Search and Seizure

311.1 PURPOSE AND SCOPE

Both the United States and the North Dakota constitutions provide every individual with the right to be free from unreasonable searches and seizures. This policy provides general guidelines for Fargo Police Department personnel to consider when dealing with search and seizure issues.

311.2 POLICY

It is the policy of the Fargo Police Department to respect the fundamental privacy rights of individuals. Members of this departmentshall conduct searches in strict observance of the constitutional rights of persons being searched. All seizures by this departmentshall comply with relevant federal and state law governing the seizure of persons and property.

The Department shall provide relevant and current training to officers as guidance for the application of current law as well as local community standards and prosecutorial considerations to specific search and seizure situations as appropriate.

311.3 SEARCHES

The U.S. Constitution generally provides that a valid warrant is required in order for a search to be valid. There are, however, several exceptions to the rule that permit a warrantless search.

Examples of law enforcement activities that are exceptions to the general warrant requirement include, but are not limited to, searches pursuant to the following:

(a) Valid consent

(b) Incident to a lawful arrest

(c) Legitimate community caretaking interests

(d) Vehicle searches under certain circumstances

(e) Exigent circumstances

Certain other activities are recognized by federal and state courts, and by certain statutes as legitimate law enforcement activities that also do not require a warrant. Such activities may include seizure and examination of abandoned property and observations of activities and property located on open public areas.

Because case law regarding search and seizure is constantly changing and subject to interpretation by the courts, each member of this department is expected to act in each situation according to current training and his/her familiarity with clearly established rights as determined by case law.

Whenever practicable, officers are encouraged to contact a supervisor or other available resource to resolve questions regarding search and seizure issues prior to electing a course of action.

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311.4 SEARCH PROTOCOL

Although conditions will vary and officer safety and other exigencies must be considered in every search situation, the following guidelines should be followed whenever circumstances permit:

(a) Officers of this departmentshall strive to conduct searches with dignity and courtesy.

(b) Officers should explain to the person being searched the reason for the search and how the search will be conducted.

(c) Searches should be carried out with due regard and respect for private property interests and in a manner that minimizes damage.

(d) In order to minimize the need for forcible entry, an attempt should be made to obtain keys, combinations or access codes when a search of locked property is anticipated.

(e) Whenever practicable, a search should not be conducted by a lone officer. A cover officer should be positioned to ensure safety and should not be involved in the search.

(f) When the person to be searched is of the opposite sex as the searching officer, a reasonable effort should be made to summon an officer of the same sex as the subject to conduct the search. When it is not practicable to summon an officer of the same sex as the subject, the following guidelines should be followed:

1. Another officer or a supervisor should witness the search.
2. The officer should not search areas of the body covered by tight-fitting clothing, sheer clothing or clothing that could not reasonably conceal a weapon.

311.5 DOCUMENTATION

Officers are responsible to document any search and to ensure that any required reports are sufficient including, at minimum, documentation of the following:

(a) Reason for the search.

(b) Any efforts used to minimize the intrusiveness of any search (e.g., asking for consent or keys).

(c) What, if any, injuries or damage occurred.

(d) All steps taken to secure property.

(e) The results of the search including a description of any property or contraband seized.

(f) If the person searched is of the opposite sex, any efforts used to summon an officer of the same sex as the person being searched and the identification of any witness officer.

Supervisors shall review reports to ensure the reports are accurate, that actions are properly documented and that current legal requirements and department policy have been met.

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311.6 CASE LAW UPDATES AND TRAINING

The Professional Standards Division commander is responsible to ensure the Department stays updated relative to new case law and to ensure that training is in alignment with any required changes. In order to effectuate this section, the PSD commander shall:

(a) Monitor appropriate legal resources for relevant case law and forward identified cases to the assistant chief and executive team for review.

(b) Once reviewed and approved by the executive staff, communicate updates to all personnel via a department training bulletin.

(c) Identify and submit drafts of any related policy or procedure change that may be needed as a result of the update.

(d) Ensure any necessary training is provided through the Training and Development Unit (TDU).

Department personnel who wish to forward case law information or have a question about whether a particular case law applies, shall forward the request through their division commander to the Professional Standards Division Commander.

311.7 REVISION DATE 01/23/2024

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