

Georgia Department of Public Safety

Policy Manual

SUBJECT GUIDELINES FOR SEARCHES WITHOUT A WARRANT	POLICY NUMBER 11.06
DISTRIBUTION SWORN EMPLOYEES	DATE REVISED 6/27/2006

11.06.1 Purpose

To provide guidelines concerning the initiation, execution and documentation of searches without a warrant.

11.06.2 Policy

When conducting searches without a warrant, members shall ensure the searches are conducted in compliance with Constitutional guidelines and applicable statutes.

11.06.3 Definitions

Common Authority - The mutual use of property by persons generally having joint access or control.

11.06.4 Procedures

A. General

Central to any member's ability to conduct professional criminal investigations is their competence, knowledge and judgment to make a decision to search based on probable cause when circumstances prevent the member from obtaining prior judicial approval through a warrant.

1. In order to justify a warrantless search, two essential conditions must exist:
 - a. It must be established that the circumstances at the time of the search were sufficient to require immediate action and which obviated the restrictions of the warrant requirement of the Fourth Amendment, and
 - b. The manner and scope of the search that was conducted must be reasonably related to the justification for the search.
2. Although warrants are generally preferred in all cases, the law recognizes a number of exceptions to the warrant requirement which will be set forth in this policy.
3. Members shall ensure they follow a course of action consistent with the Constitution and applicable laws.
4. If a member develops reasonable articulable suspicion or probable cause at a home they may detain the occupants and visitors until a warrant can be obtained.

5. Members should consult with the appropriate prosecutor whenever possible concerning issues relating to warrantless searches. Georgia Department of Public Safety supervisory personnel as well as the DPS Legal Services attorneys are available to all members when advice and guidance are needed.
6. Members shall document all activities, actions, and events in investigative summaries/incident reports, articulating all facts concerning searches conducted without a warrant.

B. Exigent Circumstances

1. In order to establish the existence of an emergency situation, the following basic elements must appear:
 - a. The member must have reasonable grounds to believe that there is an emergency at hand and an immediate need for police assistance for the protection of life or property.
 - b. The search must not be primarily motivated by intent to arrest and seize evidence.
 - c. There must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched.
2. The courts have held that a case-by-case scrutiny of the circumstances is always necessary. Circumstances determined to have been relevant to the courts include:
 - a. The degree of urgency involved and the amount of time necessary to obtain a warrant;
 - b. Reasonable belief that the contraband and/or evidence is about to be removed;
 - c. The possibility of danger to police officers guarding the site of the evidence and/or contraband while a search warrant is sought;
 - d. Information indicating the possessors of the contraband and/or evidence are aware that the police are on their trail, and
 - e. The ready destructibility of the contraband and the knowledge that efforts to dispose of narcotics and to escape are characteristic behaviors of persons engaged in narcotics trafficking.
3. In all cases where judgments are made concerning a search without a warrant based on exigent circumstances, members will ensure they can factually articulate and document their reasoning in support of their investigatory acts.
4. Crime scenes - Crime scenes by their nature are not an exception to the warrant rule. The seriousness of the offense under investigation does not itself create exigent circumstances, and a warrantless search must be "strictly circumscribed by the exigencies which justify its initiation". The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal, absent an exigency or emergency.

5. Members shall ensure the following has been completed prior to or upon arrival at a crime scene:
 - a. A sweep of the scene has been done to ensure all persons are safe and secure;
 - b. A determination has been made concerning which individuals have a reasonable expectation of privacy, and
 - c. A decision has been made regarding the need for a search warrant or documented consent, if necessary.
 6. Hot Pursuit –A suspect may not defeat an arrest, which has been set in motion in a public place by escaping to a private place. Therefore, a warrantless search may be valid when an officer is in “hot pursuit”. The essential elements of hot pursuit are as follows:
 - a. Continuity of the pursuit: The pursuit must be maintained in a continuous manner without any significant break in the action.
 - b. Immediacy of the pursuit: The immediacy of the pursuit will depend on such factors as, the nature and severity of the crime, the possible destruction of evidence, and the safety and security of all persons.
- C. Stop And Frisk, Investigative Detention And/Or Limited Pat Downs
1. There are three tiers of police/citizen encounters:
 - a. Voluntary non-coercive communication that may include questioning, for which no standard of cause is needed so long as the encounter does not interfere with a person’s liberty.
 - b. Brief detentions, limited in duration and scope, which must be based upon reasonable articulable suspicion.
 - c. Arrest, supported by probable cause.
 2. Members may approach and converse with and inquire from persons and request information, as long as the confrontation is voluntary to such a degree that the person feels they are free to go. There must not be any detention for this rule to exist.
 3. Members may detain an individual when they have articulable facts that lead them to believe criminal activity is occurring. Members shall consider the totality of the circumstances in determining whether reasonable articulable suspicion exists authorizing the detention. Based upon this, members must have a particularized and objective basis for suspecting the particular person detained of criminal activity. The following two elements must both exist prior to the stop in order for the stop to be permissible:
 - a. The assessment must be based upon a totality of the circumstances. This analysis proceeds with various objective observations, information, and the consideration of the modes and patterns of operation of certain kinds of lawbreakers. From this information, a member draws inferences and makes deductions.

- b. This process must raise a suspicion that the particular individual being detained is engaged in wrong doing or suspected of being one wanted in connection with a completed criminal violation.
4. Members are cautioned that the authority to detain does not automatically include the authority to frisk or pat down. A frisk is an intrusion reasonably necessary to discover weapons, based upon the member's belief that the person may be armed. The authority to frisk or pat down must not be driven by an investigatory motive, but propelled by the member's concern for their safety or the safety of others.

D. Plain View

1. Members may seize and act upon evidence of a crime and/or contraband when its discovery is based upon plain or open view.
2. The criteria for plain view seizure involves two steps:
 - a. The member must have a legal right to be where they are at the time of discovery.
 - b. It must be immediately apparent that the item is stolen property, contraband or other evidence of a crime.
3. Members shall be mindful that a further search beyond the scope of those items discovered in plain view may require a warrant absent exigent circumstances.

E. Consent Search

1. A valid consent to search eliminates the requirement of a search warrant. However, the consent to search is not necessarily the consent to seize.

Members must seize only those items they believe to be stolen, contraband, or evidence of a crime. To obtain a valid consent to search, the following criteria must be satisfied:

- a. The member(s) must have a legal right to be where they are at the time of the consent;
 - b. The individual consenting must have the apparent authority over the place or thing to be searched;
 - c. The individual consenting needs to be advised of the specific location, place, or thing to be searched;
 - d. The consent must be freely and voluntarily given without any coercion or duress by a law enforcement officer, and
 - e. Consent may be revoked at any time by the individual.
2. Voluntariness of a Consent - A number of factors will be considered by the court in determining the voluntariness of a consent. Members should obtain the following information and document these factors in the member's report:
 - a. Age of the individual;

- b. Education of the individual;
- c. Length of detention, if any;
- d. Prolonged nature of questioning, if any;
- e. The individual's status, non-custodial or custodial;
- f. The advisement of constitutional rights;
- g. Deprivation of food or sleep, and
- h. The psychological impact of the above upon the accused.

The totality of all the facts and circumstances will be weighed by the court to determine the voluntariness of the consent.

3. Third Party Consent

- a. The test of the validity of a consent to search given by a third party centers around whether the facts available to the member at the moment would "warrant a person of reasonable caution to believe" that the consenting party had authority over the premises.
- b. A third party may consent if that person possesses "common authority" over or other sufficient relationship to the premises or effects to be searched.
- c. The member must articulate that it is reasonable to recognize that any of the co-inhabitants has the right to permit a search in their own right and that the others have "assumed the risk" that one of them might permit the common area to be searched.

4. To be capable of giving consent, a person shall be sufficiently able to understand the circumstances and consequences of their actions. A minor or a person with diminished mental capacity may not have the minimal discretion required to provide a valid consent. For example, the courts have considered the following factors regarding minors:

- a. Whether the minor lived on the premises;
- b. Whether the minor had a right of access to the premises and the right to invite others there also;
- c. Whether the minor was of an age making it reasonable to expect him to be able to exercise at least minimal discretion, and
- d. Whether officers acted reasonably in believing that the minor had sufficient control over the premises to give a valid consent to search.

5. Documentation of Consent to Search

- a. When appropriate, the member should complete and have the person authorizing the search sign the Voluntary Consent to Search Form (DPS-1193).

- b. Whenever obtaining consent to search, the member should record or document the manner in which the consent is given. Consent should be documented by use of the in-car video camera whenever possible.
- c. The party giving consent may withdraw consent at any time. Whenever consent is withdrawn, the member shall immediately terminate the search and document the same.

F. Search Incident To Arrest

- 1. When a legal arrest has been made, members have the authority to search the arrestee at the time of the arrest.
- 2. At the time of arrest the areas authorized to be searched include:
 - a. The person of the arrestee as well as the area within the arrestee's immediate control;
 - b. Articles and containers in the arrestee's possession or immediate control, and
 - c. The passenger compartment of the vehicle occupied by the arrestee at the time of their arrest to include the glove box, console and any other containers in the passenger compartment whether locked or unlocked.

G. Searches of Vehicles

- 1. Any sworn member may search a motor vehicle without a warrant by consent or when the following two factors exist simultaneously:
 - a. The member has probable cause to believe evidence or contraband is contained in the vehicle or containers therein, and
 - b. The member possesses knowledge that the motor vehicle has the capability to become mobile.
- 2. A free-air canine sniff may be ordered only when the member has at least articulable suspicion that contraband is in the vehicle.

H. Abandonment

Abandonment is a voluntary relinquishment of control over property by a person. Denying ownership of a piece of property is considered to be abandonment. As such, abandoned property is not protected by the Fourth Amendment.

I. Curtilage and Open Fields

- 1. Curtilage is the area surrounding a person's home that harbors the intimate activity associated with the sanctity of one's home and the privacies of life. As such, curtilage is afforded the same Fourth Amendment protection as a person's dwelling.
- 2. Open fields apply to all lands outside the curtilage regardless of how remote the land is and regardless of efforts of the property owner to keep others out. Open fields may include any unoccupied or undeveloped area outside the curtilage. An

open field need be neither “open” nor a “field”. Open fields are not protected by the Fourth Amendment.

3. Members should consider the following questions when attempting to determine whether an area is protected curtilage or unprotected open fields.
 - a. The proximity of the area claimed to be curtilage to the home.
 - b. Whether the area is included within an enclosure surrounding the home.
 - c. The purpose for which the area is used, and
 - d. The steps taken by the resident to protect the area from observation by people passing by.
- J. Members may contact the Legal Services Division if they have questions regarding this policy.