

**East Lansing Police Department
Policy & Procedure**

Subject: Warrantless Searches	ELPD Policy #: 300 - 1
Effective Date: March 1, 2022 Revised Date:	Distribution: Departmental
MACP Accreditation Standard : Warrantless Searches	MACP Standard: 3.1.1

I. PURPOSE

The purpose of this policy is to provide police officers with basic guidelines for warrantless searches. The officers conducting searches must perform them in strict observance of the constitutional rights of those being searched.

II. POLICY

DEFINITIONS:

PROBABLE CAUSE: Probable cause exists when a police officer, based on his/her experience and training, is aware of articulable facts or circumstances which would lead a reasonable and prudent person to conclude a crime has been committed or is in the process of being committed.

REASONABLE SUSPICION: Reasonable suspicion means that an officer holds a belief that is reasonable, under the totality of the circumstances that exists at the time and place of the occurrence. Reasonable suspicion is a lesser standard of proof than probable cause.

A. SEARCH WARRANT RULE

1. The Supreme Court ruled searches conducted without a search warrant are unreasonable under the 4th Amendment (i.e. unconstitutional), unless they meet all of the requirements of one of the exceptions recognized by the Court. *Katz v. United States* (1967)
2. Due to judicial preference for warrants, if it is possible to obtain a warrant, one should be obtained. A search conducted with a warrant is presumed valid, while a search conducted without a warrant is presumed to be invalid unless it can be justified through one of the exceptions.

B. EXCEPTIONS TO THE SEARCH WARRANT RULE

1. **CONSENT SEARCH [3.1.1a]**

- a. A warrantless search where a person having control over the area to be searched has given their consent to the search. The person's consent must be given freely, voluntarily, and intelligently, without coercion or under duress.
- b. Consent to a search can be given verbally, but an officer should remember the burden to prove consent was granted without coercion rests with the officer. Therefore, an officer should make every attempt to record and save a verbal consent or obtain written consent, if feasible.
- c. A person's silence or failure to object to a consent search does not constitute consent and is insufficient in meeting the officer's burden to prove consent was given freely and voluntarily.
- d. If an officer claims they can search regardless of a person's consent, then the person's subsequent consent is invalid.
- e. Consent can be given by a third party who has common authority over the premises. Common authority depends upon whether a person has joint access or control over the area to be searched.
- f. Consent can be withdrawn at any point during the search. Once withdrawn the consent search must be stopped, unless one of the other exceptions to the search warrant rule exists or a warrant is obtained.
- g. An officer must ensure the consenting party has the opportunity to revoke their consent at all times during the search; Consent must be ongoing throughout the entire search in order to remain valid.
- h. A person may limit the scope of a consent search. If so, an officer may only search the permitted areas.

2. **STOP & FRISK/TERRY STOP & FRISK [3.1.1b]**

- a. The Stop and Frisk (Terry Stop & Frisk) permits an officer to pat-down a person's outer clothing for weapons, not evidence. Terry v. Ohio (1968). An officer must have reasonable suspicion that the person was, is or is about to be involved in a crime AND the officer has reasonable suspicion the person is armed. Then the officer is authorized

to conduct a pat-down for weapons to ensure their safety and the safety of others.

- b. Plain Feel Doctrine: If while conducting a valid stop and frisk for a weapon, the officer feels what is immediately recognized as contraband, the contraband may be lawfully seized.
- c. Finally, a Terry frisk is not justified for "officer safety" without reasonable suspicion that the subject is armed.

C. **SEARCH INCIDENT TO ARREST [3.1.1c]**

- 1. When an officer makes an arrest he/she may search the person for weapons, evidence and contraband, incident to the arrest, which means the search must be conducted at the time of the arrest.
- 2. An officer "may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the arrest offense." *Arizona v Gant*, 556 US 332, 351 (2009).
- 3. The arresting officer may search the arrestee's person or anything within the arrestee's wingspan.
- 5. An arrestee's cellphone may not be searched under this exception to the search warrant rule.

D. **PLAIN VIEW & OPEN VIEW [3.1.1h,i]**

- 1. Under the plain view exception, officers are authorized to seize evidence in "plain view". Two conditions must be met for such a seizure to occur.
 - a. First, the officer making the seizure must be in a place where they have a legal right to be.
 - b. Secondly, the item being seized must be immediately apparent to be evidence of a crime or contraband.
- 2. In an open view situation, there is no intrusion into a constitutionally protected area (i.e. no expectation of privacy). An officer merely observes what the public observes. However, the item must be readily apparent to be evidence of a crime or contraband.

E. **HOT PURSUIT [3.1.1j]**

1. This exception involves incidents where an officer pursues a fleeing felon into a home or building, and then observes in plain view items that are readily apparent to be evidence or contraband.
2. These exceptions to the search warrant rule apply strictly to felonies, not misdemeanors. An officer should never pursue a person wanted for a misdemeanor into a home or building based on the hot pursuit exception.

F. **AUTOMOBILE EXCEPTION [3.1.1d,h]**

1. An officer can conduct a search if the officer can articulate probable cause with **the automobile exception**. For vehicles, there are two (2) requirements for a valid search under this exception.
 - a. First, there must be probable cause to believe that evidence of a crime or contraband is located in the vehicle to be searched.
 - b. The second requirement for a valid search under this exception is that the vehicle has to be readily mobile. This does not mean the vehicle has to be moving at the time it is encountered, only that the vehicle is capable of ready movement.
2. To justify the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents (to include locked or unlocked containers) that may conceal the object of the search. Additionally, if an officer has probable cause to believe a specific container placed inside a vehicle has evidence of a crime or contraband inside it, the vehicle may be stopped and searched as is necessary to retrieve that container. Once the container is retrieved, it may be searched without a warrant under this exception.

G. **EMERGENCY AID DOCTRINE [3.1.1f]**

1. The Emergency Aid Doctrine allows for an exception to the warrant requirement when the following conditions are met:

- a. An officer has reasonable grounds to believe there is an emergency and an immediate need for their assistance for the protection of life.
 - b. The emergency is a "true emergency" (an officer's good faith belief alone is not sufficient)
 - c. The search is not primarily motivated by an intent to arrest or to seize evidence.
 - d. The officer reasonably suspects that the area or place to be searched is associated with the emergency and that, by making a warrantless entry, the officer will discover something that will alleviate the emergency.
2. If the officer happens to see evidence of a crime while inside the person's protected area due to an actual and ongoing emergency, he/she may seize that evidence under the plain view exception. If the officer believes there may be more evidence inside the protected area, he/she should seek a search warrant to collect it.

H. **INVENTORY SEARCH [3.1.1g]**

1. In order to conduct an inventory search on a vehicle, two requirements must be met. First, the vehicle must be lawfully impounded. Second, the inventory must be conducted in accordance with the departmental inventory policy.
2. Purposes of Inventory Searches:
 - a. To protect the owner's property while in law enforcement custody
 - b. To protect law enforcement against claims or disputes over lost or stolen property
 - c. To protect law enforcement from potential dangers located in the property
 - d. Public caretaking involving vehicles that impede traffic or are illegally parked.
3. An inventory search may extend to the entire vehicle and any containers within the vehicle to the extent permitted by department policy.

I. ADMINISTRATIVE SEARCHES [3.1.1j]

1. Government officials can inspect for certain types of violations of regulated functions. (For example, fire codes, licensed liquor establishments, public health codes, etc., are all regulated functions.)
2. If an attempt is made to conduct an inspection or administrative search and the person in charge of the facility refuses the inspection or administrative search, a warrantless search or inspection cannot be made. A government official cannot force an administrative search or inspection.
3. If an inspection or administrative search is refused, the officer being refused must write a detailed report, which shall be forwarded to the Investigations Division for further investigation.

J. BORDER SEARCHES [3.1.1j]

1. Federal customs or immigration laws are enforced by federal officials.
2. An officer may act in conjunction with federal officials in enforcing customs and immigration laws (i.e. K-9 assistance at the border).

K. CRIME SCENE SEARCHES [3.1.1e]

1. "The Fourth Amendment allows a properly limited protective sweep in conjunction with an in-home arrest when the searching officer possesses a reasonable belief based on specific and articulable facts that the area to be swept harbors an individual posing a danger to those on the arrest scene." *Maryland v Buie*, 494 US 325, 337 (1990). "Such a search is quick and limited, and conducted for the sole purpose of ensuring the safety of police officers and other persons." *People v Cartwright*, 454 Mich 550, 556-557 (1997).¹

III. PROCEDURE

IV. CANCELLATIONS

Authorized By:

A handwritten signature in blue ink, appearing to read "Kim P. Johnson", is written over a horizontal line.

Kim Johnson, Chief of Police

