

Abington Township Police Department Policy and Procedure Manual

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I. PURPOSE

The purpose of this general order is to establish guidelines and procedures which members must follow when conducting searches and seizures without a warrant.

II. POLICY

The Fourth Amendment to the U. S. Constitution and Article I Section 8 of the Pennsylvania Constitution guarantees every citizen the right to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. Supreme Court decisions regarding search and seizure place the responsibility on the police to ensure that citizens' Fourth Amendment rights are protected. Officers shall scrupulously observe constitutional guidelines when conducting searches and always remain mindful of their lawful purpose.

III. PROCEDURES

A. Search by Consent

1. Voluntariness

- a. The Commonwealth has the burden of proving that the defendants consent to a warrant less search was given freely and voluntarily.
- b. Voluntariness Test

- (1) The voluntariness of a person's consent is measured by the totality of the circumstances.

2. Consent after Arrest

- a. 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.

- (1) Officers are permitted to search the person arrested and their possessions.

- (2) Officers may also search the immediate area under the suspects immediate control.

3. Third Party Consent

- a. Consent for a warrant less search may be given by a third party who shares control of the premises or items to be searched (has common authority over).

4. The Abington Township Police Department will make every reasonable attempt to get a signed consent to search. However, officers are reminded that an oral consent will be subject to the same scrutiny as any type consent search.

- B. Stop and Frisk

1. Grounds for Stop

- a. To lawfully stop an individual, the police officer must have reasonable suspicion that the person stopped is involved in criminal activity or has created some alarm based upon the officers' training and experience.. A CAD computer entry shall be completed on all stops of suspicious persons, which will include name, address, home telephone number, and date of birth.

2. Grounds for Frisk

- a. For protection of the officer, he/she may do a "pat-down" of the person. In the case of a self-protective search for weapons, he/she must be able to point to particular facts, from which he/she 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)

3. Nature of Frisk

- a. The search 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 that has the shape and consistency of a weapon.

4. Search after Frisk

- a. Feeling an object which might be a weapon will justify a more extensive intrusion to obtain the weapon. An officer may enter pockets to dispel the alarm that a weapon is present.

C. Search of Vehicle

- 1. Whenever a vehicle search is completed with the consent of the owner/operator the following will be completed;

- a. Consent to search form, when written consent is obtained
- b. A narrative entered in the IRF (Incident Report Form) in the Police CAD/RMS system.

- 2. A plain view seizure is, technically, not a search. To make a plain view seizure of property (contraband, fruits or instrumentalities' of the crime), two requirements must be met:

- a. The seizure must take place where the officer has legally observed the property; and
- b. It must be immediately apparent to the officer that the items he/she observes may be evidence of a crime, contraband, or otherwise subject to seizure.
- c. The officer may not move items, look inside or underneath or behind them for serial numbers or other identifying marks. If such movement is necessary, officers shall obtain a warrant or consent to search of the owner/operator.

D. Crime Scene

- 1. Without a search warrant, exigent circumstances, or consent to search, crime scene searches will be limited to plain view searches.
- 2. A plain view seizure is, technically, not a search. To make a plain view seizure of property (contraband, fruits or instrumentalities' of the crime), two requirements must be met:

- a. The seizure must take place where the officer has legally observed the property; and
- b. It must be immediately apparent to the officer that the items he/she observes may be evidence of a crime, contraband, or otherwise subject to seizure.
- c. The officer may not move items, look inside or underneath or behind them for serial numbers or other identifying marks. If such movement is necessary, officers shall obtain a warrant.

E. Exigent Circumstances, as when the public safety is endangered

1. A warrant less search is permitted when there are both probable cause and exigent circumstances. The ultimate test is whether there is such a compelling necessity for immediate action that proceeding without a warrant is justified.
 - a. A warrantless entry of a private dwelling is generally permitted when officers are in hot pursuit of a suspect who they believe, based upon probable cause, has committed a felony.
 - (1) The officer must have evidence the suspect entered a specific building.
 - (2) After entering the building, officer may seize evidence of a crime in plain view.
2. Exigent Circumstances such as - hot pursuits, a fleeing suspect, destruction of evidence, or other examples in which speed is essential for police action are examples of exigent circumstances.

F. Inventory Searches

1. The Abington Township Police Department does not authorize inventory searches.

G. Situations Authorized by Statute and Federal Constitutional Provisions

1. Abington Township police officers will adhere to all Commonwealth and Federal statutory and case law provisions in the course of searches and seizures.