

**Consent / Residential Search  
Search and Seizure  
Module #2  
Cleveland Division of Police**



<b>Course Date:</b>	July 15 <sup>th</sup> 2019 – November 2019
<b>Current Revision Date:</b>	07-27-2019
<b>Course Hours:</b>	1 hour 40 minutes
<b>Primary Audience:</b>	Cleveland Police officers
<b>Module Goal:</b>	Through scenario based training, the student will make the decision if they are legally justified to enter private property, seize an individual and/or search a residence

## REFERENCES

1. Cleveland Division of Police GPO Search and Seizure
2. Cleveland Division of Police GPO Investigatory Stops
3. Cleveland Division of Police GPO Probable Cause / Warrant Arrests
4. Cleveland Division of Police GPO Strip Searches & Body Cavity Searches
5. Cleveland Division of Police GPO Miranda Warning and Waiver

## COURSE MATERIALS

### TEACHING AIDS

Erasable Board/Markers  Easel/Notepads

Lectern/Table

Other:

Student Handouts

Handout #1:

### INSTRUCTIONAL TECHNIQUES

Lecture  Group Discussion

Demonstration  Scenario-based Training

Individual Exercise  Hands-on Techniques

Problem Solving

## LEARNING OBJECTIVES

**At the end of this topic, the student will be able to:**

- A. Understand how to apply the five search & seizure GPOs
- B. Identify factors that would legally justify encroaching on a property owners curtilage
- C. Identify factors that legally permit an investigatory stop and a probable cause arrest
- D. Ensure they have evaluated all factors and can clearly identify the level of governmental intrusion
- E. Clearly articulate what actions the officer took during the scenario and what led them to those actions



IV. Instructor set-up and 911 call

- A. This scenario has a two officer z/c being dispatched to investigate the report of a male, in his backyard, shooting a firearm into the air. When you arrive you will speak to Role Player #2 who will be acting as the 911 caller

**Scenario and Role player Script:**

- A. Role Player #2 will advise, “My Neighbor has been in his backyard all day drinking alcohol, and shooting his gun into the air.” Role Player #2 also states that the “neighbor is always walking around his property with a gun on his hip”. The Role Player will tell the officers the description of the suspect. (Description given will match that of the role player for that days training). If asked any other questions by the officers the answer will be “I don’t know.”
- B. Officers will then see the described suspect male or female (Role Player #1) Standing by his front door with a firearm holstered on his or her hip. Role player #1 will have a bottle of alcoholic beverage (half full) in his hands.
- C. When Role Player #1 sees the officers, he or she will go inside the front door and secure the firearm. He or she will then walk back outside and stand by the front door/stoop. The holster should be empty and still on the hip. As the officers approach Role Player #1 he or she will state “You are not permitted on my property.”
- D. As officers engage Role Player #1, he or she will state to them that he has “been drinking, cleaning his pistol, and listening to the game on the radio in his backyard.” The Role player will then state “I fired a couple of rounds into the air to celebrate the championship game, just like everyone else was doing”.
- V. Role player instructions, If/When:
- A. If the Role player is asked by the officers to enter the house he or she will state” NO, I do not permit you to enter my house and that I have done nothing wrong.”

**USE THIS AS A HANDOUT TO THE ROLE PLAYER**

**ALLOW THE SCENARIO TO EVOVLE, NOTE TEACHABLE MOMENTS TO EXPLORE DURING THE DE-BREIF**

**POINT IN THE DIRECTION OF ROLE PLAYER #1**

**KEEP YOUR HANDS VISIBLE**

**HOLSTER SHOULD BE CLEARLY VISIBLE**

**WHEN ASKED ABOUT THE FIREARM, TELL THE OFFICER YOU PUT IT INSIDE THE HOUSE**

- B. If not asked by officers to enter property, role player will ask if he is “being detained or if he or she is free to go inside.”
- C. Role player will answer questions, but will state he or she “knows the law and is allowed to have a firearm on his property and can exercise his or her right to open carry.”
- D. Role player will advise officers that he is “home alone, having a few drinks while and listening to the game on the radio in the backyard.” The role player will have slurred speech and appear to be unsteady on their feet.
- E. Role player will advise that he celebrated the victory “as everyone else did around the neighborhood”.
- F. He will then state that officers are not allowed to search him, his property, nor are they allowed to enter his residence.
- G. Role player will advise officers that he is the only one home.

Due to the fact the crime involves a firearm; a pat down of the subject is justified.  
 When denied access to the residence, officers must stop and obtain a warrant before entering the subject’s apartment.  
**The correct CCO is 627.04 Using weapons while intoxicated**  
 Per Divisional Notice 16-337, officers shall not arrest for CCO 627.12.

***YOU FIRED THE ROUNDS STRAIGHT UP IN THE AIR***

***CLEVELAND  
 CODIFIED  
 ORDNANCE 627.04  
 DIVISIONAL NOTICE  
 16-337***

VI. Scenario Objectives:

- A. Officers will properly identify themselves as the “Cleveland Police” and that bodycam is recording, when safe to do so.
- B. Officers will address complainant and suspect with professionalism as they investigate the complaint.
- C Officers will assess the legal grounds for and describe the level of citizen/police interaction.

- D. Officers should approach and detain the suspect and the secure surrounding area.
- E. Officers will advise the suspect of his Miranda warnings.
- F. Pat down of suspect should occur
- G. Officers will not see the gun in the residence and ask for permission to enter to secure the firearm.

VII. Debrief

- A. Provide positive feedback to officers for proper actions taken during the scenario.
- B. Cover any missteps, problems, or issues occurring during the scenario.
- C. Answer and clarify all question connection with the scenario or related GPOs.

VIII. Scenario Specific Questions

- A. What was your legal basis for the contact?
  - i. Received a radio assignment
  - ii. Investigative stop in connection with a male or female matching the description of an individual firing a gun into the air

***C.C.O. 627.04 Using Weapons While Intoxicated:***  
 a) ***No person, while under the influence of alcohol or any drug of abuse, shall carry or use any firearm or dangerous ordnance.***  
 b) ***Whoever violates this section is guilty of using weapons while intoxicated, a misdemeanor of the first degree.***

(RC 2923.15; Ord. No. 931-14. Passed 4-20-15, eff.4-21-15)

Instructors note the reason for entering the person's curtilage is officers have reasonable belief that a crime has occurred and there is an exigency issue. Officers do not know if the suspect is a danger to himself or others

Furthermore if there was no exigency or no observable crime and an individual is refusing to allow officers on their curtilage, the preferred method is obtaining a search warrant

***ASK EVERY TEAM OF OFFICERS***

***DO NOT ALLOW ONE OFFICER TO ANSWER ALL THE QUESTIONS IT MUST BE SPLIT UP TO INCREASE PARTICIPATION***

<p>iii. After it is determined the role player is under the influence of alcohol a physical arrest can occur</p> <p>iv. A search warrant is needed to enter the residence to retrieve the firearm</p> <p>B. Did you state the stop is being recorded?</p> <p>i. Yes or no? Why or Why not?</p> <p>C. At what point did you issue Miranda Warnings? Why?</p> <p>i. The Miranda warning is required by <i>Miranda v Arizona</i>, 384 U.S. 436 (1966), and applies only to sworn police officers who will be questioning or interrogating a subject who is in custody</p> <p>1. Officers shall provide the Miranda warning when both of the following criteria are met:</p> <p>a. The subject is in custody and</p> <p>b. The officer is to question or interrogate the individual about any crime</p> <p>D. If you made a physical arrest and the suspect was wearing a religious article of clothing, how would you handle that during the search incident to arrest?</p> <p>i. Respectfully, and, if known and possible, in accordance with the person's religious beliefs. Such objects shall be returned upon the conclusion of the encounter</p> <p>E. Without using canned or boilerplate language, articulate the facts and circumstances which lead you to your arrest decision.</p> <p>F. Can you enter the house to retrieve the firearm?</p> <p>i. No, a search warrant is needed</p>	<p><b><i>MIRANDA WARNING AND WAIVER GPO (I,A)</i></b></p> <p><b><i>MIRANDA WARNING GPO (III,B,2)</i></b></p> <p><b><i>SEARCH AND SEIZURE GPO (VI, A,1,a)</i></b></p> <p><b><i>SEARCH AND SEIZURE PAGE 1</i></b></p> <p><b><i>SEARCH AND SEIZURE GPO (III, A,B,C,D)</i></b></p>
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<p>G. What parts of the suspect's home is considered the curtilage?</p> <ul style="list-style-type: none"> <li>i. Any land or building immediately adjacent to a dwelling that is directly connected to it or in close proximity</li> </ul> <p>H. If you attempted to gain a consent search did you;</p> <ul style="list-style-type: none"> <li>i. Inform the person, in an age appropriate manner, of his or her right to refuse and to revoke consent at any time</li> <li>ii. Document the consent on your WCS</li> <li>iii. Ensure that an individual is consenting to the search is voluntary</li> <li>iv. Physically or mentally coerce, threaten or exploit an individual in order to gain consent for a search</li> <li>v. Establish if the person can give consent</li> </ul> <p>I. Did you make a physical arrest? Why or why not?</p> <ul style="list-style-type: none"> <li>i. Allow the officers to articulate the justification</li> <li>ii. If an arrest was made explain to the officers additional steps that could be taken <ul style="list-style-type: none"> <li>1. When taking a subject into custody, as early as practical under the circumstances, officers shall identify themselves, inform the subject that he/she is under arrest, and state the reason for the arrest.</li> <li>2. Standardized Field Sobriety Tests</li> <li>3. Breathalyzer</li> </ul> </li> </ul>	<p>Instructors should reference Search and Seizure GPO (III, E, 1-4)</p> <p><b>***NOTE***</b></p> <p><b>THIS IS UNRELATED TO A TRAFFIC OFFENSE; IT IS THE BASIC INTOXICIFICATION STANDARD. NO ALS, NO 2255</b></p>
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<p>IX. P</p>	<p><b><u>Discuss how coercion could occur during this scenario. Officers cannot threaten an individual with the charge of a crime or threat to obtain a warrant to gain compliance to search or enter residence.</u></b></p> <p><b><u>Explain to the officers during search of the individual, if the gender is not known to the officers, they shall respectfully request the person's gender. Appropriate steps will then be taken to pat down/search within the GPO guidelines.</u></b></p> <p>formance evaluations:</p> <ol style="list-style-type: none"> <li>a. Did officers properly identify themselves as Cleveland Police? If “No”, why not?</li> <li>b. Did officers identify the age of the suspect?</li> <li>c. Do officers state the reason for the search/seizure?</li> <li>d. Did officers state how the search/seizure will be conducted?</li> <li>e. Did officer state the stop is being recorded?</li> <li>f. Is the pat down limited to outer clothing where a weapon could be concealed?</li> <li>g. Is the protective sweep conducted only in the area immediately adjacent to the subject?</li> <li>h. Did officer advise the subject of his Miranda warnings at the appropriate time and receive a verbal affirmation?</li> <li>i. If asking for a consent search, does the officer inform the person of their right to refuse and revoke consent at any time?</li> <li>j. Are searches completed with due regard and respect for private property interests?</li> <li>k. Can officers articulate the reasonable suspicion for the investigatory stop/pat down?</li> <li>l. Can officers articulate PC for arrest if applicable base on</li> </ol>	<p><i>Providing as much information as possible to the subject will increase the possibility for voluntary compliance.</i></p> <p><i>This also increases the re-enforces the community engagement pillars of; <b><u>Neutrality, Respect, Trustworthiness, Voice</u></b></i></p>
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<p>their own observations</p> <ul style="list-style-type: none"> <li>i. Reason for the stop</li> <li>ii. whether the individual was asked consent to search</li> <li>iii. whether a pat down, frisk or other non-consensual search was performed on any individual or vehicle</li> </ul> <p>m. Did the officers act with courtesy and professionalism to the subject?</p> <p>n. Did the officers follow all other departmental directives from the Search and Seizure GPOs?</p> <p>X. Handout scenario:</p> <ul style="list-style-type: none"> <li>A. The officers not currently involved in the scenario will be given a written search and seizure scenario (Handout#1).</li> <li>B. They will read the scenario and answer the questions in the handout while they waiting their turn to perform in the live action scenario.</li> <li>C. The five new policies will be made available to assist officers with completing the written scenario.</li> </ul> <div style="border: 1px solid black; padding: 10px; margin: 10px 0;"> <p>Training section will provide a training book copy of the five GPOs making up the new search and seizure policy.</p> <p>These books will be provided for reference to the officers in scenario, as well as for the officer in the handout scenarios.</p> <p>Questions not found or answered will be looked up and addressed through this reference.</p> </div> <p>XI. Handout Discussion:</p>	<p><b>Handout #1</b></p> <p><b>Officers will state specific actions that cause the decision to stop or not</b></p> <p><b>Instructor will complete the performance evaluation form for each student</b></p>
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<ul style="list-style-type: none"><li>A. The instructor will open a discussion with the students on how they would have handled the scenario in Handout #1</li><li>B. The instructor will answer any questions on how to handle the handout scenario</li><li>C. The instructor will correct any issues officers may have had during the handout scenario</li><li>D. Instructor will answer any question.</li></ul>	
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## **CONCLUSION**

- A. Summarize material
- B. Answer question from the class

## HANDOUT #1 Scenario

**Print Name and Badge #** \_\_\_\_\_

**Handout Scenario #1:** While assigned to a two officer zone car, you receive a radio assignment for a theft report. Upon arrival at 3554 East 32nd St., you identify Mr. Smith as the complainant. Mr. Smith states last night he was cutting his grass after returning home from work. After he was finished, he left his lawn mower in his backyard so the engine could cool before putting it away. His neighbor approached him and stated, "I'm sick of you cutting the grass so late in the day." Mr. Smith stated he gets home from work late and it is the only time that he has to do yard work. Mr. Smith then went inside to eat returning about an hour later to find his lawnmower missing.

Mr. Smith stated he went over to his neighbor's house to ask about the missing mower. Mr. Smith believes when he looked into the neighbor's garage, he saw his mower.

You and your partner walk over to the neighbor's house. As you are approaching the front door, you notice the neighbor's garage is open and you see several pieces of lawn equipment. However, you cannot determine if Mr. Smith's lawn mower is there.

You knock on the door and speak with Mr. Brown who is the owner of the house. He confirms the conversation between himself and Mr. Smith. He stated he did not steal any lawn mower and will not give you permission to check the garage.

1. Can you enter the garage and confirm the stolen property is inside? Explain.  
\_\_\_\_\_  
\_\_\_\_\_
2. May you tell Mr. Smith that you will obtain a search warrant to gain voluntary consent to search the garage? Explain.  
\_\_\_\_\_
3. Does this fall under the Plain View Doctrine? Why or why not?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
4. Mr. Brown's wife comes out and gives you permission to go inside the garage after Mr. Brown denies you access. Can you accept the permission? Why or Why not?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## HANDOUT #1A

### Instructor Answers Key to Scenario

**Handout Scenario #1:** While assigned to a two officer zone car, you receive a radio assignment for a theft report. Upon arrival at 3554 East 32nd St., you identify Mr. Smith as the complainant. Mr. Smith states last night he was cutting his grass after returning home from work. After he was finished, he left his lawn mower in his backyard so the engine could cool before putting it away. His neighbor approached him and stated, "I'm sick of you cutting the grass so late in the day." Mr. Smith stated he gets home from work late and it is the only time that he has to do yard work. Mr. Smith then went inside to eat returning about an hour later to find his lawnmower missing.

Mr. Smith stated he went over to his neighbor's house to ask about the missing mower. Mr. Smith believes when he looked into the neighbor's garage, he saw his mower.

You and your partner walk over to the neighbor's house. As you are approaching the front door, you notice the neighbor's garage is open and you see several pieces of lawn equipment. However, you cannot determine if Mr. Smith's lawn mower is there.

You knock on the door and speak with Mr. Brown who is the owner of the house. He confirms the conversation between himself and Mr. Smith. He stated he did not steal any lawn mower and will not give you permission to check the garage.

1. Can you enter the garage and confirm the stolen property is inside? Explain?

***No. You cannot enter the garage without consent from the home owner.***

2. May you tell Mr. Smith that you will obtain a warrant to gain voluntary consent to search the garage? Explain.

***No. You are not allowed to threaten or use coercion to gain consent to search.***

3. Does this fall under the Plain View Doctrine? Why or why not?

***No. The lawn mower is not clearly recognizable.***

4. Mr. Brown's wife comes out and gives you permission to go inside the garage after Mr. Brown denies you access. Can you accept the permission?

***No. Once you have been denied consent from the home owner, it can only be revoked by that individual.***