

# MISSOULA POLICE DEPARTMENT POLICY MANUAL



<i>Subject:</i> <b>SEARCH AND SEIZURE</b>		
<i>Effective Date:</i> <b>4/25/2018</b>	<i>Original Date:</i>	<i>Next Review:</i> <b>4/25/2019</b>
<i>Chapter</i> <b>6</b>	<i>Policy #</i> <b>6.10</b>	<i>Distribution:</i>
<i>References:</i> <i>Field Interviews and Pat Downs, Search Incident to Arrest, Strip and Body Cavity Searches, MCA 46-5-101, MCA 46-5-103</i>		

## I. Purpose

The purpose of this policy is to help officers determine when a search of a person, place or object is warranted.

## II. Policy

It is the policy of this department that all officers know the legal requirements associated with searches and seizures to prevent the suppression of evidence, to support the Constitutional rights of all citizens and to maintain public confidence in our ability to carry out the police function in an ethical and legal manner.

## III. Definitions

**46-5-101. Searches and seizures -- when authorized.** A search of a person, object, or place may be made and evidence, contraband, and persons may be seized in accordance with Title 46 when a search is made:

- (1) by the authority of a search warrant; or
- (2) in accordance with judicially recognized exceptions to the warrant requirement.

**46-5-103. When search and seizure not illegal.**

- (1) A search and seizure, whether with or without a warrant, may not be held to be illegal if:
  - (a) the defendant has disclaimed any right to or interest in the place or object searched or the evidence, contraband, or person seized;
  - (b) a right of the defendant has not been infringed by the search and seizure; or
  - (c) any irregularity in the proceedings has no effect on the substantial rights of the accused.
- (2) Evidence, contraband, or persons lawfully seized are admissible as evidence in any prosecution or proceeding whether or not the prosecution or proceeding is for the offense in connection with which the search was originally made.

**Search:** A Government action which infringes a reasonable expectation of privacy.

**Reasonable Search:** Requires a valid search warrant or an exception to the search warrant requirement.

**Scope of search:** The scope of any search is limited by what we are searching for. Once what we are searching for is found we must quit searching.

**Curtilage:** Is a legal term describing the enclosed area of land around a dwelling. It is distinct from the dwelling by virtue of lacking a roof, but distinct from the area outside the enclosure in that it is enclosed within a wall or barrier of some sort. An area is curtilage if it "harbors the intimate activity associated with the sanctity of a man's home and the privacies of life." Courts make this determination by examining "whether the area is included within an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by."

**Open Field:** The area that is outside the curtilage of the home.

#### IV. **Procedures**

Warrantless searches are illegal per se and any time we intrude into a place where someone has a reasonable expectation of privacy we must have either a search warrant or a valid exception to the search warrant requirement. It is always preferable to search with a search warrant when practical.

A search without a warrant can be conducted in only eight narrowly defined situations:

##### A. **Search incident to a lawful arrest**

Searches of a person or the area within the immediate control of a person who has been lawfully arrested are permitted to secure weapons or evidence of a crime. Search Incident to Arrest is governed by policy # 6.30

##### B. **Plain view**

First the item to be seized must be in plain view and its incriminating character must also be "immediately apparent". Second, not only must the officer be lawfully located in a place from which the object can be plainly seen, but he or she must also have a lawful right of access to the object itself.

##### C. **Consent**

A search may be conducted pursuant to consent without a warrant and without probable cause to obtain a warrant. The consent must be voluntary, freely and intelligently given by an appropriate party and the search must be limited to the terms of the consent. Written and recorded consent should be sought whenever reasonably possible.

##### D. **Emergency Situation (Hot Pursuit)**

Officers may conduct searches when they believe that a person is in need of immediate assistance under life-threatening conditions, when immediate action is necessary to protect the public from harm or when, for example, an officer

encounters a homicide scene and needs to search for additional victims, protect vital evidence or pursue the perpetrator.

#### **E. Stop and Frisk**

An officer may stop a person in order to obtain or verify an account of their presence or conduct if he/she has a particularized suspicion that the person has, is, or is about to commit a criminal offense. The officer may frisk the person for weapons if he/she has reasonable cause to suspect the person is armed and presently dangerous to the officer or others. Stop and frisk is governed by statute and by policy # 6.20 Field Interviews and Pat Downs.

#### **F. Abandoned property**

There is no reasonable expectation of privacy associated with abandoned property.

#### **G. Open fields**

There is no reasonable expectation of privacy in an open field. The area that is outside the curtilage of the home, which courts refer to as an open field, is not protected by the Fourth Amendment.

#### **H. Impounded vehicles**

Inventory searches of impounded vehicles are allowed to protect the vehicle owner's property and the City of Missoula from liability.

### **Third Party Searches**

#### **A. Searches by school officials:**

School officials may search a student, student's locker and/or a student's property when the official has reasonable suspicion to believe that the student is involved in either illegal activity or a violation of the school rules.

1. A police officer may stand by during the search but may not participate in the search.
2. Prior to taking legal action based on evidence seized by a school official, the officer should verify the following:
  - a. The school official had reasonable suspicion for conducting the search and that the scope and duration of the search were reasonably related to the reason for the search.
  - b. The search was conducted in the school or on school controlled property.
  - c. The search was NOT conducted by law enforcement officer OR at the request of a law enforcement officer.

B. Search by Private Persons:

Searches by private persons are not governed by the Fourth Amendment of the U.S. Constitution. It is possible to receive evidence from a private party search.

Some examples include:

1. Employer searching an employee's work area,
2. Parent or spouse searching their residence,
3. A common carrier, such as UPS, searching a package entrusted to their care.
4. Hotel or motel employee searching a room

Any search conducted by school officials or private persons at the request of a law enforcement officer **ARE SUBJECT** to the fourth amendment search warrant requirement.