

**CHAPTER 7**

**INVESTIGATIONS**

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# CHAPTER 7

## INVESTIGATIONS

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# CHAPTER 7 SECTION I

## INTERROGATION

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### A. Introduction

1. The purpose of this section is to provide basic information to be used as a guide to NRP personnel; it is not intended to be all-inclusive.

### B. Exclusionary Rule

1. Generally, information and evidence discovered during an illegal interrogation is not admissible at the time of trial.
2. Exceptions to this rule may be considered when information developed during an illegal interrogation inevitably would be discovered during another phase of the investigation, or the same information is discovered from an independent source.

### C. Miranda Warning

1. **In *Miranda vs. Arizona***, the United States Supreme Court established specific guidelines to be used by police for interrogations. The Miranda decision is based on the Fifth Amendment to the Constitution of the United States, and protects persons against self-incrimination.
2. The Miranda Warning shall be read directly from the card supplied by the agency.
3. The Miranda rule applies to questioning initiated by the police in a custodial atmosphere, where information, statements, and confessions are sought and response would tend to incriminate the individual being questioned. The Miranda warnings must be given when these conditions exist.
4. Miranda rights apply when the police personnel initiate custodial questioning/interrogation. Officers are not obligated to stop an individual who spontaneously offers information and/or a confession, regardless of the custodial situation. The courts have held that the police may inject an essential question for the purpose of clarification and/or keeping the individual from straying from the original topic. Should the situation gravitate to questions and answers, Miranda would be required to be given.
5. Recent Supreme Court rulings have defined the application of Miranda, dispelling the original interpretation where the police are required to advise individuals of Miranda. This is significantly affected by the totality of the circumstances present and will be judged on a case-by-case basis. Personnel confronted with the decision as to the appropriateness of Miranda and who do not have the opportunity for legal advice should advise individuals of their rights prior to questioning.
6. For the Miranda warning to be effective, it must be understood by the individual being interrogated. Read the rights from the Miranda Card. Speak distinctly, providing the opportunity for the person to listen and understand each right. Any questions should be cleared-up before proceeding.
7. An individual subject to interrogation who invokes any of their Miranda rights will not be questioned until they have consulted with an attorney. Additionally, an individual who had waived their rights initially and during the interrogation wishes not to be questioned any further, will not be interrogated until they have consulted with an attorney. The individual will be re-informed of their rights prior to any subsequent questioning.
8. After these warnings have been given and an opportunity to exercise these rights afforded, only the individual interrogated (including juveniles) may waive these rights. In order for this waiver to be

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effective, it must be done voluntarily, knowingly and intelligently. Any evidence that an individual was threatened, tricked, or cajoled into a waiver, in whole or in part, may constitute an involuntary waiver.

#### **D. Confessions**

1. For a confession to be admissible at trial, it must have been given voluntarily. The Miranda warnings should be applied when the police solicit a confession.
2. Waiver of Prompt Presentment – The Johnson Ruling. This ruling requires that an arrested individual be taken before a judicial officer (commissioner) without unnecessary delay and in no event later than twenty-four hours after the arrest or the first session of court following the filing of the charging document in the instance of a warrantless arrest.
3. The following are generally accepted as justification for delay pertaining to the Johnson Rule:
  - a. Routine processing procedures.
  - b. Determining whether or not the charging document should be issued.
  - c. Verifying the commission of the specified crime.
  - d. Obtaining information likely to be a significant aid in averting harm to persons or loss of property of substantial value.
  - e. Obtaining relevant non-testimonial information likely to be significant in discovering the identity of accomplices or preventing the loss of relevant evidence.
  - f. The arrested party may voluntarily and knowingly waive the right of prompt presentment. This waiver would substantiate any delay and make admissible any statement or confession obtained prior to presentment.

#### **E. Securing Weapons**

During an interrogation at a police installation, all personnel involved will secure their weapons in a place designated for that purpose.

#### **F. Interrogations in Investigations**

1. Interrogations, questioning, and confessions must be considered as another piece of evidence in a total investigation. Personnel should be cautioned against total dependence on this tool. Information developed through an interrogation or confession should be corroborated to the extent possible by information and evidence available from other sources. If there is more than one suspect, information supplied by one about another must be substantiated by other information in order to be admissible.
2. Interrogations, statements, and confessions should be documented, witnessed, and signed by the suspect and the interrogator. The suspect and the interrogator should initial each page of the document. Ideally, the document should be in the suspect's handwriting; however, a dictated and transcribed version is acceptable with the suspect having had the opportunity to read and sign as indicated above. The documentation should include a description of the suspect's mental, physical, and emotional state at the time of the interrogation.
3. Interrogations should be conducted in a professional manner. Every attempt should be made to neutralize the atmosphere of the settings, reducing the chance of being accused of threatening, coercing, frightening, etc. the suspect under interrogation. If possible, an interrogator of the same sex as the suspect should be present.

# CHAPTER 7 SECTION II

## SEARCH AND SEIZURE

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### A. Introduction

The Fourth Amendment applies to federal law enforcement matters but its constitutional guarantees have been applied to all states through the “due process” clause of the Fourteenth Amendment.

1. Although knowledge of the constitutional provisions relating to search and seizure will not solve the everyday practical problems that officers must face when they conduct a search or make a seizure, it is the starting point with which they can determine the propriety of their intended acts. An officer must always consider the reasonableness of the search, and, in seeking or executing a warrant, especially when considering the description of the persons, places, and items involved. If they do this with care, they can help ensure that their actions will be lawful and that the validity of the search and seizure will stand in a court of law.
2. Under the Exclusionary Rule, evidence obtained or confiscated in violation of the Fourth Amendment cannot be used in any court as evidence against the person from whom it was improperly obtained.

### B. Probable Cause

1. The true test of any search is the demonstration that probable cause exists to justify the search. The basis for determining probable cause to search is essentially the same as that of probable cause for arrest. Probable cause to search is demonstrated by the existence of facts and surrounding circumstances, which are sufficient to justify a person of reasonable caution to believe that an offense has been committed and that the particular property to be seized is relative to the offense, and is located at the particular place. Reduced to its essentials, probable cause means that the officer must have reasonable grounds to believe that things related to an offense are on the premises to be searched.
2. Searches may be conducted pursuant to the authority of a search warrant, upon receipt of proper consent, or in conjunction with the various exceptions to the warrant requirements, e.g., incident to arrest, vessel or vehicle searches, stop and frisk, abandoned property, etc. The Supreme Court has ruled that, barring these specific exceptions; all searches without a warrant are unreasonable. Each exception to the warrant requirement imposes its own unique set of guidelines, which must be followed.

### C. Search Warrants

1. A search warrant can be an effective investigative tool once it has been determined that evidence of a crime can be found at a specific location, and cannot be obtained by any other means. The following outlines the standard procedure taken in the warrant process:
  - a. Obtain guidance and approval from prosecuting attorney.
  - b. Consultation with SOD for de-confliction and or assistance.
  - c. Review of the application by the affiant’s commander or designee.
  - d. Planning the enforcement action to include completion of a risk assessment and operational plan.
  - e. Obtaining approval by the Area / Regional Commander.
  - f. Executing the search warrant and preserving evidence.
  - g. Adherence to all post-operational procedures.
2. Only judges of the Circuit Court and District Court of the State of Maryland will issue search warrants. Once issued, a search warrant will:
  - a. Be directed to a law enforcement officer for service.
  - b. Authorize the search of the individual, item, vessel, vehicle, building, thing, etc. specifically described in the warrant.

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- c. Authorize the seizure of the item(s) described in the warrant as well as any other property found liable to seizure under the criminal laws of this state.
  - d. Be valid for a period of fifteen (15) days from the date of issue, except for Natural Resources violations for which the period of validity is five (5) days.
3. When applying for the issuance of a search warrant, the applicant must present detailed information establishing probable cause to believe the item (s) sought are in possession of an individual or being held at a specific location. This document is known as the affidavit and will become part of the warrant. The affidavit contains a detailed synopsis of the facts at hand, which establishes:
  - a. The commission of a specific offense.
  - b. That certain specifically identified contraband, evidence, and property directly related to the offense is being sought.
  - c. That the contraband, evidence, or property sought is in the possession of an individual and the individual or the item(s) sought are contained in a specific container or at a specific location.
4. Facts, which lead the officer to believe that seizable goods are in certain premises, can come from three sources, first, personal knowledge what the officer has observed, second, what others have observed and related to the officer, and third, confidential informants.
  - a. A confidential informant, or "CI," is any individual who provides useful and credible information to a law enforcement officer regarding criminal activities and from whom the law enforcement officer expects or intends to obtain additional useful and credible information regarding such activities in the future. In order to establish the credibility of a CI, the law enforcement officer must have tracked the credibility of past information received from the CI. It is normally critical to conceal the identity of the CI in order to maintain the future flow of information. Where the facts are within the officer's personal knowledge, he need only set forth in detail in the probable cause sections of the warrant the following:
    - (1) The dates and times he observed the facts.
    - (2) The place where he observed the facts.
    - (3) Exactly what he observed (detail is most important here).
    - (4) A brief synopsis of the officer's experience and training.
  - b. Cooperating witnesses or "CWs," differ from CIs in that CWs agree to testify in legal proceedings and are generally known to be cooperating with law enforcement. As such, the identity of the CW normally does not need to be concealed.
  - c. Persons who provide information to the NRP but do not fall into one of these specific classifications are referred to generally as "concerned citizens." A concerned citizen provides information to a law enforcement agency only as a result of legitimate routine access to information or records. Unlike what is often the case with regard to CIs and CWs, a concerned citizen does not collect information by means of criminal association with the subjects of an investigation, but may choose to remain anonymous due to concern over retribution or reprisal.
5. When someone else tells the officer the facts, it is necessary that he include in the affidavit the facts, which caused the other person to believe that seizable goods are on the particular premises and, in addition, why the officer believed what the other person told him. Since there are these two distinct types of information required when the affidavit is to be based on an informant's observations, such an affidavit will necessarily be more lengthy than one based solely on the officer's personal knowledge. The probable cause section should contain the following information:
  - a. The date the officer was told the facts.

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- b. The name and address of the person who told the officer the facts, except in the case of a confidential informant or concerned citizen.
- c. The date the other person observed the facts.
- d. That the other person personally observed the facts.
- e. The place where the other person observed the facts.
- f. Exactly what facts (in detail) the other observed.
- g. An explanation of why the officer believes that what the other person told him is true.
- h. A brief synopsis of the officer's experience and training.

6. Police employees are under no obligation to disclose the identities of their confidential informants in a search warrant affidavit. However, when a confidential informant's identity is not disclosed, it is especially important that the officer explain fully why he believes that the facts related to him by the informant are true. To substantiate the informant's reliability, the following should appear in the probable cause section:

- a. The informant's past record for accuracy.
- b. Whether valid arrests and convictions have been based on that information.
- c. What facts the officer has personally observed which corroborate the information related by the informant.
- d. If appropriate, a statement by the informant indicating that he has committed or has participated in the commission of the crimes indicated.

Note: Give as much detail as possible without revealing the informant's identity. Where it is important to protect the identity of an informant, it is not necessary to specify the exact date upon which the informant received his information or performed some act, which assisted in establishing probable cause for the issuance of a warrant. Such phrases as "...during the week of..." may be used.

7. Once issued, the search warrant will be executed by any authorized police officer to whom it was issued unless the warrant specifies it is to be served by the applicant or other individual. The police officer executing the warrant has the right to take necessary and appropriate action to protect himself and others; assure that the item(s) sought will not be damaged, destroyed, removed, etc.; the search will not be inhibited; safeguard the scene; collect and remove property; make arrests; etc.

8. (This paragraph has been redacted due to it containing confidential policy and/or procedural information).

- a.
- b.
- c.
- d.

9. The use of good judgment in executing a warrant is as important as that used in obtaining one. An otherwise valid search can become unlawful if the warrant is not properly executed. The following procedures may be utilized when executing the warrant:

- a. Serve the warrant within fifteen (15) days of its issuance, five (5) days for warrants seeking to seize perishable items like fish or wildlife. .
- b. The breaking of doors in execution of a search warrant is commensurate with those procedures, crimes, and or circumstances established for the breaking of a door in execution of an arrest.
- c. The search warrant will be presented to the person in charge of the premises being searched, if such a person is present at the time of service.
- d. The search will include the place specified in the warrant, including all places reasonably and logically a part of that building, and everything therein where the lawfully sought articles might be

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- concealed.
- e. Only the time necessary under the circumstances may be used to conduct the search.
  - f. The officer may seize only those items particularly described in the warrant and any other instrumentalities, fruit or contraband while properly searching for the things particularly described.
  - g. A search warrant alone does not constitute authority for an arrest, but an arrest may be made on probable cause developed during execution of the warrant.
  - h. A search warrant for a residence or other premises does not permit a search of all the persons present during the search unless so stated. If probable cause is developed during the legal search to believe persons on the premises possess items, which reasonably could be objects of the search, they may be detained until the proper search warrant is obtained. Regardless of the circumstances of the search, reasonable suspicion may justify the frisk of all persons present for offensive weapons.
  - i. An inventory shall be completed containing an accurate description of all property removed. The officer executing the search and seizure warrant in the presence of the person from whom property was taken shall sign all copies of inventory sheets
  - j. A copy of the warrant, affidavit, property inventory, and return form will be left with the person in charge of the location searched. If no one is present to accept the paperwork, it will be left in a conspicuous location where it is reasonably protected from loss or damage.
  - k. Return the executed warrant and property inventory to the issuing judge within five (5) days of execution.
10. Search warrants may be necessary to obtain evidence from a person, i.e. clothing worn, fingernail clipping, hair, body fluids, body cavity searches, etc. With this in mind, the following guidelines will be followed:
- a. If an officer has adequate advance information that a person has or will have on their person items subject to lawful seizure, then the officer should get a search warrant. An officer should not rely upon the person's consent as the authorization for the search.
  - b. If a suspect or witness is asked to provide exemplars for comparison and refuses, application may be made to the State's Attorney for a search warrant requiring the production of the desired evidence.
  - c. If a person refuses to permit an authorized search, or if there is a good reason not to search in public (a strip search, for example), an officer may use reasonable force to detain them, or to take them to a place where the search can be appropriately conducted.
  - d. To execute a search warrant for the search of a person, premises may be entered under the same circumstances and in the same manner as allowed in the execution of an arrest warrant, and reasonable force may be used to make the search.
  - e. While a search may be made only for those things described in the warrant, if, while making such a search, an officer comes upon some other evidence of this or any other crime, it may be seized.
11. To avoid a possible loss of evidence, property which is under the temporary control of an officer may be held while a warrant authorizing a further search is obtained. Moreover, in some such instances where probable cause to obtain a warrant does not immediately exist, the property may be held pending a reasonable brief investigation to determine whether there is in fact probable cause for a search warrant.
12. Generally, when there is sufficient time and no opportunity to tamper with, remove, destroy, conceal, etc. property or evidence, a search warrant should be obtained.

#### D. Search Incident to an Arrest

1. A search incident to a lawful arrest is permitted to:

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- a. Protect the arresting officer and others.
  - b. Prevent escape or suicide.
  - c. Seize fruit, instrumentalities, and contraband relating to that arrest.
  - d. Prevent the destruction of evidence.
2. An arrest may not be used simply as an excuse to conduct a general search for evidence. When an officer makes a valid arrest, he cannot use that arrest as an excuse to search the arrestee for evidence of a different offense for which the officer had no arrest warrant, probable cause to arrest, or no search warrant.
3. The arrest must be lawful. If the arrest is unlawful for any reason, the incidental search of the arrested person is also unlawful, and any fruits of such a search will be inadmissible in court.
4. The arresting officer must conduct the search contemporaneous with the arrest.
5. Until an arrest has been made, there is no right to search. If the search precedes the arrest and supplies the probable cause for the arrest, the search is unlawful unless it can stand without use of the search incident-to-arrest exception. If an officer has the right to arrest on a warrant or probable cause and intends to arrest, but because of a sudden emergency or dangerous situation (e.g., possible escape of a person to be arrested or destruction of evidence) the officer first grabs the weapon, narcotics or other item, and then arrests, the seizure is lawful. This is an exception, however, and the courts will apply it strictly.
6. A search made incident to an arrest must be conducted as soon as practical after the arrest. If it is not feasible to search immediately after making an arrest, an officer should do so as soon after the reason for delaying the search has passed. This exception gives an officer the right to search a person lawfully arrested only to protect himself, to prevent escape, or to prevent the destruction of evidence. If an officer delays a search, it may appear that he was not concerned about any of those three possibilities and that he conducted the search for some other reason.
7. As a general rule, an officer may search the arrested person, everything in his possession, and everything, which, in the course of the arrest, is within his immediate reach, lunge, or grasp.
- a. Anything in the actual possession of the person arrested may be searched (for example, a carton, suitcase, or purse being carried by the arrestee).
  - b. The things within the reach of the person or within his immediate physical surroundings may be searched. In an emergency situation posing a danger to human life, the scope of the permissible search may extend beyond the person's immediate surroundings.
  - c. A search for the things within a body cavity may be conducted, only as prescribed by Agency policy.
  - d. Where an arrestee has on his person some article showing ownership of or right to control personal property from which he is temporarily separated, (e.g., where the arrestee has a locker key in his possession and the arresting officer wishes to search the locker) the officer generally may not search for and seize such property unless there is danger that someone else will remove the property before a warrant can be obtained. Similarly, if in the course of an arrest an officer observes a suitcase or other closed item in open view but not in the arrested person's actual physical possession, then the item may be seized as a protective measure, but a search warrant should be obtained before opening it.
8. Generally, anything in the possession of the person being searched may be subject to seizure. Additionally, an officer lawfully on the premises as when legally effecting an arrest, observing contraband, fruits, weapon, instrumentalities or evidence of that immediate investigation and/or of an

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unrelated incident in “plain view”, may seize these items even though they may not be considered to be in the immediate possession of the person being arrested, and there is no search warrant available. It must be understood that the “plain view” doctrine is a seizing doctrine and does not in itself automatically constitute the authority for an additional search beyond the seizure of an item in plain sight.

9. When making a reasonable search of the person (whether incident to arrest or with a search warrant) an officer may use only that degree of force necessary to protect himself, prevent the escape of the person searched, and prevent the destruction of evidence.

#### **E. Strip Searches**

1. A strip search is defined as the removal or rearrangement of any clothing which permits a visual inspection of the genitals, buttocks, anus, or female’s breasts, or undergarments of an arrestee.

2. A strip search should be considered only when the facts known to the officer, or the observations made by the officer, establish the reasonableness of a search of this extent, i.e., the necessity of viewing these intimate parts of the body and undergarments. Strip searches should never be routine and will be permitted only in the following situations:

- a. When the officer has reasonable cause to believe an arrestee is concealing a weapon.
- b. Upon authority of a valid search warrant.

3. Strip searches must be approved by the officer’s immediate supervisor or the duty officer. Strip searches shall only be conducted in a secluded, private area by a police officer of the same sex and will be done professionally and efficiently, showing care for the arrestee’s privacy and comfort.

#### **F. Search of Body Cavity**

1. A search for things within a body cavity may be conducted upon authority of a valid search warrant or incident to a lawful arrest. Time permitting; a State’s Attorney should be consulted before such a search when made incident to an arrest. The following conditions must be met before a search of a body cavity is permitted:

- a. There must be probable cause to believe that the person has within his/her body evidence, which should be removed.
- b. A licensed doctor or nurse working under sanitary conditions and in a medically approved way must make the search.

2. Force may be used only to the extent necessary to effect submission to the examination.

#### **G. Seizure of Abandoned Property**

1. If in the course of a lawful arrest (or other lawful action by an officer, such as a surveillance or questioning of a person), a person discards personal property at some place outside his dwelling or its curtilage, an officer may seize such property (even though it is then beyond the person’s physical control) on the grounds that it has been abandoned.

- a. To constitute abandonment for this purpose, there is no requirement that the person intended to get rid of the property permanently.
- b. If the property is discarded in the person’s dwelling or its curtilage (or in his hotel room, automobile, or any other area he controls), it cannot be considered abandoned and cannot be seized. However, if the property thus discarded can be identified on sight as evidence of a crime, it can be seized just as any other evidence of a crime.

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#### H. Stop and Frisk

1. This expansion of a constitutionally permissible search permits a police officer to conduct a carefully limited search of an individual's outer clothing for offensive weapons, concealed upon the individual. This is permitted when a police officer has reasonable articulable suspicion that the person is armed and dangerous and a danger to the police officer and others.
2. Both the "Stop" and the "Frisk" must be supported by reasonable and articulable suspicion. An unparticularized suspicion or "hunch" will not suffice.
3. The following circumstances may be considered by the officer in determining whether sufficient reasonable suspicion exists to justify a stop. This list is not intended to be all-inclusive.
  - a. The actions of the suspect.
  - b. The time of day.
  - c. Bulges in the suspect's clothing, which may suggest a concealed weapon.
  - d. The appearance of objects the suspect may be carrying.
  - e. The suspect's proximity to a known crime scene.
  - f. Officer's prior knowledge of the suspect including.
    - (1) Suspect's prior record.
    - (2) Information from an informant or third party
4. Once sufficient reasonable suspicion is established and the officer decides to initiate the stop, they will:
  - a. Be clearly identified as a police officer.
    - (1) By being in uniform, or
    - (2) If not in uniform, by announcing that they are an officer and at the same time displaying their badge or other police credentials.
  - b. Question the individual stopped to discover their name, address, and an explanation of the suspect's actions.
    - (1) The suspect may not be compelled to supply the answer to these or any other questions.
    - (2) If the suspect refuses to answer the officer's questions or provide their identity, they may be questioned further but may not be unduly detained nor be deprived of freedom of movement in any significant way unless the officer is prepared to make a formal arrest without a warrant. There must be some independent justification. The failure or refusal to answer questions does not bar a "frisk," if the officer reasonably suspects danger to their own or another's safety.
5. In determining whether reasonable suspicion exists sufficient to support the "frisking" of the suspect, the following factors may be considered:
  - a. Reasonableness of the officer's fears for their own safety or the safety of others.
  - b. Dealing with multiple suspects where the officer does not have assistance close at hand.
  - c. Officer's knowledge of the suspect such as criminal record or previous violence towards police.
  - d. Bulges in the suspect's clothing, which may suggest a concealed weapon.
  - e. Any other information perceived by the officer as having the potential for violence.
6. When the officer has knowledge or information regarding one or more of the above factors or any other information sufficient to justify reasonable suspicion that the person stopped is presently in possession of an offensive weapon, they may frisk the person. The frisk that is permissible is limited to a patting down of the suspect's outer clothing for the discovery of such weapons and for no other purpose. If the frisk fails to disclose evidence of an offensive weapon, no further search may be made. However, if the frisk indicates reasonable suspicion that the suspect has an object on their person that could be a

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weapon, the officer is authorized to search that part of the suspect's clothing containing such object, but may not search any further.

7. If the object felt and found in the course of the frisk is in fact an offensive weapon and the evidence is that the possession thereof violates the law, the officer may arrest the suspect committing a crime in their presence.

Incident to such a lawful arrest, the officer may make a further, more detailed, search of the suspect and their immediate surroundings. On the other hand, if the officer searches in or beneath the clothing of the suspect in the belief that an object felt in patting them down is a weapon and it turns out not to be a weapon but an item of contraband or evidence of a crime, the object may nevertheless be used to justify arrest of the suspect.

#### I. Search of Premises and Property

1. An officer may search premises without a warrant in the following situations:
  - a. Exigent Circumstances
  - b. Hot Pursuit
  - c. Prevent the Destruction of Evidence
  - d. Plain View
  - e. Abandoned Property - A dwelling that has been permanently vacated, i.e. hotel room, rented space, etc., may be searched without a warrant and without the permission of the previous tenant. The consent of the property owner or agent should be obtained.
2. Open Fields - Under certain conditions "open fields," even though privately owned, may be searched without a warrant. In *Oliver v. U.S.*, the Supreme Court held that "open fields" do not enjoy the same reasonableness as to privacy as does a home, office, commercial structure, etc.
3. Observation of a dwelling or its curtilage may be made without a warrant from any place outside the curtilage. Binoculars, flashlights, and similar devices may be used in such surveillance, as long as there is no physical trespass onto the curtilage. However, the use of thermal-imaging devices is considered a search under the Fourth Amendment. In *Kyllo v. United States* (2001), the Supreme Court held that where the Government used a device that is not in general public use, to explore details of a private home that would previously have been unknowable without physical intrusion, the surveillance is unreasonable without a warrant.
4. Listening to conversations or other sounds occurring in a dwelling or its curtilage may be accomplished without a warrant if there is no physical trespass onto the curtilage. No electronic or mechanical device may be used without a warrant. If a physical trespass is necessary, a warrant must be obtained.
5. A search warrant must be obtained prior to placing and monitoring an electronic tracking device. In *United States v. Jones* (2012), the Supreme Court held that the attachment of a GPS device to a vehicle, and the use of that device to monitor the vehicle's movements, constitutes a search under the Fourth Amendment.
6. Search of Premises Incident to Arrest
  - a. In the course of a lawful arrest, an officer may search not only the arrestee's person, but also a limited portion of the premises, which is within the arrestee's immediate control and from which he might be able to reach a weapon or destructible evidence. The area to be searched may be

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expanded if there is cause to believe there may be other persons on the premises who may reasonably be expected to interfere with the arrest or attempt to destroy evidence. A search of the surrounding area for such persons may be made. The justification for such a search is to:

- (1) Find and seize any weapons the arrestee may use to resist the arrest or to effect an escape.
  - (2) Find and seize any evidence the arrestee might try to conceal or destroy.
  - (3) To protect the officer and others present.
- b. If while making a lawful arrest, evidence is observed beyond the arrestee's immediate control in plain view.
  - c. If an arrest is affected at a certain place or time as a disguise to conduct a search of those premises, the search may be invalid.
  - d. Since a search incident to an arrest is very limited in scope, it is better to secure a search warrant at the same time that the arrest warrant is issued if a detailed search is to be conducted. When this is not possible, or when a warrantless arrest is made, a search warrant should be applied for immediately after the arrest. It is proper to allow an officer to guard the premises to prevent the destruction of evidence while the warrant is being secured.

#### **J. Crime Scene Searches**

1. Entry and subsequent warrantless search of premises are permitted in exigent situations when there exists reasonable belief that there is a need for immediate assistance.
2. The scope of the search is strictly limited by existence of the exigent circumstances. Evidence and/or contraband observed in plain view during this restricted search may be properly seized.
3. The fact that a crime has occurred at a specific location does not automatically authorize an unlimited search of the premises. Unless the situation meets the existing exceptions to warrant requirements, a warrantless search of a crime scene will be unreasonable and any evidence discovered during the search will be inadmissible at trial.

#### **K. Vessel or Vehicle Searches**

1. The limitations of vessel or vehicle searches are varied and must be based on the existence of specific conditions. These conditions and limitations will be discussed individually in this subsection.
2. The laws governing searches of vessels or vehicles provide expanded latitudes to the police. These considerations are based on the need to protect the law enforcement officer, mobility of the vessel or vehicle, increased opportunity for contraband or evidence to be lost or destroyed, and, finally, probable cause. The Carroll Doctrine established the parameters of vessel or vehicle searches and has been reinforced by a number of U.S. Supreme Court rulings: U.S. v. Ross (1982), Belton v. New York (1981), and Thornton v. US (2004).

Generally, vessels or vehicles may be searched without a warrant:

- a. Incident to an arrest of one or more of the occupants.
  - b. When probable cause exists that it contains seizable items.
  - c. When it has been abandoned.
  - d. Under "Plain View".
3. A search of a vessel or vehicle incident to a lawful custodial arrest of one or more of its occupants is predicated on the officer's right to protect themselves and others, seize evidence, and prevent the destruction of evidence. The search may include the person(s) arrested, the interior (passenger compartment) of the vessel or vehicle and any packages, containers, and property, either opened or closed,

## CHAPTER 7 SECTION II

### SEARCH AND SEIZURE

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contained therein. Locked containers should not be searched as this has been interpreted to preclude the arrestee's ability to reach the contents. In order for the search to be valid, it must be:

- a. A lawful custodial arrest.
  - b. Contemporaneous to the arrest. Since the search incident to a lawful custodial arrest is predicated on the possibility of the arrestee utilizing a weapon or destroying evidence, by delaying a search until a later time, i.e. after removal of the suspect, and relocating the vessel or vehicle, there would be no grounds for the search without a warrant. The police officer may summon additional manpower to secure the suspect(s) at the scene or reasonably close thereto while the arresting officer conducts the search of the entire passenger compartment, as well as any containers found within. Probable cause or even mere suspicion that contraband, evidence or a weapon is in the vessel or vehicle is not required.
4. Warrantless searches of vessels or vehicles based on probable cause that seizable property is contained therein is validated by the imposition of a separate set of circumstances.
- a. The Carroll Doctrine establishes that a police officer having probable cause that a vessel or vehicle contains seizable items may search a mobile vessel or vehicle, which could conceivably leave the jurisdiction before a warrant could be obtained.
  - b. If probable cause establishes that a vessel or vehicle contains a specific item, then the reasonableness and scope of the search will be determined by the nature of the item sought and its being located, if:
  - c. Probable cause establishes that the vessel or vehicle is used to conceal a specifically identified container, then the search is limited to those locations where the container may be hidden and continued only until the container is located.
  - d. A lawful arrest is made. The search may be expanded based on the search incident to arrest principle.
  - e. When a vessel or vehicle is to be searched without a warrant based on probable cause, it may be:
    - (1) Searched at the location it was first stopped or taken into custody.
    - (2) Searched after being removed to another location for reasons of safety, custody, and convenience
  - f. If probable cause were not obtained until after the vessel or vehicle has lost its mobility or until it was taken into custody a warrantless search would be improper. Whenever possible, a vessel or vehicle to be retained as evidence or for further processing should be transported from its place of recovery to an NRP Installation by the investigating officer to provide for proper safeguarding and chain of custody of evidence. The investigating officer shall arrange for such removal by a tow vehicle/vessel. The officer should secure the vessel or vehicle prior to towing and follow the vessel or vehicle as it is being towed to its destination to provide for proper safeguarding and chain of custody of evidence.

#### L. Inventory

1. If the vessel or vehicle is taken as evidence of a crime, either as an instrumentality by which the crime was committed (e.g. a hit-and-run homicide) or as fruit of a crime (a stolen car), it may be subject to a later, more careful examination after a search and seizure warrant has been secured.
2. The inventory of vessels or vehicles and other objects under police control, where they have lawful custody, is proper when done to protect the owner against property loss, to avoid a claim of destruction, and to protect the police against any hidden danger. Police cannot assume custody as a pretext for inventory if not reasonably necessary. The inventory must be carried out as part of established Agency procedure.

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### **SEARCH AND SEIZURE**

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3. An abandoned vessel or vehicle may be seized and searched without a warrant and without probable cause, unless the owner can be identified.
4. Evidence of probable cause justifying a search of a vessel or vehicle does not necessarily empower an officer to search its occupants.
5. The “plain view” exception applies to all vessels or vehicles. Any contraband or evidence of a criminal offense seen while the officer is in the proper conduct of an investigation or while interviewing an occupant of the vessel or vehicle may be seized and will justify probable cause for a subsequent arrest and a more detailed search.

#### **M. Use of Force in a Search**

1. If an officer has a legal right to conduct a warrantless search and the occupant interferes with the officer, the officer may use whatever force is reasonable and necessary to affect the search.
2. Using unreasonable force to stop a vessel or vehicle may make the subsequent search of that vessel or vehicle illegal even though it was based on probable cause, and may also cause any evidence to be excluded.

#### **N. Consent Searches**

1. A subject’s consent to a search of their person or of property under their control by an officer acts as a waiver of their Fourth Amendment right to be free from an unreasonable search. Therefore, a search based on consent is lawful, even where there is no other justification for the search, if the consent is voluntary, i.e., freely given without duress or coercion, and the person has the legal standing to consent to the search. The courts will examine the circumstances of each case to determine if the individual was aware of their rights.
2. If the person indicates that they would like to consult with an attorney or anyone else before deciding whether to consent, they should be given an opportunity to do so.
3. Consent to enter is not consent to search. After a legal entry, whatever evidence is in plain view may be seized. A statement that an officer is welcome to search may not imply that he is welcome to search without a warrant.
4. Written consent should be obtained where practical.
5. A valid consent to a search may be given only by the person with the right to grant the consent. Examples include:
  - a. A landlord cannot consent to a search of a tenant’s premises, unless the tenant has abandoned the premises or has been evicted.
  - b. A host can give consent to a search of premises occupied by a guest. But if a particular area of the premises to be searched has been set aside for a long-term guest’s exclusive use, or if the search is of an object which is exclusively the guest’s, the consent of the host may not authorize a search.
  - c. A parent can give consent to a search of premises occupied by a dependent child.
  - d. An employee cannot consent to the search of an employer’s premises, unless he has been delegated general authority to act as the agent of the employer. An employer may generally consent to a search of premises used by an employee in his work, unless it is a particular area set aside for the employee’s exclusive use.

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### **SEARCH AND SEIZURE**

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- e. A person with custody of personal property belonging to another may consent to its search only if he has been given full control over the property, or if the property has been left on his premises without his authorization. Consent by a person having only conditional custody, such as that given for storage or shipment is not valid.
6. If two or more persons have equal rights to the occupation of the premises, consent to search may be given by any one of them, but only for the areas of use common to all. It must be understood that refusal to grant consent by one occupant may over-ride the consent given by the other. A legal consent search shall be valid against all occupants. Examples include:
- a. Generally, one spouse can consent to a search of a residence shared with the other spouse.
  - b. One joint tenant can consent to a search of jointly held premises.
  - c. A partner can consent to a search of partnership premises.
7. Valid consent to search may be presumed to continue until all areas specified in the consent have been searched. Consent may be revoked, however, at any time before the search is completed. If consent is revoked prior to completion of the search, all evidence found prior to the revocation may be retained. This evidence may be used as probable cause to obtain a search and seizure warrant.

# CHAPTER 7 SECTION III

## EYEWITNESS IDENTIFICATION

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### A. Purpose

The purpose of this policy is to establish guidelines for all DNR law enforcement officers in obtaining accurate eyewitness identification, consistent with the Annotated Code of Maryland, Public Safety Article, §3-506 and §3-506.1, and the Maryland Police Training Commission's Eyewitness Identification Model Policy. This section of the Code requires that all law enforcement agencies within the State comply with the U.S. Department of Justice standards on obtaining accurate eyewitness identification.

### B. Introduction

Eyewitness identification is one of many tools used by law enforcement in the investigation of crime. This investigative tool is vigorously challenged by defense attorneys. Indeed, recent studies have shown that if certain minimum standards are not followed in the eyewitness identification process, the eyewitness identification can lead to innocent persons being wrongly accused and/or convicted. Therefore, it is critical that eyewitness identification be conducted in a professional, structured manner, and supported by written documentation and physical evidence. It is also important to point out that the responding officer may not be the first person to interview a witness. A witness's initial contact with law enforcement may be with a dispatcher or call-taker. Therefore, not only shall all DNR sworn law enforcement officers, but also all DNR police communications operators will be familiar with these policies and procedures to ensure that as much accurate information as possible is gathered during the initial report.

### C. Definitions

In this section the following words have the meanings indicated.

1. "Administrator" - means the person conducting an identification procedure.
2. "Blind" - means the administrator does not know the identity of the suspect.
3. "Blinded" - means the administrator may know who the suspect is but does not know which lineup member is being viewed by the eyewitness.
4. "Composite" - Renderings or recollections of a witness describing a suspect's appearance. Composites may be completed by an artist, computer program, or Identi-Kit which features a variety of different facial features.
5. "Eyewitness" - means a person who observes another person at or near the scene of an offense.
6. "Field View" - The exposure of an eyewitness to a group of people in a public place on the theory that the subject may be among the group. A field view differs from a show-up in that it may be conducted well after the commission of the crime, and may be conducted with or without a suspect in the group.
7. "Filler" - means a person or a photograph of a person who is not suspected of an offense and is included in an identification procedure.
8. "Folder Shuffle Method" - means a system for conducting a photo lineup that:
  - a. Complies with the requirements of this section; and

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- b. Is conducted by placing photographs in folders, randomly numbering the folders, shuffling the folders, and then presenting the folders sequentially so that the administrator cannot see or track which photograph is being presented to the eyewitness until after the procedure is completed.
  9. “Identification Procedure” - means a procedure in which a live lineup is conducted or an array of photographs, including a photograph of a suspect and additional photographs of other persons not suspected of the offense, is displayed to an eyewitness in hard copy form or by computer for the purpose of determining whether the eyewitness identifies the suspect as the perpetrator.
  10. “Identification Statement” - means a documented statement that is sought by the administrator when an identification is made:
    - a. From the eyewitness;
    - b. In the own words of the eyewitness, describing the eyewitness's confidence level that the person identified is the perpetrator of the crime;
    - c. Given at the time of the viewing by the eyewitness during the identification procedure; and
    - d. Given before the eyewitness is given feedback.
  11. “Live Line-Up” - The live presentation of a number of people to an eyewitness for the purpose of obtaining identification. The procedure is to place the perpetrator among a group of other persons whose general appearance resembles the perpetrator.
- A line-up differs from a field view in that it is conducted in a controlled setting, such as a police station, a known suspect is in the mix, and the participants are aware that an identification procedure is being conducted.
12. “Mug Book” - A collection of photographs of previously arrested individuals known or suspected to be involved in certain types of crimes. Mug Books are frequently used when there is no clear suspect and other reliable sources have been exhausted.
  13. “Perpetrator” - means a person who committed an offense.
  14. “Photo Line-Up” / “Photo Array” - A display of a photograph of the suspect, along with filler photos of other individuals whose physical characteristics resemble the suspect’s description or appearance at the time of the incident.
  15. “Show-Up” – The live presentation of one suspect to an eyewitness shortly after the commission of a crime in an effort to obtain identification.
  16. “Suspect” - means a person who is suspected of committing an offense.
  17. “Voice Line-Up” - A procedure whereby a witness is permitted to hear the voices of several people for the purpose of obtaining an identification of a suspect’s voice.

#### **D. Policy**

It shall be the policy of the Maryland Natural Resources Police and the Maryland Park Service:

1. Eyewitnesses will be given specific instructions prior to being shown a suspect;
2. Photo arrays and line-ups will be conducted using sequential rather than simultaneous presentation.

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### **EYEWITNESS IDENTIFICATION**

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3. Photos arrays, line-ups, and voice identifications, and other identification procedures will be conducted using a blind or blinded administrator.
4. To avoid any action that would be unduly suggestive during any eyewitness identification process.
5. That all eyewitness identification be conducted in a structured, professional manner designed to clear the innocent as well as identify suspects in criminal offenses.
6. That a criminal investigation will not be concluded or otherwise cease based solely on eyewitness identification. Investigations will continue until all physical evidence has been collected and examined, all witnesses identified, and all reasonable leads explored.
7. That except in unusual circumstances, a witness will participate in one and only one type of eyewitness identification procedure. This will help insure that an eyewitness's memory is not tainted by viewing a suspect more than once. The types of eyewitness identification are:
  - a. Viewing a Mug Book
  - b. Participating in the preparation of Composite
  - c. Participating in a Show-Up
  - d. Participating in a Live Line-Up
  - e. Viewing a Photo Line-Up
8. That any identification or non-identification of a suspect be documented in writing, along with any comments by the eyewitness concerning the identification or non-identification.
9. That any photograph of an individual identified by an eyewitness be retained as evidence and handled as such.
10. Whenever feasible, lineups should be a double-blind lineup. A "double-blind" lineup is one in which neither the administrator nor the eyewitness knows who the suspect is. This prevents the administrator of the lineup from providing inadvertent or intentional verbal or nonverbal cues to influence the eyewitness to pick the suspect.
11. When combined with a "blind" administrator, presenting lineup members one-by-one (sequentially), rather than all at once (simultaneously) has been proven to significantly increase the overall accuracy of eyewitness identifications. This would include photo arrays in which the photos are presented sequentially in a random order. Therefore, for the NRP, the preferred lineup method shall be sequential.

#### **E. General Considerations**

1. Due process requires that identifications be conducted in a fair, objective, and non-suggestive manner. Due process is violated when identification procedures conducted by the police are unnecessarily suggestive and conducive to irreparable mistaken identification.
2. Upon response to the scene of a crime, an officer should make an effort to prevent eyewitnesses from comparing their recollections of the offender or the incident. Officers may accomplish this by promptly separating the witnesses and interviewing each out of the earshot of the others. Witnesses should not participate in identification procedures together. For example, witnesses should not be transported together to view a suspect during a show-up.
3. Officers should use caution when interviewing eyewitnesses. Specifically, they should avoid

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### **EYEWITNESS IDENTIFICATION**

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whenever possible the use of leading questions.

4. Prior to asking an eyewitness to identify a suspect, police officers should obtain a detailed description of the offender.
5. If practicable, the officer should record the procedure and the witness' statement of certainty. If not, the officer should write down the witness' exact words and incorporate them into their report. The witness should be asked to initial and date the front of the photograph selected.
6. A report of every show-up, photo array, line-up or voice identification procedure, whether an identification is made or not, shall be submitted. The report shall include a summary of the procedure, the persons who were present for it, instructions given to the witness by the officer (this should be accomplished by submitting the appropriate witness instruction form), any statement or reaction by the witness, and any comments made by the witness regarding the identification procedure.
7. An identification procedure shall be conducted by a blind or blinded administrator.
  - a. An administrator may be blinded through the use of:
    - (1) An automated computer program that prevents the administrator from seeing which photos the eyewitness is viewing until after the identification procedure is completed; or
    - (2) The folder shuffle method.
8. Before an identification procedure is conducted, an eyewitness shall be instructed, without other eyewitnesses present, that the perpetrator may or may not be among the persons in the identification procedure.
9. When identification is made in a live lineup or photo array, the administrator shall document in writing all identification statements made by the eyewitness.
10. Use of fillers in an identification procedure:
  - a. Each filler shall resemble the description of the perpetrator given by the eyewitness in significant physical features, including any unique or unusual features;
  - b. At least five fillers, in addition to the suspect, shall be included when an array of photographs is displayed to an eyewitness; and
  - c. At least four fillers, in addition to the suspect, shall be included in a live lineup
11. Fillers -- When eyewitness has previously participated in related identification procedure.

If an eyewitness has previously participated in an identification procedure in connection with the identification of another person suspected of involvement in the offense, the fillers in the identification procedure shall be different from the fillers used in any prior identification procedure.
12. Multiple Eyewitnesses:
  - a. If there are multiple eyewitnesses:
    - (1) The identification procedure shall be conducted separately for each eyewitness;
    - (2) The suspect shall be placed in a different position for each identification procedure conducted for each eyewitness; and
    - (3) The eyewitnesses may not be allowed to communicate with each other until all identification procedures have been completed.
13. Written Record & Contents.:
  - a. Except as provided in paragraph (2) of this subsection, the administrator shall make a written

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### EYEWITNESS IDENTIFICATION

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record of the identification procedure that includes the following information:

- (1) All identification and nonidentification results obtained during the identification procedures;
  - (2) The signed identification statement of the eyewitness;
  - (3) The names of all persons present at the identification procedure;
  - (4) The date and time of the identification procedure;
  - (5) Any eyewitness identification of a filler; and
  - (6) All photographs used in the identification procedure.
- b. If a video or audio record of the identification procedure captures all of the information in paragraph (1) of this subsection, a written record is not required.

#### F. Procedures & Guidelines

The following Department of Justice (DOJ) procedures on eyewitness identification procedures are intended as a guide to the best practices in eyewitness identification. As stated in the DOJ's "[Eyewitness Evidence – A Guide for Law Enforcement](#)" the procedures are meant as a guide and are "...not meant to inhibit the development and field testing of new technologies and procedures. On the contrary, it anticipates those developments and can provide a framework for innovation."

All DNR law enforcement personnel and police communications operators shall abide these eyewitness identification procedures and guidelines.

#### G. Initial Report of the Crime: Answering the Call for Service (Police Communications Operators)

The information obtained from a witness is critical to the safety of those involved in an incident and may be important to the investigation. The manner in which facts are elicited from a caller can influence the accuracy of the information obtained.

As the initial point of contact for the witness, the Police Communications Operator (PCO) must obtain and disseminate, in a non-suggestive manner, complete and accurate information from the caller. This information can include the description/identity of the perpetrator of a crime. The actions of the PCO can affect the safety of those involved as well as the entire investigation.

1. During a 9-1-1 / emergency call and after obtaining preliminary information and dispatching police-the PCO should:
  - a. Assure the caller the police are on the way.
  - b. Ask open-ended questions (e.g., "What can you tell me about the car?"); augment with closed-ended questions (e.g., "What color was the car?").
  - c. Avoid asking suggestive or leading questions (e.g., "Was the car red?").
  - d. Ask if anything else should be known about the incident.
  - e. Transmit information to responding officer(s).
  - f. Update officer(s) as more information comes in.

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### **H. Investigating the Scene (Preliminary Investigating Officer)**

The preliminary investigation at the scene forms a sound basis for the accurate collection of information and evidence during the follow-up investigation.

Preservation and documentation of the scene, including information from witnesses and physical evidence, are necessary for a thorough preliminary investigation. The methods used by the preliminary investigating officer have a direct impact on the amount and accuracy of the information obtained throughout the investigation.

1. After securing the scene and attending to any victims and injured persons, the preliminary investigating officer should:
  - a. Identify the perpetrator(s).
    - (1) Determine the location of the perpetrator(s).
    - (2) Detain or arrest the perpetrator(s) if still present at the scene.
  - b. Determine/classify what crime or incident has occurred.
  - c. Broadcast an updated description of the incident, perpetrator(s), and/or vehicle(s).
  - d. Verify the identity of the witness(es).
  - e. Separate witnesses and instruct them to avoid discussing details of the incident with other witnesses.
  - f. Canvass the area for other witnesses.

### **I. Obtaining Information From the Witness(es)**

Information obtained from the witness(es) can corroborate other evidence (e.g., physical evidence, accounts provided by other witnesses) in the investigation. Therefore, it is important that this information be accurately documented in writing.

The manner in which the preliminary investigating officer obtains information from a witness has a direct impact on the amount and accuracy of that information.

1. When interviewing a witness, the preliminary investigating officer should:
  - a. Establish rapport with the witness.
  - b. Inquire about the witness's condition.
  - c. Use open-ended questions (e.g., "What can you tell me about the car?"); augment with closed-ended questions (e.g., "What color was the car?"). Avoid leading questions (e.g., "Was the car red?").
  - d. Clarify the information received with the witness.
  - e. Document information obtained from the witness, including the witness' identity, in a written

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report.

- f. Encourage the witness to contact investigators with any further information.
- g. Encourage the witness to avoid contact with the media or exposure to media accounts concerning the incident.
- h. Instruct the witness to avoid discussing details of the incident with other potential witnesses.

#### J. “Mug” Books

“Mug books” (i.e., collections of photos of previously arrested persons) may be used in cases in which a suspect has not yet been determined and other reliable sources have been exhausted. This technique may provide investigative leads, but results should be evaluated with caution.

Non-suggestive composition of a mug book may enable the witness to provide a lead in a case in which no suspect has been determined and other reliable sources have been exhausted.

“Mug” books must be objectively compiled to yield investigative leads that will be admissible in court.

##### 1. Preparing “Mug” Books:

In selecting photos to be preserved in a mug book, the preparer should:

- a. Group photos by format (e.g., color or black and white; Polaroid, 35mm, or digital; video) to ensure that no photo unduly stands out.
- b. Select photos of individuals that are uniform with regard to general physical characteristics (e.g., race, age, sex).
- c. Consider grouping photos by specific crime (e.g., sexual assault, gang activity).
- d. Ensure that positive identifying information exists for all individuals portrayed.
- e. Ensure that photos are reasonably contemporary.
- f. Ensure that only one photo of each individual is in the mug book.

##### 2. Instructing the Witness – Mug Books:

Instructions to the witness prior to conducting the procedure can facilitate the witness’s recollection of the perpetrator.

The investigator / person conducting the procedure shall provide instructions to the witness prior to conducting the procedure.

The investigator / person conducting the procedure should:

- a. Instruct each witness without other persons present.

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### EYEWITNESS IDENTIFICATION

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- b. Describe the mug book to the witness only as a “collection of photographs.”
- c. Instruct the witness that the person who committed the crime may or may not be present in the mug book.
- d. Consider suggesting to the witness to think back to the event and his/her frame of mind at the time.
- e. Instruct the witness to select a photograph if they can and to state how they know the person if they can.
- f. Assure the witness that regardless of whether they make an identification, the police will continue to investigate the case.
- g. Instruct the witness that the procedure requires the investigator to ask the witness to state, in their own words, how certain they are of any identification.
- h. To document that the witness has been advised of the instructions and understands the instructions, the investigator / person conducting the procedure shall have the witness read and complete NRP Form, NRP-560 (Witness Advisory - Mug Books).

#### **K. Composites**

The use of composite images can yield investigative leads in cases in which no suspect has been determined. Use of these procedures can facilitate obtaining a description from the witness that will enable the development of a reasonable likeness of the suspect.

Composite images can be beneficial investigative tools; however, they should not be used as stand-alone evidence and may not rise to the level of probable cause.

Composites provide a depiction that may be used to develop investigative leads.

#### 1. Developing and Using Composite Images:

The person preparing the composite should:

- a. Assess the ability of the witness to provide a description of the perpetrator.
- b. Select the procedure to be used from those available (e.g., identikit-type, artist, or computer-generated images).
- c. Unless part of the procedure, avoid showing the witness any photos immediately prior to development of the composite.
- d. Select an environment for conducting the procedure that minimizes distractions.
- e. Conduct the procedure with each witness separately.
- f. Determine with the witness whether the composite is a reasonable representation of the perpetrator.

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### **2. Instructing the Witness – Composites:**

Instructions to the witness prior to conducting the procedure can facilitate the witness's recollection of the perpetrator.

The investigator / person conducting the procedure shall provide instructions to the witness prior to conducting the procedure.

The investigator / person conducting the procedure should:

- a. Instruct each witness without other persons present.
- b. Explain the type of composite technique to be used.
- c. Explain to the witness how the composite will be used in the investigation.
- d. Instruct the witness to think back to the event and his/her frame of mind at the time.

### **L. Documenting the Procedures Utilized for “Mug Book” / Composite Identifications**

Documentation of the procedure and its outcome improves the strength and credibility of the results obtained from the witness and can be an important factor in the investigation and any subsequent court proceedings.

The investigator / person conducting the procedure should:

- a. Document the procedure employed (e.g., identikit-type, mug book, artist, or computer-generated image) in writing.
- b. Document the results of the procedure in writing, including the witness's own words regarding how certain they are of any identification.
- c. Document items used and preserve composites generated.

### **M. Interviewing the Witness by the Follow-up Investigator**

#### **1. Pre-Interview Preparation:**

Pre-interview preparation will enable the investigator to elicit a greater amount of accurate information during the interview, which may be crucial to the investigation.

Preparing for an interview maximizes the effectiveness of witness participation and interviewer efficiency.

Prior to conducting the interview, the investigator should:

- a. Review available information.
- b. Plan to conduct the interview as soon as the witness is physically and emotionally capable.
- c. Select an environment that minimizes distractions while maintaining the comfort level of the

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### EYEWITNESS IDENTIFICATION

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witness.

- d. Ensure resources are available (e.g., notepad, tape recorder, camcorder, interview room).
- e. Separate the witnesses.
- f. Determine the nature of the witness' prior law enforcement contact.

#### 2. Pre-Interview Contact with the Witness:

Establishing a cooperative relationship with the witness likely will result in an interview that yields a greater amount of accurate information.

Investigators shall conduct themselves in a manner conducive to eliciting the most information from the witness.

On meeting with the witness but prior to beginning the interview, the investigator should:

- a. Develop rapport with the witness.
- b. Inquire about the nature of the witness' prior law enforcement contact related to the incident.
- c. Volunteer no specific information about the suspect or case.

#### 3. Conducting the Interview:

Information elicited from the witness during the interview may provide investigative leads and other essential facts. Proper interview procedures will enable the witness to provide the most accurate, complete description of the event and encourage the witness to report later recollections. Witnesses commonly recall additional information after the interview that may be critical to the investigation.

During the interview, the investigator should:

- a. Encourage the witness to volunteer information without prompting.
- b. Encourage the witness to report all details, even if they seem trivial.
- c. Ask open-ended questions (e.g., “What can you tell me about the car?”); augment with closed-ended, specific questions (e.g., “What color was the car?”).
- d. Avoid leading questions (e.g., “Was the car red?”).
- e. Caution the witness not to guess.
- f. Ask the witness to mentally recreate the circumstances of the event (e.g., “Think about your feelings at the time”).
- g. Encourage nonverbal communication (e.g., drawings, gestures, objects).
- h. Avoid interrupting the witness.

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- i. Encourage the witness to contact investigators when additional information is recalled.
- j. Instruct the witness to avoid discussing details of the incident with other potential witnesses.
- k. Encourage the witness to avoid contact with the media or exposure to media accounts concerning the incident.
- l. Thank the witness for his/her cooperation.

#### 4. Recording Witness Recollections:

Complete and accurate documentation of the witness's statement is essential to the integrity and success of the investigation and any subsequent court proceedings.

The investigator must ensure that there is a record of the witness's statements which accurately and completely reflects all information obtained and preserves the integrity of this evidence.

During or as soon as reasonably possible after the interview, the investigator should:

- a. Document the witness's statements (e.g., audio or video recording, stenographer's documentation, witness's written statement, or written summary using witness's own words).
- b. Review written documentation; ask the witness if there is anything they wish to change, add, or emphasize.

#### 5. Assessing the Accuracy of Individual Elements of a Witness's Statement:

Point-by-point consideration of a statement may enable judgment on which components of the statement are most accurate. This is necessary because each piece of information recalled by the witness may be remembered independently of other elements.

After conducting the interview, the investigator should:

- a. Consider each individual component of the witness's statement separately.
- b. Review each element of the witness's statement in the context of the entire statement. Look for inconsistencies within the statement.
- c. Review each element of the statement in the context of evidence known to the investigator from other sources (e.g., other witnesses' statements, physical evidence).

#### 6. Maintaining Contact With the Witness:

Re-establishing contact and rapport with the witness often leads to recovery of additional information. Maintaining an open communication channel with the witness throughout the investigation is critical, for the witness may remember and provide additional information after the initial interview has concluded.

During post-interview, follow-up contact with the witness, the investigator should:

- a. Reestablish rapport with the witness.

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- b. Ask the witness if they have recalled any additional information.
- c. Follow interviewing and documentation procedures as set forth in previous subsections.
- d. Provide no information from other sources.

#### **N. Field Identification Procedure: Show-Ups**

##### **1. Conducting Show-Ups:**

When circumstances require the prompt display of a single suspect to a witness, the inherent suggestiveness of the encounter can be minimized through the use of procedural safeguards.

When conducting a show-up, the investigator should:

- a. Determine and document, prior to the show-up, a description of the perpetrator.
- b. Consider transporting the witness to the location of the detained suspect to limit the legal impact of the suspect's detention.
- c. When multiple witnesses are involved:
  - (1) Separate witnesses and instruct them to avoid discussing details of the incident with other witnesses.
  - (2) If a positive identification is obtained from one witness, consider using other identification procedures (e.g., lineup, photo array) for remaining witnesses.
- d. Caution the witness that the person they are looking at may or may not be the perpetrator.
- e. Obtain and document a statement of certainty for both identifications and non-identifications.
- f. To document that the witness has been advised of the instructions and understands the instructions, the investigator / person conducting the procedure shall have the witness read and complete NRP Form, NRP-561 (Witness Advisory – Show-Ups).

##### **2. Recording Show-Up Results:**

The record of the outcome of the field identification procedure accurately and completely reflects the identification results obtained from the witness.

When conducting a show-up, the investigator should:

- a. Document the time and location of the procedure.
- b. Record both identification and non-identification results in writing, including the witness's own words regarding how certain they are.

#### **O. Eyewitness Identification of Suspects: Photo Line-Ups**

##### **1. Composing Photo Line-Ups:**

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In a photo line-up the suspect should not unduly stand out. Fair composition of a lineup enables the witness to provide a more accurate identification or non-identification. An identification obtained through a photo lineup using the following procedures should result in a strong evidentiary value.

In composing a photo lineup, the investigator should:

- a. Include only one suspect in each identification procedure.
  - b. Select fillers who generally fit the witness's description of the perpetrator. When there is a limited/inadequate description of the perpetrator provided by the witness, or when the description of the perpetrator differs significantly from the appearance of the suspect, fillers should resemble the suspect in significant features.
  - c. If multiple photos of the suspect are reasonably available to the investigator, select a photo that resembles the suspect description or appearance at the time of the incident.
  - d. Include a minimum of five fillers (non-suspects) per identification procedure.
  - e. Consider that complete uniformity of features is not required. Avoid using fillers who so closely resemble the suspect that a person familiar with the suspect might find it difficult to distinguish the suspect from the fillers.
  - f. Create a consistent appearance between the suspect and fillers with respect to any unique or unusual feature (e.g., scars, tattoos) used to describe the perpetrator by artificially adding or concealing that feature.
  - g. Consider placing suspects in different positions in each lineup, both across cases and with multiple witnesses in the same case. Position the suspect randomly in the lineup.
  - h. When showing a new suspect, avoid reusing fillers in lineups shown to the same witness.
  - i. Ensure that no writings or information concerning previous arrest(s) will be visible to the witness.
  - j. View the spread, once completed, to ensure that the suspect does not unduly stand out.
  - k. Preserve the presentation order of the photo lineup. In addition, the photos themselves should be preserved in their original condition.
  - l. Ideally, the lineup procedure should be electronically recorded. If this is impracticable, an audio or written record shall be made.
2. Instructing the Witness Prior to Viewing a Photo Line-Up:

Instructions given to the witness prior to viewing a lineup can facilitate an identification or non-identification based on his/her own memory.

Prior to presenting a photo line-up, the investigator should:

- a. Instruct the witness that they will be asked to view a set of photographs.

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- b. Instruct the witness that it is just as important to clear innocent persons from suspicion as to identify guilty parties.
- c. Instruct the witness that individuals depicted in lineup photos may not appear exactly as they did on the date of the incident because features such as head and facial hair are subject to change.
- d. Instruct the witness that the person who committed the crime may or may not be in the set of photographs being presented.
- e. Assure the witness that regardless of whether an identification is made, the police will continue to investigate the incident.
- f. Instruct the witness that the procedure requires the investigator to ask the witness to state, in their own words, how certain they are of any identification.
- g. To document that the witness has been advised of the instructions and understands the instructions, the investigator / person conducting the procedure shall have the witness read and complete NRP Form, NRP-562 (Witness Advisory – Line-Ups).

#### 3. Conducting the Identification for *Simultaneous* Photo Line-Ups:

The identification procedure should be conducted in a manner that promotes the reliability, fairness, and objectivity of the witness's identification.

The simultaneous method means showing the photos to the witness all at same time.

When presenting a simultaneous photo lineup, the investigator should:

- a. Provide viewing instructions to the witness as outlined in the previous subsection regarding "Instructing the Witness Prior to Viewing a Photo Line-Up."
- b. Confirm that the witness understands the nature of the lineup procedure.
- c. Avoid saying anything to the witness that may influence the witness's selection.
- d. If an identification is made, avoid reporting to the witness any information regarding the individual they have selected prior to obtaining the witness' statement of certainty.
- e. Record any identification results and witness' statement of certainty as outlined in the succeeding subsection "Recording Identification Results."
- f. Document in writing the photo lineup procedures, including:
  - (1) Identification information and sources of all photos used.
  - (2) Names of all persons present at the photo lineup.
  - (3) Date and time of the identification procedure.
- g. Instruct the witness not to discuss the identification procedure or its results with other witnesses involved in the case and discourage contact with the media.

#### 4. Conducting the Identification for *Sequential* Photo Line-Ups:

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The identification procedure should be conducted in a manner that promotes the reliability, fairness, and objectivity of the witness's identification.

The sequential method means showing the photos to the witness one at a time. This method shall be the Maryland Natural Resources Police's preferred method over the simultaneous method.

When presenting a sequential photo lineup, the investigator should:

- a. Provide viewing instructions to the witness as outlined in the previous subsection "Instructing the Witness Prior to Viewing a Photo Line-Up."
- b. Provide the following additional viewing instructions to the witness:
  - (1) Individual photographs will be viewed one at a time.
  - (2) The photos are in random order.
  - (3) Take as much time as needed in making a decision about each photo before moving to the next one.
  - (4) All photos will be shown, even if an identification is made.
- c. Confirm that the witness understands the nature of the sequential procedure.
- d. Present each photo to the witness separately, in a previously determined order, removing those previously shown.
- e. Avoid saying anything to the witness that may influence the witness's selection.
- f. If an identification is made, avoid reporting to the witness any information regarding the individual they have selected prior to obtaining the witness' statement of certainty.
- g. Record any identification results and witness' statement of certainty as outlined in the succeeding subsection "Recording Identification Results."
- h. Document in writing the photo lineup procedures, including:
  - (1) Identification information and sources of all photos used.
  - (2) Names of all persons present at the photo lineup.
  - (3) Date and time of the identification procedure.
- i. Instruct the witness not to discuss the identification procedure or its results with other witnesses involved in the case and discourage contact with the media.

#### **P. Eyewitness Identification of Suspects - Live Line-Ups**

##### **1. Composing Live Line-Ups:**

In composing a live line-up, the investigator should:

- a. Include only one suspect in each identification procedure.
- b. Select fillers who generally fit the witness' description of the perpetrator. When there is a limited/inadequate description of the perpetrator provided by the witness, or when the description of the perpetrator differs significantly from the appearance of the suspect, fillers

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should resemble the suspect in significant features.

- c. Consider placing suspects in different positions in each lineup, both across cases and with multiple witnesses in the same case. Position the suspect randomly unless, where local practice allows, the suspect or the suspect's attorney requests a particular position.
- d. Include a minimum of four fillers (non-suspects) per identification procedure.
- e. When showing a new suspect, avoid reusing fillers in lineups shown to the same witness.
- f. Consider that complete uniformity of features is not required. Avoid using fillers who so closely resemble the suspect that a person familiar with the suspect might find it difficult to distinguish the suspect from the fillers.
- g. Create a consistent appearance between the suspect and fillers with respect to any unique or unusual feature (e.g., scars, tattoos) used to describe the perpetrator by artificially adding or concealing that feature.

#### 2. Instructing the Witness Prior to Viewing a Live Line-Up:

Prior to presenting a live lineup, the investigator should:

- a. Instruct the witness that they will be asked to view a group of individuals.
- b. Instruct the witness that it is just as important to clear innocent persons from suspicion as to identify guilty parties.
- c. Instruct the witness that individuals present in the lineup may not appear exactly as they did on the date of the incident because features such as head and facial hair are subject to change.
- d. Instruct the witness that the person who committed the crime may or may not be present in the group of individuals.
- e. Assure the witness that regardless of whether an identification is made, the police will continue to investigate the incident.
- f. Instruct the witness that the procedure requires the investigator to ask the witness to state, in their own words, how certain they are of any identification.

#### 3. Conducting the Identification for *Simultaneous* Live Line-Ups:

When presenting a simultaneous live lineup, the investigator / lineup administrator should:

- a. Provide viewing instructions to the witness as outlined in previous subsection "Instructing the Witness Prior to Viewing a Live Line-Up."
- b. Instruct all those present at the lineup not to suggest in any way the position or identity of the suspect in the lineup.
- c. Ensure that any identification actions (e.g., speaking, moving) are performed by all members of

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the lineup.

- d. Avoid saying anything to the witness that may influence the witness' selection.
- e. If an identification is made, avoid reporting to the witness any information regarding the individual they have selected prior to obtaining the witness' statement of certainty.
- f. Record any identification results and witness' statement of certainty as outlined in the succeeding subsection "Recording Identification Results."
- g. Document the lineup in writing, including:
  - (1) Identification information of lineup participants.
  - (2) Names of all persons present at the lineup.
  - (3) Date and time the identification procedure was conducted.
- h. Document the lineup by photo or video. This documentation should be of a quality that represents the lineup clearly and fairly.
- i. Instruct the witness not to discuss the identification procedure or its results with other witnesses involved in the case and discourage contact with the media.

#### 4. Conducting the Identification for *Sequential* Live Line-Ups:

When presenting a sequential live lineup, the lineup administrator / investigator should:

- a. Provide viewing instructions to the witness as outlined in the previous subsection "Instructing the Witness Prior to Viewing a Live Line-Up."
- b. Provide the following additional viewing instructions to the witness:
  - (1) Individuals will be viewed one at a time.
  - (2) The individuals will be presented in random order.
  - (3) Take as much time as needed in making a decision about each individual before moving to the next one.
  - (4) If the person who committed the crime is present, identify him/her.
  - (5) All individuals will be presented, even if an identification is made.
- c. Begin with all lineup participants out of the view of the witness.
- d. Instruct all those present at the lineup not to suggest in any way the position or identity of the suspect in the lineup.
- e. Present each individual to the witness separately, in a previously determined order, removing those previously shown.
- f. Ensure that any identification actions (e.g., speaking, moving) are performed by all members of the lineup.
- g. Avoid saying anything to the witness that may influence the witness' selection.
- h. If an identification is made, avoid reporting to the witness any information regarding the individual they have selected prior to obtaining the witness' statement of certainty.

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- i. Record any identification results and witness' statement of certainty as outlined in the succeeding subsection "Recording Identification Results."
- j. Document the lineup procedures and content in writing, including:
  - (1) Identification information of lineup participants.
  - (2) Names of all persons present at the lineup.
  - (3) Date and time the identification procedure was conducted.
- k. Document the lineup by photo or video. This documentation should be of a quality that represents the lineup clearly and fairly. Photo documentation can be of either the group or each individual.
- l. Instruct the witness not to discuss the identification procedure or its results with other witnesses involved in the case and discourage contact with the media.

#### **Q. Voice Identification**

1. Although considerably less common than visual identifications, voice identifications may be helpful to criminal investigations where the victim or other witness was blind, the crime took place in the dark, the subject was masked, the witness' eyes were covered by the perpetrator, or they were never in the same room with the perpetrator but heard their voice. If officers wish to conduct a voice identification procedure with a witness who also saw the subject, they must first consult with the Criminal Investigation Section's supervisor and, when feasible, the State's Attorney's Office.
2. As with any in-person identification or confrontation, if the suspect has been arraigned or indicted, they have a right to the presence of counsel at the voice identification procedure.
3. Where a voice identification is attempted, the following procedures should be employed to the extent possible:
  - a. As in a line-up, there should be at least six persons whose voices will be listened to by the witness; one-on-one confrontations should be avoided. Because line-ups will be administered by an officer who does not know the identity of the suspect, the fillers should not be known to the officer administering the procedure, and officers should abide by the guidelines for photo array and line-up fillers as described above;
  - b. The suspect and other participants shall not be visible to the witness; this can be done by using a partition, or by similar means;
  - c. All participants, including the suspect, shall be instructed to speak the same words in the same order;
  - d. The words recited by the participants shall not be the ones spoken by the offender during the crime; the line-up participants should speak neutral words in a normal tone of voice;
  - e. When both a visual and voice line-up are conducted, the witness should be informed that the line-up participants will be called in a different order and by different numbers;
  - f. If there are two or more suspects of a particular crime, present each suspect to witnesses in separate line-ups. Different fillers should be used to compose each line-up.

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### **EYEWITNESS IDENTIFICATION**

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4. As with any identification procedure, police officers should avoid any words or actions that suggest to the voice witness that a positive identification is expected or who they expect the witness to identify.
5. The investigating officer should carefully instruct the witness by reading from a departmental Voice Identification Line-up Instruction Form, and the witness should be asked to sign the form indicating that they understand the instructions. The officer should also sign and date the form. If practicable, the officer should record the procedure.
6. Adhere to the principles of blind administration as described above. As is the case with photo arrays and line-ups, the investigating officer should leave the room while the administrator conducts the procedure.

#### **R. Courtroom Identification**

1. Prior to conducting any courtroom identification procedure, officers should consult the State's Attorney's Office. The same right to an attorney and the same due process considerations that apply to all other identification procedures also apply to station house and courtroom identifications.
  - a. If the suspect has been arraigned or indicted, they have a right to have counsel present at any in-person identification/confrontation.
  - b. Live confrontations and informal viewings of the suspect by witnesses must be conducted in such a manner as to minimize any undue suggestiveness.
  - c. Officers shall not state or suggest that the suspect has been arrested or booked or that they have made any confession or incriminating statement or that any incriminating evidence has been uncovered. The witness' identification, particularly if it takes place in a police station or courtroom, must be a result of their recollection of the appearance of the perpetrator and must not be unduly influenced by information or suggestions originating from the police.

#### **S. Eyewitness Identification of Suspects - Recording Identification Results**

The record of the outcome of the identification procedure accurately and completely reflects the identification results obtained from the witness.

When conducting an identification procedure, the investigator should:

- a. Record both identification and non-identification results in writing, including the witness's own words regarding how sure they are.
- b. Ensure results are signed and dated by the witness.
- c. Ensure that no materials indicating previous identification results are visible to the witness.
- d. Ensure that the witness does not write on or mark any materials that will be used in other identification procedures.

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**EYEWITNESS IDENTIFICATION**

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# CHAPTER 7 SECTION IV

## SOCIAL MEDIA USE FOR INVESTIGATION

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### A. Purpose

The purpose of this policy is to guide the department's officers, access, use, and retention of information garnished from social media sites.

### B. Policy

Data contained within social networking sites may assist law enforcement in gathering timely information in the furtherance of crime prevention, preservation of public order, and the investigation of criminal activity. Use of social media resources shall be consistent with all applicable laws, State of Maryland and Departmental policies. Permission to deviate from Chapter 6, Section 4 may be granted in writing on a case by case basis by the officer's Bureau Chief through the chain of command.

### C. Definitions

1. Crime Analysis and Situational Assessment Reports - Analytic activities and documents that enable department personnel to identify and understand trends, causes, relationships, and potential indicia of criminal activity.
2. Criminal Intelligence Information - Data which has been evaluated and determined to be relevant to the identification of criminal activity engaged in by individuals, or organizations, which are reasonably suspected of involvement in criminal activity through the existence of supporting information provided by a concerned citizen, informant, or another law enforcement officer who has legally obtained this information.
3. Public Domain - Any internet resource that is open and available to anyone.
4. Online Alias - An online identity encompassing identifiers, such as name and date of birth, differing from the employee's actual identifiers.
5. Online Undercover Activity - The utilization of an online alias to engage in interactions with a person via social media sites that may or may not be in the public domain.
6. Social Media Websites - Sites which focus on building online communities of people who share interests and activities and/or exploring the interests and activities of others. Social media websites are further categorized by Internet-based resources that integrate user-generated content and user participation. This includes, but is not limited to, social networking sites (Facebook, Instagram, Snapchat), micro blogging sites (Twitter, Nixle), photo-and video-sharing sites (Flickr, YouTube), wikis (Wikipedia), blogs, and news sites (Digg, Reddit). The absence of an explicit reference to a specific social media website does not limit the application of this policy.
7. Social Media Monitoring Tool - A resource used to capture data and monitor social media sites by utilizing automated tools such as web crawlers and word search functions to analyze data, develop trends, or collect information.
8. Page - The specific portion of a social media website where content is displayed and managed by an individual or individuals.
9. Post - Content an individual shares on a social media site or the act of publishing content to a site.
10. Valid Law Enforcement Purpose—A purpose for information/intelligence gathering development, or collection, use, retention, or sharing that furthers the authorized functions and activities of a law

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### **SOCIAL MEDIA USE FOR INVESTIGATION**

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enforcement agency, which may include the prevention of crime, ensuring the safety of the public, and furthering officer safety, while adhering to law and agency policy designed to protect the privacy, civil rights, and civil liberties of Americans.

#### **D. Utilization of Social Media**

When a member of the department requires the use of social networking websites to conduct investigations or research, the following procedure will be used

1. Social media may be used by personnel for a valid law enforcement purpose. The following are valid law enforcement purposes:
  - a. Crime analysis and situational assessment reports;
  - b. Criminal intelligence development; and
  - c. Criminal investigations
  
2. While on duty, employees may only utilize social media, access social media websites, online aliases, and social media monitoring tools for a valid law enforcement purpose. The utilization of an online alias or social media monitoring tool for personal use is prohibited and is considered employee misconduct. Employees will only utilize social media to seek or retain information that:
  - a. Is based upon a criminal predicate or threat to public safety; or
  - b. Is based upon reasonable suspicion that an identifiable individual, regardless of citizenship or U.S. residency status, or organization has committed an identifiable criminal offense or is involved in or is planning criminal conduct or activity that presents a threat to any individual, the community, or the nation and the information is relevant to the criminal conduct or activity; or
  - c. Is relevant to the investigation and prosecution of suspected criminal incidents; the resulting justice system response; the enforcement of sanctions, orders, or sentences; or the prevention of crime; or
  - d. Is useful in crime analysis or situational assessment reports for the administration of criminal justice and public safety.
  
3. The department will not utilize social media to seek or retain information about:
  - a. Individuals or organizations solely on the basis of their religious, political, social views or activities; or
  - b. An individual's participation in a particular non-criminal organization or lawful event; or
  - c. An individual's race, ethnicity, citizenship, place of origin, disability, gender, or sexual orientation unless such information is relevant to the individual's criminal conduct or activity or if required to identify the individual; or
  - d. An individual's age other than to determine if someone is a minor unless such information is relevant to the individual's criminal conduct or activity or if required to identify the individual
  
4. The Natural Resources Police will not directly or indirectly receive, seek, accept, or retain information from:
  - a. An individual or nongovernmental information provider who may or may not receive a fee or benefit for providing the information if there is reason to believe that the information provider is legally prohibited from obtaining or disclosing the information; or
  - b. A source that used prohibited means to gather the information

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# SOCIAL MEDIA USE FOR INVESTIGATION

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### E. Authorization to Access Social Media Websites

This section addresses the authorization necessary to utilize social media and access social media websites for crime analysis and situational awareness/assessment reports; intelligence development; and criminal investigations.

1. Public Domain- No authorization is necessary for general research, topical information or other law enforcement uses that do not require the acquisition of an online alias.
2. Online Alias- An online alias may only be used to seek or retain information that:
  - a. Is based upon a criminal predicate or threat to public safety; or is based upon reasonable suspicion that an identifiable individual, regardless of citizenship or U.S. residency status, or organization has committed a criminal offense or is involved in or is planning criminal conduct or activity that presents a threat to any natural resource, individual, the community, or the nation and the information is relevant to the criminal conduct or activity; or
  - b. Is relevant to the investigation and prosecution of suspected criminal incidents; the resulting justice system response; the enforcement of sanctions, orders, or sentences; or the prevention of crime; or
  - c. Is useful in crime analysis or situational assessment reports for the administration of criminal justice and public safety.
3. Authorization for Online Aliases - Prior to generating an online alias, personnel shall submit a request for an online alias via chain of command to their Region/Division Commander. The request must contain the following information:
  - a. Purpose for the request (i.e. type of investigative activity);
  - b. Username
  - c. Copy of each URL (specific to every social media site utilizing the approval-pending alias)
  - d. Identifiers to be utilized for the online alias, such as email address, username and date of birth. Do not include password(s) for online aliases and ensure password(s) are secured at all times; and
  - e. Photograph(s) to be used with online alias to ensure anonymity
4. The Region/Division Commander must evaluate the request to determine whether an online alias would serve a valid law enforcement purpose. The Region/Division Commander shall either approve or deny the request for online alias.
5. If the request is approved, the Region/Division Commander shall forward the request to the Bureau Chief, who upon approval shall forward the request to the Intelligence and Special Investigations Bureau Chief for de-confliction with ongoing undercover investigations.
6. The use of an approved alias shall only be utilized for the purpose of viewing social media information. With the exception of sending and accepting a friend request, no other communication or contact is authorized. Specifically, officers may not communicate with a potential violator for the purpose of arranging transactions or eliciting incriminating information without the prior approval of, and de-confliction with, the Intelligence and Special Investigations Bureau.
7. For the purpose of ensuring compliance with this policy, passwords used for online aliases must be provided upon request of the Regional Commander, or in compliance with any administrative investigation.

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### **SOCIAL MEDIA USE FOR INVESTIGATION**

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#### **F. Authorization for Online Undercover Activity**

1. Only department personnel actively assigned to the Intelligence and Special Investigations Bureau are authorized to act in an online undercover capacity. Exceptions may be made on a case-by-case basis upon approval of the Intelligence and Special Investigations Bureau Chief.
2. This includes (but is not limited to) any form of electronic communication involving images, messages, emails, instant messages, videos, posts, or tweets.
3. Access and use of an online undercover account shall only be done utilizing an undercover IP address.

#### **G. Authorization to Utilize Social Media Monitoring Tools**

1. Department members actively assigned to the Special Services Bureau and the Intelligence and Special Investigations Bureau, are authorized to utilize social media monitoring tools purchased by the department. Access to and use of these accounts is strictly limited to the identification and investigation of criminal activity.
2. Use of department purchased social media monitoring tools by anyone outside of the assigned account is prohibited.
3. Account information will be maintained by the Intelligence and Special Investigations Bureau Chief.

#### **H. Network Consideration**

1. Officers utilizing a State of Maryland network computer to access social media shall consider the risk that the department can be linked to the user of the social media account. The State of Maryland networks are established to prevent intrusion but allow limited access to officers to maintain the integrity of the network. Officers shall take careful consideration when utilizing a network not associated with the Natural Resources Police or State of Maryland.
2. All officers are encouraged to take the following steps to avoid identification of the department or user which could potentially harm an ongoing investigation or officer.
  - a. When selecting a username or password ensure that it cannot be traced to the officer or department.
  - b. When conducting department business with a social media account it is incumbent upon the officer to take necessary precautions to avoid personal information being transmitted or disseminated on the internet.
  - c. Do not allow access or associate family, friends and coworkers to an alias account. Avoid using your alias account to access their pages to ensure they are not connected to your account.
  - d. Use caution when clicking tweets, links, posts or advertisements while utilizing social media. Retweeting or liking a post can alert the user that you have monitored their page.
  - e. Never open an attachment to an email from a sender that is not known to you or any other officer on the department.
  - f. Delete all “spam” emails without actually opening the email.

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### **SOCIAL MEDIA USE FOR INVESTIGATION**

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3. Officers are discouraged from using their home and/or any personal network to access social media when possible to ensure that the officer's personal information is not linked to the account. **Officers are reminded that the content of their personal devices and home or personal network may be subject to subpoena and rules of discovery.**

#### **I. Source Reliability and Content Validity**

Information developed from social media sites should be corroborated using traditional investigative tools including interviews, verification of address, verification of internet protocol address information, or other lawful means. Information deemed necessary for court must be obtained through the appropriate search warrant or subpoena.

#### **J. Off Duty Conduct**

1. The use of an approved online alias is prohibited while off duty.
2. An employee who becomes aware of potential criminal activity via the Internet while off duty shall immediately contact their supervisor if the activity involves a minor child or exigent circumstances. The supervisor shall determine the best course of action.
3. As soon as practical following awareness of the potential criminal activity the employee shall provide a memorandum detailing a complete description of the information observed and specifics as to the action taken. The memorandum should be addressed to the Intelligence and Special Investigations Unit Bureau via the officer's chain of command.

#### **K. Dissemination**

1. Any information that is gathered for the purpose of criminal intelligence shall be forwarded to the Intelligence and Special Investigations Bureau, which shall be responsible for all data storage and retention. Retention and dissemination of intelligence gathered electronically using social media information will be the same as protocols for paper files.
2. Information developed during the course of a criminal investigation will be maintained as part of the investigative case file and handled using the protocols established for retention and dissemination of investigative case files.

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**SOCIAL MEDIA USE FOR INVESTIGATION**

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