances arise necessitating another warrantless search. However, a search warrant must be obtained once the exigency of the situation has been resolved. No further search may be conducted, and anything found subsequent may be suppressed later.

I. Plain View Search / Seizure

1. A plain view seizure is, technically, not a search. To make a plain view seizure of "property contraband, fruits or instrumentality of the crime", two requirements must be met:
 2. The seizure must take place where the officer has legally observed the property, and it must be immediately apparent to the officer that the items he observed may be evidence in the crime, contraband and otherwise subject to seizure.
 3. The officer may not move the items, look inside or underneath or behind them for serial numbers or other identifying marks. If such movement is necessary, the officer shall obtain a search warrant.

J. Abandoned Property and Open Fields

1. A search warrant is not required for property that has been abandoned. To constitute abandoned property, two conditions must apply:
 - a. The property was voluntarily abandoned.
 - b. Property was discarded outside the area in which someone has reasonable expectation of privacy.
2. The Fourth Amendment does not protect open fields, but the officer must distinguish them from curtilage, which essentially is a yard where private residences are concerned. Curtilage has no absolute definition that officers can apply under all circumstances. The extent of curtilage of a private residence, for instance, is determined by whether the area is enclosed; the nature of the use of the area; proximity of the area to the home; and the measures taken by the homeowner to protect the area from observation.

K. Inventory Searches of Vehicles

See SOP-P160 Vehicle Impounds [P160- Vehicle Impounds.doc](#)

L. When Executing Arrest Warrants

1. General Guidance

- a. An officer with a valid arrest warrant may search for the defendant in his or her own home. If probable cause exists that the defendant is at home at the time of the search, the search must be limited to places where the defendant might be found.

2. Protective Sweep

The U.S. Supreme Court has ruled that officers may undertake a protective sweep of the premises without a warrant following the arrest upon a warrant, however, certain limitations must be observed:

- a. The purpose of the protective sweep is to discover persons on the premises who might present a danger to other officers.
- b. Incident to arrest, officers may without probable cause, or reasonable suspicion look in the closets or other spaces immediately adjoining the place of arrest or where threatening persons might be located.
- c. To extend a protective sweep beyond the closets and adjoining spaces, the officer must have reasonable suspicion for fearing that persons may be on the premises that pose a threat. In such cases, the sweep is limited to examining places where a person might hide. It is important that officers carefully document their reasonable suspicion.
- d. During a protective sweep, evidence discovered in plain view may be seized.
- e. The sweep must cease when officers have dispelled any reasonable suspicion of danger.

M. Warrantless Vehicles Searches

1. In recent years, the U.S. Supreme Court has modified and expanded conditions in which officers may search vehicles. Preferably, officers will search vehicles with the authority of a warrant whenever there is sufficient time to obtain one. Nevertheless, warrantless searches of vehicles may take place under many conditions and circumstances. It is imperative the officers understand the different types of vehicles searches and their limitations.
2. For the purpose of this policy, a motor vehicle is any vehicle operated or capable of being operated on the public streets or highways including trucks, automobiles, motor homes, motorcycles, or any other vehicle capable of carrying persons or property. A vehicle that has been immobilized in one location for use as a storage facility, such as a

driveway at a private residence, is not a motor vehicle for the purpose of this policy. For the purpose of this policy, a search is an examination of a motor vehicle with an investigative motive; that is, to discover evidence or to examine the vehicle identification numbers to ascertain ownership.

3. Warrantless searches of vehicles may be performed:

As noted earlier, a search warrant should be obtained in circumstances where feasible; however, no search warrant is ever required to search a vehicle in a public place provided probable cause exists for the search. Additionally, a search warrant is not needed with the driver's consent; when a frisk is being conducted for weapons; when necessary to examine the VIN or otherwise ascertain ownership or under exigent circumstances. Searches may be conducted within the following limitations:

- a. With a warrant, a search may extend anywhere within the vehicle unless limited by the warrant itself.
- b. When probable cause exists, a search may extend to anywhere within the vehicle, unless probable cause is limited to a specific part of the vehicle.
- c. When consent has been obtained from the driver or owner, the officers may search the vehicle subject to limitations specified by the consenting person. Consent should be obtaining in writing if all possible. It is the responsibility of the searching officer to ensure the consent was given freely and voluntarily without coercion or threat.
- d. Frisk for weapons shall be confined to the passenger area. Any place not immediately accessible to occupants, such as locked glove compartment, shall not be searched. If the contents of the container are immediately accessible to the subject, that closed container may be searched for weapons. Note that an officer can order the suspect from the vehicle and frisk the subject and search the vehicle; however, this is solely based on reasonable, articulable suspicion that the person is engaged in criminal activity, and that person may be armed.
- e. An entry into the vehicle to examine the VIN or otherwise determine ownership must be limited to that purpose.
- f. An emergency search of the vehicle may be conducted, but the extent of the search must not exceed whatever is necessary to respond to the emergency.
- g. If initial search above the above conditions gives rise to probable cause that evidence, contraband, fruits or instrumentalities of a crime might be found elsewhere in the vehicle, officers must search areas that might reasonably contain such items.

4. Location and time of search

- a. Whenever possible, searches of vehicles shall be conducted contemporaneously with the stopping of or discovery of the vehicle. As a general rule, vehicle searches shall be conducted as soon as reasonably possible.

- b. Whenever possible, officers shall avoid damaging a vehicle or its contents, and should minimize the intrusiveness of the search and any inconvenience suffered by the owner or passengers.

N. Containers within the vehicle

1. As a rule, no container in the vehicle shall be searched unless it might contain the item or items sought.
2. Procedures for unlocked containers

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

- a. During a consent search, containers may be opened, if the terms of consent either supplement or reasonably imply permission.
- b. Containers found in or discarded from a vehicle in circumstances not amounting to probable cause or abandoned property or in connection with a search incident to arrest shall not be searched but shall be secured until a warrant is obtained if probable cause exists.

This SOP supersedes any SOP previously issued.

BY ORDER OF THE CHIEF OF POLICE

Stacey L. Cotton

Stacey L. Cotton
Chief of Police