

CRIMINAL INVESTIGATIONS

NON-WARRANT SEARCHES

Purpose: The purpose of the directive is to establish policy, procedures and guidelines for the execution of non-warrant searches, body cavity searches, and strip searches.

Policy Statement: It is the policy of the North Little Rock Police Department to adhere to all state, federal, and constitutional laws concerning non-warranting searches.

Summary of Changes: Added qualified medical technician to section 7.2.4. Added section on Search of Supervised Probationer or Parolee.

Procedure:

1 Incident to Arrest: (ARCrP rule 12.1) An officer who is making a lawful arrest may, without a search warrant, conduct a search of the person or property of the accused for the following purposes only:

- 1.1 To protect the officer, the accused, or others;
- 1.2 To prevent the escape of the accused;
- 1.3 To furnish appropriate custodial care if the accused is jailed; or
- 1.4 To obtain evidence of the commission of the offense for which the accused was arrested, or to seize contraband, the fruits of crime, or other items criminally possessed or used in conjunction with the offense.
- 1.5 (ARCrP rule 12.2) An officer making an arrest and the authorized officials at the police station or other place of detention to which the accused is brought may conduct a search of the accused's garments and personal effects ready to hand, the surface of his body, and the area within his immediate control. [CALEA 1.2.4][CALEA 1.2.5]
- 1.6 In addition to the searches listed above, officers conducting searches incident to arrest with a search warrant may search those areas named in the warrant. [CALEA 1.2.5]

2 Stop and Frisk:

- 2.1 (ARCrP rule 3.1) A law enforcement officer lawfully present in any place may, in the performance of his duties, stop and detain any person who he reasonably believes is committing, has committed, or is about to commit (1) a felony, or (2) a misdemeanor involving danger of forcible injury to persons or of the appropriation of or damage to property, if such action is reasonably necessary either to obtain, or to determine the lawfulness of his conduct. An officer acting under this rule may require the person to remain in or near such place in the officer's presence for a period of not more than fifteen (15) minutes or for such time as is reasonable under the circumstances. At the end of such period, the person detained shall be released without further restraint, or arrested and charged with an offense.
- 2.2 (ARCrP rule 3.4) If a law enforcement officer who has detained a person under Rule 3.1 reasonably suspects that the person is armed and presently dangerous to the officer or others, the officer or someone designated by him may search the outer clothing of such person and the immediate surroundings for, and seize, any weapon or other dangerous thing which may be used against the officer or others. In no event shall this search be more extensive than is reasonably necessary to ensure the safety of the officer or others. [CALEA 1.2.4]

3 Vehicle Searches:

- 3.1 Incident to arrest (ARCrP rule 12.4)
 - 3.1.1 If, at the time of the arrest, the accused is in a vehicle or in the immediate vicinity of a vehicle of which he is in apparent control, and if the circumstances of the arrest justify a reasonable belief on the part of the arresting officer that the vehicle contains things which are connected with the offense for which the arrest is made, the arresting officer may search the vehicle for such things and seize any things subject to seizure and discovered in the course of the search.
 - 3.1.2 The search of a vehicle pursuant to this rule shall only be made contemporaneously with the arrest or as soon thereafter as is reasonably practicable.
- 3.2 Movable vehicle (ARCrP rule 14.1) [CALEA 1.2.4]
 - 3.2.1 An officer who has reasonable cause to believe that a moving or readily moveable vehicle is or contains things subject to seizure may, without a search warrant, stop, detain, and search the vehicle and may seize things subject to seizure discovered in the course of the search where the vehicle is:
 - 3.2.1.1 On a public way or waters or other areas open to the public;
 - 3.2.1.2 In a private area unlawfully entered by the vehicle; or

3.2.1.3 In a private area lawfully entered by the vehicle, provided that exigent circumstances require immediate detention, search, and seizure to prevent destruction or removal of the things subject to seizure.

3.2.2 If the officer does not find the things subject to seizure by his search of the vehicle, and if;

3.2.2.1 The things subject to seizure are of such a size and nature that they could be concealed on the person; and

3.2.2.2 The officer has reason to suspect that one (1) or more of the occupants of the vehicle may have the things subject to seizure so concealed; the officer may search the suspected occupants, provided that this subsection shall not apply to individuals traveling as passengers in a vehicle operating as a common carrier. [CALEA 1.2.4c]

3.3 Vehicle Storage Report (PD 55-6):

3.3.1 A *Vehicle Storage Report* will be completed on all vehicles ordered towed by the Police Department in accordance with Policy Directive 55-06. A vehicle inventory is not a search; however, any weapons, evidence, or contraband discovered during the inventory may be seized. If weapons, evidence or contraband are discovered during a vehicle inventory, the inventory should be stopped and a search warrant obtained prior to searching the vehicle.

4 Consent Searches: [CALEA 1.2.4]

4.1 An officer may conduct searches and make seizures without a search warrant or other color of authority if consent is given to the search or seizure. (ARCrP 11.1)

4.2 The consent justifying a search and seizure can only be given, in the case of:

4.2.1 Search of an individual's person, by the individual in question or, if the person is under fourteen (14) years of age, by the individual and his parent, guardian, or person in loco parentis;

4.2.2 Search of a vehicle, by the person registered as its owner or in apparent control of its operation at the time consent is given; and

4.2.3 Search of premises, by a person who, by ownership or otherwise, is apparently entitled to give or withhold consent. (ARCrP 11.2)

4.2.4 The United States Supreme Court has ruled that for consent to be valid, all parties present who are entitled to give or withhold consent must give consent.

4.3 A search based on consent shall not exceed, in duration or physical scope, the limits of the consent given. (ARCrP 11.3)

4.4 After making a seizure, the officer shall make a list of the things seized, and shall deliver a receipt fairly describing the things seized to the person consenting to the search. (ARCrP 11.4)

4.5 A consent given may be withdrawn or limited at any time prior to the completion of the search, and if so limited, the search under the authority of the consent shall cease, or be restricted to the new limits, as the case may be. Things discovered and subject to seizure prior to such withdrawal or limitation of consent shall remain subject to seizure despite such change or termination of the consent. (ARCrP 11.5)

4.6 The person giving consent must be informed that he/she can refuse the search, and he/she must be present during the search and available to withdraw or limit the search if he/she desires.

4.7 Consent searches should only be conducted with written consent, using the proper departmental form. If a person will consent to a search, but refuses to sign the consent form, fill out the form anyway and indicate "verbally consented to the search, but refused to sign." (PD 4-5)

4.8 Officers will attempt to have a witness sign the consent form as verification of the consent. Officers will initial above the signature of the witness on the consent form. (PD 4-5)

4.9 If items are located and seized during the search, the original *Consent to Search* form is to be placed in the property room as evidence and a copy turned in with the general report. If no items are seized, the incident number referencing the traffic stop or other contact will be placed on the form and then forwarded to the Support Services Division for filing.

4.10 The person giving consent must be informed that he/she can refuse the search, and he/she must be present during the search and available to withdraw or limit the search if he/she desires.

5 Exigent circumstances (ARCrP rule 14.3)

An officer who has reasonable cause to believe that premises or a vehicle contain: [CALEA 1.2.4]

5.1 Individuals in imminent danger of death or serious bodily harm; or

5.2 Things imminently likely to burn, explode, or otherwise cause death, serious bodily harm, or substantial destruction of property; or

5.3 Things subject to seizure which will cause or be used to cause death or serious bodily harm if their seizure is delayed; may, without a search warrant, enter and search such premises and vehicles, and the persons therein, to the extent reasonably necessary for the prevention of such death, bodily harm, or destruction.

6 Crime scene searches:

A crime scene may be searched by any lawful method of search. Consent to search or search warrant is the preferred methods of searching a crime scene. [CALEA 1.2.4]

7 Body Cavity Searches:

7.1 Whenever possible a search warrant will be obtained before conducting a body cavity search.

7.2 Searches of an accused's blood stream, or body cavities conducted incidental to arrest may be made only:
(ARCrP rule 12.3)

7.2.1 If there is a strong probability that it will disclose things subject to search and seizure and related to the offense for which the individual was arrested. [CALEA 1.2.8a]

7.2.2 If it reasonably appears that the delay consequent upon procurement of a search warrant would probably result in the disappearance or destruction of the objects of the search. [CALEA 1.2.8a]

7.2.3 If it reasonably appears the search is otherwise reasonable under the circumstances of the case, including the seriousness of the offense and the nature of the invasion of the individual's person. [CALEA 1.2.8a]

7.2.4 Any search pursuant to this rule shall be conducted by a physician, licensed nurse, or qualified medical technician.

7.2.5 When a body cavity search is performed, the arresting officer will justify the circumstances for the search in an *Incident Report*. A supervisor must be contacted for approval prior to the search. If the search is not incidental to an arrest, a search warrant must be obtained prior to the search. [CALEA 1.2.8c]

8 Strip Searches:

8.1 A strip search may only be conducted when the arresting or investigating officer has expressible, reasonable suspicion to believe the individual to be searched is concealing weapons, evidence or contraband that can not be detected by means of a less intrusive search. A supervisor must be contacted for approval prior to the search. [CALEA 1.2.8a]

8.2 Officers conducting strip searches will be of the same sex as the person being searched. A same sex witness will be present. Only persons with a need to view the search will be present. Persons of the opposite sex may not view the search. [CALEA 1.2.8b]

8.3 Strip searches will be conducted out of public view in a location where privacy of the individual is assured.
[CALEA 1.2.8b]

8.4 When a strip search is performed, the arresting officer will justify the circumstances for the search in an *Incident Report*. [CALEA 1.2.8c]

9. Search of Supervised Probationer or Parolee

9.1 A person who is placed on supervised probation or is released on parole is required to agree to a waiver as a condition of his or her supervised probation or parole that allows any certified law enforcement officer to conduct a warrantless search of his or her person, place of residence, or motor vehicle at any time, day or night, whenever requested by the certified law enforcement officer. A warrantless search that is based on a waiver shall be conducted in a reasonable manner. (Ark. Code 16-93-106)

9.2 Members are prohibited from using this statute to harass any individual.

9.3 Members must have an articulable law enforcement concern, however slight, prior to conducting such searches without the direct assistance of a parole or probation officer.

9.4 Prior to conducting a search of a probationer/parolee, members shall verify the status of the person believed to be on supervised probation or parole and that a waiver exists prior to conducting a search or seizure.

9.5 Members conducting a search of a probationer/parolee must make a request to search the probationer or parolee prior to the search; however obtaining consent to search is not required if it is determined that a waiver exists as a condition of release.

9.6 Members attempting to execute a search of a residence of probationer/parolee must contact a supervisor prior to conducting the search unless exigent circumstances exist.

9.7 In the event a co-occupant or other lawful third party prevents the search of a residence where a parolee or probationer resides based on applicable law, the third party will be advised that the parolee/probationer may be in violation of his/her parole based on their lawful objection and the incident will be reported to the Parole/Probation Office for their consideration of enforcement.

9.8 Authority granted under this statute does not preclude other restrictions that may be applicable under law including third party rights, co-occupants, etc.

- 9.9 In addition to typical enforcement that may occur, the discovery of any criminal violation or suspicious activity, or the parolee/probationer's uncooperative actions toward law enforcement, will be reported as soon as practical to the appropriate Parole/Probation Officer for further administrative consideration.
- 9.10 Any search of the residence of a probationer or parolee will be documented in an *Incident Report* regardless of the results of the search. Searches of probationers or parolees or their vehicles that result in no criminal activity will be documented using Call Notes.



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