

 ROCKFORD POLICE DEPARTMENT GENERAL ORDER - NUMBER 1.13 -		DISTRIBUTION SWORN PERSONNEL	PAGE 1 OF 12
ORDER TITLE SEARCH AND SEIZURE	SERIES NO. 1	SERIES TITLE / SUBJECT LAW ENFORCEMENT ROLE, RESPONSIBILITIES AND RELATIONSHIP	
TOPICS / REFERENCE Mobile Conveyance exception, Pat-down, Plain feel Doctrine, Plain View Doctrine, Searches, Stop and Frisk, Strip Searches, Terry Stop, California v. Carney, Carroll v. U.S. Terry v. Ohio, Wyoming v. Houghton, Arizona v. Gant		APPENDICES A, B	
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POLICY

It is the policy of the Rockford Police Department to accomplish a thorough and legal search while observing and protecting constitutional rights, minimizing the level of intrusion and providing the highest degree of safety for all concerned.

PURPOSE

The purpose of this Order is to establish procedures and guidelines for conducting searches with and without a warrant. Its further purpose is to include the seizure and proper maintenance of property, the filing of the return for the search warrant and the complete documentation of the process.

These guidelines are not meant to be all-inclusive, since each incident must be dealt with on an individual basis, but are intended as broad guidelines to assist the employees and supervisors involved.

This Order is comprised of the following numbered sections:

- I. DEFINITIONS
- II. TYPES OF SEARCHES
- III. OBTAINING SEARCH WARRANTS
- IV. PROCEDURE FOR EXECUTION OF SEARCH WARRANT
- V. EXECUTION AND ENTRY PROCEDURES
- VI. "NO-KNOCK" SEARCH WARRANT
- VII. SEARCH PROCEDURES
- VIII. SEARCH WARRANT RETURN
- IX. EFFECTIVE DATE
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APPENDICES

- A. Strip Search Consent Form
- B. Strip Search Authorization Form

I. DEFINITIONS

- A. **Affidavit in Support of a Search Warrant:** A written sworn statement of facts capable of supporting the reason of the request for a search warrant.
- B. **Body Cavity Search:** The intrusion into the anal cavity or vaginal area either manually or via instrument inspection, in search for contraband. For the purpose of this Order the mouth is not considered a body cavity.
- C. **Consent Search:** Gaining voluntary written or oral permission for a search from a person who has control over the place being searched.
- D. **Curtilage:** The area immediately surrounding a residence that harbors the intimate activity associated with the sanctity of one's home and the privacies of life. Curtilage is protected under the Fourth Amendment from unreasonable searches and seizures (*United States v. Dunn, 480 U.S. 294 (1987)*).
- E. **Execution:** Performance of the duties ordered in a search warrant.
- F. **Plain View:** The ability to see evidence, contraband or other articles connected with a crime in the normal course of legal duties.
- G. **Probable Cause:** Facts and circumstances known to the complainant, which would warrant a prudent and cautious person, with the knowledge, training and experience as a police officer, in believing that an offense has been committed or is being committed and that the individual to be arrested committed the offense.
- H. **Search Warrant:** A written order by a judge for the search of a specific place or person and a description of items to be searched for and seized.
- I. **Search Warrant Return:** A standardized legal notification to the issuing judge that the search warrant was executed as ordered.
- J. **Strip Search:** A search requiring the arrested person to remove or arrange some or all of their clothing so as to permit a visual inspection of the genitals, buttocks, anus, female breasts or undergarments of such person.

II. TYPES OF SEARCHES

- A. **Plain View Search:** Performed immediately and in conjunction with whatever action caused the availability of the observance of the evidence, contraband or other article connected with a crime.
 - 1. An officer must be lawfully in a position from which they view the object,
 - 2. The incriminatory character of the object must be immediately apparent,
 - 3. When 1. and 2. are correct the officer has a lawful right of access to the object.
- B. **Consent Search:** Performed as soon as possible in connection with a request made by an officer to a person who has rights to the location being searched. Ideally the consent should be given in writing, but may be done orally. A consensual entry is valid only if it reasonably appeared the consenting person had the authority to allow officers to enter by having sole or joint access or control over the premises. Officers must further understand that:
 - 1. The consent must be voluntary;

2. The scope of the search is limited to the words or meaning of the consent; and
 3. The consent may be withdrawn.
- C.** Search Incident to Arrest: *725 ILCS 5/108-1* provides for a search performed at the time of an individual's valid custodial arrest for the purpose of at least one of the following:
1. Protecting the officer from attack,
 - a. A Protective Sweep is a quick and limited search of a premise, incident to an arrest and conducted to protect the safety of police officers or others. It is narrowly confined to a cursory visual inspection of those places in which a person might be hiding.
 2. Prevention of escape,
 3. Discovering fruits of the crime, and
 4. Discovering any instruments, articles or items that may have been used in the commission of a crime or which may constitute evidence of a crime.
- D.** Field Interviews: Officers engage in citizen contacts on a daily basis. Most of these contacts are non-intrusive in nature and require no documentation. However, some contacts are initiated with the intent to uncover or prevent criminal activity. The purpose of this section is to provide guidelines regarding these types of contacts.
1. Pursuant to Illinois Compiled Statutes *725 ILCS 5/107-14*, Temporary Questioning Without Arrest, officers may temporarily stop individuals for the purpose of conducting field interviews when there is insufficient probable cause for arrest. The officer has reasonable suspicion (or reasonably infers from the circumstances) that the person is committing, has committed, or is about to commit, a violation of the law prior to the stop.
 2. It is important that the officer be able to articulate the basis for the suspicion. The following are factors which should be taken into consideration when establishing reasonable suspicion for temporary questioning or field interview:
 - a. That some activity out of the ordinary is occurring, or has taken place.
 - b. Some indication should exist to connect the person under suspicion with the unusual activity.
 - c. There should be some suggestion that the activity may be related to a crime. (None of these alone is necessarily sufficient to justify a stop, but must be considered in the totality of circumstances.)
 3. Pursuant to Illinois Compiled Statutes *725 ILCS 5/108-1.01*, Search During Temporary Questioning, an officer may frisk an individual for weapons if the officer reasonably suspects that he or another is in danger of attack.

- a. Although it is normal to refer to a frisk as following a stop, a frisk may be contemporaneous with the stop, with no clear delineation between the stop and frisk. Most important, the justification for both the stop and the frisk must exist prior to the frisk.
 - b. The authority to search for and seize weapons is for the limited purpose of allowing an officer to protect their self and others from attack. The authority is clearly not for the purpose of searching for and seizing evidence, although, during the course of a frisk, evidence may on occasion be discovered and become the basis for an arrest. It is important that the officer be able to articulate some reason for suspecting that he or another is in danger. (In addition to the situation encountered, this articulation may include reliance upon the training, education and experience of the officer.)
4. Field interviews that result in significant information should be documented with an incident report.
- E.** Vehicle Searches: There are situations that allow for the search of a vehicle with probable cause, but no warrant.
1. The mobile conveyance exception (Carroll Doctrine): A mobile conveyance (car, truck, boat, airplane) may be searched for evidence if probable cause for a search warrant is articulable. The mobility of a vehicle would make it impractical for police to first obtain a warrant and there is a reduced expectation of privacy in a vehicle. The legal basis for this is described in *Carroll v. U.S.*, 267 U.S. 132 (1925) and *California v. Carney*, 471 U.S. 386 (1985).
 - a. If the vehicle can be seized and a subsequent search warrant obtained this exception may not apply.
 2. An officer may conduct a warrantless search of a vehicle if:
 - a. The officer has probable cause to believe seizable evidence or contraband is concealed in a vehicle capable of mobility. The officer may search anywhere and open any container, to which the probable cause extends, wherein the object of the search could logically be concealed in the vehicle. The probable cause determination must be based on objective facts that could justify the issuance of a warrant by a judge and not merely on the subjective good faith of the police officers.
 3. During an investigative stop or “Terry Stop” of a vehicle, police may seize an object without a warrant if the encounter meets the requirements of the plain view doctrine. See **section II. A.**
 4. A vehicle search founded on probable cause may extend to any part of the vehicle, including closed containers inside the vehicle, as long as there is probable cause to believe evidence may be located where the officer is looking. Ownership of the closed containers is not relevant as long as they are located inside the vehicle. See *Wyoming v. Houghton*, 119 S.Ct. 1297 (1999).

- a. If probable cause is limited to a certain area, the officer cannot go beyond that scope during the search.
 - b. This type of search should not be confused with a search incident to arrest where immediate control becomes the issue.
5. Inventory search of vehicle to be towed: A search incidental to the towing of a vehicle for reasons of inventory. For additional guidelines and procedures refer to General Order **40.06 – Impounding or Towing of Motor Vehicles**.
 6. A search of the passenger compartment of a vehicle following an arrest is allowed only if [1] the arrestee is within reaching distance of the passenger compartment at the time of the search or [2] 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. *Arizona v. Gant, 542 (2007)*.
- F.** Strip Search: Illinois Revised Statutes **725 ILCS 5/103-1(d)** describes a strip search as **“having an arrested person remove or arrange some or all of his/her clothing so as to permit a visual inspection of the genitals, buttocks, anus, female breasts, or undergarments of such person.”** It is the opinion of the State’s Attorney’s Office that having a person strip down to his/her underwear in the presence of an officer constitutes a strip search **except** in cases where the removal of clothing is for the express purpose of collecting the clothing as physical evidence.
1. General Provisions:
 - a. An arrest must always precede a strip search.
 - b. No person arrested for a traffic, regulatory or misdemeanor offense, except in cases involving weapons or a controlled substance, shall be strip searched unless there is a reasonable belief that the individual is concealing a weapon or controlled substance.
 - c. Prior to conducting **any** strip search, an officer must obtain written permission from any command level supervisor.
 1. For the purposes of this Order, a supervisor of sergeant rank acting in the capacity of Shift Commander will be considered a command level supervisor.
 2. An arrested person may consent to a strip search. The arrested person must freely (knowingly, voluntarily and intelligently) sign a Strip Search Consent Form (**Appendix A**) witnessed by two (2) officers. Even when written consent by an arrested person is given, a command level supervisor must complete and sign a Strip Search Authorization Form (**Appendix B**) to conduct a strip search.
 - a. All circumstances concerning the strip search will be detailed in an incident report

3. A strip search may be conducted **without** written consent of the person to be searched for the following offenses, only when there is reasonable belief that the suspect is concealing a weapon or controlled substance. A command level supervisor must complete and sign a Strip Search Authorization Form (**Appendix B**) to conduct a strip search:
 - a. Felony arrests.
 - b. Weapons arrests.
 - c. Controlled substance arrests (marijuana only if felony amount).
4. When conducting a strip search based upon reasonable belief for a misdemeanor, regulatory, or traffic offense, the officer **must** comply with the following requirements of the strip search statute:
 - a. The officer must first obtain written permission to conduct a strip search from a command level officer.
 - b. When practical, it is advisable to contact an Assistant State's Attorney to determine whether the facts support a "reasonable belief"; however, this is not a requirement.
 - c. The officer must fill out a strip search form which must include:
 1. Written authorization of command level supervisor;
 2. Name of suspect subjected to the search;
 3. Name of officer(s) conducting the search;
 4. Date, time and place of the search; and,
 5. Name of supervisor present to observe the search.
 - d. A copy of the authorization form must be given to the person subject to the search.
5. When the actual strip search is conducted the following must be adhered to:
 - a. Officers of the same sex as the person to be searched must conduct the search;
 - b. The search must be conducted in privacy where persons not physically conducting the strip search cannot observe the search. An interview room may be used to conduct a strip search provided the interview room does not contain a camera or any type of listening device. A bathroom may also be utilized to conduct a strip search;
 - c. A supervisor must be present for the search;
 - d. If a supervisor of the same sex is not available, the supervisor will remain outside of the room where the search is conducted but will ensure the search is conducted according to the provisions of this order; and
 - e. All circumstances concerning the strip search will be detailed in the incident report.

- G.** Body Cavity Search: Pursuant to Illinois Compiled Statutes, *725 ILCS 5/103-1/(g)* no search of any body cavity other than the mouth shall be conducted without a duly executed search warrant.
1. Any warrant authorizing a body cavity search shall specify that the search must be performed under sanitary conditions and conducted by or under the supervision of a licensed physician.
- H.** Search based on Exigent Circumstances: A search where there is a compelling need for official action and no time to secure a warrant. The nature of the exigent circumstances defines the scope of the search, and thus exigent circumstances may justify a warrantless entry and securing of premises but not justify a full-scale search of the contents of the premises. A warrantless entry or search must be proportionate to the exigency excusing the warrant requirement. Common circumstances that may justify a warrantless entry under exigent circumstances may be one, or a combination of, the following:
1. Someone has been injured during the commission of a crime and needs immediate aid;
 2. A crime is in progress that constitutes an imminent threat to people or property;
 3. The premises may contain chemicals or explosives that present an immediate threat to occupants or others;
 4. Evidence of a crime is on the premises and may be destroyed unless officers take action;
 5. There are strong reasons to believe that a suspect may be on the premises and may be armed and therefore dangerous;
 6. There is a likelihood that a suspect may escape if not immediately apprehended.
- I.** Open Field Searches: Open field searches typically involve cannabis cultivation. The Supreme Court has held that the home and its curtilage are not necessarily protected from inspection that involves no physical invasion (I.E. What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection. (*Katz v. United States*, 389 U.S. 347,351 [1967])).
1. Officers may see what may be seen “from a public vantage point where they have a right to be” (476 U.s. at 213). Areas outside the curtilage include:
 - a. Woods.
 - b. Pastures.
 - c. Grassland.
- J.** Trash Pulls: A seizure of trash bags and other garbage receptacles discarded by the original owner(s) beyond the curtilage of a home or business. The U.S. Supreme Court ruled in *California v. Greenwood*, that a person does not have a reasonable expectation of privacy in garbage that has been left at the curb for collection. In addition, garbage left within the curtilage of a property where no

additional steps have been taken to ensure privacy around where the garbage is stored (e.g. fence or other barrier securing the area) would not constitute a search under the Fourth Amendment (*United States v. Hedrick*).

1. Areas within the curtilage of a home or business that is implicitly open to the public, such as a walkway to the front door, would not be considered a search when officers exercise the same freedom to walk on the curtilage as is implicitly granted to the public.

K. Search Warrant: A search performed as a judicial order. The search must be executed within 96 hours of the time that the search warrant was issued.

1. A copy of the search warrant must be left with the person from whom any instruments, articles or things were seized. If no person is available, the copy will be left at the place instruments, articles or things were seized.
2. Guidelines for search warrants
 - a. Require an inventory of articles seized be left at the place of execution.
 - b. Allow for the use of necessary force to execute the search warrant.
 - c. Require that all instruments, articles or things seized be brought before the issuing judge without unnecessary delay.
 - d. Require a search warrant return be completed by an officer and returned to the issuing judge without unnecessary delay. The return shall contain an inventory of instruments, articles or things seized.

III. OBTAINING SEARCH WARRANTS

A. Any time a request for search warrant is sought, the information shall be reviewed by the seeking unit's supervisor, before any further action is taken.

B. In order to obtain a search warrant, officers should first confer with the State's Attorney Office for legal assistance. Assistance will also be provided in the preparation of the actual search warrant which will contain the following:

1. An Affidavit in support of search warrant which includes:
 - a. Information describing the qualification of the officer/person supplying the information as to the reason for the search;
 - b. Probable Cause. A narrative of facts showing a reason to believe that a crime has been committed or is about to be committed along with why it is believed that the person or place to be searched contains the instruments, articles or things to be search for; and
 - c. Description of place or person and actual items being searched for.
2. A complaint for a search warrant which includes:
 - a. Name of complainant;
 - b. Criminal offense associated with search warrant;
 - c. Description of place or person to be searched;

- d. Description of items being searched for; and
 - e. The following sentence in its entirety shall be placed in the search warrant: “That the complainant has probable cause to believe that the aforesaid facts are true, for reasons listed in the attached affidavit which is herein incorporated.”
- C.** The search warrant shall contain the following:
- 1. Description of the place or person; and
 - 2. Description of the items being searched for.
- D.** The affiant will be required to swear on oath or in affirmation, before the granting judge, sufficient facts to:
- 1. Establish probable cause as outlined within the affidavit;
 - 2. Specifically describe the place or person or both to be searched;
 - a. Complete physical description of the place, person or both; and
 - b. Exact address and physical location.

Note: The Affidavit in Support of Search Warrant, Complaint for Search Warrant and Search Warrant should use the exact same wording in description of place or person and descriptions of items being searched for.

IV. PROCEDURE FOR EXECUTION OF SEARCH WARRANT

- A.** Personnel and equipment requirements:
- 1. During the execution of a search warrant at least one uniformed officer shall be present for reasons of identification and other duties as requested;
 - 2. Non-uniformed personnel shall be clearly identified as law enforcement personnel by wearing distinctive jackets or some other indicator of office;
 - 3. A canine team should be utilized whenever possible. For additional guidelines on canine usage see General Order **40.33 – Law Enforcement Canines**;
 - 4. At least one search team member will be properly equipped to perform the task of evidence technician. For additional information on crime scene processing see General Order **60.02 – Crime Scene Processing**;
 - 5. One member of the search team should be designated to record the specific times of the activities of the search team;
 - 6. An officer or multiple officers should be designated for each subject to be arrested. Upon securing the site, the suspect(s) shall be removed by the officer(s) and transported to the Public Safety Building, for interviewing and processing;
 - 7. All members of the search team will wear Department issued body armor. See General Order **40.12 - Police Patrol** for additional information;
 - 8. Care shall be taken to ensure adequate numbers of personnel, vehicles and equipment are available to serve the warrant; and,

9. If the search presents a high degree of risk due to known possession of firearms, dogs or other dangers to the search team members, the officer coordinating the search shall:
 - a. Utilize the services of Winnebago County Animal Control;
 - b. Consider notification of emergency medical services prior to serving the search warrant.

B. Preparing for Execution of Search Warrant.

1. The serving unit supervisor or their designee shall hold a pre-entry briefing. The pre-entry briefing shall advise the participating officers of the sequence of operation. Officers shall be advised of their individual duties and responsibilities. The briefing should include maps, charts or diagrams as needed to minimize confusion.
2. The serving unit supervisor or their designee shall attempt to determine if any circumstances have changed that would make executing the search warrant undesirable.
3. Assignment shall be made for the recording of the execution of the search warrant from entry until final exit. The recording can be done through video, photographs or documented in writing.
4. One or more members of the search team will be given the additional duty of conducting a security sweep of the site upon entry.

V. EXECUTION AND ENTRY PROCEDURES

- A.** The approach to the scene shall be done as covertly as possible. Radio traffic will be kept to the minimum amount to ensure safety.
- B.** The supervisor of the unit serving the search warrant shall be responsible for ensuring that the place to be searched is the same as listed in the search warrant.
- C.** The supervisor of the unit serving the warrant shall be responsible for ensuring that all team members are in place before entry is attempted.
- D.** One officer shall knock on the door and state in a loud clear voice a statement identifying them as a police officer possessing a search warrant and demanding entry. Only that force necessary to execute the search warrant shall be used.

Note: Unless otherwise dictated by circumstances and included in briefing for the search, entry shall be made at one point only in order to provide the greatest measure of safety possible for the officers and the public.

VI. “NO-KNOCK” SEARCH WARRANT

- A.** In the event that a “No-Knock” search warrant is to be sought, the reasons shall be stated in the affidavit of the search warrant as well as in the search warrant itself. The following are some exigent circumstances, which allow for entry without knocking and announcing a search warrant.
 1. The presence of firearms or explosives in the building in an area where they are accessible to any occupant.

2. The prior possession of firearms by an occupant of the building within a reasonable period of time.
 3. The presence of surveillance equipment such as video cameras or alarm systems, inside or outside the building.
 4. The presence of steel doors, wooden planking, crossbars, dogs or other similar means of preventing or impeding entry into the building.
 5. Other circumstances which may present a high degree of risk to officers executing a search warrant.
- B.** For reasons of officer safety, the “No-Knock” search warrant should be sought whenever permitted by law.

VII. SEARCH PROCEDURES

- A.** Immediately upon entry a security sweep of the site shall be conducted for reasons of safety.
- B.** The search shall be conducted as described during the pre-entry briefing.
- C.** Evidence shall be photographed, sketched and collected. For additional guidelines refer to General Orders **60.01 - Collection and Handling of Evidence and Found Property** and **60.02 - Crime Scene Processing**
- D.** Upon completion of the search, the premises shall be secured. If it cannot be secured due to damage caused by forceful entry, arrangements shall be made to guard the premise until it can be secured.

VIII. SEARCH WARRANT RETURN

- A.** The supervisor of the unit serving the search warrant shall assure that the search warrant return is properly completed and the return made before the issuing judge without unnecessary delay.
- B.** The search warrant return shall contain an inventory of items seized. The inventory may be in the form of one of the following:
1. A written list of items; or
 2. A copy of the evidence sheet listing the items.

IX. EFFECTIVE DATE

- A.** The effective date of this Order is June 18, 2008.

X. REVIEWS, REVISIONS AND CANCELLATIONS

- A.** This General Order will be reviewed each **March** by the **Accreditation Section** and, when necessary, revised or cancelled in accordance with the procedures for reviewing written directives established in General Order **10.01 - Written Directives**.
- B.** This Order incorporates policies and procedures established in General Order **1.05 - Limits of Authority** issued November 3, 2005 and supercedes the applicable policies and procedures of that Order.

- C. Any employee with suggestions for revisions and/or improvements to this order are encouraged to submit their ideas to the **Deputy Chief of the Administrative Services Bureau.**

BY ORDER OF

Chet Epperson
Chief of Police

APPENDIX A

ROCKFORD POLICE DEPARTMENT

Strip Search Consent Form

PERSONAL INFORMATION

Case Number: _____

Name: _____

Date of Birth: ____/____/____ **Sex:** M F

Address: _____

I, _____ give consent for _____
(NAME OF PERSON TO BE SEARCHED) (OFFICER CONDUCTING SEARCH - #1)

and _____ of the Rockford Police Department, in accordance
(OFFICER CONDUCTING SEARCH - #2)

with Illinois Law (725 ILCS 5/103-1), to conduct a strip search of myself. My signature indicates that I give this consent knowingly, voluntarily and intelligently. I further understand that I have a right to refuse this consent.

Signed: _____
(SIGNATURE OF PERSON TO BE SEARCHED) (DATE SIGNED)

Searching Officer #1: _____
(SIGNATURE)

Searching Officer #2: _____
(SIGNATURE)

**Command Supervisor*
authorizing search:** _____
(TITLE / RANK AND NAME) (SIGNATURE)

**Supervisor present
during search:** _____
(TITLE / RANK AND NAME) (SIGNATURE)
(If other than authorizing supervisor)

Time of Search: _____

Date of Search: _____

Location of Search: _____

* Includes sergeant designated to be acting shift commander

APPENDIX B

ROCKFORD POLICE DEPARTMENT

Strip Search Authorization Form

Case Number: _____

I, _____ authorize _____
(Command Supervisor) (OFFICER CONDUCTING SEARCH - #1)

and _____ of the Rockford Police Department, in accordance
(OFFICER CONDUCTING SEARCH - #2)

with Illinois Law (725 ILCS 5/103-1), to conduct a strip search of:

Name: _____

Date of Birth: ____/____/____ Sex: M F

Address: _____

Command Supervisor*
authorizing search:

(TITLE / RANK AND NAME) (SIGNATURE)

Searching Officer #1:

(SIGNATURE)

Searching Officer #2:

(SIGNATURE)

Supervisor present

during search:
(If other than authorizing supervisor)

(TITLE / RANK AND NAME) (SIGNATURE)

Time of Search: _____

Date of Search: _____

Location of Search: _____

* Includes sergeant designated to be acting shift commander