



Alexandria Police Department
Directive 10.37



WARRANTLESS SEARCH

Effective Date: 06-22-2021		Cancels: 08-22-2016
Updated Date:	Section(s):	SME Review Date:
Updated Date:	Section(s):	2025
Updated Date:	Section(s):	

CONTENTS

10.37.01	POLICY
10.37.02	DEFINITIONS
10.37.03	PROCEDURES
<i>Appendix A</i>	<i>Exigent Real-Time Location Written Statement</i>

10.37.01 POLICY

The Fourth Amendment of the Constitution protects the "right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures." As a general rule, searches require a search warrant. However, the courts have recognized that there are exceptions to this general rule, wherein a search warrant is not required as a prerequisite to conducting a search. In order to search without a warrant, officers must comply with the requirements for an exception as currently set down by the courts.

It is the policy of the Alexandria Police Department to conduct searches in accordance with mandates prescribed under federal and state law.

10.37.02 DEFINITIONS

Frisk – A limited, protective search of a person’s clothing or effects for the sole purpose of determining whether the person is concealing a weapon on or about his person, and based upon a reasonable, articulable suspicion that the person is armed.

Investigative Detention - The temporary detention of a subject when the officer has reasonable suspicion that criminal activity has occurred, is occurring, or is about to occur and that the person to be stopped is involved (see Directive 10.38 Investigative Detentions).

Reasonable Suspicion – A belief based upon objective facts which lead an officer to reasonably suspect that a crime has been committed or is about to be committed. A reasonable suspicion must be based on the totality of the circumstances, including the officer’s knowledge, training and experience. A reasonable suspicion does not exist unless the officer can articulate the objective factual basis for the officer’s belief.

Emergency Phone Ping – *The emergency disclosure of real-time location data for a cellular telephone obtained from the service provider based on verified investigative or law enforcement purposes.*

10.37.03 PROCEDURES

The following are exceptions to the search warrant requirement of the Fourth Amendment:

A. Search by Consent

[1.2.4.a]

An officer may conduct a consent search of a person or the person’s property when such consent to search is given by the person to be searched, or when such consent is given by the person with sole or common authority (standing) over the property to be searched. The standard is whether the consent was freely and voluntarily given. The burden is on the officer to prove that consent was obtained voluntarily. Consent is not irrevocable and may be withdrawn at any time after it has been given. The person may limit the scope of the search in any way that he or she wishes, and the officer is bound by that limit. A search that exceeds the scope of the consent is not valid. When possible, the officer should have the person sign a Consent to Search form (APD-0122).

B. Frisk (Pat Down)

A frisk constitutes a search under the Fourth Amendment. Commonly referred to as a “pat down”, a frisk usually occurs during an investigative detention and is based on reasonable, articulable suspicion the suspect may be armed or dangerous. (Terry v. Ohio, 392 U.S. 1 (1968)). A frisk is always designed to locate weapons as opposed to contraband and therefore must be limited to those areas within a suspect’s control from which a weapon might be accessed. Officers may engage in a small amount of manipulation of a suspect’s clothing during a frisk to determine whether a suspect is armed. (Bandy v. Commonwealth, 52 Va. App. 510 (2008)). Additionally, the frisk

may also include a protective sweep of any area within the suspect's reach from which the suspect could reasonably gain immediate control of weapons, such as a bag or purse (Jones v. Commonwealth, 52 Va. App. 548 (2008)), or the areas inside of a vehicle that are within the suspect's immediate control. (Michigan v. Long, 463 U.S. 1032 (1983)).

C. Search Incident to Arrest

The warrantless search of a person incident to a custodial arrest is a permissible exception to the warrant requirement of the Fourth Amendment (United States v. Robinson, 414 U.S. 218 (1973)). However, in Riley v. California, 573 U.S. 373 (2014) the Supreme court ruled that a cell phone recovered during a custodial arrest may not be searched incident to the arrest and requires a search warrant. In Arizona v. Gant, 556 U.S. 332 (2019) the court ruled that if the arrestee is an occupant or recent occupant of a vehicle, the officer may search the passenger compartment of the vehicle "only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe that the vehicle contains evidence of the offense of the arrest."

D. Hot Pursuit

The police generally do not need a search warrant to enter a house if an officer is in "hot pursuit" of someone the officer reasonably believes has committed a crime. Warden v. Hayden, 387 U.S. 294 (1967). A suspect may not defeat an arrest which has been set in motion in a public place by the expedient of escaping to a private place. United States v. Santana, 427 U.S. 38 (1976).

E. Plain View

[1.2.4.d]

If an officer who is lawfully present at a location observes contraband in plain view, the officer may seize the contraband without a warrant. The court has recognized that if an item is left in open view and is observed by a police officer from a lawful vantage point, there has been no invasion of a legitimate expectation of privacy and therefore no search has occurred within the meaning of the Fourth Amendment.

F. Abandoned Property

The Supreme Court has ruled that a police officer may search property which has been abandoned by the owner without a search warrant (California v. Greenwood, 486 U.S. 35 (1988)). The court stated that when a person abandons property, such as leaving trash on the curb or throwing a bag of drugs while being pursued by police, they forfeit any reasonable expectation of privacy protected by the Fourth Amendment.

G. Vehicle Searches**[1.2.4.c]**

In Carroll v. United States, 267 U.S. 132 (1925) the court recognized the difference between the search of a building and a vehicle because of the inherent mobility of a vehicle. For that reason, the court ruled that when probable cause exists to believe that a vehicle in a public place contains contraband or evidence of a crime, a warrantless search of the vehicle may be conducted. The scope of the search is defined by the object of the search and the places in which there is probable cause to believe that the object of the search may be found.

If the vehicle is impounded or otherwise taken into the custody of the police and the mobility of the vehicle is no longer at issue, it is always best practice to obtain a search warrant for the vehicle before conducting the search.

H. Exigent Circumstances

If exigent circumstances exist, an officer may conduct a warrantless search. In United States v. McConney, 728 F.2d 1195 (9th Cir. 1990) the court defined exigent circumstances as 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 evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.” It should be noted that the officers may not take any action to intentionally cause an exigent circumstance, and once the exigency no longer exists, the officers must cease their search and obtain a warrant (Kentucky v. King, 563 U.S. 452 (2011)).

I. Community Caretaker Function

In Commonwealth v. Waters, 20 Va. App. 285 (1995) the court recognized that “Police officers have an obligation to aid citizens who are ill or in distress, as well as a duty to protect citizens from criminal activity.” When an officer has an objectively reasonable belief that an emergency exists that requires immediate entry to render assistance or prevent harm to persons or property, such as checking on the welfare of an elderly person or evacuating an apartment building, the officer may make a warrantless entry (search) into a residence or building. Before making an entry based on the Community Caretaker Function, the officer should exhaust every reasonable effort to confirm that an emergency does exist, and that warrantless entry is necessary. When time permits, a supervisor should be notified before entry is made.

J. Protective Sweep**[1.2.4.d]**

There is no crime scene exception to the search warrant requirement. If an officer has articulable reason to believe that a crime scene may contain victims in need of assistance, outstanding suspects who may pose a threat to the officers or others, or

to secure evidence in plain view, officers may conduct a “protective sweep” of the scene to ensure that the scene is safe and secure. Once aid is provided and the scene is secure, a search warrant should be obtained before searching for evidence or contraband. Mincey v. Arizona U.S. 385 (1978); Michigan v. Clifford, 464 U.S. 287 (1984); Hunter v. Commonwealth, 8 VA. App. 81, 378 S.E.2d 634 (1989).

K. School Situations

1. The U.S. Supreme Court has established a lesser standard than probable cause for searches by school personnel. "The substantial need of teachers and administrators for freedom to maintain order in schools does not require strict adherence to the requirement that searches be based on probable cause...rather, the legality of a search of a student should depend simply on reasonableness, under all the circumstances" (New Jersey v. TLO, 469 U.S. 325 (1985)). However, when a trained police officer enters into discussion or preparation for the search, the higher standard of probable cause may be required.
2. The Fourth Amendment applies only to State actors. Consequently, administrators and staff at a private school, (for example, Bishop Ireton High School, Episcopal School, etc.) can search a student or the student's locker and personal property at any time, for any reason. There need not be a prior finding of probable cause or reasonableness under the circumstances. However, if a private school staff member or administrator conducts a search under the direction or supervision of a police officer, he or she becomes a State actor subject to the Fourth Amendment requirements.

L. Inventory Searches

[1.2.4.f]

Inventory searches of towed vehicles are outlined in Police Directive 11.22 Impounded, Stolen and Recovered Vehicles.

M. Emergency Phone Ping

An officer or detective may obtain real-time location data without a warrant in the following circumstances based on Virginia Code 19.2-70(E):

1. *To respond to the user's call for emergency services;*
2. *With the consent of the owner or user of the phone if:*
 - a. *The device is in his/her possession;*
 - b. *The owner or user is reporting the phone stolen; or*

3. *With the consent of the legal guardian or next of kin if the owner or user of the phone is reported missing;*
4. *To locate a child who is reasonably believed to have been abducted or to be missing and endangered; or*
5. *If the officer or detective reasonably believes that an emergency involving the immediate danger to a person requires immediate disclosure and that a warrant cannot be obtained in time to prevent the identified danger.*

No later than three business days after an emergency phone ping, the officer or detective shall file with the Clerk of the Circuit Court, via the Commonwealth's Attorney's office, a written statement setting forth the facts giving rise to the emergency and the facts as to why the person whose real-time location data was sought is believed to be important in addressing the emergency.

By Authority Of:

**Michael L. Brown
Chief of Police**