

	<h1>ELGIN POLICE DEPARTMENT</h1> <p>151 Douglas Avenue Elgin, Illinois 60120</p>	
Effective Date: 06/17/02	STANDARD OPERATING PROCEDURE	Revised Date: 06/03/10
Chief of Police: 	Limits of Authority, 1.2	
Cross Reference: SOP 42.2, Criminal Investigations: Operations SOP 42.5, Responding to Persons with Mental Illness SOP 61.4, Traffic Ancillary Services SOP 71.1, Transportation of Prisoners SOP 83.1, Physical Evidence: Administration SOP 83.2, Physical Evidence: Operations SOP 83.3, Evidence Handling SOP 111.1, Discriminatory Profiling 65 ILCS 5/1-4-8 65 ILCS 5/3.1-15-25 65 ILCS 5/11-1 65 ILCS 5/11-1-2.1 430 ILCS 65-2 720 ILCS 5/24-1 720 ILCS 5/24-2 725 ILCS 5/107-2 725 ILCS 5/107-3 725 ILCS 5/108-1 725 ILCS 5/107-8 725 ILCS 225/14	Policy Sections: 1.2.1 Legally Mandated Authority of Sworn Officers 1.2.2 Authority to Carry and Use Weapons 1.2.3 Constitutional Requirements Observed 1.2.4 Warrantless Searches and Seizures 1.2.5 Arrest Procedures with or Without a Warrant 1.2.6 Alternatives to Arrest 1.2.7 Use of Discretion by Sworn Officers 1.2.8 Strip Searches 1.2.9 Biased Based Profiling	

PURPOSE

The purpose of this policy is to define the legally mandated authority vested in sworn Officers, and outline the circumstances when sworn Officers should exercise alternatives to arrest and confinement. This procedure provides written guidelines which govern the use of discretion by sworn Officers, arrest procedures, and to ensure constitutional requirements are observed during investigations.

POLICY STATEMENT

It is the policy of the Elgin Police Department to enforce all laws, statutes, and ordinances of the State of Illinois and the City of Elgin.

DEFINITIONS

Arrestee's Immediate Presence: Defined by the U.S. Supreme Court as that area within the arrestee's immediate control, i.e., that area from which the arrestee might gain possession of or seize a weapon or other things to assault an Officer or effect an escape or seize concealable or destructible evidence.

Exigent Circumstance: A situation that demands unusual or immediate action that may allow an Officer based on probable cause, to make an arrest, search, or seizure

Frisk Search: A cursory search, for the protection of an Officer, designed to discover weapons during temporary questioning of a suspect. The search may be conducted pursuant to Illinois Compiled Statutes 725 ILCS 5/108-1.01 and *Terry v. Ohio*, 392 U.S. 7 (1968). Also known as a "Stop & Search", "Pat Down Search", or "Terry Stop."

Movable Vehicle Exception: Vehicles do not share the same expectations of privacy as a home or other personal items. Obvious mobility of an automobile would make it impractical to require the police to first obtain a warrant. Officers do not actually have to prove that a vehicle might or would be gone if a warrant were obtained before making the search. The existence of probable cause alone justifies the exception. The movable vehicle exception allows an Officer to search any portion of the vehicle or its contents where there is probable cause to believe evidence or contraband may be located. This type of search should not be confused with a search incident to arrest or inventory search. Also known as the Carroll Doctrine

Carroll v. U.S., 45s.Ct. 280 (1925).

Plain Feel Doctrine: Authorizes an Officer to seize evidence while conducting a frisk search if the Officer discovers contraband in which nature of evidence is “immediately apparent” to the Officer based on a feel of the object through the suspect’s clothing during the pat-down. *Minnesota v. Dickerson*, 508 U.S. 366 (1993).

Search by Consent: A search performed after the subject of the search, or the person having (standing) rights to the location, consents to a search freely and intelligently. Consent may be given orally, or documented in writing. Consent, to be valid,” must be given unequivocal, specific and intelligently given, uncontaminated by any duress or coercion.” *U.S. v. McCaleb*, 552 F.2nd 717, 721 (6th Cir. 1977).

Sworn Officer: For the purpose of this directive, the term “sworn Officer” refers only to all ranks of police Officers with the authority to make a custodial arrest.

PROCEDURES

1.2.1 LEGALLY MANDATED AUTHORITY OF SWORN OFFICERS

- A. The U.S. Constitution, Illinois Constitution and Illinois Compiled Statutes define the scope and limits of law enforcement authority as it pertains to the enforcement of laws, statutes, ordinances, and arrests.
 - 1. Illinois Compiled Statutes 65 ILCS5/11.1, grants the authority to municipalities to create and define police powers.
 - 2. Elgin City Municipal Code, Chapter, 2.52.030, establishes the powers of the Chief of Police.
- B. On duty authority and responsibility.
 - 1. While on duty, inside the city limits, Officers of the Elgin Police Department have the full authority granted to peace Officers by the Illinois statute, which includes:
 - a. The authority to make warrantless arrests, serve arrest warrants, and serve search warrants as granted by the Illinois Compiled Statutes 65 ILCS 5/3.1-15-25 and 725 ILCS 5/107-2.
 - b. The authority to make an arrest of an individual without a warrant based upon reasonable information that the individual to be arrested has been charged with a felony in the courts of another state and is wanted by that state. Illinois Compiled Statutes 725 ILCS 225/14.
 - 2. While on duty, outside of the city limits, Officers of the Elgin Police Department have the full authority granted to peace Officers by Illinois statute, but must be aware of certain statutory provisions and Departmental guidelines affecting the authority to make arrests outside of the city.
 - a. Officers who possess a search warrant or arrest warrant have the authority to execute the warrant anywhere within the State of Illinois, Illinois Compiled Statutes 725 ILCS 5/107. Prior to executing a search warrant, the local or county law enforcement agency shall be notified. Prior to executing an arrest warrant, the local or county law enforcement agency should be notified, when feasible.
 - b. Officers have the authority to make, based upon probable cause and without a warrant, an arrest anywhere in Illinois when the Officer is engaged in “hot or fresh pursuit.” *People v. Clark*, 360 N.E. 2d 1160 (1977). The local law enforcement agency should, whenever feasible, be notified of the Officer’s

presence within the jurisdiction.

- c. An Officer may make an arrest based upon probable cause and without a warrant anywhere within the geographic boundaries of the City of Elgin, Illinois Compiled Statutes 65 ILCS 5/7-4-7 and 5/7-48.
- d. Officers from the Elgin Police Department have full authority as peace Officers in another municipality when fulfilling a mutual aid role as provided by statute (Illinois Compiled Statutes 65 ILCS 5/1-4-8 and 65 ILCS 5/11-1-2.1).
- e. Officers have the authority to make a warrantless arrest outside the city if the arrest would be valid if made by a private citizen, Illinois Compiled Statutes 725 ILCS 5/107-3. When the matter is not of direct concern to the City of Elgin, Officers should make a reasonable effort to bring about the appropriate action by the responsible law enforcement agency.
- f. Under the authority of Illinois Compiled Statutes 725 ILCS 5/107-8, Officers making a lawful arrest may command the aid of persons over the age of 18 to assist in any reasonable conduct in such a manner as to have the same powers as a peace Officer.

C. Off duty authority and responsibility.

- 1. An Officer, by virtue of public employment, is vested by law with a duty to maintain public order and to make lawful arrests. An off duty Officer, however, faced with a situation involving criminal conduct, is usually neither equipped nor prepared to handle the situation in the same manner as if he/she were on duty. Therefore, an off duty Officer confronted with a situation involving criminal conduct should give consideration to causing the responsible law enforcement agency to take appropriate action. In rare cases the exigency of a given situation may call for immediate action by the Officer. The Officer may, in such circumstances, take action only after considering the totality of the circumstances with regard to safety and interests of the public.

- D. Illinois peace Officer powers do not extend beyond the state borders. When a police matter requires action, but is outside the state of Illinois, the appropriate law enforcement agency shall be notified.

1.2.2 AUTHORITY TO CARRY AND USE WEAPONS

- A. Illinois Compiled Statutes 720 ILCS 5/24-1, 720 ILCS 5/24-2, and 430 ILCS 65-2 grant the legal authority to Officers to carry firearms.
- B. Agency personnel authorized to carry weapons shall do so in compliance with the United States Constitution, Illinois Compiled Statutes, case law and Department policy.

1.2.3 CONSTITUTIONAL REQUIREMENTS OBSERVED

During the course of a criminal investigation, Officers will ensure that the constitutional rights of persons involved are not violated and shall follow all procedures as set forth in the Illinois Compiled Statutes pertaining to constitutional requirements. Particular attention should be given to protect against:

- A. Coercion to obtain involuntary confessions or admissions during field interviews, or interrogations.
- B. Failure to inform defendants of their rights, including their access to counsel.
- C. Delay in arraignment.

1.2.4 WARRANTLESS SEARCH AND SEIZURE

It is the policy of the Elgin Police Department to accomplish searches of people, places and things in a manner that provides protection of constitutional rights, minimizes intrusion, preserves evidence or fruits of a crime, and provides for safety for all parties. If possible, a search warrant should be obtained and signed by a local judge. Warrantless searches include the following:

A. Search by Consent.

A search performed after the subject of the search, or the person having (standing) rights to the location, consents to a search freely and intelligently. For a consent to be valid, "must be given unequivocal, specific and intelligently given, uncontaminated by any duress or coercion." *U.S. v. McCaleb*, 552 F.2d 717, 721 (6th Cir. 1977).

1. Consent may be given orally.
2. Written consent is preferred.
3. Document witness present for a consent.

B. Stop and Frisk Search.

A cursory search, for the protection of an Officer, designed to discover weapons during temporary questioning of a suspect. The search may be conducted pursuant to Illinois Compiled Statutes 725 ILCS 5/108-1.01 and *Terry v. Ohio*, 392 U.S. 7 (1968). Also known as a "Stop & Search", "Pat Down Search", or "Terry Stop."

1. A frisk search is not intended to discover evidence of a crime. However, evidence may be discovered based on the "plain feel doctrine" and become the basis of an arrest.
2. Prior to conducting a frisk search, an Officer must have a reasonable suspicion that the person being stopped is committing, is about to commit, or has committed a criminal offense.
3. Any Officer who initiates a frisk search must be able to articulate the reason(s) for suspecting that he or others in the immediate area are in danger. This information may be drawn from sources including, but not limited to:
 - a. Training.
 - b. Education.
 - c. Prior experience in similar situations.

C. Movable Vehicle Exception.

Vehicles do not share the same expectations of privacy as a home or other personal items. Obvious mobility of an automobile would make it impractical to require the police to first obtain a warrant. Officers do not actually have to prove that a vehicle might or would be gone if a warrant were obtained before making the search. The existence of probable cause alone justifies the exception. The movable vehicle exception allows an Officer to search any portion of the vehicle or its contents where there is probable cause to believe evidence or contraband may be located. This type of search should not be confused with a search incident to arrest or inventory search. *Carroll v. U.S.*, 45s.Ct. 280 (1925).

D. Crime Scene Searches fall into several areas of warrantless searches, which include, but are not limited to:

1. Search by consent.
2. Movable vehicle.
3. Plain View.
4. Search incident to arrest.
5. Exigent circumstances, if other exigency separate from the seriousness of the crime exists.
6. If an Officer discovers a crime scene during the course of his duties, the Officer will:
 - a. A cursory search for victims and/or suspects.
 - b. Render assistance to the injured.
 - c. Attempt to locate, identify, and arrest the offender at the scene.
 - d. Secure the area and keep it in the same physical condition as it was left by the offender.
 - e. Notify a supervisor if not already on the scene.
 - f. Attempt to identify witnesses and victims.
 - g. Yield responsibility to follow up investigators and or evidence collection personnel.
 - h. Follow additional procedures as outlined in SOP 42.2, Criminal Investigations: Administration; SOP 83.1, Physical Evidence: Administration; SOP 83.2, Physical Evidence Operations, and SOP 83.3, Handling Evidence.

E. An exigent circumstance is a situation that demands unusual or immediate action that may allow an Officer, based on probable cause, to make an arrest, search, or seizure. An Officer may affect an arrest, search, or seizure to prevent evidence from being destroyed, escape of a suspect, or the preservation of life. Factors to consider in determining if exigency exists:

1. The gravity of the offense committed.
2. Is the suspect or subject of the search considered armed and therefore dangerous?
3. More than a minimum of probable cause exists that the suspect committed the offense.
4. There exists strong reason to believe that the suspect is on the premises.
5. There is a likelihood that the suspect will escape if not immediately apprehended.
6. The circumstances of entry and time delay.
7. The aforementioned factors will contribute to the "totality of the circumstances".
8. An additional widely recognized emergency circumstances search is the well being check. These are situations in which the health and well being of a person are involved.
 - a. In most cases, there is no reason for police to suspect criminal activity.
 - b. Entries are made into private premises solely to determine the well being of the

resident or occupants.

F. During an inventory search, the property to be searched must have come lawfully into the possession of the Officer. Inventory searches of property seized by police Officers have been justified for three reasons:

1. Protects the property of the owner.
2. Protects the law enforcement agency against claims the property has been lost or stolen.
3. Allows police to discover any potential danger that may exist because of the contents of the property itself.
4. Seized vehicles incident to an arrest must be inventoried and documented on the general incident report. A Tow Receipt and Notice of Vehicle Seizure shall be completed and issued to the violator. If a vehicle is inventoried, all containers and possessions in the vehicle shall be searched. When no key is available, the Watch Commander or his designee may authorize the opening of a locked container by a lock smith for the completion of the inventory search.

Additional items of property subject to an inventory search include:

- a. Found property.
- b. Property turned over by citizens for safe keeping.
- c. Property turned in by citizen for destruction, e.g., firearms, ammunition, other weapons.
- d. Abandoned property.

G. Search incident to arrest is the most widely used exception to the search warrant requirement. The Illinois Compiled Statutes 725 ILCS 5/108-1 provides for this type of search upon making a valid arrest. Application of this section is typically applied to situations involving custodial arrests. Officers may reasonably search the person arrested and the area within that person's immediate control, to include vehicles, for the purpose of:

1. Protecting the Officer from attack.
2. Preventing person(s) from escaping.
3. Discovering fruits of the crime.
4. Discovering any instruments, articles, or things which may have been used in the commission of, or which may constitute evidence of, an offense.
5. In searches incident to an in-home arrest, a protective sweep is allowed for areas where other persons may be found and cannot last any longer than is necessary to dispel the reasonable suspicion of danger. *Maryland v. Buie*, 494 U.S. 325, 110 S.Ct. 1093 (1990).
6. In the 2009 U.S. Supreme Court case decision of *Arizona v. Gant*, 556 U.S. ___, 129 S.Ct. 1710, 173 L.Ed.2d 485, 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 tampering by the arrestee, in order to justify a warrantless vehicular search incident to arrest conducted after the vehicle's recent 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 that the arrestee might access the vehicle at the time of search or that 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.

7. Prior to placing a prisoner into a police vehicle, an Officer shall conduct a thorough search of the prisoner and outer garments. Cross reference SOP 71.1, Transportation of Prisoners.
 - a. Officers shall take and maintain custody of purses or bags carried by prisoners, checking for weapons.
 - b. The interior of the police vehicle shall be searched prior to and after transporting a prisoner.
- H. Plain View searches have been upheld by courts as long as the Officer was legitimately on the premises and had probable cause to believe the property was evidence or contraband.
 1. Limitations on plain view searches:
 - a. There must be no pre-observation intrusion that violated constitutional rights.
 - b. The item(s) must have been discovered inadvertently.
 - c. Artificial devices that aid in or enhance the ability of the Officer's view are not considered "plain view." A flashlight, however, is generally acceptable, provided the Officer has a right to be where he is when using the light source.
 - d. Moving items or rearrangement of items to note serial numbers, for example, is not supported by the "plain view" doctrine.
 2. The "plain view" doctrine also applies to warrant searches, even if the item to be seized was not noted on the search warrant. The test is:
 - a. Does the Officer have the authority to be at the location?
 - b. Does the Officer have probable cause to believe the item in the open is evidence or contraband?
- I. Open field searches typically involve marijuana cultivation. The U.S. Supreme Court has held that the home and its curtilage are not necessarily protected from inspection that involves no physical invasion. What a person knowingly exposes to the public, even in his own home or office, is not subject of Fourth Amendment protection. *Katz v. United States*, 389 U.S. 347, 351 (1967). Police Officers may see what may be seen, "from a public vantage point where they have a right to be" (476 U.S. at 13). Areas outside the curtilage include:
 1. Woods.
 2. Pastures.
 3. Grassland.
- J. Nighttime security checks are another form of a warrantless search held by the court.
 1. These searches are permissible only in a business and only if the Officer's intent is to determine if any unauthorized people are inside.
 2. The Officer may also check for owner information so notification can be made.

1.2.5 ARREST PROCEDURES WITH OR WITHOUT A WARRANT

Illinois Compiled Statutes 725 ILCS 5/107-2 provides that a peace Officer may arrest a person when he/she has reasonable grounds to believe that a person is committing or has committed an offense. When a lawful arrest is affected, with or without an arrest warrant, a law enforcement Officer may reasonably search the person arrested and the area within such person's immediate presence, or under his/her immediate control, during or after the arrest for the authorized purpose of:

- A. Protecting the Officer from attack.
- B. Preventing the person from escaping.
- C. Discovering the fruits of the crime.
- D. Discovering any instruments, articles, or things which may have been used in the commission of the offense.
- E. Discovering any instruments, articles or things which may constitute evidence of the offense, including contraband.

1.2.6 ALTERNATIVES TO ARREST

- A. Officers must exercise discretion when considering an appropriate alternative to an arrest. Alternatives of this nature include:

- 1. Informal Resolution.

Informal resolution is the practice of resolving problems without arrest, citation or referral. Informal resolution is an excellent method to deal with minor violations, simple disputes or disagreements, or where the investigating Officer determines that inadequate probable cause exists. Officers will seek direction from their supervisor when the appropriate course of action is in doubt. Cross Reference SOP 42.5, Responding to Persons with Mental Illness.

- 2. Notices to Appear.

- 3. Referral.

Referral is the practice of directing a matter to another Departmental component, City Department, governmental agency or social service organization. Cross Reference SOP 42.5, Responding to Persons with Mental Illness.

- 4. Traffic citations.

Traffic citations are used for non-felony violations of the Illinois Vehicle Code (625 ILCS) and certain City Ordinances.

NTA complaints are used for various City ordinance violations more common and minor misdemeanors.

- 5. Warnings.

Written or verbal warnings are used for minor traffic and ordinance violations. Warnings should not be used for major violations or those violations specifically addressed in a written directive.

- B. Officers must consider the following factors when exercising alternatives to arrest:

1. The presence or absence of probable cause.
2. The level of cooperation by the victims and witnesses.
3. Existing law and the elements of the offense.
4. The severity of the offense.
5. Available resources.
6. Department written directives and orders.
7. Mental and emotional state of person. Reference SOP 42.5, Responding to Persons with Mental Illness.

1.2.7 USE OF DISCRETION BY SWORN OFFICERS

- A. The proper use of discretion is an important aspect of law enforcement and is predicated on good judgment. The use of discretion requires that an Officer make responsible decisions which can withstand scrutiny by the Department, other jurisdictional components of the criminal justice system and the community itself.
- B. Sworn Officers are encouraged to exercise discretion when dealing with many of their duties. The use of discretion must be soundly based upon law, Departmental directives, experience and training. Therefore, Officers must correctly interpret laws and Department directives. Officers shall realize that the use of discretion is not permitted when certain activities are mandated by statutes, Department directives or supervisory direction. Officers shall seek direction from their supervisor when the appropriate course of action is in doubt.
- C. An Officer's discretionary decision regarding severity of enforcement action or inaction must not be influenced by malice, vengeance, or prejudice based upon status, age, race, ethnic background, religious belief gender or sexual preference, etc.

1.2.8 STRIP SEARCHES

The specific requirements of this standard are delineated in SOP 71.6.

1.2.9 BIAS BASED PROFILING

The specific requirements of this standard are delineated in SOP 111.1.