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Purpose

To define and outline the procedures involving searches and seizures. Failure to understand and comply with the provisions of the [Fourth Amendment to the U.S. Constitution](#) and those of [Article 14 of the Constitution of the Commonwealth of Massachusetts](#) can result in the inability to obtain convictions in criminal cases. Except in certain limited cases, a police officer should always obtain a valid search warrant before conducting a search.

Policy

It is the policy of the Somerville Police Department that warrants shall be obtained for searches whenever possible and practicable. Searches will be conducted in strict observance of the constitutional rights of the parties involved and with regard for the safety of officers, people, and property.

Definitions

Affidavit: A formal declaration or statement of facts, in writing, made voluntarily and confirmed by oath or affirmation before a person having the legal authority to administer it.

Exigent Circumstances: Situations in which law enforcement officials will be unable or unlikely to effect a search or seizure, for which probable cause exists, unless they act swiftly and without prior judicial authorization.

Probable Cause: The facts observed or information obtained from others, as well as personal knowledge and experience that is sufficient to lead a reasonable and prudent person to believe that a particular crime has been, is being, or is about to be committed, and that evidence of the crime is likely to be found in a specific location or on a specific person and which would justify a judge or magistrate to issue a search warrant.

Procedure

1. Types of Searches

There are two types of searches addressed in this policy, those that occur with a search warrant and those searches conducted without a warrant. Certain circumstances exist that allow exceptions to the warrant requirement. In addition, the following are not considered invasions of any privacy interest and therefore do not come under the search warrant requirement of the [Fourth Amendment to the U.S. Constitution](#):

- A. The Plain View Doctrine
- B. Abandoned Property
- C. The Open Fields Doctrine
- D. Searches by Non-Law Enforcement

2. The Plain View Doctrine [1.2.4(g)]

Officers may seize contraband or evidence without a warrant under the plain view exception to the warrant requirement if the following conditions are met:

- A. Lawful Presence - Entry is made on a valid warrant, or to make a lawful warrantless arrest; or as a result of lawful consent; or in an emergency to render necessary aid or assistance.
- B. Inadvertent Discovery - Items must be found without particular design where the discovery was not anticipated and with no planned search involved.
- C. Immediately Apparent - Items seized must be instantly recognized as contraband or evidence of crime.

3. Abandoned Property [1.2.4(g)]

Abandoned or discarded property may be searched by the police and seized. Examples of abandoned property include:

- A. Trash in collection area accessible to the public.
- B. The contents of a hotel room wastebasket once the individual has vacated the room.
- C. An apartment or hotel room may be searched without a warrant provided the guest or tenant has left with an intention not to return and the landlord or owner has given permission to search.
- D. Items thrown on the ground by a suspect.

4. Open Fields [1.2.4(g)]

- A. An open field is that portion of privately owned land surrounding a person's dwelling that is too remote or removed from the physical dwelling to be considered part of the home such that it is protected by the [Fourth Amendment to the U.S. Constitution](#). (The grounds and buildings immediately surrounding the dwelling, or the **curtilage**, are protected by the [Fourth Amendment to the U.S. Constitution](#)).
- B. Open fields may be searched without a warrant even though the terrain in question is not easily accessible to the public and even though the owner may have posted "No Trespassing" signs and may even have a locked gate.

5. Searches by Persons Other Than Law Enforcement Officers

- A. **Private Individual** - Evidence obtained by a private individual, as a result of searching someone else's property, who is not acting as an employee or agent of the government, is admissible.
- B. **Police Officer Acting as a Security Guard** - Evidence discovered as a result of the warrantless search conducted by a police officer acting as a private security guard is not admissible if the officer acts beyond the scope of the private employer's business. However, a security guard acting within the scope of his/her employer's business activity is not governed by the [Fourth Amendment to the U.S. Constitution](#).

6. Search Warrants/Obtaining a Search Warrant [74.3.1]

Officers seeking a search warrant must follow the provisions of [M.G.L. Chapter 276, Sec. 1](#) and do the following:

- A. Prepare an affidavit for search warrant that complies with the provisions of [M.G.L. Chapter 276, Sec. 2A](#) to include:
 - 1. A designation and description of the building, house, place, vessel or vehicle to be searched.
 - 2. A particular description of the property or articles to be searched for.
 - 3. The facts, information and circumstances which have led the police officer to have probable cause to believe that seizable evidence exists and that it will be found in a specific location or on a specific person.
- B. Consult with a CID Supervisor and obtain advice and guidance before proceeding to court. If court is not in session, the officer shall communicate with an authorized on-call court official to make arrangements to secure a search warrant.

- C. If legal assistance is required for the preparation of the search warrant affidavit, the District Attorney's office should be contacted via the on-call 24/7 beeper maintained by the District Attorney's Office.
- D. Every search warrant issued and any action taken on a warrant should be recorded in police department files in accordance with standard departmental procedures.

7. Execution of a Search Warrant

When a search warrant has been obtained the officer shall:

- A. Check the warrant to ensure that it is signed and clearly describes the place to be searched and the articles to be seized.
- B. Execute the warrant immediately, or within a reasonable time, but in any case, within seven (7) days from the date of issuance.
- C. Execute the warrant in the daytime unless it specifically provides for a nighttime search. However, a search that begins in the daytime may continue into the nighttime if such activity is reasonable and not done for the purpose of harassment.
- D. Upon arrival at the location to be searched, officers shall check to make certain that the premises are in fact those described in the warrant.
- E. Upon entering, show a copy of the warrant (not the original) to the person or persons lawfully on the premises unless the circumstances are such that this is not practicable.
- F. The number of officers assigned to execute a search warrant should be dependent on the particular circumstances. It is a good practice for at least one of the searching officers to be in uniform, unless this would jeopardize the success of the search.
- G. A search warrant should not be executed in, or on, any premises in the absence of the owners, unless there is good reason to believe that the occupants do not intend to return for an extended period of time, or that they do not intend to return, or the property or articles designated in the search warrant will be removed or destroyed if the premises are not searched immediately. In all cases, the manner of entry shall be made with the least possible destruction of property with a copy of the warrant left in a conspicuous place on the premises.
- H. When serving a warrant at a private dwelling, police officers must knock, identify themselves as police officers, announce that they have a warrant to search the premises, and demand entrance except in limited circumstances.
- I. Officers may knock and gain entry by deception or by means of a ruse, if this will result in a safe, practical, and successful execution of the search warrant with less property destruction.

J. Officers shall always seek entry as peacefully as possible, but forcible entry is authorized if, after waiting a reasonable time, it becomes apparent that:

1. The officers will not be admitted voluntarily.
2. The officers or any other persons are in danger of physical harm.
3. The occupants are escaping.
4. Evidence is being, or is in danger of being destroyed.

8. No-Knock Warrants

A. An immediate, forcible entry (or one gained by a ruse or trick) is authorized and the usual knock and announce procedure may be disregarded if the searching officers are in possession of reliable information that the person(s) inside the dwelling has/have knowledge of the officers purpose and presence, or where to follow the knock and announce procedure would be likely to:

1. Endanger officer safety or the safety of others.
2. Enable the wanted person(s) to escape.
3. Result in the evidence being destroyed during the period between announcement of purpose and subsequent forcible entry.

B. Officers shall apply for a “No-Knock and Announce” warrant if they have reason to believe the Knock and Announce rule should not be observed when the warrant is executed. If the circumstances which would have justified disregarding the Knock and Announce rule are no longer present when the warrant is executed, the Knock and Announce rule must be followed.

C. Upon gaining entry, the searching officers should immediately identify themselves as police officers and should state their purpose to serve a search warrant.

D. The police officer responsible for the execution of a search warrant shall:

1. Comply with [General Order 2010 - 40 Warrant Service Operational Plan](#) .
2. Not exceed the authority granted by the warrant.
3. Make a diligent effort to find the property listed in the warrant.
4. Search only the area described in the warrant unless consent is obtained or exigent circumstances exist.
5. Search only those areas capable of containing the property listed in the warrant.

6. Perform the search with the least possible damage to the premises.
7. Remain on the premises only for the time reasonably necessary to thoroughly search and seize the property listed in the warrant.
8. Terminate the search when the listed property has been found or when it reasonably appears that such property is not on the premises.
9. Make adequate provisions for the security of the searched premises before leaving unless the person in control of the premises refuses.
10. Immediately and directly transport to the police station all seized property and ensure that it is properly marked, recorded and safeguarded in accordance with department policies on Collection and Preservation of Evidence and Evidence and Property Control.
11. Complete the return section of the warrant and deliver it to the court as soon as reasonably possible after the completion of the search, but no later than seven (7) days from the date it was issued, unless an extension is granted by the court.
12. Document on the warrant the action taken along with an inventory of all property seized. If evidence not described in the warrant is seized, attach a separate sheet to the return listing all such property stating that it was seized during the execution of the search warrant.
13. Make a full departmental report of all action taken on a search warrant, to be submitted to the CID Supervisor before returning the warrant to court.

9. Other Considerations in Search Warrant Situations

- A. **Plain View** - When officers lawfully enter a dwelling with a search warrant, they may seize objects in plain view and reasonably believed by them to be connected with criminal activity even though not mentioned in the search warrant. [1.2.4(g)]
- B. **Search of Persons** - In order to ensure an orderly and safe search, all persons present on the premises when the police arrive may be detained. In the execution of a search warrant, any person found on the premises may be frisked for weapons by a police officer, for the officer's safety if the officer believes that the person is armed. The Supreme Court ruled that this frisk for weapons must be based on reasonable belief or suspicion directed at the person to be frisked, not simply that the person happens to be on the premises where a search warrant is being executed. [1.2.4(b)]
- C. **Interference** - If a police officer suspects that any person present during a search would interfere with the search, the officer may restrict their movements on the premises; however, at least one of the occupants should be permitted to witness all aspects of the search, if this is practicable.

D. Search Outside Scope - If during the execution of a search warrant it appears that there is probable cause to believe that seizable property is located in an area of the premises outside of the scope of the present warrant, a new warrant shall be obtained immediately, unless consent is granted, or exigent circumstances exist. While the new warrant is being sought, any occupants of the premises may have their freedom of movement restricted.

10. Warrantless Searches

Officers may make a warrantless search only when one of the following exceptions applies:

A. Investigative Detention - Both the [Fourth Amendment to the U.S. Constitution](#) and [M.G.L. Chapter 41, § 98](#) authorize police officers to briefly detain suspicious persons, to question persons, and if the officer reasonably believes the person may be armed or dangerous, to frisk that person for weapons. See [111 Stop-and-Frisk](#) .

B. Search Incident to Arrest - A warrantless search, which includes a protective sweep, may be conducted of a lawfully arrested person. The search must be reasonably related to the circumstances of the arrest. The search must be conducted for the purpose of [1.2.4(g)]:

1. Seizing fruits, instrumentalities, contraband, and other evidence of the crime for which the arrest was made.
2. To prevent destruction or concealment of evidence.
3. To remove any weapons that the arrested person might use to resist arrest or escape.

Note: This search is limited in scope to the arrestee and to the immediate surrounding area, i.e., the area from which the arrestee can either obtain a weapon or destroy evidence. The search must be contemporaneous with the arrest and conducted in the immediate area of the arrest. However, if safety requires, the officer may delay the search and conduct it at a safe location.

11. Protective Sweep

In addition to a careful search of the area within the arrestee's immediate control, an examination of the entire premises may also be justified at the time of, or immediately following, a valid arrest when there is a reasonable belief that the officer's safety is in jeopardy because of the presence of others in the dwelling. This sweep is limited to areas where an accomplice or other person who might come to the aid of the arrestee might reasonably be hiding. Any item or object recognizable as criminal evidence discovered in plain view during a justifiable protective sweep may be seized. An arrest shall not be used as a pretext in order to conduct a search to uncover evidence of an unrelated crime.

12. Exigent Circumstances [1.2.4(e)]

- A.** A police officer is authorized to conduct a search without a warrant when faced with an emergency situation where delay would endanger the officer or the public safety, or might result in the escape of the offender or the destruction of evidence.
- B.** The authority of the police to make warrantless entries in emergency situations, whether criminal or non-criminal, is based on the responsibility to preserve the peace and protect public safety. It must be justified that it was impractical for the police to obtain a search warrant in advance and that the search was necessitated by the emergency circumstances which could not have been anticipated.
- C.** While conducting a lawful search justified by emergency circumstances, an officer may seize any incriminating evidence inadvertently discovered in plain view.
- D.** A warrantless entry may be made into a burning building, for example, and officials may remain for a reasonable time to investigate the cause of the fire and any evidence of arson discovered is admissible at trial. Any re-entry after the fire is extinguished and where officials have left the scene should be made pursuant to a search warrant, unless the re-entry is justified by an exception to the warrant requirement like consent, emergency, or abandonment.
- E.** An officer may enter and search a building without a search warrant when the officer has reasonable cause to believe the premises contain explosives or other dangerous items which are imminently likely to burn, explode, or otherwise cause death or serious bodily harm or substantial property destruction. The officer may search to the extent reasonably necessary for the prevention of death, bodily harm, or property destruction.
- F.** The U.S. Supreme Court set out factors justifying exigent circumstances with Fresh and Continued Pursuit. These include:
 - 1.** There is a fresh and continued pursuit of the suspect.
 - 2.** A crime of violence is involved.
 - 3.** There is a strong possibility that the suspect is armed.
 - 4.** The suspect is known or reasonably believed to be in the building.
 - 5.** There is a likelihood the suspect might escape unless immediately apprehend.
 - 6.** There is sufficient justification for the failure to obtain a search warrant.

13. Consent Search [1.2.4(a)]

In many cases this recognized exception to the search warrant requirement may be the quickest and easiest way for police to gain access to a location in the investigation of crime. A consent search is based on a voluntary relinquishment of a fundamental constitutional protection and will be carefully scrutinized by the court. Because the issue at hand as to who may give lawful consent to a police entry and search or whether the consent was given voluntarily, police should not unduly rely solely on consent. However, when properly elicited, consent to a search may expedite a criminal investigation. Police may engage in a warrantless search after obtaining consent even in circumstances where they do not have probable cause. Consent is a question of fact to be determined by the circumstances in each case. For there to be a valid consent search, two vital elements must be satisfied:

- A.** The consenting party must have sufficient lawful authority over the premises or property to be able to grant consent to search. This would include:
 - 1.** Owner of the property, or any person who has possession or control of the property.
 - 2.** Co-owner of jointly owned property, any one of the owners may consent but only to common areas, not areas exclusively under the control of another.
 - 3.** A Spouse may consent to a search of a jointly owned home without the knowledge or permission of the other spouse, but, if the second spouse is present, and objects, the search cannot take place absent a warrant.
 - 4.** Parent may consent to premises under the parent's control including a child's room when the parent has general access to the child's room.
 - 5.** Child may not consent to a search of property owned by the child's parents.
 - 6.** Roommate may give consent to search of common areas but not area exclusively reserved for the suspect, i.e., bedroom, luggage, or closet.
 - 7.** Landlord cannot consent to the search of a tenant's apartment but can consent to search common areas like hallways, or stairwells.
 - 8.** Hotels owner or manager cannot consent to a search of a guest's room.
- B.** Consent must be freely and voluntarily given:
 - 1.** Consent may be given orally, but preferably it should be in writing.
 - 2.** Consent cannot be presumed from silence.
 - 3.** Consent must be free of any coercion, intimidation, or threat so officers must avoid even the appearance of intimidation.

4. Officers shall not gain consent through the use of misrepresentation or fraud.
5. Consent shall be requested prior to a search and after officers have identified themselves.
6. Consent may be revoked at any time, and the search shall end on revocation, unless additional factors or information has been discovered which justifies a continued warrantless, nonconsensual search. For example, evidence found prior to revocation of consent may be retained and used as a basis for an immediate arrest or as probable cause for a further search (if exigent circumstances exist) or for obtaining a search warrant.

14. Motor Vehicle Search [1.2.4(c)]

Although motor vehicles are considered “effects” within the meaning and intent of the [Fourth Amendment to the U.S. Constitution](#), the courts have treated them differently from dwellings or other property. Due to the inherent mobility of automobiles, it is often impracticable to obtain a warrant.

If at all possible and practicable, a search warrant should always be obtained in advance of a motor vehicle search, as this procedure is preferred by the courts. The practical considerations of police work, however, often require that a warrantless search of a motor vehicle be conducted under the following circumstances:

- A. **Stop-and-frisk:** Warrantless stopping, questioning and frisking of a motor vehicle operator or occupants, a “Stop-and-frisk” type of protective search where the officer reasonably believes that his/her safety or the safety of others is in danger is permitted. This is permitted to determine whether a suspect is armed, where the search is confined to the area of the motor vehicle from which a suspect might access a weapon.
- B. **Search Incident to Arrest:** Search of motor vehicle incident to arrest of operator or occupant is permitted: A search incident to a lawful arrest is limited to the area from which the person could obtain a weapon or reach destructible evidence. If it is impractical to conduct the search immediately at the scene, the vehicle should be towed to a police facility to be searched later.
- C. **Exigent circumstances:** [1.2.4(e)] The vehicle must be lawfully stopped on a public way or found parked in a public place. There must be probable cause to believe that the vehicle contains contraband or other evidence at the initiation of the search and exigent circumstances must exist which justify a warrantless search.
- D. **Consent:** A search conducted with the voluntary consent of the person in lawful control of the vehicle.
- E. **Roadblocks:** [41.2.3(a)] Roadblock stops (for example, to detect drivers under the influence of alcohol) are permissible if:

1. The selection of motor vehicles to be stopped is not arbitrary.
 2. The safety of the public is assured by taking necessary precautions.
 3. The motorists' inconvenience is minimized and the roadblock procedure is conducted pursuant to a plan devised by law enforcement supervisory personnel.
 4. Police have a description of a suspect vehicle, they may stop all vehicles fitting that description.
- F. Plain View Observations:** If a police officer has lawfully stopped a motor vehicle and is questioning the operator, any incriminating item observed in plain view, including anything observed with the use of a flashlight, may furnish probable cause to search the vehicle and seize the item observed without a warrant.
- G. Inventory:** [1.2.4(f)] If a vehicle is impounded it shall be thoroughly searched and all valuable personal property found in the vehicle shall be removed, carefully inventoried and kept in safe custody.
- H. Crime Scene:** [1.2.4(d)] Officers may conduct a warrantless search at the scene of any crime when any exceptions to a warrant exist.
- I. Pre-Incarceration and Inventory Searches:** [1.2.4] Before incarcerating an arrestee, police shall conduct an inventory search of the arrestee and inspection of his/her belongings in accordance with the department policy on detainee processing (Holding Facility). This is done to discover any weapons the arrestee could use to injure him/herself or others, to safeguard valuables, and to protect the police against false claims of theft or loss of the belongings.
- J. Protective Custody Search:** Officers are authorized by [M.G.L. Chapter 111B, Sec. 8](#) and required by department policy to conduct a general search for weapons of an incapacitated person prior to taking them into protective custody. This search for weapons is to be conducted when and where the person is first encountered. If a person in protective custody is transported and held at the police station he/she is subject to the pre-incarceration search described above.