



**CSU FULLERTON POLICE DEPARTMENT
GENERAL ORDER NUMBER 3-11**

LEGAL AND CONSTITUTIONAL REQUIREMENTS

- SUBJECT:** Legal and Constitutional requirements for arrests, interrogation and search and seizure.
- PURPOSE:** The purpose of this order is to specify legal and constitutional requirements for the arrest process, interview and interrogation, and search and seizure that are to be followed by all Department personnel to ensure that the rights of all individuals are protected.
- POLICY:** It shall be the policy of this Department to require employees to comply with all federal, state and local requirements, which provide for the protection of individual rights. These requirements are contained in this Order & referenced in the California Peace Officers Legal Source Book.

I. Search and Seizure

A. Plain View

1. Objects in plain view of an officer can provide probable cause to obtain a warrant or for a seizure.
2. Objects in plain view may be seized without a warrant when the following conditions exist.
 - a. The officer must be in a place where he/she has a right to be;
 - b. The item to be seized was inadvertently viewed and no type of prying quest was made; and
 - c. The item was immediately recognized as evidence, contraband, or a weapon.
3. Objects, including evidence or contraband, observed in plain view does not automatically mean that you may legally enter without a warrant to seize it, but it can serve as probable cause for a search warrant. The scene can be protected until a search warrant can be obtained.

B. Searches Conducted Pursuant to a Warrant

1. To obtain a search warrant, an officer must submit an affidavit swearing that they have probable cause to believe that property connected to a crime is in the place they seek to search.

2. The affidavit should contain sufficient facts to establish probable cause that:
 - a. A crime was, is being or is about to be committed.
 - b. That the property named in the search warrant application is connected to the crime.
 - c. That the property named in the search warrant application is in the place to be searched at the present time.
 3. The warrant must particularly describe the items sought, the location, vehicle, or person to be searched and must list the statutory grounds for issuing the warrant.
 4. An officer serving the warrant must announce his presence, identify himself or herself as an officer, state his/her purpose and demand entry before forcibly entering a private dwelling.
 5. A copy of the warrant must be provided to the subject of the warrant upon service.
 6. The warrant must be executed and returned to the court within 10 days from issuance, along with a written inventory of all property seized, unless specified otherwise by the issuing judge. (Penal Code Sections 1534 and 1537)
- C. Warrant Exceptions – There are seven legal exceptions to the warrant requirement. [CALEA 1.2.4]
1. Search by voluntary consent;
 2. Search incident to a lawful arrest;
 3. Search in an emergency where probable cause exists and there is not time to obtain a warrant;
 4. Investigative stop and frisk; and
 5. Inventories of vehicles being impounded.
 6. Item seized pursuant to the plain View doctrine. Refer to I.A. 1.2.3.
 7. Searches conducted pursuant to Probation, Parole or PRCS terms as ordered by the court and determined at sentencing. This type of search cannot be arbitrary, capricious, or harassing as decide in **Samson v. California, 547 U.S. 843 (2006)**
- D. Search by Consent [CALEA 1.2.4]
1. A search that is based on proper consent, that is freely given, not coerced, or given under duress, either expressed or implied.
 2. The person giving the consent must have the authority to do so. A valid consent to a search can only be given by a person who has a valid right to do so and can only transfer property rights that he/she actually has.

3. When two or more people have equal right of access to property/premises, a consent search may be given by any such person and the search and any evidence seized will usually be valid against all occupants.
 4. Consent must be clear, explicit, and digitally recorded, whenever possible.
 5. Even with valid consent, the search you conduct will be invalid if it exceeds the scope (limits) of the consent given.
 6. When consent is revoked prior to completion of a search, evidence recovered prior to the revocation may be used to establish probable cause for a search warrant or for an arrest and subsequent search incident to arrest.
- E. Stop and Frisk Searches (Pat Down Searches) [CALEA 1.2.4]
1. The United States Supreme Court decided in *Terry v. Ohio* 392 U.S. 1, (1968) that a Police Officer may briefly detain a person to determine proper identity and conduct an investigation based on the officer's reasonable suspicion that the person(s) may be involved in criminal activity. The persons may be searched using the "stop and frisk" principle where an officer with suspicion the person(s) are armed, can conduct a pat down of the outer clothing for weapons.
 2. Pat Down Searches are authorized in the following situations:
 - a. When the officer has observed suspicious activity on the part of a suspect that gives him/her cause to believe the suspect is armed.
 - b. Only to search for weapons;
 - c. When the officer has received a warning that a suspect might be armed from an informant known to the officer.
- F. Field Searches (Search of an Individual Subsequent to a Lawful Arrest) [CALEA 1.2.4]
1. A Field Search shall be utilized when:
 - a. The search is based upon a properly issued warrant.
 - b. The search is connected to a lawful arrest and the prisoner is to be transported.
 - c. The officer has probable cause to search for weapons.
 - d. It is necessary to confiscate items of evidence, i.e. stolen property, narcotics, items related to a crime for which the arrest is being affected.
 - e. It is believed the prisoner has in his/her possession object(s) that may be utilized as a means of escape (i.e. a handcuff key).
 2. A Field Search shall be conducted as follows:
 - a. Complete preliminary pat search or frisk search.
 - b. Work from top to bottom, checking the prisoner's hat, hair, and any objects worn in or on the head. Run fingers through the prisoner's hair, if necessary, to ensure safety. Remove sharp objects, which could become weapons.
 - c. Check the rib cage and back area by patting.

- d. Run thumbs along the prisoner's waistband. Unbuckle the prisoner's belt and check for small weapons and contraband.
 - e. The prisoner's arm pits and groin area should be checked carefully for items due to the ease of concealability.
 - f. Check wristwatches, jewelry, and gloves for concealed weapons or contraband.
 - g. Check shoes and handbags. Do not hesitate to have the prisoner remove boots, spike heels or similar apparel.
 - h. The prisoner shall not be allowed to leave the officer's presence under any circumstances until the search has been completed.
 - i. Check of the prisoners' cell phone including but not limited to all images, videos, and messages (Diaz (2011) 51 Cal.4th 84).
- G. Search of a Vehicle [CALEA 1.2.4]
1. The courts have distinguished between warrantless searches of motor vehicles and buildings.
 - a. The distinction comes from the ease in moving or hiding a motor vehicle or trailer before a Police Officer can obtain a search warrant.
 - b. Lesser privacy interests are vested in motor vehicles.
 2. The courts have upheld warrantless searches of motor vehicles, based on probable cause, that the vehicle contains contraband or evidence of a crime.
 - a. If you have probable cause to believe that an item is located somewhere inside the vehicle, then you are entitled to look inside any portion of the vehicle (trunk, glove compartment, hood, etc.)
 - b. Furthermore, you are entitled to look inside any closed, personal container, which might reasonably contain the item.
- H. Searches at the Scene of a Crime [CALEA 1.2.4]
1. Incidental to an arrest, the suspect and the areas in the suspect's immediate control may be searched. The purpose of these searches is to protect the officer (by locating weapons) and to prevent the destruction of evidence or contraband.
 2. The United States Supreme Court decided in *Mincey v. Arizona*, 437 U.S. 385 (1978), that in the absence of exigent circumstances or consent, Police Officers are required by the Fourth Amendment to obtain a search warrant before a thorough search of any crime scene can be conducted, unless the scene is a public place or another exception to requiring a search warrant exists.
 3. A Police Officer can-without a search warrant-secure a crime scene, search the area for victims or perpetrators and seize evidence, which if not seized, may be lost or destroyed, removed or is within plain view.
- I. Exigent Circumstances (Emergency Searches) [CALEA 1.2.4]

1. An officer may enter an area where there is an expectation of privacy for the purpose of protecting life, health or property. The necessity to enter must involve a substantial immediate threat to life, health or property or in the fresh pursuit of a criminal suspect.
 2. Once the emergency abates, a warrant is required.
 3. An officer cannot create the exigent circumstances.
- J. Inventory of Property/Vehicles [CALEA 1.2.4]
1. Inventories have been allowed for a threefold purpose:
 - a. To protect the defendant's property.
 - b. To safeguard the police from claims of lost property.
 - c. To protect police from potentially dangerous items located inside vehicles such as: explosives, dangerous chemicals, and/or weapons.
 2. All impounded vehicles will be inventoried, as noted in General Order 4-7, Traffic Direction and Control.
 3. Property located in a vehicle that does not have an evidentiary value or an obvious high dollar value needing additional security, should be left in the vehicle. Items of evidence will be processed in the Department's Evidence System and items of high dollar value will be taken for safekeeping and placed into the Department Property System.
- K. Strip Searches and Body Cavity Searches (Penal Code Section 4030)
1. When a person is arrested and taken into custody, that person may be subjected to pat-down searches, metal detector searches, and thorough clothing searches in order to discover and retrieve concealed weapons and contraband prior to being placed in a booking cell.
 2. All bodily intrusion and visual body cavity searches must be authorized by a warrant or court order.
 - a. There must always be probable cause to conduct the search;
 - b. The need for the search must outweigh its intrusiveness; and
 - c. Police must employ reasonable procedures in conducting the search. (Schmerber v. California (1966) 384 U.S..457)
 3. No strip search may be conducted without prior authorization of the Command Staff. The authorization will be documented in the arrest report and will include the specific and articulable facts and circumstances upon which the reasonable suspicion determination was made. [CALEA 1.2.8a]
 4. A strip search means a search which requires a person to remove or arrange some or all of his or her clothing so as to permit a visual

- inspection of the underclothing, breasts, buttocks, or genitalia of such person (Penal Code Section 4030 (c)). [CALEA 1.2.8a]
5. If authorized, strip searches will be conducted by officers who are the same sex as the arrestee, and should normally be conducted by two officers. These searches will be conducted in an area of privacy so that individuals not involved in the search cannot observe the search. [CALEA 1.2.8b]
 6. All searches will be documented in the arrest report and will include the time, date and place of the search, the name and sex of the person conducting the search, and a statement of the results of the search, including a list of items removed from the person searched. [CALEA 1.2.8c]
- L. Forced Blood Draws pursuant to *Missouri v. McNeely*, 569 U.S. 141 (2013).
1. When it is determined that a forced blood draw is warranted of a subject, who is arrested on suspicion of Driving Under the Influence.
- M. Receipts for Evidence Collected
1. Receipts must be prepared for all evidence seized during a search.
 2. Penal Code Section 1535 states that when an officer takes property, he/she must give a receipt for the property taken (specifying in detail) to the person from whom it was taken, or in whose possession it was found; or in the absence of any person, he must leave it in the place where the property was found.
- II. Interviews and Interrogation
- A. Definitions
1. Interview – A meeting for obtaining information by questioning a person. The goal of an interview is to develop information, build rapport and detect deception. [CALEA 1.2.3a]
 2. Interrogation – A focused formal examination of a person by questioning. The goal of an interrogation is a confession. [CALEA 1.2.3b]
 3. Custodial Interrogation – The questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. [CALEA 1.2.3b]
- B. Miranda [CALEA 1.2.3a,b]

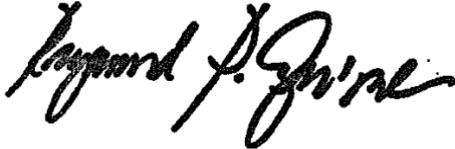
1. The “Miranda” decision requiring police to advise an individual of his rights only applies to a situation in which the person is in custody and is being interrogated. "Custody" exists for Miranda purposes when two requirements are met:
 - a. The suspect must in fact have been formally arrested, or had his freedom restrained to a degree associated with a formal arrest;
 - b. The suspect must personally be aware of this lack of freedom, or reasonably believe that it exists.
 2. Since both factors must be present to trigger “Miranda”, a person who is in custody but not being interrogated, need not be advised of his rights.
 3. A person who is being interrogated, but is not in custody need not be advised of the warnings prior to being questioned.
 4. Juveniles have no additional rights. Federal law regarding Miranda--which serves to protect a suspect’s Fifth Amendment privilege against self-incrimination-- is exactly the same for juveniles and adults. You have no obligation to advise a minor that he has a right to contact his parents (or other adult), or to have them present during questioning, because no such right exists (Aven S. (1991) 1 Cal.App.4th 69, 76).
 - a. A minor can validly waive his Miranda rights without his parents or other adult being present (John S. (1988) 199 Cal.App.3d 441, 445);
 - b. The test for the validity of a waiver (namely, an evaluation of the totality of the circumstances, such as age, experience, education, background, intelligence, ability to comprehend, etc.) is the same for minors as it is for adults; there is no "higher care" or "special care" doctrine for juveniles.
 5. Under the "Emergency-Rescue" or "Public Safety" Exception you may "interrogate" a suspect who has been arrested or is otherwise in custody--i.e., ask a question likely to produce an incriminating response, and obtain an answer which is admissible in court--even though you did not first advise the person of his Miranda rights, applies when your question or questions are reasonably prompted by a concern for the safety of another person, a victim, the defendant, or the public at large, or by a concern for your own personal safety.
- C. Access to Counsel [CALEA 1.2.3c]
1. When a suspect invokes his right to remain silent, or his/her right to have counsel present during custodial interrogation, the police must immediately cease their questioning.

2. If the suspect in anyway indicates a desire to have an attorney present during questioning, the police must honor his request.
3. Penal Code Section 825(b) states that after the arrest, any attorney licensed to practice law in California, may at the request of the prisoner, or any relative of the prisoner, visit the person so arrested.

III. Access to Telephone Calls – Shall be as noted in General Order 6-13.

REVIEWED BY:
N. Williams

APPROVED:

A handwritten signature in black ink, appearing to read "Raymund J. Aguirre". The signature is written in a cursive, flowing style.

Raymund Aguirre
Chief of Police