

	ANDOVER POLICE DEPARTMENT GENERAL ORDER		Number: O2515
			Page: 1 of 12
			Distribution: All
Title: SEARCH AND SEIZURE		Section: Investigations	
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Review: Annual	Authority: Chief Michael A. Keller 		

I. Purpose

The purpose of this General Order is to establish guidelines and procedures which members must follow when conducting searches and seizures, with or without a warrant.

II. Policy

The Fourth and Fourteenth Amendments to the U. S. Constitution and Section 15 of the Bill of Rights of the Kansas Constitution guarantees every citizen the right to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. Supreme Court decisions regarding search and seizure place the responsibility on the police to ensure that citizens' Fourth Amendment rights are protected. Officers shall scrupulously observe constitutional guidelines when conducting searches and always remain mindful of their lawful purpose.

III. Definitions

- A. **Search:** A police action which infringes upon a person's reasonable expectation of privacy.
- B. **Investigative Detention:** A seizure of a person that is reasonably brief, is generally conducted in one location (short movements for safety and/or security reasons may be permitted in an investigative detention), and that involves no more force and/or restraint than is reasonably necessary to effect and maintain the detention. For purposes of this General Order "investigative detention" is synonymous with "investigatory stop," and "Terry Stop." Investigative Detention is the "stop" in a "stop and frisk" transaction.
- C. **Probable Cause:** Reasonable grounds to believe a person has committed or is committing a crime or that a place contains specific items connected with a crime, supported by specific and articulable facts, based on the officer's observations, knowledge, training and experience, including information from a reliable source.
- D. **Seizure of a Person:** An officer-citizen contact in which the officer's words and/or actions would cause a reasonable person to believe that he is not free to leave or to refuse to participate in the contact. No seizure has



ANDOVER POLICE DEPARTMENT
GENERAL ORDER

Title: SEARCH AND SEIZURE

Number: O2515

Page: 2 of 12

Section: Investigations

occurred however, until the person submits to a show of authority by police or until force is used by police.

- E. **Reasonable Suspicion:** A particularized and objective basis, supported by specific and articulable facts, to suspect a person has committed, is committing or is about to commit a crime. Reasonable suspicion may be based on the officer's observations, knowledge and experience as well as reasonably trustworthy information known to the officer at the time an action is taken.
- F. **Seizure of Property:** A significant interference by police with a possessory interest in property.
- G. **Stop:** A seizure occurring when a law enforcement officer, by force or some show of authority, restrains a person's liberty.
- H. **Pat Down Search:** A "frisk" or external feeling of the outer garments of an individual for weapons only. Pat down search is the "frisk" in a "stop and frisk" transaction.

IV. Regulations

- A. Members shall comply with the provisions of this General Order [A].
- B. Members shall not knowingly or recklessly violate the Constitutional rights of any person [E].

V. Procedures

A. The Warrant Requirement

1. Searches and seizures generally require a search warrant in order to be reasonable. If an officer should need to obtain a search warrant, the officer shall notify his supervisor and/or an investigator, who shall assist the officer as needed.
2. Crime scene-The search of any constitutionally protected premises in which a crime has occurred, once the emergency situation or exigency at hand is addressed, generally requires either a search warrant or consent (1.2.4d).

B. Exceptions to the Warrant Requirement

1. Some searches and/or seizure actions do not require warrants but are nevertheless subject to some strict legal requirements and procedural rules.
2. Pat Down Search/Frisk
 - a. Justification for Conducting Pat Down Searches



ANDOVER POLICE DEPARTMENT
GENERAL ORDER

Title: SEARCH AND SEIZURE

Number: O2515

Page: 3 of 12

Section: Investigations

- (i) A law enforcement officer has the right to perform a pat down search of the outer garments of a suspect for weapons if:
 - (a) The suspect has been legitimately stopped with reasonable suspicion, and
 - (b) Only when the officer has reason to believe that the suspect possesses weapons on his or her person and poses a threat to the officer's or another person's safety (1.2.4b).
- (ii) Not every field interview poses sufficient justification for conducting a pat down search. The following are some criteria that may form the basis for establishing justification for performing a pat down search, and more than one of these factors may be required, to include but not be limited to;
 - (a) The type of crime suspected—particularly in crimes of violence where the use or threat of deadly weapons is involved;
 - (b) Where more than one suspect must be handled by a single officer;
 - (c) The hour of the day and the location or neighborhood where the stop takes place;
 - (d) Prior knowledge of the suspect's use of force and/or propensity to carry deadly weapons;
 - (e) The appearance and demeanor of the suspect;
 - (f) Visual indications that suggest that the suspect is carrying a firearm or other deadly weapon.
- b. Procedures for Performing a Pat Down Search

When reasonable suspicion justifies a pat-down search, the search should be performed with due caution, restraint, and sensitivity. These searches may only be performed to protect the safety of officers and others and may never be used as a pretext for shaking down individuals or groups of individuals to obtain evidence or for other purposes. Pat-down searches should be conducted in the following manner:

 - (i) Whenever possible, pat-down searches should be performed by officers of the same sex;
 - (ii) Whenever possible, pat-down searches should be conducted by at least two officers, one who performs the search while the other provides protective cover;
 - (iii) Because pat down searches are cursory in nature, they should be performed with the suspect in a standing position or with hands placed against a stationary object and feet spread apart. Should an officer visually observe a weapon, however, a more secure search position may be used, such as the prone position;



ANDOVER POLICE DEPARTMENT
GENERAL ORDER

Title: SEARCH AND SEIZURE

Number: O2515

Page: 4 of 12

Section: Investigations

- (iv) In a pat-down search, officers are permitted only to feel the outer clothing of the suspect. Officers may not place their hands in pockets unless they feel an object that could reasonably be a weapon, such as a firearm, knife, club, or other item;
 - (v) If the suspect is carrying an object such as a handbag, suitcase, briefcase, sack, or other item that may conceal a weapon, the officer should not open the item but instead place it out of the suspect's reach;
 - (vi) If the external feeling of the suspect's clothing fails to disclose evidence of a weapon, no further search may be made. If evidence of a weapon is present, an officer may retrieve that item only. If the item is a weapon, the possession of which is a crime, the officer may make an arrest of the suspect and complete a search incident to the arrest of the suspect.
- c. Reporting
- If after conducting a field interview the officer has no basis for making an arrest, the officer shall record the facts of the interview in Andover's record management system's Field Interview module if no criminal activity has been determined. If criminal activity is documented a case number shall be obtained and an incident report written and submitted.
3. Search Incident to Arrest
- This is a full search for evidence and weapons within the area of immediate access of an arrestee. It is permitted pursuant to every lawful arrest and must be done contemporaneously with the arrest. Probable cause to arrest is required but the search may be conducted whether or not there is any reason to believe evidence and/or weapons will be found.
- a. The search may extend to the person, his clothing and carried belongings, and the area to which he has immediate access.
 - b. An officer may search an arrested person of the opposite sex. However, unless circumstances warrant otherwise, it is preferable to "frisk" the arrestee and have a detailed search conducted by an officer or person of the same sex as the arrestee.
 - c. Strip searches will be conducted as detailed in General Order O2304 Processing and Temporary Detention Rooms.
 - d. Body cavity searches are strictly regulated under KSA 22-2522 and shall be conducted only under the authority of a search warrant and shall be performed only by a licensed physician or registered nurse.
 - (i) Only those law enforcement officers of the same sex as the person being searched may be present during the search.



ANDOVER POLICE DEPARTMENT
GENERAL ORDER

Title: SEARCH AND SEIZURE

Number: O2515

Page: 5 of 12

Section: Investigations

- (ii) The search must be performed in a room that offers privacy for the examiner, the person being searched and the officer.
 - (iii) Upon completion of the search the attending officer must document the same in a supplemental report to include:
 - (a) The name and sex of the person searched;
 - (b) The name and sex of the person conducting the search;
 - (c) The date, time and place of the search; and
 - (d) A statement of the results of the search.
 - e. Unless voluntary consent has been given by the arrestee, other bodily intrusions, such as plucking hair and obtaining buccal swabs for DNA, require a court order. However, voice examples, fingernail scrapings, handwriting examples, fingerprints, photos and body measurements (height, weight, etc.) are not considered to be bodily intrusions and are thus permissible, but must be obtained in a reasonable manner.
 - f. In the event that an arrestee wants or needs access to certain areas for his convenience and/or comfort, the officer shall inform the arrestee that such access is conditional upon the arrestee's consent to a prior search by the officers of the areas to which access is requested. If the arrestee consents, the appropriate search shall be conducted. If consent is withheld, the arrestee shall not be allowed the requested access. These strict rules are necessary for officer protection and survival as well as the safety of the arrestee and others.
- 4. Emergencies and Exigent Circumstances
 - a. An officer may conduct a warrantless search of anything, whether personal belongings, a vehicle, or a building, any time they have a reason to believe such action is immediately necessary to save a life, prevent injury or serious property damage (1.2.4e).
 - b. A warrantless search for evidence may be conducted when an officer has
 - (i) Probable cause to believe that the evidence is in the place or thing to be searched, and
 - (ii) Reason to believe that (before a warrant can be obtained) immediate action is necessary to prevent said evidence from being destroyed or moved.
- 5. Hot Pursuit/Fresh Pursuit

An officer is permitted to make warrantless entry into a constitutionally protected building if in immediate pursuit of a fleeing suspect. This exception to the warrant requirement allows the officer to search any area of the premises where the suspect may be hiding or where he may have concealed his weapons.



ANDOVER POLICE DEPARTMENT
GENERAL ORDER

Title: SEARCH AND SEIZURE

Number: O2515

Page: 6 of 12

Section: Investigations

6. Inventory Search

This search is permitted pursuant to the lawful impoundment of a person's property by action or order of police. It will likely occur in the context of a police ordered towing of a person's vehicle. The inventory allows discovery and proper caretaking of dangerous instrumentalities and of valuable or important property and it enables the Department to defend successfully against false claims of theft and/or property loss. All vehicles (and other property) which are impounded shall be searched, inventoried, and documented according to General Order O2409 Vehicle Towing and Impoundment, on APD Form 37. In the case of vehicles, such search and inventory shall extend to all areas and containers within the vehicle that can be opened and accessed without breakage or damage (1.2.4f).

7. Plain View Seizure

This seizure of property is permitted when an officer who is lawfully present in an area sees in plain view an item that the officer has probable cause to believe is contraband or other evidence of crime.

8. Probable Cause Search of a Motor Vehicle in a Public Area (Carroll Doctrine)

- a. This search is permitted when an officer has probable cause to believe that evidence of crime is in an apparently operable motor vehicle that is in a public area.
- b. No additional or exigent circumstances are required, and the search may extend to any area within the vehicle that could reasonably contain the evidence sought.
- c. Closed containers may be opened and searched if there is probable cause to believe they contain evidence of crime.
- d. Breakage is permitted if reasonably necessary to reach criminal evidence. For purposes of this sub-section, a "public area" is any area on which public vehicular traffic is normally permitted (Examples: streets, highways, grocery or mall parking lots, apartment complex parking lots, etc.) (1.2.4c).

9. Consent Search

- a. This search is permitted when, during a lawful officer-citizen contact, a person who has a reasonable expectation of privacy in an area (e.g. owner resident, tenant, vehicle operator) voluntarily grants permission for police to search that area (1.2.4a).
- b. Compliance with an order or demand by police is **not** a "voluntary" grant of permission.
- c. This search does not require probable cause or reasonable suspicion but is limited to those areas "reasonably" within the consent. (Example: during a lawful stop, an officer asks a vehicle operator



ANDOVER POLICE DEPARTMENT
GENERAL ORDER

Title: SEARCH AND SEIZURE

Number: O2515

Page: 7 of 12

Section: Investigations

for "permission to search this car for drugs." Permission is granted. Unless the driver objects or withdraws consent, the consent search may extend to any containers within the vehicle that can be opened without breakage.)

- d. Consent may be withdrawn at any time; if it is withdrawn, the officer shall immediately stop the search (unless, by that time, other lawful search justifications are present).
 - e. A consent search is legal if:
 - (i) The consent is given by someone legally capable of consent;
 - (ii) The person consenting has control of the place to be searched;
 - (iii) The person consenting has authority over the place at least equal to the authority of the suspect; and
 - (iv) The person consents freely and voluntarily.
 - f. Prior to conducting a consent search, an appropriate "Permission to Search Form" (APD Form 39 Consent to Search - Electronic Evidence, APD Form 41 Consent to Search-General, APD Form 42 Consent to Search - Body) should be completed whenever possible.
10. Open Fields and Woods/Abandoned Property
- a. Certain areas, though sometimes on private property, do not involve a reasonable expectation of privacy. Therefore, an officer is permitted to walk through open fields and/or woods without a search warrant.
 - b. An officer may inspect, without a search warrant, the contents of trash receptacles in common areas of multi-tenant commercial or residential premises.
 - c. An officer may pick up and examine the contents of items or containers which are apparently discarded in public areas.
 - d. Whether or not there is a reasonable expectation of privacy (and therefore a search warrant requirement) depends on all circumstances surrounding a particular situation (1.2.4g).

C. Obtaining a Search Warrant

1. Legal Basis for Seeking a Search Warrant
 - a. In order to obtain a search warrant, an officer must be able to show probable cause that a crime has been committed and probable cause to believe that specific evidence, contraband or fruits of a crime may be found at a particular location.
 - b. Specific facts establishing probable cause shall be set forth with clarity and specificity. Officers shall not rely solely upon personal opinion or unauthenticated third-party information or hearsay. Such facts may be based on:
 - (i) Personal observation/knowledge of the officer; or



ANDOVER POLICE DEPARTMENT
GENERAL ORDER

Title: SEARCH AND SEIZURE

Number: O2515

Page: 8 of 12

Section: Investigations

- (ii) Information from a reliable source.
- (iii) When informants are used, particularly confidential informants, the reliability of the informant and information provided shall be specified. Whenever possible, officers shall corroborate informant information.

2. Affidavit Preparation

An affidavit supporting application for a search warrant shall be prepared. The accuracy of the affidavit is vital to the validity of the search warrant; thus, officers shall ensure that the following information is clearly and completely specified:

- a. The offense shall be described with reference to the criminal code section.
- b. The place or thing to be searched shall be described with specificity, and officers shall ensure that the warrant includes the specific reference(s). Where premises are to be searched, references should include:
 - (i) Street number and apartment number if appropriate;
 - (ii) Physical description of the premises;
 - (iii) Legal description of the premises if appropriate;
 - (iv) Name of owner or occupant;
 - (v) Geographical location of the property if appropriate;
 - (vi) Map coordinates or distances from given reference points if appropriate; and
 - (vii) Photographs, maps or diagrams that help to specify the location in question.
- c. Only those things described in the search warrant can be seized. Therefore, the affidavit shall specify and officers shall ensure that the warrant includes the following:
 - (i) All areas that officers desire to search shall be designated. In cases where officers wish to conduct a complete search of a home and its surroundings, the affidavit should specify a "premises" search and its "curtilage" and should identify any outbuildings such as garages, tool sheds or barns, where appropriate.
 - (ii) Motor vehicles known to be on the premises that may be searched should be specified.
 - (iii) Searches (other than frisks for weapons) of specific persons on the premises shall be referenced in the affidavit by name if possible.
 - (iv) The specific items to be searched for shall be detailed. Where the item may be dismantled (e.g. firearms), the warrant should authorize search for parts, pieces or components of that item.



ANDOVER POLICE DEPARTMENT
GENERAL ORDER

Title: SEARCH AND SEIZURE

Number: O2515

Page: 9 of 12

Section: Investigations

- (v) Officers anticipating search of computers and related high-technology equipment shall consult a designated expert for appropriate language to use in the affidavit and procedures for seizure of hardware and software (See General Order O2508 Seizure of Electronic Evidence).
- d. Time and Method of Search
 - (i) A search warrant may be served at any time of the day or night and must be served within 96 hours of issuance. If not executed within 96 hours, the warrant is VOID and shall be returned to the court issuing the same as "not executed."
 - (ii) Anticipatory search warrants may be sought when it can be shown that the evidence in question will be at a specific location at some time in the near future.
 - (iii) Officers may request a "no knock and announce" provision in the warrant when they have reason to believe that adherence to the knock-and-announce rule would endanger their safety or the safety of others, would enable wanted persons to escape or would likely result in the destruction of evidence before entry can be made.
- 3. Review of the Warrant
 - a. Officers shall have another department member, preferably a supervisor, review search warrants prior to being issued by judicial authorities to ensure that they include all pertinent information set forth in the affidavit accurately and completely.
 - b. After the search warrant has been issued by judicial authorities officers shall review that the warrant has been properly signed. Officers shall not attempt to serve any warrant that is known to contain substantive or administrative errors.
- 4. Return on the Warrant

Officers shall take/send the original search warrant, the original affidavit and the return of the warrant containing the list of the property seized to the Clerk of the District Court within ten days from the receipt of the results of the search warrant.
- 5. Liaison with the Prosecuting Attorney's Office

Officers seeking warrants in unusual situations or where the seriousness, nature or legal complexity of the case dictates should consider reviewing the case with the appropriate prosecutor prior to seeking a search warrant.



ANDOVER POLICE DEPARTMENT
GENERAL ORDER

Title: SEARCH AND SEIZURE

Number: O2515

Page: 10 of 12

Section: Investigations

D. Execution of the Search Warrant

Rev. 05072014

1. The Operation Commander has the authority to grant authorization for any search warrant execution after all relevant circumstances involving the legal aspects of the operational procedures have been reviewed.

Rev. 05072014

2. The overall design of the execution plan shall be the responsibility of the case investigator. The case investigator is responsible for obtaining Operation Commanders approval of the execution plan.

Rev. 05072014

3. Should the number of available personnel within the department be less than adequate for the execution of the warrant, the Operation Commander may request additional personnel from outside the department with approval from the Chief of Police. When selecting personnel for the operation, consideration should be given to the following:

- a. Capabilities and training of personnel;
- b. Number of suspects and armament that may be encountered;
- c. Type of warrant issued;
- d. Number of search warrant to be served;
- e. Amount of evidence and/or contraband that may be seized; and
- f. The need for additional expertise.

4. During the planning phase of the search warrant execution, a site survey shall be conducted. Information obtained in the site survey shall include:

- a. Description of the building;
- b. Description of the geographic area surrounding buildings and other obstructions;
- b. Fortifications and physical security;
- c. Specific uses of the building; and
- d. Avenues of approach to and egress from the target(s).

5. A pre-execution briefing should be held involving all personnel who will be involved. The briefing, at a minimum, should give background on the suspects and the investigation, give specific assignments to personnel, list the items to be searched for and seized, and particularly describe the location and persons to be searched.

6. All entry team personnel must be easily identifiable by police uniform or the word "POLICE" attached to clothing along with a badge and identification.

7. All equipment utilized will depend on availability and operational requirements and must meet the approval of the Chief of Police.

8. Radios equipped with a common channel will be supplied to all personnel and a talkgroup designated for primary use.



ANDOVER POLICE DEPARTMENT
GENERAL ORDER

Title: SEARCH AND SEIZURE

Number: O2515

Page: 11 of 12

Section: Investigations

9. All talkgroups used during the operation should be kept clear of other traffic unless the need to utilize the talkgroup takes precedence over the operation.
10. On-duty patrol supervisors and the Communication Center should be informed of the nature and location of the search warrant prior to commencement of the operation.
11. Medical personnel should be alerted to the potential for assistance if the nature of the target suggests the possibility of injury to any participants. Medical personnel may be requested to stand off near the location of the search warrant if the situation warrants.
12. Entry Procedures
 - a. If an advance surveillance team is at the target site, radio contact shall be made to ensure that the warrant can be served according to plan.
 - b. The search personnel shall position themselves in accordance with the execution plan.
 - c. Notification
 - (i) An easily identifiable police officer shall knock and notify persons inside the search site, in a voice loud enough to be heard inside the premises, that he/she is a police officer and has a warrant to search the premises, and that he/she demands entry to the premises at once.
 - (ii) Following the knock and announce, officers shall delay entry for an appropriate period of time based on the size and nature of the target site and time of day to provide a reasonable opportunity for an occupant to respond. If there is a no-knock warrant or there is reasonable suspicion to believe that the delay would create unreasonable risks to the officers or others, inhibit the effectiveness of the investigation, or would permit the destruction of evidence, entry may be made as soon as practical.
13. On-Premises Activities
 - a. Upon entry, the occupant shall be given a copy of the search warrant.
 - b. The supervisory officer shall ensure that a protective sweep of the site is performed immediately.
 - c. After the site has been secured, a photographic and/or videotape record of the premises shall be made prior to conducting the search. Search personnel shall then follow the plan that details the likely whereabouts of the items to be seized and the order of operation for conducting the search.



ANDOVER POLICE DEPARTMENT
GENERAL ORDER

Title: SEARCH AND SEIZURE

Number: O2515

Page: 12 of 12

Section: Investigations

- d. Items specified in the warrant may be searched for in places where they may reasonably be expected to be located and seized, as well as other items that are immediately recognized as evidence.
- e. An officer, designated in the plan, shall be responsible for collecting, preserving, and documenting all items seized until possession is transferred to Property and Evidence.
- f. Cash and currency taken as evidence shall be verified by a supervisor.
- g. Officers should exercise reasonable care in executing the warrant to minimize damage to property.
 - (i) If damage occurs during an entry to premises that will be left vacant, and the damage may leave the premises vulnerable to security problems, arrangements shall be made to guard the premises until it can be secured.
 - (ii) If damage occurs, justification for actions that caused the damage and a detailed description of the nature and extent of the damage shall be documented. Photographs of the damage should be taken where possible.
- h. If items are taken from the search site, an itemized receipt shall be provided to the resident/occupant, or in the absence of the same, left in a conspicuous location at the site.
- i. In a timely manner upon conclusion of the warrant service, the investigating officer shall conduct a debriefing of all participating officers.
- j. The investigating officer, and those as determined by the on-scene supervisor, shall thereafter prepare and submit a report on the warrant service and results of actions taken.