

Police Department Policy and Procedure Manual

Chapter 4 — Operations

Section Number: 4-5-2
Section Title: Search and Seizure
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I. Policy

- A. The purpose of this section is to establish policy and procedures for managing the search and seizure process.

II. Definitions

- A. Contact-is a face-to-face communication between an officer and a private person under circumstances where the person is free to leave.
- B. Stop-is a temporary detention of a person for investigation. A stop occurs when an officer uses his/her authority either to compel a person to halt, to remain in a certain place, or to perform some act (such as walking to a nearby location where the officer can use a radio, telephone, etc.). If a person reasonably believes that he/she is not free to leave the presence of the officer and is physically seized by the officer, submits to the officer's authority, or cannot terminate the encounter (when it occurs on a bus, train or airplane) a search has occurred.
- C. Terry-Stop-A police officer may detain a citizen briefly for purposes of investigation when the officer, in light of experience and training, is aware of articulable facts or circumstances which could lead a reasonably prudent person to believe that a crime has occurred, criminal activity is going to occur, or someone is otherwise in need of police assistance. This level of proof is more than a hunch, but less than a preponderance of the evidence.
- D. Reasonable Suspicion to Frisk- A police officer has reasonable suspicion to frisk a citizen during an investigative detention when the officer, in light of experience and training, is aware of articulable facts or circumstances, which could lead a reasonably prudent person to believe that the citizen may be armed with a weapon.
- E. Frisk-is a limited protective search for weapons.

- F. Probable Cause-Probable Cause to arrest exists when a police officer, in light of experience and training, is aware of articulable facts or circumstances which could lead a reasonably prudent person to conclude that a suspect has committed, or is in the process of committing, a criminal act.
- G. Reasonable Officer-A reasonable officer can be defined as one who acts as other similarly trained and experienced officers could be expected to act, under similar circumstances. The “reasonableness” of an officer’s actions will be reviewed based on the facts and circumstances known to him/her at the time of the action.
- H. Exigent Circumstances- are defined as emergency circumstances where evidence is being destroyed, there is a danger to others, and there is a danger to police officers.

III. Search and Seizure

A. General Guidelines

1. The Fourth Amendment to the U.S. Constitution strictly limits the power of law enforcement officers to make searches. With limited exceptions, you can make a search only if you have probable cause to believe that evidence of a crime is in the place you wish to search, and the officer has a search warrant.
2. The probable cause test for a search is similar to the probable cause test for an arrest. It requires a reasonable belief, based on a reliable source, that contraband or evidence of a crime is in the place to be searched. It must go beyond mere suspicion or an educated hunch. On the other hand, it is less than absolute certainty. The evidence you need to make a search does not have to amount to proof of guilt. It must show that evidence or contraband is probably in the place to be searched.
3. You must meet the requirements of a valid search for each search you conduct. Searches must be limited in time and area and must be directed toward specific things.
4. Even a small movement of an object is a search if the movement allows you to see something you would not otherwise have seen.
5. Evidence seized in an improper search cannot be used. (This concept is known as the Exclusionary Rule).
6. A search can continue only until its purpose has been met, unless exigent circumstances dictate otherwise.

B. Searches with a Warrant

1. The Constitution of the United States, states in part that the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall be issued, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.
2. Search Warrants: In General:
 - a. Over the course of time, courts have held that search warrants are required, and that searches without warrants are presumed to be unconstitutional. If a warrant is not obtained, the burden is on the State to prove the exception applies.
 - b. As a result of the judicial preference for warrants, if it is possible to obtain a warrant, one should be acquired. It is far easier to justify police action when it is authorized by a warrant, than to try to justify action through one of the exceptions to the rule.

C. The Neutral Magistrate Requirement

1. The Fourth Amendment refers to the “issuing” of a warrant. A search warrant may only be issued by a neutral and detached judicial officer. The warrant may not be issued by law enforcement personnel, including a sworn officer who may also be a deputy court clerk, for the purpose of acting as a court officer, or to transport prisoners.

D. Geographic Limits

1. Magistrates have statewide authority for issuing warrants, and warrants may be executed in any county. The issuing agency shall contact its counterpart agency in the county/city where the search warrant is to be executed.
2. Search Warrants are issued pursuant to statute in Iowa (Iowa Code Chapter 808).
3. A search warrant cannot be obtained by telephone in Iowa except for obtaining a sample under Iowa Code Section 321J.6 and the crime being investigated is an involuntary manslaughter, or homicide or serious injury by vehicle. Iowa Code Section 321J.10(3).

E. Probable Cause

1. Probable Cause to search exists when a police officer, in light of experience and training, is aware of articulable facts or circumstances that could lead a reasonably prudent person to conclude that the items sought are in the place to be searched.

2. The probable cause necessary to obtain a warrant must establish a “nexus”. The “nexus” is the connection between the criminal activity, the place to be searched, and the items to be seized. This connection does not require proof beyond a reasonable doubt; however, “mere suspicion, rumor, or even ‘strong reason to suspect a person’s involvement with a criminal activity’ is inadequate to establish probable cause”.
3. Probable cause may be established by named and unnamed informants. If the informant is unnamed, there must be a specific finding by the magistrate of the reliability of the unnamed informant’s information, or the credibility of the informant.

F. Delay In Obtaining the Warrant

1. There are two types of delay that may affect the existence of probable cause. One is the delay involved in obtaining the warrant, after developing the probable cause. The other is the delay in executing the warrant after it is obtained. These delays may create a “staleness” problem.
2. The test for staleness for both situations is whether or not it is reasonable to believe that the evidence sought would still be in the place to be searched. In these situations, the nature of the item may be a factor (i.e., narcotics are moved frequently, yet a five ton printing press may not be moved, etc.). Officers should seek advice from the Prosecutor’s office regarding questions of staleness.
3. In any case, a search warrant in Iowa must be executed within 10 days of obtaining the warrant. Failure to execute within 10 days voids the warrant.

G. Affidavit Supported by Oath of Affirmation

1. Any officer who is an affiant, or any citizen who is an affiant, must be under oath at the time the warrant is obtained. The affiant must swear to the facts in the affidavit and sign the affidavit.
2. Officers should make a reasonable attempt to validate warrant information.
3. Oaths should never be viewed as routine and commonplace, but with careful thought given to the process.
4. Include the date and time of the allegation, as this helps to avoid staleness and shows that the information is recent.

H. Describing the Place to be Searched

1. The search warrant must describe the place to be searched with “particularity”. This means specificity. Always err on the side of caution. If a residence is to be searched, give the street address, its geographic location (northeast corner, or third house from the corner, etc.) and a physical description. Where a multiple unit dwelling is to be searched, describe the location and give the address (i.e., the apartment in the southwest corner of the building, marked 203, on the second floor, etc.). It may be helpful to list the name on the utilities.
2. On occasion, an error is made and the address is incorrect. If only an address was used, it is difficult to defend the warrant, because the requirement of “particularity” is missing. This problem can be avoided through use of geographic locations, and additional descriptions (i.e., 1234 Elm Street, a two story brick building, with white trim, located on the southeast corner of the block, between Oak and Walnut Streets).

IV. Executing the Warrant

A. Knock and Announce Requirements

1. Officers must knock and announce their presence before forcing the door open.
2. Officers need not knock and announce if doing so would cause harm or danger to the officers. However, the burden is on the officers to show exigent circumstances that precluded the knock and announce requirement.

B. Persons Found at the Scene

1. A warrant does not authorize the search of persons who might be on the premises at the time the warrant is executed. That is why, when possible, individuals known to be in the house, such as a seller, should be named and described in the affidavit, as a place (person) to be searched.
2. When executing a warrant on public premises, officers may not routinely search persons found on the premises, unless they are named in the warrant, there is probable cause to believe they possess narcotics, or they are searched incident to a lawful arrest.

C. Seizure at the Scene

1. When specifically named in the warrant, the police may search for and seize:
 - a. Instrumentalities of the crime (items used in the commission of the crime).

- b. Fruits of the crime (money or property)
 - c. Evidence (clothing, money, blood, etc.)
 - d. Contraband (narcotics, etc.) NOTE: A search warrant for narcotics in a home includes every container within the home where the narcotics could be hidden (i.e., drawers, closets, boxes and suitcases, etc.).
2. Items NOT Specifically Named in the Warrant:
- a. Items not named on the warrant may be seized if it is immediately apparent that such items are contraband or evidence. (Plain view exception). However, to actively expand the scope of the search, a fresh warrant should be obtained.
 - b. Unless named on the warrant, furniture, stereos, or televisions, etc., may not be moved for the purpose of viewing serial numbers.

D. The Warrant Return:

- 1. A copy of the warrant must be given to the person on the premises or left on the premises.
- 2. A copy of the inventory of items seized must be left at the scene, with the warrant copy.

E. Minimizing Damages to the Searched Premises:

- 1. Officers should make a reasonable attempt to minimize unnecessary damage to the premises.
- 2. Officers should attempt to re-secure the premises following the search, if there is no appropriate person present to take custody of the scene.

V. Searches Without a Warrant

- A. All searches require a warrant, unless they fall into one of the following exceptions to the warrant requirement:
- 1. Search incident to an arrest.
 - 2. Search based on probable cause and exigent circumstances.
 - 3. Search based on a plain view.

4. Search based on consent.
5. Search based on a stop and frisk situation.
6. Search based on impounding a vehicle and its inventory.
7. Search based on an emergency.
8. Administrative search (usually does not concern patrol).

B. Search Incident to Arrest

1. When making an arrest, an officer may search for weapons, evidence, and contraband, incident to the arrest.
2. The arresting officer may search the immediate area around the arrested person where the arrested person could gain possession of a weapon or destroy evidence.
3. Generally, officers are permitted to make these searches to protect themselves and others.
4. Additionally, in a search incident to an arrest in a dwelling or building etc., the officer may make a "protective sweep" of the dwelling if the officer reasonably believes that another person is in the dwelling that could be a danger to the officer.
5. The search incident to arrest must immediately precede or follow the arrest. A time delay will nullify the search.

C. Probable Cause and Exigent Circumstances

1. If the officer can articulate probable cause and exigent circumstances in a given situation, the search can be conducted without a warrant.
2. 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 person to conclude that there is an actual emergency, or imminent danger of removal or destruction of evidence, requiring immediate action.
3. Exigent circumstances are situations wherein an officer must prevent the destruction of evidence, or prevent the escape of a person, or prevent injury to himself/herself or others, or where he/she is aiding someone inside a building, or some other emergency.

4. 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.
5. Exigent circumstances are almost always present with a vehicle, because of its mobility.

D. Plain View

1. In plain view situations there is always some "intrusion", but the officer has a right to be where he/she can observe. In observing, the officer must have probable cause to believe that the item he/she observes is evidence or contraband. The incriminating nature of the item must be immediately apparent. The observations must be from the inside of the building, car, etc. to qualify under this exception.

E. Consent

1. Consent searches are exceptions to the warrant requirement, but the consent must be voluntary, must not be the result of coercion or duress, and must be given by someone with apparent authority to do so.
2. An individual giving consent for a search may limit the scope of the search. Officers must comply with the limitation.
3. The consenter may withdraw consent, once given. Officers must comply, and cease searching, unless another exception to the warrant requirement exists, or a warrant is obtained.

F. Stop and Frisk

1. In stop and frisk situations, the stop must be based on reasonable suspicion of criminal activity. The officer must be able to articulate supporting facts that justify the stop. A stop does not automatically justify a frisk. The officer must also articulate a belief that the suspect may have a dangerous weapon
2. Any item that feels like a weapon, and turns out to be a weapon, can be seized as evidence.
3. Plain Feel Doctrine -- When frisking, an officer may also use his/her "tactile sense" (sense of feel) to develop probable cause (i.e., an officer may feel narcotics in a pocket and recognize the object as narcotics based on feel, when patting for a weapon. The narcotics can be seized as evidence if the officer could articulate probable cause to believe he recognized the item as narcotics, based on feel).

4. Stop and Frisk of Vehicles:

- a. Traffic violators may be ordered out of a vehicle.
- b. A search of passengers is permitted if a Terry reason exists for each specific passenger.

G. Inventory Searches

1. Inventory searches are exceptions to the search warrant requirement, but are only permitted for the following reasons:
 - a. To protect the owner's property.
 - b. To protect officers from false claims.
 - c. To protect officers from the danger of vehicle contents.
2. Officers may not just routinely impound and inventory any vehicle. The reason for each impoundment should be clearly stated in each report.
3. Vehicle inventory searches must be conducted pursuant to reasonable written or unwritten procedures.
4. Inventory searches must not be conducted solely for the purposes of a criminal search.

H. Emergency Aid

1. The emergency aid exception gives a police officer the right to enter a dwelling without a warrant for the purpose of rendering emergency aid and assistance. This includes entry of a dwelling to seek an occupant reported as missing. To determine the reasonableness of a warrant-less search under the emergency aid exception, only an objective test applies: Would a reasonable person under the circumstances have thought an emergency existed? The quantum of evidence needed is not a formal inquiry regarding probable cause, but merely an objective determination of reasonableness. Note, however, that a suspicion that drugs or drug paraphernalia is present on a premises so that individuals may enter the property and be harmed by those substances does not raise the emergency aid exception.
2. A similar analysis can apply outside of the home. For example, the public safety exception allows a DNR officer to stop a car going less than the speed limit in a park because it is a danger to other campers.

I. School Searches

1. School searches are governed by statute. Iowa Code Chapter 808A.
2. Whenever a police officer is involved in a search of a school, students, or vehicles located on school property, all the same Fourth Amendment rules and restrictions apply. This is not true for school officials under the statute. However, the lack of restraint for school officials (based on the need to enforce school rules and regulations in addition to the law) does not allow a lack of restraint on the part of police officers.
3. Use of police canines for school searches is permitted under the statute as long as the searches are of all or a randomly selected number of school lockers, desks, and other facilities or spaces owned by the school and provided as a courtesy to a student. Police canine searches may not be conducted on a student's body according to the statute.
4. Neither school boards nor school administrators can change the requirements a police officer must satisfy under the Fourth Amendment in a search of a school or a student.

VI. Special Vehicle Search Considerations

- A. The trunk of a vehicle may only be searched under the following circumstances:
 1. With a warrant, or
 2. When the vehicle is impounded and inventoried, or
 3. When the search is based on probable cause and exigent circumstances.
 4. The officer may not search the trunk, incident to an arrest or incident to a Terry stop.
- B. The arresting officer may search, incident to the arrest, the passenger compartment of the defendant's car, and any containers therein. This includes the glove box, and the back of a station wagon or hatchback.
- C. When dealing with an automobile, the courts have said that there are almost always exigent circumstances present, based on the mobility of the vehicle.

VII. Officers Assigned to Other Agencies

- A. Officers of this department assigned to or assisting other law enforcement agencies will be guided by this policy.

VIII. Compliance

- A. Violations of this policy, or portions thereof, may result in disciplinary action.

A handwritten signature in blue ink, appearing to read "Michael G. Venema". The signature is fluid and cursive, with a large, stylized initial "M".

Michael G. Venema
Chief of Police