

	MARICOPA COUNTY SHERIFF'S OFFICE POLICY AND PROCEDURES	
	Subject SEARCH AND SEIZURE	Policy Number GJ-3 Effective Date 11-09-23
Related Information Arizona Revised Statutes Arizona Rules of Criminal Procedures CP-1, <i>Use of Force</i> EA-2, <i>Patrol Vehicles</i> EA-3, <i>Non-Traffic Contact</i> EB-1, <i>Traffic Enforcement, Violator Contacts, and Citation Issuance</i> EB-5, <i>Towing and Impounding Vehicles</i> EB-11, <i>Vehicle Impound 3511</i> GE-3, <i>Property Management and Evidence Control</i> GF-5, <i>Incident Report Guidelines</i> GI-5, <i>Voiance Language Services</i> GJ-5, <i>Crime Scene Management</i> GJ-35, <i>Body-Worn Cameras</i>		Supersedes <p style="text-align: center;">GJ-3 (05-05-22)</p>
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PURPOSE

The purpose of this Office Policy is to establish guidelines and procedures regarding search and seizure. The Fourth Amendment to the U.S. Constitution and the Article II Section 8 of the Arizona Constitution places limits on the power of law enforcement to make arrests, conduct searches on persons and their property, and seize objects and contraband, such as illegal drugs or weapons. These limits are the bedrock of search and seizure law.

POLICY

It is the policy of the Office to conduct all searches and seizures in a lawful manner in order to support the Constitutional rights of members of the public, ensure proper evidentiary procedures are followed in accordance with established law and Office Policy, and in due regard for the safety of all deputies, members of the public, and property involved.

DEFINITIONS

Affiant: A person who makes an affidavit or declaration under oath.

Affidavit: A voluntary declaration of facts written down and sworn to by the declarant before a judicial officer authorized to administer oaths.

Automobile Exception: An exception to the prohibition on warrantless searches that allows a deputy to search an automobile without a search warrant in cases where the deputy has probable cause to believe that the automobile contains evidence of a crime, the area of the automobile being searched might reasonably contain the evidence, and that the evidence would be disposed of if the deputy were to leave to obtain a warrant. This exception allows the deputy to search a container in the automobile only if the container might reasonably conceal the object of the search. Any search under the automobile exception is necessarily limited by what the deputy is seeking in the search.

Boilerplate: Language that is stock, unoriginal, appears repeatedly in different reports, and fails to attest to the unique facts of an incident.

Case Agent: The lead investigator designated for a specific investigation. The case agent is responsible for overall management of the case. This would include delegation of investigative tasks, lead tracking, collection of supplemental reports and other relevant case documentation, verifying all evidence is impounded, packaging the case for prosecution, and assisting the prosecutor with the presentation for the case in court proceedings, and providing a final disposition approval of all property and evidence held in reference to the investigation, at the conclusion of the case.

Curtilage: Grounds or buildings, such as a yard, courtyard, or shed, immediately surrounding and associated with a house or building.

Deconfliction: The process of determining when law enforcement personnel are conducting an event, in close proximity to one another, at the same time. Events include, but are not limited to, law enforcement actions such as raids, undercover operations, surveillance, or executing search warrants.

Deputy: Any sworn law enforcement officer employed by the Office, and reserve deputies with car commander status.

Exigent Circumstances: The sum of the conditions and information available in any event which, taken in their totality, dictate a need for immediate action.

Finder: The deputy assigned the duty of finding and seizing all items of evidence.

Investigative Supervisor: The supervisor in charge of the component tasked with a criminal investigation. In the case of patrol investigations, this could be the patrol supervisor. Once the investigation is assumed by an investigation component, the investigative supervisor is the person in charge of that investigative unit. In cases of joint unit investigations, the investigative supervisor will be the supervisor of the unit responsible for the most serious crime being investigated (e.g. a joint investigation between homicide and auto theft, the homicide supervisor would be the investigative supervisor). The investigative supervisor is responsible for overseeing and managing all aspects of the investigation, management of personnel and resources, delegating investigative tasks such as case agent and lead scene investigator, facilitating cooperation between various relevant groups, keeping the chain of command informed, and verify the case is managed appropriately.

Lead Scene Investigator: The detective charged with the responsibility of managing and processing of the crime scene or search warrant location. The lead scene investigator is responsible for delegating scene investigation duties, such as recorder and finder; preparing an operations plan, if necessary; coordinating with specialized units who may assist; documenting the crime scene and subsequent search; and ensuring evidence collected is entered and impounded into the Property Management Division.

No-Knock Warrant Entry: An exception by the courts that allows entry without using the knock-and-announce rule. This exception is typically used when the knock-and-announce would lead to the destruction of the objects for which the deputies are searching or would compromise the safety of the deputies or another individual. The appropriate facts and circumstances leading the deputy to this conclusion must be enumerated in the affidavit of the search warrant.

Packager: The employee who works with the finder and the recorder, who is responsible for the packaging of seized items and inventory of all items taken.

Plain View: Items in the line of a deputy's sight which are in the open and visible without moving other objects to view the item in question. The Plain View Doctrine is a rule of criminal procedure which acts as an exception to the Fourth Amendment's right to be free from searches without a search warrant. This doctrine permits a warrantless

seizure and use as evidence of an item seen in “plain view” from a lawful position or during a legal search when the deputy has probable cause to believe the item is evidence of a crime or contraband.

Probable Cause: Reasonable grounds, known to the Office employee at the time, which would justify the Office employee to suspect that a person has committed or is committing a crime or that a place contains specific items connected with a crime.

Reasonable Expectation of Privacy: What is sought to be preserved as private, even in an area accessible to the public, may be constitutionally protected.

Reasonable Suspicion: Specific, objective, articulable facts and circumstances that would lead a reasonable person, based on their training and experience, to conclude a crime is occurring, or is about to occur, and that a specific individual committed or is about to commit that crime. This is held to be a lower standard than probable cause.

Recorder: The employee who works with the finder and is responsible for recording the time, location, item number and a distinctive description of the property seized.

Search: A governmental intrusion by virtue of an inspection, examination, or viewing of persons, places, property, items, or area in which a person has a reasonable expectation of privacy, for the purpose of obtaining information or evidence.

Search Warrant: An order in writing, issued in the name of the State of Arizona, signed by a magistrate, directed to a peace officer, commanding them to search for personal property, persons, or other items, as specified in ARS 13-3912. A search warrant may be requested by contacting a magistrate in person, telephonically, or electronically and submitting a sworn affidavit to the magistrate that sets forth facts to establish probable cause for the issuance of the search warrant, as specified in ARS 13-3914.

Seizable: Items may be seized when specified in a warrant or without a warrant if the deputy has probable cause to believe the item is contraband, fruit of a crime, or instrumentalities of a crime. Additionally, the deputy must have proper legal justification for a warrantless entry into an area where an expectation of privacy exists.

Seizure: A peace officer stopping, detaining, or taking custody of a person, or taking possession of or controlling a person’s property.

Standing: A position from which one may assert or enforce legal rights and duties.

PROCEDURES

1. **Search Warrant:** A search warrant must be supported by an affidavit and will be issued upon the showing of probable cause. The affidavit specifically names and describes the person or place to be searched and the person or property to be seized. A search warrant may be issued upon the following grounds:
 - A. When the property to be seized was stolen or embezzled;
 - B. When the property or items to be seized were used as a means of committing a public offense;
 - C. When the property or items to be seized are in the possession of a person having the intent to use them as a means of committing a public offense; or in the possession of another to whom they may have delivered it for the purpose of concealing it, or preventing it from being discovered;
 - D. When property or things to be seized constitute any evidence, which tends to show that a particular public offense has been committed; or tends to show that a particular person has committed the public offense;

- E. When the property is to be searched and inspected by an appropriate official in the interest of public health, safety, or welfare as part of an inspection program authorized by law; or
 - F. When the person sought is the subject of an outstanding arrest warrant and the subject is reasonably believed to be in a structure or dwelling that may or may not be their known residence.
2. **Search Warrant Affidavit:** A search warrant must be based upon a duly sworn to and subscribed to affidavit which sets forth objective facts to establish probable cause to believe that the property sought to be seized is upon the premises; person; vehicle; or electronic property items, such as, cellular phone data storage content, to be searched and related to the crime being investigated. The affiant shall construct the affidavit with as much detail as possible and must not be based on bare conclusions. Wording shall be used that will allow the magistrate to determine how the information was obtained. Attention shall be given to complete and detailed descriptions of the premises, person, or vehicle to be searched and the person or property to be seized. Deputies shall not use or rely on information known to be materially false or incorrect in effectuating an investigatory stop or detention, or in establishing reasonable suspicion for a search.
- A. The description of the person shall include the person's name, race, sex, date of birth if known, and a complete, detailed, and accurate description of the person's physical characteristics in an effort to distinguish the person from someone else.
 - B. The description of the place to be searched shall include, but not be limited to, the following:
 - 1. A description of the building and curtilage, including the address, in an attempt to distinguish it from all other buildings in the area; and
 - 2. A description of the article to be searched, such as a vehicle, enclosed trailer, or suitcase, and a pinpointing description of its location.
 - C. The description of the property to be seized shall be particular, specific, and complete, indicating what items are sought to be seized.
3. **Issuance of a Search Warrant:** A search warrant may be obtained from the Search Warrant Center at the Maricopa County Superior Court Initial Appearance Section or any magistrate, justice of the peace, superior court judge, court of appeals, or Supreme Court judge upon submission of a completed affidavit and search warrant. The magistrate will authorize the warrant by their signature and court seal, after being satisfied that probable cause exists. This may include a digital signature and electronic court stamp for e-warrant returns.
- A. A search warrant may be requested by contacting a magistrate in person, telephonically, or electronically, as specified in Arizona Revised Statutes 13-3914. An on-call magistrate can be reached by contacting the MCSO Intake, Transfer, and Release facility (ITR) or the Communications Division.
 - 1. In person: Deputies may request a search warrant in the presence of a magistrate by presenting a written affidavit to a magistrate.
 - 2. Telephonic Search Warrant: Deputies may request a search warrant telephonically when it is not practicable for the deputy obtaining the warrant to present a written affidavit to a magistrate.
 - 3. E-Warrant: Deputies with E-Warrant access may request a search warrant electronically through the E-Warrant portal when it is not practicable for the deputy obtaining the warrant to present a written affidavit to a magistrate.

- B. A search warrant shall be executed within five calendar days from its issuance and returned to a magistrate within three court business days after the warrant is executed. Upon expiration of the five-day period, the warrant is void unless the time is extended by a magistrate. The time for execution of the warrant may be extended for no longer than five calendar days.
- C. A search warrant is good for daytime hours only, which are specified as 0630 hours to 2200 hours, unless a nighttime exception warrant is requested and granted by a magistrate. The affidavit must clearly demonstrate good cause for a nighttime exception request.
- D. A search warrant issued in this state is valid for service by any peace officer within the geographical boundaries of the state.

4. Search Warrant Execution:

- A. Prior to the execution of a search warrant, strategies and tactics for approaching, entering, securing, and leaving the search area shall be developed. Deconfliction, including notification of other law enforcement agencies that share jurisdiction with the site or property named in the search warrant, shall also be conducted. When developing strategies and tactics, considerations include, but are not limited to, the following:
 - 1. Geographical layout of the location;
 - 2. Interior layout of the search location;
 - 3. Approach and escape routes;
 - 4. Construction and peculiarities of the search location, such as fire hazards, barred windows, reinforced doors, booby traps, or attack dogs, and whether the search location can be penetrated by gunfire;
 - 5. Location of all utility shutoff points, both internal and external;
 - 6. Location of possible evidence disposal points, such as sinks, toilet bowls, and drains;
 - 7. Number of suspects and additional people that may be at the search location;
 - 8. Information regarding persons involved, such as gender and age;
 - 9. Historical information for persons and location, such as CAD documents to establish history;
 - 10. The presence of weapons and their accessibility to the suspects; and
 - 11. Identification of any undercover personnel or confidential informants inside the search location.
- B. Equipment: Adequate preparation shall enable the supervisor to determine what equipment may be needed including, but not limited to, the following:
 - 1. Weapons;
 - 2. Body armor;

3. Distinctly identifiable clothing for all search personnel, such as lightweight jackets or shirts, with proper lettering or insignia;
 4. Restraint equipment; and
 5. Communication equipment.
- C. Specialized Support Personnel: The need for specialized support personnel will be dependent on the information and actions surrounding each search operation. Prior to the start of operations, the investigative supervisor shall provide support personnel with a copy of the operational plan. Specialized support personnel may include, but are not limited to, the following:
1. Tactical Operations Unit (TOU) personnel;
 2. Explosives Ordinance Disposal (EOD) personnel;
 3. Canine Unit personnel;
 4. Cyber Crimes/ Electronic Evidence Analysis, Remote Surveillance (EEARS);
 5. Scientific Analyst Division (Crime Lab) personnel; and
 6. Medical assistance personnel.
- D. Search Warrant Entry:
1. To protect deputies from incidents of mistaken identity, doubt of credibility, or other situations of misunderstanding, a readily identifiable peace officer, or a uniformed peace officer, preferably a uniformed deputy, shall be present at the initial contact. If no uniformed deputy is available due to an exigent circumstance, the exigent circumstance should be documented in the IR. In those instances, personnel should be in attire that is clearly identifiable as a deputy sheriff.
 2. All members of the search warrant execution team shall, when possible, wear distinctive clothing identifying them as members of the team.
 3. Prior to entry into the property to be searched, the deputy must knock and announce, giving notice of authority and purpose, unless granted a “no-knock warrant entry” exception by the courts, after articulation of appropriate facts and circumstances. If after conducting the knock and announce, the deputy receives no response within a reasonable time or is refused admittance, the deputy may use forced entry into a building, premises, or vehicle, or any part thereof, to execute the warrant in compliance with ARS 13-3916. A reasonable effort will be made to make entry without causing damage.
 4. Upon entry, the time of entry, people present at the search location, and whether they are part of the search team or support personnel shall be documented by a deputy designated by the lead scene investigator. After entry into the premises, the deputy must show the search warrant to the occupant, as soon as practical, if they are present. If the occupant requests that the search warrant be produced prior to entry, the deputy must show the search warrant to the occupant.
 5. Restrictions of movement may be imposed on any occupant of the premises to prevent interference with the execution of the warrant or the destruction of evidence. Any person

at the search warrant location is subject to search, if it is reasonably believed they may have in their possession an item listed in the warrant.

6. Any person in the place to be searched may be frisked for weapons when it is reasonable to believe the person may be presently armed and dangerous. The purpose and scope of the frisk or pat-down is to ensure that the person is not in possession of weapons or other items that pose a danger to deputies' safety or those nearby. This does not include a generalized search of the entire person.
- E. Occupants of a Residence: The categorical authority to detain occupants of a residence during the execution of a search warrant does not extend to persons who are not in the immediate vicinity of the premises being searched. Factors to consider regarding whether a person is in the immediate vicinity of the scene of a search warrant include, but are not limited to:
1. The lawful limits of the premises; the property boundaries;
 2. Whether the occupant was within a line of sight of the premises being searched; and
 3. The ease of reentry from the occupant's location.
- F. In order to detain a resident who is not in the immediate vicinity of the scene of a search warrant, the deputy needs reasonable articulable suspicion of criminal activity. The deputy should therefore articulate such facts that would provide the required reasonable suspicion. The deputy must keep the detention reasonable in scope to the facts that justify the stop.
- G. Disruption and Damage: The Office has an obligation to conduct each search thoroughly, but with as little disruption and damage to property as possible. If time permits, there shall be an effort to restore major items to pre-search locations, so as to limit the perception of chaos or indifference, and to reasonably secure the search location prior to departure.
1. If the occupants have been arrested or are unavailable and reasonable means to contact them have been made by the case agent, the premises shall be reasonably secured prior to all law enforcement personnel leaving the search location.
 2. If the premises were entered by force and damage resulted, the investigative supervisor shall arrange for security of the premises until it can be secured.
 - a. Overall photographs shall be taken as soon as practical, once the scene is made safe following entry.
 - b. A second set of overall photographs shall also be taken at the completion of the search warrant and shall include photographs of any damage created by the search or entry into the property.
 - c. The forced entry and damage caused by the forced entry event shall be documented in an *Incident Report (IR)*. If *Use of Force* was used against a person during the forced entry or execution of a search warrant, the *Use of Force* shall be documented, as specified in Office Policy CP-1, *Use of Force*.
 3. Documentation should be made in the IR whenever any steps are taken to prevent or minimize damage, to include but not limited to:
 - a. Asking for keys;

- b. Obtaining security access codes; or
 - c. Checking if entry points are unlocked.
5. **Scope of the Search:** The scope of the search is limited to those areas where the items sought in the search warrant could possibly be concealed. All closed containers whose contents are unable to be ascertained from the container's exterior shall be opened and inventoried.
- A. The search of the premises and the seizure of items shall be strictly controlled and documented. A finder and recorder team shall be designated by the lead scene investigator to conduct the search of the premises or a specific limited area within the premises. The finder, recorder, and packager team is responsible for finding, seizing, packaging, documenting, and ensuring the chain of custody for all evidence, as specified in Office Policy GE-3, *Property Management and Evidence Control*.
 - B. All evidence seized shall be listed in a detailed receipt, as specified in Office Policy GE-3, *Property Management and Evidence Control*. The receipt shall be given to the person from whom the property was taken or in whose possession it was found. A copy of a *Search Log* may be issued as a receipt. In cases in which the search location is vacant, a receipt shall be left at the premises in a conspicuous location.
 - C. Photographs shall be taken of all physical evidence prior to the item being collected and packaged.
 - D. If, during the course of the search, a seizable item not listed in the warrant is discovered, this item may be seized.
 - E. All items seized during the search shall be processed and impounded at the Property Management Division, as specified in Office Policies GJ-5, *Crime Scene Management*, and GE-3, *Property Management and Evidence Control*.
 - F. When serving a search warrant in which the evidence has been destroyed or cannot be located, the affiant shall complete a supplement to the IR with an account of the incident, location, and names of all occupants contacted at the search location.
6. **Incident Reports:** Due to the potentially large time gap between the execution of the search warrant and court appearances, meticulously detailed IRs are essential. The IR may be the only link to recall the events and discoveries during the search warrant execution and will depend on the thoroughness of the notes taken. All IRs covering search warrant executions should include, but not be limited to, the following information:
- A. Names and serial numbers of all involved personnel;
 - B. Time of entry into, and departure from, the search location;
 - C. Time for closing the warrant;
 - D. Time and date the warrant and search logs were returned to the court;
 - E. Names, physical descriptions, and addresses of all occupants present at the search location; and their location within the premises at the time of entry; and
 - F. A complete inventory of all items seized, and the name and serial number of the deputy seizing the property and transporting it to the Property Management Division.

7. **Search Documentation Related to Investigatory Stops:** The search of a member of the public and/or a vehicle following an investigatory stop shall be documented as follows:
 - A. All investigatory stops or searches conducted during the course of a traffic stop shall be documented on the *Vehicle Stop Contact Form* (VSCF), as specified in Office Policy EB-1, *Traffic Enforcement, Violator Contacts, and Citation Issuance*.
 - B. All investigatory stops or searches of individuals conducted by a deputy that were not a result of a traffic stop, and documentation in an IR is not required, shall be documented on the *Non-Traffic Contact Form* (NTCF), as specified in Office Policy EA-3, *Non-Traffic Contact*.
 - C. When investigatory stops or searches are conducted during the course of an event and documentation in an IR is required; the IR shall be completed following the procedures, as specified in Office Policy GF-5, *Incident Report Guidelines*.

8. **Warrantless Searches:** Most searches occur without warrants being issued. The courts have defined a number of situations in which a search warrant is not necessary, either because the search is reasonable under the totality of the circumstances, or because, due to a lack of a reasonable expectation of privacy, the Fourth Amendment does not apply.
 - A. **Consent to Search:** If the person against whom the search is directed voluntarily consents to the search of their person, property, or vehicle, a search may be conducted, and any fruits or instrumentalities of a crime or contraband articles may be seized. The following issues shall be taken into consideration:
 1. Any consent to search must be voluntary, without fear, threats, or promises; and requested from a person who by ownership, standing, or otherwise is entitled to give consent to a search.
 - a. When a physically present co-occupant of a dwelling refuses consent, it is considered a refusal, even if other occupants consent to a search.
 - b. When a person occupies or controls a personal or private area of the premises, such as a bedroom, and that person is not available to give personal consent to search the private area, a co-occupant cannot consent to a search of the private area; however, they may consent to common areas of the premises, such as a living room or kitchen.
 - c. The person giving consent can withdraw consent at any time during the course of the search, at which time the search shall be immediately terminated.
 - d. If consent is withdrawn, the search shall be immediately terminated, unless probable cause to arrest or continue the search has been established prior to the consent being withdrawn. If probable cause to arrest has been established, the rules related to search incident to arrest shall be followed. If probable cause is established to continue searching the premises, a search warrant shall be obtained.
 - e. Deputies conducting traffic stops shall advise Communications Division personnel, when applicable and by radio contact prior to the completion of the traffic stop, of all consent searches conducted, as specified in Office Policy EB-1, *Traffic Enforcement, Violator Contacts, and Citation Issuance*.

2. When a deputy seeks consent for a search, the deputy shall affirmatively inform the person of their right to refuse and to revoke consent at any time. The request for consent to search and response, including any consent or refusal by the person, shall be captured on the body-worn camera, as specified in Office Policy GJ-35, *Body-Worn Cameras*.
 - a. Deputies working in a detective assignment shall capture the request for consent to search and response, including any consent or refusal by the person, on an Office issued digital recording device, if not captured on a body-worn camera.
 - b. If the body-worn camera or Office issued digital recording device is not available for use, the deputy or deputy working in a detective assignment, shall read and provide the information from the *Consent to Search* form, and request the person's signature.
 - c. If the person is a Spanish speaker, the deputy shall provide the person with a *Consent to Search* form in Spanish. If the person is limited in their English proficiency and does not speak Spanish, the deputy should use the telephonic language interpreting service provider, as specified in Office Policy GI-5, *Voiance Language Services*.
 - d. The person's signature shall be requested, and consent shall be obtained prior to beginning a consent to search, thereby acknowledging and waiving their rights.
 - (1) In the event the person voluntarily consents to the search, but is unable to sign or refuses to sign the *Consent to Search* form, the deputy shall document the reason for the inability to sign or refusal to sign in the signature block of the *Consent to Search* form. Deputies shall not inquire as to the person's specific injury, disability, or reason for a refusal to sign beyond the person's inability to provide their signature or the person's decision to voluntarily consent to the search without providing their signature.

Example: "UNABLE TO SIGN, DUE TO INJURY"

Example: "REFUSED TO SIGN, BUT VERBAL CONSENT GIVEN"
 - (2) The completed *Consent to Search* form shall be submitted with all associated documentation within the TraCS system.
 - e. All deputies shall carry hard copies of the *Consent to Search* forms in English and Spanish, in their Office vehicles, as specified in Office Policy EA-2, *Patrol Vehicles*. These forms shall be used in the event the TraCS system is unavailable. The hard copies shall be scanned and attached to the associated documentation within the TraCS system, when available.
3. The scope of the search is governed at all times by the terms of the person giving consent.
4. Deputies shall not destroy property, such as doors and locks, based solely on a general consent, unless given specific permission by the person giving consent.
5. Although voluntary consent can be given by a person in custody, the courts may be reluctant to find that consent was in fact voluntarily given by a person in custody, who may not be fully aware of their constitutional right to refuse permission for a search. While it is

permissible to conduct searches under such circumstances, it is unwise, as a matter of general practice, to rely upon the arrested person giving consent at the time of their arrest, if it is possible to obtain a search warrant in advance of the arrest. If a search warrant is not requested prior to the person(s) arrest, deputies may follow the consent to search procedures, as specified in this Office Policy in order to obtain consent.

- B. Frisk: Deputies may only frisk an individual who has been lawfully detained when the deputy reasonably believes that the person with whom the deputy is dealing with may be presently armed and dangerous. Conducting a frisk is for the limited purpose of ensuring officer safety, and the purpose and scope of the frisk is to ensure that the person is not in possession of weapons or other items that pose a danger to the deputy's safety or those nearby. This does not include a generalized search of the entire person.
 - 1. Deputies may conduct a limited pat-down search of the outer clothing of the suspected person to determine whether they have a weapon.
 - a. During the pat-down search, if a deputy feels a weapon, the deputy may retrieve that weapon.
 - b. If during the pat-down the deputy feels an item that they immediately know is contraband, the deputy may seize that item.
 - 2. Deputies may conduct a search of a vehicle when there is a lawful detention of the vehicle and deputies have reasonable suspicion to believe a person is dangerous, and a weapon that could be used to harm them is in the vehicle. Deputies may search the interior passenger area of the vehicle and any containers that are accessible and capable of containing a weapon.
- C. Search Incident to Arrest: Warrantless search incidents to a lawful arrest are valid to seize weapons or other articles which might be used to attack the deputy; to seize the means to effect escape; to prevent the destruction of the fruits or instrumentalities of the crime for which the arrest was made, or evidentiary items of the crime for which the arrest was made. These searches are a valuable tool for ensuring the safety of deputies and securing evidence.
 - 1. Deputies shall have probable cause to place a person under arrest and intend to arrest the individual before a search is conducted. Deputies can search the arrestee's person, possessions in their immediate control, and a designated area near the arrestee.
 - 2. A search for items beyond the person must be limited to those areas which remain within the reach of the arrestee. Reach is not confined to arm's length but includes the areas reachable by the person if they were to make a lunge or quick move to gain possession of a weapon or destroy evidence.
 - 3. If it is necessary for the person arrested to move about after their arrest, to put on clothing or assemble belongings, those areas to which the person continues to have access may also be searched for weapons or destructible evidence.
 - 4. When deputies have reason to believe that a vehicle contains evidence of the offense for which the person is being arrested, deputies may search the interior and passenger compartments of the vehicle where evidence could be located or may conduct a search of the vehicle when within proximity and contemporaneous incident of the person being arrested. Glove compartment or any other compartment whether locked or unlocked and all containers found within the interior of the vehicle shall require a search warrant unless

the warrantless automobile exception exists, as specified in this Office Policy. This does not prohibit deputies from conducting an inventory of the vehicle upon impound.

- D. **Protective Sweep:** Deputies may conduct a limited search of a structure or vehicle when the deputy has reasonable suspicion to believe that a person may be hiding, may be a threat to the safety of the deputy, and/or a weapon may be nearby and used against the deputy. Searches for weapons shall be limited to those areas in which a weapon may be placed or hidden.
- E. **Plain View Seizure:** Deputies may seize evidence and contraband that is found in plain view during a lawful observation. The following shall apply:
 - 1. Deputies shall be lawfully present at the place where the evidence or contraband can be plainly viewed;
 - 2. Deputies shall have a lawful right of access to the evidence or contraband. While plain view observations may be used to formulate probable cause, they do not allow the deputy to enter a structure or vehicle to seize the evidence, absent a search warrant, consent, or another recognized exception;
 - 3. In service of a warrant, items of evidence or contraband in plain view may be seized based on probable cause even if the item is not enumerated in a search warrant;
 - 4. Deputies shall not move objects to get a better view of the item;
 - 5. In order to seize the item, deputies shall have probable cause to believe the item is evidence or contraband; and
 - 6. The incriminating character of the evidence or contraband must be immediately apparent.
- F. **Motor Vehicles:** A warrantless search may be made of a vehicle under the automobile exception, where a deputy has probable cause to believe a crime has been committed and evidence of that crime or contraband may be present inside of the vehicle. Sufficient facts must exist so that if the deputy attempted to obtain a search warrant, the deputy would be successful. In order for this exception to be valid, the vehicle must be readily movable.
 - 1. The search may include any area of the automobile, including locked and unlocked compartments where the object of the search may reasonably be present.
 - 2. The search of the vehicle need not be contemporaneous with the seizure and may occur either on scene or later at an MCSO facility.
 - 3. The search must be conducted in a reasonable amount of time following the seizure, not to exceed 24 hours.
 - 4. Containers inside a vehicle may only be searched pursuant to the motor vehicle exception if there is probable cause to believe the container is concealing the object of the search. This would also include belongings of a passenger contained within the vehicle assuming probable cause exists that they too could conceal the object of the search.
- G. **Inventory Search:** Any deputy having a vehicle towed shall conduct an inventory of the interior and trunk areas in order to record all property in the vehicle, as specified in Office Policy EB-5, *Towing and Impounding Vehicles* and Office Policy EB-11, *Vehicle Impound 3511*.

1. The inventory search shall not extend beyond the legitimate governmental needs as recognized by the United States Supreme Court, including:
 - a. Protection of the owner's property;
 - b. Protection of the deputies from claims and disputes over stolen or lost valuables;
 - c. Protection of the public and police from dangerous items; and
 - d. Verification of identity of the property owner.
 2. Vehicles towed at the request of the owner or responsible party shall not normally be inventoried.
 3. Items found during inventory search that appear to be contraband may be seized and used as evidence.
- H. Exigent Circumstances: Entry may be made if a deputy has probable cause to believe an emergency exists. The deputy shall have probable cause to enter, prior to entry, when using this exception. This exception is justified only when, due to the nature of the emergency, there is insufficient time to obtain a search warrant. This includes, but is not limited to:
1. Hot pursuit which allows access to a place where a suspect has fled and is being pursued following a crime; and
 2. The immediate loss of evidence.
 3. Exigent circumstances do not include situations in which the deputy has created the emergency.
- I. Emergency Aid: Deputies may enter a residence without a warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury. The goal of the deputies' conduct is to preserve and protect life and not a criminal investigation. Once the emergency is resolved, deputies shall secure a search warrant to further investigate criminal activity.
9. **Cellular Phones and Other Mobile Devices:** The digital content of cellular phones and mobile devices shall not be accessed or searched without a search warrant when the device is seized incident to a lawful custodial arrest. While in some limited circumstances it may be possible to articulate an exigent circumstance exception to searching the cellular phone or mobile device, Office personnel should use caution as the courts do not recognize officer safety or risk of remote data wipe as justification under the exigent circumstances exception. If the cellular phone or mobile device is powered off upon seizure, it shall be left in that state. If a cellular phone or mobile device is powered on upon seizure, then the following process shall be followed to isolate the phone from the Cellular, Wi-Fi and Bluetooth network connections, to prevent remote wiping or other data alterations:
- A. Do not power the cellular phone or mobile device off;
 - B. If possible, switch the phone or mobile device into "airplane mode" to isolate the device from the cellular network and disable Wi-Fi and Bluetooth connectivity.

1. To minimize the destruction and/or alteration of electronic data, such as last accessed dates and times, Office personnel shall limit manually manipulating the device to only accomplish network isolation procedures, as specified in this Office Policy.
 2. Office personnel unsure of the proper protocol for manipulating a device, shall consult online resources or contact the Cyber Crimes Unit or Electronic Evidence Analysis, Remote Surveillance (EEARS) personnel to obtain guidance.
- C. If the device cannot be placed into airplane mode, then it should be connected to a rechargeable battery pack and placed into an evidence package that blocks cellular reception and transmission. Due to passcode and encryption issues, it may be important that the device's battery remains charged until it can be forensically examined. Employees shall refer to the [Mobile Device Seizure Flowchart.pptx](#) file located in the Office's shared drive for additional instructions and contact information;
- D. Electronic Evidence Examination Request Procedures:
1. Seizure of a device with a search warrant does not necessarily authorize a search of the device and an additional authored search warrant to "search" the device may still be required.
 2. Complete an *Electronic Evidence Examination Request* form located in the Office's shared drive.
 3. Attach the signed search warrant and affidavit or a completed authorized *Consent to Search* form along with the *Electronic Evidence Examination Request* form and email both forms to the Cyber Crimes Unit Supervisor for examination.
 4. Unless otherwise instructed, all evidence shall be impounded into the Property Management Division, as specified in Office Policy GE-3, *Property Management and Evidence Control*.
10. **Physical Evidence:** Physical evidence may be obtained from an individual in three ways:
- A. A search warrant may be requested by an affidavit if the deputy can establish probable cause and meet all the other requirements of a search warrant.
 - B. An order for detention for obtaining evidence of identifying physical characteristics may be requested from a magistrate prior to arrest pursuant to ARS 13-3905. There is no right to counsel during temporary detention.
 1. There must be reasonable cause for belief a felony crime has been committed.
 2. A showing must be made that procurement of the evidence may contribute to the identification of the person who committed the crime.
 3. The physical evidence cannot otherwise be obtained by the investigating deputy from either their own agency or the Arizona Department of Public Safety (DPS).
 - C. After indictment, the prosecutor may petition for an order of temporary detention for obtaining physical evidence, as specified in Arizona Rules of Criminal Procedure 15.2.a.

1. A deputy must establish probable cause that the item to be seized tends to show that a crime has been committed or tends to show that a particular person committed the crime.
2. The defendant shall be allowed to contact their attorney, if the defendant has one and wishes to do so, and that the attorney is allowed to be present during the taking of the evidence, if this can be timely and reasonably accomplished without hindering the process.

11. Office Jail Facilities:

- A. All persons and vehicles entering the grounds of an Office jail facility are subject to a warrantless search when the facilities and grounds are properly posted to that effect.
- B. Employees' vehicles are subject to search where properly posted and when approved by the jail facility commander.
 1. Jail facility commanders shall have reasonable suspicion or probable cause, as specified in this Office Policy, when approving an employee vehicle search.
 2. Vehicle searches shall be conducted, as specified in this Office Policy.
- C. Searches shall be conducted only by an on-duty detention supervisor or deputy.