





## **POLICIES AND PROCEDURES MANUAL**

	<b>SEARCH AND SEIZURE</b>	
	<b>POLICY NUMBER: 1-4</b>	ISSUING AUTHORITY 
	<b>EFFECTIVE DATE: January 1, 2025</b>	Christine A. Elow Police Commissioner

### **I. GENERAL CONSIDERATIONS AND GUIDELINES**

The term *search and seizure* includes the examination of persons or places for the discovery of contraband, property stolen or otherwise unlawfully obtained or held, or of evidence of the commission of a crime, and the taking into legal custody of such property or evidence for presentation to the court. Failure to comply with the legal technicalities that govern these procedures results in more failures to obtain convictions than any other source. The Fourth Amendment to the U.S. Constitution has been interpreted by the U.S. Supreme Court to require that, whenever possible and practicable, with certain limited exceptions, a police officer should always obtain a valid search warrant in advance.

The Fourth Amendment of the U.S. Constitution declares:

*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.*

Article XIV of the Massachusetts Constitution provides:

*Every subject has a right to be secure from all unreasonable searches, and seizures, of his person, his houses, his papers, and all his possessions. All warrants, therefore, are contrary to this right if the cause or foundation of them be not previously supported by oath or affirmation; and if the order in the warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or object of search, arrest, or seizure; and no warrant ought to be issued but in cases, and with the formalities prescribed by the laws.*

The Fourth Amendment to the U.S. Constitution prohibits unreasonable searches and seizures and the Supreme Court has consistently held that unless they come within one of the few carefully limited exceptions to the search warrant requirement, warrantless searches and seizures are considered unreasonable. Searches with prior judicial approval with a valid search warrant are preferred. The burden of showing that a valid exception exists rests upon the government when the circumstances of a warrantless search are challenged in the courts.

## II. POLICY

It is the policy of the Cambridge Police Department that:

- A. warrants shall be obtained for all searches whenever possible and practicable; and
- B. searches shall be conducted in strict observance of the constitutional rights of the parties involved, and with due regard for the safety of all officers, other persons, and property.

## III. DEFINITIONS

- A. *Exigent Circumstances*: Situations in which law enforcement officials will be unable or unlikely to effectuate a search or seizure for which probable cause exists unless they act swiftly and without prior judicial authorization.
- B. *Probable Cause*: There are trustworthy facts and inferences that would lead a reasonable person to believe it is more likely than not that a specific crime was or is being committed; and/or evidence of a crime is in a particular place.
- C. *Reasonable Suspicion*: There are trustworthy facts and inferences that would lead a reasonable person to believe that there is a concrete possibility that a crime was, is, or will be committed; and sometimes the suspect is armed and dangerous.

## IV. PROCEDURES

- A. Searches Incident to Lawful Arrest
  - 1. A warrantless search of a person under arrest may be conducted under the following conditions.
  - 2. The arrest is lawful and the search is reasonably related to the circumstances of the arrest.
  - 3. The search is conducted only for the purposes of seizing fruits, instrumentalities, contraband, and other evidence of the crime for which the arrest was made; or to prevent destruction or concealment of such; and/or to remove any weapons or instrumentalities that the arrested person might use to resist arrest or to effect escape.
  - 4. The search is limited in scope to the person of the arrestee and the immediate surrounding area. Immediate surrounding area means that area from which the arrestee can either obtain a weapon or destroy evidence.
  - 5. The search is substantially contemporaneous with the arrest and conducted in the immediate vicinity of the arrest; however, if the safety of the officer and/or arrestee requires, the officer may delay the search and conduct it at a safe location.
  - 6. If a search of a house is to be upheld incident to an arrest, that arrest must take place inside the house, unless there is a legitimate purpose to enter the dwelling after an outside arrest.

7. A search may also be made of items within the *grabbing area* of the arrested person and clothing worn at the time of arrest.
8. In addition to a careful search of the area within the arrested person's immediate control, a quick and limited search of a premises may be conducted if there is reasonable belief that it is imperative for the officers' or others' safety because of the presence of others in the premises.
  - a. The search is narrowly confined to a cursory visual inspection of those places in which a person might be hiding.
  - b. Any item or object recognizable as criminal evidence discovered in plain view during a justifiable protective sweep may be properly seized.
9. A police officer who has lawfully entered the premises may conduct a protective sweep whether or not having entered the premises with an arrest warrant, search warrant, or the existence of exigent circumstances. A protective sweep cannot last any longer than is necessary to dispel the reasonable suspicion of danger and, in any event, no longer than it takes to complete the arrest or search and depart the premises.

B. Consent to Enter

1. Officers may engage in a warrantless entry after obtaining consent even in circumstances where they do not have probable cause.
2. Officers may ask for consent at any time to enter a private area or residence within their jurisdiction for a legitimate public safety purpose. For there to be a valid consent to search, the following elements must be satisfied.
  - a. The consenting party must have sufficient lawful authority over the premises or property to be able to give consent to a search of that premises or property.
  - b. Must be present at the time of the search.
  - c. Must freely and voluntarily waive Fourth Amendment rights.
  - d. Must be given the right to revoke the search at any time.
3. Consent does not:
  - a. Need to be written. Officers do not need to seek written consent to enter.
  - b. Need to be informed. Officers are not required to inform people of their right to refuse.
  - c. Authorize a search. Officers must receive separate and distinct permission to search.

C. Consent to Search

1. Consent may be obtained from any person who has the right of ownership, possession, or control of the premises or property. Officers shall conduct a diligent inquiry concerning an individual's relationship to the premises. If there is serious doubt as to whether the individual has authority to consent to a search, a search warrant should be sought.

2. When two or more people share common authority to the premises, police may request and be given consent to a warrantless search by one of the people without consent of the others who may be non-consenting but absent.
  - a. Generally, a dwelling or business owned jointly by two or more persons may be subject to a consent search if any one of the owners gives consent to search the common areas of the premises.
  - b. However, if a present co-tenant objects to the search, officers lack consent.
3. A spouse may give consent to a police search of a jointly-owned home even without the knowledge or permission of the other spouse. However, if the other spouse is present and objects, officers lack consent. In the absence of some information which indicates exclusive use such as the inability to produce the key to a locked cabinet, officers may assume that a spouse or unmarried partner has authority to consent.
4. A parent may give consent to search regardless of the child's age if they have established and legitimate access to the room and/or property. However, where the child, regardless of age, has exclusive access to certain areas and/or property, the parent's consent will not be sufficient.
5. Generally, a child may not give consent to a police search of premises or property owned by the child's parent.
6. A roommate may consent to a police search, except in areas where the suspect maintains exclusive control. If a present roommate objects to a search, officers lack consent.
7. Generally, a landlord cannot give consent to the search of a tenant's apartment. However, a landlord may give consent to searches of common areas such as hallways and stairwells.
8. A hotel or motel owner or manager cannot give consent to search a guest's lodgings.
9. Other considerations are as follows.
  - a. Consent to search may be given orally.
  - b. Although consent cannot be presumed from silence, there are certain situations in which non-verbal gestures may give rise to consent.
  - c. Consent must be free of any coercion, intimidation, or threat, or the appearance of intimidation or duress.
  - d. Officers shall not gain consent using misrepresentation or fraud.
  - e. Consent shall be requested prior to the search and after officers have identified themselves.
  - f. A consent search shall be limited to the area specified.
  - g. Officers should avoid ambiguous language when possible.

10. Consent may be revoked at any time and the search shall cease upon revocation, unless additional factors or information have come to light that justify a continued warrantless, non-consensual search. For example, evidence found prior to revocation of consent may be retained and used as a basis for an immediate arrest or as probable cause for a further search, if exigent circumstances exist, or for obtaining a search warrant.

#### D. Threshold Inquiries

1. Both the Fourth Amendment and M.G.L. c. 41, § 98 authorize police officers to briefly detain suspicious persons who have committed, are committing, or are about to commit a crime, to question such persons and, if the officer reasonably believes the person may be armed and dangerous, to frisk that person for weapons. These procedures are referred to as a threshold inquiry.

#### E. Motor Vehicles

1. Officers are prohibited from stopping motor vehicles without reasonable suspicion of criminal activity, motor vehicle violations, or exigent circumstances.
2. If it is possible and practicable, a search warrant should always be obtained in the prescribed manner in advance of a motor vehicle search, as this procedure is generally preferred by the courts.
3. A warrantless search of a motor vehicle may be conducted under the following circumstances.
  - a. When the officer reasonably believes that their safety or the safety of others is in danger, or the officer believes that the suspect may be armed and the search is confined to the area of the vehicle from which the suspect might gain possession of a weapon.
  - b. Incident to a lawful arrest and the search is limited to the arrestee's person and the area within the immediate control of the arrestee.
  - c. In exigent circumstances when the following elements are satisfied.
    - 1) The vehicle must be lawfully stopped or found parked in a public place.
    - 2) There is probable cause to believe that the vehicle contains contraband or other evidence at the start of the search.
4. A search may be conducted with the voluntary consent of the person in lawful control of the vehicle if there is reasonable suspicion of criminal activity.
5. Roadblock stops are permissible if the selection of motor vehicles to be stopped is not arbitrary, if the safety of the public is assured by taking necessary precautions, if the motorists' inconvenience is minimized and the roadblock procedure is conducted pursuant to a plan devised by law enforcement personnel. In addition, if police have a description of a suspect vehicle, they may stop all vehicles fitting that description.
6. If an officer has lawfully stopped a motor vehicle and is questioning the operator, any incriminating item in or on the vehicle in plain view, including anything observed with the use

of a flashlight, may furnish probable cause to search the vehicle and seize the item observed without a warrant.

7. If the vehicle is impounded, the vehicle shall be inventoried, and all personal property found in the vehicle kept in safe custody in accordance with the department policy on Motor Vehicle Inventories.
8. Motor vehicles are subject to various types of administrative searches that do not require search warrants. For example, the annual motor vehicle inspection procedure is, in effect, a warrantless search.
9. In stopping and searching motor vehicles, officers shall take all reasonable precautions for their personal safety, such as directing occupants to exit from the vehicle and frisking them for weapons when the officer has reasonable belief that they may be armed and dangerous.

F. Exigent Circumstances and Emergency Aid

1. Exigent Circumstances: An officer is authorized to conduct a warrantless entry and/or search when there is probable cause of a crime, the officer is faced with an emergency where it is impracticable to obtain a warrant, and there is an immediate risk to the officer's or the public's safety, escape of the offender, or the destruction of evidence.
2. Emergency Aid: An officer is authorized to make a warrantless entry and/or search when there is reasonable suspicion that emergency assistance is needed to prevent physical harm, protect life, or aid an injured person, and the entry and ensuing protective sweep are strictly designed to deal with the emergency.
3. While conducting a lawful entry under exigent circumstances or emergency aid, police may seize any incriminating evidence inadvertently discovered in plain view.
4. Many exigent circumstances justifying warrantless entry and searches do not necessarily involve criminal acts, such as in a fire or natural disaster.
5. A warrantless entry into a burning building is permissible and officials may remain for a reasonable time to investigate the cause of the fire and any evidence of arson discovered is admissible at trial. Any reentry after the fire has been extinguished should be made pursuant to a search warrant, unless justified by a recognized exception.
6. An officer who has reasonable cause to believe that premises contain items likely to explode, burn, or otherwise cause death, serious bodily harm, or substantial destruction of property, may enter without a warrant.

G. Fresh and Continued Pursuit

1. Officers in hot pursuit of a felony suspect or a suspect who committed a jailable misdemeanor may make warrantless entry into a home.
2. Officers may not make warrantless entry into a home while in hot pursuit of a suspect for a civil offense or non-jailable misdemeanor.

#### H. Protective Custody Searches

1. Prior to transportation, an officer is required to make a search of the incapacitated person, belongings, and the immediate surroundings to discover any dangerous weapons that may be used against themselves, against the officer, or other persons present. Incapacitation may be due to alcohol or other intoxicating substances.

#### I. Pre-incarceration Searches/Booking Inventories

1. Prior to placing a prisoner in a cellblock, the booking officer shall conduct an inventory and inspection of belongings in accordance with department policy on booking procedures. This is done to uncover and safeguard any weapons or implements the detainee could use to injure themselves or others, to safeguard valuables, and to protect the police against false claims of theft or loss of the detainee's belongings.
2. Cambridge Police Officers shall, unless circumstances dictate otherwise, search detainees three times: at the point of arrest by the arresting officer, by the transporting officer prior to transport, and by the booking/station relief officer in the station.

#### J. Administrative Searches

1. The police may, under certain circumstances, engage in warrantless searches or inspections as part of their administrative functions. For example, it is proper to search a person who is about to visit a detainee.
2. A motor vehicle inventory may be considered an administrative search.

#### K. Plain View/Feel

1. Officers may seize contraband or evidence with or without a warrant under the plain view exception to the warrant requirement if the following conditions are met.
  - a. The officer must be lawfully present.
  - b. The officer must find the item seized inadvertently.
  - c. The item seized must be immediately apparent as contraband or evidence of a crime.
2. Lawful entry includes entry with a valid warrant, entry to make a lawful warrantless arrest, entry as a result of a lawful consent, entry in an emergency, or to render aid or assistance.
3. Items are immediately apparent as contraband if the officer has probable cause to believe that they are instrumentalities or means by which any crime was committed, are articles illegally possessed such as counterfeit money or controlled substances, are fruits of the crime, are evidence of any crime, are property that bears reasonable relationship to the purpose of the search such as documents showing ownership if ownership is an element of the crime.

#### L. Abandoned Property

1. Abandoned or discarded property may be searched by the police and seized, such as trash in a collection area accessible to the public, contents of a hotel room wastebasket, and items thrown on the ground by the suspect.

2. Property is abandoned when a person voluntarily relinquishes control and gives up any expectations of privacy.

M. Open Fields

1. An open field is that portion of privately-owned land surrounding a person's dwelling that is too remote or removed from the physical dwelling to be considered part of the house that is protected by the Fourth Amendment, which includes the grounds and buildings immediately surrounding the dwelling.
2. Open fields may be searched without a warrant even though the terrain in question is not easily accessible to the public and even though the owner may have posted a No Trespassing sign and may even have a locked gate.

N. Searches by Persons other than Police Officers

1. Evidence obtained by a private individual, who is not acting as an employee or agent of the government, as a result of searching someone else's property, is admissible whether or not the search by the private individual was lawful.
2. Evidence discovered as a result of a warrantless search conducted by a police officer acting as a private security guard is not admissible if the security guard acts beyond the scope of the private employer's business. Officers must obtain permission from the Police Commissioner or designee for authorization to work any secondary employment where acting as a security guard may take place.