

MAUI COUNTY POLICE DEPARTMENT

**GENERAL ORDERS**  
**CHAPTER 101**  
**ROLE AND AUTHORITY**

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**SEARCH AND SEIZURE WITHOUT A WARRANT**  
**G.O. 101.3**

I. PURPOSE

The purpose of this policy is to provide guidelines and procedures for conducting search and seizures without a warrant.

II. POLICY

It is the policy of the Maui Police Department that all officers shall make every effort to ensure that the citizens of Maui County feel secure in their persons, houses, papers, and effects against unreasonable searches and seizures. All searches conducted by officers of this Department must be based on probable cause and conducted with a warrant which is based on such probable cause, which describes with particularity the place to be searched and the items to be seized unless the circumstances fall within the exceptions described in this directive.

III. DEFINITIONS

**CURTILAGE:** The enclosed space of grounds and buildings immediately surrounding a dwelling/house. The curtilage of a dwelling is an area protected by the Fourth Amendment against government entry.

**EXIGENT CIRCUMSTANCES:** The term exigent circumstances is used to identify all those situations in which there is probable cause to search and some compelling urgency to search immediately.

**EXCLUSIONARY RULE:** When evidence has been obtained in violation of the privileges guaranteed by the U.S. Constitution, the evidence must be excluded at the trial. Evidence which is obtained by an unreasonable search and seizure is excluded from evidence under the Fourth Amendment of the U.S. Constitution and is applicable to the States.

**OPEN VIEW:** Things that an officer can sense (see, hear, smell, etc.) without invading a reasonable expectation of privacy are said to be in "open view". Things in open view have been exposed to the public and are not protected by the Fourth Amendment. Sensing things in open view is not a search.

**PLAIN VIEW:** An object is in "plain view" only if it is immediately apparent evidence,

inadvertently discovered, and during a lawful Fourth Amendment intrusion. If in the course of a lawful Fourth Amendment intrusion an officer inadvertently finds incriminating evidence in “plain view”, he may lawfully seize it without a warrant.

PRIVATE SEARCHES: The Fourth Amendment is a limitation of Government conduct only. It is not intended to control the activities of private parties. The courts, therefore, will not exclude evidence unlawfully obtained by a private person acting purely on his own initiative.

PROBABLE CAUSE: Probable cause exists where the facts and circumstances within the officers knowledge 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.

PROBABLE CAUSE TO SEARCH: There must be probable cause to believe certain property is crime connected and, therefore, that it is seizable and there must be probable cause to believe that this property can be found in a particular place.

SCOPE: The range or extent of a search.

IV. CONSTITUTIONAL REQUIREMENT

Constitution of the United States, Fourth Amendment

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizure, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

V. PROCEDURES

During the day to day operations of a law enforcement agency, officers will be required to make continuous decisions regarding search and seizure. There will be situations where they must decide immediately whether to obtain a search warrant or conduct a warrantless search with the knowledge that the wrong decision could result in losing the evidence to the exclusionary rule. The following procedures are designed to assist officers in this decision making process concerning search and seizure.

A. Consent Search

The constitutional rights against unreasonable search and seizure may be waived. When a search and seizure is sought to be justified on the grounds of consent, permission must be obtained without coercion from a citizen who understands he is waiving his constitutional rights.

1. No probable cause is needed in cases of consent search. The burden of proof will be on the police however to prove that consent was given.