

Germantown Police Department

Policies and Procedures

Number: 5-1
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Subject: Search and Seizure
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I. PURPOSE

The purpose of this policy is to establish guidelines for officers in controlling search and seizure of property and persons through an overview of existing laws.

II. POLICY

It is the policy of the Germantown Police Department that officers shall conduct searches of persons, places and things pursuant to established state and federal laws governing search warrants and/or warrantless searches. Law enforcement officers shall have due regard for the protection guaranteed under the provisions of the Fourth Amendment to the U.S. Constitution. The Fourth Amendment of the United States Constitution recognizes the right of people “to be secure in their persons, houses, papers and effects against unreasonable searches and seizures.” The following procedures shall address search and seizure policy and shall cite major case law and/or state statutes where applicable.

III. PROCEDURE

A. General Guidelines for Warranted and Warrantless Searches

1. Warranted Searches

- a. The warrant must be issued by a judicial officer authorized to hold a court of inquiry based upon a written complaint by a certified police officer. For a search warrant to be valid, it must show “whether by recitals in the affidavit or by an independent showing before the magistrate that the facts would lead a man of prudence and caution to believe that the offense has been committed. “ *Grau v. United States*, 287 U.S. 124 (1932).
- b. The neutral magistrate or city judge must find probable cause that the place to be searched contains items connected with criminal activity. *Berger v. New York*, 388 U.S. 41 (1967). The officer must swear or affirm under oath that the facts presented

for establishing probable cause are true. Probable cause must exist before the search is made and cannot be supplied by after discovered facts.

Probable cause is defined as “what facts and circumstances within an officer’s knowledge would lead a reasonable officer to believe that an offense has been committed or is being committed and/or that a particular individual has committed or is committing the offense.” Mere speculation, conjecture or opinion is not enough.

- c. The warrant must describe with sufficient particularity the person and/or place to be searched and the items to be seized. If a place can be easily identified by a street number or address, then no further information shall be necessary. However, an officer or investigative component may elect to further describe the place to be searched. The warrant shall also state the time and date of issuance.

2. Warrantless Searches

Warrantless searches are per se unreasonable subject only to a few specifically established and well-delineated exceptions. Kate v. United States, 389 U.S. 347.

- a. A search incident to a lawful arrest must be limited in scope to the arrestee’s person and the area “within his immediate control.” Chimel v. California, 395 U.S. 752 (1969).
- b. In cases involving a search incident to an arrest related to a motor vehicle, the officer may search the passenger compartment of a vehicle incident to a recent occupant’s arrest only if it is reasonable to believe that the arrestee might access the vehicle at the time of the search or that the vehicle contains evidence of the offense of the arrest. Arizona v. Gant, 07-542 U.S. Supreme Court (2009).
- c. A search incident to an arrest shall be authorized for the following reasons:
 - (1) the safety of the officer;
 - (2) to secure items that might aid in an arrested individual’s escape
 - (3) to prevent the destruction of instruments or fruits of a crime;
 - (4) at or near the scene of a crime where exigent circumstances warrant;
 - (5) pending danger of injury to an individual.
- d. A search incident to a lawful arrest must be concurrent in time and place with the arrest.

NOTE: Misdemeanor Citations – Under Tenn. Code Ann. 40-7-118, officers are required to “cite and release” individuals observed by the officer committing minor misdemeanor offenses in lieu of a custodial arrest. Officers will cite and release individuals found in violation of misdemeanor traffic offenses, unless one of the eight exceptions to this requirement is present, as outlined in

Tenn. Code Ann. 40-7-118. If one of the exceptions applies, the officer shall, in detail, outline the factual basis applicable to the exception in the arrest report.

These “arrests” are deemed brief seizures and detentions and not “custodial arrests” therefore, no search incident to arrest is permitted under the law when issuing a misdemeanor citation.

Officers will handle these situations in the same manner as issuing a traffic citation. Unless unusual circumstances exist, officers will not handcuff or place these individuals in their police vehicle.

- e. A custodial search of the arrestee’s person during the booking procedure may be justified as either an administrative search or as an inventory procedure. Once an officer has taken any property discovered during the search into his control, a further search is no longer an incident of the arrest.

3. Exigent Circumstances

- a. A warrantless search is permitted when there is both probable cause and exigent circumstances. *Steagald v. United States*, 451 U.S. 204, 211 (1981). An exigent circumstance that justifies a warrantless search is the officer’s reasonable belief that such action is a necessary response on his part to an emergency situation. The ultimate test is whether there is such a compelling necessity for immediate action that proceeding without a warrant is justified.
- b. Hot pursuit, a fleeing suspect, destruction of evidence, or other situations in which public safety is endangered and speed is essential to the accomplishment of lawful police action are examples of exigent circumstances.
- c. Other Emergencies
 - (1) Officers may enter private premises without a warrant or consent if it reasonably appears that such action is urgently necessary in order to:
 - (a) Prevent death or serious injury; or
 - (b) Provide needed emergency medical assistance; or
 - (c) Guard against the imminent threat of substantial property damage.
 - (2) Once the actions described in the preceding paragraph are completed, no further search shall be conducted unless or until:
 - (a) A search warrant for the premises is on scene; or
 - (b) Consent to search has been obtained; or
 - (c) New or additional emergency circumstances arise, which necessitates further search.

4. Stop and Frisk

- a. To lawfully stop an individual, the officer must have a reasonable suspicion that the person stopped is involved in criminal activity. Specific articulable suspicion must be based on totality of the circumstances, including objective observations, known patterns of certain kinds of lawbreakers, and inferences drawn and deductions made by trained law enforcement personnel. In appropriate situations, a Field Interview Card should be filled out on all such stops of suspicious persons and forwarded to the appropriate investigative component. A detailed description of the activity and of the person should be included.
- b. An investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop.
- c. To lawfully frisk an individual, the law enforcement officer must have a reasonable belief that the person stopped is armed and dangerous. In the case of the self-protective search for weapons, he must be able to point to particular facts from which he reasonably inferred that the individual was armed and dangerous. The frisk must be limited to that which is necessary for the discovery of weapons, which might be used to harm the officer or others nearby. *Terry v. Ohio*, 392 U.S. 1(1968); *Sibron v. New York*, 39 U.S. 40, 64 (1968). Officers are reminded that a frisk is not a search.
- d. The frisk for weapons must be only a limited intrusion of a person (pat down). Pockets cannot be entered during a pat down unless the officer feels an object which is consistent with a weapon or illegal contraband in its size, shape or feel (plain feel doctrine).
- e. Feeling an object, which might be a weapon or illegal contraband, will justify a more extensive intrusion to obtain the suspected object. An officer may enter pockets to dispel the alarm that a weapon or illegal contraband is present.

5. Third Parties and Anonymous Tips

- a. A stop may be based on information communicated to law enforcement through third parties provided the third party identifies himself/herself and provided the information is objectively reliable based on the officer's training and experience.
- b. Information that is provided by a known, reliable confidential informant will provide reasonable suspicion to justify a stop if the information contains sufficient detail to identify the suspect and the information is verified as far as possible.
- c. An anonymous tip that an individual has engaged in or is about to engage in criminal conduct is not sufficient to justify a stop without independent evidence of criminal activity apart from the anonymous tip.

6. Vehicle Stops

- a. A “seizure” occurs whenever a vehicle is stopped, even though the purpose is generally limited and the detention quite brief.
- b. There must be reasonable suspicion to justify an investigatory stop of an individual vehicle. A brief investigative stop of a vehicle is reasonable if it is “justified by some objective manifestation that the person stopped is, or is about to be engaged in criminal activity.” For an investigative stop of a vehicle to be reasonable, there must be a specific articulable suspicion, which is determined by looking at the totality of the circumstances, including objective observations, information from police reports, modes of patterns of certain kinds of law breakers, and inferences drawn and deductions made by a trained law enforcement officer. *United States v. Cortez*, 449 U.S. 411 (1981); *Terry v. Ohio*, 391 U.S. 1 (1968). Officers do not have an unrestricted right to stop citizens, whether pedestrians or drivers.
- c. If evidence of other crimes is observed, the officer has the right to take reasonable investigative steps.
- d. Officers may take reasonable action to protect themselves after a lawful stop of a motor vehicle. An officer has the right to order the driver (*Pennsylvania v. Mimms*, U.S. 106, 98 S.Ct. 330) and the passengers (*Maryland v. Wilson*, U.S. (February 19, 1997)), of the vehicle to step out of the vehicle pending completion of the stop. Officers will consider external safety factors such as crowds and traffic prior to asking anyone to step out of a vehicle.

7. Vehicle Searches

- a. The mobility of motor vehicles often constitutes exigent circumstances authorizing a warrantless search. *Chambers v. Maroney*, 399 U.S. 42 (1970). The “automobile exception” to the warrant requirement demonstrates a willingness of courts to excuse the absence of a warrant when spontaneous searches are required of a vehicle.
- b. To search under exigent circumstances, the police officer must have probable cause to believe the vehicle contains seizable items. *Carroll v. United States*, 267 U.S. 132 (1925). The search may not be based on an unparticularized suspicion or hunch.
- c. If probable cause and exigent circumstances existed originally, the police may search the vehicle on the spot or after towing it to the impound lot without securing a search warrant. When probable cause exists without exigent circumstances, a warrant is required.

- d. If the police officer has a reasonable belief that a person stopped is presently armed and dangerous, he may conduct a limited protective search of the vehicle and frisk the person.
- e. If a person is arrested after his vehicle is stopped, areas of the vehicle accessible to him may be searched incident to the arrest. The courts have construed this area to include the passenger compartment of the vehicle. *New York v. Belton*, 453 U.S. 454, 101 S.Ct. 2860 (1981). Included in the category of vehicles are vans and recreational vehicles which are used primarily for transportation and not kept in an area which indicates that the purpose of the vehicle is for use as a residence.
- f. When the search of a vehicle originates with an informant, the police officers should be informed of some of the underlying circumstances from which the informant concludes that the contraband is where he claims it is, and some of the underlying circumstances from which the officer concludes that the informant (whose identity need not be disclosed) is credible, or his information is reliable. *Aguilar v. Texas*, 378 U.S. 108 (1964).

See “Motor Vehicle Searches,” Chapter 5, Section 2 of this Manual.

8. Container and Luggage Searches

- a. Containers generally may only be searched pursuant to a warrant based on probable cause.
- b. An officer who has legitimately stopped an automobile and who has probable cause to believe contraband is located somewhere within the car may conduct a warrantless search of the vehicle, including compartments and containers within the vehicle whose contents are not in plain view. *U.S. v. Ross*, 456 U.S. 798 (1982).
- c. The search incident to arrest and plain view doctrines will generally make unnecessary the need to secure a warrant to search containers. When a lawful arrest has been made, the officer may examine the contents of any container found within the passenger compartment within reach of the arrestee (area of immediate control).
- d. Closed containers may be opened during a personal effects inventory. *Ill. v. Lafayette*, 162 U.S. 640 (1983).

9. Inventory of Vehicles

- a. Inventory searches have been upheld because they serve three legitimate interests: (1) protection of the property while in custody; (2) protection of the police from potential dangers; and (3) protection of the police against claims of lost or stolen property.

- b. For an inventory of a vehicle to be valid, the police custody of the vehicle must be lawful. Impoundment of a vehicle is valid only if there is some necessity for the police to take charge of the property. *South Dakota v. Opperman*, 428 U.S. 364 (1976). The state's right to impound may be justified out of necessity "where an unsuccessful attempt was made to locate the owner to obtain dispositional instructions. *Id.*

Impoundment of a vehicle is not permissible following arrest where another occupant is present and capable of safely removing it. If the impoundment is unreasonable, the resulting inventory search is invalid. An inventory of a vehicle is not a search. An inventory is a departmental policy designed to ensure that valuable possessions within a vehicle under police custody are accounted for. Any items illegal to possess which are found inadvertently during an inventory may be seized.

- c. The inventory must be conducted only to fulfill the police care-taking function of securing the contents of the vehicle.
- d. The inventory must be a routine part of standard police procedures for impounding vehicles, rather than a pretext for an investigatory search, and may not extend to locked luggage or other similar repositories of personal effects. It shall be standard operating procedure for Germantown Police Department officers to inventory all impounded vehicles.

10. Plain View Doctrine

The following guidelines apply to the Plain View Doctrine, which operates an exception to the warrant requirement:

- a. The officer must be at a location where he has a legal right to be;
- b. While most plain view cases are inadvertent, "inadvertence is not a necessary element of plain view." See *Horton v. California*, 496 U.S. 128 (1990);
- c. The seized items must appear on their face to be incriminating;
- d. The items seized must be plainly visible to the officer.

11. Abandonment

- a. Abandonment is a voluntary relinquishment of control of property such as disposing of or denying ownership of the property. *Abel v. United States*, 362, U.S. 217, 241 (1960).
- b. Abandoned property is not protected by the Fourth Amendment. Officers may seize abandoned property without probable cause and without a warrant. There can be

nothing unlawful in the government's appropriation of such abandoned property. Whether or not property has been abandoned is a question of intent, which must be shown by clear, unequivocal and decisive evidence.

12. Curtilage

- a. Curtilage is afforded the same Fourth Amendment protection as is the home. "Curtilage" has been defined as the "Yards and grounds of a particular address, its gardens, barns and buildings." Generally speaking, curtilage has been held to include all buildings in close proximity to a dwelling, which are continually used for carrying on domestic purposes, or such places as are necessary and convenient to a dwelling, and are habitually used for family purposes (including a patio or lawn).
- b. The Fourth Amendment protection does not extend to the "open fields" surrounding the curtilage and home.
- c. The determination of whether Fourth Amendment protection will be extended to items seized from the curtilage or open fields focuses on whether the person challenging the search has a legitimate expectation of privacy in the place which was searched. Factors to consider in defining extent of curtilage include proximity to home, whether area is included within enclosure surrounding home, nature of uses to which area is put, and steps taken by residents to protect area from observation by people passing by. *United States v. Dunn*, 480 U.S. 294 1987).

13. Consent Searches

- a. The officer obtaining consent has the burden of proving that the defendant's consent to a warrantless search was given freely and voluntarily, and that it was not the product of an illegal detention.
- b. The voluntariness of a person's consent is measured by the totality of the circumstances with no single factor controlling.
- c. If the consenting party is in custody, the voluntariness of the consent is still measured by the totality of the circumstances, although courts will analyze the relevant factors more critically.
- d. Consent for a warrantless search may be given by a third party who shares control of (or has common authority over) the premises or items to be searched. Areas belonging exclusively to parties not present or not giving consent shall not be searched.
- e. Officers will make every reasonable attempt to get a signed consent to search. Officers are reminded that an oral and written consent will be subject to the same scrutiny. The standard for measuring the scope of a suspect's consent under the

Fourth Amendment is that of “objective reasonableness, what would the typical reasonable person have understood by exchange between the officer and the suspect.”

14. Greater Intrusion Searches

- a. Intrusions on the body’s surface (swabbing, hair samples, retrieval of evidence from the mouth, etc.) are governed by the Fourth Amendment. Such searches are permissible as long as they are conducted in a reasonable manner and are justified under the circumstances (e.g., probable cause to search). A search into a person’s body against his will is authorized in instances where the State has good reason to believe that the person had committed a crime, and where the manner of the search is reasonable. However, a search for evidence by intrusion into a person’s body against his/her will can be reasonable only under very limited circumstances.
- b. Certain intrusions into the body (e.g., stomach pumping, surgery) have been held to be violative of the Fourth Amendment. *Rochin v. California*, 342 U.S. 165 (1952); *Winston v. Lee*, 470 U.S. 753 (1985). Hence, only under the most exigent circumstances, and only pursuant to a search warrant, could such a procedure be allowed. Surgical removal of bullet pursuant to a search warrant did not constitute unreasonable search and seizure. However, other more common interior intrusions, such as blood tests, may be conducted without a warrant if the setting and procedures are reasonable, as when blood is drawn by a doctor in a hospital. *Schmerber v. California*, 384 U.S. 757 (1965) (minor intrusion authorized). Evidence concealed within the body of a prisoner may under proper circumstances be removed where there is no danger to life or limb. The Court found that removal of a bullet from defendant’s body would amount to a minor intrusion. Probable cause must exist in all cases.

15. Arrest Warrant Executions in Third Party Premises

Absent exigent circumstances or consent by an owner or legal occupant, an arrest warrant issued to arrest an individual does not justify entry into or search of a residence or premises of a third party without first obtaining a search warrant. *Steagald v. U.S.*, 451 204, 101 S.Ct. 1642 (1981).

See “Search Warrant Execution” found in Chapter 5, Section 3 of this manual.

16. Location and Persons to be Searched Pursuant to a Warrant

- a. Officers shall be limited to search in areas particularly described by the search warrant.
- b. Officers shall also be limited to searching only for those items particularly described in the search warrant. A search warrant must describe the item sought with enough

particularity to enable the executing officer to seize those items with reasonable certainty; however, where circumstances make the exact description impossible, it is permissible that the warrant describe only generic class of items sought. Additionally, plain view items, which are evidence of the commission of crimes other than that referred to in the warrant, may be seized when executing search warrant even if those items are not specified in the warrant.

- c. Search warrants are not directed at persons but authorize the search of places and the seizures of things and as a constitutional matter, need not even name the person from whom the things will be seized. But, when possible, officers should have more descriptive information than a “male,” a “white female,” etc., if the officers are to list an individual on the warrant to be searched.
- d. In the execution of the search warrant, the officer executing the same may reasonably detain and/or search any person in the place to be searched at the time:
 - (1) to protect himself from attack. *Ybarra v. Illinois*, 444 U.S. 85 (1979);
 - (2) and to prevent the disposal or concealment of any instruments, articles or things particularly described in the search warrant.
 - (3) A warrant to search for contraband founded on probable cause carries with it authority to detain the occupants of the premises while a proper search is conducted. *Michigan v. Summers*, 452 U.S. 692, 705 (1981).

17. Protective Sweeps During Search Warrants

The U.S. Supreme Court has ruled that officers may undertake a protective sweep of the premises without a warrant following the arrest upon a warrant. *Maryland v. Buie*, 494 U.S. 325, 336-7 (1990). Certain limitations must be observed, however:

- a. The purpose of the protective sweep is to discover persons or weapons on the premises, which might present a danger to officers.
- b. Incident to arrest, officers may without probable cause or reasonable suspicion look in closets or other spaces immediately adjoining the place of arrest or where threatening persons might be located. However, general exploratory no warrant searches of an entire residence is prohibited.
- c. In order to extend a protective sweep beyond the closets and adjoining spaces, the officer must have reasonable suspicion for fearing that persons may be on the premises who pose a threat. In such cases, the sweep is limited to examining places where a person might hide. It is important that officers carefully document their reasonable suspicion.

- d. During a protective sweep, evidence discovered in plain view may be seized. *Michigan v. Tyler*, 436 U.S. 499 (1978). Officers are not authorized, however, to open closed containers or discover contraband not in plain view.
- e. The sweep must cease when officers have dispelled any reasonable suspicion of danger.

18. Forcible Entry

a. Warrant and Probable Cause Requirements

- (1) A warrant is generally required to justify a forcible entry into private premises. Exceptions to that rule are explained in this section.
- (2) Whether or not a warrant is required to justify a forcible entry, an officer must always have, prior to such entry, probable cause to believe that the person or evidence sought is present in the premises at the time of the entry.
- (3) When a warrant is required for a forcible entry, the type of warrant required is a search warrant. An exception to that rule exists for forcible entry to arrest a person in premises which the officer has probable cause to believe are the private residential premises of the person to be arrested, in which case an arrest warrant is sufficient.

b. Warrantless Entry to Arrest:

Officers may enter private premises without a warrant or consent in order to arrest someone in the premises only if:

- (1) Someone is likely to be killed or seriously injured unless immediate warrantless action is taken; or
- (2) A serious and/or dangerous criminal offender is likely to escape apprehension and/or prosecution unless immediate warrantless action is taken; AND
- (3) There is probable cause to arrest the person sought; AND
- (4) There is probable cause to believe that the person to be arrested is physically present in the premises at the time of entry.

c. Warrantless Entry to Preserve Evidence:

- (1) If there is probable cause to believe that critical evidence of a serious and/or dangerous offense is located within private premises and that the evidence is almost certain to be destroyed or removed unless immediate warrantless

action is taken, the officer may enter without a warrant or consent to secure the premises while awaiting the arrival of a search warrant.

(2) Once the premises are secured, no further search shall be conducted unless or until:

- (a) A search warrant for the premises is on the scene; or
- (b) Consent to search has been obtained; or
- (c) New or additional emergency circumstances arise, which necessitates additional warrantless search.

d. Crime Scenes:

(1) For purposes of this subsection, a “crime scene” is a location where a serious crime has very recently occurred and where there is an apparent need for investigative action and/or emergency services. (Example: Homicide scenes, fire scenes, scenes of burglaries or break-ins). [Note: The mere presence of contraband or evidence in private premises does not make those premises a “crime scene” for purposes of this section].

(2) Upon arriving at a crime scene in private premises, the officer may enter the premises without a warrant or consent in order to:

- (a) Locate and secure perpetrators; and/or
- (b) Provide assistance to injured or others requiring emergency assistance; and/or
- (c) Locate and secure evidence which is likely to be lost or destroyed by the mere passage of time.

(3) Once the actions described in the preceding paragraph are completed, no further search shall be conducted unless or until:

- (a) A search warrant for the premises is on scene; or
- (b) Consent to search has been obtained; or
- (c) New or additional emergency circumstances arise, which necessitates further search.

IV. REVIEW PROCESS

An annual review of this policy shall be conducted to determine if it should be revised, cancelled or continued in its present form.

This order shall remain in effect until revoked or superseded by competent authority.