



# Search and Seizure without a Warrant

<b>Issue Date:</b>	8/24/2020	<b>Effective Date:</b>	8/24/2020
<b>Review Date:</b>	8/34/2021	<b>Number of Pages:</b>	12
<b>Rescinds:</b>			
<b>IACLEA Standards:</b>	2.2.5		

## Purpose

The Indiana University Police Department to accomplish searches of people, places and things in a manner that provides protection of constitutional rights, minimizes intrusion, preserves evidence or the fruits of a crime, and provides for the safety of all parties.

## General Order

The Indiana University Police Department (IUPD) will provide general guidelines and procedures for sworn and non-sworn officers to follow in conducting searches that **have not** been reviewed and authorized by a judicial officer.

This general order will clearly instruct officers in the exceptions to the search and seizure without warrant requirement in accordance with all other applicable constitutional requirements as well as institutional and IUPD policies.

Searches conducted by non-sworn officers should be done either by consent or in a way authorized by IUPD policies.

Non-sworn officers are prohibited from knowingly acting as agents of the police in conducting searches. This directive shall outline the actions, if any, that may be taken by non-sworn officers when dealing with subjects suspected of possessing a weapon.

Sworn officers will not use their role as divisional officials to circumvent constitutional restrictions on search and seizure.

This general order will be reviewed annually with Legal Counsel and/or the local Prosecutor’s Office.

## Definitions

**Crime Scene Search** – The search of a crime scene where there is no expectation of privacy (e.g. public street, public park, non-fenced open field, or place of public resort) can be made without a warrant or consent.

**Exigent Circumstances** – Factual situations in which the officer forcing entry to a dwelling has probable cause to believe immediate entry is necessary to:

- Prevent injury to a person in the dwelling.
- Prevent destruction of material evidence involving a felony (e.g. flushing narcotics down a toilet).



## Search and Seizure without a Warrant

<b>Issue Date:</b>	8/24/2020	<b>Effective Date:</b>	8/24/2020
<b>Review Date:</b>	8/34/2021	<b>Number of Pages:</b>	12
<b>Rescinds:</b>			
<b>IACLEA Standards:</b>	2.2.5		

- Prevent the escape of a felon, and
- Complete an arrest (e.g. hot pursuit), or in situations where the pursuit is immediate, and entry is part of an uninterrupted process of the pursuit. Officers require a minimum of the following to support a warrantless forced entry while in hot pursuit:
  - Probable cause to believe the person pursued has committed a felony; and
  - Some visible or audible command or signal that could reasonably be expected to be understood.

**Pat-down/ Stop or Frisk** – *Terry Stop or Frisk Search* (Terry v. Ohio, 392 U.S. 7 [1968].) The frisk search stems from Terry v. Ohio which authorizes that an officer may conduct a cursory pat-down designed to discover weapons. Officers may temporarily stop individuals for the purpose of conducting field interviews when there is insufficient probable cause for arrest, provided that the officer has reasonable suspicion (or reasonably infers from the circumstances) that the person is committing, has committed, or is about to commit a violation of the law. This reasonable suspicion is required for any Terry Stop. Absent reasonable suspicion, a frisk cannot be done without consent.

**Strip Search** – Having the arrestee remove or rearrange some or all their clothing to permit a visual inspection of the genitals, buttocks, anus, female breasts, or undergarments of such person.

**Search by Consent** – is a search performed after the subject of the search, or the person having (standing) rights to the location, vehicle, or property consents, provided the consent is freely and intelligently given. Consent may be given orally or documented in writing. Consent, to be valid "must be unequivocal, specific and intelligently given, uncontaminated by any duress or coercion." (U.S. v. McCaleb, 552 F.2d 717, 721 [6th Cir. 1977].)

### 2.2.5 a. Consent Search

Officers may conduct a search without a warrant, if:

- Consent to search, whether it is made orally or in writing, is valid.
- A written consent to search should be obtained whenever possible using department authorized forms.
- Consent to enter a premise is not to a consent to search that premises.

Key points for search by consent are:



## Search and Seizure without a Warrant

<b>Issue Date:</b>	8/24/2020	<b>Effective Date:</b>	8/24/2020
<b>Review Date:</b>	8/34/2021	<b>Number of Pages:</b>	12
<b>Rescinds:</b>			
<b>IACLEA Standards:</b>	2.2.5		

- The consent must be **voluntary**.
- The scope of the search is limited to the exact words or meaning of the consent.
- The person giving the consent must be in a legal position to do so; and
- Consent may be withdrawn at any time.

### 2.2.5 b. Pat-down/ Stop and Frisk Search

Stop –(Generally) – Stop and Frisk are two (2) *separate* actions, each requiring individual justification. Officers may stop a suspect even though there is insufficient cause to arrest if:

- The officer has knowledge of facts that reasonably lead him/her to believe that the suspect is involved in criminal activity and/or may be armed and dangerous.

Frisk –(Generally) – A frisk must be a carefully limited search of the suspect’s outer clothing aimed at discovering weapons.

- It is only justified where the officer can articulate reasonable suspicion that leads him/her to believe that the subject is armed or otherwise dangerous to themselves or others.
- The "plain feel" doctrine authorizes an officer to seize evidence other than a weapon if, in conducting the frisk, the contraband nature of the evidence is "immediately apparent" to the officer based on a feel of the object through the suspect's clothing during the pat down. “Plain feel” must be based on the initial feel of the item. Repeated feeling and/or manipulation of the item is not allowed in establishing “plain feel”. Officers must have probable cause to believe that the item was crime-related at the time it was felt. Officers should rely on their training and experience to establish this probable cause.
- Any officer who initiates a frisk must be able to articulate the reasonable suspicion justifying the Terry Stop and the reason(s) for suspecting that he/she or others in the immediate area are in danger. This information may be drawn from sources including, but not limited to:
  - Training.
  - Education, and
  - Prior experience in similar situations.
- **Searching Persons of the Opposite Sex**



## Search and Seizure without a Warrant

<b>Issue Date:</b>	8/24/2020	<b>Effective Date:</b>	8/24/2020
<b>Review Date:</b>	8/34/2021	<b>Number of Pages:</b>	12
<b>Rescinds:</b>			
<b>IACLEA Standards:</b>	2.2.5		

- When practical, persons should be searched by an officer of the same gender if such an officer is on the scene or can arrive within a reasonable period of time. If the gender of the person to be searched is in question, officers shall ask the person to identify their gender before proceeding with the search.
- Prior to the execution of an arrest or search warrant, where a female officer is likely to be needed, a female officer shall be included in the operation if possible.

### 2.2.5 c. Plain View Seizure

Plain View Seizure has been upheld by courts as long as the officer was legitimately on the premises and had probable cause to believe the property was evidence or contraband. Limitations on plain view discovery:

- There must be no pre-observation intrusion that violated constitutional rights.
- The item(s) must have been discovered inadvertently.
- Artificial devices that aid in or enhance the ability of the officer's view are permitted. Use of field glasses or a flashlight to make the observation triggers no Fourth Amendment protection.
- 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. The test is:
  - Does the officer have a right to be where he or she is?
  - Does the officer have probable cause to believe the item in the open is evidence or contraband?

### 2.2.5 d. Exigent Circumstances

The *Exigent Circumstances* exception allows an officer to make a warrantless search in situations where the officer recognizes there is not time to obtain a warrant.

- Factors to consider in determining if exigency exists:
  - If a search is not conducted immediately, evidence will be destroyed.
  - The gravity of the offense committed.
  - If the suspect is reasonably considered to be armed and dangerous.



## Search and Seizure without a Warrant

<b>Issue Date:</b>	8/24/2020	<b>Effective Date:</b>	8/24/2020
<b>Review Date:</b>	8/34/2021	<b>Number of Pages:</b>	12
<b>Rescinds:</b>			
<b>IACLEA Standards:</b>	2.2.5		

- Probable cause exists that the suspect committed the offense.
- There exists strong reason to believe that the suspect is on the premises.
- There is a likelihood that the suspect will escape if not immediately apprehended.
- The aforementioned factors will contribute to the "totality of the circumstances."
- An additional, widely recognized exigent circumstances search is the well-being or welfare check. These are situations in which the health and well-being of a person, student, faculty, staff, or visitor are involved.
  - In most cases, there is no reason for police to suspect criminal activity.
  - Entries are made into private premises solely to determine the well-being of the resident.

### 2.2.5 e. Vehicle Searches

The same above criteria would apply to a motorist and his vehicle. If an officer has reasonable suspicion that leads him to believe that the suspect is armed or otherwise dangerous to himself or others, the officer may search the passenger compartment of the vehicle for weapons. The search must be limited to areas where a weapon might be placed or hidden within the drivers and or passenger's scope of reach. (Michigan v. Long, 463 US 1032 (1983)).

- *Movable Vehicle Exception.* There are two reasons given for allowing the search of a vehicle with probable cause, but no warrant.
  - Vehicles do not share the same expectations of privacy as a home or other personal item.
  - Mobility of an automobile would make it impractical to require the police to first obtain a warrant.
- Officers do not actually have to prove that a vehicle might or would be gone if a warrant were obtained before making the search.
- The existence of probable cause alone justifies the exception.
- The movable vehicle exception allows an officer to search any portion of the vehicle or its contents where there is probable cause to believe evidence or contraband may be located.
- This type of search should not be confused with a search incident to arrest or inventory search.



Indiana University Police Department

General Order G2.2.5

## Search and Seizure without a Warrant

<b>Issue Date:</b>	8/24/2020	<b>Effective Date:</b>	8/24/2020
<b>Review Date:</b>	8/34/2021	<b>Number of Pages:</b>	12
<b>Rescinds:</b>			
<b>IACLEA Standards:</b>	2.2.5		

### 2.2.5 f. Residence Halls and Other Institutional Property<sup>1</sup>

- Probable cause searches of resident rooms will follow these guidelines:
  - Residence hall staff will notify IUPD where there is probable cause to believe violations of university or civil rights regulations are being committed.
  - No student room or apartment shall be entered by IUPD without knocking, whether the door is locked, unlocked, or ajar except when exigent circumstances exist.
  - The IUPD officer will identify themselves and state why the entry is desired. If the door is closed, the official will then request the door be opened.
  - If the door is not opened or the official is refused entry, the official will knock again and restate personal identification and the reason entry is desired.
  - IUPD will state the intention to use a key, card, or code to enter if the door is not opened.
  - IUPD will state again, upon entering the room or apartment:
    - The purpose of the entry or search.
    - The fact that it is being conducted by probable cause, and
    - The identity of the specific objects being sought.
- The items below apply whether the room or apartment to be searched is occupied at the time of the search.
  - Only items specifically prohibited or that pose an immediate danger to the health and safety of the residents will be removed from a student's room without the express permission of the owner.
  - The university official conducting the search is free to seize illegal materials in "plain view." However, the extent of the search must be in keeping with the information upon which the probable cause for the search is founded.
  - If an extensive search is required (i.e., opening all drawers, luggage, and locked boxes) and the student has not given permission, a search warrant may be obtained.

<sup>1</sup> Indiana University Residential Programs and Services, [A to Z Guide to Res. Hall and Furnished Apartment Living 2020, Your Room, Room Entry](#)



Indiana University Police Department

## Search and Seizure without a Warrant

<b>Issue Date:</b>	8/24/2020	<b>Effective Date:</b>	8/24/2020
<b>Review Date:</b>	8/34/2021	<b>Number of Pages:</b>	12
<b>Rescinds:</b>			
<b>IACLEA Standards:</b>	2.2.5		

- All evidence seized during searches complying with the above regulations may be used in university disciplinary hearings for violations of the Code of Student Rights, Responsibilities, and Conduct.
- Evidence seized in violation of the search standards may not be used. A student who believes this policy has been violated should report the incident to the Office of the Dean of Students.

When authorized university personnel or their agents must enter a student's room or apartment when no occupants are present, and two staff members should be present, if possible. Students will be notified of such entries and the reasons for them upon their return. In all instances, such entries shall be made only for purposes listed above and in the contract.

---

### Crime Scene Search

- Crime scene searches of private property where there is a reasonable expectation of privacy can be made with consent. Absent exigent circumstances or consent, a warrant will be required.
- An officer discovering, or summoned to, a crime scene will:
  - Secure the area and keep it in the same physical condition as it was left by the offender.
  - Render assistance to the injured.
  - Attempt to identify witnesses and victims.
  - Attempt to locate, identify, and arrest the offender at the scene.
  - Notify a supervisor if not already on the scene.
  - Yield responsibility to follow-up investigators and/or evidence collection personnel.
- A search warrant may be required to maintain access to the crime scene. If a person with standing (not an arrestee) does not consent to police presence, a search warrant should be sought.
- **Inventory Searches** – of property seized by police officers. Inventory searches have been justified for three reasons: an inventory protects the property of the owner, it protects the law enforcement agency against claims the property has been lost or stolen, and it allows police to discover any potential danger that may exist because of the contents of the property itself.



## Search and Seizure without a Warrant

<b>Issue Date:</b>	8/24/2020	<b>Effective Date:</b>	8/24/2020
<b>Review Date:</b>	8/34/2021	<b>Number of Pages:</b>	12
<b>Rescinds:</b>			
<b>IACLEA Standards:</b>	2.2.5		

- Limitations on these searches include:
  - The property to be searched must have come lawfully into the possession of the police employee.
- The inventory must be conducted pursuant to standard operations and policies prescribed by the University Police Department as stated in Section III of this policy.
- Seized vehicles involved in an arrest must be inventoried and recorded on a police towing slip.
- If a vehicle is inventoried, all containers and possessions in the vehicle shall be searched.
  - Additional items of property subject to an inventory search include:
    - Found property.
    - Property turned over by citizens for safekeeping.
    - Property turned in by a citizen for destruction, (e.g. firearms, ammunition, and other weapons).
    - Abandoned property.
    - Found University property turned over by a visitor, faculty, staff, or student.

**Search Incident to Arrest** – Is an exception to the search warrant requirement.

Officers may reasonably search the person arrested and the area within that person's immediate control (wingspan) for the purposes of:

- Protecting the officer from attack.
- Preventing the person from escaping.
- Discovering the fruits of the crime.
- Discovering any instruments, articles, or things which may have been used in the commission of, or which may constitute evidence of, an offense.
- Searches of motor vehicles incident to arrest will comply with *Arizona v. Gant* (556 U.S. , 129 S.Ct. 1710, 173 L.Ed.2d 485).
- The Supreme Court held that a police officer may search the passenger compartment of a vehicle incident to a recent occupant’s arrest only if it is reasonable to believe that the





## Search and Seizure without a Warrant

<b>Issue Date:</b>	8/24/2020	<b>Effective Date:</b>	8/24/2020
<b>Review Date:</b>	8/34/2021	<b>Number of Pages:</b>	12
<b>Rescinds:</b>			
<b>IACLEA Standards:</b>	2.2.5		

arrestee might access the vehicle at the time of the search or that the vehicle contains evidence of the offense of arrest.

- In searches incident to an in-home arrest, a protective sweep is allowed for areas where other persons may be found and cannot last any longer than is necessary to dispel the reasonable suspicion of danger (Maryland vs. Buie, 494 U.S. 325, 110 S. Ct. 1093, 1099, 108 L.Ed. 2d 276 [1990]).
- The only justification needed for a search incident to arrest is that a valid arrest occurred.
- Prior to placing a prisoner into a police vehicle, an officer shall conduct a thorough search of the prisoner and outer garments.
  - Officers shall take and maintain custody of purses or bags carried by prisoners, checking for weapons and contraband.
  - The interior of the police vehicle shall be searched prior to and after transporting a prisoner.

**Strip Searches** – A strip search includes the removal or rearrangement of clothing to permit the visual or manual inspection of any skin surfaces of a person’s genitals, buttocks, anus, or female breasts.

- Strip Searches may be conducted only in the following circumstances:
  - Officers have probable cause to believe that evidence, or contraband exists and will be destroyed or lost in the absence of an immediate strip search; or
  - Officers have probable cause to believe that an immediate search is necessary to prevent imminent danger to the suspect, officer, or others.
- The following procedure shall be followed when conducting a strip search, whether the person has been arrested or not:
  - Supervisory approval shall be obtained before conducting a strip search. Such approval shall only be given after an on-scene assessment by the supervisor.
  - The supervisor shall be present when the search is conducted unless precluded from doing so by the issue of gender.



## Search and Seizure without a Warrant

<b>Issue Date:</b>	8/24/2020	<b>Effective Date:</b>	8/24/2020
<b>Review Date:</b>	8/34/2021	<b>Number of Pages:</b>	12
<b>Rescinds:</b>			
<b>IACLEA Standards:</b>	2.2.5		

- If the supervisor who authorized the strip search is prohibited from being present, a supervisor of the same sex as the person to be searched should be present when the search is conducted.
- If it is not reasonable or possible to have a supervisor of the same sex witness the strip search, the supervisor shall ensure that at least two officers of the same sex conduct/witness the search.
- The search shall be performed in a location that affords the suspect privacy from persons not involved in the search. Officers shall be aware that strip searches conducted in the field could require extraordinary measures to ensure the suspect’s privacy.
- The supervisor authorizing the strip search shall complete a supplemental report articulating why the search was justified and necessary. The supplement will also explain:
  - The officers conducted the search.
  - The officers were present for the search.
  - Where the search was conducted, and
  - How the search was conducted.
- Nothing stated in this policy shall preclude an officer from immediately recovering a weapon if the officer can articulate that any delay would cause imminent danger to the safety of the officer or others.
- Nothing stated in this policy shall preclude an officer from collecting a urine sample for evidentiary purposes (e.g. OWI).

**Body Cavity Searches** – is a body cavity search is a search that goes beyond visual or manual inspection of skin surfaces, so that it involves internal physical examination of body cavities, and in some instances, organs such as the stomach.

- Apart from the mouth, body cavity searches shall only be performed by medical personnel, in a medical facility, pursuant to a search warrant or court order.
- Exigent circumstances such as the suspect placing illegal narcotics or contraband into their mouth does not require obtaining a search warrant or court order.
- Minimal physical force (which includes low control options such as joint manipulation, pressure points and verbal directions) may be used to recover suspected narcotics from a



Indiana University Police Department

General Order G2.2.5

## Search and Seizure without a Warrant

<b>Issue Date:</b>	8/24/2020	<b>Effective Date:</b>	8/24/2020
<b>Review Date:</b>	8/34/2021	<b>Number of Pages:</b>	12
<b>Rescinds:</b>			
<b>IACLEA Standards:</b>	2.2.5		

suspect's mouth. Force used shall not include any strikes or any type of force which restricts breathing or blood flow in the neck

### Related Information

- US Supreme Court Case: Knowles v. Iowa, 119 S. Ct. 484 (1198)
- Indiana State Supreme Court Case: Edwards v. State, 759 N.E. 2d 626, 630 (Ind. 2001)

---

Benjamin Hunter (8/24/2020)  
Superintendent of Public Safety



Indiana University Police Department

General Order G2.2.5

## Search and Seizure without a Warrant

<b>Issue Date:</b>	8/24/2020	<b>Effective Date:</b>	8/24/2020
<b>Review Date:</b>	8/34/2021	<b>Number of Pages:</b>	12
<b>Rescinds:</b>			
<b>IACLEA Standards:</b>	2.2.5		

### F2.2.5 Consent Search Authorization

BEFORE ANY SEARCH IS MADE, YOU MUST UNDERSTAND YOUR RIGHTS.

1. You may refuse to consent to a search and may demand that a search warrant be obtained prior to any search of premises described below.
2. If you consent to a search, anything of evidentiary value seized during the search can and will be introduced into evidence in court against you.
3. You have the right to consult an attorney prior to consenting to this search.
4. If you cannot afford an attorney, you have the right to have an attorney provided for you at no cost.

I HAVE READ THE ABOVE STATEMENT OF MY RIGHTS AND AM FULLY AWARE OF MY RIGHTS.

I HEREBY CONSENT TO A SEARCH WITHOUT WARRANT BY OFFICERS OF THE INDIANA UNIVERSITY POLICE DEPARTMENT OF THE FOLLOWING:

*(Describe premises or automobile)*

**LOCATION TYPE** *(vehicle/residence)*: \_\_\_\_\_

**LOCATION OF SEARCH:** \_\_\_\_\_

**DATE & TIME OF SEARCH:** \_\_\_\_\_

**SUBJECT GIVING CONSENT:** \_\_\_\_\_

**OFFICERS CONDUCTING SEARCH:** \_\_\_\_\_

I HEREBY AUTHORIZE THE ABOVE OFFICERS TO SEARCH THE ABOVE LOCATION. I UNDERSTAND THAT THE OFFICERS WILL SEIZE ANY ARTICLE(S) WHICH THEY MAY DEEM TO BE OF EVIDENTIARY VALUE.

THIS STATEMENT IS SIGNED OF MY OWN FREE WILL, WITHOUT ANY THREATS OR PROMISES HAVING BEEN MADE TO ME.

**CONSENTING SUBJECT:** \_\_\_\_\_  
(SIGNATURE) (DATE/TIME)

\_\_\_\_\_  
(WITNESS)

\_\_\_\_\_  
(WITNESS)