

## Search and Seizure

### 1100.1 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 Montgomery County Sheriff's Office personnel to consider when dealing with search and seizure issues.

### 1100.2 POLICY

It is the policy of the Montgomery County Sheriff's Office to respect the fundamental privacy rights of individuals. Members of this office will conduct searches in strict observance of the constitutional rights of persons being searched. All seizures by this office will comply with relevant federal and State law governing the seizure of persons and property.

The Office will provide relevant and current training to deputies as guidance for the application of current law, local community standards and prosecutorial considerations regarding specific search and seizure situations, as appropriate.

### 1100.3 SEARCHES

The U.S. Constitution generally provides that a search is presumed to be unlawful if conducted without a valid search warrant. There are, however, several exceptions 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:

- Valid consent
- Incident to a lawful arrest
- Legitimate community caretaking interests
- Vehicle searches under certain circumstances
- 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 Deputy 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, deputies are encouraged to contact a supervisor and/or agency legal counsel to resolve questions regarding search and seizure issues prior to electing a course of action.

# Montgomery County Sheriff's Office

## Policy Manual

### *Search and Seizure*

---

#### **1100.4 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 office will strive to conduct searches with dignity and courtesy.
- (b) Unless circumstances indicate otherwise, deputies 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. Property should be left in a condition as close as reasonably possible.
- (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 single 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 deputy, a reasonable effort should be made to summon a deputy of the same sex as the subject to conduct the search. When it is not practicable to summon a deputy of the same sex as the subject, the following guidelines should be followed:
  1. Another deputy or a supervisor should witness the search.
  2. The deputy should not search areas of the body covered by tight-fitting clothing, sheer clothing or clothing that could not reasonably conceal a weapon.

#### **1100.5 DOCUMENTATION**

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

- 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
- Completion and distribution of Administrative Office of the Courts (AOC) form CR-206
- If the person searched is the opposite sex, any efforts to summon a deputy of the same sex as the person being searched and the identification of any witness deputy

# Montgomery County Sheriff's Office

## Policy Manual

### *Search and Seizure*

---

- In the event where property is seized from an individual, a Montgomery County Sheriff's Office property receipt shall be issued when applicable.

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