

TYPE OF COMMUNICATION	DISSEMINATION	DESTINATION	NUMBER	PAGE OF
General Orders	Department	Directives Manual	401.00	1 11
TOPIC: Investigative Contacts, Interviews, Interrogations, Search & Seizure	EFFECTIVE DATE 06/15/93	SOURCE TLK	APPROVED BY JDM	<input checked="" type="checkbox"/> NEW <input checked="" type="checkbox"/> AMENDS <input checked="" type="checkbox"/> RESCINDS 01/21/25

## 401.01 PURPOSE

To provide information and guidelines for governing investigative contacts, interviews, interrogations, searches and seizures.

## 401.02 POLICY

Investigative procedures including voluntary contacts, interviews, interrogations, searches and seizures are governed by both state and federal law. Over the years state and federal courts have provided interpretations of these laws which serve to provide guidance, direction and mandates for law enforcement officers to follow. In order to investigate criminal activity effectively and lawfully, officers must understand the relationship between police authority granted to them and rights granted to all citizens under state and federal law. It is the policy of this Department that officers shall adhere to all state and federal laws including constitutionally protected rights.

## 401.03 STATE LAW CONSIDERATIONS

This directive is written in terms of federal constitutional law; however, Georgia statutory and constitutional law sometimes impose greater restrictions on police authority than are imposed by the Federal Constitution. It is the responsibility of individual officers and their supervisors to be familiar with and adhere to applicable federal and state law. Department supervisors and managers are responsible for assuring that their subordinate officers know and understand the provisions and/or requirements of applicable state law. If applicable state law is more restrictive of police authority than is the federal constitution and this directive, state law shall control and be obeyed by officers. Any provisions of this order inconsistent with more restrictive state or federal law shall be disregarded.

## 401.04 TRAINING

This order covers a number of subjects, which have been dealt with in basic and in-service training received by department employees over a period of many years. Also, such training has covered many related matters, which are not discussed in this directive. It is possible that some past training has been inconsistent, unclear, and/or inaccurate.

Additionally, court decisions frequently dictate changes in policy and procedures. Any past department training that is inconsistent with this directive should be reported, through the chain of command, to the Department's Training Section Commander.

It will be the responsibility of the Training Section Commander to ensure that all sworn personnel are provided with legal updates and recent court decisions in a timely manner. The manner and method of distribution will be the responsibility of the Training Section Commander.

## 401.05 DEFINITIONS

- A. Arrest – Any seizure of a person that exceeds the limits of an investigative detention in terms of duration, involuntary movement, and/or use of force.
- B. Articulable Reasonable Suspicion – A set of facts and circumstances in which a reasonable and prudent peace officer suspects, based on their knowledge, training and experience, that criminal activity is afoot or is about to occur. For example:
  1. An officer can stop a person if they suspect that a person has been, is, or is about to be, involved in criminal activity; or
  2. An officer can frisk a person if they suspect that a person is armed with a quickly accessible weapon and constitutes a danger to the officer.

- C. Gender - An individual's actual or perceived sex, gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the sex assigned at birth.
- D. Gender Expression - The external appearance of one's gender identity
- E. Gender Identity - A person's perception of having a particular gender, which may or may not correspond with their sex at birth.
- F. Interrogation - Any words or conduct on the part of police, other than those normally attendant to arrest and custody, that police should know are reasonably likely to elicit an incriminating response from the suspect.
- G. Interview - A meeting between one or more officers with victims, witnesses, suspects, or other persons for the purpose of obtaining information. The goal of conducting interviews is to obtain valuable, accurate and specific information and details following a crime or incident about who, what, when, where, why, and/or how a crime was committed.
- H. Investigative Detention - A seizure of a person that is reasonably brief, is generally conducted in one location (short movements for safety and/or security reasons may be permitted in an investigative detention), and that involves no more force and/or restraint than are reasonably necessary to effect and safely maintain the detention. NOTE: For purposes of this order, the term "investigative detention" is synonymous with "investigatory stop," "terry stop," and "field interview." Investigative detention is the "stop" in a "stop and frisk" transaction.
- I. Juvenile - This term shall be defined according to applicable state law where an officer is transacting business with a person under the age of 17 or under the age of 21, if O.C.G.A. 15-11-2(2)(B) is applicable. 15-11-2(2)(B) defines a child as "under the age of 21 years, who committed an act of delinquency before reaching the age of 17 years and who has been placed under the supervision of the court or on probation to the court." This does not preclude a person who is 17 years of age or older and under the supervision of the Juvenile Court for sentencing purposes from being charged as an adult for any offense committed while 17 years of age or older.
- J. Probable Cause - A set of facts and circumstances which would lead a reasonable and prudent person,
  - 1. (to arrest) using one's senses, to believe that a crime has been or is being committed by the person committed
  - 2. (to search) based upon reliable and credible information that the particular person or particular items to be seized are at a particular location being described
- K. Search - A police action, which infringes upon a person's reasonable expectation of privacy.
- L. Seizure of a Person - An officer-citizen contact in which the officer's words and/or actions would cause a reasonable person to believe that they are not free to refuse to participate in the contact. No seizure has occurred, however, until the person submits to a show of authority by police or until force used by police is successful in controlling the person.
- M. Seizure of Property - A significant interference (by police) with a possessory interest in property.
- N. Sex - A person's biological gender, whether male or female, they are born with.
- O. Transgender - A person with diverse gender expression or identity. This could include individuals who change from female to male, male to female, cross dressers or individuals who do not identify with a gender. The person does not have to have had gender altering procedures or hormone replacement methods.
- P. Voluntary contact - An officer-citizen contact in which the officer's words and/or actions would cause a reasonable person to believe that they are free to refuse to participate in the contact.

#### **401.06 INTERVIEWS**

Interviews of victims, witnesses, and suspects are often crucial in solving many types of crimes. The goal of an interview is to obtain accurate, detailed and specific information concerning a crime or incident. Interviews should be conducted in accordance with all applicable state and federal laws and departmental policies and guidelines. An effective interview can obtain valuable evidence that might otherwise be lost.

##### **A. Victim/Witness Interviews**

Ideally statements should be video or audiotaped. As an alternative, a detailed written statement may be taken from the individual. Should these not be possible the officer should take very detailed notes of the interview. Record the date, time,

persons present, and location of the interview. The officer conducting the interview should ensure that the statement documents the elements of the crime being reported. The trauma/stress to which the victim or witness has been subjected should be considered and the interview conducted in a way that reduces stress and minimizes further problems. The age, physical limitations, and creditability of witnesses should also be considered.

#### B. Interview of Suspects

Statements should be documented/recorded in the same manner as described for Victim/Witness Interviews above. With suspect interviews, it is useful to note the ending as well as beginning times for interviews.

1. Interviews to obtain investigative leads can be very useful, but all constitutional precautions must be taken and recorded if the interview is to be used in court later.
2. Detailed notes and/or a written statement should be made for future reference and court use, giving time, date, location, officers present, waiver of rights if necessary, time interview ended, etc.

### 401.07 INVESTIGATIVE CONTACTS/SEIZURE OF PERSONS

There are three forms of investigative contacts: voluntary contact, investigative detention, and arrest. Investigative detentions and arrests are seizures of persons and require different levels of factual/articulable justification.

- A. Voluntary Contact is permitted without probable cause or reasonable suspicion. It can be a highly effective investigative tool and is unlikely to cause evidence suppression and/or civil liability. Therefore, it is the preferred form of contact, where circumstances permit.
- B. Investigative Detention(s) may be conducted only if there is (at least) reasonable suspicion of criminal activity on the part of the person(s) to be detained. In an investigative stop the officer has a right to stop the person, but may not always require the person to answer any questions or produce identification. Reasonable force may be used to require a person to stop for an investigative stop.

The courts have held that there is no lawful authority for an officer to stop a person for the sole purpose of completing a field interview. In examining the issue of investigative stops, the court, in *United States v. Glover*, 957 F.2d1004, 1009-10 (2d Cir. 1992), held that, "To justify a limited Terry-type investigative stop, a law enforcement officer must have a reasonable suspicion based on articulable facts that the suspect is, has been, or is about to be engaged in criminal activity . . . Although the concept of reasonable suspicion is not susceptible to precise definition . . . the requisite level of suspicion to make an investigative stop is considerably less than proof of wrongdoing by a preponderance of evidence . . . Still, the Fourth Amendment requires some minimal level of objective justification for making the stop . . . Consequently, an officer's inchoate suspicion or mere hunch is insufficient to justify a Terry-type detention."

Patterned, "check-point" type stops generally do not require reasonable suspicion.

1. Use of Force and/or restraints is permitted only if reasonably necessary to effect or to safely maintain an investigative detention. Excessive force is prohibited. (See General Directive 503.00).
2. Involuntary Movement of a detained person from one place to another is prohibited except for short distances reasonably necessary for safety and/or security. Generally, such movement will be permitted only within one locale, or area, and may not involve transportation in a vehicle.

If a detained person is willing to move voluntarily, or if there exists probable cause to arrest the detained person, movement is permitted.

3. Duration – Investigative detentions shall be limited in duration to a reasonably brief period of active and diligent investigation. In serious matters where circumstances require it, up to approximately one hour of diligent investigation may be permitted, provided reasonable suspicion continues.
- C. Arrests shall be made only if there is probable cause to believe that the person to be arrested has committed a crime for which the officer has authority to arrest. Searches, processing of arrestees, and charging procedures shall be in accordance with Department training, Department policy and applicable state law.
  - D. Discontinuation of Arrest Custody
    1. If, following arrest but before commitment to jail custody, probable cause to arrest evaporates, because of new information or realization of an error, the officer shall release the arrestee as quickly as possible in a reasonably safe

place of the arrestee's choosing, if possible. In such cases, the officer shall immediately notify their supervisor and document the arrest and reasons for it as well as the release from custody and reasons for it.

2. If, after commitment of an arrestee to jail custody, an officer discovers new information, and/or realizes an error, which causes probable cause to evaporate, the officer shall immediately consult with a supervisor and with the appropriate prosecutor's office in order to determine the procedure for causing the release of the arrestee. Thereafter, the officer and supervisor shall proceed diligently in an effort to affect promptly, through lawful process, the release of the arrestee from custody.
- E. Juveniles shall be seized and handled only as is permitted by applicable state law and in accordance with General Directives Section 415.00 entitled "Juvenile Procedures."
- F. Rapid ID System – The use of Rapid ID technology requires the voluntary consent of the individual prior to using the scanner. Suspects should be advised that they are not required to submit to the request.

#### **401.08 STRIP & BODY CAVITY SEARCHES**

##### **A. Strip Searches**

Strip searches are prohibited unless there is probable cause to believe that a person who has been arrested is concealing weapons, controlled substances, and/or critical evidence. As used in this section, a "strip search" is defined as having an arrested person remove or rearrange some or all of their clothing so as to permit the visual inspection of genitals, buttocks, anus, female breasts or the undergarments of such persons. Strip searches do not require a search warrant and shall be conducted in accordance with the following guidelines.

1. Strip searches should be conducted at the jail when practical to do so. An arresting officer may request that jail personnel conduct a strip search of an arrested person if the above criteria are present. The arresting officer must complete a "Strip Search Request Form" at the jail and it must be signed by the authorizing jail supervisor.
2. Strip searches not conducted at the jail require the approval of a supervisor prior to the search being conducted.
3. All strip searches will be conducted in a professional and efficient manner and will take place in a secure and private area that is out of sight of unauthorized and/or unnecessary persons and any video recording device located where a search is taking place shall be turned off. This includes officer issued BWC's.
4. The officer conducting a strip search shall wear surgical gloves and will not touch the person being searched unless it is necessary for officer safety. Verbal instructions will be utilized, enabling the officer to visually inspect the arrestee without making physical contact. Officers may ask the subject to remove a prosthetic device(s) they may be wearing if that device is hindering the officer's view of the part of the body that is believed to be concealing weapons, controlled substances and/ or critical evidence. Officers will not remove any casts or long-term bandages. If there is probable cause to believe those items are concealing weapons, controlled substances and/or critical evidence, the subject should be taken to a medical facility for qualified medical personnel to remove the cast or bandage.
5. Strip searches shall only be conducted by an officer of the same sex, or same gender identity or expression, as the arrested person being searched. When possible, a second officer of the same sex, or same gender identity or expression should be present during the search. At no time is any officer/person of the opposite sex permitted to participate or be present during the search. Civilians will not perform, nor be witness to, a strip search.
6. A detailed report shall be completed documenting the following information related to any strip search:
  - Supervisor approving the search;
  - Officer conducting the search, along with any other officers who were present.
  - Location where the search took place;
  - Area of the search; and
  - Results of the search.
7. Every reasonable attempt should be made to obtain the cooperation of the suspect prior to conducting a strip search.
8. Juveniles will not be subject to strip searches without prior approval of the Juvenile Court or its officers.

##### **B. Body Cavity Searches**

Body cavity searches are prohibited unless there is probable cause to believe that a person who has been arrested is concealing weapons, controlled substances, and/or critical evidence. A body cavity search is defined as a manual, visual,

or instrument inspection of any body cavity that can be used to conceal weapons, controlled substances, or critical evidence. A cursory visual inspection of the mouth is not considered a body cavity search. Body cavity searches shall be conducted in accordance with the following guidelines:

1. The Watch Commander or his/her designee shall be notified.
2. A search warrant must be obtained authorizing the body cavity search.
3. Once the warrant is obtained, it will be reviewed by the Watch Commander or his/her designee and then served.
4. The arrestee to be searched will be transported to a medical facility where the authorized body cavity search will be performed by the medical staff at the facility.
5. An officer of the same sex or gender identity/expression as the suspect will be present during the search to provide security and document any evidence that may be recovered.
6. A detailed report shall be completed documenting the following information related to any body cavity search:
  - Watch commander or his/her designee approving the search;
  - Copy of the search warrant and the search warrant return;
  - Name of the medical facility where the search was conducted;
  - Name of the attending physician/medical personnel conducting the search;
  - A description of the procedures utilized (i.e., X-Rays, ultrasounds, physical examination, etc.); and
  - Medical findings prepared by attending physician/medical personnel.
7. Juveniles will not be subject to body cavity searches without prior approval of the Juvenile Court or its officers.

#### **401.09 ONE-ON-ONE SHOW-UP**

Show-ups can be a valuable tool. Courts continue to allow show-ups because they serve two important purposes. Show-ups enable officers to quickly end the detention of uninvolved parties and refocus their investigation and continue the search for responsible parties.

Prior to using a one-on-one show-up, officers must consider a number of factors. This includes the length of time since the crime occurred. While the courts have not recognized a specific length of time between the crime and show-up, normally it should be no more than one hour, or at the most two hours. Other considerations include the distance the suspect is from the scene of the crime in relationship to the time when the crime occurred. In other words, is it reasonable that the perpetrator could have traveled a particular distance since the crime occurred? Also, the officer must consider the physical and mental condition of the victim and/or witness, as well as the physical description of the perpetrator compared to that of the person being detained.

Normally, a one-on-one show-up is used after a crime has been committed and the responding officers locate a subject of similar description. At this point an officer will have one of three types of contact with the person:

- A. If it is a voluntary contact, then the officer can request the subject's cooperation in either going to the incident location or having the victim and/or witness come to that location for the show-up.
- B. If the contact is an investigative detention, the officer cannot compel the subject to go to the incident location for a show-up. The officer may detain the subject at the location only a reasonable amount of time as described in 401.06(2)(c).
- C. If probable cause to arrest exists, the officer may compel the subject to participate in the show-up.

The preferred manner of transportation to the show-ups is to drive the victim and witnesses to the location of the person that is suspected of the crime. The show-up must be done separately for each victim and witness if there is more than one party.

Extreme caution should be used in a one-on-one show-up so as not to influence the victim and/or witness and so that the show-up is not unnecessarily suggestive. Courts have held that having a suspect in the back of a patrol car, handcuffed, and flanked by numerous officers can be suggestive, therefore, these conditions and actions should be minimized if possible. Prior to viewing the show-up, officers should be careful of the instructions and statements made to the witnesses and victim. Officers should also not make any statements to the victim and/or witness to prejudice the show-up. Statements like "We caught the guy you identified" or

"The suspect is currently being detained" should not be used and officers should instead use neutral statements such as "We have someone we would like you to look at."

Officers should document the details of the identification. Furthermore, O.C.G.A. 17-20-2 states at the time that an identification of an individual is made, and in the witness's own words without necessarily referencing a numeric or percentage standard, a clear statement from the witness as to the witness's confidence level that the individual identified is the individual who committed the alleged crime. Items to document include the lighting conditions, time of day, and the distance from which the identification was made. Officers are prohibited from providing any feedback to the victim and/or witnesses regarding the show-up. In the event the witness makes an identification, officers should ask specific questions that will aid in identifying the level of confidence expressed by the witnesses such as "Why did you pick him" or "What made you identify him?" Officers should also ask if the identification was made because of facial features, physical manifestations, clothing, scars, marks, tattoos, or a combination of these.

When a suspect has been identified due to a show-up, a detailed incident report and/or supplemental report should document the details of how the officer made their initial contact with the individual, how the show-up was conducted, manner of transportation to the show-up, instructions given to the victim and witnesses prior to and after the show-up, and other significant details of the show-up.

#### **401.10 INTERROGATION PROCEDURE**

A. Voluntariness – Threats, intimidation, physical abuse and/or deprivation, promises of reward, and other similar coercions are prohibited in connection with interrogation.

B. Miranda Warnings – Officers shall advise arrestees of those rights prescribed in *Miranda v. Arizona* prior to any effort to interrogate. Interrogation may proceed only if the arrestee waives Miranda rights.

1. Non-custodial Interrogation – Miranda warnings are not required for non-custodial interrogation and, therefore, shall not be given in such circumstances. For purposes of this sub-section, "non-custodial" means that police have not said or done things that would cause a reasonable person to believe that he has already been arrested. However, if a person makes a confession or admission of guilt, then the interrogation and/or questioning will immediately cease and the person shall be advised of their Miranda rights prior to further questioning.
2. Juveniles – Interrogation of juveniles shall be conducted only as permitted by applicable state law and General Directive 415.00. Any provision of this policy, which is inconsistent with applicable state law, shall be disregarded.
3. Re-warnings of Miranda rights shall be given only under circumstances which warrant reasonable doubt that the arrestee understands that the earlier rights warning is still applicable. Re-warnings are not required following every short break in interrogation. Re-warnings will generally be more of an exception than a rule. Examples of circumstances, which might warrant re-warnings, include: complete change of interrogators, change of interrogation site, a break of more than a few hours, etc.
4. Exceptions of the Miranda Warning Requirement – Certain types of questions by police do not require prior Miranda warning and waiver although they might elicit incriminating information. They are:
  - Routine booking and processing questions attendant to arrest and custody;
  - General, on-scene, questioning of persons present.

Example: An officer arrives at the scene of a crime or disturbance, walks up to someone, and asks, "What happened here?"

- Questioning during traffic stops and other investigative detentions in which the officer's words and actions would not cause a reasonable person to believe that he has already been arrested.
  - Questions asked out of urgent necessity to dispel an imminent threat to public safety
5. Form of Warning and Waiver – Miranda warnings and waivers need not necessarily follow any particular, precise language or phrasings. However, to ensure that all the warnings are fully and clearly conveyed to the individual, it is a good practice to read the warnings from the preprinted Miranda card. Officers shall assure that Miranda warnings clearly convey the following messages:
    - You have the right to remain silent;
    - Anything you say can and will be used against you in court;
    - You have the right to a lawyer to assist you prior to and during any questioning;

- If you want a lawyer but cannot afford one, one will be appointed to represent you at no cost to you prior to any questioning.

Before interrogation can begin, the suspect must understand his rights and must give a waiver of his rights. This can be done by asking the suspect the following questions:

- Do you understand these rights?
- Are you willing to answer questions now without a lawyer present?

The answers to these questions (the Miranda waiver) can be express or implied. An express waiver can be a verbal answer to these questions, or the signing of a written waiver form. An implied waiver can be inferred from the defendant's silence, coupled with a course of action indicating waiver (*North Carolina v. Butler*, 441 U.S. 369 (1979)).

The *North Carolina v. Butler* case was reinforced and clarified in *Berghuis v. Thompkins*, 560 U.S. (2010). *Berghuis v. Thompkins* determined the following: a suspect who understands his Miranda Rights and is aware he has the right to remain silent, must explicitly invoke his right to remain silent. The Supreme Court held that unless the suspect actually states that he is invoking his right to remain silent, his subsequent voluntary statements can be used in court and officers can continue to question him. The mere act of remaining silent is insufficient to show that the suspect has invoked his right to remain silent. A voluntary reply, even after lengthy silence, can be construed as an implied waiver.

Similarly, the invocation of the right to counsel (the suspect asking for an attorney), must be clear and unequivocal. *Davis v. United States*, 512 U.S. 452 (1994) found that the burden rests on the suspect to clearly ask for an attorney. The Supreme Court found that statements like, "Maybe I should talk to a lawyer," are insufficient to show that a suspect has invoked his right to counsel. Therefore, questioning may continue. The Court stated that a good police practice would be to ask clarifying questions when a statement like this is made but refused to adopt a ruling requiring officers to ask clarifying questions.

#### C. Procedure Following Assertion of Rights:

1. Assertion of Right to Silence by In-Custody Suspect – In this event, officers shall cease all interrogation efforts immediately and attempt no further interrogation on any matter unless or until:
  - The suspect initiates new discussion of his involvement in criminal activity with police, or
  - The suspect leaves custody.
2. Assertion of Fifth Amendment (Miranda) Right to Counsel by In-custody Suspect – In this event, officers shall cease all interrogation efforts immediately and no officer will attempt any further interrogation on any matter unless or until:
  - Counsel is actually present at any subsequent interrogation, or
  - The suspect initiates new discussion of his involvement in criminal activity with police, or
  - The suspect leaves custody.
3. Assertion of Sixth Amendment Right to Counsel by Formally Charged Suspect – In this event, officers shall cease all interrogation efforts regarding the formally charged crime immediately and attempt no further interrogation regarding the formally charged crime unless or until:
  - Counsel is actually present at any subsequent interrogation, or
  - The suspect initiates new discussion with police regarding the formally charged crime. Then an officer may attempt to obtain a waiver of rights by advising the suspect that he has been formally charged with a particular (named) offense, that police wish to discuss the formally charged matter, and then using standard Miranda warning and waiver procedures.
  - If an in-custody suspect asserts only the Sixth Amendment Right to Counsel (without invoking his right to remain silent), he may be questioned about offenses other than the formally charged crime by an officer using standard Miranda warning and waiver procedures.

**Note:** For purposes of this Directive, a person has been "formally charged" only if he has been indicted by a grand jury or has been to court for "arraignment" or for a "probable cause hearing."

In *Maryland v. Shatzer*, 559 U.S. (2010), the Supreme Court determined that officers can begin another interview/interrogation with a suspect who has asked for an attorney after 14 days have passed. When the 14 days have passed, the suspect must again be advised of his Miranda rights. If the suspect waives his rights a new interview/interrogation can begin without an attorney present.

#### **401.11 INTERVIEW ROOMS**

Once a person comes into police custody personnel are responsible for their well-being. This extends to persons who are suspects but have not been charged. The care and control of a person in custody is a critical responsibility and requires all employees to adhere to policies and procedures as well as exercising good judgment. These policies and procedures apply to all interview rooms.

Interview rooms are located at the precincts, as well as in the Criminal Investigations Division (CID), to facilitate and document interviews. The interview rooms located in the Criminal Investigations Division are for use by all personnel including CIS, SIS and Uniform personnel to interview witnesses, defendants and/or suspects. One of the interview rooms in CID also serves as a "Safe Room" to interview children and should be used when interviewing child victims.

Prior to placing a suspect, person of interest or arrestee in an interview room that person will be searched, regardless of whether a search has already been performed in the field. A hand held metal detector wand is available in CID for personnel to assist in searches. The person will not be left unattended once placed in an interview room and must be monitored. The term "monitored" means maintaining a constant visual observation of the person either in person or through the use of a monitor. To facilitate this process in CID monitors have been installed in the recording room, the officer work area and the conference room. These locations provide a way to covertly monitor the individual while at the same time provide a quick response should the person attempt to escape or injure someone.

Personnel will not wear any firearms into an interview room. Suspects/defendants will only be kept for that amount of time required for an interview. Once the interview is completed the person will be released or taken immediately to the Detention Center. Any person being interviewed should be afforded the right to use the restroom, obtain water or otherwise take a break unless doing so would jeopardize the interview or risk the escape of the individual. Interview rooms will be furnished with only a table and chairs and will be kept clear of any items not necessary for the interview itself.

Extreme care should be used when interviewing suspects or defendants who pose a safety/security concern. This includes suspects/defendants who show obvious signs of mental illness, irrational behavior, escape tendencies or violent outbursts. In these cases the person should be interviewed at the Detention Center or interviewed at a later time. Interviews should be conducted by no more than two (2) personnel in the interview room at any one time. Interviews will not be conducted after normal working hours by one person. If an interview needs to be conducted after normal hours and other personnel are not available, a uniform supervisor should be contacted and a request made for another sworn officer to stand by in the area during the interview. Interview rooms are equipped to video record interviews. Supervisory personnel should be familiar with the operation of the recording equipment. Recordings will be handled as any other evidence in accordance with departmental policy.

Interview rooms are also equipped with a local area emergency alarm in the event a suspect becomes combative or an investigator needs immediate assistance. Personnel should familiarize themselves with procedures for operating the recording, monitoring and alarm activation/deactivation equipment before using the interview rooms.

#### **401.12 SEARCH & SEIZURE**

Searches and seizures of persons, places, and property are regulated by the Fourth Amendment to the United States Constitution. The guiding principle of the Fourth Amendment, and therefore of the law of search and seizure, is "reasonableness." Any search and/or seizure which is not "reasonable" under the "totality," or all, of the circumstances violates the Fourth Amendment and is unconstitutional. Officers shall strive to ensure that their actions are at all times "reasonable." A working definition of "reasonable" is if the officer has specific and articulable facts sufficient for the search and/or seizure.

Types of search and seizure:

- A. Warrant Requirement – Searches and seizures generally require a search warrant in order to be reasonable. If an officer should need to obtain a search warrant, the officer shall notify a supervisor who will arrange for any assistance that the officer may require. The form, issuance, execution, and service of search warrants are regulated by state statutory law. Also, state law may require warrants for certain arrests, even though the arrest is made outside private premises. Officers and supervisors shall ensure that applicable state law regarding warrants is carefully followed. Personnel should also be familiar with GDM Policy 441.00 – Arrest/Search Warrant Procedures. Personnel assigned to the Criminal Investigations Division will follow additional guidelines outlined in the Criminal Investigations Manual.
- B. Exceptions to the Warrant Requirement – Some search and/or seizure actions do not require warrants but are nevertheless subject to strict legal requirements and procedural rules. Following is a summary of those requirements and rules:



1. Frisk – This is a limited, “pat-down” type, protective search of outer clothing and quickly accessible carried belongings. It is permitted only during lawful officer-citizen contacts and only if the officer has reasonable suspicion that a person is armed and may constitute a danger to the officer or another person. If the subject is in or beside a vehicle, and if the officer reasonably suspects the presence of weapon(s) in the vehicle that could be quickly reached and used against him, he may conduct a limited search of quickly accessible portions of the passenger compartment for weapons.
2. Search Incident to an Arrest – This is a full search for evidence and weapons within the area of immediate access of an arrestee. It is permitted pursuant to every lawful arrest and must be conducted contemporaneously with the arrest. Probable cause to arrest is required but the search may be conducted whether or not there is any reason to believe evidence and/or weapons will be found.
  - The search may extend to the person, his clothing and carried belongings, and the area to which he has immediate access, sometimes called “lunge area.” The Supreme Court held that once an occupant of a vehicle is removed from the vehicle and handcuffed, the police may not search or enter the vehicle as a search incident to arrest. Rather, officers may only search a vehicle incident to arrest if (1) the arrestee is within reaching distance of the passenger compartment at the time of the search, or (2) it is reasonable to believe that the vehicle contains evidence of the offense which is the subject of the arrest.
  - In the event that an arrestee wants or needs access to certain areas for his convenience and/or comfort, the officer shall inform the arrestee that such access is conditional upon the arrestee’s consent to a prior search by the officer of the areas to which access is requested. If the arrestee consents, the appropriate search shall be conducted. If consent is withheld, the arrestee shall not be allowed the requested access. These strict rules are absolutely necessary for officer protection and survival, as well as the safety of the arrestee and others.
  - Arrestees shall be handcuffed before transportation. Handcuffing shall precede searches of arrestees, except if immediate frisk is required by circumstances, in which case handcuffing shall occur as quickly thereafter as possible.
3. Inventory – This search is permitted pursuant to the lawful impoundment of a person’s property by action or order of police. In this Department, it will likely occur in the context of a police-ordered towing of a person’s vehicle. The inventory allows discovery and proper care taking of dangerous instrumentalities and of valuable or important property, and it ensures the Department that all vehicles and other property which are impounded are searched and inventoried. In the case of vehicles, such search and inventory shall extend to all areas and containers within the vehicle that can be opened and accessed without breakage or damage. See Sections 427.00 and 411.00 of the General Directives Manual for more information.
4. Plain View Seizure – This seizure of property is permitted when an officer who is lawfully present in an area sees in plain view an item that the officer has probable cause to believe is contraband or other evidence of crime and that can be seized without any additional privacy intrusion. Example: An officer lawfully present on the street may not use this rule to force warrantless entry into a home in which the officer can see, through a front window, a marijuana cigarette being smoked. Such an entry requires an additional privacy intrusion. Said another way, the officer is not lawfully present in the place from which the seizure can be accomplished.

The question of whether or not these circumstances create exigency, justifying a warrantless forcible entry, is a function of the state’s classification of the crime of simple marijuana possession as non-serious. In Gwinnett County, the offense of simple possession of marijuana is not a felony, and it is an offense, which can be charged as a county ordinance violation. Therefore, these circumstances are not exigent and a warrantless forcible entry would be unconstitutional.

5. Probable Cause Search of a Motor Vehicle in a Public Area – This search is permitted when an officer has probable cause to believe that evidence of crime is in an apparently operable motor vehicle that is in a public area. No additional or exigent circumstances are required and the search may extend to any area within the vehicle that could reasonably contain the evidence sought. Closed containers may be opened and searched if there is probable cause to believe they contain evidence of crime. Breakage is permitted if reasonably necessary to reach criminal evidence. For purposes of this sub-section, a “public area” is any area on which public vehicular traffic is normally permitted. Examples are streets, highways, grocery or mall parking lots, apartment complex parking lots, etc.
6. Consent Search This search is permitted when, during a lawful officer-citizen contact, a person who has a reasonable expectation of privacy has the authority to grant consent and has a vested property interest in the area to be searched; e.g., owner, resident, tenant, vehicle operator, voluntarily grants permission for police to search that area. Compliance with an order or demand by police is not a “voluntary” grant of permission. This search does not require probable cause or reasonable suspicion but is limited to those areas “reasonably” within the consent. Examples are: During a lawful stop, an officer asks a vehicle operator for permission to search this car for drugs.” Permission is granted. Unless the driver objects or withdraws consent, the consent search may extend to any containers within the vehicle that can be opened without breakage. Consent may be withdrawn at any time. If it is withdrawn, the officer shall immediately stop

the search unless at that time other lawful search justifications are present. If circumstances permit, the officer should obtain a written consent or waiver prior to conducting the search or should have a witness to the consent. An incident report will be completed whenever a consent search of a residence (home, apartment, hotel room, etc.) or business takes place and no evidence or contraband is found, or if no other type of report is generated. If evidence or contraband is found, the facts and circumstances of the consent search will be detailed in the narrative of the incident report. SIS detectives may document the consent search on a Suspicious Activity Report (SAR) instead of an incident report if no drugs or contraband were found.

7. Open Fields and Woods/Abandoned Property – Certain areas, though sometimes on private property, do not involve a reasonable expectation of privacy. Therefore, an officer is permitted to walk through open fields and/or woods without a search warrant. An officer may inspect, without a search warrant, the contents of trash receptacles in common areas of multi-tenant commercial or residential premises. An officer may pick up and examine the contents of items or containers, which are apparently discarded in public areas. Whether or not there is a reasonable expectation of privacy, and therefore a search warrant requirement, depends on all circumstances surrounding a particular situation. In general, the closer an officer gets to a single-family residence, the greater and more reasonable are privacy expectations and the more likely it is that probable cause or a search warrant will be required. However, if an officer uses common, regularly used public pathways, e.g., front walks, to reach the front door of a residence in order to make an inquiry, the officer has not intruded upon any reasonable expectation of privacy. No justification is required for such an action.

#### **401.13 WARRANTLESS ENTRY INTO PRIVATE PREMISES**

Improper warrantless entries into private premises cause serious liability and evidence suppression problems. Additionally, officers face the risk of serious injury or death. Therefore, applicable federal and state law must be followed.

##### **A. Entry to Arrest**

Officers may enter private premises without a warrant or consent in order to arrest someone in the premises only if:

1. Someone is likely to be killed or seriously injured unless immediate warrantless action is taken; or
2. A serious and/or dangerous criminal offender is likely to escape apprehension and/or prosecution unless immediate warrantless action is taken; and
3. There is probable cause to arrest the person sought; and
4. There is probable cause to believe that the person to be arrested is physically present in the premises at the time of the entry.

##### **B. Entry to Preserve Evidence**

If there is probable cause to believe that critical evidence of a serious and/or dangerous offense is located within private premises and that the evidence is almost certain to be destroyed or removed unless immediate warrantless action is taken, the officer may enter without a warrant or consent to secure the premises while awaiting the arrival of a search warrant. Once the premises is secured, no further search shall be conducted unless or until:

1. A search warrant for the premises is on scene; or
2. Consent to search has been obtained; or
3. New or additional emergency circumstances arise necessitating additional warrantless search.

##### **C. Crime Scenes**

1. For Purposes of this subsection, a “crime scene” is a location where a crime has very recently occurred and where there is an apparent need for investigative action and/or emergency services.
  - Examples: homicide scenes, fire scenes, scenes of burglaries or break-ins, etc.
  - Note: The mere presence of contraband or evidence in private premises does not make those premises a “crime scene” for purposes of this subsection.
2. Upon arriving at a crime scene in private premises, the officer may enter the premises without a warrant or consent in order to:

- Locate and secure perpetrators; and/or
  - Provide assistance to injured or others requiring emergency assistance; and/or
  - Locate and secure evidence, which is likely to be lost or destroyed by the mere passage of time.
3. Once the actions described in the preceding paragraph are completed, no further search shall be conducted unless or until:
- A search warrant for the premises is on scene; or
  - Consent to search has been obtained; or
  - New or additional emergency circumstances arise necessitating further search.

#### D. Other Emergencies

Officers may enter private premises without a warrant or consent if it reasonably appears that such action is urgently necessary in order to:

1. Prevent death or serious physical injury; or
2. Provide needed emergency medical assistance; or
3. Guard against the imminent threat of substantial property damage.

#### **401.14 OTHER ACTIONS**

Investigative actions and uses of authority that are not dealt with explicitly in this or another Directive shall be conducted, if at all, in strict compliance with Department training, applicable state laws, and federal constitutional requirements. Officers shall consult with their supervisors regarding any questions that may arise. Officers and supervisors shall contact the Departmental training manager and/or legal counsel if questions have not been answered clearly and appropriately.

#### **401.15 FIELD INTERVIEW FORM**

The Field Interview Form in the Enterprise Records Management System (ERMS) is a method to record identities, descriptions, vehicles, times and places found and the circumstances of an officer's contact with suspicious persons. The Field Interview Form should be completed whenever an officer conducts an investigative detention, or needs to document any other activity, individual or vehicle that may be related to criminal activity including but not limited to terrorism or other suspicious activity.

Each individual interviewed must have a separate form in ERMS in order for the person to be assigned a separate number in the system. If person(s) interviewed are related to the same case/incident this information should be included in the narrative. All Field Interview Forms should be completed in full and turned in at the end of the watch through ERMS.

A digital copy of the Field Interview Form is reviewed by Crime and Intelligence Analysis personnel. The information is then transferred to and stored in RMS. Any information contained on the Field Interview Form can be assessed and searched through RMS.

#### **401.16 INFORMANTS**

The use of informants is addressed in the Criminal Investigations Division Manual section 201.08. All personnel will follow this directive when handling informants.