PAWNEE COUNTY SHERIFF'S OFFICE
SHERIFF DARRIN VARNELL

Policy: SEARCH AND SEIZURE	Related Policies:
This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by The Pawnee County Sheriff's Office for non-judicial administrative action in accordance with the laws governing employee discipline.	
Applicable State Statutes:	

PURPOSE AND SCOPE

Both the federal and the state Constitutions provide every individual with the right to be free from unreasonable searches and seizures. This policy provides general guidelines for Pawnee County Sheriff's Office personnel to consider when dealing with search and seizure issues.

POLICY

It is the policy of the Pawnee County Sheriff's Office to respect the fundamental privacy rights of individuals. Members of this agency will conduct searches in strict observance of the constitutional rights of persons being searched. All seizures by this agency will comply with relevant federal and state law governing the seizure of persons and property.

SEARCHES

The Fourth Amendment - U.S. Constitution: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." The Fourth Amendment generally provides that a valid warrant is required in order for a search to be valid. There are, however, several exceptions to the rule 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.
- Stop and Frisk/Pat down search for weapons.
- Vehicle searches under certain circumstances (exigency, automobile exception, etc.).
- Vehicle Inventory.

· Exigent circumstances.
· Incident to a lawful arrest.
· Seizure of evidence or contraband in plain view or by plain touch.

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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 where the officer has legal access and observations of activities and property located on open public areas. All exceptions require the officer to be able to articulate the facts that justify and support his/her belief that the application of the exception to the warrant requirement was appropriate and reasonable. These facts should be explained in the officer's report. Because case law regarding search and seizure is constantly changing and subject to interpretation by the courts, each member of this agency is expected to act in each situation according to current training and his/her familiarity with clearly established rights as determined by case law. Whenever practicable, officers are encouraged to contact a supervisor or other available resource to resolve questions regarding search and seizure issues prior to electing a course of action.

SEARCH PROTOCOL

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

a. Members of this agency will strive to conduct searches with dignity and courtesy.
b. Officers should explain to the person being searched the reason for the search and how the search will be conducted.
c. Searches should be carried out with due regard and respect for private property interests and in a manner that minimizes damage. Property should be left in a condition as close as reasonably possible to its pre-search condition.
d. In order to minimize the need for forcible entry, an attempt should be made to obtain keys, combinations or access codes when a search of locked property is anticipated.

CONSENT SEARCHES

Searches conducted pursuant to a valid consent are an exception to the general warrant requirement. The following guidelines have been established for search and seizure without a warrant based on consent to search:

a) To be valid, the person granting consent must have the authority to do so. Generally, officers of this agency should only ask for consent

to search when they have articulable reasonable suspicion that does not yet reach probable cause.

b) The officer requesting the consent search shall inform the person that they have the right to refuse the search and may withdraw consent at any time during the search.

Officers wishing to conduct a consent search shall document the request for consent by capturing the interaction on their body worn camera video. This interaction will also be documented, at a minimum, in the CAD notes for the call using keywords “Consent Granted” or “Consent denied” as Policy applicable. If a report is required for the incident, the request for consent and the associated response and officer actions shall be described in the report. Officers who are not issued a body worn camera shall document their request for a consent search, at a minimum, in the CAD notes of the call using the applicable keywords as listed above. If a report is required for the incident, the request for consent and the associated response and officer actions shall be described in the report.

STOP AND FRISK/PAT–DOWN SEARCH FOR WEAPONS

A Stop and frisk/Pat-Down Search for Weapons of an individual is allowed under certain circumstances as described below in Terry v. Ohio:

a. Terry v. Ohio, 392 U.S. l (1968) was a landmark decision by the United States Supreme Court which held that the Fourth Amendment prohibition on unreasonable searches and seizures is not violated when a police officer stops a suspect on the street and frisks him or her without probable cause to arrest, if the police officer observes unusual conduct which leads him to reasonably conclude, based on his experience, that the person (1) has committed, is committing, or is about to commit a crime;
and (2) that person "may be armed and presently dangerous."

b. For their own protection, police may perform a carefully limited surface search of the person's outer clothing for weapons if they have reasonable suspicion that the person stopped is armed and presently dangerous. This reasonable suspicion must be based on "specific and articulable facts" and not merely upon an officer's hunch. This permitted police action has subsequently been referred to in short as a "stop and frisk" or simply a "Terry frisk". The Terry standard was later extended to temporary detentions of persons in vehicles, known as traffic stops; see Terry stop for a summary of subsequent jurisprudence.

c. The rationale behind the Supreme Court decision revolves around the understanding that, as the opinion notes, “The rule of excluding evidence seized in violation of the Fourth Amendment has its limitations.” The meaning of the rule is to protect persons from unreasonable searches and seizures aimed at gathering evidence, not searches and

seizures for other purposes (like prevention of crime or personal protection of police officers).

d. Courts will decide the reasonableness of suspicion on a case-by-case basis. An officer may detain (investigative detention or stop) an individual without probable cause to arrest if the officer has reasonable grounds, based on specific facts, clearly expressed, that the detention was necessary in the interests of crime detection and prevention.

e. Frisk is used to describe the precaution of running the hands quickly up and down and around a person's clothing to discover possession of a weapon. Courts have justified the procedure, generally, as a precautionary measure for the purpose of discovering weapons which might pose a threat to the officer's safety while questioning a person under investigation. Circumstances that may establish justification for performing a pat-down search include, but are not limited to:

a. The type of crime suspected, particularly in crimes of violence where the use or threat of weapons is involved.
b. Where more than one suspect must be handled by a single officer.
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c. The hour of the day and the location or area where the stop takes place.
d. Prior knowledge of the suspect's use of force and/or propensity to carry weapons.
e. The appearance and demeanor of the suspect.
f. Visual indications that suggest the suspect is carrying a firearm or other weapon.

SEARCH OF A MOTOR VEHICLE

a. The "Carroll Doctrine" (Carroll v. United States) in criminal law, Carroll doctrine refers to a principle that permits a police officer to search an entire motor vehicle and any containers inside it if there is probable cause to believe the vehicle contains contraband or the fruits, instrumentalities or evidence of criminal activity.

b. Incident to a lawful arrest of an occupant, motor vehicles and other conveyances may be searched without a search warrant under the following guidelines:

1. Arizona v. Gant - Officers may search the passenger compartment of a vehicle incident to arrest under two scenarios:

i. The arrestee and/or other occupants of the car are unsecured and within reaching distance of the passenger compartment at the time of the arrest; or
ii. The officer has a "reasonable belief" that evidence relevant to the crime of arrest might be found in the vehicle. Once a driver and passengers have

been secured, other justification must be used to search the interior of the vehicle.

2. Officers may conduct a search of a vehicle, which do not fall under “incident to arrest” situations under other exceptions to the warrant requirement (i.e. consent search, plain view, probable cause, search for weapon upon reasonable suspicion, and valid inventory search).

3. If the vehicle has no connection with the offense, the search incident to arrest of the vehicle should be limited to the entire passenger compartment and all open or closed containers therein. Locked containers located within the passenger compartment should not be searched without a warrant. Exigent circumstances may exist which may permit an exception to the warrant requirement.

4. The trunk of a vehicle cannot be searched solely for the purpose of an in-custody incident to a lawful arrest incident. If probable cause exists for a specific item that is believed to be located in the trunk of the vehicle, the trunk may be opened and searched without a warrant because of the mobility of the vehicle. If a locked container is found and probable cause exists to search it, a warrant should be obtained.

5. The Mobility of a motor vehicle may constitute an exigent circumstance authorizing a warrantless search.

6. To search a vehicle under exigent circumstances, an officer must have probable cause to believe that it contains sizable items.

7. If probable cause exists to search a vehicle for contraband the vehicle may be searched relative to the size of the contraband being sought.

8. Generally, if the officer has probable cause to believe that a specific container contains contraband and no other exception to the warrant requirement exists, then the officer should obtain a search warrant before searching that container.

VEHICLE INVENTORY AND OTHER INVENTORY SEARCHES

An inventory search is the routine search performed upon property and persons taken into custody. It is justified not on the basis of probable cause, but on the basis that it is a reasonable administrative task, useful in safeguarding property, the police, and jail security.

(Policy 510.11 VEHICLE TOWING AND RELEASE) All property in a vehicle towed at the request of a agency employee, and not on behalf of the person in charge of the vehicle, shall be inventoried and listed on the Tow Sheet. This includes the trunk and any obvious compartments or containers, even if they are closed and/or locked. Members conducting inventory searches should be as thorough and accurate as

practicable in preparing an itemized inventory. Conducting such an inventory shall only be for the intended purpose of protecting an owner's property while the owner is in police custody, to provide for the safety of officers and the public, and to protect the Agency against fraudulent claims of lost, stolen or damaged property.
If the apparent potential for damage to a locked container reasonably appears to outweigh the protection of the items inside, other options to consider regarding locked containers include, but are not limited to:

- Obtaining access to the locked container from the owner.
- Placing the locked container into safekeeping.
- Obtaining a written waiver of responsibility for the contents of the locked container.

EXIGENT CIRCUMSTANCES

Exigent Circumstances – 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 the suspect, or some other consequence improperly frustrating legitimate law enforcement efforts. The United States Supreme Court has described the Exigent Circumstances Exception as follows:

A warrantless intrusion into a home may be justified by:
a. Hot pursuit of a fleeing felon; or
b. Imminent destruction of evidence; or
c. The need to prevent a suspects escape; or
d. The risk of danger to the police or to other persons inside or outside the dwelling.

"As a matter of constitutional principle, the emergency doctrine is not just another means to justify a warrantless search, but for entry onto private premises to respond to urgent need for aid or protection, promptly launched and promptly terminated when the exigency which legitimized the police presence
ceases." State v. Rogers, 573 S.W.2d 710, 716 (Mo. App. W.D. 1978).

INCIDENT TO LAWFUL ARREST

Searches incident to a lawful arrest serve to:
a. Protect officers from weapons;
b. Prevent defendant from destroying evidence; and
c. Prevent defendant from escaping by gaining access to weapons or other items.
Incident to a lawful arrest (upon probable cause or with arrest warrant) police may search the person and area within his/her immediate control without probable cause to believe he/she has evidence upon him/her.

a. “Chimel v. California” states in part that a search incident to a lawful arrest in a home must be limited to the area into which an arrestee might reach in order to grab a weapon or other evidentiary items.

PLAIN VIEW

a. An object in plain view of an officer, who has the right to be at a location to have that view, can provide probable cause for a seizure.

b. It is not a search to observe that which is in the open and visible in either daylight or artificial light.

c. It is not a search when lawful entry has been made into a residence and a contraband article is exposed to view.

d. It is not a search for an officer to peer through the window of a detained vehicle (provided the officer’s head remains outside the vehicle).

AT THE SCENE OF A CRIME

A valid search warrant is necessary to search the scene of a crime unless the person who is legally in charge of the property is incapacitated or gives consent. Generally, search warrants will be obtained in most instances even if the person in charge is incapacitated or provides consent. In such instances, where consent is granted or person is incapacitated, a search may be conducted if circumstances exist that would make waiting for a search warrant unreasonable (some level of exigency).

DOCUMENTATION

Officers should document any search in a report. To ensure that such reports are sufficient, they should include, at minimum, documentation of the following:

a. Reason for the search
b. Any efforts used to minimize the intrusiveness of any search (e.g., asking for consent or keys)
c. What, if any, injuries or damage occurred
d. What, if any, steps taken to secure property
e. The results of the search including a description of any property or contraband seized
f. 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.

SEIZURE OF PROPERTY

Deputies shall only seize property directly related to the scope of the search and the warrant.