

VIRGINIA MILITARY INSTITUTE POLICE DEPARTMENT

GENERAL ORDER	Number: 1-26
CONSTITUTIONAL SAFEGUARDS	Date: 6/9/20
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Authorization: Chief Michael L. Marshall	Review Date: Annually

Note: This order is for internal use only and does not enlarge an officer's liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this order, if proven, can only form the basis of a complaint by this department and then only in a non-judicial administrative setting.

I. POLICY

Of all the actions an officer might take during the course of duty, the ones with the most severe consequences concern constitutional rights. The use of deadly force might result not only in injury or death but a review of the constitutionality of the act. Similarly, the arrest of a person for a misdemeanor shoplifting, by contrast, invokes the law of arrest and search and seizure issues that are controlled by the Constitution. The U.S. Constitution and the Bill of Rights guarantee every citizen certain safeguards from government intrusion into their lives. These safeguards have become the cornerstone for the application of criminal justice in America. Consequently, these safeguards have placed limitations on the authority of police to enforce the laws of the nation and state, and the regulations of Virginia Military Institute. The department expects officers to observe constitutional safeguards scrupulously and knowledgeably. The department further expects that officers understand the limits and prerogatives of their authority to act. Respect for the civil liberties of citizens shall be the paramount concern in all enforcement matters.

II. PURPOSE

The purpose of this general order is to define the legally mandated authority for the enforcement of laws, to establish procedures for ensuring compliance with constitutional requirements during criminal investigations, to set forth guidelines concerning the use of discretion by officers, and to define the authority, guidelines and circumstances when officers should exercise alternatives to arrests and pretrial confinement.

III. PROBABLE CAUSE AND REASONABLE SUSPICION

A. Probable cause

1. Searches (with the few important exceptions outlined in this order) and all arrests are based on the police officer's perception of probable cause. According to the U.S. Supreme Court, "Probable cause exists where the facts and circumstances within their [the arresting officers'] knowledge and of which they had reasonable trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed."
2. An officer must have probable cause to undertake a search or make an arrest.

3. When an officer has appropriate probable cause, he or she may undertake a complete body search (not including a body-cavity search), record the suspect's fingerprints, take the suspect's photograph, and jail him.
 4. The aim of probable cause is to make a formal charge.
- B. Elements of probable cause
1. Probable cause may be established through investigation and observation, witnesses, confidential informants, or through anonymous sources provided that the information is corroborated by investigation.
 2. Unnamed informants may be used in an affidavit for a search warrant if the informant has first-hand knowledge of the investigation and information is included about why the informant is credible and reliable.
- C. Reasonable Suspicion
1. Reasonable suspicion involves a standard that is less stringent than probable cause, generally defined by the courts as a circumstance or collection of circumstances that would lead a trained, experienced officer to believe that criminal activity may be afoot.
 2. An officer must have reasonable suspicion to temporarily detain a citizen.
 3. When an officer has reasonable suspicion, he or she may undertake a pat-down of a suspect's outer clothing for weapons and record the circumstances of the encounter.
 4. The aim of reasonable suspicion is to resolve an ambiguous situation.

IV. PROCEDURE

- A. Law-enforcement authority
1. Code of Virginia § 15.2-1701 authorizes any locality to organize a police force and § 15.2-1704 invests the police force of the locality with authority to prevent and detect crime, apprehend criminals, safeguard life and property, preserve the peace, and enforce state and local laws and ordinances.
- B. Limitations on law enforcement authority
1. Limitations on law enforcement authority are derived from statutes, federal, state, and local judicial interpretation of laws, opinions of the attorney general and commonwealth's attorney, departmental policies/rules and regulations, and local administrative decisions.
 2. Statutory limitations
 - a. These limitations include, but are not limited to:
 - 1) Enforcement of laws outside of the city limits.
 - a) § 19.2-250 grants authority to enforce state criminal laws one mile beyond the boundaries of the town except as specified.
 - b) § 23.1-815 grants campus law enforcement agencies the authority to enforce laws and local ordinances:
 - i. upon any property owned or controlled by the public institution of higher education or private institution of higher education, or, upon request, any property owned or controlled by another public institution

of higher education or private institution of higher education, and upon the streets, sidewalks, and highways immediately adjacent to any such property;

- ii. pursuant to a mutual aid agreement as provided for in § 23.1-815(C) or between the governing board of a public institution of higher education or private institution of higher education and another public institution of higher education or private institution of higher education in the Commonwealth or an adjacent political subdivision;
 - iii. in close pursuit of a person as provided in § 19.2-77; Notwithstanding the provisions of these two statutes,
- c) § 15.2-1730 allows the chief of police, in a declared emergency, to call upon other chief law-enforcement officers of towns or counties to provide law-enforcement assistance without a need to deputize officers from other jurisdictions.

3. Judicial limitations

- a. Courts constantly interpret laws that place limitations on the authority of law-enforcement officers. The more common limitations address Miranda rights/warnings, rulings on search and seizure, eyewitness identification, and lineups. The department shall provide policy guidance concerning these decisions, as appropriate.

V. INTERVIEWS AND INTERROGATIONS

A. Definitions

1. An interview, as opposed to an interrogation, may be construed as any conversation with a suspect, witness, victim, or the citizen.
2. An interrogation, to paraphrase the Supreme Court, includes direct questioning (or its functional equivalent) about a crime or suspected crime, as well as any words or conduct on behalf of the police that may elicit an incriminating response from the suspect.
 - a. Officers are reminded that an interrogation does not rely solely or exclusively on words; conduct can be the "functional equivalent" of asking questions.
3. A person is in custody when an officer tells him or her that he or she is under arrest. The functional equivalent of being in custody occurs when a reasonable person in the suspect's place would feel that his or her freedom of action has been restricted to the same degree as a formal arrest.

B. Rights admonition

1. In order to achieve uniformity in administering Miranda warnings, police officers shall be issued cards with the Miranda warnings and waiver on them. Before custodial interrogation, officers shall advise suspects of their rights by reading aloud from the card the following:
 - a. "You have the right to remain silent."
 - b. "Anything you say can and will be used against you in a court of law."

- c. "You have the right to talk to a lawyer and have him present with you while you are being questioned."
 - d. "If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish one."
 - e. "You may stop talking at any time."
2. After the warning, in order to secure a waiver, the officer shall ask and receive affirmative replies to the following questions:
 - a. "Do you understand each of these rights I have explained to you?"
 - b. "Having these rights in mind, do you wish to talk to us now?"
 3. After the rights have been read, understood, and the person wishes to waive them, the officer will have the suspect sign the waiver of rights form. Officers shall interrogate suspects only when they have knowingly and intelligently waived their rights. Officers shall cease questioning whenever the suspect invokes the right to silence or requests the presence of counsel.
 - a. Officers shall not try to elicit incriminating evidence unless the suspect waives the right to counsel.
 - b. If a suspect, once in custody, requests counsel after being advised of Miranda rights, he or she cannot be interrogated again about the crime for which he or she was charged, other crimes, or by any other officers unless (1) the counsel is present during the interrogation or (2) the suspect himself initiates the interrogation. Officers therefore cannot obtain a waiver under these circumstances unless the suspect initiates interrogation. If a suspect refers to counsel but his or her intentions are unclear, officers may question the suspect further to clarify his or her intentions.
 - c. If the suspect is deaf or unable to speak English, the interrogating officer shall notify the on-duty supervisor and shall immediately arrange to obtain an interpreter.
 4. Officers will take care when advising juveniles of their rights to ensure that the rights are understood before obtaining a waiver. Officers should honor a child's request to speak to a parent or guardian before waiving his or her rights. Whenever possible, the child's parents should be present while the child's rights are explained and the waiver obtained.
 5. If a suspect has invoked his or her right to silence, officers may interrogate the suspect if, after a passage of time, the suspect initiates communication with officers. Before questioning, however, officers shall again administer Miranda warnings and shall obtain a written waiver.

C. Voluntariness of Confessions

1. The courts have provided officers with much latitude in interrogating suspects. If a suspect claims that he or she was coerced into confessing, the courts will examine the interrogation according to the totality of the circumstances. If interrogation methods appear to overcome the suspect's will, then the courts will find any resulting confession to be involuntary. If officers use trickery, threats, or offer promises to obtain confessions, they must:

- a. Carefully assess the suspect's background, age, education, mental impairment, and physical condition to determine vulnerability to coercion; and
- b. Coupled with the background characteristics, choose an appropriate mix of interrogation tactics and environmental factors to convince the suspect to confess without overbearing the suspect's will. Note that Miranda warnings would have been given before the interrogation takes place, in most instances.

D. Exemptions or Special Cases

1. Miranda warnings do not apply to the following situations which are non-custodial. This list is not all-inclusive:
 - a. Brief on-scene questioning.
 - b. Identification procedures such as fingerprinting, conducting a lineup, sobriety tests. (Questioning during booking may require Miranda warnings.)
 - c. Volunteered, spontaneous statements. (Once the officer has heard the suspect express spontaneous incriminating statements, the officer shall then advise the suspect of Miranda rights and obtain a waiver before asking additional questions.)
 - d. Brief investigative detention or stop/frisk.
 - e. Roadside questioning during routine traffic stops, including DUI stops until custodial interrogation begins.
 - f. Routine booking questions attendant to arrest.
 - g. Questioning by private persons.
2. Public-safety exception
 - a. When an officer urgently needs information from a suspect because lives are in imminent danger, officers may delay giving Miranda warnings until the officers have received information sufficient to dispel the emergency. Officers are advised that a genuine, life-threatening emergency must exist.

E. Documentation Requirements

1. Officers shall document the circumstances surrounding the conduct of interrogations and the recording of confessions. Required information includes but is not limited to the following:
 - a. Location, date, time, duration of the interrogation.
 - b. Identities of all persons present.
 - c. Miranda warnings given, the suspect's responses, and any waivers provided.
 - d. The nature and duration of any breaks or lapses during the interrogation and the reasons for them.
2. Video or audio tape recordings shall be treated as evidence and handled accordingly.

VI. **SEARCH AND SEIZURE – WARRANTLESS SEARCHES**

A. A search occurs where

1. there is a "prying into hidden places by the police officer" and

2. the person whose premises or person is being searched has a reasonable expectation of privacy.
- B. The Fourth Amendment guarantees the right for people to be free from unreasonable searches and seizures of their homes, persons and things. The Supreme Court is continuously interpreting the Fourth Amendment as it applies to police conduct. Illegally seized items of evidence will not be admitted in court and may be cause for a lost criminal case. Additionally, an illegally conducted search invites civil suits and criminal prosecution. In order to ensure that Fourth Amendment rights are protected, officers will obtain search warrants upon probable cause in all appropriate criminal cases except for the following circumstances.
1. Open View and Plain View Searches
 2. Consent Searches
 3. Exigent Circumstances
 4. Pat Down/Frisks During Investigatory Stops
 5. Custodial Searches and Other Searches Incident to Arrest
 6. Vehicle Inventory Searches
 7. Open Fields and Curtilage
- C. As a general rule, no search warrant is required for a public place, as long as probable cause exists.
- D. Further guidance regarding search and seizure may be found in General Order 2-31 *Search and Seizure*

VII. EYEWITNESSES

- A. Eyewitnesses
1. Eyewitness identifications generally do not provide reliable evidence during criminal investigations. Consequently, the Supreme Court has addressed this issue in numerous cases and set forth guidelines to be followed when eyewitness identifications are solicited by officers. Eyewitness identifications may take the following form:
 - a. On-scene identification
 - b. Lineups
 - c. Photo lineups
 2. Officers should review General Order 2-22 *Eyewitness Identification* for guidance on eyewitness identification procedures.
- B. Hearsay
1. Officers shall understand the rules by which hearsay can be considered evidence and therefore of use in an investigation.
 - a. According to the Virginia Supreme Court, hearsay is "evidence not proceeding from the personal knowledge of the witness, but from the mere repetition of what he has heard others say."
 2. Hearsay is generally inadmissible in court.

3. Some hearsay is useful as evidence. Some exceptions to the Hearsay Rule, and therefore admissible include:
 - a. A dying declaration or a statement, oral or written, made by a mortally wounded person who knows that he is about to die and has abandoned hope of recovery.
 - b. Spontaneous declarations, or exclamations of a participant or bystander concerning an incident, made without time for reflection.
 - c. Public records, or reports prepared by public officials under a duty imposed by law or regulation.
4. All hearsay statements recorded by officers with the intention of being used in a potential criminal proceeding will be documented in quotation marks, attributed to the speaker. The circumstances under which the statement was made will be documented thoroughly, with objective observations.

VIII. VEHICLES

- A. In recent years, the U.S. Supreme Court has modified and expanded the conditions under which officers may search vehicles. Preferably, officers shall search vehicles under the authority of a warrant whenever sufficient time exists to obtain one. Nevertheless, warrantless searches of vehicles may take place under many conditions and circumstances. It is imperative that officers understand the different types of vehicle searches and their limitations.
- B. Definitions
 1. For the purposes of this section, a motor vehicle is any vehicle operating or capable of being operated on public streets or highways, from trucks to automobiles to mobile homes. A vehicle that has been immobilized in one location for use as a storage facility or home is not a motor vehicle for Fourth Amendment purposes.
 2. For the purposes of this section, a search is an examination of a motor vehicle with an investigative motive, that is, to discover evidence or to examine the vehicle identification number (VIN) to ascertain ownership.
- C. When Warrantless Vehicle Searches May Be Performed
 1. As noted earlier, warrants shall be obtained to search vehicles, if feasible, unless an emergency exists. Any vehicle that has been disabled with little chance of its being driven away shall be searched with a warrant. In all other cases, vehicles may be searched without a warrant under the following circumstances:
 - a. When probable cause exists.
 - b. With the driver's consent.
 - c. Incident to the arrest of the occupants.
 - d. To frisk for weapons.
 - e. When necessary to examine the VIN or to otherwise ascertain ownership.
 - f. Under emergencies or exigent circumstances.
 - g. Inventories. Further Guidance for inventory searches may be found in General Order 2-20 *Impounds*
- D. Searches may be conducted within the following limitations:

1. With a warrant, a search may extend anywhere within the vehicle, unless limited by the warrant itself.
 2. When probable cause exists, a search may extend anywhere within the vehicle, unless the probable cause is limited to a specific part of the vehicle.
 3. When consent has been obtained from the driver, officers may search the vehicle subject to any limitations specified by the consenting person. Consent shall be obtained in writing, if feasible.
 4. Searches incident to the arrest of an occupant shall be limited to any area within reach of the arrestee. The area within reach is deemed to be the passenger compartment. The trunk, engine compartment, and any locked compartments shall not be searched unless immediately accessible to the suspect. (See General Order 2-31 *Search and Seizure* for a fuller treatment of searches incident to arrests.)
 5. Frisks for weapons shall be confined to the passenger area. Any place not immediately accessible to the occupants, such as a locked glove compartment, shall not be frisked. If the contents of a container are immediately accessible to the subject, a closed container may be searched for weapons.
 6. Note that an officer can order the suspect from the vehicle and frisk both the suspect and the vehicle.
 7. An entry into the vehicle to examine the VIN or otherwise determine ownership must be limited to these purposes.
 8. An emergency search of the vehicle may be conducted but the extent of the search must not exceed whatever is necessary to respond to the emergency.
- E. Containers within the vehicle
1. As a rule, no container within a vehicle shall be searched unless it might reasonable contain the item(s) sought. For example, one could not reasonable search for a firearm within a pill bottle.
 2. Procedures for unlocked containers
 - a. In a probable cause search, containers may be opened wherever found in the vehicle.
 - b. When the passenger area is searched incident to an arrest, containers within the passenger area may be opened.
 - c. During a consent search, containers may be opened provided that the terms of the consent either so permit or reasonably imply permission.
 - d. Containers found in or discarded from a vehicle under circumstances not amounting to probable cause or in connection with a search incident to an arrest shall not be searched but shall be secured until a warrant is obtained.
 3. Procedures For Locked Containers
 - a. Under most conditions, locked containers shall be opened under a warrant unless one of the following circumstances has been met:
 - 1) Consent has been given.
 - 2) Probable cause exists to search the vehicle and the object of the search might be found in the container. (Even in this circumstance, a warrant is preferred.)
 - 3) Inventory.

F. Conduct of the Vehicle Search

1. When possible, searches of vehicles shall be conducted contemporaneous with the stopping or discovery of the vehicle. As a general rule, vehicle searches shall be conducted as soon as reasonably possible.
2. When possible, officers shall avoid damaging a vehicle or its contents, and shall minimize the intrusiveness of the search and any inconvenience suffered by the passengers or owner.
3. As vehicles may contain sharp or pointed objects, and perhaps even syringes or other materials with body fluids on them, officers shall take precautions to minimize exposure to communicable diseases. See General Order 2-14 *Communicable Disease Exposure*.

IX. LIMITATIONS ON AUTHORITY

A. Limitations on Law-Enforcement Authority by Local Courts

1. Occasionally, the local courts may limit law-enforcement authority to enforce state statutes and local ordinances. The department manual shall contain relevant orders offering appropriate guidance to officers. These limitations include, but are not limited to:
 - a. The enforcement of certain parking ordinances.
 - b. The handling of juvenile offenders.
 - c. The issuance of summonses as opposed to arrests/incarceration.
 - d. Restrictions relating to the animal control ordinance.

B. Limitations on law enforcement authority by the commonwealth's attorney

1. Occasionally, the commonwealth's attorney may issue opinions to the department imposing limitations on officers. These areas include, but are not limited to:
 - a. Prosecution of certain cases.
 - b. Extradition.
 - c. Enforcement of certain statutes pending opinions from the attorney general's office.

C. Limitations on law-enforcement authority by the Deputy Superintendent for Finance, Administration and Support or the Chief of Police

1. Limitations on police enforcement actions by the Board of Visitors, the Deputy Superintendent for Finance, Administration and Support or the Chief of Police include, but are not limited to:
 - a. Employee decal violations.
 - b. Parking violations.

D. Changes in laws/interpretational limitations

1. Periodically, changes take place which may impose new limitations on police authority or remove or alter existing limitations. Normally, annual updates on such changes are provided to all personnel by the commonwealth's attorney. In case

immediate changes in departmental operations are required, the commonwealth's attorney's office may provide information orally and confirm it in writing.

X. CONSTITUTIONAL REQUIREMENTS: GENERAL

A. Compliance with constitutional requirements during criminal investigations

1. All officers when conducting criminal investigations shall take all precautions necessary to ensure that all persons involved are afforded their constitutional protections. Officers shall ensure that:
 - a. All statements or confessions are voluntary and non-coercive.
 - b. All persons are advised of their rights in accordance with this general order.
 - c. All arrested persons are taken promptly before a magistrate for formal charging.
 - d. All persons accused or suspected of a criminal violation for which they are being interrogated are afforded an opportunity to consult with an attorney.
 - e. Prejudicial pre-trial publicity of the accused is avoided so as not to interfere with a defendant's right to a fair and impartial trial.

B. The use of discretion by officers

1. Officers, by the nature of their job, are required to exercise discretion in the performance of their duties. The department provides officers with written policies, rules, departmental orders, directed patrol assignments, and training in order to aid them in making decisions which govern discretion in performing their duties.
2. With the exception of rules and regulations, general orders give officers procedures to follow for common or critical enforcement tasks. By definition, general orders afford officers a window of discretion within which to act. General orders are to be followed unless unusual or extreme circumstances dictate another course of action. In this case, officers shall make reasoned decisions in their discretion based on good judgment, experience, and training. It is up to the individual officer to consider the relevant facts, the situation, and then, using knowledge, training, and good judgment, make appropriate decisions. Supervisors must closely observe the use of discretion by their subordinates and point out factual errors or alternatives that may be more appropriate.

C. Alternatives to arrest/pre-arraignment confinement

1. Under certain circumstances, officers are faced with situations where an arrest and pre-arraignment confinement will not be possible. In such cases, officers may elect to exercise certain alternatives such as the issuance of summonses, referral to a social service agency, or simply to give a warning. Examples:
 - a. Mentally or emotionally disturbed persons.
 - b. Domestic situations where counseling may be appropriate except where probable cause requires an arrest, as detailed in General Order 2-9- *Domestic Violence*.
 - c. Juvenile offenders. See General Order 2-15, *Juvenile Procedures*.
 - d. Transient persons who need shelter and food.

- e. Certain misdemeanor cases.
- 2. Authority to issue summonses in lieu of arrest/confinement
 - a. § 19.2-74 authorizes officers to issue a summons in lieu of arrest for persons charged with a misdemeanor criminal offense except D.U.I. and drunk in public. Additionally, § 19.2-74 authorizes the use of summonses when enforcing city ordinances.
 - b. In determining whether a summons should be used, the officer shall:
 - 1) Decide whether the offense committed is serious.
 - 2) Make a judgment as to whether the accused poses a danger to the public or himself.
 - 3) Decide, based on circumstances, whether the person may disregard a summons.
- 3. Informal handling of criminal matters
 - a. Officers often deal with situations where the public interest would be better served by social service agencies or crisis and professional organizations. When in the judgment of the officer a better solution to the problem will be achieved by use of alternatives to enforcement, he or she should refer the citizen to an appropriate social services agency.
- 4. Use of warnings as an alternative to arrest
 - a. The use of warnings may sometimes provide a solution to a problem and may enhance the public perception of the department. Normally, the use of a warning occurs in traffic offenses, but occasionally may be applied to criminal offenses. In determining if a warning should be issued, the officer shall consider:
 - 1) The seriousness of the offense.
 - 2) The likelihood that the violator will heed the warning.
 - 3) The reputation of the violator, i.e., known repeat offender, has received previous warnings, etc.
- 5. Limitations on intelligence activity
 - a. Departmental intelligence gathering activities shall be limited to that information concerning criminal conduct that presents a threat to the community.
 - b. Departmental personnel and equipment shall only be used in conjunction with intelligence gathering activities, as defined above, in full compliance with all law, and only with the advance approval of the chief of police.
 - c. Intelligence information shall be collected, used, and processed in full compliance with all laws.