

Brief reason for the revision:

Recommendation submitted by the OPO office, "Capacity to Give Consent".

306 Search and Seizure

306.5 CONSENT

- (a) Entry into a location or vehicle for the purpose of conducting a search for any item reasonably believed relevant to any investigation is permitted once valid consent has been obtained. Officers should be aware that overuse of the consent search can negatively impact the Department's relationship with our community and only request a consent search when they have an articulable reason why they believe the search is necessary and likely to produce evidence related to an investigation. A search by consent is only allowed if the following criteria are met:
1. Consent is freely and voluntarily given (e.g., clear, specific and unequivocal), and not induced by force, duress, intimidation, or deceptive tactics.
 2. Consent is obtained from a person who has the authority to give the consent (e.g., care, custody and control of the location or vehicle).
 3. Consent is not given by a person who, due to a lack of mental capacity, is unable to understand the nature of his or her act.
 - ~~3.4.~~ The search does not exceed the scope of the consent given.
- (b) Consent must be obtained as the product of a free will. It cannot be obtained through submission to authority, either expressed or implied.
- (c) Although officers are not required to conduct searches within the plain view of suspects, those who have the authority to grant or revoke consent should be in a position to communicate a withdrawal of consent should they so desire. If consent was obtained by telephone from a person who has authority to grant the consent, the person should be provided with contact information to revoke the consent.
- (d) Absent other legal justification, any related search should be discontinued at any point that consent is withdrawn, even if the withdrawal is made by a different party who is at the scene and who also has authority over the area being searched.