

WINTER HAVEN POLICE DEPARTMENT

GENERAL ORDER 1.4

ARREST PROCEDURES

ACCREDITATION STANDARDS: CALEA – 1.1.4, 1.2.4, 1.2.5, 1.2.9, 74.1.3, 74.3.1,

EFFECTIVE DATE: MARCH 14, 1995

RESCINDS: G.O. 1.4 April 30, 2015 and all applicable Amended/Temporary Orders prior to January 5, 2018

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POLICY

It shall be the policy of the Winter Haven Police Department to maintain procedures to be followed when effecting arrests.

PURPOSE

The purpose of this General Order is to establish guidelines for effecting arrests.

SCOPE

This General Order shall apply to all Department members.

PROCEDURE

I. Authority for law enforcement officers to arrest without a warrant :

- A.** This is provided in Florida State Statute 901.15 and outlined in General Order 1.3 Limits of Authority (CALEA 1.2.5)
1. Officers shall be aware that as a matter of Federal Constitutional Law, under Payton vs. New York, 445 U.S. 57. (1980), there is no longer any viable distinction between making a warrantless felony arrest and a warrantless misdemeanor arrest when that arrest involves entry into a person's home. A search warrant is required to enter a second party residence unless permission or emergency or exigent circumstances exist. (CALEA 1.2.4)
 2. An officer may enter a suspect's premises to affect a lawful arrest in accordance with Florida State Statute 901.15, when the officer reasonably believes the person to be arrested is within the premises.
 3. An officer may forcibly enter premises, to affect a lawful arrest in accordance with Florida State Statute 901.19, announcing their authority and purpose and making a demand for admission. The announcement and demand shall not be necessary if an officer reasonably believes such announcement and demand might cause danger to life or limb, or if the person to be arrested is attempting to destroy evidence or elude arrest.
 4. Before an officer may arrest, it shall be established that probable cause exists. Probable cause can be established by an officer's own observations, or through statements of witnesses or other law enforcement officers.
 5. Officers shall check for local, Florida Crime Information Center (FCIC) and National Crime Information Center (NCIC) warrants on all arrested persons.

II. Execution of Arrest warrants or Capias (CALEA 1.2.5, 74.3.1)

- A.** Each warrant must be confirmed prior to the actual arrest. Confirmation shall be as follows: (CALEA 74.1.3d)
1. Verification of an outstanding arrest warrant through NCIC/FCIC, Criminal Justice Information System (CJIS).
 2. Verification of an outstanding arrest warrant through the Polk County Sheriff's Office warrants system.
- B.** Arrests on Out-of-Jurisdiction Warrants (CALEA 74.1.3d)
1. When NCIC/FCIC shows an outstanding warrant, confirm that the warrant is active with the originating agency and that the agency will extradite the subject.
 2. Upon confirmation of an active warrant and intent of extradition, complete a probable cause affidavit on the subject.

- C. Members will verify the identity of wanted persons and investigate any discrepancies, by all available means prior to making a warrant arrest.
- D. Once an arrest has been made, the subject shall be transported to the county jail.

III. Stop and Frisk Law

- A. Law Enforcement officers can utilize verbal contact with selected pedestrians and motorists as an effective crime prevention and information gathering tactic pursuant to Florida State Statute 901.151. Since the stop and questioning of citizens is restrictive on their freedom, certain guidelines and procedures must be established. Individuals shall never be singled out or otherwise treated differently based upon their race, color, ethnicity, sex, physical handicap, or religion. (CALEA 1.2.4, 1.2.9a)
- B. An officer must have reasonable suspicion that a subject is committing, has committed, or is about to commit a violation of criminal law.
- C. The Stop and Frisk law does not restrict law enforcement officers from approaching any person to engage in voluntary conversation.
- D. Detention shall not be longer than reasonably necessary and must terminate if inquiry into the suspicious circumstances fails to produce probable cause or results in a reasonable explanation for the questioned activity.
- E. Subjects detained shall not be removed to another area without their consent or arrest.
- F. The “frisk” is intended for an officer’s protection. Upon stopping a subject, if circumstances develop that cause an officer to believe a subject is armed with a dangerous weapon, then a pat down or frisk is appropriate. When an officer conducting a pat-down search discovers an object “whose mass or contour makes its identity immediately apparent,” the officer is not required to ignore the contraband but is justified in seizing the object.
- G. Factors to consider when deciding to frisk a subject shall include: If the suspected crime involves the use of weapons, bulges in clothing that could be indicative of concealed weapons, the attitude or actions of the subject, the availability of assistance and the number of subjects being detained.
- H. This law shall not allow indiscriminate searching of a subject. The “frisk” is a pat down for weapons for the protection of an officer only.
- I. Should the pat-down reveal illegal weapons, the subject may be arrested and a more extensive search shall be conducted.
- J. Any stop and frisk shall be documented either in an Offense Incident Report or a Field Intelligence Report (FIR).

IV. Search and Arrest

- A.** When a lawful arrest is made, the person being arrested and the area within the immediate presence of the subject may be searched without a warrant to discover weapons and evidence for the purpose of protecting an officer from attack, preventing the subject from escaping, or discovering fruits of the crime. (CALEA 1.2.4)
 - 1.** A restriction imposed by the Supreme Court in *Chimel vs. California*, 395 U.S. 752 (1969), requires that a search warrant be obtained first, if an arrest of a subject is anticipated at a subject's home, office, or other premises, and a search of the entire premises is desired coincident with the arrest.
 - 2.** Florida State Statute 933.09, provides that "the officer may break open any outer door, inner door or window of a house, or any part of a house or anything therein, to execute the warrant, if after due notice of his authority and purpose he is refused admittance to said house or access to anything therein."
 - 3.** The Florida Supreme Court in *State vs. Kelly* has interpreted Florida State Statute 933.09, as allowing a "no knock" entry where law enforcement officers can show by clear and convincing proof that the evidence sought was being or about to be destroyed, or would be destroyed if the persons inside knew law enforcement officers were outside.
 - 4.** If any of the "knock-notice" steps of a search are omitted, an officer must be prepared to show in court that noncompliance was justified under the circumstances.

V. If an Arrest is made in a House or Building and No Search Warrant Exists

- A.** A check shall be made of other rooms and closets of the premises for other wanted persons or accomplices, or to protect an officer from possible attack.
- B.** Items of evidence that are in plain view in the room where the arrest occurred, or in other rooms entered while looking for the subject or accomplices, may be seized. (CALEA 1.2.4)
- C.** Other rooms, closets, or drawers shall not be searched for evidence. Neither is it permitted to conduct a search of files, suitcases, boxes or cabinets.
- D.** If the subject is arrested outside the house or building, it is not permissible to take the subject into the building in order to search the inside of the premises.
- E.** It is possible to obtain a valid consent to search the premises. (CALEA 1.2.4)

VI. Arrest Made From Within a Motor Vehicle; Vehicle Searches

- A.** The United States Supreme Court permits the interior of a motor vehicle and any containers found therein to be searched incident to a lawful arrest of an occupant (*Belton* 1981) only when it is reasonable to believe that the arrestee might access the motor

vehicle at the time of the search or that the vehicle contains evidence of the offense for which the occupant is being arrested. (*Gant* 2009) (CALEA 1.2.4)

1. An officer may no longer automatically conduct a routine warrantless search of a motor vehicle incident to the arrest of an occupant. [*Arizona v. Gant*, 129S.Ct.1710 (2009)] (CALEA 1.2.4)
 2. The purpose of a search incident to arrest is to protect officers making the arrest and to safeguard any evidence of the offense of the arrest that the arrestee(s) might conceal or destroy. (CALEA 1.2.4)
- B.** If there is independent probable cause that a vehicle contains fruits or instrumentalities of a crime or contraband, the entire vehicle including any containers may be searched. *U.S. vs. Ross*, 456 U.S. 798 (1982). (CALEA 1.2.4)
- C.** Although *Arizona v. Gant* is now the general rule, there are several important exceptions which continue to allow the warrantless search of a motor vehicle: (CALEA 1.2.4)
1. When the officer searches the occupant's motor vehicle for evidence or fruits of the crime for which the officer has already arrested the occupant.
 2. Despite the limitations imposed by *Arizona v. Gant*, an officer may obtain consent to search the motor vehicle. The consent eliminates the need for a legal basis to conduct the search of the motor vehicle. The consent must be voluntary and may be revoked or limited at any time during the search.
 3. When the officer has probable cause to search the motor vehicle for evidence of another crime. Based on *Belton* (1981) and *Ross* (1982), rules have emerged and can be stated as follows: (CALEA 1.2.4)
 - a. A mobile vehicle can be searched without a warrant if the search is based on probable cause which would be sufficient to justify the issuance of a warrant, indicating that the vehicle contains the items sought. (*Carroll v. State* 1925)
 - b. When the officer has reasonable suspicion that the subject is dangerous and has immediate control of a firearm/weapon. The suspect's motor vehicle may be searched; however, the search is limited to those areas in which a firearm/weapon may be placed or hidden. During the search of a motor vehicle, any additional item(s)/contraband, other than firearms/weapons, discovered by the officer may be cause to expand the scope of the search. [*Michigan v. Long*, 463, U.S. 1032 (U.S. 1983)]
 - c. The scope of a warrantless search of a motor vehicle based on probable cause that the motor vehicle contains the items sought is the same as that of a motor vehicle search pursuant to a warrant; that is, all areas or containers in the motor vehicle that may contain the articles sought may be examined.
 - d. If probable cause exists that certain articles are contained in a specific container and/or containers rather than somewhere in a motor vehicle, a

warrant does not need to be obtained to validly open the container(s).
(CALEA 1.2.4)

- D. When an officer impounds a vehicle incident to arrest, an inventory search of the vehicle shall be conducted.

VII. Search and Seizure without a warrant at the scene of a crime

- A. An officer at the scene of a crime may search the scene to seize evidence as outlined under guidelines of the U.S. Constitution and court decisions.

VIII. Search and seizure without a warrant in exigent circumstances

- A. A person or location may be searched in a situation in which articulable facts exist which indicates that safety of officers or other persons or the preservation of evidence would be jeopardized. These articulable facts constitute exigent circumstances where a warrant is not necessary under guidelines of the U.S. Constitution and court decisions.

IX. Actual Arrest

- A. In making arrests, Winter Haven Police Officers shall strictly observe the laws of arrest and the following provisions:
 - 1. Only necessary restraint to assure safe custody and the safety of the officer and others shall be employed. All suspects under arrest shall be handcuffed while being transported, in accordance with General Order 71.1.
 - 2. The arresting officer is responsible for the security of the personal property in the possession of the arrested person or under their control at the time of arrest until such property is turned over to another authorized person or agency.
 - 3. The arresting officer is responsible for the safety and protection of the arrested person while in their custody.
 - 4. The arresting officer shall ensure that those rights as mandated by the U.S. Constitutions are provided to the arrested person.

X. Consent Searches During a Citizen Contact

- A. During a citizen encounter, an officer may ask the citizen for permission to search their person or belongings. If an officer requests such a search the following will apply:
 - 1. The citizen may refuse to be searched without being harassed, threatened or intimidated.
 - 2. If the citizen asks if they have to allow a search, they will be told they do not.
 - 3. If during a search the citizen withdraws consent the search must stop immediately.

4. If the citizen consents to a search, a WHPD Waiver Form (whpd-99) shall be signed by the citizen.
5. If illegal contraband is found during the search it may be seized as evidence and the subject may be arrested. All evidence seized shall be logged into evidence.
6. The officer shall complete an offense report or field intelligence report documenting the encounter and search.

XI. Consular/Foreign National Notification (CALEA 1.1.4)

- A. In accordance with Article 36, Section "b" of the Vienna Convention on Consular Relations, specific measures are to be taken when a foreign national, a consular officer, a diplomatic officer or an honorary consul is arrested and received. These individuals are citizens of other countries that may require mandatory notification. Mandatory notification countries and jurisdictions are: Albania, Algeria, Anguilla (UK), Antigua and Barbuda, Armenia, Azerbaijan, Bahamas, Barbados, Belarus, Belize, Bermuda (UK), British Virgin Islands (UK), Brunei, Bulgaria, the Cayman Islands, China, (including Macao and Hong Kong), Costa Rica, the Crown Dependencies of Jersey, Guernsey, the Isle of Man, Cyprus, Czech Republic, Dominica, Fiji, Gambia, Georgia, Ghana, Gibraltar, Great Britain (England, Wales and Scotland), Grenada, Guyana, Hungary, Northern Ireland (UK), Jamaica, Kazakhstan, Kiribati, Kuwait, Kyrgyzstan, Malaysia, Malta, Mauritius, Moldova, Mongolia, Montserrat (UK), Nigeria, Philippines, Poland, Romania, Russia, St. Kitts and Nevis, St. Lucia, St. Vincent (& The Grenadines), Seychelles, Sierra Leone, Singapore, Slovakia, Tajikistan, Tanzania, Tonga, Trinidad and Tobago, Tunisia, Turkmenistan, Turks and Caicos Islands (UK), Tuvalu, Ukraine, United Kingdom, Uzbekistan, Zambia and Zimbabwe.
- B. When a member arrests a person that is a foreign born national from a mandatory notification country, the member shall transport this arrestee to the Polk County Jail. Members shall notify the detention deputy that the arrestee is a foreign born national from a mandatory notification country.
- C. The Polk County Sheriff's Office detention personnel shall make notification to the nearest embassy or consular post in accordance with Polk County Sheriff's Office Detention Directive 2.2.

XII. Definition – None

APPROVED



**Charles E Bird
CHIEF OF POLICE**