



BRAINTREE POLICE DEPARTMENT

Policy and Procedure

Search and Seizure

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General Considerations The term “searches and seizures” includes the examination and taking into custody of persons, places or possessions with the intent to discover contraband, stolen property, or evidence of the commission of a crime.

The Fourth Amendment to the U.S. Constitution provides: *“The right of the people to be secure in their places, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”*

Here, in the Commonwealth, Article Fourteen of the Massachusetts Declaration of Rights provides: *“Every subject has a right to be secure from all unreasonable searches, and seizures, of his person, his houses, his papers and all his possessions. All warrants, therefore, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation; and if the order in the warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure: and no warrant ought to be issued but in cases, and with the formalities prescribed by the laws.”*

Searches and seizure conducted without a warrant, or exception thereto, are considered unreasonable. In an effort to reduce the possibility that

seized evidence will be ruled inadmissible as the result of an unreasonable search (and therefore excluded at trial), officers should have a thorough understanding of the basic constitutional and statutory requirements involved in searching for and seizing evidence.

The following procedures provide basic guidelines that are both legal and practical in the technical area of searches and seizures.

Policy It is the policy of the Braintree Police Department that:

1. When feasible, warrants should be obtained for searches; and
2. Searches should be conducted in conformity with the constitutional rights of all parties involved and with due regard for the safety of all officers involved.

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 such oath or affirmation.

Exigent Circumstances: Circumstances that are of such urgency as to justify a warrantless entry, search, or seizure by police when a warrant would ordinarily be required.

Probable Cause to Arrest: Probable cause to arrest exists if the officer possesses reasonably trustworthy information which is sufficient for a person of ordinary or reasonable intelligence to believe that the person is, has, or is about to commit the crime for which the arrest is being made.

Probable Cause to Search: Probable cause to search exists if a person of reasonable prudence and caution would believe that what is being sought will be found in the place to be searched.

Procedures **Search Warrants**

Obtaining a Search Warrant

The legal procedure specified by M.G.L. c. 276, §1 for the issuance of a search warrant is as follows:

A court or justice authorized to issue warrants in criminal cases may, upon complaint on oath that the complainant believes that any of the property or articles hereinafter named are concealed in a house, place, vessel or vehicle or in the possession of a person anywhere within the

probable cause for such belief, issue a warrant identifying the property and naming or describing the person or place to be searched and commanding the person seeking such warrant to search for the following property or articles:

- i. Property or articles stolen, embezzled or obtained by false pretenses, or otherwise obtained in the commission of a crime;
- ii. Property or articles which are intended for use, or which are or have been used, as a means or instrumentality of committing a crime, including, but not in limitation of the foregoing, any property or article worn, carried or otherwise used, changed or marked in the preparation for or perpetration of or concealment of a crime;
- iii. Property or articles the possession or control of which is unlawful, or which are possessed or controlled for an unlawful purpose; except property subject to search and seizure under sections forty-two through fifty-six, inclusive, of chapter one hundred and thirty eight;
- iv. The dead body of a human being;
- v. The body of a living person for whom a current arrest warrant is outstanding;
- vi. Biological or trace evidence, including body tissues/and or fluids including blood and blood serums, saliva, hair and fibers; and
- vii. Buccal samples for future forensic testing.

Note: The word "property" as used in this section shall include books, papers, documents, records and any other tangible objects.

A search warrant may also authorize the seizure of evidence.

FORM OF SEARCH WARRANT: A search warrant shall:

- i. Designate and describe the building, house, place, person, vessel or vehicle to be searched;
- ii. Particularly describe the property or articles to be searched for;
- iii. Be substantially in the form prescribed in G.L. c. 276, § 2A; and
- iv. Be directed to a sheriff or his/her deputy or to a constable or police officer, commanding him/her to search in the daytime, or if the warrant so directs, in the nighttime, the building, house, place, vessel or vehicle where the property or articles for which [s]he is required to search are believed to be concealed, and to bring such property or articles when found, and the persons in whose possession they are found, before a court having jurisdiction.

An officer requiring a search warrant should consult with his/her supervisor before proceeding to court. If legal assistance is required for the preparation of the search warrant affidavit, the District Attorney's office should be contacted.

Every search warrant issued and any action taken on such warrant should be recorded in police department records in accordance with standard departmental procedures. See department policy on **Legal Process**.

Executing Search Warrants

After a search warrant is obtained, a police officer shall:

- Check the warrant to ensure that it is signed and it clearly describes the place to be searched and the articles to be seized;
- Execute the warrant immediately, or within a reasonable time, but in any case, within seven days from date of issuance;
- Execute the warrant in the daytime unless it specifically provides for nighttime search. Nighttime for this purpose is from 10:00 p.m. until 6:00 a.m.;
- A search begun in the daytime may continue into the nighttime if such activity is reasonable and not for the purpose of harassment.

Service of Search Warrant

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.

When practical, show a copy of the warrant (not the original) to the person or persons lawfully on the premises.

The number of officers assigned to execute a search warrant is dependent upon the particular circumstances. One of the searching officers should be in police uniform, unless this would jeopardize the success of the search.

It is preferred but not required that search warrants be executed on any premises when the owners are present. At times, this practice can reduce the possibility of property destruction. In all cases, the manner of entry should be made as such to keep potential property destruction to a minimum. A copy of the warrant should also be left in a conspicuous place on the premises.

Knock and Announce Requirement For Dwellings

When serving a warrant at a 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.

Officers may knock on the door and gain entry by deception or by means of a ruse, if they reasonably believe this will result in a safer, practical and successful execution of the search warrant with less destruction of property.

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

- The officers will not be admitted voluntarily;
- The officers or any other persons are in danger of physical harm;
- The occupants are escaping; or
- The officers reasonably believe that evidence is being, or is in danger of being destroyed.

No Knock Entry

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 establishing probable cause, attested to in an affidavit, that the person inside the dwelling to be entered has knowledge of the officers' purpose and presence or where to follow the knock and announce procedure:

- Would be likely to endanger their safety or the safety of others;
- Would be likely to enable the wanted person(s) to escape; or
- Would be likely to result in the evidence being destroyed during the period between their announcement of purpose and subsequent forcible entry.
- Officers shall apply for a "no knock" warrant, if they have reason to believe the knock and announce rule should not be observed when the warrant will be executed.
- Officers will NOT apply for a "no-knock" warrant if there is reason to believe minor children or adults over the age of 65 are in the home, unless there is a credible risk of imminent harm to the minor adult over the age of 65 in the home to be searched.

A "NO-KNOCK" warrant shall only be issued by a Judge and not a Clerk

Magistrate

Note: Prior to executing a “no knock” warrant, officers shall assess the circumstances. If the circumstances which would justify disregarding the knock and announce rule are no longer present when the warrant is executed, the knock and announce rule must be followed.

Upon gaining entry, the searching officers should immediately identify themselves as police officers and should state that it is their purpose to serve a valid search warrant issued by the court

Search Responsibilities

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

- Shall not exceed the authority granted by the warrant;
- Shall make a diligent effort to find all the property listed in the warrant;
- Shall not search beyond the area described in the warrant unless consent is obtained or exigent circumstances exist; **[1.2.4 a, e]**
- Shall search only those areas capable of containing the property listed in the warrant;
- Shall carry out the search with the least possible damage to the premises;
- Shall remain on the premises only for the time necessary to thoroughly search for and seize the property listed in the warrant;
- Shall terminate the search when the listed property has been found or when it reasonably appears that such property is not on the premises;
- Shall make a reasonable attempt to secure the searched premises before leaving unless the person in control of such premises refuses such police actions;
- Shall, as quickly and practical, transport to the police station all seized property and ensure that it is properly marked, recorded and safeguarded in accordance with the departmental policies on ***Collection and Preservation of Evidence*** and ***Evidence and Property Control***;
- Evidence seized or obtained during the execution of a warrant shall be inadmissible if a law enforcement officer violates this section.
- Shall complete the Return section of the warrant and deliver it to the court within a reasonable period of time after the completion of the search, but no later than seven days from the date it was

- issued;
- Shall note on the warrant the action taken with an inventory of all property seized by authority of the warrant. (If evidence not described in the warrant is seized, attach a separate sheet to the Return listing all such property and state that it was seized during the execution of that warrant); and
 - Shall make a departmental report of all action taken on a search warrant, to be submitted to their immediate supervisor or in his/her absence the Officer-In-Charge before returning the warrant to the court.

Plain View

Police officers may seize objects in “plain view” when:

- The officer is “lawfully in a position to view the object”;
- The officer has “a lawful right of access to the object”;
- The incriminating character of the object is “immediately apparent,” or where the particular evidence is plausibly related to criminal activity of which the police are already aware; and
- The officer comes across the object “inadvertently.” **[1.2.4g]**

Commonwealth v. White, 469 Mass. 96, 102 (2014), quoting Commonwealth v. Sliach Brodeur, 457 Mass. 300, (2010).

Search of Persons on the Premises

In order to ensure an orderly and safe search, all persons present on the premises when the police arrive may be detained and prevented from moving about.

Persons not named in or referred to in the search warrant may not be searched unless either:

- (a) Probable cause exists in regard to the individual to be searched (mere presence at a location where criminal activity has taken place is not enough to constitute probable cause) **[1.2.4 g]**; or
- (b) The officer has reasonable suspicion to believe that such person is armed and dangerous then [s]he may be frisked for weapons. **[1.2.4 b]**

Search of Area Outside the Scope of Warrant

If during the execution of a search warrant it appears that there is probable cause to believe that seizeable property is located in an area of

the premises outside of the scope of the present warrant, a new warrant should be obtained immediately, unless consent is granted or exigent circumstances are present. While the new warrant is being sought, any occupants of the premises may have their activities restricted.

Search without a Warrant

Exceptions to Warrant Requirement [1.2.4 a,c,e,g]

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

- Warrantless stopping, questioning and frisking (investigative detention);
- Search incident to arrest (including protective sweep);
- Exigent or emergency circumstances search (including "hot pursuit"); **[1.2.4 e]**
- Consent searches; **[1.2.4 a]**
- Motor vehicle searches; **[1.2.4 c]**
- Pre-incarceration and inventory searches;
- Protective custody searches; and
- Administrative searches.

The following are exceptions to the warrant requirement of the Fourth Amendment of the U.S. Constitution and Article Fourteen of the Massachusetts Declaration of Rights: **[1.2.4 g]**

- The "plain view" doctrine;
- The "open fields" doctrine; and
- Abandoned property.

Police officers should not rely on any one of these exceptions. Instead, when possible under the circumstance, officers should obtain a search warrant in advance. In every case where a search is conducted without a warrant, a written report shall be made detailing the circumstances to include all important facts relative to the incident and an inventory of any evidence seized, in accordance with departmental procedures.

Warrantless Stopping, Questioning and Frisking (Investigative Detention) [1.2.4 b]

Both the Fourth Amendment and M.G.L. c. 41 Chapter 41 § 98 authorize police officers to briefly detain suspicious persons, to question such

persons and, if the officer reasonably believes the person may be armed and dangerous, to frisk that person for weapons. These procedures are sometimes referred to as a "threshold inquiry" and "Terry Frisk". This type of warrantless search and seizure is covered in depth in the departmental policy and procedure on ***Threshold Inquiries***.

Search Incident to Lawful Arrest [1.2.4 d]

CRITERIA: A warrantless search of an arrested person may be conducted under the following conditions:

- i. The arrest is lawful and the search is reasonably related to the circumstances of the arrest;
- ii. The search is conducted only for the purposes of:
 - Seizing fruits, instrumentalities, contraband and other evidence of the crime for which the arrest was made;
 - In order to prevent its destruction or concealment; and/or
 - To remove any weapons that the arrested person might use to resist arrest or to effect his/her escape.
- iii. The search is limited in scope to the person of the arrestee and the immediate surrounding area. Immediate surrounding area means that area from which the arrestee could either reasonably obtain a weapon or destroy evidence; and
- iv. The search should occur at relatively the same time and within the immediate vicinity of the arrest unless safety concerns dictate otherwise.

USE OF FORCE: The officer conducting the search may use the degree of force reasonably necessary to:

- Protect him/her self and others present;
- Prevent escape; and
- Prevent the destruction of evidence.

SEARCH OF POSSESSIONS AND CLOTHING: A search may also be made of items actually in possession of the arrested person and clothing worn at the time of arrest if such search is related to the offense for which the arrest was made or for weapons.

PROTECTIVE SWEEP: In addition to a search of the area within the arrestee's immediate control, a search of the entire premises may also be conducted at the time of or immediately following a valid arrest if the officer(s) are reasonably concerned for their safety due to the presence of

others.

This search 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 properly seized.

An arrest shall not be used as a pretext in order to make a search.

Searches in Emergency or Exigent Circumstances [1.2.4 d, e]

CRIMINAL ACTS: A police officer is authorized to conduct a search without a warrant when faced with an emergency situation where delay would endanger his/her or the public's safety or might result in the escape of the offender or the destruction of evidence.

The authority of the police to make warrantless entries in emergency situations, whether criminal or noncriminal is based upon their fundamental responsibility to preserve the peace and to protect the public safety. **[1.2.4 d, e]**

Warrantless entries and searches based on the emergency or exigent circumstances exception to the warrant requirement necessitate the police justify not only that it was impractical for them to obtain a search warrant in advance, but also that the emergency or exigent circumstances could not have been anticipated. **[1.2.4 e]**

While conducting a lawful search justified by emergency or exigent circumstances, a police officer may seize any incriminating evidence inadvertently discovered in plain view. **[1.2.4 e]**

PUBLIC SAFETY: Many emergencies justifying a warrantless entry and search do not necessarily involve criminal acts; for example, when a police officer hears a call for assistance, when [s]he observes smoke or flame, or when [s]he learns of an actual or potential natural or man-made calamity or disaster, [s]he has the duty and obligation to respond immediately. **[1.2.4 g]**

BURNING BUILDINGS: A warrantless entry into a burning building is permissible in an emergency. 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 reentry after the fire has been extinguished and officials have left the scene should be made pursuant to a search warrant, unless the re-entry is justified by a recognized exception to the warrant

requirement.

EXPLOSIVES/OTHER DANGEROUS ITEMS: When an officer has reasonable belief that the premises contain items imminently likely to burn, explode, or otherwise cause death, serious bodily harm, or substantial destruction of property may, without a search warrant, enter and search such premises to the extent reasonably necessary for the prevention of such death, bodily harm or destruction.

FRESH AND CONTINUED PURSUIT: The U.S. Supreme Court case of *U.S. v. Santana* set out factors supporting justification of exigent circumstances under this doctrine including: **[1.2.4 e]**

- i. There is fresh and continued pursuit of the suspect;
- ii. A crime of violence was involved;
- iii. There was a strong possibility that the suspect was armed;
- iv. The suspect was known or reasonably believed to be in the building;
- v. There was a likelihood that the suspect might escape unless immediately apprehended; and
- vi. There was sufficient justification for failure to obtain a search warrant.

Where the above or other emergency factors are not present, police may stake out the building or premises until a warrant is obtained.

NOTE: Under Massachusetts' Fresh and Continued pursuit doctrine, officers may enter a private residence without a warrant to apprehend a fleeing suspect when the following exigent circumstances exist:

- i. There is fresh and continued pursuit of the suspect; and
- ii. The pursuing officer has probable cause to arrest the suspect for either a felony or jailable misdemeanor.

Commonwealth v. Jewett, 471 Mass. 624 (2015)

Search by Lawful Consent [1.2.4 a]

Because such issues as who may give lawful consent to a police entry and search or whether the consent was given voluntarily will be carefully scrutinized by the court, police should not unduly rely on such consent. On the other hand, when properly obtained, consent to a search may expedite a criminal investigation. Police may engage in a warrantless search after acquiring consent even in circumstances where they do not

have probable cause.

For there to be a valid consent to search, the following two elements must be satisfied:

1. The consenting party must have sufficient lawful authority over the premises or property to be able to give consent to a search of that premises or property, and
2. Consent may be obtained from any person who has the right of ownership, possession or control of the premises or property. If there is serious doubt a search warrant should be obtained.

JOINTLY OWNED PROPERTY: Generally, if property, such as a house, apartment or business, is owned jointly by two or more persons, any one of them may consent to a search of the common areas of the premises unless where one of them has total exclusive control over that area (i.e. locked closet).

SPOUSE: A spouse may give consent to a police search of a jointly owned home, even without the knowledge or permission of the other spouse. If both are present and one objects then there is no valid consent.

PARENT: A parent may give consent to search premises under the parent's control although it involves searching a child's room and the parent has general access to the child's room. However, where the child, whether or not an adult, has exclusive access, often locked, to certain areas or property, the parent's consent may not be enough.

CHILDREN: Generally, a child may not give consent to a police search of premises or property owned by the child's parents.

ROOMMATE: A roommate may be able to give consent to a police search of common areas of the apartment but the roommate probably cannot give consent to a search of areas exclusively reserved for the suspect, such as his/her bedroom, luggage or closet.

LANDLORD: Generally, a landlord cannot give consent to the search of a tenant's apartment; however, a landlord may give consent to searches of common areas such as hallways and stairwells.

HOTELS: A hotel or motel owner or manager cannot give consent to a search of a guest's lodgings.

- Consent must be freely and voluntarily given.
- Officers are encouraged to notify the person from whom consent is sought of their right to refuse to give consent.
- Consent to search may be given orally but preferably, it should be in writing.
- Consent cannot be presumed from silence.
- Consent must be free of any coercion, intimidation, or threat.
- Officers shall not gain consent through the use of misrepresentation or fraud.
- Consent shall be requested prior to search and after the police officers have identified themselves.
- A consent search shall be limited to the area specified.
- Consent may be revoked at any time and the search shall cease upon revocation, unless additional factors or information have come to light which justify a continued warrantless, non-consensual 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.

Motor Vehicle Searches

Officers are prohibited from stopping motor vehicles without reasonable suspicion of criminal activity or motor vehicle violations.

If practicable, a search warrant should be obtained in advance of a motor vehicle search, as this procedure is generally preferred by the courts.

A warrantless search of a motor vehicle may be conducted under the following circumstances:

- **WARRANTLESS STOPPING, QUESTIONING AND FRISKING OF MOTOR VEHICLE OPERATOR OR OCCUPANTS:** A "stop and frisk" type of protective search when the officer reasonably believes that his/her safety or the safety of others is in danger in order to determine whether a suspect is armed, with the search confined to the area of the motor vehicle from which a suspect might gain possession of a weapon.
- **SEARCH OF MOTOR VEHICLE INCIDENT TO ARREST OF OPERATOR OR OCCUPANT:** A search incident to a lawful arrest limited to the area from which the person could reasonably obtain a weapon or reach destructible evidence. **[1.2.4 f]**

- **EXIGENT CIRCUMSTANCES SEARCH:** A warrantless search of a vehicle may be made when the following elements are satisfied: **[1.2.4 c]**
 1. The vehicle must be lawfully stopped on a public way or parked in a public place; and
 2. There is probable cause to believe that the vehicle contains contraband or other evidence at the initiation of the search

Note: Where exigent circumstances exist, the courts do not require the police to post a guard and seek a warrant prior to searching the vehicle.

CONSENT: A search may be conducted with the voluntary consent of the person in lawful control of the vehicle.

OUI ROADBLOCKS: As a matter of current Practice, the Braintree Police Department does not conduct OUI Roadblocks. However, if ever implemented they are permissible if:

- The selection of motor vehicles to be stopped is not arbitrary;
- If the safety of the public is assured by taking necessary precautions; and
- If the motorists' inconvenience is minimized and the roadblock procedure is conducted pursuant to a plan devised by law enforcement supervisory personnel.

Rarely will any other type of roadblock be implemented; however, if a roadblock is necessary for a major crime and there is a description of a suspect vehicle, all vehicles fitting that description can be stopped.

PLAIN VIEW OBSERVATIONS: If a police officer has lawfully stopped a motor vehicle, any incriminating item in or on the vehicle 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.

MOTOR VEHICLE INVENTORY: If the vehicle is impounded, the vehicle shall be searched and all personal property found in the vehicle shall be inventoried in accordance with the departmental policy on ***Motor Vehicle Inventory***. **[1.2.4 f]**

ADMINISTRATIVE SEARCHES: Motor vehicles are subject to various types of administrative searches which do not require search warrants. For example, the annual motor vehicle inspection procedure is, in effect, a warrantless search.

Booking Inventory Searches [1.2.4 f]

Prior to incarcerating a detainee in a police lockup, police shall conduct an inventory search of his/her person and inspection of his/her belongings in accordance with the departmental policies on ***Detainee Booking and Processing*** and ***Protective Custody***. This shall be done to uncover and safeguard any weapons or implements the detainee could use to injure him/her self or others, to safeguard valuables and to protect the police against false claims of theft or loss of the detainee's belongings.

Administrative Searches [1.2.4 g]

Under certain circumstances, police may engage in warrantless searches or inspections as part of their administrative functions. (i.e. it is proper to search a person who is about to visit a detainee) See departmental policy on ***Detainee Booking and Processing***.

Abandoned Property [1.2.4 g]

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

- Trash in collection area accessible to the public.
- The contents of a hotel room once an individual has vacated the room.
- 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.
- Items thrown away by a suspect.

Open Fields [1.2.4 g]

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 "house" such that it is protected by the Fourth Amendment.

The “curtilage” that is protected by the Fourth Amendment includes the grounds and buildings immediately surrounding the dwelling.

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 or may even have a locked gate.

Searches by Persons other than Law Enforcement Officers

PRIVATE INDIVIDUAL: Evidence obtained by a private individual, who is not acting as an employee or agent of the government, as a result of searching someone else’s property, is admissible.

POLICE OFFICER ACTING AS 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 [s]he acts beyond the scope of the private employer’s business.