

Search and Seizure

306.1 VERSION

Review Date	Effective Date	Approving Authority
07/09/2021	07/09/18	Kelley Warner, Chief of Police

306.2 POLICY AND PURPOSE

The purpose of this directive is to establish the policy for search and seizure of a person, place or thing. This directive also contains guidelines for the completion of the Affidavit and execution of a Search Warrant.

It is the policy of the Harrisonburg Police Department to establish guidelines for lawful search and seizures as set forth by local, state and federal laws. The Fourth Amendment to the United States Constitution guarantees every citizen the right to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. Officers shall scrupulously observe these constitutional guidelines when conducting searches and should always remain mindful of their lawful purpose.

306.3 ACCOUNTABILITY STATEMENT

All employees are expected to fully comply with the guidelines and timelines set forth in this policy. Responsibility rests with the supervisor to ensure that any violations of policy are investigated and appropriate training, counseling and/or disciplinary action is initiated. This directive is for internal use only, and does not enlarge an employee's civil liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violation of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

306.4 DEFINITIONS

Abode - A dwelling place where a person lives or resides. An "abode" would include homes, apartments, hotel rooms, RV's, tents, and trailer homes. Special requirements apply to a search warrant of an "abode" such as execution by a uniformed officer, distribution of copies of affidavit, and hours of initial entry.

Daylight/Nighttime Execution - Initial entry for a search warrant for an "abode" must be in the daytime between 8am. and 5 pm. unless authorized by a judge or magistrate (if a judge is not available), or upon exception. A magistrate can issue after 5 pm.

"Good Cause" - As it applies to search warrants, good cause might be to prevent the destruction or removal of evidence or because the police know that certain occupants will be present at that time or because a warrant can only be safely and successfully executed at night or the need for an immediate search or evidence sought by the police is only available at night or for safety reasons to protect the officers or the public in general.

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Uniformed Officer - An officer that is "dressed in such a uniform as he/she may customarily wear in the performance of his/her duties which will clearly show him/her to casual observation to be an officer." Vests with "POLICE" written in large, reflective block text on their front and back, or an officer wearing plain clothes with a badge around one's neck is NOT being dressed in uniform.

306.5 PROCEDURES

306.5.1 SEARCHES INCIDENT TO ARREST

- (a) The U.S. Supreme Court has ruled that a warrantless search of a dwelling incident to a lawful full custodial arrest is constitutionally confined to the area within the arrestee's reach at the time of his/her arrest. A search may be incident to an arrest only if it is substantially contemporaneous with the arrest and is confined to the immediate vicinity of the arrest. *Chimel v. California*, (1969).
- (b) The U.S. Supreme Court has held, additionally, that only in well-delineated situations may a warrantless entry of a dwelling take place, and the burden rests upon the Commonwealth to prove an exceptional situation. Those exceptions are as follows:
 - 1. Consent to the search
 - 2. Probable Cause and exigent circumstances
- (c) Arrest in Homes and in Third Party Dwellings:
 - 1. The Fourth Amendment prohibits police, in the absence of probable cause and exigent circumstances, from making a warrantless or nonconsensual entry into a suspect's home for the purpose of effecting a routine felony arrest. Therefore, police cannot enter the home of an accused for the purpose of effecting a felony arrest without having first obtained an arrest warrant and having the warrant in his/her possession. *Payton v. N.Y.*, (1980).
 - 2. Before an officer can enter the suspect's home pursuant to an arrest warrant, the officer must have a "reasonable belief" that the location to be searched is where the suspect lives and, second, the officer must have a "reasonable belief" that the suspect is actually present at the address listed on the warrant. *Payton v. N.Y.*, (1980).
 - 3. In the absence of the consent of the owner of the dwelling or exigent circumstances, a search warrant is required to search for a person named in an arrest warrant on the premises of a third person. *Steagald v. U.S.*, (1981); *Wallace v. King*, (1980).
- (d) Protective Sweep in Conjunction with an In-home Arrest:
 - 1. When officers enter a person's home to arrest that person pursuant to an arrest warrant and officers possess an articulable and objectively reasonable belief that another potentially dangerous person may be located in the home, officers may conduct a limited visual inspection of those areas where a person could be found. The sweep can last no longer than is necessary to dispel the officers's reasonable suspicion and must end when the arrest is completed and officers leave the premises. Officers may, without reasonable suspicion, also look in

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closets and other spaces immediately adjoining the area of arrest. *Maryland v. Buie*, (1990).

- (e) Search of the Passenger Compartment of an Automobile Upon the Arrest of the Occupant:
 - 1. When a police officer has made a lawful custodial arrest of the occupant of an automobile, the officer may search the passenger compartment of that automobile when:
 - (a) The officer was unable to sufficiently restrain the arrestee during the search, so that it was reasonable to believe the arrestee might have been able to access the vehicle; OR
 - (b) There was a reasonable basis to believe that evidence of the crime for which the occupant of the vehicle was arrested might be found in the passenger compartment at the time of the search. *Arizona v. Gant*, (2009).
 - 2. Officers may examine the contents of any containers found within the passenger compartment, whether the containers are locked or unlocked. *New York v. Belton*, (1981). (Note: While the U.S. Supreme Court in *Belton* did not specifically discuss locked containers, subsequent federal cases can be interpreted to allow searching locked containers during a search incident to arrest.)

306.5.2 SEARCHES WITHOUT A SEARCH WARRANT

- (a) Consent to Search:
 - 1. The officer may advise the person providing consent for the warrantless search, that he/she has the right to deny the search or stop the search at any time.
 - 2. If a co-tenant is physically present and states a refusal to permit the search, the officer shall not conduct the search based on the consent of the other tenant. This only applies if the refusing co-tenant is physically present and expressly refuses consent. *Georgia v. Randolph*, (2006). If the refusing co-tenant is absent due to a lawful detention or arrest, this would not preclude the officer from obtaining consent from the other co-tenant at a later time. *Fernandez v. California*, (2014).
 - 3. Officers are required to list the name and age of the consenting individual as well as all items that were seized in the Incident Based Report (IBR).
 - 4. Distribution of Completed Form: 14-Consent to Search.pdf
 - (a) Retained by the investigator/officer assigned to the case.
- (b) Protective Sweep of the Area Within the Suspect's Immediate Control:
 - 1. Police officers may, whenever they possess an articulable and objectively reasonable suspicion that a suspect is presently or potentially dangerous, conduct a protective sweep for weapons or persons in the area within the suspect's immediate control. If the suspect moves about, an officer is justified in staying with the individual during the course of the stop and conducting a protective sweep of the areas which come within the suspect's immediate

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control, even if this action necessitates entry into the suspect's home. This includes furtive movements by an occupant of a vehicle that gives the officer reasonable suspicion the occupant may possess a firearm.

(c) Search of a Vehicle Based on Probable Cause:

1. Officers are authorized to search a lawfully stopped vehicle for contraband and/or illegal drugs when officers have probable cause to believe such items are contained in the vehicle. *Carroll v. U.S.* (1925) "Carroll Doctrine"
2. The scope of a vehicle search based on probable cause is determined by the object of the search and whether the object could be contained in the item to be searched. "If probable cause justifies the search of the stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search." Therefore, unlike a search incident to custodial arrest, a search based on probable cause is not confined to the passenger compartment.
3. Officers with probable cause to search a vehicle may inspect passengers' belongings found in the car that are capable of concealing the object of the search. Separate probable cause is not needed to search an item once the officer has probable cause to search the vehicle in its entirety. *Wyoming v. Houghton*, (1999).

306.5.3 INVENTORY SEARCHES

Inventory searches serve caretaking functions and are not designed to uncover evidence of criminal activity. The purpose of the inventory search is to protect the property owner from loss, protect the impounding officer, the Harrisonburg Police Department and the City of Harrisonburg against false liability claims; and protect the general public from danger.

Refer to : 410.10.2 VEHICLE INVENTORY

306.5.4 SEARCHES IN EXIGENT CIRCUMSTANCES

Officers are authorized to search without a warrant in emergency situations in which circumstances exist that would cause a reasonable person to believe that entry (or other relevant prompt action) is necessary to prevent physical harm to the officer(s) or others persons, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly impeding legitimate law enforcement efforts.

306.5.5 BODY SEARCHES

- (a) A police officer may detain a person in a public place only when the officer can articulate a reasonable suspicion that the person is committing, has committed or is about to commit a criminal act and once stopped, the officer may inquire of such person his/her name and address. The police officer may, if he/she reasonably believes that such person is armed and dangerous, frisk his/her person for a dangerous weapon, and if such person is found to illegally possess a dangerous weapon, the police officer shall take possession of the same and dispose of it as provided by law.

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- (b) The Frisk - A frisk is a pat down for weapons plus a pat down of bags or other objects, which may contain weapons. An officer may conduct a frisk only after he/she has lawfully stopped the person.
 - 1. Police officers have a right to “Frisk” only when:
 - (a) They have already lawfully stopped a person based on a reasonable suspicion that the person was engaged in criminal activity, and
 - (b) They have a reasonable suspicion to believe that the person is armed and dangerous, i.e. that either the officer’s safety or the safety of others is in danger. *Terry v. Ohio*, (1968).
- (c) The Complete Search - This search should be handled by a police officer of the same sex. It is much more involved than the frisk. The laws governing this type of search are much broader.
 - 1. Searches of a person are reasonable when:
 - (a) They are based on a properly issued warrant;
 - (b) Connected with a full custodial arrest; or,
 - (c) When consent is freely and voluntary given by the person being searched.
 - 2. The officer may look for:
 - (a) Concealed weapons;
 - (b) Evidence which may connect the suspect with a crime; and,
 - (c) Objects which may be used as a means of escape.
- (d) The Strip Search – A person removes or arranges some or all of his/her clothing so as to permit a visual inspection of the genitals, buttocks, anus, female breasts or undergarments. In most cases, simply arranging some or all of the clothing to permit a visual inspection of the genitals, buttocks, anus, female breasts or undergarments constitutes a strip search.
 - 1. When a Strip Search can be Conducted:
 - (a) Pursuant to a search warrant specifically authorizing a strip search.
 - (b) Pursuant to specific consent from the person to conduct a strip search of the person.
 - (c) Pursuant to “special justification” for the strip search. Case law shows that the courts will balance the need for the particular search against the invasion of personal rights that the search entails. Courts will consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted. *Taylor v. Commonwealth*, (1998); *Hughes v. Commonwealth*, (2000).
 - 2. Supervisory approval has been obtained in addition to the search warrant, consent and/or special justification.
 - 3. When a Strip Search Can Not be Conducted:

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- (a) No person in custodial arrest for a traffic infraction, Class 3 or Class 4 misdemeanor or a violation of a City Ordinance, which is punishable by 30 days or less in jail, shall be strip searched unless there is reasonable cause to believe, on the part of a law enforcement officer authorizing the search, that the individual is concealing a weapon. (VA Code §19.2-59.1).
4. Procedure to be Followed by Department Personnel:
- (a) All strip searches must be conducted by a law enforcement officer and documented in the Incident Based Report.
 - (b) All strip searches will be conducted in private with only the individual under custodial arrest and the searching officers present. officer
 - (c) Persons of the same sex shall perform any strip searches conducted under this section.
 - (d) The officer conducting the search should not touch the individual's private parts. A possible exception would be if the officer conducting the search observes the individual attempt to conceal contraband or a weapon(s).
5. Where Strip Searches are to be Conducted:
- (a) Searches may be conducted in a private setting where there is no opportunity for any individual, other than the officers conducting the search, to view the proceedings.
- (e) The Oral Cavity Search – An inspection of the mouth.
- 1. An officer may reasonably order an arrestee to disgorge that which the arrestee has within his/her mouth. **Force will not be used to extract drugs or evidence from a suspect's mouth.** Suspects who are in custody and who have ingested drugs or evidence, or where there is a reasonable suspicion that the in-custody suspect has ingested drugs or evidence, shall be transported by the arresting officer or Harrisonburg Rescue Squad to Sentara Rockingham Memorial Hospital for treatment.
 - 2. Upon examination of the subject by medical personnel, the officers will:
 - (a) Inform the medical personnel of the facts as known by the officer regarding the arrestee's ingestion of the contraband.
 - (b) Not advise, instruct, direct, request and/or insinuate to the medical personnel as to any particular medical course of action or outcome or any medical procedure, therapy and /or treatment.
 - (c) While medical attention is being administered to a person in custody, remain readily available at the site of the person receiving medical attention.
 - 3. Note: If, at any time, the contents, that the officer reasonably believes to be contraband in the arrestee's mouth, stomach, etc., come outside of the arrestee's body the officer shall, to the extent reasonable, collect, document and preserve those contents as evidence.

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- (f) The Full Body Cavity Search – An inspection of the body orifices, internal organs and fluids:
 - 1. Searches of body cavities, with the exception of the mouth, will not be conducted by officers of the Harrisonburg Police Department. Should visual examination of a suspect during a strip search and/or other information lead an officer to believe that a suspect or arrestee is concealing a weapon, evidence or contraband within a body cavity, the following procedures shall be followed:
 - (a) When probable cause exists to support a body cavity search, officers shall apply for a search warrant.
 - (b) If a search warrant is granted, the subject shall be taken to any of the following medical facilities, where the search will be conducted in a private location by medically qualified personnel:
 - 1. Sentara Rockingham Memorial Hospital
 - (c) Harrisonburg Police officers shall not arrest, or take any other adverse action against medical personnel for refusing to perform a body cavity search of a subject or to order other staff members to refuse to perform a body cavity search.
 - (d) When allowed by medical personnel, an officer of the same sex as the subject receiving the body cavity search shall be present to witness the search and to recover any weapons, evidence or contraband. Should the search be conducted outside of the presence of the officer, proper chain of custody protocol will be followed and documented within the IBR.
 - (e) The officer shall compile an IBR report with all applicable information and maintain a copy of the search warrant.

306.5.6 SEIZURES

- (a) What may be seized:
 - 1. Weapons or other objects used in the commission of a crime;
 - 2. Articles or things for which the sale or possession of is unlawful;
 - 3. Stolen property or the fruits of any crime; or,
 - 4. Any object or person, including without limitation, documents, books, papers, records or body fluids, constituting evidence of the commission of a crime.
- (b) Records and Handling of Seized Property (Evidence):
 - 1. The property to be used as evidence shall be safely kept and thereafter disposed of as provided by law. Any property which is not used for evidence, things stolen or embezzled property, can be returned to its owner with approval from Commonwealth Attorney or court disposition. Those items mentioned in Virginia Code §19.2-53 may be burned or otherwise destroyed as soon as there is no further need for its use unless it is otherwise expressly prohibited by law.
 - 2. The court may, with the consent of the Commonwealth's Attorney, authorize the Clerk of the Circuit Court, upon all appeal rights being exhausted, to deposit such

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- monies or cash in an interest-bearing account. (Refer to the Asset Forfeiture policy)
3. Any agency seizing property pending forfeiture and final disposition, may do any of the following: (Refer to the Asset Forfeiture policy)
 - (a) Place the property under constructive seizure by posting notice of seizure for forfeiture on the property or by filing notice of seizure for forfeiture in any appropriate public record relating to property;
 - (b) Remove the property to a storage area for safekeeping or, if the property is a negotiable instrument or money, deposit it in an interest-bearing account;
 - (c) Remove the property to a place designated by the Circuit Court in the county or city wherein the property was seized; or,
 - (d) Provide for another custodian or agency to take custody of the property and remove it to an appropriate location within or not within the jurisdiction of the Circuit Court in the county or city where the property was seized or in which the complaint was filed.
 4. A report regarding the type of property subject to forfeiture and its handling and the final disposition of the property shall be filed by the seizing agency with the Department of Criminal Justice Services.

306.6 SEARCH WARRANTS

306.6.1 PROCEDURES

To obtain a search warrant, an officer must provide the magistrate or judge with an affidavit that will allow the magistrate or judge to determine the persuasiveness of the facts relied on to show probable cause. (See Search Warrants Policy)

Officers should receive authorization from a supervisor before preparing a search warrant application. (306.14.1 THE AFFIDAVIT FOR A SEARCH WARRANT) Once authorization is received, the officer will prepare the affidavit and search warrant, consulting with the applicable prosecuting attorney as needed. The officer will also perform a risk assessment with his/her supervisor to determine the level of risk associated with the proposed warrant. Refer to Operations Planning and Deconfliction Policy.

Under review and control of a supervisor, the investigating officer should have responsibility for the execution of the warrant. The lead officer should:

- Ensure the accuracy of the warrant.
- Consider deconfliction of any search warrant (refer to the Operations Planning and Deconfliction Policy).
- Conduct the briefing prior to the execution.
- Comply with all legal requirements related to search warrants.
- Ensure proper documentation of all pertinent facts during the execution.

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306.7 PRELIMINARY CONSIDERATIONS

306.7.1 PREPARATION

The following factors shall be recognized in the preparation of search warrants:

- (a) Probable cause to support the search or arrest, including relevant dates and times
- (b) A clear explanation of the affiant's training, experience and relevant education
- (c) A nexus between the place to be searched and the persons or items central to the investigation. The facts supporting this nexus should be clear and current. For example, the affidavit shall explain why there is probable cause to believe that a particular person is currently present at a particular location or that the items sought are present at a particular location
- (d) Full disclosure of known or suspected residents at the involved location and any indication of separate living spaces at the involved location. For example, it should be disclosed that several people may be renting bedrooms at a single location, even if the exact location of the rooms is not known
- (e) A specific description of the location to be searched, including photographs of the location, if reasonably available
- (f) A sufficient description of the items to be seized
- (g) The search warrant must state the crime for which the search warrant is being obtained

306.7.2 VERIFICATION

The lead detective/officer or the detective/officer preparing the search warrant should personally observe the site of the search before a warrant is obtained. Reasonable measures should be taken to establish the ownership, occupancy, and interior and exterior description of the search site.

306.7.3 EXECUTION TIMING

A search warrant for the search of any place of abode shall be executed by initial entry of the abode only in the daytime hours between 8:00 a.m. and 5:00 p.m. unless:

- (a) a judge or a magistrate, if a judge is not available, authorizes the execution of such search warrant at another time for "good cause" shown by particularized facts in an affidavit or,
- (b) prior to the issuance of the search warrant, law enforcement officers lawfully entered and secured the place to be searched and remained at such place continuously.

Officers shall make reasonable efforts to locate a judge before seeking authorization from a magistrate to execute the warrant at another time, unless circumstances require the issuance of the warrant after 5 p.m., in which case the law enforcement officer may seek such authorization from a magistrate without first making reasonable efforts to locate a judge.

If officers have already entered and secured the property under consent or exigent circumstances, no additional authorization is necessary, even if the search warrant execution will be after 5 p.m.

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This section only applies to places of abode. A search warrant for any place other than an abode does not have time restrictions.

306.7.4 PROMPTNESS IN EXECUTION

Warrants shall be served forthwith and as soon as practicable, but no more than 15 days after being obtained. Prompt execution will decrease the possibility that the target of the search will be aware of the warrant's existence and will prevent the warrant from becoming stale due to passage of time and possible loss of probable cause. There may be an exception if circumstances indicate that a reasonable delay in serving the warrant is appropriate.

306.7.5 PRESENCE OF UNIFORMED OFFICER

Search teams shall include at least one uniformed officer while executing a search warrant for places of abode.

306.7.6 NOTIFICATIONS

Supervisors shall make the following notifications:

- (a) Requests for assistance from the SWAT Team will be made to the appropriate Commander. The appropriate Commander will notify the Special Operations Bureau Commander or designee to evaluate the utilization of the SWAT team.
- (b) When feasible, the appropriate Division Commander, when on-duty, or the Duty Officer should be advised of every search warrant that will be executed. Requests for assistance from uniformed officers shall be made during this contact.
- (c) The Emergency Communications Center supervisor should be contacted and advised of all pending search warrant executions. The supervisor should coordinate with the Emergency Communications Center supervisor to ensure a clear channel during the warrant execution until the search site is secured, if required or warranted.

306.8 BRIEFING

The supervisor, lead detective/officer or other designee shall, when appropriate, conduct the briefing prior to execution with all officers of the search team present. The following shall be presented at the briefing:

- (a) Review of site characteristics (ie., security measures)
- (b) Description of potential occupants and any associated dangers they may pose
- (c) Description of items sought at the search site and any indication of their possible locations
- (d) Assignment of responsibilities for members of the search team
- (e) Review of facts of the case
- (f) Previous calls for service
- (g) Animals at the residence
- (h) Medical plan

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- (i) Contingencies

306.9 CONDUCT IMMEDIATELY PRIOR TO ENTRY

306.9.1 RECORDING

A member of the search team shall record the entire execution of a search warrant. Officers equipped with BWC's will operate in accordance with the Audio/Video Recorders Policy.

306.9.2 ANNOUNCEMENT OF PURPOSE AND AUTHORITY

No law enforcement officer shall seek, execute, or participate in the execution of a no-knock search warrant. A search warrant for any place of abode authorized under this section shall require that a law enforcement officer be recognizable and identifiable as a uniformed law enforcement officer and provide audible notice of his/her authority and purpose reasonably designed to be heard by the occupants of such place to be searched prior to the execution of such search warrant.

- (a) Must be prior to execution
- (b) Must be by a uniformed officer
- (c) Must announce his/her authority
- (d) Must state his/her purpose
- (e) Cannot be a whisper
- (f) Should be made at the main entrance

Officers executing search warrants must attempt to gain admittance to the home peaceably by announcing their presence, identifying themselves as police and stating their purpose. Accordingly, officers must wait a reasonable amount of time, after knocking, for the occupants to answer the door. Factors include size of dwelling, location of subjects, time of day, etc. (U.S. vs. Banks 2003)

306.10 ENTRY

Whenever possible, premises shall be entered in a courteous and non-destructive manner. No forced entry shall be initiated unless reasonably necessary.

After entering and securing the place to be searched and prior to undertaking any search or seizure pursuant to the search warrant, the executing law enforcement officer shall give a copy of the search warrant and affidavit to the person to be searched or the owner of the place to be searched or, if the owner is not present, to any occupant of the place to be searched. If the place to be searched is unoccupied, the executing law enforcement officer shall leave a copy of the search warrant and affidavit in a conspicuous place within or affixed to the place to be searched.

Officers should have multiple copies of the search warrant and affidavit ready to give to several occupants. Occupants potentially means any human being inside the house, including babies, children, visitors – anyone in the home at the time of execution.

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If the place to be searched is unoccupied, the executing, uniformed officer must leave a copy of the search warrant and affidavit in a conspicuous place within or affixed to the place to be searched.

306.11 PERSONS WITHIN THE PREMISES

306.11.1 PERMISSIBLE SEARCH OF PERSONS

Mere presence at a search site is not a factor which gives sufficient reason to search a person within the premises. In order for the search to be valid, the detective/officer must articulate facts or circumstances within the search warrant affidavit which provide probable cause to support the action taken. The affidavit must identify the persons to be searched by name and the basis for such search or the search warrant includes all persons found on said premises.

306.11.2 ARRESTS

Probable cause to arrest a person at the search site may arise during the execution of a search warrant. In that event, a search incidental to that arrest and independent of the warrant may be conducted.

306.11.3 PERMISSIBLE FRISK OF PERSONS

Any person within the premises at the time the warrant is executed or any person that voluntarily enters the premises after the search has commenced may be frisked, if the detective/officer reasonably suspects that such person has a concealed weapon or dangerous instrument. In order for the frisk to be proper, the detective/officer must be able to articulate facts or circumstances which provide reasonable suspicion to support the action taken.

306.11.4 RESTRICTING MOVEMENT OF PERSONS

Restrictions may be placed on the movement of any person at the search site. This restriction is essential to prevent interference with the search and to safeguard the search team and other persons involved. The restriction shall be limited to the time needed to ensure security. Persons not under arrest or detained should be permitted to leave the premises as soon as practical.

306.12 SEIZURE OF ITEMS IN PLAIN VIEW

If contraband items are found in plain view, but not listed in the search warrant, they may be seized when the item could logically be seen within the scope of the warrant, in an area controlled by the search warrant. If new items are to be searched for based on the plain view seizure, a new warrant shall be obtained to continue the expanded scope.

306.13 ACTIONS AFTER SEARCH

306.13.1 PROTECTING DAMAGED PROPERTY

If damage occurs during entry, a supervisor at the scene shall evaluate the need to ensure the protection of the search site.

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306.13.2 WARRANT RETURN

The lead officer shall ensure return the warrant to the appropriate court as soon as practical, within the three days according to Virginia Code Section §19.2-57. A copy of the list of items seized shall be sworn to under oath, and such fact shall be stated in the inventory sheet before return to the Court. If nothing is seized, a statement to that effect shall be filed with the Clerk of Circuit Court of the jurisdiction where it was seized within the 3-day requirement. (The 3 days is 3 business days)

The lead officer/detective shall ensure that all affidavits, warrants, receipts and returns, regardless of any associated cases, are filed with the appropriate court as soon as reasonably possible, but in any event no later than any date specified on the warrant.

A copy of the search warrant will be turned into the Professional Standards Unit (for structures).

306.13.3 RETURN OF NON-CONTRABAND ITEMS

Whenever non-contraband items seized during the execution of a warrant are no longer needed for prosecution, they may be returned to the proper person, with authority of the Commonwealth's Attorney.

306.14 AFFIDAVIT FOR A SEARCH WARRANT

306.14.1 THE AFFIDAVIT FOR A SEARCH WARRANT

- (a) The affidavit must contain the following:
 - (a) The Offense Involved:
 - (a) The offense must be in relation to the person, place or thing to be searched. The person, place or thing searched for constitutes evidence relative to the commission of the offense. This is a statutory requirement, and its omission may result in the warrant being declared invalid.
 - (b) The Material Facts Constituting Probable Cause for the Issuance of the Search Warrant:
 - (a) Probable cause is the aspect of a warrant most frequently declared defective. The police officer should be as specific as his/her resources will allow and document the affidavit with facts. The magistrate or judge decides whether the alleged facts are sufficient to establish probable cause.
 - (b) Mere affirmation of belief or suspicion is not enough for the issuance of a search warrant. The affiant must state in detail the information he/she received from the informant or cooperating citizen and whether the information is of personal knowledge of the affiant. Also, there must be statements in the affidavit to show why the informant or cooperating citizen is credible and worthy of belief. The statement "that the person is reliable as he/she has given good information in the past" is not sufficient. It must state how the person is reliable.

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- (c) If the affiant is relying on personal observations made by him/herself, he/she should state when such observations were made and what he/she observed.
 - (d) The affidavit should not merely be a statement of the conclusions of the affiant or that of the informant, but should be facts on which the magistrate or judge could make an independent conclusion that sufficient probable cause existed for a search warrant.
- (c) The Allegation of Fact:
- (a) In order for the magistrate or judge to issue the search warrant, the facts in the police officer's affidavit must show a probability of criminal activity. However, these facts must be alleged facts or observations and not merely the conclusions of the officer, the cooperating citizen or the officer's informant. Probable cause must be written "Within the Four Corners of the Affidavit", the how, where, what or why the officer suspects criminal activity. The officer's affidavit must also establish jurisdiction, i.e. City of Harrisonburg. The magistrate must be told in the affidavit the observations of the police officer, the cooperating citizen or the officer's informant so that the magistrate can conclude whether there is probable cause.
- (d) The Description of the Person, Place or Thing to be Searched:
- (a) A search warrant must describe with particularity the place to be searched. A search warrant directed against a multiple occupancy building will be invalidated if it fails to specify the particular sub-unit to be searched, such as the apartment number, room number or floor number and shall describe in detail the location, color and distinguishing characteristics of the property being searched.
- (e) Description of Person or Things to be Searched For:
- (a) The description should be as specific as possible. However, the police officer conducting the search is not restricted in seizing only those items listed in the search warrant. If the officer comes upon evidence for the crime that the warrant was issued for or evidence of another crime, the officer is entitled to seize it.
 - 1. NOTE: If the search warrant is for a television, or large item, small places such as jewelry boxes may not be searched.
- (b) Helpful in the Affidavit:
- (a) Verification of informer's facts by police;
 - (b) Criminal record of suspect;
 - (c) Reputation of suspect; and,
 - (d) Expertise of police officer and the officer's conclusion.
- (c) Submit the original affidavit and three copies to the Magistrate:
- (d) The affidavit must be signed in front of the Judicial Officer issuing the warrant.

Harrisonburg Police Department

Policy Manual

Search and Seizure

- (e) No “general warrant” for the search of a house, place, compartment, vehicle or baggage shall be issued.
- (f) Every search warrant will contain the date and time it was issued.