

UW Whitewater Police



Warrantless Search and Seizure

Number:
1.2.4

No. Pages:
7

Special Instructions:

CALEA: 1.2.4

Approved By:
Chief Kiederlen

Effective Date:
1/17/2023

Revised Date:
New

Revision number:

I. Purpose

The purpose of this General Order is to provide a written directive instructing sworn personnel of UW-Whitewater Police Department policies regarding warrantless search and seizures.

II. Definitions

Exigent Circumstances: Situations where an officer must prevent the destruction of evidence, or prevent the escape of a person, or prevent injury to themselves or others, or where they are aiding someone inside a building, or some other emergency. A situation in which there is either an emergency that exists or an urgency, that prevents an officer from obtaining a search warrant because it is not possible or practical. This could be because people are in imminent danger, evidence faces imminent destruction or a suspect's escape is imminent.

Emergency Circumstances: A situation in which property or human life are in jeopardy and the prompt summoning of aid is essential.

Emergency Doctrine: "That when an actor is faced with a sudden and unexpected circumstance which leaves little or no time for thought, deliberation or consideration, or causes the actor to be reasonably so disturbed that the actor must make a speedy decision without weighing alternative courses of conduct, the actor may not be negligent if the actions taken are reasonable and prudent in the emergency context." *Rivera v. New York City Tr. Auth.*, 77 N.Y.2d 322, 327 (1991); see also *Lifson v. City of Syracuse*, 17 N.Y.3d 492, 497 (2011); *Caristo v. Sanzone*, 96 N.Y.2d 172, 174 (2001).

Stop and Frisk: *Terry v. Ohio* (1968) case law established that officers may stop and frisk an individual under circumstances in which officers are able to articulate reasons to fear for their safety. Officers performing this type of action shall limit their scope to a protective pat down search for weapons. *Michigan v. Long* (1983) extended this same principle to the search of a vehicle's passenger compartment.

III. Policy

It is the policy of the UW-Whitewater Police Department (UWWPD) that all constitutional provisions and due process will be followed while conducting warrantless search and seizures,

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and that all warrantless searches or stop and frisks that occur will be documented. When reasonable, a search that goes beyond a frisk/pat down should be conducted by an officer of the gender requested by the subject. If possible, a second officer should be present for these searches.

IV. Procedure

A. Warrantless Searches Permitted

1. Search with Voluntary Consent: Officers may search property or persons when voluntary consent has been given by a person who has the authority to do so.
 - a. No threats or coercion may be used by officers to obtain such permission.
 - b. The consent may be withdrawn by the authorizing person at any time during the search.
 - c. Consent to search forms should be utilized by officers whenever possible (see Appendix A and B).
2. Search of Abandoned Property:
 - a. Officers may search abandoned property, including bags or purses discarded while being chased, without a warrant.
 - b. Officers can also search garbage that has already been placed for collection, provided it is located where the actual pickup is normally performed.
3. Search of Vehicles due to Movable Vehicle Exception:
 - a. *Carroll v. United States* (1925) established that officers may search a vehicle, including the trunk and other containers, without a warrant if officers have probable cause to believe they have evidence.
 - i. Where police officers have probable cause to search an entire vehicle, they may conduct a warrantless search of every part of the vehicle and its contents, including all containers and packages, which may conceal the object of the search.
 - ii. The scope of the search is not defined by the nature of the container in which the contraband is found. Rather, it is defined by the object of the search and the places in which there is probable cause to believe that it may be found. *United States V. Ross* 102 S. Ct. 2157 (1982).
 - iii. Police officers do not have to separately request permission to search each container found in a vehicle since a reasonable person may be expected to know that narcotics are generally carried in some form of container. *Florida v. Jimeno*, 111 S. Ct. 1801 (1991).
 - b. *California v. Carney* (1985) also applies this exception to motor homes or mobile campers.
4. Search Due to Emergency Circumstances: Emergency circumstances are those that demand immediate action. Emergency circumstances have generally justified entry

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into a dwelling or building, without a warrant, when any of the following conditions is reasonably believed to apply:

- a. When evidence would be destroyed.
- b. When there is the threat of injury to the officer or others.
- c. When a felon would escape.
- d. When a crime is in progress.
- e. Under exigent circumstances.
- f. When in hot pursuit of a criminal.

5. Search Due to Exigent Circumstances:

- a. Officers may search a person or property without a warrant under exigent circumstances. The officer must be able to articulate probable cause and the exigent circumstances.
 - i. Probable cause exists when a police officer, in light of experience and training, is aware of articulable facts or circumstances which could lead a reasonably prudent police officer to conclude that there is an actual emergency, or imminent danger of removal or destruction of evidence, requiring immediate action.
- b. Examples of exigent circumstances include:
 - i. An officer must prevent the destruction of evidence; or
 - ii. Prevent the escape of a person; or
 - iii. Prevent injury to themselves or others; or
 - iv. Aiding someone inside of a building;
 - v. Some other emergency.
- c. Exigent circumstances do not justify a search, but they allow you to be in a place where another exception to the warrant requirement (i.e. plain view) may apply.
- d. An exigency may expire with the passage of time. Generally, exigent circumstances are short lived, and seizures resulting from them should be made as an immediate result of the exigency. The more time passes following an exigent circumstance, the more likely it is that a court will require a search warrant for seized evidence to be admissible.

6. Search Incident to Arrest: *Chimel v. California* (1969) established that officers may search a person for weapons and evidence incident to arrest. This search must be limited to the area within the arrestee's immediate control. The entire interior of a motor vehicle may be searched if the person was an occupant at the time of arrest.

- a. Persons should be searched as soon as possible when taken into custody. As a safety precaution, everyone in police custody who is placed in a police facility shall be searched immediately upon entry to the facility.
- b. This search is mandatory even through a preliminary search shall be conducted in the field prior to transport. This search can include, but is not limited to:
 - i. A pat down of clothing and the emptying of all pockets;

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- ii. Inspection of all packages, luggage, book bags, wallets or purses; and
- iii. Removal of boots and shoes for inspection.

7. Crime Scene Search

- a. A warrantless search at a crime scene may be made when exigent circumstances exist, evidence is in plain view, or with consent (consent search form should be used whenever practical).
- b. At the "Scene of a Crime" the U.S. Supreme Court has ruled there are no exceptions to the 4th Amendment for crime scene searches. However, in responding to a homicide or serious assault scene, officers may:
 - i. Make a warrantless entry where they reasonably believe a dead body or injured person will be found. A suspected dead body may still be alive and entry is justified under the Emergency Doctrine.
 - ii. Examine the body itself.
 - iii. Search the premises for other victims or subjects.
 - iv. Seize any evidence in plain view while inside the residence pursuant to any of the above permissible activities. There is no "crime scene exception" to the search warrant requirement for residences.

B. Warrantless Seizure

- 1. Seizure Due to Plain View: Officers may seize evidence in plain view, provided they have a legal right to be at the location where the evidence was observed.
- 2. Plain Feel Doctrine: Under the plain feel doctrine, a police officer may seize non-threatening contraband detected through the officer's sense of touch during a Terry frisk if the officer is lawfully in a position to detect the presence of contraband, the incriminating nature of the contraband is immediately apparent from its tactile impression and the officer has a lawful right of access to the object.
 - a. The plain feel doctrine is only applicable where the officer conducting the frisk feels an object whose mass or contour makes its criminal character immediately apparent.
 - b. Immediately apparent means that the officer readily perceives, without further exploration or searching, that what he or she is feeling is contraband. If, after feeling the object, the officer lacks probable cause to believe that the object is contraband without conducting some further search, the immediately apparent requirement has not been met and the plain feel doctrine cannot justify the seizure of the object.
- 3. Seizure Incident to Arrest:
 - a. Any item that may be used as a weapon by the person in custody shall be seized.
 - b. Evidentiary material shall be seized and held.
 - c. Officer discretion shall prevail as to whether any of these items are returned when, and if, the person is released from custody.

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- d. Contraband shall be destroyed in the presence of another officer and documented if not used for evidence.
- 4. In regard to crimes involving sexual activity, it is prohibited to use evidence of vice crimes, such as condoms, as the sole basis for determining criminal activity.
- 5. Officers shall conduct inventory searches of seized vehicles or other seized property without a warrant based on the following justifications:
 - a. An inventory protects the property of the owner;
 - b. An inventory protects the law enforcement agency against claims that property in its possession has been lost or stolen;
 - c. And an inventory allows officers to discover any potential danger that may exist because of property in their possession.

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Appendix A. Consent to Search Place or Vehicle

CONSENT TO SEARCH

THE FOURTH AND FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES ALLOW THE POLICE TO CONDUCT A SEARCH OF PRIVATE PREMISES ONLY WITH A SEARCH WARRANT OR THE CONSENT OF THE PARTY IN CONTROL OF THE PREMISES / PROPERTY. YOU HAVE THE RIGHT TO REFUSE TO GIVE YOUR CONSENT TO THE AUTHORITIES TO SEARCH ANY PREMISES / PROPERTY UNDER YOUR CONTROL. IF YOU CONSENT TO A SEARCH, ANYTHING FOUND MAY BE USED AGAINST YOU IN A CRIMINAL PROCEEDING.

I, _____, have been advised of my constitutional right to refuse to allow a police search of all premises / property within my control, specifically described as: _____ . which is located at: _____ .

I have decided to allow _____, a law enforcement Officer for the UW-Whitewater Police Department to search every part of the described property and to take any evidence located. I give this consent of my own free will, without being subject to threats or promises. I know that anything discovered may be used against me in a criminal proceeding.

Signed: _____

Date: _____

Witness: _____

Date: _____

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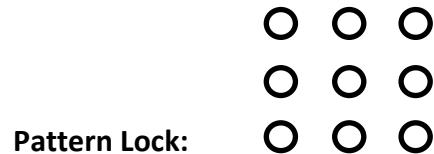
Appendix B. Consent to Search Electronic

CONSENT TO SEIZE/SEARCH **COMPUTER EQUIPMENT, MOBILE DEVICE, ELECTRONIC DATA**

I, _____, hereby authorize _____, who has identified himself/herself as a law enforcement officer, and any other individual, including, but not limited to a computer forensic examiner, to take possession of, remove, copy (i.e., create an exact bit-stream duplicate "copy"), and conduct a complete examination of the following computer systems, data storage devices, data storage media, mobile device, GPS, and other electronic equipment under my control (specifically): I further authorize the law enforcement officer(s) to copy and keep any documentation or data found on the equipment described above that are determined by the officer to be pertinent to the criminal investigation.

I am providing any and all passwords, and access codes known to me that may be necessary for a complete examination of the computer systems, devices, and/or media. I consent for these passwords and access codes to be used for the purposes of performing a complete examination of the computer systems, devices, and/or media by law enforcement.

All of the passwords and access codes are:



I give my consent freely and voluntarily without fear, threat, coercion, or promise of any kind. I understand that the officer does not have a search warrant, and that I have the right to refuse a police search of these computers, devices and/or systems. I understand that I am allowing access to all data contained on these computers, devices and/or media, including any and all encrypted data. I further agree that I am the owner of this equipment and have complete access to and use of it. I understand that any evidence of illegal activity located on or within any of these computers, devices, and/or media, may be used against me in a Court of Law. I understand and acknowledge that I have an absolute right to refuse to give my consent, and I hereby voluntarily waive this right.

Signed: _____ Date: _____

Witness: _____ Date: _____