



*Alexandria Police Department*  
Directive 10.25



# SEARCH INCIDENT TO ARREST

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10.25.01
PURPOSE AND POLICY

The purpose of this directive is to establish guidelines for the search of person(s) who are placed under arrest and taken into custody. Unless stated otherwise, the searches referred to in this document are searches incident to an arrest.

The Department expects officers to search competently and knowledgeably. When a search is made incidental to an arrest, the search must be based on the arrest and not the arrest on the search. The officer's authority to search without a warrant comes automatically from a lawful arrest.

10.25.02
DEFINITIONS

**Body Cavity Search:** a search involving not only visual inspection of skin surfaces but the internal physical examination of body cavities and, in some instances, organs such as the stomach cavity.

**Strip Search:** for the purposes of this directive, "strip search" means having an arrested person remove or arrange some or all of his/her clothing to permit a visual inspection of

the genitals, buttocks, anus, female breasts, or undergarments (Virginia code §19.2-59.1.F).

<b>10.25.03      PROCEDURES</b>
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**A. General** – The general rule is that a reasonably limited search for weapons or evidence may follow a valid custodial arrest. A search incident to a custodial arrest may extend to areas, articles, and containers located in areas subject to the suspect's immediate control.

**B. Search before an arrest**

1. An officer cannot search a person without probable cause and then arrest the person if something incriminating is found *during that search*.
2. A search before an arrest is valid only if:
  - a. Probable cause for the arrest existed before the search began; and
  - b. The search and arrest occur almost at the same time, and are part of a continuous, uninterrupted transaction.

**C. Time and place of search incident to an arrest**

1. Following an arrest, a search incident to the arrest is mandatory.
2. A search incident to an arrest must occur in such a way that the search and the arrest are part of a continuous, uninterrupted transaction. Two conditions are necessary for this to occur:
  - a. The search must be made as soon as practical after the arrest; and
  - b. The search must be made at or near the place of the arrest.
3. In cases involving hostile crowds, it may be desirable to remove the arrestee from the immediate area prior to the search.

**D. Use of force**

1. An officer is permitted to use whatever degree of force is reasonable and necessary to conduct a search incident to an arrest.
2. Suspects will be handcuffed prior to being searched incident to an arrest.

### E. Scope of search

1. The entirety of the person being arrested.
2. The area within the immediate control of the person being arrested into which the suspect might reach for a weapon or for evidence. The purpose of this search must be to:
  - a. Protect the officer;
  - b. Prevent escape; and/or
  - c. Prevent the destruction of evidence.
3. Accessories carried by the suspect may be searched incident to a custodial arrest for they are within the area in which the defendant might reach to grab a weapon or an item of evidence.
4. Vehicles contemporaneous with the arrest of an occupant or driver. The search will be conducted as soon as practical following the arrest.
  - a. A search of the entire passenger compartment (including any container found within the passenger compartment) may be undertaken only if the arrestee is unsecured, i.e., not in handcuffs, and within reaching distance of the passenger compartment at the time of the search, or it is reasonable to believe the vehicle contains evidence of the offense of arrest. See Arizona v. Gant, 129 S. Ct. 1710 (2009).
  - b. When these justifications are absent, a search of an arrestee's vehicle will be unreasonable unless a warrant is obtained, or you can show that another exception to the warrant requirement, i.e. the Carroll Doctrine, applies.
5. Procedures for inventory searches of towed vehicles are outlined in Police Directive 11.22 Impounded, Stolen, and Recovered Vehicles.

### F. Strip searches

1. *Strip searches are sometimes necessary for the safety and security of the officer or to seize critical evidence of criminal activity. Officers shall make a reasonable effort to conduct strip searches in a manner to ensure the personal privacy of the arrestee, and with due regard for human dignity. Therefore, officers will attempt to ascertain the sex of a person subject to a strip search or body cavity search, regardless of their appearance or gender identity.*

- a. *To identify the sex of the person to be searched, officers shall utilize a professional and courteous line of questioning as outlined below. Officers will also explain the probable cause behind the search and the process by which the search will be conducted.*
  - b. *After providing the probable cause explanation, officers should tell the person that they are required to ask them the following questions to ensure they are being treated with dignity and with respect to their personal privacy. Then, the officer shall ask the following:*
    - i. *Were you born with male or female genitalia?*
    - ii. *Do you identify as a male or female?*
    - iii. *Have you had transition surgery?*
2. *Sex will be determined by the genitalia an individual possesses, not their gender identity or expression. Only a sworn officer who is the same sex as the prisoner being searched shall conduct the strip search.*
  3. *Strip searches shall only be performed on premises where the search cannot be observed by persons not physically conducting the search. Regardless of location, a supervisor must authorize the strip search.* [1.2.8.b]
    - a. A strip search in the field will only be conducted under exigent circumstances where the safety of the officer or others is at risk and a supervisor has authorized it.
    - b. Except when noted above (10.25.03.F3a), strip searches will be performed in a private room, preferably one designed for the purpose, by the least number of same-sex personnel present as necessary, in conformance with approved hygienic practices, and under circumstances that provide privacy from all but those authorized to conduct the search. [1.2.8.b]
  4. Section 19.2-59.1 of Virginia State Code provides that strip searches will not be conducted of persons arrested for traffic violations, Class 3 or 4 misdemeanors, or violations of city, county, or town ordinances, which are punishable by less than 30 days in jail, unless the officer has an articulable, reasonable suspicion to believe that the person is concealing a weapon. Reasonable suspicion may be based on, but is not limited to, the following criteria:
    - a. Nature of the offense;
    - b. Arrestee's demeanor;
    - c. Circumstances of the arrest or evidence of a major offense in plain view or during the course of the arrest;

- d. Arrestee's criminal record, particularly a history of narcotics offenses or violence; and/or
- e. Detection of suspicious objects beneath the suspect's clothing during a search incident to an arrest.

5. *Except for children committed to the Department of Juvenile Justice or confined or detained in a secure local facility for juveniles or a jail or other facility for the detention of adults and except circumstances when the child is taken into custody by or remanded to a law-enforcement officer pursuant to a circuit or district court order, no child under the age of 18 shall be strip searched or subjected to a search of any body cavity by a law-enforcement officer, as defined in § 9.1-101, or a jail officer unless the child is in custodial arrest and there is reasonable cause to believe on the part of a law-enforcement officer or jail officer authorizing the search that the child is concealing a weapon.* [1.2.8.c]

**G. Body cavity searches**

[1.2.8.a]

- 1. A search of any body cavity must be performed under sanitary conditions. A search of any body cavity, other than the mouth, shall be conducted by or under the supervision of medically trained personnel.
- 2. Body cavity searches, other than the mouth, will be conducted only when there is probable cause to believe a particular prisoner may be concealing contraband within a body cavity or otherwise on the suspect's person.
- 3. Body cavity searches, other than the mouth, will only be conducted with the approval of the watch commander.
- 4. If appropriate, upon approval by the watch commander, the officer will seek a search warrant and will prepare the necessary affidavit. Body cavity searches will be conducted without a warrant only in extreme emergencies to protect the lives of prisoners or to prevent serious breaches of security.
- 5. The body cavity search will be performed only by a licensed physician or other medically trained person as directed by the physician.
- 6. The process of conducting the body cavity search will involve the same safeguards for privacy and hygiene as for strip searches. [1.2.8.b,c]
- 7. Body cavity search procedures:
  - a. The officer will inform the prisoner of his or her intention to conduct a body cavity search, giving the prisoner the opportunity to voluntarily surrender the suspected contraband.

- b. The prisoner will remove every article of clothing, including wigs and dentures, and will give them to the officer for inspection.
- c. Should the prisoner resist the cavity search and become violent, additional officers (of the same sex as the prisoner whenever possible; see Sub-section "d" below) will restrain the prisoner and assist in stripping. Only sufficient force necessary under the circumstances to complete the search will be applied.
- d. Should a prisoner resist a cavity search and an insufficient number of same-sex officers are available to restrain the prisoner, the following procedures will be followed:
  - i. Officers of the opposite sex may assist in subduing the prisoner before the prisoner is stripped.
  - ii. Officers will subdue the prisoner and apply the necessary restraints (handcuffs, shackles, etc.), and then officers of the opposite sex will leave the room, unless there are insufficient officers of the same sex to provide adequate security for personnel conducting the search.

**H. What may be seized:** During a search incident to an arrest, an officer may seize any of the following things:

1. Anything in the area that is evidence of the offense for which the officer has probable cause to make the arrest;
2. Anything in the area that is evidence of any other offense; or
3. Anything else outside the area that is evidence of the offense for which the officer makes the arrest or of any other offense if the evidence is in plain view of the location where the arrest is made.

**I. Search of Cell Phones:**

- a. As a general rule, cell phones seized incident to an arrest may not be searched or forensically "dumped" without first obtaining a search warrant.
- b. In extremely limited situations, exigent circumstances may justify a limited, warrantless search of a cell phone. These situations will rarely present themselves, and, according to the Supreme Court, may exist in the following circumstances:
  - i. When an officer has specific information that the particular cell phone in question is in imminent danger of being remotely wiped;

- ii. When the officer needs information on the cell phone to immediately locate or capture an extremely violent suspect who is in actual flight from police; or
  - iii. When the officer needs information on the cell phone to assist or locate a person who is seriously injured or who is threatened with serious, immediate physical injury.
- c. If an officer or detective believes that exigent circumstances justify a warrantless examination of a cell phone, the Office of the Commonwealth's Attorney should be contacted, if practical, to discuss the facts presented to them.
- J. Searches incident to an arrest** are legal. The Attorney General of Virginia has determined that searches incident to lawful arrests are not prohibited by Virginia Code §19.2-59, which provides that no law enforcement officer will conduct a search unless in possession of a valid search warrant.
- K. Reporting requirements:** Officers will document all searches incident to arrest, including strip searches and body cavity searches, in their arrest reports. In the cases involving strip searches or body cavity searches, officers will include the name of the supervisor or watch commander authorizing the search. **[1.2.8.c]**

**By Authority of:**

**Don Hayes**  
**Chief of Police**