



# YARMOUTH POLICE DEPARTMENT POLICY AND PROCEDURE

## SEARCH AND SEIZURE 2014-44

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### Policy Statement

The term search and seizure includes examination of persons or places for the discovery of property stolen or otherwise unlawfully obtained or held, or of evidence of the commission of 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 United States Constitution has been interpreted by the United States 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 of a search. Mincey v. Arizona, 437 U.S. 385, 89 S. Ct. 2408 (1978).

The Fourth Amendment of the United States Constitution declares:

The right of 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 person or things to be seized.

Article XIV of the Massachusetts Constitution provides as follows:

Every subject has a right to be secure from all unreasonable searches, and seizures, of his person, his house, his papers, and all of his possessions. All warrants, therefore, are contrary to this right if the cause or foundation of them not previously supported by oath or affirmation; and if the order in the warrant to 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 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.<sup>i</sup> 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.

The following procedures have been prepared to provide basic guidelines that are both legal and practical in their technical area of searches and seizures. In their implementation, all related department policies such as Arrest, Investigation, Detention, the Use of Informants, and the Handling and Preservation of Evidence should also be considered.

Policy

It shall be the policy of the Yarmouth Police Department in recognition of the judicial preference for search warrants, such warrants will be obtained, when circumstances allow, for all searches whenever possible and practicable; and 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 involved.

Special  
Terms

**Affidavit:** A formal declaration or statement of facts, in writing, made voluntarily and confirmed by oath or affirmation before a person having the legal authority to administer such oath or affirmation.

**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.<sup>ii[iii]</sup>

**Probable Cause:** The facts observed, information obtained from others and personal knowledge and experience that is sufficient to lead a reasonable and prudent person to believe that a particular crime has been, is being, or is about to be committed, and that seizable evidence of a crime is likely to be found in a specific location

or on a specific person, which would justify a judge or magistrate to issue a search warrant.

**Consent Search:** Requires the individual person or property being searched to freely and voluntarily waive their Fourth Amendment rights, granting the officer permission to perform the search. The person has a right to give consent or in limited cases revoke consent at any point during the search. Officers must assure the person giving consent has a right to the property or area requested to be searched. Officers must conduct all searches in plain view of the suspect, and in a manner slowly enough that he may withdraw or delimit his consent at any time during the search.

**Strip Search** - Any search which requires the removal or re-arrangement of any clothing so as to expose or permit the visual observation of a person's buttocks, anus, genitalia or breast area. This generally refers to an inspection of a naked individual, without any scrutiny of his body cavities. *A strip search occurs when the last layer of clothing is moved (not necessarily removed) in such a manner whereby an intimate area of the detainee is viewed, exposed, or displayed. Commonwealth v. Morales, 462 Mass. 334 (2012).*

**Body Cavity Search** – Any search involving not only visual inspection of skin surfaces but that also includes the internal physical examination of body cavities including the anal and genital areas.

Search  
Warrant  
Guidelines

The general rule to be followed is that searches and seizures are reasonable and proper if they are based upon a valid search warrant, the issuance of which indicates that the police can demonstrate that probable cause exists that the evidence of criminal activity will be uncovered by the search.

With certain limited exceptions, therefore, a search shall always be conducted with a search warrant issued by a court of competent jurisdiction after the presentation of a properly executed affidavit:

The affidavit must contain the facts, information, and circumstances which have led a police officer to have probable cause to believe that a crime has been, is being, or is about to be committed, and that seizable evidence relating to that crime is present in the place or on the person to be searched;

Many cases have been lost because an officer had sufficient basis for probable cause but did not furnish enough information in his affidavit;

Any fact that is not set out in the affidavit cannot be inserted or used later for the purpose of establishing probable cause for a search;

It is most important that an affidavit describe with particularity the objects to be seized, as the search warrant must be sufficiently definite that the officer serving the warrant will not seize the wrong property and it must be sufficiently descriptive that an officer will identify the property to be seized with reasonable certainty.

#### Obtaining a Search Warrant

The legal procedure specified by Massachusetts Statute for the issuance of a search warrant is as follows:

A court or justice authorized to issue warrants in criminal cases may, upon complaint on oath that the complainant believes that any of the property or articles hereinafter named are concealed in a house, place, vessel, or vehicle or in the possession of a person anywhere within the commonwealth and territorial waters thereof, if satisfied that there is probable cause for such belief, issue a warrant identifying the property and naming or describing the person or place to be searched, and commanding the person seeking such warrant to search for the following property or articles:

1. Property or articles stolen, embezzled, or obtained by false pretenses, or otherwise obtained in the commission of a crime;
2. Property or articles which are intended for use, or which are or have been used, as a means or instrumentality of committing a crime, including, but not in limitation of the foregoing, any property or article worn, carried, or otherwise used, changed, or marked in the preparation for or perpetration of or concealment of a crime;
3. Property or articles the possession or control of which is unlawful, or which are possessed or controlled for an unlawful purpose; except property subject to search and seizure under sections 42 through 56, inclusive of chapter 138, regarding alcoholic beverages;
4. The dead body of a human being;
5. The body of a living person for whom a current arrest warrant is outstanding.

A search warrant may also authorize the seizure of evidence.

NOTE: The word "property" as used in this section shall include books, papers, documents, records, and any other tangible objects.

Search  
Warrant  
Form  
Description

A search warrant shall designate and describe the building, house, place, vessel, or vehicle to be searched and shall particularly describe the property or articles to be searched for; the warrant shall be substantially in the form prescribed in M.G.L. Ch. 276, § 2A and shall be directed to the sheriff or his deputy or to a constable or police officer, commanding him to search in the daytime, or if the warrant so directs, in the nighttime, the building, house, place, vessel, or vehicle where the property or articles for which he is required to search are believed to be concealed, and to bring such property or articles when found, and the persons in whose possession they are found, before a court having jurisdiction.

Officers requiring a search warrant should consult with their Shift Commander (OIC) and obtain his/her advice and guidance before proceeding to court. If the court is not in session, the Officer-in-Charge shall communicate with an authorized court official to make the necessary arrangements to secure a search warrant.

- If legal assistance is required for the preparation of the search warrant affidavit, the District Attorney's office should be contacted.
- Every search warrant issued and any action taken on such warrant shall be recorded in report form and filed in accordance with standard Departmental procedures.

Execution of  
A Search  
Warrant  
74.3.1

After a search warrant is obtained, an applying Officer shall:[74.3.1]

1. Check the warrant to ensure that it is signed and it clearly describes the place to be searched and the articles to be seized.
2. Execute the warrant immediately, or within a reasonable time, but in any case, within seven days from date of issuance.
3. Execute the warrant in the daytime unless it specifically provides for nighttime search. Nighttime for this purpose is from 10:00 p.m. until 6:00 a.m. A search begun in the daytime may continue into the nighttime if such activity is reasonable and not for the purpose of harassment.

Service of  
Search  
Warrant

Upon arrival at the location to be searched, Officers shall check to make certain that the premises are in fact those described in the warrant. The warrant should not be executed if there is a reasonable likelihood that the wrong premises will be searched.

Upon entering, show a copy of the warrant (not the original) to the person or persons lawfully on the premises unless the circumstances are such that this is not practical. Officers should bring a copy of the warrant and supporting affidavit to the scene to guide searching Officers.

The number of officers assigned to execute a search warrant should be dependent upon the particular circumstances. It is a good practice for at least one of the searching officers to be in police uniform, unless this would jeopardize the success of the search.

A search warrant should not be executed in or on any premises in the absence of the owners, unless there is good reason to believe that the occupants do not intend to return for an extended period of time (or that they do not intend to return at all); or that the property or articles designated in the search warrant will be removed or destroyed if the premises are not searched immediately. In all such cases, the manner of entry shall be made with the least possible destruction of property and a copy of the warrant left in a conspicuous place on the premises.

Knock and  
Announce  
Requirements

When serving a warrant at a private dwelling, police officers must knock, identify themselves as police officers, and announce that they have a warrant to search the premises and demand entrance, except in limited circumstances.

- -Officers may knock on the door and gain entry by deception or by means of a ruse, if this will result in a safe, practical and successful execution of the search warrant with less destruction of property.

Officers shall always seek entry as peacefully as possible, but forcible entry is authorized if, after waiting a reasonable time, it becomes apparent that:

1. The officers will not be admitted voluntarily

2. The officers or any other persons are in danger of physical harm
3. The occupants are escaping
4. Evidence is being, or is in danger of being destroyed.

No Knock Entry

A no-knock warrant is permitted when the police inform the magistrate of circumstances providing probable cause to believe that the object of the search may be destroyed or violence may occur if officers knock and announce their presence. *Comm. v. Rodriguez*, 415 Mass. 447, 614 N.E.2d 649 (1993).

Officers shall apply for a "no knock and announce" warrant, if they have reason to believe the knock and announce rule should not be observed when the warrant will be executed.

Note: If the circumstances which would justify disregarding the knock and announce rule are no longer present when the warrant is executed, the knock and announce rule must be followed.

An immediate, forcible entry (or one gained by a ruse or trick) is authorized and the usual knock and announce procedure may be disregarded if the searching Officers are in possession of reliable information that the person inside the dwelling to be entered has knowledge of the officers' purpose and presence<sup>iii</sup> or if they were to follow the knock and announce procedure:

1. Would be likely to endanger their safety or the safety of others
2. Would be likely to enable the wanted person(s) to escape; or
3. Would be likely to result in the evidence being destroyed during the period between their announcement of purpose and subsequent forcible entry.

Upon gaining entry, the searching officers should immediately identify themselves as police officers and should state that it is their purpose to serve a valid search warrant issued by the court.

Search Responsibilities

The Officer responsible for the execution of a search warrant:

1. Shall not exceed the authority granted by the warrant

2. Shall make a diligent effort to find all the property listed in the warrant
3. Shall not search beyond the area described in the warrant unless consent is obtained or exigent circumstances exist. (If the warrant authorizes a search of the first floor of a building, e.g., a search of the second floor is unlawful.)
4. Shall search only those areas capable of containing the property listed in the warrant (if the warrant authorizes a search for a large TV set, do not search in a small bureau drawer)
5. Shall carry out the search with the least possible damage to the premises
6. Shall remain on the premises only for the time reasonably necessary to thoroughly search for and seize the property listed in the warrant
7. Shall terminate the search when the listed property has been found or when it reasonably appears that such property is not on the premises
8. Shall make adequate provisions for the security of the searched premises before leaving unless the person in control of such premises refuses or rejects such police protection
9. Shall immediately and directly transport to the police station all seized property and ensure that it is properly marked, recorded and safeguarded in accordance with the departmental policies on Collection and Preservation of Evidence and Evidence
10. Shall complete the Return section of the warrant and deliver it to the court as soon as reasonably possible after the completion of the search, but no later than seven days from the date it was issued
11. Shall note on the warrant the action taken with an inventory of all property seized by authority of the warrant. (If evidence not described in the warrant is seized, attach a separate sheet to the Return, listing all such property and state that it was seized during the execution of that warrant); and

12. Shall make a full departmental report of all action taken on a search warrant, to be submitted to the Officer-in-Charge before returning the warrant to the court.

Safety of  
Persons  
Present  
During  
Search

In order to ensure an orderly and safe search, all persons present on the premises when the police arrive may be detained and prevented from moving about. The police may secure the premises prior to obtaining a search warrant, but must NOT begin their search until the warrant is issued and a copy presented to the owner/occupier, Comm. v. Yesilcimen, 406 Mass. 736, 550 N.E. 2d 378 (1990). In the execution of a search warrant, any person found on the premises may be frisked for weapons by a police officer, for his own protection and safety, if the officer believes that such person is armed. Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868 (1968). It should be noted, however, that the Supreme Court ruled that this "does not permit a frisk for weapons on less than reasonable belief or suspicion directed at the person to be frisked, even though such person happens to be on premises where an authorized search is taking place." Ybarra v. Illinois, 444 U.S. 85, 100 S. Ct. 338 (1979).

If an Officer suspects that any person present during an authorized search would interfere with such search, the officer may direct such person to restrict his movements on the premises; however, at least one of the occupants should be permitted to witness all aspects of the search if this is practical under particular circumstances.

Need for  
Additional  
Search  
Warrants

If during the execution of a search warrant it appears that there is probable cause to believe that property that may be subject to seizure is located in an area of the premises outside the scope of the present warrant, a new warrant should be obtained immediately, unless consent is granted or exigent circumstances are present. While the new warrant is being sought, any occupants of the premises may have their activities restricted. A warrant authorizing the search of a residence also gives police the right to search automobiles owned or controlled by the owner of such residence, which are located within the curtilage at the time the warrant is executed. Comm. v. Signorine, 404 Mass. 400, 535 N.E. 2d 601 (1989).

Search  
Without a  
Warrant  
1.2.4 a-g

The following are the major exceptions to the search warrant requirement that have been recognized as constitutionally permissible by the court:

1. Warrantless stopping, questioning, and frisking (investigative detention)[1.2.4 b]
2. Search incident to arrest (including protective sweep);
3. Exigent or emergency circumstances search (including "hot pursuit")[1.2.4 e]
4. Consent searches; [1.2.4 a] Review section Special Terms
5. At the scene of a crime; [1.2.4 d]
6. Motor vehicle searches under the movable vehicle exception; [1.2.4 c]
7. Plain view observations; [1.2.4 g]
8. Pre-incarceration(seized vehicles) and inventory searches;[1.2.4 f]
9. Protective custody searches;
10. Administrative searches

The following are not considered invasions of any privacy interest and, therefore, do not come under the search warrant requirement of the Fourth Amendment generally:[ 1.2.4 g]

1. The "plain view" doctrine
2. The "open fields" doctrine
3. Abandoned property.

An Officer should never rely on one of these exceptions whenever it is possible, under the particular circumstances, to obtain a search warrant in advance. In cases where a search is conducted without a warrant and criminal charges are to follow, the police officers involved shall make a written report of the circumstances to include all important facts relative to the incident and an inventory of any evidence seized, in accordance with departmental procedures.

Plain View  
Doctrine  
1.2.4 g

Officers may seize contraband or evidence without a warrant under the "plain view" exception to the warrant requirement if the following conditions are met<sup>iv</sup>: [1.2.4 g]

1. There must be a prior lawful entry
2. Such entry must bring the officer within "plain view" of the item seized and discovery of the item is inadvertent
3. The item seized must be "immediately apparent" as contraband or evidence of crime

Lawful entry includes:

1. Entry with a valid warrant;
2. Entry to make a lawful warrantless arrest;
3. Entry as a result of lawful consent; and
4. Entry in an emergency to render necessary aid or assistance.

Items are immediately apparent as contraband if the Officer has probable cause to believe they are:

1. Instrumentalities or means by which any crime was committed, (such as weapons, masks, tools, etc.);<sup>v</sup>
2. Contraband (articles which may not be legally possessed, such as counterfeit money or controlled substances, etc.);<sup>vi</sup>
3. Fruits of any crime (such as stolen property);<sup>vii</sup>
4. Other evidence of any crime (such as clothing or other items fitting the description of the criminal offender); or
5. Property that bears a reasonable relationship to the purpose of the search (such as documents establishing who owns the premises searched if ownership is an element of the crime).<sup>viii</sup>

Open Fields  
and  
Abandoned  
Property  
1.2.4 g

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" such that it is protected by the Fourth Amendment.<sup>ix</sup>

The “house” that is protected by the Fourth Amendment includes the grounds and buildings immediately surrounding the dwelling.<sup>x</sup>

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 “No Trespassing” signs and may even have a locked gate.<sup>xi</sup> [1.2.4 g]

Abandoned or discarded property may be searched by the police and seized. Examples of abandoned property include: [1.2.4 g]

1. Trash in collection area accessible to the public.<sup>xii</sup>
2. The contents of a hotel room wastebasket once an individual has vacated the room.<sup>xiii</sup>
3. An apartment or hotel room may be searched without a warrant provided the guest or tenant has left with an intention not to return and the landlord or owner has given permission to search.<sup>xiv</sup>
4. Items thrown on the ground by a suspect.<sup>xv</sup>

Search  
Incident to a  
Lawful Arrest  
1.2.4 d, f

A warrantless search of an arrested person may be conducted under the following conditions:

The arrest is lawful and the search is reasonably related to the circumstances of the arrest.

The search is conducted only for the purposes of:[1.2.4d]

1. Seizing fruits, instrumentalities, contraband and other evidence of the crime for which the arrest was made;
2. In order to prevent its destruction or concealment; and/or
3. To remove any weapons that the arrested person might use to resist arrest or to effect his/her escape.<sup>xvi</sup>

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. The search is substantially contemporaneous with the arrest and conducted in the immediate vicinity of the arrest; however, if

safety requires, the officer may delay the search and conduct it at a safe location. [1.2.4 d, f]

The Officer conducting the search may use the degree of force reasonably necessary to:

1. Protect himself/herself and others present
2. Prevent escape
3. Prevent the destruction of evidence.

A search may also be made of items actually in possession of the arrested person and clothing worn at the time of arrest if such search is related to the offense for which the arrest was made. [1.2.4 f]

In addition to a careful search of the area within the arrested person's immediate control, an examination of the entire premises may also be justified at the time of, or immediately following, a valid arrest if there is a reasonable belief that it was imperative for the Officers' safety because of the presence of others in the house or apartment.<sup>xvii</sup> This search is limited to areas where an accomplice or other person who might come to the aid of the arrestee might reasonably be hiding. Any item or object recognizable as criminal evidence discovered in plain view during a justifiable "protective sweep" may be properly seized.<sup>xviii</sup>

An arrest shall not be used as a pretext in order to make a search.

Search in  
Emergency or  
Exigent  
Circumstances  
1.2.4 e

The authority of the police to make warrantless entries in emergency situations, whether criminal or non-criminal, is based upon their fundamental responsibility to preserve the peace and to protect the public safety. Thurlow v. Crossman, 336 Mass. 248, 143 N.E. 2d 812 (1957), (Comm. v. Bates 28 Mass. App. Ct. 217 (1990)). [1.2.4 e]

The doctrine that permits warrantless entries and searches because of exigent circumstances requires justification by the police that it was impractical for them to obtain a search warrant in advance and that the warrantless search was truly necessitated by the emergency circumstances, which could not have been anticipated. Comm v. Collaza, 29, 34 Mass. App. Ct. 79, 607 N.E.2d 418 (1993).

While conducting a lawful search justified by emergency circumstances, a police officer may seize any incriminating evidence inadvertently discovered in plain view.

A warrantless entry into a burning building is permissible in an emergency, 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; but any re-entry after the fire has been extinguished and officials have left the scene should be made pursuant to a search warrant, unless re-entry is justified by a recognized exception to the warrant requirement, such as consent, emergency, or abandonment. Michigan v. Tyler, 436 U.S. 499, 98 S. Ct. 1942 (1978), Michigan v. Clifford, 464 U.S. 287, 104 S. Ct. 641 (1984).

An Officer who has reasonable cause to believe premises contain things imminently likely to burn, explode, or substantially destroy property may, without a search warrant, enter and search such premises to the extent reasonably necessary for the prevention of such death, bodily harm, or destruction. Comm. v. Marchione, 384 Mass. 8, 422 N.E. 2d 1362 (1981).

Fresh and  
Continued  
“Hot”  
Pursuit  
1.2.4 e

The Supreme Court addressed the issue of the immediate need to protect public safety by supporting the "hot pursuit" exception to the search warrant requirement. The Court ruled that when the police are in hot pursuit of a criminal suspect, they may make reasonable warrantless entries to apprehend the suspect, to seize weapons, and to secure evidence of that crime. Warden v. Hayden, 387 U.S. 294, 87 S. Ct. 1642 (1967). The Court stated that "the exigencies of the case made that course imperative... and the Fourth Amendment does not require police officers to delay in the course of an investigation if to do so would gravely endanger their lives or the lives of others. McDonald v. United States, 335 U.S. 451, 69 S. Ct. 191 (1948)[1.2.4 e]

Justification for a warrantless search under the "hot pursuit" doctrine exists when there is a definite need for immediate police action. The test to be applied is whether the safety of the police and the public is immediately threatened or that evidence is in the immediate process of being destroyed. U.S. v. Santana, 427 U.S. 38, 96 S. Ct. 2406 (1976). If there is an indication that there was no emergency involved and that the search warrant could have been obtained, the "hot pursuit" doctrine will not justify a warrantless search.

The Supreme Judicial Court outlined some factors that would support justification of exigent circumstances under "hot pursuit" doctrine, as follows: Comm. v. Moran, 370 Mass. 10, 345 N.E. 2d 380 (1976):  
[1.2.4 e]

1. The Officers were on fresh and continued pursuit of the suspect and
2. A crime of violence was involved and
3. There was a strong possibility that the suspect was armed and
4. The suspect was known or reasonably believed to be in the building and
5. There was the likelihood that the suspect might escape unless immediately apprehended and
6. There was sufficient justification for failure to obtain a search warrant.

Where the above or other emergency factors are not present, police may stake out the building or premises until a warrant is obtained. U.S. v. Adams, 621 F. 2d 41 1st Cir. (1980).

Strip Search  
or Body  
Cavity Search  
1.2.8 a-c

No person shall be subjected to a strip search or visual body cavity search unless an officer has determined that there is *probable cause*, based upon specific and particular facts, to believe such person is concealing evidence, a weapon, contraband, or fruits or instrumentalities of the crime that he could not reasonably expect to discover without forcing the suspect to discard all of his/her clothing. Strip searches should be conducted in a professional manner and designed to preserve an individual's privacy and dignity as much as possible.

No strip search shall be conducted without prior authorization from a Shift Supervisor. The time, date, and place of the search, the name and gender of the person conducting the search, the name of the authorizing supervisor and a statement of the results of the search shall be recorded in the arrest record. The recorded information shall be retained in the records central files and made available to the arrestee or other authorized representative upon request. [1.2.8 a, c]

Individuals may be requested to manipulate their own body parts. Police officers may not touch or prod any body part. In the event that the strip search and/or visual body cavity search is not accomplished, due to a lack of cooperation on the part of the arrested person, the Shift Supervisor shall determine whether or not the arrested person is placed in a cell or kept under guard.

Searches shall be conducted under sanitary conditions and in an area of privacy so that persons not participating in the search cannot observe the search. [1.2.8 b] Every effort shall be made to conduct strip searches out of the view of the public and should be conducted in a private room whenever possible.

Unless conducted by a physician or other licensed medical personnel, the officer(s) conducting the strip search or present during visual body cavity search shall be of the same gender identity as the person being searched.

Whenever possible, a second officer of the same gender should also be present during the search, for security and as a witness to the finding of evidence. The officer conducting a strip search or present during visual body cavity search shall not touch the breasts, buttocks or genitalia of the person being searched.

Nothing in this policy section shall prohibit the otherwise lawful collection of trace evidence based on a valid exigency, consent or a search warrant.

***No person arrested shall be subjected to a physical body cavity search without a search warrant signed by a judge.*** A copy of the search warrant and the results of any body cavity search shall be included with the related reports and made available, upon request, to the arrestee or authorized representative. [1.2.8 a, c]

***Only a physician or nurse practitioner may conduct a physical body cavity search.***

Except for the above mentioned licensed medical personnel, persons present must be of the same sex as the person being searched. Privacy requirements, including restricted touching of body parts, is the same as the strip search standard. [1.2.8 b]

Motor Vehicle  
Exception  
1.2.4 a-f

Although motor vehicles are considered "effects" within the meaning of intent of the Fourth Amendment, the courts have not considered motor vehicles in the same category as other property and have upheld searches of motor vehicles where searches of a dwelling house or other structure would have been prohibited. The Supreme Court has observed that "the inherent mobility of automobiles often makes it impractical to obtain a warrant and, in addition, the configuration, use, and regulation of automobiles often may dilute the reasonable expectation of privacy that exists with respect to differently situated property. (Arkansas v. Sanders, 442 U.S. 753, 99 S. Ct. 2586, (1979))

[1.2.4 c]

If it is at all possible and practicable, a search warrant should always be obtained in the prescribed manner in advance of a motor vehicle search, as the courts always prefer this procedure.

The practical considerations of police work, however, often require that a warrantless search of a motor vehicle be conducted under the following circumstances.

**Warrantless stopping, questioning, and frisking of a motor vehicle operator or occupants**-A "stop and frisk" type of protective search is to determine whether a suspect is armed, with the search confined to the area of the motor vehicle from which a suspect might gain possession of a weapon. See Policy: **Interrogations and Interviews**. [1.2.4 b]

**Search of motor vehicles incident to arrest of occupant or operator**- A search incident to a lawful arrest limited to the area from which the person could obtain a weapon or reach destructible evidence. If it is impractical to conduct the search immediately at the scene, the vehicle should be towed to a police facility to be searched later.

**Exigent circumstances search**-A search on probable cause to believe that there is incriminating evidence in the vehicle and that exigent circumstances exist, which justify a warrantless search.[1.2.4 e]

**Consent**-A search conducted with the voluntary consent of the person in lawful control of the vehicle. [1.2.4 a]

**Roadblocks**-Roadblock stops (for example, to detect drivers under the influence of alcohol) 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 is conducted pursuant to a plan devised by law enforcement supervisory personnel. In addition, if police have a description of a suspect vehicle, they may stop all vehicles fitting that description, Comm. v. Cameron 407 Mass. 1005, 553 N.E.2d 898 (1990).

**Plain view observations**-If an Officer has lawfully stopped a motor vehicle and is questioning the operator, any incriminating item in or on the vehicle, observed in plain view, including anything observed with

the use of a flashlight, may furnish probable cause to search the vehicle and seize the items observed without a warrant. [1.2.4 c, g]

**Inventory**-Inventory searches shall be conducted in accordance with Department procedures. See Policy: **Motor Vehicle Inventory** [1.2.4 f]

**Administrative Searches**-Motor vehicles are subject to various types of administrative searches, which do not require search warrants.

*Note: Random stops of motor vehicles in the absence of reasonable suspicion of criminal activity or motor vehicle violations constitutes an unreasonable seizure in violation of the Fourth Amendment, and any evidence obtained as a result of such impermissible stops is subject to exclusion in court.*

Computers,  
Cell Phones,  
and Devices  
Store Data  
Electronically  
1.2.4 g  
83.2.5

Computers, cellular phones, and electronic data storage are increasingly involved in unlawful activities. These instruments may be contraband, fruits of a crime, a tool of the offense, or a storage container holding evidence of the offense. Related evidence may include the mainframe computer, the pocket-sized personal data assistant, the floppy diskette, CD, and SIM cards. Images, audio, text, and other data on these media are easily altered or destroyed. Officers must recognize, protect, seize and search such devices in accordance with applicable laws, guidelines and policies. Once the cell phone or computer's role is understood, the following questions should be answered:

1. Is there probable cause to seize the hardware?
2. Is there probable cause to seize the software?
3. Is there probable cause to seize the data?

The search and seizure of electronic devices and computer evidence is governed by the same legal standard which applies to all physical evidence. Before evidence can be introduced in a legal proceeding, the search or seizure must be conducted pursuant to a search warrant, or a recognized exception to the warrant requirement.

If it is determined that the investigating officer has a right to seize the item. The officer shall:

1. document the incident in the proper report form
2. submit the item into evidence(power off item and store in faraday bag for smaller items)

3. apply for search warrant for the content(unless consent is given)
4. once warrant is issued submit evidence to the Cape and Islands District Attorney's Office or Barnstable County CIO units for forensic retrieval of evidence. [1.2.4 g] [83.2.5]

Guidelines  
Search and  
Seizure of  
Computers  
83.2.5

Secure the Scene

1. Preserve area for potential fingerprints
2. Immediately restrict access to the computer
3. Isolate from phone lines (because data on the computer can be accessed remotely)
4. Secure the computer as evidence, if computer is off, do not turn it on

If the computer is on:

**Stand alone computer (Non-Networked)**-consult computer specialist  
If specialist not available:

1. Photograph screen, then disconnect all power sources; unplug from wall and the back of the computer
2. Place evidence tape over each drive slot
3. Photograph/diagram and label back of computer components showing existing connections
4. Label all connectors/cable ends to allow reassembly as needed
5. If transport is required, package components and transport/store components as fragile cargo.
6. Keep away from magnets and radio transmitters

**Networked or business computer**-consult a computer specialist.  
Officers shall be aware:

1. Pulling the plug could severely damage the system, disrupt legitimate business and or expose the Officer and Department to civil liability.

Searches by Private Individuals-Evidence obtained by a private individual, as a  
Persons other than Law result of searching someone else's property, who is not acting as an  
Enforcement employee or agent of the government, is admissible.<sup>xix</sup> [1.2.4 g]  
Officers Police Officers acting as Security Guards- Evidence discovered as a  
1.2.4 g result of the warrantless search conducted by a police officer acting as  
a private security guard are not admissible if [s]he acts beyond the  
scope of the private employer's business.<sup>xx</sup>

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<sup>2</sup> *Stoner v. California*, 376 U.S. 483, 84 S.Ct. 889 (1964)

<sup>3</sup> *U.S. v. Campbell*, 581 F.2d 22 (C.A. NY)

<sup>iii</sup> *Com. v. Antwine*, 417 Mass. 637, 632 N.E.2d 818 (1994)

<sup>iv</sup> *Horton v. California*, 496 U.S. 128, 110 S.Ct. 2301 (1990)

<sup>v</sup> *Com. v. Accaputo*, 380 Mass. 435, 404 N.E.2d 1204 (1980)

<sup>vi</sup> *Id.*

<sup>vii</sup> *Id.*

<sup>viii</sup> *Com. v. Scalise*, 387 Mass. 413, 439 N.E.2d 818 (1982)

<sup>ix</sup> *Hester v. U.S.*, 265 U.S. 57, 44 S.Ct. 445 (1924); *Com. v. John G. Grant & Sons, Inc.*, 403 Mass. 151, 512 N.E.2d 522 (1988)

<sup>x</sup> *Rozencrantz v. U.S.*, 356 F.2d 310 (1st Cir. 1969)

<sup>xi</sup> *Oliver v. U.S.*, 466 U.S. 170, 104 S.Ct. 1735 (1984); *Hester v. U.S.*, 265 U.S. 57, 44 S.Ct. 445 (1924)

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xii *Com. v Pratt*, 407 Mass. 647, 555 N.E.2d 559 (1990)

xiii *Abel v. U.S.*, 362 U.S. 217, 80 S.Ct. 683 (1960)

xiv *Com. v. Lanigan*, 12 Mass. App. Ct. 913, 423 N.E.2d 800 (1981)

xv *Com. v. Wedderburn*, 36 Mass. App. Ct. 558, 633 N.E.2d 1058 (1995); *Com. v. Marrero*, 414 Mass. 1102, 606 N.E.2d 915 (1992)

xvi M.G.L. c. 276, s. 1

xvii *Maryland v. Buie*, 494 U.S. 325, 110 S.Ct. 1093 (1990)

xviii *Com. v. Bowden*, 379 Mass. 472, 399 N.E.2d 482 (1980)

xix *Com. v. Leone*, 386 Mass. 329, 435 N.E.2d 1036 (1982)

xx *Id.*