

	SECTION:	OPERATIONS	OPR-217
	CHAPTER:	ARREST-SEARCH AND SEIZURE	
	DIRECTIVE:	SEARCH AND SEIZURE WITHOUT A WARRANT (High Risk)	

217.01 SUMMARY

This directive identifies the nine circumstances in which an Officer can conduct a search and seizure without a warrant and describes the procedures for those searches. The policy purpose of this directive is to ensure that searches conducted by Department employees are in accordance with the constitutions and statutes of the United States of America and the State of Colorado.

Although this directive addresses exceptions to the search warrant requirement, and absent “consent to search”, it is Department policy that an Officer obtains a search warrant when he/she has probable cause to conduct a search where another person has a reasonable expectation of privacy.

Note: Since the 4th Amendment to the U.S. Constitution protects persons (not places) from unreasonable search and seizure, an Officer may need a search warrant even though the Officer will not trespass on property to conduct the search.

217.02 ADVANTAGES OF SEARCH WARRANTS

Every Officer should understand and know the advantages in obtaining a search warrant even when an exception applies.

- Search warrants usually permit a more extensive search than a search permitted as an exception.
- To suppress evidence seized under a search warrant, the defendant has the burden of proving lack of probable cause. When evidence is seized without a warrant, the prosecuting attorney has the burden of proving probable cause.
- Obtaining a search warrant helps provide the Officer with a good-faith defense against civil litigation related to the search.

217.03 EXCEPTION CATEGORIES

The only exceptions to the normal search warrant requirement are:

- Consent searches.
- Motor vehicle searches.

**EXCEPTION CATEGORIES
(con't)**

- Plain view searches.
- Searches incident to an arrest.
- Interview room searches.
- Vehicle Inventories.
- Exigent circumstances.
- Prisoner searches.
- Informant searches.

217.04 CONSENT SEARCHES

MUST HAVE VOLUNTARY CONSENT – An Officer may conduct a search without a warrant if the Officer receives prior voluntary consent from a person who reasonably appears to have authority to give consent. Note: Consent Searches are often subject to question after the fact.

- In major cases, if the Officer has sufficient probable cause to get a search warrant, it is preferable to search with a warrant rather than by consent.
- Consent should be in writing. If not possible, a verbal consent may fulfill legal requirements. If verbal consent is given, the Officer should try to have another Officer or another person witness the consent.
- The person who gives consent may limit consent to specific items, areas or times. Consent may be given to include a home, property, person, or vehicle.

LIMITATIONS

- The consent is invalid if it is given in the presence of a person who objects to the search and who has an equal or similar interest in the property.
- A person may withdraw consent at any time. In that event, the Officer must immediately stop searching. A search warrant may be needed to continue the search, but the search warrant application can include information on items seized before consent was withdrawn. Exception: consent search of a vehicle may continue after consent has been withdrawn if probable cause has been established.

217.05 MOTOR VEHICLE SEARCHES

MUST HAVE PROBABLE CAUSE – An Officer may stop and search a vehicle without a search warrant if:

- There is probable cause to believe that evidence of a crime is in the vehicle AND
- The vehicle is capable of being moved.
- The Officer may conduct a search whether or not an arrest has been made. The Officer may search any part of the vehicle in which the items sought might reasonably be found.

LIMITATIONS

- The rule does not apply to crimes that have no evidence (for example, most traffic offenses).

RELATED ISSUES

- When a motor vehicle occupant is taken into full custodial arrest, the Officer may search the vehicle passenger compartment, incident to arrest, and prior to transporting the arrested person. The search includes glove boxes, receptacles, luggage, clothing, or other closed containers.
- An Officer searches the transport vehicle directly prior to and directly after transporting an arrested person.

217.06 PLAIN VIEW SEARCHES

MUST BE ON PREMISES LAWFULLY – An Officer who is lawfully on a premise may make a plain view seizure of property if it is immediately apparent to the Officer that the property constitutes criminal evidence.

LIMITATIONS

- The rule does not apply if the item must be moved or examined more closely. A search warrant is required to move the item.
- Except in exigent circumstances or in motor vehicles, plain view observation of evidence does not justify an Officer's warrantless entry into a constitutionally protected area to seize the item.

217.07 SEARCHES INCIDENT TO ARREST

AFTER A LAWFUL ARREST – An Officer is permitted to conduct a search subsequent to a full custody arrest to:

- Collect and preserve evidence.
- Protect the safety of the arresting Officer and others.

SEARCHES INCIDENT TO ARREST (con't)

- Prevent escape.
- Prevent weapons and contraband from entering a custodial facility.

APPLICATION

- The search incident to arrest is limited to the person, the person’s clothing, and the area and articles within the person’s immediate reach (including a purse or wallet).
- The area within the person’s reach is defined at the time of arrest and not at the time of search. The Officer should conduct the search immediately at the arrest location with the arrested person present, if possible. The Officer may not make the arrest, transport the arrested person, and then return to the arrest location to conduct a search incident to arrest.
- The Officer may also conduct a search incident to arrest at the place of detention after prompt transportation of the arrested person.

RELATED ISSUES

- If the Officer reasonably believes, based on specific and articulable facts, that there is an individual present who poses a danger to persons at the arrest location, the Officer may conduct a limited protective sweep of the premises incident to an arrest.
- Because a full custody arrest is based upon probable cause, a search incident to that arrest is a reasonable intrusion under the 4th Amendment to the U.S. Constitution.

217.08 INTERVIEW ROOM SEARCHES

ALWAYS CHECK THE ROOM – An Officer will always check the interview room for weapons, contraband, and damage before and after an arrested person occupies it. Report any findings to the on-duty Supervisor, as soon as possible.

RELATED ISSUES

The on-duty Supervisor is responsible for regular inspection of the interview room to check for operational wear and tampering. The inspection includes:

- Doors and locks
- Walls, floors, ventilator covers, and ceiling tiles

INTERVIEW ROOM
SEARCHES (con't)

- Light fixtures
- Other security devices.

The Supervisor is also responsible for ensuring that defective equipment is replaced or repaired as soon as possible.

217.09 EXIGENT
CIRCUMSTANCES

An Officer is permitted to search and arrest without a warrant in certain exigent circumstances:

- **Hot pursuit of suspect.** Should only be used to justify warrantless search or entry in connection with felonies and serious misdemeanors. Hot pursuit means that the Officer is in continuous and uninterrupted pursuit (but not necessarily continuous visual contact). The Officer should not unnecessarily delay conducting the search.
- **Immediate crisis** in which police assistance would probably be helpful. Examples are medical emergencies, suicides, drug overdoses. An Officer responding to such calls may search for the immediate cause of the crisis (for example, drug vials).
- **To prevent the destruction of evidence.** The Officer must have articulable facts to suspect that the evidence is about to be destroyed or disposed. The presence of drugs does not automatically justify warrantless search.

APPLICATION

An Officer will not try to create exigent circumstances through an action or lack of action (for example, delay obtaining a search warrant then wait until the Officer can chase a drug suspect into the suspect's residence).

RELATED ISSUES

An Officer outside of his/her jurisdiction may make a valid arrest without warrant if confronted with emergency circumstances. (As defined in **C.R.S. 16-3-110**. Also see the "**Arrests Without A Warrant**" (OPR-213) directive.

217.10 PRISONER
SEARCHES

MANDATORY SEARCH – An Officer taking custody of an arrested person will always search that person for contra-band and/or weapons. This applies to the arresting Officer, to an Officer receiving an arrested person, and/or when transporting prisoner(s) to and from court appearances, hospital visits, or interviews.

**217.11 INFORMANT
SEARCHES**

An Officer or other Department employee of the same gender as the informant will always conduct the search of any informant. (See the “**Informants**” (OPR-284) directive.



High Risk