
	<b>GAITHERSBURG POLICE DEPARTMENT</b>		
	<b>Searches and Seizures</b>		
	<b>GENERAL ORDER</b>	<b>601.3</b>	
	<b>Effective Date</b>	<b>09/05/2024</b>	
<b>Authorized by:</b>		<b>Mark P. Sroka</b> CHIEF OF POLICE	SIGNATURE
			DATE <b>09/05/2024</b>

## **1. DEPARTMENT POLICY**

1.1 Recognizing that criminal activity can be detected or prevented through a wide range of persistent proactive field strategies, the Department encourages its officers to conduct investigatory stops and other seizures as well as frisks and other searches, in a manner that upholds rights guaranteed by the U.S. Constitution, in accordance with statutory and case law, and in conformance with all Departmental directives, training and requirements.

Warrantless searches and seizures are restricted by the Fourth Amendment to the United States Constitution and are presumed to be unreasonable unless they fall within an exception to the warrant requirement. If there is any question as to whether a warrant is required, and no exigency exists, officers should consult with a supervisor and consider obtaining a warrant prior to conducting a search. Law enforcement-related exceptions to the warrant requirement are highlighted in this General Order.

### **1.2 The Fourth Amendment and Court Proceedings**

The Fourth Amendment of the U.S. Constitution protects individuals from unreasonable searches and seizures by law enforcement. When police conduct a warrantless search or seizure without a valid exception (such as exigency), any resulting evidence is typically suppressed after independent judicial review of the incident. This means that the evidence cannot be used against the defendant in criminal trials.

**Exclusionary Rule:** The exclusionary rule prevents the use of evidence obtained through unreasonable searches or seizures in criminal proceedings. If a court determines that an individual's Fourth Amendment rights were violated, the evidence may be suppressed. Evidence that is suppressed after an independent judicial review does not automatically result in disciplinary action against a police officer(s) without additional police misconduct factors being present. Officers may face disciplinary consequences if they acted with deliberate indifference or malice.

**Good Faith Exception:** The good faith exception is an exception to the exclusionary rule. If an officer makes a reasonable mistake in conducting a search, evidence found during that search may be admissible if the officer acted in good faith. Evidence located by officers with reasonable intentions, but who may have been mistaken in their

actions, may be admissible under the good faith exception. This exception also applies to search warrants, in that evidence may be admissible if officers relied on a reasonable search warrant with an apparent lawful basis, even if the warrant was later deemed invalid.

The good faith exception is one that is rooted in pure intentions and reasonableness, meaning that officers cannot engage in other misconduct or make obvious mistakes that a reasonable officer would not make. The U.S. Supreme Court requires officers to act reasonably, not perfectly.

**Preliminary Hearings:** Preliminary hearings, which include probable cause hearings and motions hearings, are court proceedings that occur before a criminal trial to determine if there is sufficient evidence to move forward with a case. If a court determines that an officer(s) did not have sufficient probable cause or reasonable suspicion, evidence may be suppressed, or the case may be dismissed.

When determining probable cause or reasonable suspicion, the courts use a totality of the circumstances approach, which allows for flexibility, instead of a bright-line rule. Similar to the Exclusionary Rule, a finding of insufficient probable cause or reasonable suspicion does not automatically result in disciplinary action against a police officer(s) without additional police misconduct factors being present.

## 2. **DEFINITIONS**

- 2.1 **Deliberate Indifference:** The term “deliberate indifference” in the context of this directive refers to a conscious or reckless disregard for the consequences of one’s actions or omissions. It is more severe than negligence but does not require the intent to cause harm.
- 2.2 **Hot pursuit:** The term “hot pursuit” is defined as a pursuit by a law enforcement officer (with or without a warrant) for the purpose of preventing the escape or effecting the arrest of a person who is suspected of committing, or having committed, a misdemeanor or felony. “Hot pursuit” implies pursuit without unreasonable delay but does not need to be immediate pursuit.
- 2.3 **Malice:** The term “malice” in the context of this directive refers to the intention to commit a wrongful act without justification or excuse, with the intent to cause harm to others. It involves a conscious violation of the law that injures another individual and indicates a disposition in disregard of social duty.
- 2.4 **Probable Cause:** The term “probable cause” in the context of this directive refers to a legal standard that requires a reasonable basis to believe a crime has been committed or that evidence of a crime is present. It’s a flexible concept that is supported by the totality of facts and circumstances in a given situation. Probable cause is stronger than reasonable suspicion but weaker than the evidence required for a criminal conviction.

- 2.5 **Reasonable Suspicion:** The term “reasonable suspicion,” which is sometimes referred to as “reasonable articulable suspicion,” refers to a legal standard that allows law enforcement officers to stop, question, and sometimes search a person based on a subjective assessment of specific facts and reasonable inferences or beliefs. The suspicion must be based on a belief that the person is, has been, or will be involved in criminal activity, and cannot be based on lawful or innocent behavior.
- 2.6 **Totality of the Circumstances:** The term “totality of circumstances” refers to a legal method of analysis that requires courts to consider all relevant facts and circumstances of a case, rather than focusing on any one factor or using a bright-line rule.

### 3. **CONSENT SEARCHES**

- 3.1 Consent must be given voluntarily and freely, without coercion or implied threat, and the consenting person must have the right to control or authority over the premises or property. When determining if consent was freely and voluntarily given, courts consider the totality of the circumstances.  
*Relevant Case Law:* [Harless v. Turner, 456 f.2d 1337 \(1972\)](#); [Bumper v. North Carolina, 391 U.S. 543 \(1968\)](#); [United States v. Matlock, 415 U.S. 164 \(1974\)](#)
- 3.2 If police reasonably believe that an individual has the authority to grant consent to search a particular premises, the consent is valid even if that belief is mistaken.  
*Relevant Case Law:* [Illinois v. Rodriguez, 497 U.S. 177 \(1990\)](#)
- 3.3 In a situation where multiple parties have apparent authority over a premises, a refusal to consent takes precedence. For instance, if one party consents to a search, but another party on scene does not, then the refusal takes precedence.  
*Relevant Case Law:* [Georgia v. Randolph, 547 U.S. 103 \(2006\)](#)
- 3.4 Physical presence at the scene is required for a refusal of consent.  
*Relevant Case Law:* [Fernandez v. California, 571 U.S. 292 \(2014\)](#); [Georgia v. Randolph, 547 U.S. 103 \(2006\)](#)
- 3.5 If an officer seeks consent and the person does not orally respond, silence alone is not considered an affirmative answer.
- 3.6 All requests for consent searches and subsequent searches of individuals, vehicles, residences, and devices shall be recorded on body worn cameras. Officers may also consider explaining and executing a Consent to Search Form.

### 4. **EXIGENT CIRCUMSTANCES AND WARRANTLESS ENTRY**

- 4.1 There are situations where exigency makes the needs of law enforcement so compelling that a warrantless search is objectively reasonable under the Fourth Amendment.  
*Relevant Case Law:*; [Michigan v. Tyler, 436 U.S. 499 \(1978\)](#); [United States v. McConney, 728 F.2d 1195 \(9th Cir. 1984\)](#)

4.2 The exigent circumstances rule applies when officers do not create the exigency by engaging or threatening to engage in conduct that violates the Fourth Amendment.

**Relevant Case Law:** [Kentucky v. King, 563 U.S. 452 \(2011\)](#)

4.3 Officers may force entry into a dwelling without a warrant if the officer is in a situation where there are exigent circumstances, to include:

4.3.1 Reasonable belief that a person or persons inside the dwelling is/are an imminent danger to another person (this does not include lone barricaded suicidal subjects).

**Relevant Case Law:** [Michigan v. Fisher, 558 U.S. 45 \(2009\)](#)

4.3.2 Reasonable belief that there is a need for immediate assistance within the dwelling. For instance, reasonable belief that an individual who is suffering from a serious injury requires aid, or reasonable belief that the threat of violence to another is imminent or occurring at the moment.

**Relevant Case Law:** [Brigham City v. Stuart, 547 U.S. 398 \(2006\)](#)

4.3.3 Reasonable belief that evidence of a crime is being destroyed or about to be destroyed inside the dwelling.

**Relevant Case Law:** [Cupp v. Murphy, 412 U.S. 291 \(1973\)](#); [Ker v. California, 374 U.S. 23 \(1963\)](#); [Kentucky v. King, 563 U.S. 452 \(2011\)](#)

4.3.4 An officer is in “hot pursuit” of a suspect.

**Relevant Case Law:** [United States v. Santana, 427 U.S. 38 \(1976\)](#); [Warden v. Hayden, 387 U.S. 294 \(1967\)](#)

4.3.4.1 The flight of a suspected misdemeanor does not always justify a warrantless entry into a home. An officer must consider all the circumstances in a pursuit case to determine whether there is a law enforcement emergency. On many occasions, the officer will have good reason to enter (e.g., to prevent imminent harm of violence, destruction of evidence, or escape from the home). However, when the officer has time to get a warrant, they must do so, even though the misdemeanor fled.

**Relevant Case Law:** [Lange v. California \(2021\)](#)

4.4 **Forcing Entry:** If an officer determines there is a need to force entry into a residence, that officer should, if circumstances allow, receive approval from the on-duty supervisor prior to making entry. However, this does not preclude an officer from forcing entry without supervisory approval if the officer reasonably believes the delay caused by notification may result in an increased likelihood of serious physical injury or death to persons within the residence, or the imminent destruction of evidence.

- 4.4.1 Any time an officer forces entry, the on-duty supervisor should be notified, the incident should be documented in an event report, photos should be taken, and the on-duty supervisor should send an email with the photos and report to the Police Managers.
- 4.5 In situations where officers are dealing with a lone, armed, suicidal subject who is confined within his residence or another structure in which he has standing, if the subject poses no threat to anyone but himself and has not committed a crime, then entry cannot be made without an additional legal means to do so. See Training Bulletin 2016-01 – Dealing with Lone Barricaded Suicidal Subjects.  
*Relevant Case Law:* [Escobedo v. Bender, 2010](#); *Julio Morais v. City of Philadelphia, 2007*).

## **5. WARRANTLESS SEARCHES DEPENDENT ON PROBABLE CAUSE**

### **5.1 Search Incident to Arrest**

- 5.1.1 In the case of a lawful custodial arrest, officers may conduct a full search of the person under arrest.  
*Relevant Case Law:* [United States v. Robinson, 414 U.S. 218 \(1973\)](#)
- 5.1.2 In the case of a lawful custodial arrest, officers may search the area “within the immediate control” of the person arrested, meaning the area from which the arrestee might gain possession of a weapon or destroy evidence.  
*Relevant Case Law:* [Chimel v. California, 395 U.S. 752 \(1969\)](#)

### **5.2 Vehicle Searches**

- 5.2.1 Officers may conduct a warrantless search of a vehicle if probable cause exists to believe that contraband or evidence of a crime is present within the vehicle and the vehicle itself is capable of being in motion.  
*Relevant Case Law:* [Carroll v. United States, 267 U.S. 132 \(1925\)](#); [Wyoming v. Houghton, 526 U.S. 295 \(1999\)](#); [United States v. Ross, 456 U.S. 798 \(1982\)](#)
- 5.2.1.1 The rationale for this exception is grounded in the exigency arising from the inherent mobility of vehicles and the somewhat lessened expectation of privacy in one’s vehicle. The entire vehicle may be searched if there is probable cause to believe the vehicle contains contraband or evidence of a crime, even though there is no danger that the vehicle or the evidence may be lost.
- 5.2.2 Officers may conduct a warrantless search of the passenger compartment of a vehicle incident to a lawful arrest in certain circumstances, to include:

5.2.2.1 When the occupant of a vehicle is under arrest, has recently exited the vehicle, and the officer reasonably believes that evidence of the crime of arrest exists within the vehicle.

**Relevant Case Law:** [\*Thornton v. United States\*, 541 U.S. 615 \(2004\)](#)

5.2.2.2 When the occupant of a vehicle is under arrest, is unsecured, is within reaching distance of the passenger compartment of the vehicle at the time of the search, and it is reasonable to believe that evidence of the crime of arrest exists within the vehicle.

**Relevant Case Law:** [\*Arizona v. Gant\*, 556 U.S. 332 \(2009\)](#)

5.2.2.3 Note: The courts have held that it is unreasonable to believe that evidence of traffic crimes, such as driving on a suspended license, provide probable cause to search a vehicle.

5.2.3 If an officer is uncertain about whether exigency exceptions exist to search a vehicle absent a search warrant, the officer may retain custody of the vehicle and seek to obtain a warrant to search the vehicle.

5.2.3.1 Anytime a vehicle is towed subsequent to a search, the initiating officer will ensure an inventory search of the vehicle is conducted pursuant to Section 10 of this General Order.

5.2.4 During the course of a lawful traffic stop, an officer's order for the driver to exit the vehicle is reasonable under the Fourth Amendment.

**Relevant Case Law:** [\*Pennsylvania v. Mimms\*, 434 U.S. 106 \(1977\)](#)

5.2.4.1 Similarly, during the course of a lawful traffic stop, an officer may order passengers to exit the vehicle.

**Relevant Case Law:** [\*Maryland v. Wilson\*, 519 U.S. 408 \(1997\)](#)

## 5.2.5 **Canine Alerts**

5.2.5.1 A drug detection police dog can be used to sniff a vehicle for contraband on any traffic stop if the vehicle is lawfully stopped and the sniff occurs within the duration of time needed to reasonably conduct the stop. The officer is not required to have any belief or facts of a drug violation prior to the sniff occurring.

**Relevant Case Law:** [\*Illinois v. Caballes\*, 543 U.S. 405 \(2005\)](#)

5.2.5.2 In certain instances, the duration of a traffic stop may be extended if an officer has reasonable suspicion of criminal activity and is acting with due diligence and without unnecessary delay to confirm or dispel that suspicion.

**Relevant Case Law:** [\*United States vs. Mendoza\*, No. 05-4299 \(10th Cir. 2006\)](#); [\*United States v. Salgado\*, No. 13-2480 \(8th Cir. 2014\)](#)

5.2.5.3 A positive indication from a well-trained drug detection police dog is sufficient to establish probable cause.

**Relevant Case Law:** [United States v. Race, 529 F.2d 12 \(1st Cir. 1976\)](#)

5.2.5.4 Absent additional facts or information, a positive drug detection dog alert on a vehicle does not establish probable cause to search the passengers of that vehicle. Specifically, the state of Maryland describes occupants for whom probable cause to search does **not** exist as “non-owners, non-drivers” of the vehicle. In *State v. Funkhouser*, the court held that a canine alert provided probable cause to search the vehicle and the driver, who was the “lone occupant” of the vehicle.

**Relevant Case Law:** [State v. Wallace, 372 Md. 137, 812 A.2d 291 \(Md. 2002\)](#); [Livingston v. State, 317 Md. 408, 564 A.2d 414 \(Md. 1989\)](#); [State v. Funkhouser, 140 Md. App. 696, 782 A.2d 387 \(Md. Ct. Spec. App. 2001\)](#)

5.2.5.5 A sniff of the exterior of a vehicle by a drug detection police dog is not considered a search under the Fourth Amendment. However, if the dog enters the vehicle to sniff, it is considered a search unless the dog’s entry into the vehicle was “instinctive and not the product of police encouragement.”

**Relevant Case Law:** [US v. Sharp, 10-6127 \(6th Cir. 2012\)](#)

5.2.5.6 Evidence of a drug detection police dog’s reliability in the field is not required for probable cause. The standard for determining probable cause depends on the totality of the circumstances. The courts have held that training and testing records support a dog’s reliability rather than a comprehensive, documented review of a dog’s prior hits and misses in the field, as this runs antithesis to a totality of the circumstances approach.

**Relevant Case Law:** [Florida v. Harris, 568 U.S. 237 \(2013\)](#)

## 6. Plain View

6.1 Under the plain view doctrine, an object may lawfully be seized if, at the time of the seizure, the object was in plain sight of the officer.

**Relevant Case Law:** [Harris v. United States, 390 U.S. 234 \(1968\)](#); [Texas v. Brown, 460 U.S. 730 \(1983\)](#)

6.2 This plain view doctrine is subject to the following requirements:

6.2.1 The officer must lawfully be in the place or position from which the contraband or evidence was first seen.

**Relevant Case Law:** [Collins v. Virginia, 584 U.S. \(2018\)](#)

6.2.2 The officer must have probable cause to believe that the items observed are contraband or evidence of a crime.

*Relevant Case Law:* [Texas v. Brown, 460 U.S. 730 \(1983\)](#)

6.2.3 The incriminating character of the evidence must be immediately apparent. If further investigation is necessary before the incriminating nature of the object becomes apparent, the plain view doctrine does not apply, and a warrant must be obtained before the seizure of any property can occur.

*Relevant Case Law:* [People v. Humphrey, 361 Ill. App. 3d 947 \(2005\)](#)

## **7. WARRANTLESS SEARCHES NOT DEPENDENT ON PROBABLE CAUSE**

### **7.1 Investigative Detention**

7.1.1 Under certain circumstances, a police officer may stop an individual for the purpose of investigating possible criminal behavior even though there is no probable cause for arrest. An officer is permitted to stop and detain an individual for investigative purposes when the officer has a reasonable suspicion, based on objective and articulable facts, that the individual is involved in criminal activity.

*Relevant Case Law:* [Terry v. Ohio, 392 U.S. 1 \(1968\)](#)

7.1.2 Reasonable suspicion consists of objective, articulable facts that, within the totality of the circumstances, lead an officer to reasonably suspect that criminal activity has been, is being, or is about to be committed. Reasonable suspicion includes not only specific articulable facts, but logical conclusions that the officer's experience enables him/her to draw from those facts as well.

*Relevant Case Law:* [Terry v. Ohio, 392 U.S. 1 \(1968\)](#)

7.1.3 The duration of the stop is limited to the time period that officers are actively working to confirm or dispel the suspicion that criminal activity is afoot and that the individual detained is involved in that criminal activity.

7.1.3.1 The duration of a stop is not restricted to a fixed or limited period of time. Instead, the duration of a stop is based on the totality of the circumstances, to include the specific observations and articulable facts of officers on scene.

### **7.2 Frisk**

7.2.1 If a police officer has a reasonable suspicion, based on articulable and objective facts, that a person is involved in criminal activity and that person may be armed **and** presently dangerous, the officer may conduct a limited search for weapons, which is known as a “frisk” or “pat down.”

*Relevant Case Law:* [Terry v. Ohio, 392 U.S. 1 \(1968\)](#)



7.2.2 A “frisk” or “pat down” is a limited search of the outer clothing to confirm or dispel suspicions that an individual seized during an investigative detention is armed and dangerous. Officers conducting a frisk may seize any item that is immediately apparent as a weapon.

**Relevant Case Law:** [\*Terry v. Ohio, 392 U.S. 1 \(1968\)\*](#)

### 7.2.3 Plain Touch/Feel

7.2.3.1 During a frisk, items cannot be removed from a person’s clothing that are not reasonably believed to be weapons, unless an officer can articulate that the items are contraband or evidence, and that the nature of the items is immediately apparent.

**Relevant Case Law:** [\*Minnesota v. Dickerson, 508 U.S. 366 \(1993\)\*](#)

7.2.3.2 If “plain touch/feel” reveals the presence of an object that the officer has probable cause to believe is contraband, the officer may seize that object. The Court has viewed this situation as analogous to “plain view” in that obvious contraband may be seized, but a search may not be expanded to determine whether an object is contraband.

**Relevant Case Law:** [\*Minnesota v. Dickerson, 508 U.S. 366 \(1993\)\*](#)

## 7.3 Frisk – Vehicles

7.3.1 An officer who has reasonable suspicion, based on specific and articulable facts, that a weapon may be found within a vehicle, can conduct a limited frisk for weapons, to include the passenger compartment of a vehicle and any container in the passenger compartment where a weapon could reasonably be found.

**Relevant Case Law:** [\*Michigan v. Long, 463 U.S. 1032 \(1983\)\*](#)

## 7.4 Limited Protective Sweeps

7.4.1 A home or premises where a lawful arrest has been made or where officers are lawfully on the premises (for instance, when executing a search warrant), may be subjected to a limited protective sweep when a reasonable belief exists, based on specific and articulable facts, that the area to be swept harbors an individual posing a danger to those on scene.

**Relevant Case Law:** [\*Maryland v. Buie, 494 U.S. 325 \(1990\)\*](#); [\*State v. McCall \(2022\)\*](#)

## 7.5 Abandoned Property

7.5.1 A warrantless search and seizure of abandoned property does not violate the Fourth Amendment. In abandoning property, individuals surrender their expectation of privacy. If an officer reasonably believes, based on specific and

articulable facts, that property is abandoned, the officer may search and seize that property.

**Relevant Case Law:** [U.S. v. Thomas, 864 F.2d 843 \(D.C. Cir. 1989\)](#); [U.S. v. Moskowitz, 883 F.2d 1142 \(2d Cir. 1989\)](#)

## 7.6 Mobile Devices

7.6.1 Mobile devices, such as cell phones, tablets, and navigation systems, may be searched without a warrant under exigent circumstances which are compelling and urgent, such as the need to assist persons who are seriously injured or are threatened with imminent injury (for instance, a suspect texting an accomplice who, it is feared, is preparing to detonate a bomb, or a child abductor who may have information about the child's location on his cell phone).

**Relevant Case Law:** [Riley v. California, 573 U.S. 373 \(2014\)](#)

7.6.2 For searches of mobile devices not involving exigent circumstances, officers will not search the contents under the justification of search incident to arrest. Instead, officers may search mobile devices under the following circumstances:

7.6.2.1 Consent;

7.6.2.2 Pursuant to a search warrant;

7.6.2.3 When exigency exists, as described above in Section 7.6.1.

7.6.3 Officers may request forensic assistance in the search of mobile devices by utilizing the Montgomery County Police Electronic Crimes Unit (ECU) and completing the following steps:

7.6.3.1 Complete a digital forensic exam request, which can be accessed via Montgomery County Web Board.

7.6.3.2 Advise the Property Custodian of the examination request, so the item(s) can be entered into the evidence tracking system and delivered to Headquarters Evidence Unit, to be transferred to ECU for examination.

7.6.3.3 Once the above steps are completed, ECU will send an email to the officer advising the officer when he should obtain a warrant.

7.6.4 Officers may search devices themselves if the device is not password protected, the search is minor in scope (i.e. limited to text messages, photos, etc.), and a search warrant has been approved and signed by a judge.

7.6.5 Officers submitting devices to be searched may place the device in electronically secure packaging located in the evidence processing area.

7.6.6 Officers may examine the mobile devices physical aspects to ensure that it cannot be used as a weapon.

## **8. WARRANTLESS SEARCHES – DUI**

8.1 Pursuant to the provisions of [Maryland Traffic Article § 16-205.1](#), a warrantless search and seizure of a person's blood is permitted for the purpose of laboratory analysis (and for use as evidence) if the person was driving or attempting to drive a motor vehicle while DWI or DUI, and while doing so, was involved in a traffic collision involving life threatening injuries or a fatality.

8.2 Pursuant to [Maryland Traffic Article § 16-205.1](#), in the event a suspected DWI/DUI is transported to the hospital and unconscious, or otherwise incapable of refusing to submit to a blood test for the purpose of laboratory analysis (and for use as evidence), the officer may order medical personnel to draw blood (using a blood kit), if the withdrawal of blood will not jeopardize the health or well-being of the DWI/DUI.

## **9. COMMUNITY CARETAKING**

9.1 Community caretaking does not justify warrantless searches and seizures in the home.

*Relevant Case Law:* [Caniglia v. Strom, 593 U.S. \(2021\)](#)

9.2 The community caretaking function describes actions taken by officers to ensure the safety and welfare of the community that are divorced from the detection, investigation, or acquisition of evidence relating to a violation of a criminal statute. Actions such as entering/moving a vehicle to address immediate traffic concerns or providing immediate aid when an officer reasonably believes an individual is suffering from a medical emergency may fall under the community caretaking function. When it comes to community caretaking, the courts have typically applied the function to vehicles. In the case of entries into homes, the courts consider exigent circumstances.

*Relevant Case Law:* [Cady v. Dombrowski, 413 U.S. 433 \(1973\)](#)

## **10. INVENTORY SEARCHES OF SEIZED VEHICLES/OTHER PROPERTY**

*Relevant Case Law:* [South Dakota v. Opperman, 428 U.S. 364 \(1976\)](#); [Colorado v. Bertine, 479 U.S. 367 \(1987\)](#)

10.1 It is the policy of the Department that officers will conduct a non-investigatory inventory search of each and every vehicle that they seize or tow to a police facility, to:

- 10.1.1 Protect officers from danger;
  - 10.1.2 Identify and take possession of valuable property for safekeeping, and;
  - 10.1.3 Protect the Department and its personnel from claims of lost, stolen, or damaged property.
- 10.2 This policy also applies to vehicles that are towed when neither the owner nor the operator is aware of the tow.
- 10.3 The scope of the inventory search shall be limited to those unsecured or readily accessible areas within the vehicle. A locked trunk or glove compartment shall be within the scope of the inventory search only if the keys to those areas are in the officer's possession. The scope of the inventory shall be limited to those areas to which the officer legally has access.
- 10.4 An officer shall complete the non-investigatory vehicle inventory using his or her Body Worn Camera (BWC). The officer shall verbally narrate the inventory, with items left in the vehicle being verbally noted on the BWC.
- 10.5 If an event report is generated, it will be noted in the narrative that an inventory was conducted via the officer's BWC.
- 10.6 The officer shall classify the BWC video by selecting the "Vehicle Inventory" classification in Evidence.com when a vehicle is towed.
- 10.6.1 The officer shall ensure that the case number or CAD event number is added to the BWC recording.
- 10.7 All evidence removed from the vehicle will be submitted to the Evidence/Property Custodian in accordance with the procedures listed in General Order 1105.1.
- 10.8 This policy does not apply to those vehicles that are left legally parked while the driver is taken into custody or to vehicles driven or owned by a person who has diplomatic immunity (See General Order 627.1).

## **11. SEARCHES ARISING FROM THE ODOR OF MARIJUANA**

[HB1071](#) provides the following guidance for searches involving the odor of marijuana:

- 11.1 A police officer may not initiate a stop or a search of a person, a motor vehicle, or a vessel based solely on one or more of the following:
  - 11.1.1 The odor of burnt or unburnt cannabis.
  - 11.1.2 The possession or suspicion of possession of cannabis that does not exceed the personal use amount.

- 11.1.3 The presence of cash or currency in proximity to cannabis without other indicia of an intent to distribute.
- 11.2 If a police officer is investigating a person solely for driving or attempting to drive a motor vehicle or vessel while impaired by or under the influence of cannabis in violation of [§ 21-902 of the Transportation Article](#) or [§ 8-738 of the Natural Resources Article](#), the police officer may not conduct a search of an area of a motor vehicle or vessel that is not:
  - 11.2.1 Readily accessible to the driver or operator of the motor vehicle or vessel; or reasonably likely to contain evidence relevant to the condition of the driver or operator of the motor vehicle or vessel.
  - 11.2.2 Evidence discovered or obtained in violation of this section, including evidence discovered or obtained with consent, is not admissible in a trial, a hearing, or any other proceeding.

## **12. WARRANT APPLICATION AND SERVICE**

- 12.1 **Warrant Application Review Process**

A search and seizure warrant is a document signed by a judge that authorizes officers to search and seize particular items from a particular place. The life of a search and seizure warrant is 10 days, with the date the document was signed being counted as day one. If not served by the end of the 10th day, the document automatically becomes null and void.
- 12.2 Whenever possible, officers will apply for a search warrant or a search and seizure warrant, unless a warrantless search is authorized by law or otherwise consistent with this General Order.
- 12.3 Before an officer takes an application for a warrant to a judge, the officer will notify the appropriate Commander of the intention to apply for the warrant and ensure the application is reviewed, consistent with the Commander's direction. Except in emergency or exigent circumstances, all search warrant applications or search and seizure warrant applications must be reviewed by an officer's supervisor and the Commander prior to the application being presented to a judge or the SAO.
- 12.4 "No knock" search warrants may be submitted to a judge, but must have prior approval by:
  - 12.4.1 The police supervisor and;
  - 12.4.2 The State's Attorney
  - 12.4.3 A description of the evidence in support of the application;

- 12.5 An application for a “no knock” search warrant shall contain:
  - 12.5.1 A description of the evidence in support of the application;
  - 12.5.2 An explanation of the investigative activities that have been undertaken and the information that has been gathered to support the request for a no knock search warrant;
  - 12.5.3 An explanation of why the affiant is unable to detain the suspect or search the premise using other, less invasive methods;
  - 12.5.4 Acknowledgement that any police officers who will execute the search warrant have successfully completed the same training in breach and call-out procedures as SWAT team members;
  - 12.5.5 A statement as to whether the search warrant can effectively be executed during daylight hours and, if not, what facts or circumstances preclude effective execution in daylight hours; and
  - 12.5.6 A list of any additional occupants of the premises, by age and gender, as well as an indication whether any individuals with cognitive or physical disabilities or pets reside at the premises, if known.
- 12.6 A no knock search warrant must have reasonable suspicion that, without authorization, the life or safety of the executing officer or another person may be endangered.
- 12.7 In all cases of search warrants related to controlled dangerous substances (CDS), the Street Crimes Unit supervisor will be consulted. The Street Crimes Unit supervisor will review the warrant and de-conflict with other GPD units and allied agencies. The final approval of all CDS search warrants will be the responsibility of the Special Operations Bureau Commander or the appropriate on-call Commander.

### **13. Search Warrant Service Threat Assessment**

- 13.1 The Search Warrant Threat Assessment will be used to determine if the entry of any building named in a search warrant will be conducted by a qualified SWAT team, or by other means. To make the appropriate determination on the level of force for entry, the investigating officer must completely list and document all appropriate threats present.
- 13.2 Upon receipt of a signed search warrant for any building, the officer obtaining the

warrant will complete and submit to the appropriate Commander, via chain of command, a Search Warrant Threat Assessment (Form GPD 714), prior to the execution of the search warrant.

13.2.1 If extenuating circumstances do not allow an appropriate amount of time for the review of the form, the officer may verbally supply the information to the appropriate Commander for approval.

13.2.2 In instances when a Commander provides verbal approval, the officer will also complete the Search Warrant Threat Assessment, prior to the end of the shift during which the incident occurred.

13.3 The appropriate Commander will approve or disapprove the use of SWAT for the search warrant service. The Commander will maintain a file containing a copy of each search warrant and Search Warrant Threat Assessment.

#### **14. Warrant Service**

14.1 A no knock search warrant shall be executed between the hours of 8:00 am and 7:00 pm, absent exigent circumstances.

14.2 While executing a search warrant, a police officer shall be clearly recognizable and identifiable as a police officer, wearing a uniform, badge, and tag, bearing the name and identification number of the police officer.

14.3 A search and seizure under the authority of a search warrant shall be made within 10 calendar days.

14.4 While executing a search warrant, all GPD officers shall wear body-worn cameras and have them recording.

14.5 Unless executing a no knock search warrant, a police officer shall allow 20 seconds for the occupant of the residence to respond and open the door before the police officer attempts to enter the residence, absent exigent circumstances.

14.6 A Gaithersburg Police Department officer may not use flashbangs, stun, distraction, or other similar military-style devices when executing a search warrant, absent exigent circumstances.

14.7 The execution of a search or search and seizure warrant will be closely supervised by the officer designated as the Raid Supervisor. The procedures listed herein will be followed:

14.7.1 Prior to execution of the warrant, the Raid Supervisor will ensure that the respective on-call Commander, the Chief of Police, and Duty Commander are notified.

- 14.7.2 The Raid Supervisor will plan for appropriate back-up assistance, such as ERT, other uniformed officers, and narcotics investigators.
- 14.7.3 All officers participating in the service of the warrant will wear body armor.
- 14.7.4 Consideration should be given to deployment of ballistic shield(s) if the search warrant involves a high-risk entry.
- 14.7.5 Using a pre-raid checklist, the Raid Supervisor will conduct a pre-raid briefing, during which the execution of the warrant will be planned and discussed, and members of the raid team will be assigned certain tasks, such as evidence collector, recorder, etc.
- 14.7.6 Prior to gaining entry to execute the warrant, the Raid Supervisor will ensure that the PSCC Supervisor is notified of:
  - 14.7.6.1 The location of the raid;
  - 14.7.6.2 Time of projected execution; and
  - 14.7.6.3 The number of officers involved.
  - 14.7.6.4 If necessary, will request “restricted air” from the PSCC until entry is gained and the scene is stabilized.
- 14.7.7 After entry has been gained and the scene is stabilized, the Raid Supervisor will ensure that the PSCC Supervisor, the Duty Commander, and the appropriate Gaithersburg Police Department Commander are notified.
- 14.7.8 The search will be conducted in a manner that is systematic and maximizes officer safety.

#### **14.8 Collection of Evidence**

- 14.8.1 Any property seized will be accounted for on the Search Warrant Inventory and will be labeled and appropriately packaged consistent with accepted packaging techniques and Department policies (See General Order 1105.1).
- 14.8.2 The Raid Supervisor will ensure that all evidence seized is submitted to the Property/Evidence Custodian, prior to conclusion of the seizing officer’s tour of duty.

#### **14.9 Search Warrant Return**

- 14.9.1 The Raid Supervisor will ensure that the search warrant return is completed



and submitted to the issuing judge within 10 calendar days of the warrant's execution.

#### **14.10 Return of Seized Property**

14.10.1 Property will be returned by the Property/Evidence Custodian if:

14.10.1.1 The case has reached final disposition.

14.10.1.2 It is not contraband.

14.10.1.3 It is recoverable by law; and

14.10.1.4 Ownership is in not dispute.

#### **14.11 No Knock Search Warrant Annual Reporting**

14.11.1 An annual reporting is made of all no-knock search warrants, executed by a law enforcement agency, to the Governor's Office of Crime Prevention, Youth and Victim Services, with the following information:

14.11.1.1 The number of times no-knock search warrants were executed in the previous year;

14.11.1.2 The name of the county, municipal corporation, and zip code of the locations where each no-knock search warrant was executed;

14.11.1.3 For each search warrant executed, the number of days from the issuance until the execution of the search warrant, disaggregated by whether the search warrant was a no-knock search warrant;

14.11.1.4 The legal basis for each no-knock search warrant issued;

14.11.1.5 The number of times a search warrant was executed under circumstances in which a police officer made forcible entry into the building, apartment, premises, place, or thing to be searched, specified in the warrant;

14.11.1.6 The number of times a SWAT team was deployed to execute a search warrant;

14.11.1.7 The number of arrests made, if any, during the execution of a search warrant;

14.11.1.8 The number of times property was seized during the execution of a search warrant;

- 14.11.1.9 The number of times a weapon was discharged by a police officer during the execution of a search warrant; and
- 14.11.1.10 The number of times a person or domestic animal was injured or killed during the execution of a search warrant, disaggregated by whether the person or animal was injured or killed by a police officer.
- 14.11.2 The annual report of no-knock search warrants must be submitted by January 15 of each year to the Governor's Office of Crime Prevention, Youth and Victim Services, and the governing body of the law enforcement agency.
- 14.11.3 The Police Training and Standards Commission shall develop a standardized format for the submission of the annual report.
- 14.11.4 The Governor's Office of Crime Prevention, Youth and Victim Services shall publish on its website, and submit the report, before September 1 of each year, to the Governor and the General Assembly.
- 14.11.5 The Governor's Office of Crime Prevention, Youth and Victim Services, and MPTSC, shall report the non-compliance of any law enforcement agency to report to the Governor and the General Assembly.