



GENERAL ORDER

OAK BROOK POLICE DEPARTMENT

OAK BROOK, ILLINOIS

Title: SEARCH AND SEIZURE		Number: OPR-349
Author: Commander Jeffrey Weber		Page: 1 of 5
Effective Date: 01-05-96		Distribution: ALL
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CALEA Reference: 1.2.4		

349.1 Policy

It is the policy of the Oak Brook Police Department to accomplish searches of people, places and things in a manner that provides protection of constitutional rights, minimizes intrusion and provides for the safety of all involved parties.

349.2 Purpose

The purpose of this policy is to provide guidelines and procedures to follow in conducting a variety of searches that meet the criterion established by statutory requirements, case law and judicial review.

1.2.4

349.3 Warrantless Search and Seizure

There are several exceptions to an Officer needing a search warrant and the Officer may seize items under these exceptions. These exceptions are:

- a. The Search by Consent is a search performed by an Officer after the subject of the search or the person having standing, rights, to the location, vehicle or property consents provided that the consent is given freely and intelligently given. Consent may be given:
 1. Orally or
 2. Documented in writing on the Oak Brook Police Department Permission to Search Form (Attachment A)

Consent may be withdrawn at any time and the search may not exceed the terms of the consent.

- b. The Pat Down Search stems from Terry v. Ohio which authorizes an Officer to conduct a cursory pat down search intended to discover weapons. For this type of

search to be valid:

1. An officer, after having identified themselves as an officer, may stop any person in a public place for a reasonable period of time when the officer reasonably infers from the circumstances that the person is committing, is about to commit or has committed an offense and may demand the name and address of the person and an explanation of their actions. Such detention and temporary questioning will be conducted in the vicinity of where the person was stopped. (725 ILCS 5/107-14) and
2. When an Officer has stopped a person for temporary questioning and reasonably suspects that they or another are in danger of an attack, the officer may search for weapons. (725 ILCS 5/108-1)
 - i. The authority to pat down and seize weapons is for the limited purpose of protecting the officer and others.
 - ii. The authority isn't for searching and seizing evidence. During the course of the pat down, evidence may on occasion be discovered and become the basis for arrest.
 - iii. The plain feel doctrine authorizes an officer to seize evidence other than a weapon if, in conducting the pat down, the contraband is immediately apparent to the officer based upon a feel of the object through the suspects clothing during the pat down. Repeated feeling or manipulation of the item is not allowed in establishing the plain feel doctrine.
3. An Officer, who initiates a pat down, must be able to articulate the reasonable suspicion justifying the stop and the reason(s) for suspecting that they are in immediate danger. This information may be drawn from the following sources, but is not limited to:
 - i. Training
 - ii. Education
 - iii. Prior experience in similar situations
- c. The Movable Vehicle Exception has two (2) reasons that permit this search with probable cause, but without a warrant:
 1. Vehicles do not share the same expectation of privacy as a home or personal property.
 2. The obvious mobility of a vehicle makes it impractical to require the police to first obtain a warrant.
 - i. Officers do not have to actually prove that a vehicle would be or may be gone if they obtained a warrant prior to making the search.
 - ii. The existence of probable cause alone justifies the exception.
 - iii. This exception allows for an Officer to search any portion of the vehicle or its contents as long as they had probable cause to believe that evidence or contraband may be located where they are looking.
 - iv. This search should not be confused with search incident to the arrest or an inventory search.

- d. The Crime Scene Search can have several potential reasons for exception; Consent, Plain View, Exigent Circumstances and Search Incident to the arrest. If a member discovers a crime scene during the course of their duties, they shall notify a sworn Officer. The following steps are to be taken when a crime scene is discovered:
 1. Render aid to the injured
 2. Secure the crime scene in the same condition as it was found
 3. Attempt to identify witnesses and victims
 4. Attempt to locate, identify and arrest the offender at the scene
 5. Notify the Shift Supervisor
 6. Start a Crime Scene Log (Attachment B)
 7. Yield responsibility for a follow-up and or evidence collection to a Detective(s) and or Evidence Technician(s)

A search warrant may be required to maintain access to the crime scene. If a person with standing does not consent or maybe a suspect, a search warrant shall be needed.

- e. The Exigent Circumstances Exception allows an Officer to make a warrantless search in situations where the following factors are relevant:
 1. If the Officer does not search immediately, the evidence will be destroyed
 2. The gravity of the offense committed
 3. It is reasonable to consider that the suspect is on the premises, or is armed and therefore considered dangerous.
 4. Probable cause exists that the suspect committed the offense
 5. There is the likely hood that the subject(s) will escape if not immediately apprehended
 6. There is a reasonable belief that there may be an injured person(s) on the premises

The aforementioned factors will contribute to the “totality of the circumstances”.

One of the most widely recognized exigent circumstances is the “check the well-being”. This is a situation where the health and well- being of a subject are involved. In this type of situation:

- i. In most cases, there is no reason for police to suspect criminal activity
 - ii. Entries to the residence are made solely to “ check the well-being”
- f. Inventory searches are conducted by sworn Officers and have been justified for the following reasons:
 1. An inventory protects the owner of the property
 2. An inventory protects the Officer(s) and the department against claims that the property has been lost or stolen
 3. An inventory permits the Officer(s) to discover any potential danger that may exist because of the property itself

Limitations of an inventory search include:

- i. The property to be searched must have lawfully come into possession of the Officer(s)
- ii. The inventory must be conducted pursuant to standard operating procedures prescribed by department policy

Seized vehicles involved in an arrest must have the vehicle's contents inventoried and the vehicle condition noted on the department's Towed Vehicle Report (Attachment C).

- g. Search Incident to the Arrest is yet another exception to warrantless searches, (ILCS 725 5/108-1. When a lawful arrest is effected, a peace Officer may reasonably search the person arrested and the area within such person's immediate presence for the purpose of:
 1. Protecting the Officer from attack; or
 2. Preventing the person from escaping; or
 3. Discovering the fruits of a crime; or
 4. Discovering any instruments, articles, or things which may have been used in the commission of, or which may constitute evidence of an offense.

In "Arizona v. Gant", the United States Supreme Court found that Officers must demonstrate an actual and continuing threat to their safety posed by an arrestee, or a need to preserve evidence related to the crime of arrest from tampering by the arrestee, in order to justify a warrantless vehicular search incident to arrest conducted after the vehicle's occupants have been arrested and secured. In addition, the court held that an Officer may search the passenger compartment of a vehicle, incident to a recent occupant's arrest only if it's reasonable to believe that the arrestee might access the vehicle at the time of the search, or that the vehicle contains evidence of the offense of arrest.

- h. Plain View Searches without a warrant have been upheld by the courts as long as the Officer is legitimately on the premises and the Officer has probable cause to believe the property was evidence or contraband. Limitations for Plain View Searches are as follows:
 1. There must be no pre-observation intrusion that violates constitutional rights
 2. The items must have been inadvertently discovered
 3. Devices that aid or enhance the ability, binoculars or a flashlight, of the Officer(s) view are permitted provided that the Officer(s) have the right to be where they are when making the observation with the device.
 4. Moving or rearranging of items to note serial numbers is not supported under this exception
 5. Plain view applies to warrant searches, even if the item to be seized was not listed on a search warrant. This exception applies if:
 - i. Does the Officer have the right to be there? and
 - ii. Does the Officer have probable cause to believe that the item is evidence or contraband?
- i. Open Field Searches are searches that usually involve marijuana cultivation. Areas

that surround buildings and homes should not be considered an “Open Field”. The courts have held these to be “curtilage” and therefore are essentially the equivalent of a yard. Areas that are recognized as outside the “ curtilage” include:

1. Woods
2. Pastures
3. Grasslands

If an owner has taken any steps to protect the area from trespass or observation, it may not be considered an “Open Field”.

349.4 Issuing Authority

This General Order will supersede any directives or understandings in conflict.

By order of:



James R. Kruger Jr., Chief of Police

Revisions

04-04-2016	Attachments	Changed Attachment A to revised attachment.
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CONSENT TO SEARCH

I, _____, consent to allow law enforcement officials or other authorized individuals to search and seize items from the following:

- _____ Vehicle _____
(Description)
- _____ Address _____
(Description)
- _____ Electronic device(s) _____
(Description)
- _____ Biological sample(s) _____
(Description)
- _____ Other _____
(Description)

No promises, threats, force, physical or mental coercion of any kind have been used against me. I freely consent to search and seize items described above.

Signature

Date

Time

Witness

Witness



CONSENTIMIENTO A LA BÚSQUEDA

Yo, _____, doy mi consentimiento para que los agentes encargados de hacer cumplir la ley u otras personas autorizadas para buscar e incautar los artículos en lo siguiente:

- _____ Vehículo _____
(Description)
- _____ Dirección _____
(Description)
- _____ Aparato(s) electrónico(s) _____
(Description)
- _____ Muestra(s) biológica(s) _____
(Description)
- _____ Otro _____
(Description)

No promesas, amenazas, fuerza, coacción física o mental de cualquier tipo se han utilizado en mi contra. Yo consiento libremente a buscar e incautar los artículos descritos anteriormente.

Firma

Fecha

Hora

Testigo

Testigo

**OAK BROOK POLICE DEPARTMENT
TOWED VEHICLE REPORT**

DATE	TIME	OFFICER	BADGE #	REPORT NUMBER
INCIDENT LOCATION		<input type="checkbox"/> RELEASE <input type="checkbox"/> SEIZURE <input type="checkbox"/> HOLD HOLD FOR: _____ _____ HOURS (DUI HOLD) _____ Proof of Insurance		REASON FOR SEIZURE <input type="checkbox"/> Hold For Forfeiture <input type="checkbox"/> Hold Until Further Notice Reason: _____
CHARGES				
FINES / FEES:				
<input type="checkbox"/> TOW COMPANY FEES ONLY <input type="checkbox"/> _____ ADMINISTRATIVE FEE PAID TO: _____				

REASON FOR TOW

<input type="checkbox"/> ACCIDENT	<input type="checkbox"/> DUI ARREST	<input type="checkbox"/> DRIVING WHILE LICENSE SUSPENDED/REVOKED	<input type="checkbox"/> NO VALID D.L.	<input type="checkbox"/> STOLEN / RECOVERED
<input type="checkbox"/> SUSPENDED, REVOKED, CANCELLED REGISTRATION	<input type="checkbox"/> POSSESSION OF CANNABIS	<input type="checkbox"/> POSSESSION OF CONT. SUBSTANCE		
<input type="checkbox"/> ABANDONED	<input type="checkbox"/> USED IN COMMISSION OF A CRIME	<input type="checkbox"/> OTHER _____		

VEHICLE INFORMATION

YEAR	MAKE	MODEL OR BODY STYLE	COLOR(S)
LICENSE #	STATE	VIN	INSURANCE COMPANY
VEHICLE TOWED TO:		VEHICLE TOWED BY	
		<input type="checkbox"/> JR's TOWING <input type="checkbox"/> OTHER _____	

DRIVER / OWNER INFORMATION

DRIVER - LAST NAME	FIRST NAME	M.I.	SEX	RACE	DATE OF BIRTH
ADDRESS		CITY	STATE	ZIP	TELEPHONE #
DRIVER'S LICENSE #	STATE	RELATION TO OWNER	OWNER NOTIFIED		DATE / TIME
				<input type="checkbox"/> YES <input type="checkbox"/> NO	
OWNER - LAST NAME (OR FIRM)	FIRST NAME (OR TYPE OF BUSINESS)	M.I.	METHOD OF NOTIFICATION		
		<input type="checkbox"/> IN PERSON <input type="checkbox"/> PHONE <input type="checkbox"/> CERTIFIED MAIL			
ADDRESS		CITY	STATE	ZIP	TELEPHONE #

VEHICLE INVENTORY

Exterior Damage (Describe) _____ Interior Damage (Describe) _____ Personal Property Inventory (Describe) _____ _____ _____	CIRCLE DAMAGED AREAS <p align="center">FRONT</p> <p align="center">8 1 2</p> <p align="center">7 9 3</p> <p align="center">6 5 4</p> <p align="center">REAR</p>
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REPORTING OFFICER	BADGE #	SUPERVISOR	BADGE #
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