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Approval: Chief of Police	Manual: Policy and Procedure			

I. PURPOSE

The procedures for search and seizure, and/or arrest, with or without a warrant, are governed by North Carolina General Statutes 15A, Sub-chapter II, Articles 9-15 and 15A Sub-chapter IV, Article 20.

II. DEFINITIONS

- A. Search: In criminal law, search means examination of a person's body, property or other area which the person would reasonably be expected to consider as private by a law enforcement officer for finding evidence of a crime.
- B. Seizure: A seizure is the act of taking by legal process or force, such as the seizure of evidence found at the scene of a crime.

III. POLICY

- A. A law enforcement officer may conduct a search and make seizures, without a search warrant or other authorization, if consent to the search is given. The consent needed to justify a search and seizure under state law must be given by the person to be searched, by the registered owner of a vehicle to be searched or by the person in apparent control of its operation and contents at the time consent is given or by a person who by ownership or otherwise is reasonably apparently entitled to give or withhold consent to a search of premises.
- B. The search may not exceed, in duration or physical scope, the limits of the consent given. Upon completion of the search, the officer must make a list of things seized and must deliver a copy to the person who consented to the search.
- C. If an officer has reason to believe that his safety or the safety of others is in jeopardy at any time during the lawful encounter with an individual, even though the officer does not have grounds to arrest the individual, the officer may search for any dangerous weapons by an external pat-down of the clothing of the suspect.
 - 1. If, during a legal frisk, an officer feels an object, based on his training and experience, that is immediately apparent (without squeezing, sliding or otherwise manipulating the article) to be an illegal substance, he may legally seize said object.
- D. When officers interact with people in or near a vehicle but do not make an arrest, they may search a vehicle for weapons without a warrant if they have reasonable suspicion that the person is dangerous and a weapon may be in the vehicle that could be used to harm them.
- E. Officers may make a limited warrantless search of a vehicle when they need to determine ownership of the vehicle, i.e.: theft, vandalism or abandonment.
 - 1. The United States Supreme Court has ruled (Carroll vs. United States) that a vehicle can

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be searched without a warrant if there is probable cause to believe it contains contraband or evidence and vehicle is in a public place.

Courts have applied this vehicle exception to uphold warrantless searches of an assortment of vehicles, including a motor home, houseboat and a roomette on a train. The vehicle exception is based on the court's conclusion that the expectation of privacy with respect to one's vehicle is lower than that regarding one's home or office due to the inherent mobility of a vehicle, their periodic inspections and licensing requirements, and the public nature of vehicle travel where both its occupants and contents are in plain view. Under the authority of this ruling, Kinston Police Department Officers may perform warrantless searches of vehicles.

2. The United States Supreme Court has ruled (*Arizona vs. Gant*) that a the Fourth Amendment to the United States Constitution requires law enforcement officers to demonstrate an actual and continuing threat to their safety posed by an arrestee, or a need to preserve evidence related to the crime of arrest from tampering by the arrestee, in order to justify a warrantless vehicular search incident to arrest conducted after the vehicle's recent occupants have been arrested and secured.
- F. A police officer's search of a crime scene shall be limited by the following factors: the consent given by the owner of the premises which forms the crime scene; the search is only permitted in areas necessary to discover or disclose evidence or contraband of the crime that has been committed at the scene; the exigency of the search to prevent further harm to the general public or the persons present in the premises; as limited by a search warrant; and/or contraband in plain view.
1. A warrantless search may be conducted without a search warrant, arrest warrant or consent when exigent circumstances exist (when immediate action is needed to preserve life or property). A warrantless search may also be authorized by a person authorized to give consent.
 2. When an officer reasonably believes that doing so is urgently necessary to save life, prevent serious bodily harm, or avert or control public catastrophe, the officer may take one or more of the following actions: enter buildings, vehicles, and other premises; limit or restrict the presence of persons in premises or areas; and exercise control over the property of others.
- G. Upon seizing items pursuant to a search warrant, an officer must write and sign a receipt listing the items taken and containing the name of the court by which the warrant was issued. If the items were taken from a person, the receipt must be given to the person. If items were taken from a place or vehicle, the receipt must be given to the owner or person in apparent control of the premises or vehicle if the person is present; or, if such person is not present, the officer must leave the receipt in the premises or vehicle from which the items were taken.
1. If during the search the officer lawfully, yet inadvertently, discovers items not specified in the warrant that are subject to seizure under N.C.G.S. 15A-242 he may also take possession of the items discovered.

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2. Seized items must then be secured in the Crime Lab for safekeeping or evidence to later be obtained by the owner of the vehicle or property. Any items seized by the officer during the inventory search, which become evidence of a crime, must be logged as evidence and also turned over to the Crime Lab for potential analysis and/or submission in the subsequent prosecution.
- H. A non-testimonial order is an investigative procedure authorized by N.C.G.S. 15A-271 which can be utilized to identify a perpetrator of a crime. It can also be used to exclude an individual from the pool of suspects. Under this article, a solicitor may make application to a judge for an order requiring suspects to submit to certain non-testimonial identification procedures such as: fingerprints, measurements, urine, saliva, and/or hair specimens, voice and/or handwriting samples, photographs, and lineups.
1. North Carolina Supreme Court requires that a search warrant be issued before obtaining blood from a suspect (unless written consent is given).
- I. An officer must obtain a search warrant for a strip and/or body cavity search unless exigent circumstances in which evidence would dissipate while the officer sought a warrant or the failure to immediately obtain evidence would present a serious threat to the safety of any person involved in the search or arrest. When a suspect is in custody, the officer can search the entire body, except body cavities, including clothing and inside pockets. Although highly intrusive, strip and body cavity searches may make it impractical to obtain a warrant; such as, the evidence would be destroyed or sometimes be necessary to protect the safety of officers, civilians, and other prisoners; and to detect and seize evidence of the crime.
1. **Strip Searches** are defined as any search of an individual requiring the removal of all clothing to permit the visual inspections of skin surfaces including genital areas. Strip searches should be conducted only if the officer has a search warrant for the person, or the person is under arrest, or if the subject consents to be strip searched. An officer must have probable cause, articulable and reasonable suspicion, to believe that an individual is concealing contraband or weapons. Strip searches must be authorized by a supervisor and must be conducted out of the public view in a secured room and in a manner that protects the privacy of the person being searched. Only officers of the same gender as the subject may conduct the search and the search may only be viewed by those officers involved in or called in to assist in the search.
 2. **Body cavity searches** are defined as any search involving not only visual inspection of skin surfaces but also the internal physical examination of body cavities, such as the rectal or vaginal cavity. If there is probable cause to believe that evidence of a crime or a weapon is being concealed within a body cavity, a search warrant that specifically orders a body cavity search must be obtained. A suspect may consent to the body cavity search. In the case of a body cavity search the following procedures shall be followed:
 - a. A body cavity search shall be performed, pursuant to a search warrant or consent, by a qualified physician or other medically trained personnel directed by the physician. Only officers of the same sex as the person being searched will be present when the search is conducted.

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- b. Body cavity searches shall be performed with due recognition and regard for privacy and hygiene concerns.
 - c. The authorized medical personnel conducting the search shall furnish a copy of their report to the police officer serving the search warrant.
 - d. Only officers involved in, or called in to assist in, the search may be present during the search.
 - e. Any evidence recovered from a body cavity search and placed in an evidence storage locker must have a hazardous materials tag (red tag) placed on the outside of the evidence locker.
- J. All searches shall be conducted with regard to safety, legal seizure of evidence, and shall be conducted in a manner to be considered reasonable and legal by applicable judicial authorities.