COUNTY OF MONROE
OFFICE OF THE SHERIFF
ROCHESTER, NEW YORK

GENERAL ORDER POLICE BUREAU	DATE OF ISSUE MARCH 4, 2026	EFFECTIVE DATE MARCH 4, 2026	NO. 025-26
SUBJECT: GENERAL ORDER Search & Seizure without a Warrant		DISTRIBUTION Police Bureau Personnel	AMENDS
REFERENCE: NYSLEAP 43.5, 50.1, 64.1			RESCINDS 025-14

Purpose: To provide guidelines and procedures for members of the Monroe County Sheriff's Office (MCSO) to follow in conducting searches that have not been reviewed and authorized by judicial personnel.

Policy: It is the policy of the MCSO to abide by all current constitutional, statutory, and judicial guidelines regarding searches and seizures conducted without a warrant. Members will familiarize themselves with all applicable laws governing non-warrant searches and seizures, and will not conduct a search without a warrant unless it meets criteria as an exception to the warrant requirement or is expressly authorized by statute. When there is a question regarding search and seizure without a warrant the District Attorney's Office should be consulted. No strip search will be performed by police personnel unless there is reasonable suspicion to believe the prisoner is in possession of evidence, weapons, or contraband, and that a strip search is necessary to recover such items. Strip searches may also be conducted as authorized by a search warrant.

Definitions: Strip Searches: A search that required the prisoner to completely disrobe. Each item of the prisoners clothing is searched and their entire body is visually inspected, including a visual inspection of the mouth and ears. A strip search will not include the invasion of any body cavity below the neckline.

Visual Body Cavity Searches: A visual inspection of a prisoner's anal or genital cavity, without touching, generally while the person is bent over.

Manual Body Cavity Searches: A manual and instrumental inspection of the interior of any private orifice (anus & vagina). This search will only be performed in an established medical facility by duly licensed medical personnel and by virtue of a valid search warrant directing such a search. The only instance wherein a manual body cavity search is permitted without a search warrant is if the prisoner is in extreme medical distress and it appears that their health will be jeopardized if the item(s) remain inside the body cavity.

* **I. Constitutional Cases and Concepts**

A. Fourth Amendment

The Fourth Amendment to the United States Constitution guarantees the right of the people to be free from "unreasonable searches and seizures." Only in specific, well-defined exceptions will search and seizures be permissible in the absence of a warrant. Warrantless searches that fall outside of these exceptions may be found to be unreasonable and unlawful, and may lead to the exclusion of any evidence obtained.

B. Terry vs. Ohio

The Court ruled that under the Fourth Amendment of the United States Constitution, a police officer may stop a suspect on the street and frisk him or her without probable cause to arrest, if the police officer has a reasonable suspicion that the person has committed, is committing, or is about to commit a crime and has a reasonable belief that the person "may be armed and presently dangerous".

* **II. Four Levels of Debour (40 N.Y.2d 210) – NYS Court of Appeals Extension of Terry v. Ohio to NYS w/limitations**

* A. Level I-Objective Credible Reason-Request for Information

* 1. Ask brief non-threatening and non-accusatory questions regarding name, address, and destination.

2. Can say "stop" if not forceful.

3. Can approach stopped car.

4. Can touch holster.

5. Cannot request permission to search.

6. Cannot cause people to reasonably believe they are suspected of a crime, no matter how calm and polite the tone of the questions.

* B. Level II-Founded Suspicion-Common Law Right to Inquire

1. Can ask pointed questions that would reasonably lead one to believe that he/she is suspected of a crime.

2. Questions can be more extended and accusatory. Focus on possible criminality.

3. Can request permission to search.

4. Cannot pursue.

5. Cannot forcibly detain.

* C. Level III-Reasonable Suspicion-Right to Forcibly Stop (Seize) Citizens

1. Can forcibly detain.

2. Can frisk for weapons, if in fear.

3. Can pull car out of flow of traffic.

4. Can order defendant to lie on ground (for good reason).

5. Can pursue.

* D. Level IV- Probable Cause-Believe a specific person committed a crime.

1. Can arrest and search.

III. Search by Consent

A. A voluntary consent to search is considered a major exception to the general warrant requirement, however there remains a heavy burden on the part of the prosecution in proving such voluntary consent.

1. The New York State Court of Appeals has held that consent is voluntary when it is a true act of will, a product of an essentially free and unconstrained choice, and is incompatible with official coercion, actual or implicit, overt or subtle (Gonzalez, 39 NY2d 122).

2. The voluntary nature of consent is a question of fact that will be determined from a totality of the circumstances in any particular case.

* 3. No single factor, in and of itself, will determine whether the consent is voluntary, and may include but is not limited to any of the following:

a. Whether or not the subject is in custody,
b. Whether or not the subject was threatened or coerced by the police,
c. The number of police officers present,
d. Whether or not the police officers have their guns drawn,
e. The background of the subject, and/or,
f. Existence of deception by the police.

B. The form in which consent to search is given also does not determine the voluntary nature of the consent and may be written, oral or implied by specific conduct.

1. Written consent is the preferred method of conducting a search by consent. MCSO personnel should utilize Consent to Search Form.

* 2. Oral consent should nonetheless be documented on the appropriate departmental form. Documentation will include the actual words used by the subject granting consent; the subject's authority and competency to grant consent, and the identities of witnesses to the consent. If oral consent body camera footage is available, enter into evidence.

C. In addition to consenting to a voluntary search, the subject granting consent must have apparent legal control or authority over the object or premise of the search. Examples of people who have legal rights of possession, control, or authority over property include:

1. A homeowner,
2. A homeowner's spouse,
3. A parent, permitting the search of a non-rent paying child's room within the parent's home,
4. A roommate, permitting the search of the common areas of an apartment or dorm room,
5. The registered owner of a motor vehicle, and/or
6. The operator of a motor vehicle.

* D. Consent to search may be granted only to a specific area, and must then be limited to that area. Consent may also be withdrawn at any time; if consent is withdrawn, the search must be terminated. A person must have the ability to be present, so they may withdraw consent at any time.

IV. Stop and Frisk

* A. Authority to "stop and frisk" is derived from Criminal Procedure Law Section 140.50(3). The "stop" prior to the frisk should be based upon a Level III stop of Dabour, or factors that have become apparent during a Level I or Level II stop raise the level of encounter to that of Level III.

1. Stop and frisk constitutes the most intrusive level of police conduct short of an arrest.

2. Authority to do so is limited to a "search" for deadly weapons and/or dangerous instruments, when the police officer has an articulable reason to fear for their safety.

   a. A "search" in this instance is in reality a "frisk" or "pat down", a limited touching of the subject for the purpose of identifying the presence of a potential weapon.

   * b. The manner, in which the frisk is conducted, for example, standing or prone, is left to the discretion of the officer based upon the totality of the circumstances.

3. An investigatory search (unconnected to weapons) or a search for evidence under these circumstances is not permitted.

   a. The police officer may not request the subject to empty their pockets, unless the subject repeatedly reaches into a pocket, nor can the officer reach into the subject's pocket or waistband.

   b. If the police officer has specific information about the location of a weapon, or if the subject makes a threatening motion to an area of their person in which the officer has reason to believe there is a weapon, then the officer may conduct an immediate protective search of that specific area.

   c. There is no "plain touch" doctrine; therefore, only items reasonably believed to be weapons might be removed from the subject at this stage. Contraband inadvertently seized under the belief that it was a potential weapon, should not be returned to the subject, but rather is submitted to the Property Clerk as evidence. The conduct of the police officer will be judged by the courts based upon the reasonableness of his or her actions.

B. Stop and frisk may extend beyond the subject's person under certain circumstances.

1. Authority to frisk or pat down a subject's property does not exist absent authority to frisk the subject himself.

2. If otherwise authorized, the subject's property must be physically located within the subject's reachable area in order to be frisked.

C. In order for a frisk to be justified, the police officer must have a reason to fear for their safety and be able to articulate that reason.

1. No requirement exists that the officer be "certain" that the subject is armed; the officer may rely upon reasonable suspicion that the subject is armed.

2. The reasonable suspicion must be derived independently from the reason for the stop, unless the reason for the stop involves the commission of a violent crime. In that case, the reasonable suspicion justifies both the initial stop and the ensuing frisk.

3. The police officer may also take other self – protective measures aside from the frisk, if justified by the circumstances.

    a. The officer may draw his or her weapon upon approach; this action does not necessarily convert the encounter to an arrest.

    b. The officer may grab the subject's hand, or order the subject to remove his hands from his pockets.

    c. The officer may ask the subject is he/she has anything on their person, which might cut or injure the officer during course of the pat-down.

    d. The officer may handcuff the subject temporarily, but must be able to articulate why it was necessary (i.e. officer and/or subject safety).

V. Strip Searches Conducted without a Search Warrant

* A. Prior to any strip search being conducted, the arresting Deputy will confer with a Supervisor and advise them of the circumstances surrounding the arrest and the basis of the reasonable suspicion upon which the search would be based. The Supervisor will then decide whether to authorize the strip search. When BWC/ICC are used during a strip search the video must be classified to indicate the video contains a strip search. Only command officers are authorized to review such video.

Note: If Deputies have reasonable suspicion to believe that a weapon or dangerous instrument is secreted on a prisoner's person that presents an imminent safety concern, Deputies will immediately attempt to retrieve the weapon or dangerous instrument in accordance with MCSO policy. Deputies will then notify a supervisor and fully document their reasonable suspicion and take steps to retrieve the weapon or dangerous instrument.

B. All strip searches will be conducted in the presence of two (2) Deputies of the same sex as the prisoner, if available. If two (2) Deputies of the same sex are not available, the actual search will be conducted by at least one (1) Deputy of the same sex.

C. In instances where the prisoner has been remanded to the Monroe County Jail (MCJ), Patrol Deputies can utilize the services of Jail Deputies to perform a strip search pursuant to **JBGO-028 Searches of Persons**.

D. The arresting or searching Deputy will fully document the reasonable suspicion justifying the strip search in their SIR, DIR, or Investigative Action Report and include the identity of the Supervisor approving the strip search.

VI. Strip Searches Conducted Pursuant to a Search Warrant

A. Strip searches authorized by a search warrant may be conducted at Zone Substations, Headquarters, MCJ, or at the scene of the search warrant as directed by the Supervisor

responsible for the search warrant execution or upon specific directions noted by the warrant.

* B. All strip searches will be conducted in the presence of two (2) Deputies of the same sex as the prisoner, if available. If two (2) Deputies of the same sex are not available, the actual search will be conducted by at least one (1) Deputy of the same sex.

* C. The Deputy(s) conducting the strip search will fully document the circumstances of the strip search in an Investigative Action Report as appropriate. When BWC/ICC are used during a strip search the video must be classified to indicate the video contains a strip search. Only command officers are authorized to review such video.

VII. Body Cavity Searches

A. A visual body cavity search may be conducted if there is reasonable suspicion that contraband, evidence, or a weapon is hidden inside the prisoner's body, provided that the search is conducted in a reasonable manner.

B. If, based on reasonable grounds, it is believed that contraband or evidence is secreted inside a body cavity below the neckline of a prisoner and such prisoner refuses to surrender the contraband or evidence, a Command Officer will be notified immediately and such prisoner will be kept under constant observation. Any subsequent search of a body cavity will be accomplished only by duly licensed medical personnel in an established medical facility and by virtue of a valid search warrant directing such search. The only instance wherein a manual body cavity search is permitted without a search warrant is if the prisoner is in extreme medical distress and it appears that his or her health will be jeopardized if the item(s) remains inside the body cavity.

C. The Command Officer will attempt to notify the Major of Operations, through the chain-of-command, prior to conducting a body cavity search if practicable. If prior notice is not practicable, the Major of Operations will be notified as soon as possible after the search.

* D. In any situation where a strip search or body cavity search is required, Deputies will conduct the search with the utmost regard to decency and privacy, out of public view, and with due regard for human dignity. When BWC/ICC are used during a strip search or body cavity search the video must be classified to indicate the video contains a strip search or body cavity search. Only command officers are authorized to review such video.

VIII. Search of Automobiles

A. Justification for stopping a motor vehicle cannot be based on police officer's "mere whim, caprice, or idle curiosity".

1. A vehicle may be stopped for a violation of the Vehicle and Traffic Law or other law, where the officer reasonably suspects a violation of it, based upon specific and articulable facts.

   a. When a police officer determines that the driver's paperwork is in order, and has issued a traffic summons, the initial justification for stopping the vehicle has ended, and if the driver is further detained for additional questions or for permission to search the car, the ensuing search and seizure may be deemed unlawful.

   * b. If, however, the driver's paperwork offers a false identity, or a failure to produce a government issued ID, a founded suspicion that criminal

activity is afoot will exist, entitling the officer to conduct a common law right of inquiry.

2. A vehicle may be stopped for an "investigative stop" when the officer has a reasonable suspicion that its occupants have been, are presently, or are about to be engaged in a violation of the law.

   a. A officer's approach to a stationary vehicle is comparable to approaching a citizen on the street, and may be based upon a level I "request for information" police/citizen encounter, under *People v. Debour.* However, an investigative stop of a moving vehicle must be based upon the higher standard of "reasonable suspicion".

* b. A stop made for this purpose is considered a limited detention for the purpose of making inquiries. Once these inquiries have been answered satisfactorily, the purpose of the stop has been achieved. If, however, the driver's paperwork offers a false identity or a failure to produce a government issued ID, a founded suspicion that criminal activity is afoot will exist, entitling the deputy to conduct a common law right of inquiry.

3. A vehicle may be stopped by the use of a roadblock or checkpoint stop.

   a. The validity of a roadblock stop will be based in large part upon whether the officer had discretion to select which cars to stop and which ones to let pass.

   b. The roadblock must be based upon a legitimate function or purpose, like detecting and deterring intoxicated driving.

   c. The reasonableness of the roadblock must be determined, based upon the establishment of written guidelines, procedures, etc. Refer to PBGO 029 Roadblocks and Checkpoints.

4. A police officer may stop a vehicle anytime there is probable cause to believe that the driver of an automobile has committed a traffic violation, and the primary motivation of the deputy is no longer a relevant concern for the courts when evaluating the legality of the stop. The use of a traffic infraction as a pretext for stopping a motor vehicle for the investigation of a more serious crime is not a violation of Fourth Amendment.

   Note: Anytime a pre-textual stop leads to the issuance of criminal charges, the deputy shall also issue a UTT for the underlying investigation.

B. Once a motor vehicle has been stopped, the officer may undertake a number of actions with regard to the operator of the vehicle.

* 1. The officer may open any of the doors to the vehicle, for officer safety purposes only.

2. The officer may require the driver to turn off the ignition and step out of the car, or to remain inside the car and turn on the interior lights.

3. The officer may shine a flashlight into the car, but once the occupants have been removed, a search will be deemed to have been conducted if an officer moves his head inside the car to conduct a visual inspection.

4. The driver may be required to produce identification.

5. The officer may conduct a brief inquiry with regard to the basis for the stop.

6. Based solely upon the traffic stop, the officer will not be justified in reaching into the vehicle and examining the contents of a bag or container.

7. When there are "suspicious circumstances" surrounding the traffic stop, an officer may grab a container when the occupant of the vehicle makes a sudden effort to seize it.

* 8. The driver of the vehicle should be searched incidental to a lawful custodial arrest.

C. The officer may also take a number of actions with regard to the passengers of the stopped vehicle.

1. The officer may order the passenger to keep their hands in view while the driver's paperwork is examined.

2. The passenger may be ordered out of the vehicle.

* 3. Based on the circumstances of the initial stop, a passenger that has been removed from a vehicle or has removed themselves from a vehicle, cannot be detained absent reasonable suspicion that they have committed a criminal offense.

* D. The search of a vehicle itself may in some instances be conducted.

1. As previously stated, once the occupants have been removed from the vehicle, if an officer sticks his head inside the car to conduct a visual inspection, opens the door to check a vehicle identification number, or places a flashlight inside the vehicle to better view the interior, the courts have held that a search has been conducted.

2. It should be noted that there is a lesser expectation of privacy in one's vehicle than in one's home. In part due to this reduced expectation of privacy, and the extensive regulation and inspection that they receive, the courts have carved out an automobile exception to the warrant requirement.

3. Under the automobile exception, police may search a vehicle and any containers found inside when they have probable cause to believe that it contains contraband, a weapon, or evidence of a crime.

a. The circumstances, which give rise to the probable cause, may be independent from the arrest, and may exist before any arrest is made.

b. The circumstances, which give rise to the probable cause to arrest the occupants of a car, may also give rise to the probable cause required to search the vehicle itself.

* c. Where probable cause exists, police may search a locked trunk, glove compartment, and any containers found in the vehicle, but it must be clear that the probable cause would justify the search of the vehicle. If questionable, a search warrant should be obtained.

4. Police may search the driver or other occupant of the vehicle incident to a lawful arrest.

    a. This exception to the warrant requirement exists to protect against the destruction of evidence and prevent the suspect's access to a weapon.

    b. This search is limited to the suspect's person, and their reachable area, the space within his or her immediate reach. Space outside of the subject's immediate reach should not be searched without probable cause.

IX. Plain View

A. Under certain circumstances, the police may seize contraband, evidence, or instrumentality of a crime without a warrant under the plain view exception to the warrant requirement. Two factors must exist for the seizure to be lawful.

1. The items seized are in plain, open view;

2. The officer observes the items from a lawful vantage point, that is, he or she has a right to be in the position from which the observations are made.

B. For items to be lawfully seized under this exception, it must be immediately apparent to the officer that the items observed are evidence, contraband, instrumentality of a crime, or otherwise subject to seizure.

X. Exigent Circumstances

A. Under certain exceptional circumstances, warrantless entry of premises will be permitted. In each of these circumstances, the police have probable cause to enter, but due to the urgency of the situation, they do not have time or opportunity to obtain a warrant. The burden of showing the exigency why a warrant could not be obtained remains with the prosecution.

Note: A warrant needs to be obtained after the area is secured and the concerns listed below are no longer evident.

1. Exigent circumstances involving evidence, weapons, and contraband may permit a warrantless search, in order to assist in the gathering of evidence.

    a. Warrantless entry may be permitted to prevent the imminent use of weapons.
    b. Warrantless entry may be permitted to prevent the destruction of evidence.
    c. Warrantless entry may be permitted to prevent the removal of contraband.

2. Police may also enter premises without a warrant under the "emergency doctrine", in order to protect life and property.

    a. Warrantless entry may be permitted to protect an individual in distress.
    b. Warrantless entry may be permitted to assist the victim of a crime.
    c. Warrantless entry may be permitted to investigate a suspicious condition or some sign of impending danger.
    d. Once responding to such an emergency, the police have the right to take a variety of intrusive actions in order to restore control to the situation.

3. Police may enter the premises without a warrant in "hot pursuit", to search for a subject who has fled after committing a crime. The police must have probable cause to believe that the suspect has both committed a crime, and that he fled to the specific premise to be searched.

B. Types of exigent circumstances, which justify a warrantless arrest, are not necessarily the same that may justify a warrantless search.

XI. Inventory Searches

A. Inventory searches have been held to be an exception to the warrant requirement, as they serve several interests.

1. An inventory search protects the owner's property while it is in the custody of the police.

2. It ensures against claims of lost, stolen, or damaged property.

3. It protects the police from danger.

B. Searches of closed containers, bags, or luggage of an arrestee can be made at a later time as part of an inventory search during the booking process, as an "administrative care taking function," as opposed to a search for evidence.

C. Inventory searches of vehicles may also be done following an arrest.

1. When the driver of a motor vehicle has been arrested for an offense unrelated to the operation of the vehicle, and the vehicle is taken into custody, the police are authorized to inventory its contents.

2. During the inventory search, any closed container or article found within the vehicle may be searched.

3. Evidence found as a result of a lawful inventory search may be used in a subsequent prosecution.

D. The legitimacy of an inventory search will depend upon a determination of its reasonableness.

1. The inventory search must be conducted in a manner pursuant to **PBGO-006 Towing of Vehicles**.

2. It must be administrative in nature and not an investigative search for evidence.

XII. Procedures During and Following Searches without a Warrant

A. All information relative to a search and seizure shall be documented on the appropriate departmental form, containing information that will include the following:

1. A statement of the events that led up to the search;
2. The reason for the search;
3. The identity of the person conducting the search;
4. The specific location of property discovered;
5. A chronology of times for significant events, including consent, search, seizure of contraband, withdrawal of consent, etc.;

6. A description of the chain-of-custody of the property seized;
7. The failure to locate specific items during the execution of the search should nonetheless still be documented on the appropriate agency form.

B. All property seized shall be processed pursuant to current directives, and shall be fully described on the Property Custody Report, pursuant to **MBGO-016 Property Recovery, Custody & Security**. In the case of an inventory search, if there is no property contained within the vehicle to be catalogued, this too shall be documented on the appropriate agency form (SIR, DIR, etc.)

C. A copy of the Property Custody Report shall be given to the owner of the property as a receipt for items seized by Sheriff's Office personnel.

D. All seized property shall be delivered in a timely fashion to the custody of the Property Clerk's Office, pursuant to **MBGO-016 Property Recovery, Custody & Security**.

By Order of the Sheriff,

Todd K. Baxter