

YORK-POQUOSON SHERIFF'S OFFICE	GENERAL ORDERS
SUBJECT: Search Incident to Arrest	NUMBER: GO 2-5
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AMENDS/SUPERSEDES: GO 2-5, December 7, 2018	APPROVED:  Sheriff
VLEPSC:	

1 **INDEX WORDS**

- 2
- 3 Body-cavity searches
- 4 Force; use of during a search
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- 9 Searches of Vehicles

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11 **POLICY**

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13 Deputies who, during the course of duty, develop probable cause or reasonable suspicion that a

14 crime has been committed may make investigative stops of citizens, arrests, or conduct searches.

15 The Sheriff's Office encourages investigative activity and expects deputies too competently and

16 knowledgeably search whenever the need and justification arises. Consistent with the policies of

17 [GO 2-1 Constitutional Safeguards](#), [GO 2-2 Search Warrants](#), [GO 2-3 Field Interview Stop Frisk](#)

18 and [GO 2-4 Arrests](#), deputies shall not conduct general exploratory searches but shall adhere

19 strictly to constitutional guidelines.

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21 **PURPOSE**

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23 To establish guidelines for the search of person(s) who are placed under arrest and taken into

24 custody.

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26 **PROCEDURE**

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- 28 • The Fourth Amendment to the U.S. Constitution states in part, "The right of the people to
 - 29 be secure in their persons, houses, papers and effects against unreasonable searches and
 - 30 seizures shall not be violated."
 - 31 • Reasonable searches may follow a valid arrest. The deputy has the authority to conduct a
 - 32 search, which may extend to articles carried by the suspect, and the suspect's immediate
 - 33 surroundings. Although an arrestee who is handcuffed at the time of search cannot
 - 34 reasonably reach into the area being searched, the search of the area is still legally
 - 35 justified.
 - 36 • Searches of individuals should be conducted by a deputy of the same sex as the person
 - 37 being searched; however, if a deputy of the same sex is unavailable the search shall be
 - 38 witnessed by another deputy if a BWC or mobile in car camera is unavailable or recorded
 - 39 using the body worn camera and or mobile in car camera if available.

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- Time and place of search incident to an arrest
 - A search incident to an arrest must occur in such a way that it and the arrests are part of a continuous, uninterrupted transaction.
 - Two things are necessary for this to occur:
 - The search must be made as soon as practical after the arrest.
 - The search must be made at or near the place of the arrest.
 - A search incident to arrest shall be made prior to placing the arrestee in a Sheriff's Office vehicle.
 - In certain extreme cases, the search may be conducted at the detention center or other location if all of the above requirements are present.
 - When a search before an arrest is valid
 - A search incident to an arrest is normally required to follow the arrest. A deputy cannot make a search of a person without probable cause and then arrest the person if something incriminating turns up.
 - A search before an arrest is valid only if:
 - Probable cause for the arrest existed before the search began; and
 - The search and arrest occur near simultaneously.
 - A deputy conducting a search incident to an arrest is permitted to use whatever degree of force is reasonable and necessary. If he used an unreasonable amount of force, the search may be deemed unlawful.
 - Scope of search
 - A deputy making a search incident to an arrest may search only the following places:
 - The entirety of the person being arrested, *United States v. Robinson*, 414 U.S. 218 (1973); and
 - The area in the immediate control of the person being arrested into which he could reach for a weapon or for evidence; the purpose of this search must be to:
 - Protect the deputy
 - Prevent escape; or
 - Prevent the destruction of evidence *Chimel v. California*, 395 U.S.752 (1969)].
 - Accessories carried by the suspect may be searched incident to a full custodial arrest, for they are within the area in which the defendant might reach to grab a weapon or an item of evidence. *United States v. Litman*, 739 F. 2d 137 (1984).
 - Strip searches
 - Strip searches are governed by Section [19.2-59.1](#), Code of Virginia.
 - Strip searches shall not be conducted of persons arrested for traffic violations, Class 3 or 4 misdemeanors, or violations of city, county or town ordinances which is punishable by no more than 30 days in jail, unless there is reasonable cause to believe on the part of the deputy that the person is concealing a weapon.

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- Strip searches shall be performed by persons of the same sex as the person arrested and on premises where the search cannot be observed by persons not physically conducting the search.
 - A search of any body cavity must be performed under sanitary conditions and a search of any body cavity other than the mouth shall be conducted either by or under the supervision of medically trained personnel.
 - In accordance with Section [19.2-59.1.H.](#), no child under the age of 18 shall be strip searched or subjected to a body cavity search by a law enforcement officer unless:
 - The child is in custodial arrest, and
 - There is reasonable cause to believe on the part of a law enforcement officers authorizing the search that the child is concealing a weapon.
 - ❖ No strip or body cavity search shall be authorized by York-Poquoson Sheriff's Deputies unless approval for the search is obtained from a supervisor of the rank of Sergeant or above.
 - Deputies, Investigators, Deputies First Class and Master Deputies, when performing duties as an acting supervisor, **may not** authorize strip or body cavity searches.
 - What may be seized
 - During a search incident to an arrest, a deputy may seize the following things: Anything in the permissible area that is evidence of the offense for which the deputy has probable cause to make the arrest.
 - Anything in the permissible area that is evidence of any other offense.
 - Anything else which is outside the permissible area that is evidence of the offense for which the deputy makes the arrest or of any other offense if:
 - ❖ The evidence is in plain view from where that deputy makes the arrest; and
 - ❖ The deputy's discovery of the evidence is inadvertent, that is, the deputy neither knows the location of the evidence nor intends to seize it before he goes to make arrest.
 - Searches incident to an arrest are not recognized under Section [19.2-59](#), Code of Virginia.
 - The Attorney General has decided that searches incident to lawful arrest are not prohibited by this statute, which provides that no law enforcement officer shall conduct a search unless he has a search warrant issued by the proper officer.

123 **PROCEDURES**

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- Searches of prisoners
 - The Sheriff's Office advocates the following method of conducting searches incidental to arrest:
 - As soon as feasible the arrestee shall be placed into authorized restraints.
 - The arrestee shall be moved to a safe place where the search will be conducted.
 - The place of the search should ensure the safety of both the deputy and arrestee.
 - The search should, if at all possible, be conducted by a deputy of the same sex.

- 132 ○ The following areas should be searched:
- 133 ▪ Hair
- 134 ▪ Open mouth (Have suspect open mouth for visual inspection. Keep fingers out
- 135 of mouth.)
- 136 ▪ Collar
- 137 ▪ Back of neck
- 138 ▪ Both arms
- 139 ▪ Armpits
- 140 ▪ Chest
- 141 ▪ Back
- 142 ▪ Waistband (feel inside the waistband)
- 143 ▪ Inside belt
- 144 ▪ Crotch
- 145 ▪ Down both legs
- 146 ▪ Pants cuffs
- 147 ▪ Socks
- 148 ▪ Inside shoes
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- 150 ● Body cavity searches
- 151 ○ Other than the mouth, body cavity searches will be conducted either by or under the
- 152 direct supervision of medically trained personnel, in a recognized medical facility,
- 153 and only when there is probable cause to believe a particular prisoner may be
- 154 concealing contraband within a body cavity or otherwise on his or her person.
- 155 ○ Such searches will be conducted only in extreme circumstances to:
- 156 ▪ Protect the life of the arrestee.
- 157 ▪ Protect the lives of prisoners.
- 158 ▪ Prevent serious breaches of security.
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- 160 ○ Body cavity searches shall only be approved by patrol supervisors or higher authority.
- 161 ○ If time allows the Commonwealth Attorney should be consulted.
- 162 ○ Should a body cavity search become necessary, the following procedures will be
- 163 followed:
- 164 ▪ The deputy shall notify the on duty patrol supervisor of the intent to conduct a
- 165 body cavity search and obtain required permission by providing detailed
- 166 information as to why the search is believed to be necessary.
- 167 ▪ The deputy shall obtain consent or a search warrant to conduct the search, unless
- 168 exigent circumstances exist where a delay in conducting the search would place
- 169 the prisoner's life in danger.
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- 171 ○ The deputy will inform the prisoner of his/her intention to conduct a body cavity
- 172 search thus giving the prisoner the opportunity to voluntarily surrender the suspected
- 173 contraband.
- 174 ○ The deputy shall transport the prisoner to an appropriate facility where trained
- 175 medical personnel can either supervise or conduct the search.
- 176 ○ The prisoner shall remove every article of clothing including wigs and dentures and
- 177 shall give them to the deputy for inspection.

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- Should the prisoner resist the cavity search and become violent, additional deputies of the same sex as the prisoner shall restrain the prisoner and assist in stripping.
 - Only sufficient force will be applied to complete the search in accordance with the procedure set forth.

 - Should a prisoner resist a cavity search and insufficient number of the same sex deputies are available to restrain the prisoner, the following procedures will be followed:
 - Deputies of the opposite sex may be called upon to subdue the prisoner, before he or she is stripped.
 - Deputies shall subdue the prisoner and apply the necessary restraints (handcuffs, shackles, etc.) then leave the room.

 - The deputy shall document in the form of an incident report details of the encounter to include the following:
 - Nature of the offense.
 - Probable cause for conducting the search.
 - Name of supervisor approving the search.
 - Specific location where search was conducted.
 - By whom the search was conducted to include medical titles if applicable.
 - Names of those present during the search.
 - Evidence recovered as a result of the search.

 - In all cases, body cavity searches will be conducted only when considered absolutely essential and probable cause exists, and will be conducted so as to afford a minimum of embarrassment and maximum privacy for the prisoner.