

**Oakland County Sheriff's Office**  
**General Order # 3.2**



<b>SUBJECT:</b> Search and Seizure - Warrantless		<b>NUMBER:</b> 3.2
<b>EFFECTIVE DATE:</b> 1/25/2023	<b>MACP Standard Impact:</b> 3.1.1	
<b>REVIEW DATE:</b> Annually		
<b>REPLACES AND RESCINDS:</b> Policy & Procedure #29	<b>DISTRIBUTION:</b> All Personnel	<b>NUMBER OF PAGES:</b> 6

This order replaces and rescinds all previously issued orders, procedures, rules and regulations, notices and/or practices in conflict with this General Order.

**I. PURPOSE**

This Order provides general guidelines for searches and seizures without a warrant.

**II. POLICY**

It is the policy of the Oakland County Sheriff's Office to respect constitutional rights in making warrantless searches and seizures, to comply with all applicable laws, and ensure the admissibility of evidence in criminal proceedings.

**III. DEFINITIONS**

- A. Frisk - A brief pat down on the subjects outer clothing. A frisk may include a pat down of a person's clothing and feeling specifically over pockets and folds of material over every part of the body but does not include the removal of any of the suspects clothes. The object of frisks is to determine whether the suspect is carrying a weapon that might endanger the deputy. A frisk may also be used to determine whether there is probable cause for detention and a more intrusive search.
- B. Search - Manual inspection of a person's clothing, vehicle, dwelling and/or other belongings or property, based upon consent, probable cause or incident to arrest. This includes the manipulation of the contents of pockets, headwear, footwear, and clothing accessories. If the deputy believes there may more evidence inside a protective area, they should seek a search warrant.
- C. Exigent Circumstances - An emergency that justifications the need for a search warrant. Exigent circumstances are conditions at a specific place and time in which a deputy must act swiftly to prevent danger to persons or property or to secure evidence that is likely to be lost if it is not sought or impounded immediately.

**IV. PROCEDURES**

- A. Search By Consent (MACP Standard 3.1.1a)
  - 1. A deputy is authorized to make a warrantless search when consent to search has been knowingly, intelligently, freely and voluntarily given by a person having control over the

**Oakland County Sheriff's Office**  
**General Order # 3.2**

area to be searched. A request for consent should be specific as to the place or item to be searched.

2. Consent may be limited in scope and may be revoked at any time.
  3. Consent to search can be given verbally, but the burden to prove that it was granted without coercion rests with the deputy.
  4. When feasible, deputies should obtain written consent on the Sheriff's Office Consent to Search form or consent captured by body worn camera or in-car video recording system.
  5. A third party, who has common authority over the premises, can consent to a search. Common authority depends upon joint access or control. For example, both spouses normally have common authority over the marital home. On the other hand, a landlord does not have common authority over a tenant's apartment. Likewise, a hotel employee does not have common authority over a guest's room.
  6. A joint occupant can provide sufficient authority for a deputy to search by consent, only if others having shared authority over the premises are not immediately available or are available and do not object to the warrantless search.
  7. The driver of a motor vehicle cannot consent to a search of any passenger's personal property e.g., purses and backpacks.
  8. A minor whom the courts deem to be of adequate maturity and intelligence, and who enjoys access and authority over the home, may provide sufficient authority for a deputy to search the premises without a warrant.
  9. The burden to prove that consent was freely and voluntarily given is not satisfied by a showing of mere submission to authority. For example, a person's failure to object to a deputy's request to "look around" does not constitute valid consent. Consent cannot be conferred by silence.
  10. Deputies shall not claim that they can make a search regardless of consent. Consent which follows such a claim is invalid.
- B. Stop and Frisk or Terry Stop (MACP Standard 3.1.1 b)
1. Where a deputy observes unusual conduct which leads to a reasonable conclusion that criminal activity may be occurring and that the person with whom the deputy is dealing with may be armed and presently dangerous, a deputy may conduct a carefully limited search of the persons outer clothing in attempt to discover weapons. This is also known as a Terry Frisk referencing the U.S. Supreme Court case Terry v Ohio 392 U.S. 1 (1968).
  2. In order to temporarily detain an individual, a deputy must have a "reasonable suspicion" that the person was, is, or is about to be involved in criminal activity. To frisk the individual, the deputy must have a "reasonable suspicion" that the person is armed and dangerous.
  3. Deputies conducting a traffic stop may frisk the driver and any passengers upon reasonable suspicion that they may be armed and dangerous.

**Oakland County Sheriff's Office**  
**General Order # 3.2**

**C. Search Incident to Arrest (MACP Standard 3.1.1c)**

1. Deputies are authorized to search a person incident to their arrest. A search incident, to a valid arrest, shall be limited to an arrestee's person and the area within his immediate control, including containers.
2. In connection with a lawful in-home arrest deputies are authorized to conduct a protective sweep of the home limited to areas which may harbor other individuals potentially posing a danger to them or others.
3. When deputies have made a lawful arrest of the occupant of a motor vehicle, they may search the passenger compartment if the occupant is close enough to access the vehicle, or if they reasonably believe that they will find evidence in the vehicle that is relevant to the crime for which the person was arrested.
4. A cell phone may not be searched incident to arrest. Deputies must obtain a search warrant or have exigent circumstances (See section F.) to search a cell phone.
5. Arrestees should be searched by deputies of the same gender when possible, however the safety of the deputy is paramount, and a search shall not be unnecessarily delayed.

**D. Search of Motor Vehicle based on Probable Cause and Exigency (MACP Standard 3.1.1d)**

1. Deputies are authorized to and shall conduct a warrantless search of a motor vehicle based upon probable cause (which would be sufficient to justify the issuance of a search warrant) that the vehicle contains evidence or contraband. All areas or containers in the vehicle which could contain the evidence or contraband may be searched.
2. If probable cause exists that the evidence or contraband is contained within a specific container in a motor vehicle, then the container may be seized, and a search warrant should be obtained before the container is opened.
3. When a deputy has lawfully stopped a motor vehicle and has a reasonable suspicion that it contains a weapon, the deputy may conduct a "protective search" of the passenger compartment of the vehicle. The search must be limited to those areas in which a weapon could be hidden.

**E. Scene of a Crime (MACP Standard 3.1.1e)**

1. The United States Supreme Court has consistently held that there is no crime scene exception to the search warrant requirement rule. A person still maintains an expectation of privacy in their residence even if they have committed a crime.
2. Deputies may make warrantless entry into a dwelling or other structure where they reasonably believe a person needs immediate attention (such as medical attention) and deputies may make a prompt warrantless search of the area to see if there are other victims or if the suspect is on the premise.
3. Once a crime scene is secured, deputies will cease further searching without a search warrant or listed exception.

**Oakland County Sheriff's Office**  
**General Order # 3.2**

4. During a general investigation of crime scene searches for evidence where the owner or resident is the complainant or victim of a crime, such as home invasion, consent may be given to search their home for evidence. If consent is revoked, a deputy shall not continue the search without a search warrant (or exception).
  5. Deputies may search crime scenes without a warrant when the circumstances and location surrounding the search of that crime scene would violate no reasonable expectation of privacy for any entity.
- F. Exigent Circumstances, Emergency Aid, Community Caretaking (MACP Standard 3.1.1f)
1. Deputies are authorized to conduct a warrantless search when "exigent circumstances" exist. The evaluation of the circumstances must be made in the light of facts known to deputies at the time, and deputies must have a reasonable and good faith belief in the urgency of the situation that required the search in order to secure the safety of people, property, or evidence.
    - a. Specific exigencies that justify entry without a warrant include:
      - i. The pursuit of a fleeing felon e.g., where a fleeing suspect is pursued from a public place into a private one. The following factors must be considered: the gravity of the offense committed, the belief that the suspect is armed, the likelihood that the suspect will escape in the absence of swift police action, and the safety of the public.
      - ii. To prevent the imminent destruction or removal of evidence. The seriousness of the underlying offense by itself, does not create an exigent circumstance e.g., when it is known that there is no one present inside a building, the building should be secured by guarding the entrances while a search warrant is obtained.
      - iii. To prevent a suspect's escape.
      - iv. Where there is a risk of danger to deputies or others inside or outside a dwelling are endangered.
  2. Under the emergency aid exception deputies may enter a dwelling without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury. Deputies may do no more than is reasonably necessary to determine whether a person needs assistance and to provide that assistance unless a crime is found to be in progress.
  3. Deputies perform a variety of functions that are separate from their duties to investigate and solve crimes. These duties are sometimes categorized under the heading of "community caretaking" or "police caretaking" functions. The defining characteristic of community caretaking functions is that they are unrelated to the criminal investigation duties of the police. Searches conducted to further these community caretaking functions do not necessarily require a warrant to be reasonable. Such community caretaking functions include welfare checks, firefighting and lifesaving, impoundment and inventory of abandoned vehicles, and assisting intoxicated persons.
- G. Inventory Searches of Seized Vehicles or Other Property (MACP Standard 3.1.1g)
1. Deputies are authorized to conduct a warrantless search of a motor vehicle or other property which is being impounded or seized. Such a search extends to the entire motor vehicle and any containers found therein.

**Oakland County Sheriff's Office**  
**General Order # 3.2**

**H. Plain View/Plain Feel/Open Field Searches (MACP Standard 3.1.1h,i)**

1. Deputies are authorized to seize evidence in "plain view". In order for evidence to be in "plain view", the deputy must be in a place where they have a legal right to be. Further, for an item to be in "plain view" it must be immediately apparent that it is evidence of a crime.
2. Deputies are authorized to search a motor vehicle when contraband is observed in plain view. Such contraband may be lawfully seized and a search for additional contraband conducted, regardless of whether an arrest has been made.
3. Under the plain feel doctrine, a law enforcement may seize non-threatening contraband detected through the deputy's sense of touch during a Terry frisk if the deputy is lawfully in a position to detect the presence of contraband, the incriminating nature of the contraband is immediately apparent from its tactile impression and the deputy has a lawful right of access to the object.
4. The plain feel doctrine is only applicable where the deputy conducting the frisk feels an object whose mass or contour makes its criminal character immediately apparent. Immediately apparent means that the deputy readily perceives, without further exploration or searching, that what he or she is feeling is contraband. If, after feeling the object, the deputy lacks probable cause to believe that the object is contraband without conducting some further search, the immediately apparent requirement has not been met and the plain feel doctrine cannot justify the seizure of the object.
5. Similar to plain view and plain feel (touch), it is understood that a "plain smell" doctrine may be applicable when the constitutional threshold is met (lawfully present, incriminating nature of the smell is immediately apparent).
6. Open fields beyond the curtilage are not protected by the Fourth Amendment and observation of those areas does not constitute a search. The police are lawfully able to see what the public sees.

**I. Warrantless Residential Searches Based on 911 Calls**

1. Hang-up Calls With No Identifiable Caller and NO Crime Reported
  - a. When dispatched to a residence where there is no identifiable caller and no reported crime you may:
    - i. Knock at the door to check on the welfare of the occupants.
    - ii. Ask for permission to enter and check on the situation. Barring an indication someone inside the dwelling requires immediate assistance, you should NOT enter the residence without permission.
2. Unidentified Caller With Possible Crime In Progress
  - a. When an unidentified person calls 911 and provides some information regarding a crime, you may conduct a warrantless search if the information provided and personal observations at the scene would lead a reasonable person to believe that:
    - i. A crime is currently being committed, and
    - ii. that a person posing a threat to people inside, and
    - iii. entry is necessary in order to protect a citizen.

**Oakland County Sheriff's Office**  
**General Order # 3.2**

3. Identified Caller Reporting a Crime in Progress
    - a. If a 911 call is received reporting a crime in progress, and the caller identified him/herself, you are justified in conducting a warrantless search of the residence if the information provided suggests:
      - i. A crime in progress, and
      - ii. that a person posing a threat to people inside, and
      - iii. entry is necessary to protect a citizen.
  4. Calls Reporting Potential Suicide
    - a. When someone calls law enforcement to express concern that another individual has threatened suicide, a deputy shall be sent to the residence in order to do a welfare check. You may only enter the residence if your personal observations at the scene suggest that an occupant has injured themselves and is in need of first aid.
- J. Other Authorized Searches (MACP Standard 3.1.1j)
1. It is understood that the law may recognized other warrantless searches, and that certain parameters of existing law may change. Deputies with the Oakland County Sheriff's Office are authorized to conduct other warrantless searches as allowed by law. Further, when case law regarding a specific type of warrantless search changes and becomes more restrictive, thus expanding the constitutional rights and expectations of the public, deputies shall follow the law and protect the rights of citizens.



**ISSUED BY:** Sheriff Michael J. Bouchard