

# POCOLA POLICE DEPARTMENT

## POLICIES AND PROCEDURES

<b>SUBJECT</b>	<b>SEARCH AND SEIZURE</b>		
<b>NUMBER:</b>	<b>8.000</b>	<b>EFFECTIVE DATE:</b>	<b>12/24/2015</b>
<b>SCHEDULED REVIEW DATE:</b>	<b>06/14/2016</b>	<b>ISSUE DATE:</b>	<b>12/14/2015</b>
<b>DATE REVIEWED:</b>		<b>REVISION DATE:</b>	
<b>APPROVED BY:</b>	<b>Chief Steve Howard</b>		

### I. Purpose and Scope

- A. The purpose of this policy is to provide guidelines and procedures for Pocola Police Department personnel to follow while conducting searches and seizures that have not been reviewed and authorized by judicial personnel.

### II. Policy

- A. It shall be the policy of the Pocola Police Department that all searches and seizures conducted by its members be performed in a lawful manner, consistent with the Constitution of the United States, and the Constitution of Oklahoma.

### III. Definitions

- A. For the purposes of this policy, the following definitions as set forth in the Oklahoma Rules of Criminal Procedure will apply:
1. Search: any intrusion other than an arrest, by an officer under color of authority, upon an individual's person, property, or privacy, for the purpose of seizing individuals, or things, or obtaining information by inspection or surveillance, if such intrusion, in the absence of legal authority or sufficient consent, would be a civil wrong, criminal offense, or violation of the individual's rights under the Constitution of the United States or this state.
  2. Seizure: the taking of any person or thing or the obtaining of information by an officer pursuant to a search or under other color of authority.
  3. Search warrant: an order issued by a judicial officer authorizing a search or seizure or both.
  4. Officer: a law enforcement officer or other person acting under color of authority to search and seize.

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5. Individual: includes a corporation
6. Vehicle: any craft or device for the transportation of persons or things by land, sea, or air.
7. Property: any real or personal property, including vehicles.
8. Reasonable cause to believe: a basis for belief in the existence of facts which, in view of the circumstances under and purposes for which the standard is applied, is substantial, objective, and sufficient to satisfy applicable constitutional requirements.
9. Reasonable belief: a belief based on reasonable cause to believe.
10. Reasonable suspicion: a suspicion based on facts or circumstances which of themselves do not give rise to the probable cause requisite to justify a lawful arrest, but which give rise to more than a bare suspicion; that is, a suspicion that is reasonable as opposed to imaginary or conjectural suspicion.
11. Citation: a written order, issued by a law enforcement officer who is authorized to make an arrest, requiring a person accused of violating the law to appear in a designated court or governmental office at a specified date and time.
12. Summons: an order issued by a judicial officer or, pursuant to the authorization of a judicial officer, by the clerk of a court, requiring a person against whom a criminal charge has been filed to appear in a designated court at a specified date and time.

**IV. Permissible Objects of Seizure**

- A. The following are subject to lawful seizure, in accordance with the Oklahoma Rules of Criminal Procedure.
  1. Evidence of or other information except privileged information concerning the commission of a criminal offense or other violation of the law.
  2. Contraband, the fruits of crime, or things possessed in violation of the laws of this state.
  3. Weapons or any other items used or likely to be used as means of committing a criminal offense.
  4. An individual for whose arrest there is reasonable cause, or who is lawfully held in confinement or other restraint.

**V. Stopping and Detaining of Persons**

- A. A law enforcement officer lawfully present in any place may, in the performance of his/her duties, stop and detain any person who they reasonably suspect is committing, has committed, or is about to commit (1) a felony, or (2) a misdemeanor involving danger of forcible injury to persons or of appropriation of or damage to property, if such action is reasonably necessary either to obtain or verify the identification of the person or to determine the lawfulness of his conduct. An officer acting under this rule may require the person to remain in or near such place in the officer's presence for a period for such time as is reasonable under the circumstances. At the end of such period the person detained shall be released without further restraint, or arrested and charged with an offense. (Oklahoma Rules of Criminal Procedure)

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- B. Officers who have detained a person shall immediately advise that person of their official identity and the reason for the detention. (Oklahoma Rules of Criminal Procedure)

However, due to the nature and purpose of the operations, undercover officers or officers acting as decoys are exempt from identifying themselves until the point that arrest, detention or enforcement actions are being attempted.

- C. Officers may use such force as may be reasonably necessary under the circumstances to stop and detain any person for the purpose authorized in Section V.A. of this policy. (Oklahoma Rules of Criminal Procedure)
- D. If an officer has detained a person he or she reasonably suspects is armed and presently dangerous to the officer or others, the officer or someone designated by him or her may search the outer clothing of such person and the immediate surroundings for, and seize, any weapons or other dangerous thing which may be used against the officer or others. In no event shall this search be more extensive than is reasonably necessary to ensure the safety of the officer or others. (Oklahoma Rules of Criminal Procedure Rule)
- E. Whenever a law enforcement officer has reasonable cause to believe that any person found at or near the scene of a felony is a witness to the offense, they may stop that person. After having identified themselves, the officer must advise the person of the purpose of the stopping and may then demand of him his name, address, and any information he may have regarding the offense. Such detention shall in all cases be reasonable unless the person shall refuse to give such information, in which case the person, if detained further, shall immediately be brought before any judicial officer or prosecuting attorney to be examined with reference to his name, address, or the information he may have regarding the offense. (Oklahoma Rules of Criminal Procedure)

## VI. Consent to Search

- A. Authority to Search and Seize Pursuant to Consent
  1. An officer may conduct searches and make seizures without a search warrant or other color of authority if consent is given to the search or seizure. (Oklahoma Rules of Criminal Procedure)
  2. Prior to conducting a search by consent, other than a search of a vehicle, officers of the Pocola Police Department will, if possible, have the person consenting to the search sign a Pocola Police Department Consent to Search Form (Form: PPD-CTS). Additionally, officers must notify the person they have a right to refuse consent.

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3. Officers conducting a vehicle search by consent will not be required to have the person sign Consent to Search Form; however it is recommended that the verbal consent be recorded utilizing electronic recording. If such recording equipment is not available, or if other circumstances make it desirable to have written consent, the officer should consider having the person sign Consent to Search Vehicle Form. In the case of a consensual vehicle search, the officer is under no obligation to notify the person of their right to refuse consent.
- B. The consent justifying a search and seizure can only be given, in the case of:
    1. Search of an individual's person, by the individual in question or, if the person is under eighteen (18) years of age, by both the individual and his parent, legal guardian, or a person in loco parentis; (Oklahoma Rules of Criminal Procedure )
    2. Search of a vehicle, by the person registered as its owner or in apparent control of its operation or contents at the time consent is given; and (Oklahoma Rules of Criminal Procedure)
    3. Search of premises, by a person who, by ownership or otherwise, is apparently entitled to give or withhold consent. (Oklahoma Rules of Criminal Procedure)
  - C. A search based on consent shall not exceed, in duration or physical scope, the limits of the consent given. (Oklahoma Rules of Criminal Procedure)
  - D. A consent given may be withdrawn or limited at any time prior to the completion of the search, and if so withdrawn or limited, the search under authority of the consent shall cease, or be restricted to the new limits, as the case may be. Things discovered and subject to seizure prior to such withdrawal or limitation of consent shall remain subject to seizure despite such change or termination of the consent. (Oklahoma Rules of Criminal Procedure)
  - E. After making a seizure, the officer shall make a list of the things seized, and shall deliver a receipt fairly describing the things seized to the person consenting to the search. (Oklahoma Rules of Criminal Procedure)

**VII. Search and Seizure Incidental to Arrest**

- A. An officer who is making a lawful arrest may, without a search warrant, conduct a search of the person or property of the accused for the following purposes only: (Oklahoma Rules of Criminal Procedure Rule)
  1. To protect the officer, the accused, or others;
  2. To prevent the escape of the accused;
  3. To furnish appropriate custodial care if the accused is jailed; or
  4. To obtain evidence of the commission of the offense for which the accused has been arrested or to seize contraband, the fruits of crime, or other things criminally possessed or used in conjunction with the offense.

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**B. Search of Vehicles: Permissible Circumstances**

1. If, at the time of the arrest, the accused is in a vehicle or in the immediate vicinity of a vehicle of which he is in apparent control, and if the circumstances of the arrest justify a reasonable belief on the part of the arresting officer that the vehicle contains things which are connected with the offense for which the arrest is made, the arresting officer may search the vehicle for such things and seize any things subject to seizure and discovered in the course of the search.
2. The search of a vehicle pursuant to this rule shall only be made contemporaneously with the arrest or as soon thereafter as is reasonably practicable. (Oklahoma Rules of Criminal Procedure)

**C. Search of Premises: Permissible Circumstances, Time and Scope**

1. An arresting officer may search such premises or part thereof for such things, and seize any things subject to seizure, if at the time of arrest:
  - a. The accused is in or on premises all or part of which he is apparently entitled to occupy; and
  - b. In view of the circumstances the officer has reason to believe that such premises or part thereof contain things which are:
    - 1) Subject to Seizure;
    - 2) Connected with the offense for which the arrest is made; and,
    - 3) Likely to be removed or destroyed before a search warrant can be obtained and served.
2. Search of premises pursuant to this section shall only be made contemporaneously with the arrest, and search of building interiors shall only be made consequent upon an entry into the building made in order to affect an arrest therein. In determining the necessity for and scope of the search to be undertaken, the officer shall take into account, among other things, the nature of the offense for which the arrest is made, the behavior of the individual arrested and others on the premises, the size and other characteristics of the things to be searched for, and whether or not any such things are observed while making the arrest. (Oklahoma Rules of Criminal Procedure)

**D. Custodial Taking of Property Pursuant to Arrest; Vehicles**

1. Things not subject to seizure which are found in the course of a search of the person of an accused may be taken from his possession if reasonably necessary for custodial purposes. Documents or other records may be read or otherwise examined only to the extent necessary for such purposes, including identity checking and ensuring the physical well-being of the person arrested.
2. A vehicle impounded in consequence of an arrest, or retained in official custody for other good cause, may be searched at such times and to such extent as is reasonably necessary for safekeeping of the vehicle and its contents. (Oklahoma Rules of Criminal Procedure)

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**E. Vehicular Searches**

1. An officer who has reasonable cause to believe that a moving or readily movable vehicle is or contains things subject to seizure may, without a search warrant, stop, detain, and search the vehicle and may seize things subject to seizure discovered in the course of the search where the vehicle is:
  - a. on a public way or waters or other area open to the public;
  - b. in a private area unlawfully entered by the vehicle; or
  - c. in a private area lawfully entered by the vehicle, provided that exigent circumstances require immediate detention, search, and seizure to prevent destruction or removal of the things subject to seizure.
2. The officer may search the suspected occupants (except that this subsection shall not apply to individuals traveling as passengers in a vehicle operating as a common carrier) if the officer does not find the things subject to seizure by his search of the vehicle, and if:
  - a. the things subject to seizure are of such a size and nature that they could be concealed on the person; and,
  - b. the officer has reason to suspect that one or more of the occupants of the vehicle may have the things subject to seizure so concealed.  
(Oklahoma Rules of Criminal Procedure)

**F. Emergency Searches**

1. An officer may, without a search warrant, enter and search such premises and vehicles; and the persons therein, to the extent reasonably necessary for the prevention of death, bodily harm, or destruction, if he has reasonable cause to believe that the premises or a vehicle contain:
  - a. Individuals in imminent danger of death or serious bodily harm; or
  - b. Things imminently likely to burn, explode, or otherwise cause death, serious bodily harm, or substantial destruction of property; or
  - c. Things subject to seizure which will cause or be used to cause death or serious bodily harm if their seizure is delayed. (Oklahoma Rules of Criminal Procedure)

**G. Crime Scene Searches**

1. Warrantless searches of crime scenes may be permissible, depending on the circumstances. In certain cases, the expectation of privacy by the property's owner may require the investigating officer to first obtain lawful consent to search from the person authorized to grant such consent, or obtain a search warrant. If in doubt, the officer should first consult the prosecuting attorney for advice prior to conducting any search of the crime scene in question. This section is not intended to prohibit "emergency searches" that would otherwise be allowable under Oklahoma law.

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