PROVIDENCE POLICE DEPARTMENT

HEADQUARTERS

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CHIEF OF POLICE

TYPE OF ORDER	NUMBER/SERIES	ISSUE DATE	EFFECTIVE DATE
General Order	330.03	6/1/2026	6/2/2026
SUBJECT TITLE		**PREVIOUSLY ISSUED DATES**	
Search & Seizure		7/14/2024; 5/26/2023; 9/23/2022; 6/25/2021; 5/1/2020; 1/1/2018;11/14/2016; 7/17/2015; 6/5/2014; 3/28/2014; Supersedes "Search and Seizure Update"	
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SUBJECT AREA		**DISTRIBUTION**	
Law Enforcement Operations		All Sworn Personnel	

PURPOSE:
The purpose of this policy is to detail the responsibilities, procedures and legal considerations that officers need to be cognizant of when engaging in activities that are classified as searches and seizures.

POLICY:
It is the policy of the Providence Police Department that all searches and seizures are conducted in a lawful manner such that they will not only withstand the scrutiny of judicial review, but also uphold the constitutional rights of those persons who are the subjects of such searches and seizures.

DISCUSSION:
The Fourth Amendment of the United States Constitution states the following:

"*The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated…*"

Two types of seizures implicate the Fourth Amendment. Physical seizures occur when officers use intentional force to stop a person and the person is actually stopped by the force. Show of authority seizures occur when a "show of authority" is displayed to a person by the police and the person submits to that authority.

In order to ensure that the efforts of the Department will not be overturned during judicial review, it is imperative that every officer thoroughly understand the basic constitutional and statutory provisions involved in searches and seizures. Failure to comply with the subtleties of the laws pertaining to such searches and seizures may result in evidence being declared inadmissible due to having been obtained illegally. In carrying out their duties in this regard, all officers must fulfill their responsibilities to protect the community and at the same time protect the individual rights guaranteed to every citizen by the United States Constitution.

PROCEDURE:

I. CONSENT TO SEARCH

A. Consent to search without a search warrant, which may be granted in writing or orally, is an abandonment of a Constitutional Right, and as such will be closely scrutinized. The following considerations must be made when obtaining consent:

1. Consent cannot be presumed from silence.

2. Consent must be specifically and intelligently given.

3. Consent must be given freely, knowingly and voluntarily, free of any coercion, intimidation or threat. Officers must avoid even the appearance of intimidation or duress. The burden is on the State, and thus the police, to show that consent was voluntary.

4. A person who has “authority”, i.e., the immediate right of possession and control of the premises or property that is the subject of the search, must give consent. However, police may rely upon “apparent authority” in obtaining consent. If there is any doubt as to who has the immediate right of possession and control of the premises / property, then a search warrant should be obtained.

5. Consent must be free of misrepresentation or fraud. Consent obtained by trick, duress or misrepresentation voids the consent and makes evidence obtained inadmissible.

    a. Any individual requested to consent to a search by a law enforcement officer of their motor vehicle, person, or belongings shall be informed by the officer of their right to refuse consent to the search. An individual’s choice not to consent to a search shall not be deemed reasonable suspicion to conduct a search.

6. Consent must be obtained prior to the search and after the officers have identified themselves and requested the right to search.

7. Consent must be limited to the area specified and such consent may be revoked at any time, unless items are found prior to such revocation that establishes probable cause. Upon such revocation, the search must cease. Evidence found prior to revocation may be retained and used as a basis for immediate arrest or as probable cause for the issuance of an arrest or search warrant.

B. Written consent, documented on the Department "Consent To Search" form, is always preferred over oral consent.

C. A search warrant is always preferred over a written consent search.

1. However, the ideal circumstance is to have a search warrant in hand and also obtain written consent before producing and executing the search warrant.

D. See Section IV below, "**MOTOR VEHICLE-SPECIFIC SEARCHES WITHOUT A WARRANT**", for information specific to consent searches of motor vehicles.

II. PLAIN VIEW SEIZURE

A. In certain limited circumstances, an officer may make a warrantless seizure of objects in plain view. The following conditions, however, must be met before the plain view doctrine is applicable:

1. The initial intrusion that afforded the view must have been lawful.

2. The incriminating nature of the evidence must have been immediately apparent without further intrusion.

B. When an officer lawfully enters upon premises, contraband that he observes in plain view may be seized without a warrant. In such cases, the usual requirements of obtaining a search warrant are unnecessary because no "search" has been conducted. A "search" implies looking into private or hidden places for concealed items, and does not include the observation of articles that are open to plain view or obvious to the senses. It is also permissible for an officer to use a flashlight to make such observations.

C. An observant officer, utilizing the "plain view" doctrine, may often be successful in recovering stolen property; unlawful drugs, or weapons used or intended for use in the commission of a crime. Areas in which a person has no expectation of privacy, such as open fields, streets or roadways, may be searched without a search warrant. This does not include the "curtilage," which is defined as the immediate yard or outbuildings of a dwelling house.

1. However, obtaining a search warrant prior to the search is preferable.

D. Search of abandoned property.

1. Things thrown away or left in a constitutionally unprotected place may be seized and examined. This includes articles dropped or otherwise discarded by a person, but not articles temporarily separated from an individual.

a. Also, this exception to the search warrant requirement does not include articles discarded after an illegal seizure of the person; i.e., an improper detainment or illegal arrest.

III. SEARCH INCIDENT TO ARREST

The Supreme Court has determined that any search incident to arrest, regardless of the place of arrest (i.e., a dwelling, a vehicle, etc.), must be substantially contemporaneous (i.e., must occur during the period in which the arrest is being conducted and before the situation has so stabilized that it could be said that the arrest has been completed) with the arrest, and must meet the objectives of protecting the arresting officers or safeguarding evidence of the offense of arrest. The Court has stated:

"If there is no possibility that an arrestee could reach into the area that law enforcement officers seek to search, both justifications for the search incident to arrest exception are absent and the rule does not apply."

A. Arrests in dwellings.

1. Police may do a thorough search of the arrestee's person and any objects on the arrestee (i.e., wallet, purse, cell phone, jacket, etc.) for weapons, evidence, and/or any means of escape.

2. Police may search the arrestee's lunging area (i.e., the area immediately within the arrestee's span of control) only if the arrestee is reasonably able to access that area at the time of the search.

3. Protective Sweeps. Police may also look into closets and other areas immediately adjoining the arrest area in which accomplices and/or others who could pose a danger to the officers may be hiding. Protective sweeps may be conducted without further suspicion. This search would be limited to those adjoining areas where a person is capable of fitting.

B. Motor vehicle arrests.

1. The U.S. Supreme Court has recently held that law enforcement officers need to 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 vehicular search incident to arrest conducted after the vehicle's recent occupants have been arrested and secured. The Court has stated:

   "Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest. When these justifications are absent, a search of an arrestee's vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies."

   Thus, a search of a motor vehicle incident to arrest may be conducted when either of the following are present:

   a. The arrestee is within reaching distance of the passenger compartment of the vehicle *at the time when the search is conducted* (vs. the time when the *arrest* is conducted), AND has the present ability to gain access to it. The Supreme Court has stated:

      "Because officers have many means of ensuring the safe arrest of vehicle occupants, it will be the rare case in which an officer is unable to fully effectuate an arrest so that a real possibility of access to the arrestee's vehicle remains. But in such a case a search incident to arrest is reasonable under the Fourth Amendment."

      i. In the vast majority of cases, officers who are performing their jobs properly and according to Department training will have arrestees secured and unable to access the passenger compartment of a suspect vehicle. In such situations, a search of a motor vehicle incident to arrest for the reason that a suspect could access the vehicle would be invalid.

   b. Reasonable suspicion exists that evidence pertaining to the offense of arrest is present within the vehicle.

      i. For example, a search of a motor vehicle incident to the arrest of a suspect for only a suspended license offense would be invalid, as there would be nothing to search for within the vehicle that would constitute evidence of the offense of arrest.

2. The search is limited to the passenger compartment; however, the entire passenger compartment, including any containers, may be searched for evidence, weapons, or means of escape.

C. During the arrest and booking processes, a routine custodial search of the person under arrest is authorized.

D. Those arrestees who are in possession of unsecured property coming into police custody may have such property inventoried as per Department property procedures.

1. Such inventories are not considered "searches" under the Fourth Amendment.

IV. MOTOR VEHICLE-SPECIFIC SEARCHES WITHOUT A WARRANT

A. Although the expectation of privacy in a motor vehicle is lower than the expectation of privacy in the home, a search warrant must be obtained whenever it is practical to do so. In certain *pre-arrest circumstances*, however, searches of motor vehicles may be conducted without a warrant.

1. Practical considerations often dictate that a search of a motor vehicle be conducted without a search warrant due to the fact that a moveable vehicle creates the possibility that it might be transported before a search warrant may be obtained. This is known as the "moveable vehicle exception" to the warrant requirement.

2. In situations when police officers have *probable cause* to search a motor vehicle for an object, they may conduct a warrantless search of every part of the vehicle and its contents, including all containers and packages that may conceal the object of the search. The scope of the search is not defined by the nature of the container in which the object is secreted. Rather, it is defined by the object of the search and the places in which there is *probable cause* to believe that it may be found. Police may even tow the vehicle back to the station and conduct the search.

a. Moreover, *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 police officers. It must be grounded on facts known by the officer which, in the judgment of the court, would make his faith reasonable.

3. If *reasonable suspicion* exists to believe that an individual is dangerous and might access the vehicle to gain immediate control of weapons, then the passenger compartment of the vehicle, including closed containers capable of holding the suspected weapon(s), may be searched without a search warrant.

a. However, if the investigation is focused on a particular container that just happens to be in a vehicle, a search warrant is required for a search of the vehicle for that particular container.

b. Containers may be searched under other exceptions to the search warrant requirement, such as "exigent circumstances."

4. According to Title 31, Chapter 31-21.2 (Racial Profiling Act of 2004) Statute § 31-21.2-5 of the RI General Laws:

"Unless there exists reasonable suspicion or probable cause of criminal activity, no motor vehicle stopped for a traffic violation shall be detained beyond the time needed to address the violation. Nothing contained herein shall prohibit the detention of a motor vehicle for a reasonable period of time for the arrival of a canine unit or subsequent criminal investigation, if there is reasonable suspicion or probable cause of criminal activity."

B. If a lawful search of a motor vehicle is conducted without a search warrant, anything of evidentiary value is admissible whether or not it is related to the arrest. For example, if an officer is justified in searching an automobile for narcotics, and stolen property is found, such stolen property is admissible in evidence as long as it was found in an area reasonably likely to contain the narcotics originally sought.

1. However, written consent is always preferred over oral consent or a search without a warrant.

C. Regarding consent searches of motor vehicles, Statute § 31-21.2-5 states:

"No operator or owner-passenger of a motor vehicle shall be requested to consent to a search by a law enforcement officer of his or her motor vehicle which is stopped solely for a traffic violation, unless there exists reasonable suspicion or probable cause of criminal activity."

D. A search warrant is always preferred over a written consent search.

1. However, the ideal circumstance is to have a search warrant in hand and to also obtain written consent before producing and executing the search warrant.

E. The routine inventory search of a motor vehicle in police custody is not considered a search, but rather a legitimate housekeeping procedure. However, such searches may only be performed if:

1. Written Department policy allows for the search.

2. The search is conducted on all vehicles in Department custody.

3. The search is limited to those areas of the vehicle authorized by policy.

NOTE Since the Providence Police Department does not have a written policy allowing inventory searches, members of this agency shall not perform inventory searches of motor vehicles.

V. ENTRY WITHOUT A WARRANT UNDER EXIGENT CIRCUMSTANCES

A. No court has attempted to formulate a final and comprehensive list of all exigent circumstances that might justify an entry of a premises without a warrant. However, such circumstances include, and are not limited to:

1. The degree of urgency involved and the time required to obtain a search warrant.

2. The officer's reasonable belief that contraband is about to be removed or destroyed.

3. The possibility of dangers to others, including officers left to guard the site.

4. Information that the possessors of the contraband are aware that a police investigation is being conducted.

5. Whether the offense is serious, or involves violence.

6. Whether officers reasonably believe the suspects are armed.

7. Whether there is, at the time of entry, a clear showing of probable cause.

8. Whether the officers have strong reason to believe the suspects are actually present on the premises.

9. The likelihood of escape if the suspects are not swiftly apprehended.

10. Hot pursuit, which involves a suspect's recent entry into a premises either during or shortly after pursuit by officers.

NOTE - Courts have frowned upon using exigency and hot pursuit to justify an entry where only a minor offense is involved.

B. An officer may make a warrantless entry to secure the premises prior to or while seeking a search warrant if the need to preserve evidence and

protect officers outweighs the individual's right to privacy in maintaining the sanctity of the home.

C. The following two factors must be present for the warrantless entry:

1. Officers have probable cause to believe evidence is on the premises.

2. Delaying entry would create a substantial risk that evidence will be lost or destroyed, or the critical nature of the circumstances prevents the use of the search warrant procedure (exigency).

D. Exigent circumstances that present a compelling need for immediate official action, or which present a substantial threat of imminent danger to life or public safety include:

1. The need to seize short-lived evidence, such as blood.

a. However, the need to seize such short-lived evidence must be balanced against other factors to establish exigent circumstances.

2. The need to search in an emergency, such as a burning fire.

a. However, no general emergency exception, such as occupational / safety violation, homicide scene, or extinguished fire, creates such exigent circumstances.

E. Exigent / exceptional circumstances include the right to enter and search an enclosure when in pursuit of a felon (and sometimes misdemeanants based on the totality of the circumstances) if there is reasonable cause to believe that the felon is inside.

F. Exigent / exceptional circumstances must exist and be known to the officer prior to the conducting of the search and seizure, and may not be developed as the search and seizure takes place.

G. There is no crime scene exception to the warrant requirement. Therefore, once exigency has passed, no other officers, including BCI detectives, may enter the crime scene and conduct a search.

VI. STOP AND FRISK

A. OVERVIEW

This General Order defines the term stop, for purposes of compliance with Providence Code of Ordinances Sec. 18 ½.4(c)(1)(ii). A stop of an individual takes place when a reasonable person would believe, based upon a totality of the circumstances, that they were not free to leave and

terminate the encounter with police. A police officer may conduct an investigatory stop, provided the officer has a reasonable suspicion based on specific and articulable facts that the person detained is engaged in criminal activity. An officer may further perform a limited pat-down search of a suspect's outer clothing for weapons, which shall also constitute a stop, if the officer has reasonable suspicion based on specific and articulable facts to believe the person may be armed and dangerous.

Conduct that constitutes a stop shall include, but not be limited to:

- Asking for a subject's identification or driver's license.
- Ordering a motorist or passenger to exit a vehicle.
- Applying handcuffs.
- Transporting a suspect any distance away from the scene including for the purpose of witness identification.

However, when exigent circumstances exist that would require a police officer to briefly detain an individual and perform a quick pat down or frisk for weapons, or perform a preliminary field inquiry, without a full search or without obtaining an identification of the individual for the safety of the public or the police, this shall not be considered a stop.

Additionally, a stop does not occur when a police officer performs a protective sweep of a building that results in a pat down of the individual(s) for the safety of the police officer or individual (s). Stops shall also not include when, under exigent circumstances, an officer requires the identity of an individual (s) for the purpose of identifying a specific suspect.

If exigent circumstances do not exist, a police officer must record any stop of an individual as defined by this General Order.

B. A law enforcement officer may temporarily detain a person if ***reasonable suspicion*** exists that a crime has been committed, is being committed, or is about to be committed, including whenever the officer reasonably suspects that a person is illegally carrying a concealed weapon.

1. These ***reasonable suspicion*** stops must not be confused with "consensual contacts", which are interactions that require no level of suspicion on the part of an officer and are consented to by the person of their own free will. As such, "consensual contacts" do not constitute a seizure unless the person is given the impression at some point during the contact that they must comply with police requests.

2. Police may not consider an individual's lack of proof of identification or failure to respond to a request for identifying information as probable cause or reasonable suspicion of criminal activity, unless the police have a lawful reason to require identification.

C. A temporary detention, as recognized by the United States Supreme Court, is a seizure, and as such is controlled by the Fourth Amendment.

D. Within the stop and frisk doctrine, two distinct acts exist: (1) the stop, and (2) the frisk.

E. The Stop.

1. The stop is the detention of a subject for a brief period of time necessary to conduct a diligent investigation.

2. In order to make the stop, the officer must have *reasonable suspicion* to believe that a person is committing, has committed, or is about to commit a crime, or illegally possesses a concealed weapon. The courts are likely to rule that the following factors may be considered in building a foundation for the stop:

a. The "crime" must be articulable and not a generalized suspicion, and of a type that normally involves a weapon.

b. The officer has valid knowledge that the individual has a prior criminal record that includes crimes which normally involve the carrying or use of a weapon.

c. The individual fits the description of a known wanted suspect.

d. The individual exhibits furtive conduct, such as: fleeing from the presence of an officer; attempting to conceal an object from the officer's view; or displays movement consistent with reaching for or manipulating a weapon.

e. Bulges are observed in the person's clothing consistent with the concealment of a weapon.

f. The vehicle observed is similar to a broadcast description for a known offense.

g. The individual exhibits unusual behavior, such as staggering or appearing to be in need of medical assistance.

h. The location and time of day are consistent with past patterns of criminal activity.

i. Information from a reliable third party. The veracity of a complainant / witness / informant is a factor that must be considered.

F. The Frisk.

1. Should the officer reasonably believe that the person stopped may attempt to do him bodily harm, or is carrying a concealed weapon, the officer may conduct a "pat-down" for weapons of the person's outer clothing.

2. Items that the officer recognizes as a weapon (conventional or unconventional), or that could reasonably contain a weapon, may be removed and inspected. The officer must articulate the pertinent facts and the experience, training and knowledge that establish the reasonableness of the conclusion that the item is a weapon or could contain one.

3. If, while conducting a valid stop and frisk for a weapon, an officer feels what is *immediately recognizable* as contraband, the contraband may be lawfully seized. The incriminating nature of the contraband must be *immediately apparent*, meaning that if an officer must manipulate the item to figure out that it is contraband, then it is not lawfully seized.

    a. This is known as the "plain touch" or "plain feel" doctrine. This concept is often not very useful in a practical sense, since the officer must recognize the item without squeezing or manipulating it. As a result, the "plain touch" doctrine typically applies to very unique items.

G. Hearsay information is acceptable in basing the foundation for stop and frisk, as long as such information is of a credible nature. In order for the information to be deemed credible, the officer must have some means to gauge both the reliability and the basis of the informant's knowledge.

H. Search beyond the person – pre-arrest.

1. The United States Supreme Court has held that the stop and subsequent pat down search (frisk) for weapons of a person suspected of criminal activity does not restrict the protective search to only the person of the detained suspect, but that the search of the area within the suspect's immediate control is allowed as well.

2. A lawful protective search for weapons that extends to an area beyond the person, *in the absence of probable cause to arrest*, must have all of the following elements present:

    a. A lawful investigative stop.

    b. Specific and articulable facts, which taken together with the rational inferences from those facts, reasonably warrant the

officer to believe that the suspect is dangerous and may gain immediate control of weapons.

c. The search must be limited to those areas:

i. In which a weapon may be placed or hidden.

ii. That would ensure that there are no weapons within the subject's immediate grasp, i.e., an area within the subject's immediate control.

VII. SEARCH WARRANTS

A. Search warrants may be issued to search for and seize any of the following four (4) types of items:

1. Fruits of a crime: Material objects acquired by means or in consequence of the commission of the crime.

2. Contraband: Items kept, concealed, or possessed in violation of the law or items kept for the purpose of violating the law.

3. Instruments of a crime: Items, which will aid or have been used in the commission of a crime, such as weapons and burglary tools.

4. Other evidence: Items, which will aid in the apprehension or conviction of a criminal, such as bloody or ripped clothing or business record. This evidence may be seized providing the warrant clearly states its connection to the crime.

B. The language in the warrant determines the scope of a search. Typically, officers executing a search warrant may only search areas capable of holding or concealing the items named in the search warrant.

C. Officer Responsibilities.

1. When an officer believes that probable cause exists to request that a search warrant be issued, the officer shall take the following steps prior to having a judge review the application for a search warrant:

a. The officer shall seek approval from his/her immediate supervisor prior to undertaking the issuance of a warrant.

b. The officer shall prepare an affidavit and search warrant detailing the probable cause to search a specific location.

c. The officer will determine if the warrant will be served in the daytime or the nighttime and include this information in the affidavit and on the search warrant.

d. The supervisor shall review the application for a search warrant prior to the officer responding to have a judge review the search warrant.

e. The officer will also articulate the reason(s), facts and circumstances that are necessary to request permission for a “no-knock” search warrant. “No Knock” entry is permissible for the following reasons:

i. Officer safety.

ii. To prevent the destruction of evidence.

f. The officer will make a reasonable attempt to identify the target of the search warrant.

g. The officer will give a detailed description of the location to be searched and the things to be seized.

h. The officer should include all non-trivial information available to law enforcement that could reasonably be found to be material to the probable cause determination.

D. Supervisor Responsibilities.

1. The supervisor will obtain from the officer all pertinent information regarding any informants, subjects of the search warrant, and the location to be searched.

2. The supervisor will review and either reject or approve the application for a search warrant prior to the officer presenting it to a judge.

a. **All** NO-KNOCK search warrants shall be reviewed for its approval by the Chief of Police or his/her designee prior to its submittal to a judge.

3. Once permission is granted to present the application for a search warrant to a judge, the officer will present the application to an appropriate judge of the Rhode Island Judiciary for review. Once the application has been approved, the officer will immediately advise his/her supervisor. This supervisor will make his/her immediate supervisor aware of the search warrant and shall seek further approval prior to the execution of the warrant.

VIII. SEARCHES OF CELLULAR TELEPHONES

A. According to United States Supreme Court case #13-132, *Riley v. California*, decided June 25, 2014:

1. A warrant is required before a cell phone can be searched, even when a cell phone is seized incident to arrest.

a. Even though the search incident to arrest exception does not apply to cell phones, one well-recognized exception to the search warrant requirement applies when the exigent nature of a situation renders the needs of law enforcement so compelling that a warrantless search of a cell phone is objectively reasonable under the Fourth Amendment.

APPROVED:



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