

UPPER MERION TOWNSHIP POLICE DEPARTMENT
POLICY AND PROCEDURES

No. 440

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SEARCH AND SEIZURE

- I. **PURPOSE:** The purpose of this policy is to establish guidelines and procedures officers must follow when conducting searches and seizures.

- II. **POLICY:** The Fourth Amendment to the U.S. Constitution and Article I, Section 8 of the Pennsylvania Constitution guarantees every citizen the right to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. Supreme Court decisions regarding search and seizure place the responsibility on the police to ensure that citizens' Fourth Amendment rights are protected. Searches of persons, places and things will be accomplished in a manner that provides protection of constitutional rights, minimizes intrusion, preserves evidence or fruits of the crime, and provides for the safety of all parties.

- III. **CROSS-REF:** Policy # 430, SEARCHES OF ARRESTED PERSONS
Policy # 600, EVIDENCE AND PROPERTY CONTROL
Policy # 630, INTERVIEWS AND INTERROGATIONS

- IV. **PROCEDURE- SEARCH AND SEIZURE WITHOUT A WARRANT:**
 - A. SEARCH BY CONSENT: Officers shall comply with the following procedures when initiating searches by consent.
 - 1. Consent to search must be voluntarily given and not the result of duress or coercion, express or implied. Facts and circumstances will determine if the consent was voluntary. Officers shall ensure that consent searches are in fact voluntary and that consent has been freely given prior to initiating any such search.

2. Officers are not required to advise the individual of his/her right to refuse consent, but knowledge of the right to refuse is a factor that the courts may consider in determining the validity of the consent
3. Any officer initiating a consent search shall ensure the subject giving consent has ownership or other authority over the area or item to be searched in order for the consent to be valid.
4. A person has the right to limit the scope of a consent search. Officers conducting consent searches shall ensure that the subject granting consent has extended that consent specifically, voluntarily, and unequivocally to the area and/or items to be searched.
5. While consent may be given verbally, ideally the consent should be in writing and documented on the department's Consent to Search form. It is always preferable to have a witness to a consent search, if one is available.

B. EXIGENT CIRCUMSTANCES:

1. The exigent circumstances exception to the warrant requirement allows an officer to search under situations where the officer recognizes that there is not enough time to obtain a warrant, and that if he/she does not conduct the search immediately, the evidence may be lost forever. Probably the two strongest justifications for conducting a search without a warrant are probable cause to believe that someone is in need of immediate assistance because of injury, illness or other peril, or probable cause to believe that a crime is in progress or being committed, particularly a crime of violence.
2. The following are some factors to be considered in determining whether or not exigent circumstances exist:
 - a. The gravity of the offense committed.
 - b. The likelihood that the suspect is armed and therefore dangerous.
 - c. Probable cause exists that a suspect committed the offense and there is strong reason to believe that the suspect is still on the premises.
 - d. There is a likelihood that the suspect will escape if not immediately apprehended.
 - e. The circumstances of entry and time delay.
 - f. The likelihood that the evidence will be lost, destroyed or tampered with.

C. SEARCH OF A VEHICLE:

1. Under the Pennsylvania Constitution, police officers may search a motor vehicle when there is probable cause to do so, and the search does not require any exigency beyond the inherent mobility of a motor vehicle. (*Comm v. Gary*) However, whenever feasible, a warrant shall be obtained for the search of a motor vehicle. When a vehicle has broken down, or there is otherwise no significant chance the vehicle will be driven away or that evidence contained within it will be removed or destroyed, the vehicle should be searched only after a warrant has been obtained. The following procedures are recommended:
 - a. If the occupants of the vehicle have been arrested, or there is probable cause to arrest the occupants of the vehicle, the vehicle should not be searched without a warrant.
 - b. The vehicle should be towed to a secure location. A search warrant should be obtained and the vehicle should be searched at the secure location. Once the vehicle is taken into police custody, the vehicle may not be searched without a warrant.
2. Vehicles, lawfully stopped, may be searched without a warrant under Pennsylvania law by:
 - a. Consent.
 - b. Plain view: An officer who is where he/she is allowed to be, and looking where he/she is allowed to look, and who has probable cause to believe that the item is evidence of a crime, contraband, or otherwise subject to official seizure, may seize the item. The officer may not move items, or look inside, underneath or behind them for serial numbers or other identifying marks. If such movement is necessary, officers shall obtain a warrant or consent to search from the owner/operator.
 - c. Stop and frisk: When an officer can articulate facts which lead to a reasonable belief that an occupant may be armed and dangerous, the officer may search those areas of the passenger compartment, including containers, where weapons may be concealed, provided the driver and/or occupants have not been placed in police custody and restricted from further access to the compartment.
3. In no instance shall a container in a motor vehicle be searched unless it could contain the item(s) being sought.
 - a. Locked containers, such as attaché cases, suitcases and footlockers found during a vehicle search should only be opened if the search is being conducted under a warrant, or a valid consent to open the locked container is first obtained.

- b. Unlocked containers found during the consent search of a vehicle may be opened provided that the terms of the consent expressly permit or reasonably imply that the particular container may be opened, or under the conditions of a search warrant.

D. CRIME SCENE: Officers shall comply with the following procedures when initiating a search at the scene of a crime:

1. Officers may conduct a warrantless entry of a residence under the following conditions:
 - a. Consent by the owner or tenant.
 - b. Probable cause to believe someone in the premises is armed and dangerous, or to believe someone's life or personal safety is in danger, or to believe a serious crime is being committed in the officer's presence and there is a likelihood the offender would escape or evidence of the crime would be destroyed if time is taken to get a warrant. Such searches must be limited in scope to areas where the persons or evidence described in this section may be found.
2. Consent to enter a premises is not consent to search that premises. Once inside, an officer may make a protective sweep of a building to ensure there are no persons present who could cause harm to the officer.
3. Officers shall obtain a search warrant in all cases where circumstances do not provide for exceptions to the warrant rule.

E. STOP AND FRISK:

1. Investigative stops by officers shall be supported by reasonable suspicion. An officer who lacks probable cause, but whose observations lead him/her to reasonably suspect that a particular person has committed, is committing, or is about to commit a crime, may detain that person briefly in order to investigate the circumstances that provoked suspicion.
2. A police officer has the right to perform a pat-down search (frisk) of the outer garments of a suspect for weapons if he/she has been legitimately stopped with reasonable suspicion, and only when the officer has reasonable belief that the suspect may be armed and dangerous (refer to Policy #630, INTERVIEWS AND INTERROGATIONS, Section V-B-8).
3. When reasonable suspicion exists to perform a pat-down search, it should be performed with due caution, restraint and sensitivity. Pat-down searches shall be conducted in the following manner:



- b. Pat-down searches should be performed in such a manner that will provide the greatest amount of safety to the officer(s) conducting the search.
- c. In a pat-down search, officers are only permitted to externally feel the outer clothing of the suspect. Officers may not place their hands in pockets unless they feel an object that could reasonably be a weapon. An exception to this rule is established by the “plain feel” doctrine (Minnesota v. Dickerson). This doctrine allows an officer to seize evidence other than a weapon if, in conducting a frisk, the contraband nature of the evidence is immediately apparent to the officer based on his feel of the object through the person’s clothing during the pat down.
- d. In appropriate situations, the scope of a pat-down search may be extended to include handbags, briefcases, suitcases, or any other item that may conceal a weapon (Comm. v. Davidson).

F. INVENTORY SEARCHES:

- 1. The Upper Merion Township Police Department does not authorize inventory searches.

G. K-9 NARCOTICS SEARCHES: Pennsylvania courts consider the sniff of a trained dog to be a search and focus on whether or not such a search should require a warrant. Pennsylvania courts require the police to articulate reasonable suspicion for believing that drugs may be present in the place before they seek to search it with a dog sniff.

- 1. *Search of a place:* Pennsylvania courts require the following before a dog may search a place:
 - a. the police must be able to articulate reasonable suspicion for believing that drugs may be present in the place they seek to search with the dog;
 - b. the police must be lawfully present in the place where the K-9 sniff is conducted.
- 2. *Search of a person:* Pennsylvania courts require the heightened standard of probable cause to search a person or a bag held by the person. The sniff is always a search under Pennsylvania law, and a person has a more heightened privacy interest than in a place.
- 3. *Exterior sniff of a vehicle:* Pennsylvania courts require the standard of reasonable suspicion to be met for the exterior sniff of a vehicle to be proper.
- 4. *Schools:* Pennsylvania courts have held that school officials on their own initiative could use police with a police drug dog to perform a “random search” of student lockers.

5. *Abandonment*: Pennsylvania courts have held that an abandonment of property that is not the product of an illegal seizure, with circumstances manifesting intent to relinquish any privacy expectation held in the property, can permit a dog sniff of the property.

H. SEIZURE:

1. Any evidentiary items discovered in the course of a search shall be collected, handled, packaged, marked, transported and stored in accordance with Policy #600, EVIDENCE AND PROPERTY CONTROL. Where appropriate and feasible, itemized receipts for seized property shall be given to the owner of the property.

I STATUTORY AUTHORIZATION:

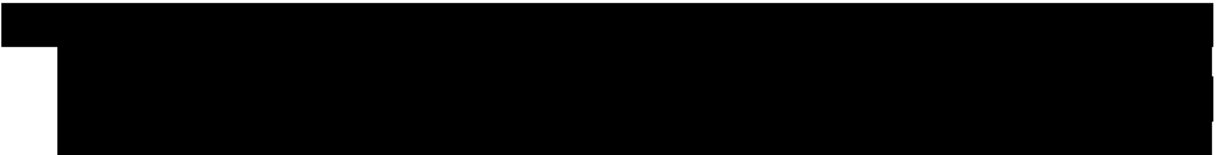
1. Upper Merion Township police officers will adhere to all Commonwealth and Federal statutory and case law provisions in the course of searches and seizures.

V. **PROCEDURE- SEARCH AND SEIZURE WITH A WARRANT:**

A. EXECUTION:

1. A search warrant shall be executed as soon as practicable within the conditions established by state law. Circumstances that may necessitate a delay in executing a search warrant include, but are not limited to:
 - a. The need to have many searches occur at the same time, which requires coordination and mobilization of law enforcement resources.
 - b. The seizable items have not arrived at the search site.
 - c. The probability that substantial resistance will be encountered.
 - d. A particular person(s) is absent from the search site, and the supervisory officer feels that the search would best be conducted if that person were present.
 - e. The need to protect an informant's identity
2. Absent court approval, a search should be conducted between 0600 and 2200 hours.

B. PREPARATION FOR EXECUTION:



[REDACTED]

2. The supervisory officer shall attempt to determine if any circumstances have changed that make executing the search warrant at that time undesirable.
3. The supervisory officer shall insure that the entire search warrant execution process is documented on the appropriate departmental report.

C. ENTRY PROCEDURES:

[REDACTED]

2. The supervisory officer shall be responsible for ensuring that the search warrant is valid and that the property about to be searched is the property listed on the warrant.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

D. ON PREMISES ACTIVITIES:

[REDACTED]

2. After the search site has been secured, search personnel shall develop a prioritized strategy that details the likely whereabouts of the items to be seized and an order of operation for conducting the search.
3. Each person collecting evidence shall bag, tag, and transport the evidence to a central location where a designated person shall be responsible for the following:

- a. Recording the name of the person who recovered the evidence.
 - b. Recording a description of each item of evidence recovered.
 - c. Recording the location where each item of evidence was found.
 - d. Preserving all evidence until custody is transferred to the evidence technician or other designated person responsible for inventory and storage.
4. If damage occurs during an entry to premises that will be left vacant, and the damage may leave the premises vulnerable to security problems, arrangements shall be made to guard the premises until it can be secured.

APPROVED: *Thomas M. Nolan*
Chief Thomas M. Nolan

DATE: **01/30/2019**

APPROVED: *Jeremy Johnson*
Captain Jeremy Johnson

DATE: **01/30/2019**

TO BE REVIEWED: ANNUALLY

DISTRIBUTION: All police officers
Township Manager
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