

UNION COUNTY SHERIFF'S OFFICE STANDARD OPERATING PROCEDURES																				
VOLUME: III	CHAPTER: 01	# OF PAGES: 18																		
SUBJECT: ARREST, SEARCH AND SEIZURE																				
EFFECTIVE DATE: July 1, 2022	<table border="1"> <thead> <tr> <th colspan="3">REVISIONS</th> </tr> <tr> <th>DATE</th> <th>PAGE #</th> <th>SECTION</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table>			REVISIONS			DATE	PAGE #	SECTION											
REVISIONS																				
DATE	PAGE #	SECTION																		
BY THE ORDER OF: SHERIFF PETER CORVELLI																				

PURPOSE:

The purpose of this policy is to provide general guidelines and procedures to follow in conducting arrests, searches and seizures that meet the criteria established by statutory requirements, case law, Attorney General Guidelines and/or judicial review.

POLICY:

It shall be the policy of the Union County Sheriff's Office (UCSO) to conduct all arrests, searches, and seizures in compliance with all local, state, and federal statutes, case law and the Constitution of the State of New Jersey and the United States of America.

The procedures outlined herein shall be used as a guide by all sworn Sheriff's personnel of the UCSO.

To that end, the following guidelines are to be strictly followed.

Section I: General Principles of Arrest

- A. General Principles of Arrest.** An arrest is the exercise of control or custody over a person by restricting that person's liberty of movement for a temporary period of time.
1. The term "arrest" generally means the taking of a person(s) into custody in order that they may be held to answer for committing a crime or offense.
 2. Arrest is a broad concept and may be found to exist without the individual actually being "brought in" or officially "placed under arrest." The mere act of temporarily restricting one's movements in some cases may be considered an arrest.
 3. It is a violation of the law for an officer, without grounds for arrest, to deprive a person of his freedom of movement for any period of time longer than a limited detention. Refer to Section N of this chapter.
- B. Geographic Jurisdiction.** Personnel of the UCSO may ordinarily only arrest an individual within the geographical area of Union County. A lawful arrest may be made with or without a warrant.
1. However, an officer may arrest a person anywhere in the State of New Jersey if:
 - a. the officer has *probable cause* to believe that the person to be arrested has committed a crime;
 - b. any disorderly or petty disorderly offense is committed in the officer's presence:
 - (1) "presence" is a concept that is easily understandable, and for the purpose of the New Jersey Code of Criminal Justice, it includes situations where the officer sees, hears, or smells the offense being committed; or
 - c. the officer has a valid warrant for an individual's arrest:
 - (1) a warrant is based upon an affidavit or evidence that presents sufficient facts to convince a judge that *probable cause* exists;
 - (2) The warrant must identify the person believed to have committed the particular crime either by name or by a description which identifies him with reasonable certainty.
- C. Probable Cause**
1. Probable cause is defined as the amount of evidence sufficient to lead an ordinary and prudent person to reasonably believe a crime is occurring or has occurred, and that the person to be arrested committed or is committing said crime.
 - a. All circumstances may be considered.
 - b. It does not matter whether the information that reached the officer was later found to be true or false, but only whether the officer was reasonable in accepting the information as true.
 - c. Probable cause is not a complex legal formula understandable only by those trained in the law. Probable cause is arrived at by collecting facts of such quality that logic and common-sense point with reasonable certainty in the direction of guilt.
 - (1) Hunches or suspicions are not enough. The belief must be supported by the facts.
 - (2) Experiences as a Sheriff's officer are a fact that can be relied on to support probable cause, providing they can be documented.

- (3) The facts upon which the belief of guilt is based must have been known at the time of arrest.
 - (4) Post-arrest actions by the accused are irrelevant to the lawfulness of the initial arrest.
 - (5) It is not necessary to believe beyond a reasonable doubt that a person committed an offense in order to arrest.
- 2. An officer should arrest only when he believes that at the moment of arrest, he could point to a sufficient number of articulable facts to convince a neutral and detached judge it was reasonable to believe a crime was committed by the person arrested.
- 3. Various kinds of information can be used to support probable cause, providing the information is not vague and can be documented.
 - a. The officer can rely upon observed facts surrounding the incident, such as:
 - (1) behavior;
 - (2) appearance;
 - (3) location of suspect; and/or
 - (4) suspect's height and weight.
 - b. The officer can rely upon familiarity with the suspect, including:
 - (1) suspect's prior record;
 - (2) prior observation of suspect; and/or
 - (3) earlier contacts with suspect.
 - c. The officer can rely upon reports from others, including:
 - (1) accounts given by victims or witnesses; and/or
 - (2) reliable informants.
 - d. The officer can rely upon his own experience, such as:
 - (1) knowledge of criminal behavior; and/or
 - (2) what is normal or abnormal for the area where the incident occurred
- 4. If the officer has any doubt as to whether he has the needed probable cause to make an arrest, and if the risk of a temporary delay is not great, the officer should obtain a warrant. Repercussions of an illegal arrest may be:
 - a. The case may be dismissed, and any evidence seized incidental to the arrest, would be suppressed;
 - b. Any confessions or admissions made after the unlawful arrest must be excluded; and / or
 - c. The possibility of a civil suit for false arrest can result.

D. Effecting an Arrest

- 1. An officer making an arrest should identify himself to the person being arrested.
- 2. The officer should also indicate the crime for which the suspect is being arrested.
- 3. If the arresting officer has a warrant, then it should be exhibited.
 - a. 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.
- 4. Primary residence
 - a. 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 location considered to be his primary residence, the officer may enter the residence to make the arrest.

- (1) The probable cause must be documented on the officer's final report.
 - b. If possible, it would be more prudent to obtain a search warrant or wait for the individual to exit the premises.
 - c. When an officer possesses a valid arrest warrant, he may enter the residence listed on the warrant to make the arrest if he has probable cause to believe the subject named in the warrant is within the residence (*see Volume III, Chapter 4*).
 - d. Barring any exigent circumstances, the officer should knock on the door of the residence, identify himself and demand entry.
 - e. Upon gaining entry to the residence, the officers may search anywhere that the subject named in the warrant could be hiding.
 - (1) Forcible entry into the residence may be employed, provided the officer has probable cause to believe the subject named in the warrant is hiding within:
 - i. For example:
 - (a) officers observed subject peer out window.
 - (b) officers observed subject entering residence.
 - f. After gaining access to the dwelling and arresting the subject named in the warrant, the officer should do the following:
 - (1) Conduct a protective sweep of the immediate area of the arrest for anything that might pose a danger to the officers or others who may be present.
 - (2) Conduct a protective sweep of areas not in the immediate vicinity of the arrest, if reasonable suspicion exists to believe the area may contain anything that might pose a danger to the officers or others who may be present.

Note: In arrest setting, officers may sweep spaces immediately adjoining place of arrest. Any wider sweep must be justified by **reasonable articulable suspicion**.
 - g. If the location is not the person's primary residence, the officer must obtain a search warrant or obtain consent to search.
5. **Warrantless Arrest.** Only in rare circumstances involving extremely serious offenses and exigent circumstances can an officer enter a residence to make a warrantless arrest.

Commented [JG1]: Should we list some examples that could contribute to probable cause (or reference III C below)?

- E. Execution of a Warrant.** The arrest of the person named in the warrant is termed the "execution of a warrant."
 - 1. The executed warrant and the person arrested must be taken without unnecessary delay before the issuing court.
 - 2. Even when an arrest is made without a warrant, the person arrested must be taken without necessary delay before the court of jurisdiction.
- F. Citation, Complaint-Summons or Complaint-Warrant.** As a matter of law, certain procedures must be followed for the issuance of Citations, Complaint-Summons or Complaint-Warrants.
 - 1. Compliance with these requirements is essential to ensure the integrity of the arrest, the viability of the prosecution and the protection of the rights of the accused.
 - 2. *See UCSO Duty Manual Standard Operating Procedures Volume III Chapter 4*

G. Immigration and Customs Enforcement (ICE) Notifications.

1. All officers will refer to refer to Attorney General Law Enforcement Directive No. 2018-6 which directly relates to ICE notifications for additional information.

H. Consular Notification

1. Foreign National

- a. Any person who is not a United States citizen is considered a foreign national.
 - (1) Any foreign national who is arrested must be advised that he has the right to have his consular official notified.

2. Notification Process

- a. Determine the country of origin for the passport or other travel document used by the arrestee.
- b. Report the arrest to the consular office if that country is on the mandatory notification countries list (refer to Volume III, Chapter 4).
 - (1) Advise the foreign national that notification is being made.
- c. Offer the arrestee the opportunity to have the detention reported to the consular office if the issuing country is not on the mandatory reporting list.
 - (1) Notify the nearest consular office if requested by the arrestee (refer to Volume III, Chapter 4).
 - (2) Document the notification or the declined notification on the arrest report with all the pertinent information, such as the name of the official notified, how notified, time, etc.
3. Under no circumstances should any information indicating that a foreign national may have applied for asylum in the United States or elsewhere be disclosed to that person's government.
4. All officers shall familiarize themselves with the *Vienna Convention on Consular Relations*, Apr. 24, 1963, articles 5, 36, 37, 21 U.S.T. 77, 101, the *Consular Notification and Access* booklet from the United States Department of State and the countries requiring mandatory notification (refer to Volume III, Chapter 4).

Section II: Search Warrants and Seizures

I. Search Warrants

1. Under both the state and federal constitutions, search warrants can be issued only if there is probable cause to believe a crime has been or is being committed at a specific location or that evidence of a crime is at the place sought to be searched.
 - a. Search warrants must be supported by probable cause.
 - b. The search warrant application must be drafted in a way that fully reflects the probable cause that supports the application.
 - (1) Search warrant application can be found in appendices.
 - c. Search warrants must be executed within 10 days.
2. **Application for a Search Warrant.** No law enforcement officer shall apply to a New Jersey judge for issuance of a search warrant without first obtaining express authorization from a designated Assistant County Prosecutor (*A.G. Law Enforcement Directive #2002-2*). Any officer seeking search warrant approval will first confer with their immediate supervisor before contacting the on-call assistant prosecutor.
 - a. The Search Warrant Approval form:
 - (1) must be reviewed and approved by a designated assistant prosecutor before the application is submitted to a judge; and
 - (2) includes search warrants issued by superior and municipal court judges, as well as search warrants in indictable and non-indictable cases.
3. **List of Designated Prosecutors**
 - a. The Union County Prosecutor maintains a list of assistant prosecutors who are authorized to review and approve search warrant applications before submission to a judge.
4. When a search warrant is approved, the Crime Scene Unit Supervisor is to be notified for the collection and documentation of the scene and evidence.
5. Absent unusual circumstances, officers executing a search warrant at a residence will knock and announce their presence before entering. The term "residence" will include single-family and multi-family dwellings.

J. No-Knock Warrants. In certain limited circumstances, the officers may execute a search warrant without first knocking to announce their presence. (*See AG directive no. 2021-12 I. Restrictions on No-Knock Warrants*)

1. To justify a no-knock provision, a law enforcement officer must have a "reasonable, particularized suspicion" that forcible entry is required for one of two reasons:
 - a. to protect the officer's safety; or
 - b. to protect the safety of another
2. If at the time the officers apply for a search warrant, they have information to suggest that their safety or the safety of another will be endangered if they knock and announce, they will seek judicial permission to make an unannounced entry to execute the warrant.
 - a. The information upon which this request is based will be set forth in the affidavit submitted in support of the search warrant.
 - (1) The officers will ask the issuing judge to indicate on the search warrant itself or on an attached addendum that he is permitting the police to make an unannounced entry.

Commented [JG2]: Read-through AG Directive 2021-12 regarding No Knock Search Warrants; some of it has changed from what is in here (Prosecutor/DCJ approval, tactical team execution, etc)

Commented [JG3]: The relevant parts from 2021-12 that I was alluding to in my previous note are:
After studying the issue, I have determined that no-knock warrants present significant risks to public and officer safety, privacy, and community trust, and should be used only in rare and targeted circumstances. Accordingly, this Directive takes four broad actions regulating no-knock warrants for both residences and commercial premises alike. • First, the Directive generally prohibits the use of no-knock warrants. Absent exigent circumstances, law enforcement officers are permitted to request authorization from the court for a no-knock warrant provision only under the following circumscribed conditions—narrower than what is permitted by law—where (i) knocking and announcing will create a reasonable and particularized concern for officer safety or the safety of another person and (ii) a trained tactical team executes the no-knock warrant. • Second, the County Prosecutor, Director of the Division of Criminal Justice (DCJ Director), or their senior legal staff designee must approve any warrant that includes a no-knock provision.

And

Restrictions on No-Knock Warrants A. Limiting no-knock provisions except for officer or civilian safety. Although the New Jersey Supreme Court has provided three independent justifications for no-knock provisions—destruction of evidence, officer safety, and effecting an arrest or seizure—officers and prosecutors shall only request a no-knock warrant where there is a reasonable and particularized concern for the safety of the executing officers or another person. The specific facts supporting the request should be included in the warrant affidavit. A no-knock provision should be sought only where knock-and-announce entry would be inadequate to achieve safe warrant execution. B. Use of tactical teams to execute no-knock warrants. In line with best practices among the counties, to promote both officer and civilian safety, warrants that include a no-knock provision shall be executed only by tactical teams, or other law enforcement units specifically trained to handle high-risk incidents, including S.W.A.T. (Special Weapons and Tactics), S.R.T. (Special Response Team), T.E.A.M.S. (Technical Emergency and Mission Specialists), High Risk Entry Teams, Rapid Deployment, Fugitive Squads or similar units. This requirement may be waived by the County Prosecutor, DCJ Director, or their senior legal staff designee, if, after reasonable inquiry, tactical personnel are unavailable, there is particularized urgency for the execution of the warrant, and other properly-trained personnel are available to execute the warrant. C. Subsequent prosecutor review. After execution of a no-knock warrant, the executing agency will report back to the approving official at the County Prosecutor's Office the results of the operation within 48 hours. If based on that information provided, the County Prosecutor's Office or Attorney General's Office identifies issues that warrant greater review, upon request, the

Commented [CC4R3]:

3. If the issuing judge refuses to authorize an unannounced entry, then the officers will knock and announce their presence before entering, unless the circumstances set forth in the next section are present.
4. If, after the officers obtain the search warrant, they obtain information showing that an announced entry will jeopardize their safety or the safety of another person, they will do one of the following:
 - a. If time permits, the officers will obtain judicial authorization for an unannounced entry; or
 - b. If time does not permit obtaining judicial authorization, the officer's immediate supervisor will be notified and will decide whether to make an unannounced entry. The basis for any unannounced entry will be documented in an Investigation Report and made a part of the case file.
 - c. In any instance where exigencies lead to entry without announcing in the execution of a warrant that does not include an approved no-knock provision, that warrant's affiant shall report the entry to the County Prosecutor or DCJ Director within 24 hours, which will later be reported to the Attorney General or designee.
 - d. No-Knock Search Warrant Application form can be found in appendices.
5. Search warrants should presumptively be executed between 5:00 a.m. and 10:00 p.m.
 - a. Extended time periods must be approved by the court and supported by facts in the affidavit establishing good cause for the request. The face of each search warrant must state the time range for execution.
6. Flash bangs should be rarely used in search warrant executions. In the minimal instances where law enforcement deems use of flash bangs to be necessary, careful planning will be required, including consideration of any individuals with disabilities that are known to be present in the residence.
 - a. The County Prosecutor, DCJ Director, or their senior legal staff designee, or Chief of Detectives, must approve the planned deployment of flash bangs during any search warrant execution.
 - b. Flash bangs should only be used in the execution of a search warrant by trained tactical personnel and with requisite safety precautions in place (e.g., fire extinguishers available).
 - c. Nothing in this Directive, however, shall limit law enforcement's ability to deploy flash bangs in exigent circumstances during a warrant execution. In any instance where exigencies lead to the use of flash bangs without prior approval, that warrant's affiant shall report use of the device to the County Prosecutor or DCJ Director, in a manner prescribed by the County Prosecutor or DCJ Director, within 48 hours.
7. Prior to the execution of any search warrant that requires a written operations plan, unless exigent circumstances exist, such plan shall include the following:
 - a. The reasonable steps taken to timely identify any residents or occupants of the location to be searched, and any subdivided living quarters, legal or otherwise, within the specific unit to be searched, and when those steps were taken.
 - b. The following information for anyone known or believed to be present at the target premises if it can be determined with reasonable efforts.
 - i. The age and gender, and whether they are connected to the criminal activity detailed to support probable cause;
 - ii. Cognitive or physical disabilities, if known; and

iii. Animals.

8. Warrants that include a no-knock provision shall be executed only by tactical teams, or other law enforcement units specifically trained to handle high-risk incidents, including S.W.A.T. (Special Weapons and Tactics), S.R.T. (Special Response Team), T.E.A.M.S. (Technical Emergency and Mission Specialists), High Risk Entry Teams, Rapid Deployment, Fugitive Squads or similar units. This requirement may be waived by the County Prosecutor, DCJ Director, or their senior legal staff designee, if, after reasonable inquiry, tactical personnel are unavailable, there is particularized urgency for the execution of the warrant, and other properly trained personnel are available to execute the warrant.
9. ***Before any application for a warrant including a no-knock provision is presented to the court, it must be approved by the County Prosecutor, DCJ Director, or their senior legal staff designee.***

- K. Post Warrant Execution Steps.** Upon the execution of any search warrant issued to the UCSO, the ranking Sheriff's supervisor in charge will carry out or ensure the following occurs:
1. an inventory of all evidence seized is completed and a copy provided to the owner or person in control of the property; and
 2. all warrant return procedures are completed, and the required documents and information are returned to the issuing judge.
 3. the ranking sheriff's supervisor will report back to the approving official at the County Prosecutor's Office the results of the operation within 48 hours.

- L. Out-of-County Warrant Executions.** Whenever advised that an agency from outside of Union County intends to execute a search warrant within the municipality or within the jurisdiction of a Union County law enforcement agency, the Union County Prosecutor's Office shall immediately be notified of this information.

1. The notification shall be made by contacting the on-call Assistant Prosecutor in the Major Crimes Unit of the Union County Prosecutor's Office.
2. At times other than normal business hours, the on-call Major Crimes detective may be reached through the Union County Police (908)654-9800.
3. For further direction **see NJ AG Directive 2002-2 APPROVAL OF SEARCH WARRANT APPLICATIONS, EXECUTION OF SEARCH WARRANTS, AND PROCEDURES TO COORDINATE INVESTIGATIVE ACTIVITIES CONDUCTED BY MULTIPLE LAW ENFORCEMENT AGENCIES.**
4. **Notification of Searches in Multiple Jurisdictions**
 - a. Where an application is made for a warrant to conduct a search in multiple locations any one of which is outside the territorial jurisdiction of the applicant's agency, or beyond the territorial jurisdiction of an assistant prosecutor reviewing the application, the application shall not be approved and no search shall be conducted without first notifying and consulting with a representative of the County Prosecutor's Office having jurisdiction over the place to be searched, or a representative of the Division of Criminal Justice. (Example: a search warrant application reviewed by an Assistant Prosecutor of county A involves an intended search of multiple premises, one of which is located in county B. The search of the premises located in county B shall not

Commented [JG5]: Should we reference language from NJ AG Directive 2002-2 regarding Notification of Searches in Multiple Jurisdictions and our obligation to reach out to another jurisdiction's Prosecutor's Office if we are looking to execute a search warrant in their jurisdiction?

be conducted without first notifying and consulting with a representative from the County B Prosecutor's Office.) In addition, the local police department having patrol jurisdiction over each and every place or premises to be searched shall be notified of the operation prior to execution of the search unless a Designated Attorney, for good cause shown, determines that notification to the local police department shall only be provided during the execution of the search, or at some later time.

M. Warrantless Search and Seizure

1. The UCSO recognizes the importance of the rights of citizens to be free in their person and property from unreasonable search and seizure or unreasonable detention.
2. Sheriff's officers will conduct all searches and seizures and temporary detentions with due regard for the constitutional rights of the individual and within applicable state and federal constitutional provisions and prosecutor's directives.
3. The following guidelines for conducting searches and seizures, which have not had prior authorization through judicial review, should be adhered to by all sworn personnel.
 - a. Search Incident to Arrest
 - (1) Arrest must be lawful
 - (2) Right to arrest pre-exists the search
 - (3) Search is "incident" to the arrest
 - (4) Search is "contemporaneous" with the arrest
 - (5) Search includes the person of arrestee
 - (6) Search includes the area within arrest's immediate control
 - i. Motor Vehicle Search Incident
 - (a) Officers may conduct a vehicle search incident to a recent occupants arrest only when:
 - (i) The arrestee is unsecured and within reaching distance of the passenger compartment of the vehicle at the time of the search; or
 - (ii) It is reasonable to believe the vehicle contains evidence of the offense of arrest.
 - b. Impounded Vehicle Inventory
 - (1) "Routine" impoundments and inventory are unconstitutional in New Jersey.
 - (2) Prior to impounding a motor vehicle, officers must demonstrate substantial police need, - a substantial public safety necessity.
 - (3) See UCSO duty manual Volume II, Chapter 4, Motor Vehicle Enforcement, Impound and Inventory.
 - c. Inventory of personal effects incident to booking and jailing
 - (1) Arrestees shall be afforded the opportunity to consent to the search or the opportunity to make other arrangements for the disposition of personal property. See (*State v. Padilla*, 321 N.J. Super).
 - (2) So long as the strict requirements of *State v. Padilla* are met, it will then be lawful for officers to remove, search and list (or inventory) the personal effects of a person under lawful arrest as part of a routine administrative procedure incident to booking and jailing.
 - d. Exigent Circumstances
 - (1) Law Enforcement Officers have the right to respond to emergency situations and make warrantless entries and searches when they reasonably believe a

person within is in need of immediate aid, or when they reasonably believe a suspect is still in the premises.

- i. Emergency Aid Requirements/Community Caretaking
 - (a) Officers must have a reasonable and objective basis to believe that a real emergency exists, and immediate action is required to protect or preserve life or to prevent serious injury.
 - (b) There must be a connection or nexus between the emergency and the area entered or searched.
- e. Automobile Exception
 - (1) When officers have probable cause to believe a particular readily mobile vehicle contains evidence of a crime or contraband and the police action was prompted by the unforeseeability and spontaneity of the circumstances giving rise to probable cause, they may conduct a warrantless search of every part of that vehicle and its contents, including all containers and packages found therein, whether open or closed, which may be capable of concealing the object of the search. *See State v. Alston 88 N.J. 211 (1981), State v. Witt 223 N.J. 409 (2015).*
- f. Searches for evidence of vehicle ownership
 - (1) Where there has been a traffic violation and the operator of the motor vehicle is either unwilling or unable to produce proof of registration, officers may search the car for evidence of ownership.
 - i. This search must be confined to the glove compartment or other area where a registration might normally be kept in a vehicle.
- g. Search by Consent
 - (1) **Officers shall not ask an individual under 21 for consent to search their person, property, or vehicle to determine a violation of N.J.S.A. 2C:35-15(a)(1).**
 - i. (However, if the individual is over 18 and the officer reasonably believes that other criminal activity is afoot, the individual may grant consent to search. The consent to search form can be found in Appendix A of this policy.
 - (2) An officer may speak with a citizen provided the citizen wishes to talk to the officer.
 - i. If identification is provided by the citizen, the officer should write down any appropriate information and promptly return the identification to the individual(s).
 - (3) Officers should accept the possibility that the citizen may refuse to talk and refuse to identify himself.
 - i. A non-confrontational approach and friendly demeanor can often obtain a citizen's voluntary cooperation without soliciting a negative response.
 - (4) Consent to Search Person / Residence / Business In cases where a search is desirable and not incidental to an arrest:
 - i. In order for a consent to be lawful, the consent must be *voluntary*, *intelligent*, and *knowing*.
 - ii. The person consenting must be advised that they have the right to refuse.
 - iii. An officer may make a request to conduct a search of a person or person's property;

- iv. UCSO Consent to Search form should be presented along with verbal explanation of rights outlined on form; and
- v. The officer will provide the “consenter” with the copy of the Consent to Search form.

(5) Consent to Search Motor Vehicle

- i. Officer must at least have a reasonable articulable suspicion that vehicle contains contraband or evidence of a criminal offense.
 - (a) The odor of marijuana, hashish, or alcohol no longer constitutes reasonable articulable suspicion to initiate a stop of an individual under the age of 21, nor does it provide probable cause to search the person’s personal property or vehicle to determine a violation of N.J.S.A. 2C:33-15(a)(1).

(6) Consent to Enter Premises

- i. Asking permission to enter a premises does not require advice of the right to refuse consent.

** Note: Consent to search forms can be found in appendices.

h. *Plain view*

- (1) Officer must be lawfully in the viewing area; and
- (2) The item’s incriminating character is immediately apparent. *See State v. Gonzales 227 N.J. (2016)*

NOTE: *The unconcealed possession of an alcoholic beverage, marijuana, hashish, or cannabis item in violation of N.J.S.A. 2C:33-15(a)(1) that is observed in plain sight shall not constitute probable cause to initiate a search of an individual under the age of 21 or that individual’s personal property or vehicle to determine a violation of any law.*

i. *Plain touch*

- (1) Officer must be lawfully in the touching area;
- (2) Officer’s hands must be lawfully on the touching area;
- (3) Officer must upon touching the area in question, immediately gain probable cause to associate the item with criminal activity.

j. *Plain Feel*

- (1) Contraband found during the course of a lawful pat down may be seized without a warrant if the officer feels an object whose contour or mass makes its identity immediately apparent.

k. *Open Fields*

- (1) There is no reasonable expectation of privacy in an open field.

N. Stop and Frisk

1. An officer may perform a stop and frisk procedure if they have an articulable reason to fear for their safety.
 - a. The officer must be able to articulate specific facts, which, taken together with rational inferences from those facts, reasonably warrant the stop and detention
 - (1) Belief that an individual has engaged in criminal behavior
2. The lawfulness of such an investigative stop will eventually be judged against what was considered reasonable under the circumstances that existed at the time of the stop.

3. Stop and Frisk Sequence

- a. The officer must determine the permissible scope of the intrusion as it relates to the detainee.
- b. Justification for investigative detention is not necessarily justification for a frisk.
- c. A frisk must be supported by reasonable suspicion that the detainee **may be armed and/or dangerous.**
 - (1) The intensity of a frisk is limited because the sole object of a frisk is to locate weapons and protect the officer or others.
 - (2) An unidentified object that could reasonably be used as a weapon against the officer can and should be removed from the detainee.
- d. The longer a person is detained by an officer, the greater becomes the degree of intrusion, and the more closely the seizure resembles an arrest.
- e. The use of appropriate force in connection with a stop is permissible when the officer reasonably believes it is necessary for his protection.

O. Crime Scene

1. There is no crime scene exception to the written warrant requirement.
2. A warrant should be obtained before a search is made, when possible.
3. Warrantless searches are to be conducted only when lack of time or other exigencies make it impractical for officers to obtain a warrant.
4. Cases where warrantless searches may be conducted should include the following criteria:
 - a. Consent is given by the person or individual in control of the building, area, property or object.
 - b. Search is incident to the arrest of a person.
 - c. Evidence is in plain view with no reasonable expectation of privacy.
 - d. Officer safety dictates a need to search.
 - e. Any other emergency circumstances not otherwise described above.

P. Seized Evidence

1. All property that is seized as evidence, (including motor vehicles) will be:
 - a. Documented in the investigation report;
 - b. Inventoried;
 - c. Recorded on Consent to Search form and continuation page for a warrantless search;
 - (1) Ensure sure dates, times, and location of evidence / property seized are recorded accurately on form. (*NY vs. Burke/Randazza*).
 - d. Submitted to the property and evidence custodian in the Administration Division for entry into the BEAST Evidence Tracking program.
2. The owner of the property will be given a Property Receipt form.
 - a. Whenever possible, the Consent to Search form and continuation page may serve as a receipt for seized property.
 - b. As a last resort, some type of written receipt must be provided to the owner for any property that is seized.
3. An officer shall not be prohibited from conducting any search as long as the situation is authorized by state and federal provisions.

Section III: Strip Searches

Q. Definitions

1. Body Cavity Search. A body cavity search is the visual inspection or manual search of a prisoner's anal or vaginal cavity (NJSA 2A:161A-3b).
2. Exigent Circumstances. Facts or circumstances that require immediate action on the part of a Sheriff's officer in the interest of public safety.
3. Inventory Search. Search of a prisoner's clothing and items carried by the prisoner for the purpose of recovering evidence or contraband and for listing of the prisoner's personal property.
4. Pat Down Search. A search of a prisoner consisting of grabbing and squeezing the clothing to reveal any obvious weapons, contraband or evidence.
5. Strip Search. Strip search is the removal or rearrangement of clothing for the purpose of visual inspection of the prisoner's undergarments, buttocks, anus, genitals or breasts.
 - a. The term does not include the removal or rearrangement of clothing reasonably required to render medical assistance, or the removal of articles of outer clothing such as coats, ties, belts or shoe laces (NJSA 2A:161A-3[a]).

R. Pat Down Procedure

1. Any items or packages carried by the prisoner shall be removed and thoroughly searched for possible weapons or evidence.
 - a. Any outer clothing, such as coats, jackets or hats, shall be removed from the prisoner and thoroughly searched for weapons and evidence.
2. Method of Search
 - a. Utilize the search position best suited for a particular arrest such as wall, kneeling, or laying on stomach (prone).
 - (1) When utilizing the prone position officers **shall immediately** upon completion of search **place person in the recovery position** (lying on side or sitting up).
 - b. If circumstances dictate, the prisoner shall be handcuffed.
 - c. The search will consist of grabbing and squeezing of the clothing to reveal any obvious weapons or evidence.
 - d. Start at the head and search downward on one side, and then proceed to the other side.

S. Prisoner of the Opposite Sex

1. Whenever possible, officers of the same sex as that of the prisoner shall conduct the search.
2. If the situation dictates that the officer must search a prisoner of the opposite sex, the search should be conducted before a witness.
3. Unless circumstances require a more extensive search, officers of the opposite sex shall avoid frisking or searching the genital or breast area of the prisoner.
4. If the search can safely be delayed until an officer of the same sex is available to conduct the search, it should be delayed.
5. *Interactions with transgender non-binary individuals*
 - a. Sheriff's personnel shall refer to NJAG Directive 2019-3.

T. Strip Search Requirements for Arrests without Custodial Confinement. A person detained pursuant to a reasonable and articulable suspicion of criminal activity or arrested for the commission of a crime that requires no custodial confinement may be strip-searched only under the following circumstances:

1. the superior officer in charge authorizes the search;
2. under the authority of a search warrant;
3. pursuant to valid consent;
4. supported by a clear showing of probable cause that leads the officer to believe that the person is carrying a concealed weapon, contraband or evidence of a crime; and
5. Exigent circumstances prevent obtaining a search warrant or approval of the officer in Charge.
6. *Interactions with transgender non-binary individuals*
 - a. Sheriff's personnel shall refer to NJ AG Directive 2019-3.

U. Strip Search Requirements for Arrest with Custodial Confinement. Prisoners may only be subjected to a strip search under the following circumstances:

1. the officer in charge authorizes confinement in the County Correctional Facility;
2. under the authority of a search warrant;
3. pursuant to a valid consent;
4. supported by a reasonable and articulable suspicion that the person is concealing a weapon, contraband or a controlled dangerous substance, as defined by the Comprehensive Drug Reform Act of 1987, NJSA 2C:35-1 et al.
5. *Interactions with transgender non-binary individuals*
 - a. Sheriff's personnel shall refer to NJ AG Directive 2019-3.

V. Procedures for Strip Searches

1. A strip search shall be conducted as follows:
 - a. by a person of the same sex
 - b. in private;
 - c. in a professional and dignified manner; and
 - d. under sanitary conditions;
 - e. if in custodial confinement, conducted in accordance with D.O.C. regulations.
2. Please note that the direct observation of a prisoner defecating, urinating or changing a sanitary napkin or tampon is considered a "search" for constitutional purposes, and will be treated as a strip search by the courts.
3. *Interactions with transgender non-binary individuals*
 - a. Sheriff's personnel shall refer to NJ AG Directive 2019-3.

W. Body Cavity Searches

1. Requirements. Prisoners lawfully incarcerated in a county or municipal detention facility should not be subjected to a body cavity search except under the following circumstances:
 - a. The officer in charge authorizes confinement in the county or municipal detention facility.
 - b. The officer in charge authorizes the body cavity search under the authority of a valid search warrant.

- c. In the absence of a warrant, the search may be conducted pursuant to a valid consent.
- 2. **Procedures for Body Cavity Searches.** A body cavity search shall be conducted as follows:
 - a. by a licensed physician or registered nurse of the same sex;
 - b. in private;
 - c. in a medically acceptable manner and environment; and
 - d. under sanitary conditions;
 - e. if in custodial confinement, conducted in accordance with D.O.C. regulations.

- X. Reporting Requirements of Searching Officer.** An officer who performs a strip search or requests a body cavity search must report the reason for the search on his incident report. The report, at a minimum, must include the following:
- 1. a statement of facts indicating reasonable suspicion or probable cause for the search;
 - 2. a copy of the search warrant, if appropriate;
 - 3. a copy of the consent form, if appropriate;
 - 4. the name of the officer in charge who authorized the search;
 - 5. the name of the person conducting the search;
 - 6. an itemized inventory of property found and taken from the prisoner during the search.
 - a. If exigent circumstances provided the basis for the search, the facts should be set forth in the report.

Y. Requirements and Procedures of Officer-In-Charge

- 1. The prisoner shall be processed in accordance with Court Rule 3:4-1, which is outlined in *Volume III, Chapter 4*.
- 2. If appropriate, a prisoner arrested in accordance with Court Rule 3:4-1 shall be released either on their own recognizance or on bail.
- 3. Unless authorized by search warrant or consent, a strip search will not be conducted if the prisoner is to be released without confinement.
- 4. The officer in charge shall request a sworn statement from the licensed physician or registered nurse who conducted the search stating that the body cavity search was conducted.
- 5. The officer in charge will ensure that the officer conducting a strip search or body cavity search records all property taken from the prisoner on appropriate agency forms.
 - a. Unauthorized items and confiscated items shall be shown on the inventory report along with the prisoner's signature.
 - b. If the prisoner refuses to sign the inventory, this should be noted.
- 6. Reports pertaining to strip searches or body cavity searches are not public record.
 - a. These reports shall be made available, upon request, only to the person searched, their legal representative, the County Prosecutor, the Attorney General or the Commissioner of the Department of Corrections.

- Z. Searches of Unconscious or Injured Prisoners.** When an unconscious or seriously injured prisoner is removed to a hospital, an officer shall search the prisoner in the presence of a witness.
- 1. Any unauthorized items found in the prisoner's possession shall be taken by the arresting officer and delivered to the officer in charge for safekeeping.

2. The hospital authorities will include the receipt in the personal property of the prisoner that they are treating.

AA. Non-Custodial Defendants in Court

1. A cursory pat down search of domestic violence defendants is permissible.
 - a. This search shall be performed only when requested by the judge hearing the case.
2. A cursory pat down search may be conducted on all other defendants who are not incarcerated and are appearing for sentencing if there is a reasonable and articulate suspicion that the person(s) has a weapon or contraband on their person(s):
 - a. The cursory pat down search shall be:
 - (1) conducted by a person of the same sex, when possible;
 - (2) conducted in private; and
 - (3) conducted in a professional and dignified manner.
3. ***Interactions with transgender non-binary individuals***
 - a. Sheriff's personnel shall refer to NJAG Directive 2019-3.

BB. Newly Incarcerated Inmates. Individuals who are remanded / committed to the Union County Jail by the court for execution of sentence, violation of probation, contempt, non-support or any other reason or taken into custody on an outstanding warrant shall be:

1. immediately placed in handcuffs;
2. subjected to a pat down search; and
3. have property inventoried on Union County Sheriff's Office Prisoner Property Report
 - a. Copy of Prisoner Property Report to be placed in inmate property envelope.
 - (1) Copy of Prisoner Property Report will be forwarded to the Administration Division property and evidence custodian.

CC. Prisoner Transport. If the arrestee is being transported from a municipal police department, county correctional facility or state prison, and has property inventoried and sealed in that agency's property envelope, officers do not have to open, empty and re-inventory property again (unless items of significant value or large amounts of currency are listed).

DD. Prisoner Property.

1. Occasions will arise when Sheriff's officers will transport prisoners and their personal property to the UC Jail.
2. Prisoner property that is refused by the UC Jail will be forwarded to the Administration Division's property and evidence custodian.
3. The prisoner will be given a receipt (Prisoner Property Report) for the property.
 - a. Receipt will clearly state that property not retrieved within six months will be forfeited as per the provisions of NJSA 40A:14-157.
 - b. This forfeited property will be sold at public auction and the proceeds will be deposited into the UCSO forfeiture account.
4. See *Volume II Operations Chapter 10: Property and Evidence Control*.

EE. Abandoned or Found Property.

1. See *Volume II Operations Chapter 10: Property and Evidence Control*.

FF. Mandatory Compliance. Failure of members to comply with any of the provisions set forth herein shall subject them to disciplinary action up to and including dismissal and may also expose them to civil liability.

APPENDIX A – ARREST, SEARCH AND SEIZURE RELATED FORMS

- A. AG Search Warrant Application Form
- B. Currency Seizure Report
- C. Forfeiture – Law Enforcement Seizure Incident Report Form
- D. Inventory Sheet
- E. No Knock Warrant Request Form
- F. Permission to Search
- G. UCSO Consent to Search Electronic Media
- H. UCSO Consent to Search Property

**** These forms are in the “Arrest and Search Forms” folder on the UCSO X Drive (X:\Sheriff-data\Arrest and Search Forms).**