

GENERAL ORDER



Title		
Warrantless Searches		
Topic	Series	Number
PCA	702	02
Effective Date		
April 27, 2023		
Replaces:		
GO-PCA-702.02 (Warrantless Searches), Effective Date September 8, 2022		

DISTRICT OF COLUMBIA

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I. PURPOSE

It is the policy of the Metropolitan Police Department (MPD) to respect the fundamental privacy rights of all individuals. MPD members shall conduct all searches in strict accordance with the rights secured and protected by the Fourth Amendment to the United States Constitution and District of Columbia law. All searches shall be conducted with concern for safety, dignity, courtesy, and respect for privacy. The purpose of this policy is to establish procedures for determining the need for and conducting most warrantless searches (i.e., searches incident to arrest, searches based on exigent circumstances, searches of a crime scene inside a dwelling, and consent searches). Policies and procedures concerning protective pat downs and warrantless vehicle searches are covered in other orders. To the extent that provisions in this general order conflict with existing directives, the provisions set forth in this general order shall prevail.

II. PROCEDURES

A. General

1. A search occurs when a law enforcement officer intrudes on an individual's privacy or property interest. Searches shall be conducted in strict observance of the constitutional rights of the individual and with due regard for the safety of all members, other persons, and property involved.
2. The United States Constitution generally requires law enforcement officers to obtain a search warrant prior to conducting a search. There are limited exceptions to the search warrant requirement. Common exceptions include the warrantless searches covered in this order:

Warrantless Searches
a. Searches incident to arrest
b. Searches based on exigent circumstances
c. Searches of crime scenes inside a dwelling
d. Consent searches

3. When in doubt as to the existence or applicability of an exception to the search warrant requirement, members shall obtain a search warrant pursuant to the procedures set forth in [GO-PCA-702.03 \(Search Warrants\)](#).
4. Members shall strive to conduct searches courteously and in a way that promotes the dignity of the subject being searched. Members shall explain to the subject of the search the reason for the search and how the search will be conducted.
5. Pursuant to [GO-SPT-302.13 \(Body-Worn Camera Program\)](#), members shall activate their body-worn camera (BWC) during any type of search.
 - a. Members not equipped with a BWC shall request that a BWC-equipped member respond to the scene, when practicable.
 - b. Members shall attempt to record the activity on which they base their reasonable suspicion or probable cause, to the extent practicable and safe.
6. As a general rule, a subject shall only be searched by a member of the same gender, unless the subject expresses health or safety reasons for a cross-gender search. Absent exigent circumstances, the subject's preferences for health or safety reasons with respect to the gender of the member conducting a search shall be honored. When it is not practicable to summon a member of the mandated or preferred gender, the member shall have another member or a supervisor witness the search. Searches of transgender subjects shall be conducted pursuant to [GO-PCA-501.02 \(Handling Interactions with Transgender Individuals\)](#).
7. Members shall carry out searches with due regard and respect for private property interests and in a manner that minimizes damage. Members shall leave property as close as reasonably possible to its pre-search condition.
8. In order to minimize property damage and the need for forcible entry, and where doing so would not place members at heightened risk or result in the destruction of evidence being sought, members shall attempt to lawfully obtain keys, combinations, or access codes when a search of locked property is anticipated.
9. Members **shall not** conduct a search beyond the scope of the underlying justification for the search. Any search conducted past that point requires either a search warrant or another exception to the search warrant requirement.

10. Members shall ensure that all warrantless searches are properly documented according to the procedures set forth in [GO-OPS-304.10 \(Field Contacts, Stops, and Protective Pat Downs\)](#), [GO-SPT-401.01 \(Field Reporting\)](#), [GO-SPT-602.01 \(Vehicle Searches\)](#), and this order.

B. Search Incident to Arrest

1. Members must have probable cause to arrest, the authority to arrest, and the intent to arrest before performing a search incident to arrest.
2. Members shall conduct a protective pat down and visually inspect the subject, paying particular attention to all areas where contraband may be hidden (e.g., the waistband, inseams, outer seams, pant and shirt cuffs, pockets, underarms, crotch area, collars, jacket liners, insoles, and any other item that may conceal contraband, evidence or a weapon.
3. Members shall ensure that the subject removes, or assists the subject with the removal of, all his or her outer clothing including hats, wigs, multiple layers of shirts, pants, socks, and shoes down to a single outer layer of clothing (e.g., jeans, pants, shirt, dress) until the search is complete. Members shall remove all contents (e.g., money, belts, jewelry, sunglasses, medications, contraband, and weapons) from the subject's clothing including, but not limited to, his or her pockets, jacket, coats, shoes, socks, or other clothing articles belonging to the subject.
4. In general, persons wearing religious head coverings or other articles of faith may continue wearing them except when removal or confiscation is reasonably required for reasons of safety or security. If a subject indicates that he or she requires special accommodations for a religious head covering, members shall ensure that the search is conducted by a member of the same gender, taking all steps reasonably necessary to ensure that persons of the opposite gender are not present during removal.
5. Members shall run their fingers under waistbands of all layers of clothing, including undergarments. Members shall pull bras away from the body, without removing the single outer layer of clothing or exposing the breast, to dislodge any contraband that might be hidden under the elasticized areas.
6. Members shall look inside each shoe, remove the insoles, when possible, flex the soles of each shoe, and pound each shoe to ensure that nothing is lodged or taped inside.
7. The search may include any articles of property found on the person, and minor manipulation of clothing that does not expose a subject's groin/genital area, buttocks, breasts, or more than the waistband or upper portions of the undergarments.
8. The areas included in this search are the person being arrested and the area in their immediate control. Once the subject has been removed from

the area and has been rendered incapable of gaining immediate control of items in that area, a warrantless search incident to arrest may no longer be conducted of that area.

9. If the subject is an occupant or was recently an occupant of a vehicle, a limited search of the passenger compartment of the vehicle (including glove box, center console, or containers therein) may be conducted, if the subject is unsecured and within reaching distance of the passenger compartment at the time of the search or there is reasonable suspicion that a search of the passenger compartment will uncover evidence related to the crime for which the occupant was arrested. Vehicle searches incident to arrest shall be conducted pursuant to [GO-SPT-602.01](#).
10. Members shall inspect all property removed from the subject. Property shall be handled in accordance with [GO-SPT-601.01 \(Recording, Handling, and Disposition of Property Coming into the Custody of the Department\)](#).

C. Search Based on Exigent Circumstances

1. The United States Supreme Court has long adhered to the view that the warrant procedure minimizes the danger of needless intrusions. Therefore, absent exigent circumstances, law enforcement officers must obtain a warrant before entering into a private residence or non-public building where there is a reasonable expectation of privacy to make an arrest or conduct a search.
2. Absent authorization from a person with legal authority to provide consent, a warrantless search of any non-public location may be conducted only under one or more of the following emergency circumstances.
 - a. Hot Pursuit of Fleeing Felons
 - (1) Members may enter a private residence or non-public building when in hot pursuit of a fleeing felony suspect **only** when the member has probable cause to believe the building or premises contains evidence of a crime **and** a reasonable belief that the evidence may be destroyed.
 - (2) Members **shall not** make a warrantless hot pursuit entry when there is only probable cause of a misdemeanor or a minor offense (e.g., traffic offenses, curfew violations, citation offenses, and non-arrestable violations).
 - b. Destruction of Evidence
 - (1) The law allows warrantless entry into a private residence or non-public building if the member has probable cause to believe that the premises contains evidence of a crime **and**

the member has reasonable suspicion that the evidence may be destroyed.

- (2) If entry is made to prevent the destruction of evidence, except in exceptional circumstances such as danger to members or the public, members **shall not** seize the evidence or contraband. Members shall secure the premises and the evidence, freeze the scene to include all occupants while allowing for occupants to leave if they wish, and await the arrival of a search warrant.
- (3) Members do not have the right to remain inside the premises if there is no genuine need to do so. The ability to remain inside a private residence will depend upon the totality of the circumstances. Unless members can reasonably articulate the need to remain inside, members shall accomplish the goal of securing the premises by stationing a member at the door from the outside.

c. Exigent Circumstances/Emergency Aid

- (1) When members have probable cause to believe that immediate entry to a private residence or non-public building is necessary to assist someone in danger of bodily harm inside the premises, they may enter with a specific intent to investigate a genuine emergency and to render assistance.
- (2) The entry shall be tailored carefully to achieve the objective to render emergency aid and the entry must **not** be motivated primarily by the intent to arrest or search.

d. Public Safety/Community Caretaking

As part of their community caretaking function, members remove vehicles to permit the uninterrupted flow of traffic and/or impound vehicles which violate parking ordinances and which thereby jeopardize both public safety and the efficient movement of vehicular traffic. Members may make a warrantless search under the community caretaking doctrine when members show:

- (1) By specific and articulable facts, that the member's conduct was totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute;
- (2) That their conduct was reasonable considering the availability, feasibility, and effectiveness of alternatives to the member's actions;

- (3) The member's actions ended when the community was no longer in need of assistance; **and**
- (4) The member's interests outweigh the individual's interest in being free from minor government interference.

3. Once lawful entry has been made pursuant to an emergency as outlined in this order, members may:

Search Procedures
a. Seize evidence or contraband observed in plain view;
b. Clear the dwelling for any potential danger to emergency responders; and
c. Assist other members, already within the dwelling, as necessary to restore or maintain order until the emergency ends.

4. Once the emergency circumstances have ended, any further search and seizure must be carried out after obtaining valid consent or a search warrant. Discoveries made during a warrantless search under exigent circumstances may be used to establish probable cause for a search warrant.

D. Search of a Crime Scene inside a Dwelling

- 1. Members responding to a reported crime who determine that the crime scene is located inside a dwelling shall adhere to the procedures regarding warrantless searches outlined in this order.
- 2. Whenever practicable, at least one member shall remain within the crime scene while emergency activities are ongoing in accordance with department procedures.
- 3. Once the emergency activities surrounding the entry have ended and the premises has been secured, no further entry into the residence shall be made by anyone until valid consent or a search warrant has been obtained.
- 4. If it has been determined that a search warrant is necessary, at least one member shall remain **outside** of the crime scene to secure the scene in accordance with department procedures until relieved by an official or the appropriate investigating member.
- 5. Nothing in this order is intended to prohibit members from conducting protective sweeps when responding to calls for service. Protective sweeps must be limited to an area that may harbor an individual that would pose a danger to those on the arrest scene and last no longer than necessary to dispel reasonable suspicion of danger.

E. Consent Search

- 1. Members may search any object, place, or person if given lawful consent. Consent searches:

Consent Search Requirements	
a.	Must be authorized by a person who has the legal authority to give the consent;
b.	Must be limited to the exact words or meaning of the consent; and
c.	May be withdrawn at any time.

2. Prior to conducting a consent search, members shall:
 - a. Explain, using plain and simple language delivered in a calm demeanor, that the subject of the search is being asked to voluntarily, knowingly, and intelligently consent to a search;
 - b. Advise the subject that a search will not be conducted if the subject refuses to provide consent to the search and that the subject has a legal right to decline to consent to the search;
 - c. Obtain consent to search without threats or promises of any kind being made to the subject;
 - d. Confirm that the subject understands the information communicated by the member; and
 - e. Use interpretation services when seeking consent to conduct a search of a person who cannot adequately understand or express themselves in spoken or written English or is deaf or hard of hearing.
3. Members who are unable to obtain lawful consent from the subject shall not conduct a consent search.
4. When practicable, there shall be at least one BWC-equipped member present with his or her BWC activated prior to conducting a consent search.
 - a. Members not equipped with a BWC shall request that a BWC-equipped member respond to the scene.
 - b. In cases when it is not practicable to have a BWC-equipped member present, members shall document the subject's consent using a PD Form 781 (Consent to Search). No consent searches shall be conducted without documented consent on BWC or a signed PD Form 781.
 - c. Members shall capture their explanation of the consent search including their notification that the subject may decline, and the subject's voluntary consent, on their BWC or in writing.
 - d. Members shall ensure completed PD Forms 781 are emailed to the Records Division at records.adminbox@dc.gov.

- e. There shall be a presumption that the subject did not voluntarily consent if the evidence of consent, including warnings required in this order, is not captured on BWC or in writing.
 - 5. The Risk Management Division shall conduct two audits each year on compliance with consent search requirements including [DC Official Code § 5-113.01\(a\)\(4B\) \(Records – Required\)](#), [DC Official Code § 23–526 \(Limitation on consent searches\)](#), and related MPD policies.
- F. Documentation and Property Control
- 1. Members who conduct warrantless searches shall complete a records management system (RMS) report using the classification that best corresponds to the incident or offense. Members may use the “Warrantless Search” classification and document the justification for the search in the narrative when no other classification is applicable.
 - 2. When documenting searches in RMS, members shall differentiate between searches that occur as a result of a stop and searches that result from an arrest.
 - 3. Members conducting a search must be prepared to cite the particular factors that justified the search. Members shall use the internal narrative section of the report to describe the circumstances and an articulation of the officer’s justification. The record of the search shall contain all factors relied upon for this justification. Members shall use accurate and specific descriptive language in their narratives documenting searches.
 - 4. Members shall itemize all items of value on a PD Form 81 (Property Record) pursuant to the procedures set forth in [GO-SPT-601.01](#) for any property seized during a search.
 - 5. When categorizing BWC footage, members shall select the BWC category that best corresponds with the incident or offense, ensuring that the most serious offense is selected, and include the central complaint number (CCN).

III. DEFINITIONS

When used in this directive, the following terms shall have the meanings designated.

	Term	Definition
1.	Consent search	Search of a person, vehicle, home, or property based solely on the subject’s consent to that search, not executed pursuant to a warrant, and not conducted pursuant to an applicable exception to the warrant requirement as described in United States or District of Columbia case law, excluding the exception for consent searches.
2.	Exigent circumstance	Unanticipated situations that threaten the immediate safety of individuals or property within the District of Columbia (24 DCMR 2599.1)
3.	Probable cause	Set of facts, circumstances, or reliable information that would lead a reasonable and prudent police officer to believe that a crime has

		been committed, or is about to be committed, and that a certain person committed it.
4.	Protective pat down	Limited protective search for concealed weapons or dangerous instruments. A pat down, also known as a frisk, consists of patting an individual's outer clothing to determine the presence of weapons and other dangerous objects.
5.	Protective sweep	Limited search to allow members to ensure their own safety, and that of those on the scene, by searching for anyone who may pose a threat in the vicinity of the arrest.
6.	Reasonable	Fair, proper, or moderate under the circumstances. Determining whether a member has behaved reasonably is an objective standard whereby the court will consider the circumstances, not the intent of the actor.
7.	Reasonable suspicion	Minimal level of objective justification. Although reasonable suspicion is not capable of precise definition, it is more than a hunch or mere speculation but less than probable cause.
8.	Search	Intrusion of an individual's privacy or property interest.
9.	Search warrant	Court order issued by judge or magistrate authorizing the examination of a place, item or person for the purpose of discovering contraband, stolen property, or evidence of guilt to be used in the prosecution of a criminal action.
10.	Seizure	Act of taking possession of a person or property by the legal process.
11.	Warrant	Court order issued by judge or magistrate authorizing the police or some other body to make an arrest, search premises, or carry out some other action relating to the administration of justice.



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