

18.1 GENERAL POLICY

- .1 It is the policy of the Hagerstown Police Department that searches and seizures shall be conducted in accordance with all state and federal laws, and with the requirements of the United States Constitution and Maryland Declaration of Rights, as interpreted from time to time by state and federal courts. The Hagerstown Police Department recognizes that judicial analysis and interpretation of the United States and Maryland Constitutions is dynamic. If any Department policies or procedures are found to be in conflict with constitutional requirements or restrictions, said requirements or restrictions shall prevail.
- .2 Unless permitted by one of the judicially recognized exceptions, searches and seizures must be conducted pursuant to a search and seizure warrant issued by an authorized judicial officer.
- .3 Search and seizure must be based on probable cause. While no "bright line" definition exists, U. S. Supreme Court has described it as a flexible, common sense standard, requiring only that facts be available to the officers which would "warrant a man of reasonable caution" to believe that certain items may be contraband or evidence of a crime, and that those items are located in a certain place. A practical, nontechnical probability that incriminating evidence is involved is all that is required to establish probable cause.
- .4 In establishing probable cause, the experience and special knowledge of the affiant may be considered. Additionally, the facts need not be within the personal knowledge of the affiant, but may be verified by this oath on information and belief.

18.2 SEARCH AND SEIZURE WARRANTS

- .1 Search and Seizure Warrants are issued for the seizure of contraband and the fruits and instrumentalities of crime, or evidence of where and by whom a crime was committed. Some examples include:
 1. a weapon used in a robbery or violent crime
 2. clothing worn during commission of the offense
 3. records, documents, photographs, and papers
 4. computers, drives, storage media, etc.
 5. stolen property
 6. narcotics
 7. biological material (i.e. DNA, blood, hair, etc.)
- .2 In all cases, before a search warrant may be applied for by a member of this department, the request must be reviewed by his/her commanding officer or supervisor.
- .3 Before being presented to a judge, all applications for search warrants are to be reviewed by the State's Attorney's Office for approval.
- .4 Securing property pending issuance of search warrant: Property may be secured or seized pending the issuance of a search warrant provided there exists both probable cause (discussed above in 18.1.3) and exigent circumstances (discussed below in 18.3.11).
- .5 State law regarding the application for and execution of search warrants can be found in the Criminal Procedure Article, §1-203, and Maryland Rules, Rule 4-601. The following are relevant portions of those laws.

CP §1-203

(a) In general. --

(1) A circuit court judge or District Court judge may issue forthwith a search warrant whenever it is made to appear to the judge, by application as described in paragraph (2) of this subsection, that there is probable cause to believe that:

(l) a misdemeanor or felony is being committed by a person or in a building,

apartment, premises, place, or thing within the territorial jurisdiction of the judge; or

(ii) property subject to seizure under the criminal laws of the State is on the person or in or on the building, apartment, premises, place, or thing.

(2) (I) *An application for a search warrant shall be:*

1. *in writing;*
2. *signed and sworn to by the applicant; and*
3. *accompanied by an affidavit that:*
 - A. *sets forth the basis for probable cause as described in paragraph (1) of this subsection; and*
 - B. *contains facts within the personal knowledge of the affiant that there is probable cause.*

(ii) An application for a search warrant may contain a request that the search warrant authorize the executing law enforcement officer to enter the building, apartment, premises, place, or thing to be searched without giving notice of the officer's authority or purpose, on the grounds that there is reasonable suspicion to believe that, without the authorization:

1. *the property subject to seizure may be destroyed, disposed of, or secreted; or*
2. *the life or safety of the executing officer or another person may be endangered.*

(3) *The search warrant shall:*

(I) be directed to a duly constituted police officer, the State Fire Marshal, or a full-time investigative and inspection assistant of the Office of the State Fire Marshal and authorize the police officer, the State Fire Marshal, or a full-time investigative and inspection assistant of the Office of the State Fire Marshal to search the suspected person, building, apartment, premises, place, or thing and to seize any property found subject to seizure under the criminal laws of the State;

(ii) name or describe, with reasonable particularity:

1. *the person, building, apartment, premises, place, or thing to be searched;*
2. *the grounds for the search; and*
3. *the name of the applicant on whose application the search warrant was issued; and*

(iii) if warranted by application as described in paragraph (2) of this subsection, authorize the executing law enforcement officer to enter the building, apartment, premises, place, or thing to be searched without giving notice of the officer's authority or purpose.

(4) (I) *The search and seizure under the authority of a search warrant shall be made within 15 calendar days after the day that the search warrant is issued.*

(ii) After the expiration of the 15-day period, the search warrant is void.

Rule 4-601

(b) Retention of application and affidavits -- Secrecy. A judge issuing a search warrant shall note on the warrant the date of issuance and shall retain a copy of the warrant, application, and supporting affidavit. The search warrant shall be issued with all practicable secrecy. A supporting affidavit may be sealed for not more than 30 days as provided by Code, Criminal Procedure Article, § 1-203(e). The warrant and application, affidavit, or other papers upon which the warrant is based shall not be filed with the clerk until the search warrant is returned executed pursuant to section (e) of this Rule.

(c) Inventory. An officer shall make and sign a written inventory of all property seized under a search warrant. At the time the search warrant is executed, a copy of the inventory together with a copy of the search warrant, application, and supporting affidavit, except an affidavit that has been sealed by order of court, shall be left with the person from whom the property is taken if the person is present or, if that person is not present, with the person apparently in charge of the premises from which the property is taken. If neither of those persons is present at the time the search warrant is executed, the copies shall be left in a conspicuous place at the premises from which the property is taken. The officer preparing the inventory shall verify it before making the return. Upon the expiration of the order sealing an affidavit, the affidavit shall be unsealed and delivered within 15 days to the person from whom the property was taken or, if that person is not present, the person apparently in charge of the premises from which the property was taken.

(d) Return. An executed warrant shall be returned to the issuing judge, or if that judge is not immediately available, to another judge of the same circuit if issued by a circuit court, or of the same district if issued by the District Court, as promptly as possible and in any event within ten days after the date the search warrant is executed or within any earlier time set forth in the search warrant for its return. The return shall be accompanied by the verified inventory. A search warrant unexecuted within 15 days after its issuance shall be returned promptly to the issuing judge.

(h) Contempt. Except for disclosures required for the execution of a search warrant or directed by this Rule or by order of court issued pursuant to this Rule, a person who discloses before its execution that a search warrant has been applied for or issued, or a public officer or employee who discloses after its execution the contents of a search warrant or the contents of any other paper filed with it, may be prosecuted for criminal contempt of court.

- .6 Physical extent of search -- for a building, the extent would include the building specified in the warrant, including all premises reasonably and logically a part of that building, and everything therein which could hide the thing lawfully sought.
- .7 Extent of seizure -- only the things "particularly described" in the warrant, plus such other instrumentalities, fruits or contraband as happen to be seen openly while searching for the things particularly described, may be seized. If, during the search, probable cause is developed that other contraband or fruits or instrumentalities of crime are present, the officer must obtain a search warrant specific for those in order to search beyond the scope of the original warrant. For example, an officer is searching for stolen jewelry. He finds the jewelry, and also sees marijuana in plain sight. The officer may seize the marijuana, but must obtain another warrant to continue searching for other drugs.
- .8 Time consumed by the search -- whatever is reasonable under the circumstances.
- .9 Inventory of Property Taken:
 - .1 Inventories shall be completed in detail on the HPD Search Warrant Return/Inventory form.
 - .2 Abbreviations and generalizations shall not be used in descriptions of articles.
 - .3 The officer executing the Search and Seizure Warrant will sign the completed inventories in the presence of the person from whom the property was taken, unless the person is not present.
 - .4 The officer executing the Search and Seizure Warrant will leave one copy of the inventory with person from whom the property was taken (or at the scene if the person is not present), retain one copy for the case file, and return the original to the judge at the same time the executed search warrant is returned.

- .10 Use of force or deception -- the officer may break both outer and inner doors if, after giving notice of his authority and purpose and demanding entrance, and after a reasonable amount of time, the officers is refused admittance. The determination of what is a reasonable amount of time is based on the individual circumstances. Peaceful entry by misrepresentation has been allowed.
- .11 Arrest of persons on the premises -- a search warrant is not authority for an arrest, but an arrest may be made on probable cause developed during execution of the search warrant.
- .12 Search of persons on the premises -- a search warrant for premises is not authority for searching persons found on the premises unless the search warrant so commands, or if officers develop probable cause independent of the search warrant. Officers may frisk persons on the premises if reasonable suspicion exists that the persons may be armed, however the suspicion must be articulable for each individual to be frisked.
- .13 Detention of persons on the premises -- during the execution of a search warrant, persons found on the premises may be detained to ensure officer safety, prevent destruction of or tampering with evidence, or as is reasonably needed to determine the person's involvement in the crime under investigation.
- .14 Return of the Search Warrant -- the life of a State Search Warrant is fifteen (15) days. The Search Warrant and Search Warrant Return shall be made in each instance to the issuing Judge, no later than five (5) days after execution.
- .15 Tactics -- the tactics and personnel used in the execution of each search warrant are decided on a case by case basis. Known and reasonably anticipated risks need to be considered when planning the execution of a search warrant. For example, if a search warrant does not contain a "no knock" provision, officers may still enter the building, apartment, premises, place, or thing to be searched without giving notice of the officer's authority or purpose, on the grounds that there is reasonable suspicion to believe that, without the authorization, the life or safety of the executing officer or another person may be endangered.

18.3 EXCEPTIONS TO SEARCH WARRANT REQUIREMENT

Courts have recognized certain exceptions to the search warrant requirement. Below are some of the exceptions more commonly encountered by police officers, and a brief summary of each.

- .1 Arrest Warrant Exception - An arrest warrant is not a warrant to search. However, an officer can search a defendant's home for the defendant if;
 - there is a valid arrest warrant, and
 - there is probable cause to believe that the defendant is home.

NOTE: Such a search is limited to only places where a person could be found (i.e., a closet, not a dresser drawer)

- .2 Stop and frisk - Included in this exception are two separate components; the warrantless seizure of the person during an investigative detention, and the warrantless search, or frisk, of the person's outer clothing. This exception was originally established in *Terry v. Ohio*, 392 U.S. 1, 20 (1968) and is commonly referred to as a "Terry" stop.

Regarding the first component (seizure of the person), if a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot, the officer may briefly stop the suspicious person and make reasonable inquiries aimed at confirming or dispelling his suspicions.

Regarding the second component (search of the person), if the police officer has reasonable suspicion that the person may be armed, the officer may conduct of pat down, or frisk, of the person. Because

the object of the frisk is the discovery of dangerous weapons, it must therefore be confined in scope to an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer. Specifically, it must be confined to the outer clothing. Once the officer identifies by touch what he believes is a weapon, the officer may seize the object. If, in the course of a weapons frisk, "plain touch" reveals presence of an object that the officer has probable cause to believe is contraband, the officer may seize that object. This situation is analogous to that covered by the "plain view" doctrine: obvious contraband may be seized, but a search may not be expanded to determine whether an object is contraband. In determining whether there is such reasonable suspicion as to authorize a frisk of the person, the following factors may be considered by the officer.

For both components, the officer's suspicion must be reasonable and articulable. This is an objective standard, focusing not on the police officer's actual state-of-mind, but on whether a reasonable person, having the information available to and known by the police, would have had that level of suspicion. Based on the totality of circumstances, the detaining officers must have a particularized and objective basis for suspecting the particular person stopped.

Maryland Annotated Code, Criminal Law Article §4-206, contains the specific Maryland law on limited search, seizure, and arrest involving handguns. In addition to statutory authority and limitations of police officer, It also requires that every law enforcement officer who has conducted a "stop and frisk" of any person for a handgun shall, within 24 hours thereafter, file a written report on a form prescribed by the Secretary of Public Safety and Correctional Services, i.e. Firearms Report Form 97A. See HPD Rules and Regulations section 28.14 for instructions on completing the form.

Use of Force During Investigative Stop. The use of force during an investigative stop does not automatically convert the investigative stop into an arrest. An officer can use reasonable force during an investigative stop including the use of handcuffs) to protect himself/herself, other officers, and/or bystanders or to prevent the suspect from fleeing where the suspect has shown a willingness to flee.

- .3 . Search Incident to Arrest - Any person legally arrested can be searched for contraband, weapons and fruits of the crime. When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction.

The area into which an arrestee might reach in order to grab a weapon or evidentiary items is governed by a like rule which permits a warrantless search of the arrestee's person and the area within his immediate control--construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence.

An extension of the search incident to arrest exception was created in the case of *Maryland v Buie* , 494 U.S. 325 (1990). Not only may officers search areas within the arrestee's immediate control in order to alleviate any threat posed by the arrestee, but they may extend that search if there may be a threat posed by "unseen third parties in the house." A "protective sweep" of the entire premises (including an arrestee's home) may be undertaken on less than probable cause if officers have a "reasonable belief," based on "articulable facts," that the area to be swept may harbor an individual posing a danger to those on the arrest scene.

If a person is arrested outside his house, office, or other premises protected by the Fourth Amendment, he cannot be taken to those premises for a search of them incidental to arrest. If the officer deliberately delays an arrest until the person is in his house or other premises, for the purpose of making an incidental search of those premises, the search is unreasonable, but not if the purpose of the delay is to make the arrest more securely and safely. If the officers find the person to be arrested outside the premises, and by fraud or deceit lure him into the premises and make the arrest there, so that a search of the premises can be made, the search is unreasonable.

- .4 Automobile Exception - On the existence of probable cause, a vehicle can be searched without a warrant.

Once police have probable cause to believe there is contraband in a vehicle, they may remove it from the scene to the station house in order to conduct a search, without thereby being required to obtain a warrant. "[T]he justification to conduct such a warrantless search does not vanish once the car has been immobilized; nor does it depend upon a reviewing court's assessment of the likelihood in each particular case that the car would have been driven away, or that its contents would have been tampered with, during the period required for the police to obtain a warrant." (Michigan v. Thomas, 458 U.S. 259, 261, 1982)

In addition to a warrantless vehicle search based on probable cause, a vehicle can be "frisked", that is a limited search can be made of areas readily accessible to the occupants, if reasonable suspicion exists that weapons are present.

In *Arizona v. Gant*, the Supreme Court discussed both the automobile exception and the search incident to arrest exception. In that case the court concluded there is no entitlement to search the passenger compartment incident to every arrest. The search of the passenger compartment of a car can be justified only if the arrest is for the type of crime for which an officer could reasonably expect to find evidence in the car, or the arrestee is unsecured and actually within reaching distance of the passenger compartment when the search is made.

- .5 Vehicle Inventory: Because of the lessened expectation of privacy, inventory searches of impounded automobiles are justifiable in order to protect public safety and the owner's property. Accordingly, any evidence of criminal activity discovered in the course of an inventory is admissible in court, provided Departmental policies for conducting an inventory search are followed (refer to section 17.15.1.2 of HPD Rules and Regulations Manual).
- .6 Consent - A person with apparent control or authority gives voluntary consent. The person either must be legally stopped or legally in custody, or the person must be in a situation where a reasonable person would feel free to leave or refuse to consent. The person must also possess a level of maturity and mental ability to understand the nature and consequences of giving consent.

Consent can be given verbally, without any documentation or recording. The use of a Consent to Search form is recommended, however, as it assists the prosecution in its burden to prove the consent is voluntary, and it can help protect against allegations of violation of rights. If used, mark the consent form with a incident number and forward it to the Records Division.

Once consent is obtained, conduct search as you would with a search warrant. However, if during the search the person removes the consent, it must stop immediately. Also, the person may not be deliberately detained or removed to keep him from objecting to the consent.

If contraband, evidence, or fruits or instrumentalities of the crime are found before the consent is removed, probable cause is now established and the officer may proceed in accordance with current legal procedures (i.e. continue search based on any of the exceptions to the warrant requirement, or obtain a warrant to further search). Any contraband, evidence, or fruits or instrumentalities of a crime may be seized and held for disposition.

Factors Which Could Result in a Ruling that the consent was not voluntary:

- More officers than reasonably required for the situation.
- Exceeding the scope of the original contact without allowing the subject the opportunity to leave. For example, holding a subject's license longer than is reasonably necessary to complete a traffic stop and/or asking for consent during a traffic stop when no probable cause or reasonable suspicion of criminal activity exists; or holding a subject's identification or not allowing the subject the opportunity to leave once the reason for the stop has been satisfied.

- Threatening the subject with false statements or other action in return for the consent, such as, "If you do not consent I will get a search warrant anyway," or, "If you do not consent, I will charge you with the traffic violation I stopped you for."

The following are a few specific situations where consent may and may not be given:

- Owner or Landlord: an owner or landlord cannot authorize a consent search of leased premises that is valid against the tenant. The Fourth Amendment protects the right of possession, not legal title.
 - Tenant, subtenant or roomer: a consent search directed against a tenant of any kind must be authorized by the tenant, not the landlord.
 - Joint tenants and common occupants: there is inconclusive authority indicating that one joint tenant or common occupant can authorize a consent search valid against the others.
 - Partners: a partner in a business enterprise may give a consent to search that is valid against both himself and the other partners.
 - Spouse: there are sufficient decisions to tentatively conclude that one spouse may authorize a consent search of the family dwelling, excepting only those things within the dwelling which are completely under the control of the other spouse. Additionally, one spouse may not give consent to search any part of the family dwelling over the other spouse's objection.
 - Agent: an employee or other person to whom the lawful possessor of the premises has given full agency powers over the premises may authorize a consent search valid against his employer.
 - Employer: an employer may authorize a consent search of office or plant premises, valid against an employee, including any locker, desk drawer or similar place where the employee has no reasonable expectation of privacy.
 - Employee: an ordinary employee, lacking agency status, has no authority to authorize a consent search of the employer's premises that is good against the employer.
 - Custodian or personal property: a custodian to whom the owner has surrendered complete control may authorize a consent search valid against the owner. This may not, however, authorize opening luggage, safes, or other personal storage items. If the custodian was to hold the object until the owner's return, then a search warrant would be required.
 - Parent, relative, children: in the absence of adequate authority on the point, it may be assumed that a parent can authorize a consent search against his minor child, but not the reverse, and that a parent or other relative living in the home of an adult child cannot authorize a consent search against the household. An adult child who maintains a bedroom in parent's house has a right to privacy, even if he/she does not pay rent, if the parent would not enter the room without permission. In that situation, a search warrant would be required.
 - Guest or visitor: the person possessing the premises may authorize a consent search against a visitor or temporary non-paying guest, but not the reverse.
- .7 Plain View - As long as the officer is legitimately on the premises or at the location, any item he/she observes and has probable cause to believe is contraband or evidence may be seized. Police can use spotlights and binoculars to enhance their ability to observe evidence. There is also no Fourth Amendment violation to observe something that is visible to the naked eye while traveling in an airplane or helicopter in public airways. Police are further allowed to use vision enhancement equipment as long as it is accessible to the public. An officer may not manipulate an item where the object of the search could not reasonably be hidden.

The plain view doctrine has 3 requirements: (1) the officer must already have lawful presence in an area protected by the 4th Amendment;(2) the officer must observe an item in plain view; and (3) the officer must immediately recognize the item as evidence or contraband without making a further intrusion.

- .8 Abandoned Property - Abandoned property is any property in which the owner relinquishes possession. When the property is abandoned, the owner no longer has any expectation of privacy over that property as protected by the Fourth Amendment. This is constructively done when the owner leaves the

property unsecured in a public place, or takes any other measures to surrender ownership. Abandoned property that is rendered accessible to other members of the public is equally accessible to the police. When a suspect flees from the police and throws down a bag of illegal drugs, the drugs were abandoned. When a person leaves a satchel on a park bench, it is abandoned. A resident that removes trash from the curtilage of the residence and places it by the curb no longer has a privacy interest in it.

- .9 Open Fields - Open fields encompass any open, undeveloped property that is not intimately used for dwelling (including curtilage) or business. Open fields are not protected under the Fourth Amendment, as they are not "persons, houses, papers and effects." The status of an open field does not change even if a fence secures the property and "no trespassing" signs are erected.
- .10 Inventories and custodial searches - These types of searches are administrative in nature, done for the purpose of inventorying and securing the personal effects for safekeeping. The most common are inventories of vehicle contents when a vehicle is towed or impounded at the direction of an officer, and searches of person's property after he has been arrested and submitted for detention. Although evidence may be found during a custodial search, this is not the primary reason for it. The goal is to protect the officer and the employer, as well as the owner of the property in case theft or damage occurs or false allegations are made.
- .11 Exigent Circumstances - this can be described as those 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 relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts. The practical application of exigent circumstances allow an officer to enter a home or business, or seize property without a warrant. The officer is limited to taking steps in ending the exigency. The officer can retrieve and secure any evidence found in plain view, but cannot conduct a full search. Once the situation is stabilized, the officer is required to obtain a search warrant to continue searching for evidence.

18.4 STRIP SEARCHES AND BODY CAVITY SEARCHES

- .1 This Department recognizes that the use of strip searches and body cavity searches may, under certain conditions, be necessary to protect the safety of officers, civilians and other prisoners; to detect and secure evidence of criminal activity and to safeguard the security, safety and related interests of this agency's holding facility. Recognizing the intrusiveness of these searches on individual privacy, however, it is the policy of this Department that such searches shall be conducted only with proper authority and justification, with due recognition and deference for the human dignity of those being searched and in accordance with the procedural guidelines for conducting such searches as set forth in this policy.
- .2 STRIP SEARCHES
 - .1 A strip search is defined as any search of an individual requiring the removal or rearrangement of some or all clothing to permit the visual inspection of the skin surfaces of the genital areas, breasts, and/or buttocks.
 - .2 Where articulable, reasonable suspicion exists to conduct a strip search, the officer shall request permission from a supervisor. When making such a request, the officer requesting such action will clearly define the basis for suspicion.
 - .3 When authorized by a supervisor, strip searches may be conducted only:
 - at HPD or other location that provides privacy from all but those authorized to conduct the search (except as provided in section 18.4.2.4);
 - in conformance with approved hygienic procedures and professional practices;
 - by at least two officers (if additional officers are needed, the least number needed will be

- used), and only by those of the same sex as the person searched; and
 - under conditions that provide privacy from all but those authorized to conduct the search.
- .4 Field strip searches of prisoners shall be conducted only in the rarest of circumstances under exigent circumstances where the life of officers or others may be placed at risk, and only in private.
- .5 Individuals arrested for traffic violations and other minor offenses of a nonviolent nature shall not be subject to strip searches unless the arresting officer has articulable, reasonable suspicion to believe that the individual is concealing contraband or weapons. Reasonable suspicion may be based upon, but is not limited to:
- The nature of the offense charged.
 - The arrestee's appearance and demeanor.
 - The circumstances surrounding the arrest.
 - The arrestee's criminal record, particularly past crimes of violence and narcotics offenses.
 - The discovery of evidence of a major offense in plain view or in the course of a search incident to the arrest.
 - Detection of suspicious objects beneath the suspect's clothing during a field search incident to arrest.
- .6 If during a strip search the officer observes that suspected weapons or contraband are being concealed only partially in a body cavity such as the anus or vagina, the officer may retrieve the item as long as doing so will not require an intrusion inside the body cavity, and it is reasonable to believe that the person being searched will not be injured by the retrieval. If reasonably necessary for the safety of the suspect/or officers, the officer may immediately remove the weapons/contraband.
- .7 All strip searches shall be documented in the investigative report (or supplement report) by the officer performing the search. Included in the report shall be the following information:
- Location of the search.
 - Identity of the officer conducting the search .
 - Identity of the individual searched.
 - Those present during the search.
 - Name of supervisor authorizing the search.
 - The justification for the search.
 - A detailed description of the nature and extent of the search.
 - Any weapons, evidence or contraband found during the search.
- .3 BODY CAVITY SEARCH
- .1 A body cavity search is defined as any search involving not only visual inspection of skin surfaces, but the internal physical examination of body cavities (excluding the mouth) and, in some instances, organs such as the stomach cavity.
- .2 Should visual examination of a suspect during a strip search and/or other information lead an officer to believe that the suspect is concealing a weapon, evidence or contraband within a body cavity, the procedures in this section (18.4.3) shall be followed.
- .3 The suspect shall be kept under constant visual surveillance until a body cavity search is conducted or an alternative course of action taken.
- .4 The officer shall consult with his immediate supervisor to determine whether probable cause exists to seek a search warrant for a body cavity search. The decision to seek a search warrant shall recognize that a body cavity search is highly invasive of personal privacy and is reasonable only where the suspected offense is of a serious nature and/or poses a threat to the safety of

officers or others, and/or the security of the department's detention operations.

- .5 If probable cause exists for a body cavity search, an affidavit for search warrant shall be prepared that clearly defines the nature of the alleged offense and the basis for the officer's probable cause.
- .6 On the basis of a search warrant, a body cavity search shall be performed only by a physician or by other medically trained personnel at the physician's direction.
- .7 The search shall be conducted at a medical facility under conditions that provide privacy from all but those authorized to conduct the search, and with enough police personnel in place to provide adequate security. Police personnel who will be observing the search must be of the same sex as the person being searched.
- .8 Body cavity searches shall be performed with due recognition of privacy and hygienic concerns previously addressed in this policy.
- .9 All body cavity searches shall be documented in the investigative report (or supplement report) by the officer requesting the search. Included in the report shall be the following information:
 - Location of the search.
 - Identity of the medical personnel conducting the search .
 - Identity of the individual searched.
 - Those present during the search.
 - The identity of the judge who authorized the search warrant.
 - A detailed description of the nature and extent of the search.
 - Any weapons, evidence or contraband found during the search.