



Independence Police

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GENERAL ORDER	No. PD95-033	Page 1 of 9
SUBJECT: Law Enforcement Role and Authority	EFFECTIVE DATE:	1 April 2001
	REVIEW:	14 September 2007
	REFERENCE:	City Charter, Section 3.9, City Ordinance Chap. 18, Art. 24. Sec. 18.664. FOP Work Agreement

PURPOSE

Establish the law enforcement role and limits of authority of sworn officers of the Independence Police Department.

POLICY

The Independence Police Department will establish policies and procedures for the conduct of police personnel that ensure that the constitutional rights of all persons are respected while providing police services to the community.

PROCEDURE

Police Officer: Powers and Duties Defined-City Charter (Section 3.9)

- The police department, in accordance with and subject to the law and ordinances, shall preserve the peace and order, enforce the law and ordinances, prevent and suppress crime, detect and apprehend violators of all laws and ordinances, and perform such other duties relating to public peace, order, and safety as the council shall provide. The Chief of Police and every member of the police department shall be conservators of the peace, and shall have the power to arrest, or cause to be arrested, with or without process, any person whom they see violating, or whom they have reasonable grounds to believe has violated, any law of the state or ordinance of the city.

- Sworn officers of the Independence Police Department will execute their lawful powers and duties in compliance with all laws of the United States, the State of Missouri, the ordinances and policies of the City of Independence, the Code of Conduct and General Orders of the Independence Police Department.
- All commissioned personnel are presumed to be subject to duty twenty-four (24) hours per day. Any action taken by a commissioned officer on their time off, which action would have been taken by an officer on duty, if present or available, provided that an emergency exists which would constitute a felony violation or any situation causing imminent fear of death or serious physical injury shall be considered police action, and the commissioned officer shall have all the rights and benefits concerning such action as if they were on active duty.

Constitutional Requirements

- **Interviews and interrogations:** All interviews and interrogations conducted by department personnel will be conducted within the limits of the Missouri Constitution and the United States Constitution. Officers will use rights waivers when possible. The following methods of obtaining a confession are prohibited:
 - No confession will be obtained by force or coercion.
 - Arraignments will not be delayed to obtain a confession.
 - Defendants will be advised of their constitutional rights prior to questioning, lawful exemptions excepted.
 - Defendants shall not be deprived of their right to counsel.
 - Officers will not take any action, including causing pretrial publicity that would prevent the defendant from receiving a fair trial.
- **Search and Seizure (without warrant):**
 - **Search by consent:** In general persons can waive their constitutional rights to searches and seizures of their persons, property, vehicles and residences. The following procedures will be followed when conducting a search with consent.
 1. The consent to conduct the search will be voluntary.
 2. The extensiveness of the search is limited to the exact words of the consent.
 3. The person giving consent must have the capacity to consent.

- a. Generally a spouse can consent to the search of a residence or room shared with their spouse.
 - b. Under normal circumstances an officer may not rely on consent given by a juvenile.
4. The consent may be revoked at anytime during the search.
 5. When a consent search results in an arrest or seizure the officer will note in the case report the details of the consent.
 6. Consent to Search (waiver) forms should be used when possible.
- **Stop and Frisk:** An officer may conduct a limited search of the outer clothing of a person in an attempt to discover weapons which might be used to assault the officer when the officer has an articulable reason to fear for their safety. The following court case should guide an officer's actions in these types of searches:
1. ***Terry v. Ohio*** (1968) This case defined the "Stop and Frisk Doctrine". The Supreme Court held that "a Police Officer may in appropriate circumstances and in an appropriate manner approach a person for the purposes of investigating criminal behavior even though there is no probable cause to make an arrest." An officer may frisk the outer clothing for weapons and if a weapon-like bulge is found, the officer may seize it.
- Note:** In the "Terry" case the Supreme Court held that the sole justification of the search in the present situation is the protection of the police officer and others nearby, and it must therefore be confined in scope to an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments that could be used to assault the police officer.
- **Search of Movable Objects:** The United States Supreme Court ruled in ***Carroll v. United States*** (1925) that there is a necessary difference between searching a dwelling and searching an automobile, ship, airplane, wagon or other movable object. Because these objects can be quickly moved it is often not possible for police to obtain a warrant. The following are minimum requirements for searching a vehicle under the "moving vehicle" rule:
1. Officers must have probable cause to believe that the vehicle contains articles which they are entitled to seize and for which a warrant could be obtained (e.g., contraband or evidence of a crime). When these conditions exist, the entire vehicle including contents may be searched.

➤ **Crime scene searches (“plain view exception”):**

The “plain view” exception to the Fourth Amendment warrant requirement permits a law enforcement officer to seize what clearly is incriminating evidence or contraband when it is discovered where the officer’s presence is authorized. When an officer wishes to apply the “plain view exception” to a search or seizure the following two criteria must be met:

1. The officer must be legitimately in a position to view the object.
2. The officer must have probable cause to associate the property with criminal activity.

Search and seizure activities may be conducted on public property and in public places without the necessity of a warrant as the officers can be lawfully at those locations under any circumstances. In privately owned businesses and other private dwellings the officers have limited access. These areas are protected by the Fourth Amendment and officers are limited to three means of access.

1. Consent
2. Search Warrant
3. Exigent circumstances (Entry because of an emergency)

➤ **Crime Scene Searches-Procedures:**

Generally, officers are summoned to a crime scene and when they enter they do so either with consent or by exigent circumstances to handle an emergency. Once the emergency is over and the investigation phase is begun, officers have to evaluate their standing to be present at the crime scene. Officers may not be able to rely on exigent circumstances to remain at the crime scene to conduct search and seizure activities. The following procedures should be followed once the emergency is over:

1. The owner, lessee or person in charge should be sought and consent obtained to remain at the crime scene. Consent to Search form should be completed when the person with standing is a possible suspect. Persons with no standing can not deny entry. On major crime scenes, an Investigations Unit supervisor will determine what action is taken.
2. In the event consent is denied by a person with standing a Patrol Unit supervisor will respond to the scene and determine what course of action to take. If no Patrol Unit supervisor is on duty, the Staff Duty Officer will be notified. At major crime scenes an Investigations Unit supervisor will be in charge of the crime scene.

3. When a Patrol Unit supervisor determines that a Search Warrant is necessary, a detective will respond to the scene to provide technical assistance in obtaining a warrant.

Exigent Circumstance

In 1980, the United States Supreme Court ruled in *Payton v. New York* that police could not enter a person's home to make a warrant less felony arrest or conduct a seizure of property absent exigent circumstances. As a general rule, exigent circumstances exist when there is an emergency calling for immediate action. Where it pertains to crime, it concerns crimes of violence. In *State v. Wiley* (Mo.), 522 S.W. 2nd 281 (1975) the court upheld warrant less search on "exigent doctrine". For the purposes of this directive officers of the Independence Police Department will only exercise the "exigent doctrine" to make seizures or enter dwellings or property protected by the Fourth Amendment when the following conditions exist:

1. The officer has reasonably trustworthy information that a crime or other activity is taking place on or within the place in question where if not curtailed will result in serious injury or death to a person or persons or,
2. Were the officer(s) to fail to take immediate action public safety would be endangered.

➤ **Inventory Search of Seized Vehicles and Other Property:**

Chapter 18, Article 24, Section 18.664, Authority to Impound Vehicles or Other Personal Property, of the ordinances of the City of Independence defines when police officers may impound vehicles and other personal property. When department personnel impound such vehicles and/or property, the following procedures will be followed:

1. **Vehicles:** The impounding officer will conduct an inventory search of the contents of the impounded vehicle. The impounding officer will list the contents of the impounded vehicle in the Case Report. In addition to any evidence or contraband discovered in the inventory of the vehicle, the following items will be removed from the vehicle prior to impoundment and placed in police property for safe keeping:
 - a. Any firearms
 - b. Any jewelry
 - c. Currency

- d. Any other items of substantial value
2. **Property:** Personal property recovered as the result of a search, seizure, or recovered pursuant to 18.24.18.664 will be listed in a Case Report.

➤ **Destruction/Disposal of Worthless Property-Supervisory Approval Required**

Whenever a department employee recovers property that has no value as evidence and is damaged or deteriorated to the point of being worthless said property may be destroyed and disposed of with approval of a police supervisor. The purpose of this policy is to ensure that recovered property is held as evidence when required, returned to the rightful owner when possible, and to control the collection of property in such a manner as to prevent needed space in the property room for evidence and recovered property from being utilized to store junk and worthless items.

- a. When property is destroyed or disposed of in such a manner the incident will be documented in a Case Report. A detailed description of the property will be included in the report.

➤ **Other Searches and Seizures Authorized by State and Federal Constitutional Provisions**

The Missouri State Constitution is modeled after the United States Constitution. Officers have additional powers concerning search and seizure by the following long standing constitutional powers:

1. Search with a valid warrant
2. The U.S. Supreme Court has ruled that upon probable cause preservation of evidence or contraband in a structure can include refusing entry to anyone for a reasonable period of time for the purpose of obtaining a search warrant. Found “reasonable” was a period of two hours.
3. Search incidental to a lawful arrest (Scope and limitations)
 - a. Search of the person arrested: A search of the person of the arrestee may be made by virtue of a lawful arrest (United States v. Robinson-1973).
 - b. Search of area under immediate control of arrestee (Within premises where arrest is made): In *Chimel v. California* (1969) the United States Supreme Court ruled that there is ample justification for the search of the arrestee’s

person and the area “within his immediate control.” This is construed to mean the area from which he might gain possession of a weapon or destructible evidence.

- c. Search of the automobile incidental to a lawful arrest: When a police officer has made a lawful custodial arrest of the occupant of an automobile, the officer may, as a contemporaneous incident of the arrest, search the passenger compartment of that automobile. A search of the trunk would not be permitted absent consent. (*New York v. Belton* (1981).
4. Waiver of constitutional rights-The consent must be voluntary.
5. Seizure without search- “plain view doctrine”-The officer must be lawfully in a position to view the object and have probable cause to associate the articles with criminality.

Arrest Procedures (With and Without Warrant)

- **Arrest without warrant:** Pursuant to 544.216 RSMo. officers of the Independence Police Department may arrest on view, and without a warrant, any person observed violating the law or who they have reasonable grounds to believe has violated any law of this state, including a misdemeanor, or has violated any ordinance over which such officer has jurisdiction. This authority extends to property or land leased by the city, but not within the city limits. Refer to General Order PD94-004A, Pre-Trial Incarceration, for alternatives to booking for ordinance and traffic violations.
- **Twenty hours detention on arrest without warrant:** 544.170 RSMo.: All persons arrested and confined in any jail, calaboose or place of confinement by any peace officer, without warrant or other process, for any alleged breach of the peace or other criminal offense, or on suspicion thereof, shall be discharged from said custody within twenty hours from the time of such arrest, unless they shall be charged with a criminal offense by the oath of some credible person, and held by warrant to answer to such offense; and every such person shall, while so confined, be permitted at all reasonable hours during the day to consult with counsel or other persons in his behalf; and any person or officer who shall violate the provisions of this section, by refusing to release any person who shall be entitled to such release, or by refusing to permit him to see and consult with counsel or other persons, or who shall transfer any such prisoner to the custody or control of another, or to another place, or prefer against such person a false charge, with intent to avoid the provisions of this section, shall be deemed guilty of a misdemeanor.
- **Arrest with a warrant:** The City Charter, Section 3.9, empowers officers of the department to make arrest with process (warrants). 575.180 RSMo. makes it a criminal

violation for a law enforcement officer to fail to execute a warrant. The following procedures will be followed in the execution of warrants by officers of the department.

1. Forced entry into a residence will not be made to execute a warrant without the approval of a police supervisor absent exigent circumstances.

Alternatives to Arrest, Pre-arraignment Confinement and Pre-Trial Arrest

In lieu of arrest, officers of the department may utilize the following alternatives to arrest providing that the adult or juvenile offender has not committed an offense in any of the following categories:

1. A felony
2. Crime of violence
3. A domestic violence crime
4. Violation of an ex-parte or full order of protection
5. Involvement in a traffic accident or moving violation while driving while intoxicated

The following alternatives to arrest may be utilized when applicable:

1. Referral to another agency that can best provide the following services:

- a. Civil matters/Legal aid
- b. Marriage counseling-where no violations of domestic violence laws have occurred
- c. Abuse/neglect protection services
- d. Alcohol/drug abuse
- e. Crisis intervention, including mental health services
- f. Youth services

2. Warnings and Informal Resolutions:

In reference to the handling the matter, the investigating officer may, after determining the violation was not of a serious nature, use personal discretion not to make an arrest. The officer may use any of the following legal means to resolve the matter:

- a. Resolve the case informally at the scene.
- b. Issue a verbal warning
- c. Issue a written warning (Traffic violations only)
- d. Return a juvenile to the custody of a parent or guardian

Gary D. George, Chief of Police