

**GENERAL ORDERS MANUAL
WESTERN MICHIGAN UNIVERSITY
DEPARTMENT OF PUBLIC SAFETY**

I. PURPOSE

The purpose of this general order is to provide guidelines and procedures for officer searches and seizures as defined by law.

II. POLICY

It is the policy of WMU Public Safety to respect and protect the individual constitutional rights of all persons.

III. WARRANTLESS SEARCHES

WMU police officers shall secure a search warrant in all cases where circumstances do not provide for exceptions to the warrant rule.

- A. Exigent circumstances – founded upon showing that emergency conditions existed at the time of the search which involved the immediate threat of removal, concealment or destruction of the evidence if the search wasn't conducted right away.
 - 1. Person- search of a person may occur where there is a lack of probable cause for arrest, but probable cause to believe that evidence may be concealed on or in the person to be searched and the evidence will be gone before a warrant can be obtained.
 - 2. Automobile – vehicles are subject to search under this exception if: (3.1.1.d, 3.1.1.f)
 - (a) Probable cause exists.
 - (b) The vehicle in question is capable of mobility.
 - (c) There exists an immediate threat of mobility – vehicle will leave before search warrant is obtained.
 - 3. Exigent Circumstances – includes imminent substantial property damage, imminent destruction of evidence, fresh pursuit of a dangerous offender, preventing escape of someone sought to be detained or arrested in public, public safety/community caretaking, and rescue/emergency aid. (3.1.1.f)
- B. Consent searches – Any person may waive their protection under the Fourth Amendment and consent to a search. (3.1.1.a)
 - 1. Consent to a search must be voluntarily given and not the result of duress or coercion, expressed or implied. Officers shall ensure that consent searches are in fact voluntary and that consent has been freely given prior to initiating any such search.
 - 2. In order for a consent search to be valid, consent must be given by one possessing control over the area to be searched. Any officer initiating a consent search shall ensure the subject giving consent has ownership or other authority to the area or item to be searched.

3. Consent is only good for the areas for which it is given. The person giving consent may limit the scope of consent or withdraw consent at any time and the search must stop.
- C. Stop and frisk – a Supreme Court recognition of an exemption to the warrant requirement which permits the temporary detention of a citizen on less than probable cause and also may permit a “pat down” of a person for offensive weapons. Officers shall consider the following procedures when initiating a stop and frisk (Terry stop and search). (3.1.1.b)
1. Investigative stops by officers shall be supported by reasonable suspicion.
 2. An officer who lacks probable cause, but whose observations lead him/her to reasonably suspect that a person has committed, is committing, or is about to commit a crime, may detain that person briefly in order to investigate the circumstances that provoked suspicion.
 3. Reasonable suspicion for the stop shall be based on the officer’s personal observation and/or information supplied by an individual that leads them to believe:
 - (a) There is criminal activity afoot, and;
 - (b) That the person is armed and dangerous.
 4. Handcuffs may be used during a “Terry” search:
 - (a) Officers conducting a “Terry” search shall consider controlling and securing subject(s) with handcuffs first, prior to initiating the search.
 - (b) Officers shall advise any person handcuffed for a “Terry” search that they are being handcuffed for officer safety, that they are not under arrest, and that the handcuffs will be removed when officer safety is ensured.
 5. Vehicle extension (3.1.1.d)
 - (a) Terry frisks can extend to the passenger compartment of a vehicle, and officers may search the driver/passenger(s), if the officer reasonably believes that a suspect, lawfully, stopped, can gain access to a weapon.
 - (b) Officers shall not search, without probable cause, the passenger compartment of a vehicle if the driver/occupant(s) have been removed and do not have a reasonable continuing opportunity to access the compartment. (Note: Other exceptions may still exist for search of the compartment, i.e. incident to arrest and vehicle impound searches).
 6. Plain feel, plain smell and plain touch – Officers may seize an object when it becomes immediately apparent, with knowledge gleaned from the officers’ senses, that probable cause exists to believe the object is contraband. Officers may seize contraband detected through the senses if the officer is lawfully in a position to detect the presence of the contraband and the incriminating nature of the contraband is immediately apparent from its sensory impression. Immediately apparent means that the officer readily perceives, without further exploration or searching, that what is sensed is contraband. (3.1.1.h)
 7. Plain view and open view – A plain and open view exception to the search warrant rule involves what the public would see; there is no intrusion into an area protected by the Fourth Amendment. However, the incriminating nature of the item observed must be immediately apparent. Officers are also authorized to search a motor vehicle when contraband is observed in plain and open view. Such contraband may be lawfully seized and a search for additional contraband conducted, regardless of whether an arrest has been made. (3.1.1.h)
 8. Open fields – Warrantless searches of an area outside the property owner’s curtilage does not violate the Fourth Amendment protection. However, unless there is some other legal basis for a search, the search must exclude the home and any adjoining land that is within an enclosure or otherwise protected from public scrutiny.

Generally, curtilage has been held to include all buildings in close proximity to a dwelling. (3.1.1.i)

9. Search incident to arrest – Searches incident to arrest do not require any probable cause to believe that the arrestee possesses any weapon or contraband. The United States Supreme Court has recognized that the potential for possession of such items is strong enough to permit a search incident to every arrest. The Michigan Supreme Court has ruled, in *People v. Chapman*, 425 Mich. 245 (1988) that a custodial arrest justifies a search at the time and place of arrest. (3.1.1.c)

Scope of search:

- (a) The search of the arrestee's person.
 - (b) The area within the immediate reach or control of the arrestee.
 - (c) The opening and search of containers or articles in possession of the arrestee.
10. Automobile inventory searches – The U.S. Supreme Court has ruled that inventory searches of automobiles are permitted, including closed containers or locked compartments. (3.1.1.g)
 - (a) Vehicle must be impounded as a result of becoming the responsibility of the police.
 - (b) The inventory is conducted to protect public safety, protect property found in vehicle, to protect the police against claims.
 - (c) All inventory searches are to be conducted in accordance with departmental policy.
 11. Administrative searches – Michigan law permits “administrative search warrants” to enforce regulations, statutes, and ordinances. Such a search warrant requires only a showing that an intrusion is necessary to ensure compliance with a law or ordinance, such as an OSHA safety regulation or plumbing code.
 12. Other situations authorized by state and federal constitutional provisions - Officers may conduct searches and seizures based upon other situations which are authorized by state and federal constitutional provisions. (3.1.1.j)

D. Crime Scene Search (protective sweeps) (3.1.1.e)

1. Protective sweep elements
 - (a) A limited search of a residence that is justified by an articulable concern for officer safety.
 - (b) A protective sweep is searching for people.
 - (c) Crime scene searches should be done with a search warrant unless another warrantless search exemption is found.

IV. SEARCHES WITH A WARRANT

- A. A search warrant is a court order directing the search of a specific place for a specific item(s). In Michigan, a warrant must be based upon a written and sworn statement of the facts supporting the proposed search. Search warrants may properly be issued to search for:
 1. Stolen or embezzled property.
 2. Property or items designed and intended for use, or which have been used, as a means of committing a criminal offense.
 3. Property or items possessed, controlled or used wholly or partially in violation of Michigan law.
 4. Evidence of a crime or criminal conduct on the part of any person (may include blood samples, hair samples, fingerprints, bank records, and other things which are not criminal to possess).

5. Contraband.
 6. The bodies of humans or animals that are, or may be, the victims of a criminal offense.
 7. The object of a search warrant.
- B. Procedures for obtaining and executing a search warrant: (3.1.2)
1. A search warrant affidavit is an application for a search warrant based on articulable probable cause, which is normally presented to a judge or magistrate in the county where the search is to occur. The court will review the affidavit, and, if it is determined probable cause exists, the officer will swear the facts contained in the document are true to the best of their information and belief.
 2. The search warrant affidavit and search warrant templates are police share drive on the 511.
 3. If a search warrant is requested outside the court's normal business hours, officers should contact the recording for the on-call judge/magistrate at (269) 384-8128. The on-duty judge/magistrate will provide instructions on how to fax or email the search warrant affidavit and search warrant.
 4. If the search warrant is high risk, the Kalamazoo Metropolitan SWAT team shall be contacted for consideration in executing the search warrant. Request for activation of KM-SWAT will be made by notifying the KM-SWAT team commander through the Kalamazoo County Consolidated Dispatch Center.
 5. Once a search warrant is authorized, it must be executed in a timely manner.
 6. Officers must knock and announce their presence before forcing the door open.
 7. Upon completion of the execution of the search warrant, copies of the search warrant and tabulation of items seized will be left at the scene of the search. Additional copies will be placed in records and a copy promptly returned to the issuing judge or magistrate.
 8. Any items seized pursuant to the search warrant will be documented in an official police report and placed into the evidence system.
- C. No-Knock Search Warrants
1. 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.
 2. A no knock clause should be in the affidavit and search warrant prior to the execution of the search warrant.
 3. Approval for no knock warrants must be obtained from the Chief or Deputy Chief.

Issued Date: 09/10/2020

Revised Date: 11/11/2020, 01/21/2021, 11/19/2023

Issued by



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