JOPLIN POLICE DEPARTMENT	6-05 STANDARD OPERATING GUIDELINE
SUBJECT: Search and Seizure	**REVIEW DATE: Annually - June**
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I. POLICY

It is the policy of the Joplin Police Department to establish guidelines for search and seizure to ensure enforcement is made in a manner consistent with City, State, and Federal Laws and constitutional guidelines. Officers are required to recognize and comply with those rights granted to individuals by the United States Constitution and case law that impact the Department

II. PURPOSE

The purpose of this standard operating guideline is to establish procedures for ensuring compliance with constitutional requirements during criminal investigations relating to search and seizure.

III. DEFINITIONS

A. Search

A **search** occurs where (1) there is a "prying into hidden places by the police officer" and (2) the person whose premises or person is being searched has a reasonable expectation of privacy.

IV. PROCEDURE: SEARCH AND SEIZURE - Warrantless Searches

A. The Fourth Amendment guarantees the right for people to be free from unreasonable searches and seizures of their homes, persons and things. The Supreme Court is continuously interpreting the Fourth Amendment as it applies to police conduct. Illegally seized items of evidence will not be admitted in court and may be cause for a lost criminal case. Additionally, an illegally conducted search invites civil suits and criminal prosecution. In order to ensure that Fourth Amendment rights are protected, officers will obtain search warrants upon probable cause in all appropriate criminal cases except for the following circumstances: (1.2.4 G)

1. Consent searches
2. Emergency searches
3. Plain view and "plain feel" (1.2.4 G)
4. Abandoned property and open fields
5. Inventory searches of vehicles
6. When executing arrest warrants
7. Incident to arrest-Gant v. Arizona (must be related to arrest for vehicle search)
8. Pat-downs of suspicious persons
9. Probable cause vehicle searches (Carroll Doctrine)

As a general rule, no arrest warrant or search warrant is required for an arrest in a public place, as long as probable cause exists.

B. Consent (1.2.4 A)

1. A search warrant is not necessary where a person who has authority or control over the thing or place searched consents to the search. Note that the officer doesn't have to have reasonable suspicion nor probable cause to make a consent search: he or she may merely ask for permission from someone with control over the premises. If that person grants permission, the search may take place. **The sole justification for a consent search is the existence of knowing, intelligent, and voluntary consent.**

   Consent searches must observe the following rules:

   a. Generally, the person granting consent must use, access, or control the property. A person having exclusive possession of some part of jointly owned property could only give consent for a search of that part.

   b. If two or more persons have joint ownership of property, any may give consent, however if one of the parties denies consent you must obtain a search warrant for the premises. The party denying consent must be present. If possible, have the consenting party sign a written permission-to-search form.

   c. A landlord, including a hotel or motel manager, cannot consent to a search of a tenant's premises, **unless** the tenant has been evicted or has abandoned the property.

   d. A husband or wife, or one member of a cohabiting unmarried couple, may consent to a search of areas in common ownership or use, but if either one is present and denies the search then NO SEARCH CAN BE CONDUCTED without a warrant.

   e. A parent may consent to a search of premises occupied by a dependent child if the parent also has access to the premises.

   f. An employee cannot give valid consent to a search of his employer's premises unless he has been left in custody of the premises.

   g. An employer may generally consent to a search of premises used by employees, except premises used solely by an employee (e.g., a locker).

2. Consent must be given voluntarily. If an officer requests consent from a citizen under circumstances that a reasonable person would consider coercive, then officers must seek a warrant. The officer may have the burden of demonstrating voluntariness.

3. A person who initially gives consent may withdraw it at any time. Officers shall then secure the premises and seek a warrant if probable cause exists.

4. Refusal to give consent, in itself, cannot justify further law-enforcement action.

5. The scope of a consent search is limited to the area for which consent has been given, and within this area officers may search only into areas where the objects sought could reasonably be hidden.

C. Emergency searches (1.2.4 E)

1. A search warrant is not necessary in an emergency. An emergency is sometimes termed "exigent circumstances."

2. Eleven considerations determine whether an emergency exists:

a. The degree of urgency involved and the time required in getting a warrant.

b. Officer's reasonable belief that contraband is about to be removed or destroyed. [Note that not all crimes are serious enough to create exigent circumstances. [See "e" below.]

c. The possibility of danger to others including officer's left to guard the site.

d. Information that the possessors of contraband are aware that police are on their trail.

e. Whether the offense is serious, or involves violence.

f. Whether officers reasonably believe the suspects are armed.

g. Whether the officers have probable cause at the time of entry.

h. Whether the officers have strong reason to believe the suspects are present on the premises.

i. The likelihood that the suspects will escape.

j. The suspects' entry onto premises after hot pursuit. To justify warrantless entry following hot pursuit, the arrest process must have begun away from the premises, **and** the offender knows that he or she is under arrest, **and** the offender tries to avoid arrest.

k. A reasonable belief that someone on the premises is in distress and in need of emergency assistance.

3. If officers enter premises with probable cause to believe that critical evidence may be destroyed or removed unless immediate action is taken, they may enter without a warrant, secure premises, and obtain a search warrant before proceeding further **unless** they have obtained consent to search, or some new circumstances arise necessitating another warrantless search.

D. Plain view (1.2.4 G)

1. A plain-view seizure is, technically, not a search. To make a plain-view seizure of property (contraband, fruits, or instrumentalities of the crime), two requirements must be met:

a. From a lawful vantage point, the officer must observe contraband left in open view; and

b. It must be immediately apparent to the officer that the items he or she observes may be evidence of a crime, contraband, or otherwise subject to seizure.

c. Once a seizure has been made, further search cannot be conducted unless there is a circumstance such as outline is section IV.A.1-9 of this policy.

2. During a lawful frisk (stemming from a lawful stop), if an officer detects an object that is or might reasonably be an item that is contraband or other criminal evidence, then the object may be seized. Threatening items such a weapons may always be removed during frisks. Non-threatening items may be removed **only** if their contraband or evidentiary nature is immediately apparent (the so-called "plain-feel" rule).

3. The plain-view doctrine, however, does not authorize an officer to enter a structure without a warrant to seize contraband merely because the contraband is visible from outside the structure. Officers must have had a lawful reason to either have been inside the structure or to enter the structure.

E. Abandoned property and open fields (1.2.4 G)

1. A search warrant is not required for property that has been abandoned.

2. To constitute abandoned property, two conditions must apply:

   a. Property was voluntarily abandoned.

   b. Property was discarded outside the area in which someone has a reasonable expectation of privacy.

3. Open fields are not protected by the Fourth Amendment, but officers must distinguish them from curtilage, searches of which require a warrant. **Curtilage** is the area of a dwelling, which is necessary, convenient, and habitually used by the family for domestic purposes. The extent of curtilage of a private residence is determined by whether the area is enclosed; the nature and use of the area; the proximity of the area to the home; and any measures taken by the owner to protect the area from observation. Note that under some circumstances surveillance (e.g., aerial surveillance) of activities within curtilage may take place without a warrant.

F. Inventories of vehicles (1.2.4 F)

1. The department requires officers to inventory any lawfully impounded vehicle, or a vehicle removed from the street and placed in police custody. Any evidence or contraband found during the inventory may be used to formulate probable cause for a subsequent search or arrest. Vehicles shall be inventoried per departmental procedure, which requires an inventory of the entire contents, including closed containers (provided they can be opened without breakage). The purpose of an inventory is to ensure safekeeping of private property and to protect the department from liability. To repeat, in order to justify an inventory of a vehicle, the following conditions must be met:

   a. Officers must have lawful custody of it.

   b. The inventory shall be conducted pursuant to departmental policy.

   c. The scope of the inventory shall be limited to those parts of a vehicle likely to conceal important, hazardous, or valuable items including, but not limited to, the passenger compartment, the trunk, and glove compartment.

2. Closed containers shall be examined if they are likely to contain valuable property, and whose contents officers determine they are unable to ascertain from examining the exterior. If closed containers are locked or sealed, they shall not be forced open but simply logged on the inventory form.

3. The vehicle and its closed containers shall not be damaged.

G. When executing arrest warrants (1.2.4 G, 1.2.5)

l. General guidance

An officer with an arrest warrant may search for the defendant in his or her own home **provided that** the warrant was valid; the officer searches the defendant's home (and not someone else's); and there is a reasonable expectation that the defendant is home at the time of the search. The search for the defendant must be limited to places where he or she might be found.

2. Protective sweep

Following the execution of an arrest warrant, officers may undertake a "protective sweep" of the premises where the arrest takes place without a warrant. Certain limitations must be observed, however:

a. The purpose of the protective sweep is to discover persons on the premises who might present a danger to officers.

b. Incident to arrest, officers may, without probable cause or reasonable suspicion; look into closets or other spaces immediately adjoining the place of arrest where threatening persons might be located.

c. In order to extend the protective sweep beyond closets and adjoining spaces, officers must have reasonable suspicion for fearing that persons may be on the premises that pose a threat. In such cases, the sweep is limited to examining places where a person might hide.

i. Officers shall carefully document their reasonable suspicion.

d. During a protective sweep, evidence discovered in plain view may be seized.

e. The sweep must cease when officers have dispelled a reasonable suspicion of danger.

(Note: With a search warrant, a protective sweep is always justified.)

H. At the Scene of a Crime (1.2.4 D)

A valid search warrant is necessary to search the scene of a crime unless the person who is legally in charge of the property is incapacitated or gives consent.

1. If the crime scene includes a constitutionally protected area, and a possible suspect might have a reasonable expectation of privacy at the scene, it must be searched pursuant to a valid search warrant.

2. Officers may enter and search a constitutionally protected area under lawful exigent circumstances to include medical emergencies, or public safety issues such as a violent felony in progress or the reported presence of a bomb. This exception only extends to the termination of the emergency. At that point, another justification must be found. (1.2.4 E)

3. Officers may conduct protective sweeps of a crime scene for their protection prior to securing the scene pending a warrant or consent. (1.2.4 B)

V. VEHICLES

In recent years, the U.S. Supreme Court has modified and expanded the conditions under which officers may search vehicles. Preferably, officers shall search vehicles under the authority of a warrant whenever sufficient time exists to obtain one. Nevertheless, warrantless searches of vehicles may take place under many conditions and circumstances. In *Carroll v. United States* the Supreme Court has ruled that a search warrant is unnecessary when there is probable cause to search an automobile stopped on the highway, the car is movable, the occupants are alerted, and the car's contents may never be found if a warrant must be obtained. It is imperative that officers understand the different types of vehicle searches and their limitations. In recent case law, *Arizona v. Gant*, the United States Supreme Court has limited the scope of searches of a vehicle incident to an arrest. An officer may search a vehicle incident to arrest if one of the two following conditions is met: the arrestee is within reaching distance of the passenger compartment at the time of the search **OR** it is reasonable to believe the vehicle contains evidence of the offense of arrest. Officers with the Joplin Police Department shall not leave a suspect near or in a vehicle in order to conduct a search incident to arrest. The officer should obtain consent or utilize a K9 or another exemption to the warrant requirement if it is not reasonable to believe that the vehicle contains evidence of the offense of arrest. (1.2.4 C)

A. Definitions

1. For the purposes of this section, a **motor vehicle** is any vehicle operating or capable of being operated on public streets or highways, from trucks to automobiles to mobile homes. A vehicle that has been immobilized in one location for use as a storage facility or home is not a motor vehicle for Fourth Amendment purposes.

2. For the purposes of this section, a **search** is an examination of a motor vehicle with an investigative motive, that is, to discover evidence or to examine the vehicle identification number (VIN) to ascertain ownership.

B. When warrantless vehicle searches may be performed (1.2.4 C)

As noted earlier, warrants shall be obtained to search vehicles, if feasible, unless an emergency exists. Any vehicle that has been disabled with little chance of its being driven away shall be searched with a warrant. In all other cases, vehicles may be searched without a warrant under the following circumstances:

1. When probable cause exists.

2. With the driver's consent.

3. Incident to the arrest of the occupants if it is reasonable to believe the vehicle contains evidence of the offense of arrest.

4. To frisk for weapons.

5. When necessary to examine the VIN or to otherwise ascertain ownership.

6. Under emergencies or exigent circumstances.

7. Inventories.

C. Searches may be conducted within the following limitations: (1.2.4 C)

1. **With a warrant**, a search may extend anywhere within the vehicle, unless limited by the warrant itself.

2. **When probable cause exists**, a search may extend anywhere within the vehicle, unless the probable cause is limited to a specific part of the vehicle.

3. **When consent has been obtained** from the driver, officers may search the vehicle subject to any limitations specified by the consenting person. Consent shall be obtained in writing, if feasible.

4. **Searches incident to the arrest** of an occupant shall be limited to any area within reach of the arrestee if it is reasonable to believe the vehicle contains evidence of the offense of arrest. The area within reach is deemed to be the passenger compartment. The trunk, engine compartment, and any locked compartments shall not be searched **unless** immediately accessible to the suspect.

5. **Frisks for weapons** shall be confined to the passenger area. Any place not immediately accessible to the occupants, such as a locked glove compartment, shall not be frisked. **If** the contents of a container are immediately accessible to the subject, a closed container may be searched for weapons.

   a. Note that an officer can order the suspect from the vehicle and frisk **both** the suspect and the vehicle.

6. **An entry into the vehicle to examine the VIN** or otherwise determine ownership must be limited to these purposes.

7. **An emergency search** of the vehicle may be conducted but the extent of the search must not exceed whatever is necessary to respond to the emergency.

Note: If the initial search under the above conditions gives rise to probable cause that evidence, contraband, fruits, or instrumentalities of the crime might be found elsewhere in the vehicle, officers may search those areas that might reasonably contain such items.

D. Containers within the vehicle (1.2.4 C)

As a rule, no container within a vehicle shall be searched unless it might contain the item(s) sought.

l. Procedures for unlocked containers

   a. In a **probable cause search**, containers may be opened wherever found in the vehicle.

   b. When the passenger area is searched **incident to an arrest**, containers within the passenger area may be opened.

   c. During a **consent search**, containers may be opened provided that the terms of the consent either so permit or reasonably imply permission.

   d. Containers found in or discarded from a vehicle under circumstances not amounting to probable cause or in connection with a search incident to an arrest shall not be searched but shall be secured until a warrant is obtained.

2. Procedures for locked containers

   Under most conditions, locked containers shall be opened under a warrant unless one of the following circumstances has been met:

   a. Consent has been given.

b. Probable cause exists to search the vehicle and the object of the search might be found in the container. (Even in this circumstance, a warrant is preferred.)

c. Inventory.

E. Conduct of the vehicle search (1.2.4 C)

l. When possible, searches of vehicles shall be conducted contemporaneous with the stopping or discovery of the vehicle. As a general rule, vehicle searches shall be conducted as soon as reasonably possible.

2. When possible, officers shall avoid damaging a vehicle or its contents, and shall minimize the intrusiveness of the search and any inconvenience suffered by the passengers or owner.

3. As vehicles may contain sharp or pointed objects, and perhaps even syringes or other materials with body fluids on them, officers shall take precautions to minimize exposure to communicable diseases.

VI. COMPLIANCE

Violations of this policy, or portions thereof, may result in disciplinary action as described in the City of Joplin's Personnel Rules, or the Joplin Police Department's Rules and Regulations and General Orders. Members of the Joplin Police Department, while assigned to or assisting other agencies shall comply with this policy.

VII. APPLICATION

This document constitutes department policy, is for internal use only, and does not enlarge an employee's civil or criminal liability in any way. It shall not be construed as the creation of a higher legal standard of safety or care in any evidentiary sense, with respect to third party claims insofar as the employee's legal duty as imposed by law. Violations of this policy, if proven, can only inform the basis of a complaint by this department, and then only in a non-judicial administrative setting.