




RICHMOND POLICE DEPARTMENT GENERAL ORDER

NOTE: This directive is for internal use only, and does not enlarge an employee's civil liability in any way. It should not be constructed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violation of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

Chapter 1	Number 6	Effective Date 07/07/09	Review Date 2012
Subject SEARCH AND SEIZURE		<input type="checkbox"/> New Order <input checked="" type="checkbox"/> Replaces <i>G.O. 1-6 (11/03/06)</i> <i>E.O. 08-13 (08/08/08)</i> <i>E.O. 09-09 (05/26/09)</i>	
References CALEA 1.2.4a, 1.2.4b, 1.2.4c, 1.2.4d, 1.2.4e, 1.2.4f, 1.2.4g, 1.2.8a, 1.2.8b, 1.2.8c VLEPSC ADM.02.02c, ADM.02.02d, OPR. 03.06a, OPR.03.06b, OPR. 12.03, U.S. Constitution – Fourth Amendment VA Code 19.2 Chapter 5, 19.2-386 General Order 7-6, 8-7			
 <hr/> Chief of Police or Designee		07/07/09 <hr/> Date	

I. PURPOSE

The purpose of this *directive* is to establish the policy and procedure for search and seizure of a person, place or thing. This order also contains guidelines for the completion of the Affidavit for a Search Warrant.

II. POLICY

It is the policy of the Richmond Police Department to establish guidelines for lawful search and seizures as set forth by local, state and federal laws. The Fourth Amendment to the United States Constitution guarantees every citizen the right to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. Officers shall scrupulously observe these constitutional guidelines when conducting searches and should always remain mindful of their lawful purpose.

III. ACCOUNTABILITY STATEMENT

All employees are expected to fully comply with the guidelines and timelines set forth in this general order. Failure to comply will result in appropriate corrective action. Responsibility rests with the Division Commander to ensure that any violations of policy are investigated and appropriate training, counseling and/or disciplinary action is initiated.

IV. PROCEDURE

A. Searches with a Search Warrant:

1. In order to obtain a search warrant, a police officer must provide the magistrate or judge with an affidavit that will allow the magistrate or judge to determine for him/herself the persuasiveness of the facts relied on to show probable cause. Department members shall use the Commonwealth of Virginia affidavit for search warrants. (Form DC-338 [07/08])
2. The search warrant shall:
 - a. Name the affiant;
 - b. Recite the offense in relation to which the search is to be made;
 - c. Name or describe in detail the person, place or thing to be searched (a warrant directed against a multiple-occupancy structure must describe a particular sub-unit or specify the name of the occupant);
 - d. Describe the property or person to be searched for;
 - e. Describe or state the facts that establish probable cause;
 - f. Contain the date and time it was issued; and,
 - g. State the reliability of the information and how it was obtained.
3. The official authorized to issue search warrants shall attach a copy of the affidavit to the search warrant and sign with the date and time.
4. Prior to the execution of a search warrant, an operational plan with supervisory approval shall be prepared. The only allowable exception to this would be (1) the search warrant has been executed at a crime scene, and (2) the search and seizure would involve a vehicle or person.
5. Notification of all search warrants shall include the Special Investigations Division's Narcotics *Unit* and the CAPS Unit. The Division of Emergency Communications (DEC) must also be notified of the search warrant location. Notification via telephone call is appropriate.
6. Any search warrant not executed within 15 days after issuance shall be returned to, and voided by, the official who issued the search warrant.
7. The integrity of a valid and legal search warrant must be the prime consideration and it is on this premise that the Department must operate. In many instances, it may be necessary to prolong investigations in order that sufficient facts may be gathered to establish probable cause for search warrants.
8. Under Virginia law, the authority to affect an "immediate" entry stems from exigent circumstances reasonably appearing to the officers to be in existence at the time the entry is made, and not at the time the warrant is obtained; a magistrate or judge lacks the authority to "command" an "immediate" entry in advance of the entry.

B. Searches Incident to Arrest:

1. The U.S. Supreme Court has ruled that a warrantless search of a dwelling incident to a lawful full custodial arrest is constitutionally confined to the area within the arrestee's reach at the time of his/her arrest. A search may be incident to an arrest only if it is substantially contemporaneous with the arrest and is confined to the immediate vicinity of the arrest. *Chimel v. California*, (1969).
2. The U.S. Supreme Court has held, additionally, that only in well-delineated situations may a warrantless search of a dwelling take place, and the burden rests upon the Commonwealth to prove an exceptional situation. Those exceptions are as follows:
 - a. Consent to the search;
 - b. Officers responding to an emergency;
 - c. In hot pursuit of a fleeing felon; and,
 - d. To maintain the status quo while a search warrant is sought, i.e. the goods ultimately seized were in the process of destruction or removal.
3. Arrest in Homes and in Third Party Dwellings:
 - a. The Fourth Amendment prohibits police, in the absence of exigent circumstances, from making a warrantless or nonconsensual entry into a suspect's home for the purpose of affecting a routine felony arrest. Therefore, police cannot enter the home of an accused for the purpose of effecting a felony arrest without having first obtained an arrest warrant and having the warrant in his/her possession. *Payton v. N.Y.*, (1980).
 - b. Before an officer can enter the suspect's home pursuant to an arrest warrant, the officer must have a "reasonable belief" that the location to be searched is where the suspect lives and, second, the officer must have a "reasonable belief" that the suspect is actually present at the address listed on the warrant. *Payton v. N.Y.*, (1980).
 - c. In the absence of the consent of the owner of the dwelling or exigent circumstances, a search warrant is required to search for a person named in an arrest warrant on the premises of a third person. *Steagald v. U.S.*, (1981); *Wallace v. King*, (1980).
4. Protective Sweep in Conjunction with an In-home Arrest:

When officers enter a person's home to arrest that person pursuant to an arrest warrant and officers possess an articulable and objectively reasonable belief that another potentially dangerous person may be located in the home, officers may conduct a limited visual inspection of those areas where a person could be found. The sweep can last no longer than is necessary to dispel the officers' reasonable suspicion and must end when the arrest is completed and officers leave the

premises. Officers may, without reasonable suspicion, also look in closets and other spaces immediately adjoining the area of arrest. Maryland v. Buie, (1990).

5. Search of the Passenger Compartment of an Automobile Upon the Arrest of the Occupant:

a. When a police officer has made a lawful custodial arrest of the occupant of an automobile, the officer, as a contemporaneous incident of that full custodial arrest, may search the passenger compartment of that automobile **when:**

1) *The officer was unable to sufficiently restrain the arrestee during the search, so that it was reasonable to believe the arrestee might have been able to access the vehicle; OR,*

2) *There was a reasonable basis to believe that evidence of the crime for which the occupant of the vehicle was arrested might be found in the passenger compartment at the time of the search.*

New York v. Belton, (1981), Arizona v. Gant, (2009).

b. The officer may search the passenger compartment incident to the custodial arrest if the occupant is in the vehicle when the officer approaches or if the occupant has recently exited the vehicle and is near the vehicle when the officer approaches **so long as at least one of the two requirements from IV.B.5.a.1 or IV.B.5.a.2 above is present and can be articulated by the involved officer.** Thornton v. U.S., (2004), Arizona v. Gant, (2009).

c. Officers may examine the contents of any containers found within the passenger compartment, whether the containers are locked or unlocked. New York v. Belton, (1981). (Note: While the U.S. Supreme Court in Belton did not specifically discuss locked containers, subsequent federal cases can be interpreted to allow searching locked containers during a search incident to arrest.)

C. Searches Without a Search Warrant:

1. Consent to Search:

a. All personnel shall utilize the Permission to Search Form (PD-83) when a **warrantless** search is **conducted** with the consent of **an individual who has authority under the law to consent to the search** of the premises, building or vehicles, **when feasible**. The PD-83 **is to** be signed by the person who granted the permission to search.

b. The officer shall **advise** the person **providing** consent **for** the **warrantless** search, that he/she has the right to deny the search or stop the search at any time.

c. If a co-tenant is physically present and states a refusal to permit the search, the officer shall not conduct the search based on the consent of the other

tenant. This only applies if the refusing co-tenant is physically present and expressly refuses consent. *Georgia v. Randolph*, (2006).

- d. All property seized shall be listed on the back of all copies of the **PD-83**, and a copy of the completed form shall be left with the *consenting* individual. ***In the event that a PD-83 was not utilized, officers are required to list the name and age of the consenting individual as well as all items that were seized in the IBR.***
- e. Distribution of Completed Form:
 - 1) Original - (File the same way as a search warrant.) If an arrest is made, attach to arrest warrant and forward to the court that has jurisdiction of the case. If no arrest is made, the original copy shall be forwarded to the proper court.
 - 2) Copy - Retained by the investigator assigned to the case.
 - 3) Copy - Left with the individual who granted the permission to search.
 - 4) Copy - Forward to the Special Investigations Division without delay.
- f. Quarterly, the Internal Affairs Division will conduct an audit of the forms forwarded to the Special Investigations Division and forward a report to the Chief of Police.

2. Protective Sweep of the Area Within the Suspect's Immediate Control:

Police officers may, whenever they possess an articulable and objectively reasonable belief that a suspect is presently or potentially dangerous, conduct a protective sweep for weapons or persons in the area within the suspect's immediate control. If the suspect moves about, an officer is justified in staying with the individual during the course of the stop and conducting a protective sweep of the areas which come within the suspect's immediate control, even if this action necessitates entry into the suspect's home. This includes furtive movements by an occupant of a vehicle that gives the officer reasonable suspicion the occupant may possess a firearm.

3. Warrantless, Nonconsensual Searches of Fire-Damaged Premises:

- a. Warrantless, nonconsensual searches to fire-damaged premises may only be conducted under the following circumstances. *Michigan v. Tyler*, (1978):
 - 1) During the official's initial entry to fight a fire;
 - 2) During a reasonable time thereafter to investigate the cause of the blaze after it has been extinguished; and,
 - 3) Where an initial investigation is temporarily interrupted due to adverse conditions such as smoke, steam or darkness, reentry may be made without a warrant to continue the investigation into the cause of

the fire. But, re-entry must be promptly made upon the end of the adverse conditions.

- b. Inadvertent discovery of incriminating evidence - Where a police officer, with justification for being on the premises, is not searching for evidence against the accused but inadvertently comes across incriminating evidence; he/she may seize it without a warrant.

4. Search of a Vehicle Based on Probable Cause:

- a. Officers are authorized to search a lawfully stopped vehicle for contraband and/or illegal drugs when officers have probable cause to believe such items are contained in the vehicle. U.S. v. Ross, (1982).
- b. The scope of a vehicle search based on probable cause is determined by the object of the search and whether the object could be contained in the item to be searched. "If probable cause justifies the search of the stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search." *Ross at 825*. Therefore, unlike a search incident to custodial arrest, a search based on probable cause is not confined to the passenger compartment.
- c. Officers with probable cause to search a vehicle may inspect passengers' belongings found in the car that are capable of concealing the object of the search. Separate probable cause is not needed to search an item once the officer has probable cause to search the vehicle in its entirety. Wyoming v. Houghton, (1999).

D. Inventory Searches:

Inventory searches serve caretaking functions and are not designed to uncover evidence of criminal activity. The purpose of the inventory search is to protect the property owner from loss, protect the impounding officer, the Richmond Police Department and the City of Richmond against false liability claims; and protect the general public from danger (See G.O. 8-7, Inventory, Towing, Seizure, Storage and Abandoned Vehicles).

E. *Crime Scene Searches:*

Officers are authorized to secure a crime scene until a search warrant is obtained. Officers may execute a warrantless search at the scene of a crime under the following circumstances:

1. *With consent;*
2. *Contemporaneous to a lawful arrest, the arrestee and the area immediately surrounding the arrestee, if it is likely to contain weapons or evidence;*
3. *If the location to be searched is open to the public; or,*
4. *Under exigent circumstances.*

F. *Searches in Exigent Circumstances:*

Officers are authorized to search without a warrant in emergency situations in which circumstances exist that would cause a reasonable person to believe that entry (or other relevant prompt action) is necessary to prevent physical harm to the officer(s) or others persons, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly impeding legitimate law enforcement efforts.

G. Body Searches:

1. A police officer may detain a person in a public place only when the officer can articulate a reasonable suspicion that the person is committing, has committed or is about to commit a criminal act and once stopped, the officer may inquire of such person his/her name and address. Such police officer may, if he/she reasonably believes that such person is armed and dangerous, frisk his/her person for a dangerous weapon, and if such person is found to illegally possess a dangerous weapon, the police officer shall take possession of the same and dispose of it as provided by law.
2. The Frisk - A frisk is a pat down for weapons plus a pat down of bags or other objects, which may contain weapons. An officer may conduct a frisk only after he/she has lawfully stopped the person.
 - a. Police officers have a right to "Frisk" only when: 1.) They have already lawfully stopped a person based on a reasonable suspicion that the person was engaged in criminal activity, and 2.) They have a reasonable suspicion to believe that the person is armed and dangerous, i.e. that either the officer's safety or the safety of others is in danger. Terry v. Ohio, (1968).
 - b. A frisk is lawful only when the officer:
 - 1) Has observed criminally suspicious activity on the part of the person to be frisked;
 - 2) Has lawfully stopped the person based on the officer's reasonable suspicion of criminal activity and the officer has identified him/herself as a police officer;
 - 3) Has a reasonable articulable suspicion that the suspect is armed and dangerous; and,
 - 4) The officer limits him/herself to a frisk for weapons.
3. The Complete Search - This search should be handled by a police officer of the same sex. It is much more involved than the frisk. The laws governing this type of search are much broader.
 - a. Searches of a person are reasonable when:
 - 1) They are based on a properly issued warrant;

- 2) Connected with a full custodial arrest; or,
 - 3) Made with the free consent of the person searched.
- b. The officer may look for:
- 1) Concealed weapons;
 - 2) Evidence which may connect the suspect with a crime; and,
 - 3) Objects which may be used as a means of escape.
4. The Strip Search – A person removes or arranges some or all of his/her clothing so as to permit a visual inspection of the genitals, buttocks, anus, female breasts or undergarments. In most cases, simply arranging some or all of the clothing to permit a visual inspection of the genitals, buttocks, anus, female breasts or undergarments constitutes a strip search.
- a. When a Strip Search can be Conducted:
- 1) Pursuant to a search warrant specifically authorizing a strip search.
 - 2) Pursuant to specific consent from the person to conduct a strip search of the person.
 - 3) Pursuant to “special justification” for the strip search. Case law shows that the courts will balance the need for the particular search against the invasion of personal rights that the search entails. Courts will consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted. *Taylor v. Commonwealth*, (1998); *Hughes v. Commonwealth*, (2000).
 - 4) Supervisory approval has been obtained in addition to the search warrant, consent and/or special justification.
- b. When a Strip Search Can Not be Conducted:
- No person in custodial arrest for a traffic infraction, Class 3 or Class 4 misdemeanor or a violation of a City Ordinance, which is punishable by 30 days or less in jail, shall be strip searched unless there is reasonable cause to believe, on the part of a law enforcement officer authorizing the search, that the individual is concealing a weapon. (VA Code §19.2-59.1).
- c. Procedure to be Followed by Department Personnel:
- 1) All strip searches must be conducted by a law enforcement officer.
 - 2) All strip searches will be conducted in private with only the individual in custodial arrest and the searching officer present. The only

exception to this rule will be if the individual being searched may jeopardize the safety of the officer conducting the search.

- 3) Persons of the same sex shall perform all strip searches conducted under this section on the person arrested and on premises where persons not physically conducting the search cannot observe the search.
- 4) The officer conducting the search should not touch the individual's private parts. A possible exception would be if the officer conducting the search observes the individual attempt to conceal contraband or a weapon(s).
- 5) The Strip Search Form (PD-98) must be completed by the officer only if the officer requires the person to remove clothing so that the person's genitals, buttocks, anus or female breasts are fully exposed to the officer. The original copy of the PD-98 is forwarded to the Officer-in-Charge of the affected Division; the officer conducting the search shall retain a copy.

d. Where Searches are to be Conducted:

- 1) At Police Headquarters or Special Investigations Division – searches may be conducted in a bathroom or private office where there is no opportunity for any individual, other than the officer conducting the search, to view the proceedings.
- 2) When made pursuant to the execution of a search warrant, the search shall be conducted on the premises, out of the view of others including other police officers or individuals arrested.

5. The Oral Cavity Search – An inspection of the mouth.

An officer may reasonably order an arrestee to disgorge that which the arrestee has within his/her mouth. Force will not be used to extract drugs or evidence from a suspect's mouth. Suspects who are in custody and who have ingested drugs or evidence, or where there is a reasonable suspicion that the in-custody suspect has ingested drugs or evidence, shall be transported by the arresting officer or transporting officer to the hospital (preferably VCU Medical Center) for treatment. If an individual, who is not an arrestee or is a non-custodial arrestee (summons), has or is believed to have ingested drugs or evidence, the officer shall call for the Richmond Ambulance Authority (RAA) to respond for medical treatment. Should the individual leave the scene or refuse medical attention, his/her refusal shall be documented. The officer shall:

- 1) Upon *examination of the subject* by medical personnel, inform the medical personnel of the facts as known by the officer regarding the arrestee's ingestion of the contraband.

- 2) Not advise, instruct, direct, request and/or insinuate to the medical personnel as to any particular medical course of action or outcome or any medical procedure, therapy and /or treatment.
- 3) While medical attention is being administered to a person in custody, remain readily available at the site of the person receiving medical attention.

NOTE: If, at any time, the contents, that the officer reasonably believes to be contraband in the arrestee's mouth, stomach, etc., come outside of the arrestee's body the officer shall, to the extent reasonable, collect, **document** and preserve those contents as evidence.

6. The Full Body Cavity Search – An inspection of the body orifices, internal organs and fluids:

*Searches of body cavities, with the exception of the mouth, will **not be conducted by members of the Richmond Police Department.** Should visual examination of a suspect during a strip search and/or other information lead an officer to believe that a suspect or arrestee is concealing a weapon, evidence or contraband within a body cavity, the following procedures shall be followed:*

- a. *Where there exists reasonable and appropriate cause to support a body cavity search, officers shall apply for a search warrant.*
- b. *If a search warrant is granted, the subject shall be taken to the VCU Medical Center where the search will be conducted in a private location by medically qualified personnel.*
- c. *When allowed by medical personnel, an officer of the same sex as the subject receiving the body cavity search shall be present to witness the search and to recover any weapons, evidence or contraband. Should the search be conducted outside of the presence of the officer, proper chain of custody protocol will be followed and documented within the IBR.*
- d. *The officer shall compile an IBR report with all applicable information and maintain a copy of the search warrant.*

H. Seizures:

1. What may be seized:
 - a. Weapons or other objects used in the commission of a crime;
 - b. Articles or things for which the sale or possession of is unlawful;
 - c. Stolen property or the fruits of any crime; or,
 - d. Any object or person, including without limitation, documents, books, papers, records or body fluids, constituting evidence of the commission of a crime.

2. List of Property Seized:

- a. The officer who seizes any property shall prepare an inventory that shall be produced before the Circuit Court designated in the warrant. The officer executing the warrant shall endorse the date and time of execution and shall file the warrant with the inventory attached (or a notation that no property was seized) and the accompanying affidavit within three (3) working days after the execution of the search warrant in the Circuit Court Clerk's office. Saturdays, Sundays or any federal or state legal holiday shall not be used in computing the three-day filing period.
- b. The seized property shall be recorded on the search warrant under the heading of Search Inventory and Return and sworn to before the Magistrate or Circuit Court Clerk.

3. Records and Handling of Seized Property (Evidence):

- a. The property to be used as evidence shall be safely kept and thereafter disposed of as provided by law. Any property which is not used for evidence, things stolen or embezzled property, shall be restored to its owner. Those items mentioned in VA Code §19.2-53 may be burned or otherwise destroyed as soon as there is no further need for its use unless it is otherwise expressly prohibited by law.
- b. With the consent of the Commonwealth's Attorney, the officer or agency having possession of "money or securities" may retain sufficient amounts necessary to prove the crime of Grand Larceny or any crime requiring a specific amount in value and release the remaining excess moneys or securities to the owner with a proper receipt.
- c. The official authorizing the release shall make an appropriate record including designation or copying of serial numbers. This record shall be admissible into evidence in any proceeding, hearing or trial of the case to the same extent as if such moneys or securities had been introduced.
- d. The record or receipt shall contain:
 - 1) The name of the financial institution or person from whom such monies or securities were taken;
 - 2) The place from where taken;
 - 3) The name of the accused; and,
 - 4) The name of the arresting officer(s) coming into initial possession of such monies or securities.
- e. Pictures shall be taken of any instruments or securities and such pictures shall be attached to the record above and shall contain, in the case of copying, the date of the photograph and the name of the photographer.

- f. The court may, with the consent of the Commonwealth's Attorney, authorize the Clerk of the Circuit Court, upon all appeal rights being exhausted, to deposit such monies or cash in an interest-bearing account.
- g. Any agency seizing property pending forfeiture and final disposition, may do any of the following (Asset Forfeiture):
 - 1) Place the property under constructive seizure by posting notice of seizure for forfeiture on the property or by filing notice of seizure for forfeiture in any appropriate public record relating to property;
 - 2) Remove the property to a storage area for safekeeping or, if the property is a negotiable instrument or money, deposit it in an interest-bearing account;
 - 3) Remove the property to a place designated by the Circuit Court in the county or city wherein the property was seized; or,
 - 4) Provide for another custodian or agency to take custody of the property and remove it to an appropriate location within or not within the jurisdiction of the Circuit Court in the county or city where the property was seized or in which the complaint was filed.
- h. A report regarding the type of property subject to forfeiture and its handling and the final disposition of the property shall be filed by the seizing agency with the Department of Criminal Justice Services in accordance with regulations promulgated by the Board.

I. The Affidavit for a Search Warrant:

1. The affidavit must contain the following:

a. The Offense Involved:

The offense must be in relation to the person, place or thing to be searched. The person, place or thing searched for constitutes evidence relative to the commission of the offense. This is a statutory requirement, and its omission may result in the warrant being declared invalid.

b. The Material Facts Constituting Probable Cause for the Issuance of the Search Warrant:

1) Probable cause is the aspect of a warrant most frequently declared defective. The police officer should be as specific as his/her resources will allow and document the affidavit with facts. The magistrate or judge decides whether the alleged facts are sufficient to establish probable cause.

2) Mere affirmation of belief or suspicion is not enough for the issuance of a search warrant. The affiant must state in detail the information he/she received from the informant or cooperating citizen and

whether the information is of personal knowledge of the affiant. Also, there must be statements in the affidavit to show why the informant or cooperating citizen is credible and worthy of belief. The statement "that the person is reliable as he/she has given good information in the past" is not sufficient. It must state how the person is reliable.

- 3) If the affiant is relying on personal observations made by him/herself, he/she should state when such observations were made and what he/she observed.
- 4) The affidavit should not merely be a statement of the conclusions of the affiant or that of the informant, but should be facts on which the magistrate or judge could make an independent conclusion that sufficient probable cause existed for a search warrant.
- 5) The Allegation of Fact:

In order for the magistrate or judge to issue the search warrant, the facts in the police officer's affidavit must show a probability of criminal activity. However, these facts must be alleged facts or observations and not merely the conclusions of the officer, the cooperating citizen or the officer's informant. Probable cause must be written "Within the Four Corners of the Affidavit", the how, where, what or why the officer suspects criminal activity. The officer's affidavit must also establish jurisdiction, i.e. City of Richmond. The magistrate must be told in the affidavit the observations of the police officer, the cooperating citizen or the officer's informant so that the magistrate can conclude whether there is probable cause.

- 6) The Use of Informants or Cooperating Citizens and Establishing Their Reliability:

- a) If the person's name is used:

When the person is a non-confidential source, the law requires that the officer state the facts to support the officer's conclusion, i.e. how the named informant or cooperating citizen "knows" or "suspects" the individual is violating the law. While establishment of a named informer or cooperating citizen's reliability is not mandatory, the Richmond Police Department highly recommends it. The difficulty in doing so is minimal because usually only a cooperating citizen would want his/her name used. The reliability of a citizen informer can be adequately established by showing that the citizen is steadily employed, a registered voter and enjoys a good reputation in the neighborhood, et cetera.

- b) If the Informer is a Confidential Source:

The vast majority of information will come from unnamed sources and the following two-step procedure must be followed:

- i) The informer must allege the facts; and,
- ii) The affidavit must show the informant's reliability. This may be accomplished in several ways:
 - (a) By alleging the informer was an eyewitness and participant in the crime;

NOTE: This informant is discoverable in court.

- (b) By alleging that the informer is a disinterested citizen who is steadily employed, a registered voter and enjoys a good reputation in the community; or,
- (c) By alleging that the informer is a person of known and proven reliability and has furnished information to law enforcement officers, which has been instrumental in procuring convictions.

NOTE: Statements such as "because of reliable information received" or "received reliable information from a credible person" or "information from informant, who has given information in the past" are not acceptable because they do not say what was the prosecutorial value of information received in the past. The affidavit must demonstrate past reliability. Perhaps the minimum attestation of informer reliability is "my informant on previous occasions has given information which has proved to be reliable." This statement is acceptable, although the Department stresses more specificity from an officer.

- (d) If statements made by an informant are against to that individual's "Penal Interest", the information is deemed reliable.

NOTE: This informant must be named in the affidavit. The affidavit can be sealed by the issuing Judicial Officer.

- c) If the Confidential Informer's Reliability Cannot be Established:
 - i) In these cases, the law enforcement officer must submit a factual report giving credit to the informant's story. In other words, probable cause can be shown by a combination of the informant's and the police officer's observation. For example, if the informant, whose reliability cannot be proved, states he has been buying drugs at a certain address, an officer can verify his/her

reliability by observing the party enter the dwelling and return with drugs.

- ii) Hearsay - The information supplied by any type of informant must be based on his/her personal observation and not what he/she has been told, and the affidavit should allege personal observation of the criminal activity. The only exception to this rule is when one of the participants in the crime tells the informant of his/her involvement.

NOTE: Refer to General Order 7-6, Informants, when further instruction or procedural reference is needed.

- c. The Description of the Person, Place or Thing to be Searched:

A search warrant must describe with particularity the place to be searched. A search warrant directed against a multiple occupancy building will be invalidated if it fails to specify the particular sub-unit to be searched, such as the apartment number, room number or floor number and shall describe in detail the location, color and distinguishing characteristics of the property being searched.

- d. Description of Person or Things to be Searched For:

The description should be as specific as possible. However, the police officer conducting the search is not restricted in seizing only those items listed in the search warrant. If the officer comes upon evidence for the crime that the warrant was issued for or evidence of another crime, the officer is entitled to seize it.

NOTE: If the search warrant is for a television, or large item, small places such as jewelry boxes may not be searched.

- 2. Helpful in the Affidavit:
 - a. Verification of informer's facts by police;
 - b. Criminal record of suspect;
 - c. Reputation of suspect; and,
 - d. Expertise of police officer and the officer's conclusion.
- 3. Submit the original affidavit and three copies to the Magistrate:
- 4. The affidavit must be signed in front of the Judicial Officer issuing the warrant.
- 5. No "general warrant" for the search of a house, place, compartment, vehicle or baggage shall be issued.
- 6. Every search warrant will contain the date and time it was issued.

J. Roles and Responsibilities Post Issuance and Execution:

1. Duties of Magistrate:

Within seven (7) days after issuance, the magistrate shall certify the Affidavit for Search Warrant to the Clerk of the Circuit Court -- Division I or II, depending upon jurisdiction, regardless of whether or not the search warrant has been executed.

2. Duties of Police Officer:

If the police officer seizes property, the officer shall make a list, under oath, of all articles, instruments or other property. If the police officer does not seize any property, a notation that "no property was seized" shall be attached to the warrant. This list or note must be filed within three (3) working days of the warrant's execution in the Circuit Court Clerk's Office. Saturdays, Sundays, or any Federal or State legal holiday shall not be used in computing the three days filing period.

3. Any search warrant not executed within 15 days after it is issued shall be voided by the officer and returned to the magistrate or judge who issued the search warrant.

K. The Department's Search Warrant Logbook:

1. The Special Investigations Division is responsible for maintaining a Search Warrant Logbook at its office. Police personnel executing search warrants will send the search warrant information to the Narcotics *Unit* after the completion of each search warrant.

2. The information is to be sent electronically via e-mail prior to the officer's end of tour of duty on the day the search warrant is executed.

3. Police personnel must provide the following information:

a. The exact address of the search warrant, including apartment number, if applicable;

b. The time and date of the execution;

c. The name of the officer obtaining the search warrant;

d. The name of the supervisor, or Officer-in-Charge overseeing the execution of the search warrant; and,

e. The name of the Narcotics *Unit* Detective Sergeant notified prior to the execution of the search warrant and the time notified.

4. Police personnel must provide the Special Investigations Division with a hard copy of the search warrant within five (5) business days, excluding weekends. The hard copy shall be hand carried to the Special Investigations Division.

5. Supervisors' Responsibilities:

Supervisors overseeing the search warrant will ensure that:

- a. The information is sent to the Special Investigations Division - Narcotic Team.
- b. The name of the Narcotics Detective Supervisor that was notified, along with the time notified prior to the execution of the search warrant is listed.
- c. The hard copy of the search warrant is forwarded to the Special Investigations Division within five (5) business days, excluding weekends.

L. *Searches of Convicted Subjects who have an active Fourth Amendment Waiver on File:*

1. *Pursuant to Virginia law, decided in a case styled Anderson v. Commonwealth 256 Va. 580 (1998), defendants may waive their Fourth Amendment right against unreasonable searches and seizures pursuant to an agreement with the Commonwealth and a subsequent court order. Richmond's Commonwealth's Attorney's Office has obtained court orders in which defendants have waived such rights and will continue to do so in the future. The Commonwealth's Attorney's Office will continue to send all Fourth Amendment waivers to the Special Investigations Division (SID), who will enter all such waivers into PISTOL as an alert. The actual waiver form will be attached to the alert.*
2. *The hard copies of the waivers will then be delivered to the Information Desk, placed on file and logged. The SID Crime Analyst will ensure that Fourth Amendment waivers are purged according to their expiration date until such time that the waivers can be automatically purged from PISTOL.*
3. *Any officer coming in contact with a convicted felon who has a valid Fourth Amendment waiver on file with the Information Desk may search that subject and his/her personal property without a warrant or arrest. Officers will document each such stop/search conducted on the basis of a Fourth Amendment waiver by creating a Field Interview Report (FIR) and stating the reason for the stop/search on the FIR (i.e. knew waiver was on file or stopped the person for other valid reason and learned of the waiver through the Information Desk. In these instances the reason for the stop should be discussed in the narrative section of the FIR.)*
4. *Officers will be advised by the Information Desk or DEC via radio or MDT when any inquiry is made on a subject if that subject has a valid Fourth Amendment waiver on file. The Information Desk **MUST** verify that the waiver is valid prior to any warrantless search being conducted. Officers having personal knowledge of a subject having a Fourth Amendment waiver on file, WILL, prior to any search being conducted on the basis of a Fourth Amendment waiver, verify with the Information Desk that the subject's waiver is still valid.*

NOTE: Fourth Amendment waiver searches are limited to the subject named in the waiver and his/her personal property (including any vehicle within his/her immediate control) only.

5. ***In the event an individual with a valid Fourth Amendment waiver runs, in instances where probable cause to believe criminal activity is afoot does NOT already exist and was NOT the reason for the stop (i.e. stop was for FIR purposes only), officers will NOT chase individuals but rather will contact the Commonwealth's Attorney's Office to institute mechanisms for having a PB15 issued for their probation violation of failing to comply with the terms of their Fourth Amendment waiver.***

V. ROLES AND ACCOUNTABILITY

A. Officers shall:

1. Provide affidavit to magistrate or judges. Affidavit must include items and information as described in this order;
2. Follow procedures as outlined in this order relating to:
 - a. Arrest in homes and third party dwellings;
 - b. Protective sweeps in conjunction with an in-house arrest;
 - c. Search incident to arrest;
 - d. Searches w/out search warrants;
 - e. Warrantless and non-consensual search of fire-damaged premises;
 - f. Vehicle search based on probable cause;
 - g. Inventory searches;
 - h. ***Crime scene searches;***
 - i. ***Searches in exigent circumstances;***
 - j. Body searches including "The Frisk", "Complete Search", "Strip Search", "Oral Cavity Search" ***and "Body Cavity Search"; and,***
 - k. ***Searches of convicted subjects who, pursuant to an agreement with the Commonwealth and/or as a condition of sentencing, have waived their Fourth Amendment right against unreasonable searches and seizures.***
3. Seize only those items allowable by following procedures for seizure as stated in this order; and,
4. Follow post issuance and execution procedures as stated in this order.

B. Supervisor shall:

1. Prepare Operational Plan; and,
 2. Notify designated units and assume all responsibilities as stated in this order.
- C. Internal Affairs Division shall:
- Conduct audit of forms forwarded to SID and forward a report of this audit to the Chief of Police.
- D. Special Investigations Division (*SID*) shall:
1. Maintain Search Warrant log book following procedures as stated in this order;
 2. Provide a location within the *SID* for strip searches as described in this order;
and,
 3. *Enter Fourth Amendment waivers into PISTOL as an alert.*
- E. *SID Crime Analyst shall:*
- Ensure that Fourth Amendment waivers are purged according to their expiration date until such time that the waivers can be automatically purged from PISTOL.*
- F. *Information Desk personnel shall:*
1. *Log Fourth Amendment waivers and place on file;*
 2. *Advise officers when any inquiry is made on a subject if that subject has a valid Fourth Amendment waiver on file; and,*
 3. *Verify that the waiver is valid prior to any warrantless search being conducted.*
- G. *DEC personnel shall:*
- Advise officers when any inquiry is made on a subject if that subject has a valid Fourth Amendment waiver on file.*

VI. **FORMS**

- A. *Commonwealth of Virginia Affidavit for Search Warrant (or similar computer generated form)*
- B. *PD-83, Permission to Search form (English & Spanish)*
- C. *PD-98, Strip Search form*
- D. *IBR*