

**East Lansing Police Department
Policy & Procedure**

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| Subject: Search Warrants and Strip Body Cavity Searches | ELPD Policy #: 300-5 |
| Effective Date: March 1 2022 Revised Date: | Distribution: Departmental |
| MACP Accreditation Standard : Search Warrant and Body Cavity Search | MACP Standard: 3.1.2, 3.1.5 |

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 bears 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 issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. The Fourth Amendment also 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 East Lansing Police Department to be responsive to and protect the constitutional rights of the citizen.

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.
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.).
- 4. 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.
 - a. The affiant's oath needs not occur in the physical presence of the judge. The oath may be administered over the phone.
 - b. Proof that the affiant signed the affidavit may consist of electronic communication including facsimile or computer network.
 - c. Proof that the judge signed the warrant may consist of an electronic communication including facsimile or computer network.
- 5. 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:
 - i. 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.
 - ii. 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.
 - iii. 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:
 - i. If the person is named and makes affirmative allegations in the affidavit that they spoke with personal knowledge concerning the facts/information.
 - ii. 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.
 - iii. Proof that the affiant signed the affidavit may consist of electronic communication including facsimile or computer network.
 - iv. Proof that the judge signed the warrant may consist of an electronic communication including facsimile or computer network.

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).

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 the search warrant to a 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. The search warrant must be executed in a reasonable and timely manner, consistent with Constitutional requirements. Officers shall not attempt to serve a warrant with substantive or administrative errors.

- a. Announcing Presence and Authority Requirements

- i. The courts in Michigan have ruled that police officers must announce authority and presence before forcing open the door.
 - ii. Officers need not to 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. A no knock clause should be in the affidavit and search warrant prior to the execution of the search warrant.
 - iii. Approval of no-knock warrants must also be obtained from the Chief of Police or his/her designee.
- b. Persons Found at the Scene
 - i. 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.
 - ii. 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.
 - iii. 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
 - i. 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.

- ii. 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.
- iii. Unless named in the search warrant, furniture, stereos, or televisions, etc. may not be moved for the purpose of viewing serial numbers.
- iv. Only locations and containers may be searched that may reasonably contain the object that the warrant seeks.

d. The Warrant Return and Tabulation

- i. 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).
- ii. Have person before whom the tabulation is completed sign the tabulation as witness.
- iii. 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.
- iv. 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

- i. Officers will make a reasonable attempt to minimize damage to the premises, pursuant to Michigan law.
- ii. 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. STRIP SEARCHES AND BODY CAVITY SEARCHES (3.1.5)

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.
 - 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.

- 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.
- 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.

a. Officers must have probable cause to believe that a person is concealing a weapon, a controlled substance, or evidence of a crime.

- 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.
- 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

- 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:



Kim Johnson, Chief of Police

