

POLICE DEPARTMENT HANOVER PARK, ILLINOIS



DIRECTIVE: 208-P

REFERENCE STANDARDS: 1.2.3a, b 1.2.4 1.2.5 1.2.6

SUBJECT: Arrest, Search and Seizure

PURPOSE: The purpose of this Directive is to establish guidelines for arrest, search, and seizure decisions by Hanover Park Police Officers in order to assure that they are made in a manner consistent with federal and states laws, and constitutional guidelines.

I. DEFINITIONS

Consent: permission for an officer to search a constitutionally protected area given by a person with standing to grant it. That permission must be given without force, duress, or compulsion of any kind.

Probable cause: facts and circumstances that would lead a reasonable and prudent officer, acting in a cautious manner, to believe that a crime has been committed, and the person in question committed the crime.

II. PROCEDURE

A. Legal Authority

1. Hanover Park police are state certified peace officers possessing the power of arrest, search, and seizure.
2. Officers shall at all times exercise their authority in a fair and impartial manner so as to safeguard the constitutional rights of the persons with whom they come into contact, while enforcing the law to enhance public safety.
3. Geographic jurisdiction
 - a. Police officers have authority to enforce laws within the corporate limits of the Village of Hanover Park.
 - b. Police officers shall have authority to respond to incidents, enforce ordinances and statutes upon any lands covered by the department's police district.

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VILLAGE OF HANOVER PARK

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III. INTERVIEWS AND INTERROGATIONS, ACCESS TO COUNSEL

- A. Officers will at all times treat individuals being interviewed or interrogated fairly and with respect. No statements or confessions will be taken in a manner that is in any way in violation of their constitutional rights. (1.2.3a)
- B. Protection of Citizens Rights
 - 1. Whenever a citizen is arrested, or becomes a suspect in a criminal investigation and would reasonably believe that they are no longer free to leave, Miranda warnings shall be given prior to any questioning designed to elicit a self incriminating response. The warnings may be given at the time of custody, but must be given prior to interrogation. (1.2.3b)
 - 2. Suspects who have an insufficient command of English to clearly understand their rights or the questions being asked them shall be provided with an interpreter by the department prior to any interrogation.
 - 3. There are occasions when the officer believes that a suspect to be interrogated may not understand his rights due to the level of intoxication or other impairment. In these situations the officer shall confirm that the suspect understands their rights through interactive questioning, prior to any interrogation.
 - 4. Officers should make note of any unsolicited statements made by a suspect in custody and are under no obligation to provide him with any advice to stop, or to stop him for the purpose of advising him of his rights.

IV. PRETRIAL PUBLICITY

Press releases relative to arrest or detention of a suspect will be made in accordance with the guidelines established in DIR 582-S.

V. SEARCHES AND SEIZURES

- A. Search by consent. A Hanover Park police officer may conduct a search of any person, place, or thing without probable cause when the person having legal control over that area consents to the search. (1.2.4)
- B. Frisk resulting from a detention. When, during a detention, the officer has a reasonable suspicion that the subject is presently armed and dangerous, he/she may conduct a carefully limited search of the outer clothing of the subject for the purpose of detecting a weapon. This frisk does not require consent by the subject. (1.2.4)

C. Searches of vehicles. Officers shall be guided by the following basic principles, and will be kept apprised of changes in case law from the state and federal courts through roll call training, in-service training, and course approved by the Training Unit. (1.2.4)

1. Due to the inherent mobility of a motor vehicle, the courts have historically held officers to a standard of probable cause for their search. This means that there are some conditions under which the officer does not need a search warrant in order to search a motor vehicle. Officers may search a motor vehicle without first obtaining a search warrant under the following conditions:
 - a. The passenger compartment incident to a recent occupant's arrest if it is reasonable to believe that the arrestee might access the vehicle at the time of the search or that the vehicle contains evidence of the offense of arrest.
 - b. Based on probable cause to believe that the mobile vehicle contains evidence of a crime or contraband. This search is only limited by the scope of where those items could be concealed.
 - c. An inventory shall be routinely conducted on all motor vehicles impounded by this department. However, an inventory should never take precedence over, or be used to replace the above listed searches.
 - d. In the event of a detention of the driver or occupant, and the officer has a basis for a frisk of that person, the frisk may extend into the vehicle to the areas where he might leap or lunge for a weapon.
 - e. Unless the search is performed on the basis of consent, the officer shall not conduct the search of a motor vehicle without a search warrant unless there is a clear exception in law to that requirement. In the 2009 U.S. Supreme Court case decision of *Arizona v. Gant*, the court held that the Fourth Amendment to the United States Constitution requires law enforcement officers to demonstrate an actual and continuing threat to their safety posed by an arrestee, or a need to preserve evidence related to the crime of arrest from being tampered by the arrestee(s), in order to justify a warrantless vehicular search incident to arrest conducted after the vehicle's occupants have been arrested and secured. Furthermore, the court held that police may search the passenger compartment of a vehicle incident to a recent occupant's arrest only if it is reasonable to believe the arrestee might access the vehicle at the time of search or the vehicle contains evidence of the offense of arrest. When these justifications are absent, a search of the arrestee's vehicle will be held unreasonable.

D. Searches at the scene of a crime (1.2.4)

1. Officers will adhere to the following guideline with respect to searches of crime scenes: if the crime scene includes a constitutionally protected area, and a possible suspect might have a reasonable expectation of privacy in the scene, it will be searched pursuant to a search warrant.
 - a. Exceptions:
 - 1) Officers may conduct protective sweeps of a crime scene for their protection prior to securing the scene pending a warrant or consent.

- 2) In cases other than homicides, the scene may be searched with the consent of a person with standing to give it. If there is an existence of a reasonable expectation of privacy in a homicide scene, it will be searched pursuant to the issuance of a search warrant.
 - 3) When the suspect is arrested in the crime scene, officers may search the area under the immediate control of the suspect if it is contemporaneous with the arrest.
 - 4) Officers may enter and search a constitutionally protected area under lawful exigent circumstances to include medical emergencies, or public safety issues such as a violent felony in progress or the reported presence of a bomb. This exception only extends to the termination of the emergency. At that point, another justification must be found. (1.2.4)
2. Other situations authorized by state and federal provisions: (1.2.4)
- a. Officers may enter an open field and search it for items subject to seizure when they have reason to believe that the stated item(s) are to be found at the location. The fourth amendment affords no protection to open fields. An open field is the area in proximity to a dwelling, but not within the curtilage of that dwelling.
 - b. Officers may search public places when they have reason to believe that items subject to seizure are at the location. The fourth amendment affords no protection to public places. Public places are those locations owned or controlled by public entities that are available for public use. An example would be a public park.
 - c. Officers may search private locations open to the public when they have reason to believe that items subject to seizure are at that location. The fourth amendment affords no protection to private places open to the public. These are locations that are privately owned but are available for public use. An example would be the lobby of a bank.
 - d. Officers may seize items that are immediately apparent as evidence when they come into view and the officer is lawfully searching in connection with a crime or he otherwise has a right to be where he is at the time.
 - e. Officers may search abandoned property if it can be established that the owner or person in possession of the property intended to abandon it and did so freely.

E. Use of Personal Protective Equipment

1. In cases of all searches where the discovery of narcotics and/or controlled substances is suspected, the use of personal protective equipment, (PPE), as defined in Department Directive 525-S, including gloves, masks, and protective eyewear and/or face shields prior to the start of any search by an officer is highly recommended. This is due to the highly volatile and toxic nature of a number of substances and the danger it presents to the handler.

VI. ARREST WITH/WITHOUT A WARRANT (1.2.5)

- A. Hanover Park Police Officers may arrest anyone within their jurisdiction when they have knowledge of the existence of a felony warrant, a misdemeanor warrant issued within this state, or they have probable cause to believe that the person has committed a violation of federal or state criminal laws, or is in violation of a Hanover Park village ordinance.
 - 1. When possible, the officer will identify himself/herself as a police officer, clearly advise the suspect that he/she is under arrest, and advise them of the charge.
 - 2. All arrested suspects will be searched incident to arrest, subject to the constraints in DIR 258-P. The area of their immediate control may also be searched contemporaneous with the arrest. They will then be transported to the department for booking as soon as is practical.
 - 3. Arrestees will be afforded all the rights available to them under federal, state, and case law; to include the right to be considered for bond by a judge, to communicate with family, friends, or counsel, and to release after the allotted statutory time period if no arrest warrant is issued. **Exception:** an arrestee may be held briefly without the opportunity to communicate with persons outside the jail when that communication could represent a direct threat to officers in the performance of their duties. This exception may only be exercised with the permission of an officer of command rank and must be continuously reviewed for termination as soon as the threat that caused the restriction no longer exists. An example would be a series of search warrants being served on felons who are armed, violent, and known to be associates of each other.
- B. Officers who are outside their legal jurisdiction may have limited police powers under special statutory authority.

VII. ALTERNATIVES TO ARREST (1.2.6)

- A. Absent the existence of an arrest warrant or a statutory provision to the contrary, Hanover Park Police Officers are not required to make an immediate arrest. Alternatives to arrest include: the issuance of a summons, a warning, or referral of a case to the appropriate prosecutor.
- B. The factors that an officer shall consider in the decision to make an arrest or select an alternative shall include: the safety of the community, outstanding evidence to be recovered, the seriousness of the charge, the advisability of securing bond from the suspect, and the level of restraint necessary to resolve an ongoing situation.

VIII. PRETRIAL RELEASE (1.2.6)

- A. Prisoners in custody under authority of an arrest warrant shall not be released except with

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Permission of a judge with jurisdiction over the offense.

- B. Prisoners in custody on the basis of a warrant-less arrest may be released by the arresting officer, follow up investigator, any supervisor, or commander without posting bond. Relevant considerations will include the seriousness of the offense, the reasons that the arrest was made, and the limitations set by the judicial authorities. **Exception:** Felony prisoners in custody on a warrant-less basis shall not be released on a discretionary basis.
- C. Officers are strongly advised not to make arrests on minor charges when the sole justification is to secure bond. Those persons may be arrested upon the subsequent issuance of an arrest warrant if they fail to appear for arraignment.