



# Indianapolis Metropolitan Police Department

GENERAL ORDER

**1.10**

## SEARCH AND SEIZURE

### PURPOSE

This directive provides guidelines and procedures for officers when conducting searches and seizures that have not been reviewed and authorized by a judicial officer.

### POLICY

The Indianapolis Metropolitan Police Department (IMPD) will effectively enforce criminal laws while protecting the constitutional rights of all persons. The reasonableness requirement of the Fourth Amendment is fundamental to protecting individuals' rights; any warrantless search and/or seizure must be justified by one of the recognized exceptions.

### DEFINITIONS

Arrestee – A person who is in custody and is being arrested and transported.

Body Cavity Search – Any search involving the penetration of the anal and/or vaginal cavity for the purposes of retrieving contraband.

Juvenile – A person seventeen (17) years of age or younger.

Person Frisk - A limited search (pat down) of a person's outer clothing aimed at discovering weapons.

Plain View – When evidence or contraband is clearly visible to the officer during a lawful observation.

Probable Cause – When facts and circumstances known to the officer provide the basis for a reasonable person to believe that a crime was committed at or in the location or vehicle to be searched, or that evidence of a crime exists at or in the location or vehicle.

Reasonable Suspicion – An objectively justifiable suspicion that is based on specific facts or circumstances and that justifies stopping and sometimes searching (as by frisking) a person thought to be involved in criminal activity at the time.

Strip Search – The removal of some or all clothing to expose the genitals, buttocks, anus, and/or breasts of said person to permit a visual inspection.

Vehicle Frisk – A limited search (pat down and/or cursory inspection) within the passenger compartment aimed at discovering weapons.



## PROCEDURE

### I. General

- A. The arresting or reporting officer will perform and document searches and seizures unless a specialty unit or different officer is needed for an articulable reason.
- B. Searches shall be performed with the searching officer positioned behind the arrestee/detainee and with a second officer present when feasible.
- C. Searches shall be performed prior to transportation and/or when assuming custody of a person.
- D. Search and Seizure of Cell Phones or Video-Recording Devices

- 1. Cell phones or recording devices may be seized incident to arrest if the device is in a person's possession at the time of arrest. Officers shall not search a seized cell phone or recording device without a valid search warrant.

**NOTE**

Depending on the type of investigation and investigative authority, consent is an option. If consent is given, officers will be mindful to not inadvertently alter any potential evidence.

- 2. When an individual who recorded police activity has not been placed under arrest, officers will not seize or search the individual's cell phone or recording device without:
  - a. The individual's consent (preferably on a "Consent to Search" form);
  - b. A valid search warrant; or
  - c. Exigent circumstances.
- 3. If probable cause exists to support a search warrant, citizens may be detained, and their device secured until a search warrant is obtained. Officers should exercise discretion in determining whether it is reasonable and essential to the investigation to detain someone and request a warrant to seize their cell phone.
- 4. Exigent circumstances may exist when officers have probable cause that there is a compelling need to act and no time to obtain a warrant. Any doubt as to whether exigent circumstances exist should be resolved by obtaining a search warrant.
- 5. Persons recording police activity shall ONLY be arrested if they:
  - a. Engage in other unlawful activity;
  - b. Do not maintain a safe and reasonable distance from the scene of a police action;
  - c. Physically interfere with an officer in the performance of their duties; or
  - d. Present a physical danger to officers, civilians, or others.

**NOTE**

Any doubt regarding whether an individual is physically interfering or presenting a danger to officers or others should be resolved in favor of the citizen's right to record.



## **II. Warrantless Searches**

### **A. Stop and Frisk/Pat Down**

1. Stop and frisk/pat down are two (2) separate actions; each requiring individual justification.
2. Officers may stop a person, even though there is insufficient probable cause to arrest, if the officer has knowledge of facts reasonably leading the officer to believe the person is involved in criminal activity and/or may be armed and dangerous.
3. A frisk/pat down is only justified when the officer can articulate reasonable suspicion to believe the subject is armed and dangerous to themselves or others.
4. A frisk/pat down does not permit officers to manipulate an item discovered during this limited search to determine if it is a weapon. It must be readily apparent upon discovery that the item is a weapon.

### **B. Search By Consent**

1. Officers may conduct a search without a warrant if they have proper consent.
  - a. Consent to search, whether it is made orally or in writing, is valid.
  - b. Officers must, when conditions permit, have a valid Consent to Search form signed by the person with authority over the property.
  - c. Consent to enter a premises is not consent to search that premises.
2. Key points for search by consent are:
  - a. The consent must be voluntary;
  - b. The scope of the search is limited to the exact words or meaning of the consent;
  - c. The person giving the consent must have authority to do so; and
  - d. Consent may be withdrawn at any time.
3. When a person in custody is requested by an officer to provide consent, the officer must advise the person of their right:
  - a. To deny consent; and
  - b. To the presence of counsel.
4. Probationers and parolees who have unambiguously been informed of their consent to warrantless/suspicion-less searches waive their 4<sup>th</sup> Amendment Rights for the duration of their corrections program.

### **C. Vehicles**

1. Vehicle Frisk
  - a. Officers do not need any suspicion to ask the occupant(s) of a vehicle to exit.



- b. If an officer has reasonable suspicion to believe an occupant of a vehicle is armed or otherwise dangerous to themselves or others, the officer may inspect the passenger compartment of the vehicle for weapons. The inspection must be limited to areas where a weapon might be placed or hidden within the driver's and/or passengers' scope of reach.

## 2. Automobile Exception

- a. An officer can make a warrantless search of a vehicle if:
  1. The officer has probable cause; and
  2. The vehicle was moving or about to be moved.

### NOTE

Officers are reminded that *Pirtle v. State* deems a person who is asked to give consent to search while in police custody is entitled to the presence and advice of counsel prior to making the decision whether to give such consent.

- b. A vehicle search founded on probable cause may extend to any part of the vehicle, including unlocked closed containers found inside, in which the object of the search can be concealed.
- ## 3. Search Incident to a Lawful Custodial Arrest – Officers may search a vehicle incident to the lawful, custodial arrest of a recent occupant only when there is reasonable suspicion the vehicle contains evidence of the arrested offense, and the arrestee is not secured.
- ## 4. Vehicle Inventories
- a. In accordance with General Order 7.3 – *Towing/Impounding Vehicles*, any vehicle impounded by IMPD must be inventoried to protect the owner's/occupant's property while in police custody vehicle Inventories do not constitute a search.
  - b. All vehicle inventories shall be written in an employee's field notebook.

## D. Crime Scene Search

1. The search of a crime scene where there is no expectation of privacy (e.g., public street, public park, non-fenced open field, or place of public resort) can be made without a warrant or consent.
2. Crime scene searches of private property where there is a reasonable expectation of privacy can be made with consent.
3. Absent exigent circumstances or consent, a warrant will be required.
4. If there is any question about the need for a warrant or consent to search the scene of a crime, the prosecutor's office should be contacted.

## E. Emergencies and Exigent Circumstances

1. Exigent circumstances require immediate action. Officers must be able to articulate an emergency and probable cause that criminal activity is afoot to establish an exigent circumstance.
2. Officers may conduct a forced entry and search if exigent circumstances as defined below are present. See General Order 1.6 – *Warrant and Forced Entry Procedures* for additional information.



3. Exigent circumstances allow warrantless entry into a structure to search and seize a person to:
  - a. Prevent injury to a person;
  - b. Prevent the destruction of material evidence involving a felony;
  - c. Prevent the escape of a felon;
  - d. Complete an arrest of the person with whom they are engaged in hot pursuit. The entry into the structure and subsequent seizure of the person must occur immediately before or simultaneously with the person's arrest.
    - i. Hot pursuit requires a minimum of probable cause to believe the person pursued has committed a felony immediately prior to the pursuit.
    - ii. Officers must give a visible or audible command or signal to the occupant(s) of the structure which could be reasonably expected to convey the police require compliance.

**F. Strip Searches**

1. Strip searches may be conducted when there is probable cause the arrestee is concealing a weapon, controlled substance, or contraband.
2. Strip searches must be conducted by an officer that is the same gender identity as the arrestee.
3. Strip searches must be conducted in areas out of view of the public and where officers who are not conducting the search cannot observe the search.
4. Officers must obtain authorization from a supervisor prior to performing a strip search.
5. Body-worn cameras must be activated and record the search.
6. Strip searches on juveniles are prohibited.
7. Every officer or employee conducting a strip search will prepare an incident report (initial or supplement to the initial report) of the search, to include:
  - a. Name of person subject to the search;
  - b. Name of person conducting the search;
  - c. Time, date, and place of search; and
  - d. Narrative explaining the reason for the strip search.
8. If an arrestee is uncooperative with determining their gender identity, the officer will have to make a determination using their professional judgement.
9. If an arrestee objects to being searched by an officer, the officer will request a supervisor to the scene, document the objection in the incident report, and complete the search as thoroughly and professionally as possible.

**NOTE**

Officers are reminded that *Pirtle v. State* deems a person who is asked to give consent to search while in police custody is entitled to the presence and advice of counsel prior to making the decision whether to give such consent.



### **III. Body Cavity Searches**

- A. Body cavity searches, except searches of the mouth, are prohibited unless a valid search warrant is obtained.
- B. Officers will notify a supervisor prior to contacting the appropriate investigative unit to assist with the search warrant.
- C. Body cavity searches on juveniles are prohibited.
- D. Every officer or employee conducting a strip or body cavity search will prepare an incident report (initial or supplement to the initial report) of the search, to include:
  - 1. Name of person subject to the search;
  - 2. Name of person conducting the search;
  - 3. Time, date, and place of search; and
  - 4. Narrative explaining the reason for the strip search.
- E. If an arrestee is uncooperative with determining their gender identity, the officer will have to make a determination using their professional judgement.
- F. If an arrestee objects to being searched by an officer, the officer will request a supervisor to the scene, document the objection in the incident report, and complete the search as thoroughly and professionally as possible.