

Search and Seizure

312.1 PURPOSE AND SCOPE

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

312.2 POLICY

It is the policy of the Missoula Police Department to respect the fundamental privacy rights of individuals. Members of this department will conduct searches in strict observance of the constitutional rights of persons being searched. All seizures by this department will comply with relevant federal and state law governing the seizure of persons and property (§ 46-5-101 MCA, § 46-5-103 MCA).

The Department will provide relevant and current training to officers as guidance for the application of current law and prosecutorial considerations regarding specific search and seizure situations, as appropriate.

312.3 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:

- Valid consent
- Incident to a lawful arrest
- Legitimate community caretaking interests
- Vehicle searches under certain circumstances
- Plain view
- Abandoned property
- Exigent circumstances
- Inventory searches
- Third-party searches

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.

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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 to resolve questions regarding search and seizure issues prior to electing a course of action.

312.4 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) Members of this department will strive to conduct searches with dignity and courtesy.
- (b) When practicable, officers should make a reasonable effort to answer any questions relating to the reason for the search and the manner in which it 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. Property should be left in a condition as close as reasonably possible to its pre-search condition.
- (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, as well as video recorded when available.

312.5 THIRD-PARTY SEARCHES

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.

- (a) A police officer may stand by during the search but may not participate in the search.
- (b) Prior to taking legal action based on evidence seized by a school official, the officer should verify the following
 - 1. 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.
 - 2. The search was conducted in the school or on school controlled property.

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3. The search was NOT conducted by law enforcement officer OR at the request of a law enforcement officer.

Searches 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:

- (a) Employer searching an employee's work area,
- (b) Parent or spouse searching their residence,
- (c) A common carrier, such as UPS or FedEx, searching a package entrusted to their care,
- (d) 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.

312.6 DOCUMENTATION

Officers are responsible for ensuring that any required reports are sufficient including, at minimum, documentation of:

- Reason for the search.
- Any efforts used to minimize the intrusiveness of any search (e.g., asking for consent or keys).
- What, if any, injuries or damage occurred.
- All steps taken to secure property.
- The results of the search including a description of any property or contraband seized.
- Any presence of audio/video recordings.
- If the person searched is the opposite sex, any efforts 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.