

**7.10**  
**CRAIG POLICE DEPARTMENT**  
**Office of Chief of Police**  
**General Order**

**Date Issued:** December 1, 1998                      **Revision Date:**                      April 22, 2009  
**Subject:**                      Search Incident to Arrest                      **Reference:**  
**To:**                      All Officers

**I. Policy**

Officers, who, during the course of duty, develop probable cause or reasonable suspicion that a crime has been committed, may make investigative stops of citizens, arrests, or conduct searches. The department encourages investigative activity and expects officers competently and knowledgeably to search whenever the occasion arises. Consistent with this Order, officers shall not conduct general exploratory searches but shall adhere strictly to constitutional guidelines.

Authority: *Chimel v. California*, 395 U. S. 752 (1969); *New York v. Belton*, 453 U. S. 454 (1982); *Thornton v. United States*, 541 U. S. 615 (2004); *Arizona v. Gant* 556 U. S. \_\_\_ (2009); slilp op. No 07-542 (2008)

**II. Procedure**

A. The general rule is that a reasonable search may follow a valid arrest. The officer has the authority to make a search which may extend to articles carried by the suspect, and the suspect's immediate surroundings.

B. Time and Place of Search Incident to an Arrest: A search incident to an arrest must occur in such a way that it and the arrest are part of a continuous, uninterrupted transaction.

1. The search must be made as soon as practical after the arrest.
2. The search must be made at or near the place of the arrest.

These two things have been fulfilled if the peace officer takes the arrested person to the department or to another detention center to be searched.

C. Search of Vehicles Incident to Arrest (*Arizona v. Gant*) (2009)

1. A search incident to arrest of the passenger compartment of a vehicle requires:
  - a. A lawful arrest; and
  - b. The search must take place at the time of the arrest (contemporaneous with arrest); and

- c. The arrestee must have the possibility of access (thus not yet secured or handcuffed); **OR**
- d. There is a likelihood of discovering evidence directly related to the offense for which the arrest occurred.

People v. Graham (Colorado Court of Appeals, September 2008)

“...that a vehicle search incident to arrest is lawful even if the search is commenced as the arrestee is being transported away from the area. Here, as in Lugo, there was no possibility that defendant could obtain a weapon or destroy evidence once he was in the police car, and thus, the very bases for a search incident to arrest appear not to have been present. Nevertheless, as noted, the supreme court cases have emphasized the importance of the temporal proximity between the police encounter and the defendant's presence in the vehicle, irrespective of the defendant's location at the time of the vehicle search.”

Note: this will be dependent upon the justifications for the search based on Section C above.

D. A peace officer conducting a search incident to an arrest is permitted to use whatever degree of force is reasonable and necessary. If he/she used an unreasonable (excessive) amount of force, the search is unlawful.

E. Scope of Search: A peace officer making a search incident to an arrest may search only the following places:

1. The entirety of the person being arrested, and
2. The area in the immediate control of the person being arrested into which he could reach for a weapon or for evidence; the purpose of this search must be to:
  - a. protect the officer;
  - b. prevent escape; or
  - c. prevent the destruction of evidence.
3. Accessories carried by the suspect may be searched incident to a full custodial arrest, for they are within the area in which the defendant might reach to grab a weapon or an item of evidence.

F. Detention Search

A detention search of an arrestee is conducted within the confines of the detention center. During the detention search the officer will remove all of the arrestee's personal property for the purposes of inventory. The arrestee's property will then be listed on the appropriate form.

1. When detention searches are conducted, when at all possible, an officer or detention officer of the same sex as the arrestee should conduct the search.

G. Strip Searches: See [Order 7.06](#)

**Authorized By:**



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**Chief of Police**