

	Winchester City Sheriff's Office Manual of General Orders Administration 103	Effective Date: May 1, 2014 Accreditation Standards: ADM .02.02
		Original Policy: May 1, 2014 Last Review Date: October 31, 2023 Next Review Date: October 31, 2024
Subject: Limits of Authority		<u>By Authority of:</u> <hr/> William E. Sales, Sheriff

I. PURPOSE

The purpose of this directive is to define the legally mandated authority for the enforcement of laws, to establish procedures for assuring compliance with constitutional requirements during criminal investigations, and to set forth guidelines concerning the use of discretion by law enforcement officers.

II. POLICY

The United States Constitution guarantees every citizen safeguards from government intrusion into their lives. These safeguards have become the cornerstone for the application of criminal justice in America. Consequently, these safeguards have placed limitations on the authority of law enforcement officers to enforce the laws of the United States, Commonwealth of Virginia, and the City of Winchester. The Winchester City Sheriff's Office expects its deputies to act with due regard for citizen's civil liberties.

III. PROCEDURE

A. Miranda Rights:

1. Miranda applies only to custodial interrogation. Interrogation is defined below. As to what constitutes custody, if a reasonable person in the suspect's position believes that he or she is not free to leave, then Miranda applies. Note that it is not the deputy's view of what constitutes custody, but the suspect's view.

In determining whether a suspect is free to leave the law enforcement officer's presence, a court will look at the totality of the circumstances of the interrogation: if a law enforcement officer questions a suspect in his police car or at the station, the environment may be construed as a secure one, and the interview custodial. Practically speaking, an arrest or physical restraint of a suspect places him or her in custody, and Miranda warnings must be administered before the deputy asks questions about the offense. Miranda warnings must be given when:

2. The suspect reasonably believes that he/she is in custody, and
3. The suspect is interrogated.

B. Definitions

1. An interview as opposed to an interrogation may be construed as any conversation with a suspect, witness, victim, or other citizen.
2. An interrogation, according to the Supreme Court, includes any words or conduct on the part of law enforcement officer (other than those normally attendant to arrest and custody) that the law enforcement officer should know are reasonably likely to elicit an incriminating response from the suspect.
3. Deputies are reminded that an interrogation does not rely solely or exclusively on words: conduct can be the "functional equivalent" of asking questions.

C. Rights of Admonition

1. In order to achieve uniformity in administering Miranda warnings, law enforcement officers will be issued forms with the Miranda warnings and waiver of them. Deputies will advise suspects, the following:
 - a. You have the right to remain silent.
 - b. Anything you say can and will be used against you in a court of law.
 - c. You have the right to talk to an attorney and have him present with you while you are being questioned.
 - d. If you cannot afford to hire an attorney, one will be appointed to represent you before any questioning, if you wish to have one.
2. After the warning, in order to secure a waiver, the deputy shall ask and receive affirmative replies to the following questions:
 - a. Do you understand each of these rights I have explained to you?
 - b. Having these rights in mind, do you wish to talk to me/us now?
3. After the rights have been read, understood, and the person wishes to waive them, the deputy shall have the suspect sign the waiver or rights form. Deputies must cease questioning whenever the suspect invokes the right to silence or the right to have an attorney.
 - a. After the suspect has been given the Miranda warning, deputies will not try to elicit incriminating evidence unless the suspect waives the right to counsel.
 - b. If the suspect has requested counsel, deputies shall not try to obtain a waiver unless the suspect initiates conversation with them.
 - c. If the suspect seeks counsel, then the deputies must not interfere with suspect's effort to gain access to counsel.
4. Deputies will take care when advising juveniles of their Miranda warning to ensure that the juvenile completely understands the rights before the juvenile signs the waiver.

D. Exemptions/Special Cases

1. Miranda warnings do not apply to the following situations:
 - a. Brief on scene questioning;
 - b. Identification procedures such as fingerprinting, conducting a line-up, sobriety test;
 - c. Volunteered, spontaneous statements.
 - d. Brief investigative detention;
 - e. Roadside questioning during routine traffic stops;
 - f. Routine booking questions attendant to arrest;
 - g. Questioning by a private person.
2. The Supreme Court decided in *Maryland v. Shatzer* (2010) that after being read their Miranda warning and the suspect invokes his/her right to have an attorney present during questioning, that this right is valid for 14 days. After 14 days law enforcement may again attempt to question the suspect without their attorney present. However, if the suspect is in custody he/she must waive their rights to an attorney being present, before questioning.

E. Search and Seizure

- a. The Fourth Amendment guarantees the right of people to be free from unreasonable searches and seizures of their homes, persons, and belongings. The Supreme Court is constantly interpreting the Fourth Amendment as it applies to law enforcement conduct. Illegally seized items of evidence may not be admitted in court and may cause the loss of a criminal case. Additionally, an illegally conducted search invites civil litigation under the Civil Rights Act. In order to ensure that Fourth Amendment Rights are protected, deputies will obtain search warrants upon probable cause in all appropriate criminal cases except the following:

- 1. Consent searches;**
- 2. Emergency searches;**
- 3. Plain view;**
- 3. Abandoned property;**
- 5. Inventory searches of vehicles;**
- 6. Incident to arrest;**
- 7. Pat-downs of suspicious persons (Terry Stops).**

F. Consent

1. A search warrant is not necessary where a person who has authority or control over the thing or place to be searched consents to the search.
 - Generally, such authority extends to a person who shares use, access, or control of property.

• If two people have joint ownership of property, either may give consent as long as the other does not object to the search.

• A landlord, including a hotel or motel manager cannot consent to a search of a tenant's premises, unless the tenant has been evicted or has abandoned the property.

• A parent may consent to a search of premises occupied by a dependent child.

• An employee cannot give valid consent to a search of his employer's premises unless he has been left in custody of the premises.

• An employer may generally consent to a search of premises used by employees, except premises used solely by an employee (e.g., a locker).

2. Consent must be voluntarily given. If a deputy requests consent from a person under circumstances, which a reasonable person would consider coercive, then the deputy must seek a search warrant. The deputy may have the burden of demonstrating volunteerism.

3. A person who initially gives consent for a search may withdraw it at any time. Deputies shall then stop the search, secure the premises and seek a search warrant.

G. Emergency Searches

1. A search warrant is not necessary in an emergency. An emergency is sometimes termed "exigent circumstances".

2. The Virginia Supreme Court, in *Verez v. Commonwealth*, gave ten factors to be considered in evaluating whether an emergency exists:

a. The degree of urgency involved and the time required to obtain a search warrant.

b. Deputy's reasonable belief that contraband is about to be removed or destroyed.

c. The possibility of danger to others, including deputies, left to guard the site.

d. Information that the possessors of contraband are aware that law enforcement is on their trail.

e. Whether the offense is serious, or involves violence.

f. Whether deputies reasonably believe the suspects are armed.

g. Whether the deputies have probable cause.

h. Whether the deputies have strong reason to believe the suspects are present on the premises.

i. The likelihood that the suspects will escape.

- j. The suspect's entry onto premises after hot pursuit.

H. Plain View

1. A plain view seizure is, technically, not a search. To make a plain view seizure of property (contraband, fruits or instrumentalities of the crime), the deputy must inadvertently observe the property in a place where he/she has a legal right to be.
2. It must be immediately apparent to the deputy that the items he/ she observes may be evidence of a crime, contraband, or otherwise subject to seizure.
 - a. The deputy may not move items; look inside or underneath, or behind them for serial numbers or other identifying marks. If such movement is necessary, deputies shall obtain a warrant.

I. Abandoned Property

1. A search warrant is not required for property that has been abandoned.
2. To constitute abandoned property, two conditions must apply:
 - a. Property was voluntarily abandoned.
 - b. Property was discarded outside the area in which someone has a reasonable expectation of privacy.

J. Inventory Searches of Vehicles

1. A lawfully impounded vehicle, or a vehicle removed from the street and placed in Sheriff's Office custody, shall have its contents inventoried for purposes of Sheriff's Office management. Any evidence or contraband found during the inventory may be used to formulate probable cause for subsequent search or arrest. The inventory must be a routine law enforcement procedure.

K. Probable Cause and Reasonable Suspicion

1. Probable Cause: Most searches and all arrests are based on the law enforcement officer's perception of probable cause. According to the Supreme Court, "Probable cause exists where the facts and circumstances within their (the arresting deputy's) knowledge and of which they had reasonable trustworthy information are sufficient in themselves to warrant a person of reasonable caution in the belief that an offense has been, or is, being or may be committed."
 - a. A deputy must have probable cause to undertake a search or make an arrest.
 - b. When a deputy has probable cause, he/she may undertake a complete body search (Strip searches are governed by Virginia Code § 19.2-59.1), record the suspect's fingerprints, take the suspect's photograph, and criminally charge the person. The aim of probable cause is to make a formal criminal charge.

L. Reasonable Suspicion: Reasonable suspicion involves a standard less than probable cause, generally defined by the courts as circumstances or a collection of circumstances that would lead a trained, experienced deputy to believe that criminal activity may be afoot.

1. A deputy must have reasonable suspicion to temporarily detain a person.

M. Vehicles

1. Preferably, deputies shall search vehicles under authority of a warrant whenever there is sufficient time to obtain one.
 - a. If a vehicle is broken down, or is parked on private property, and there is little likelihood that the vehicle will be driven away or that evidence within it will be destroyed, deputies shall obtain a warrant to search it, unless voluntary consent is given.
2. Custodial Arrests: According to *Gant v Arizona* deputies may search the passenger compartment of a vehicle incident to a recent occupant's arrest only if it is reasonable to believe that the arrestee might access the vehicle at the time of the search or that the vehicle contains evidence of the offense of the arrest.
3. Probable cause only - apart from custodial arrests, deputies may search a vehicle without a warrant if:
 - a. Probable cause exists that the vehicle contains evidence of an illegal act, and
 - b. The vehicle is moving or capable of being moved quickly so that if the deputy does not search immediately, evidence could be destroyed or lost.
 - c. When deputies have probable cause to believe that contraband is concealed somewhere within the vehicle, they may conduct a warrantless search of the entire vehicle, including all containers and packages that may conceal the object of the search. If, however, probable cause is directed at a specific container within the vehicle, a deputy may seize the container and must obtain a search warrant before searching it.

N. Stop and Frisk: The "stop-and-frisk" (*Terry v Ohio*) is a routine technique whereby law enforcement officers stop, question, and sometimes search a suspicious person.

1. The search must be confined to a limited pat down to search for weapons for the deputy's own protection based on reasonable suspicion that the person has a weapon.
2. Seizure of contraband can be justified during a stop-and-frisk through the plain view doctrine if detected by the sense of touch as long as the search stays within the bounds of *Terry v. Ohio*. Articulation must be precise as to how contraband was recognized by deputy's touch.

O. Non-English Speaking and/or Hearing Impaired Suspects

1. Deputies will assure that hearing impaired and/or non-English speaking suspects clearly understand their rights as guaranteed by the United States Constitution. Qualified interpreters

will be used whenever Constitutional Rights issues become apparent to the deputies confronted with hearing impaired and/or non-English speaking person.

