

NEW HAVEN DEPARTMENT OF POLICE SERVICE

GENERAL ORDERS



GENERAL ORDER 8.12

EFFECTIVE DATE:

SEARCH AND SEIZURE

8.12.01 PURPOSE

The purpose of this General Order is to provide basic guidance for properly conducting searches and seizures of persons and property.

8.12.02 POLICY

It is the policy of the New Haven Department of Police Service that all searches and seizures conducted by officers be conducted professionally, constitutionally, and according to established principles and recognized best practices. Officers are expected to know, understand, and follow all requirements for conducting searches and seizures of persons and property as described in this General Order.

8.12.03 DEFINITIONS

ARREST: Actual or constructive seizure or detention of a person, performed with the intention to effect an arrest and so understood by the person detained.

BIAS BASED PROFILING: The detention, interdiction, frisk, search, or other disparate treatment of any person solely on the basis of race,

ethnicity, religion, gender, sexual orientation, economic status, age, cultural group, or some other identifiable common trait or characteristics of such individual.

PROBABLE CAUSE FOR ARREST: The existence of circumstances that would lead a reasonably prudent person to believe that a crime was committed and the individual to be arrested has committed the crime.

REASONABLE SUSPICION: The existence of circumstances that would lead a reasonable police officer to believe that an individual is engaging in criminal activity.

SEIZURE: In Connecticut, a person is seized when, by means of physical force or a show of authority, his or her freedom of movement is restrained. A seizure occurs when, in view of all of the circumstances, a reasonable person would believe that he was not free to leave. Relevant factors include the display of weapons, content and tone of language indicating that compliance is required, physical touching, blocking tactics or aggression, and use of sirens and/or flashing lights.

An officer's subjective intentions are irrelevant to the seizure inquiry unless that intent has been conveyed to the person confronted. Mere presence does not constitute a seizure. Although it is recognized that a uniformed law enforcement officer is necessarily cloaked with an aura of authority, this cannot, in and of itself, constitute a show of authority sufficient to constitute a seizure. For a seizure to occur, some indication must be given to the subject that he is not free to leave. Absent such an indication, allowing police officers to approach and interact with citizens on foot and in vehicles to make minimal inquiries serves important law enforcement purposes without jeopardizing constitutional rights.

SEARCH: For constitutional purposes, a search is an intrusion into an area in which an individual has a reasonable expectation of privacy, with the specific intent of discovering evidence of a crime. A person possesses a reasonable expectation of privacy in a particular area or item if: (1) he or she exhibits an actual subjective expectation of privacy; and (2) that expectation is one that society is prepared to recognize as reasonable. Only persons possessing a reasonable expectation of privacy in an area or item have the right to legally challenge its being searched.

8.12.04 PROCEDURE

WARRANTLESS SEARCH AND SEIZURE

Law enforcement officers are required to obtain a search warrant issued on probable cause before conducting a search, including that of homes,

persons, articles/objects, and vehicles. However, the courts have recognized warrantless search and seizure exceptions as follows:

Motor Vehicle Exception

- Police may conduct a warrantless on-the-scene search of a motor vehicle based on probable cause to believe that it contains contraband or evidence of a crime.
- The scope of the search is defined by the nature of the probable cause and includes any place in the vehicle which is capable of containing the contraband or evidence.
- The search may also include the personal effects of any occupant capable of containing the item(s), whether or not probable cause was developed specifically as to a particular occupant.
- Whenever a search of a motor vehicle is anticipated for the purpose of seizing contraband, controlled substances, or criminal evidence, a warrant should be utilized, unless probable cause exists and at least one of the following circumstances apply:
 - The vehicle is moving, has recently been moved, or the officer has reason to believe that the vehicle may be moved
 - The possibility exists that an alerted criminal will use the vehicle to flee
 - It is impractical to post a detail to guard the vehicle pending evidence collection
 - The possibility exists that time or elements may destroy the evidence
 - It is an emergency situation in which the vehicle must be searched to save life, prevent injury to others, or prevent serious damage to property.
- Under the Connecticut constitution, an automobile exception search is valid only if conducted on-the-scene of the stop. Once the vehicle is removed from the scene - for whatever reason - the authority to conduct an automobile exception search ends. A subsequent search of the vehicle must be conducted pursuant to a warrant or another exception to the warrant requirement.
- Where probable cause develops as to a specific container before it is placed into a motor vehicle, once it is placed in the vehicle, police are permitted, absent further justification, to search the suspect container only, and not the entire vehicle.

- Motor Vehicle Exception – Odor of Marijuana
 - Except as provided below, the existence of any of the following substances SHALL NOT constitute, in whole or in part, probable cause or reasonable suspicion and SHALL NOT be used as a basis to support any stop or search of a person or motor vehicle:
 - The odor of cannabis or burnt cannabis
 - The possession of or the suspicion of possession of cannabis without evidence that the quantity of cannabis is or is suspected to be in excess of five ounces of cannabis plant material (C.G.S. Sec. 21a-279a) or the equivalent amount of cannabis products
 - The presence of cash or currency in proximity to cannabis without evidence that such cash or currency exceeds five hundred dollars
 - Any evidence discovered as a result of any stop conducted in violation of these provisions shall not be admissible at trial
 - A police officer may conduct a test for impairment based on the odor of cannabis or burnt cannabis if such official reasonably suspects the operator of a motor vehicle of violating C.G.S. Secs.14-227, 14- 227a, 14-227m or 14-227n.

Community Caretaking Function

- The Community Caretaking Function is action taken by the police that is totally separate from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute and does not constitute a “search” for constitutional purposes. Such action is commonly referred to as “community caretaking” and relates to the safety and welfare of the community. For example, if an officer views jewelry on the front seat of an unlocked vehicle, the officer can secure the jewelry without having violated any right to privacy.

Consent Searches

- A warrantless entry or search is permitted on the basis of the free and voluntary consent of an authorized person.
- An authorized person is someone with an interest in the property, usually the owner, the lessee, or a possessor. Even where officers have sufficient probable cause, they are not obligated to obtain a search warrant before trying to obtain consent.

- Any search by an officer of a motor vehicle or the contents of the motor vehicle that is stopped by an officer solely for a motor vehicle violation shall be based on probable cause, or after having received the “unsolicited consent” to search from the operator of the motor vehicle in written form or recorded by body-worn recording equipment or a dashboard camera, each as defined in C.G.S. Sec. 29-6d.
- An officer who solicits consent to search a person shall, whether or not the consent is granted, complete a police report documenting the reasonable and articulable suspicion for the solicitation of consent, or the facts and circumstances that support the search being reasonably necessary to further an ongoing law enforcement investigation.
- The consent of a person given to a law enforcement officer to conduct a search of such person shall not, absent the existence of probable cause, constitute justification for such officer to conduct such search.
- Consent may be limited or withdrawn at any time prior to the completion of the search by some verbal or physical act.
- When consent to search real property is obtained a supervisor shall be notified.

Exigent Circumstances

- Generally, an officer may not enter or search a non-public area where a person has a reasonable expectation of privacy, like a home, private place of business, or locked compartment, unless the officer first obtains a search warrant.
- However, under exigent circumstances, an officer does not need to obtain a warrant to enter or search property that the officer reasonably believes either contains evidence that may be lost or destroyed if not immediately recovered or contains a fleeing suspect who is actively avoiding immediate apprehension. Under exigent circumstances, an officer may also enter property without a warrant if the officer reasonably believes that a delay in entry to get a warrant will result in harm to another person or their property or that an occupant may be in immediate danger or in need of aid.
- When an officer has entered or searched property under exigent circumstances, the entry or search is permitted to extend only as far as necessary to address the exigent circumstance, such as preventing the destruction of evidence or apprehending a fleeing suspect.
- Once the exigent circumstance is addressed, an officer is no longer allowed to conduct a search of the property and must secure a warrant to continue or extend the search or to seize evidence, unless some other exception to the warrant requirement exists.

- When an officer makes a lawful arrest and, in addition, has reasonable suspicion to believe that the premises contain another person or persons who pose a danger to the officer, a brief protective sweep may be made of the area.

Search Incident to Custodial Arrest

- A lawful custodial arrest permits officers to conduct a full search (not just a frisk) of the arrestee's person and the area within his immediate control.
- The search may occur on-scene at the time of arrest or be conducted after arrest at the detention destination.
- The authority to conduct a search incident to arrest derives solely from the fact of custody and is not dependent upon the nature or seriousness of the charge.
- As long as the two events occur contemporaneously, the search may occur momentarily before the actual arrest. Following a lawful arrest, personal effects may be taken from the arrestee and kept in official custody without any additional probable cause.
- The police are authorized to search the interior compartment of a vehicle incident to the arrest of a recent occupant only if: the arrestee is unsecured and within reaching distance of the vehicle at the time of the search; or there is reason to believe that the vehicle contains evidence of the offense of arrest. Absent one of these two situations, a search of the vehicle is unreasonable unless the police obtain a search warrant or show that another exception to the warrant requirement applies.
- Under the Connecticut Constitution, the vehicle search is permitted only while the arrestee remains at the scene of the arrest. Once the arrestee is removed from the scene, for whatever reason, the authority to search the vehicle's interior under this exception ends. Where a vehicle is stopped, and the officer is authorized to make a custodial arrest, but elects instead to issue a summons or citation, a non-consensual search of the vehicle is not permitted. Even where a summons or citation is issued, and the stop technically over, the officer may attempt to secure consent to search the vehicle without informing the operator that the stop is effectively over.

Plain View and Plain Feel

- **Plain View:** An item in the plain view of an officer may be seized without a warrant if: the officer is lawfully in a position to view the item; and the officer has probable cause, without further investigation, to believe that the item is contraband or evidence of a crime. Regarding motor vehicles, police may, without any need of justification, lawfully stand beside a vehicle and look inside, even with the aid of a flashlight.
- **Plain Feel:** An item detected lawfully through the sense of touch may be seized absent a warrant if it is immediately apparent, without removal, visual inspection, or further manipulation, that the item is contraband. The plain feel exception does not apply where the touching is itself unlawful.

Abandoned Property

- No reasonable expectation of privacy exists in property that has been abandoned. Consequently, such property may be seized and searched without a warrant.
- Property that is disposed of as a result of unlawful police pursuit is not deemed abandoned.
- Similarly, property that is left unattended in a public place more or less out of necessity is not deemed abandoned.

OTHER AUTHORIZED SEARCH SITUATIONS

Other situations where a warrantless search and seizure may be authorized by state and federal constitutional provisions include the following:

- **Hot Pursuit**

When an officer attempts to make a lawful arrest and is in immediate pursuit of the individual, but the person flees into a home or other building, exigent circumstances exist, and the officer may enter the premise to effectuate the arrest. Officers are limited to searching the location only for the fleeing suspect and are reminded to use extreme caution in such circumstances.

- **Protective Sweep**

Police are permitted to conduct a limited protective sweep of an area adjoining an arrest to ensure their own safety and the safety of others.

- **First Tier Sweep:** Arresting officers may, as a precautionary matter and without further justification, examine areas and places immediately

adjoining the place of arrest from which an attack could immediately be launched.

- Second Tier Sweep: Arresting officers may sweep areas beyond those immediately adjoining the place of arrest based on a reasonable and articulable belief that the area poses a danger to individuals on-scene.

- **Probation Searches**

Officers are permitted to accompany probation officers when they conduct warrantless searches of a private residence that are based on reasonable suspicion of criminal activity that would violate conditions of probation. The officer's presence during the search is to provide safety and security for the probation officers conducting the search. The officer shall not conduct the search or act as an agent of probation.

- **Traffic Stops**

- A routine motor vehicle violation stop constitutes a seizure of all of the occupants, so each may challenge the constitutionality of the stop. Following a valid routine motor vehicle stop, an officer may, without further justification, order the operator and/or any passengers out of the vehicle.
- After a vehicle is lawfully stopped for a routine motor vehicle violation, an officer may conduct a pat down of a passenger if the officer reasonably suspects that the passenger is armed and dangerous, even if the officer does not have reasonable grounds to believe that the passenger is committing, or has committed, a criminal offense. The suspicion may develop during interactions on matters unrelated to the basis of the stop.
- Areas of the passenger compartment capable of concealing a weapon may protectively be searched if police have a reasonable and articulable suspicion that the person is dangerous and might access the vehicle and gain control of a weapon.

- **Crime Scene Searches**

- A search warrant must be obtained for a crime scene if:
 - The suspect resides at the place to be searched, regardless if the victim is the owner.

- The officers leave the scene and later wish to return to conduct a search or otherwise collect evidence, or if the search will continue for an extended time after the premises are secured.
 - The area to be searched or evidence to be seized does not fall under one of the exceptions noted below:
 - Consent to search has been obtained by a party authorized to give consent
 - If the evidence to be seized could be destroyed prior to obtaining a warrant
 - If the evidence to be seized is otherwise subject to a warrant exception
- **Stops and Frisk Searches**
 - An officer may conduct a temporary investigative stop of a person based on *reasonable suspicion* that the person is committing, has committed, or is about to commit a crime. During the stop, the officer may question the person about the crime that the officer is investigating.
 - Officers are permitted to conduct a pat down, or frisk, based on a reasonable belief that the person is potentially armed and dangerous.
 - A frisk involves a limited pat down of the exterior of the suspect's clothing for weapons and it does not involve manipulation of the objects discovered.
 - A detention alone does not justify a pat search.
 - To conduct a pat search on a person who is detained, there must be independent facts and circumstances identified by the officer that the detainee is or is presumed to be armed or dangerous.

REPORT WRITING- DEMONSTRATING LEGAL JUSTIFICATION

Officers who conduct a warrantless search or seizure must be able to identify the appropriate legal standard for conducting the search or seizure and explain how the facts and circumstances that led up to the search or seizure adequately meet the legal standard.

In providing an explanation, an officer can rely only on facts and circumstances that were known to the officer before the officer began conducting the search or seizure. An

officer must be able to clearly describe any observations supporting the officer's decision to conduct a search or seizure without relying on conclusory language, or language that concludes that the standard has been met without describing the basis for the conclusion.

Below are examples of how legal justifications for warrantless searches and seizures should—and should not—be described.

Describing consent for a search or seizure

- Not acceptable – a description using conclusory language: “I approached the person and they consented to a search of their backpack. I found a knife.”
- Acceptable – a description using clear, expressive language: “I approached the person and introduced myself to them. I then asked them if I could look inside their backpack. They said “yes,” so I then opened the backpack and looked inside, where I found a knife.”

Describing reasonable suspicion for a protective search or seizure

- Not acceptable – a description using conclusory language: “The person matched the description of a robbery suspect so I stopped him. Then, when I approached him, he bladed away, so I patted him down.”
- Acceptable – a description using clear, expressive language: “I received a radio report of a recent robbery committed by someone wearing a dark hooded sweatshirt and light-colored pants. Shortly after receiving the radio description, and approximately two blocks away from where the robbery occurred, I saw someone wearing a dark green hooded sweatshirt and light grey sweatpants walking on the sidewalk. As the person walked ahead, I approached him from the opposite direction, facing him. When he saw me, he immediately turned his body away from me, put his hands into his sweatshirt pockets, and pushed his sweater down so that I could not see his waist. I stopped him based on the match between his clothing and the description of the robbery suspect, and I patted him down before questioning him to ensure he had no weapons on him.”

Describing probable cause to arrest

- Not acceptable – a description using conclusory language: “I saw the suspect steal clothing from the store and then use furtive movements when I approached them.”
- Acceptable – a description using clear, expressive language: “I saw the suspect take clothing from the rack inside the store and then leave without paying. I then saw them stuff the clothing inside their coat while zipping it up tightly. As I approached and asked the suspect to stop, they turned away from me while holding their arms closely against their coat and avoiding eye contact with me.

They then tried to walk away from me before I was able to stop them and place them under arrest.”

Describing an exigent circumstance for a warrantless search or seizure

- Not acceptable – a description using conclusory language: “There was an exigent circumstance, so I broke down the door and arrested the suspect.”
- Acceptable – a description using clear, expressive language: “I saw the suspect with a pistol held in his waist. When I approached him, he ran into a nearby apartment building and pushed his way into a first-floor apartment. When he entered the apartment, he closed the door and I immediately heard yelling and screaming coming from inside and someone yelling for him to get out. I pushed open the door and entered the apartment and found the suspect trying to escape out of a bathroom window. I pulled him back inside and placed him under arrest.”

STOPS, SEARCHES, AND ARRESTS OF LGBTQ INDIVIDUALS

- Officers may not consider a person’s apparent or perceived gender when determining whether *reasonable suspicion*, *probable cause to search*, or *probable cause to arrest* exists, unless gender is a necessary part of a specific and reliable description of a suspect that includes other appropriate, non-demographic characteristics such as clothing, height, build, or other identifiers like tattoos, piercings, scars, or birthmarks.
- Officers may not conduct a search of a person for the purpose of touching, viewing, or evaluating the person’s anatomy or for the purpose of assigning that person a gender.
- Absent exigent circumstances, when conducting a search of a person, officers will honor the person’s expressed preference about the gender of the member conducting the search. In the absence of a stated preference, the gender of the person being searched shall be consistent with the gender of the officer conducting the search. If the person’s request was not honored for any reason, the officer must memorialize on the body-worn camera (BWC) the reason that the preference was not honored.
- An officer shall not remove any item of a person’s clothing, prosthetics, or cosmetic items, such as wigs and jewelry, except for a clear law enforcement purpose. Whenever practicable, removal of these items shall be conducted in private.
- Officers may not question a person about the intimate details of the person’s sexual practices, anatomy, or any gender transition-related medical history unless such questions are necessary and relevant to a law enforcement investigation.

USE OF DISCRETION

- At all times, an officer's actions should be guided by both the legal requirements for their actions and the public safety justifications for them.
- Even where an officer has satisfied the legal requirements for initiating a warrantless contact, such as an investigative stop or protective pat-down, the officer retains discretion to determine whether initiating the contact appropriately serves an intended public safety or law enforcement purpose.
- When exercising discretion, an officer must evaluate the range of legally authorized responses to a situation and determine the most effective response that uses the least intrusive means for achieving the officer's public safety objective. For example, an officer may choose to issue a citation instead of arresting someone when an arrest is unnecessary to ensure public safety. For additional guidance, refer to General Order 5.01, Arrest Procedure.

SEARCH WARRANTS

Preparation

Officers wishing to obtain a search warrant must develop and be able to articulate probable cause under conditions that would lead a reasonable and prudent person to believe that a criminal offense has been or is being committed. There are two key components to a search warrant:

- particularity as to the descriptions of what is to be searched and what is to be seized.
- probable cause to believe that the items sought are connected with criminality and presently in the space to be searched. A deficiency related to the descriptions and probable cause will render the warrant unconstitutional and invalid. Typographical errors alone will not render a warrant invalid as long as they are not material to probable cause.

Probable Cause

A search warrant affidavit must contain sufficient information to establish probable cause to believe that the items sought:

- are contraband, or otherwise connected with criminal activity, or will assist in an apprehension or conviction; and
- are presently located in the place(s) to be searched.

Supervisor Review and Approval

All Department search warrants will require review and approval by a supervisor. When reviewing any search warrant, the supervisor will ensure the search warrant meets the statutory and constitutional requirements, achieves a legitimate law enforcement objective, and the information contained in the warrant has been verified and corroborated by a thorough investigation by the officer. The supervisor should confirm that any locations to be searched have been properly verified by the officer to establish the link between the target and the location.

- In addition to probable cause, officers attempting to secure a search warrant must have specific, reliable information to:
 - Describe the place to be searched and the item(s) to be seized with sufficient detail so that the person executing it is able to determine with reasonable certainty what place is to be searched and what item(s) is to be seized.
 - Describe the items as precisely as the circumstances and the nature of the criminal activity at issue permit. General descriptions should be coupled with particular criminal activity: e.g., items used in the manufacture, operation, maintenance, or detonation of explosive devices.
 - Identify which law(s) are being violated, including any evidence that identifies the person or location to be searched.
 - In the case of motor vehicle searches, furnish the name of the owner (if known), registration plate, make, model, VIN, color, and body style of the vehicle to be searched.
 - The name of the person to be searched, when there is reason to believe that such person will be concealing items named in the warrant.

Search Warrant Service

Prior to serving any search warrant for real property or locations where occupants could be present, the warrant must be reviewed by a supervisor, using a multi-step process that shall include, at a minimum, the following:

- A review of the initial investigation and verification of probable cause
- Review of the three key components involved in a search warrant (search warrant affidavit, search warrant, and inventory return)
- Assurance that the person or place to be searched and the items seized are addressed with specificity and correlate with information developed in the investigation.

- Details and verification of the location to be searched including:
 - Address
 - Description of the location to be searched
 - Details of how the search warrant location was identified
 - Relationship of the target to the search warrant location and any known occupants
 - A list of children residing and/or present at the search warrant location
 - If the search warrant location is a multi-unit building, then the layout of the units in the building and the identification process of the specific unit
 - Two verified sources that link the target to the search warrant location (e.g. public records, lease agreements)
- The warrant properly addresses issues regarding nighttime and/or no-knock warrants.
- The lead investigator, or officer serving the search warrant, should document in his/her report that supervisory review of the process was completed. The documentation should include the identity of the supervisor, prosecutor or inspector conducting the review and any other appropriate information.

Execution of Search Warrants

- A search warrant is valid for ten days after issuance and must be executed within that time period, or sooner if a delay in execution will render the information upon which it is based stale.
- In the event that a warrant is not executed within the ten-day period, and it expires, a second warrant may be sought. In doing so, the affidavit should explain the circumstances surrounding the issuance and non-execution of the original warrant and contain any pertinent updated information.
- A supervisor must be notified when a search warrant for real property or locations where occupants could be present will be served and may coordinate the service of the warrant. The lead investigator or officer involved in obtaining or serving the warrant may execute the actual search and associated duties, subject to the supervisor's approval.
- The Supervisor is responsible for assuring that a "Threat Assessment Matrix" is completed prior to executing the search warrant. The "Threat Assessment Matrix" is designed to assist Department personnel in assessing situations where

consultation and/or use of the SWAT Team is required (refer to General Order 6.04, Critical Incident Response and Special Weapons and Tactics Team).

- A “no knock” entry can occur only if officers develop an exigency, based on reasonable suspicion, that necessitates dispensing with knocking and announcing their presence before executing the search warrant. A “no knock entry” must be approved by a supervisor.

Filing and Service and Return Requirements

- A copy of the warrant application and affidavits shall be filed with the clerk of the court, within a reasonable amount of time, after issuance.
- Within forty-eight hours of execution, copies of the application and affidavits must be given to the owner, occupant or named person unless the judge issuing the warrant has specified that the information does not need to be disclosed.
- Within a reasonable amount of time from execution, the warrant, with a completed inventory return form, shall be returned to court.

**Chief of Police
(Signature and Date)**

**Chair, Board of Police Commissioners
(Signature and Date)**