JOPLIN POLICE DEPARTMENT	6-08 STANDARD OPERATING GUIDELINE
SUBJECT: Search Incident to Arrest	**REVIEW DATE: Annually - June**
EFFECTIVE DATE: September 23, 2016	**ACTION DATE:**
AMENDS/SUPERSEDES: 6-08 January 30, 2014	**AMEND DATE: August 22, 2022**
ACCREDITATION INDEX: 1.2.5, 1.2.8 a, b, c	**APPROVED:** Richard A. Pearson **Chief of Police**

I. POLICY

Officers who develop reasonable suspicion that a crime has been committed may make investigative stops of citizens and under probable cause may make arrests or conduct searches. The department encourages investigations and expects officers to search competently and knowledgeably whenever the occasion requires. Officers shall not conduct general exploratory searches but shall adhere strictly to constitutional law. Officers are reminded that when a search is made incidental to an arrest, the search must be based on the arrest and not the arrest on the search.

II. PURPOSE

To establish guidelines for the search of person(s) who are placed under arrest and taken into custody.

III. DEFINITIONS

A. Strip search

A strip search means the removal or rearrangement of some or all of the clothing of a person so as to permit an inspection of the genitals, buttocks, anus, breasts or undergarments of such person, including but not limited to inspections conducted visually, manually or by means of any physical instrument. A strip search shall only be conducted at the jail or lock-up and shall be witnessed only by officers or jail personnel of the same sex.

B. Body-cavity search

A body cavity search means the inspection of a person's anus or genitalia (and, in some instances, organs such as the stomach cavity), including but not limited to inspections conducted visually, manually or by means of any physical instrument. A body-cavity search shall only be performed under sanitary conditions by a physician, registered nurse, or practical nurse licensed in this state. A body-cavity search shall take place at a medical facility.

IV. PROCEDURE

A. General

The general rule is that a reasonable search may follow a valid arrest. The officer has the authority to make a search, which may extend to articles carried by the suspect and to the suspect's immediate surroundings. Although an arrestee who is handcuffed at the time of search cannot reasonably reach into the area being searched, the search of the area is still legally justified.

B. Time and place of search incident to an arrest (1.2.5)

1. A search incident to an arrest must occur in such a way that it and the arrest are part of a continuous, uninterrupted transaction. Four conditions are necessary for this to occur:

   a. The search must be made as soon as practical after the arrest.

   b. The search must be made at or near the place of the arrest.

   c. The arrestee is within reaching distance of the passenger compartment at the time of the search **OR**

   d. It is reasonable to believe the vehicle contains evidence of the offense of arrest.

C. When a search before an arrest is valid

A search incident to an arrest is mandatory following the arrest. An officer cannot search a person without probable cause and then arrest the person if something incriminating turns up.

A search before an arrest is valid only if:

1. Probable cause for the arrest existed before the search began, **and**

2. The search and arrest occur almost at the same time.

D. Use of force

An officer conducting a search incident to an arrest is permitted to use whatever degree of force is reasonable and necessary at the time of the arrest. If the officer used an unreasonable amount of force under the existing circumstances, the search is unlawful.

1. Officers are reminded that the use of deadly force merely to prevent the escape of a fleeing felon constitutes an unreasonable seizure under the Fourth Amendment. The same logic applies to any application of excessive force during a search.

E. Scope of search (1.2.5)

An officer making a search incident to an arrest may search only the following permissible places:

1. Search incident to arrest is justified only in custodial arrests.

2. The search, of the person, incident to arrest extends through the booking process and anything found on the arrested person is seizable as evidence.

3. At the time of the arrest, the scope of this search is limited to the area within the immediate reach or control of the arrested person, meaning the area from within which the arrested person might gain possession of a weapon or destructible evidence.

4. The justification to search the area around the arrested person diminishes quickly when the subject is removed.

5. When a person is definitively under police control during an arrest (e.g., properly handcuffed and placed in a police cruiser), there is no justification for a search incident to arrest of property possessed by the arrested person because the arrested person cannot gain possession of a weapon or

destructible evidence from said property.

6. To ensure employee safety, safeguard arrested persons' belongings, and protect the Department against claims of wrongdoing, a cursory inventory search will be performed at the scene of an arrest prior to the transport of the arrested person to the Police Department or the jail for Prisoner Processing. Any property taken with the arrestee, will be safeguarded and conveyed along with the arrested person. The property will be completely inventoried during booking in accordance with other applicable Department directives.

.

7. Vehicles may be searched contemporaneous with the arrest of the occupant or driver. The search shall be conducted as soon as practicable following the arrest.

   a. A contemporaneous search of the entire passenger compartment may be undertaken incident to the arrest of the occupant or driver, even if the driver or occupant is not in the vehicle at the time of the search only if one of the two following conditions are 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. Officers should obtain consent or utilize a K9 or another exception to the warrant requirement if it is not reasonable to believe that the vehicle contains evidence of the offense of arrest.

   b. A search undertaken pursuant to "a" includes any container found within the passenger compartment. A container is any object capable of holding another object, and includes open or closed glove compartments, luggage, boxes, and bags.

   c. The trunk of the vehicle shall not be searched incident to an arrest **unless** readily accessible to the suspect.

F. Strip searches and body cavity searches (1.2.8)

Strip and body cavity searches are governed by § 544-193 RSMo. (1.2.8 A)

1. A strip search or a body cavity search shall **not** be conducted of persons arrested for a traffic offense or an offense which does not constitute a felony by any law enforcement officer or employee unless there is probable cause to believe that such person is concealing a weapon, evidence of the commission of a crime or contraband. (1.2.8)

   a. A body cavity search, other than the mouth, of any person detained or arrested for a traffic offense or an offense which does not constitute a felony may only be conducted pursuant to a duly executed search warrant, and as with any body cavity search, under sanitary conditions and by a physician, registered nurse or practical nurse, licensed to practice in this state.

2. All strip searches conducted by law enforcement officers or employees in this state shall be performed by persons of the same sex or by gender or gender identity/expression as the person being searched. A form will be filled out and the person subject to a strip search will indicate their preference on the gender of the searching officer. Strip searches shall be conducted on premises where the search cannot be observed by any person other than the persons physically conducting the search, except that nothing herein shall be interpreted to prohibit a readily available person from being present at the request and consent of the person being searched. In any event, the on-duty police or jail supervisor has authority on behalf of the Chief of Police to authorize a strip search, and shall expressly authorize the

strip search. (1.2.8 B)

a. A strip search in the field shall only be conducted under exigent circumstances where the life of the officer or others is at risk and the on-duty supervisor has expressly authorized it.

b. When authorized, the strip search shall be performed in a room designed for the purpose, by the least number of same-sex personnel present as necessary, in conformance with approved hygienic practices, and under circumstances that provide privacy from all but those authorized to conduct the search.

3. Body cavity searches shall be conducted without a warrant only in extreme emergencies to protect the lives of prisoners or to prevent serious breaches of security.

4. The process of conducting the body cavity search shall involve the same safeguards for privacy and hygiene as for strip searches.

5. Every law enforcement officer or employee requesting a strip search shall:

a. Obtain written permission from an on-duty supervisor authorizing the strip search; and

b. Prepare a report regarding the strip search. The report shall include: (1.2.8 C)

i. The written permission required in subdivision (a) above;

ii. The name of the person searched;

iii. The name of the persons conducting the search;

iv. The time, date and place of the search. A copy of the report shall be furnished to the person who was searched.

6. Every law enforcement officer or employee requesting a body cavity search shall:

a. Obtain written permission from an on-duty supervisor authorizing the body cavity search; and

b. Prepare a report regarding the body cavity search. The report shall include: (1.2.8 C)

i. The written permission required in subdivision (a) above;

ii. The name of the person searched;

iii. The name of the persons conducting the search;

iv. The time, date and place of the search. A copy of the report shall be furnished to the person who was searched.

c. If consent for the body cavity search is not obtained and there are no exigent circumstances for the search, then a search warrant shall be obtained prior to conducting the body cavity search.

7. Body-cavity search procedures.

a. A body-cavity search shall only be performed under sanitary conditions by a physician, registered nurse, or practical nurse licensed in this state and shall take place at a medical facility.

b. The officer shall inform the prisoner of the intent to conduct a body-cavity search thus giving the prisoner the opportunity to voluntarily surrender the suspected contraband.

c. An officer of the same sex as the prisoner should be present during the search.

d. The prisoner shall remove every article of clothing including wigs and dentures and shall give them to the officer for inspection.

e. Should the prisoner resist the cavity search and become violent, additional officers of the same sex as the prisoner shall restrain the prisoner and assist in stripping. Only sufficient force, necessary under the circumstances, shall be applied to complete the search.

f. Should a prisoner resist a cavity search and an insufficient number of same-sex officers are available to restrain the prisoner, the following procedures shall be followed:

i. Officers of the opposite sex may assist in subduing the prisoner before the prisoner is stripped.

ii. Officers shall subdue the prisoner and apply the necessary restraints (handcuffs, shackles, etc.), then leave the room.

G. What may be seized

1. During a search incident to an arrest, an officer may seize any of the following things:

a. Anything in the permissible area that is evidence of the offense for which the officer has probable cause to make the arrest.

b. Anything in the permissible area that is evidence of any other offense.

c. Anything else, which is outside the permissible area, that is evidence of the offense for which the officer makes the arrest or of any other offense if the evidence is in plain view of the spot where that officer makes the arrest.

V. SEARCHES OF PRISONERS – PROCEDURES (1.2.5)

The department advocates the following method of searching arrested persons:

A. Prisoner search

1. In the interest of officer safety, officers should handcuff prisoners before searching them.

2. When feasible, have another officer present before conducting the search, to act as a cover.

3. If officers choose not to handcuff the prisoner before searching, proper control of the suspect should be maintained during the search.

B. Search the following

When searching a suspect incident to an arrest, search all of the following places:

1. Hair
2. Open mouth (have suspect open mouth; officer checks visually)
3. Collar
4. Back of neck, the ears, and behind the ears
5. Both arms
6. Armpits
7. Chest
8. Back
9. Waistline (feel inside the pants)
10. Inside belt
11. Crotch
12. Down both legs
13. Cuffs
14. Socks
15. Inside shoes

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 an 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 form a basis of a complaint by this department, and then only in a non-judicial administrative setting.