

<i>Cf</i> 	STANDARD OPERATING PROCEDURE <small>State Form 39870(R/S-06)</small>	Reference Number LEG-005
	Subject Warrantless Searches	
	Special Instructions Replaces LEG-010 dated August 5, 2010	Effective Date January 15, 2015

I. PURPOSE

Establish guidelines for conducting a search that has not been authorized by judicial order or warrant.

II. POLICY

Department employees may only conduct warrantless searches in compliance with the law.

III. PROCEDURES

A. Generally, the Fourth Amendment of the United States Constitution and Article 1, Section 11 of the Indiana Constitution prohibit unreasonable search and seizure of persons and property. The provisions of both Constitutions have been interpreted to require that a search warrant be obtained for a search of persons or property unless one of the specific exceptions exist. Officers are encouraged, when practical, to seek legal advice from a Department legal advisor or the county prosecuting attorney's office, prior to conducting any search.

B. An officer may submit a request to any Indiana judge for the issuance of a search warrant under IC 35-33-5 and should do so whenever practicable.

1. The request may be made orally or in a formal written request.

2. The request may be submitted by:

- a. Telephone,
- b. Radio;
- c. Recorded hearing before the Judge;
- d. In writing by a facsimile transmission; or
- e. In writing by electronic mail or other electronic transmission.

C. Exceptions to the Warrant Requirement – Warrantless searches are subject to the initial requirement that an officer must be in a place where the officer is lawfully entitled to be. Various searches are not subject to the requirement to obtain a warrant prior to conducting a search, including:

1. Plain view – Observation of anything that is plainly or readily apparent to be evidence or contraband, when that observation is made with any of the senses including view, smell, touch or hearing, without making further intrusion;

- a. Open field – Observations made in an open field are similar to plain view. An open field must be distinguished from any buildings located in the field or the area near any structures where a person might have a reasonable expectation of privacy, e.g., the curtilage;
- b. Aerial surveillance – An officer may fly over private property in public air space to make open view observations without obtaining a warrant to authorize the search during the flight; and
- c. Abandoned property – Typically, abandoned property is not protected under the fourth amendment. However, under Litchfield v. State, the Indiana Supreme Court held that the search of trash recovered from the place where it is left for collection is permissible under the Indiana Constitution, but only if the investigating officer(s) have an articulable basis justifying reasonable suspicion that the subjects of the search have engaged in violations of law that might reasonably lead to evidence in the trash.

2. Vehicle Inventory.

- a. When a motor vehicle is lawfully taken into custody or impounded, an officer shall conduct an inventory of the contents of the vehicle as required by applicable Department policies;
- b. An inventory involves an examination of the items in a motor vehicle and may include items found in an accessible container, the contents of which cannot be readily ascertained by an examination of the container's exterior;
- c. An inventory may extend to locked areas of a vehicle or locked containers in the vehicle when access may be gained without damage to the vehicle or container; and
- d. When an inventory is performed, an officer shall prepare a list utilizing the Police Officer/Abandoned Vehicle Report (State Form #55014) identifying the various items of value observed during the examination.

3. Exigent Circumstances – Circumstances that require an officer to act immediately; i.e., when a search is necessary to prevent the destruction of evidence, when an officer is in hot pursuit of a fleeing suspect, or an officer believes that the officer and/or others present are at risk of serious bodily injury or death.

4. Search incident to a lawful arrest.

- a. The search must be contemporaneous with the arrest and may include a complete search of the arrested person as well as any containers found on the person.
- b. The search may also extend to the area under the immediate control of the arrested person as well as any unlocked or accessible containers found in this area. The area under a person's immediate control includes the area that the person may reach to grab a weapon or other evidentiary items.

c. When a person is arrested in a motor vehicle, the officer may only search the passenger compartment of the vehicle to prevent the arrestee from gaining possession of a weapon or destroying evidence when:

(1) The arrestee is unsecured and within reaching distance of the vehicle's passenger compartment, or

(2) The officer has reasonable suspicion to believe evidence relevant to the crime for which the occupant was arrested might be found in the vehicle. Under these circumstances, the officer may search any place in the passenger compartment they may reasonably expect to find the subject of the search.

d. When an officer arrests a person in a private home, the officer may make a protective sweep of the home if the officer reasonably believes that there may be other persons in the home who pose a danger to the officer.

e. Unless there are exigent circumstances, an officer who is not the same sex as the person arrested shall arrange for an officer of the same sex as the person arrested to search the prisoner's person.

5. Consent Search.

a. The voluntariness of the consent is determined from a consideration of the totality of the circumstances surrounding the consent. An officer must be able to prove (has the burden to prove) that the person gave consent as a free and voluntary act.

b. When a person is not in custody, a written consent is not required; however, some prosecuting attorneys require a written consent to document any consent to search.

c. When a person is in custody, the person must be advised of his or her right to counsel before being asked to consent to a search. If a person who is in custody voluntarily gives consent to search, an officer must document the consent in writing on the Department Consent to Search form.

d. An officer shall use the Department Consent to Search form (State Form 39329/R) to document a written consent.

6. Vehicle Exception - Search of a motor vehicle upon probable cause to believe that the vehicle contains contraband and due to the vehicles inherent mobility makes it impracticable for a warrant to be obtained.

a. The vehicle may be detained and searched at the scene of the stop without a warrant. If the vehicle is searched at any location other than the scene of the stop, a search warrant must be obtained prior to the search.

b. The search may extend to any part of the motor vehicle where there is probable cause to believe that seizable items may be located including the glove compartment, the trunk, or a package or container found during the search.

7. Stop and Frisk (Terry Stop) – An officer is authorized to make a Terry Stop when the officer observes conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the person(s) with whom he is dealing may be armed and dangerous.

a. An officer may ask the suspect for identification and may question the suspect without giving the person any warning of rights.

b. The suspect may be detained for a brief period of time for the purpose of investigation and the investigation ordinarily must be conducted at the place where the suspect is stopped.

c. An officer may frisk a suspect for weapons during an investigative detention if particular facts exist from which the officer reasonably believes that the individual is armed and dangerous.

(1) A frisk is a limited search.

(2) A frisk is only permissible when it is conducted as a search for weapons.

d. During a lawful investigatory stop, an officer may frisk any occupant of a lawfully stopped vehicle if the officer has reasonable suspicion that the individual is armed and dangerous.

e. An officer shall not frisk a suspect of the opposite sex unless there are compelling reasons to conduct a search.

f. If the officer discovers an object reasonably believed to be a weapon during a frisk, the officer may remove the object from the suspect.

8. Administrative Search – Conducting or assisting in an administrative search as specifically authorized by statute.

D. This procedure is to be used in conjunction with all relevant Department regulations, rules, policies, and procedures.