

CITY OF ANDERSON POLICE DEPARTMENT

Anderson, South Carolina

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SUBJECT SEARCH and SEIZURE WITHOUT A WARRANT		
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I. Purpose:

To establish guidelines and to state the source of material(s) that govern search and seizure without a warrant.

II. Policy:

It is the policy of the City of Anderson Police Department to conduct search and seizure in compliance with the provisions of the U.S. Constitution, State Constitution, State law and applicable court decisions.

This policy applies equally to all warrantless searches and includes the following:

- Search by Consent;
- Stop and Frisk of an individual under circumstances where the officer has articulable reasons to fear for his/her safety;
- Search of a Vehicle under a Movable Vehicle Exception;
- At the Scene of a Crime;
- Exigent Circumstances, as where the public safety is endangered;
- Inventory Searches of Seized Vehicles or other property; and
- Other Situations authorized by State and Federal Constitutional Provisions.

III. Procedure

A. Consent Searches

1. A search made with the voluntary consent of one authorized to give consent is a lawful exception to the warrant requirement. Consent is a relinquishment of Fourth Amendment protection by the consenting party and thus is reasonable even in the absence of probable cause and where searching officers cannot particularly describe the materials being sought.
2. The critical issue in any consent search is whether or not the consent is voluntary; that is, whether it is the result of free and unconstrained choice. The sum total of surrounding circumstances will be used to determine voluntariness. Consideration in this regard may include:
 - a. Number of officers present.
 - b. Time of day.
 - c. Manner of request.
 - d. Display of weapons.
 - e. Physical or mental condition of the consenter.
 - f. Whether the consenter is in custody.
 - g. Whether the consenter is a juvenile.
3. A second consideration is that only a person in lawful possession may give consent. This is the person who currently possesses the premises or personal property to the exclusion of others. Ownership is not the equivalent of lawful possession where the owner has temporarily yielded his right to possess. Examples are landlord/tenant and innkeeper/guest.
 - a. Lawful presence is not the same as lawful possession. A guest or invitee, while lawfully present, could not consent to a search of the premises.
 - b. Where two or more persons jointly possess the property, any of those individuals may consent to the search of those areas which are commonly possessed. The rules relating to joint possession apply in a wide variety of relationships such as husband and wife, paramours, roommates as to common areas, business partners, confederates in crime, etc.
 - c. As a general rule, parents may consent to the search of a family dwelling directed against children residing therein and being supported by the parents.
4. There is no requirement to provide a warning of Fourth Amendment rights before

requesting the consent. Officers should, however, inform individuals from whom consent is sought that they have a right to withhold consent since it is a factor bearing on the voluntariness of the consent.

5. Consent to search should be obtained in writing. The Consent to Search form will be used when written consent is given in writing (APD 108). Oral consent verified by more than one (1) officer will suffice in the absence of an available form.

B. Stop and Frisk

1. An officer may stop a person for investigative purposes based on specific and articulable facts which, taken together with rational inferences from those facts reasonably warrant suspicion of criminal conduct on the part of the person, that the person may be ARMED and the officer has reason to fear for his safety. The officer must be able to state the reasons for his actions in order to justify a stop and frisk.
2. The frisk is a pat down only and not a full-scale search. It is intended only to check for weapons.
3. The frisk will be limited to the person's outer clothing. If, however, an object is located that reasonably appears to be a weapon, the officer can then search further in order to retrieve the weapon.
4. The stop and frisk is derived from the Terry Doctrine, established by the United States Supreme Court.
5. A search of impounded vehicles requires a search warrant or consent to search.

C. Search of a Vehicle Under a Moveable Exception

1. This search is based on the principle that warrantless searches of automobiles are justified on the basis of probable cause to believe the vehicle contains contraband. This search is also referred to a Carroll Search.
2. Vehicles may be searched without a warrant primarily because of a reduced expectation of privacy. The mobility factor is secondary. A search of a vehicle found on the open road or other public place may be made without a warrant, consent, or arrest, where officers have probable cause to believe the vehicle contains contraband or evidence of a crime and it is impractical to obtain a search warrant.
3. The scope of the search is the same as with a warrant and may therefore be extended to any part of the vehicle wherein the evidence sought could reasonably be located. Likewise, the search may extend into any container of any kind found within the vehicle as long as the evidence sought could be secreted therein.

4. Since the authority to search is directed against the vehicle, search of the driver and occupants for evidence is not permissible, although a self-protective frisk may be used upon the development of reasonable suspicion that such persons are ARMED and constitute a threat.
5. A search of an impounded vehicle requires a (1) search warrant or (2) consent to search. A search warrant or consent to search is not required for an inventory of a vehicle. See section F (below) for procedures concerning vehicle inventory.

D. Crime Scene Searches

1. Crime scenes may not present such exigent circumstances that will permit a warrantless search of the entire premises
2. Officers may respond to the emergency and seize evidence in plain view but any extended search of premises directed against the person possessing Fourth Amendment protection in that premises, must be done under a search warrant or with the consent of the person in lawful possession.

E. Emergency Searches

1. The delay necessary to procure a search warrant may sometimes place the safety of people in jeopardy or defeat the purpose of the warrant by permitting disposal of evidence. The law recognizes that under certain emergency circumstances, the requirement of a search warrant is waived and an officer may properly make a warrantless entry and search of a place protected by the Fourth Amendment.
2. Immediate warrantless entry is justified in the following circumstances:
 - a. To protect the life and safety of persons.
 - b. To arrest a fugitive while in hot pursuit.
 - c. To preserve evidence from being destroyed or removed.

F. Inventory of Seized Vehicles or Other Property

1. An inventory is different from a vehicle search (See section C5 above for vehicle search requirements). It does not permit officers to make a warrantless search and seizure of contraband or other evidence from a vehicle and has been held to be reasonable by the courts because it is non-investigatory in nature.
2. The concept of the inventory is based on the idea that police frequently come into possession of property belonging to other people and is further based on three

primary interests:

- a. Protecting the vehicle or other property owner's property.
 - b. Protecting police against claims of theft and damage.
 - c. Protecting police and the public against dangerous instrumentalities.
3. The threshold requirements to justify an inventory are:
 - a. The police must take custody of the vehicle or other property.
 - b. The inventory must be done pursuant to written departmental policy. Refer to General Order 182.1.
 4. The scope of the inventory extends to the entire vehicle and any containers therein.
 5. Non-evidentiary items of significant value found in the vehicle will be removed for safekeeping and turned in to the Property Room.
 6. Contraband or evidence found in the vehicle will be immediately seized and turned in to the Property Room as per general order 182.1.
 7. If the doors, glove compartment, trunk or any containers therein are locked or otherwise sealed, note of the same will be made on the inventory sheet and the wrecker driver will be informed.
 8. The Department Vehicle Inventory form (APD 110) will be completed when an inventory is conducted.

G. Miscellaneous Searches

1. Frisk Type Search of a Vehicle
 - a. Police officers may stop a vehicle for investigative purposes based on specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant suspicion of criminal conduct on the part of the occupants of the vehicle.
 - b. During the course of an investigative stop of an automobile, a limited search of the passenger compartment, limited to those areas in which a weapon may be placed or hidden, is permissible if the police officer has a reasonable belief based on specific and articulable facts that the suspect is dangerous and may gain immediate control of a weapon.


2. Supervisory Searches

The warrantless search of an employee's assigned city vehicle, desk, file cabinet, or locker by a supervisor is reasonable if made for non-investigatory (non-criminal) work-related purposes or to investigate work-related misconduct.

3. School Searches

The US Supreme Court has approved the search of a public school student by school officials by balancing the need to maintain safety, order and discipline against the students right to privacy. If requested by school officials, officers may observe the search and take appropriate enforcement action.

By order of:


Martin D. Brown, Chief of Police

6-21-2011
Date