

Search and Seizure

313.1 PURPOSE AND SCOPE

Both the federal and state Constitutions provide every individual with the right to be free from unreasonable searches and seizures. This policy provides general guidelines for Urbana Police Department personnel to consider when dealing with search and seizure issues.

313.2 POLICY

It is the policy of the Urbana Police Department to respect the fundamental privacy rights of individuals. Members of this department will conduct searches in strict observance of the constitutional rights of persons being searched. All seizures by this department will comply with relevant federal and state law governing the seizure of persons and property.

As often as practicable, the Department will provide relevant and current training to officers as guidance for the application of current law, local community standards and prosecutorial considerations regarding specific search and seizure situations, as appropriate.

313.3 SEARCHES

The U.S. Constitution generally provides that a valid warrant is required in order for a search to be permissible. There are, however, several exceptions that permit a warrantless search.

Examples of law enforcement activities that are exceptions to the general warrant requirement include, but are not limited to, searches pursuant to the following:

- Valid consent
- Incident to a lawful arrest
- Legitimate community caretaking interests
- Vehicle searches under certain circumstances
- Exigent circumstances

Certain other activities are recognized by federal and state courts and by certain statutes as legitimate law enforcement activities that also do not require a warrant. Such activities may include seizure and examination of abandoned property, and observations of activities and property located on open public areas.

Because case law regarding search and seizure is constantly changing and subject to interpretation by the courts, each member of this department is expected to act in each situation according to current training and his/her familiarity with the subject's clearly established rights as determined by case law.

Whenever practicable, officers are encouraged to contact a supervisor to resolve questions regarding search and seizure issues prior to electing a course of action.

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313.3.1 SEARCHES PROTOCOL FOR PROPERTY AND PREMESIS

Although conditions will vary and officer safety and other exigencies must be considered in every search situation, the following guidelines should be followed whenever circumstances permit:

- (a) Members of this department will strive to conduct searches with dignity and courtesy.
- (b) Whenever possible, officers should explain the reason for the search.
- (c) Searches should be carried out with due regard and respect for private property interests and in a manner that minimizes damage.
- (d) In order to minimize the need for forcible entry, consideration may be given to obtaining keys, combinations or access codes when a search of locked property is anticipated.

313.4 SEARCH PROTOCOL

The U. S. Constitution provides for the search of a person under certain circumstances:

- Valid Consent
- Incident to lawful arrest
- Warrant

Because case law is constantly changing and subject to interpretation by the courts, each member of this department is expected to act in each situation according to current case law.

Whenever practicable, officers are encouraged to contact a supervisor to resolve questions regarding search and seizure issues prior to electing a course of action.

313.4.1 SEARCH PROTOCOL FOR PERSONS

Thorough searches of prisoners and arrestees are a safety practice that lowers the level of danger both for the officer and the arrestee. Proper searches are also an effective means of building a criminal case. Evidence and/or contraband are often carried on the person of criminals. The Police Department requires that every arrestee, as soon as practical, be thoroughly searched. Although conditions will vary and officer safety and other exigencies must be considered in every search situation, the following guidelines should be followed whenever circumstances permit:

- Members of this department will strive to conduct searches with dignity and courtesy.
- Officers should explain to the person being searched the reason for the search and how the search will be conducted.
- When the person to be searched is of the opposite sex as the searching officer, a reasonable effort should be made to summon an officer of the same sex as the subject to conduct the search.
- When it is not practicable to summon an officer of the same sex as the subject, another officer or supervisor should witness the search.

1. Searches Incident to Arrest (Custody Searches)

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Under the Code of Criminal Procedure, when a lawful arrest is made, a peace officer may reasonably search the person arrested and the area within such person's immediate control for the purpose of protecting the officer from attack, preventing the person from escaping, discovering the fruits of the crime, or discovering any instruments, articles or things which may have been used in the commission of, or which may constitute evidence of, an offense. 725 ILCS 5/108-1(1). The arresting officer shall search all arrestees; provided, however, that the officer conducting a search shall be of the same sex as the arrestee when practicable. If at all possible, searches should be performed immediately after handcuffing.

2. Searches with Warrants

Arrestees and others may be searched pursuant to a search warrant issued by a judge. These searches should be done in a controlled environment and by the appropriate medical personnel or those trained for the type of search required.

For details on physical body cavity searches refer to Custodial Searches policy.

3. Stop and Frisk during Temporary Questioning (Pat Downs)

A peace officer, after having identified himself as a peace officer, may stop any person in a public place for a reasonable period of time when the officer reasonably infers from the circumstances that the person is committing, is about to commit or has committed an offense as defined in Section 102-15 of this Code, and may demand the name and address of the person and an explanation of his actions. Such detention and temporary questioning will be conducted in the vicinity of where the person was stopped.

When a peace officer has stopped a person for temporary questioning pursuant to 725 ILCS 5/107-14 and reasonably suspects that he or another is in danger of attack, he may search the person for weapons. If the officer discovers a weapon, he may take it until the completion of the questioning, at which time he shall either return the weapon, if lawfully possessed, or arrest the person so questioned. 725 ILCS 5/108-1.01

4. Searches by Officers Transporting Prisoners

Oftentimes, the officer making the arrest and the initial search is not the one transporting. The transporting officer is also required to ensure that the arrestee has been searched and not just assume that a search has been done.

5. Strip Searches

"Strip search" means having an arrested person remove or arrange some or all of his or her clothing so as to permit a visual inspection of the genitals, buttocks, anus, female breasts or undergarments of such person.

For details on strip searches refer to Custodial Searches policy

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313.5 DOCUMENTATION

Officers are responsible to document any search and to ensure that any required reports are sufficient including, at minimum, documentation of the following:

- Reason for the search
- Any efforts used to minimize the intrusiveness of any search (e.g., asking for consent or keys)
- What, if any, injuries or damage occurred
- All steps taken to secure property
- The results of the search, including a description of any property or contraband seized
- If the person searched is the opposite sex, any efforts to summon an officer of the same sex as the person being searched and the identification of any witness officer

Supervisors shall review reports to ensure the reports are accurate, that actions are properly documented and that current legal requirements and department policy have been met.