

Geneva Police Department GENERAL ORDERS		WARRANTLESS SEARCHES AND SEIZURES	
<input type="checkbox"/> new: <input checked="" type="checkbox"/> rescinds: Policy & Procedure 50.2 <input type="checkbox"/> amends:		cross-reference: GO 620; GO 710 Accreditation/Recognition standards:	
effective date: 5.26.04	issue/amend/review date: 5.26.04 / 10.24.13 / 8.26.20	NYS L.E.A.P.: 50.2	

I. PURPOSE	The purpose of this General Order is to establish and describe policies and procedures for conducting searches and seizures without a warrant. All Officers must familiarize themselves with the legal principles and Departmental policy concerning warrantless searches and seizures. This Order is not intended nor should it be construed to prohibit Geneva Police Officers from engaging in any lawful search or seizure activity.
II. POLICY	It is the policy of the Geneva Police Department to conduct searches and seizures without a warrant only if it meets the criteria of one or more of the exceptions to the search warrant requirement or if it is expressly allowed by statute.
III. PROCEDURE	<p>A. Officers will fully document the facts, circumstances, and justification for warrantless searches and seizures in a Department Incident Report. Documentation will include:</p> <ol style="list-style-type: none"> 1. The events that led up to the search or seizure; 2. The reason for the search and seizure; 3. The Officer(s) conducting the search and seizure; 4. The person(s) involved or witnessing the search and seizure; 5. The nature, description, and location of any property discovered and/or seized; and 6. The chain of custody. <p>B. All evidence, contraband, or other property seized will be processed and preserved in accordance with present Departmental procedures.</p>
IV. SEARCH WARRANT REQUIREMENT EXCEPTIONS	<p>A. The Fourth Amendment to the Constitution guarantees the right of the people to be free from unreasonable searches and seizures of their homes, person, and things. The Supreme Court and New York Courts are constantly interpreting the Fourth Amendment and state search and seizure rules as they apply to police conduct. Illegally seized items of evidence will not be admitted in court and may be cause for a lost criminal case as well as possible civil suits.</p> <p>B. Every search or seizure by the police must be conducted with a search warrant unless one of the legally recognized exceptions exist. To be lawful, a search or seizure must meet the criteria of a specifically recognized exception to the search warrant requirement or must be otherwise authorized by a specific statute.</p> <p>C. The following are examples of some exceptions to the search warrant requirement where specific circumstances allow officers to conduct a search or seizure without a warrant:</p>

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1. Arrest Warrant Exception

- a. Officers may search the **residence** of a defendant named in an arrest warrant if there is **probable cause** to believe the defendant is home at the time of the search. A search warrant is not required in such cases.
- b. This search is limited to searching **only** for the defendant. Officers may search only in areas of the residence where the defendant could be located. Once the defendant is located and taken into custody, or a complete search has failed to locate the defendant, no further search of the residence is permissible under the arrest warrant exception.
- c. This exception applies **only** to the defendant's own residence. It does not permit Officers to search another person's home without a search warrant even if there is probable cause to believe the warrant defendant is in the other person's home. In order to search the home of another person for a warrant defendant, Officers must obtain a search warrant or one of the exceptions to the search warrant requirement must be present (e.g., consent).

2. Stop and Frisk Exception- (*Terry v. Ohio*) - *See G.O. 710 Suspect Interview and Statement Procedures §IV (a-b)(i)*.

- a. **Reasonable Suspicion**- that suspicion based upon articulable facts and circumstances, and any reasonable inferences that can be drawn in light of experience that would lead one, as an ordinary and cautious person, to believe that some specific crimes (s), or some specific criminal activity is being committed, was committed, or is about to be committed.
 - i. Reasonable Suspicion **is not** a mere hunch or "gut feeling", (even if made in good faith). To substantiate reasonable suspicion, Officers must base their suspicion on specific, articulable, and rational facts. These facts and circumstances together with logical and rational inferences, reasonably warrant a stop and frisk. Officers may rely on their experience and training as police officers in determining if conduct is reasonably suspicious.
- b. **Stop**: A police officer may briefly detain (**stop**) a person, either on foot or in a vehicle, based on **reasonable suspicion**, for the purpose of determining a person's identity, address and resolving the Officer's suspicions. These stops may also be referred to as "investigative detentions" or "field interviews".
- c. **Frisk**: During such a stop, a police officer may conduct a "frisk" of the person **for weapons or dangerous items only**, if the Officer has reasonable suspicion that the person may be armed. This type of warrantless search must be limited to a "pat down" type search, generally of the outer clothing, including those areas which may be within a suspects immediate control.

Note: A frisk is not automatically allowed during every stop. To justify a frisk, there must be **reasonable suspicion** that the subject may be armed.

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- d. **Applicable NYS Law § 140.50 CPL**- Section 140.50 CPL authorizes a Police Officer to “**stop**” a person in a public place located within the geographical area of such Officer’s employment when the officer reasonably suspects that such person is committing, has committed, or is about to commit either a felony or misdemeanor as defined in the Penal Law, and may demand of such person his/her name, address and an explanation of his/her conduct. The section also provides that if during such stop, a police officer reasonably suspects that the Officer or another person is in danger of physical injury, the Officer may search the person stopped for a deadly weapon or dangerous instrument, article or substance readily capable of causing serious physical injury and of a sort not ordinarily carried in a public place by law-abiding citizens. If an Officer finds such a weapon or instrument, or other property which he/she reasonably believes may constitute a crime, he/she may secure it until the completion of the questioning, at which time the Officer shall either return it, if lawfully possessed, or arrest such person.
- e. Reasonable suspicion is not required for every police-citizen contact. Officers are free to approach any person and engage in conversation if the person is willing to speak to the Officer. However, if the Officer detains the person in a non-consensual manner, or conducts a non-consensual “frisk”, there **must** be reasonable suspicion.

3. Consent to Search Exception

- a. A person who reasonably appears to have legal authority over a premise, area, or item may consent to allow the police to conduct a search. There are four basic requirements to establish a valid consent to search:
 - i. The consent must be given **voluntarily**;
 - ii. The consent must be given **knowingly**;
 - iii. The person giving consent must reasonably appear to have **legal authority** over the premises, area, or item to be searched; and
 - iv. There must be some **positive acknowledgement** of consent, i.e., do not consider mere silence as a voluntary consent.
- b. A valid consent may be given orally or in writing. Oral consents are legally sufficient. Nonetheless, it is preferable to get written consent. Written consents when presented in Court tend to be more convincing that consent was valid. Officers may utilize a GPD Consent to Search Form (*See Attachment A*) to obtain a written consent.
- c. The person giving consent may limit the scope of a search. For example, a homeowner may permit the police to search certain rooms in his house but not others.
- d. In determining whether a particular person has the legal authority to consent to a search, Officers should consider whether the person has a legal right of possession and control over the property so as to direct and regulate its use.
 - i. Officers may encounter situations in which more than one person has authority over property. In such cases, one person may consent to a search of any area that is private or exclusive to him/herself and any common area to which he/she has access.

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- ii. The following are examples of persons who may consent to a search:
1. If two people have joint ownership of property, either may give consent (e.g., husband/wife)
 2. A tenant may give consent to a search of his/her residence;
 3. A parent may consent to a search of a **minor** child's room;
 4. Roommates or co-tenants may consent to a search of any area under his/her exclusive control and any common or joint areas;

Note: Roommates or co-tenants cannot consent to a search of any area under the exclusive control of a non-consenting party.
 5. A hotel or motel manager or clerk may consent to a search of a vacant room having no registered guests; and
 6. Either the registered owner or the driver of a motor vehicle, in that order of preference, may consent to a search of that vehicle. A consent from the driver **is not** valid if the registered owner is also present and refuses to consent. Nonetheless, the registered owner's consent would be valid even when the driver refuses to consent.

iii. The following are examples of persons who may not give consent to a search:

1. A young child may not consent to a search of his/her parent's home;
2. A landlord may not give consent to a search of his/her tenant's residence;

Note: A landlord may give consent if the tenant has been evicted or has abandoned the property.
3. A hotel or motel manager may not consent to a search of a hotel guest's room; and
4. A college official may not consent to a search of a dormitory room.

e. The person giving consent may withdraw that consent at any time. In the event that consent is withdrawn, Officers must stop the search immediately.

4. **Plain View Exception**

- a. A plain view observation is not a search - it is an observation you make with any one of your senses, usually the sense of sight. When an Officer is lawfully present at a given location, by invitation or in connection with some other lawful activity, he/she may seize contraband that is observed in open or plain view. To justify this exception, the Officer's presence at the location where the contraband is observed must be lawful.
- b. Plain view observations may be made either:
 - i. Inside a building or other kind of structure; or
 - ii. Outdoors, when standing outside of a vehicle within sight of someone or something in the vehicle.

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5. Abandoned Property Exception

- a. A search warrant is not required for property that has been abandoned or discarded. By abandoning or discarding property, a person no longer has a reasonable expectation of privacy and the property may be lawfully searched and seized without a warrant.
- b. This extends to a person who discards a container as the police approach him on the street, provided the act of discarding the property is not prompted by unlawful police conduct.
- c. This exception also applies to trash/garbage that is placed curbside. It does not permit officers to enter private property to search trash/garbage.

6. Vehicle Inventory Exception

- a. Inventory searches are allowed to protect an individual's personal property; to protect the police against claims of loss or theft; and, to protect the police and others from dangerous instruments, devices or substances. These warrantless searches must be carried out in a consistent and reasonable manner and must not be an excuse for general rummaging to discover incriminating evidence.
- b. A warrantless inventory search of a motor vehicle may be conducted under the following circumstances:
 - i. The vehicle must be lawfully towed or impounded (e.g., intoxicated driver's vehicle is towed after DWI arrest, towed after AUO arrest); and
 - ii. The inventory must be conducted pursuant to departmental policy. *See General Order 620 Vehicle Towing and Impound Procedures §IV (A-G)*
- c. If the aforementioned circumstances are met, a warrantless search is justified as it allows the police to protect the owner's property and protects the Department and Officer(s) against claims that property has been lost, stolen or damaged.

7. Exigent (Emergency) Circumstances Exception

- a. When exigent circumstances are present, such as imminent danger to the Officer or a third person, or threatened destruction of property or evidence, a reasonable search of a person or premises may be conducted without a warrant. Also, under New York law, the police may lawfully enter and investigate in an emergency without the accompanying intent to either search or arrest. The following guidelines apply to this emergency doctrine:
 - i. The police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property.
 - ii. The search must **not** be primarily motivated by intent to arrest and seize evidence.
 - iii. There must be some reasonable basis, approximating probable cause to associate the emergency with the area or place to be searched.

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- b. In order to justify a search or seizure under the exigent circumstance exception, there **must be probable cause** to believe that:
 - i. A crime, (e.g., misdemeanor or felony) has been, is being, or is about to be committed; and
 - ii. If immediate action is not taken, the crime will be completed, or the Officer or other person(s) will suffer physical injury or death, or that evidence of the crime will be destroyed or otherwise lost.
- c. The scope of the search or entry under the exigent circumstance exception must be limited only to that which is necessary to resolve the emergency. Once the emergency situation is resolved, any further search or seizure must be conducted with a search warrant or justified by one of the search warrant exceptions.
- d. The exigent circumstances exception **does not** permit a full and extended search of a crime scene. It does permit Officers to enter a crime scene, provide for assistance or first aid to any injured person, conduct a “walk-through” search to determine whether any suspects are still at the scene, and secure the scene to prevent the destruction, concealment, or removal of evidence. Any contraband observed during such activities may be lawfully seized without a search warrant pursuant to the plain view exception. After the victim has been cared for and the scene secured, there must be a search warrant or recognized exception (e.g., consent) to continue.
- e. Any search or seizure under exigent circumstances must take place immediately at the time of the occurrence of those circumstances. It cannot take place hours or days later or at another location remote from the immediate scene, or at the Officer’s convenience.

8. Search Incident to Arrest Exception

- a. Upon making a lawful arrest of a person, an Officer may conduct a warrantless search incident to arrest. The Officer may conduct a full and complete search of the defendant and that immediate area within the defendant’s reach, to locate and seize any weapon, dangerous instrument, evidence or contraband.

9. Motor Vehicle Exception

- a. A motor vehicle may be searched without a warrant if there is probable cause to believe there is contraband or evidence in the vehicle.

Note: Although the law permits the police to search a motor vehicle without a search warrant, the Officer must have the same level of probable cause as would be required to obtain a search warrant.

- b. This exception applies to other types of motor vehicles or other conveyances including trucks, motor homes, boats, etc., provided that the vehicle is capable of moving.
- c. Under this exception to the search warrant requirement, the entire vehicle may be searched provided the area or portion of the vehicle searched could contain the object of the search.

**V. SEARCHES
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STATUTE**

A. Environmental Conservation Searches

1. “Police Officers shall enforce the provisions of the Environmental Conservation Law and shall have the power to search without a search warrant any boat or other vehicle of any kind other than a dwelling whenever they have cause to believe that any provision of Article 71 of any law for the protection of fish, shellfish, crustacea, wildlife, game, or protected insects has been, or is being violated”
Environmental Conservation Law, §71-0525.
2. These searches must be strictly limited for the sole purpose of detecting Environmental Conservation offenses. These searches cannot be made to collect evidence or for use in the prosecution of other offenses.

B. Probation Searches - CPL §410.50 (3-5)

1. “If at any time during the period of probation the court has reasonable cause to believe that the defendant has violated a condition of his sentence, it may issue a search order. Such order must be directed to a probation officer and may authorize such officers to search the person of the defendant and/or any premises in which he resides or any real property which he owns or which is in his possession.”
CPL §410.50-3
2. “When a probation officer has reasonable cause to believe that a person under his supervision pursuant to a sentence of probation has violated a condition of the sentence, such [probation] officer may, without a warrant, take the probationer into custody and search his person.” CPL §410.50-4.
3. “In executing a search order or in taking a person into custody, pursuant to this section, a probation officer **may be assisted by a police officer.**” CPL §410.50-5.

Approved By

MICHAEL J. PASSALACQUA
CHIEF OF POLICE

ATTACHMENTS:

- A. Voluntary Consent to Search (English & Spanish)