

To: Police Chiefs, Police Directors, and Police Commanders
From: J.A. Montgomery Risk Control
Topic: Don't Avoid the "Search Incident to a Lawful Arrest"
Re: Law Enforcement Bulletin 2018-01 / Roll Call Training Material
Date: January 8, 2018

Don't Avoid the "Search Incident to a Lawful Arrest"

Officer Safety is a major concern when it comes to helping our law enforcement clients. Taking persons into custody can be uneventful or it may result in an altercation that causes physical injury to the officer. In reviewing the data, it is clear that many of these physical altercations result in hand and arm injuries. Fractures, sprains, exposures, and abrasions lead the list. These altercations are quick, dynamic and in many cases unexpected. Timing is important because people may not fully understand what is occurring at first and their attitude and demeanor can change quickly when they finally realize that you are taking them into custody. In an attempt to limit these injuries, procedures and tools can be used to help keep us safe.

The United States Supreme Court over the years has recognized exceptions to the warrant requirement. There are at least seven formally recognized exceptions to the search warrant requirement that allow a law enforcement officer to conduct warrantless search. One of the formally recognized exceptions is "searches conducted as an incident to a lawful arrest." Unfortunately, many officers do not take full advantage of this exception. On some occasions officers may become careless or lack situational awareness of what may be occurring. Officers become complacent and they conduct "frisks" instead of searches or they delay the search and figure that it can be conducted in headquarters. Sometimes the person is so filthy, officers want to avoid touching the prisoner or maybe the officer doesn't have the right Personal Protective Equipment readily available. On other occasions, the person in custody appears to be "OK," they may be friendly or even very accommodating. Caution should be used when dealing with these types of subjects, they may be sizing the officer up, or looking to see how attentive the officer is to their own safety and security. Whenever a subject is taken into custody, officers need to speak in a professional manner, provide clear and concise directions, and use the tools that were issued to properly restrain the person being taken into custody. You do not want to become a victim of your own complacency.

Follow your Department's arrest, search, and seizure and prisoner transportation policies.

Important points to remember:

- Once the subject has been taken into lawful custody, ensure they are properly restrained
- Conduct a search incident to a lawful arrest and whenever possible wear Personal Protective Equipment (puncture resistant gloves!)
- During the search remove all dangerous items that are weapons or items that could be used as weapons

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- Firearms, razors, knives, pens, cestus, daggers, dirks, stilettos, etc., just to name a few
- Mini revolvers in .22 caliber are for legal sale, they are less than 4 inches in length and 7/8 inches in width and carry five rounds of .22 caliber long rifle ammunition
- If transporting in a vehicle, ensure that the containment area of the vehicle is searched prior to securing the person in the vehicle
- Make sure the subject is “secured” in the vehicle – seatbelts!
- While securing the subject, officers need to realize that they are vulnerable to an assault, the officer is focused on the prisoner, their back is turned, and their weapon is exposed
- To reduce the risk of an assault, it is recommended that a second officer be present to assist with the arrest and scene security
- While transporting the subject, follow your agencies policy on the tracking of your movements, time, route, communications, use of body cam or mobile video equipment to reduce allegations of mistreatment
- Upon arrival at the processing facility ensure that you follow your department’s procedures and secure the subject
- Search the subject again! The subject is in a controlled environment and it is in the officer’s best interest to take advantage of this situation, don’t be surprised if you find additional contraband and or weapons
- Once the subject is secured, search your transport vehicle to see if any contraband or weapons were left by the subject
- Searching prisoners should be done by each officer who is responsible for the prisoner, don’t be offended, two searches are better than one!

Consult your county prosecutor’s office for legal advice and guidance when implementing a new policy or procedure.

Safety is our Goal!