

**PURPOSE:** The purpose of this policy is to provide general guidelines and procedures to follow in conducting a variety of searches that meet the criteria established by statutory requirements, case law and/or judicial review.

**POLICY:** It will be the policy of the Dekalb Police Department to accomplish searches of people, places and things in a manner that provides protection of constitutional rights, minimizes intrusion, and provides for the safety of all involved parties. Officers should be aware that case law can and occasionally does change acceptable procedures concerning search and seizure. Officers must adhere to the standards developed in the Illinois Compiled Statutes and the most recent applicable case law. [ILEAP ADM.02.02 (d) & (e)]

**DEFINITIONS:**

See 725 ILCS 5/108, for Compiled Statute definitions relating to search and seizure.

**Field Interview (Terry Stop):** The brief detainment of an individual, whether on foot or in a vehicle, based on reasonable suspicion for the purposes of determining the individual's identity and resolving the officer's suspicions.

**Pat-Down Search:** A "frisk" or external feeling of the outer garments of an individual for weapons only.

**Temporary Questioning Without Arrest, 725 ILCS 5/107-14:** "A peace officer, after having identified himself as a peace officer, may stop any person in a public place for a reasonable period of time when the officer reasonably infers from the circumstances that the person is committing, is about to commit or has committed an offense, and may demand the name and address of the person and an explanation of his actions. Such detention and temporary questioning will be conducted in the vicinity where the person was stopped."

**Search During Temporary Questioning, 725 ILCS 5/108-1.01:** "When a peace officer has stopped a person for temporary questioning pursuant to Section 107-14 of this Code and reasonably suspects that he or another is in danger of attack, he may search the person for weapons. If the officer discovers a weapon, he may take it until the completion of the questioning, at which time he shall either return the weapon, if lawfully possessed, or arrest the person so questioned."

**PROCEDURE:**

**I. General Rule on Searches**

- A. Unless otherwise excepted under Section II of this policy, officers are to obtain a search warrant prior to searching and/or seizing the property of another. In cases where requisite search warrants have not been obtained, courts will generally not allow seized evidence to be admitted.
- B. Officers should always confer with the State's Attorney's Office for the county the incident occurs in for legal assistance prior to seeking judicial review and approval of a warrant.
- C. When a request for a search warrant is sought, the request and the information forming the basis for the warrant will normally be reviewed by the Shift Supervisor or the Investigations Supervisor.
- D. **Search warrant procedures are outlined in Policy 404.1, Complaints and Warrants .**

**II. Searches Without a Warrant :** The following are exceptions to search warrant requirements:

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Subject: **Search & Seizure Guidelines**

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- A. **Search by Consent** is a search performed by a police officer after the subject of the search, or the person having ownership, rights, or standing to the item, vehicle, or location to be searched, voluntarily consents, providing that the consent is freely and intelligently given.
1. The extent of a consent search depends upon the terms of the consent itself.
  2. Consent may be given orally.
  3. Ideally, the consent should be in writing.
  4. A landlord does not have the authority to consent to a search of a private residence that is rented to a tenant.
  5. A hotel operator does not have the authority to consent to a search of a room that is currently rented.
  6. A roommate can consent to a search of rooms used in common by everyone, but not the rooms rented or used exclusively by others.
  7. A parent or guardian can consent to the search of the bedrooms of their dependent children under the age of 18, if it can be proven that the parent or guardian has ordinary access to their child's room.
- B. **Frisk Search** is known also as a "pat down search," usually performed on a field interview "Terry stop" of an individual. See 725 ILCS 5/107-14, "Temporary Questioning Without Arrest," listed in the Definitions on page one of this policy. Authority for these searches stem from Terry vs. Ohio, in which the United States Supreme Court held that an officer may conduct a cursory pat-down for the purpose of discovering weapons. Pursuant to 725 ILCS 5/108-1.01, an officer may frisk an individual for weapons if the officer has stopped a person for temporary questioning **and** reasonably suspects that he/she or another is in danger of attack. See Policy 401.1, Citizen Contacts & Field Interviews for complete department policy relating to Terry stops and related pat-down searches.
- C. **Mobile Vehicle Exception** : There are two reasons that are given for allowing the search of a vehicle with probable cause, but without a warrant. The first is that a vehicle does not share the same expectations of privacy afforded to a residence or other personal property. Second, the obvious mobility of an automobile makes it sometimes impractical to require the police to first obtain a search warrant.
1. Officers do not have to actually prove that a vehicle may or would be gone if he obtained a warrant before making the search.
  2. The existence of probable cause alone justifies the exception but must be more than reasonable suspicion.
  3. In vehicles, the discernable odor of illicit drugs from within the vehicle, or drug contraband observed in the vehicle, establishes probable cause.
  4. The vehicle exception allows for an officer to search the entire vehicle as long as he/she has probable cause to believe evidence may be located where he/she is looking, including persons and containers present.
  5. If probable cause is somehow limited to a specific area, the officer cannot go beyond the scope of that search.
  6. This type of search should not be confused with a search that is conducted incidental to arrest where immediate control becomes an issue. For example, arresting a person from a vehicle allows for the contemporaneous search of the passenger compartment when there is reason to believe the vehicle contains evidence of the offense being arrested for.
  7. Also see Policy 406.2, Motor Vehicle Searches for additional information.

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- D. **Crime Scene Searches** : In potential homicide cases, police may make warrantless entries onto premises if they reasonably believe a person needs immediate aid and may make prompt warrantless searches of a homicide scene for possible other victims or a killer on the premises. Crime scene searches may fall into several different categories of searches. These may include: consent searches, plain view, exigent circumstances and/or search incidental to arrest. **Officers must be aware there is no "crime scene exception" to search and seizure.** If an officer should come across a crime scene in the course of normal duties, and should there be no other search warrant exceptions, consideration should be given to obtaining a search warrant:

1. Secure the area and keep it in the same physical condition as it was left by the offender.
2. Render assistance to the injured, if appropriate.
3. Attempt to identify any witnesses and victims.
4. Attempt to identify and arrest the offender if the offender is still on the scene.
5. Notify the Shift Supervisor.
6. Yield responsibility to follow-up investigators and/or evidence technicians.

- E. **Emergency Exigent Circumstances** : This exception allows for an officer to make a warrantless search in situations where an officer recognizes there is no time to obtain a warrant and that if the officer does not immediately conduct the search or if the officer does not immediately recover evidence, an imminent dangerous situation will arise or the evidence will be lost forever.

1. **The following are factors that should be considered in determining if emergency exigent circumstances exist :**
  - a. The seriousness of the offense committed.
  - b. It is reasonable to consider the subject armed and imminently dangerous.
  - c. Sufficient probable cause exists to believe that the subject committed the offense.
  - d. There exists a strong reason to believe that the subject(s) are still on the premises.
  - e. There exists a likelihood that the subject(s) will escape if not immediately apprehended.
  - f. There is a reasonable belief that there may be an injured person(s) on the premises.
  - g. The aforementioned factors should be used when determining the totality of the circumstances.
2. **Check Well-Being** . One of the most widely recognized exigent circumstances is legitimately checking on the well-being of an individual. These are situations referred to as "community caretaking" in which the health and well-being of a person are seriously questioned. In most of these situations, there is no reason for police officers to suspect that criminal activity has taken place. In these cases, entry into private premises will only be made under the following circumstances:
  - a. After obtaining the name and information of the complainant and why the complainant is requesting the check on well-being.
  - b. The final decision on making entry will be made by the Shift Supervisor.
  - c. Entry will be made using the minimal amount of force/damage needed.

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- d. In cases involving someone inside a vehicle, an officer may enter the vehicle to check the well-being of an occupant that has been unresponsive to verbal or physical attempts to revive the person.
    3. **Hot pursuit** . Officers that are actively pursuing a suspect that is unlawfully fleeing from the presence of the officer may continue the pursuit even if the suspect enters a building or residence. Necessary force to enter is authorized in these cases, providing that the pursuit is indeed ongoing.
- F. **Inventory Searches** : Inventory searches are conducted to provide an accurate written record of items being detained or seized. Inventories are conducted by police officers for the following reasons:
  1. An inventory protects the owner of the property.
  2. The inventory protects the officer and the department against claims by the owner that the property is stolen or has been lost.
  3. It allows for the officer and the department to discover any potential danger that may exist because of the contents of the property.
  4. The following limitations exist on inventory searches:
    - a. The property to be searched must have lawfully come into the possession of the officer and/or the department.
    - b. The property inventoried must be listed on a property or evidence sheet, and placed into evidence in accordance with department regulations.
    - c. An inventory search must not be performed on a pretextual basis only to seize evidence or contraband.
  5. In cases of vehicles, inventory searches will be conducted in accordance with Policy 406.1, Motor Vehicle Inventories.
- G. **Searches Incident to Arrest** : This is the most common exception to the requirement for a search warrant. 725 ILCS 5/108-1 provides for this type of search upon making a valid arrest. Officers may reasonably search a person who has been arrested and the area that is in the person's immediate control for the purpose of:
  1. Protecting the officer from attack,
  2. Preventing the person from escaping,
  3. Discovering the fruits of the crime,
  4. Discovering any instruments, articles or things that may have been used in the commission of, or other things that may constitute evidence of an offense.
  5. The only justification that is needed for this type of search is that the arrest be valid.
  6. See Policy 404.2, Arrest, Booking, & Bond Procedures for complete department policy regarding the arrest, search, and seizure of prisoners and their property.
  7. Strip Searches will only be done in accordance with Policy 404.4, Strip Searches.
- H. **Plain View Searches** : The plain view doctrine generally states that officers can seize evidence that they see in plain view. Plain view searches have been upheld by the courts as long as the officer is legitimately on the premises and the officer has probable cause to believe that the property is evidence or contraband. Limitations do exist and these are:
  1. There must be no pre-observation that violates constitutional rights.
  2. The item(s) must have been inadvertently discovered.

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3. Artificial devices that aid in or enhance the ability of the officer(s) view are not considered plain view. However, use of a flashlight is acceptable, provided that the officer has the right to be present when using it.
  4. If the officer is outside a private residence and sees contraband or evidence inside, there must be a compelling immediate need to seize the items without a warrant. Observable offenses such as underage drinking or drug use do not automatically create a plain view situation where officers can enter a residence without a warrant.
  5. The **"Plain Feel Doctrine"** is explained in *Minnesota vs. Dickerson*. The Supreme Court held that an officer may seize evidence other than a weapon if, while conducting a frisk search, the nature of the contraband is "immediately apparent" to the officer based on his/her feel of the object through the subject's clothing during the pat down.
  6. Moving or rearranging of items to note serial numbers or other items is not supported by the "Plain View Doctrine".
  7. The "Plain View Doctrine" also applies to warrant searches, even if the item to be seized was not listed on the search warrant. In this case, the officer:
    - a. must have the right to be there, and
    - b. the officer must have probable cause to believe the item is evidence or contraband.
- I. **Open Field Searches** : The open field doctrine generally establishes that there is no expectation of privacy in open areas away from homes and buildings. These types of searches typically involve marijuana cultivation but could include other crimes. Within the city limits, there are few places that would be considered open fields. Established yard areas as well as areas that surround buildings and homes are not considered an "open field". The courts have held these areas to be "curtilage." Areas that would be considered outside the curtilage include:
1. Woods
  2. Pastures
  3. Grasslands
  4. NOTE: If an owner has taken steps to physically protect the area from trespass or observation, it may not be considered an open field. It would be best to inquire with the State's Attorney's Office before initiating an open field search of an area that is fenced, secured, has no open access points, or is posted with No Trespassing signs.
- J. **Abandoned Property** . There is no expectation of privacy in abandoned property. Warrants are not required to enter or seize abandoned property, including vehicles. Discarded trash, beyond the curtilage of a premise, is also generally accepted as abandoned property that can be searched and seized without a warrant.
- K. **Custody and Disposition of Things Seized** , 725 ILCS 5/108-2:
1. "An inventory of all instruments, articles or things seized on a search without a warrant shall be given to the person arrested and a copy thereof delivered to the judge before whom the person arrested is taken."
  2. "If the person arrested is released without a charge being preferred [filed] against him, all instruments, articles or things seized, other than contraband [items of evidence], shall be returned to him upon release."
  3. Evidence Receipts should be used when documenting an inventory list of items seized.

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4. Officers should document in the case report the elements of the requisite reasonable suspicion or probable cause established to support the warrantless search or seizure of property.
5. Any items seized will follow the department's regulations on custody and storage of property and/or evidence.

[ILEAP ADM.02.02(e)]

**Policy originally issued 12-1-07; this revision becomes effective on 1-1-19 by authority of the Chief of Police .**

NOTE: This policy and procedure summarizes the department's position on this specific matter. This policy is for general direction and guidance primarily designed for use by the department's members. This policy is for internal use only and does not create or enlarge an officer's liability in any way. This policy shall not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this policy, if proven, can only form the basis of an internal departmental complaint and then only in a non-judicial administrative setting.