

RAMSEY POLICE DEPARTMENT - POLICIES & PROCEDURES

GENERAL ORDER

Subject: Arrest, Search & Seizure	Section Number V7 C1	Effective Date: March 3, 2001	
Volume Title: Authority	Number of pages: 31		
Accreditation Standard: 3.1.1, 3.1.2	Distribution: general		
Source/References: U.S. and New Jersey Constitution New Jersey Criminal Code Title 2C New Jersey Court Rules Bergen County Prosecutor's Office Chief's Manual New Jersey Attorney General Guidelines	Revised: 9/7/07 4/20/09 2/26/14 1/25/18	Page: 16-17 18-20 11,17 18-23	Approved: Chief Gurney Chief Gurney Chief Gurney Chief Gurney
Prepared by: Policy Committee			
Authority of Chief Bryan Gurney:			

POLICY:

The Constitution of the United States is of special importance to police officers because it directly regulates the performance of their duties. This is particularly true in the area of arrest, search and seizure. Careful study of the rules and procedures established as a result of court interpretation of the constitutional requirements will help ensure protection of individual rights and, at the same time, assure that criminals may be apprehended and necessary evidence obtained in a manner that will be upheld in a court of law.

The Constitution, together with its amendments, is designed to strike a balance between the need to provide for effective government and the need to preserve individual liberties. Nowhere is this balance more critical than in the enforcement of the criminal laws. It is imperative that the government be able to seek evidence of crime in order to identify and convict offenders, but it is equally imperative that an individual citizen be permitted to maintain the privacy of his person and property unless the government is able to show good reason for interfering with that privacy. Accordingly, the Fourth Amendment to the Constitution, which is applicable to the states by virtue of the Fourteenth Amendment, provides:

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, support by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

When an arrest or search is conducted in violation of the above constitutional requirements, the courts, by utilizing the "exclusionary rule", will not permit the evidence so found to be used at trial against the person whose privacy was violated. The purpose of the exclusionary rule is to deter future unlawful searches. Thus, a defendant may be immune from conviction by reason of an officer's failure to adhere to constitutional rights. Therefore, the purpose of this policy is to assist police officers in effectively carrying out their duties in a manner consistent with the Constitution.

Officers have a responsibility to keep apprised of legal updates and changes in the law.

PROCEDURE:

I. PROBABLE CAUSE TO ARREST

- A. In the State of New Jersey, a police officer ordinarily may only arrest an individual within the jurisdiction in which he is an officer. However, the officer may arrest a person anywhere in the state, if:
 - 1. The officer reasonably believes that person has committed a crime.
 - 2. The officer has a warrant for the person's arrest.
- B. A lawful arrest may be made with or without a warrant based on probable cause.
- C. A police officer may arrest without a warrant when he has "**probable cause**" to believe that the person has committed a crime.
- D. A police officer may also arrest a person without a warrant when a disorderly persons offense or petty disorderly is committed in the officer's presence.
 - 1. "**Presence**" is a concept that is easily understandable, and for the purpose of the New Jersey law of arrest, it includes situations

where the officer sees, hears or smells the offense being committed.

- E. Probable cause is not a complex legal formula understandable only by those trained in the law. It is arrived at by collecting facts of such quality that logic and common sense point with reasonable certainty in the direction of guilt.
 - 1. Vague "hunches" or suspicions are not enough.
 - 2. The belief must be supported by the facts.
 - 3. One's experience as a police officer is a fact, which can be relied upon to support probable cause, provided it can be documented.
 - 4. The facts upon which the belief of guilt is based must have been known at the time of arrest.
 - 5. Post-arrest actions by the accused are irrelevant to the lawfulness of the initial arrest.
 - 6. It is not necessary to believe beyond a reasonable doubt that a person committed an offense in order to arrest.
- F. An officer should arrest only when reasonably sure that at the moment of arrest the officer could point to a sufficient number of hard facts to convince a neutral and detached judge that it was reasonable to believe a crime was committed or was being committed by the person to be arrested.
- G. There is no limit to the types of information that can be used to support probable cause, provided such information is not vague and can be documented. Among the types of information the officer can rely upon:
 - 1. Observed facts surrounding the incident (behavior, appearance and location of suspect; suspect's height and weight).
 - 2. Familiarity with the suspect (suspect's prior record, prior observation of suspect and earlier contacts with suspect).
 - 3. Reports from others (accounts given by victims or witnesses; reliable informants).
 - 4. Each of these sources of information can lead to a determination of probable cause, but some

require corroboration by other facts if they are to be given weight.

- H. As a general constitutional principle, a police officer must possess an arrest warrant if he is to make a legal arrest.
 - 1. A warrant is based upon an affidavit or evidence presented stating sufficient facts to convince an impartial magistrate that "probable cause" exists.
 - 2. For the warrant to be valid, there must be a showing of "**probable cause**" that a specific person committed a particular crime.
 - 3. The suspect must be identified by name, or if the suspect's name is unknown, by a description which identifies him with reasonable certainty.
 - 4. The exception of warrantless arrests is justified by the presence of exigent circumstances such as possible harm to others or flight of the suspect.
- I. A police officer making an arrest should identify himself/herself to the person being arrested.
 - 1. The officer should also indicate the crime for which the suspect is being arrested.
 - 2. If the arresting officer has a warrant, then it should be exhibited. If the warrant is not in the arresting officer's possession at the time of the arrest, the person arrested should be informed of the offenses charged and the fact that a warrant has been issued.
- J. If an officer has **an arrest warrant for an indictable offense** and has probable cause to believe that the subject of the warrant is inside a house, building or apartment, the officer **may**, under appropriate circumstances, enter the house, building or apartment to make the arrest. The officer should use sound judgment in determining whether to enter the building or wait to make the arrest outside. If the officer decides to enter, he/she should announce his/her identity and demand that the person inside opens the door.

An arrest warrant permits entry into a residence to make an arrest **only if the premise is the primary residence of the person to be arrested**. If the premise

is not the primary residence of the person to be arrested, an entry cannot be made without a search warrant or consent.

Only in rare circumstances involving extremely serious offenses and exigent circumstances can an officer enter a residence to make a warrantless arrest.

1. The knock and announcement would cause danger to the officer.
2. The suspect would attempt to escape.
3. The suspect would try to destroy evidence.
4. If it is necessary to prevent commission of a crime. A forcible entry or subterfuge may be used to gain entry where it is refused.

- K. A police officer while in "hot pursuit" of a person suspected of minor motor vehicle infractions or a disorderly persons or petty disorderly persons offense may not make a warrantless entry into the suspect's home to effect an arrest.

"Hot Pursuit" alone is an insufficient justification for a warrantless entry into a person's home to effect an arrest absent exigent circumstances.

- L. An officer should not make a custodial arrest for a routine Title 39 violation. Only a serious Title 39 violation, such as drunken driving, will justify a custodial arrest.

- M. Arrest Procedure

1. The arresting officer shall employ only such force and necessary restraint to assure the safety of other persons, other police officers, or him or herself.

2. Officers of this department shall refrain from using unnecessary force or violence in making arrests and must not strike a prisoner or any other person except when necessary in self-defense, or to overcome physical resistance when making an arrest.

3. The arresting officer is responsible for the safety and protection of the arrested person while in custody. The police officer shall notify the Tour Commander of any injury, or apparent illness he or she observes and will see to it that the prisoner receives medical treatment for their condition. The arresting

officer is responsible for the security of personal property taken into possession, or under the control of the arrested person at the time of the arrest.

N. Handcuffing of Individuals Arrested

Under most circumstances, any individual taken into custody, under arrest, will be handcuffed. Any special or unusual cases will be dealt with on a case by case basis. Common sense will be utilized in evaluating each situation. Anytime an arresting officer feels that handcuffs should not be utilized on an arrested individual, the Tour Commander is to be notified. Each time an individual is arrested and handcuffed, the handcuffs will be double locked behind the person's back to prevent injury to the individual and the officer.

O. Prerequisites to arrests

An officer may effect an arrest of an individual under the following circumstances:

1. The officer has a valid, judicially authorized warrant for an individuals arrest.

2. If the crime committed is an indictable offense and the officer has probable cause to believe the individual is the person who committed the crime.

3. The crime, disorderly persons offense or petty disorderly persons offense occurs in the officers presence.

4. Any of the following enumerated disorderly persons offenses/motor vehicle offenses that occur outside of the officer's presence; however, the officer has probable cause to believe the individual is the person who committed the offense:

1. Shoplifting (2C:20-11)

2. Theft of library materials (2C:24-14b)

3. Any of the enumerated offenses under (2C:25-19)

4. Driving while intoxicated (39:4-50)

5. Camcorder piracy of motion pictures (2C:21-21)

5. Any other disorderly persons offense, or petty disorderly persons offense, Borough Ordinance, which constitute a breach of the peace that occurs in the officer's presence.

Note: An individual's admission to an officer of the facts making up the offense alleged will satisfy the requirements that the disorderly person offense occurred in the officer's presence.

P. Arrest with a warrant

An arrest warrant has the purpose of interposing a probable cause determination by a neutral and detached Judge between the officer and the person to be arrested. Once a police officer receives a valid arrest warrant, the officer can execute the warrant and arrest the individual anywhere within the state of New Jersey.

Q. Arrest without a warrant

The officer is permitted to arrest an individual in any public place without a warrant if there is probable cause to believe that the individual has committed, or presently committing a criminal offense. An officer is allowed to make such warrantless criminal arrests even if the officer has sufficient time to obtain a warrant.

Arrests without a warrant are allowed for all indictable offenses, where the police officer has probable cause to believe that an individual committed the indictable offense, or any disorderly persons or petty disorderly persons offense that occurs in the police officer's presence, or any of the enumerated disorderly persons offense where the police officer has probable cause to believe the individual committed the offense.

R. Procedures for processing individuals arrested with or without a warrant:

When a police officer has arrested a person with or without a warrant, the police officer shall transport the prisoner to headquarters where a complaint will be prepared forthwith.

The following paperwork will be completed by the arresting officer after effecting an arrest of an individual:

1. Police Report: The police report will articulate all of the important facts pertaining to the case. Probable cause for any offense or crime that is charged will be clearly articulated in the police report. The report will then be

reviewed by the arresting officer's tour commander and with the tour commander's approval can be forwarded to the records division for filing.

2. Arrest Report: The arrest report, or arrest card, will be completed in its entirety with all pertinent and pedigree information included.

3. Witness/Case Report: The witness/case report, or witness list, is to include police officers, civilians, or other witness, who has a significant role in the case, and who's testimony may needed to testify on behalf of the State of New Jersey, shall be included on the witness/case report.

4. Evidence Report: The evidence report, or Evidence sheet, is to be completed if there is any evidence or property seized as a result of an arrest. An evidence report will be completed listing all items seized. The completed report will be filed in accordance with evidence booking procedures. A copy of the Evidence report shall be included with the all other arrest reports pertaining to the particular case.

5. Victim/Witness Statements: Victim and/or witness statements should be completed and added to the police report, when appropriate.

All police reports pertaining to the case will be completed before the completion of the arresting officer's tour of duty.

II. SEARCHES WITH A WARRANT

- A. The term "**search**" as applied here refers to an examination of an individual's house, building, premises or the person, with a view to the discovery of contraband or illicit, stolen property or some evidence of guilt to be used in a future prosecution.
- B. A "**seizure**" occurs when a police officer confiscates an individual's person, property or other things in which he/she has a privacy interest.
- C. Probable cause must be demonstrated.
- D. An affidavit must be presented to the judge. The affidavit in support of the warrant must demonstrate that there is a reasonable basis to believe that a crime has been or is being committed and that a search

would disclose the fruits of a crime or other seizable items.

- E. A search should be conducted pursuant to a search warrant absent extraordinary circumstances.
- F. As a rule, an officer should include as many facts as possible in the affidavit supporting his belief as to the existence of probable cause.
 - 1. The police officer must supply enough information in the affidavit to convince a prudent judge that a search will yield evidence.
 - 2. An affidavit will be sufficient if the officer demonstrates personal knowledge to support a finding of probable cause. If the officer has insufficient personal knowledge respecting the issue of probable cause, the officer may use hearsay (information taken from other sources) if the officer establishes both the reliability of the source and the reliability of the source's information.
- G. The officer must describe in the affidavit and warrant with particularity the place to be searched, the property to be seized, the individual or entity possessing the property and the underlying crime.
 - 1. The description should not be general in nature.
 - 2. It is insufficient if the place or person to be searched is specifically designated by the street address or the name of the person and/or the name of the occupants. More descriptive information is required.
 - 3. The requirement that the evidence to be seized be designated renders general searches impossible and prevents the seizure of one item under a warrant describing another.
 - 4. The general rule is that an affidavit or warrant is sufficiently descriptive if it enables an officer who is completely unfamiliar with the case to execute the warrant. Of course, this is merely an illustration and the affiant should always execute the warrant.
- H. Only certain items are subject to seizure. Fruits of a crime (for example, stolen property), instrumentality of crime (for example, weapons, masks,

tapes, etc.), and contraband (anything prohibited by law to be possessed) may be seized. Evidence directly related to criminal conduct or which is probative of such conduct may also be seized.

- I. If during the course of a valid search, the officer inadvertently discovers evidence of criminal conduct not specified in the warrant, such evidence may be validly seized. Moreover, it is an accepted police procedure to inspect the premises for the presence of anyone who may pose a danger both to the officers or to the integrity of the evidence to be seized.
- J. A search conducted with a warrant is presumed to be valid and the burden of showing its invalidity is upon the defendant. The warrant, however, must be executed and returned to the court within ten (10) days after it is issued or it will no longer be valid. The warrant may be executed only once and the officer cannot remain on the premises longer than is reasonably necessary to conduct the search.
- K. The person named in the warrant, or property owner should be served with a copy of the search warrant. If no one is present at the location then a copy can be left in a conspicuous place.
- L. A receipt including the property seized should be left at the location or with the person from whom the property was seized.
- M. The police shall knock and announce their presence before entering a dwelling to execute a search warrant.
 - 1. An unannounced entry may be proper if there is a sufficient threat of violence or a sufficient risk that evidence will be destroyed if the police knock and announce before entering.
 - 2. If, at the time the police apply for a search warrant, they have information to suggest that their safety will be endangered or evidence will be destroyed if they knock and announce, they shall seek judicial permission to make an unannounced entry to execute the search warrant.
 - a. The information upon which this request is based shall be set forth in the affidavit submitted in support of the search warrant.

- b. The police shall ask the issuing judge to indicate on the search warrant itself or on an attached addendum that he/she is permitting the police to make an unannounced entry.
- 3. If, after the police obtain the search warrant, they receive information that an unannounced entry will jeopardize their safety or lead to the destruction of evidence, they shall do one of the following:
 - a. If time permits, the police shall obtain judicial authorization for an unannounced entry;; or
 - b. If time does not permit to obtain judicial authorization, the ranking officer present shall make the decision and document the basis for any unannounced entry in his/her police report which shall be made part of the case file.
- 4. The officer preparing the search warrant affidavit must submit his/her affidavit, including the basis for the unannounced entry to one of the designated Assistant Prosecutors for review before it is presented to the judge.

III. SEARCHES WITHOUT A WARRANT

- A. As a matter of constitutional law, searches without warrants are considered exceptions to the warrant requirement. Courts tend to be reluctant in sanctioning warrantless searches. Therefore, it is imperative that a police officer obtains a search warrant unless he is certain that one of the following exceptions exist.
 - 1. Examples of warrantless searches:
 - a. Search incident to arrest
 - b. Consent searches
 - c. Automobile exception
 - d. Exigent circumstances and emergency aid doctrine
 - e. Impound/inventory
 - f. Open fields
 - g. Plain view
 - h. Abandonment
 - i. Regulatory/Administrative searches
 - j. Community caretaking

- B. A search incident to an arrest immediately conducted after a valid arrest requires no additional justification.
 - 1. Before placing an arrestee in the cell, he shall be searched.
 - a. Surgical gloves should be worn.
- C. The purpose of a search incident to an arrest is to protect the arresting officer, to deprive the prisoner of a potential means of escape and to avoid destruction of evidence by the arrested person.
- D. Nevertheless, while a search is lawful as an incident to a valid arrest, the scope of such a search is limited to the area in the immediate control of the arrestee.
 - 1. When arresting a suspect in a dwelling or apartment and no search warrant has been obtained, the search may only extend to the person and items in his possession and the area into which the arrestee might reach in order to obtain a weapon or other evidence.
 - 2. A warrantless search of a suspect's house is not justified by the arrest of the defendant outside the house.
- E. A search incidental to an arrest is not reasonable unless it is made contemporaneously with the arrest. To be contemporaneous, a search must be conducted as soon as practical after the actual arrest.
- F. Searches Based on Exigent Circumstances
 - 1. Police have the right to respond to emergency situations and make warrantless entries and searches when they reasonably believe:
 - a. A person within is in need of immediate aid; or
 - b. A suspect is still in the premises.
 - 2. Evidence found in plain view during the course of a **fan-out or protective search** may be seized.
 - 3. Emergency Aid - To justify a warrantless entry or search under the emergency aid doctrine, three conditions must be met.

- a. There must be a reasonable and objective basis to believe a real emergency exists and immediate action is required to protect or preserve life or to prevent serious injury;
 - b. Any entry or search conducted must not be primarily motivated by the desire to find evidence; and
 - c. There must be a connection between the emergency and the area entered or searched.
- 4. Easily lost or destroyed evidence - Requirements for search
 - a. Probable cause to believe the residence contains CDS; and
 - b. Substantial grounds to believe the CDS will be destroyed before the search warrant can be obtained.
- 5. Burglaries in progress
- 6. Blood-alcohol evidence - a suspect may be restrained in a medically acceptable way as could any other uncooperative patient, in order to obtain blood-alcohol evidence.

G. Searches Based Upon Consent

- 1. Before a Consent Search is conducted, the department's Consent Search Form is to be completed and signed by the person authorized to give consent.
- 2. A person who consents to a search by a police officer waives the right to be free from a search without a warrant. But, unless the officer informs the suspect that there is a right to refuse to agree to such a request, his agreement to the search is not meaningful.
- 3. Defendant's consent must be clear, unequivocal, intelligent and voluntarily given. A written waiver is the preferred method of obtaining consent to search. The officer, though acting in good faith, must be careful to avoid not only the use but also the appearance of coercion.
- 4. When requesting consent to search, there are certain basic precautionary measures which should be followed. The size of the group requesting consent should be the minimum consistent with the safety of the officers. Nevertheless, for purposes of a later challenge to the fact of consent, it is preferable to have at least one (1) other police officer witness the waiver.

5. Officers seeking permission to search should avoid unnecessary display of weapons and should make their requests clearly independent of the power and authority represented by the badge and uniform. Moreover, permission to enter is not permission to search, whether obtained at the door prior to entry or obtained during entry.
6. In an interview following entry, consent to search must be independently requested and specifically given. The exact words chosen by the officer and their expression are important in obtaining truly voluntary consent. The language must convey a request, not a command.

Additionally, where the person giving consent is in custody, the burden of proving voluntariness becomes more formidable but not impossible. As noted, it is imperative that such an individual be specifically informed of his right to refuse consent.

A valid consent cannot be obtained by advising falsely that search warrant is available "anyway", by implying that a threat of arrest will be lifted as soon as consent is given, or by declaring that the purpose of entry is to interview the suspect when the actual purpose is to search. The person should be informed that a consent to search may be revoked at any time prior to completion of the search.

7. If the suspect is incompetent at the time he consents, then the search is invalid even if the officer had a good faith belief that the individual was competent. A valid consent to search may be given only by the person with the primary right to the occupation of the premises. If the premises are jointly occupied by the suspect and another, the latter may ordinarily be entitled to consent to entry on that portion of the premises jointly occupied and to seize property therefrom. Likewise, a spouse may authorize a search of those premises jointly occupied.
8. A parent may ordinarily consent to a search of premises occupied by a dependent child. A landlord cannot consent to a search of a tenant's premises unless the tenant has abandoned the premises or has been evicted.

9. An employer cannot consent to the search of premises used by an employee in his work, where the employee has an expectation of privacy.
10. An individual with custody of personal property belonging to another may not consent to its search unless he has been given full control over the property. Thus, consent by a person having only limited custody, such as for storage or shipment, is not valid.
11. Consent searches shall be based on reasonable suspicion that a crime, offense, contraband or evidence will be detected.
12. Prior to conducting a consent search the Tour Commander shall be notified.
13. A computer entry shall be made for all consent searches.

H. Stop and Frisk

1. A "stop" occurs whenever a police officer utilizes his/her authority to detain an individual in a given place.
2. An individual may be stopped if there is "reason to suspect" the person of unlawful activity, i.e., that the suspect has committed, is committing, or is about to commit a crime. "Reasonable suspicion" is clearly more than a hunch or unfounded suspicion and is less than probable cause to arrest.
3. As in the case of probable cause, there is no precise definition of the standard. Various factors which have been construed as giving rise to "reasonable suspicion" include the subject's appearance, actions, proximity to the scene of a crime, the time and place observed, and the prior record or reputation of the subject.
4. When it is determined that a stop is appropriate, the police officer should identify himself/herself as such, and request the person to remain stationary. The officer should inform the suspect that it is not an arrest. Reasonable force may be used to effectuate the stop.
5. When a detained suspect is questioned, the inquiry should be limited to ascertaining his/her

name, address and an explanation of his/her actions. Identification papers may be requested for inspection. Should the answers to these questions prove unsatisfactory, false, contradictory or incredible, then probable cause to arrest may result.

6. Should a suspect refuse to cooperate, he/she may not be compelled to answer and his/her silence may not be used to build a case for arrest. Moreover, since the purpose of the stop is to establish the suspect's identity and to explain his/her actions, the inquiry should generally not last more than several minutes. It should be emphasized that there is a very narrow line between a legitimate stop and an unlawful detention.
7. An individual temporarily detained should not be transported from the place of the stop. However, the suspect may be moved a short distance from the point of the stop if it is necessary to verify his/her answers to the officer's preliminary questions by the use of a police vehicle radio or portable. If the victim needs to identify the stopped individual, the victim should be driven to the individual's location.
8. In the course of detaining an individual, a frisk of that person may be appropriate. It is a carefully limited protective search. It is not based on probable cause, and is solely for the protection of the officer. A frisk includes a pat-down of outer clothing and a limited search of the immediate vicinity where weapons might be concealed.
9. A lawful stop does not automatically give rise to a legal frisk. The frisk should only occur if nothing in the initial stages of the encounter dispels the officer's reasonable fear for his own or other's safety. Of course, the officer need not be absolutely certain that the individual is armed. The standard is whether an individual of reasonable caution in the circumstances would be warranted in the belief that the officer's safety or that of another was in danger. Thus, the purpose of a limited search after an

investigatory stop is not to discover evidence of a crime, but to allow the officer to pursue the investigation without fear for his physical safety.

10. When it is determined that there is cause for a protective frisk, the officer should proceed as follows: carefully pat-down the suspect's clothing. If no objects are discovered which might be weapons, then the frisk should not proceed further. If, however, during the frisk, the officer feels something that might be a weapon, then the officer may reach into that portion of the suspect's clothing. If an unlawful weapon is found, a search incident to an arrest for possession of the weapon may follow.
11. There are to be no seizures of garbage as an investigative tool without the **prior** authorization of the Bergen County Prosecutor's Office. This authorization will be handled by the same assistant prosecutors who are assigned to review search warrants. Generally, a search warrant would be required to search a citizen's curbside garbage.

I. Open Fields

1. Personnel are permitted to enter and search an open field without a search warrant. The special and unique safeguards provided by the Fourth Amendment to people in their persons, houses, papers, and effects, is not extended to open fields. Open fields are not houses, nor can they be considered effects.
2. An open field is best described as a place that has no protected reasonable expectation of privacy. Examples include, but are not limited to:
 - a. Common woods/forests;
 - b. Rivers, streams and riverbanks;
 - c. Public parks and playgrounds;
 - d. Marshlands/wetlands.
3. The area immediately surrounding a home may, depending on the circumstances, be considered curtilage, and Constitutional restrictions may apply. Officers should consult with a supervisor before engaging in this type of search.

IV. CRIME SCENE SEARCHES

Crime Scene Searches

The fact that a crime has been committed, despite the severity of the crime, does not in and of itself give officers the right to conduct a warrantless search of the scene. While this does not preclude officers who are legally present from seizing evidence that is in plain view it does prohibit limitless searches. Officers are also permitted to conduct protective victim/suspect "fan-out" searches of a crime scene to determine the presence of victims or the presence of suspects who may be a danger to officers or others.

1. There may however be "exigent circumstances" which would justify a warrantless search of a crime scene. In the absence of such circumstances a search warrant must be obtained prior to conducting a crime scene search.
2. Circumstances which may justify such a search may include but are not limited to the following:
 - a. Degree of urgency involved and the amount of time necessary to obtain a search warrant.
 - b. Reasonable belief that evidence/contraband is about to be removed or destroyed.
 - c. Possibility of danger to officers securing the scene while a search warrant is being sought.
 - d. Information indicating that suspects in possession of evidence/contraband are aware of immediate or imminent police interdiction.
 - e. Ready destructibility of the evidence/contraband and the knowledge that efforts to dispose of the evidence/contraband and to escape are characteristic behavior of suspects engaged in this type of criminal activity.

V. VEHICLE SEARCHES

The Tour Commander shall be notified prior to the start of a search by the officer on scene.

A. Following a Stop for Motor Vehicle Violation

1. An officer may stop a car for a suspected motor vehicle violation.
2. The driver may be asked to exit in every instance for officer's protection. Passengers may be asked to exit only where the officer can point to

specific and articulable facts that would warrant heightened caution.

3. A limited search of persons and vehicle may be performed when:
 - a. When an officer reasonably believes that that a weapon is present.
 - b. No registration is produced and ownership is in doubt after N.C.I.C. check.
 - (1) Search of a vehicle may be conducted to retrieve ownership credentials (not proof of insurance or driver's license). Search limited to area where registration might normally be kept - glove compartment, console, over sun visor, under floor mats. Once the credentials are located the search must cease. Implicit in this type of search is that there must be a reasonable opportunity for the owner/operator to produce the required documentation. Any further search would require separate probable cause with an exigency or consent.
 - a. A search for ownership credentials is allowable under the following circumstances:
 - (1) The motorist has been asked to provide credentials and has failed to do so; or
 - (2) The information provided by the motorist leads to a reasonable belief that the motorist is lying as to his/her identity; or
 - (3) The information provided by the motorist leads to a reasonable belief that the motorist is not in lawful possession of the vehicle.
 - b. Any contraband or items of evidentiary value that are in plain view during the credential search may be seized. Thoroughly document the location of all seized items in the investigation report.

c. When appropriate and supported by probable cause, motorists and/or passengers should be arrested.

(2) No search of the trunk is permitted without probable cause.

c. Plain view/plain smell observation reveals presence of suspected illegal articles. Plain view may be extended to the recognition of evidence or contraband through any of the officers senses. (ex. sight, touch, smell, etc.)

The officer must be lawfully in the viewing area; the officer must have probable cause to believe the items observed may be evidence of a crime, contraband, or otherwise subject to official seizure.

(1) Contraband visible from outside vehicle may be seized.

(2) Trunk may be searched when evidence of CDS in trunk is present.

(3) The odor of marijuana **alone**, raw, unburned or burned, constitutes probable cause to search.

d. There is a suspected violation of **N.J.S. 39:4-50** (Driving under the Influence of Alcohol or Drugs).

If officers develop probable cause to arrest an operator for DWI, a search for open containers of alcohol may be conducted if there is probable cause to believe that such containers are present in the vehicle. The search must be confined to areas where an open container may be kept (e.g., center console, cup holders, etc.)

(1) Police may not conduct an automatic search of the passenger compartment of a car as an incident of an arrest for a Title 39 violation.

(2) When the police make a custodial arrest of an occupant of a motor vehicle for a Title 39 offense, they may

contemporaneously search the area of the arrestee immediate control only if the arrestee remains in or adjacent to the vehicle after arrest.

- (3) Searches for evidence of identification absent probable cause that there is criminal activity afoot or that the vehicle contains evidence or contraband are prohibited. (see State V. Lark)

B. Where probable cause exists to believe the auto contains contraband or evidence of a crime.

1. Probable cause may be supplied by an informant's tip. The information should be independently verified. The informant should also be shown to be trustworthy and credible.
2. Vehicle must be mobile to satisfy the "exception" to obtaining a search warrant. Justification for the search is the danger of removal of evidence if the car is not immediately searched.

a. In accordance with State v. Alston, 88 NJ 211 (1981), the automobile exception to the warrant requirement authorizes the at-scene warrantless search of a motor vehicle only:

1. When officers have probable cause to believe that the vehicle contains contraband or evidence of an offense; **and**

2. The circumstances giving rise to probable cause are unforeseeable and spontaneous.

A search under this exception extends to all parts of the vehicle, as well as to all containers that may reasonably be expected to conceal the object of the search until the object of the search is found. If the probable cause extends only to a particular container in the vehicle then a search of the entire vehicle and any other containers may not be justified. This is a fact specific issue and is typically judged on a case-by-case basis using a common sense standard.

In order to conduct an at-scene warrantless search of a motor vehicle, the following requirements must be met:

1. The initial stop is not a pretext; and
 2. There must be probable cause to believe the vehicle contains contraband or other evidence subject to official seizure; and
 3. Such probable cause must be unforeseeable and spontaneous; and
 4. The motor vehicle must be readily mobile.
 - a. Note: Once the vehicle is removed from the scene it is no longer readily mobile and you must apply for a search warrant.
3. Entire vehicle may be searched where probable cause to do so exists.
- a. A trunk may not be searched when CDS in the vehicle does not give probable cause to believe that more CDS will be found in the trunk.
4. Search warrant should be obtained for luggage or closed containers found in car where no exigent circumstances exist.
- a. Destruction of evidence
 - b. Officer/Public safety issue
- C. Incident to arrest of driver or other occupant for valid custodial offense.
1. The State constitution prohibits warrantless automobile searches incident to arrest after defendant was removed from the vehicle and secured. Additionally, the courts have held that no exigent circumstances exist to justify a search incident to arrest under the automobile exception.

When the police arrest a motorist for a Title 39 violation, the officer can search the person of the arrestee. However, once the individual is arrested and

in custody, the vehicle should be secured and a warrant obtained for any additional search.

D. Pursuant to a valid consent by the owner or vehicle operator where:

1. The officer has reasonable suspicion and the person has been advised that he/she has the right to refuse consent and knowingly waives his/her right to require that a search warrant be obtained.
2. Consent is product of party's free will.
3. Consent is clear and explicit.
4. Consenting party has authority to do so, based upon equal right to ownership or use of vehicle or thing searched.
5. Search limited to area for which consent is given.
6. Officers shall complete the Ramsey Police Department Consent to Search form.
7. The Tour Commander shall be notified prior to the start of a consent search by the officer on scene.
8. A CAD/computer entry shall be made for every consent search. A written report shall be completed if any items are seized or if any individual is arrested as a result of the consent search.

E. Inventory of Motor Vehicle

1. The Ramsey Police Department does not inventory motor vehicles. Exception: If the owner/permissive user is unconscious, incapacitated as a result of a motor vehicle accident, and is unable to communicate verbally, and other arrangements cannot be made for the securing of property contained within the vehicle, an inventory is to be conducted to ensure the protection of the victim's property.
2. See Impound Policy for further details.

VI. PROCEDURE TO BE FOLLOWED WHEN APPLYING FOR A SEARCH WARRANT

- A. Include ALL information you have at your disposal in the affidavit. The prosecutor CANNOT use information you may have in your files or reports at a Motion to Suppress UNLESS you put it into the affidavit.
- B. Include only current information in the affidavit. If the information is too old, the court will hold that it is stale and the warrant may fail.
- C. If you use information provided by a CONFIDENTIAL INFORMANT include ALL information concerning the informant's credibility or reliability. DO NOT, HOWEVER, REVEAL THE INFORMANT'S IDENTITY.
- D. Include ALL the facts which indicate how the informant obtained the information.
- E. Include information which links the person you wish to search to the criminal activity.
- F. Include information which links the place to be searched to the criminal activity.
- G. Include information which links the person to be searched with the place to be searched.
- H. If you intend to search a home, describe the home as completely as possible. Include:
 - 1. Complete street address
 - 2. Physical description, i.e. one-family or two-family, one-story, two-story style of home
 - 3. Color of house
 - 4. Legal description from the deed, if you have it
 - 5. Provide a snap shot, if possible
- I. If you intend to search the home where a young person resides with his or her parents, be sure and show a **CONNECTION** between the HOME and the PERSON to be searched. Do not just characterize the residence as the parents' home.
- J. If you want to search an automobile, include a complete description including make, model, license number and color.
- K. **FINALLY, BEFORE TAKING ANY WARRANT APPLICATION TO A JUDGE, THE PERSONS PREPARING THE APPLICATION MUST CONTACT THE ASSISTANT PROSECUTOR TO RECEIVE APPROVAL BEFORE APPLYING FOR A WARRANT.** The officer must note in his or her file the assistant prosecutor who reviewed the affidavit.

VII. DRUG SNIFFING DOGS IN PUBLIC SCHOOLS

- A.
 - (1) The use of trained drug-sniffing dogs to patrol school hallways for the purpose of detecting CDS inside student lockers does not constitute a search;
 - (2) the dog's actions in alerting the dog's handler to the presence of CDS in a specific locker may constitute probable cause to believe the locker contains CDS; and
 - (3) once probable cause is established, a search warrant may be obtained or, if sufficient exigent circumstances are present, a warrantless search of that locker may be conducted.
- B. School officials should adopt a policy authorizing random patrolling of dogs in school halls. This policy should be made known to the student body orally and in writing. This may eliminate any possible claim of a reasonable expectation of privacy in odors emanating from a locker that is detectable only to the highly developed sense of smell of a dog. This has the possible side benefit of discouraging students from bringing drugs to school in the first place.
- C. The dogs used should have sufficient training and the handlers should have sufficient expertise to qualify as experts under Wanczyk, supra; i.e., dogs from the Bergen County Sheriff's Department K-9 Unit.
- D. Once a dog indicates CDS is present in a specific locker, a search warrant should be obtained.
- E. Records should be kept of each time the dog indicates CDS is present and the result of the subsequent search.
- F. Teachers who search lockers even without police intervention, may run the risk of exposing themselves to civil actions: invasion of privacy or deprivation of civil rights under U.S.C.A. Title 42, Section 1983; and, therefore, this action should be discouraged.
- G. School officials who search lockers after a drug-sniffing dog indicates CDS is present, without a search warrant, may run the risk of civil liability for illegal search. For this reason, this is also unacceptable.

- H. All CDS confiscated by school officials, even when acting independently without any police supervision, should be immediately turned over to police authorities with some report as to how it was seized. This will avoid the possibility of a teacher being charged with possession of CDS.
- I. In short, the courts have indicated that a school locker is subject to considerations of privacy. Therefore, the better practice is to obtain a search warrant prior to going into a student's locker.

VIII. ARRESTS BY A MUNICIPAL POLICE OFFICER OUTSIDE HIS OR HER MUNICIPALITY

- A. The authority of a police officer to make an arrest without a warrant is set forth by N.J.S. 40A:14-152 as follows:
 - 1. "The members and officers of a police department and force, within the territorial limits of the municipality, shall have all the powers of peace officers and upon view may apprehend and arrest any disorderly person or any person committing a breach of the peace. Said members and officers shall have the power to serve and execute process issuing out of the courts having local criminal jurisdiction in the municipality and shall have the powers of a constable in all matters other than in civil causes arising in such courts." (Emphasis added).
 - 2. Basically, this statute authorizes a municipal police officer to arrest only within the confines of the municipality in which he is an officer. There are, however, statutory and case law exceptions to this general rule.
 - a. The most important statutory exception is outlined in N.J.S. 2A:156-1, et seq., "Intrastate Fresh Pursuit Act." Under this statute, a police officer who is in "fresh pursuit" of a person who is reasonably believed by him to have committed a high misdemeanor or has committed, or attempted to commit, any criminal offense in the presence of such officer, or for whom such officer holds a warrant of arrest may arrest and hold that person anywhere in the State. "Fresh pursuit" is defined by N.J.S. 2A:156-2 as not necessarily implying immediate or

instant pursuit but "pursuit without unreasonable delay."

The statute includes pursuit of a person reasonably suspected of having committed a high misdemeanor. However, if the offense is less than a high misdemeanor, the authority to pursue under this Act only extends to offenses committed in the officer's presence or ones that he holds a warrant for the arrest of the person. In State v. McCarthy, 123 N.J. Super. 513 (Cty. Ct. 1973), the phrase "any criminal offense" was held to include drunken driving. Disorderlies and other motor vehicle violations are probably also included. Id. at 522.

- b. New Jersey also has a statute validating arrests made interstate N.J.S. 2A:155-1 et seq. This statute permits a law enforcement officer from one state who is in "fresh pursuit" to enter another state to effect an arrest for a felony (N.J. statute includes "high misdemeanors") if both states have enacted the Uniform Fresh Pursuit Law. States bordering New Jersey have enacted such a statute. Pa. Stat. Anno., Title 19, Sec. 11; Del. Code Ann., Title 11, Sec. 1935; N.Y. Crim. Pro. Law, Sec. 140.55.

The authority of a police officer to arrest for disorderly and motor vehicle offenses outside of the boundaries of the municipality has also been upheld under N.J.S. 2A:169-3 and N.J.S. 39:5-25. In State v. McCarthy, supra, the arrest of a person in Verona by a Cedar Grove police officer who first observed the defendant weaving back and forth across a double yellow line in Cedar Grove was held to be a valid arrest. The court upheld the arrest on the basis of the Intrastate Fresh Pursuit Act (referred to above) and on N.J.S. 39:5-25 and N.J.S. 2A:169-3.

The Court stated that under N.J.S. 39:5-25 a police officer is empowered to arrest without a warrant anyone who violates in his presence any motor vehicle provision within Title 39, Chapters 3 and 4. The authority to apprehend under this statute is not

specifically limited to the municipality or county where the offense occurred. The statute only requires that the arrested person be brought before any magistrate of the county where the offense occurred.

- c. The Court also cited N.J.S. 2A:169-3, which states that a private citizen may:

"Whenever an offense is committed in his presence, any constable or police officer shall, and any other person may, apprehend without warrant or process any disorderly person, and take him before any magistrate of the county where apprehended." (Emphasis added).

Under this statute, a private citizen's power to apprehend a disorderly person is not geographically limited to the municipality or county where the offense occurred. The Court in State vs. McCarthy felt that a police officer's powers to arrest are co-extensive with a private citizen and therefore, a police officer has the authority to arrest as a private citizen outside of the borders of his town. The Court considered drunken driving offenses as disorderlies for purposes of intra-state pursuit so arrests for disorderly persons offenses and drunken driving offenses can be made by a police officer outside of his municipality under N.J.S. 2A:169-3.

However, in State v. Williams, 136 N.J. Super., 544 (Law Div. 1975), the Court rejected the State's argument on a motion to suppress that a Park Ridge patrolman had a right to arrest and search, as a private citizen, in Montvale. The officer in this case had obtained consent to search a vehicle which he stopped for a motor vehicle violation and Williams had, the Court felt, given his consent to a person he believed to be a uniformed police officer. The State could not, therefore, justify the stopping of the vehicle and the subsequent consent to search on the basis of a private citizen's right to arrest.

Although this was not a fresh pursuit situation and the argument of the right of

the private citizen to arrest was rejected, the Court held that a police officer may make warrantless arrests on either side of a road which forms a common boundary with another municipality. Therefore, in this case where the offense was committed on the Montvale side of the road, the Park Ridge officer nevertheless had the authority to arrest the offender.

B. In accordance with the above case law and statutes, police officers may arrest outside their municipality without a warrant in the following situations:

1. Indictable Offenses

- a. When in fresh pursuit, a police officer may arrest, anywhere in this State, anyone whom he reasonably believes committed a high misdemeanor. A misdemeanor must be committed in his presence. N.J.S. 2A:156-1. The arrested person should then be taken, without unnecessary delay, before the nearest available committing judge. R.3:4-1.

2. Disorderly Person Offenses

- a. A police officer may arrest a person who commits a disorderly persons offense in his jurisdiction and in his presence and then, with the officer in fresh pursuit, flees to another municipality. N.J.S. 2A:156-1. In other than fresh pursuit situations, an officer may, under certain circumstances, arrest as a private citizen for offenses which occur in his presence. N.J.S. 2A:169-3; State v. McCarthy. Although N.J.S. 2A:169-3 provides that a person arrested by a police officer without a warrant shall be taken to any magistrate of the county wherein the offense is committed, the jurisdiction of a municipal court to hear offenses involving the "disorderly persons law" is limited to offenses occurring within the territorial jurisdiction of the court. It would seem, therefore, that if the offense occurs in the municipality and the arrest effected outside of it, the matter would have to be heard in the municipality where the offense occurred.

3. Motor Vehicle Offenses

- a. A police officer may arrest or issue a summons to any person who commits a motor vehicle violation in his presence and then flees with the officer in fresh pursuit to another municipality. N.J.S. 2A:156-1. In other than a fresh pursuit situation, an officer may arrest anywhere on roads forming the border of his municipality. State v. Williams. One may also effectuate an arrest for offenses committed in his presence, N.J.S. 2A:169-3 and N.J.S. 39:5-25; State v. McCarthy. As with disorderly offenses, the matter should then be heard in the municipal court where the offenses occurred.

C. N.J.S.A. 40A:14-152.1, effective March 2, 1978, provides that:

1. Notwithstanding the provisions of N.J.S.A. 40A:14-152 or any other law to the contrary, any full-time, permanently appointed municipal police officer shall have full power of arrest for any crime committed in said officer's presence and committed anywhere within the territorial limits of the State of New Jersey. (Emphasis supplied).
 - a. This legislation represents and attempts to enlarge the jurisdictional bases for arrests previously conferred upon municipal police officers by N.J.S.A. 40A:14-152 and N.J.S.A. 2A: ch. 155 and 156.1. Senate County and Municipal Government Committee, Statement to Assembly Bill No. 235; December 1, 1977. The general rule previous to the enactment of N.J.S.A. 40A:14-15 was that a municipal police officer could directly exercise police power only within the jurisdictional confines of the appointing municipality. State v. Cohen, 73 N.J. 331, 342 (1977); but see, State v. McCarthy, 123 N.J. Super. 513 (Law Div. 1973).
 - b. The key provisions of N.J.S.A. 40A:14-151.1 requiring interpretation are:
 - (1) that a "crime" has been committed, and
 - (2) that the crime was committed in the "presence" of the officer.

In New Jersey the word "crime" is defined as those acts constituting misdemeanors and high misdemeanors, currently denoted

indictable offenses. Numerous petty offenses, formerly prosecuted as crimes, are now quasi-criminal offenses under the Disorderly Persons Act. N.J.S.A. 2A:169 et seq.; In re Garafone, 80 N.J. Super. 259, 271 (Law Div. 1963); State v. Morse, 54 N.J. 32, 35 (1969). Similarly, motor vehicle violations are not "crimes" in New Jersey, but only petty offenses. State v. Macuk, 57 N.J. 1, 9 (1970). See also United States v. Evans, 398 F.2d 159, 165-166 (3 Cir. 1968); State v. Hawthorne, 49 N.J. 130 (1967); State v. Hurt, 49 N.J. 114 (1967).

That the legislature intended to use the word "crime" in the specific sense is clearly reflected by the fact that in N.J.S.A. 40A:14-107, which enumerates the enforcement powers of county law enforcement officers, the legislature clearly differentiated "crimes" from lesser offenses. Moreover, such a construction of the statute is fully in accord with the previously stated legislative policy of cautiousness concerning arrests for minor offenses by police officers. N.J.S.A. 40A:14-152; State in Interest of J.B., Jr., 131 N.J. Super. 6, 13 (J.& D.R. Ct. 1974); State v. Morse, *supra*. The logical extension of such a policy is that while in another municipality an off-duty policeman's authority should be limited to situations where his intervention is truly required in the interests of public safety. The suppression of minor offenses is best left to the on-duty police officers in the municipality where the offense has occurred. To construe the instate statute as permitting extra-territorial arrests for minor offenses by off-duty police officers would not only unnecessarily burden the individual off-duty police officer, it would be beyond the scope addressed by the legislature.

- c. In order to lawfully execute an extra-territorial arrest, N.J.S.A. 40A:14-152.1 requires that the crime be committed in the officer's presence. The word presence sums up the requirement that the officer know of the event through the use of his senses. State v. Macuk, *supra*; State v. Morse,

supra; State v. Dickens, 130 N.J. Super. 73, 76-77 (App. Div. 1974). In order to satisfy the in-presence requirement each element of the offense must occur in the presence of the arresting officer. State in Interest of J.B., Jr., supra at 15, 16. An exception to the rule occurs where the arrest is based on the admission of the offender. The thesis is that if the arrest is based on the defendant's own admission of guilt the danger of a mistaken arrest is obviated. State v. Macuk, supra at 36.

- d. Finally, it should be noted that so long as the police officer reasonably believes that the offense committed in his presence constitutes a "crime" the arrest would clearly have met the requirements of N.J.S.A. 40A:14-151.1 for a lawful extra-territorial arrest, regardless of whether the person is eventually charged with only having committed a petty offense. See State in Interest of J.B., Jr., supra; State v. Morse, supra. It is sufficient if the police officer has probable cause to believe an offense of that grade has been, or is being committed. State v. Hutchins, 43 N.J. 85, 100 (1964). The instant statute only adds the requirement that the officer's probable cause determination be based upon personal knowledge. N.J.S.A. 40A:14-152.1 by no means would require that an arrest made pursuant to the statute be invalidated on the basis that the officer was mistaken as to whether the persons acts technically fell within the statutory definition of a "crime". In the absence of probable cause to believe a crime has been committed in his presence the officer will only have the powers of arrest granted to any private citizen. See State v. McCarthy, supra at 517; N.J.S.A. 2A:169-3.
- e. In summary, N.J.S.A. 40A:14-152.1 empowers municipal police officers to execute arrests beyond the limits of their employing jurisdiction where there is probable cause to believe that a crime (indictable) has been committed in his presence anywhere within the territorial limits of the State of New Jersey. This power, however, does

not extend to disorderly persons offenses or
traffic infractions.