

	FREDERICKSBURG POLICE DEPARTMENT DIRECTIVES	
	OPERATIONS	
300.00	APPROVED: <i>David W. Nye, Chief of Police</i>	Initiated: 10/01/2007
		Revised: 11/19/2012

PURPOSE – The purpose of this Directive Section is to define the role, responsibilities, and procedures for specific functions of the Fredericksburg Police Department. Additionally, this directive is to provide guidance for police officers charged with enforcing the law and when conducting lawful duties.

POLICY – It is the policy of the Department that all Police Department employees understand and apply lawful operational procedures in the delivery of professional law enforcement services.

SEARCH PROCEDURES

300.00 – Search and Seizure without a Warrant – The Fourth Amendment to the United States Constitution provides citizens protection against unreasonable search and seizure. The same protection is afforded citizens in the Virginia Constitution. The following standards govern the procedures for warrant-less searches and seizures:

300.01 – Consent Search – Officers may conduct consent searches provided that they can articulate a reasonable suspicion that the search may reveal contraband or evidence of a crime. Where possible, officers shall endeavor to obtain written permission prior to conducting the search. Officers must immediately cease searching when consent is withdrawn, except in situations where the results of a consensual search-in-progress have yielded probable cause for the continuance of a lawful, non-consensual search. [1.2.4, a]

300.02 – Stop and Frisk – Law enforcement officers may conduct field interviews and perform a "frisk" or pat-down search of the outer garments of a suspect for weapons. The officer must have reasonable suspicion of the suspect and may conduct a "frisk" only if the officer has a reasonable fear for his own safety. Thus, not every field interview poses sufficient justification for conducting a "frisk" or pat-down search. For more information, consult *Terry vs. Ohio*, 392 U.S.1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 [1968]. [1.2.4, b]

300.03 – Vehicle Search – Because of their mobility and a lesser expectation of privacy an individual has in his vehicle as compared to his home, a police officer may search a vehicle without first obtaining a search warrant if one of the following provisions apply: the search is made incident to a full custody arrest and it is reasonable to believe that the arrestee might access the vehicle at the time of the search; the search is made incident to a full custody arrest and it is reasonable to believe that the vehicle contains evidence of the offense for which the occupant is being arrested; the search is based on probable cause and the probability of the loss of evidence is high.(there must be specific, articulable facts to justify this search). [1.2.4, c]

300.04 – Crime Scenes – Officers shall exercise every precaution in avoiding contamination or destruction of evidence when investigating an incident. Officers are accountable for preserving the crime scene and prohibiting unauthorized persons from entering the area. The detective assigned to a crime scene is responsible to ensure a thorough crime scene search is performed and process all physical evidence according to established procedures. Officers are reminded that there is no crime scene exception to the need for a search warrant unless exigent circumstances exist or permission is granted. [1.2.4, d]

300.05 – Exigent Circumstances – Search warrants are not necessary to initiate a search in exigent circumstances where public safety is endangered and officers must act quickly. A search initiated under exigent circumstances must stop, however, once the exigent circumstance is under control or the threat is eliminated. [1.2.4, e]

300.06 – Inventory Searches – When a vehicle is towed at the direction of a police officer for any reason (including seizing a vehicle) it is required that the officer inventory the vehicle's contents and record the findings.

The impounding officer is responsible for:

- Inventorying all property located in the passenger area and, if the keys are available, in the locked compartments (trunk, glove compartment or console, etc.)
- Listing all property of any value on a Custodial Property Inventory Form.
- Inventorying valuable property, which shall be turned in to the property and evidence section for safekeeping. Property that is deemed to have little value must be secured out of view in a locked trunk or glove compartment of the vehicle if possible.
- Indicating on the inventory form which articles of property were taken into custody and which items were left in the vehicle.
- Leaving a copy of the inventory form in the vehicle.

This procedure will be followed regardless of the anticipated length of time the vehicle will be impounded. [1.2.4, f]

300.07 – Miscellaneous Situations – Search warrants are not initially required in circumstances where: the destruction or removal of evidence is a high probability; the suspect is an immediate flight risk; the officer is in hot pursuit; emergency aid must be administered; items are located in plain view or open fields; items are abandoned or in the garbage; or there is a disclaimer of ownership. [1.2.4, g]

300.08 – Strip and Body Cavity Searches – A strip search occurs when an arrested person is made to remove or arrange some or all of his or her clothing in order to permit a visual inspection of the genitals, buttocks, anus, female breasts or undergarments. The authority and limitations for strip-searching are derived from the Code of Virginia, §19.2-59.1.A - Strip searches prohibited; exceptions; how strip searches conducted. The following is especially noteworthy: “No person in custodial arrest for a traffic infraction, Class 3 or Class 4 misdemeanor, or a county ordinance which is punishable by no more than thirty days in jail, shall be strip searched unless there is reasonable cause to believe on the part of the law enforcement officer authorizing the search that the individual is concealing a weapon.” [1.2.8, a] Furthermore, the following conditions shall be observed in conducting strip searches:

- An officer should confirm the class of offense prior to conducting a strip search.
- Strip searches shall be done by an officer of the same sex as the individual who is to be searched and in an area that cannot be observed by persons not conducting the search. [1.2.8, b]
- Search warrants must be obtained prior to searching any body cavity other than the mouth.
- Code of Virginia Section §19.2-59.1.C states: “A search of any body cavity must be performed under sanitary conditions and a search of any body cavity other than the mouth shall be conducted by or under the supervision of medically-trained personnel.” Officers are not authorized to perform a body cavity search, other than the mouth or by medically trained personnel under the authority of a search warrant. Officers may request that Jail personnel perform a body cavity search at the Jail. The officer requesting the search must document that the search was conducted and make mention of any unusual circumstance occurring during or after the search.
- All strip and body cavity searches will be documented by a report. [1.2.8,c]

300.09 - Electronic Communication Information – Law enforcement officers may obtain electronic communication information from providers of electronic communication services when one of the following conditions is met:

- With the consent of the subscriber,
- Pursuant to a search warrant,
- Pursuant to a court order,
- Pursuant to a grand jury subpoena,
- In cases of suspected child pornography,
- When there is a reasonable belief that an emergency involving immediate danger of death or serious physical injury to any person justifies disclosure of the information.

Examples of circumstances which permit an emergency warrantless request for electronic communication information include, but are not limited to:

- Hostage/barricade situations
- Kidnapping/abductions
- During a search for missing children whose age or circumstances places them in imminent danger of death or serious injury
- During a search for missing adults whose physical or mental condition places them in imminent danger of death or serious injury
- To locate persons who have expressed imminent suicidal intentions
- To locate the offender immediately following a serious violent crime (i.e. a fleeing shooting suspect)
- To prevent an impending violent crime (i.e. a stalker in route to the victim's location, or to prevent an imminent retaliatory shooting)
- To locate an unaccounted for on-duty officer when other efforts to locate the officer have failed

Examples of circumstances which do not permit an emergency warrantless request for electronic communication information include, but are not limited to:

- Property crimes
- Narcotics offenses
- Misdemeanor assaults
- Runaway juveniles whose age or circumstances do not place them in imminent danger of death or serious injury
- To locate a suspect or wanted person who does not pose an imminent danger of death or serious injury to others
- To locate an overdue motorist, family member, or employee
- To locate a Police Department employee via their personal phone for supervisory purposes

For the purpose of this directive “electronic communication information” includes subscriber information, lists of incoming or outgoing calls, the content of text messages, sent or received images, any real-time GPS-like information (i.e. tracking or “pinging”), which the provider gathers and stores during the normal course of business.

Only sworn employees may initiate an emergency request for electronic communication information, and all such requests made without benefit of a search warrant, court order, subpoena or customer consent require approval of the Watch Commander. Non-sworn employees may facilitate the processing of the request. (Detectives may obtain permission through their supervisory staff)

An IBR report shall be completed whenever an emergency request for electronic communication information is made. COMSEC will retain a copy of the emergency request form submitted to the electronic communication provider and note the related report number on the form. If requested by the service provider, the assigned case officer/Detective shall be responsible for obtaining court orders related to the emergency request.

Nothing in this directive prohibits employees from receiving electronic communication information voluntarily provided by the owner of the electronic device or subscriber to the electronic communication service.

Nothing in this directive prohibits the Police Department from obtaining electronic communication information or intercepting electronic communications for Department issued electronic communication devices.

300.10 – Warrant Service Risk Assessment/Operational Plan – Prior to the execution of a search warrant at a home or business where people are likely to be present or when pre-planning arrest related to a serious felony, a risk assessment shall be completed.

Serious Felonies include:

- homicide
- manslaughter
- armed robbery
- violent sex offense
- any felony assault or kidnapping/abduction by force.

This risk assessment is intended to serve as a guide to document the risk factors associated with either and to assist in determining what resources are to be utilized in order to minimize these risks.

An operational plan shall be completed prior to the execution of any search warrant at a residence or business likely to be occupied, any search warrant or arrest warrant involving SETT, and controlled buys and undercover operations.

Both the risk assessment and operational plans are located in the department forms.

300.11 – Court Authorized 4th Amendment Waivers – The Circuit Court may accept an individual's temporary waiver of his or her 4th Amendment rights as part of the sentencing agreement for a criminal conviction. The waiver states, "I further understand and agree that, as a condition of this suspended sentence and plea agreement, I waive my Fourth Amendment rights against unreasonable searches and seizures at any time and by any law enforcement officer during the period of ___ years."

The Commonwealth Attorney provides the names of those who have waived their 4th Amendment rights and the duration of the waiver. COMSEC will alert those persons in RMS and note the expiration dates of the waivers. The alert shall be expunged when the waiver

expires. Officers will not produce or maintain lists of those who have waived their 4th Amendment rights.

When an officer in the field requests a wanted check of a person, COMSEC will advise the officer of the waiver and expiration date. If an officer encounters a person the officer believes to have waived his or her 4th Amendment rights, the officer will confirm with COMSEC that the waiver is still active prior to conducting a search.

It is the policy of the Fredericksburg Police Department to use discretion when conducting searches and seizures based upon a 4th Amendment waiver and officers will not indiscriminately search persons or property subject to such a waiver. Officers will limit 4th Amendment waiver searches and seizures to encounters involving one of the following circumstances:

- The person who has waived his or her 4th Amendment rights is encountered under circumstances which would rise to the level of a *Terry* stop.
- The person who has waived his or her 4th Amendment rights is encountered during a lawful traffic stop.
- The person who has waived his or her 4th Amendment rights is encountered during a criminal investigation.
- The person who has waived his or her 4th Amendment rights is encountered during a citizen generated call for service.
- The person who has waived his or her 4th Amendment rights is encountered at a time and place known for recent criminal activity **and the officer can articulate specific facts to support that knowledge.**
- The person who has waived his or her 4th Amendment rights is encountered in the company of persons known to have recently engaged in criminal activity **and the officer can articulate specific facts to support that knowledge.**

Before conducting a search or seizure based upon a 4th Amendment waiver, officers must ensure the property or place is not protected by the 4th Amendments rights of another person. For example, if a person subject to a 4th Amendment waiver shares an apartment with another person, the common areas of the apartment are protected by the 4th Amendment rights of the roommate. Or, if a person subject to a 4th Amendment waiver is a passenger in a vehicle, the vehicle is protected by the 4th Amendment rights of the owner or authorized user of the vehicle.

If the person who has waived his or her 4th Amendment rights refuses to submit to a search in accordance with the Court approved waiver, the officer may consider the refusal obstruction of justice under Code of Virginia §18.2-460 and proceed accordingly. Additionally, the officer will document the refusal with a report and forward it to the Commonwealth Attorney for further action.