

GENERAL ORDER XXI

SUBJECT: SEARCH PROCEDURES

EFFECTIVE DATE: 11-01-04 REVIEW DATE: 02-05-2014

NOTE: This rule or regulation is for internal use only, and does not enlarge an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

I. POLICY

The West Plains Police Department recognizes that officers encounter persons, whether in custody or not, that must be searched. The following guidelines have been established to ensure the safety of officers, suspects and the general public during such searches.

II. 1. General Principle - Warrantless Searches

The general principle is that searches conducted outside of the judicial process, without prior approval by a judge, are per se unreasonable under the Fourth Amendment, subject only to a few specifically established and well-delineated exceptions. A search is not unreasonable under the Fourth Amendment if it is:

1. a search incident to a lawful arrest as long as search is related to offense of which subject was arrested for;
2. a seizure of items falling within the plain view doctrine;
3. a search of an automobile where probable cause exists to believe that it contains a substance or object that offends the law;
4. a consensual search;
5. a Terry type protective search by officers for weapons upon less than probable cause to arrest;
6. a seizure of items falling within the plain feel doctrine.

III. DEFINITIONS

1. Non Custodial Terry Type Frisk or Pat Down: Once a valid stop has been made, police may pat suspect's outer clothing if they have a reasonable particularized suspicion that the suspect is armed. The purpose of this limited search is not to discover evidence of a crime, but to allow the officer to pursue his investigation without fear of violence for himself or anyone else.
2. Plain Feel Doctrine: If a police officer under Terry lawfully pats down a suspect's outer clothing and feels an object whose contour or mass makes its identity immediately apparent, if the object is contraband it may be seized.

3. Consensual Search: Consent to search that is freely and voluntarily given by a person with the authority to consent and the search must not exceed the scope of the consent given.

4. Custodial or Incident to Arrest Pat-Down Search: A pat down of the outer clothing to check for weapons, evidence and contraband which is generally conducted in the field.

5. Strip Search: The removal or rearrangement of some or all of the clothing of a person so as to permit an inspection of the genitals, buttocks, anus ,breasts or undergarments of such person, including but not limited to, inspections conducted visually, manually or by means of any physical instrument.

6. Body Cavity Search: The inspection of a person's anus or genitalia including, but not limited to, inspections conducted visually, manually or by means of any physical instrument.

IV. PROCEDURE

1. General Search Procedures

A. When conducting a pat down search, suspect(s) will be placed in a position of disadvantage. When conducting a pat down search where officer(s) safety, suspect(s) safety is at risk, or a custodial arrest is made, suspect(s) may be handcuffed prior to the search.

B. Obviously, the ability to complete a strip search or body cavity search on a subject who is handcuffed or restrained is hindered. Therefore, if the subject is not violent, the restraints may be removed. However, if subject is violent, the strip or body cavity search should be completed, in the best manner possible, with the restraints in place.

C. No person arrested or detained for a traffic offense or an offense that does not constitute a felony may be subject to a strip search or a body cavity search by an employee of this department unless there is probable cause to believe that such person is concealing a weapon, contraband or evidence.

D. Employees shall not direct any offensive or derogatory statements toward the person(s) being searched.

E. All searches shall be conducted with the utmost of discretion, professionalism and courtesy and shall be handled as speedily as possible, taking into consideration thoroughness and safety for all.

F. During the booking procedure, non-commissioned employees may be required to search arrested subjects. At no time during said searches, will a non-commissioned employee search or be left alone with a prisoner. A commissioned officer must be present and when strip searches are necessary the commissioned officer must be of the same gender as the subject being searched.

V. CUSTODIAL AND INCIDENT TO ARREST SEARCHES

A. A pat-down search consists of placing the subject to be searched in a position of disadvantage. The searching officer should take control of the subject with one hand, while using their other hand to feel and squeeze the clothing of the subject to check for weapons, contraband or evidence.

B. Unless the subject is under arrest. Only those items readily identifiable as weapons, contraband or evidence should be seized.

C. Thorough prisoner pat-down searches shall be conducted during the booking process and prior to the prisoner being lodged in the County Jail.

D. Employees of the same sex as the subject being searched, unless extenuating circumstances exist, should only conduct these searches.

E. If non-commissioned personnel conduct the pat-down search (at the request of commissioned personnel), a commissioned officer shall be present for safety concerns, regardless of gender.

F. The following procedures are recommended during a custodial pat-down search

1. Examine the head first:

a. Inspect the inside of the mouth, under the tongue, up the nose and behind the ears.

2. Inspect the shirt collar. Run your fingers along it feeling for any foreign objects.

3. Run your hands across and down the back of the shoulders.

4. Search each arm separately. Run your hands down the outside of the prisoner's arms to the shirt cuff. Then move your hands up the inside of the arms to the armpits.

5. Search the shirtfront by running your hands down the front of the shirt.

6. Check the pockets for foreign materials.

7. Check the inside of the waistband where foreign materials may be hidden.

8. Run your hands over the prisoner's buttocks.

9. Move both hands down each leg, starting at the crotch. Be sure to check the seam or cuff at the bottom of the pants.

10. Run your hands over the prisoner's abdomen and crotch carefully. Most concealed items are hidden there.

11. Have the prisoner step out of their shoes. Check the feet and the inside of the shoes carefully.

12. If the officer sees or feels an obvious weapon, contraband evidence, it should be seized immediately.

VI. STRIP SEARCHES

A. All strip searches conducted by employees of this department shall be performed with two persons present. At least one of which must be a commissioned officer, and both of the same sex as the person to be searched. Said search shall be conducted where it cannot be observed by any person(s) other than the persons physically conducting the search, except that nothing herein shall prohibit a readily available person from being present at the request and consent of the person being searched.

B. All strip searches should be conducted at the police department, unless exigent circumstances exist.

C. All strip searches must be in accordance with state statute RSMo 544.193 and approved by a supervisor in addition to any other requirements. (see Appendix 1)

D. Employees should never touch the person being searched during a strip search, except to take physical control of a resistive or combative subject.

E. The following procedures should be followed in conducting a strip search:

1. Search the prisoner's clothing, casts or prosthetic devices.

a. Examine all pockets.

b. Check lining and hems for hidden wires, saw blades, etc.

c. Turn clothing inside out.

d. Examine soles, heels and insides of shoes.

e. Have the prisoner remove any devices such as false teeth and artificial limbs.

f. Carefully examine casts, being careful to check for a false cast. If concerns arise, have medical personnel assist.

2. Search the head.

a. Instruct the prisoner to run his/her fingers through their hair several times.

b. Examine the mouth and under the tongue.

c. Look up the nose.

d. Look behind and into the ears.

3. Search the torso.

a. Check the armpits.

b. Check the open hands, front and back.

c. Look at the prisoner's torso. NOTE: Women have been known to tape contraband under their breasts.

d. Have the prisoner turn around and look at their back.

e. Be especially critical of bandages that may be hiding something.

4. Search the lower body.

a. Visually inspect male prisoner's genital area to see if anything is hidden.

b. Have female prisoners squat down and cough, which should dislodge anything hidden in the vaginal cavity.

c. Have the prisoner bend over and spread their buttocks. If anything is observed, make arrangements to have medical personnel present or available to remove contraband if prisoner is unwilling or unable to immediately and safely remove same.

d. Check the bottom of the prisoner's feet.

F. All strip searches shall have attached Addendum A (Strip Search and Body Cavity Search Authorization) filled out by reporting officer and signed by a supervisor. A copy of Addendum A shall be given to the person searched. Probable cause for the search shall be contained in reporting officer's report.

West Plains Police Department

Strip Search and Body Cavity Search Authorization

I. Authorization:

I authorize a _____ of _____

(Strip Search or Body Cavity Search) (Person to be Searched) to be conducted as outlined in State Statute RSMo 544.193 and following guidelines set forth by the department policy manual.

NOTE: Body cavity searches may only be conducted after obtaining a search warrant. They must be done under sanitary conditions by a physician, register nurse or practical nurse licensed to practice in the State of Missouri.

(Supervisor)

II. SEARCH

Name of person searched _____

Names of person(s) conducting search:

1. _____

2. _____

3. _____

Time of search _____ Date of search _____

Place search conducted _____

NOTE: ONE COPY OF THIS COMPLETED FORM GOES TO PERSON SEARCHED.

ADDENDUM A

G. After conducting a proper pat-down search, an officer in a field situation and with adequate probable cause, may conduct a limited search by opening or rearrangement of a person's clothing to locate and seize a weapon that could be used against the officer or innocent person. The removal of clothing that is inconsistent with modesty is prohibited in a field situation, unless exigent circumstances are present and it is performed in accordance with the above procedures.

H. If such a search is made, the officer making the search shall include all the facts of the incident in their report. They will notify their supervisor as soon as possible following the search and comply with all reporting requirement.

VII. BODY CAVITY SEARCHES

A. A body cavity search of a person may only generally be conducted on subjects arrested for a felony and in accordance with state statute RSMo 544.73, and may only be conducted by a physician, registered nurse or practical nurse, licensed to practice in this state. All body cavity searches intrusive to the body shall be conducted by search warrant.

B. Prior to requesting a cavity search, if the searching officer visually observes an item protruding from the person to be searched, they should request the person being searched to remove the item themselves.

C. A body cavity search should only be conducted whenever there is a clear indication that contraband is being hidden in a body cavity. These searches involve an extreme intrusion of a person's privacy. Some indicators to look for before requesting a body cavity search:

1. The presence of a greasy substance around the anus, discovered during a strip search.
2. Contraband that can be partially seen during a visual strip search.

D. Documentation and procedures for all body cavity searches shall be in accordance with those set forth for strip searches, as pertaining to authorization by statute RSMo 544.193 and the supervisor.

VIII. SEARCHING MEMBERS OF THE OPPOSITE GENDER

A. Generally, employees of this department shall not search members of the opposite gender, unless exigent circumstances exist.

B. When an officer arrests or detains a person whom they have reasonable suspicion to believe is presently armed, and an officer of the same gender as the prisoner or detainee is not present or available, the officer shall make a carefully limited search of the subject to seize the weapon(s).

1. The following procedure should be followed for said limited search and be conducted with the back of the officer's hand.

a. Outer clothing should be removed that can be done with modesty (i.e. coats, jackets, etc). These articles should then be searched.

b. The person being searched should turn pockets inside out. If this is not possible, pockets may be hand searched by the searching officer with palms outward.

C. In the case of exigent circumstances where the officers have probable cause to believe their safety or the safety of others is in imminent jeopardy, they may conduct searches of the opposite gender. They are authorized to conduct whatever level of search is reasonable and necessary to seize weapons and ensure the safety of all concerned provided such search is justified and such search must be fully documented.

a. Officer(s) who are positive in their belief, may seize contraband from a subject of the opposite gender who is detained, if there is the possibility that the subject may dispose of the contraband before an officer of the same gender can be reached.

b. In all cases, the search must be unquestionably necessary.

D. Female employees will normally only search female prisoners and male employees will conduct searches on male prisoners in accordance with all policies, guidelines and state statute RSMo 544.193.

1. Exceptions will be allowed at any time safety is an issue and/or when a female prisoner is violent or has shown or threatened violence during the arrest or booking.

2. Male arresting/booking officers shall remain in the booking room during pat-down searches of females, but shall remain for safety factors only and will not assist in the search unless they are needed by the female conducting the search in situations as indicated above.

3. Pat-down searches will not be conducted by a single, non-commissioned employee, but as indicated above. Strip searches will also be conducted in this manner, but only by persons of the same sex and employees/officers of the opposite sex of the prisoner will not be present during the search.

a. At no time should a non-commissioned employee be allowed to solely conduct any type of search or remain alone with a prisoner for any reason.

IX. NONCUSTODIAL SEARCHES

A. Protective Pat-Down Search Under Terry

Once a valid stop has been made, police may pat a suspect's outer clothing if they have a reasonable, particularized suspicion that the suspect is armed. The purpose of this limited search is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence. The sole justification of the search is the protection of the police officer and others nearby, and it must therefore be confined in scope to an intrusion reasonable designed to discover guns, knives, clubs or other hidden instruments for the assault of the police officer. Once an officer determines that an object is not a weapon and that he is not concerned for his safety, his Terry search is over. Terry "stop and frisk" principles have been extended to motor vehicle stops so that police who have the requisite reasonable suspicion may conduct a search of the passenger compartment of an automobile, limited to those areas in which a weapon may be placed or hidden.

B. Plain-Feel Doctrine

The plain-feel doctrine provides that if a police officer discovers what is immediately apparent as contraband during a valid limited Terry search for weapons, he is not required to ignore it. Once a valid stop has been made, a police officer may pat suspects outer clothing if there exists reasonable suspicion that the suspect might be armed, even if no probable cause exists to make an arrest. A police officer may not conduct the pat down in search of contraband. Nevertheless, while conducting the pat down for weapons, should the officer feel an object whose contour or mass makes its identity as contraband immediately apparent as contraband, the officer may seize the object. He may not squeeze, slide, or manipulate the object to determine if it is contraband. If the incriminating character of the object is not immediately apparent to the officer, the officer may not seize it.

C. Consensual Search

An officer may at any time ask a citizen whether he has contraband in his possession and may ask for permission to search. For consent to search to be valid, it must be freely and voluntarily given by a person with authority to consent and the search must not exceed the scope of the consent given. Even if an officer does not have reasonable suspicion to further detain a driver at the completion of a traffic stop, the officer may question the driver if the encounter has turned into a consensual one; so long as a reasonable person would feel free to disregard the police and go about his business. The circumstances surrounding the encounter and the conduct of the officer must not communicate to a reasonable person that the person is not free to decline the officers' request, leave, or otherwise terminate the encounter.

AUTHORITY

A. This policy is issued by the authority of the Chief of Police. Any policy additions, deviations or revisions shall be made only at the direction of the Chief of Police.

By Authority of:

Jeffrey S. Head, Chief of Police

Appendix 1

Missouri Revised Statutes

Chapter 544 Arrest, Examination, Commitment and Bail Section 544.193 August 28, 2010

Strip searches prohibited, when--how executed if authorized.

544.193. 1. As used in sections 544.193 to 544.197:

(1) "Body cavity search" means the inspection of a person's anus or genitalia, including but not limited to inspections conducted visually, manually or by means of any physical instrument.

(2) "Strip search" means the removal or rearrangement of some or all of the clothing of a person so as to permit an inspection of the genitals, buttocks, anus, breasts or undergarments of such person, including but not limited to inspections conducted visually, manually or by means of any physical instrument.

2. No person arrested or detained for a traffic offense or an offense which does not constitute a felony may be subject to a strip search or a body cavity search by any law enforcement officer or employee unless there is probable cause to believe that such person is concealing a weapon, evidence of the commission of a crime or contraband.

3. All strip searches and body cavity searches conducted by law enforcement officers or employees in this state shall be performed by persons of the same sex as the person being searched, and shall be conducted on premises where the search cannot be observed by any person other than the persons

physically conducting the search, except that nothing herein shall be interpreted to prohibit a readily available person from being present at the request and consent of the person being searched.

4. A body cavity search of any person detained or arrested for a traffic offense or an offense which does not constitute a felony may only be conducted pursuant to a duly executed search warrant, under sanitary conditions and by a physician, registered nurse or practical nurse, licensed to practice in this state.

5. Every law enforcement officer or employee conducting a strip search or body cavity search shall:

(1) Obtain the written permission of the person in command of the law enforcement agency in which the strip search or body cavity search is to be conducted authorizing the strip search or body cavity search; and

(2) Prepare a report regarding the strip search or body cavity search. The report shall include:

(a) The written permission required in subdivision (1) above;

(b) The name of the person searched;

(c) The name of the persons conducting the search;

(d) The time, date and place of the search.

A copy of the report shall be furnished to the person who was searched.

(L. 1980 H.B. 982 § 1)