



City of Lyons Police Department POLICE OPERATIONS MANUAL

Chapter 9 SEARCH AND SEIZURE	Effective Date:	January 20, 2021	# of Pages:	23
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	SPECIAL INSTRUCTIONS: GEORGIA LAW ENFORCEMENT CERTIFICATION PROGRAM (GLECP) STANDARDS INCLUDED: 5.1			

ATTENTION CEO: This policy also contains a section for vehicle forfeiture. While not actually a search, a search may lead to forfeiture; therefore, it is included here. You may consider moving it to another part of the policy manual, such as Investigations.

I. PURPOSE

The Lyons Police Department is mandated by the Federal and State Constitutions and State statutes to serve and execute legal process in support of the judicial function. The functioning of the courts is affected by the prompt service of court documents. Thus, the effectiveness and image of the judicial system are dependent, in part, upon the effective and timely service of court documents. Inadequate record keeping and/or inappropriate procedures regarding the service of legal processes may subject the Department to litigation and civil liability.

This section addresses areas of Departmental procedure and discretion searches, seizures, condemnations and the execution and recording of search warrants. This policy is designed to ensure sufficiency of information, accuracy, timeliness and accessibility in the delivery of search warrants. Because the law relating to search and seizure is subject to change at any time, officers will be responsible for keeping themselves current on the law.

II. POLICY

It is the policy of the Lyons Police Department to conduct searches of persons, places and things pursuant to established state and federal laws governing search warrants and/or warrantless searches. Law enforcement officers shall have due regard for the protection guaranteed under the provisions of the Fourth Amendment to the U.S. Constitution. The following procedures shall address search and seizure policy and shall cite major case law and/or state statutes where applicable.



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III. Definitions

SEARCH WARRANT - A judicial command to "search the place or person particularly described in the warrant and to seize the instruments, articles, or things particularly described in the warrant" (**OCGA 17-5-23**).

IV. Search and Seizure

A. Search Warrants and Affidavits

Sworn law enforcement officers and/or authorized agent of the Lyons Police Department may search a person, property, or premises pursuant to a valid search warrant.

Once a law enforcement officer has obtained probable cause to search a person, property, or premise, the officer should obtain a search warrant by compiling an affidavit and presenting it to the appropriate judicial officer. Upon the judicial officer signing the search warrant, it will be the responsibility of the officer to execute said warrant as soon as possible or practical. Even though search warrants should be executed as soon as possible, or practical, certain situations may call for a delay in the execution of said search warrants.

If a delay is necessary, it will meet with the approval of the officer's supervisor and in no event will a search warrant be executed after *ten (10) days* from the date of issuance.

B. Procedure

Information regarding each item of all warrants shall include the following elements:

1. Date and time received
2. Type of process
3. Nature of document
4. Source of document
5. Name of complainant and defendant
6. Officer involved

Date served/inactive and date service is due by Warrant number



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Officers attempting to serving a Search Warrants shall prepare an incident report and record in it the address where service was attempted, date, time and name of officer attempting to serve the warrant, for whom the warrant was intended and, if necessary, the reason for non-service.

Officers successfully servicing search warrants must include the following elements in their report:

1. Date and time served
2. Name of officers serving and method of service
3. Person's name on whom search warrant was executed
4. Property/evidence seized and its disposition
5. Location of service

C. Obtaining and Execution of a No-Knock Search Warrant

To gain entrance to any building or dwelling without giving notice, a search warrant must contain a no-knock provision. This provision should be in the body of the affidavit.

A no-knock provision cannot be based upon a mere suspicion, but rather must be predicated upon probable cause from an investigation and/or informant. The following would be examples of probable cause for a no-knock provision:

1. A reliable informant or other source provided information concerning a suspect who kept evidence in a bathroom, such as drugs, and would destroy the evidence when the officer knocked on the door (Scull v. State, 122 Ga. App. 696).
2. A reliable informant or other source provided information concerning a suspect who kept firearms next to a door, and when an officer knocked on a door, the suspect would shoot through a door in an attempt to kill or harm the officer (Jones v. State, 127 Ga. App. 137).

Since an officer has a right to use necessary and reasonable force it is also a responsibility of an officer to obtain the *correct address and location of property* or premises to be searched.



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V. EXECUTION OF A SEARCH WARRANT

A. Legal Requirements of Execution

A search warrant may be executed at any reasonable time, day or night; a reasonable time depends on the facts in each individual case (OCGA 17-5-26). A search warrant must be served within ten (10) days from date of issuance. If the warrant is served, a "duplicate copy shall be left with any person from whom any instruments, articles, or things are seized; or if no person is available, the copy shall be left in a conspicuous place on the premises from which the instruments, articles, or things were seized". Any search warrant not served within ten (10) days from the date of issuance shall be void and will be returned to the court of the judicial officer who issued the warrant (OCGA 17-5-25)". A written return of all instruments, articles, or things seized shall be made without unnecessary delay before the judicial officer named in the warrant or before any court of competent jurisdiction. An inventory of any instruments, articles, or things seized shall be filed with the return and signed under oath by the officer executing the warrant" (OCGA 17-5-29).

Upon application of the search warrant, the officer shall obtain three copies. The first copy shall be left with the magistrate after the warrant is approved. The second copy shall be left pursuant to paragraph A mentioned above, and the final copy shall be returned to the Magistrate's Court upon completion of the search.

B. Force Used in the Execution of a Search Warrant

1. An officer has a right under a lawful search warrant to use all necessary and reasonable force to get into any building, dwelling or other area described in a search warrant (**OCGA 17-5-27**).
2. Unless the search warrant contains a no-knock provision, an officer is required to give oral notice to the person or persons inside, if any, of the identity of the officer and of the fact that the officer has a search warrant to search the premises (**OCGA 17-5-27**).
3. If the person or persons inside refuse to acknowledge an officer's notice, or if an officer cannot determine if anyone is present inside, or if it is unoccupied, an officer can then use reasonable force to gain entrance (**OCGA 17-5-27**).
4. Any action taken by the officer should be recorded as to each action taken prior to making a forced entry, such as: "... knocked on door, identified myself by position and advised I have a search warrant for the premises and no one responded to my call and so entrance was gained". The purpose of



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the record is that the officer will have to testify in court concerning the reason for their actions. (Jackson v. State, 129 Ga. App. 901;1973).

5. Whenever force is used in order to gain entry into a premise or place, and any amount of damage occurs, the superior officer in charge of the search shall insure that all damage is documented, and photographs taken if necessary.
6. The appropriate amount of time that the officer should allow will depend on the conditions of each search.

C. Locations/Persons to be Searched Pursuant to a Search Warrant

1. Officers shall be limited to search in areas particularly described by the search warrant.
2. Officers shall also be limited to searching only for those items particularly described in the search warrant.
3. When officers are searching for an individual(s) utilizing a search warrant, officers should have more descriptive information than "a male", "a white female", etc., to describe an individual(s) listed on the warrant.
4. In the execution of the search warrant the officer executing the same may reasonably detain and/or search any person in the place at the time:
 - a. To protect himself from attack; or
 - b. To prevent the disposal or concealment of any instruments, articles, or things particularly described in the search warrant (**OCGA 17-5-28**).

D. Personnel Executing Search Warrants

1. Supervisory Personnel
 - a. Prior to the execution of a search warrant, an officer of supervisory rank should have reviewed the affidavit and warrant and the circumstances of its issuance to ensure that requirements of law are being met and that all the necessary elements are present even though the warrant may have already been signed by the appropriate authority. All affidavits and search warrants obtained by any officer should, if at all possible, be reviewed first by a supervisor prior to review and approval by a magistrate.



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- b. When appropriate, the District Attorney's Office will be consulted prior to, during and after the service of search warrants for advice, recommendation, or for any other purpose the officer deems appropriate (e.g., preparation for prosecution).

NOTE: All requests for wiretap warrants must be approved in advance by the Chief of Police, and the District Attorney's Office. (The actual written application for interception of wire or oral transmissions by law enforcement officers must be executed by the District Attorney of the circuit wherein a device is to be physically placed, or by the Attorney General. (OCGA 16-11-64).)

- c. Supervisory Personnel are to be present at the execution of any search warrant along with other personnel as needed. If possible, the supervisor is to be from the unit concerned; if unavailable, a Sergeant or higher-ranking officer from another Unit may be called to assist.

1. Assigned Officers

All personnel are to conduct themselves in a professional manner by:

- a. Restricting their actions in such a manner as is consistent with the scope of the warrant;
- b. Whenever possible, leaving property not seized in an orderly fashion (or as found) and insuring that it is not left in an unreasonable state of disorder or destroyed;
- c. Ensuring all evidence seized is documented on the inventory and forwarded to the Evidence Room and/or Crime Lab.

NOTE: Items considered to be illegal and/or contraband are not to be destroyed without either the appropriate order of the court or, in cases where prosecution is not to follow, by proper documentation.

VI. SEARCHES WITH AND WITHOUT A WARRANT

A. Serving Search Warrants

1. Search Warrants Within the City Of Lyons

Whenever a law enforcement officer/investigator attempts to serve a search warrant at any location within the city limits of Lyons, the officer will have departmental uniform officers present during the warrant execution. A departmental supervisor will also be present during the warrant execution.



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2. Search Warrants Outside the City of Lyons

Whenever a law enforcement officer attempts to serve a search warrant at any location outside of the City of Lyons, the officer will have uniform officers from the agency responsible for law enforcement within that location present during the warrant execution. A departmental supervisor will also be present during the warrant execution.

3. Serving Criminal Arrest Warrants and Search Warrants Without Uniform Law Enforcement Officers

In certain situations, such as using the element of surprise in order to affect an arrest or a search, the execution of criminal arrest and search warrants may be done periodically or on a routine basis, without the presence of uniform law enforcement officers. This practice will be an exception to the rule and will only be done after approval of the Chief of Police.

B. Search with a Warrant

The following is required of all search warrants and search warrant affidavits:

1. Issuance

The warrant must be issued by a judicial officer authorized to hold a court of inquiry (**OCGA 17-5-21**).

2. Probable Cause

The judicial officer must find probable cause that the place to be searched contains items connected with criminal activity. (Berger v. New York, 388 U.S.41) The officer must swear or affirm under oath that the facts presented for establishing probable cause are true. Probable cause is defined as "what facts and circumstances within an officer's knowledge would lead a reasonable man to believe that an offense has been committed or is being committed and/or that a particular individual has committed or is committing the offense."

3. Description

The warrant must describe with sufficient particularity the person or the place to be searched and the items to be seized (**OCGA 17-5-23**). If a place can be easily identified by a street number or address, then no further information shall be necessary; however, an officer may elect to give a physical description of the place to be searched.



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NOTE: A warrant may be issued based on an affidavit containing only hearsay where the reliability of the informant is established, and the underlying factual circumstances are described.

C. Search of a Person Incident to Arrest

1. The search incident to arrest may be conducted to:

- a. Protect the officer from attack;
- b. Prevent the arrested person from escaping;
- c. Discover/seize fruits of the crime for which the person has been arrested; or
- d. Discover and seize any instruments, articles, or things that may have been used in the commission of the crime for which the person has been arrested.

2. Once the arrest has occurred the officer may conduct a search without additional cause. For the search incident to arrest to be legal, the arrest must be legal. The search must be conducted at the time of arrest and be limited to the arrestee's person and the area "within their immediate control." A search of an arrested individual at the detention facility may be justified as a search incident to arrest.

3. Booking Searches

A custodial search of the arrestee's person may be justified as either an administrative search or as an inventory procedure. Once an officer has taken any property discovered during the search into their control, a further non-contemporaneous search is no longer incidental to the arrest.

D. Consent Search (**GLECP std. 5.1a**)

1. Voluntariness

The law enforcement officer obtaining consent to search has the burden of proving that the defendant's consent to a warrantless search was given freely and voluntarily. A person may withdraw consent at any time and the search must cease.

2. Test

The voluntariness of a person's consent is measured by the totality of the circumstances.



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3. Consent After Arrest

If the consenting party is in custody, the voluntariness of the consent is still measured by the totality of the circumstances, although courts will analyze the relevant factors more critically.

4. Third Party Consent

Consent for a warrantless search may be given by a third party who shares control of (or has common authority over) the premises or items to be searched. Areas belonging exclusively to parties not present or not giving consent shall not be searched.

Lyons Police Officers will get a signed consent to search form for any voluntary consent to search. (i.e. vehicles, hotel rooms, residences, etc.)

E. Stop and Frisk (**GLECP std. 5.1b**)

1. Grounds for a Stop

To lawfully stop an individual, the law enforcement officer must have specific and articulable facts, which taken together with rational inferences from those facts, reasonably warrants the intrusion rather than a subjective, unparticularized suspicion or hunch.

2. Grounds for a Frisk

In *Terry v. Ohio*, 392 U.S. 1, the Supreme Court decided that an officer is authorized to stop and frisk an individual whenever the law enforcement officer has a 'reasonable suspicion' that the subject is committing, has committed, or is about to commit a crime and the officer has real, articulate reasons to fear for his or her safety. Since the scope of the search in *Terry* is limited to weapons, such search may not be intrusive and beyond the scope of looking for weapons. However, contraband discovered in such searches is subject to seizure and may be admissible into evidence. When the officer no longer is in fear for his or her safety, the exception to warrantless search and seizure under *Terry* no longer applies.

3. Nature of A Frisk

The frisk for weapons must be only a limited intrusion through patting down a persons outer clothing. Such a protective search must be strictly limited to that which is necessary for the discovery of weapons, which might be used to harm the officer or others nearby; if the protective search goes beyond what is necessary to determine if the suspect is armed, the search is no longer



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valid and its fruits will be suppressed. (*Minnesota v. Dickerson, 508 U.S. 366*)

4. Search After a Frisk

Feeling an object, which might be a weapon based on its size, shape and/or feel, or which is immediately recognizable as contraband, will justify a more extensive intrusion to obtain the suspected weapon or contraband. An officer may enter pockets to dispel the alarm that a weapon is present or to seize the contraband.

F. Vehicle Searches (**GLECP std 5.1c**)

1. Exigent Circumstances

The mobility of motor vehicles often constitutes exigent circumstances authorizing a warrantless search. The "automobile exception" to the warrant requirement demonstrates a willingness of courts to excuse the absence of a warrant when spontaneous searches are required of a vehicle. (*Gondor v. State, 129 GA. App.665; 1973*)

2. Standard

To conduct a warrantless search under exigent circumstances, the police officer must have probable cause to believe the vehicle contains items that may be seized. A warrant is needed to search a vehicle that the officer can legally control without fear of its' being moved. (See *U.S. v. Johns, 469 US 478* and *California v. Acevedo, 500 US 565*)

3. Times and Place Search

If probable cause and exigent circumstances existed originally, the police may search the vehicle after towing it to the impound lot without securing a search warrant. When probable cause exists without exigent circumstances, a warrant is required. (*Caito et al. v. State, 130 GA. App.83; 1974*)

4. Arrest of Occupants

If a person is arrested after a vehicle stop, the passenger compartment of the vehicle may be searched incident to the arrest if the circumstances of the custodial arrest fall within the guidelines outlined in *Arizona v. Gant, 556 U.S. 332 (2009)*. Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search OR it is reasonable to believe the vehicle contains evidence of the offense of arrest. When these justifications are absent, a



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search of an arrestee's vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies.

G. Plain View Doctrine

Mere observation of contraband by an officer does not constitute a search within the scope of the Fourth Amendment. However, the seizure of such contraband is governed by the Fourth Amendment principles, and for the evidence to be admissible under the Plain View Doctrine:

1. The law enforcement officer must have the right to be at a location where they have a legal right to be;
2. The discovery of seized items must be inadvertent;
3. The seized items must appear on their face to be incriminating; and,
4. The items seized must be plainly visible to the law enforcement officer.

H. Crime Scene Search (**GLECP std. 5.1d**)

Generally, search warrants are required prior to conducting a crime scene search on/in private property. There are some exceptions to this rule including:

1. When the defendant does not possess a reasonable expectation of privacy in the premises, a search warrant is not necessary. (The defendant is a trespasser; no warrant is required)
2. When the search is conducted for the purpose of finding dead or injured crime victims or when rendering aid to a victim, no warrant is required.
3. When evidence is being protected or photographed during the time it takes to obtain a search warrant, no warrant is required to enter the crime scene.
4. No warrant is required to enter the crime scene in order to find the perpetrator who may still be present on the scene.
5. A crime scene search may be made without a warrant if:
 - a. It is an emergency and there is reasonable belief that there is imminent danger to person. In an emergency crime scene search, contraband in plain view may be seized. If evidence is seen that is not contraband, it is best to get a warrant before seizing it.
 - b. A homicide victim is the sole occupant.



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c. The scene is a public place.

I. Exigent Circumstances (**GLECP std. 5.1e**)

1. Justification

A warrantless search is permitted when there is both probable cause and exigent circumstances. The ultimate test is whether there is such a compelling necessity for immediate action that proceeding without a warrant is justified.

2. Exigent Circumstances Defined

Hot pursuit, a fleeing suspect, imminent destruction of evidence, or other situations in which speed is essential to the accomplishment of lawful police action are examples of exigent circumstances.

- a. *"Hot Pursuit" Warrantless pursuits into the offender's home* - In *United States v. Santana*, the Supreme Court ruled that hot pursuit justifies forcible entry into the offender's home without the need for a warrant. The court said, "We thus conclude that a suspect may not defeat an arrest that has been set in motion in a public place... by the expedient of escaping into a private place." In order to justify this arrest, the three elements of hot pursuit must be satisfied: (1) the arrest process has begun; (2) the offender knows he is being placed under arrest; and, (3) the offender takes action to avoid the arrest. However, under the restrictions imposed by the Supreme Court case of *Payton v. New York*, officers may not enter an individual's home or dwelling without a warrant. Warrantless probable cause arrests, permissible in a public place, do not justify access to the sanctity of an offender's home.
- b. *Searches where public safety is endangered* - Under special circumstances where an officer hears screams, observes an immediately dangerous situation to anyone, or other exigent circumstances exist, an officer may make an emergency search of persons or premises. In *Michigan v. Tyler*, the court specified the "compelling need for official action and no time to secure a warrant". Various other courts suggested factors establishing this compelling need to include the gravity of the offense, the presence of weapons, and the likelihood of escape. The "totality of the circumstances" will be the deciding factor in each case.



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J. Inventory of Vehicles (**GLECP std. 5.1f**)

1. Seizure of Vehicle

For an inventory of a vehicle to be valid, the police custody of the vehicle must be lawful. An inventory of a vehicle is not a search. An inventory is a departmental policy designed to ensure that valuable possessions within a vehicle under police custody are accounted for. Any contraband which is found inadvertently during an inventory may be seized.

2. Justification

The inventory must be conducted only to fulfill the police care taking function of securing the contents of the vehicle.

3. Nature of Inventory

The search must be a routine part of standard police procedures for impounding vehicles, rather than a pretext for an investigatory search, and may not extend to locked luggage or other similar repositories of personal effects. It shall be standard operating procedure for _____ Police officers to inventory all impounded vehicles.

K. Vehicle Stops

1. Significance of a Stop

A "seizure" occurs whenever a vehicle is stopped, even though the purpose is generally limited and the detention quite brief; therefore, the Fourth Amendment applies.

2. Grounds for a Stop

There must be reasonable suspicion to justify an investigatory stop of an individual vehicle. Law enforcement officers do not have an unrestricted right to stop people, either pedestrians or drivers.

3. License Checks

Vehicles may also be stopped at general license checks which serve legitimate law enforcement purposes. If the purpose of the roadblock is legitimate, (i.e., to check driver's licenses) and not randomly stop vehicles, and if evidence of other crimes is observed, the officer has the right to take



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reasonable investigative steps. License checkpoints must be approved by (Responsible Position) or the Chief of Police.

4. Initial Intrusion

Law enforcement officers may take reasonable action to protect themselves after a lawful stop of a motor vehicle. An officer may prefer to ask the driver of a vehicle to step out of the vehicle. Law enforcement officers may consider external factors such as weather, crowds, etc., prior to asking anyone to step out of their vehicle.

5. Further Intrusion

If the police officer has a reasonable belief that a person stopped is presently armed and dangerous, he may conduct a limited protective search of the vehicle and frisk of the person.

6. Vehicle Searches

If a person is arrested after their vehicle is stopped, areas of the vehicle accessible to him may be searched incident to the arrest. The courts have construed this area to include the passenger compartment of the vehicle.

Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search OR it is reasonable to believe the vehicle contains evidence of the offense of arrest. When these justifications are absent, a search of an arrestee's vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies. *Arizona v. Gant*, 556 U.S. 332 (2009).

Included in the category of vehicles are vans and recreational vehicles which are used primarily for transportation and not kept in an area which indicates that the purpose of the vehicle is for use as a residence.

L. Containers and Luggage Searches

1. Standard

When there is probable cause that contraband will be found somewhere inside of a vehicle, combined with exigent circumstances such that it is not possible to obtain a warrant, officers may open containers in the vehicle to seek the contraband. However, the automobile exception normally will not justify a warrantless search of specific containers. Where there is probable



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cause as to specific containers, the containers should be secured until a search warrant is obtained to open them.

2. Automobiles

A law enforcement officer who has legitimately stopped an automobile and who has probable cause to believe contraband is located somewhere within the car may conduct a warrantless search of the vehicle, including compartments and containers within the vehicle whose contents are not in plain view. (U.S. v. Ross, 456 U.S. 798, 31 CrI 3051; 1982)

3. Exceptions

The Search Incident to Arrest and Plain View Doctrines may make unnecessary the need to secure a warrant to search containers. When a lawful arrest has been made, the officer may examine the contents of any container found within the arrestee's immediate area of control; i.e., the passenger compartment. (area of immediate control)

4. Inventory

Closed containers may be opened during a personal effects inventory. (Ill. v. Lafayette, 162 U.S. 640, 33 CrI 3183; 1983)

M. Abandonment

1. Act

Abandonment is a voluntary relinquishment of control of property, (i.e., disposing of, denying ownership).

2. Implications

Abandoned property is not protected by the Fourth Amendment. Officers may seize abandoned property *without* probable cause and *without* a warrant. Whether or not property has been abandoned is a question of intent, which must be shown by clear, unequivocal, and decisive evidence.

N. Curtilage

1. The Curtilage Doctrine

Curtilage is afforded the same Fourth Amendment protections, as is the home. Generally speaking, curtilage has been held to include all buildings in close proximity to a dwelling, which are continually used for carrying on



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domestic purposes; or such places as are necessary and convenient to a dwelling and are habitually used for family purposes (including a patio).

2. The Open Field Doctrine

The Fourth Amendment protections do not extend to the "open fields" surrounding the curtilage and the home.

3. Legitimate Expectation of Privacy

The determination of whether Fourth Amendment protections will be extended to items seized from the curtilage or open fields focuses on whether the person challenging the search has a legitimate expectation of privacy in the place that was searched.

O. Greater Intrusion Searches

1. Exterior Intrusion

Intrusions on the body's surface (swabbing, hair samples, retrieval of evidence from the mouth, etc.) are governed by the Fourth Amendment. Such searches are permissible as long as they are conducted in a reasonable manner and are justified under the circumstances (i.e. probable cause to search).

2. Interior Intrusion

Certain intrusions into the body (i.e., stomach pumping, surgery) have been held to be in violation of the Fourth Amendment (*Rochin v. California*, 342 U.S. 165, *Winston v. Lee*, 470 U.S. 753). Hence, only under the most exigent circumstances and only pursuant to a search warrant, could such a procedure be allowed. However, other more common interior intrusions, such as blood tests, may be conducted without a warrant if the setting and procedures are reasonable, as when blood is drawn by a doctor in a hospital (*Schmerber v. California*, 384 U.S. 757). Probable cause must exist in all cases.

VII. CONDEMNATION PROCEDURES

A. Purpose

The Lyons Police Department shall seek the condemnation of real and personal property whenever possible by authority of **OCSA 16-13-49** relating to forfeitures and **40-6-391.2** relating to the seizure and forfeiture of motor vehicles operated by habitual violators.



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B. Procedure

1. The responsibility for filing forfeitures with the proper legal authority and maintaining condemnation files is vested with the Criminal Investigations Division (CID). All seizures for condemnation, which originate outside the Criminal Investigations Division is to use the guidelines established in this procedure for proper forwarding of a condemnation request.
2. The purpose of this procedure is to establish guidelines that will assist those outside the Criminal Investigations Division to determine:
 - a. What can be seized.
 - b. Under what circumstances can property be seized.
 - c. Who can seize property.
 - d. Duties of supervisor.
 - e. What documentation should be completed and forwarded to the CID.
 - f. What, if any, preliminary investigation should be conducted by the seizing officer.
 - g. Proper storage of seized property.
3. The procedures outlined will deal primarily with the seizure of currency, weapons and motor vehicles. Questions concerning requests for seizure of other items for forfeiture, to include intangible assets, personal property, residences and real property shall be forwarded to the on-call investigator on a case-by-case basis.

C. What can Be Seized

1. **OCGA 16-13-49** allows for the seizure of anything of value. This includes, but is not limited to: Currency, bonds, stocks, weapons, motor vehicles, boats, airplanes, real property, residences and personal property of any kind.
2. **OCGA 40-6-391.2** allows for the seizure of any motor vehicles.

D. Circumstances Under Which a Seizure Can Take Place

1. **OCGA 16-13-49** allows for the seizure of the above listed types of property under the following conditions:



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- a. Any property used to facilitate the commission of a violation of the Georgia Controlled Substance Act is subject to seizure. An example would be the motor vehicle from which drugs were sold, or electric scales used to weigh them. Note that any item, such as a motor vehicle or a residence, which is used to store drugs can be assumed to have been used to facilitate a violation. Proximity of property, i.e. currency or a firearm, to contraband can be evidence that the item was used to facilitate a violation.
 - b. All proceeds which are derived from the violation of the Georgia Controlled Substance Act are subject to seizure. An example would be the currency from the sale of an illegal drug, or an item purchased with these proceeds.
2. **OCGA 40-6-391.2** allows for the seizure of motor vehicles if ALL of the following circumstances are present.
- a. Subject operating vehicle must have been arrested for a violation of **OCGA 40-6-391**, Driving Under the Influence, at the time of the seizure of the motor vehicle.
 - b. Subject must have a revoked drivers license.
 - c. Subject must have been declared a habitual violator based on at least three (3) past convictions for **OCGA 40-6-391** (within a five-year period), Driving Under the Influence Of Alcohol Or Drugs.

E. Who Can Seize

1. Any law enforcement officer of this State or one of its political subdivision may seize properties subject to Condemnation.
2. Property which is subject to forfeiture under **OCGA 16-13-49** may be seized without process if there is probable cause to believe that the property is subject to forfeiture and said seizure takes place in close proximity to the arrest of the defendant, or absent an arrest, if the officer has possession, either actual or constructive, and probable cause exists to believe that the property is subject to forfeiture.
3. Motor vehicles seized under **OCGA 40-6-391.2** should be seized at the time of arrest of the defendant. The arresting officer will make all attempts to determine the violator's driver's license status.
 - a. When the driver is arrested for D.U.I. and it is determined that he is a habitual violator the vehicle will be towed to the impound lot by the



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appropriate rotational/contract wrecker service contracted by the Lyons Police Department.

- b. If the officer is unable to determine the driver's license status at the scene, but the officer suspects that the driver may be a habitual violator, then the vehicle will be towed to the impound lot by the appropriate rotational/contract wrecker service. The tow truck will be followed to the impound lot and the keys will be picked up and entered into evidence.
- c. Should an individual be arrested for D.U.I. and it is not determined until later that they meet the pre-existing conditions for seizure of the vehicle, then all paperwork should be completed and forwarded to the CID and the vehicle can be seized at a later date.
- d. If the vehicle was towed to the wrecker service impound lot then notify the impound lot to place a HOLD on the vehicle by taking a Lyons PD *Vehicle Hold/Release Form* to the wrecker service. Also note the "Hold" on the inventory sheet.
- e. If the vehicle has been removed by another citizen then forward the appropriate paperwork and the Criminal Investigations Unit will determine whether to seize the vehicle at a later date with a search warrant.

F. Seizure of Property

If circumstances, as described in E1, 2 and 3 above, indicate that probable cause exists to believe that the item is subject to forfeiture, then the officer shall seize the property. The seizing officer shall immediately notify their supervisor that the seizure has taken place. Upon notification the supervisor shall make a determination of the validity of the seizure using the following guidelines:

1. Violation of **OCGA 16-13-30**.

a. Currency

(a) Must be five hundred dollars (\$500.00) or more,

(b) Must meet the criteria established above:

i. Proximity to contraband,

ii. Circumstances indicate that it proceeds from a violation of **16-13-30**.



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- iii. Presence of contraband,
 - (i.) Defendant not employed,
 - (ii.) Subject cannot explain origin of cash.
 - b. Vehicles
 - (a) If cocaine, there must be at least one gram or more, or evidence exist that a sale has taken place or was about to take place.
 - (b) If marijuana, there must be at least four ounces or more;
 - (c) No weight requirement on other controlled substances, (i.e., Methamphetamine, Heroin, LSD, etc.)
 - (d) Pharmaceutical, prescription drugs obtained through fraud or forgery.
 - i. Before seizing a motor vehicle, the officer must show a relationship between the seized contraband and the owner of the vehicle. If the occupant of the vehicle arrested is not the actual owner of the vehicle, then the seizing officer must show that the owner holds the property jointly, in common, or in community with the person whose conduct gave arise to it's forfeiture (**16-13-49 (E)(2)**). Circumstances to consider when establishing this relationship include but are not limited to:
 - Presence of contraband and locations within the vehicle relative to the owner.
 - Owner is sole occupant of the vehicle.
 - ii. Other circumstances indicate that the owner should have known that the contraband was in the vehicle.
2. Violation of **OCGA 40-6-391.2**
- a. If the seizure of a motor vehicle is made pursuant to **OCGA 40-6-391.2** then it must meet the requirements as set out earlier in this procedure.
 - b. The person arrested for D.U.I. must also be the owner or spouse of the owner of the vehicle.



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G. Documentation Once Validity is Established

1. Upon establishing the validity of the seizure for a violation of **OCGA 16-13-49** the seizing officer shall document all pertinent information on a Notice of Seizure and Forfeiture supplement. The supplement should contain, at a minimum, the following information:
 - a. Date and time of the offense and seizure.
 - b. Location of the offense and seizure.
 - c. Offense charged with.
 - d. Description of the property to be seized.
 - e. Defendant's name, address and telephone number.
 - f. Type and quantity of drug seized, if any.
 - g. Name of arresting officer.
 - h. Complete name and address of everyone associated with the seizure.
 - i. Specific location of the contraband in relation to defendant and items to be seized.
2. Upon establishing the validity of the seizure of a vehicle under **OCGA 40-6-391.2** the following documents are to be forwarded to the Criminal Investigations Unit.
 - a. Copy of the Incident Report.
 - b. Copy of the Arrest Report.
 - c. N.C.I.C. printout of the Tag Query.
 - d. N.C.I.C. printout of the Title Query.
 - e. N.C.I.C. print-out of defendant's driving history.
3. Within ten (10) days of the date of seizure the forfeiture paperwork must be received by the District Attorneys Office. A copy of signed affidavit is to be returned to the Criminal Investigations Unit to be placed in the case file.



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H. Storage of Seized Property

1. All property seized for condemnation shall be tagged and stored as evidence. Under the "Remarks" section on the Evidence Sheet, enter "HOLD FOR CONDEMNATION".
2. Vehicles seized for condemnation shall be impounded and held in the wrecker impound lot.

I. Preliminary Investigations Regarding Motor Vehicles

The seizure of motor vehicles presents unique legal and practical hurdles that must be overcome regarding ownership and equity.

1. Ownership

The seizing officer must be able to establish a relationship between the contraband and the owner of the motor vehicle seized. It is therefore imperative that the seizing officer takes steps at the moment of seizure to establish ownership.

- a. Ask driver and occupants who owns the vehicle.
- b. Check glove box for documentation of ownership. If found seize and tag as evidence separate from the motor vehicle.
- c. If subject is buying vehicle from someone get their name and address.
- d. Check tag and VIN through N.C.I.C.

2. Equity

When vehicles with liens are seized for forfeiture it becomes the responsibility of the Lyons Police Department to assume the lien on the motor vehicle. For this reason, the seizing officer should make every effort to determine the amount of money, if any, owed on a motor vehicle so the CID can determine whether or not to proceed for the forfeiture proceedings. The following steps should be completed at the time of the seizure:

- a. Ask driver or occupants whom the owner is and how much, if any, money is owed on the vehicle. If money is owed, then include the name and address of the lien holder.
- b. Check the glove compartment for documents relating to lien holders.



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If found seize as evidence and tag separate from the motor vehicle.

- c. Check N.C.I.C. Title Query for liens.

These inquiries should be made of all vehicles regardless of whether they are seized for violation of **OCGA 16-13-49 or 40-6-392.1**. Questions concerning circumstances not covered by this procedure shall be addressed to the on-call Investigator.