


Atlanta Police Department Policy Manual		Standard Operating Procedure
Effective Date June 1, 2015		APD.SOP.3020 Search and Seizure
Applicable To: All employees		
Approval Authority: Chief George N. Turner		
Signature: Signed by GNT		Date: 5/29/15

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1. PURPOSE

To establish the policies and procedures for conducting searches and seizures of private property.

2. POLICY

The Atlanta Police Department places the highest priority on maintaining the Constitutional rights of all individuals. All searches and seizures of private property will be conducted and performed in compliance with applicable federal and state laws and in a manner that provides for the highest degree of safety for all involved parties.

3. RESPONSIBILITIES

3.1 Division, section, and unit commanders are responsible for ensuring that all employees within their chain of command comply with the requirements of this directive.

3.2 Supervisors are responsible for ensuring compliance with this directive and being present when employees under their chain of command execute a search warrant.

3.3 All employees are responsible for complying with the requirements of this directive.

3.4 **PRAU must contact the City of Atlanta Department of Law prior to making any revisions, amendments, or deletions in this Standard Operating Procedure.**



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#### 4. ACTION

##### 4.1 General

- 4.1.1 The validity of the scope of a search depends upon the reasonableness of the search in light of its purpose. The scope of a search must be strictly tied to and justified by the circumstances that rendered its initiation permissible.
- 4.1.2 Officers are justified in staying on the premises only as long as necessary to conduct a reasonable search. Officers must not exceed their authority and should be considerate of the comfort, convenience, and feelings of the occupants.
- 4.1.3 Officers are obligated to avoid unnecessary damage to the premises and to terminate the search as soon as the objects of the search have been discovered.
- 4.1.4 The validity of an initial search, pursuant to a warrant or under an exception to the warrant requirements, generally will not sustain a later search of the same area unless a new warrant is obtained, or unless there again exists a right to search without a warrant.
- 4.1.5 Officers will not allow the news media to enter a suspect's home to witness a search or arrest when their presence is not in aid of the execution of the warrant (*Wilson v. Layne*, 119 S. Ct. 1692 (1999)).
- 4.1.6 Sworn personnel of the Atlanta Police Department shall only lawfully take or demand identification, or require an individual to identify him/herself when reasonable suspicion exists that the individual is engaged or had engaged in criminal conduct.

**\*This Section, 4.1.6, may not be deleted, revised, or amended pursuant to the May 19, 2015 Order in *Calhoun, et al. v. Pennington, et al.* 1:09-CV-3286-TCB. Consult the City of Atlanta Department of Law with any questions or concerns.\***

##### 4.2 Searches with a Warrant

- 4.2.1 A search warrant may be issued for the seizure of the following (OCGA § 17-5-21):
  - 1. Instruments, articles, things, including private papers of any person, which are designed, intended for use, or which have been used in the commission of the offense in connection with which the warrant is issued;
  - 2. Any person who has been kidnapped in violation of the laws of the state, kidnapped in another jurisdiction and now concealed in this state, or any human fetus or human corpse;
  - 3. Stolen or embezzled property;
  - 4. Any item, substance, object, thing, or matter, the possession of which is unlawful;
  - 5. Any item, substance, object, thing, or matter, other than the private papers of any person, which is tangible evidence of the commission of the crime for which probable cause is shown.

##### 4.2.2 Scope of the Search



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Officers may search the premises that are located at the place described in the search warrant, including the curtilage around the place described. No warrant is required to search an area beyond the curtilage as no constitutional protection extends to open fields or other lands that are not an immediate part of the place described or when there is a clear indication that the area in question was (or is) open to the public.

#### 4.2.3 Purpose of Search

An officer may search anywhere within the permissible area in which the object or objects of the search may be located, but not in an area in which the object of the search could not be located. Officers must take care to avoid unnecessary damage to the premises and personal property located therein.

#### 4.2.4 Property Which May Be Seized

Officers may seize only those items particularly described in the warrant. Officers conducting a lawful search may also seize items not listed in the search warrant if the discovery of that item resulted from a bona fide search for the items named in the warrant. Items that may be seized include contraband, stolen property, and evidence of the commission of a crime.

#### 4.2.5 Obtaining a Search Warrant

1. Only sworn and POST certified employees may obtain a search warrant (OCGA § 17-5-21; 17-5-24). Each officer applying for a search warrant is responsible for corroborating the facts stated in the affidavit and determining the accuracy, validity, and truthfulness of the information presented.
2. Officers must file a written complaint (affidavit) for the issuance of a search warrant. When preparing the affidavit the officer will state the facts necessary to substantiate the issuance of the warrant in a clear, organized, accurate and concise manner. The affidavit will include but is not limited to:
  - a. The criminal offense committed;
  - b. Description of the premises, properties, and persons to be searched;
  - c. Description of the property, evidence, and contraband to be seized;
  - d. Case-specific review of the target's propensity for violence, possibility of weapons possession and other unique circumstances;
  - e. Any information provided by an informed or concerned citizen to support the issuance of the search warrant;
  - f. Any information obtained as a result of an independent investigation by the officer;
  - g. Statement of probable cause; and
  - h. Justification for obtaining an "other party" and/or a "no knock" clause, if needed.
3. The search warrant will also include the following information:



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- a. The criminal offense
  - b. A detailed description of the premises, properties, and persons to be searched;
  - c. An “other party” and/or “no knock” clause, if needed;
4. All search warrants must be based on a determination of probable cause, supported by oath or affirmation, and can only be issued and signed by a neutral and detached magistrate who is authorized to hold a court of inquiry for any area of the county in which the premises described in the search warrant is located (OCGA § 17-5-21).

#### 4.2.6 Authorization

1. The warrant must be signed by a neutral and detached magistrate who is authorized to hold a court of inquiry for any area of the county in which the premises described in the search warrant is located (OCGA § 17-5-21).
2. Prior to executing the warrant, the officer will present the affidavit and the search warrant to the lieutenant or above for approval. If a Confidential Source is used to establish probable cause, his/her file must be presented along with the affidavit and warrant. The lieutenant will indicate approval of both the affidavit and the search warrant by initialing and dating the lower-left margin of the face side of each document.
3. A search warrant containing a “no knock” clause must be approved by the officer’s major or above who will initial and date the lower-left margin of the face side of each document.

#### 4.2.7 Pre-Search Planning

1. Prior to executing the search warrant, the affiant will verify the information contained in the warrant, will attempt to determine if any circumstances have changed that make executing the warrant unjustifiable or undesirable, and will confirm the actual location of the search site to avoid searching the wrong location. Pictures of the exterior of the location should be taken whenever possible.
2. Prior to the actual execution of the search warrant, a Tactical Plan utilizing APD Form 683 must be completed by the affiant and approved by the search team supervisor. The supervisor will indicate approval by initialing and dating each page of the tactical plan. The tactical plan must also be approved by the unit commander, prior to execution.
3. On the day of the search warrant execution, the affiant and supervisor will conduct a pre-operation briefing with all participating personnel. The briefing will provide and document the following information:
  - a. Number of suspects, descriptions, and photographs if available;
  - b. Criminal history and/or background of the suspects and the premises;
  - c. Probability of the existence of weapons and the types of weapons;
  - d. The address of the premises to be searched;



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- e. The exterior and interior description of the premises to be searched (sketches should be distributed);
- f. The existence of children, animals, or other factors that may necessitate special precautions during the search;
- g. A thorough description of the items to be seized;
- h. The tactics to be used if a forced entry is required (approach, entry, etc.);
- i. Any special provisions authorized in the search warrant;
- j. The availability of all items of equipment required;
- k. The specific duties and responsibilities of all persons involved in the search; and
- l. Any other information necessary for the safe and successful execution of the search warrant.

#### 4.2.8 Executing the Search Warrant

1. A search warrant must be executed within 10 days from the time of its issuance. If the warrant is not executed within the 10-day period, it will be void and must be returned to the court of issuance (OCGA § 17-5-25).
2. Search warrants may be executed at any reasonable time within the 10-day period (OCGA § 17-5-26).
3. Only sworn and POST certified personnel may execute a search warrant (OCGA § 17-5-24).
4. At least one uniformed officer and marked patrol vehicle will be present during the execution of search warrants by non-uniformed officers. All non-uniformed officers will be clearly identifiable, wearing clothing and equipment that identifies them as police officers and in compliance with APD.SOP.2130 "Dress Code/Uniforms". If the search warrant is executed at any location outside the City of Atlanta, the officer(s) will have uniformed officers from the agency responsible for law enforcement within that location present during warrant execution.
5. At least one supervisor must be present during the execution of search warrants when a forcible entry is being made. The supervisor present is responsible for informing the Communications Section of the location of the search warrant execution, and the participating units. The supervisor must verify that HIDTA Deconfliction notification is made, if narcotics are in the scope of the search.
6. Reasonable and necessary force may be used to affect entry into any building or property (or part thereof) to execute a search warrant if, after verbal notice or an attempt in good faith to give verbal notice by the officer directed to execute the same of his authority and purpose (OCGA § 17-5-27):
  - a. The officer is refused admittance;



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- b. The person or persons within the building or property or part thereof refuse to acknowledge and answer the verbal notice;
  - c. The presence of the person or persons therein is unknown to the officer; or
  - d. The building or property or part thereof is not then occupied by any person.
  - e. The person or persons attempt to flee the location or attempts to destroy the evidence listed in the search warrant affidavit.
7. High Risk Warrant Entries are often executed when there is a reasonable belief that weapons or other factors that may jeopardize officer safety exist, or that the immediate destruction of evidence is likely. High-risk entries will only be executed by trained personnel who are part of an "entry team" and meet the following criteria:  
(CALEA 5<sup>th</sup> Edition Standard 33.6.2)
  - a. All entry team members, including the entry team supervisor, must have documented training in the execution of "high-risk warrants".
  - b. Entry team supervisors must ensure that documented trainings/rehearsals are conducted at least on a quarterly basis. Each team will have an assigned training coordinator to schedule and document quarterly training for each member.
  - c. All members of the entry team must be dressed in the Department approved raid suit.
  - d. All entry team members must wear their City-Issued body armor and helmet.
  - e. Entry team personnel must be in possession of the specialized equipment needed (e.g., shield, ram, halogan bar and hammer) to affect a high-risk entry.
8. In the execution of the search warrant, the officer executing the warrant may reasonably detain or search any person in the place at the time:
  - a. To protect himself from attack; or
  - b. To prevent the disposal or concealment of any instruments, articles, or things particularly described in the search warrant (OCGA § 17-5-28).
9. When conducting the search, officers will first perform a security sweep for other individuals located or hiding within the entire premises. Officers are allowed to make a limited protective sweep when the officer possesses a reasonable belief, based on specific and articulable facts, that the area to be swept harbors an individual posing a danger to those on the search scene. This protective sweep may extend only to a cursory inspection of those spaces where a person may be found.
10. Officers will limit their search to the location, person(s), and properties described in the warrant. The areas to be searched are limited to those areas where the object(s) sought might be located.
11. Officers may seize only those items particularly described in the warrant. Officers conducting a lawful search may also seize items not listed in the search warrant if the discovery of that item resulted from a bona fide search for the items named in the warrant.



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Items that may be seized include contraband, stolen property, and evidence of the commission of a crime.

12. The officer who prepared the search warrant is responsible for preparing an inventory of the items seized during the execution of the warrant. Property seized should be turned in to Property Control as soon as practicable.
13. When executed, the duplicate copy of the warrant will be left with the person from whom any items are seized. If no person is available, a copy of the warrant and an inventory of the items seized will be left in a conspicuous place on the premises (OCGA § 17-5-25).

#### 4.2.9 Return of the Search Warrant

After the search has been completed, it is the duty of the affiant to return the search warrant and file a verified list of the items seized with the judicial officer named in the warrant or before any court of competent jurisdiction (OCGA § 17-5-29). The affiant will also submit an after-action report to his/her supervisor by the end of their next tour of duty.

#### 4.3 Searches without a warrant

##### 4.3.1 Generally

1. There is a constitutional preference for searches to be conducted pursuant to a warrant rather than without one. Searches conducted without a warrant are per se unreasonable and subject to only a few specifically well-delineated exceptions.
2. Probable Cause must exist to make a warrantless search. Specifically, to justify a warrantless search, two essential elements must exist:
  - a. It must be established that the exigent circumstances at the time of the search were sufficient to require immediate action, which necessitated not complying with the restrictions of the warrant requirement of the Fourth Amendment.
  - b. The manner and scope of the search that was conducted must be reasonably related to the justification of the search.
3. In a lawful search without a warrant, officers may seize any contraband, stolen property, or mere evidence of a crime which is in plain view and which is immediately recognizable as such, provided that the scope of the search was strictly tied to and justified by the circumstances that rendered it permissible when initiated. In this case the officer/investigator should make every effort to "Freeze" the scene and obtain a warrant before searching the premises more thoroughly.

##### 4.3.2 Search Incident to a Lawful Arrest

- 4.3.3 The type of search conducted (e.g., frisk, field search or strip search, etc.) is dependent upon the situation surrounding the detention or arrest. A recognized exception to the search warrant requirement is a search incident to a lawful arrest. This exception permits an officer to perform a warrantless search during or immediately after a lawful arrest. The reason for the search is to remove any weapons the arrestee may use to resist arrest, or effect an escape or to search and seize any evidence in order to prevent concealment or destruction. The Atlanta Police Department recognizes three (3) types of searches incident to a lawful arrest.



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#### 4.4 Strip/Body Cavity Searches (CALEA 5<sup>th</sup> ed. standard 1.2.8)

1. A strip search or a body cavity search incident to a lawful arrest shall only be conducted where reasonable articulable suspicion exists that the suspect is concealing a weapon, explosive device, or contraband, and may be conducted only at a jail, correctional, or detention facility after transport. After an initial search incident to an arrest, the officer shall:
  - a. Notify his or her supervisor that the subject in the officer's custody may be concealing an unknown item and request permission to have a strip search or body cavity search conducted.
  - b. Request that a strip search or body cavity search be conducted by the Department of Corrections at the jail after transport. Searches must be conducted out of public view and by a person of the same gender. Body cavity searches must be conducted by qualified medical personnel.
  - c. Ensure that the incident report contains detailed information about the search to include: the date, place and time of the search; the justification for the search; the name of the person conducting the search; the name of any witnesses to the search; the identity of the person being searched; and the type of contraband located and where on the body found.
2. A body cavity search that is not incident to a lawful arrest must be supported by a search warrant. If an officer has probable cause to believe that a person is concealing a weapon, explosive device, or contraband, the officer shall obtain a search warrant prior to a body cavity search.
  - a. Searches must be conducted out of public view and by a person of the same gender. Body cavity searches must be conducted by qualified medical personnel.
  - b. Ensure that the incident report contains detailed information about the search to include: the date, place and time of the search; the justification for the search; the name of the person conducting the search; the name of any witnesses to the search; the identity of the person being searched; and the type of contraband located and where on the body found.
3. A field search is the search of an arrestee at the time of arrest in order for the officer to seize any weapons or contraband. The scope of the field search shall include a frisk or pat-down of the arrestee's clothing and a search of the arrestee's pockets, socks, shoes, hair, and waistband.
  - a. If you have a reasonable articulable suspicion that the arrestee is hiding contraband or a weapon due to the type of arrest (e.g., murder, armed robbery, drug sales, etc...) or during the field search you have determined that the arrestee is concealing a weapon or other contraband, you should retrieve it immediately.
  - b. A "Strip Search" is more intrusive than a "Field Search." Officers may reasonably retrieve weapons or contraband during the "Field Search" as long as the make every effort not to expose the arrestee's undergarments, buttocks, anus, genitals, or breasts to view.





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- c. **Remember, the reasonableness of such searches will be measured by the need for the search, the efforts of the officers to protect the privacy of the suspect, the intrusiveness of the search, and the location where the search was done. Without these protections, every arrest would result in a strip search. Such intrusive searches should only be done by officers of the same sex as the suspect – absent extreme and compelling circumstances.**

#### 4. Definitions

- a. **Strip Search:** Removal or rearrangement of clothing to permit visual inspection of a person's 1) undergarments, 2) buttocks, 3) anus, 4) genitals, or 5) breasts. The following does not constitute a strip search: 1) removal or rearranging of clothing reasonably required to render medical treatment or assistance, or 2) removal of articles of outer clothing, such as coats, ties, belts or shoelaces.
- b. **Body Cavity Search:** Visual inspection or manual search of a person's anal cavity or vaginal cavity.
- d. **Field Search:** A search of the arrestee at the time of arrest in order for the officer to seize any weapons or contraband. The scope of this search shall include a frisk or pat-down of the arrestee's clothing and a search of the arrestee's pockets, socks, shoes, hair, and waistband.

***\*This Section, 4.4, may not be deleted, revised, or amended pursuant to the March 19, 2012 Order in Walker, et al. v. Reed, et al. 1:11-CV-3334-CAP. Consult the City of Atlanta Department of Law with any questions or concerns.\****

- 4.4.1 The choice of a searching position (i.e. kneeling, prone etc.) is dependent on the context in which the search is conducted. The officer in choosing the searching position must not only consider his or her welfare but also the welfare of onlookers and the suspect.

#### 4.5 Incident to lawful arrest

1. Officers may search the person arrested and the area within the person's immediate presence for the purpose of:
  - a. Protecting the officer from attack;
  - b. Preventing the person from escaping;
  - c. Discovering or seizing the fruits of the crime for which the person has been arrested; or
  - d. Discovering or seizing any instruments, articles, or things which are being used, or which have been used, in the commission of the crime for which the person has been arrested (OCGA § 17-5-1).
2. A search incident to an arrest will not be valid unless the arrest itself is lawful. The arrest may not be made as a pretext for conducting a search, and it will not be validated by what is found in the search. The arrest must generally precede the search or be substantially contemporaneous with the search.



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#### 4.5.1 Stop and Frisk

1. There are three types of police-citizen encounters:
  - a. Communication between police and citizens involving no coercion or detention. Voluntary, non-coercive communication may include questioning, for which no standard of cause is needed, as long as the encounter does not interfere with a person's liberty;
  - b. Brief seizures that must be supported by reasonable suspicion. They are limited in both duration and scope, and must be based upon reasonable articulable suspicion;
  - c. Arrest, which must be supported by probable cause.
2. Officers may approach, converse with, and inquire from persons and request information as long as the confrontation is voluntary to such a degree that the persons feel they are free to go. There must not be any detention for this rule to exist.
3. Officers may detain an individual when they have articulable facts that lead them to believe criminal activity is occurring. Officers will consider the totality of the circumstances in determining whether reasonable articulable suspicion exists authorizing the detention. Based upon this, officers must have a particularized and objective basis for suspecting the particular person detained of criminal activity. The following elements must exist prior to the stop for it to be permissible:
  - a. The assessment must be based on a totality of the circumstances. This analysis proceeds with various objective observations, information, and the consideration of the modes and patterns of operation of certain kinds of lawbreakers. From this information, an officer draws inferences and makes deductions.
  - b. This process must raise a suspicion that the particular individual being detained is engaged in a criminal act or the furtherance of a criminal act, or suspected of being one wanted in connection with a completed criminal violation.
  - c. When conducting a warrantless seizure, search or frisk of a person inside any residence, commercial building or structure, officers on self-initiated calls must complete the ICIS Demographics tab under the Field Contact Tab. In instances whereby an officer calls 9-1-1 and he or she is, in turn, the primary unit responding to said call, the ICIS Demographics tab under the Field Contact tab must also be completed. This requirement does not apply to officers responding to dispatched calls for service.

***\*This Subsection, 4.5.1 (3c), may not be deleted, revised, or amended pursuant to the May 19, 2015 Order in Calhoun, et al. v. Pennington, et al. 1:09-CV-3286-TCB. Consult the City of Atlanta Department of Law with any questions or concerns.\****
- d. The ICIS Demographics Tab under the Field Contact tab must clearly specify:
  - (a) The specific facts giving rise to reasonable articulable suspicion regarding a crime;



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(b) Whether the individual was frisked for weapons, and if so the specific facts giving rise to reasonable articulable suspicion that the individual was both armed and dangerous;

(c) Whether the individual was searched for anything other than weapons, and if so, the specific facts giving rise both to probable cause and exigent circumstances.

**\*This Subsection, 4.5.1 (3d), may not be deleted, revised, or amended pursuant to the May 19, 2015 Order in Calhoun, et al. v. Pennington, et al. 1:09-CV-3286-TCB. Consult the City of Atlanta Department of Law with any questions or concerns.\***

4. The authority to detain or stop does not automatically include the authority to frisk or pat down. A stop is a brief (temporary) investigative detention of an individual short of arrest. A frisk is an intrusion reasonably necessary to discover weapons, based on the officer's belief that the person may be armed. The authority to frisk or pat down must not be driven by an investigatory motive, but propelled by the officer's concern for their safety or the safety of others. If, following the stop, the officer reasonably believes that the person is both armed and presently dangerous; they may frisk the suspect for weapons. The frisk may not be justified by the desire to discover or prevent the destruction of evidence in the absence of probable cause, and a valid stop does not justify a frisk. The scope of the frisk must be limited to an intrusion necessary to discover weapons on or about the person detained.

**\*This Subsection, 4.5.1 (4), may not be deleted, revised, or amended pursuant to the May 19, 2015 Order in Calhoun, et al. v. Pennington, et al. 1:09-CV-3286-TCB. Consult the City of Atlanta Department of Law with any questions or concerns.\***

#### 4.5.2 Exigent Circumstances

1. Officers may conduct a warrantless search in some emergency situations when there is an immediate necessity to search and no opportunity to obtain a warrant. To establish the existence of an emergency situation, the following basic elements must appear:
  - a. The officer must have reasonable grounds to believe that there is an emergency at hand and an immediate need for police assistance for the protection of life or property.
  - b. The search must not be primarily motivated by intent to arrest and seize evidence.
  - c. There must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched.
2. A case-by-case scrutiny of the circumstances is necessary. Circumstances determined to have been relevant to the courts include:
  - a. The degree of urgency involved and the amount of time necessary to obtain a warrant.
  - b. The reasonable belief that the contraband or evidence is about to be removed or destroyed.
  - c. The possibility of danger to police officers guarding the site of the evidence or contraband while a search warrant is sought.



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- d. Information indicating the possessors of the contraband or evidence are aware that the police are on their trail.
  - e. The ready destructibility of the contraband and the knowledge that efforts to dispose of narcotics and to escape are characteristic behaviors of persons engaged in narcotics trafficking.
3. In all cases where judgments are made concerning a warrantless search based on exigent circumstances, officers will ensure that they can factually articulate and document their reasoning in support of their investigatory acts.

#### 4.5.3 Crime Scenes

1. Crime scenes are not, by their nature, an exception to the warrant rule.
2. The seriousness of the offense under investigation does not, in and of itself, create an exigent circumstance.
3. If exigent circumstances exist, a warrantless search must be strictly limited by the exigencies that justify its initiation: the need to protect or preserve life or avoid serious injury is justification for what would otherwise be illegal, absent exigent circumstances. *Mincey v. Arizona* 437 U.S. 385 (1978).
4. If exigent circumstances do not exist, a search warrant or consent to search is required.

#### 4.5.4 Hot Pursuit

1. A suspect may not defeat a lawful arrest by escaping to a private place. A warrantless search for persons and weapons may be valid when an officer is in hot pursuit. The essential elements of hot pursuit are:
  - a. Continuity of the pursuit: the pursuit must be maintained in a continuous manner without any significant break in the action.
  - b. Immediacy of the pursuit: the immediacy of the pursuit will depend on such factors as the nature and severity of the crime, the possible destruction of evidence, and the safety and security of all persons.

#### 4.5.5 Consent

1. A valid consent to search eliminates the requirement for a search warrant. However, the consent to search is not necessarily the consent to seize. Items that may be seized include contraband, stolen property, and evidence of the commission of a crime. To obtain a valid consent to search, the following criteria must be satisfied:
  - a. The officer must have a legal right to be at that location at the time of the consent.
  - b. The individual consenting must have the apparent authority over the place or thing to be searched.



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- c. The individual consenting needs to be advised of the specific location, place, or thing to be searched.
- d. Consent must be freely and voluntarily given, without any coercion or duress by a law enforcement officer.
- e. Consent must be obtained utilizing the Consent to Search Form (APD Form 310 or 311).

***\*This Subsection 4.5.5 (1e), may not be deleted, revised, or amended pursuant to the May 19, 2015 Order in Calhoun, et al. v. Pennington, et al. 1:09-CV-3286-TCB. Consult the City of Atlanta Department of Law with any questions or concerns.\****

- f. On all consents, the Consent to Search Form shall be completed prior to conducting the search. Regardless if an arrest is made, officers must complete the Consent to Search Form. The form must be completed and turned into property as evidence prior to the end of his/her shift. Off-duty Police Officers working a Department-approved extra-job must also adhere to this requirement.

***\*This Subsection 4.5.5 (1f), may not be deleted, revised, or amended pursuant to the May 19, 2015 Order in Calhoun, et al. v. Pennington, et al. 1:09-CV-3286-TCB. Consult the City of Atlanta Department of Law with any questions or concerns.\****

- g. Consent may be revoked at any time.
2. The test of the validity of a consent to search by a third party centers on whether the facts available to the officer at the moment would warrant a person of reasonable caution to believe that the consenting party had authority over the premises.
  3. A third party may consent if that person possesses common authority over, or sufficient relationship to, the premises or effects to be searched. The officer must articulate that it is reasonable to recognize that any of the co-inhabitants has the right to permit a search in their own right and that the others have assumed the risk that one of them might permit common areas to be searched.
  4. To be capable of giving consent, a person has to be sufficiently able to understand the circumstances and consequences of their actions. A minor or a person with diminished mental capacity may not have the minimal discretion required to provide a valid consent. The courts have considered the following factors regarding minors giving consent:
    - a. Whether the minor lived on the premises.
    - b. Whether the minor had a right of access to the premises and the right to invite others there also.
    - c. Whether the minor was of an age making it reasonable to expect him or her to be able to exercise at least minimal discretion.
    - d. Whether officers acted reasonably in believing that the minor had sufficient control over the premises to give a valid consent to search.



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#### 4.5.6 Abandoned Property

Abandonment is the voluntary relinquishment of control over property by a person to the extent that that person no longer has a reasonable expectation of privacy at the time of the search. All relevant circumstances existing at the time of the alleged abandonment should be considered. Denying ownership, interest, or discarding a piece of property while in a state of flight are all considered to be abandonment. Abandoned property is not protected by the Fourth Amendment and is not subject to policies governing searches with or without a warrant.

#### 4.5.7 Plain View

1. The plain view rule or doctrine is not an exception to the warrant requirement for a search, in that articles discovered as a result of "plain view" are not discovered as a result of a search. No warrant is required since no search is conducted. Officers may seize and act upon evidence of a crime and/or contraband when its discovery is based upon plain or open view.
2. The criteria for a plain view seizure include:
  - a. Officer must have a legal right to be where they are at the time of discovery.
  - b. It must be immediately apparent that the item to be seized is stolen property, contraband, or other evidence of a crime.
3. Officers will be mindful of the fact that a further search beyond the scope of those items discovered in plain view may require a warrant, absent exigent circumstances.

#### 4.5.8 Open Fields

No search warrant is necessary for the search of an open field. The open fields doctrine applies to all land outside the curtilage regardless of how remote the land is and regardless of the efforts of the property owner to keep others out. Open fields may include any unoccupied or undeveloped area outside the curtilage, and need be neither 'open' nor a 'field' as those terms are used in common speech.

#### 4.5.9 Border Searches

1. An airport at which passengers arrive after a non-stop flight from outside the country is the functional equivalent to a border of the United States.
2. A search at a border, incident to the entrance of a person into the United States, is not protected by the Fourth Amendment; therefore no search warrant is required for such searches.

#### 4.5.10 Vehicles

1. The following exceptions or limitations may apply to the rule requiring a search warrant for a motor vehicle:



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- a. Search incident to a lawful arrest where evidence of the offense may be present inside the vehicle or if an unrestrained arrestee must be left inside the vehicle and may access weapons.
  - b. When there is probable cause to search;
  - c. When the car is impounded or placed in storage;
  - d. When there is consent to the search;
  - e. Search of a car at or near a border of the United States; or
  - f. Search of an abandoned vehicle.
2. Officers may search a motor vehicle without a warrant, by consent, or when the following two factors exist simultaneously:
    - a. The officer has probable cause to believe that evidence or contraband is contained in the vehicle or containers therein.
    - b. The officer possesses knowledge that the motor vehicle has the capability to become mobile.
  3. When there is a reasonable and articulable suspicion that a vehicle contains illegal drugs, an officer is authorized to walk a drug dog around the vehicle to see if the dog alerts for drugs. If the dog alerted for drugs, that factor, combined with the other factors prompting the use of the drug dog may establish probable cause authorizing the search of the vehicles interior.
  4. An officer who has made a lawful arrest of an occupant of a motor vehicle may, at the time of that arrest, search the passenger compartment of that vehicle. This right to search also applies to containers located in the passenger compartment. An officer may search a vehicle incident to the lawful arrest of an occupant if the arrest offense leads to the belief that evidence of the offense may be found in the vehicle. An officer may also search a vehicle incident to arrest if the arrestee is left unrestrained inside the vehicle beyond the point of arrest and the officer must search the vehicle in order to prevent the arrestee from accessing weapons. Since allowing arrested persons unrestrained movement compromises officer safety, this exception is generally prohibited. See APD SOP 3030 "Arrest Procedures", section 4.1.6.
  5. Officers may search a stopped automobile without a warrant if there is probable cause to believe that contraband or other evidence of crime is within the vehicle and it is not practicable to secure a search warrant. The probable cause determination must be based on objective facts that could justify the issuance of a warrant by a magistrate and not merely on the subjective good faith of the officer.
  6. When probable cause exists, officers may search every part of the vehicle and its contents that may conceal contraband. The scope of the warrantless search of a vehicle is not defined by the nature of the container in which the contraband is secreted; rather it is defined by the object of the search and the places in which there is probable cause to believe the contraband may be found.



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7. When a driver is arrested, and there is probable cause to believe that evidence pertaining to the crime is in the vehicle, the officer may require passengers to get out so that the officer can safely and effectively search the vehicle. Officers may search the passengers based on probable cause to arrest as a search incident to a lawful arrest.
8. Abandoned vehicles may be searched without a warrant as the owner has no standing or expectation of privacy. A vehicle may be temporarily abandoned, may be abandoned if given to another person, by leaving at a location for an unreasonable period of time, or after the driver of that vehicle flees the vehicle.
9. Officers may conduct an inventory of an impounded vehicle for the purpose of:
  - a. Protecting the owner's property while they are in custody or elsewhere;
  - b. Protecting the officer against claims of the owner for alleged missing property;
  - c. Protecting the public and the police from illegal weapons which might be contained in the car;
  - d. Determining whether the vehicle has been stolen
10. In conducting an inventory, an officer may check all areas of the automobile for which reasonable probable cause exists to believe might contain any of the items to be inventoried. Inventory searches serve two purposes:
  - a. To protect the vehicle and the property in it; or
  - b. Safeguard the officer or other officers from claims of lost possessions

#### 4.5.11 Documentation of Identification Checks

1. All ACIC/GCIC/NCIC identification checks conducted inside of a residence and/or commercial building or structure by sworn Atlanta Police personnel, shall require the completion of the Demographics Tab under the Field Contact tab in ICIS. This requirement does not apply to officers responding to dispatched calls for service. This requirement applies to officers on self-initiated calls. In instances whereby an officer calls 9-1-1 and he or she is, in turn, the primary unit responding to said call, the ICIS Demographics tab under the Field Contact Tab must also be completed;
2. The ICIS Demographics tab under the Field Contact tab must clearly specify;
  - a. the specific facts giving rise to reasonable articulable suspicion regarding a crime;
  - b. whether the individual was frisked for weapons, and if so the specific facts giving rise to reasonable articulable suspicion that the individual was both armed and dangerous;
  - c. whether the individual was searched for anything other than weapons, and if so, the specific facts giving rise both to probable cause and exigent circumstances.
3. Pursuant to an ACIC/GCIC/NCIC identification check conducted inside of a residence and/or commercial building or structure by a sworn Atlanta Police personnel, the Field





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Contact information shall be imputed in ICIS prior to the end of the officer's shift. Off-duty officers working a Department-approved extra-job must also adhere to this requirement.

***\*This Section 4.5.11, may not be deleted, revised, or amended pursuant to the May 19, 2015 Order in Calhoun, et al. v. Pennington, et al. 1:09-CV-3286-TCB. Consult the City of Atlanta Department of Law with any questions or concerns.\****

#### 5. DEFINITIONS

- 5.1 Contraband: items, objects, properties that cannot be lawfully carried, possessed, furnished, or owned.
- 5.2 Curtilage: the area immediately surrounding a house or dwelling which is reserved for or used by the occupants for their enjoyment or work. Curtilage may or may not be enclosed by fencing and includes any outhouses such as stand-alone garages or workshops.
- 5.3 Entry Team: a well organized and disciplined team made up of 7 to 9 trained members for the purpose of executing forcible entries.
- 5.4 Exigent circumstances: an emergency or a dangerous situation, such as hot pursuit, threat to an individual's life or public safety, and/or destruction of evidence.
- 5.5 Fruits of the crime: material objects acquired by means in consequence of the commission of a crime and/or containing subject matter of the crime.
- 5.6 Motor vehicle: any vehicle operating or capable of being operated on public streets or highways, to include automobiles, trucks, trailers, recreation vehicles, mobile homes, motor homes, and any other type of vehicle, whether self propelled or towed.
- 5.7 Other Party Clause: a special clause which may be included in the search warrant, granting the affiant authority to detain and search all persons inside the place to be searched.
- 5.8 Private Papers: any papers that are covered or protected by privilege, i.e., attorney-client, doctor-patient, etc.
- 5.9 Probable Cause: that set of facts or circumstances which would lead a reasonably prudent person using all of one's senses to believe that a crime has been, is being, or is about to be committed by the suspected person.
- 5.10 Reasonable Articulate Suspicion: based on articulable facts and circumstances, which, taken together with reasonable inferences in light of an officer's training and experience, would cause an officer to conclude that a person is, has been, or is about to be, involved in criminal activity or that a person is armed with a weapon that constitutes a danger to the officer or others.
- 5.11 Search: a law enforcement action which infringes upon a person's reasonable expectation of privacy. A search occurs when an expectation of privacy that society is prepared to consider reasonable is infringed.
- 5.12 Search Warrant: a judicial command to search a place or person particularly described in the warrant and to seize the instruments, articles, or things particularly described in the warrant (OCGA § 17-5-23).



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- 5.13 Seizure: occurs when there is some meaningful interference with an individual's possessory interests in the property seized (Maryland v. Macon, 105 S. Ct. 2778 (1985)).
- 5.14 Self-initiated calls: Police intervention whereby an officer was not dispatched for service but rather took it upon him or herself to initiate the police intervention.
- 5.15 Stop and Frisk: a brief detention of a person to verify or dispel a reasonable and articulable suspicion of criminal activity and a pat down of the subject's outer clothing to determine the existence of weapons if there is reason to believe that such weapons exist.

6. CANCELLATIONS

APD.SOP.3020 Search and Seizure, effective August 14, 2014

7. REFERENCES

March 19, 2012 Order in Walker, et al. v. Reed, et al. 1:11-CV-3334-CAP

May 19, 2015 Order in Calhoun, et al. v. Pennington, et al. 1:09-CV-3286-TCB

APD.SOP.3030 "Arrest Procedures"

Commission on Accreditation for Law Enforcement Agencies (CALEA), 5th Edition Standards 1.2.4, 1.2.8 and 33.6.2

O.C.G.A Codes: 17-5-1; 17-5-21; 17-5-24; 17-5-25; 17-5-26; 17-5-27; 17-5-28; and 17-5-29

U.S. Supreme Court: Wilson v. Layne, 119 S. Ct 1692 (1999)

U. S. Supreme Court: Mincey v. Arizona U.S. 385 (1978)

APD Form 310 "Consent For Hair Samples and Bodily Fluids To Be Taken"

APD Form 311 "Consent to Search Form – Clothing/Vehicle/Premises"

APD Form 683 "Tactical Plan"