

Policy 311

Search and Seizure

POLICY It is the policy of the Broomfield Police Department to respect the fundamental privacy rights of individuals. Members of this department will conduct searches and seizures in strict observance of the constitutional rights afforded to all persons. All searches and seizures conducted by this department will comply with relevant federal and state law.

The Department will provide relevant and current training to officers as guidance for the application of current law, local community standards and prosecutorial considerations regarding specific search and seizure situations, as appropriate.

PURPOSE Both the federal and state Constitutions provide every individual with the right to be free from unreasonable searches and seizures. This policy provides general guidelines for Broomfield Police Department personnel to consider when dealing with search and seizure issues.

DEFINITIONS None

SOP None

311.1 SEARCHES

The 4th Amendment of the U.S. Constitution provides that a warrant is required in order for a search to be valid. There are, however, several exceptions to the warrant requirement which permit an officer to conduct a warrantless search.

Due to the constantly evolving nature of case law surrounding search and seizure, this policy, along with related policies and SOPs, may include references to “landmark” cases establishing an exception, but may not always reflect the very latest legal standards. Therefore, this policy shall never supersede current case law. When acting in any situation, each member of this department is expected to rely on their current training and understanding of clearly established rights as defined by the most up to date case law and constitutional standards. In all instances, the balance between effective law enforcement and the protection of individual rights must be maintained to foster public trust and confidence in the Department's commitment to constitutional policing.

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Examples of law enforcement activities that are recognized exceptions to the general warrant requirement of the 4th Amendment include, but are not limited to, searches pursuant to the following:

- **Consent**
 - *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973)
 - *Fernandez v. California*, 571 U.S. 292 (2014)
- **Incident to Arrest**
 - *Chimel v. California*, 395 U.S. 752 (1969)
 - *Arizona v. Gant*, 556 U.S. 332 (2009)
- **Legitimate Community Caretaking Interests**
 - *Cady v. Dombrowski*, 413 U.S. 433 (1973)
 - *Caniglia v. Strom*, 593 U.S. ____ (2021)
- **Automobile Exception**
 - *Carroll v. United States*, 267 U.S. 132 (1925)
 - *Collins v. Virginia*, 584 U.S. ____ (2018)
- **Plain view**
 - *Coolidge v. New Hampshire*, 403 U.S. 443 (1971)
 - *Riley v. California*, 573 U.S. 373 (2014)
- **Inventory**
 - *South Dakota v. Opperman*, 428 U.S. 364 (1976)
 - *Florida v. Wells*, 495 U.S. 1 (1990)
- **Exigent circumstances**
 - *Warden v. Hayden*, 387 U.S. 294 (1967)
 - *Missouri v. McNeely*, 569 U.S. 141 (2013)
 - Defined as: Insufficient time exists to obtain a warrant, and failure to search is likely to result in evidence being lost or destroyed, or a suspect escaping.
 - Exigency must always be weighed against the subject's expectation of privacy as well as the severity of the crime.
- **Emergency circumstances**
 - *Mincey v. Arizona*, 437 U.S. 385 (1978)
 - *Brigham City v. Stuart*, 547 U.S. 398 (2006)
 - Defined as: Reasonable articulable circumstances exist for an officer to believe a warrantless search is necessary to preserve life or prevent injury.

Whenever practicable, officers are encouraged to contact a supervisor or utilize legal resources to resolve questions regarding search and seizure issues prior to electing a course of action.

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311.2 GENERAL SEARCH PROTOCOL

Although conditions will vary and officer safety and other exigencies must be considered in every search situation, the following guidelines should be followed whenever circumstances permit:

1. Field Operations Bureau employees shall activate body worn cameras while conducting searches.
 - a. Employees who conduct searches shall take, and preserve in property / evidence storage, under the associated case number, still photographs of known evidence, items of obvious significant value, or of contraband found during searches. Body worn camera recordings of searches should never be a substitute for taking still photos.
2. Members of this department will strive to conduct searches with dignity and courtesy.
3. Officers should explain to the person being searched the reason for the search and how the search will be conducted.
4. Searches should be carried out with due regard and respect for private property interests and in a manner that minimizes damage. Property should be left in a condition as close as reasonably possible to its pre-search condition.
5. In order to minimize the need for forcible entry, an attempt should be made to obtain keys, combinations or access codes when a search of locked property is anticipated.
6. Searches should be conducted in a systematic and thorough manner so as to reduce the possibility of items being overlooked.
 - a. Secondary searches are recommended in order to have “fresh eyes” and “fresh hands” ensure the search was thorough, unless such secondary searches would be unnecessarily intrusive or unusual for the circumstances.
 - b. Additional searches are required in some circumstances, such as when a secondary employee takes custody of a person for transport, or such as when a component of a dangerous or contraband item is found, but not the dangerous or contraband item itself. (See Policy and SOP 346)
7. For searches conducted at the scene of arrest, when the person to be searched is of the opposite sex as the searching officer, it is preferred, but not necessary to have a same sex officer conduct the search. If a detainee / arrests objects to a search by a person of the opposite sex a reasonable effort should be made to summon an officer of the same sex as the subject to conduct the search.
 - a. When it is not practicable to summon an officer of the same sex as the subject within a reasonable amount of time, or without causing undue strain on Department resources, the following guidelines should be followed:
 - i. Another officer or a supervisor should witness the search, and ideally, should position themselves so as to afford a complete view with their BWC of the subject and the officer.

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8. For secondary / additional searches conducted at the Jail, when the person to be searched is of the opposite sex as the searching officer, it is preferred, but not necessary to have a same sex officer conduct the search; because, by nature of the location, it is being witnessed by another officer and is being recorded on jail surveillance system(s) in addition to searching and assisting officer's BWC's. However, if the arrestee objects to the search by the opposite sex officer, reasonable efforts to have the search completed by an officer of the same sex is preferred, when practicable and safe to do so.

311.2.1 FRISKS / PATS / PROTECTIVE SWEEPS

Person Frisks

The detention and pat-down of any person must be supported by reasonable suspicion. C.R.S. 16-3-103 provides that when a peace officer has stopped a person for questioning pursuant to reasonable suspicion, and reasonably suspects that the officer's personal safety requires it, the officer may conduct a pat-down search of that person for weapons. Officers may frisk a detained individual for weapons or dangerous objects only if there are articulable facts that the person possesses a weapon and poses a danger to the safety of officers or others. The scope of the search is limited to a cursory patting down or external feeling of clothing for a weapon.

Frisks of Separable Possessions

A frisk of a separable possession, such as a backpack, purse, or bag, may only be conducted when the officer has reasonable articulable suspicion that the separable item contains a weapon. The frisk of a separable possession is limited to a squeeze or feeling of the exterior of the item. Any other manipulation beyond what is necessary to determine if an item is a weapon is not permitted unless supported by additional circumstances preventing the officer from identifying the item or from mitigating the safety concern.

Vehicle Frisks

When an officer has reasonable articulable suspicion to believe a suspect is dangerous and may gain immediate access to a weapon within a vehicle, the officer(s) may order occupants out of the vehicle and conduct a limited frisk of the vehicle for weapons. The scope of the frisk is confined to those areas where a weapon could reasonably be concealed and within the immediate reach of the suspect. The officer must be able to articulate the specific facts that led to the belief that the suspect was armed and posed a safety threat.

Protective Sweeps

A "protective sweep" is a limited and cursory inspection of areas within a home or other premises conducted by law enforcement to ensure officer safety during an arrest or

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lawful entry. The scope of a protective sweep is restricted to areas where a person could be hiding and is justified by specific, articulable facts that suggest a danger to officers or others may be present. This search is not intended to discover evidence but to identify potential threats and must end once safety threats are addressed.

311.2.2 CELL PHONE SEARCHES

1. The search of cellular phones is a complex and evolving area of law, dependent on specific circumstances. Officers must adhere to current case law and constitutional standards when conducting these searches. The following guidelines provide common examples and exceptions but are not comprehensive or exhaustive:

- a. **Consent and Warrants:**

Cell phones cannot be searched without consent from the owner, including access to the passcode, or a valid warrant. Exceptions to this rule include exigent circumstances where a life-threatening emergency justifies a limited warrantless search.

- b. **Emergency Location Information:**

Obtaining Cell phone location information requires a warrant or must meet an applicable exception. Employees must comply with C.R.S. § 16-3-303.5 regarding obtaining location information from cell phones or similar devices.

- c. **Preserving Evidence:**

While cell phones generally cannot be searched incident to arrest without a warrant, turning it off or removing the battery may be necessary to preserve evidence and prevent tampering. Whenever possible, employees should use a faraday bag or similar signal-blocking device instead of turning off the phone.

- d. **Abandoned Devices:**

Abandoned cell phones can be searched without a warrant, but the scope of the search must be limited to identifying the owner unless there is a specific justification for a broader search.

- e. **Plain View Evidence:**

Evidence in plain view on a cell phone screen, without manipulation, such as an image or message that appears on the “home screen” or “lock screen” may be documented without a warrant. However, further searches require a warrant based on the plain-view evidence.

- f. **Inventory Searches:**

Inventory searches of cell phones are limited to describing / documenting the exterior features (e.g., black iPhone with a blue case) and any visible serial / identifying number on the exterior of the device, as well as to whom it belongs, if known, and / or where it was found. Without a warrant,

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inventory of a cell phone must not include physically manipulating those areas of the device / menus which would contain device information.

g. **Third-Party Consent:**

Third parties with clear authority over, and regular access to, a device may provide consent to search. Without clear authority, a search of the device requires a warrant.

311.2.3 VEHICLE SEARCHES

The Broomfield Police Department recognizes that while individuals have a significantly reduced expectation of privacy in their vehicles, vehicle searches must still be conducted with respect for constitutional protections. Officers are expected to adhere strictly to the principles established by the 4th Amendment, ensuring that all vehicle searches are based on lawful authority and recognized exceptions to the warrant requirement.

311.2.4 HOME / BUSINESS SEARCHES

The Broomfield Police Department acknowledges that the 4th Amendment of the U.S. Constitution affords individuals the highest expectation of privacy within their homes and places of business. Consequently, searches of these locations must be conducted with utmost respect for constitutional protections. Officers are expected to obtain a search warrant before entering or searching a home or business, except in cases where a recognized warrant exception exists.

Consent to search a home must be voluntary, informed, and given by an individual who has authority and standing over the premises. Any occupant has the right to limit the scope of, refuse, or withdraw consent at any time even if another occupant consents. Absent another warrantless search exception, officers shall default to not performing a search of a home when one occupant with legal authority and standing consents but another occupant with legal authority and standing objects, revokes, or refuses consent.

In situations where exigent circumstances justify a warrantless entry, such as an imminent threat to life, serious bodily injury, or the risk of destruction or loss of evidence, officers must ensure that their actions are supported by objective, articulable facts, as opposed to subjective or hypothetical, circumstances.

Officers are expected to rely on their training, current legal standards, and established case law to guide their actions in balancing the fundamental privacy and liberty rights of individuals in their homes and businesses with the needs for officer safety, effective law enforcement, and protection of the community.

311.2.5 SEARCHES OF PERSONS

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Officers are required to conduct searches of persons based on lawful authority and recognized exceptions to the 4th Amendment, or a valid warrant. Officers are expected to rely on their training, current legal standards, and established case law to guide their actions during searches of persons, with a commitment to conducting searches in a lawful, respectful, and professional manner.

Officers may perform a limited pat-down or frisk of an individual for weapons as described above in section 311.2.1.

When a search is conducted incident to a lawful arrest, officers are authorized to fully search the person, their personal property in their possession, and the area within their immediate control to ensure officer safety, prevent the destruction/loss of evidence, or identify and secure personal belongings. However, a search incident to arrest is only authorized in connection with and subsequent to an arrest.

Searches of individuals should always be conducted with respect for privacy, and when feasible, officers should aim to conduct such searches in a manner that minimizes embarrassment or discomfort to the person being searched. However, this does not mean that an officer has to compromise safety, thoroughness, or deviate from standard procedures, in order to accommodate the person's perceived embarrassment or discomfort.

Officers shall adhere to the requirements of C.R.S. § 16-3-405 when conducting strip searches or body cavity searches. Strip searches are permitted when there is legal authority, such as reasonable suspicion under recognized exceptions to the 4th Amendment, while body cavity searches require probable cause and a valid warrant, unless exigent circumstances exist. Supervisory approval must be obtained before conducting a strip search, unless exigent circumstances make this impractical. Officers must ensure that these searches are conducted in a manner that respects the individual's privacy, dignity, and constitutional rights, and must thoroughly document the justification, circumstances, procedures, and any steps taken to minimize embarrassment or discomfort, including the identities of those present.

311.3 DOCUMENTATION

Officers must document any search, or request for consent to search a person, vehicle, or other property, and must ensure that reports contain the following:

- The basis for the search, or the request for consent to search;
- If requested, whether or not consent was granted;
- Any efforts used to minimize the intrusiveness of any search (e.g., asking for consent or keys);

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- Any forcible actions taken against a person or property in executing a search;
- What, if any, injuries or damage occurred, and medical aid rendered, if applicable;
- All steps taken to secure property at the conclusion of the search, if applicable;
- The results of the search, including a description of any evidence or contraband discovered and the basis for seizing property, if applicable;
- If the person searched is the opposite sex, and they object to the search, any efforts to summon an officer of the same sex as the person being searched and the identification of any witness officer.

Supervisors shall review reports to ensure the reports are accurate, that actions are properly documented, and that current legal requirements and Department policy have been met.

If a person's property is damaged during a search, employees shall:

- Document, and photograph the damage within the case report.
- Provide the property owner with contact information for the City and County's Risk Management entity.
- Notify Risk Management via email with a synopsis of the potential claim, and the associated case / incident number.
- **Not** make promises or assurances to the property owner(s) that the City and County will compensate them for the damage.

311.3.1 DATA-COLLECTION

In addition to any documentation that would otherwise be required depending on the nature of the contact from which the search resulted (e.g., CAD notes, summons, a case report, a field interview (FI) card), officers shall report to the department, using the prescribed data-collection format, all required information regarding the contact, in accordance with the Bias-Free Policing Policy 401. (CRS § 24-31-309(3.5))

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