



Policy Title: Search and Seizure	Policy Number: 312
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312.1 PURPOSE AND SCOPE

The Livonia Police Department (LPD) subscribes to a Constitutional and Holistic policing philosophy. Both the federal and the state Constitutions provide every individual with the right to be free from unreasonable searches and seizures. Therefore, the purpose of this policy is to establish both an educational tool and general procedural guidelines related to Search and Seizure. As such, it does not address every conceivable search and seizure issue that may arise. The scope of this policy provides a general reference and framework from which to identify the common legal analysis of usual and customary police search and seizure issues.

If you are unsure of the legality of your search and seizure issue, ask your supervisor for assistance. This document also details guidelines for obtaining search warrants with the assistance of the prosecutor for the searches of suspects and property with authorization upon review of a judge or magistrate.

312.2 POLICY

The LPD recognizes the legal standards set forth in the United States Constitution and the Constitution of the State of Michigan and the importance of protecting its citizens from unreasonable searches and seizures. Members of the Livonia Police Department shall abide by the Constitution of United States and the State of Michigan along with all related laws, statutes and/or judicial decisions and interpretations. Therefore, it is the policy of the LPD that all searches and seizures by the LPD will comply with relevant federal and state law governing the search and seizure of persons and property.

The Department will provide relevant and current training to officers as guidance for the application of current law and prosecutorial considerations regarding specific search and seizure situations, as appropriate. Whenever practicable, officers are encouraged to contact a supervisor to resolve questions regarding search and seizure issues prior to electing a course of action.

312.3 SEARCH CATEGORIES

There are two types of search categories. They are (1) Reasonable Expectation of Privacy which is based on Katz and (2) Trespass Upon Personal Property (Chattel) which has been re-established since June of 2012 in the Jones case.

Reasonable Expectation of Privacy Search. This type of search occurs when the government intrudes upon a citizen's subjective reasonable expectation of privacy. However, that expectation of privacy must be objectively reasonable. An example of this type of search occurs when an officer enters the home or vehicle of a subject.

Trespass Upon Personal Property (Chattel) Search. This type of search occurs when the government physically occupies (possesses, touch, manipulate, mark) private personal property for the purpose of obtaining information. An example of this type of search is when the government places a GPS monitor on a vehicle to gather data related to their travels.

DEFINITIONS

312.3 HISTORICAL CONSTITUTIONAL PROVISIONS

The Fourth Amendment to the United States Constitution states, in pertinent part that: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” Also, Article 11 of the Michigan Constitution is consistent with the provisions of the United States Constitution regarding search and seizure.

312.4 REQUIREMENT FOR SEARCH WARRANT

The Fourth Amendment generally provides that a valid warrant is required in order for a search to be valid. However, there are exceptions to that rule.

312.5 WARRANTLESS SEARCHES – GENERAL PRINCIPLES

Since the adoption of the Fourth Amendment, there have been several judicially recognized exceptions to the rule requiring a search warrant.

- A. Most searches conducted by members of LPD will be warrantless searches.
- B. Although conditions will vary and officer safety and other exigencies must be considered in every search situation, the following general guidelines should be followed whenever circumstances permit:
 - Members of LPD will strive to conduct searches with dignity and courtesy.
 - Officers should explain to the person being searched the reason for the search and how the search will be conducted.
 - Searches should be carried out with due regard and respect for private property interests and in a manner that minimizes damage.
 - Property should be left in a condition as close as reasonably possible to its pre-search condition.
 - In order to minimize the need for forcible entry, an attempt should be made to obtain keys, combinations or access codes when a search of locked property is anticipated.
- C. Many times, one or more of the exceptions will be applicable to the search. In this instance, all applicable exceptions should be taken into consideration.
- D. When searching under any exception or number of exceptions, the unique case facts and circumstances that justify the reasonableness of the warrantless search must be appropriately documented on a police report.
- E. The usual and customary search warrant exceptions are:
 - Border
 - Emergency
 - Administrative
 - Consent

- Hot Pursuit
- Plain View
- Probable Cause and Exigent Circumstances (Auto Exception)
- Inventory
- Search Incident to Arrest
- Stop and Frisk (Terry Stop and Frisk)

312.6 EXCEPTIONS TO WARRANT REQUIREMENT

When an Officer utilizes an exception to the search warrant requirement, they shall do so in a reasonable manner that takes into consideration and adheres to the unique legal aspects and constitutional parameters of each exception.

Border.

Summary of Legal Principle. Border searches are an exception to the Fourth Amendment warrant requirement for reasonable searches in places that are the functional equivalent of the United States Border. For example, customs agents at the border do not need probable cause or reasonable suspicion to conduct routine searches of an entrant's person or effects. Further detention of persons at the border generally requires reasonable suspicion, but this is not necessarily so with vehicles at the border.

- The same rules generally apply to permanent checkpoints located some distance from the border. But reasonable suspicion is required for the investigatory stop of a vehicle by Border Patrol Agents on roving patrol. Officers may have contact with Border Patrol Agents who are conducting searches pursuant to their duties.
- Members of the Livonia Police Department will not be involved with the Border exception unless they are working in conjunction with an agent of the federal government that has authority to conduct a border search.
- Officers assigned to a concept team involving federal authority, may have involvement in assisting in these types of searches when working with the federal agency, however, officers will not, under most circumstances, not be involved in this type of search.

Emergency.

Summary of Legal Principle. The Supreme Court has held that police may enter a building without a warrant when they have an objectively reasonable basis to believe that an occupant is seriously injured or threatened with such injury. See *Brigham City v Stuart*, 547 U.S. 398 (2006) and *Michigan v Fisher*, 558 U.S. 45 (2009).

- During an emergency entry, the officer should do no more than is reasonably necessary to determine whether a person needs assistance, and to provide that assistance.
- Reasonableness is the requirement for an emergency aid entry. See *People v Brzezinski*, 243 Mich App 431 (2000).
- There are a number of factors that allow the emergency entry if the officer has an "objectively reasonable basis that:
 - i. seriously injured or

- ii. threatened with such injury or
 - iii. the need to protect life or
 - iv. the need to preserve life or
 - v. avoid serious injury or
 - vi. person within [the house] is in need of immediate aid
- An officer involved in conducting an entry based on the emergency exception shall properly document the unique and case specific facts and circumstances that led to their objectively reasonable basis for entry on their police report.

Administrative.

Summary of Legal Principle. Administrative searches are conducted pursuant to a statutory scheme governing a particular industry or business that is “pervasively regulated.”

- Generally, there is implied consent for the search. However, the scope of the search must be within the statutory or regulatory framework.
- A warrantless administrative search is not conducted for a criminal investigation and is invalid if the search is conducted for that purpose.
- Officers will rarely be involved in these types of searches unless assisting other governmental agencies, and/or conducting specific administrative inspections such as liquor control commission licensing checks, motor carrier inspections, jail shakedowns, secondhand dealer inspections, firearms dealers, etc.

Consent

Summary of Legal Principle. Consent is an exception to the warrant requirement for search and seizure. It must be voluntary; that is, it must be unequivocal, specific, and freely and intelligently given. Also, consent may be limited in scope, and it can be revoked at any time, although not retroactively.

- Voluntariness. Consent to a search must be voluntary. To be voluntary, consent must be “unequivocal, specific, and freely and intelligently given.” Consent to a search is not voluntary if it is the result of coercion or duress. The burden is on the prosecution to demonstrate that consent was valid. See *People v Chowdhury*, 285 Mich App 509 (2009).
- Totality of Circumstances. The validity of consent is evaluated under the totality of the circumstances. Circumstances to be considered include subtly coercive police questions and the possibly vulnerable state of the person who consents. See *Schneckloth v. Bustamonte*, 412 US 218 (1973).
- Right to Refuse Consent. The police are not required to advise a suspect of the right to refuse consent. Knowledge of the right to consent is one factor to be considered when analyzing the totality of circumstances surrounding consent, but the government does not need to establish such knowledge for consent to be effective. See *People v Borchard–Ruhland*, 460 Mich 278; 597 NW2d 1 (1999); *Ohio v Robinette*, 519 US 33; 117 S Ct 417; 136 L Ed 2d 347 (1996).
- Officer Obligation. If a citizen or suspect inquires as to if they can deny, limit or revoke consent, the officer must advise them that they may do so.

- Non-Coercive. Police questioning or conduct that is coercive, or the existence of a coercive atmosphere, are relevant in determining whether the consent was voluntary. See *People v Klager*, 107 Mich App 812; 310 NW2d 36 (1981).
- Limitations. Consent may be limited in scope. The standard for measuring the scope of a suspect's consent is objective reasonableness: what would the typical reasonable person have understood by the exchange between the officer and the suspect. See *People v Frohriep*, 247 Mich App 692 (2001) and *Florida v Jimeno*, 500 US 248 (1991).
- Revocation. A suspect may revoke consent at any time during a search and, once revoked, police must stop the search unless it can be justified on some other basis. Evidence obtained during the consensual portion of the search may be considered in determining whether a continued search may be justified on some other basis. See *People v Powell*, 199 Mich App 492; 502 NW2d 353 (1993).
- Officers shall conduct consent searches consistent with applicable law and such searches shall be properly documented in their police report.

Hot Pursuit

Summary of Legal Principle. The Hot Pursuit is an exigent circumstance that allows a police officer to pursue a fleeing felon in what would otherwise be a place protected by the 4th Amendment. See *United States v Santana*, 427 U.S. 38 (1976).

- The pursued suspect must be trying to escape apprehension by flight. See *Johnson v United States*, 333 U.S. 10 (1948) and *Warden v Hayden*, 387 U.S. 294 ((1967).
- Probable Cause of felonious activity on the part of the pursued subject is required. See *People v Joyner* 93 Mich. App. 554 (1979).
- The exception applies when there is probable cause that exigent circumstances are present. Exigent circumstances occur when, "the exigencies of the situation make the needs of law enforcement so compelling that a warrantless search is objectively reasonable under the Fourth Amendment." *Missouri v McNeely*, 569 US 141 (2013).
- The essence of an exigency that would excuse the failure to obtain a warrant is the existence of circumstances known to the police that prevent them from taking the time to obtain a warrant because to do so would thwart the arrest. *People v Parker*, 417 Mich 556 (1983).
- Officers shall conduct hot pursuit encounters consistent with applicable law and such actions shall be properly documented on their police report.

Plain View

Summary of Legal Principle. The Plain View doctrine allows a seizure to occur without a warrant when (1) the police officer is lawfully in the position to observe the items, (2) it must be "immediately apparent" to the police that the items they observe may be evidence of a crime, contraband, or otherwise subject to seizure. See *Texas v Brown*, 460 U.S. 730 (1983).

- The discovery of the evidence does not have to be inadvertent. See *Horton v California*, 496 U.S. 128 (1990).

- The Officer cannot move objects to develop probable cause to seize. See *Arizona v Hicks*, 480 U.S. 321 (1987).
- Officers shall conduct plain view seizures consistent with applicable law and such seizures shall be properly documented in their police report.

Probable Cause and Exigent Circumstances

Summary of Legal Principle. Probable cause occurs when known facts and circumstances sufficient to warrant a person of reasonable prudence in the belief that contraband or evidence of a crime will be found. Each case must be determined on its own facts or the totality of the circumstances. There are four exigent circumstances which are: "(1) hot pursuit of a fleeing felon, (2) imminent destruction of evidence, (3) the need to prevent a suspect's escape, and (4) the risk of danger to the police or others inside or outside the dwelling." See *Forfeiture of \$176,598, In re*, 443 Mich. 261 (Mich. 1993) and *U.S. v. Rohrig*, 98 F.3d 1506 (6th Cir. 1996) and *Kentucky v King*, 563 U.S. 452 (2011).

- Vehicle Searches. If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment permits police to search the vehicle and seize the contraband. See *Pennsylvania v Labron*, 518 U.S. 938 (1996).
- Impounded Vehicles. Once a vehicle has been inventoried, impounded and is in department custody, the officer will obtain a search warrant prior to conducting a search of the impounded vehicle.
- Officers will conduct probable cause and exigent circumstances searches consistent with applicable law and such searches shall be properly documented in their police report.

Inventory

Summary of Legal Principle. When vehicles are lawfully in the process of being impounded, Officers will follow departmental established procedure by securing and inventorying the vehicles contents. These procedures address three rationales: (1) to protect the owner's property while it remains in government custody, (2) to protect the government against claims of lost or stolen property, and (3) to protect officers from potential danger posed by the contents of the car. See *South Dakota v. Opperman* 428 U.S. 364 (1976)

- Opening Closed Container. Officers are authorized to inventory, and search closed container within the vehicle. See *Colorado v. Bertine*, 479 U.S. 367 (1987).
- Opening Locked Containers. Any locked or sealed containers should be opened if this can be done without damaging the container. If in the officer's opinion; locked/sealed containers that may contain something dangerous may be forced open with the approval of a supervisor. This should only be done if the level of danger will not be increased by forcing open the container. See *Florida v Wells*, 495 U.S. 1 (1990).
- For additional procedures regarding vehicle inventories, please see LPD Policy #502, Vehicle Towing.
- Officers shall conduct an inventory of a vehicle consistent with the applicable law and such actions shall be properly documented on their police report.

Search Incident to Arrest

Summary of Legal Principle. When an arrest is made, it is reasonable for an officer to search the person arrested to remove any weapons that the arrestee might use to resist arrest. It is also reasonable for an officer to search and seize any evidence on the arrestee's person to prevent its concealment or destruction and for the means of committing an escape. See *Chimel v. California*, 395 U.S. 752 (1969)

- Search of Arrestee. During a lawful arrest, a full search of the person may be made by virtue of the lawful arrest. See *United States v. Robinson*, 414 U.S. 218 (1973).
- Search of Vehicle After Arrest of Occupant. The police may search a vehicle incident to arrest after the arrestee has been secured when it is reasonable to believe that evidence related to the crime of arrest may be found within the vehicle. See *Arizona v. Gant*, 556 U.S. 332 (2009).
- Incident to Traffic Citation. Law enforcement officers are not justified in conducting searches incident to traffic citations. See *Knowles v. Iowa*, 525 U.S. 113 (1998). A search incident to arrest is unconstitutional when there is no reason to believe that evidence relevant to the crime of arrest would be found in the vehicle when Officers are addressing civil infractions or a person driving without a valid license. *People v Tavernier*, 295 Mich App 582 (2012).
- Area of Search. Searches "incident to arrest" are limited to the area within the immediate control of the suspect, which is the area into which the arrestee might reach to grab a weapon or evidentiary items. See *Chimel v. California*, 395 U.S. 752 (1969) and *Davis v. Robbs*, 794 F.2d 1129 (6th Cir. 1986).
- Officers shall conduct searches incident to arrest in a manner consistent with applicable law and such actions shall be documented on their police report.

Stop and Frisk (Terry Stop and Frisk)

Summary of Legal Principle. The 4th Amendment prohibits unreasonable searches and seizures. An officer "seizes" a person when he or she restrains their freedom to walk away. Likewise, there is, by definition, a "search" when an officer makes a careful exploration of outer surfaces of person's clothing (i.e. patdown or frisk) to attempt to find weapons. These searches and seizures must be reasonable to justify them under the Fourth Amendment. See *Terry v. Ohio*, 392 U.S. 1 (1968).

- In justifying any particular intrusion, the Officer must be able to point to specific and articulable facts that, taken with rational inferences from those facts, reasonably warrant that stop. The stop must be based on more than a hunch. Simple good faith on part of the officer is not sufficient. See *Terry v. Ohio*, 392 U.S. 1 (1968).
- Reasonable Suspicion in General. Reasonable suspicion entails something more than an inchoate or unparticularized suspicion or 'hunch,' but less than the level of suspicion required for probable cause. See *United States v. Sokolow*, 490 U.S. 1, (1989) and *People v. Champion*, 452 Mich. 92 (1996).
- Reasonable Suspicion for Stop. An Officer must have reasons that they can articulate and place into their police report why they believe that the subject stopped is, was or is about to be involved with criminal activity. The detaining officer must have had a particularized and objective basis for the suspicion of

criminal activity. See *People v. Shabaz*, 424 Mich. 42(1985). *People v. Champion*, 452 Mich. 92 (1996).

- **Reasonable Suspicion for Frisk.** An Officer must have reasons that they can articulate and place into their police report why they believe that the subject stopped is armed and dangerous. "An officer who makes a valid investigatory stop may perform a limited patdown for weapons if the officer has reasonable suspicion that the individual stopped for questioning is armed and thus poses a danger to the officer. The permissible scope of a patdown is reasonably designed to discover guns, knives, clubs, or other hidden instruments that could be used to assault an officer. *Adams v. Williams*, 407 U.S. 143 (1972) and *People v. Champion*, 452 Mich. 92 (1996).
- Officers shall conduct Terry Stop and Terry Frisks in a manner consistent with applicable law and such actions shall be document on their police report.

312.7 SEARCHES OF CRIME SCENE

Once the exigency of the situation has passed, a search warrant shall be secured to conduct a search of a crime scene, whether a murder scene or other criminal scene. Pursuant to the exigent circumstance's doctrine, Officers may make warrantless entries if they reasonably believe a person needs immediate aid and may make a protective sweep, a search is not constitutionally permissible simply because a homicide has recently occurred on the premises. See *Mincey v Arizona*, 437 US 385 (1978) and *Brigham City v Stuart*, 547 U.S. 398 (2006) and *Michigan v Fisher*, 558 U.S. 45 (2009). There is no "crime scene" exception to the warrant requirement.

312.8 CURTILAGE AND OPEN FIELDS DOCTRINE

The curtilage of a home is the area immediately surrounding and associated with the home. The curtilage is treated as part of the home for Fourth Amendment purposes. "Open fields," on other hand, are areas outside the home, in which there is no reasonable expectation of privacy regardless of whether they are fenced or "no trespassing" signs are posted. An intrusion into an open field is not a search for Fourth Amendment purposes. See *Hester v. United States*, 265 U.S. 57 (1924) and *Oliver v United States*, 466 U.S. 170 (1984) and *United States v Dunn*, 480 U.S. 294 (1987).

312.9 OPEN VIEW DOCTRINE

Under the open view doctrine, viewing items that are readily visible from an area that is not constitutionally protected (from which any member of the public might see the items) is not a search for Fourth Amendment purposes.

- There is no search for Fourth Amendment purposes when an officer views items or activity with the officer's normal vision from a vantage point that is not within a constitutionally protected area. See *People v Barbee*, 325 Mich App 1; 923 NW2d 601 (2018).

- The open view doctrine allows officers to look into a constitutionally protected area that is open to public view, but it does not allow entry into a constitutionally protected area; further justification for entry is required. See *United States v Dunn*, 480 US 294 (1987)

312.10 PLAIN FEEL DOCTRINE

During a Terry frisk, non-threatening contraband discovered by “plain feel” during a lawful protective weapons frisk is constitutional and allowed as long as the frisk does not exceed its stated purpose. *Minnesota v Dickerson*, 508 US 366 (1993).

- An officer may frisk a suspect for weapons and seize nonthreatening contraband that is immediately apparent by plain feel. *United States v Garcia*, 496 F3d 495 (6th Cir. 2007).
- The plain feel (or plain touch) doctrine allows the warrantless seizure of an object felt during a legitimate frisk for weapons when the identity of the object is immediately apparent and the officer has probable cause to believe that the object is contraband. *People v Champion*, 452 Mich 92 (1996).
- Whether an officer had probable cause to believe that an object was contraband is determined under the totality of the circumstances. *People v Champion*, 452 Mich 92 (1996).

312.11 SEARCH PROTOCOL

Although conditions will vary, and officer safety and other exigencies must be considered in every search situation, the following guidelines should be followed whenever circumstances permit:

- (a) Members of this department will strive to conduct searches with dignity and courtesy.
- (b) Officers should explain to the person being searched the reason for the search and how the search will be conducted.
- (c) Searches should be carried out with due regard and respect for private property interests and in a manner that minimizes damage.
- (d) In order to minimize the need for forcible entry, an attempt should be made to obtain keys, combinations or access codes when a search of locked property is anticipated.
- (e) Whenever practicable, a search should not be conducted by a lone officer. A cover officer should be positioned to ensure safety and should not be involved in the search.
- (f) When the person to be searched is of the opposite sex as the searching officer, a reasonable effort should be made to summon an officer of the same sex as the subject to conduct the search.

When it is not practicable to summon an officer of the same sex as the subject, the following guidelines should be followed:

1. Another officer or a supervisor should witness the search.
2. The officer should not search areas of the body covered by tight-fitting clothing, sheer clothing or clothing that could not reasonably conceal a weapon.

3. If an officer of the same sex is not reasonably available, a witnessing officer should be present during the search or the officer should utilize a video that provides an overview perspective of the search.

312.12 DOCUMENTATION

Officers are responsible for documenting any search and ensuring that any required reports are sufficient including, at minimum, documentation of:

- Reason for the search.
- Any efforts used to minimize the intrusiveness of any search (e.g., asking for consent or keys).
- What, if any, injuries or damage occurred.
- All steps taken to secure property.
- The results of the search including a description of any property or contraband seized.
- If the person searched is the opposite sex, any efforts to summon an officer of the same sex as the person being searched and the identification of any witness officer.

Supervisors shall review reports to ensure the reports are accurate, that actions are properly documented, and that current legal requirements and department policy have been met.