



# Florida Highway Patrol Policy Manual

<b>SUBJECT</b> SEARCHES	<b>POLICY NUMBER</b> 11.02	<b>ISSUE DATE</b> 02/01/1996
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## 11.02.01 PURPOSE

To specify procedures used by members of the Florida Highway Patrol governing the search and seizure of persons and/or property.

## 11.02.02 POLICY

It is the policy of the Florida Highway Patrol to employ measures that safeguard the rights granted in the Fourth Amendment of the United States Constitution relating to search and seizures. Article I, Section 12 of the Florida Constitution also protects persons and places from unreasonable searches and seizures.

## 11.02.03 DEFINITIONS

- A. **BIASED POLICING (formerly: Biased Based Profiling)** – The selection of an individual(s) for enforcement action based in whole or in part on a trait common to a group, without actionable intelligence to support consideration of that trait. This includes, but is not limited to, race, ethnic background, national origin, gender, sexual orientation/identity, religion, economic status, age, cultural group, or any other identifiable characteristics.
- B. **PLAIN VIEW** – Observation of evidence of a crime or contraband, without searching, from a location where the member has a lawful right to be.

- C. **PROBABLE CAUSE** – A fair probability that the evidence will be found, based on an objective assessment of the totality of the circumstances, viewed in light of the member’s training and experience. It means there is a reasonable basis for believing that a crime has been or is being committed, and showing that the items to be seized are at the place to be searched.
- D. **REASONABLE SUSPICION** – Articulable facts sufficient to a member, based on their knowledge and experience, that a person is committing, has committed, or is about to commit a crime.
- E. **SEARCH** – The action of examining a premises, including a vehicle, of a person involved or believed to be involved in criminal activities with an object of collecting evidence expected or anticipated to be available there which is otherwise not available.
- F. **SEIZURE** (of a person) – An indication of detention or when one’s freedom of movement has been restrained by an officer in a way which would cause a reasonable person to believe they were not free to leave.
- G. **STOP AND FRISK LAW** (Section 901.151, F.S.) – Authorized temporary detainment of a person when a member has reasonable suspicion that the person has committed, is committing, or is about to commit a crime in order to ascertain the identity of the person and the circumstances surrounding the person’s presence that led to the member’s suspicion. If, during the temporary detainment, the member has reasonable suspicion to believe the person is armed with a dangerous weapon and therefore offers a threat to the safety of the member or any other person, the member may search such person only to the extent necessary to disclose, and for the purpose of disclosing, the presence of such weapon.

**11.02.04 OBJECTIVES**

- A. To protect the rights of individuals when being searched and detained by members of the Florida Highway Patrol.
- B. To establish guidelines for searching individuals, property, and motor vehicles.
- C. To define the different types of warrantless searches and when to use them.
- D. To stress the safety of members who are executing certain types of searches.

### **11.02.05 RESPONSIBILITIES**

- A. The Florida Highway Patrol Training Academy shall, upon receipt of information from the Department's Office of General Counsel, update field personnel immediately of any changes in the process of search and seizures due to statutory changes, changes in case law, or other acts.
- B. The Policy, Accreditation, Inspections, and Forms staff shall, upon receipt of recommendations from the Department's Office of General Counsel, review and update this policy as needed.

### **11.02.06 PROCEDURES**

The Fourth Amendment to the United States Constitution protects citizens from unreasonable searches and seizures. Members of the Florida Highway Patrol have taken an oath to uphold the Constitution. If any member has a question as to whether to search without a warrant, the member shall obtain a warrant.

#### **A. SEARCH WARRANTS**

Search warrants shall be obtained and executed according to Chapter 933, Florida Statutes, and FHP Policy 22.07. When executing a search warrant, members shall search only those places noted on the warrant. The number of officers required shall fit the particular situation and shall be determined by the on-duty district supervisor or Troop Watch Supervisor (TWS). Members shall conduct deconfliction per FHP Policy 22.17 prior to the execution of a search warrant at a physical location. The troop/bureau commander can waive the deconfliction requirement on an individual case by case basis.

#### **B. WARRANTLESS SEARCHES**

##### **1. Search by Consent**

- a. Members may search a person or a person's property, including a vehicle, when that person orally gives that member permission to do so. For a person to consent to a search of a vehicle or other property, the person must own the property or have sufficient control of the property to authorize the search, such as the driver of a vehicle. This consent must be voluntary. At any time, the person can withdraw their consent to a search of their person and the search shall cease. Also,

at any time, prior to establishing probable cause, the person can withdraw their consent to a search of their property, including a vehicle or any part thereof and the search shall cease. Any evidence or contraband found before the withdrawal of the consent shall be retained. Specific consent to search the trunk of a vehicle or a locked container should be obtained.

- b. Consent to Search form (HSMV 61061) should be used when appropriate to add credence to subsequent testimony that consent was knowingly and voluntarily given. Members should also document the consent on their mobile video recording devices when practicable.

2. Stop and Frisk (“Terry Stops”)

- a. Members may stop a person if the member has reasonable suspicion that the person has committed, is committing, or is about to commit a crime in order to determine identity and obtain information from that person that raised said suspicion.

- 1) If, before or during this temporary detention, the member has reasonable suspicion to believe that the person is armed with a dangerous weapon and therefore offers a threat to the safety of the member or another person, the member may search that person only to the extent necessary to disclose the presence of the weapon.

- 2) If such a search discloses such a weapon or any evidence of a criminal offense, it may be seized.

- b. Members may conduct a protective sweep of the passenger compartment of an automobile, limited to those areas where a weapon may be placed or hidden, if the member possesses a reasonable suspicion that the suspect is dangerous and may gain immediate access and control of weapons.

3. Search of Motor Vehicles

The courts have recognized differences between a warrantless search of vehicles and that of buildings, due to the ease of moving or hiding a vehicle before being able to obtain a search warrant.

- a. Members may, with probable cause to believe the vehicle contains contraband or evidence of a crime, search said vehicle in any area or part where such contraband or evidence may be found.
- b. Members shall, incident to a lawful arrest, conduct an inventory of the arrested person's vehicle before towing, as prescribed in FHP Policy 11.04.
- c. Members may search a vehicle if they obtain lawful consent to search said vehicle, until such consent is withdrawn.

#### 4. Crime Scene

Searches of crime scenes that are on public property may be conducted without a warrant. A search warrant must be obtained prior to processing a crime scene that is on private property unless permission to search and process the scene is obtained from the property's owner. The exigent circumstances exception applies only to the extent necessary to locate and aid possible victims. Thereafter, the scene should be secured and a search warrant obtained.

#### 5. Search Incident to an Arrest

- a. All persons arrested shall be searched at the location of the arrest for the protection of the member, the prevention of escape or destruction of evidence, and for the discovery of evidence or contraband. Procedures as prescribed in FHP Policy 11.05.04(C) shall be followed.
- b. Search incident to arrest can only be made to secure the safety of the officer or if looking for evidence of the crime charged. Members may only search a vehicle incident to arrest if:
  - 1) It is reasonable to believe that the arrestee might be able to access the vehicle at the time of the search, or

- 2) The vehicle contains evidence of the offense for which the arrest was made.

Once an arrest scene is secure and there is no probable cause to believe evidence of the crime charged may be found in the vehicle, law enforcement may not search the vehicle "incident to arrest."

A vehicle inventory shall be conducted of all vehicles which are impounded. A majority of the Florida Highway Patrol's arrests are made on the highways, and an inventory of the vehicle would be appropriate when towing is required.

6. Plain View

Any time a member observes, in plain view, evidence of a crime or contraband, and the member has a lawful presence, the evidence or contraband shall be seized.

7. Exigent Circumstances Search

Members may, with probable cause, search a person or a person's property, including a vehicle, if emergency conditions exist such that time spent obtaining a search warrant could allow the destruction of evidence, the escape of a criminal suspect, or endanger the life, health or property of the public.

8. Strip and Body Cavity Searches (Section 901.211, Florida Statutes)

- a. Members are NOT to conduct strip or body cavity searches.
- b. If a strip or body cavity search is necessary, the following procedures will be followed:
  - 1) The member must establish probable cause to believe that a weapon, controlled substance, or other contraband or evidence is being concealed and that a strip or body cavity search is the only means to recover such item.

- 2) The arrested person is to be transported to the county jail. Members are reminded that they are to search the transporting vehicle prior to and after placement of the prisoner in the vehicle (see FHP Policy 11.05).
- 3) A request will be made to jail personnel that a strip or body cavity search be performed. Local procedures will be adhered to.
- 4) The member's supervisor or their designee, must be notified and approve the request for the search prior to it being requested of jail personnel.
- 5) The arrest affidavit will specifically outline the probable cause for requesting the strip or body cavity search and the results of the search.

#### 9. Cell Phone Searches

- a. The unauthorized search of a person's cell phone and/or the unauthorized downloading, copying or distribution of the contents of the phone (pictures, video, text messages, etc.) is an unlawful invasion of an individual's civil rights and could subject a member to civil or criminal liability and possible disciplinary action.
- b. If a cell phone is seized without a warrant, subject to the provisions of subsection (d) below, the cell phone should be secured and members must obtain a search warrant before searching the contents of a cell phone from a person who has been arrested unless:
  - 1) An emergency exists where a person's safety is in danger.
  - 2) There is an immediate threat to officer safety.
  - 3) Consent to search the cell phone has been obtained in accordance with the provisions of section 11.02.06(B)(1).

- 4) The member observes, in plain view, evidence of a crime or contraband on the cell phone. Such evidence should be documented and recorded where possible. Any subsequent search of the cell phone and/or downloading or copying of any evidence observed in plain view or other evidence contained in the cell phone should be obtained pursuant to a search warrant. The evidence observed in plain view may be used as probable cause to obtain the search warrant.
- c. Members may seize a cell phone as evidence and, if exigent circumstances or some other exception to the warrant requirement can be shown, may conduct a search of the phone. The member shall document in detail the emergency or special circumstances that justified the warrantless search.
- d. Cell phones can be erased remotely. Therefore, if a member seizes an unlocked cell phone, the member may place the phone in airplane mode to ensure it has power until a search warrant is obtained. Members seizing cell phones locked with a password may turn the phone off, remove its battery, or place it in a special "Faraday" bag to isolate it from radio waves while obtaining a warrant to search the phone.

#### C. EVIDENCE AND CONTRABAND OBTAINED FROM A SEARCH

Evidence and contraband seized during a search shall be collected, packaged, marked, and forwarded as prescribed in FHP Policy 12.01.

#### D. LEVELS OF POLICE/CITIZEN ENCOUNTERS

1. Consensual Encounters: The most minimal level of member/citizen contact during which a citizen may choose to comply with, or ignore, the member's requests. The Florida Supreme Court has defined this as an encounter in which a reasonable person would feel free to disregard the police and go about the person's business. The member cannot hinder or restrict the person's freedom to leave or freedom to refuse to answer inquiries and the person may not be detained without a well-founded and articulable suspicion of criminal activity.



2. Investigatory Stop: A member may reasonably detain an individual temporarily once the member has a reasonable suspicion that the person has committed, is committing, or is about to commit a crime.
3. Arrest: Must be supported by probable cause that a crime has been or is being committed.

**11.02.07 REGULATIONS**

- A. Searches are important issues in the courts, and members are required to maintain updated information on topics dealing with the Fourth Amendment.
- B. Due care shall be taken by members while conducting a search. Any time there is a possible suspect present, two officers should be present before the search commences.
- C. Employees of the Florida Highway Patrol are prohibited from allowing an individual's race, ethnicity, gender, age, education level, religious affiliation, sexual orientation, or financial status to influence that individual's treatment. Any behavior that constitutes biased policing or the perception of such is strictly prohibited.