
	Florida State University Police Department	
ARRESTS, SEARCHES, AND SEIZURES		
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Policy

Arrests, Searches, and Seizures Policy

When making arrests and seizing evidence and/or property, it is the policy of the FSU PD that sworn officers shall strictly comply with the provisions of the U. S. Constitution (4th Amendment), Florida Statutes, pertinent case law, and FSU PD policies and procedures (General Orders).

Procedures

A. Method of Arrest by Officer without a Warrant

The law provides that a peace officer making an arrest without a warrant shall inform the person of his or her authority and the cause of the arrest. In accordance with Section 901.17, F.S., informing the person is not required when the person flees or forcibly resists or when giving the information will imperil the arrest.

B. Searches and Seizures without a Warrant

A search warrant should always be obtained unless there are exigent circumstances or consent, as outlined in #2 below is given. In any warrantless search, the burden is on the law enforcement officer to prove that the search and subsequent seizure, if any, were lawful.

1. Search and Seizure Incident to an Arrest. Once a lawful arrest has been made, the arrestee may be searched. A search of the arrestee’s premises can also be made but only that part of the premises within the immediate control of the arrestee. The interior of a vehicle within the immediate control of the arrestee may be searched under the conditions outlined in the Supreme Court decision, *Arizona vs. Gant, (2009)* (See Section D of this General Order, “Search of a Vehicle”). Searches must be contemporaneous with the time and place of arrest and for the following reasons:
 - a. Officer safety.
 - b. To prevent the destruction or loss of evidence and/or fruits of a crime.
 - c. To prevent escape.

2. Search and Seizure by Consent. Consent to search can never be implied. Officers should attempt to obtain a signed form to minimize any question as to the legality of the search. If a person consents to a search and then withdraws that consent before or during the search, any search in progress shall cease immediately. If the person lawfully titled to possession of the place to be searched waives his/her Fourth Amendment rights and gives consent, the search is held to be lawful and reasonable if:

- a. The consent is intelligently given and the person knows that they are waiving their Constitutional rights freely and voluntarily and that they do not have to waive those rights;
 - b. The consent is clear and explicit.
3. Stop and Frisk The purpose of a stop and frisk is to investigate a crime, prevent a crime or to detect a crime. The decision to stop and frisk may be based on something *less* than probable cause. Although courts have ruled on at least one occasion that two hours was not excessive, as a general rule, the maximum time allotted for a stop and frisk should not exceed twenty (20) minutes. No person may be temporarily detained longer than is reasonably necessary to accomplish the purposes outlined in the statute.
- a. Authority for a police officer to “stop and frisk” under Florida law is found in Section 901.151, F.S. Police officers, during the course of a proper “stop” of a subject, may conduct a limited search of an individual for weapons. They must have a reasonable belief, supported by articulable facts and from which inferences can be drawn, that the subject may be dangerous and may gain immediate control of weapons. Any part of the recently occupied passenger compartment of a vehicle where a weapon could be concealed may also be searched.
 - b. An officer may conduct a limited “protective search” of the area around a person.
 - c. Although the person being questioned may be handcuffed and placed in the police vehicle, any such actions taken in this regard by FSU PD personnel must be justified based on articulable safety concerns.
 - d. The person being questioned should not be removed from the immediate area without their consent.
 - e. The stop and frisk procedure is primarily for the protection of police officers. It is not meant to be a way to increase convictions. If proper procedures are followed, any weapons or contraband found during a lawful stop and frisk may be used in evidence against the stopped subject.

D. Search of a Vehicle

Searches of vehicles without a warrant may be made by the police when the owner gives his or her explicit consent or the officer has probable cause to believe that someone in the vehicle has committed a crime or that the vehicle contains contraband or the fruits of a crime. The conditions regarding a warrantless search of a vehicle are based upon the recent Supreme Court decision, *Arizona vs. Gant*, U.S. Supreme Court, 2009.

1. If an officer makes an arrest, a search incident to arrest in a vehicle is only authorized “when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search.” It is not recommended that officers engage in lapses in “officer safety” in order to justify searches. Therefore, continue with the other justifications cited below.
2. If an officer makes an arrest and it is reasonable to believe that evidence related to the crime or arrest could be found in the passenger compartment, it can be searched incident to that lawful arrest.
3. If an officer has probable cause to believe that evidence of a particular crime is located in a vehicle, the officer can search the vehicle without a warrant, based upon the motor vehicle exception to the search warrant requirement.

4. If an officer reasonably believes that a vehicle occupant is dangerous and may gain immediate control of a weapon from a vehicle, the officer may conduct a limited search of the passenger compartment, only looking in places that a weapon could be hidden. This is commonly called a “vehicle frisk”.
5. If an officer has a lawful justification to impound an automobile, the officer may conduct an inventory of the contents of the vehicle and all containers therein, pursuant to the provisions of the General Order titled, “Vehicle Impoundment and Towing.” Any contraband or evidence observed during this inventory may be seized.

E. Inventory Search

A vehicle which has been seized by the police shall be inventoried. The United States Supreme Court has held justification allowing police to inventory the vehicle. They are:

1. When a vehicle remains upon any street or parking lot in such a manner as to constitute a hazard or obstruction to the flow of traffic, Department members will cause the vehicle to be towed by contract wrecker. Department members shall complete a Vehicle Report to include the inventory of the vehicle’s contents.
2. While following standard police procedures, a seized vehicle may be inventoried. Additionally, when a vehicle is towed and held as evidence, a Vehicle Report will be completed.

F. Search and Seizure at the Scene of a Crime

When a police officer is summoned or comes upon what he believes to be the scene of a crime, he is obligated to investigate. The search and seizure of evidence or fruits of a crime at the scene is to:

1. Ensure subsequent lawful custody.
2. Reconstruct the criminal occurrence.
3. Find evidence of what occurred.
4. Assist in the successful prosecution of the person who committed the offense.

G. Search and Seizure/Exigent Circumstances

The “exigent circumstances” exception to the search warrant requirement confers a limited privilege to make warrantless searches.

Officers must have a reasonable belief that there is an emergency and there must be an immediate need for police assistance for the protection of life or property. When there is an urgent need for immediate action and there is no time to obtain a search warrant, the police may enter and search. The police response to cries for help from within a house would be an example of this exception.

H. Searches and Seizures Involving Computers

Computers found at crime scenes may be needed for evidence. Officers should understand the role that the computer has or may have played in the offense being investigated. Most searches of computer systems will be pursuant to a warrant, but the recognized exceptions to the warrant requirement apply equally to the search and seizure of computers. (If the computer belongs to the University, then it is State property, and the user would have no expectation of privacy. However, it is still best to get a search warrant when time and circumstances allow.)

1. Decisions on whether to search on-site or at the Florida Department of Law Enforcement (FDLE) Laboratory are critical. Only those persons trained to conduct searches on computers on-site shall do so.
2. Prior to the collection of computer evidence, members of this department may contact FDLE Computer Evidence Recovery Section (CER) with any questions. They are also encouraged to contact the State Attorney's Office for legal advice.
3. The FDLE Crime Laboratory Evidence Submission Manual provides guidelines that must be followed when collecting computer evidence. Officers will adhere to these procedures.

I. **Other Situations Involving Search and Seizure**

Recognizing the fact that state and federal court decisions often modify the rules of search and seizure, officers shall be provided with pertinent legal bulletins via e-mail. Such bulletins are periodically received from other criminal justice agencies and forwarded by the member of the command staff initially receiving them.

J. **Method of Arrest and Search by Officer by a Warrant**

A police officer making an arrest by a warrant shall inform the person to be arrested of the cause of arrest and that a warrant has been issued, except when the person flees or forcibly resists before the officer has an opportunity to inform him, or when giving the information will imperil the arrest. The officer need not have the warrant in his possession at the time of arrest but on request of the person arrested shall show it to him as soon as practicable per FSS 901.16.

1. **Arrests, Areas Which May Be Searched, and Seizures With a Warrant.** There are two types of search warrants; those for premises including vehicles, and those for persons. Generally, in a warrant for premises, only the premises can be searched. In searching premises, any part of the structure where the items to be seized could be found can be searched. It would be wise to include the curtilage in the application for the warrant, if appropriate. The time and day of week of the warrant's execution must also be included in the warrant, i.e. anytime of the day or night, including Sundays. If the warrant mentions a particular person, that individual can be searched when the warrant is executed. Officers may search any person(s) or vehicle(s) arriving, leaving or present at the specified property and/or property immediately adjacent thereto, who are believed to be involved in criminal activity and/or possess the property sought. The officer can perform a pat down and check the immediate vicinity of every person to protect himself from hidden weapons.
2. **Statutory Authority.** Officers shall follow the provisions of Chapter 933, F.S., when seeking a search warrant. Whenever an officer determines the need to obtain a search warrant, the officer shall gain the approval of the shift supervisor and notify the Investigations Division prior to the processing of the warrant. Officers most familiar with the investigation should consult with the Office of the State Attorney for assistance. Once the search warrant is drafted and completed, the SAO shall review the search warrant for approval (unless not available, see section 3 (e) below), before the warrant is signed by a judge.
3. **Warrant Drafting and Issuance.** [CFA 15.08A] A search warrant may be issued only upon probable cause. The officer will draft an Affidavit for Search Warrant and a Search Warrant containing all pertinent information to justify a search to include but not limited to:

- a. The place to be searched which is specifically described so that there can be no question as to its whereabouts.
 - b. The property to be seized as specifically described as possible.
 - c. The certain crime(s) which has been or is being committed on the premises to be searched.
 - d. The name of the person or persons who occupy or control the premises shall be stated, if known to the affiant, but such name is not required.
 - e. Once the Affidavit for Search Warrant and Search Warrant have been drafted and proofed, it shall be reviewed by the Investigations Division. The officer will present the Affidavit for Search Warrant and Search Warrant to a designated Assistant State Attorney for review and approval. There are occasions when members will need to secure a Search Warrant after normal working hours or when an Assistant State Attorney is unavailable. In these instances, the officer is not required to contact an Assistant State Attorney for review and approval.
 - f. Upon approval of the Assistant State Attorney (unless not available), the Affidavit for Search Warrant and the Search Warrant will be presented to a Judge for approval and signature. As a general rule, the County Court Judges shall be used to sign Affidavit for Search Warrant and the Search Warrant, unless unavailable. If a County Court Judge is not available a Circuit Court Judge shall be contacted. [CFA 15.08B].
4. Prior to the execution of a search warrant for an “unsecured” location, the guidelines in the General Order titled “High Risk & Raid Operations” must be adhered to and an Operational Plan must be completed and approved by the appropriate authority.
 5. Warrant Service. A search warrant shall be served by the officer(s) named in the warrant. All such warrants shall be returned within ten (10) days, with the inclusion of actions taken, if any, after issuance [CFA 15.08C].
 6. Duplicate Copy of Warrant. A search warrant shall be issued in duplicate and when served, a copy shall be delivered to the person named in the warrant. In the absence of the person named in the warrant, the warrant shall be delivered to some person who is present or living on the premises. If no person is present on the premises, a copy of the warrant shall be left in a prominent place along with a copy of the property inventory, even if no property was removed from the premises. [CFA 15.08C.]
 7. Description of Property. Each item of property seized shall be described thoroughly along with the location where it was discovered. If no property was seized, it shall be so indicated [CFA 15.08E].
 8. Areas Which May Be Searched. Under the authority of a search warrant, sworn officers have the authority to make a complete search of the entire premises described in the warrant. The only restriction is that the search must be consistent with the type of property indicated in the warrant. For example, a search of desk drawers cannot be made under authority of a search warrant for stolen television sets. Per Section 933.17, F.S., any officer who in executing a search warrant willfully exceeds his or her authority or exercises it with unnecessary severity, shall be guilty of a misdemeanor of the second degree [CFA 15.08D].
 9. Items to be seized. As long as the search is consistent with the property being searched for, any property connected with any crime, even though not described or listed in the search warrant,

may be legally seized. If found in good faith while executing a search warrant, contraband, stolen property, instrumentalities of crimes or evidentiary property connected with a crime may be seized.

10. Other Jurisdiction. If the warrant is to be served outside the jurisdiction of the Department, the agency having jurisdiction shall be notified prior to the execution and an officer from that agency shall be requested to be present.
11. Entry of Premises. If after due notice of their authority and purpose, admittance to said house or access to anything therein is denied, Florida law permits police to break open any outer door, inner door or window of a house, or any part of a house or anything therein, to execute the warrant. The search warrant may include a "no knock" feature authorized by the issuing judge [CFA 15.08C].
 - a. Prior notification as to time and location of the search warrant shall be provided to the Communications Section.
 - b. If intelligence information indicates any significant hazards such as armed or dangerous persons, the securing of the area and entrance to the premises should be done by those officers trained to do so.
 - c. Under the direction of the officer in charge, officers shall announce themselves as "police officers," display their badges, and advise they have a search warrant for the premises.
 - d. Force may be used to enter if, while waiting for the door to open, there is indication that the occupants are taking flight, destroying evidence, or taking some action that may jeopardize the safety of the officers.
 - e. The disruption caused by the service of a search warrant will be kept to a minimum. Any property damage incurred will be documented and photographed.
12. Search execution will include the following:
 - a. A protective sweep of the premises;
 - b. Each occupant within the premises shall be identified and brought into one designated room or area;
 - c. The officer named in the warrant will read the warrant to all persons present;
 - d. When possible, video tape the premises prior to conducting the search.
 - e. An orderly and thorough search will be conducted. If practical, a photographic and/or video taped record will be made of all articles found and seized during the search. When possible, property items will be photographed and/or video taped in the location where they are found. Recovered and seized property will be tagged and marked appropriately.
 - f. After the search has been completed, the premises shall be videotaped a second time, if possible.
 - g. A property inventory sheet shall be completed [CFA 15.08E].
13. Time of Entry. Florida law authorizes either daytime or nighttime execution, as exigent circumstances may demand or require. Additionally, a search warrant may be specific as to being served on a Sunday.
14. Final Documentation. Within ten (10) days, one of the original signed search warrants, along with a copy of the property inventory sheet, shall be returned to the clerk of the circuit court as prescribed by Florida law. Per Section 933.12, F.S., upon the return of the warrant, the officer shall attach thereto or thereon a true inventory of the property taken under the warrant, and at the foot of the inventory shall verify the same by affidavit taken before some officer authorized to administer oaths, or before the issuing officer, said verification to be to the following effect:

"I, _____ the officer by whom the warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on said warrant." [CFA 15.08F].

K. Relevant Court Cases

A number of cases decided by the United States Supreme Court have addressed law enforcement activities under the Fourth Amendment. Sworn personnel should be familiar with the provisions of the following:

1. *Weeks v. U.S.* (232 U.S. 383) This ruling applied the exclusionary rule to federal law enforcement officers.
2. *Mapp v. Ohio* (367 U.S. 643) This ruling applied the exclusionary rule to states law officers.
3. *Harris v. U.S.* (331 U.S. 145) This ruling applied to the "plain view" doctrine.
4. *Nardone v. U.S.* (308 U.S. 338) This ruling prohibited not only direct use of illegally obtained evidence but also its indirect use. It established the "fruit of the poison tree" doctrine.
5. *Carroll v. U.S.* (267 U.S. 132) This ruling addresses searches of motor vehicles.
6. *Chimel v. California* (392 U.S. 752) This ruling addressed the area within a vehicle to be searched
7. *Terry v. Ohio* (392 U.S. 1) This ruling applied to "stop and Frisk".
8. *Ker v. California* (374 U.S. 23) This ruling applied to exigent circumstances.
9. *Preston v. U.S.* (376 U.S. 364) This ruling applied to warrantless vehicle searches.
10. *Chambers v. Mahoney* (399 U.S. 42) This ruling applied to the admissibility of evidence seized from a motor vehicle.
11. *Schmerber v. California* (384 U.S. 757) This ruling applied to evidence seized from a persons body, in this case, a blood sample.
12. *Arizona v. Gant* (2009, WL 10459620) This ruling clarified the search and seizure rules pertaining to vehicle searches.

Glossary

Arrest Warrant - a judge's order to law enforcement officers to arrest and bring to jail a person charged with a crime. The warrant is issued upon a sworn declaration by the district attorney, a police officer or an alleged victim that the accused person committed a crime.

Contraband - Goods forbidden by law, e.g. counterfeit money.

Exigent - A call for immediate action or attention, urgent, pressing needs, demands, requirements.

Frisk - A carefully limited search of the outer clothing. A pat down. The only legal justification for a "frisk" is the officer's concern for safety.

Judicial Review - Under scrutiny of a court.

Legal Description - A detailed description of the location, including a starting point from a nearby intersection of reference, and an easy to understand list of directions on how to get to the location from the starting point. The physical appearance of the location shall also be described in the detail.

Probable Cause - A combination of facts or apparent facts, viewed through the eyes of an experienced police officer, which would lead a man of reasonable caution to believe that a crime is being or has been committed.

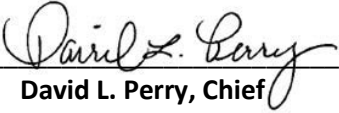
Reasonable Suspicion - Facts and inferences that would lead a reasonable person to conclude that someone being stopped may have committed, may be committing, or may be about to commit a crime or whose curious or unusual conduct would necessitate a police inquiry.

Search Warrant – A legal document based on probable cause and signed by a Judge that empowers officers to search persons or property without consent.

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Attachments—None

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