	SALISBURY POLICE DEPARTMENT
	Written Directive: Search and Seizure
	Publication Date: April 23, 2018
	Approved: Barbara Duncan, Chief of Police
Related CALEA Standards: 1.2.3, 1.2.4, 1.2.8	**Search and Seizure** Section #223

Search and Seizure

1. Policy:

It is the policy of the Salisbury Police Department that all searches and seizures of private property and persons will be conducted within well-defined, lawful and constitutional guidelines. As such, this policy will serve as a standard for all matters concerning search and seizure.

2. Purpose:

The purpose of the policy is to ensure that all searches and seizures comply with all constitutional and statutory provisions.

3. General:

A. The Fifth Amendment Right Against Self-Incrimination: Police Officers are often in doubt as to when or if they should advise an individual of his *Miranda* rights. Those rights, defined in the case of *Miranda v. Arizona*, include the right against self-incrimination and the right to counsel when being questioned by the police. The rights attach when an individual is being subjected to an in-custody interrogation, and the question of when "custody" exists may arise. To avoid a dispute about whether or not an individual who has been arrested is in "custody" for purposes of *Miranda*, it is the policy of SPD to give Miranda advisements before conducting any interrogation or questioning, unless special circumstances apply.

B. In order to achieve uniformity and ensure that individuals receive their *Miranda* warnings, police officers will be issued cards with the *Miranda* warnings and waiver on them. When advising individuals of their rights, the officer should read the card aloud to insure a clear record.

C. After the *Miranda* rights have been read, understood, and the individual wishes to waive them, officers will have him or her sign the Waiver of Rights form.

4. Police Limitations on Search and Seizure:

A. The Fourth Amendment guarantees the right for people to be free from unreasonable searches and seizures of their homes, person, and things. The Supreme Court is constantly interpreting the Fourth Amendment as it applies to police conduct. Illegally seized items of evidence will not be admitted in court and may be cause for a lost criminal case. Additionally, an illegally conducted search invites civil suits under the Civil Rights Act. In order to ensure that citizen Fourth Amendment rights are protected, Salisbury Police Officers will obtain search warrants in all appropriate criminal cases except the following:

a) Consent Searches - The consent must be voluntarily given by someone who has the authority to relinquish his or her right. When exercising a consent search the officer will get a written relinquishment.

b) Stop and Frisk is not an arrest; it is a "stop" - The search is limited to a superficial pat down of the outer clothing for weapons. The law established in *Terry v. Ohio,* 392 U.S. 1 (1968) permits a "reasonable search for weapons for the protection of the officer where he has reason to believe that he is dealing with an armed and dangerous individual regardless of whether he has probable cause to arrest the individual for a crime." The Supreme Court in *Terry v. Ohio* further provided the following information:

i. What is a Seizure - For the purposes of the 4th Amendment, a "seizure" takes place "whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person."

ii. What is a Search - A careful exploration of the outer surfaces of a person's clothing all over his or her body in an attempt to find weapons is considered a search.

iii. What is Reasonable - In justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts reasonably warrant the intrusion

iv. What is Objective - Would the facts available to the officer at the moment of the seizure or search warrant a man of reasonable caution in the belief the action taken was appropriate.

v. An anonymous tip may be used, in certain circumstances, to articulate justification to conduct a *"Terry Stop"*. The Supreme Court has held that in order to justify a "*Terry Stop*", an anonymous tip must not simply single out a particular person, but must provide reliable corroborative details about the assertion itself. The officer's suspicion that the defendant was carrying a weapon was not based on any personal observations, but solely on a tip made by an anonymous caller from an unknown location. The officers had "no information about the informant;" therefore, no means to test the informant's basis

of knowledge or credibility.

vi. When you observe unusual conduct which leads you to reasonably believe, in the light of your experience, that criminal activity may be in process and that the individual may be armed and dangerous; when, in the course of investigating this suspicious behavior, you identify yourself as a police officer and make reasonable inquiries; and when in the initial stage of the inquiry you maintain a reasonable fear for your or another's safety, you may conduct a pat down of the outer clothing in an attempt to discover weapons. Weapons seized in such a pat down may be properly introduced in court as evidence.

vii. It is important to understand that the stop and frisk rules are constantly changing and officers are reminded to keep themselves current through roll call training, review of legal updates, and the attendance of approved training courses.

c) Moveable Motor Vehicle - *Carroll v. United States,* 267 U.S. 132 (1925) the automobile exception establishes that automobiles can be searched without a warrant provided (1) there is probable cause to believe the contents of the vehicle violate the law, and (2) the vehicle would be gone before a search warrant could be obtained. The Court added in this case that "where securing of a warrant is reasonably practicable, it must be used." The following factors shall be taken into consideration when applying *Carroll v. United States*:

i. The mobility of motor vehicles often produces exigent circumstances.
ii. A diminished expectation of privacy surrounds the automobile.
iii. A car is used for transportation and not as a residence or repository of personal belongings.
iv. The car's occupants and contents are in plain view
v. Automobiles are necessarily highly regulated by the government.

d) Emergency to save life or property - An emergency must exist, the primary motive is to protect property or people, and the area searched must be associated with the emergency.

e) Plain View - The officer must be in a place where he has the legal right to be in order to discover and/or seize fruits/instrumentalities/ evidence/contraband. Any discovery must be inadvertent, and the property must be recognized as fruit/instrumentalities/evidence of a crime or contraband.

f) Abandoned Property – refers to the property to which the owner has relinquished all rights. When property is abandoned, the owner gives up the reasonable expectation of privacy concerning it. A police officer shall take possession of abandon property as evidence without violating the Fourth Amendment.

g) Inventory of Vehicles
   i. Motor vehicle exception; i.e., search incident to an arrest.
   ii. If evidence of a crime is discovered in the course of an inventory search, it may be seized without a warrant, if the inventory search was conducted as a routine matter and in accordance with agency policy;
   iii. Whenever circumstances cast doubt in the officer's mind he should contact his supervisor or the State's Attorney for further guidance.

h) Incidental to Arrest - An officer can fully search a person once he has been arrested, but only within the area within the immediate control of the person

i) Exigent Circumstances - Emergency search to prevent the imminent destruction/loss of evidence.

j) "Hot Pursuit" or "Fresh Pursuit" - A search in which a police officer may enter a private premises without a warrant when the officer suspects a crime has been committed by the person being pursued and when delay would endanger their lives or the lives of others and lead to the escape of the alleged perpetrator if the pursuit of the individual has been continuous and without unreasonable delay.

5. General:

In all search and seizure cases, the officers are cautioned that where there is time to obtain a search warrant, notwithstanding the above exceptions, the officers should obtain a warrant.

6. Searches of Arrested Subjects:

A. The safety of officers and the public are of the utmost importance. The transporting officer must ensure that the prisoner is not in possession of a weapon. This consideration must not be compromised, even in those situations where the prisoner is of the opposite sex than that of the transporting officer. Any transporting officer, prior to moving an arrested subject from one location to another, shall thoroughly search all prisoners for concealed weapons and/or other contraband / evidence.
   a) Under no circumstances shall officers assume that another officer has searched a prisoner.
   b) Independent searches: Prior to accepting a prisoner for transport, officers will conduct an independent search of that subject.
   c) Opposite Sex Searches: The safety of officers, the public, and the arrested subject are of the utmost importance. The transporting officer must ensure that the prisoner is not in possession of a weapon. This consideration must not be compromised, even in those situations where the prisoner is of the opposite sex than that of the transporting officer.

i. Officers must exercise prudence and good judgment in conducting a search incident to arrest of a subject of the opposite sex. Attempts should be made to find an officer of the same sex as the prisoner to conduct the search. In this effort, a request will be made to allied jurisdictions for assistance. Officers should consider:
   1) Maryland State Police
   2) Wicomico County Sheriff's Office
   3) Delmar Police Department
   4) Fruitland Police Department
   5) Salisbury University Police Department

ii. If an officer of the same sex as the prisoner is not available, a limited pat down outside of the clothing may be carefully conducted with the blade or back of the hand. This pat down is conducted to locate weapons and or contraband / evidence of a crime. This search is to be recorded on the Body Worn Camera and/or the In Car Video System.

iii. In cases where reasonable suspicion would exist when the officer, based upon his/her observations and knowledge obtained from witnesses, believes that the suspect may be armed or concealing contraband / evidence that if not recovered may be lost or lose its value as evidence, the search shall be as though if the subject and the searching officer were of the same sex. Areas of possible concealment, i.e., behind the ears, under the tongue, should not be overlooked.

7. <u>Strip and Body Cavity Searches:</u>

A. Strip searches with or without a warrant may be necessary for the safety and security of members of the department, or to seize evidence of criminal activity.

   a) The strip search shall not be conducted unless the officer has reasonable suspicion to believe that the suspect is concealing a weapon or contraband on his/her person and then only with the authorization of a division commander following an evaluation of the facts. Time permitting a search warrant shall be obtained.

   b) The division commander authorizing the search shall ensure that it is conducted within the limits of legal authority, out of public view, in a secure area within the bathroom of the processing area of the holding cell of the department and with due regard for human dignity and privacy.

   c) The strip searches shall be conducted by just two officers of the same gender as the person being searched. One officer shall conduct the search and the other officer shall be available for any needed assistance and to ensure that the search is

conducted in accordance with this policy.

d) This search shall not be videoed or photographed to preserve human dignity and privacy.

e) If a weapon or contraband is observed taped to the body, the officer shall remove the item in a tactful manner.

f) If a possible weapon or contraband is observed inside a body cavity, the employee shall appropriately and safely restrain the suspect and obtain a body cavity search warrant. Under no circumstances will the officer remove the item.

g) While awaiting the body cavity search warrant the suspect shall be kept under constant and watchful supervision and shall be taken to a hospital facility where the search warrant shall be executed. All strip searches shall be documented on the appropriate Departmental Memo form and routed through the chain of command to the Office of the Chief.

h) If a strip and body cavity search of a transgender individual is required, the officers conducting the search will be of the same gender as the arrestee as determined in the Gender Identification section of this policy.

i) Strip and body cavity searches will be conducted in the same manner for adults as juveniles.

8. <u>Body Cavity Search:</u>

A. Body cavity searches require a search warrant issued by the applicable judicial authority, special hygienic procedures and a licensed and practicing medical physician to conduct the search. Beyond a visual examination of the mouth, nose and ears, all body cavity searches will be conducted by qualified medical personnel. An officer of the same gender of the person being searched shall be present to ensure that the chain of evidence is maintained.

B. No photographs, video and/or audio recordings shall be made of the search in order to preserve human dignity and protect privacy.

C. All body cavity searches will be thoroughly documented in the incident report. The Division Commander shall ensure that written documentation of the search (strip or body cavity) is made by the involved personnel within their tour of duty, or no later than eight hours following their tour of duty during which the search occurred. A copy of the report(s) shall be immediately forwarded to the Office of the Chief of Police.

D. The Administrative Commander shall maintain a copy of all reports pertaining to searches of this nature.

E. If a strip and body cavity search of a transgender individual is required, the officers conducting the search will be of the same gender as the arrestee as determined in the Gender Classification section of this policy.

9. <u>Gender Classification:</u>

A. A person's gender will be classified as it appears on the individual's government issued identification card.

B. In the event the person does not have a government issued identification card available, the officer will respectfully ask if the person has male genitalia.
   a) If the arrestee states that they have male genitalia, he will be classified as a male.
   b) If the arrestee states he/she does not have male genitalia, she will be classified as a female.

C. In the event that the officer is uncertain of a person(s) gender classification or the person refuses to identify his/her gender classification, the officer will consult with their supervisor. These occurrences will be documented in a supplemental report.

D. If the person utilizes a different name than as it appears on their government issued identification card, this name will be documented on the arrest report as an alias.

10. <u>Searches Involving Transgender Person(s):</u>

A. Definition:
   a) Transgender – Any person whose gender identity or expression differs from the one which corresponds to a person's anatomical sex at birth.
   b) Gender Identity / Expression – The actual or perceived identity or behavior of a person as being male or female.
   c) Sexual Orientation – An individual's enduring romantic, emotional, and/or sexual attraction to individual(s) of a particular gender.

B. Searches:
   a) Searches will be conducted by an officer who is the same gender as the arrestee as determined in the policy and is in accordance with both warrantless search and seizure and the search of prisoners. The exception to this policy will be those person(s) who have undertaken operative procedures for gender reassignment.
      i. Male to female person(s) will be processed as a female;
      ii. Female to male person(s) will be processed as a male.

C. A person may request an officer of the same gender identity or expression is present while the search takes place. When reasonable, an officer of the same gender expression as the arrestee will be requested to respond to the incident scene to be present for the field search.

D. If an arrestee objects to being searched by a female or male officer, the officer will inquire the nature of the objection. The officer will consult with their supervisor and document the objection in a supplemental report attached to the arrest, specifically indicating the person's stated preference.

E. Transgender persons will not be subject to more invasive search or pat down procedures than non-transgender persons.

F. Identity related items such as clothing, wigs and other cosmetic items may be temporarily seized:
   a) Only as necessary to ensure officer safety;
   b) Consistent with procedures while processing non-transgender persons; and
   c) In accordance with this policy.