

	POLICY & PROCEDURE	SERIES # 1126	PAGE 1 OF 3
	SUBJECT		EFFECTIVE DATE
	SEARCH INCIDENTAL TO ARREST		05/25/2021
			OVERSIGHT Operations
DISTRIBUTION ALL MANUALS	AMENDS/SUPERSEDES/CANCELS P&P #1126 dated 01/03/13.		

I. PURPOSE:

To establish guidelines for the search of person(s) who are placed under arrest and taken into physical custody.

II. POLICY:

It is the policy of the Hampton Police Division that search made incidental to an arrest by members of this Division must be in accordance with the guidelines set forth herein. This search will not be exploratory or general and shall be limited to protective purposes for the safety of the arresting officer.

III. PROCEDURE:

A. U. S. Constitution, Fourth Amendment

1. The Fourth Amendment to the U.S. Constitution states in part, "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated."
2. The general rule is that a reasonable search may follow a valid arrest. The officer has the authority to make a search which may extend to articles carried by the suspect and the suspect's immediate surroundings.

B. Legality Of The Search Incident To Arrest

1. For a search incidental to arrest to be legal, the arrest must be valid. If for any reason an arrest is unlawful, any search conducted by the arresting officer may be ruled illegal and any evidence seized could be excluded.
2. When a search is made incidental to an arrest, the search must be based upon the arrest, not the arrest based on the outcome of a search.

APPROVED:
CHIEF OF POLICE



3. Contemporaneous searches, incidental to arrests, are justified by the need to seize weapons and other things which might be used to assault an officer or effect an escape, as well as by the need to prevent the destruction of evidence. Preston vs. U.S., 376 U.S. 364.
4. A search incident to a lawful arrest must be contemporaneous in time and place.
5. A warrant is not required for search incident to an arrest because the search prevents the arrestee from reaching weapons or destroying evidence.
6. A search incident to a lawful arrest is permissible when it is limited in scope.
7. Immediately upon arrest, an officer may lawfully search the person of the arrestee and the area within the arrestee's immediate control-construing that phrase to mean the area from which he might gain possession of a weapon or destroy evidence. Chimel vs. California, 395 U.S.752.
8. When an officer has made a lawful custodial arrest of the occupant of an automobile, they may search the vehicle only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of the arrest (Arizona v. Gant 129 S.Ct. 1720).

C. STRIP SEARCHES AND BODY CAVITY SEARCHES

Strip searches and body cavity searches are massive intrusions of personal privacy and can be tolerated only in the most extraordinary of circumstances. The more intrusive the search, the more likely the balance of interests (courts) will lean in favor of personal privacy.

1. Strip Search - shall mean having an arrested person remove or arrange some or all of his clothing so as to permit visual inspection of the genitals, buttocks, anus, female breasts, or undergarments of such person.
 - a. No person in custodial arrest for a traffic infraction, Class 3 or Class 4 misdemeanor, or a violation of a city, county, or town ordinance, which is punishable by no more than thirty days in jail shall be strip searched unless there is reasonable cause to believe on the part of a law enforcement officer authorizing the search that the individual is concealing a weapon, AND ALL OTHER SEARCH TECHNIQUES HAVE BEEN EXHAUSTED. A supervisor will be notified prior to conducting a strip search.
 - b. Before conducting a strip search or body cavity search of an individual, officers conducting the search will ask the individual to

be searched their preference with respect to the gender of the officer conducting the search (i.e. a trans woman may prefer to be searched by female members of the department). This request will be honored absent exigent circumstances, which shall be documented in writing.

If an individual's gender request can be reasonably and expeditiously accommodated without risk to officer safety, the request should be granted. Under exigent circumstances, including but not limited to the existence of reasonable suspicion of imminent threat of bodily harm or escape, any officer may conduct a search of any detainee, regardless of the gender identity/expression of the detainee.

- c. Strip searches shall be performed by two officers as described in Section b above.
- d. The search shall be performed in an area where it cannot be observed by persons not physically conducting the search.
- e. As soon as possible, the officer conducting the strip search and the attending officer will complete a special report via the chain of command to the Operations Branch Commander. The report will include, but not be limited to, the following information:
 1. Time, date and location of the strip search.
 2. The justification for the strip search.
 3. The name, age, and sex of the arrested person who was searched.
 4. Findings from the search.
 5. Any problems.
2. Body Cavity Search - is any search involving not only visual inspection of skin surfaces but also the internal physical examination of body cavities and, in some instances, organs such as the stomach cavity. Body cavity searches are the most intrusive type of search.

Any Body Cavity search, other than the mouth, ***will be conducted only under the authority of a search warrant.*** In either case probable cause must exist based on specific articulable facts that the arrested person is concealing a weapon, contraband or evidence in a body cavity. (Refer to [P&P 707, EXECUTION OF SEARCH WARRANTS](#)).

