



# TIVERTON POLICE DEPARTMENT

<b>SUBJECT:</b>	Search and Seizure		
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<b>PER ORDER OF:</b>	Patrick W. Jones, Chief of Police		
<b>RIPAC:</b>	2.5		
<b>DISTRIBUTION:</b>	Sworn Officers		

NOTE: This written directive is for the internal governance of the Tiverton Police Department, and is not intended and should not be interpreted to establish a higher standard of care in any civil or criminal action than would otherwise be applicable under existing law.

## I. POLICY:

The department's policy is to fairly and impartially enforce the law while respecting the constitutional rights of all persons to be free from unreasonable searches and seizures. Officers desiring to conduct a search and seizure of persons or property shall seek an arrest or search warrant as applicable and only search without a warrant under certain clearly defined exceptions as noted below.

## II. PURPOSE:

The purpose of this written directive is to set forth the constitutional guidelines under the State and Federal Constitutions, and the statutory requirements that officers must observe regarding searches and seizures.

## III. DISCUSSION:

The Fourth Amendment of the United States Constitution provides as follows:  
 “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated...”

Two types of seizures implicate the Fourth Amendment. Physical seizures occur when officers use intentional force to stop a person and the person is actually stopped by the force. Show of authority seizures occur when a “show of authority” is displayed to a person by the police and the person submits to that authority. In order to ensure that the efforts of the Department will not be overturned during judicial review, it is imperative that every officer thoroughly understand the basic constitutional and statutory provisions involved in searches and seizures. Failure to comply with the subtleties of the laws pertaining to such searches and seizures may result in evidence being declared inadmissible due to having been obtained illegally. In carrying out their duties in this

regard, all officers must fulfill their responsibilities to protect the community and at the same time protect the individual rights guaranteed to every citizen by the United States Constitution.

#### **IV. PROCEDURE:**

##### **A. CONSENT TO SEARCH**

1. Consent to search without a search warrant, which may be granted in writing or orally, is an abandonment of a Constitutional Right, and as such will be closely scrutinized. The following considerations must be made when obtaining consent:
  - a. Consent cannot be presumed from silence.
  - b. Consent must be specifically and intelligently given.
  - c. Consent must be given freely, knowingly and voluntarily, free of any coercion, intimidation or threat. Officers must avoid even the appearance of intimidation or duress. The burden is on the State, and thus the police, to show that consent was voluntary.
  - d. A person who has “authority”, i.e., the immediate right of possession and control of the premises or property that is the subject of the search, must give consent. However, police may rely upon “apparent authority” in obtaining consent. If there is any doubt as to who has the immediate right of possession and control of the premises / property, then a search warrant should be obtained.
  - e. Consent must be free of misrepresentation or fraud. Consent obtained by trick, duress or misrepresentation voids the consent and makes evidence obtained inadmissible. It should be noted, however, that there is no requirement that police tell a person that they have the right to refuse consent.
  - f. Consent must be obtained prior to the search and after the officers have identified themselves and requested the right to search.
  - g. Consent must be limited to the area specified and such consent may be revoked at any time, unless items are found prior to such revocation that establishes probable cause. Upon such revocation, the search must cease. Evidence found prior to revocation may be retained and used as a basis for immediate arrest or as probable cause for the issuance of an arrest or search warrant.
2. Written consent, documented on the Department “Consent to Search Form”, is always preferred over oral consent.

3. A search warrant is always preferred over a written consent search.
4. See Section III (D) below, “Motor Vehicle Searches Without a Warrant”, for information specific to consent searches of motor vehicles.

#### B. PLAIN VIEW SEIZURE

1. In certain limited circumstances, an officer may make a warrantless seizure of objects in plain view. The following conditions, however, must be met before the plain view doctrine is applicable:
  - a. The initial intrusion that afforded the view must have been lawful.
  - b. The incriminating nature of the evidence must have been immediately apparent without further intrusion.
2. When an officer lawfully enters upon premises, contraband that he observes in plain view may be seized without a warrant. In such cases, the usual requirements of obtaining a search warrant are unnecessary because no “search” has been conducted. A “search” implies looking into private or hidden places for concealed items, and does not include the observation of articles that are open to plain view or obvious to the senses. It is also permissible for an officer to use a flashlight to make such observations.
3. An observant officer, utilizing the “plain view” doctrine, may often be successful in recovering stolen property; unlawful drugs, or weapons used or intended for use in the commission of a crime. Areas in which a person has no expectation of privacy, such as open fields, streets or roadways, may be searched without a search warrant. This does not include the “curtilage,” which is defined as the immediate yard or outbuildings of a dwelling house.
4. Search of abandoned property.
  - a. Things thrown away or left in a constitutionally unprotected place may be seized and examined. This includes articles dropped or otherwise discarded by a person, but not articles temporarily separated from an individual.

#### C. SEARCH INCIDENT TO ARREST

The Supreme Court has determined that any search incident to arrest, regardless of the place of arrest (i.e., a dwelling, a vehicle, etc.), must be substantially contemporaneous (i.e., must occur during the period in which the arrest is being conducted and before the situation has so stabilized that it could be said that the arrest has been completed) with the arrest, and must meet the objectives of protecting the arresting officers or safeguarding evidence. The Court has stated:

*“If there is no possibility that an arrestee could reach into the area that law enforcement officers seek to search, both justifications for the search incident to arrest exception are absent and the rule does not apply.”*

1. Arrests in dwellings.

- a. Police may do a thorough search of the arrestee’s person and any objects on the arrestee (i.e., wallet, purse, jacket, etc.) for weapons, evidence, and/or any means of escape.
- b. Police may search the arrestee’s lunging area (i.e., the area immediately within the arrestee’s span of control) only if the arrestee is reasonably able to access that area at the time of the arrest.
- c. Protective Sweeps. Police may also look into closets and other areas immediately adjoining the arrest area in which accomplices and/or others who could pose a danger to the officers may be hiding. Protective sweeps may be conducted without further suspicion. This search would be limited to those adjoining areas where a person is capable of fitting.

2. Motor vehicle arrests.

- a. The U.S. Supreme Court has held that law enforcement officers need to demonstrate an actual and continuing threat to their safety posed by an arrestee, or a need to preserve evidence related to the crime of arrest from tampering by the arrestee, in order to justify a vehicular search incident to arrest conducted after the vehicle's recent occupants have been arrested and secured. The Court has stated:

*“Police may search a vehicle incident to a recent occupant’s arrest only if 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. When these justifications are absent, a search of an arrestee’s vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies.”*

- b. A search of a motor vehicle incident to arrest may be conducted when either of the following are present:
  - 1) The arrestee is within reaching distance of the passenger compartment of the vehicle at the time when the search is conducted (vs. the time when the arrest is conducted), AND

has the present ability to gain access to it. The Supreme Court has stated:

*“Because officers have many means of ensuring the safe arrest of vehicle occupants, it will be the rare case in which an officer is unable to fully effectuate an arrest so that a real possibility of access to the arrestee’s vehicle remains. But in such a case a search incident to arrest is reasonable under the Fourth Amendment.”*

- 2) Reasonable suspicion exists that evidence pertaining to the offense of arrest is present within the vehicle.
- c. The search is limited to the passenger compartment; however, the entire passenger compartment, including any containers, may be searched for evidence, weapons, or means of escape.
3. During the arrest and booking processes, a routine custodial search of the person under arrest is authorized.
4. Those arrestees who are in possession of unsecured property coming into police custody may have such property inventoried as per Department property procedures.
  - a. Such inventory is not considered a “search” under the Fourth Amendment.

#### D. MOTOR VEHICLE SEARCHES WITHOUT A WARRANT

1. Although the expectation of privacy in a motor vehicle is lower than the expectation of privacy in the home, a search warrant must be obtained whenever it is practical to do so. In certain pre-arrest circumstances, however, searches of motor vehicles may be conducted without a warrant.
  - a. Practical considerations often dictate that a search of a motor vehicle be conducted without a search warrant due to the fact that a moveable vehicle creates the possibility that it might be transported before a search warrant may be obtained. This is known as the “moveable vehicle exception” to the warrant requirement.
  - b. In situations when police officers have probable cause to search a motor vehicle for an object, they may conduct a warrantless search of every part of the vehicle and its contents, including all containers and packages that may conceal the object of the search. The scope of the search is not defined by the nature of the container in which the object is secreted. Rather, it is defined by the object of the search and the places in which there is probable

cause to believe that it may be found. Police may even tow the vehicle back to the station and conduct the search.

- 1) The probable cause determination must be based on objective facts that could justify the issuance of a warrant by a magistrate, and not merely on the subjective good faith of the police officers. It must be grounded on facts known by the officer which, in the judgment of the court, would make his faith reasonable.
2. If reasonable suspicion exists to believe that an individual is dangerous and might access the vehicle to gain immediate control of weapons, then the passenger compartment of the vehicle, including closed containers capable of holding the suspected weapon(s), may be searched without a search warrant.
  - a. However, if the investigation is focused on a particular container that just happens to be in a vehicle, a search warrant is required for a search of the vehicle for that particular container.
  - b. Containers may be searched under other exceptions to the search warrant requirement, such as “exigent circumstances.”
3. According to Title 31, Chapter 31-21.2 (Racial Profiling Act of 2004) Statute § 31-21.2-5 of the RI General Laws:

*“Unless there exists reasonable suspicion or probable cause of criminal activity, no motor vehicle stopped for a traffic violation shall be detained beyond the time needed to address the violation. Nothing contained herein shall prohibit the detention of a motor vehicle for a reasonable period of time for the arrival of a canine unit or subsequent criminal investigation, if there is reasonable suspicion or probable cause of criminal activity.”*
4. If a lawful search of a motor vehicle is conducted without a search warrant, anything of evidentiary value is admissible whether or not it is related to the arrest. For example, if an officer is justified in searching an automobile for narcotics, and stolen property is found, such stolen property is admissible in evidence as long as it was found in an area reasonably likely to contain the narcotics originally sought.
5. Regarding consent searches of motor vehicles, Statute § 31-21.2-5 states:

*“No operator or owner-passenger of a motor vehicle shall be requested to consent to a search by a law enforcement officer of his or her motor vehicle which is stopped solely for a traffic violation, unless there exists reasonable suspicion or probable cause of criminal activity.”*

6. A search warrant is always preferred over a written consent search.
7. Inventory Searches.
  - a. The purpose for an inventory of an impounded vehicle is to:
    - 1) Protect the vehicle owner's property while it remains in custody.
    - 2) Protect the police against claims or disputes over lost or stolen property.
    - 3) Protect the police from potential danger arising from materials contained in the vehicle.
  - b. In order for an inventory search to be valid, all of the following conditions must be met:
    - 1) The vehicle must be lawfully impounded.
    - 2) The impoundment and subsequent search must be conducted pursuant to standard police procedures.
    - 3) The impoundment and subsequent search must not be performed as a pretext for an improper investigatory motive. Examination of the contents of a motor vehicle pursuant to a criminal investigation, or with the intent of discovering evidence of a crime, is a NOT an inventory search.
  - c. Inventory searches shall be conducted when:
    - 1) The vehicle has been lawfully seized or impounded either pursuant to the arrest of the driver; after towing the vehicle for violations; or for legitimate law enforcement or public safety (community caretaker) reasons.
    - 2) When an accident requires the tow of a vehicle and the owner or operator is not available (i.e., death, serious injury) or is unwilling to/incapable of removing items of value from the vehicle.
  - d. The inventory shall be conducted before constructive custody of the vehicle is released to a third-party towing company whenever it is safe and practicable to do so; otherwise, the inventory will be performed as soon as practicable thereafter.

- e. If the vehicle is being impounded for evidentiary purposes in connection with the investigation of a criminal offense, the vehicle will be towed to Headquarters and the inventory will be performed after such investigation is completed.
- f. Inventory searches of impounded vehicles will be conducted in the following areas:
  - 1) Throughout the passenger and engine compartments of the vehicle including, but not limited to, accessible areas under or within the dashboard area; in any pockets in the doors or in the back of the front seat; in any console between the seats; under any floor mats; and under the seats.
  - 2) Any unlocked compartments that are a part of or affixed to the vehicle including, but not limited to, vehicle trunks, glove-boxes, hatchbacks, and car-top containers.
  - 3) Any locked compartments that are a part of or affixed to the vehicle including, but not limited to, vehicle trunks, glove-boxes, hatchbacks, and car-top containers, if either the keys are available; an unlocking mechanism for such compartment is available within the vehicle; or if access can be gained without damaging any portion of the compartment or the vehicle itself.
- g. All open or closed, free-standing containers, shall be searched.
  - 1) Officers may use discretion as to whether or not to search a closed container whenever the officer is reasonably certain of the contents of the container by observing the designs, markings, or wording thereupon or by directly observing the contents within a transparent or translucent portion of the container.
- h. Locked free-standing containers shall be searched only if access within such containers can be accomplished without damaging the container or any portion of the vehicle.
  - 1) Locked containers that cannot be opened for any of the reasons stated above, but that are suspected of containing illegal weapons or contraband; or suspected of containing any evidence, fruits, or instrumentalities of a crime; shall be seized and processed in accordance with Department policies and procedures, and a search warrant sought prior to opening.

- i. Any illegal weapons or contraband; or any evidence, fruits, or instrumentalities of a crime; are admissible as evidence when discovered as a result of a valid inventory search.
  - 1) Whenever such circumstances arise, officers shall seize such evidence and shall follow all applicable Department policies and procedures (i.e., reporting, forms, evidence submission, charging, etc.) pertaining to such seizures.
- j. Inventory searches will be documented in a *“Tiverton Police Department Tow Inventory Report”*.
  - 1) Seized items will also be reported in the property section of an Offense (OF) or Arrest (AR) report.
- k. Officers shall consult with their immediate supervisors when considering seizing any item solely for reasons pertaining to its value.
  - 1) Officers who shall seize such items shall follow all applicable Department policies and procedures pertaining to the seizure of property.
- l. Items of value that are not seized shall be placed within the trunk of the vehicle when possible; otherwise, they shall be left in the most secure place available within the vehicle.

E. ENTRY WITHOUT A WARRANT UNDER EXIGENT CIRCUMSTANCES

- 1 No court has attempted to formulate a final and comprehensive list of all exigent circumstances that might justify an entry of a premises without a warrant. However, such circumstances include, and are not limited to:
  - a. The degree of urgency involved and the time required to obtain a search warrant.
  - b. The officer’s reasonable belief that contraband is about to be removed or destroyed.
  - c. The possibility of dangers to others, including officers left to guard the site.
  - d. Information that the possessors of the contraband are aware that a police investigation is being conducted.
  - e. Whether the offense is serious, or involves violence.
  - f. Whether officers reasonably believe the suspects are armed.

- g. Whether there is, at the time of entry, a clear showing of probable cause.
  - h. Whether the officers have strong reason to believe the suspects are actually present on the premises.
  - i. The likelihood of escape if the suspects are not swiftly apprehended.
  - j. Hot pursuit, which involves a suspect's recent entry into a premises either during or shortly after pursuit by officers.
2. An officer may make a warrantless entry to secure the premises prior to or while seeking a search warrant if the need to preserve evidence and protect officers outweighs the individual's right to privacy in maintaining the sanctity of the home.
  3. The following two factors must be present for the warrantless entry:
    - a. Officers have probable cause to believe evidence is on the premises.
    - b. Delaying entry would create a substantial risk that evidence will be lost or destroyed, or the critical nature of the circumstances prevents the use of the search warrant procedure (exigency).
  4. Exigent circumstances that present a compelling need for immediate official action, or which present a substantial threat of imminent danger to life or public safety include:
    - a. The need to seize short-lived evidence, such as blood.
      - 1) However, the need to seize such short-lived evidence must be balanced against other factors to establish exigent circumstances.
    - b. The need to search in an emergency, such as a burning fire.
      - 1) However, no general emergency exception, such as occupational / safety violation, homicide scene, or extinguished fire, creates such exigent circumstances.
  5. Exigent / exceptional circumstances include the right to enter and search an enclosure when in pursuit of a felon (and sometimes misdemeanants based on the totality of the circumstances) if there is reasonable cause to believe that the felon is inside.

6. Exigent / exceptional circumstances must exist and be known to the officer prior to the conducting of the search and seizure, and may not be developed as the search and seizure takes place.
7. There is no crime scene exception to the warrant requirement. Therefore, once exigency has passed, no other officers may enter the crime scene and conduct a search.

F. STOP AND FRISK

1. A law enforcement officer may temporarily detain a person if reasonable suspicion exists that a crime has been committed, is being committed, or is about to be committed, including whenever the officer reasonably suspects that a person is illegally carrying a concealed weapon.
  - a. These reasonable suspicion stops must not be confused with “consensual contacts”, which are interactions that require no level of suspicion on the part of an officer and are consented to by the person of their own free will. As such, “consensual contacts” do not constitute a seizure unless the person is given the impression at some point during the contact that they must comply with police requests.
2. A temporary detention, as recognized by the United States Supreme Court, is a seizure, and as such is controlled by the Fourth Amendment.
3. Within the stop and frisk doctrine, two distinct acts exist: (1) the stop, and (2) the frisk.
4. The Stop.
  - a. The stop is the detention of a subject for a brief period of time necessary to conduct a diligent investigation.
  - b. In order to make the stop, the officer must have reasonable suspicion to believe that a person is committing, has committed, or is about to commit a crime, or illegally possesses a concealed weapon. The courts are likely to rule that the following factors may be considered in building a foundation for the stop:
    - 1) The “crime” must be articulable and not a generalized suspicion, and of a type that normally involves a weapon.
    - 2) The officer has valid knowledge that the individual has a prior criminal record that includes crimes that normally involve the carrying or use of a weapon.

- 3) The individual fits the description of a known wanted suspect.
- 4) The individual exhibits furtive conduct, such as: fleeing from the presence of an officer; attempting to conceal an object from the officer's view; or displays movement consistent with reaching for or manipulating a weapon.
- 5) Bulges observed in the person's clothing consistent with the concealment of a weapon.
- 6) The vehicle observed is similar to a broadcast description for a known offense.
- 7) The individual exhibits unusual behavior, such as staggering or appearing to be in need of medical assistance.
- 8) The location and time of day are consistent with past patterns of criminal activity.
- 9) Information from a reliable third party. The veracity of a complainant / witness / informant is a factor that must be considered.

5. The Frisk.

- a. Should the officer reasonably believe that the person stopped may attempt to do him bodily harm, or is carrying a concealed weapon, the officer may conduct a "pat-down" for weapons of the person's outer clothing.
- b. Items that the officer recognizes as a weapon (conventional or unconventional), or that could reasonably contain a weapon, may be removed and inspected. The officer must articulate the pertinent facts and the experience, training and knowledge that establish the reasonableness of the conclusion that the item is a weapon or could contain one.
- c. If, while conducting a valid stop and frisk for a weapon, an officer feels what is immediately recognizable as contraband, the contraband may be lawfully seized. The incriminating nature of the contraband must be immediately apparent, meaning that if an officer must manipulate the item to figure out that it is contraband, then it is not lawfully seized.
  - 1) This is known as the "plain touch" or "plain feel" doctrine. This concept is often not very useful in a practical sense, since the officer must recognize the item without squeezing

or manipulating it. As a result, the “plain touch” doctrine typically applies to very unique items.

6. Hearsay information is acceptable in basing the foundation for stop and frisk, as long as such information is of a credible nature. In order for the information to be deemed credible, the officer must have some means to gauge both the reliability and the basis of the informant’s knowledge.
7. Search beyond the person – pre-arrest.
  - a. The United States Supreme Court has held that the stop and subsequent pat down search (frisk) for weapons of a person suspected of criminal activity does not restrict the protective search to only the person of the detained suspect, but that the search of the area within the suspect’s immediate control is allowed as well.
  - b. A lawful protective search for weapons that extends to an area beyond the person, in the absence of probable cause to arrest, must have all of the following elements present:
    - 1) A lawful investigative stop.
    - 2) Specific and articulable facts, which taken together with the rational inferences from those facts, reasonably warrant the officer to believe that the suspect is dangerous and may gain immediate control of weapons.
    - 3) The search must be limited to those areas in which a weapon may be placed or hidden and that would ensure that there are no weapons within the subject’s immediate grasp, i.e., an area within the subject’s immediate control.

## G. SEARCH WARRANTS

1. Search warrants may be issued to search for and seize any of the following four (4) types of items:
  - a. Fruits of a crime: Material objects acquired by means or in consequence of the commission of the crime.
  - b. Contraband: Items kept, concealed, or possessed in violation of the law or items kept for the purpose of violating the law.
  - c. Instruments of a crime: Items, which will aid or have been used in the commission of a crime, such as weapons and burglary tools.
  - d. Other evidence: Items, which will aid in the apprehension or conviction of a criminal, such as bloody or ripped clothing or

business record. This evidence may be seized providing the warrant clearly states its connection to the crime.

2. The language in the warrant determines the scope of a search. Typically, officers executing a search warrant may only search areas capable of holding or concealing the items named in the search warrant.
3. Officer Responsibilities.
  - a. When an officer believes that probable cause exists to request that a search warrant be issued, the officer shall take the following steps prior to having a judge review the application for a search warrant:
    - 1) The officer shall seek approval from his/her immediate supervisor prior to undertaking the issuance of a warrant.
    - 2) The officer shall prepare an affidavit and search warrant detailing the probable cause to search a specific location.
    - 3) The officer will determine if the warrant will be served in the daytime or the nighttime and include this information in the affidavit and on the search warrant.
    - 4) The officer will also articulate the reason(s), facts and circumstances that are necessary to request permission for a “no-knock” search warrant. “No Knock” entry is permissible for the following reasons:
      - i. Officer safety.
      - ii. To prevent the destruction of evidence.
    - 5) The officer will make a reasonable attempt to identify the target of the search warrant.
    - 6) The officer will give a detailed description of the location to be searched and the things to be seized.
    - 7) The officer should include all non-trivial information available to law enforcement that could reasonably be found to be material to the probable cause determination.
    - 8) The supervisor shall review the application for a search warrant prior to the officer responding to have a judge review the search warrant.

4. Supervisor Responsibilities.

- a. The supervisor will obtain from the officer all pertinent information regarding any informants, subjects of the search warrant, and the location to be searched.
- b. The supervisor will review and either reject or approve the application for a search warrant prior to the officer presenting it to a judge.
- c. Once permission is granted to present the application for a search warrant to a judge, the officer will present the application to an appropriate judge of the Rhode Island Judiciary for review. Once the application has been approved, the officer will immediately advise his/her supervisor.

H SEARCHES OF CELLULAR TELEPHONES

1. According to United States Supreme Court case #13-132, Riley v. California, decided June 25, 2014:
  - a. A warrant is required before a cell phone can be searched, even when a cell phone is seized incident to arrest.
    - 1) Even though the search incident to arrest exception does not apply to cell phones, one well-recognized exception to the search warrant requirement applies when the exigencies of the situation make the needs of law enforcement so compelling that a warrantless search of a cell phone is objectively reasonable under the Fourth Amendment.