



Rochester Police Department General Order



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| EFFECTIVE DATE: April 20, 2015 | SUBJECT: FIELD INTERVIEW/INTELLIGENCE INFORMATION FORM (FIF) | ORDER# 570 |
| RESCINDS: G.O. 570 (07/10/08) | REFERENCE STANDARD(S): NYS: 8.1; 50.5,.7; 55.5 | PAGE 1 of 7 |
| ATTACHMENT(S): (A) Field Interview Form (FIF) | | |
| Chief's Signature: <i>Michael L. Ciminelli</i> | | |

I. DEFINITIONS

- A. Field Interview - The brief detainment of an individual, whether on foot or in a vehicle, based on **People v. De Bour Level 1 (Request for Information)**, or **People v. De Bour Level 2 (Common Law Right to Inquiry)**, or **People v. De Bour Level 3 (Reasonable Suspicion)**, where the member has an articulable basis for the interaction in accordance with Department training and guidelines established for such interaction, and with authoritative decisions of the Courts of the State of New York and United States.
- B. Valid Law Enforcement Purpose - Lawful activities related to the prevention of crime and/or the apprehension of persons responsible for the commission of crimes.

II. POLICY

- A. The Rochester Police Department neither condones nor permits the use of any bias based profiling in field interview contacts. **Field interview contacts will not be based solely on a common trait of an individual, including but not limited to: age, race, creed, color, religion, national origin, gender, sexual orientation, disability, marital status or economic status.** Field interview contacts and reporting will serve a valid law enforcement purpose.
- B. The RMS Field Interview Form (FIF) will be used to document information obtained through non-custodial field interviews, post-arrest information, police officer observations, and information from citizens, constituting investigative and / or intelligence information.
- C. If information received becomes so complex / critical in nature that the person providing the information becomes a Department informant who requests compensation for the information (e.g.,

reduction of charges, money, etc.), all dealings with the person must be documented, and procedures as outlined in General Order 414, Compensated Confidential Informants will be followed.

III. PROCEDURES

- A. Members may request information and/or stop individuals for the purpose of conducting a field interview only when, and to the extent that, they are authorized to do so in accordance with Section II.A., above.

Note: A subject may only be detained or handcuffed if circumstances justify a Level 3 De Bour stop. Handcuffing is not justified as a normal course of business during level 1 and 2 stops. Any handcuffing must be clearly documented along with the circumstances which justified such detention.

- B. In justifying the field interview, members must be able to articulate specific facts, that when taken together with rational inferences drawn from those facts in light of experience, reasonably warrant the questioning and/or stop.

C. Suspected Terrorism Related Activity

1. Upon receiving information on any suspected acts of terrorism or terrorism related activity, members will:
 - a) Complete an FIF.
 - b) Contact the New York State 24-hour terrorism tip hotline at 1-866-SAFENYS, which is managed by the New York State Police Criminal Intelligence Unit.
 - c) Record the "SAFENYS call number" in the narrative portion of the FIF.

D. Members will:

1. Complete an FIF concerning any stop based on reasonable suspicion that the person stopped was committing, had committed or was about to commit a crime.
2. Complete an FIF concerning suspected criminal activity or information of an investigative or intelligence-related nature (e.g., information which deals directly with an ongoing crime trend or which could have direct bearing on a future incident) serving a valid law enforcement purpose which is

received through field interviews other than those based on reasonable suspicion, or which is received through post-arrest interrogations, police officers observations or information from citizens.

3. Complete and submit reports by the end of that tour of duty. Members will notify a platoon supervisor for any report that cannot be completed by the end of that tour of duty, and will obtain approval to either complete the report immediately or during their following tour of duty.

Note: When information is received or observed off-duty, the FIF will be submitted as soon as possible or during the member's next scheduled tour of duty.

4. Access FIF databases only for information to serve a valid law enforcement purpose.
- E. A platoon supervisor will review submitted reports by the end of that tour of duty, or defer to a different platoon supervisor depending on the circumstances of the incident. All reports must, however, be reviewed no later than the member's following tour of duty.

IV. DISTRIBUTION

- A. Information Systems will:
1. Verify and merge all FIF information into the Law Enforcement Records Management System (LERMS).
- B. Division/Section/Unit Investigative Coordinator will:
1. Distribute and make available to all Division/Section/Unit personnel any informational bulletin generated by the Crime Research Unit pertaining to the completed FIF.
 2. Copy and distribute to any Division/Section/Unit any FIF containing information relevant to that Division/Unit.
- C. Crime Research Unit (CRU) and Special Investigation Section (SIS) will:
1. Prepare reports concerning specific investigations or statistical concerns.

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2. Distribute any relevant information to other law enforcement agencies at weekly Coordinator's meeting.
3. Forward a copy to the FBI Joint Terrorist Task Force in the City of Rochester on suspected acts of terrorism or terrorism related activity.

FORM COMPLETION

RMS Field Interview Form (FIF)

CR #: CR # of assignment.

Location of FIF: Address of interview or observation made.

PSA: Patrol beat where the interview or observation occurred.

Date: Date of contact.

Time: Time of contact.

Contact Type: Select one that applies (concerned citizen info, street stop, traffic stop, other).

Contact Reason: Make the appropriate selection for reason for contact. Only one category may be selected.

Information Source: Make the appropriate selection for how the information was obtained.

For each subject:

Subject Name: Enter the full name of the subject, including middle and suffix (e.g., Jr.), in the applicable RMS fields.

Address: Enter the address of the subject's residence in the appropriate fields.

Age: Enter the age of the subject.

Date of Birth: Enter the date of birth of the subject, if known.

Sex: Select the appropriate sex of the subject.

Race: Select the subject's race.

Ethnicity: Select the ethnicity of the subject.

Height: Enter the subject's approximate height in feet and inches.

Weight: Enter the subject's approximate weight in pounds.

Build: Select the appropriate build description of the arrestee.

Hair Color: Select the appropriate hair color of the arrestee.

Hair Length: Select the appropriate descriptive length of the arrestee's hair.

Eye Color: Select the descriptive eye color of the arrestee.

Facial Hair: Select the appropriate facial hair description of the arrestee.

MoRIS No.: Enter the assigned MoRIS number. Members will make inquiry to City Records as to whether a criminal record is on file, as well as the existence of any "wants" or warrants outstanding on the subject FIF'd.

Clothing, Jewelry, Distinguishing Features: Enter descriptive information.

Gang Affiliation: Make the appropriate selection if the arrestee is affiliated with a gang or not.

Gang Name: If the subject is affiliated with a gang, enter the name of the gang.

How Determined: Select how the above information was obtained (colors, self admission, tattoos, other (which should be explained in the narrative)).

Place of Birth: Enter the arrestee's place of birth.

Scars, Marks, Tattoos: Enter any scars, marks, tattoos, or distinguishing features that the juvenile has in the SMT code, type, location and description fields. List the two most prominent SMTs (i.e., most visible). If there are more than two, list the additional in the narrative.

Nickname: Enter nickname or street name (e.g., Sunny, Angel).

Court Placement: Make the appropriate selection if the subject is currently either on probation or parole.

Vehicle Involvement: If stopped in a vehicle, select whether the subject was the driver or a passenger.

Select the appropriate Vehicle Type, and then select or enter in the applicable fields the below information:

- Year
- Make
- Model
- Style
- Color
- Plate #
- State
- Other Identifying Characteristics/Marks/Damage/Tint/Etc
- Registered Owners Name
- Registered Owners Address
- Registered Owners Address

Narrative: Record any information related to the subject(s) interviewed or the premises observed, and the factual basis leading up to or causing the interview, as well as any other information the member feels is pertinent to the interview or observation that is not already recorded in other fields of the FIF.

Reporting Officer, IBM, Date, Reviewed By



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| EFFECTIVE DATE: April 20, 2015 | SUBJECT: SEARCH/SEIZURES: BY DYNAMIC ENTRIES, SEARCH WARRANT, ARREST WARRANT, WITHOUT WARRANT | ORDER# 415 |
| RESCINDS: G.O. 415 (07/06/12) | REFERENCE STANDARD(S): NYS: 50.2 | PAGE 1 of 42 |
| ATTACHMENT(S): (1), Application for a Search Warrant, (2), Search Warrant, (3), Inventory of Property Taken, (4), Disposition of Seized Property, (5), Search Warrant/Dynamic Entry Checklist, RPD 1234, (6) Consent to Search Form, RPD 1353, (7), High Risk Search Warrant Criteria | | |
| Chief's Signature: <i>Michael L. Ciminelli</i> | | |

I. **DEFINITIONS**

- A. **Gender Expression:** Is a person's external representation or expression of gender identity to others, often through behavior, clothing, hairstyle, voice or body characteristics.
- B. **Gender Identity:** Is an individual's internal sense of being male, female, both, or neither. Individuals determine their own gender identity.
- C. **Pretext Stop:** A pretext stop is a traffic stop where an officer relies on the fact that a vehicle operator has violated the vehicle and traffic law to justify the stop of the vehicle, but the actual motivation of the officer is to investigate some other matter for which there is no probable cause. In a pretext stop, the officer is essentially utilizing the vehicle and traffic law as a means to further an unrelated investigation. (People v. Robinson)
- D. **Probable Cause ("Reasonable Cause"):** Probable cause to search exists when facts and circumstances known to the officer provide the basis for a reasonable person to believe that a crime was committed at the place to be searched, or that evidence of a crime exists at the location. Probable cause to seize property exists when facts and circumstances known to the officer would lead a reasonable person to believe that the item is contraband, is stolen, or constitutes evidence of a crime. When probable cause is based on information from an informant, there must be sufficient grounds to conclude both that: (1) the informant was reliable; and, (2) the information was credible. Note: under the New York law, the term, "reasonable cause" is equivalent to the term "probable cause."

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- E. **Reasonable Suspicion:** Is that suspicion based upon facts and any reasonable inferences that can be drawn in light of experience that lead one, as an ordinary and cautious person, to believe that some specific crime(s) or some specific criminal activity is being committed, was committed, or is about to be committed.

- F. **Reasonable Expectation of Privacy:** A reasonable expectation of privacy exists when a person has exhibited an actual (or “subjective”) expectation of privacy, and that expectation is one that society is prepared to recognize as “reasonable.”

- G. **Search:** A search is defined as any activity by a government official (including a police officer) that invades any area in which a person has a reasonable expectation of privacy. This includes but is not limited to a physical entry into an area, location, or item; a visual inspection or surveillance into a private area without an actual physical entry; an auditory interception or overhearing of communications on a communications device such as a telephone; and viewing data on a computer or similar device. A search deals with a person’s privacy rights, and can occur regardless of whether any items are actually seized or taken by the police.

- H. **Search Warrant Rule:** In order to be reasonable and hence lawful, every search or seizure by the police must be done with a search warrant, or under one of the specific recognized exceptions to the search warrant requirement.

- I. **Sex:** The biological status of a person as male or female (physical attributes).

NOTE: **Intersex Individuals** are individuals born with chromosomes, external genitalia, and/or internal reproductive system that varies from what is considered “standard” for either males or females.

- J. **Transgender:** A broad term that refers to any persons who do not conform or identify with traditional gender expectations associated with the sex they were assigned at birth. This term includes transsexual persons, androgynous individuals, individuals whose dress is typically associated with the opposite sex, and others whose appearance or characteristics are perceived to be gender atypical.

II. BACKGROUND

A search is an indispensable part of many investigations. It is the systematic and lawful examination of a person, place, or other object to locate evidence, illicit contraband, or other "fruits of the crime." Searches should be thorough and conducted in a timely manner with a reasonable amount of intrusion to the person and/or physical location being examined.

The complexities surrounding searches for objects, either with a warrant or without, necessitate well-defined procedures. The Fourth Amendment to the U.S. Constitution, and the New York Constitution, prohibit "unreasonable searches and seizures". A search or seizure may be found unreasonable by a court and lead to the exclusion of evidence obtained. A warrant may protect against the exclusion of evidence in a criminal court and provide some civil liability protection.

III. POLICY

- A. It is the policy of the Rochester Police Department (RPD) to comply with the spirit and letter of the law. All searches will be conducted in a manner that protects the rights of all persons, and the integrity of the Department and its members.
- B. The RPD neither condones nor permits the use of any bias-based profiling, as defined in G.O. 502, in asset seizure and forfeiture efforts.
- C. **It is acceptable for an officer to use a vehicle and traffic violation as a pretext for stopping a vehicle to further an investigation.**
- D. Members will not conduct a warrantless search unless it meets the legal criteria for an exception to the search warrant rule.

IV. DYNAMIC ENTRIES

A dynamic entry is a lawful, rapid, and methodical control of a place or premise, as well as the control of all occupants, by using surprise, speed, and aggression by law enforcement personnel. It is planned for the arrest of wanted persons, to collect physical evidence, or seize contraband, and/or to recover stolen property.

2. Nothing in the aforementioned procedures will prevent a member from following the normal course of procedure relative to arrest and subsequent searching and scanning of a prisoner at the Monroe County Sheriff's Central Booking Office.

IX. WARRANTLESS SEARCHES - EXAMPLES

A. The following are some exceptions to the general search warrant rule (refer to Appendix I for detailed explanation):

1. Arrest Warrant Exception
2. Frisk Exception
3. Search Incident to Arrest Exception
4. Automobile Exception
5. **Consent to Search Exception**
6. Plain View Observation Exception
7. Abandoned or Discarded Property Exception
8. Open Fields Exception
9. Inventory Search Exception
10. Exigent Circumstances Exception

B. The following are searches expressly allowed by statute (refer to Appendix II for a detailed explanation):

1. Environmental Conservation Searches
2. Probation "Search Orders"
3. Parole Searches
4. Administrative Searches

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X. PROCEDURES DURING AND FOLLOWING WARRANTLESS SEARCHES

- A. Following any search, members will document their actions. This is especially important because the reasonableness of the search and seizure cannot be based upon what was found as a result of the search. Instead it is measured by the facts and circumstances known to the member prior to the search and seizure. In the event a search results in a subsequent seizure that may later prove to be of evidentiary value and presented to a criminal court, the member will fully document the events that led up to the search, the reason for the search, the person(s) conducting the search, location of property discovered, chain of custody, etc. This documentation will be reduced on the appropriate RPD report form (Incident, IAR, etc.).
- B. All evidence/contraband discovered during a search and subsequently seized will be processed and preserved per current evidence handling procedures, and fully documented and described on the Property Custody Report.
- C. A copy of the completed Property Custody Report will be presented to the possessor/rightful owner of the property.
- D. All seized property will be delivered to the custody of the Property Clerk pending later determination of property status, etc.
- E. Additional procedures in Consent to Search instances:
1. **Written Consent** - Whenever possible, consent searches should be in writing and read out loud to the person giving consent.
 - a) Members may attempt to obtain a written consent prior to a search of a vehicle or premises.
 - b) In the event a written consent is obtained, members conducting the search will utilize a Consent to Search Form, RPD 1353, (Attachment 6) to document the written and voluntary authorization by the person granting same.
 - c) In cases of third party consent, the member must inquire into the person's authority and competency to

give consent, and then document that information/authority.

2. **Oral Consent**

In the event a written consent is refused but an oral consent is granted, another member or a responsible civilian will serve as a witness to the oral consent. The member receiving the permission to search will utilize the appropriate Departmental report form (e.g., Incident, IAR) to document the following:

- a) The actual words used by the consenting party and the circumstances surrounding the consent.
- b) The reason(s) why written consent was refused, as stated by the consenting party.
- c) The name, address, and phone number of the witness when the witness is a civilian.

F. Knock and Talk

Knock and Talk is a drug enforcement strategy designed to notify the residents of a suspected drug location that the RPD is aware of their illegal activities, and that they should cease and desist such activities.

1. Pre-Knock and Talk Procedures

- a) Background and Intelligence Gathering
 - (1) Consent searches can only be conducted during a Level II intrusion, commonly referred to as a "Common Law Right to Inquire". (People v. DeBour)
 - (2) Common Law Right to Inquire is activated by "a founded suspicion that criminal activity is afoot", such as observable conduct or reliable hearsay information based upon the following:
 - (a) Documented Complaints to the Police Department.
 - (b) Police documented reports.

- (c) Confidential Informant information.
- (d) Citizen Informant information.
- (e) Police observations

NOTE: Information supplied to the Department should be corroborated through police observations.

2. Conducting a Knock & Talk

- a) Consult with SIS personnel first to determine whether a Knock and Talk may jeopardize an on-going investigation.
- b) Notify a section supervisor that a Knock and Talk is being planned.
- c) No more than two (2) uniform members should be visibly present at the location when initiating a conversation with the citizen.
- d) Conversation with the citizen must be in a non-threatening manner, with no verbal force being exhibited.
- e) When possible, consent should be obtained as outlined in Section X.E, above.
 - (1) Consent should be in the form of a two-step procedure: consent to enter and consent to search.
- f) Once consent is gained:
 - (1) A member should remain with the citizen supplying the consent for officer safety reasons, and to provide the citizen with the ability to withdraw their consent.
 - (2) Additional members may be present to assist with a search, and for officer safety.
 - (3) A complete search of the premises can be conducted, unless the consent is withdrawn.

- g) If consent is withdrawn after evidence / contraband has been located, the search must cease.
 - (1) Members should file for a search warrant of the complete residence based upon the evidence / contraband located during the consent search.
- 3. Post Knock and Talk Procedures
 - a) Non-arrest Knock and Talks will be documented on an Incident Report, outlining the procedures followed, and the results.
 - b) Arrest Knock and Talks will be documented on an Incident Report outlining the procedures and the probable cause resulting in the arrest.
- 4. Plain View Exception
 - a) If contraband is observed during the initial phase while at the door to the location, members may be justified in entering the location and seizing the observable contraband. A further search beyond this initial seizure would require the use of another search exception (e.g., consent or a search warrant).

APPENDIX I

EXCEPTIONS TO THE SEARCH WARRANT REQUIREMENT

A. ARREST WARRANT EXCEPTION

Armed with a valid arrest warrant, a police officer may search for the defendant in the defendant's home if there is probable cause to believe the defendant is home at the time of the search (*Payton v. New York*).

This search is limited to searching only for the defendant. This exception will not allow an officer to search a third person's home, even with an arrest warrant AND probable cause to believe the defendant is present (absent any other exception to the Search Warrant requirement, e.g., consent). Secure the home and obtain a SEARCH WARRANT per CPL 690.

B. FRISK EXCEPTION

A police officer may search an individual for weapons if the officer has an articulate and reasonable fear that the individual may be armed. Whether called a frisk or a pat down, it is still a search and limited only to the detection of weapons. New York State CPL's "Stop and Frisk" statute authorizes:

1. A police officer to stop a person in a public place located in the officer's geographical area of employment when he reasonably suspects that such person is, has, or is about to commit a felony or misdemeanor defined in the Penal Law and may demand of such person, his name, address, and explanation of his conduct (CPL 140.50, the "stop"), and
2. Upon stopping a person as previously described, if the police officer reasonably suspects that he is in danger of physical injury, he may search such person for a deadly weapon or any instrument, article or substance readily capable of causing serious physical injury and of a sort not ordinarily carried in public places by law-abiding persons (CPL 140.50.3, the "Frisk").

This is a limited search for weapons. It does not allow the seizure of items not reasonably believed to be weapons (e.g., small soft glassine envelopes or crack vials, *People v. Brockington*). If, during the course of your frisk, you discover what turns out to be the fruits or instrumentalities of a crime that you have reasonable cause to believe was committed or was about to be committed, you may arrest the person and seize such property as evidence (*Peters v. New York*).

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C. SEARCH INCIDENT TO ARREST EXCEPTION

The most often used exception is the search incidental to a physical arrest when the defendant is taken into custody. Upon making a valid arrest, an officer may conduct a full and complete search of the defendant. This is a much broader search and not limited to only weapons. Any weapons or contraband discovered will be seized and appropriate charges considered. It must also be conducted incident to the arrest and not delayed. This also allows for a search of the area within the reach of the defendant (*Chimel v. Cal.*).

D. AUTOMOBILE EXCEPTION

An automobile may be searched without a warrant if there is probable cause to believe that there is evidence in the vehicle. This is the one exception where probable cause alone supplies the justification to conduct a warrantless search (*Carroll v. United States*).

Unlike the search incident to arrest, the automobile exception allows an officer to search the entire automobile, not just the interior, as long as he has probable cause to believe evidence may be located where he is looking. The search under this exception cannot exceed the scope of the probable cause. It also allows for the search of all containers and items contained in the motor vehicle if probable cause exists for these containers.

The automobile exception applies to all types of mobile, motorized wheeled vehicles (e.g., motor homes, etc. - *California v. Carney*).

If this defendant was driving or occupying a motor vehicle at the time of this arrest, a valid arrest for a crime authorizes a warrantless search (for a reasonable time and to a reasonable extent) of a vehicle and of a closed container visible in the passenger compartment of the vehicle, when the circumstances give reason to believe that the vehicle or its visible contents may be related to the crime for which the arrest is being made (as possibly containing contraband or as having been used in the commission of the crime), or there is reason to believe that a weapon may be discovered or access to means of escape thwarted. It does not extend to the trunk of the vehicle (*People v. Belton*).

E. CONSENT TO SEARCH EXCEPTION

If a person with apparent legal control or authority over the object of a search voluntarily consents to that search, a police officer may make a search based on that consent when the officer has founded reasonable suspicion that criminal activity is afoot (People v. Saunders, NYS Court of Appeals, 02/20/92).

The key to this search is it was voluntary. **Consent must be knowingly and voluntarily given in a positive manner (silence and acquiescence do not constitute consent).** The consent may be oral or in writing. Consent may also be withdrawn at any time. If the consenting person withdraws his consent, the search must be terminated. Threats by the police will make this consent involuntary. The scope of the consent limits the scope of the search.

The determination as to who may legally consent to the search is the person who has a legal right of possession and control over that property so as to direct and regulate its use.

Examples of persons who can consent are a:

1. Homeowner, to search his home
2. Homeowner's spouse, to search their home
3. Parent, to search a child's room in the parent's home when the child is not paying rent, or where the child's room is not separately secured by the child or where the child does not have the authority to exclude the parent
4. Roommate or co-tenant, to search an apartment or dorm room (or areas of common/joint control) except those areas over which the non-consenting roommate has exclusive right (a private bedroom)
5. Hotel clerk, to search a vacant room having no registered guests
6. Registered owner or driver of a motor vehicle, in that order of preference. The consent of the driver will not be valid if the registered owner is present and refuses to consent.

Examples of persons who cannot consent are a:

1. Resident child, to search his parent's home
2. Landlord, to search a tenant's apartment
3. Hotel clerk, to search a paying guest's hotel room

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F. PLAIN VIEW OBSERVATION EXCEPTION

As long as the officer is legitimately on the premises, any item he observes which the officer has probable cause to believe is evidence (the fruits or instrumentalities of a crime) or contraband may be seized. The key is for the officer to justify his presence at the location where the evidence is observed (*Horton v. California*).

During the execution of a search warrant, a member may seize any evidence that comes within "plain view," even if the evidence was not an item sought in the search warrant. Whenever possible, the member will secure the property at the location and apply for an amended warrant that includes the evidence that is not listed in the original warrant.

There are limitations under this exception and you may not move property around to look for identifying serial numbers to determine if the property was stolen (*Arizona v. Hicks*). You may use flashlights to assist in illumination but you may not utilize optical magnification and enhancement devices (e.g., binoculars, telescopes, or camera/video equipment with telephoto capabilities).

G. ABANDONED OR DISCARDED PROPERTY EXCEPTION

Property abandoned or discarded may be searched and seized by police officers without a warrant. By discarding the property, a person no longer has a reasonable expectation of privacy in that property and has no standing to complain about any search that is conducted (*United States v. Lee*).

This extends to the person who discards a container as the police approach him on the street (*United States v. Eubanks*) as long as the act of discarding the item is not prompted by unlawful police conduct, but is a calculated risk taken by the individual to avoid detection and apprehension.

It also applies to individuals who place their garbage at the curb (*California v. Greenwood*).

H. OPEN FIELDS EXCEPTION

Buildings, homes, yards, and their "curtilage" are protected by the Constitution (*Oliver v. United States*). A yard is generally designated by the limits of the area where the grass is mowed or by the existence of a fence.

The exact extent of the "curtilage" is dependant upon:

1. The proximity of the area to the house
2. Whether the area is within any enclosure surrounding the house
3. The nature and use of the area, and
4. Steps the owner takes to protect the area from observation

Open fields, woods, and pastures outside the curtilage area are not protected by the Constitution unless they are fenced or signs have been posted to exclude intruders. In cases where no fences or "No Trespassing" signs are present, or there are no other overt demonstrations by the owner that the owner has an expectation that members of the public should not enter upon the land, officers may search areas beyond the curtilage of a home without a warrant because those "open fields" are not areas where society recognizes a legitimate expectation of privacy (People v. Scott, People v. Reynolds).

I. INVENTORY SEARCH EXCEPTION

The inventory search of persons arrested or vehicles or objects lawfully possessed by the police is justified for three reasons:

1. Protect an owner's property while it is in the custody of the police;
2. Protect police against claims of lost, stolen or vandalized property and;
3. Guarding police and others from dangerous instrumentalities that would otherwise go undetected.

The limitations on the authority of the police to conduct inventory searches are:

1. The property to be searched must have lawfully come into the possession of the police (e.g., DWI offenders' vehicles being towed), and
2. The inventory must be conducted pursuant to a standard departmental policy (Illinois v. Lafayette) such as G.O. 511 Vehicle Towing.

Once these limitations are met, the inventory exception allows for a warrantless search that is thorough and complete. All property discovered and secured at the Property Clerk's Office, whether of evidentiary value or not, will be noted on the Property Clerk's Report.

J. EXIGENT CIRCUMSTANCES EXCEPTION

This exception allows a police officer to make a warrantless search under situations where the officer recognizes there is no time to obtain a warrant and that, if he does not make the search or if he doesn't seize the evidence immediately, that the evidence will be lost forever.

Simply because the evidence may be lost or destroyed does not in itself justify a search under exigent circumstances. The more serious the crime, the more likely the courts are to recognize the situation as a true emergency justifying the search based on exigent circumstances.

Probable cause must exist leading one to believe:

1. A crime (misdemeanor or felony) has been or is being committed, and
2. That if immediate action is not taken, the crime will be completed, or you have reasonable suspicion that you or others will suffer physical injury or death, or you have reason to believe that evidence of the crime will be destroyed or otherwise lost (Warden v. Hayden). If a minor offense has occurred and the sole purpose for the warrantless entry is to make an arrest or to serve an appearance ticket for that offense, the exigent circumstances exception would not be applicable.

Assume you cannot use this exception in other than extremely unusual circumstances, for example:

1. Entering a home in pursuit of an armed fleeing felon
2. When you are legally at a premises investigating a minor matter and you hear what appears to be sounds, conversations, or the like, leading you to conclude that a serious physical injury crime is occurring, or is about to occur, you may enter the premise and terminate said crime.

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Any search and seizure under exigent circumstances must take place immediately at the time of the occurrence of those circumstances. It cannot take place hours or days later or at another location removed from the immediate scene, or at your convenience (*Mincey v. Arizona*).

K. SEARCHES BY PRIVATE PERSONS

1. Where a private person who has no connection with the police or other governmental agency conducts a search for purely personal reasons, that person may turn over any evidence obtained in such a search to the police. Such evidence will be admissible in a criminal prosecution.
2. If the evidence is obtained solely in the course of a private search, the private person does not become an agent of the police. However, if the police instigate, request, supervise the search, or provide assistance or instructions to the private person conducting the search, or offer any reward or inducement for the search, the private person will become an agent of the police. When the private persons is acting as an agent of the police, he or she may not conduct any search that would be unlawful if conducted by the police. For example, if the search would require a search warrant if conducted by the police, a private person acting as agent of the police may not conduct the search without a search warrant.