

## HEADQUARTERS MEMORANDUM 04-14

File With: FC 513

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### Subject: Restrictions on Searches

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A search incidental to arrest may only be conducted when a lawful custodial arrest is made.

An arrest is the taking, seizing, or detaining of the person of another, by any act that indicates an intention to take him into custody and that subjects him to the actual control and will of the person making the arrest. There are two historical rationales for the “search incident to arrest” exception to warrant requirement:

1. The need to disarm the suspect in order to take him into custody, and
2. The need to preserve evidence for later use at trial.

U.S. v. Robinson, 94 S.Ct. 467 (1973), states that a custodial arrest involves “danger to an officer” because of “the extended exposure which follows the taking of a suspect into custody and transporting him to the police station.” When an officer affects a lawful custodial arrest, the officer is permitted to conduct a contemporaneous search of the person of the arrestee. Before a search incidental is deemed valid, the arrest itself must be lawful. An officer’s intent whether to take the person into custody is a factor to consider.

#### Criminal Citations

The officer’s intent is critical to whether an arrest occurs. If the officer has no intent to take a subject into custody, the officer CANNOT conduct a search incidental on the mere issuance of a criminal citation or an non-incarcerable traffic offense. If the officer is not making a full custodial arrest, the officer CANNOT conduct a search incidental.

Example: You stop an individual for speeding. As you approach the car you observe CDS paraphernalia in plain view. At this point you can make either a full custodial arrest or you can merely issue a criminal citation. If you are only going to issue a criminal citation, you CANNOT make a search of that person or vehicle as incidental to arrest.

You may still have the authority to conduct a Terry pat-down if you have reasonable and articulable suspicion that the person is armed.

#### Civil Citations

You CANNOT conduct a search incidental on civil citations; there is no authority to make an arrest (i.e., underage possession of alcohol).

#### General

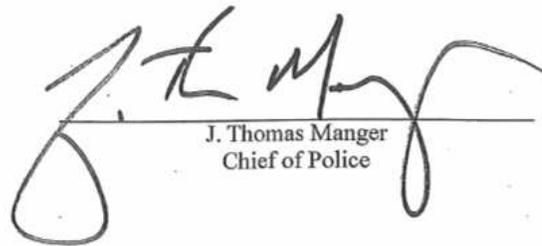
The threat to officer safety from issuing a citation is a good deal less than in the case of a custodial arrest. The rationale for the “search incident to arrest” for disarming the suspect in order to take him into custody does not apply when the officer, having probable cause to make a custodial arrest, issues a citation instead. While the concern for officer safety in this context may justify the additional minimal intrusion of ordering a driver and passengers out of the car,

it does not by itself justify the often considerably greater intrusion of a full field-type search. Officers have other, independent bases to search for weapons and protect themselves from danger.

Arrests, Without Processing or Charging (FC 513, Section IV.A)

On occasion, an officer may have probable cause to arrest a suspect but subsequently releases the person without placing charges.

1. If a prior report is on file, write a supplement report detailing the arrest and release in the narrative.
2. If no report is on file, obtain a CR number, and complete a 2938 event report detailing the arrest and release in the narrative. No arrest report or criminal ID will be obtained.



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Chief of Police

JTM:ksp