

SEARCHES – PRIVATE PROPERTY AND RESIDENCES

PREAMBLE:

The Fourth Amendment to the United States Constitution guarantees the right of people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. The courts have determined that such rights extend to the Curtilage of their property. Absent a warrant or an exception as described in this policy, the burden is on the officers conducting a search to prove the search was reasonable.

POLICY:

It is the policy of the Omaha Police Department (OPD) that officers shall not make a warrantless and nonconsensual entry into a private residence or other private property in order to conduct a search or make an arrest unless an exception to the warrant requirement exists. Officers will obtain a search warrant whenever time and circumstances permit.

For additional procedures governing warrant service see the OPD "[Warrants - Search Warrant Service](#)" policy.

DEFINITIONS:

Curtilage: An area intimately linked to the home, both physically and psychologically, immediately surrounding and associated with the home where privacy expectations are most heightened. Curtilage is considered to be part of the home itself. (Collins v. Virginia, citing Florida v. Jardines, and California v. Ciraolo.)

Exigent Circumstances: An emergency situation requiring swift action to prevent imminent danger to life or serious damage to property, or to forestall the imminent escape of a suspect or destruction of evidence.

First-Party Residence: Address shown to be the primary residence of the suspect (i.e., address on IMS, NCJIS, utilities, mail, vehicle registration etc.).

Fresh Pursuit: The act of pursuing a wanted suspect to prevent their escape which must be done without unreasonable delay, but need not be Hot Pursuit.

Hot Pursuit: The immediate and direct pursuit of a fleeing suspect when an arrest of the suspect was initiated in a public space and continues into a private property/residence.

Third-Party Residence: Residence that is NOT the primary residence of the suspect as shown by IMS, NCJIS, utilities, mail, vehicle registration or another means.

PROCEDURE:

I. Requirement for a Warrant

- A. The Fourth (4th) Amendment and Supreme Court case law have determined that an officer must have a warrant prior to searching a private residence or private property. Officers must start with the assumption that a warrant is required and then determine if an exception to the warrant requirement exists.
 1. Once an officer determines there needs to be a search, the officer must either obtain a search warrant or ascertain if any of the exceptions to the search warrant requirement exist.
 2. Additional procedures specifically governing the service of search warrants are addressed in the OPD "[Warrants - Search Warrant Service](#)" policy.

II. Exceptions to the Warrant Requirement

- A. Some exceptions to the warrant requirement include the following:
 - 1. Certain searches of persons as described in the OPD "[Searches – Persons](#)" policy.
 - 2. Exigent Circumstances exist.
 - 3. Certain vehicle searches as described in the OPD "[Searches – Vehicles](#)" policy.
 - 4. Consent has been given by an appropriate person.

III. Authorization to Search a Residence or Private Property

- A. Both the United States Supreme Court and the Nebraska Supreme Court have addressed situations relating to law enforcement officers' entry into private residences in arrest situations. Both courts have held that "absent Exigent Circumstances, the threshold may not reasonably be crossed without a warrant."
- B. Officers who wish to search a residence or private property absent Exigent Circumstances will obtain permission/authorization to search in one of the following ways:
 - 1. Receive permission to search the property from the person in control of the property.
 - a. Officers shall complete a Permission for Search form ([OPD Form 5](#)) to document the permission as well as the following information:
 - (1) The name of the owner of the property.
 - (2) The name and identification of the person in control of the property.
 - (3) The names of all officers who entered the property.
 - (4) The circumstances which led officers to enter the property, including probable cause.
 - (5) The time the property was entered.
 - (6) The time officers left the property.
 - (7) All actions taken by officers, including whether or not:
 - (a) Property was seized.
 - (b) People were taken into custody.
 - (8) Reference to any other reports that were made.
 - b. After completion of the search, officers will give the consenting person a copy of the Permission to Search form ([OPD Form 5](#)), omitting the Supplementary Section at the bottom of the form.
 - (1) The Supplementary Report Section is for police use only, and will be completed by the officer after leaving the property.
 - (2) The Supplementary Report Section will contain a narrative of the officer's reasonable suspicion for the search.

- (3) If the consenting party is neither the owner/renter of the property, the officer will document why they believed the third party possessed the authority to consent to the search.
 - c. The person in control of the property may revoke the permission at any time or restrict the area of the property that may be searched.
 - (1) If the permission to search is revoked, officers shall stop searching the property IMMEDIATELY and obtain a search warrant to continue the search.
- 2. Obtain a search warrant.
 - a. Officers will secure the property and request a command officer's presence while they obtain a search warrant.

NOTE: Officers may apply for search warrants as needed; however, approval of an OPD lieutenant, captain, or deputy chief and submission of the Warrant Threat Assessment Form ([OPD Form 28A](#)) to the OPD ERU lieutenant are required PRIOR TO SERVICE as described in the OPD "[Warrants - Search Warrant Service](#)" policy.

IV. Additional Procedures – Arrest Warrants and Searches

- A. Officers who have an arrest warrant for a suspect will adhere to the following procedures when searching property for such suspects:
 - 1. Officers who have an arrest warrant for a suspect may force entry into a property to arrest the suspect if:
 - a. The address of the property is shown to be the First-Party Residence of the suspect (i.e., address on IMS, NCJIS, utilities, mail, vehicle registration etc.);

– AND –
 - b. Officers have reasonable grounds to believe that the party is inside at the time of the forced entry (i.e., officer saw suspect, known vehicle outside, conversation through the door indicating the person is present, etc.).
- NOTE:** The arrest warrant serves as the authority to force entry into the First-Party Residence and make the arrest.
- 2. Officers who have an arrest warrant for a suspect, will NOT force entry to arrest the suspect if they are unable to confirm the property is the First-Party Residence of the suspect, except in Exigent Circumstances.
 - a. If officers wish to search a Third-Party Residence for a suspect, they will either obtain permission to search or a search warrant.
 - b. Forced entry into a Third-Party Residence is defined as passing the threshold of the door regardless of whether the door is open or closed or if damage is done. Even if the suspect is talking to an officer on the other side of the threshold in a Third-Party Residence, officers shall obtain permission to search or a search warrant prior to entering such residence to arrest the suspect except in Exigent Circumstances.

3. Officers who enter into a property to arrest a suspect shall document the entry as follows:
 - a. If officers entered into a property and damage was done officers will complete a Chief's Report ([OPD Form 214](#)) to document the damage/entry in accordance with the OPD "[Chief's Report](#)" policy.
 - (1) If the property owner requests reimbursement for damage, officers shall direct them to file a claim on the City of Omaha, [City Clerk's public web page](#).
 - (2) If the property owner requests assistance to secure the property, based on their physical condition and/or other factors such as age or disability, etc., the on-scene officers will make a reasonable attempt to secure the property, with the owner's consent.
 - b. If no damage was done, officers shall thoroughly document the entry and reasons for entry into the property in another report as appropriate (i.e., Incident Report, Information Report, etc.).

V. Warrantless/Nonconsensual Entry

- A. Officers searching a private property without a warrant and without consent shall complete a Chief's Report and include the following information:
 1. Name of the owner of the property.
 2. Name and identification of the person in control of the property.
 3. Names of all officers who entered the property.
 4. The circumstances which led officers to enter the property, including the basis of the probable cause.
 5. The exigent factors that justified officers' warrantless entry into the property. Exigent factors include:
 - a. To prevent the escape of suspect.
 - b. To prevent the imminent destruction of evidence.
 - c. To prevent bodily harm to a person or provide emergency aid.
 - (1) Officers must articulate and document the exigent factors that justified their warrantless entry into a property.
 - (2) Officers shall document any dangerous or life-threatening circumstances that led to the entry.
 - (3) When pursuing a fleeing misdemeanor suspect simply citing the Hot Pursuit doctrine is NOT sufficient. Officers must determine if a law enforcement emergency exists, and be able to articulate a need to prevent imminent injury, destruction of evidence, or escape from the residence.

NOTE: The Supreme Court has ruled that the pursuit of a fleeing misdemeanor suspect does not always justify a warrantless entry into a home. Each incident must be evaluated on a case-by-case basis. Generally, their opinion is that when officers have time to obtain a warrant they must do so, even if a misdemeanant has fled (*Lange v. California*).

6. The time officers entered and the time officers left.
 7. All actions taken by officers, including whether or not property was seized and whether or not persons were taken into custody.
 8. Reference to any other reports that were made.
- B. The completed Chief's Report and copies of all other pertinent reports are to be forwarded as described in the OPD "[Chief's Report](#)" policy for review and disposition.

VI. Curtilage

- A. Officers may approach the front doors of residences/private property in an attempt to contact the occupants of a residence.

1. Absent evidence to the contrary, courts have found that property owners have implied their consent for visitors to go to the front door of a property.

EXAMPLE: The pathway leading from the driveway to the front door of a residence is generally not within the Curtilage. A recessed driveway area would be considered part of the Curtilage.

- B. Items of evidence or contraband observed in an area of Curtilage may not be seized without a warrant.

1. Officers may include their observations in an "[Affidavit and Application for Issuance of a Search Warrant](#)" (located in the PowerDMS "Forms – Other" folder) in order to be able to obtain a warrant to enter and search the Curtilage and seize the item of evidence or contraband.

EXAMPLE: Officers observe drug paraphernalia lying in plain view in a driveway area that extends beyond what would be considered the pathway exempted from the Curtilage of a residence. Absent an exception to the warrant requirement as described in this policy, officers must obtain a search warrant in order to enter the area and seize the contraband.

- C. The automobile exception to the warrant requirement does not permit the warrantless entry into a driveway, carport, or garage or the property's Curtilage in order to search a vehicle.

EXAMPLE: Officers observe a vehicle they believe to be stolen covered by a tarp in a recessed area of a driveway that lies in the Curtilage area of a property. Absent an exception to the warrant requirement as described in this policy, officers must obtain a search warrant in order to enter the area and lift the tarp to inspect the plates, VIN, etc.

REFERENCES:

I. Court Cases

- A. *Collins v. Virginia*, 2018 WL 2402551 (Curtilage definition page 8).
- B. *State v. Ramaekers*, 257 Neb. 391, 396-97, 597 N.W.2d 608, 612-13 (1999) (implied consent to visitors going to front doors).

C. [Lange v. California](#), 594 U.S. __ (2021)

II. Previous OPD Orders

A. Previous General Orders: #73-85, 12-91, 42-91, 5-98, 38-14, 40-17, 17-19, 65-20, 86-23, and 66-24.

III. Accreditation Standards

A. Relevant CALEA Accreditation Standards: 1.2.4.