

# Washtenaw County Sheriff's Office

## Procedural Guideline

### Consent to Search

Reference Number: 4.02 PG



Jerry L. Clayton, Sheriff

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<b>Subject:</b>	<b>Consent to Search</b>
<b>Chapter:</b>	<b>Arrest, Search, Seizure, Property</b>
<b>Status:</b>	<b>Revised</b>
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<b>Prepared by:</b>	<b>Mark A. Ptaszek, Undersheriff</b>
<b>Reviewed by:</b>	<b>-</b>
<b>Issued by:</b>	<b>Mark Ptaszek, Undersheriff</b>
<b>Issuing Authority:</b>	<b>Jerry L. Clayton, Sheriff</b>
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All Sheriff's Office employees are expected to 1) treat all whom we are sworn to serve with courtesy, professionalism, dignity, and respect in accordance with the law and our Sheriff's Office mission and professional standards, and 2) to discharge our duties in accordance with our Oath of Office, i.e., to support the constitution of the United States and of the State of Michigan.

To this end, the Fourth Amendment of the Constitution of the United States of America states:

*"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."*

In so stating, the Fourth Amendment provides the foundation of the law regarding arrests, the acquisition of search warrants, stop and frisk, etc. A primary purpose is to protect people, places and things from warrantless searches by government agents. Recognition of the citizenry's fundamental Fourth Amendment protection against unreasonable searches and seizures is essential to the safe and effective delivery of law enforcement services and the building and maintaining of public trust and professional integrity.

This procedural guideline establishes policy and reporting procedures regarding instances where we have been provided with the consent to search. Its purpose is to guide employee decision-making regarding the way such consent is obtained, and how it is documented and tracked in a legal and procedurally just manner.

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#### I. PURPOSE

- A. To ensure and protect an individual's constitutional rights.
- B. To maintain public trust and confidence in Sheriff's Office operations.
- C. To establish policy and procedure regarding the use of consent searches, including but not limited to requiring an articulable reason for a consent search to take place prior to making the consent search request of the citizen.
- D. To provide a process for establishing and documenting an articulable reason for a consent search prior to making the consent search request of an individual.
- E. To develop reporting and tracking requirements when a consent search of an individual, place or thing is requested.
- F. To prevent the suppression of evidence.

#### II. SCOPE

- A. This policy and procedure applies to all members of the Sheriff's Office who may perform a consent search in the course of their duties.

#### III. DEFINITIONS

- A. Search: Any governmental action that invades a person's reasonable expectation of privacy.
- B. Consent to Search: A search conducted pursuant to consent, made without a warrant, where the consent to conduct the search is freely, clearly, explicitly and intelligently given by a party who has the actual authority to provide it.
- C. Valid Consent: Valid consent occurs when a person's consent to search of their property is given voluntarily, unequivocally and specifically.
  - 1. The person giving the consent must have the actual or apparent authority to do so.
  - 2. The search must be limited to the scope of the consent.
  - 3. Consent obtained under coercion, duress, threat or intimidation is not voluntary and thus not valid.
  - 4. No solitary factor will necessarily determine the voluntariness of the consent and the totality of circumstances will likely be considered

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by the courts in determining whether the consent was voluntarily given, thus valid.

#### IV. POLICY

- A. The consent to search exception to the search warrant is a legally sound and effective law enforcement tool and is supported by the Sheriff's Office when used appropriately.
- B. It is the policy of the Sheriff's Office that:
  1. The fourth amendment of the constitution protects a citizen from unreasonable searches and seizures. It is the duty of a law enforcement officer to ensure that an individual's constitutional rights are not violated.
  2. A Deputy Sheriff must establish and document an articulable reason for a search prior to requesting an individual to submit to a consent search of their person, property or vehicle/vessel.
    - a) The Deputy must develop a basis for requesting a person to submit to a consent search through personal observations and investigative techniques.

A mere hunch or feeling, without further articulation, is not justification for a Deputy to request a consent search of a person during a traffic stop or other contact.
    - b) When making the decision to request consent to search, the Deputy must evaluate the importance of conducting the search against the intrusiveness placed upon the person.
    - c) The articulable reason for the search must be documented in a written report.
  3. Routine arbitrary requests of persons to consent to search during all contacts or traffic stops is an unacceptable practice.
  4. A Deputy Sheriff's Body Worn Camera (BWC) will always be on and operating when 1) requesting and documenting a consent to search and 2) while conducting the related search, if valid consent to search is given.

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- C. Limitations of Use
1. A search being conducted based upon a voluntary consent to search will immediately cease if the consent is withdrawn, unless separate articulable grounds other than consent exist, such as the plain view doctrine or in the case of a motor vehicle where probable cause exists to believe contraband exists in the vehicle.
    - a) Seizable items discovered during the search, but before withdrawal of consent, are now in plain view (another exception to the warrant rule) and may be seized, as up to the point of the withdrawal of consent the Deputy was legally present.
    - b) Any further search once consent is withdrawn would require a search warrant.
  2. A search being conducted based on voluntary consent will immediately cease or will be confined to newly established limited areas if conditions of consent change before or during the search.
    - a) Seizable items discovered during the search, but before withdrawal of consent, are now in plain view (another exception to the warrant rule) and may be seized, as up to the point of the withdrawal of consent the Deputy was legally present.
    - b) Any further search once consent is withdrawn would require a search warrant.
  3. While conducting a consent search, Deputies shall ensure that the physical proximity of the person who granted consent does not deny them the opportunity to request that the search cease or to redefine limitations of the search.
- D. The intent of this policy is to protect individual rights. However, nothing contained herein is meant to compromise officer safety, discourage a Deputy from investigating unusual or suspicious activity, or performing a warrantless search in accordance with some other rule of law.

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#### V. PROCEDURE

- A. The consent to search exception to the search warrant requirement is satisfied when the following elements are established.
  1. Voluntary Consent: Consent to search was not provided under duress or coercion, actual or implied. It was unequivocally, specifically, freely and intellectually given, without a promise of anything in return.
  2. Caution: The subject must be informed of the right to refuse a search.
  3. Control: The person giving consent must have actual or apparent control over the area being searched.
- B. Deputies shall conform to the following procedural guidelines upon determining that consent to search will be requested of a citizen:
  1. Consent to Search Form
    - a) A Consent to Search form shall be completed. No exceptions.
    - b) The Consent to Search form shall include but not be limited to the following information:
      - (1) An explanation that justifies the request to conduct a consent search.
      - (2) The Deputy's initial reason for conducting the traffic stop or making the citizen contact.
      - (3) Search of Vehicle, Residence or Business:
        - (a) The driver/owner and all occupants' personal information (race, sex, DOB, height, weight), included on a supplement page.
      - (4) Business or Residence Search:
        - (a) Personal information of all persons searched or detained, included on a supplement page.
      - (5) The Deputy's name and identification number.
      - (6) Date, time and location where the consent to search was requested.

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2. Advice and Consent
  - a) The Consent to Search form will be presented to the person and the Deputy Sheriff will advise them of the following:
    - (1) Reason for requesting the search.
    - (2) Area to be searched.
    - (3) That they have the right to refuse the search.
  - b) Once a person consents to a search, the form is properly and completely filled out, and they have been advised of the reason, areas to be searched, and that they have the right to refuse the search, the Deputy must obtain the person's signature on the form.
  - c) If the person having authority to consent 1) declines to sign the form, 2) yet continues to provide their verbal consent, the investigating Deputy shall:
    - (1) Capture the verbal consent on their BWC.
    - (2) Notify a supervisor that an individual provided verbal consent but refused to sign the Consent to Search form.
      - (a) Supervisory notification must be noted in the Deputy's report.
    - (3) Complete the form.
    - (4) Enter in the signature portion of the form with the appropriate date and time of consent, orally noting same on their BWC:

*"Declined to sign but consented verbally. Verbal consent preserved on BWC video."*

Commentary: Supervisors are encouraged to respond to the scene of the search as a quality assurance step further verifying and witnessing that verbal consent was given, although the individual declined to sign the Consent to Search form. Where possible, they should leverage the use of their BWC to further document the validity of the search.

3. The Deputy will conduct the search in a manner that ensures their safety and in accordance with accepted police practices.

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4. If a consent search was started and the consent is subsequently rescinded and no other articulable grounds exist to justify a search, the investigating Deputy Sheriff must terminate the search.

However, the Consent to Search form must still be completed, noting that the consent was withdrawn.

5. Evidence and/or contraband discovered during the search that may legally be seized shall be processed in accordance with accepted agency policy and procedure.
  - a) The person who consented to the search will be advised of any evidence or contraband found during the search.
6. A written report documenting all details relating to obtaining a valid consent to search must be generated to document the incident regardless of whether any property was seized, the consent was withdrawn, or the search results in a criminal charge.
  - a) Notation should be made in the BWC system to assure that the camera footage is categorized for proper retention.
7. A copy of the Consent to Search form must be attached to the police report prior to the end of the Deputy's tour of duty.
8. Supervisors will review all Consent to Search forms for accuracy, completeness, and policy compliance as a part of the case management process.

#### C. Exceptions to Written Consent

1. If, under the circumstances, it is not practical or it is unsafe to obtain written consent and verbal consent has been provided, e.g., searching for an alleged violent suspect where time is of the essence, the investigating Deputy Sheriff shall complete the Consent to Search form and enter in the signature portion of the form "*Consented verbally*," with the appropriate date and time of consent.
  - a) Exceptions to written consent should be rare.

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Commentary: The community will only place its trust in its police if the actions they take are procedurally just and in accordance with the provisions of the constitution, statute and case law.

Although verbal consent to search is legally enough and it may seem simpler and easier than obtaining written consent, there are limitations. Consent can be modified or fully revoked; later claims of duress and intimidation may be made in contravention to the truth of what occurred; the person who claimed to have actual control and granted permission may not have had control, all complicating an investigation and potential criminal charges. As a result, care and caution in obtaining written consent and documenting what occurred in a report and on a Deputy's BWC is essential to a competent, professional investigation.

Further, there is often no need to rush, and the best course of action absent exigent circumstances is to obtain a search warrant. It simply eliminates any argument regarding the validity of a search.

#### VI. SUMMARY

- A. Verbal consent is a lawful exception to the warrant requirement.
- B. Consent may only be provided from someone with actual or apparent authority to provide it.
- C. A person must be aware of their rights.
  - 1. Consent must be made with the knowledge that the individual with authority to consent need not consent to a search.
  - 2. Consent provided must be voluntary and free of duress or coercion.
  - 3. Consent must be clearly, explicitly and intelligently given
  - 4. Consent may be revoked at any time.
- D. Written documentation of consent should be obtained on the Consent to Search form.
- E. A written report documenting all details relating to obtaining a valid consent to search must be generated.
  - 1. The Consent to Search form must be attached to the report prior to the end of the Deputy's tour of duty.

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#### VII. MODIFICATION

- A. The Sheriff or Undersheriff may modify the provisions of this procedural guideline.

#### VIII. COMPLIANCE

- A. All employees shall comply with all provisions of this procedural guideline. A violation of any section is a Class 2 offense and may result in corrective discipline.
- B. A violation may also be a violation of other Sheriff's Office professional conduct standards which may result in corrective disciplinary action up to and including discharge.