


<p>RABUN COUNTY SHERIFF'S OFFICE</p>  <p>GENERAL ORDER NUMBER: 5.08</p>	<p>Date of Issue</p> <p>2/23/2016</p>	<p>Effective Date</p> <p>2/23/2016</p>	<p>Revision Date</p>
<p>Subject: SEARCH AND SEIZURE</p>	<p>Amends:</p>	<p>Rescinds:</p>	
<p>Index as:</p> <p>Criminal Procedure/Process Search and Seizure</p>	<p>State Certification Standards: 4.1, 4.6</p>		

PURPOSE

The purpose of this General Order is to prescribe the policies and procedures of the Rabun County Sheriff's Office regarding Search and Seizure.

STATEMENT OF POLICY

It shall be the policy of the Rabun County Sheriff's Office that all searches and seizures of private property will be performed in accordance with all applicable federal and state statutes.

DISCUSSION

The members of the Rabun County Sheriff's Office place the highest priority on maintaining the Constitutional rights of all individuals. Accordingly, all searches and seizures of private property will be performed in full compliance with applicable federal and state laws.

The authority to search and seize property and individuals is a responsibility that must not be taken lightly. In addition to the requirement that the Constitution guarantees be complied with, searches and seizures will also be conducted in a manner that provides for the highest degree of safety for all individuals concerned and in a way that minimizes the level of intrusion experienced by those whose person or property is being searched.

Whenever possible, the search of an individuals' property will be conducted with a search warrant. Departmental personnel are authorized to search without a search warrant in certain circumstances. It must be recognized that the

burden for thoroughly justifying these exceptions falls on the individual officer and that any misuse of authority may result in criminal or civil liability and/or the possible contamination of a criminal investigation.

DEFINITIONS

EXIGENT CIRCUMSTANCES — A limited search authorized without a search warrant if "the exigencies of the situation" make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.

GEORGIA P.O.S.T. — The Georgia Peace Officers Standards and Training Council

MOTOR VEHICLE — Any vehicle operating or capable of being operated on public streets or highways to include automobiles, trucks, trailers, recreation vehicles, mobile homes, motor homes and any other type of vehicle, whether self propelled or towed.

O.C.G.A. — The Official Code of Georgia Annotated

PROBABLE CAUSE — A set of facts and circumstances that would cause a person of reasonable caution to believe that the evidence sought is in the place described.

REASONABLE SUSPICION — Suspicion that is based upon articulable facts and circumstances which, that taken together with reasonable inferences in light of an officer's training and experience, that would cause a officer to conclude that a person has been, is, or is about to be, involved in criminal activity or that a person is armed with a quickly accessible weapon that constitutes a danger to the officer or to others.

SEARCH — A law enforcement action that infringes upon a person's reasonable expectation of privacy.

SEARCH WARRANT — A document, which is a judicial command to "search a place or person particularly described in the warrant and to seize the instruments, articles, or things particularly described in the warrant" (O.C.G.A. 17-5-23)

SEIZURE OF PROPERTY — A meaningful interference by law enforcement authorities with a person's interest in the item taken.

STOP AND FRISK — A brief detention of a person to verify or dispel a reasonable/articulable suspicion of criminal activity and a "pat-down" of the subject's outer garments if there is a need for officer safety because of a reason to believe weapons are involved.

I. SEARCH WITH A WARRANT

A. General Provisions

1. Only a Georgia P.O.S.T. certified peace officer can obtain or execute a search warrant. (O.C.G.A. 17-5-21/24)
2. Any judicial officer authorized to hold a court of inquiry in Rabun County can issue a search warrant. The search warrant must be issued and executed within the geographic boundaries of Rabun County, the only exception being a warrant signed by a Superior Court Judge who has authority in Habersham and Stephens as well as Rabun County.

3. A search warrant can be issued for the following:
 - a. Any things or papers which are designed or intended for use, or have been used, in connection with a crime,
 - b. Any person who has been kidnapped or any human fetus or corpse,
 - c. Stolen or embezzled property,
 - d. Anything which it is unlawful to possess, and
 - e. Anything that is tangible evidence of the commission of a crime except private papers unless those private papers are instrumentalities of a crime.
4. All search warrants will be based upon probable cause with a written affidavit in the format prescribed by the presiding judicial official. If the probable cause is based upon information received from a confidential source, the identity of the informant will not be listed in the affidavit for the warrant.
5. All non-uniformed personnel shall be clearly identified by wearing appropriate departmental clothing that identifies them as law enforcement personnel and they shall be armed.
6. Search warrants will be executed within ten (10) days from the time of issuance. If the warrant is not executed within the ten-day period, it will be void and returned to the court of issue.
7. When the warrant is executed, the duplicate copy shall be left with any person from whom property is seized.
8. If no person is available, a copy of the warrant and inventory of items seized will be left in a conspicuous place on the premises. (O.C.G.A. 17-5-25)
9. A search warrant may be executed at any time, day or night. (O.C.G.A. 17-5-26)

B. Pre-search Planning

1. Prior to performing the actual search, the requesting officer will verify the information in the warrant and will attempt to determine if any circumstances have changed that make executing the warrant unjustifiable or undesirable. Special care will be taken to confirm the actual location of the search site to preclude the possibility of searching the wrong premises.
2. In addition, every attempt will be made to determine the existence of children, animals, or other factors that may necessitate special precautions during the search.
3. Prior to the actual execution of the warrant, a pre-entry briefing with all search personnel will be held. This briefing will include a review of the items to be seized, the exterior and interior description of the search site, the boundary lines of the property if known, the tactics to be used if a forced entry is required, any special provisions authorized in the warrant, the availability of all items of equipment required, the specific duties of all personnel, and any special instructions concerning the safety of undercover/informant personnel already on the premises.

4. Provisions will be made to ensure that the entire search warrant execution process is documented from the beginning and until the search team personnel leave the premises. A written record will be prepared, supported by photographs and if possible, videotaping of the entire site.
 5. The execution of a search warrant will require the presence of a supervisor in the grade of sergeant or higher when the following conditions exist:
 - a. Narcotics;
 - b. Stolen Property and/or;
 - c. Arrest of a person is possible.
 6. The execution of a search warrant will not require the presence of a supervisor in the grade of sergeant or higher when the warrant is for the following:
 - a. Bodily substance for laboratory examination;
 - b. Retrieval of items required for laboratory examination; and/ or
 - c. Documents required for the purpose of a criminal investigation.
 7. The Supervisor responsible for oversight of the execution of a search warrant that qualifies under the aforementioned paragraph number (5) five, is required to have a uniformed patrol officer present during the initial entry. The Supervisor has discretion to release the uniform patrol officer upon the scene being secured.
 8. One investigator will be designated by the search supervisor as responsible for collecting, preserving, and documenting all items seized and for the security of these items in accordance with the agency's evidence handling and processing procedures.
- C. Executing a search warrant
1. Unless a "no-knock" provision is in the warrant or other exigent circumstances exist, deputies are required to give oral notice to the person(s) inside of the identity of the officer and of the fact that a search warrant has been issued authorizing the search of the premises.
 2. Deputies are authorized to use all reasonable and necessary force to enter a building, vehicle, or other area to execute a search warrant if after verbal notice or an attempt in good faith to give verbal notice:
 - a. The officer is refused admittance;
 - b. The person or persons within the building or property refuse to acknowledge and answer the verbal notice or the presence of the person or persons therein is unknown to the officer;
 - c. The building or property or part thereof is not occupied by any person.
 3. Deputies may seek the issuance of a "no-knock" provision in the search warrant affidavit if they have reasonable grounds to believe that such a warning would place their safety in jeopardy or lead to the immediate destruction of evidence. If the "no-knock" provision is authorized by the issuing judicial official granting the search warrant, no verbal notice is required prior to entering the dwelling, building, or property for which the search warrant is issued.

4. For the protection of agency personnel and to prevent the destruction or concealment of evidence, any individual located on the premises being searched or who arrives after the search has been initiated, may be detained during the search: (O.C.G.A. 17-5-28)
 - a. While these individuals are being legally detained, deputies should attempt to determine if a connection or "nexus" exists between each individual and the criminal activity for which the search warrant was issued. If such nexus is established, the individual will fall under the authority of the search warrant and may be searched, including any personal belongings in the person's possession such as purses, bags, and vehicles present at the premises being searched.
 - b. If no nexus can be established linking the individual to the criminal activity for which the search warrant was issued, the individual may not be searched under the authority of the search warrant. A search of such individual must be based upon other authority such as consent or probable cause; however a "frisk" for weapons may be conducted if the officer can articulate a reasonable belief that the individual may be armed with a weapon.
 - c. For the safety of law enforcement and all others present during the execution of the search warrant, any person, especially those who have not been searched, may be forbidden access to the premises or be required to leave the premises while the search warrant is being executed.
- D. Upon the execution of the search warrant, departmental personnel will first perform a security sweep for other individuals located or hiding within the entire search site. After the site has been secured, items specifically identified in the warrant shall be seized.
- E. Deputies shall limit their search to the location, for the individual(s) named/described, and/or for the items particularly described in the warrant. Deputies executing a valid warrant must limit their search areas where the object sought might be located.
- F. Other items not particularly described in the search warrant may also be seized if there is a reason to believe they are stolen or embezzled, contraband or evidence of another crime and they are located within the lawful scope of the search warrant.
- G. In the execution of the search warrant, personnel may search the curtilage, including the yards, grounds, garden, barns, driveway, garage, and other storage sheds located at a particular address or in more rural settings, areas not immediately part of the dwelling site. Motor vehicles parked on the curtilage may also be searched.
- H. Motor vehicles and trailers belonging to those other than the occupant of the dwelling being searched are also subject to search if the officer can articulate a reasonable belief that the owner of the vehicle is in some way connected with the illegal activity occurring or for which the warrant was issued.
- I. However, no area or property that is beyond the property lines of the location specified in the warrant may be searched. The identification of property lines becomes particularly important when conducting searches in residential areas where motor vehicles may be parked in adjacent public places or on adjacent private property.
- J. During the execution of the search warrant, if an officer is put on notice that they are searching or about to search the personal belongings of a visitor to the premises, the search of those personal effects of the visitor must be independently authorized by consent, probable cause, or a reasonable belief that the

visitor or the personal property of the visitor is in some way connected with the illegal activity occurring or for which the warrant was issued.

- K. If the search warrant is issued for a particularly described item or object such as a specific gun or a specific piece of equipment, the search must be discontinued upon the locating of this item.
- L. It is the responsibility of the requesting officer to prepare an inventory of the items seized or to designate an officer to be in charge of the inventory. Copies of the inventory will be given to the individual arrested, to the court having jurisdiction, and prepared for the case file.
- M. All other property not seized shall be left in an orderly fashion (or as found).
- N. Following the execution of the search warrant, agency personnel will complete the "Return of Service" portion of the warrant and attach the inventory listing all instruments, articles, or things seized. The officer executing the warrant will file the "Return of Service" and inventory, signed under oath before the judicial officer who issued the warrant or any court of competent jurisdiction.
- O. If any damage occurs as a result of the entry to the premises or during the course of a search, the reporting officer will describe in the incident report the nature and extent of the damage and the circumstances and actions causing the damage. Photographs of all damage should be included in the evidence of the case. If substantial damage occurs, a separate report will be prepared by the on-scene supervisor that identifies the actions that caused the damage and a detailed description of the nature and extent of the damage. All damaged property will be photographed. The report will be submitted to the Criminal Investigations Division Commander within 24 hours following the search.

II. SEARCHES WITHOUT A WARRANT - GENERALLY

- P. It must be emphasized that searches of private property without the prior approval of a judge or magistrate, are considered unreasonable under the Fourth Amendment.
- Q. Numerous exceptions to the warrant requirement have evolved based upon precedents established by the courts. Many of these exceptions are interrelated and more than one exception may be applicable in any given situation such as the case with vehicle searches. Examples of legal exceptions to the warrant requirement include:
 - 1. Consent;
 - 2. Incident to a lawful arrest;
 - 3. Emergency (Exigent Circumstances);
 - 4. Hot pursuit; and
 - 5. Abandonment.

III. STOP AND FRISK

- A. In 1968 the Supreme Court of the United States declared in the case of *Terry v. Ohio* that a police officer may stop a person for questioning if the officer reasonably suspects that the person has committed, is committing, or is about to commit a crime. It is not necessary that the officer have probable cause to arrest the individual at the time that the stop is made. All that is required is that the officer has a reasonable suspicion that the individual is involved in criminal activity. However, to be reasonable, this suspicion must be based on articulable facts that would lead a reasonable person to

suspect the individual being stopped of being involved in criminal activity. "Feelings" or "gut instincts" are not sufficient, the stop must be based on observable facts that can be described to others in order to be lawful.

- B. The Supreme Court further declared in *Terry v. Ohio* that an officer who has stopped a suspect may "... search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual."
- C. A legal "stop" or field interview is a brief investigative detention that must be based upon reasonable, articulable suspicion. There are many factors, that when viewed in the totality of the circumstances, may establish reasonable suspicion to justify a "stop" of an individual, including:
 - 1. Appearance – which would include the observation of what appears to be a concealed weapon, a probable match to a "BOLO" or look-out, or sight of an object that appears to be contraband;
 - 2. Conduct – which would include driving in a manner as if intoxicated, or reactions to police presence such as immediately hiding an object, fleeing what appears to be the scene of a crime, or evading a traffic check point;
 - 3. Environment – which would include a hand-to-hand transaction in a high drug trafficking area, driving slowly, late at night, with no headlights in a new, unoccupied subdivision, or being found on the premises late at night when a burglar alarm sounds;
 - 4. Report of a crime – which would include tips with specific details of criminal activity from known sources with unknown reliability, or known reliable informants with information not specific enough to fully establish probable cause.
- D. A legal "frisk" is limited to a pat-down of the outer clothing of a suspect for weapons only. It is not a full-scale search. During a frisk, deputies may not reach into the suspect's clothing or pocket unless and until a weapon has been detected by the initial pat-down search. Containers such as sacks, briefcases, handbags, or other containers that a suspect may be carrying should not be searched as part of a frisk. In order to legally search such containers, other authority is required such as consent or probable cause. For safety, any containers not searched should be placed out of the reach of the suspect during the field interview.
 - 1. If the initial "stop" is not valid the "frisk" or pat-down search is also invalid.
 - 2. The right to stop a suspect for questioning does not automatically give the officer the right to conduct a frisk. The frisk must be justified by factors known by the officer at the time of the stop. There are many factors, that when viewed in the totality of the circumstances, may establish reasonable suspicion to justify a frisk of an individual, including:
 - a. The type of crime the officer believes to be committed;
 - b. The circumstances of the stop (number of suspects, number of deputies present, the time of day, location of the stop, the commission of any criminal activities in the presence of the officer);
 - c. The behavior of the suspect such a furtive movements, belligerence, vague answers to questions, refusal to identify himself/herself;

- d. Any visual indication that the suspect may be carrying a weapon such as a bulge in the clothing or inappropriate attire, carrying suspicious objects, appearing to be out of place;
 - e. Any prior knowledge that the officer may have that this particular individual carries weapons or is prone to violence;
3. The officer's belief that the suspect may be armed and dangerous must be both reasonable and actual.
 4. Whenever possible, the frisk should be conducted by deputies of the same gender as the suspect.

IV. PLAIN VIEW

- A. It should be noted that "plain view" is a seizure exception as opposed to a search exception because it does not authorize any type of search. Any item discovered and seized as a result of "plain view" is not discovered as a result of a search therefore no warrant is required.
- B. In addition to items seen by an officer under "plain view", courts have recognized "plain feel", "plain smell", and "plain hearing", as a legal basis for a seizure.
- C. In order for an officer to legally seize an item under the "plain view" doctrine:
 1. The officer discovering the item must have a legal right to be where he/she is at the time of discovery. (The officer must be engaged in a lawful activity at the time and have lawful access to the object); and
 2. It must be immediately apparent to the officer that the item is stolen property, contraband, or fruits of a crime or evidence of a crime. (The officer must be able to articulate this in detail.)

V. CONSENT TO SEARCH

- A. Any time an officer conducts a search, and it is safe and reasonable to do so, he/she should attempt to obtain prior consent. Even when the search is legal under other authority, such as a search warrant or probable cause, the addition of consent will not only serve to strengthen future prosecution, it helps create a spirit of cooperation between the suspect and the officer.
- B. In order for consent to search to be valid, it must be given voluntarily, without threat or coercion and by an individual who has the authority to give the consent.
- C. The burden of proof in court that the consent was voluntarily given rests with the officer obtaining the consent and will be based upon the totality of circumstances surrounding the encounter. Therefore, it is important that all facts and circumstances concerning the consent be fully documented in the Incident Report and that whenever possible, a recorded and/or signed waiver is obtained from the individual authorizing the search. The granting of consent to search and the signing of the waiver should be witnessed by another officer at the scene.
- D. The consent to search can be withdrawn by the consenting party at any time following the initiation of the search. When this occurs, the search will immediately stop.

- E. The consenting party may give restrictions as to the areas to be searched. If no restrictions are given, it can be assumed that all areas can be searched, to include locked containers, as long as the consenting party has common authority over the locked container.
- F. There is no necessity to give Miranda warnings before requesting consent nor to advise the person that she/he has the right to refuse consent.
- G. Anyone who reasonably appears to have the right to be in a location and authority over the premises can confer the consent.
- H. When two or more individuals jointly occupy the premises or area to be searched, any one of the individuals has the authority to permit an inspection of the area as long as that individual has full access to the area to be searched, however if another joint occupant having full access to the same area refuses to consent to a search or contests the other individual's authority to consent to a search of the area, the search is not authorized under "consent".
- I. A search will not be performed based upon the consent of a juvenile unless it is necessary to proceed with the search prior to the arrival of an adult. When a juvenile is confronted, the following consent factors should be considered to determine the validity of the search:
 - 1. Whether the minor lives on the premises;
 - 2. Whether the minor has right of access and the right to invite others into the premises;
 - 3. Whether the minor is of an age at which she/he could be expected to exercise at least minimal discretion; and
 - 4. Whether the officer reasonably believes the minor has sufficient control over the premises to give a valid consent to search.

VI. SEARCH INCIDENT TO A LAWFUL ARREST

- A. If the arrest of an individual is not valid the search incident to the arrest is also invalid.
- B. When departmental personnel make an arrest, they will conduct a full search of the person and the area within the person's immediate control or within his/her lunging area, for the purpose of self protection and the protection of others from attack, preventing the escape of the arrestee, discovering/seizing the fruits of the crime for which the person is arrested, or discovering/seizing any instruments, articles, or items which were used in the commission of the crime for which the arrestee is charged. (O.C.G.A. 17-5-1)
- C. If the individual is arrested within a building or dwelling, the area where the arrest occurs may be automatically swept to check for persons. This sweep is to protect the enforcement personnel from any individuals who may be hiding. However, this is not a full search, but only a visual inspection of immediately adjoining areas where individuals may be hiding. The protective sweep and may last no longer than is reasonably necessary to dispel a reasonable suspicion of danger.
- D. Other areas in the building, such as the basement, may also be swept for the presence of individuals if there is reasonable suspicion that a person is in hiding.

- E. If the arrest occurs outside a building, then no search may be conducted in the building unless a search warrant or consent is obtained or exigent circumstances are present.
- F. When an arrest has been made of an occupant of an automobile, deputies may search the vehicle's passenger compartment only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offence of arrest. (*Arizona v. Gant*)
- G. All searches incident to an arrest must be conducted immediately following the arrest. Searches that are not contemporaneous with the arrest are not legally authorized under "search incident to arrest".

VII. EMERGENCY (EXIGENT CIRCUMSTANCES)

- A. A search without a warrant may be conducted in certain emergency situations where there is an immediate necessity to search and no opportunity to obtain a warrant, if the exigencies of the situation make the needs of law enforcement so compelling to be objectively reasonable under the Fourth Amendment. In order to establish the existence of an emergency situation, the following basic elements must be present:
 - 1. The officer must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property;
 - 2. The search must not be primarily motivated by intent to arrest and seize evidence;
 - 3. There must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched.
- B. Contraband searches justified under exigent circumstances are scrutinized by the courts on a case-by-case basis according to the totality of the circumstances. Circumstances which have been considered relevant to the courts include:
 - 1. The degree of urgency involved and the amount of time necessary to obtain a warrant;
 - 2. The reasonable belief that the contraband is about to be removed or destroyed;
 - 3. The possibility of danger to police deputies guarding the site of the contraband while a search warrant is being sought;
 - 4. Information indicating the possessors of the contraband are aware that the police are in pursuit;
 - 5. The ready destructibility of the contraband and in the case of illegal drugs, the knowledge that efforts to dispose of illegal drugs and to escape are characteristic behavior of persons engaged in the distribution of illegal drugs.
- C. When a search is conducted under exigent circumstances, the scope and duration of the search is strictly limited by the specific exigent circumstances that justify its initiation. Examples are:
 - 1. The warrantless sweep of a residence when there is a reasonable belief that inside the residence there may be a victim in immediate need of assistance or an individual in immediate danger;

- a. The search must be limited to a quick sweep of the residence to locate people and the search must stop as soon as the sweep can reasonably be completed. During this limited sweep, the “plain view” doctrine is applicable and any items located under the guidelines of “plain view” may be seized.
2. The search of the pockets of a person found lying unconscious in a public place to learn his identity and to obtain information about his medical history.
 - a. The search must be limited to places where pieces of identification and medical history may reasonably be located and must stop as soon as it is reasonable to believe that all necessary items have been located, are not present, or other sources of this information become available such as a credible witness. During this limited search, the “plain view” doctrine is applicable and any items located under the guidelines of “plain view” may be seized.
3. The warrantless entry into a residence when there is probable cause to believe that contraband is inside the residence and unexpected circumstances create probable cause to believe the contraband is about to be destroyed.
 - a. The search must be limited to a quick sweep of the residence to locate and secure people for the purpose of seizing the premises while a search warrant is sought. The search must stop as soon as the sweep can reasonably be completed. During the limited sweep, the “plain view” doctrine is applicable and any items located under the guidelines of “plain view” may be seized.
- D. As soon as the exigency of the situation diminishes or the emergency is over, the justification to search under “exigent circumstances” also ends, at which time it will become necessary to obtain a search warrant or other legal authority in order to continue searching.

VIII. HOT PURSUIT

- A. A search without a warrant may be conducted in certain situations where speed is essential and deputies may endanger their lives or the lives of others if they were to delay in the course of the investigation. In the “hot pursuit” of a suspect, deputies are permitted to conduct a search for persons and weapons to insure that the police can gain control of all weapons that could be used against them or to effect an escape.
- B. The courts have ruled that when an arrest for a serious crime has been set in motion in a public place, the suspect cannot defeat the arrest by the expedient of escaping to a private place. In order for a search to be valid under “hot pursuit” the following factors must be present:
 1. There must be probable cause to believe that the suspect being pursued committed either a felony offense, or an offense of such a serious nature to create the reasonable belief that the public would be endangered if the person is not apprehended quickly;
 2. The pursuit of the suspect must be continuous, with no significant break in contact between the suspect and the pursuing officer, from the scene of the crime or from the scene where the arrest process began;

3. The officer must have been in pursuit when the suspect entered the place to be searched, and there must be probable cause to believe the person being pursued is still inside the place to be searched;
- C. A search conducted under "hot pursuit" must be limited to a quick sweep of the location for the suspect being pursued and any weapons the suspect may have discarded. The search must stop as soon as the sweep can reasonably be completed, at which time it will become necessary to obtain a search warrant or other legal authority in order to continue searching. . During the limited sweep, the "plain view" doctrine is applicable and any items located under the guidelines of "plain view" may be seized.

IX. ABANDONMENT OF PROPERTY

- A. A search and seizure without a warrant may be conducted in certain situations where it can be shown that the suspect relinquished his/her interest in the property to the extent that he/she no longer has a reasonable expectation of privacy at the time of the search. Abandonment is primarily a question of intent, which may be inferred from all relevant facts and circumstances existing at the time of the alleged abandonment. Some examples include:
1. A vehicle that is abandoned by the driver (defendant) during a police pursuit;
 2. Contraband that is dropped or thrown by a defendant while he/she is being followed or approached by law enforcement;
 3. An object or container in which the defendant denies ownership or any interest;
 4. Discarded garbage, provided that the garbage is either in a public location such as beside the street, or a location where the officer has a legal right to be, such as a hotel trashcan in a vacated room with the consent of the hotel manager.

X. OPEN FIELDS

- A. A search and seizure without a warrant may be conducted in certain unoccupied or undeveloped areas outside of the private curtilage of a residence, regardless of how remote the land is and regardless of the efforts of the property owner to keep others out.
- B. The extent of the curtilage of a residence is determined by factors that bear upon whether an individual reasonably may expect that the area in question should be treated as the home itself and whether the area harbors the intimate activity associated with the sanctity of a person's home and the privacies of life. Factors to consider include:
1. The proximity of the area to the home;
 2. Whether the area is included within an enclosure surrounding the home;
 3. The nature of the uses to which the area is put; and
 4. Steps taken by the resident to protect the area from observation by people passing by.

- C. The expectation of privacy in the curtilage of a residence does not prevent an officer from going to the front door of a house by the same route that would be used by any guest, deliveryman, postal employee, or other caller.

XI. SCHOOL SEARCHES

- A. When entering school property, deputies are subject to the full range of Fourth Amendment requirements applicable to searches of adults and/or within other private areas.
- B. In order for consent to search to be valid, the child's permission to search must be knowingly and intelligently given, not the result of trick or fraud, and must be given by a competent student (the younger the child, the less likely the consent will be held valid).
- C. Searches by school officials:
 - 1. A school search conducted at the request of law enforcement requires probable cause, a search warrant, or other legal exception justifying a warrantless search; or
 - 2. When acting alone, school officials may conduct a search based upon "reasonable suspicion," taking into consideration the child's age, history, record in school, the prevalence and seriousness of the problem to which the search is directed, and the exigency to perform the search without delay; and
- D. The use of police canines to conduct a random search for drugs, firearms, or explosives is considered valid, provided the search is of "things," such as vehicles, lockers, and other public areas and not a search of a person (student or faculty member).

XII. CRIME SCENE SEARCH

- A. When an officer has probable cause to believe that a crime has been committed, the officer has authority to "seize" the scene of the crime for the purpose of protecting the crime scene by preventing the destruction or contamination of evidence and controlling the movement of persons into or out of the crime scene.
- B. Searching and/or further processing of the crime scene requires a search warrant unless other legal authority exists, including but not limited to an emergency (exigent circumstances), a protective sweep incident to arrest, plain view, or consent to search.
- C. In the case of an entry authorized under exigent circumstances, as soon as the exigency of the situation diminishes or the emergency is over, the justification to search under "exigent circumstances" also ends, at which time it will become necessary to obtain a search warrant or other legal authority in order to continue searching.
- D. While awaiting the issuance of a search warrant for the crime scene, deputies will maintain control over the crime scene area. No unauthorized individuals will be allowed entry into the crime scene and no item within the crime scene will be moved without the approval of the case investigator or supervisor.

XIII. SEARCH OF A MOTOR VEHICLE – INCIDENT TO A VALID ARREST

- A. Due to the recent ruling in *Arizona v. Gant* the following questions should be ask before the search of a vehicle after a valid arrest.
- B. If an officer makes an arrest and an unsecured arrestee is within arms reach of the passenger compartment, the passenger compartment could be searched incident to arrest. It is not recommend that deputies engage in lapses in “officer safety” in order to justify searches. Therefore, continue with the other justifications below.
- C. If an officer makes an arrest and it is reasonable to believe that evidence related to the crime of arrest could be found in the passenger compartment, it can be searched incident to that lawful arrest.
- D. If an officer has probable cause to believe that evidence of a particular crime is located in a vehicle, the officer can search the vehicle without a warrant, based upon the motor vehicle exception to the search warrant requirement.
- E. If an officer reasonably believes that a vehicle occupant is dangerous and may gain immediate control of a weapon from a vehicle, the officer may conduct a limited search of the passenger compartment, only looking in places that a weapon could be hidden.
- F. If an officer has a lawful justification to impound an automobile, the officer may conduct an inventory of the contents of the vehicle and all containers therein, pursuant to department policy. Any contraband or evidence observed during this inventory may be seized and should be admissible in court. The rationale for the inventory is (1) to protect the owner’s property, (2) to protect the police from potential danger due to the contents of the vehicle, and (3) to protect the police from false allegations of theft.

XIV. SEARCH OF A MOTOR VEHICLE – PROBABLE CAUSE

- A. An officer may conduct a full search of a motor vehicle, including locked containers and the trunk of the vehicle, if probable cause exists to believe the vehicle contains contraband, stolen property, or evidence or fruits of a crime.
- B. The probable cause must be based upon objective facts, when viewed in the totality of the circumstances, could justify the issuance of a search warrant.
- C. A complete search can be conducted of areas of the vehicle where the item(s) may reasonably be located.
- D. The probable cause search of a vehicle may be delayed and the vehicle may be moved to another location prior to the search.
- E. Motor homes may be searched if they are located in places not regularly used for residential purposes. If a motor home is parked in a space designated for such vehicles or is connected to power and water and not readily moveable, the motor home is protected as a residence and cannot be searched without first obtaining a warrant.

XV. ADMINISTRATIVE INVENTORY OF IMPOUNDED VEHICLES

- A. When a vehicle is lawfully impounded, a thorough inventory of the entire vehicle will be conducted and all items will be documented on the inventory form.
- B. The purpose of the inventory is to:
 - 1. Protect the owner's property while he/she is in custody or elsewhere;
 - 2. Protect the officer against claims of the owner for alleged missing property;
 - 3. Protect the public and the police from illegal weapons which might be contained in the vehicle; and
 - 4. Determine whether the vehicle has been stolen.
- C. A vehicle is not impounded if it is merely towed by a private towing service, to their facility, with no law enforcement interference with the owner's property rights, such as an investigative hold placed upon the vehicle. A vehicle is impounded when it is seized and placed into the custody or under the control of law enforcement.
- D. If the vehicle impoundment is not valid, the inventory is also invalid.
- E. Unless the vehicle is evidence, stolen, or is subject to seizure, the investigating officer should make a reasonable attempt to properly dispose of the vehicle without having to resort to impoundment, such as another vehicle occupant present that can be trusted with the vehicle and is capable of lawfully driving the vehicle or a wrecker of the driver's choice or the on call wrecker taking it to their wrecker lot.
- H. Departmental personnel will impound a motor vehicle when the owner/driver has been arrested and:
 - 1. There is no one present who is authorized and capable of removing the vehicle;
 - 2. The vehicle is not located on the subject's property; or
 - 3. The vehicle is considered evidence or reported stolen.
- I. Vehicles may also be impounded if it is illegal to operate the vehicle, such as improper equipment, no current license plate, or no insurance.
- J. Impounded motor vehicles will be transported by a local wrecker service and brought to its facility for safekeeping either before or after the inventory, or will be placed in the departmental impound lot. If the driver or owner is on the scene and is able to observe the wrecker loading and taking away their vehicle there is no need for a vehicle inventory.
- K. All personal property and vehicle accessories such as radios, tape players, etc. shall be listed on the inventory form.
- L. All containers will be unlocked, opened, and inspected to include the glove compartment, the trunk, the console, under seats and floor mats, packages, luggage, and any other location in which it may reasonably be expected that items of personal property may be located. All items will be itemized and the condition of each will be described on the form.
- M. All inventories will be conducted and witnessed by at least one other party, such as the wrecker operator or another officer.
- N. The original copy of the vehicle inventory form will be attached to the Incident Report.

- O. During the course of the inventory, all suspected contraband, stolen property, or other fruits of a crime may be seized. When such a seizure is made, normal evidence handling procedures will be followed. Following the seizure, the inventory will be resumed and completed.
- P. Impounded motor vehicles will not be released unless authorized by the impounding officer or supervisor and the requesting individual can produce proof of ownership and insurance.



By Order of the Sheriff: **Chad K. Nichols**
Sheriff, Rabun County