



# Rochester Police Department General Order



EFFECTIVE DATE: <b>April 20, 2015</b>	SUBJECT: <b>SEARCH/SEIZURES: BY DYNAMIC ENTRIES, SEARCH WARRANT, ARREST WARRANT, WITHOUT WARRANT</b>	ORDER# <b>415</b>
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."

- 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.

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## 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.

1. Members may not enter the dwelling of a third person not named on the warrant (CPL 120.80.4) without possession of a SEARCH warrant for that dwelling. If another exception to the search warrant requirement (e.g., voluntary consent to search by the third party resident) exists, the search warrant may not be required. Refer to Appendix I for exceptions to the search warrant requirement.
- B. If the member has reason to believe the defendant named on the warrant is in the dwelling of a third party not named on the warrant, and no exception to the search warrant requirement exists, the member will secure a search warrant to enter said dwelling (CPL 690.05.2.b).

## VIII. STRIP AND BODY CAVITY SEARCHES

- A. Unless exigent circumstances exist, members will apply for a search warrant for a strip search or a body cavity inspection in accordance with Section V (Search Warrants) of this order. Strip searches and body cavity inspections without a warrant will be conducted only accordance with this order.
- B. There are three types of strip and body cavity searches.
  1. A **strip search** occurs when a person is required to disrobe so an officer can visually inspect the person's body.
  2. A more intrusive **visual body cavity inspection** occurs when the officer looks at the arrestee's anal or genital cavities without any physical contact.
  3. In a **manual body cavity search**, there is an actual physical intrusion beyond the body's surface, such as the removal of an object from a cavity, or the insertion of a finger into an orifice.

Note: Removal of contraband (e.g., drugs) from an arrestee's mouth is not considered a strip search or body cavity search.

Note: Members will not conduct any type of search or touch a person in any way solely to determine a person's sex.

- C. Strip Searches and Visual Body Cavity Inspections

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1. To conduct a strip search, members must have reasonable suspicion to believe that the arrestee is concealing evidence/weapon underneath the clothing, and the search must be conducted in a reasonable manner, with due regard for the arrestee's privacy. To conduct a visual body cavity inspection, members must have a specific, articulable, and individualized factual basis supporting a reasonable suspicion to believe that the arrestee secreted evidence inside a body cavity, and the visual inspection must be conducted in a reasonable manner, with due regard for the arrestee's privacy. Strip searches and visual body cavity inspections shall not be conducted in public, except under the most extraordinary circumstances, such as where necessary to save the life of an arrestee.
2. Field strip searches or visual body cavity inspections of prisoners without a warrant will be conducted only in the rarest of circumstances under exigent circumstances where the life of members or others may be placed at risk, and only with the explicit approval of a supervisor. Members will not conduct a strip search or visual body cavity inspection without a warrant of any person who has not been placed under arrest. **Under no circumstances may members conduct a strip search or visual body cavity inspection of persons who are detained in a "DeBour" or "stop and frisk" situation.**
3. When reasonable suspicion exists to conduct a strip search or visual body cavity inspection, the arresting member will make a request for such action to his supervisor that clearly defines the basis for this action.
4. When authorized by a supervisor, strip searches will be conducted in accordance with procedures outlined in Section E below, and in conformance with approved hygienic procedures and professional practices.

NOTE: Exigent circumstances, e.g. as may be found in SIS search warrant executions, may dictate the necessity to conduct an immediate strip search of an individual due to the need to secure evidence and ensure officer safety. However, it is important to emphasize that strip searches, visual body cavity inspections and manual body cavity searches cannot be routinely undertaken as incident to all

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drug arrests or under a blanket policy that subjects persons suspected of certain crimes to these procedures. Members must have a specific, articulable, and individualized factual basis to justify subjecting an arrestee to these procedures.

D. Manual Body Cavity Searches

1. Members are prohibited from conducting manual body cavity searches themselves.
2. To be lawful, there must be probable cause to believe an object is hidden inside the arrestee's body, and there must be a search warrant, unless exigent circumstances exist.
3. If, during a visual examination of a subject during a strip search or visual body cavity inspection, the member observes an item that appears to be a weapon, evidence, or contraband, on the subject's body, the member may retrieve the item, unless doing so would involve removing it from within a body cavity or body organ.
4. In the event that a visual examination of a subject during a strip search or visual body cavity inspection, or other information, establishes probable cause to believe that the subject is concealing a weapon, evidence, or contraband *within* a body cavity or body organ, the member will notify a supervisor, and arrangements will be made to apply for a search warrant, unless exigent circumstances exist. Such exigent circumstances include that the arrestee is in medical distress, or there is an imminent danger that the evidence would be lost or destroyed.
5. If exigent circumstances exist, the member will notify a supervisor and ensure that the subject is transported to a hospital facility for removal of the contraband by medical personnel. Any manual body cavity search without a search warrant must be approved by the Staff Duty Officer, a Captain, or higher RPD authority. Members will ensure that properly trained medical personnel conduct the search.
6. When authorized, manual body cavity searches will be conducted in accordance with procedures outlined in Section E below, and in conformance with approved hygienic procedures and professional practices.

E. Procedures for Strip Searches and Body Cavity Inspections/Searches

1. Members will adhere to the following procedures in conducting strip searches and body cavity inspections:
  - a) Conduct these types of searches in a private secure area that affords the subject of the search dignity and privacy.
  - b) Conduct this type of search with the least number of members necessary, but in the presence of at least two members, and only by members of the same gender as the person to be searched. If it is determined the subject is a transgender person, members will search consistent with the gender expression of the prisoner, unless otherwise requested by the subject. If the gender expression is unclear, the member will respectfully ask how the person would like to be referred to, and by which gender officer by which gender officer the person would prefer to be searched.
  - c) Document on an Incident Report or Investigative Action Report the details of the search, to include:
    - (1) Date and place of the search
    - (2) Identity of the member conducting the search
    - (3) Identity of the individual searched
    - (4) Those present during the search
    - (5) A description of the nature and extent of the search
    - (6) Any weapons, evidence or contraband found during the search
    - (7) The specific, articulable, and individualized factual basis supporting a reasonable suspicion for initiating the search
    - (8) The name of the supervisor that sanctioned the search.

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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