The Allegheny County Chiefs of Police Association

SEARCH & SEIZURE PROCEDURES

An Allegheny County Criminal Justice Advisory Board Project

Initial issue 2008,rev 2010, 2017, 2021, 2024

In Partnership With

The Allegheny County District Attorney's Office

March 2024

Please understand that this model should serve only as a "**Starting Point**" for those departments who may wish to update their Rules & Regulations Manual in this area. To best serve your department, it should be reviewed and revised by you and your Municipality and Insurance Carrier.

REVISED MODEL

SEARCH & SEIZURE POLICY

01. PURPOSE

The purpose of this policy is to provide Police Officers with guidelines on Search & Seizure and possible related activity. Changes in law and procedure, as well as training provided on this procedure, will give rise to modifications and updates.

02. SEARCH BY CONSENT

Police Officers shall consider the following procedures when initiating searches by consent:

A. Voluntariness of consent

1). Consent to search must be voluntarily given and not the result of duress or coercion, express or implied. Voluntariness is a question of fact to be determined from all the circumstances. Police Officers shall ensure that consent searches are, in fact, voluntary and that consent has been freely given prior to initiating any such search.

B. Authority to consent

1). In order for a consent to be valid, it must be given by one possessing control or apparent authority over the area searched.

2). Any Police Officer initiating a consent search shall ensure the subject giving consent has ownership or other authority to consent to the area or item to be searched, i.e., person in charge may not consent to the search of another person's item(s) if that person is present.

C. Prerequisite for Consent Searches

1) The voluntary nature of an individual's consent is always judged on the totality of the circumstances, which includes the custodial status of the individual at the time the request is made. Courts will consider certain factors including but not limited to: the manner in which a Police Officer approaches and asks for consent; how many Police Officers are present; did the Police Officers surround the person; were weapons drawn; what was the Police Officer's tone of voice; were there other civilians in the area; did the Police Officers inform the individual that she/he didn't have to consent to search; what is the individual's level of education?

D. Scope

1) A person has a right to limit the scope of a consent search.

2) Police Officers conducting consent searches shall ensure that the subject granting consent has extended that consent specifically, voluntarily, and unequivocally to the area(s) and/or item(s) searched (Signed Voluntary Consent To Search Form Preferred, Appendix A & B-Digital Items).

03. STOP AND FRISK

Police Officers shall consider the following procedures when initiating a stop and frisk:

A. Investigative Stop

1) Investigative stops by Police Officers shall be supported by reasonable suspicion of criminal activity, which shall subsequently be articulated in a report of the incident documenting the stop.

2). A Police Officer who lacks probable cause, but whose observations lead him/her to reasonably suspect that a particular person has committed, is committing, or is about to commit a crime, may detain that person briefly in order to investigate the circumstances that provoked suspicion.

(a). The reasonable suspicion for the stop shall be based on the Police Officer's personal observation and/or information supplied by another reliable person.

3). Length of Stop

(a). Police Officers will diligently pursue a means of investigation that is likely to confirm or dispel his suspicions in a timely manner when detaining a suspect.

B. "Terry Stop"

1). Police Officers may conduct a limited frisk/pat down for weapons if they observe unusual and suspicious conduct on the part of an individual that leads them to believe that:

(a). There is criminal activity afoot **AND**;

(b). That the person may be armed and dangerous.

2). Handcuffs

(a). Officer safety should always come first and the use of handcuffs during a Terry stop and frisk, when an Police Officer fears for his/her safety, **WILL NOT** automatically turn the stop into an arrest. But Police Officers should be prepared to articulate their safety concerns.

(b). Police Officers shall advise any person handcuffed for a "Terry" search that they are being handcuffed for Officer Safety, that they are not under arrest, and that the handcuffs will be removed when Officer Safety is ensured.

3). Vehicle Extension

(a). "Terry" searches can extend to the passenger compartment of a vehicle when a driver/passenger (by his/her actions such as furtive movements) has given a Police Officer reason to believe that a weapon is located in the vehicle. [A]nd Police Officers may frisk/pat down the driver/passenger(s), if the Police Officer reasonably believes that a suspect, lawfully stopped, is armed and dangerous.

C. "Plain Feel" Doctrine

1). Police Officers conducting cursory frisks may seize an object when it becomes **immediately** apparent, with knowledge gained from the Police Officer's sense of touch, that probable cause exists to believe the object is contraband.

04. SEARCH OF VEHICLE

In Pennsylvania, the default position is that a warrant must be obtained for all searches. Pennsylvania has a limited automobile exception under Article I, Section 8 of our Constitution, pursuant to which warrantless vehicle searches require BOTH Probable Cause and Exigent Circumstances; "one without the other is insufficient."
COMMONWEALTH OF PENNSYLVANIA, v. KEITH ALEXANDER, Decided December 22, 2020.

Police Officers shall consider the following procedures when initiating a search of a vehicle, including containers within a vehicle:

A. Pennsylvania Supreme Court recognizes a limited automobile exception to the warrant requirement which allows police officers to search a motor vehicle only when there are **both Probable Cause** and **Exigent Circumstances** to justify the warrantless search.

B. When ample advance information is available that a search of a vehicle is likely to occur in conjunction with the apprehension of a suspect, whenever possible Police Officers **shall** secure a warrant before searching the vehicle.

C. In a search incident to an arrest, there is no exigency once the suspect is in custody and cannot drive the vehicle away.

D. If probable cause exists to search a vehicle but there are no exigent circumstances, a warrant must be obtained to conduct a search.

E. Vehicles, lawfully stopped on a highway, may also be searched under Pennsylvania law by:

1). Consent

a). A Police Officer must conclude a lawful motor vehicle stop before a consent to search can be sought. The termination of a motor vehicle stop is determined under the totality of circumstances which includes but is not limited to: whether relevant documents are returned to a driver or whether a driver is informed that he/she is free to leave. Failure to transform the motor vehicle stop into a mere encounter absent reasonable suspicion that other criminal activity is afoot will lead to an invalid consent. However, if a Police Officer develops articulable

reasonable suspicion that criminal activity is afoot above and beyond a traffic violation, then consent to search can be sought regardless as to whether the motor vehicle stop has concluded.

2). Plain view

(a). A Police Officer, who is in a lawful position to observe and possesses a right to access may seize items in plain view which are obviously contraband. Seizure of plain view contraband may not in itself allow a search of other areas of the car.

3). "Terry" Stop

(a). When a Police Officer can articulate facts which lead to a reasonable belief that an occupant may be armed and dangerous, the Police Officer may conduct a frisk/pat down of the individual. If the Police Officer has reason to believe that a weapon is in the vehicle and may be used to harm the Police Officer, a brief look into the specific area is permitted but the Police Officer must be able to articulate his/her concerns. The brief cursory search should not extend to other areas of the passenger compartment.
REMEMBER THAT OFFICER SAFETY SHOULD ALWAYS COME FIRST.

05. SEARCH AT THE SCENE OF A CRIME

Police Officers shall consider the following procedures when initiating a search at the scene of a crime.

A. Police Officers may conduct a warrantless entry of residences under the following conditions:

1). Consent by tenant or owner.

2). Exigent Circumstances

(a). Before a Police Officer enters a residence without a warrant or consent he/she must establish that

(1) A belief that someone's life or personal safety is in immediate danger.

OR

(2) The Police Officer is in "Hot Pursuit" of an armed and dangerous individual.

06. MOTOR VEHICLE INVENTORY

A WARRANTLESS INVENTORY SEARCH OF A VEHICLE IS PERMISSIBLE ONLY WHEN THE POLICE HAVE LAWFULLY TOWED AND STORED, OR IMPOUNDED THE VEHICLE.

COURTS WILL NORMALLY REQUIRE DEPARTMENTS TO HAVE A WRITTEN POLICY ON TOWING AND INVENTORY SEARCHES BEFORE THEY WILL ALLOW ADMISSION OF EVIDENCE DISCOVERED DURING AN INVENTORY SEARCH.

IT IS IMPORTANT TO NOTE THAT THE VEHICLE INVENTORY POLICY SHALL NOT BE UTILIZED IN LIEU OF A WARRANT SEARCH OR A SEARCH WARRANT. THE PURPOSE OF THIS POLICY IS TO PROTECT VALUABLES AND PROPERTY BELONGING TO INDIVIDUALS WHOSE VEHICLES ARE TOWED, IMPOUNDED OR SEIZED.

A. It shall be the policy of the Department that all vehicles towed, impounded or seized are thoroughly Inventory Searched for valuables.

B. The inventory should be conducted at the location, from where the vehicle is towed, impounded or seized unless limited by safety concerns or practicality. If the vehicle is not inventoried at the scene because of safety concerns, it must be inventoried upon arrival at a safe and secure location.

C. A motor vehicle inventory shall extend to all areas of the vehicle in which personal property or hazardous materials may reasonably be found, including but not limited to the passenger and engine compartment(s), trunk and glove box or other areas attached to the vehicle.

D. All closed containers found in the vehicle shall be opened and inventoried unless the contents can be determined from an examination of the exterior of the container.

E. Closed and locked containers shall not be forced open but should be logged on a Report as such. If a key or lock combination is available, locked containers may be opened and inventoried.

F. When possible, the owner or operator shall be asked to take possession of all valuables discovered during the inventory of the vehicle prior to impoundment. Such possession shall be noted on an Inventory Section of the Report. If the owner or operator cannot take possession of the valuables discovered during the inventory, then they will be inventoried and secured within the vehicle prior to towing. The owner or operator shall be requested, when possible, to verify the completeness of the inventory by signature.

G. All property found inside the vehicle will be recorded on an Inventory Section of the Report. Contraband and evidence discovered during the course of a Motor Vehicle Inventory Search shall be seized and logged in as “Evidence.”

H. Any damage or peculiarities pertaining to the vehicle shall also be documented.

I. All vehicles impounded shall be towed to a secure facility by an insured and bonded towing service.

07. <u>SEARCH WARRANTS:</u>

Pennsylvania has a knock and announce requirement when executing a Search Warrant.

The purpose of the Rule is to prevent violence and physical injury to the police and occupants; to protect an occupant’s privacy expectation against the unauthorized entry of unknown persons; and to prevent property damage resulting from forced entry.

Requirements of Rule of Criminal Procedure 207 “Manner of Entry Into Premises”:

(1) A law enforcement officer executing a search warrant **shall,** before entry, give, or make reasonable effort to **give, notice of the officer's identity, authority, and purpose** to any occupant of the premises specified in the warrant, unless ***exigent circumstances** require the officer's immediate forcible entry.

(2) Such officer shall await a response for a **__**reasonable period of time** after this announcement of identity, authority, and purpose, unless exigent circumstances require the officer's immediate forcible entry.

(3) If the officer is not admitted after such reasonable period, the officer may forcibly enter the premises and may use as much physical force to effect entry therein as is necessary to execute the search. *234 Pa. Code § 207*

* The Pennsylvania Supreme Court has recognized four exceptions to the requirements of the rule:
1. the occupants remain silent after repeated knocking and announcing;
2. the police are virtually certain that the occupants of the premises already know their purpose;
3. the police have reason to believe that an announcement prior to entry would imperil their safety; and
4. the police have reason to believe that evidence is about to be destroyed.

** A “reasonable period of time” depends upon the circumstances, but must be sufficient to allow the occupants the opportunity to respond to the knock. Courts have held that 30-40 seconds is not long enough under certain circumstances. There must be sufficient time and circumstances to create a reasonable belief that the occupants of the premises do not intend to voluntarily or peaceably surrender the premises

A. Police Officers shall adhere to all Commonwealth of Pennsylvania and Federal statutory and case law concerning searches and seizures.

B. Police Officers should contact an appropriate Deputy or Assistant District Attorney to provide an opinion in any and all cases which may be questionable.

08. SEARCH AND SEIZURE (in-custody)

Police Officers should consider the following procedures when searching a person in custody and seizing property:

A. Search

1). All subjects taken into custody shall be searched by a Police Officer. When possible, a search will be conducted on scene. In the case where a subject who was not searched is turned over to another Police Officer, that Police Officer shall be informed that the subject was not searched. If circumstances on scene do not allow for a search to be conducted, one will be completed as soon as reasonable. If the subject is returned to a police station or holding facility a search will be conducted in the station prior to the start of processing, regardless of whether the subject has already been searched.

2). All efforts shall be made for a same gender search to subject in custody. When reasonable, Officers from another department may be requested. Officer safety is always the primary consideration. If a same gender search is not possible, the search should be conducted in front of another Police Officer/witness. **When possible,** the back of the hand should be used during the search, if it does not interfere with Officer safety.

B. Seizure

1). All property taken from a person in custody and subject to detainment shall be seized. The Police Officer shall inventory the property on a "Property Report" form. The form shall identify the property taken and the Police Officer connected with the arrest/search. The form will be kept with the property until returned. After the property is returned, the form will be signed by the Police Officer releasing the property and the detainee or a representative of another agency if the detainee is being turned over. It will be placed in the case folder, or if no folder, attached and filed with Departmental records.

2). All contraband/evidence located on a subject searched shall be seized. The contraband/evidence shall be properly tagged and an evidence inventory form completed. The evidence shall then be safely secured for storage and/or testing.

09. SEARCH OF FEMALES

All Police Officers are authorized to conduct on-scene searches of female prisoners. **When possible, the back of the hand should be used during the search, if it does not interfere with Officer safety.** Once at a station or holding facility, female prisoners shall be searched by a female Police Officer or matron only.

10. STRIP SEARCHES AND BODY CAVITY SEARCHES

Strip searches and/or body cavity searches shall only be conducted on persons who are in custody. A lawful arrest standing alone does not entitle a Police Officer to conduct a strip search and/or body cavity search. A constitutionally valid warrantless strip search requires a Police Officer to possess reasonable suspicion to believe that a person who is in custody following a lawful arrest has a controlled substance, weapon or other contraband hidden on or within his person.

I. Strip Search: This is a procedure wherein an arrested person is required to remove all clothing. The arrestee is then searched by visual observation of the body, along with a complete search of the clothing.

A. Rules for Strip Searches

1). Police Officers or other police personnel of the same sex shall do a strip search. The search should be witnessed. Police Officer(s) or personnel of the opposite sex shall not be allowed in the room or cell where the search is being conducted.

2). Strip searches shall only be done in areas that provide privacy from outside observation.

3). Searching Police Officers or personnel shall ask the arrestee if there are any medical conditions or other factors which may affect the search, and if any, the search must not interfere with any such condition.

4). Police Officers shall consider the balance between Police Officer safety, safety of the arrestee, and appropriate regard to the dignity of the suspect.

II. Body Cavity Search: A body cavity search is a procedure whereby an arrested person's body openings (anus, vagina, etc) are actually examined to look for contraband, weapons, drugs, evidence, etc. A constitutionally valid warrantless body cavity search requires a Police Officer to possess probable cause to believe that a person who is in custody following a lawful arrest has a controlled substance, weapon or other contraband hidden on or within his person.

A. Rules for Body Cavity Searches:

1). A body cavity search which involves manual probing of body cavities should be done by qualified medical personnel in a hygienic setting, except in the most urgent circumstances which include life and death.

2). Police Officers shall consider the balance between Police Officer safety, safety of the arrestee, and appropriate regard to the dignity of the suspect.

3). A Supervisor shall first approve a body cavity search.

III. Search Warrant Requirement

A. A search warrant is required for a strip search or body cavity search if the suspect is not under arrest.

B. If the subject is under arrest, strip searches and body cavity searches shall never be done randomly or at the whim of the Police Officer or his/her immediate supervisor. The mere fact of an arrest does not allow a strip search or body cavity search, there must be additional factors. Consider the following:

(1). The nature and seriousness of the offense.

(2). The past criminal record of the arrestee, along with any open warrants and charges.

(3). Whether or not there is reasonable suspicion to believe that the person arrested is carrying or may have any contraband, weapons, evidence, drugs, etc.

(4). The amount of time the arrestee will be in custody prior to arraignment, release, or transport to another agency.

(5). Whether or not the arrestee will be held with another or alone.

(6). Whether the arrestee physically resisted arrest or otherwise used violence or force toward the arresting Police Officer(s) or others.

(7). Whether or not the arrestee has any history of violence, hiding of contraband, drug use, etc.

IV. A strip search may be conducted after considering all of the below circumstances:

A. When a Police Officer has reasonable suspicion based on facts, circumstances and the Police Officer's experience, that the arrestee has contraband, weapons, drugs or some other prohibited substance or property or evidence of a crime.

B. When the person was arrested for a crime that involved weapons, violence or force, or where the offense involves contraband.

C. When the arrestee has a criminal record for arrests for felonies and misdemeanors involving weapons or contraband.

D. When the arrestee is going to be held in police custody for an extended period of time after the arrest.

E. When the Police Officers have a reason to believe that the arrestee is a danger to him/herself or others.

F. When there is a valid search warrant.

V. Body cavity searches are controversial, even when legally permissible.
These searches shall only be conducted when legally necessary and reasonable.

VI. Documentation Required
A. Whenever a suspect is subject to a strip search or body cavity search, the same shall be documented in the incident report.

B. The Police Officer shall document all reasons and suspicion for the search.

C. The Police Officer shall document the starting and ending time of the search, along with the location of the search.

D. The Police Officer shall document other Police Officers and police personnel that were present during the search.

E. The Police Officer shall document any evidence, contraband, drugs, etc, found during the search and the location where it was found.

11. PRISONER SEARCH

A. Before placing a prisoner in a police vehicle for transportation, the transporting Police Officer will search the prisoner, making sure no weapons or contraband have been overlooked.

B. Never assume that a search has been made by another Police Officer or Officer.

C. A search will be made of a prisoner each time he/she comes into the custody of the transporting Police Officer, including transports to and from arraignments and court appearances.

12. RECEIPT

A. When property is seized, the officer(s) shall provide a departmental receipt (appendix D) to the person in possession of the property or, in the absence of a person, if reasonably possible, leave a receipt in the place where the property was seized. This does not apply if you are otherwise required (Search Warrant) to provide a receipt for the property.

MODEL #1

POLICE DEPARTMENT
VOLUNTARY CONSENT TO SEARCH
COMPUTERS, COMPUTER ACCESSORIES, DATA STORAGE DEVICES AND MEDIA

(READ & PRINT YOUR NAME) I, _____, have been made aware of my constitutional rights regarding the privacy of data stored on computers, computer accessories, data storage devices, media, internet accounts, and cell phones. I understand my constitutional right to be free from searches without a search warrant and my right to refuse consent to such searches. I also acknowledge that I have the right to revoke my consent to a search at any time.

I understand that conducting such a search may be time consuming, may require a lengthy documentation process, and may require the temporary utilization of software and/or hardware.

CHECK ITEM(S) TO BE SEARCHED

☐**CONSENT TO SEARCH COMPUTERS AND INTERNET ACCOUNTS**

(READ & PRINT YOUR NAME) I,_____, hereby authorize Police or other law enforcement agencies they deem necessary to access, search, seize, print, copy, or otherwise save in any form, data and any information stored, transmitted, or existing on computers, or internet accounts listed on the second page of this form which is contraband, or may be used as evidence in criminal proceedings.

☐**CONSENT TO SEARCH CELLULAR TELEPHONES, SERVICES AND DATA**

(READ & PRINT YOUR NAME) I,_____, hereby authorize Police to conduct a complete search of the cell phone(s) described on the second page of this form and any information stored or transmitted or data contained therein/thereon. Police are authorized by me to take any information, media or data which is contraband, or may be used as evidence in criminal proceedings.

I am not unduly under the influence of drugs and/or alcohol._____**(Initial)**

I am giving this written permission voluntarily and without threats, pressures, coercion or promises of any kind being made to me. _____**(Initial)**

PRINT NAME:_____

LOCATION:_____

SIGNATURE:_____ **DATE:** _____

OFFICER: _____ **DATE:** _____

OFFICER: _____ **DATE:** _____

DESCRIPTION OF ARTICLES TO BE SEARCHED

DESCRIPTION: **PASSWORD:** **INITIALS:**

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

7. _____

8. _____

9. _____

10. _____

11. _____

12. _____

13. _____

14. _____

15. _____

16. _____

17. _____

18. _____

19. _____

20. _____ **Appendix A**

MODEL #2

POLICE DEPARTMENT
VOLUNTARY CONSENT TO SEARCH

(READ & PRINT YOUR NAME) I, _____, having been informed of my constitutional rights not to have a search made of myself, the premises, property, or motor vehicle mentioned below without a search warrant and, my right to refuse to consent to such search, and that I may revoke my consent to search at any time, hereby authorize Police to conduct a complete search of my person, premises, property or motor vehicle described as

_____

_____

_____

_____

These Police Officers are authorized by me to take any letters, papers, materials or other property, which is contraband or may be used as evidence in criminal proceedings.

I am not unduly under the influence of drugs and/or alcohol._____ **(Initial)**

I am giving this written permission voluntarily and without threats, pressures, coercion or promises of any kind being made to me._____ **(Initial)**

Print Name_____

Signature_____

Location _____

Date & Time_____

Police Officer_____

Police Officer_____

Appendix B

REASONABLE SUSPICION

AN OFFICER'S SUSPICION BASED ON **SPECIFIC FACTS** AND **INFERENCES**, THAT WOULD LEAD A **REASONABLE** PERSON

TO CONCLUDE THAT,

SOMEONE BEING STOPPED,

MAY HAVE COMMITTED,

MAY BE COMMITTING,

MAY BE ABOUT TO COMMIT A CRIME.

You must be able to point to specific and articulable facts which, taken together with rational inferences from those facts realistically form the basis of the requisite for reasonable suspicion. It is **not** based on your mere suspicion or a "hunch," but to the specific reasonable inferences which you are entitled to draw from the facts in light of your experience.

Appendix C

PROBABLE CAUSE

FACTS OR **CIRCUMSTANCES**

THAT WOULD **LEAD**

A **REASONABLE PERSON**

TO **BELIEVE**

THAT AN **OFFENSE**

HAS BEEN **COMMITTED;**

OR THAT **SEIZABLE OBJECTS**

ARE **IN**

THE **PLACE TO BE SEARCHED.**

Appendix D

Form may be used on your department letterhead

PROPERTY RECEIPT & NOTIFICATION FORM

I acknowledge that the items listed below were seized / voluntarily relinquished.

1. _____

2. _____

3._____

4._____

5._____

6._____

7._____

8._____

9._____

10._____

NOTICE OF YOUR LEGAL RIGHT FOR RETURN OF SEIZED PROPERTY

If due to a seizure property was taken from you, whether or not the seizure was executed pursuant to a warrant, you may file a motion for return of the property on the ground that you are entitled to the lawful possession of the property. **This written motion must be filed in the Court of Common Pleas for Allegheny County, at the Allegheny County Courthouse, 436 Grant Street, Pittsburgh, PA 15219.** The Court will decide whether your property will be returned. If your motion is granted, your property will be returned to you unless the Court determines that the property is contraband. If your property is determined to be contraband, then the Court may order that your property be forfeited. You may file a motion for a return of property on your own at the above address or, take this paper to a lawyer. If you do not have or know a lawyer, then you should contact the **Lawyer Referral Service at the Allegheny County Bar Association, 920 City-County Building, Pittsburgh, PA 15219, TELEPHONE**: **412-261-0518.**

Print Name_____Signature_____

Location_____

Date/Time_____

Officer_____Officer_____

Appendix E