

City of Johns Creek Police Department

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| <i>Subject:</i> Search and Seizure | | <i>Number:</i> 04-09 |
| <i>Reference:</i> | | <i>Amends:</i> |
| <i>Effective:</i> 04/08 <i>Revised:</i> 01/10 01/13 06/17 | <i>Review Date:</i> Annually | <i># of Pages:</i> 9 |

PURPOSE:

Establish guidelines for the search and seizure of places, persons and things consistent with existing laws and constitutional protections.

DEFINITIONS:

Probable Cause: Those facts and circumstances within an officer's knowledge which would lead a reasonable man and prudent person to believe an offense has been committed or is being committed and/or that a particular individual has committed or is committing the offense.

Exigent Circumstances: Situations in which speed is essential to the accomplishment of lawful police action, such as hot pursuit of a fleeing suspect or destruction of evidence.

Curtilage: The area of land occupied by a dwelling and its adjacent yard and outbuildings, actually enclosed or considered as enclosed.

Search Warrant: A judicial command to "search the place, thing or person particularly described in the warrant and to seize the instruments, articles, or things particularly described in the warrant." (OCGA 17-5-23).

Consensual Search: A spouse or a roommate can grant consent to search a mutual shared area of a premises in the absence of the other party. Room(s) which are exclusive to the other party not present may not be searched without his/her consent.

Officer's Immediate Knowledge: When, by seeing, hearing, or using any of the other senses, the officer has personal knowledge of the commission of a crime and is considered equivalent to "in the officer's presence." This excludes reporting of a crime by any third party other than another officer who has direct knowledge. (OCGA 17-4-20).

POLICY: (04-09)

The Department will conduct searches of persons, places, and things pursuant to current 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 United States Constitution. Only sworn law enforcement officers of the Johns Creek Police Department are authorized to search a person, property, or premises pursuant to a valid search warrant. An officer who has probable cause should obtain a search warrant and affidavit from the appropriate judicial officer.

The Department shall conduct searches of persons, properties, vehicles, and items pursuant to established state and federal laws governing warrantless searches. It shall also be the policy of this Department to conduct reasonable, lawful searches and seizures, within the protection granted by the fourth amendment. The searches and seizures will be conducted in a professional manner, without deference to any citizen based on race, sex, religion, or political affiliation.

PROCEDURES:

Serving Criminal Arrest and Search Warrants (04-09-01)

A. Arrest warrants within the City of Johns Creek.

Whenever a law enforcement officer attempts to serve a criminal arrest warrant at any location within the city limits of Johns Creek, the officer should have departmental uniform officers present during the warrant execution. (See also "Legal Process")

B. Arrest warrants outside the City of Johns Creek.

Whenever a law enforcement officer attempts to serve a criminal arrest warrant at any location outside the City of Johns Creek, the officer will have uniform officers from the agency responsible for law enforcement within that location present during the service.

C. Search warrants within the City of Johns Creek.

Whenever a law enforcement officer attempts to serve a search warrant within the city limits of Johns Creek, the officer will have a uniformed officer present during the execution of the warrant.

D. Search warrants outside the City of Johns Creek.

Whenever a law enforcement officer attempts to serve a search warrant at any location outside the City of Johns Creek, the officer will have uniform officers present from the local jurisdiction.

E. Serving criminal arrest warrants without uniform law enforcement officers.

In certain situations, such as using the element of surprise in order to affect an arrest, the execution of a criminal arrest may be done without the presence of uniformed officers only after approval of a Division Major or Chief of Police.

Search and Seizure (04-09-02)

Search and seizure guidelines are present to control search and seizure of property and persons through an overview of existing laws. Only sworn law enforcement officers will execute search warrants and seize property.

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 protections guaranteed under the provisions of the fourth amendment to the United States Constitution. The following procedures shall address search and seizure policies and shall cite major case law and/or state statutes where applicable.

A. Searches with a Search Warrant

The following is required of all 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). For searches inside the City of Johns Creek, officers will use the City of Johns Creek Municipal Court. Outside the

city, officers will use the appropriate judicial officer.

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 "facts and circumstances within an officers knowledge would lead a reasonable man to believe that an offense has been committed or is being committed and/or that a particular person(s) has committed or is committing the offense."
3. Description - The warrant must describe with sufficient particularity the person or 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, no further information shall be necessary; however, an officer may elect to further describe the place to be searched.

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. Searches without a Search Warrant/Incident to Arrest

1. Scope - A search incident to a lawful arrest must be limited 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:
 - * For the security of the officer
 - * To secure items that might aid in an arrested individuals escape
 - * To prevent the destruction of instruments of 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 jailhouse search of an arrested individual 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. Exigent Circumstances

1. Justification - A warrantless search is permitted when there is both probable cause and exigent circumstances. The ultimate test is whether there is 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 police action.
3. "Hot Pursuits" Warrantless Pursuits Into the Offenders Home - In United States v. Santana, the Supreme Court ruled that hot pursuit justifies forcible entry into the offenders home without the need for a warrant. The court said "We thus conclude suspects may not defeat an arrest that has been set in motion in a public place...by the expedience of escaping into a private place." In order to justify this arrest, the three elements of hot pursuit must be satisfied: (1) the arrest process has begun; (2) the offender knows he is being placed under arrest; and (3) the offender takes action to avoid the arrest.
4. Searches Where Public Safety is Endangered - Under special circumstances where

an officer hears screams, observes an immediate dangerous situation to anyone, or other exigent circumstances exist, an officer may make an emergency search of persons or premises. In *Michigan v. Tyler*, the other courts suggested factors establishing this compelling need to include the gravity of the offense, the totality of the presence of weapons, and the likelihood of escape. The “totality of the circumstances” will be the deciding factor in each case.

D. Stop and Frisk

1. Grounds for Stop - To lawfully stop an individual, the law enforcement officer must have an articulable reasonable suspicion the person stopped is involved in criminal activity. In appropriate situations, a Field Interview Report (FIR) should be filled out on all such suspicious persons and forwarded to the appropriate investigative component. A detailed description of the activity and the person should be included.
2. Grounds for Frisk - In *Terry v. Ohio*, 392 U.S. 1, the Supreme Court decided that an officer is authorized to stop and frisk an individual whenever the law enforcement officer has reasonable suspicion the subject is committing, has committed, or is about to commit a crime and the officer has real, articulable reason to fear for his/her safety. Since the scope of the search in *Terry* is limited to weapons, such search may not be intrusive and beyond the scope of looking for weapons. However, contraband discovered in such searches is subject to seizure and may be admissible into evidence. When the officer no longer is in fear for his/her safety, the exception to warrantless search and seizure under *Terry* no longer applies.
3. Nature of 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.
4. Search After 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 a weapon is present.

E. Vehicle Stops

1. 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.
2. Grounds for Stop - There must be an articulable reasonable suspicion to justify an investigatory stop of an individual's vehicle. Law enforcement officers do not have an unrestricted right to stop people, either pedestrians or drivers.
3. Vehicle Safety Checkpoints - Vehicles may also be stopped at safety checkpoints which serve legitimate law enforcement purposes. If the purpose of the safety checkpoint is legitimate, (to check driver's license and not randomly stop vehicles, and if evidence of other crimes is discovered, the officer has the right to take reasonable investigative steps (see section below).
4. Initial Intrusion - Law enforcement officers may take reasonable action to protect themselves after a lawful stop of a motor vehicle. An officer may prefer to ask the driver of a vehicle to step out of the motor vehicle.
5. Further Intrusion - If the police officer has reasonable belief that a person stopped is presently armed and dangerous, he may conduct a limited protective search of the vehicle and frisk the person.
6. Vehicle Search Incident to Arrest: In accordance with *Arizona v. Gant*, a vehicle may be searched incident to arrest, only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe that the vehicle contains evidence of the offense for which the person was arrested.

F. Vehicle Searches

1. Exigent Circumstances - The mobility of vehicles often constitutes exigent circumstances authorizing a warrantless search. The "automatic 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. 655; 1973)
2. Standard - To search under exigent circumstances, the police officer must have probable cause to believe the vehicle contains evidence of a crime, thus, seizeable items.
3. Time and Place Search - If probable cause and exigent circumstances existed originally, the police may search the vehicle after towing it to the impound yard without securing a search warrant. When probable cause exists without exigent circumstances, a warrant is required. (Caito et al. v. State, 130 GA. App. 83; 1974)
4. Arrest of Occupant - If a person is arrested (taken into custody) after a vehicle stop, the passenger compartment of the vehicle may be searched incident to arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe evidence of the offense may be located in the vehicle (examples: DUI, Drug Offenses, Larceny Offenses, and Person on Person Offenses involving weapons).

G. Container and Luggage Searches

1. Standard - Containers generally may only be searched pursuant to a warrant based on probable cause.
2. Automobile - A law enforcement officer who has legitimately stopped an automobile and 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 CrI 3051; 1982)
3. Exceptions - The search incident to arrest and plain view doctrines will generally make unnecessary the need to secure a warrant to search containers. When a lawful arrest has been made, the officer may examine the contents of any container found within a passenger compartment within reach of the arrestee. (Area of immediate control.)
4. Inventory - Closed containers may be opened during a personal effects inventory. (III.V. Laffayette, 162 U.S. 640, 33 CrI 3183; 1983)

H. Inventory of Vehicles

1. Seizure of Vehicle - For an inventory to be valid, the police custody of the vehicle must be lawful. ***An inventory of a vehicle is not a search.*** An inventory is a departmental policy designed to ensure valuable possessions within a vehicle under police custody are accounted for. Any contraband which is found inadvertently during an inventory may be seized.
2. Justification - The inventory must be conducted only to fulfill the police caretaking function of securing the contents of the vehicle.
3. Nature of Inventory - The inventory must be a routine part of standard police procedure 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 Johns Creek Police

Department officers to inventory **all** impounded vehicles.

I. Plain View Doctrine

In order for the Plain View Doctrine to apply:

- * The law enforcement officer must be at a location where he/she has a legal right to be;
- * The seized items must appear on their face to be incriminating; and
- * The items seized must be plainly visible to the law enforcement officer.

J. Abandonment

1. Act - Abandonment is a voluntary relinquishment of control of property, i.e. disposal of, denying ownership.
2. Implications - Abandoned property is not protected under 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.
3. 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.

L. Consent

1. Voluntariness - The law enforcement officer obtaining consent has the burden of proving the defendant's consent to a warrantless search was given freely and voluntarily. Consent shall not be obtained by threat of warrant, etc.
2. Test - The voluntariness of a person's consent is measured by the totality of the circumstances.
2. 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.
3. 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. Law enforcement officers will make every reasonable attempt to get **a signed** consent to search. Officers are reminded that an verbal consent will be subject to the same scrutiny as a written consent.
5. This department does not conduct random consent searches of people stopped for traffic violations. The officer will be required to articulate his/her "reasonable suspicion" that the person or vehicle contains illegal items or other contraband. The burden is upon the officer to establish he/she had prior knowledge and/or immediate knowledge the vehicle was transporting contraband, etc.

M. Greater Intrusion and Strip Searches

1. Exterior Intrusions - 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. (Probable cause to search.)
2. Interior Intrusions - Certain intrusions into the body (stomach pumping, surgery) have been found to violate the Fourth Amendment (Rochin v. Calif., 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, shall 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. Calif.*, 384 U.S. 757) **Probable cause must exist in all cases.**

3. Strip searches are typically conducted by jail personnel; however any arrested person may be strip searched if there is reasonable suspicion to believe the suspect is concealing a weapon, controlled substance, or stolen property. Any person may be strip searched with consent of the suspect or with a search warrant. Prior to conducting the strip search, the officer must receive a supervisor's approval. A written report will be completed explaining all circumstances surrounding any search. Strip searches will be conducted by a person of the same gender and in a location out of view of others not involved in the search.
4. It is the policy of this agency that strip/ body cavity searches of juvenile offenders shall not be conducted by JCPD personnel, and is a determination to be made by Juvenile Intake and YDC personnel.

When a Search Warrant Can Be Executed (04-09-03)

Search warrants may be executed at any reasonable time, day or night. "Reasonable time" depends on the facts in each individual case (OCGA 17-5-26). A search warrant must be served within 10 days from the day of issuance. If the warrant is served, a duplicate copy shall be left with the 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 articles were seized. Any search warrant not served within 10 days from the issue date shall be void and will be returned to the issuing court. (OCGA 17-5-25)

A warrant return of all articles seized shall be made without unnecessary delay before the judicial officer named in the warrant, or before any court of component jurisdiction. An inventory of any articles 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 leave the original affidavit with the issuing judge and retain two copies, one of which will be left at the search location.

Execution of Search Warrants (04-09-04)

A. Supervisory Personnel

1. Prior to the execution of a search warrant, an officer of supervisory rank should have reviewed the affidavit and warrant and the circumstances prior to its issuance to ensure requirements of law are being met and all necessary elements are present even though the warrant may have already been signed by the appropriate judge. All search warrants and affidavits obtained by any officer should, if at all possible, be reviewed prior to a judge's signature.
2. When appropriate, the district attorney's office will be consulted prior to, during and after the service of the search warrant for advice, recommendations, or for any other purpose the officer deems necessary.

NOTE: All requests for wiretap warrants must be approved in advance by a Division Commander, the Chief of Police, and the District Attorney's Office. (The actual warrant must be applied for by the District Attorney's Office.) (OCGA 16-11-14)

B. Assigned Officers

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

1. Restricting their actions in a manner consistent with the scope of the warrant;
2. Whenever possible, leaving property not seized in an orderly fashion and ensuring it is not left in an unreasonable state of disorder or destroyed; and
3. Ensuring all evidence seized is documented on the inventory and forwarded to the evidence room.

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.
(See also "Evidence and Property Control")

C. Search Warrant Execution Protocol

To eliminate confusion and disorganization, and to promote thorough and precise execution of search warrants (or processing of any other type crime scene), a chain of command shall be established with particular assignments of tasks or functions to support personnel participating on search warrants, raids and major crime scenes.

Incident command protocol shall apply and the case officer and/or affiant of the warrant shall assume incident command. He/she, being the most knowledgeable about any circumstances which may surround a particular scene, shall coordinate and direct the efforts of all personnel assigned, and shall assign specific personnel to perform specific tasks before, during and after the event.

Specifically named personnel may be assigned as an entry team, others may be assigned the task of searching (only), others may be assigned the task of evidence collection (only), others may be assigned the task of security, and others may perform tasks of diagramming, sketching, photography or such other tasks essential to the safe and effective execution of the search warrant.

This directive is not intended to circumvent normal chain of command protocol, and all events and activities involving personnel of this department shall be subject to pre-event review by the supervisors and/or staff of the department. If potential errors are detected, a supervisor may assume command of the event.

Force Used to Execute a Search Warrant (04-09-05)

- A. An officer has a right under a lawful search to use all necessary, reasonable force to enter into any building, dwelling or other area described in a search warrant. (OCGA 17-5-27)
- B. Unless the search warrant contains a "no-knock" provision, an officer is required to give verbal notice to the person or persons inside, if any, of the identity of the officer and of the fact the officer has a search warrant to search the premises.
- C. If the person or persons inside refuse to acknowledge an officers notice, or if an officer cannot determine if anyone is present inside, or if it is unoccupied, an officer then can use reasonable force to gain entrance. (OCGA 17-5-27)
- D. Whenever force is used in order to gain entry, and damage has been done, a supervisor shall be summoned and advised of the situation.

No-Knock Search Warrant (04-09-06)

- A. 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 and be authorized by the Division/Unit Commander or Major.

- B. A no-knock provision cannot be based on mere suspicion, but rather must be founded upon probable cause from an investigation or an informant.
- C. 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 the officer(s).

Location/Persons to be Searched Pursuant to a Search Warrant (04-09-07)

- A. Officers shall be limited to search in areas *particularly* described in the warrant.
- B. Officers shall also be limited to searching only for those items *particularly* described in the warrant.
- C. Officers shall be limited to searching individuals named or described in the search warrant. Officers should have more than descriptive information, other than "a male" etc., if the officer is to list an individual on the warrant to be searched.
- D. In the execution of the warrant the officer may reasonably detain and/or search any person in the place at the time:
 - 1. To protect himself/herself; or
 - 2. To prevent the disposal or concealment of any instruments, articles, or things particularly described in the search warrant. (OCGA 17-5-28)
- E. Properties or areas in conjunction with an on-going investigation where the victim is a third party resident, such as a homicide, must be treated as a third party search and a search warrant *should* be obtained.
- F. Once the property or area searched is abandoned by law enforcement, the authority of the warrant no longer stands.