


Billerica Police Department 	POLICY NUMBER OPS-08	PAGES 11	EFFECTIVE 7/10/16
	Accreditation Standards: 1.2.4 General Orders:		
Search & Seizure			

I. General Considerations and Guidelines

The Fourth Amendment to the US Constitution prohibits "unreasonable" searches and seizures, and the Supreme Court has consistently held that unless they come within one of the few carefully limited exceptions to the search warrant requirement, warrantless searches and seizures are considered unreasonable.¹

The Fourth Amendment to the US Constitution has been interpreted by the US Supreme Court to require that, whenever possible and practicable, with certain limited exceptions, a police officer should always obtain a valid search warrant in advance.²

The following procedures have been prepared to provide basic guidelines that are both legal and practical in the technical area of searches and seizures. In their implementation, officers should consider all related department policies on the following topics: **Arrests, Stop and Frisk and Threshold Inquiries, Search Warrant Affidavits, Use of Informants and Collection and Preservation of Evidence.**

II. Policy

It is the policy of the Billerica Police Department that:

- A. Warrants shall be obtained for all searches whenever possible and practicable; and
- B. Searches shall be conducted in strict observance of the constitutional rights of the parties involved, and with due regard for the safety of all officers, other persons and property involved.

III. Definitions

- A. **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.
- B. **Exigent Circumstances:** Situations in which law enforcement officials will be unable or unlikely to effectuate a search or seizure for which probable cause exists unless they act swiftly and without prior judicial authorization.³
- C. **Probable Cause:** The facts observed, information obtained from others, and personal knowledge and experience that are sufficient to lead a reasonable and prudent person to believe that a particular crime has been, is being, or is about to be committed, and that seizable evidence of a crime is likely to be found in a specific location or on a specific person, and which would justify a judge or magistrate to issue a search warrant.

IV. Procedures

A. Search with a Warrant

1. Generally

- a) The Constitution of the United States and the Massachusetts State Constitution establish a requirement to obtain a search warrant prior to conducting a search of an individual's person or property.
- b) Any search without a warrant is an exception to the warrant requirement of each of these documents.
- c) Searches with a valid search warrant are preferred by the courts.

2. Obtaining a Search Warrant

- a) A court or justice authorized to issue warrants in criminal cases may issue a warrant identifying the property to be searched for and naming or describing the person or place to be searched.

An officer seeking a warrant must submit a warrant application and affidavit upon oath that [s]he believes that the property or articles named in the application for the warrant are concealed in a house, place, vessel or vehicle or in the possession of a person anywhere within the Commonwealth and/or territorial waters.

- b) The requirements and procedures for obtaining a search warrant are specified by MGL c. 276, §1. For further information, see the department policy on **Search Warrant Affidavits**.

3. Executing a Search Warrant

Officers conducting a search based upon a search warrant are limited to searching the locations named in the body of the warrant and only in such places that the property sought may be concealed.

For further information, see the department policy on **Executing Search Warrants**.

B. Searches without a Warrant

1. Generally: A police officer should never rely on one of the exceptions whenever it is feasible, under the particular circumstances, to obtain a search warrant in advance.
2. Exceptions to Warrant Requirements: Officers may make a warrantless search only when one of the following major 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");
 - Consent searches;
 - Motor vehicle searches;
 - Pre-incarceration and inventory searches;
 - Protective custody searches; and
 - Administrative searches.

3. Searches Which Are Not Exceptions: The following are not considered invasions of any privacy interest and, therefore, do not come under the search warrant requirement of the Fourth Amendment generally:
 - The "plain view" doctrine;
 - The "open fields" doctrine; and
 - Abandoned property.
4. Warrantless Stopping, Questioning and Frisking (Investigative Detention) **[1.2.4(b)]**
 - a) Both the Fourth Amendment to the US Constitution and Chapter 41, section 98 of the Massachusetts General laws authorize police officers to briefly detain suspicious persons, to question such persons and, if the officer reasonably believes the person may be armed or dangerous, to frisk that person for weapons.

These procedures are sometimes referred to as a "threshold inquiry." This type of warrantless search and seizure is covered in depth in the department policy on **Stop, Frisk and Threshold Inquiries**.

C. Search Incident to Lawful Arrest [1.2.4(d)]

1. Criteria

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

- a) The arrest is lawful and the search is reasonably related to the circumstances of the arrest;
- b) 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;⁴
- c) 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 can either obtain a weapon or destroy evidence; and
- d) The search is substantially connected with the arrest and conducted in the immediate vicinity of the arrest; however, if safety requires, the officer may delay the search and conduct it at a safe location.

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

2. Search of a House: If a search of a house is to be upheld as incident to an arrest, that arrest must take place inside the house.⁵
3. 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.

4. Protective sweep

- a) In addition to a careful search of the area within the arrested person's immediate control, a quick and limited search of a premises may be conducted if there is a reasonable belief that it is imperative for the officers' or others' safety because of the presence of others in the house or apartment.⁶
 - b) This search is narrowly confined to a cursory visual inspection of those places in which a person might be hiding and may include a search for weapons.⁷
 - c) Any item or object recognizable as criminal evidence discovered in plain view during a justifiable "protective sweep" may be properly seized.⁸
 - d) A police officer who has lawfully entered the premises may conduct a protective sweep whether [s]he entered the premises with an arrest warrant, search warrant or the existence of exigent circumstances.
 - e) A protective sweep cannot last any longer than it is necessary to dispel the reasonable suspicion of danger and, in any event, no longer than it takes to complete the arrest or search and depart the premises.
5. Use of force: The officer conducting the search may use the degree of force reasonably necessary to:
- a) Protect himself/herself and others present;
 - b) Prevent escape; and
 - c) Prevent the destruction of evidence.

D. Searches in Emergency or Exigent Circumstances [1.2.4(e)]

1. 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.⁹
 - a) The authority of the police to make warrantless entries in emergency situations, whether criminal or non-criminal, is based upon their fundamental responsibility to preserve the peace and to protect the public safety.¹⁰
 - b) The doctrine that permits warrantless entries and searches because of emergency or exigent circumstances requires justification by the police that it was impractical for them to obtain a search warrant in advance and that the warrantless search was truly necessitated by the emergency circumstances which could not have been anticipated.¹¹
 - c) While conducting a lawful search justified by emergency or exigent circumstances, a police officer may seize any incriminating evidence inadvertently discovered in plain view.

2. 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. Two examples (but not limited to) of warrantless searches during a public safety emergency are:

a) Burning Buildings:

- A warrantless entry into a burning building is permissible in an emergency, and 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 such as consent, emergency or abandonment.¹²

b) Explosives/Other Dangerous Items:

- When an officer has reasonable cause to believe premises contain things imminently likely to burn, explode, or otherwise cause death, serious bodily harm, or substantial destruction of property, the officer 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.¹³

3. Fresh and Continued Pursuit

a) The US Supreme Court case of *US v. Santana*¹⁴ set out factors supporting justification of exigent circumstances under this doctrine, including:

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

b) Where the above or other emergency factors are not present, police may stake out the building or premises until a warrant is obtained.¹⁵

E. Search by Lawful Consent [1.2.4(a)]

1. 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 elicited, consent to a search may expedite a criminal investigation. Police may engage in a warrantless search after obtaining consent even in circumstances where they do not have probable cause.

2. For there to be a valid consent to search, the following three elements must be satisfied:

- a) 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. 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: Consent to a warrantless search by one who possesses common authority or other sufficient relationship to the premises or effect sought to be inspected is valid as against an absent, non-consenting person with whom that authority is shared. 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.¹⁶ The consent will be valid even if an *absent* co-tenant objects. However, if a *present* co-tenant objects to the search, there is no consent.¹⁷

- 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.¹⁸ But, if the other spouse is present and objects, there can be no consent.¹⁹
 - 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.²⁰ 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.²¹
 - 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. Although, if there is a present roommate who objects, there is no consent to a search.
 - Landlord: Generally, a landlord cannot give consent to the search of a tenant's apartment.²² 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.²³
- b) Consent must be freely and voluntarily given.²⁴
- Officers shall notify the person from whom consent is sought of the person's right to refuse to give consent.²⁵
 - Consent to search may be given orally, but preferably it should be in writing.²⁶
 - Consent cannot be presumed from silence.
 - Consent must be free of any coercion, intimidation, or threat, so officers must avoid even the appearance of intimidation or duress.
 - 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.

- c) 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, nonconsensual 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.

F. Motor Vehicle Searches [1.2.4(C)]

1. Generally

- a) Officers are prohibited from stopping motor vehicles without reasonable suspicion of criminal activity or motor vehicle violations.²⁷
- b) If it is at all possible and practicable, a search warrant should always be obtained in the prescribed manner in advance of a motor vehicle search, as this procedure is generally preferred by the courts.
- c) Warrantless searches of motor vehicles may be conducted under several exceptions to the warrant requirement.

2. Stopping, Questioning and Frisking of Motor Vehicle Operator or Occupants: A "stop and frisk" type of protective search occurs when the officer reasonably believes that his/her safety or the safety of others is in danger and is done 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.²⁸

3. Search of Motor Vehicle Incident to Arrest of Operator or Occupant: This is a search incident to a lawful arrest limited to the arrestee's person and the area within his or her immediate control, i.e., the area where the arrestee might gain possession of a weapon or destructible evidence.²⁹

4. Exigent Circumstances Search: A warrantless search of a vehicle may be made when the following elements are satisfied:³⁰ **[1.2.4(C)]**

- a) The vehicle must be lawfully stopped on a public way or is found parked in a public place,³¹
- b) There is probable cause to believe that the vehicle contains contraband or other evidence at the initiation of the search; and
- b) Exigent circumstances are present.

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.³²

5. Consent: A search may be conducted with the voluntary consent of the person in lawful control of the vehicle.³³

6. Roadblocks: Roadblock stops (for example, to detect drivers under the influence of alcohol) are permissible if the selection of motor vehicles to be stopped is not arbitrary, if the safety of the public is ensured by taking necessary precautions, if the motorists' inconvenience is minimized, and the roadblock procedure is conducted pursuant to a plan devised by law enforcement supervisory personnel.³⁴ If police

have a description of a suspect vehicle, they may stop all vehicles fitting that description.

7. Plain View Observations: If a police officer has lawfully stopped a motor vehicle and is questioning the operator, 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.³⁵
8. Motor Vehicle Inventory: If the vehicle is impounded, the vehicle shall be searched and all personal property found in the vehicle shall be inventoried and kept in safe custody in accordance with the department policy on **Motor Vehicle Inventories**.

All police officers shall be especially watchful and alert when stopping and searching a motor vehicle or its occupants, as many officers have been seriously injured, some fatally, in taking this police action which should never be considered "routine."

In stopping and searching motor vehicles, officers shall take all reasonable precautions for their personal safety, such as directing the occupants to alight from the vehicle and frisking them for weapons when the officer has a reasonable belief that they may be armed and dangerous.³⁶ [1.2.4(g)]
9. 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.

G. Booking Inventory Searches [1.2.4(f)]

1. 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 department policies on **Detainee Processing** and **Protective Custody**.
2. This shall be done to uncover and safeguard any weapons or implements the detainee could use to injure himself/herself or others, to safeguard valuables and to protect the police against false claims of theft or loss of the detainee's belongings.

H. Administrative Searches [1.2.4(g)]

1. The police may, under certain circumstances, engage in warrantless searches or inspections as part of their administrative functions.
2. For example, it is proper to search a person who is about to visit a detainee. See departmental policy on **Detaining Prisoners**.

I. The "Plain View" Doctrine [1.2.4(g)]

1. Officers may seize contraband or evidence without a warrant under the "plain view" exception to the warrant requirement if the following conditions are met:³⁷
 - a) There must be a prior lawful entry;
 - b) The officer must be within "plain view" of the item seized;
 - c) The officer finds the item seized "inadvertently";³⁸ and
 - a) The item seized must be "immediately apparent" as contraband or evidence of crime.

2. Lawful entry includes:
 - a) Entry with a valid warrant;
 - b) Entry to make a lawful warrantless arrest;
 - c) Entry as a result of lawful consent;
 - d) Entry in an emergency to render necessary aid or assistance; and
 - e) Item viewed from a public area.
3. Items are immediately apparent as contraband if the officer has probable cause to believe they are:
 - a) Instrumentalities or means by which any crime was committed, (such as weapons, masks, tools, etc.);³⁹
 - b) Contraband (articles which may not be legally possessed, such as counterfeit money or controlled substances, etc.);⁴⁰
 - c) Fruits of any crime (such as stolen property);⁴¹
 - d) Other evidence of any crime (such as clothing or other items fitting the description of the criminal offender); or
 - e) Property which bears a reasonable relationship to the purpose of the search (such as documents establishing who owns the premises searched if ownership is an element of the crime).⁴²

J. Abandoned Property [1.2.4(g)]

1. Abandoned or discarded property may be searched by the police and seized.
2. Examples of abandoned property include:
 - a) Trash in a collection area accessible to the public;⁴³
 - b) The contents of a hotel room wastebasket once an individual has vacated the room;⁴⁴
 - c) An apartment or hotel room, provided the guest or tenant has left with an intention not to return and the landlord or owner has given permission to search;⁴⁵ and
 - d) Items thrown on the ground by a suspect.⁴⁶

K. Open Field [1.2.4(g)]

1. 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.⁴⁷
2. The "house" that is protected by the Fourth Amendment includes the grounds and buildings immediately surrounding the dwelling.⁴⁸
3. 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 and may even have a locked gate.⁴⁹

L. Searches By Persons Other Than Law Enforcement Officers

1. 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, whether or not the search by that private individual was lawful.⁵⁰
2. 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.⁵¹

M. Reports

1. In every case where a search is conducted without a warrant, the police officers involved shall make a written report of the circumstances.
2. This will include all important facts relative to the incident and an inventory of any evidence seized, in accordance with departmental procedures.

¹ *Stoner v. California*, 376 U.S. 483, 84 S.Ct. 889 (1964).

² *Mincey v. Arizona*, 437 U.S. 385, 89 S.Ct. 2408 (1978).

³ *U.S. v. Campbell*, 581 F.2d 22 (C.A. NY).

⁴ M.G.L. c. 276, §1.

⁵ *United States v. Wilson*, 36 F.3d 205, 208 (1st Cir. 1994).

⁶ *Maryland v. Buie*, 494 U.S. 325, 110 S.Ct. 1093 (1990).

⁷ *United States v. Martins*, 413 F.3d 139, 149,150 (1st Cir. 2005).

⁸ *Com. v. Bowden*, 379 Mass. 472, 399 N.E.2d 482 (1980).

⁹ *Warden v. Hayden*, 387 U.S. 294, 87 S.Ct. 1642 (1967); *Com v. Moran*, 370 Mass. 10, 345 N.E.2d 380 (1976).

¹⁰ *Thurlow v. Crossman*, 336 Mass. 248, 143 N.E.2d 812 (1957).

¹¹ *Com v. Guaba*, 417 Mass. 746, 632 N.E.2d 1217 (1994).

¹² *Michigan v. Tyler*, 436 U.S. 499, 98 S.Ct. 1942 (1978); *Michigan v. Clifford*, 464 U.S. 287, 104 S.Ct. 641 (1984).

¹³ *Com. v. Marchione*, 384 Mass. 8, 422 N.E.2d 1361 (1981).

¹⁴ *U.S. v. Santana*, 427 U.S. 39, 96 S.Ct. 2406 (1976); *Com v. Moran*, 370 Mass. 10, 345 N.E.2d 380 (1976).

¹⁵ *U.S. v. Adams*, 621 F.2d 41 (1st Cir. 1980).

¹⁶ *U.S. v. Matlock*, 415 U.S. 164, 94 S.Ct. 988 (1973); *Com. v. Maloney*, 399 Mass. 785, 506 N.E.2d 1147 (1987).

¹⁷ *Georgia v. Randolph*, 2006 WL 707380, Decided March 22, 2006.

¹⁸ *Com. v. Martin*, 358 Mass. 282, 264 N.E.2d 366 (1970).

¹⁹ *Georgia v. Randolph*, 2006 WL 707380, Decided March 22, 2006.

²⁰ *Com v. Ortiz*, 422 Mass. 64, 661 N.E.2d 926 (1996).

²¹ *U.S. v. DiPrima*, 472 F.2d 550 (1st Cir. 1973).

²² *Niro v. U.S.*, 388 F.2d 535 (1st Cir. 1968).

²³ *Stoner v. California*, 376 U.S. 483, 84 S.Ct. 889 (1964).

²⁴ *Com. v. McGrath*, 365 Mass. 631, 310 N.E.2d 601 (1974).

²⁵ *Com. v. Sanna*, 424 Mass. 92, 674 N.E.2d 1067 (1997) (Although there is no legal requirement that a person be advised of their right to refuse to give consent to a police search, this is one of the factors that the court will consider in determining whether the consent was voluntarily given.)

²⁶ *Com. v. Reed*, 417 Mass. 558, 631 N.E.2d 552 (1994).

²⁷ *Delaware v. Prouse*, 440 U.S. 648, 99 S.Ct. 1391 (1979).

²⁸ *Com. v. Gonsalves*, 429 Mass. 658, 711 N.E.2d 108 (1999) rejecting *Penn. v. Mimms*, 434 U.S. 106, 98 S.Ct. 330 (1977); *Com. v. Silva*, 366 Mass. 402, 318 N.E.2d 895 (1974).

²⁹ *Thorton v. United States*, 541 U.S. 615, 124 S. Ct. 2127, 2130, 158 L.Ed.2d 905 (2004).

³⁰ *U.S. v. Ross*, 456 U.S. 798, 102 S.Ct. 2157 (1982); *Com. v. Cast*, 407 Mass. 891, 556 N.E.2d 69 (1990).

³¹ *Com. v. Wunder*, 407 Mass. 909, 556 N.E.2d 65 (1990).

³² *Com. v. Ortiz*, 376 Mass. 349, 380 N.E.2d 669 (1978); *Com v. A Juvenile (No.2)*, 411 Mass. 157, 580 N.E.2d 1014 (1991); *Com v. Bakoian*, 412 Mass. 295, 588 N.E.2d 667 (1992).

³³ *Com. v. Lanoue*, 356 Mass. 337, 251 N.E.2d 894 (1969).

³⁴ *Com. v. McGeoghegan*, 389 Mass. 137, 449 N.E.2d 349 (1983).

³⁵ *Com. v. Cavanaugh*, 366 Mass. 277, 317 N.E.2d 480 (1974); *Com. v. Doulette*, 414 Mass. 653, 609 N.E.2d 473 (1993).

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- ³⁶ *Com. v. Gonsalves*, 429 Mass. 658, 711 N.E.2d 108 (1999) rejecting *Penn. v. Mimms*, 434 U.S. 106, 98 S.Ct. 330 (1977).
- ³⁷ *Horton v. California*, 496 U.S. 128, 110 S.Ct. 2301 (1990).
- ³⁸ *Commonwealth v. Balicki*, 436 Mass. 1, 14-15, 762 N.E.2d 290, 301 (2002) (requirement of inadvertence means only that the police lacked probable cause to believe before entering the premises that specific items would be there).
- ³⁹ *Com. v. Accaputo*, 380 Mass. 435, 404 N.E.2d 1204 (1980).
- ⁴⁰ *Com. v. Accaputo*, 380 Mass. 435, 404 N.E.2d 1204 (1980).
- ⁴¹ *Com. v. Accaputo*, 380 Mass. 435, 404 N.E.2d 1204 (1980).
- ⁴² *Com. v. Scalise*, 387 Mass. 413, 439 N.E.2d 818 (1982).
- ⁴³ *Com. v. Pratt*, 407 Mass. 647, 555 N.E.2d 559 (1990.)
- ⁴⁴ *Abel v. U.S.*, 362 U.S. 217, 80 S.Ct. 683 (1960).
- ⁴⁵ *Com. v. Lanigan*, 12 Mass. App. Ct. 913, 423 N.E.2d 800 (1981).
- ⁴⁶ *Com. v. Wedderburn*, 36 Mass. App. Ct. 558, 633 N.E.2d 1058 (1995); *Com. v. Marrero*, 414 Mass. 1102, 606 N.E.2d 915 (1992).
- ⁴⁷ *Hester v. U.S.*, 265 U.S. 57, 44 S.Ct. 445 (1924); *Com. v. John G. Grant & Sons, Inc.*, 403 Mass. 151, 512 N.E.2d 522 (1988)
- ⁴⁸ *Rozencrantz v. U.S.*, 356 F.2d 310 (1st Cir. 1969).
- ⁴⁹ *Oliver v. U.S.*, 466 U.S. 170, 104 S.Ct. 1735 (1984); *Hester v. U.S.*, 265 U.S. 57, 44 S.Ct. 445 (1924).
- ⁵⁰ *Com. v. Leone*, 386 Mass. 329, 435 N.E.2d 1036 (1982).
- ⁵¹ *Com. v. Leone*, 386 Mass. 329, 435 N.E.2d 1036 (1982).