

1.2.3 Search & Seizure without Warrant

I. POLICY

Of all the actions an officer might take during the course of duty, the ones with the most severe consequences concern constitutional rights. The use of deadly force might result not only in injury or death but a review of the constitutionality of the act. Similarly, the arrest of a person for a misdemeanor shoplifting, by contrast, invokes the law of arrest and search and seizure issues that are controlled by the Constitution. The US Constitution and the Bill of Rights guarantee every citizen certain safeguards from government intrusion into their lives. These safeguards have become the cornerstones for the application of criminal justice in America. Consequently, these safeguards have placed limitations on the authority of police to enforce the laws of the nation, Commonwealth of Pennsylvania, and the City of Johnstown. The department expects officers to observe constitutional safeguards scrupulously and knowledgeably. The department further expects that officers understand the limits and prerogatives of their authority to act. Respect for the civil liberties of citizens shall be the paramount concern in all enforcement matters.

II. PURPOSE

The purpose of this policy is to define the legally mandated authority for the enforcement of laws, to establish procedures for ensuring compliance with constitutional requirements during criminal investigations, to set forth guidelines concerning the use of discretion by officers, and to define the authority, guidelines and circumstances when officers should exercise alternatives to arrests and pretrial confinement.

III. DEFINITIONS

1. Probable Cause: Searches and all arrests are based on the police officers perception of probable cause. According to the U.S. Supreme Court, probable cause exists where the facts and circumstances within the arresting officers knowledge and of which they had reasonable trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed.
 - a. An officer must have probable cause to undertake a search or make an arrest.
 - b. When an officer has appropriate probable cause, he or she may undertake a complete body search [not including a body-cavity search],

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record the suspect's fingerprints, take the suspect's photograph, and may detain the suspect in the holding cell. The aim of probable cause is to make a formal charge.

2. Reasonable Suspicion: This involves a standard less than probable cause, generally defined by the courts as a circumstance or collection of circumstances that would lead a trained, experienced officer to believe that criminal activity may be afoot.
 - a. An officer must have reasonable suspicion to temporarily detain a citizen.
 - b. When an officer has reasonable suspicion, he or she may undertake a pat down of a suspect's outer clothing for weapons and record the circumstances of the encounter. The aim of reasonable suspicion is to resolve an ambiguous situation.
3. Elements of Probable Cause: Probable cause may be established through investigation and observation, witnesses, confidential informants, or through anonymous sources provided that the information is corroborated by investigation. Unnamed informants may be used in an affidavit for a search warrant if the informant has first-hand knowledge of the investigation and information is included about why the informant is credible and reliable.

IV. PROCEDURES

A. Law-enforcement Authority

1. PA Consolidated Statutes Title 18 authorizes any locality to organize a police force and invests the police force of the locality with authority to prevent and detect crime, apprehend criminals, safeguard life and property, preserve the peace, and enforce state and local laws and ordinances.
2. PA Act 120 requires that all officers, before performing their duties be certified under the Municipal Police Officers Education and Training Commission. He/she is required to take an oath of Office shall include at the minimum the language required by Article VI, Section 3 of the Constitution of the Commonwealth of Pennsylvania, which states an oath whereby they swear to support the Constitution of the United States and the Constitution of the Commonwealth of Pennsylvania.

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B. Limitation on Law-enforcement Authority

Limitations on law enforcement authority are derived from statutes, federal, state, and local judicial interpretation of laws, opinions of the attorney general and commonwealth's attorney, departmental policies/rules and regulations, and city administrative decisions.

1. Statutory limitations include, but are not limited to enforcement of laws outside of the cities limits. A Mutual Aid Agreement grants authority to enforce state criminal and vehicle laws beyond the boundaries of the City of Johnstown except as specified.
2. Judicial limitations pertaining to law are interpreted by the courts that place the limitations on the authority of law-enforcement officers. The more common limitations address *Miranda* rights/warnings, rulings on search and seizure, eyewitness identification and lineups. The department shall provide policy guidance concerning these decisions, as appropriate.

V. SEARCH AND SEIZURE – Warrantless Searches

A search occurs when the police pry into hidden places such as a persons premise or a person being searched who has a reasonable expectation of privacy.

- A. The Fourth Amendment guarantees the right for people to be free from unreasonable searches and seizures of their homes, persons and thing. The Supreme Court is continuously interpreting the Fourth Amendment as it applies to police conduct. Illegally seized items of evidence will not be admitted in court and may be cause for a lost criminal case. Additionally, an illegally conducted search invites civil suits and criminal prosecution. In order to ensure that Fourth Amendment rights are protected, officers will obtain search warrants upon probable cause in all appropriate criminal cases except for the following circumstances.

1. Consent Searches
2. Emergency Searches
3. Plain View and Plain Feel
4. Abandoned Property and Open Fields
5. Inventory Searches of Vehicles
6. When executing Arrest Warrants

7. Incident to Arrest

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8. Pat-downs of suspicious persons

B. Consent Search

1. A search warrant is not necessary where a person who has authority or control over the thing or place searched consents to the search. The officer does not have to have reasonable suspicion nor probable cause to make a consent search: the officer may merely ask for permission from someone with control over the premises. If that person grants permission, the search may take place.

Consent searches shall observe the following rules:

- a. Generally, the person granting consent must use, access, or control the property. A person having exclusive possession of some part of jointly owned property could only give consent for a search of that part.
 - b. If two people have joint ownership of property, either may give consent. If possible, have the consenting party sign a written permission to search form.
 - c. A landlord, including a hotel or motel manager, cannot consent to a search of a tenant's premises, unless the tenant has been evicted or has abandoned the property.
 - d. A husband or wife, or one member of a cohabitating unmarried couple, may consent to a search of areas in common ownership or use.
 - e. A parent may consent to a search of premises occupied by a dependant child if the parent also has access to the premises.
 - f. An employee cannot give valid consent to a search of his employer's premises unless he has been left in custody of the premises.
 - g. An employer may generally consent to a search of premises used by employees, except premises used solely by an employee.
2. Consent must be given voluntarily. If an officer request consent from a citizen under circumstances that a reasonable person would consider coercive, then officers must seek a warrant. The officer may have the burden of demonstrating the person giving permission.
 3. A person who initially gives consent may withdraw if at any time. Officers shall then secure the premises and seek a warrant if probable cause exists.
 4. Refusal to give consent, in itself, cannot justify further law enforcement action.
 5. The scope of a consent search is limited to the area for which consent has been given, and within this area officers may search only into areas where the objects sought could reasonably be hidden.

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C. Emergency Searches

1. A search warrant is not necessary in an emergency. An emergency is termed; exigent circumstances.
2. Here are eleven considerations to determine whether an emergency exists:
 - a. The degree of urgency involved and the time required getting a warrant.
 - b. Officers reasonable belief that contraband is about to be removed or destroyed.
 - c. The possibility of danger to others including officer's left to guard the site.
 - d. Information that the possessors of contraband are aware that police are on their trail.
 - e. Whether the offense is serious or involves violence.
 - f. Whether officers reasonably believe the suspects are armed.
 - g. Whether the officers have probable cause at the time of entry.
 - h. Whether the officers have strong reason to believe the suspects are present on the premises.
 - i. The likelihood that the suspects will escape.
 - j. The suspect's entry onto premises after hot pursuit. To justify warrantless entry following hot pursuit, the arrest process must have begun away from the premises, and the offender knows that he/she is under arrest, and the offender tries to avoid arrest.
 - k. A reasonable belief that someone on the premises is in distress and in need of emergency assistance.
3. If officers enter premises with probable cause to believe that critical evidence may be destroyed or removed unless immediate action is taken, they may enter without a warrant, secure premises, and obtain a search warrant before proceeding further unless they have obtained consent to search, or some new circumstances arise necessitating another warrantless search.

D. Plain View Search

1. A plain view seizure is technically not a search. To make a plain view seizure of property two requirements must be met:
 - a. From a lawful vantage point the officer must observe contraband left in open view.

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- b. It must be immediately apparent to the officer that the items he or she observes may be evidence of a crime, contraband, or otherwise subject to seizure.
2. During a lawful frisk if an officer detects an object that is or might reasonably be an item that is contraband or other criminal evidence, then the object may be seized. Threatening items such as a weapon may always be removed during frisks. Non-threatening items may be removed only if their contraband or evidentiary nature is immediately apparent. This is also referred to as plain feel.

E. Abandoned Property and Open Fields

1. A search warrant is not required for property that has been abandoned.
2. To constitute abandoned property, two conditions must apply:
 - a. Property was voluntarily abandoned.
 - b. Property was discarded outside the area in which someone has a reasonable expectation of privacy.
3. Open fields are not protected by the Fourth Amendment, but officers must distinguish them from curtilage, searches of which require a warrant. Curtilage is the area of a dwelling, which is necessary, convenient, and habitually used by the family for domestic purposes. The extent of curtilage of a private residence is determined by whether the area is enclosed; the nature and use of the area; the proximity of the area to the home; and any measures taken by the owner to protect the area from observation. Note that under some circumstances surveillance of activities within curtilage may take place without a warrant.

F. Inventories of Vehicles

1. The department requires officers to inventory any lawfully impounded vehicle, or a vehicle removed from the street and placed in police custody. Any evidence or contraband found during the inventory may be used to formulate probable cause for a subsequent search warrant or arrest. Vehicles shall be inventoried per departmental procedure that requires an inventory of the entire contents, including closed containers provided they could be opened without breakage. The purpose of an inventory is to ensure safekeeping of private property and to protect the department from liability. To repeat in order to justify an inventory of a vehicle the following conditions must be met:
 - a. Officers must have lawful custody of it.

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- b. The inventory shall be conducted pursuant to departmental policy.
- c. The scope of the inventory shall be limited to those parts of a vehicle likely to conceal important, hazardous, or valuable items including, but not limited to, the passenger compartment, the trunk and glove box compartment.
2. Closed containers may be examined if they are likely to contain valuable property. If closed containers are locked or sealed, they shall not be forced open but simply logged on the inventory form.
3. The vehicle and its closed containers shall not be damaged.
4. If contraband is found the search should stop and a search warrant obtained to continue.

G. When executing Arrest Warrants

An officer with an arrest warrant may search for the defendant in his or her own home provided that the warrant was valid; the officer searches the defendant's home; when probable cause exists that the defendant is home at the time of the search. The search for the defendant must be limited to places where he or she might be found.

1. Protective Sweep following the execution of an arrest warrant the officer may undertake a search of the premises where the arrest took place without a warrant. Certain limitations must be observed, however:
 - a. The purpose of the protective sweep is to discover persons on the premises who might present a danger to officers.
 - b. Incident to arrest, officers may, without probable cause or reasonable suspicion; look into closets or other spaces immediately adjoining the place of arrest where threatening persons might be located.
 - c. In order to extend the protective sweep beyond closets and adjoining spaces, officers must have reasonable suspicion for fearing that persons may be on the premises who pose a threat. In such cases, the sweep is limited to examining places where a person might hide.
 - i. Officers shall carefully document their reasonable suspicion.
 - d. During a protective sweep, evidence discovered in plain view may be seized.
 - e. The sweep must cease when officers have dispelled a reasonable suspicion of danger.

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H. Vehicle Warrantless Searches

In recent years, the U.S. Supreme Court has modified and expanded the conditions under which officers may search vehicles. Preferably, officers shall search vehicles under the authority of a warrant whenever sufficient time exists to obtain one. Nevertheless, warrantless searches of vehicles may take place under many conditions and circumstances. It is imperative that officers understand the different types of vehicle searches and their limitations.

Definitions for the purposes of this section:

Motor Vehicle is a vehicle that is self-propelled except one which is propelled solely by human power or by electric power obtained from overhead trolley wires, but not operated upon rails.

A search is an examination of a motor vehicle with an investigative motive, which is to discover evidence or to examine the vehicle identification number [VIN] to ascertain ownership.

1. Warrants shall be obtained to search vehicles, if feasible unless an emergency exists. Any vehicle that has been disabled with little chance of its being driven away shall be searched with a warrant. In all other cases, vehicles may be searched without a warrant under the following circumstances.
 - a. When probable cause exists.
 - b. With the driver's consent.
 - c. Incident to the arrest of the occupants.
 - d. To frisk for weapons.
 - e. When necessary to examine the VIN or to otherwise ascertain ownership.
 - f. Under emergencies or exigent circumstances.
 - g. Inventories
2. Searches may be conducted within the following limitations.
 - a. With a warrant, search may extend anywhere within the vehicle, unless limited by the warrant itself.
 - b. When probable cause exists, a search may extend anywhere within the vehicle, unless the probable cause is limited to a specific part of the vehicle.

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- c. When consent has been obtained from the driver, officers may search the vehicle subject to any limitations specified by the consenting person. Consent shall be obtained in writing, if feasible.
 - d. Searches incident to the arrest of an occupant shall be limited to any area within reach of the arrestee. The area within reach is deemed to be the passenger compartment. The trunk, engine compartment, and any locked compartments shall not be searched unless immediately accessible to the suspect.
 - e. Frisks for weapons shall be confined to the passenger area. Any place not immediately accessible to the occupants, such as a locked glove compartment, shall not be frisked. If the contents of a container are immediately accessible to the subject, a closed container may be searched for weapons.
 - i. Note that an officer can order the suspect from the vehicle and frisk both the suspect and the vehicle.
 - f. An entry into the vehicle to examine the VIN or otherwise determine ownership must be limited to these purposes.
 - g. An emergency search of the vehicle may be conducted but the extent of the search must not exceed whatever is necessary to respond to the emergency.
3. As a rule no container within a vehicle shall be searched unless it might contain the items[s] sought. Procedures for unlocked containers are:
 - a. In a probable cause search, containers may be opened wherever found in the vehicle.
 - b. When the passenger area is searched incident to an arrest, containers within the passenger area may be opened.
 - c. During a consent search, containers may be opened provided that the terms of the consent either permit or reasonably imply permission.
 - d. Containers found in or discarded from a vehicle under circumstances not amounting to probable cause or in connection with a search incident to an arrest shall not be searched but shall be secured until a warrant is obtained.
 4. Under most conditions, locked containers shall be opened under a warrant unless one of the following circumstances has been met:
 - a. Consent has been given.
 - b. Probable cause exists to search the vehicle and the object of the search might be found in the container. However, a search warrant is preferred.
 - c. Inventory.

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5. Conduct of the vehicle search shall:
 - a. When possible, searches of vehicles shall be conducted contemporaneous with the stopping or discovery of the vehicle. As a general rule, vehicle searches shall be conducted as soon as reasonably possible.
 - b. When possible, officers shall avoid damaging a vehicle or its contents, and shall minimize the intrusiveness of the search and any inconvenience suffered by the passengers or owner.
 - c. As vehicles may contain sharp or pointed objects, and perhaps even syringes or other materials with body fluids on them, officers shall take precautions to minimize exposure to communicable diseases.

Effective:

Date: June 14, 2006

By Order Of:

Craig Foust
Chief Of Police

Limits of Authority
Search & Seizure Without Warrant 1.2.3
Section A

- ❖ U.S. Constitution Bill of Rights
 - Amendment IV
 - Search & Seizure
 - Amendment XIV
 - Due Process

- ❖ Commonwealth of Pennsylvania Constitution
 - Declaration of Rights
 - Article 1 Section 8
 - Security from Searches & Seizures

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Section B

- ❖ Probable Cause research
 - 'Lectric Law Library
 - About.com Guide to Civil Liberties
 - Court TV
 - North Carolina Justice Academy
 - National Association of Criminal Defense Attorneys
 - Nolo Press Guide

- ❖ Court Cases – Judicial Decisions
 - Draper Vs United States, 358 U.S. 307 [1959]
 - Arizona Vs Hicks, 480 U.S. 321 [1987]
 - New York Vs Belton, 453 U.S. 454 [1981]
 - Chimel Vs California, 395 U.S. 752 [1969]
 - Brinegar Vs United States, 338 U.S. 160 [1949]
 - Miranda Vs Arizona, 384 U.S. 436 [1966]
 - Terry Vs Ohio, 392 U.S., 1, 88 [1968]

- ❖ FindLaw: U.S.Constitution: Fourth Amendment: Annotations
 - Valid Searches & Seizures Without Warrants
 - Stop & Frisk
 - Search Incident to Arrest
 - Vehicular Searches
 - Vessel Searches
 - Footnotes

