



OPERATIONS ORDER

SUBJECT: CONSENT TO SEARCH GUIDELINES FOR UNIFORMED MEMBERS OF THE SERVICE ASSIGNED TO THE DETECTIVE BUREAU AND OTHER INVESTIGATORY COMMANDS/UNITS	
DATE ISSUED:	NUMBER:
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1. To ensure that permission to conduct a consent search of a premise, vehicle or item is obtained from a person with an expectation of privacy in a knowing, intelligent and voluntary manner; the following procedure has been established. Uniformed members of the service are required to ask specific questions, ensuring that the person has full knowledge of their rights with respect to a consent search. Additionally, Department form **CONSENT TO SEARCH (PD541-030)** has been revised to include new captions to be completed by the uniformed member of the service requesting consent.

2. Therefore, effective 0001 hours, October 15, 2016, uniformed members of the service assigned to the Detective Bureau and other investigatory commands/units will comply with the following procedure when there exists probable cause to believe that seizable property or wanted persons are present at a particular location, and an attempt is made to obtain permission from an individual with an expectation of privacy to search such premise, vehicle or item without a search warrant, and it would be prudent in time sensitive situations:

PURPOSE

To obtain permission from a person with an expectation of privacy of an address, vehicle or item to search such premise, vehicle or item without a search warrant. For example, a person with an expectation of privacy would be the hotel room guest, not the manager; tenant of a room or apartment, not the super or custodian; or the person in charge of a private area of a commercial establishment, not the owner. Furthermore, the purpose of this Order is also to ensure that any property seized, be invoiced according to NYPD procedures.

DEFINITION

CONSENT TO SEARCH (PD541-030) – A signed Department form granting permission to a police officer or detective to conduct a search of a designated premise, or of a designated vehicle, or a designated item, for the purpose of the seizure of property or persons located therein.

NOTE

Arrested persons can also give consent to search.

The Criminal Procedure Law lists the following categories of property as subject to seizure pursuant to a search warrant:

- a. *Stolen property*
- b. *Unlawfully possessed property or contraband*
- c. *Property used or possessed for the purpose of committing or concealing a crime*
- d. *Evidence which tends to demonstrate that an offense was committed or that a particular person participated in the commission of an offense.*

The above list is a guide and helps define the parameters by which a consent search may be justified.

PROCEDURE

When uniformed members of the service assigned to the Detective Bureau and other investigatory commands/units believe that there exists probable cause that seizable property or wanted persons are present at a particular location:

UNIFORMED MEMBER OF THE SERVICE

1. Approach the legal owner or lawful custodian of the address, vehicle or item to be searched and request permission to conduct a consent search.
 - a. Ask for consent to search in a manner that elicits a clear ‘yes’ or ‘no’ response.
 - b. Follow up by explicitly saying, *I can only conduct a search, if you consent.*
 - c. Specifically ask the person, *Do you understand?*
 - d. If a consent search is conducted, offer the person a **CONTACT CARD (PD142-011)** with rank, name, shield, and command captions completed.

NOTE

If the owner does not consent to a search, you cannot conduct a search unless a search warrant is obtained.

*A uniformed member of the service performing duty in an undercover (UC) capacity and those UMOS operating in operational support of a UC or a confidential informant, are exempt from providing **CONTACT CARDS** due to the sensitive nature of their assignment.*

2. If feasible, request that the legal owner or lawful custodian sign a **CONSENT TO SEARCH (PD541-030)**.
3. Provide the person with a duplicate copy of the prepared **CONSENT TO SEARCH**, if practical.
4. Notify immediate supervisor that a **CONSENT TO SEARCH** has been executed and a search is to be conducted.

IMMEDIATE SUPERVISOR

5. Respond to observe consent search, if available.

NOTE

Explain that they have the right to refuse this search and request that a warrant be obtained to conduct the search. This consent must be obtained voluntarily, knowingly and intelligently. It must be secured without threats or promises of any kind being made.

UNIFORMED MEMBER OF THE SERVICE

6. Be guided by *P.G. 212-75, “Search Warrant Applications”* and *P.G. 221-17, “Search Warrant Execution,”* if consent is denied.
7. Immediately proceed to conduct search of address, vehicle or item designated in the **CONSENT TO SEARCH**, once consent to search is obtained.
8. Seize the property specified in the **CONSENT TO SEARCH**.
9. **IMMEDIATELY** cease the search if consent is withdrawn prior to the completion of the authorized search, and seek to obtain a search warrant as outlined in *P.G. 212-75, “Search Warrant Applications”* and *P.G. 221-17, “Search Warrant Execution.”*

NOTE

Contraband or evidence not specified in the consent may be seized pursuant to the “Plain View Doctrine” (see Legal Bulletins Vol. 13, No. 5 and Vol. 17, No. 6 for an explanation of the “Plain View Doctrine”). If a police officer is lawfully in a premises pursuant to a consent, such officer may seize contraband or evidence if:

- a. The incriminating nature of the seized item is immediately apparent, and*
- b. The discovery of the item is inadvertent.*

UNIFORMED MEMBER OF THE SERVICE (continued)

- 10. Prepare **PROPERTY CLERK INVOICE (PD521-141)** for property seized and any other necessary forms/reports (**ONLINE BOOKING SYSTEM ARREST WORKSHEET [PD244-159]**, etc.).
- 11. Have immediate supervisor review and approve **CONSENT TO SEARCH**.
- 12. File appropriate paperwork according to Department procedures.
- 13. Have available for court, all appropriate forms/reports relating to case.

ADDITIONAL DATA

*In those circumstances when the request to search the property of a person is due to an established security perimeter or security checkpoint (e.g., transit bag checks, large scale events, school security, etc.), uniformed members of the service are not required to make the request in a prescribed manner, prepare a **CONSENT TO SEARCH**, or provide a **CONTACT CARD** unless requested.*

RELATED PROCEDURES

*Search Warrant Applications (P.G. 212-75)
Search Warrant Execution (P.G. 221-17)*

FORMS AND REPORTS

CONTACT CARD (PD142-011)
CONSENT TO SEARCH (PD541-030)
PROPERTY CLERK INVOICE (PD521-141)
ONLINE BOOKING SYSTEM ARREST WORKSHEET (PD244-159)

3. Effective 0001 hours, October 15, 2016, the revised Department form, **CONSENT TO SEARCH (PD541-030)** will be available on the Department Intranet in the Department Forms and Reports Section.

4. Effective 0001 hours, October 15, 2016, all existing copies of Department form, **CONSENT TO SEARCH (PD541-030)** bearing the revision date prior to **[Rev. 10-16]** are **OBSOLETE** and should be destroyed.

5. Effective 0001 hours, October 15, 2016, Operations Order 29, series 2008, is hereby **REVOKED**.

6. Commanding officers will ensure that the contents of this Order are brought to the attention of members of their commands.

BY DIRECTION OF THE POLICE COMMISSIONER

DISTRIBUTION
All Commands