

Subject: Searches	Page 1 of 6
Effective Date: July 1997	Revision Date: November 2011
Amends/Supercedes: 900.180/May 2011	Approved by: Chief Kevin Higdon
Meets Accreditation Standard:	1.4

Section 1000.140 Searches

Policy

It shall be the policy of the Shively Police Department to conduct all searches of persons, locations and vehicles in accordance with the Law and any other police procedure found in this manual or elsewhere. All officers are expected to comply with the rule of law and police standards and practices.

Procedures

Generally, there are four (5) circumstances in which persons, locations and vehicles can be legally searched:

- **Stop and frisk**
- **Search incident to lawful arrest**
- **Consent search**
- **Search with a warrant.**
- **Plain view search.**

All of these circumstances have requirements that must be met by the officer before proceeding with the search. Each situation, with its requirements and proper procedures shall be followed. Any officer or commanding officer that has any doubt to the legality of a search should seek guidance and advice before conducting a search.

Police searches are a routine but legal procedure that should not be taken lightly and all personnel shall be responsible for conducting searches as prescribed by training, experience and current law. Following is general guidelines for conducting searches and every officer should practice and be familiar with changes in police practice.

Stop and Frisk *Terry v. Ohio 392 U.S. 1(1968)*

This search is based on the “Terry Stop” doctrine. An officer may conduct a Stop and Frisk if an officer reasonably believes a subject may possess a means to threaten the safety of the officer or that of the public.

- The officer may frisk for weapons only.

Search Incident to Lawful Arrest

When an officer has arrested a person, or taken a juvenile into custody, he/she may make a search incident to that arrest or taking into custody (in the case of a juvenile). The officer may search for weapons, evidence or contraband.

Subject: Searches	Page 2 of 6
Effective Date: July 1997	Revision Date: November 2011
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Plain View Search

The plain view doctrine is a concept in criminal law that allows a law enforcement officer to make a search and seizure without obtaining a search warrant if evidence of criminal activity or the product of a crime can be seen without entry or search.

Consent Search

A. The Constitution recognizes that a person may waive his or her rights and consent to a search without a warrant to arrest, etc. In the case of juveniles, however, some special problems occur. Because any consent to search must be a knowledgeable consent, the age of the juvenile is of major importance. It is doubtful a court would recognize a consent given by a first, second, or third grader as a knowing consent. Consent given by a sixteen (16) or seventeen (17) year old would be judged by the individual circumstances. The courts have long held that parents can not waive the rights of their children. It appears, then, that in order for a consent search to be valid, the child will have to be older, and probably both the juvenile's and parent's consent should be obtained.

In the case where extreme exigent circumstances indicate a strip search with a consent, the actual search should be conducted by the parent, if possible, or Youth Center personnel.

Exigent Circumstances

Allows officers to enter a structure without a search warrant, or if they have a "knock and announce" warrant, without knocking and waiting for refusal under certain circumstances. It must be a situation where people are in imminent danger, evidence faces imminent destruction, or a suspect will escape.

Exigent circumstance means:

An emergency situation requiring swift action to prevent imminent danger to life or serious damage to property, or to forestall the imminent escape of a suspect, or destruction of evidence. There is no ready litmus test for determining whether such circumstances exist, and in each case the extraordinary situation must be measured by the facts known by officials.

Those circumstances that would cause a reasonable person to believe that entry (or other relevant prompt action) was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.

Exigent circumstances may make a warrantless search constitutional if probable cause exists. The existence of exigent circumstances is a mixed question of law and fact. There is no absolute test for determining if exigent circumstances exist, but general factors have been identified. These include: clear evidence of

Subject: Searches	Page 3 of 6
Effective Date: July 1997	Revision Date: November 2011
Amends/Supercedes: 900.180/May 2011	Approved by: Chief Kevin Higdon
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probable cause; the seriousness of the offense and likelihood of destruction of evidence; limitations on the search to minimize the intrusion only to preventing destruction of evidence; and clear indications of exigency.

Exigency may be determined by: degree of urgency involved; amount of time needed to get a search warrant; whether evidence is about to be removed or destroyed; danger at the site; knowledge of the suspect that police are on his or her trail; and/or ready destructibility of the evidence. In determining the time necessary to obtain a warrant, a telephonic warrant should be considered. As electronic data may be altered or eradicated in seconds, in a factually compelling case the doctrine of exigent circumstances will support a warrantless seizure.

Even in exigent circumstances, while a warrantless seizure may be permitted, a subsequent warrant to search may still be necessary

Search with a Warrant

- A. A search with a warrant, whether for a house, automobile, or person (juvenile or adult) is always preferred. Warrants are only valid if signed by a judge and typically expire after 24 hours. If an officer is called to a school to search a juvenile, the officer should determine if probable cause exist to support a search warrant.
- B. If the probable cause is the testimony of teachers or school personnel, that testimony should be reduced to writing and signed. The officer should then apply to a Juvenile Court judge for an order to search.
- C. Once the signed order is obtained, the juvenile should be taken to the Jefferson County Youth Center for the search by a police officer of the same sex.
- D. If a strip search is indicated, the judge's order should specify a strip search.

Before serving a search warrant, the Highest Ranking Officer on the shift MUST complete the Risk Assessment Matrix.

Subject: Searches	Page 4 of 6
Effective Date: July 1997	Revision Date: November 2011
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These types of searches involve:

- **Persons** *U.S. v. Robinson, 414 U.S. 218 (1973)*
- **Locations** *Chimel v. California 395 U.S. 752 (1969)*
- **Vehicles** *New York v. Belton, 454 U.S. 454 (1981)* *Arizona v. Gant(2009)see below*
 - **Vehicle Exception Search**
 - *Carroll v. U.S., 267 U.S. 132 (1925)*
 - **Hot Pursuit to Arrest**
 - *Warden of Maryland Penitentiary v. Hayden, 387 U.S. 294 (1967)*
 - **Entry of Premises to Protect Life of Health**
 - *Cady v. Dombrowski, 413 U.S. 433 (1973).*
 - *Mincey v. Arizona, 437 U.S. 385 (1978)*
 - **Entry of Premises to Prevent Destruction of Evidence**
 - *U.S. v. Santana, 427 U.S. 38 (1976)*
 - **Sweep Search**
 - *Maryland v. Buie, 494 U.S. 325 (1990)*
 - **Vehicle Inventory**
 - *South Dakota v. Opperman, 428 U.S. 364 (1976)*
 - *Colorado v. Bertine, 479 U.S. 367 (1987)*
 - *City of Danville v. Dawson, Ky., 528 S.W.2d 687 (1975)*
 - *Clark v. Comm., Ky. App., 868 S.W. 2d 101 (1994)*
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Exclusionary Rule *Silverthorne Lumber Co. v. U.S., 251 U.S. 385 (1920)*

Each officer shall be familiar with the Exclusionary Rule as it applies to preventing evidence from being used in Court.

Arizona v. Gant

Held: Police may search the passenger compartment of a vehicle incident to a recent occupant’s arrest only if it is reasonable to believe that the arrestee might access the vehicle at the time of the search or that the vehicle contains evidence of the offense of arrest. Pp. 5–18.

(a) Warrantless searches “are *per se* unreasonable,” “subject only to a few specifically established and well-delineated exceptions.” *Katz v. United States*, 389 U. S. 347, 357. The exception for a search incident to a lawful arrest applies only to “the area from within which [an arrestee] might gain possession of a weapon or destructible evidence.” *Chimel*, 395 U. S., at 763. This Court applied that exception to the automobile context in *Belton*, the holding of which rested in large part on the assumption that articles inside a vehicle’s passenger compartment are “generally . . . within ‘the area into which an arrestee might reach.’ ” 453 U. S., at 460. Pp. 5–8.

Subject: Searches	Page 5 of 6
Effective Date: July 1997	Revision Date: November 2011
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RISK ASSESSMENT MATRIX

Risk assessment is based on facts and circumstances stated in the affidavit for the arrest or search warrant, knowledge of the target location and the criminal history of the suspect(s). A copy of the warrant should be attached to the Risk Assessment Matrix.

NOTE: The supervising officer must consider the presence of non-involved persons and children when determining the manner of any entry into a residence.

Section 1 Search Warrant Considerations		
Points	Facts	Score
0	Warrant for Property Crime	
1	Warrant for Crime against Person	
2	Warrant for Major Drug Possession/Dist.	
Section 2 Arrest Warrant Considerations		
Points	Facts	Score
0	Warrant for Property Crime	
1	Warrant for Crime against Person	
2	Warrant for Major Drug Possession/Dist.	
Section 3 Subject History Considerations		
Points	Facts	Score
0	History of Property Crimes	
1	History of Crimes against Persons	
2	Subject Statements regarding intent to resist	
3	Criminal History of Resistance or Drug Offenses	
4	Criminal History of Violence	
10	Criminal History of Firearms Use	

Subject: Searches	Page 6 of 6
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Section 4 Location Considerations		
Points	Facts	Score
1	Location of Service requires Minimal Force	
2	Location has Surveillance by Suspects	
3	Presence of Hazardous Materials	
3	Location requires use of Ram/Sledgehammer	
10	Location is Fortified requiring Specialty Breaching	
10	Location guarded by dog(s)	
Section 5 Firearms Considerations		
Points	Facts	Score
2	Firearms are readily available to Suspect	
3	Previous history of location involved weapons or involved violence to officers	
4	Subject known to carry and has been arrested for unlawful possession of firearm	
6	Subject is known to be always armed	
8	Subject has history of Assault on Officers or Resisting Arrest when confronted by Law Enforcement	
25	Automatic weapon is possessed by Suspect or was used by Suspect in the commission of prior crime	

Circle only one provision in each of the 5 sections. The circled provision should be the highest known provision that is applicable to the subject location.	
Points	
0-14	Service/Execution may be handles by the unit supervisor.
15-20	Consultation with SWAT Commander is optional; warrant service requires approval of District/Unit Commander or designee
21-24	Consultation with SWAT Commander is required; warrant service requires approval of District/Unit Commander or Designee
25 or More	SWAT Team is required for service/execution of warrant; warrant service requires approval of District/Unit Commander and notification of Commanding Officer of Supporting Units

Signature of Highest Ranking Officer

Date of Review