



## **CHAPTER 22 CONSTITUTIONAL ISSUES**

**Effective: June 2007**

**Revised: January 2020**

### **22.0 PURPOSE**

The purpose of this chapter is to provide information and guidelines to help members understand and protect an individual's constitutional rights.

### **22.1 POLICY**

It is the policy of the Golden Police Department to diligently protect the constitutional rights of all persons with whom we come into contact, specifically those rights pertaining to arrest, search, seizure, self-incrimination, access to counsel, and due process. To this end, every officer will have thorough knowledge of part 1, part 3, and part 4 of article 3 of title 16, C.R.S. and act in accordance with these laws.

### **22.2 ENFORCEMENT CONTACTS / BIAS BASED PROFILING**

The department takes a proactive approach to the delivery of police services. It will aggressively investigate suspicious persons and circumstances and actively enforce motor vehicle laws.

The department will not condone the use of any bias based profiling in its enforcement efforts. Members will focus attention on a person's conduct or other specific suspect information. The selection of individuals based solely on a common trait of a group to include, but not limited to, race, ethnic background, gender, sexual orientation, religion, economic status, age or culture, is prohibited.

All investigative detentions, vehicle stops, arrests, searches and seizures of property (to include asset forfeiture procedures) by members will be based on a standard of reasonable suspicion or probable cause as required by the Fourth Amendment of the U.S. Constitution, statutory authority and prevailing case law. Members must be able to articulate specific facts, circumstances and conclusions that support reasonable suspicion or probable cause for an arrest, investigative detention, or vehicle stop.

In accordance with § 24-31-309, C.R.S. members who detain any person for a traffic stop, but do not issue a citation or make an arrest, will provide to that person a business card. The business card will contain the member's name, badge / identification number and a telephone number that people may use to report any comments regarding the traffic stop or other contact. During

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authorized undercover operations, the issuance of business cards to any person who has been detained in a vehicle stop, but not cited or arrested is not mandatory as provided by C.R.S.

Members will receive training in profiling issues to include legal aspects and current case law findings. Training may also include a member's ability to articulate facts that lead to reasonable suspicion and probable cause in the support of arrest or search and seizure. In addition, management and supervisory personnel will provide oversight to these activities with specific attention to potential unconstitutional, illegal or unethical actions.

Professional Standards will conduct an annual administrative review of agency practices including bias based profiling related citizen concerns and complaints and any corrective measures taken. This review will be included as part of the *Professional Standards Annual Report*.

**22.3 WARRANTLESS SEARCHES**

At times, a member performing their duties may conduct a search without having to obtain a search warrant.

**22.3.1 Consent Search**

Search by consent is a search performed by a member after the subject of the search or the person having standing (rights) to the location to be searched voluntarily consents. The consent must be freely and intelligently given.

- A. Pursuant to § 16-3-310, C.R.S, a member may conduct a consensual search of a person who is not under arrest, the person's effects, or a vehicle.
  - 1. A member must advise the person subject to the search or with the apparent or actual authority to provide permission to search the vehicle or effects of the following:
    - a. They are being asked to voluntarily consent to the search; and,
    - b. They have the right to refuse the search request.

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2. A member does not need to provide a specific recitation of the advisement. Substantial compliance with the substance of the advisement is sufficient to comply with the statute's requirements.
  3. A member may conduct the search only after the person has been advised as required and they subsequently provide consent.
- B. A member may conduct the search only if the person voluntarily provides verbal or written consent.
1. Consent may be given orally, but ideally, the consent should be in writing and documented on a *Consent to Search* form.
  2. Other evidence of knowing and voluntary consent may be acceptable if the person is unable to provide written or verbal consent.

**22.3.2 Frisk Search (Pat Down Search)**

Frisk searches are known by other names which include: "Stop and Search," "Pat Down Search," or a "Terry Stop;" however, they all stem from U.S. Supreme Court case *Terry v. Ohio* which, in summary, says that an officer may conduct a cursory pat down designed to discover weapons.

- A. Pursuant to § 16-3-103 (2), C.R.S., a member may frisk an individual for weapons if they have stopped a person for temporary questioning and reasonably suspects that their personal safety requires it.
1. The authority to search for and seize weapons is for the limited purpose of allowing an officer to protect themselves and others.
  2. The authority is clearly not for the purpose of searching for and seizing evidence, although during the course of a frisk, evidence may be discovered and become the basis for an arrest.
  3. Pursuant to the "plain feel" doctrine, a member may seize evidence other than a weapon if, in conducting the frisk, the contraband nature of the evidence is "immediately apparent" to them based on their feel of the object through the suspect's clothing during the pat down.

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- B. Any member who initiates a frisk must be able to articulate specific facts for their reasonable belief that a suspect may be armed and pose a threat to a member or others. This determination is based upon the totality of the circumstances associated with the contact, which includes the specific facts regarding the situation, such as the member's observations, which may be supported by their training, education, and prior experience in similar circumstances.

**22.3.3 Moveable Vehicle Exception**

The following set forth the basis for allowing the search of a vehicle with probable cause, but without a warrant:

- A. As contrasted to a home or other personal items, there is a lesser expectation of privacy regarding motor vehicles.
- B. The mobility of a motor vehicle would make it impractical to require the police to first obtain a warrant.
  - 1. Members do not have to prove that a vehicle might or would be gone if they obtained a warrant before making the search.
  - 2. The existence of probable cause alone justifies the search.

The motor vehicle exception allows a member to search the entire vehicle when they have probable cause to believe the vehicle contains contraband or evidence of a crime. If probable cause is limited to a certain area, then a member cannot go beyond the area in the scope of that search.

**22.3.4 Crime Scene Search**

Crime scene searches may fall into several areas of warrantless searches to include:

- A. Consent (*Consent Search* section of this chapter).
- B. Plain view (*Plain View Search* section of this chapter).
- C. Search incident to arrest (*Search Incident to Arrest* section of this chapter).

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- D. Exigent circumstances (*Exigent Circumstances Search* section of this chapter).

If a member discovers a crime scene during the course of their duties, they should:

- A. Secure the area or place and keep it in the same physical condition as it was left by the perpetrator.
- B. Render assistance to the injured.
- C. Attempt to identify witnesses and victims.
- D. Attempt to locate, identify, and arrest the offenders if they are still at the scene.
- E. Notify the watch commander if they are not already on the scene.
- F. Yield responsibility to follow-up investigators and/or evidence collection personnel.

Additional information regarding crime scene security as well as evidence collection and preservation can be found in *GPD PPM Chapter 80 – Property and Evidence, Section A – Collection and Preservation*. The *C.B.I. Physical Evidence Handbook, Chapter XIII*, also details investigative methods to be employed during crime scene searches.

**22.3.5 Exigent Circumstances Search**

The exigent circumstances exception allows a member to make a warrantless search in situations where probable cause exists and, due to an emergency, the compelling need for immediate police action outweighs the adherence to the search warrant requirement. Exigent circumstances have been found to exist in those situations involving:

- A. The “hot pursuit” of a fleeing suspect.
- B. A risk of immediate destruction or removal of evidence.
- C. Reasonable claim of an emergency threatening the life or safety of another.

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In determining the existence of exigent circumstances, a member must consider the “totality of the circumstances” known to them at the time.

**22.3.6 Inventory Search**

Inventory of property seized by members are justified for the following reasons:

- A. An inventory protects the property of the owner.
- B. It protects the police agency against claims that property has been lost or stolen.
- C. It allows police to discover any potential danger that may exist because of the contents of the property itself.

Limitations on these searches include:

- A. The property to be inventoried must have lawfully come into possession of a member.
- B. The inventory must be conducted pursuant to department directives.

Additional items of property subject to an inventory search include:

- A. Found property.
- B. Property turned over to the police department by a citizen for safekeeping, destruction, evidence, etc.
- C. Abandoned property.

**22.3.7 Search Incident to Arrest**

Members may reasonably search any person arrested and the area within such person’s immediate control for the purpose of:

- A. Protecting themselves or another.
- B. Preventing the person from escaping.
- C. Discovering evidence of the crime.

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- D. Discovering any instruments, articles, or things which may have been used in the commission of or which may constitute evidence of an offense.

The only justification needed for this search incident to arrest is that a valid custodial arrest occurred.

Members may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search, or if it is reasonable to believe the vehicle contains evidence of the offense of the arrest (U.S. Supreme Court case *Arizona v. Gant*).

**22.3.8 Plain View Search**

The "plain view" doctrine provides that no warrant is needed to seize evidence in plain view as long as a member is conducting a legitimate investigation of criminal activity, legitimately on the premises, the discovery of the evidence is inadvertent and the object in plain view possesses a readily apparent incrimination nature. For the plain view search to be upheld:

- A. There must be no pre-observation intrusion that violated constitutional rights.
- B. Artificial devices that aid in or enhance the ability of a member's view are not considered "plain view;" however, a flashlight is generally acceptable, provided a member has a right to be where they are when using the light source.
- C. Moving items or the rearrangement of items to note serial numbers, for example, is not supported by the "plain view" doctrine.

The "plain view" doctrine also applies to warrant searches, even if the item to be seized was not noted on the search warrant.

**22.3.9 Open Field Search**

Open field searches may involve, for example, marijuana cultivation. Areas immediately surrounding buildings and home should not be considered "open field" instead, the courts have viewed this land as "curtilage" and is essentially equivalent to a yard. Areas outside the "curtilage" include:

- A. Woods.

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B. Pastures.

C. Grassland.

If an owner has taken any step(s) to protect the area from trespass or observation, it may not be considered "open field."

**22.3.10 Night-Time Security Checks**

Night-time security checks are a form of a warrantless search upheld by the courts.

A. These searches are permissible only in a business and only if the member's intent is to determine if any unauthorized people are on said premises.

B. Members may check for owner information so notification can be made.

**22.4 INTERVIEW AND INTERROGATION**

Members will interview, interrogate or otherwise question persons in accordance with the law and established department directives.

**22.5 REQUESTS FOR LEGAL SERVICE / CLARIFICATION**

All non-emergency requests for legal services / clarification from members (except the Chief of Police and Division Heads) should be submitted, in writing, through the chain of command. Responses from the department's legal advisor will be returned to the requestor following the chain of command. This process is not required when immediate legal clarification is needed during an emergency.