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	Subject: <i>Search and Seizure</i>	Issued: 10/04/2022	TBP: 7.06, 7.07, 10.14, 10.15

Abandoned Property

An officer may, without a warrant, search for and seize any property found and determined to be abandoned.

Consent


When an officer has reason to make a warrantless search, they may request consent to search from any person who has authority over the thing or place to be searched. Consent may be given verbally or by use of the authorized departmental consent form.

- A. In all cases, the officer shall advise the person giving consent that they have the right not to consent and, if they consent, anything found might be seized and used as evidence.
- B. An invitation to enter the premises does not give the officer consent to search.
- C. If the consent to search is later revoked, the officer must immediately stop the search. If the consent to search is later limited, the officer must restrict it to the new limit. However, the officer may still seize all seizable property discovered prior to the withdrawal or limitation of consent and then apply for a search warrant if necessary.
- D. A consent to search can be withdrawn by any person with authority over the thing or place being searched regardless of another's consent with equal standing.

Plain View (TBP 7.07, 10.14)

An officer, without a warrant, may seize property if:

- A. The officer lawfully occupied their vantage point when they observed the property through their senses,
- B. The officer can observe and seize the property without unreasonable intrusion on any person's reasonable expectation of privacy.
- C. The officer immediately realizes the observed property is seizable property, and the observation of the property occurred inadvertently.
- D. When practical, and if the imminent destruction or removal of the property appears unlikely, an officer should obtain a search warrant. If necessary and practical, an officer may guard the property until the search warrant can be executed.
- E. For the purposes of this section, seizable property is defined as an item that is categorized as:
 - 1. Contraband,
 - 2. Fruits of a crime,
 - 3. Evidence of a crime or
 - 4. Instruments of a crime

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Search of Suspect's Mouth

When an officer has probable cause to believe a person has a seizable quantity of evidence in their mouth, the officer may use reasonable force to recover the evidence. Except for situations where a person's life is in jeopardy, choking a suspect for the sole purpose of retrieving small quantities of evidence is not reasonable.

Unclothed Searches (TBP 7.07, 10.14)

An officer may conduct an unclothed search of a lawfully detained person if the officer has probable cause to believe that such a search is necessary to detect evidence of a particular crime or a hidden weapon.

An officer may conduct an unclothed search of a lawfully arrested person if the officer has reasonable suspicion to believe that such a search is necessary to detect evidence of a particular crime or a hidden weapon.

The unclothed search cannot include a search of body cavities or extend beneath the body surface. An unclothed search requires prior supervisor approval and should always be conducted in a controlled environment. Unclothed searches will be conducted by persons of the same sex.

A search of an arrestee's body cavities shall only be conducted pursuant to consent or a search warrant under sanitary conditions. The search requires supervisory approval and may be conducted only in a medically approved manner by medical personnel.

Exigent Circumstances


In an emergency, an officer may enter a premises or vehicle without a search warrant if they have probable cause to believe it is necessary to:

- A. Aid persons in immediate danger of death or bodily injury or
- B. Prevent, if appropriate, the imminent destruction of property and/or evidence.

Prior to non-consensual or forced entry, and within the limits allowed by the particular emergency, the officer shall reasonably attempt to obtain consent to enter the premises or vehicle.

Following entry, the officer may search the premises or vehicle only to the extent necessary to carry out the purposes of the entry.

When the emergency has ended, the officer shall secure the premises or vehicle prior to leaving either by release to a responsible person, or by making all reasonable effort to physically secure the property if no further action is necessary inside the premises.

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Should circumstances exist necessitating further investigation of the premises, the officer should “hold” the scene and obtain consent or make application for a search warrant of the premises.

Warrantless Vehicle Searches

When an officer has probable cause to believe a vehicle contains seizable property, the officer may conduct the search without a warrant if an exception to the warrant requirement, such as exigent circumstances, exists. When determining whether a search without a warrant is appropriate under this rule, an officer should consider:

- A. Whether the vehicle could be easily removed from the jurisdiction;
- B. Whether any person might obtain access to the evidence believed to be contained in the vehicle or
- C. Whether the nature of the evidence makes it likely to be destroyed by the passage of time or exposure to the elements.

When an officer has probable cause to search a vehicle, the officer may search:

- A. Any part of the entire vehicle where the item sought could be located, whether or not an arrest is made,
- B. Either at the place where the vehicle is first located or at a more convenient location. If a vehicle is to be moved in favor of a more convenient location, officers are advised to keep the suspect with the vehicle.


Search Incident to Lawful Arrest (TBP 7.07, 10.15)

An officer may search a person incident to a lawful custodial arrest.

- A. An officer shall confine a search incident to an arrest to the person arrested and that person’s area of access at the time of the arrest. An officer may also search beyond the arrestee’s area of immediate control for other persons who the officer has reason to believe may endanger the safety of the officer. The search shall be limited to locating and controlling movements of such persons.
- B. Whenever practical, an officer shall obtain an arrest warrant in conjunction with the search warrant if they have probable cause to believe seizable items will be found at the expected place of arrest.

Search of a Vehicle Incident to Arrest

When an officer has made a lawful custodial arrest of the occupant of an automobile, including a passenger, he/she may, incident to the arrest, search the passenger compartment of the automobile and examine the contents of any containers, whether open or closed, found within the passenger compartment if either of the two following circumstances exist:

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- A. The arrestee is within reaching distance of the passenger compartment at the time of the search or
- B. It is reasonable to believe the vehicle contains evidence of the offense of the arrest.

Booking Searches

An arrested person shall be searched during the booking process in order to:

- A. Remove any seizable property and items he/she might use to escape or to injure himself or herself and
- B. Inventory and protect his or her property from damage or theft while he/she is incarcerated.

Search Warrants

General

All search warrants shall be presented to a supervisor or their designee, for review and approval, prior to presentation to an appropriate magistrate.

Preparation of a Search Warrant (TBP 7.06)

Search warrants obtained by personnel of the Department will conform to those standards set out by Chapter 18 of the Code of Criminal Procedure.

Warrants Require Proper Form


An officer shall presume any search warrant, which appears in proper form, is valid. If the search warrant lacks proper form, the officer shall not execute it but shall return it to the magistrate who issued it. An officer shall not alter the information on any search warrant in any manner.

Search Warrant Served Within Time Limit

A search warrant shall be executed as soon as practical after it is received, but in no event more than three (3) whole days after the magistrate issues it. In calculating the days allowed for execution, the day of issuance and the day of execution are excluded.

The time of day for executing the search warrant should be based on the following considerations:

- A. Execute when the property to be seized is most likely to be present.
- B. Execute when resistance is least expected and best controlled.
- C. Balance the safety, effectiveness and convenience of the officer and the occupants.

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Warrant Matrix

All search warrants requiring forced entry or potential forced entry shall have a warrant matrix completed and approved by a supervisory officer prior to the execution of the search warrant. If a matrix score totals 25 or more points, an Assistant Chief will be notified prior to the execution of the search warrant.

Additionally, officers and supervisors should consider requesting SWAT assistance for any warrant matrix totaling 25 points; or, at any other time, regardless of matrix score, if there are conditions present that present an undue risk of safety to officers, citizens, or suspects. If safety conditions justify SWAT consideration, an Assistant Chief will be notified before the warrant is executed.

Participation Limited

Only peace officers will generally participate in the execution of a search warrant. However, when appropriate, the supervisor in charge may permit other persons to accompany him in such execution for the safe and expedient execution of the warrant.

Supervisor Responsible for Safe Execution

A supervisor shall be notified prior to the execution of a search warrant. The supervisor in charge shall take appropriate measures to ensure the safety and security of fellow officers, the items sought and any persons at the scene of the execution.


Chief's Notification

When executing a search warrant requiring forced entry or potential forced entry the supervisor in charge shall ensure notification of the Chief of Police or his designee.

Search of Proper Place

An officer shall only execute the search warrant and make the search at a place described in the warrant.

- A. An officer may search all buildings, structures and curtilage named in the warrant where the items sought may be kept.
- B. If a warrant describes the place to be searched as a limited portion of larger premises, the officer may not extend the search to other unnamed portions.
- C. The search warrant should, when applicable, specify any vehicles to be searched on the premises. Vehicles not within the curtilage (example: public street) and not particularly described in the warrant must conform to the requirements of the definition of exigent circumstances and/or the written directive concerning warrantless searches.

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Pre-warrant Briefing

Prior to the execution of a search warrant:

- A. The lead officer will identify any high risk or threats to officers and will advise the supervisor of the existence of any potential high risk or threat factors. If necessary, the SWAT Commander or their designee will be consulted.
- B. A briefing will be held of all participating officers where duties and responsibilities will be assigned. Personnel who are not present during this briefing shall be briefed prior to assisting in the actual entry and securing of the scene.
- C. Officers who are serving the warrant will be made aware of any potential threats.
- D. A sufficient number of officers will be assigned to execute the search warrant safely and to conduct a thorough search.
- E. The supervisor will notify dispatch of the location and approximate time of execution of the warrant.
- F. Officers who are executing the search warrant shall wear department issued equipment and vests which clearly identifying themselves as "POLICE".
- G. Body armor will be worn by each officer involved in the execution of the search warrant.
- H. Body Worn Cameras (BWC) will be worn by each officer in the execution of the search warrant.


Execution of Search Warrants

Unless circumstances dictate a lesser number of officers and is approved by a command officer, all search warrants shall require a minimum of 8 peace officers present for execution - including supervisory officers.

Unless permitted under the written directive concerning warrantless search and seizure, an officer shall not conduct a search or seize property without a search warrant. An officer shall execute a valid search warrant as provided by law and by written departmental directives.

Prior to the execution of a search warrant, officers executing a search warrant shall announce and make their presence and purpose known prior to entry into the location described by the particular search warrant. Officers shall allow a reasonable amount of time for occupants of a residence to allow voluntary entry to the residence prior to forcing entry, barring a 'no-knock' provision within the search warrant.

The only accepted exceptions to this practice include circumstances during the execution of search warrants observed by officers leading them to believe their safety or the safety of others is jeopardized, or that circumstances lead them to believe there is an imminent threat of the destruction of evidence. If such an exception exists, officers will document the circumstances justifying such an entry.

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In cases of “No-knock” search warrants, officers will include the verbiage requesting such an exemption in the body of the search warrant presented to a magistrate, and will include information justifying the request in the supporting affidavit of the search warrant. “No-knock” warrants shall not be used solely for evidence preservation.

Entry by Minimum Force

An officer shall enter the premises by the least forceful means possible under the circumstances. However, when exigent circumstances exist, which unduly jeopardize the safety and security of the officers, the items sought or persons in the area, an officer shall enter the premises by the most efficient means practical to the situation.

In cases where property damage is caused during the execution of a search warrant, a supervisor will ensure that a Notification of Damage to Non-Departmental Property report is completed.

Control of Persons


When necessary, an officer shall first enter the building or other premises and locate and control the movement of all persons who might hinder the search or pose a threat to safety. The officers shall also locate and control all items, which might be used as weapons.

- A. An officer shall use the least amount of force necessary to secure the premises.
- B. Officers shall, as soon as practical, display the search warrant, and explain the reason for the search.

Secure then Search

After securing the premises, an officer shall search for the items named in the search warrant.

- A. An officer shall diligently attempt to prevent and minimize damage to the premises and property.
- B. During the course of the search, the supervisor in charge shall ensure that a record is made of the date and time, items seized and where each seized item was found. Each officer shall safeguard the admissibility of all seized property by protecting the chain of custody of the seized property. As to all items seized, the officer in charge shall furnish an inventory to the person from whose possession or control they were taken. If no such person is present, the officer should leave the inventory in a logical and conspicuous place on the premises. The officer in charge shall complete the return to the magistrate.
- C. An officer shall take reasonable measures to secure the premises upon completion of the warrant execution.

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Search for Named Person

An officer may search a person found upon the premises:

- A. Incident to a lawful arrest of that person;
- B. If the warrant gives the name and useful description of that person (e.g. usually owner or person in charge of the premises);
- C. If the warrant specifies (e.g. "any person(s) unnamed, found on the premises");
- D. If the officer has reasonable suspicion that a particular person is armed and endangers any person or
- E. To prevent the disposal or concealment of any instruments, articles or things particularly described in the warrant, if the officer has a reasonable suspicion that the person may have such items on his person. In determining whether reasonable suspicion exists, officers should consider:
 - 1. The nature and physical quality of the item sought;
 - 2. The ease with which the item may be disposed of if so concealed;
 - 3. Whether the officer has located the items on the premises and
 - 4. The relationship of the person to the premises (such as owner, resident or visitor) and to those in control of the premises.

Duty to identify

In cases of combined warrants commanding both arrest and search at a premise or where an officer reasonably suspects an occupant may be named in an outstanding arrest warrant, an officer may require any person on the searched premises to identify themselves in order to determine whether the arrest warrant names that person.


During the execution of any search warrant, an officer may require persons on the premises who witnessed the search or arrest to submit to being photographed and to identify themselves. The requirement to be photographed does not apply to juveniles.

Arrest of Persons on Premises

An officer may arrest any person who attempts to escape or who forcefully resists or interferes with the lawful execution of a search warrant.

Search Only for Items Named

Any search pursuant to the execution of a search warrant shall be limited to the location described in the search warrant, and limited in scope to areas where the items described in said warrant could be found.

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Seizure of Unnamed Items

An officer may seize items not named in the search warrant, but discovered during a lawful search, if he found the items in a place reasonably within the scope of search, and he has probable cause to believe they are:

- A. Contraband.
- B. Fruits of a crime (such as stolen property);
- C. Evidence of a crime or
- D. Instruments of a crime.

Copy of Warrant for Residence

Whenever an officer executes a search warrant, they shall bring it with them to the scene and provide a copy of the search warrant order to the person in charge of the premises. If the premises are unoccupied, the officer shall leave a copy of the search warrant order in a conspicuous location inside the place named. The search warrant affidavit will not be provided to the person in control of the premises, nor left at the scene, unless ordered by the magistrate.

One Search per Warrant

A search warrant authorizes only one search of a premise. Thus, an officer cannot search the premises again under the same warrant once he has executed the warrant and left the premises.

Search Warrant Return (7.06)

The date of issuance and execution should be listed as well as the name of the officer receiving the warrant. An accurate description of all property seized should be itemized. All persons arrested in relation to the warrant should be listed by name.

The return should be signed by the warrant’s affiant. The return of the original search warrant, officer’s return, and affidavit must be made promptly to the magistrate within three (3) working days of the warrant’s execution. A photocopy of the search warrant, officer’s return, and affidavit should be retained in the case file by the affiant.