



# HIRAM POLICE DEPARTMENT

<b>S.O.P. 8.02</b>	<b>EFFECTIVE DATE: 03/27/2015</b>
<b>SEARCH WARRANTS</b>	<b>APPROVAL: CHIEF T. A. VANDE ZANDE</b>
<b>TOTAL PAGES: 15</b>	<b>REVIEW: Annually</b>

## I. POLICY

To establish guidelines for City of Hiram Police Department officers in controlling search and seizure of property and persons through an overview of existing laws. It shall be the policy of the department to conduct searches of persons, places and things pursuant to established state and federal laws governing search warrants and/or warrantless searches. Law enforcement officers shall have due regard for the protection guaranteed under the provisions of the Fourth Amendment to the U.S. Constitution. The following procedures shall be followed for any arrest made with or without a warrant.

## II. EXECUTION OF A SEARCH WARRANT

### A. When a Search Warrant can be Executed

The search warrant may be executed at any reasonable time, day or night; a reasonable time depends on the facts in each individual case (OCGA 17-5-26). A search warrant must be served within ten (10) days from date of issuance. If the warrant is served, a "duplicate copy shall be left with any person from whom any instruments, articles, or things are seized; or if no person is available, the copy shall be left in a conspicuous place on the premises from which the instruments, articles, or things were seized". Any search warrant not served within ten (10) days from the date of issuance shall be void and will be returned to the court of the judicial officer who issued the warrant (OCGA 17-5-25)" A written return of all instruments, articles, or things seized shall be made without unnecessary

delay before the judicial officer named in the warrant or before any court of competent jurisdiction. An inventory of any instruments, articles, or things seized shall be filed with the return and signed under oath by the officer executing the warrant" (OCGA 17-5-29).

Upon application of the search warrant, the officer shall obtain three copies. The first copy shall be left with the magistrate after the warrant is approved. The second copy shall be left pursuant to the previous paragraph above, and the final copy shall be returned to the Magistrate's Court upon completion of the search.

#### B. Force Used in the Execution of a Search Warrant

1. An officer has a right under a lawful search warrant to use all necessary and reasonable force to get into any building, dwelling or other area described in the search warrant (OCGA 17-5-27).
2. Unless the search warrant contains a no-knock provision, an officer is required to give oral notice to the person or persons inside, if any, of the identity of the officer and of the fact that the officer has a search warrant to search the premises (OCGA 17-5-27).
3. If the person or persons inside refuse to acknowledge an officer's notice, or if an officer cannot determine if anyone is present inside, or if it is unoccupied, an officer can then use reasonable force to gain entrance (OCGA 17-5-27).
4. Any action taken by the officer should be recorded as to each action taken prior to making a forced entry, such as: "... knocked on door, identified myself by position and advised I have a search warrant for the premises and no one responded to my call and so entrance was gained." The purpose of the record is that the officer will have to testify in court concerning the reason for his actions. (Jackson v. State, 129 Ga. App. 901; 1973).
5. Whenever force is used in order to gain entry into a premise or place, and any amount of damage occurs, the superior officer in charge of the search shall insure that all damage is documented and photographs taken if necessary.
6. The appropriate amount of time that the officer should allow will depend on the conditions of each search.

#### C. Locations/ Persons to be Searched, Pursuant to a Search Warrant

1. Officers shall be limited to search in areas particularly described by the search warrant.
2. Officers shall also be limited to searching only for those items particularly described in the search warrant.
3. Officers shall be limited to searching individuals named or described in the search warrant. Officers should have more descriptive

information than "a male," "a white female," etc., if the officer is to list an individual on the warrant to be searched.

4. In the execution of the search warrant, the officer executing the same may reasonably detain and/or search any person in the place at the time:
  - a) To protect himself from attack; or
  - b) To prevent the disposal or concealment of any instruments, articles, or things particularly described in the search warrant (OCGA 17-5-28).

#### D. Personnel Executing Search Warrants

##### 1. Supervisory Personnel

- a) Prior to the execution of a search warrant, an officer of supervisory rank or detective should have reviewed the affidavit and warrant and the circumstances of its issuance to ensure that requirements of law are being met and that all the necessary elements are present even though the warrant may have already been signed by the appropriate authority. All search warrants and affidavits obtained by any officer should, if at all possible, be reviewed first by a supervisor or detective prior to review and approval by a magistrate.
- b) When appropriate, the District Attorney's Office will be consulted prior to, during and after the service of search warrants for advice, recommendation, or for any other purpose the officer deems appropriate (e.g., preparation for prosecution).
- c) An officer of supervisory rank or detective shall be present at the execution of any search warrant along with other personnel as needed. If possible, the supervisor is to be from the unit concerned; if unavailable, a Sergeant or higher ranking officer from another Unit shall assist.

##### 2. Assigned Officers

All involved personnel shall conduct themselves in a professional manner by:

- a) Restricting their actions in such a manner as is consistent with the scope of the warrant;
- b) Whenever possible, leaving property not seized in an orderly fashion (or as found) and insuring that it is not left in an unreasonable state of disorder or destroyed;
- c) Insuring all evidence seized is documented on the inventory and forwarded to the Evidence Room and/or Crime Lab.

**NOTE:** Items considered to be illegal and/or contraband are not to be destroyed without either the appropriate order of the court or, in cases where prosecution is not to follow, by proper documentation.

E. Obtaining and Execution of a No Knock Search Warrant

1. To gain entrance to any building or dwelling without giving notice, a search warrant must contain a no-knock provision. This provision should be in the body of the affidavit.
2. A no-knock provision cannot be based upon a mere suspicion, but rather must be predicated upon probable cause from an investigation and/or informant. The following would be examples of probable cause for a no- knock provision:
  - a) A reliable informant or other source provided information concerning a suspect who kept evidence in a bathroom, such as drugs, and would destroy the evidence when the officer knocked on the door (Scull v. State, 122 Ga. App. 696).
  - b) A reliable informant or other source provided information concerning a suspect who kept firearms next to a door, and when an officer knocked on a door, the suspect would shoot **through a door in an attempt to kill or harm the officer (Jones v. State, 127 Ga. App. 137).**
3. Since an officer has a right to use necessary and reasonable force it is also a responsibility of an officer to obtain the correct address and location of property or premises to be searched. Searching the wrong person or premises could lead to prosecution and/or civil liability of an officer.

**III. SEARCHES WITH AND WITHOUT A WARRANT**

A. Search with a Warrant

The following is required of all search warrants and search warrant affidavits:

1. Issuance

The warrant must be issued by a judicial officer authorized to hold a court of inquiry (OCGA Section 17-5-21).

2. Probable Cause

The judicial officer must find probable cause that the place to be searched contains items connected with criminal activity. (Berger v. New York, 388 U.S.41) The officer must swear or affirm under oath that the facts presented for establishing probable cause are true. Probable cause is defined as "what facts and circumstances within an officer's knowledge would lead a reasonable man to

believe that an offense has been committed or is being committed and/or that a particular individual has committed or is committing the offense."

3. Description

The warrant must describe with sufficient particularity the person or the place to be searched and the items to be seized (OCGA 17-5-23). If a place can be easily identified by a street number or address, then no further information shall be necessary; however, an officer or may elect to give a physical description the place to be searched. Also by giving a legal description by giving directions from the closest major intersection.

**NOTE:** A warrant may be issued based on an affidavit containing only hearsay where the reliability of the informant is established and the underlying factual circumstances are described.

B. Search without a Warrant/ Incident to Arrest

1. Scope

A search incident to a lawful arrest must be limited in scope to the arrestee's person and the area "within his immediate control." (Chimel v. California, 395 U.S. 752; 1969).

2. When authorized

A search incident to an arrest shall be authorized for the following reasons:

- a) For the security of the officer
- b) To secure items that might aid in an arrested individual's escape
- c) To prevent the destruction of instruments or fruits of a crime

3. Nature

A search incident to a lawful arrest must be concurrent in time and place with the arrest.

4. Booking or Administrative Searches

A custodial search of an arrested individual during booking is justified as an administrative search. A custodial search of the arrestee's person may be justified as either an administrative search or as an inventory procedure. Once an officer has taken any

property discovered during the search into his control, a further non-contemporaneous search is no longer an incident of the arrest.

C. **Consent Search (GLECP Std. 4.1a)**

1. **Voluntariness**

The law enforcement officer obtaining consent to search has the burden of proving that the defendant's consent to a warrantless search was given freely and voluntarily.

2. **Test**

The voluntariness of a person's consent is measured by the totality of the circumstances.

3. **Consent after Arrest**

If the consenting party is in custody, the voluntariness of the consent is still measured by the totality of the circumstances, although courts will analyze the relevant factors more critically.

4. **Third Party Consent**

Consent for a warrantless search may be given by a third party who shares control of (or has common authority over) the premises or items to be searched. Areas belonging exclusively to parties not present or not giving consent shall not be searched.

D. **Exigent Circumstances (GLECP Std. 4.1e)**

1. **Justification**

A warrantless search is permitted when there is both probable cause and exigent circumstances. The ultimate test is whether there is such a compelling necessity for immediate action that proceeding without a warrant is justified.

2. **Exigent Circumstances Defined**

Hot pursuit, a fleeing suspect, imminent destruction of evidence, or other situations in which speed is essential to the accomplishment of lawful law enforcement action are examples of exigent circumstances.

E. **Crime Scene Search (GLECP Std. 4.1d)**

*Mincey v Arizona* 437 U.S. 385 (1978) The Supreme Court ruled there is no crime scene exception to the search warrant requirement. This means that the general rule with regard to Crime Scene is "Get a search warrant!"

There are many exceptions to this rule and some of them are the following:

1. When the defendant does not possess a reasonable expectation of privacy in the premises, a search warrant is not necessary. (The defendant is a trespasser; no warrant is required)
2. When the search is conducted for the purpose of finding dead or injured crime victims or when rendering aid to a victim, no warrant is required.
3. When evidence is being protected during the time it takes to obtain a search warrant, no warrant is required to enter the crime scene.
4. No warrant is required to enter the crime scene in order to find the perpetrator who may still be present on the scene.
5. A crime scene search may be made without a warrant if:
  - a) It is an emergency and there is reasonable belief that there is imminent danger to person. In an emergency crime scene search, contraband in plain view may be seized. If evidence is scene which is not contraband, it is best to get a warrant before seizing it.
  - b) A homicide victim is the sole occupant.
  - c) The scene is a public place.

#### **IV. STOP AND FRISK (GLECP Std. 4.1b)**

##### **A. Grounds for a Stop**

To lawfully stop an individual, the law enforcement officer must have a reasonable suspicion that the person stopped is involved in criminal activity.

##### **B. Grounds for a Frisk**

To lawfully frisk an individual, the law enforcement officer must have a reasonable belief that the person stopped is armed and/or dangerous. In the case of the self-protective search for weapons, he must be able to point to particular facts from which he reasonable inferred that the individual was armed and/or dangerous. The frisk must be limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby. (Terry v. Ohio, 392 U. S. 1) Officers are reminded that a frisk is not a "search."

##### **C. Nature of a Frisk**

The frisk for weapons must be only a limited intrusion of a person (pat down). Pockets cannot be entered during a pat down unless the officer feels an object which is consistent with a weapon in its size, shape, or feel or unless by plain feel it is clearly identifiable as contraband.

D. Search after a Frisk

Feeling an object which might be a weapon will justify a more extensive intrusion to obtain the suspected weapon. An officer may enter pockets to dispel the alarm that a weapon is present.

**V. VEHICLE STOPS**

A. Significance of Stop

A "seizure" occurs whenever a vehicle is stopped, even though the purpose is generally limited and the detention quite brief; therefore, the Fourth Amendment applies.

B. Grounds for Stop

There must be reasonable suspicion to justify an investigatory stop of an individual vehicle. Law enforcement officers do not have an unrestricted right to stop people, either pedestrians or drivers.

C. Vehicle Roadblocks

Vehicles may also be stopped at general roadblocks which serve legitimate law enforcement purposes. If the purpose of the roadblock is legitimate, (e.g., to check drivers licenses and proof of insurance), and if an attempt to stop all vehicles and not randomly stop vehicles, and if evidence of other crimes is observed, the officer has the right to take reasonable investigative steps. Vehicle roadblocks shall be prohibited unless approved by a uniform watch commander (See S.O.P. 16.1, Traffic Safety Checkpoints).

D. Initial Intrusion

Law enforcement officers may take reasonable actions to protect themselves after a lawful stop of a motor vehicle. An officer may prefer to ask the driver or passengers of a vehicle to step out of the vehicle or remain inside, at his discretion. Law enforcement officers may consider external factors such as weather, crowds, etc., prior to asking anyone to step out of their vehicle. (Maryland v Wilson; US v Sanders; Brendlin v. California)

E. Further Intrusion

If a law enforcement officer has a reasonable belief that a person stopped is presently armed and dangerous, he may conduct a limited protective search of the vehicle and frisk of the person.

**VI. VEHICLE SEARCHES**

A. Arrest of Occupant

If a person is arrested after his vehicle is stopped, areas of the vehicle accessible to him may be searched incident to the arrest if the officer can articulate a reasonable belief that the vehicle contains evidence of the



offense of arrest. If there is no reasonable belief that evidence of the offense might be present, no search shall be done. However, if the vehicle is being impounded, a thorough inventory will be conducted as a matter of department policy.

**B. Exigent Circumstances (GLECP Std. 4.1c)**

The mobility of motor vehicles often constitutes exigent circumstances authorizing a warrantless search. The "automobile exception" to the warrant requirement demonstrates a willingness of courts to excuse the absence of a warrant when spontaneous searches are required of a vehicle. (Gondor v. State, 129 Ga. App. 665; 1973)

**C. Standard**

To search under exigent circumstances, the law enforcement officer must have probable cause to believe the vehicle contains items subject to seizure.

**D. Time and Place of Search**

If probable cause and exigent circumstances existed originally, law enforcement may search the vehicle after towing it to the impound lot without securing a search warrant.

**VII. CONTAINER AND LUGGAGE SEARCHES**

**A. Standard**

Containers generally may only be searched pursuant to a warrant based on probable cause.

**B. Automobiles**

A law enforcement officer who has legitimately stopped an automobile and who has probable cause to believe contraband is located somewhere within the car may conduct a warrantless search of the vehicle, including compartments and containers within the vehicle whose contents are not in plain view. (U. S. v. Ross, 456 U. S. 798, 31 CrL 3051; 1982)

**C. Inventory**

Closed containers may be opened during a personal effects inventory. (Ill. v. Lafayette, 162 U.S. 640, 33 CrL 3183; 1983)

**VIII. INVENTORY OF VEHICLES STD 4.1f**

**A. Seizure of Vehicle**

For an inventory of a vehicle to be valid, law enforcement custody of the vehicle must be lawful. An inventory of a vehicle is not a search. An inventory is a departmental policy designed to insure that valuable possessions within a vehicle under law enforcement custody are accounted for. Any items illegal to possess which are found during a vehicle inventory will be taken into evidence.

B. Justification

The inventory must be conducted only to fulfill the law enforcement care taking function of securing the contents of the vehicle.

C. Nature of Inventory

The search must be a routine part of standard law enforcement procedures for impounding vehicles, rather than a pretext for an investigatory search, and may not extend to locked luggage or other similar repositories of personal effects. It shall be standard operating procedure for Hiram law enforcement officers to inventory all impounded vehicles.

**IX. PLAIN VIEW DOCTRINE STD 4.1g**

A. In order for the Plain View Doctrine to apply:

1. The law enforcement officer must be at a location where he has a legal right to be;
2. The seized items must appear on their face to be incriminating, and;
3. The items seized must be plainly visible to the law enforcement officer.

**X. ABANDONMENT**

A. Act

Abandonment is a voluntary relinquishment of control of property, i.e., disposing of, denying ownership.

B. Implications

Abandoned property is not protected by the Fourth Amendment. Officers may seize abandoned property without probable cause and without a warrant. Whether or not property has been abandoned is a question of intent, which must be shown by clear, unequivocal and decisive evidence.

**XI. CURTILAGE**

A. The Curtilage Doctrine

Curtilage is afforded the same Fourth Amendment protections as is the home. Generally speaking, curtilage has been held to include all buildings in close proximity to a dwelling, which are continually used for carrying on domestic purposes; or such places as are necessary and convenient to a dwelling, and are habitually used for family purposes (including a patio).

B. The Open Field Doctrine

The Fourth Amendment protections do not extend to the "open fields" surrounding the curtilage and the home.

C. Legitimate Expectation of Privacy

The determination of whether Fourth Amendment protections will be extended to items seized from the curtilage or open fields focuses on whether the person challenging the search has a legitimate expectation of privacy in the place which was searched.

**XII. GREATER INTRUSION SEARCHES**

A. Exterior Intrusion

Intrusions on the body's surface (swabbing, hair samples, retrieval of evidence from the mouth, etc.) are governed by the Fourth Amendment. Such searches are permissible as long as they are conducted in a reasonable manner and are justified under the circumstances (e.g. probable cause to search).

B. Interior Intrusion

Certain intrusions into the body (e.g., stomach pumping, surgery) have been held to be in violation of the Fourth Amendment (*Rochin v. California*, 342 U.S. 165; *Winston v. Lee*, 470 U.S. 753). Hence, only under the most exigent circumstances and only pursuant to a search warrant, could such a procedure be allowed. However, other more common interior intrusions, such as blood tests, may be conducted without a warrant if the setting and procedures are reasonable, as when blood is drawn by a doctor in a hospital (*Schmerber v. California*, 384 U.S. 757). Probable cause must exist in all cases.

**XIII. MOTOR VEHICLE FORFEITURE**

A. INTRODUCTION

It is the policy of this Agency to utilize to the fullest extent the forfeiture provisions available in state and federal drug laws.

B. PURPOSE

The purpose of this policy is to direct the seizure and forfeiture of motor vehicles used during the commission of a felony involving transportation, facilitation of transportation, concealment, manufacture, or protection of controlled substances.

C. DEFINITIONS

1. SEIZURE OF MOTOR VEHICLES - Any assertion of dominion and control over a vehicle by a law enforcement officer or agency

pursuant to suspected criminal acts that interferes with the full possessory rights of the vehicle title owner constitutes a seizure.

2. **FORFEITURE OF MOTOR VEHICLES** - Forfeiture is the procedure by which title to seized property is finally transferred to the seizing agency. Forfeiture can be obtained through a final order of the court having jurisdiction over the seized property, or through negotiated settlements with those persons having a lawful legal interest in the seized property.
3. **STATUTORY AUTHORITY FOR CIVIL FORFEITURES OF MOTOR VEHICLES-** Distinct procedures for seizure and forfeiture of motor vehicles can vary depending on federal, state and municipal law. The Agency continuously consults relevant federal, state and municipal regulations to ensure that seizure and forfeiture policies of the Agency meet current standards.

#### D. PROCEDURES

##### 1. Seizure of Vehicle for Forfeiture

The seizing officer shall:

- a) Determine if the motor vehicle used in the commission of a drug-related felony is subject to seizure. Agency members shall not seize a motor vehicle for forfeiture purposes:
  - (1) If it is a common carrier and the owner is not consenting or a conspirator to the violation;
  - (2) If the owner has no knowledge of the offense or has not given consent;
  - (3) If it is encumbered by a bona fide security interest and is subject to the interest of the secured party, and he neither had knowledge of nor consented to the act; and
  - (4) If the vehicle is leased.
- b) Obtain clearance to seize for forfeiture purposes. The seizing officer must contact his supervisor, advise of the facts and circumstances surrounding the potential seizure and forfeiture and receive authorization to continue the forfeiture investigation.

- c) Determine whether the violator owns the vehicle and, if not, identify the registered owner or title holder by name, address and telephone number.
- d) Obtain, or attempt to obtain, the registration and title and forward them to the drug enforcement unit.
- e) When possible, obtain post-Miranda statements implicating the motor vehicle, and in those cases where the violator is not the owner, implicate the owner (and/or co-owner) as knowledgeable about the use of the motor vehicle by the violator.
- f) Determine if the vehicle is to be processed by evidence technicians. Any motor vehicle seized for forfeiture will be handled as evidence as provided by Agency policies concerning property and evidence control and vehicle storage and inventory. All receipts and inventory forms will be marked "Hold for Forfeiture."
- g) Have vehicle towed to the Agency's vehicle storage facility or to evidence section.
- h) Complete incident report, particularly describing the circumstances of the seizure.

## 2. Supervising the Seizure

The shift supervisor shall:

- a) Consider the type, condition and approximate value of the seized motor vehicle, in determining the practicality of recommending a forfeiture action. If it is obvious that the property is of no use to the Agency or would have little value at auction, the supervisor may instruct the seizing or investigating officer to discontinue the forfeiture investigation.
- b) If the supervisor determines that forfeiture is appropriate or is unsure of the practicality of the processing, the supervisor shall contact the drug enforcement unit or appropriate seizure control officer, and report the facts and circumstances of the seizure and potential forfeiture. If the drug enforcement unit or appropriate seizure control officer authorizes a continuance of the forfeiture investigation, the

supervisor shall so advise the seizing or investigating officer and shall comply with steps 3 through 8 above.

- c) Ensure that a complete and accurate report, including all supplemental follow-ups, detailing the seizure has been completed, and a copy delivered to the drug enforcement unit.
  - d) Prepare and submit a written memo describing the article seized, the offense number and the location of the seized motor vehicle, with a copy forwarded directly to the drug enforcement unit. A copy of the inventory of the motor vehicle shall be forwarded to the drug enforcement unit.
3. Vehicle Storage and Processing
  4. When a vehicle is seized for forfeiture, the law enforcement Agency's towing service will tow the vehicle.
  5. The inventory section of a vehicle/property receipt shall be completed and all personal property shall be removed. If the vehicle is to be processed and it is determined that the vehicle would be contaminated by the removal of any personal property, the seizing officer may wait until the processing is completed. The seizing officer shall be responsible for ensuring that personal property is removed.
  6. Personal property not being held for evidence or seizure shall be returned to the owner. If the owner has been arrested or is otherwise unavailable to take possession of the property, it shall be placed in the property unit to be returned to the owner at a later date. The property receipt shall be completed, including the authorization for release.
  7. Any property seized as evidence shall be packaged and entered into evidence separately from any personal property.
  8. The seizing or assisting officer shall meet the tow truck driver at the vehicle storage facility. After the vehicle has been placed in storage, the seizing officer will secure the keys as evidence by turning the keys over to the evidence custodian.
  9. When vehicles are seized for forfeiture, the officer handling the paperwork must ensure the vehicle identification number is obtained from the vehicle itself rather than from a registration check.

E. Duties of Criminal Investigation Division

1. Receive copies of all reports from the seizing officer, verify that the keys to the vehicle were turned over to the evidence custodian for safekeeping. The evidence custodian is responsible for proper maintenance of the vehicle during the holding period.
2. Ensure that the proper administrative hold has been or is placed on the property, and place a hold on vehicle/files through NCIC/GCIC.
3. Determine and identify any lien-holder, person or lending institution or other person having financial or equitable interest in the vehicle. Request a copy of the title from the Georgia Department of Revenue.
4. Determine the value of the vehicle for future sale or for use as Agency property.
5. Photograph the seized vehicle.
6. Prepare all necessary documents for forfeiture of the vehicle and submit them to the District Attorney within 20 calendar days of the day of seizure. See O.C.G.A. 16-13-48.1.
7. Coordinate forfeiture process with the appropriate legal division (i.e., district attorney, law enforcement legal advisor).
8. Dispose of the vehicle either through sale or conversion to Agency property in accordance with the Superior Court Order. If released to an owner or repossessed (ensure if applicable) that all towing and/or storage fees are reimbursed to the Agency, prior to release of vehicle. If converted to Agency property, assign the vehicle a property number and place the vehicle into the inventory system.
9. Release the hold on the vehicle file through NCIC/GCIC.