



## 209-Search and Seizure DEPT. OF PUBLIC SAFETY

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**Warning:** This directive is for AAMU DPS use only and therefore should not be construed as a creation of a higher legal standard of safety, or care, in an evidentiary sense with respect to third party claims. Violations of this directive will form the basis for departmental administrative sanctions. Violations of the law will form the basis for civil and criminal sanction/s in a recognized judicial setting.

### 209.1 PURPOSE

The purpose of this policy is to establish guidelines for the search incident to arrest, the search at a crime scene, the search and seizure of motor vehicles, and the search and seizure of evidence during the execution of search warrants.

### 209.2 POLICY

It is the policy of the AAMU DPS to utilize search and seizure procedures in order to aid criminal investigations in the recovery of evidence, contraband, and/or stolen property. These procedures shall only be utilized where probable cause exists to recover these items from locations or individuals, and in a manner that complies with both judicial and Department expectations. Officers shall comply with all legal requirements whenever obtaining search warrants and utilize appropriate risk assessment and mitigation measures as applicable.

### 209.3 DEFINITIONS

**Pat-down Searches:** A “frisk” or external feeling of the outer garments of an individual for weapons only.

**Reasonable Suspicion:** Articulable facts that, within the totality of the circumstances, lead an officer to reasonably suspect that criminal activity has been, is being, or is about to be committed.

**Field Interview:** A brief detainment of an individual, whether on foot or in a vehicle, based on reasonable suspicion, for the purposes of determining an individual’s identity and resolving the officer’s suspicions concerning criminal activity.

**Search:** The examination of a person, property, place, or location by a person of authority while conducting a lawful investigation.

**Search Warrant:** Is an order in writing in the name of the state signed by a judge, or by a magistrate authorized by law to issue search warrants, and directed to the sheriff or to any constable of the county, commanding him to search for personal property and bring it before the court issuing the warrant.

**Strip Search:** Any search of an individual requiring the removal or rearrangement of some or all clothing to permit the visual inspection of any or all skin surfaces including genital areas, breasts and buttocks.

**Body Cavity Search:** Any search involving the internal physical examination of body cavities and, in some instances, organs such as the stomach cavity.

**Motor Vehicle:** Any vehicle operating or capable of being operated on public streets or highways, to include automobiles, trucks, trailers, recreational vehicles, mobile homes, motor homes, and any other type of vehicle, whether self-propelled or towed. This policy does not apply to vehicles of any type that have been immobilized in one location for use as a temporary or permanent residence or storage facility, or which are otherwise classified by the law as residences or buildings.

**Motor Vehicle Search:** An examination of all or a portion of the vehicle with an investigatory motive (i.e., for the purpose of discovering fruits, instrumentalities, or evidence of a crime or contraband). A vehicle search may also be conducted to determine the vehicle identification number or the ownership of the vehicle.

**Seizure:** The taking of evidence, property, contraband, concealed weapons, stolen property, or other tools or “fruits of crime,” into legal custody for the purpose of legal investigations and dispositions.

**Contraband:** Counterfeit currency, counterfeiting equipment, narcotics, illegal drug paraphernalia, firearms and other types of unlawful property that the mere possession of such material is an offense in itself.

## **209.4 PROCEDURES**

Officers shall conduct field interviews, perform pat-down searches and execute search warrants in conformance with procedures set forth in this policy.

### **209.4.1. Field Interviews**

209.4.1.1. Officers may stop individuals for the purpose of conducting a field interview only where reasonable suspicion is present.

209.4.1.2. The Officer must be able to point to specific facts that, when taken together with rational conclusions, reasonably warrant the stop. Such facts include, but are not limited to:

- The appearance or demeanor of an individual suggests that he/she is part of a criminal enterprise or is engaged in a criminal act.
- The actions of the suspect suggest that he/she is engaged in criminal activity.
- The hour of day or night is inappropriate for the suspect’s presence in the area.
- The suspect’s presence in a location is inappropriate. The suspect is carrying a suspicious object.
- The suspect’s clothing bulges in a manner that suggests he/she is carrying a weapon.
- The suspect is located in proximate time and place to an alleged crime.
- The officer has knowledge of the suspect’s prior criminal record or involvement in criminal activity.
- The individual flees at the sight of a police officer.

209.4.1.3. When conducting a field interview, officers shall confine their questions to those concerning the suspect's identity, place of residence, and other inquiries necessary to resolve the officer's suspicions. However, in no instance shall an officer detain a suspect longer than is reasonably necessary to make these limited inquiries and resolve suspicions.

209.4.1.4. Suspects are not required, nor can they be compelled, to answer any questions posed during field interviews. Failure to respond to an officer's inquiries is not, in and of itself, sufficient grounds to make an arrest although it may provide sufficient justification for additional observation and investigation.

209.4.1.5. Officers shall not prolong the field interview beyond the period necessary to accomplish the purpose of the interview. Officers shall be aware that prolonging a field interview unnecessarily may cause a court to view the detention as an actual arrest.

209.4.1.6. Officers shall take precautionary measures for their own safety during a field interview, including handcuffing the suspect if necessary. Officers shall be aware that unnecessary or prolonged handcuffing during the field interview may cause a court to view the detention as an actual arrest.

209.4.1.7. Officers who reasonably believe that a person, under investigative detention during a field interview, may pose a threat to their safety shall conduct a frisk or pat-down search of the detainee's outer clothing for weapons. Officers shall not conduct any further search of a suspect unless and until it appears that there is probable cause for the arrest.

- Plain Feel Doctrine: Officers conducting cursory frisks may seize an object when it becomes immediately apparent, with knowledge gleaned from the officer's sense of touch, that probable cause exists to believe the object can be seized.

209.4.1.8. If during the field interview, it becomes apparent that there is probable cause to believe that the detainee has committed a criminal offense, the detainee may then be placed under arrest.

## **209.4.2 Consent to Search**

When requesting consent to search from an individual, officers shall consider the following guidelines:

209.4.2.1. Voluntariness of consent: Consent to search must be voluntarily given and not the result of duress or coercion.

209.4.2.2. Authority to Consent: In order for consent to be valid, it must be given by someone possessing control over the area to be searched.

209.4.2.3. Scope: A person has a right to limit the scope of a consent search.

## **209.4.3 Search Incident to Arrest**

When a person has been arrested, a search incident to that arrest may be made in accordance with the following:

209.4.3.1. Officers shall conduct a thorough search of the person arrested.

209.4.3.2. Any criminal evidence discovered during the search of the arrestee's person shall be seized and preserved in accordance with departmental procedures.

209.4.3.3. The search incident to arrest shall include not only the person of the arrestee, but also areas within the reach and control of the arrestee such as clothing, and any bags or packages he or she may be in possession of at the time and place of arrest. Multiple searches of the person are permitted under this exception as custody is passed from officer to officer or facility to facility.

209.4.3.4. Strip searches shall not be conducted in the field except under the most extreme circumstances and with prior approval from a supervisor. Arrestees shall not be subject to strip searches unless the arresting officer has articulable, reasonable suspicion to believe the arrestee is concealing contraband or weapons. Any officer conducting a strip search of an arrestee in the field shall justify the reasons for such a search and document those reasons in a subsequent written report.

- Strip Searches shall be conducted by the fewest number of personnel necessary and only by those of the same sex.
- Strip Searches shall be conducted in a location that provides privacy from all but those authorized to conduct the search.
- This policy does not prohibit the routine search of prisoners and their clothing when the prisoners are being dressed out in Madison County Jail uniforms as part of the booking process.

209.4.3.5. Body cavity searches shall not be conducted in the field.

209.4.3.5.1 Should visual examination of a suspect during a strip search and/or other information lead an officer to believe that the suspect is concealing a weapon, evidence, or contraband within a body cavity, the following procedures shall be followed:

- The suspect shall be kept under constant visual surveillance until a body cavity search is conducted or an alternative course of action taken.
- The officer shall consult with his immediate supervisor to determine whether probable cause exists to seek a search warrant for a body cavity search.
- If probable cause exists for a body cavity search, an affidavit and search warrant shall be prepared and presented to a judge as defined by policy.
- If a search warrant is issued, a body cavity search shall be performed only by an authorized physician or by other medically trained personnel at the physician's direction.
- Any evidence recovered shall be collected and stored as defined by policy.
- If the body cavity search is made subsequent to arrest or if criminal charges result from the body cavity search, all events surrounding the search shall be documented in the arrest report. If the search was not subsequent to arrest and no charges result from the search, the incident shall be documented in an Incident/Offense Report.
- The AAMU DPS assumes responsibility for any cost incurred from the body cavity search. However, if criminal charges result from the body cavity search, the officer shall obtain copies of all bills related to the search and to submit the copies of the bills, along with a request for restitution, to the Madison County Prosecutor or the appropriate District Attorney's Office.

209.4.3.5.2. Whenever possible, search incident to arrest shall be conducted by officers of the same gender as that of the person being searched.

209.4.3.5.3 A protective sweep in the home of the area of arrest shall be conducted; including places where someone could be hiding that would present a safety risk to officers affecting the arrest.

209.4.3.5.4 A vehicle can only be searched 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.

#### **209.4.4 Search of a Motor Vehicle**

209.4.4.1 Searches and entries of a motor vehicle without a warrant may be conducted in the following situations:

- Consent: Officers may search a vehicle with the consent of the owner or operator. Written consent should be obtained whenever possible.
- The occupants and passenger compartment of a vehicle may be searched for weapons if the officer has a reasonable belief that the occupant(s) may be armed.
- Probable Cause: Officers are authorized to search a lawfully stopped vehicle for contraband when officers have probable cause to believe such items are contained in the vehicle.
- Officers may enter a vehicle where circumstances require the officer to determine the vehicle identification number or vehicle ownership, and such information cannot be acquired from the exterior of the vehicle. Entries made to examine the vehicle identification number or to determine the ownership of the vehicle must be limited to actions reasonably necessary to accomplish these goals.
- Officers may enter a vehicle without a warrant where emergency circumstances make it necessary in order to protect life or property, or when the exigencies of the situation otherwise require such action.

209.4.4.2. Unlocked containers inside a motor vehicle that has been lawfully stopped can be searched under the following conditions:

- Probable Cause
- Consent
- Incident to arrest and the search is performed with the reasonable expectation that it will produce evidence of the crime of arrest

209.4.4.3. Locked containers inside a motor vehicle that has been lawfully stopped can be searched under the following conditions:

- A search warrant has been obtained
- Probable Cause
- Consent

209.4.4.4. Items belonging to passengers inside a motor vehicle that has been lawfully stopped can be searched under the following conditions:

- Probable Cause
- Consent
- Passengers belongings can be searched incident to the passenger's arrest and the search is performed with the reasonable expectation that it will produce evidence of the crime of arrest

209.4.4.5. Warrantless searches of motor vehicles are to be conducted only when lack of time or other exigencies make it impractical for officers to obtain a warrant. When a vehicle has broken down, or there is otherwise no significant chance the vehicle will be driven away or that evidence contained within it will be removed or destroyed, the vehicle should be searched only after a warrant has been obtained.

### **209.4.5 Search at the Scene of a Crime**

Officers shall consider the following procedures when initiating a search at the scene of a crime:

209.4.5.1. Officers may conduct a warrantless entry of residences under the following conditions:

209.4.5.1.1 Consent by the resident(s)

209.4.5.1.2 Probable cause to believe:

- Someone in the premises is armed and dangerous
- Someone's life or personal safety is in danger
- A serious crime is being committed, and there is a likelihood the offender would escape or that evidence of a crime would be destroyed if time is taken to get a warrant.
- Fresh pursuit of a suspect who has committed a crime.

209.4.5.1.3 Officers shall secure a search warrant in all cases where circumstances do not provide for exceptions to the warrant rule.

### **209.4.6 Search of a Physical Location**

209.4.6.1 Officers may conduct a warrantless search of a physical location when there is an:

- Immediate and real danger or threat of public safety in the immediate vicinity; or
- There exists the possibility that physical evidence may be concealed, damaged, or destroyed.

209.4.6.2 An officer can enter a location in response to an unexplained sound, gunshot, or a cry for help without postponing action until a search warrant has been obtained. Officers are not required to abandon the pursuit of someone whom they reasonably believe has just committed a serious crime, even if that person enters a private residence, apartment, or other similar location. The conditions that must be met for an entry without a warrant are:

- There must be a solid basis for the belief that an emergency exists;

- The emergency must be serious and substantial;
- The emergency must not allow delay long enough to obtain a warrant; and
- The search must not exceed the need created by the emergency, including necessary precautionary measures for the safety of the officer(s) and others.

#### **209.4.7 Seizure of Property**

209.4.7.1. Contraband, property used in the commission of a crime, and/or weapons and property that may be used by a person in custody to affect an escape or inflict injury, death, or property used or reasonably believed to be used in the commission of a crime may be seized.

209.4.7.2. If there is probable cause to believe that a vehicle is forfeitable under federal or state law, no warrant is needed before seizing the vehicle from a public place. Once seized, vehicles must be inventoried in accordance with department policy.

209.4.7.3 Property inventoried and seized shall be processed in accordance with department policy.

#### **209.4.8 Search Warrants**

209.4.8.1. Obtaining a search warrant

209.4.8.1.1 An officer requesting a search warrant must provide sufficient information from which a judge may find probable cause to believe that the objects sought are currently in the location to be searched. Officers may confer with the district attorney's office prior to seeking a search warrant.

209.4.8.2. Execution of Search Warrants

209.4.8.2.1 Section 15-5-12, Alabama Statutes, requires that a search warrant be executed and returned within 10 days of the date of issuance.

209.4.8.2.2 Search warrants not executed within 10 days of issuance shall be considered void and returned to the issuing judge/clerk of courts.

209.4.8.2.3 An incident report shall be completed after the execution of a search warrant documenting the officer's activities and seizure of any property and/or other evidence.

209.4.8.2.4 Prior to executing a search warrant, officers shall knock and state their identity and purpose and allow a reasonable amount of time for the occupant to permit entry. If the officer notes activity within the premises that reasonably leads him/her to believe that the officer(s) or other persons within the premises are in imminent danger of bodily harm, evidence is being destroyed or escape attempted, officer(s) may use reasonable force to enter the premises. Section 15-5-9, Alabama Statutes, provides that officers may use, "all necessary force" to execute the search warrant.

209.4.8.2.5 Damage which occurs during the execution of a search warrant shall be photographed and documented in a general report. Regardless of whether damage occurs, photographs may be valuable in the event that damage claims are made at a later date.

209.4.8.2.6 The number of officers conducting the actual search shall be limited to ensure that each item seized is properly recorded and a chain of evidence is maintained.

209.4.8.2.7 An officer may legally seize anything described in a search warrant. Officers may search any location, within the parameters established in the warrant, in which an item described in the warrant may reasonably be secreted.

209.4.8.2.8 Items not identified in a search warrant may be seized if they meet all of the following requirements:

- The evidence must be discovered in the course of a lawful search; and
- The evidence must be readily recognized as contraband or, in conjunction with facts known to the officer before the search, the officer recognizes property as evidence of or the fruits of a crime; and
- The property was discovered in the physical area properly subject to search by authority of the warrant; and
- The evidence was found prior to the time that all specifically named items in the warrant were found.

209.4.8.2.9 Officers must terminate the search when all described warrant items are found.

#### 209.4.8.3 Return of a Search Warrant

209.4.8.3.1 After a search warrant is executed, the officer to whom the warrant was directed shall be responsible for returning the warrant to the court designated therein with a written inventory of the property seized. This must occur within 10 days of the date of issuance and within 48 hours of the time of execution of the warrant.

209.4.8.3.2 Within 5 days after the execution of the warrant, the officer responsible for obtaining the search warrant shall ensure the affidavit or complaint made in support of the issuance of the warrant and a transcript of any testimony taken in support of the issuance of the warrant shall be filed with the Clerk of Courts.

#### 209.4.8.4 Search Warrants in Other Jurisdictions

209.4.8.4.1 When an AAMU DPS officer seeks a search warrant in another jurisdiction, the officer will notify the AAMU DPS Investigation Unit will assist in the drawing up, applying for and executing the search warrant.

209.4.8.4.2 The Chief of Police or his designee will notify the law enforcement agency within the jurisdiction of the search warrant in advance of the actual execution of the search warrant and request their assistance during the execution phase.



Executive Director of Public Safety  
Chief of Police



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