

# MERIDIAN TOWNSHIP POLICE DEPARTMENT GENERAL ORDER

Subject: <b>SEARCH AND SEIZURE</b>	General Order: 961
Effective Date: November 10, 2015 Revision Date: July 9, 2019	Distribution: All Sworn Employees

## **I. PURPOSE**

This general order establishes policy and procedures for managing the search and seizure process.

## **II. POLICY**

The Fourth Amendment to the U.S. Constitution strictly limits the power of law enforcement officers to make searches. A search is defined as a governmental intrusion into a person's reasonable expectation of privacy.

It is the policy of the Meridian Township Police Department to be responsive to, and protect the constitutional rights of the community.

All officers of this Department, including those assigned to assist or work with other agencies, are responsible for complying with legal requirements and this directive.

## **III. PROCEDURES**

### **A. SEARCH AND SEIZURE IN GENERAL**

1. A search warrant is required to conduct a search unless one of the recognized exceptions defined by the courts exists.
2. The United States Supreme Court has consistently held that there is no crime scene exception to the search warrant rule. A person still maintains an expectation of privacy in his/her residence even if he/she has committed a crime. However, there is no expectation of privacy in a public place.
3. 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.

New

4. Officers must meet the requirements of a valid search for each search conducted. Searches must be limited in time and area and must be directed toward specific things. Even a small movement of an object is a search if the movement allows you to see something you would otherwise not have seen.
5. Evidence seized in an improper search cannot be used (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. The Neutral Magistrate Requirement - 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.
3. Geographic Limits
  - a. District Courts have statewide authority for issuing warrants, and District Court warrants may be executed in any county of the State.
  - b. Search Warrants are issued pursuant to Michigan Statute (MCL §780.651 et.Seq.).
  - c. Electronic Search Warrants - All normal warrant requirements should be followed with respect to electronic search warrant requests. MCL §780.651 authorizes an affidavit to be submitted to a judge electronically and a search warrant to be issued electronically by any means of electronic communication, including facsimile or computer network, if the judge orally administers the oath or affirmation and the affiant signs the affidavit.

- 1) The affiant's oath need not occur in the physical presence of the judge. The oath may be administered over the phone.
- 2) Proof that the affiant signed the affidavit may consist of electronic communication including facsimile or computer network.
- 3) Proof that the judge signed the warrant may consist of an electronic communication including facsimile or computer network.

4. Probable Cause for Obtaining a Search Warrant

- a. Probable cause does not require that it should appear more likely than not that the evidence sought will be found in the place described; it is only necessary that the affidavit enable the magistrate to conclude that it would be reasonable to seek the evidence in the place indicated by the affidavit.
- b. The Probable Cause necessary to get a search warrant can be defined as:
  - 1) The law requires that the information contained in the affidavit enable the judge to conclude that it would be reasonable to seek the evidence in the place described in the affidavit.
  - 2) That a judge be convinced, through a showing of facts, that it is reasonable to search for the items in the area where you wish to search.
  - 3) This does not require that you demonstrate that the items you seek are likely to be at the place to be searched, only that it is reasonable to believe that they are.
- c. Probable Cause may be established through named and unnamed informants, if the affidavit contains one or more of the following:
  - 1) If the person is named and makes affirmative allegations in the affidavit that they spoke with personal knowledge concerning the facts/information, or;
  - 2) If the person is unnamed, the affiant must make affirmative allegations in the affidavit that the source spoke with personal knowledge concerning the facts/information, and it must also be shown that the unnamed person is either credible or the information is reliable.

5. Delay in obtaining or executing the search warrant

- a. There are two types of delays (staleness) that may affect the existence of probable cause. One is the delay involved in *obtaining* the search warrant, after developing the probable cause. The other is the delay in *executing* the search warrant after it is obtained.
- b. The test for “staleness” for both situations is whether 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.) Officers should seek advice from the Ingham County Prosecutor’s Office regarding questions of staleness.
- c. Include the date and time of the allegation in the affidavit as this helps to avoid staleness and shows that the information is recent.

6. Affidavit Supported by Oath or Affirmation

- a. Any officer or 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. An oath may be given over the telephone when the judicial officer allows it.
- b. Officers should make reasonable attempts to validate search warrant information prior to presenting the affidavit.
- c. Oaths should never be viewed as routine or commonplace, but with careful thought given to the process.

7. Describing the Place to be Searched

- a. 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 and its geographic location (northwest corner, or third house from the corner, etc.), and a description of the structure. Where a multiple unit dwelling will 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.).

- b. 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 using geographic locations, and additional descriptions (i.e., 1234 Elm Street, a two story brick building, with white trim, located on the southwest corner of the block, between Oak and Walnut Streets).

New

#### 8. Procedures for Obtaining the Search Warrant

- a. In paragraph one, FULLY describe the person, place, or thing to be searched and give its EXACT location.
- b. In paragraph two, FULLY describe the property/person that is to be searched for and seized.
- c. In paragraph three, set forth the facts and observations that establish probable cause.
- d. Present to prosecuting official for review.
- e. Present the original of the affidavit and search warrant to the judge/magistrate for review.
- f. Swear to the contents of the affidavit and sign it before the judge/magistrate.
- g. Have the judge/magistrate sign both the original of the affidavit and the search warrant.

#### 9. Executing the Warrant

Officers shall review search warrants issued by judicial authorities to ensure they include all pertinent information set forth in the affidavit accurately and completely, and the warrant has been properly signed. Officers shall not attempt to serve a warrant with substantive or administrative errors.

- a. Announcing Presence and Authority Requirements – Officers must announce their presence before forcing the door open.
  - 1) The courts in Michigan have ruled that officers must announce authority and presence before forcing open the door.
  - 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 search warrant does not authorize the search of persons who might be on the premises at the time the search warrant is executed. These persons can be detained and a pat-down search for safety conducted, but the search warrant alone does not authorize searching them. When possible, individuals known to be in the house, such as a seller of controlled substances, should be named and described in the affidavit, as a place (person) to be searched.
- 2) Officers may detain a person when they execute a search warrant because the warrant permits the officers to conduct the search safely, and prevent the destruction of evidence.
- 3) 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 illegal items, or they are search 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 person
  - Instrumentalities of the crime
  - Fruits of the crime
  - Evidence
  - Contraband (narcotics, etc.) Note: A search warrant for narcotics in a home includes every container within the home where the narcotics could be hidden.
- 2) Items not specifically named in the search warrant may be seized if it is immediately apparent that such items are contraband or evidence. Otherwise, another warrant must be obtained to expand the scope of the search.
- 3) Unless named in the search warrant, furniture, stereos, or televisions, etc. may not be moved for the purpose of viewing serial numbers.
- 4) Only locations and containers may be searched that may reasonably contain the object that the warrant seeks.

Revised

## d. The Warrant Return and Tabulation

- 1) Complete the tabulation (list) of property taken in the presence of the person(s) from whom it is seized, if present, or any other person (including another officer).
- 2) Have person before whom the tabulation is completed sign the tabulation as witness.
- 3) Leave a copy of the search warrant and completed tabulation with the person(s) from whom the property was taken, if present, or at the premises.
- 4) Return the original search warrant and completed tabulation to the issuing court indicating the date returned and name of the person(s) served.

## e. Minimizing Damages to the Searched Premises

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

## C. SEARCHES WITHOUT A WARRANT: EXCEPTIONS TO THE SEARCH WARRANT REQUIREMENT

All searches require a search warrant, unless they fall into one of the following exceptions to the warrant requirement:

- Search incident to an arrest
- Search based on probable cause and exigent circumstances
- Search based on a plain view
- Search based on consent
- Search based on a stop and frisk situation
- Search of a vehicle based upon the Department's inventory policy
- Search based on an emergency
- Search based on hot pursuit
- Administrative search
- Border searches (usually not conducted by this department)

***Search Incident to an Arrest***

1. When making an arrest, an officer may search the arrested person for weapons, evidence and contraband, incident to the arrest.

2. The arresting officer may also search the immediate area (wingspan) around the arrested person where the arrested person could reach or lunge.
  - a. Officers are permitted to make “wingspan” searches to protect themselves and others.
  - b. In a search incident to an arrest inside a building or dwelling, etc. the officer may make a “protective sweep” of the areas “immediately adjacent” to the defendant.
  - c. If the suspect is in a vehicle, a wing span search is not allowed if the suspect could not reach the passenger compartment (ex; if the suspect is handcuffed and away from the vehicle or in the patrol car). An officer must establish probable cause to justify a further search of the vehicle.
3. Search Incident to Arrest for a Bondable Misdemeanor
  - a. Officers may search the defendant, when the defendant is placed under custodial arrest. This includes being arrested for a misdemeanor pursuant to the Interim Bond Act (MCL §780.581). The search should be completed on the street at the scene of the arrest.
  - b. The arrested person should be informed of his/her right to post bond pursuant to the Interim Bond Act.

### ***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, which would lead a reasonably prudent person to conclude there is an actual emergency, or imminent danger of removal or destruction of evidence, requiring immediate police action.
3. Exigent circumstances exist when there is an emergency that justifies a warrantless entry.
  - Exigent circumstances are situations wherein an officer must enter a reasonable area of privacy to prevent the destruction of evidence or prevent the escape of a person.



Revised

- Exigent circumstances do not justify a search, but allow for the intrusion into the reasonable expectation of privacy without a warrant.
- Exigent circumstances are usually present with a vehicle because of its mobility. If an officer has probable cause to believe that contraband or evidence of a crime is located in a vehicle, then a search is justified.

Revised

***Plain View/Smell***

1. In plain view situations, there is prior legitimate intrusion into the expectation of privacy utilizing a warrant or one of the recognized exceptions to the warrant requirement. Anything in plain sight for which the officer has probable cause to believe is evidence or contraband can be seized. The incriminating nature of the item must be immediately apparent.
2. Open view is when the officer is not in an area of privacy and any evidence in plain sight can be seized.
3. Plain smell is when an officer qualified to know the odor can establish that the odor itself is probable cause of a crime. Officers are cautioned that civil infractions are not crimes

New

***Consent***

Meridian Police Officers should request consent to search from an individual only when there is an articulable reason for this course of action to be pursued. Reason may be developed through an officer's observations and discussion with the subject(s) involved. This applies to both property and vehicle searches. A "Consent to Search" form should be completed when possible.

1. Consent searches must be voluntary, must not be the result of coercion or duress, and must be given by someone with the apparent authority to do so.
2. An individual giving consent for a search may limit the scope of the search.
3. If more than one person is present that has a reasonable expectation of privacy, then either one can deny consent.
4. The person giving consent may withdraw the consent and the officer must comply and cease searching. However, if a search warrant is obtained or another exception to the search warrant rule exists, the search can be completed.

***Stop and Frisk***

- Revised
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 reasonable suspicion that the suspect may be armed and presently dangerous in order to perform a frisk.
  2. Any item that feels like a weapon, and turns out to be a weapon, can be seized as evidence.
- Revised
3. Plain Feel Doctrine - When frisking, an officer may also use his “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 may be seized as evidence if the officer could articulate probable cause to believe he recognized the item as narcotics, based on feel). The incriminating character of the item must be immediately identifiable without additional manipulation.
- Revised
4. A pat down search also pertains to the immediate area around a suspect, including any containers, from which the suspect could access a weapon.
  5. Stop and Frisk of Vehicles
    - a. Traffic violators may be ordered out of a vehicle; drivers and passengers may also be ordered out of a vehicle to protect the officer from unobserved movements that could be assaultive in nature;
    - b. A frisk of a driver or passengers is permitted if the officer has reasonable suspicion that there are weapons present.
    - c. Officers may also search the passenger compartment of the vehicle if they have a reasonable belief that the vehicle contains weapons potentially dangerous to the officer.
- New
- d. Officers should be aware of the passenger’s expectation of privacy regardless of driver’s consent to search. See *People v Mead*, Docket No. 156376

***Impounding a Vehicle - Inventory Searches Based Upon Department Policy***

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 the officers from false claims,
  - c. To protect officers from potentially dangerous vehicle contents.
2. Officers may only impound and inventory vehicles for justifiable reasons, which must be clearly stated in the Incident Report.
3. Inventory searches shall be conducted pursuant to Department directives regarding the impound and inventory of vehicles.

New

***Community Caretaker Exception***

1. The Fourth Amendment does not apply when law enforcement officers are engaged in activities unrelated to the investigation of potential criminal conduct. Examples include, but are not limited to:
  - a. Checking an unconscious person for identification;
  - b. Removing an intoxicated person from the street;
  - c. Responding to persons likely to be in need of emergency aid;
2. The law enforcement officer's conduct must be totally divorced from the investigation of potential criminal activity for this exception to apply.

***Crime Scene Search/Emergency Circumstances***

Revised

1. Emergency entry may be made in a case of imminent danger to life, destruction of evidence, escape of a suspect, or serious damage to property.
2. Such entry does not justify a search. It does allow the officer to be in a place where another exception to the warrant requirement (i.e. plain view) may apply.

New

3. Once the scene is secure, the injured have been cared for, and the officers have determined that the safety of the victim(s), the general public, and their own safety have been secured, then the officers must

determine their next course of action. They must determine if a search warrant is needed to continue a further search of the crime scene for evidence. The officers must consider:

- a. Is the scene accessible to and open to the public
- b. Is there any possibility that the suspect(s) or anyone else may have a "reasonable expectation of privacy" at the scene
- c. If the scene is on private property, are there issues relating to "curtilage" guidelines

- |     |    |  |
|-----|----|--|
| New | 4. | If the crime scene is open to the general public, a warrant is not required.   |
| New | 5. | If the crime scene is on private property and there are concerns relating to "curtilage" and/or there exists an "expectation of privacy," then the police officers should seek a search warrant or consent to search.  |
| New | 6. | It is important to remember that once the emergency that allowed for the warrantless entry no longer exists the police officers may not be able to continue searching in that place without a warrant or consent. This may require the police officers to secure the scene by removing people and preventing access until a warrant is obtained. |

### ***Hot Pursuit***

1. Hot pursuit is when an officer pursues a fleeing felon into an area that is a reasonable expectation of privacy (usually a home or building) and then observes in plain sight items that are readily apparent as evidence or contraband.
2. Court cases dealing with the "hot pursuit" exception are based upon felonies, not misdemeanors. Officers cannot pursue a person into his home to make a warrantless misdemeanor arrest, and then expect to introduce evidence seized based on the "hot pursuit" exception to the search warrant requirement.

### ***Administrative Searches***

1. Government officials can inspect for certain types of statutory violations where a statute provides for the inspection. Such inspections might include fire codes, licensed liquor establishments, hazardous materials, public health codes, and other regulatory inspections.

2. If an attempt is made to conduct an inspection or administrative search at a particular business site, and the person in charge refuses the inspection or administrative search, a warrantless search or inspection shall not be forced without supervisory review and direction.
3. Officers faced with a refusal have three primary alternatives:
  - Complete a report detailing all facts and circumstances, and forward it to the appropriate licensing or regulatory agency for action.
  - Apply to the Court for an Administrative Search Warrant.
  - If an officer believes that a situation exists which constitutes a threat to public safety and an emergency situation may exist. Supervisory guidance should then be sought.

### ***Border Searches***

1. Michigan law enforcement officers do not enforce customs or immigration laws, except in conjunction with Federal agencies.

New

### ***Open Fields Doctrine***

1. Open fields beyond the curtilage are not protected by the Fourth Amendment. Curtilage is determined by:
  - a. Proximity of area to the home
  - b. Whether the area is in an enclosure surrounding the home
  - c. The nature of the area's use
  - d. Steps taken to protect the area from observation.
2. In any situation where standing is in question, and there is not a clear exception to the search warrant rule, a search shall not be conducted or a search warrant shall be obtained.

### **D. SPECIAL VEHICLE SEARCH CONSIDERATIONS**

An officer may not search the trunk, incident to an arrest. 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 pursuant to departmental policy, or
3. when the search is based on probable cause and exigent circumstances.
4. The arresting officer may conduct a warrantless vehicle search incident to arrest only if the arrestee is within reaching distance of the vehicle or if the officer has reasonable belief that evidence of the offense of arrest might be found in the vehicle.

#### E. STRIP SEARCHES AND BODY CAVITY SEARCHES

Michigan Law closely controls the use of strip and body cavity searches by law enforcement officials. Strip and body cavity searches are sometimes necessary for officer safety and security and/or to seize evidence of criminal activity. These searches are highly intrusive and must be conducted in compliance with the statute, out of the public view, and with due regard for human dignity. Statutory provisions governing strip and body cavity searches are addressed in MCL §764.25a and §765.25b.

1. A strip search is defined as a search that requires a person to remove his or her clothing to expose underclothing, breasts, buttocks, or genitalia.
2. A body cavity search is defined as the physical intrusion into a body cavity for the purpose of discovering any object concealed in a body cavity.
  - a. A body cavity is defined as the interior of the human body not visible by normal observation, being the stomach or rectal cavity of a person, and the vagina of a female person.
3. STRIP SEARCHES - A person arrested or detained for a misdemeanor offense or an offense which is punishable only by a civil fine, shall not be strip searched unless both of the following occur:
  - a. The person arrested is being lodged into a detention facility by order of a court, or there is reasonable cause to believe that the person is concealing a weapon, a controlled substance, or evidence of a crime, and
  - b. The strip search is conducted by a person who has obtained prior written authorization from the Chief of Police or his/her designee.

- New
- c. A strip search of a person arrested or detained for a felony offense shall also follow this policy.
4. Strip Search Conditions
- a. A strip search which is conducted under this policy shall be performed by a person of the same sex as the person being searched, and
- b. The search shall be conducted in a place which prevents the search from being observed by a person not conducting or necessary to assist with the search. A law enforcement officer who assists in the strip search shall be of the same sex as the person being searched.
5. Strip Search Reporting Requirements - Every time a strip search is conducted under this policy, the arresting officer shall prepare a report of the strip search using the "Strip Search or Body Cavity Search Authorization and Report" form. The report shall include:
- The name and sex of the person subjected to the strip search
  - The name and sex of the person conducting the strip search
  - The name and sex of any person who assists in conducting the strip search
  - The time, date and place of the strip search
  - The justification for conducting a strip search
  - A list of all items recovered from the person who was strip searched
  - A copy of the written authorization required under this policy
- Revised
- a. A copy of the report required by this policy shall be given without cost to the person who has been searched, subject to deletions permitted by section 13 of the Freedom of Information Act 1976 PA 442, MCL 15.243
- b. Officers are cautioned that Michigan law holds that a law enforcement officer, any employee of a law enforcement agency, or a chief administrative officer or employee of a juvenile detention facility who conducts or authorizes a strip search in violation of the statute is guilty of a misdemeanor.
- Revised
6. BODY CAVITY SEARCHES - shall not be conducted without a valid search warrant and prior written authorization from the Chief of Police or his/her designee.

- New a. Officers must have probable cause to believe that a person is concealing a weapon, a controlled substance, or evidence of a crime.
- Revised 7. Body Cavity Searches – Conditions and Persons Authorized:
- A body cavity search shall only be conducted by a licensed physician or a physician's assistant, licensed practical nurse, or registered professional nurse acting with the approval of a licensed physician.
- a. If the body cavity search is conducted by a person of the opposite sex of the person being searched, the search shall be conducted in the presence of a person of the same sex as the person being searched.
- New b. The search shall be conducted in a place which prevents the search from being observed by a person not conducting or necessary to assist with the search.
8. Body Cavity Searches - Reporting Requirements:
- Every time a body cavity search is conducted under this policy, and pursuant to a valid search warrant, the law enforcement officer who executes the warrant shall prepare a report containing all of the following:
- A copy of the search warrant
  - The name and sex of the person searched
  - The name and sex of the person who conducted the search
  - The time and place of the search
  - A list of all items recovered from the person who was searched
  - The name and sex of all law enforcement officers or employees of the law enforcement agency present at the search
- Revised a. A copy of the report required by this policy shall be given without cost to the person who has been searched, subject to deletions permitted by section 13 of the Freedom of Information Act 1976 PA 442, MCL 15.243.
9. Officers are cautioned that Michigan law holds that any law enforcement officer or employee of a law enforcement agency, or any chief administrative officer or personnel of any facility described in this policy, who conducts or authorizes a body cavity search in violation of the statute is guilty of a misdemeanor.



#### IV. CANCELLATIONS

None

Authorized by:



Ken Plaga, Chief of Police

Index as:

Search and Seizure  
Exceptions to Search Warrant Requirements  
Strip Searches  
Body Cavity Searches  
Standard 3.1.1  
Standard 3.1.2  
Standard 3.1.5

*Application: This directive constitutes Department policy, and is not intended to enlarge the employer's or employee's civil or criminal liability in any way. It shall not be construed as the creation of a higher legal standard of safety or care in an evidentiary sense with respect to third party claims insofar as the employer's or employee's legal duty as imposed by law.*