

ILLINOIS STATE POLICE DIRECTIVE ENF-037, WARRANTLESS SEARCHES

RESCINDS: ENF-037, 2014-088, revised 11-03-2014.	REVISED: 09-17-2018 2018-013
RELATED DOCUMENTS: ENF-012, ENF-016, EQP-015, OPS-201	RELATED CALEA STANDARDS: 1.2.4, 41.2.4, 61.1.2

I. POLICY

NOTE: Consistent with all relevant statutory and case law, this directive is intended to provide general guidance with respect to warrantless searches and is not relevant to evidentiary issues regarding admissibility.

The Illinois State Police (ISP) will conduct searches of people, places, and things in a manner intended to:

- I.A. Provide protection of constitutional rights.
- I.B. Minimize intrusion to the extent necessary to effectuate the purpose of the search.
- I.C. Preserve evidence or the fruits of a crime.
- I.D. Provide for the safety of all parties.

II. DEFINITIONS

- II.A. Curtilage - the area immediately surrounding buildings and homes where activities associated with the privacies of life occur.
- II.B. Open field - an abbreviated way of identifying non-curtilage areas.
- II.C. Search by consent - a search performed by a police officer after the subject of the search, or the person having a reasonable expectation of privacy at the location to be searched, provides consent. The person giving consent must be free from duress and not in-custody when consent is given.
- II.D. Stop-and-frisk, also known as a pat down detention or a "Terry Stop" – this search allows an officer to conduct a cursory pat down of outer clothing for weapons when an officer reasonably believes the suspect is armed, engaged in criminal conduct or is about to be. The detention may last as long as an active and diligent investigation reasonably requires to dispel suspicion or allow it to rise to the level of probable cause.

III. PROCEDURES

- III.A. As a general rule, a search warrant should be obtained if possible and practical when conducting a non-consensual search.
- III.B. Search by consent
 - III.B.1. At the conclusion of enforcement activity, and after issuing, if appropriate, citation(s)/written warning(s)/any other paperwork, the officer will return all of the violator's materials before requesting consent to search.
 - III.B.2. If the violator agrees to continue discussion with the officer, the video and audio components of the recording equipment in use will remain on for any further discussion and/or inquiry, including but not limited to a request for consent to search, the subject's response, and any search conducted until the conclusion of contact with the subject.
 - III.B.3. Use of Consent to Search form, ISP 1-017 (this document is available in the ISP Document Library at <http://maphome/documentlibrary/>)
 - III.B.3.a. If the audio component for all available recording equipment is inoperable at the time of the request or the officer is not in immediate possession of any recording

- equipment, the officer will prepare a written request using the Consent to Search form and request the subject to sign the form.
- III.B.3.b. If the subject orally consents to the search but refuses to sign the Consent to Search form, the officer will write "Oral Consent Given" in the signature line and may conduct the search.
- III.B.4. If the consent to search request is a result of a self-initiated traffic stop, the officer will document on the ISP e-Stop Card that consent was requested, whether or not consent was given, whether or not the search was conducted, and if the search was performed by "Consent" or "Other" means.
 - III.B.4.a. If a K-9 was used on the stop and the K-9 alerted (probable cause is obtained), any subsequent search will be deemed a search by "Other" means on the e-Stop Card regardless of whether consent is requested and/or granted.
 - III.B.4.b. Officers will document their reasonable facts, circumstances, and conclusions that support their request for consent to search the vehicle, driver and/or passenger(s) in the "Notes" field on the e-Stop card or bottom of the hard-copy ISP Traffic Stop Card, ISP 5-833, (this document is available in the ISP Document Library at <http://maphome/documentlibrary/>), if their MDC is not operational or they do not have an MDC.
 - III.B.4.c. If a Consent to Search form was prepared pursuant to paragraph III.B.3.a., and the subject orally consented but refused to sign the form, the officer will document that fact in the "Notes" field of the e-Stop Card or bottom of ISP 5-833.
 - III.B.5. If a field report is being completed in accordance to policy for reasons other than the search, but a consent search was also conducted, officers will document the pertinent facts leading up to the search as well as the outcome of the search in the field report.
 - III.B.5.a. In the field report, officers will indicate the Secondary Case Classification as "Consent for Search Requested."
 - III.B.5.b. If contraband is found as a result of the consent search, officers will capture the information in the "Property Tab" of the field report.
 - III.B.6. The officer will follow and complete these procedures regardless of whether or not an arrest was made.
- III.C. Warrantless searches where no consent is necessary
 - III.C.1. A stop-and-frisk, also known as a pat down, or a "Terry Stop" is:
 - III.C.1.a. In accordance with 725 ILCS 5/108-1.01, "Search during temporary questioning," an officer may search an individual for weapons if the officer has stopped a person for temporary questioning pursuant to 725 ILCS 5/107-14, "Temporary questioning without arrest," and reasonably believes that the officer or another is in danger of attack. If the officer discovers a weapon, the officer may take it until the completion of the questioning, at which time the officer shall either return the weapon, if lawfully possessed, or arrest the person so questioned.
 - III.C.1.b. The "plain feel" doctrine allows an officer to seize evidence other than a weapon if, in conducting a search for weapons, the contraband nature of the evidence is "immediately apparent" to the officer based on their training and experience.
 - III.C.1.c. Any officer who initiates a pat down or frisk for suspected weapons should be able to articulate the reason(s) for suspecting the officer or others in the immediate area are in fear of being harmed.
 - III.C.1.d. An activation of a need to complete a Pedestrian Stop Card, ISP 5-833a, (this document is available in the ISP Document Library at <http://maphome/documentlibrary/>).
- Officers will complete an ISP Pedestrian Stop Card when an officer has a reportable encounter.

- III.C.2. Movable vehicle exception
 - III.C.2.a. The regular justifications and authorizations to search apply to movable vehicles.
 - III.C.2.b. In addition, special vehicle exceptions exist.
 - III.C.2.b.1) The vehicle exceptions allow an officer to search any portion of the vehicle the officer has probable cause to believe evidence of the crime for which the occupant was arrested may be located.

For instance, if an occupant was arrested for Driving Under the Influence of Drugs, the vehicle could be searched for additional evidence to support the original charge. If the occupant was arrested for Driving while Suspended, the vehicle could not be searched without consent or a search warrant since there is no additional evidence associated with that charge. A tow inventory can be conducted pursuant to ISP Directive ENF-016, "Tows."
 - III.C.2.b.2) The vehicle exceptions in the event of the arrest of an occupant allow search of areas within reach of the arrestee.
- III.C.3. The regular justifications and authorizations apply to crime scene searches. Where practical, officers should consider seeking the advice of the state's attorney's office for crime scene searches, particularly for residences where the suspect or offender may have an expectation of privacy.
- III.C.4. Exigent circumstances may allow a warrantless search in situations for which delay in obtaining a warrant may endanger the public or result in the loss of evidence.
- III.C.5. Inventory of seized items
 - III.C.5.a. Inventory of property seized by police officers (see ISP Directives OPS-201, "Evidence – Collecting and Packaging" and ENF-016, "Tows") may be justified to:
 - III.C.5.a.1) Protect the property of the owner.
 - III.C.5.a.2) Protect the law enforcement agency against claims the property has been lost or stolen.
 - III.C.5.a.3) Allow the police to discover any potential danger that may exist because of the contents of the property itself.
 - III.C.5.b. When a vehicle is towed, the requirements of ISP Directive ENF-016, "Tows," will apply.
 - III.C.5.c. Inventory principles apply to property that comes into possession of the officer.
- III.C.6. An officer may reasonably search a person arrested and the area within such person's immediate control for weapons or additional evidence of the crime on which the arrest is based.
- III.C.7. Plain view searches are justified when an officer is legitimately at a particular location and has probable cause to believe an item observed is contraband or evidence.
- III.C.8. "Open field" searches may be permissible in areas outside the curtilage surrounding buildings and homes.
- III.C.9. Court rulings may supersede provisions of this directive at any time. Officers should refer to the ISP Legal Office or local state's attorney for continuing guidance.

| Indicates new or revised items.

-End of Directive-