

HAVERFORD TOWNSHIP POLICE DEPARTMENT OPERATIONS MANUAL		
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Accreditation Index: 1.2.3		Rescinds: Directive 1.2.3 of February 2021
Chapter: One – Organization and Management Role		Section: Two – Limits of Authority
Chief of Police: <i>John F. Viola</i>		

SUBJECT: SEARCH & SEIZURE WITH AND WITHOUT WARRANT

I. PURPOSE

The purpose of this Directive is to provide Department personnel with guidelines when a situation necessitates a search and/or seizure without a warrant or the procedure for obtaining a search warrant.

II. POLICY

It is the policy of the Department to provide professional police services to the community while safeguarding the basic rights guaranteed by State and Federal Constitutions to our citizens with respect to search and seizure issues. The search warrant is one of the more powerful and valuable tools in the law enforcement arsenal. While the process of applying for and obtaining a search warrant should be familiar to most officers, there are many technical and legal pitfalls that can invalidate a search warrant, lead to the suppression of evidence or dismissal of cases, and have liability implications for involved officers. All officers shall have a sound knowledge of the legal requirements associated with searches, both with and without a warrant. Officers shall also understand how to obtain a search warrant in order to prevent suppression of evidence, support the Constitutional rights of citizens and to maintain public confidence in the Department’s mandate to carry out the police function in an ethical and legal manner.

III. DEFINITIONS

Search Warrant – A written order, in the name of the people, signed by a magistrate or other judicial authority, directing a peace officer to search for specified personal property and bring it before the magistrate.

IV. PROCEDURES

The Fourth Amendment to the U.S. Constitution prohibits unreasonable searches and seizures. Officers conducting searches without a warrant – such as those noted below – bear the burden of proving that the search was reasonable. Therefore, officers should consider obtaining a search warrant whenever time and circumstances permit.

A. Exceptions to a Search Warrant

Some exceptions to the search warrant requirement include the following;

- Search by Consent;
(PLEAC 1.2.3 a)
- Stop and Frisk of an individual under circumstances where the officer has at least reasonable belief that the subject is armed and dangerous;
(PLEAC 1.2.3 b)
- At the Scene of a Crime;
(PLEAC 1.2.3 c)
- Exigent Circumstances as permitted by statute or case law;
(PLEAC 1.2.3 d)
- Inventory Searches of seized vehicles or other property;
and
(PLEAC 1.2.3 e)
- Other situations authorized or governed by United States and Pennsylvania constitutional provisions, Pennsylvania statutes or case law.
(PLEAC 1.2.3 f)
 - Searches Incident to Arrest
 - Plain View

1. Search by consent.

- a) Officers will consider the following procedures when initiating searches by consent:
- (1) Voluntariness of consent - Consent to search must be given voluntarily and not the result of duress or coercion, either expressed or implied. Voluntariness is a question of fact to be determined from the totality of the circumstances. Officers shall ensure that consent searches are in fact voluntary and that the consent has been given freely prior to initiating any such search.
 - (2) Authority to consent - In order for consent to be valid, it must be given by a person possessing

control over the area searched. An officer initiating a consent search shall ensure that the subject giving the consent has ownership or authority to consent to a search of the area or item to be searched.

- (3) Scope - A person has a right to limit the scope of a consent search. Officers conducting consent searches shall ensure that the subject granting consent has extended that consent to the area and/or item(s) to be searched.
- (4) Reasonable suspicion is not a prerequisite for consent searches; however the initial stop must be lawfully valid for the consent to be valid.
- (5) Written consent should be obtained whenever possible before conducting these searches using a Haverford Township Police Department Consent to Search form. (Appendage #1 or #1a)
- (6) With verbal consent, if contraband is located, the consent search will be terminated and the officer will make application for a search warrant.

(PLEAC 1.2.3a)

2. Stop and/or frisk of an individual. (“Terry Stop”)

- a) Officers will consider the following when initiating a stop and frisk.
 - (1) Investigative Stop.
 - (a) Investigative stops must be supported by reasonable suspicion. If an incident report is required, the officer will articulate the reasons for the stop in that report.
 - (b) An officer who lacks probable cause but whose observations lead him/her to reasonably suspect that a particular person has committed, is committing, or is about to commit a crime, may detain the person briefly in order to investigate the circumstances that motivated the suspicion.
 - (i) The reasonable suspicion for the stop must be based on the officer’s personal observation and/or information supplied by another person.

(c) When detaining a subject, officers will diligently pursue a means of investigation that is likely to confirm or dispel his/her suspicions quickly.

(2) Cursory searches are those conducted under circumstances where the officer has an independent reasonable belief to fear for his/her safety and can articulate that reason.

(a) “Terry Stop”.

(i) Officers may conduct a limited “pat-down” search for weapons if they observe unusual and suspicious conduct on the part of an individual that leads them to believe that there is criminal activity afoot and that the person is in a possession of a weapon.

(PLEAC 1.2.3b)

(b) Handcuffs.

(i) Officers conducting “Terry” searches will consider controlling and securing the subject(s) with handcuffs first, prior to initiating a search under the “Terry” criteria.

(ii) Officers will advise any person handcuffed for a “Terry” search that they are being handcuffed for officer safety, that they are not under arrest, and that the handcuffs will be removed when officer safety is ensured.

(c) Vehicle Extension.

(i) “Terry” frisks can extend to the passenger compartment of a vehicle. Officers may search the driver/passenger(s), if the officer reasonably believes that a suspect, who was lawfully stopped, can gain access to a weapon. See Memorandum from the Office of District Attorney attached to this

directive (appendage 3) for additional guidance.

- (d) Plain feel doctrine - Officers conducting cursory frisks may seize an object when it becomes immediately apparent, through the sense of touch that the object is contraband.

3. Search at the scene of a Crime

- a) Officers shall consider the following procedures when initiating a search at the scene of a crime.

- (1) Officers may conduct a warrantless entry of residences under the following conditions:

- (a) Consent by the tenant or owner.

- (b) Probable cause to believe:

- (i) Someone in the premises is armed and dangerous.

- (ii) Someone's life or personal safety is in imminent danger.

- (iii) A serious crime is being committed in your presence and there is a likelihood the offender would escape if time is taken to get a warrant or that evidence of a crime would be destroyed.

- (2) Officers shall secure a search warrant in accordance with Department guidelines in all cases where circumstances do not provide for exceptions to the warrant rule.

(PLEAC 1.2.3c,d)

- b) When sufficient advance information is available that a search of a vehicle is likely to occur in conjunction with the apprehension of a suspect, officers will secure a search warrant before the vehicle is searched.

- (1) Any search warrant application in a major case must have prior approval from a representative of the Delaware County District Attorney's Office.

4. Search in exigent circumstances.

- a) Officers will consider the following procedures when initiating a search under exigent circumstances.
 - (1) Vehicles - If an officer has probable cause to search a vehicle, and an exigency exists, no warrant is needed. This exigency must be apart from the potential mobility of the vehicle.
 - (2) Residences – Refer to section “3(a)(1)” above.

(PLEAC 1.2.3d)

5. Inventory searches of seized vehicles or other property.

- a) Officers shall conduct an inventory search of all property and/or vehicles towed, impounded or seized by this Department. The search must be documented on an Inventory Report form. (Appendage #2)
- b) Officers will conduct inventory searches for the purpose of securing any valuables being held in police custody to assure the safekeeping of such valuables. Officers will not conduct an inventory search if the sole purpose in conducting the search is to find evidence of a crime.

(PLEAC 1.2.3e)

6. Situations authorized or governed by statute and federal constitutional provisions.

- a) Haverford Township police officers will adhere to all Commonwealth and Federal statutory and case law provisions relating to searches and seizures.

(PLEAC 1.2.3f)

- b) Search incident to arrest.
 - (1) When a person has been arrested based upon a warrant, probable cause or other legal authority, a search incident to that arrest may be made in accordance with the following:
 - (a) Person – The clothing worn by the person and any bags or packages he/she may be in possession of at the time and place of arrest may be searched. Multiple searches of the person are permitted under this exception as custody is passed from officer to officer or facility to facility.
 - (b) Home – A protective sweep of the area of arrest may be completed, including places where someone could be hiding that would

present a safety risk to officers affecting the arrest.

- (c) Vehicle – Vehicle searches conducted incident to arrest shall adhere to Directive 6.2.13 Inventory Search of Vehicles.

c) Search of a vehicle under a moveable vehicle exception.

- (1) Officers will consider the following procedures when initiating a search of a vehicle under a moveable vehicle exception.

- (a) Under the Pennsylvania Constitution, there is no “per se exception” to the warrant requirement for vehicles. Probable cause to search, without any accompany exigent circumstances, does not justify a warrantless search of a vehicle. See Memorandum from the Office of District Attorney attached to this directive (appendage 3) for additional guidance.

- (b) Vehicles, lawfully stopped spontaneously on a highway, may also be searched without a warrant under Pennsylvania law by:

- (i) Consent – Officers may search a vehicle upon receiving the knowing and voluntary consent of the owner.

- (ii) Plain View – An officer who is where he/she is allowed to be and looking where he/she is allowed to look may seize items which are obviously contraband.

- (iii) Officer Safety – When an officer can articulate facts which lead him/her to a reasonable belief that an occupant may be armed and dangerous, the officer may search the passenger compartment for weapons (that is, where a weapon might reasonably be found) provided the driver and/or occupants have not been removed and restricted from further access to the compartment.

(iv) Exigent Circumstances – Officers who have probable cause to search a vehicle, and an exigency exists, may search the vehicle without first obtaining a warrant.

(a) The exigency needs to be apart from the vehicle’s potential mobility.

(b) The exigency which is cited as the necessity for conducting the search cannot be created by any action of the officer(s).

d) Plain View

(1) While not technically a search, the following legal requirement must be met for an item to be seized while following the “plain view doctrine”.

(a) An officer must be in a location where he/she is lawfully allowed to be and that same officer is looking where he/she is allowed to look may seize items which are obviously contraband and in plain sight.

B. Legal Basis for Seeking a Warrant

1. In order to obtain a search warrant, an officer must be able to show probable cause to believe that specific evidence, contraband or fruits of a crime may be found at a particular location.

2. Specific facts establishing probable cause shall be set forth with clarity and specificity. Officers shall not rely solely upon personal opinion or unauthenticated third-party information or hearsay. Such facts may be based on;

- a) personal observation/knowledge of the officer; or
- b) Information from a reliable source.

3. When informants are used – particularly confidential informants - the reliability of the informant and information provided shall be specified. Whenever possible, officers shall corroborate informant information.

C. Affidavit Preparation

An affidavit supporting application for a search warrant shall be prepared on the designated search warrant form. The accuracy of the affidavit is vital to the validity of the search warrant; thus, officers shall ensure that the following information is clearly and completely specified;

1. Offense – The offense shall be described with reference to the criminal code section where possible.
2. Place or Thing to be Searched – The place or thing to be searched shall be described with specificity, and officers shall ensure that the warrant includes the specific reference(s). Where premises are to be searched, references should include:
 - a) Street number and apartment number if appropriate;
 - b) Physical description of the premises;
 - c) Name of owner or occupant;
 - d) Geographical location of the property;
 - e) Map coordinates or distances from reference points; and
 - f) Photographs, maps, or diagrams that help to specify the location in question.
3. Scope of the Search – Only those things described in the search warrant can be seized. Therefore, the affidavit shall specify and officers shall ensure that the warrant includes the following:
 - a) All areas that officers desire to search shall be designated. In cases where officers wish to conduct a complete search of a home and its surroundings, the affidavit should specify “premises” search and its “curtilage” and should identify any outbuildings such as garages, tool sheds, or barns, were appropriate.
 - b) Motor vehicles known to be on the premises that may be searched should be specified.
 - c) Searches (other than frisks for weapons) of specific persons on the premises shall be referenced in the affidavit by name if possible.
 - d) The specific items to be searched for shall be detailed. Where the item may be dismantled (e.g. firearms), the warrant should authorize search for parts, pieces or components of that item.

- e) Officers anticipating search of computers and related high-technology equipment shall consult a designated expert for appropriate language to use in the affidavit and procedures for seizure of hardware and software.

4. Time and Method of Search

- a) A search warrant may be served at any time of the day or night as long as the affidavit provides good cause and permission is granted in the warrant.
- b) Anticipatory search warrants may be sought when it can be shown that the evidence in question will be at a specific location at some time in the near future.
- c) officers may request a “no knock and announce” provision in the warrant when they have reason to believe that adherence to the knock-and-announce rule would endanger their safety or the safety of others, would enable a wanted person to escape or would likely result in the destruction of evidence before entry can be made.

D. Review of the Warrant

- 1. Officers shall review all search warrant applications in major cases with the Delaware County District Attorney’s Office prior to presentation of the search warrant affidavit to the judicial authority for approval
- 2. Officers shall review the search warrant to ensure that all pertinent information set forth in the affidavit is accurate and complete, and that the warrant has been properly signed. Officers shall not attempt to serve any warrant that is known to contain substantive or administrative errors.

E. Return of the Warrant

- 1. Officers shall observe statutory and administrative requirements regarding return of the warrant to include providing a receipt to the proper person for the property taken, retention and security of property taken, and return of the warrant and delivery of the property inventory to appropriate judicial authority within specified time limits.

F. Incident Reports

- 1. An incident report shall be prepared by the officer detailing the location, time, and date of the search warrant service. This report shall also detail the persons present at the time of the search,

persons conducting the search and all pertinent information to accurately reflect the events of the search warrant service.

BY ORDER OF THE CHIEF OF POLICE



Haverford Township Police Department
1010 Darby Road
Havertown, Pennsylvania 19083
Phone: 610-853-1298 Fax: 610-853-3481



CONSENT TO SEARCH AUTHORIZATION

Reference #: _____ Date: _____ Time: _____

Description of property to be searched: _____

Location of property to be searched: _____

I, _____, do hereby give my consent to the officers of the Haverford Township Police Department and specifically, _____ to search any and all property listed above that was in my possession or belongs to me and can be found at the above location.

I understand that I may refuse to this consent to search and that I am not required to consent to a search without a warrant. I also understand that anything of evidentiary value that is seized can be used as evidence in a court of law. This authorization is made of my own free will, without any threats or promises having been made to me. Further, by signing this form below, I acknowledge that I can read and write the English language and that I am not presently under the influence of drugs and/or alcohol.

Signature of Person Giving Consent

Date

Time

Witness (Print Name & Badge)

Signature

Witness (Print Name & Badge)

Signature

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Haverford Township Police Department

1010 Darby Road
 Havertown, Pennsylvania 19083
 Phone: 610-853-1298 Fax: 610-853-3481



CONSENT TO SEARCH AUTHORIZATION *Electronic Devices*

Reference #: _____ Date: _____ Time: _____

Description of electronic device(s) to be searched: _____

Location of electronic device(s) to be searched: _____

I, _____, do hereby give my consent to the officers of the Haverford Township Police Department and specifically, _____ to search any and all electronic device(s) listed above that was / were in my possession or belongs to me and can be found at the above location. I understand that the search of the electronic device(s) includes the retrieval of all information contained in the electronic device(s) including all electronic files, such as, but not limited to, directory of information and/or calls sent and received, messages sent or received, calendar and telephone directory, text messages sent and received, e-mails drafted, sent and received, as well as photographs and video that have been recorded, software, application(s) and data.

I understand that I may refuse to this consent to search and that I am not required to consent to a search without a warrant. I also understand that anything of evidentiary value that is seized can be used as evidence in a court of law. This authorization is made of my own free will, without any threats or promises having been made to me. Further, by signing this form below, I acknowledge that I can read and write the English language and that I am not presently under the influence of drugs and/or alcohol.

 Signature of Person Giving Consent

 Date

 Time

 Witness (Print Name & Badge)

 Signature

 Witness (Print Name & Badge)

 Signature

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RECEIPT / INVENTORY OF SEIZED PROPERTY

Date: _____ Time: _____ Reference #: _____

Table with 2 columns: Item #, Description. Rows 1-14.

Seized by Officer: _____
Print Name & Badge Signature

Witness: _____
Print Name & Badge Signature

Time Search Started: _____ Time Search Concluded: _____

Copy issued to: _____ Page: ___ of ___

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Keep Original – Issue a Copy

02/2016



OFFICE OF THE DISTRICT ATTORNEY
 DELAWARE COUNTY COURTHOUSE
 MEDIA, PENNSYLVANIA 19063

JACK STOLLSTEINER
 DISTRICT ATTORNEY

MEMORANDUM

To: County Police Departments
 From: First Assistant District Attorney Rouse
 Assistant District Attorney Kiefer
 Date: January 15, 2021

**AUTOMOBILE SEARCHES IN A WORLD
 WITHOUT THE AUTOMOBILE EXCEPTION**

Law Enforcement Guide

January 2021

On December 22, 2020, the Pennsylvania Supreme Court eliminated the automobile exception to the warrant requirement (*Commonwealth v. Alexander*). The law as it existed before the 2014 decision in *Commonwealth v. Gary*, which had adopted the automobile exception, is what we must now follow. This guide is intended to serve as background and guidance on the law of automobile searches as it existed prior to *Gary*. Because that law requires a fact-specific determination, this memo provides general guidance only. Please contact a member of the District Attorney's Office for more specific guidance when necessary.

GENERAL RULE: The default rule is that to conduct a warrantless search of an automobile, you need probable cause AND exigency. Without exigency, get a warrant unless one of the other exceptions to the warrant requirement, discussed below, apply.

- **Exigency** generally means an unanticipated circumstance in which there is a threat to officer or public safety, or a threat of evidence destruction. Mere generalized assertions of threat are not enough. *Officer must be able to articulate the danger posed under the specific circumstances of the case* that require prompt police action.
 - Examples of NO exigency:
 - Several hours advanced warning that suspect would be transporting drugs in his car generally requires officer to get warrant
 - Unless officer can articulate specific reasons why he is concerned for his safety in the particular circumstances of the case, warrantless search for "officer safety" is not sufficient

- Where officers have control over the car, the defendant is in custody, and there is no opportunity for third parties to gain access to the vehicle, there is generally no exigency
- Where multiple officers are on-scene that can secure the vehicle pending a warrant, generally no exigency

Practice Point: if you have time to contact an ADA or your supervisor to ask whether you can search, you don't have exigency.

- Is Exigency Created Where there is delay/inability to get a timely search warrant? This is an undecided issue. In order to make the case that inability to get judge to review the warrant application creates an exigency, it is important for police to document ALL efforts to get review of the warrant application. This includes:
 - Phone logs and/or screen shots of each time (there must be multiple) you called the judge seeking approval;
 - Contacting radio room to get phone number for another judge and then calling that other judge;
 - Making records of what judge said "I won't do this until the morning" or that the call went unanswered
 - Amount of time that has passed while driver is detained and concern that further delay while awaiting judge will violate rights of detained driver.
- **Limited automobile exception (aka plain view exception):** When contraband or plainly incriminating evidence is observed in plain view from a lawful vantage point, and the officer lacked advanced notice that such contraband/evidence would be located inside the vehicle, the officer may seize the contraband/evidence that is in plain view without a warrant. Any further search of the vehicle beyond seizure of the items in plain view must be supported by PC and a warrant, unless exigency or another exception to the warrant applies.
- **Securing or impounding a vehicle while awaiting a search warrant**
 - When a defendant has been arrested, the vehicle is on public property, and probable cause exists for a search warrant, the vehicle may be seized and held pending a warrant
 - The "public property" requirement has been extended to include where a car is parked in front of a gas pump at a gas station and therefore is "obstructing business"
 - When a suspect has not yet been arrested, where practical, the most defensible action is to secure the vehicle in place while a warrant is obtained.
 - Where that is not feasible due to lack of manpower to secure the vehicle in place, and/or where the location is unsafe or hazardous, and/or inability to obtain a warrant after efforts are made to obtain one, and/or other circumstances that render seizure necessary, then seize the car and remove it to a secure location while awaiting a warrant.

Practice Point: If you need to seize and move the vehicle, document in detail and with particularity all the circumstances that require such action so we can defend it later at a suppression hearing.

Practice Point: If you seize a vehicle based on probable cause to obtain a warrant, you may NOT the conduct an inventory search of that vehicle. You must await a warrant to search.

Practice Point: When you do obtain a warrant, be sure to also request to search any containers found within the vehicle that are capable of holding the contraband/evidence for which you have probable cause to search.

Practice Point: While awaiting a search warrant but without probable cause to arrest, you may hold someone for approximately one hour. General guidance is detention must be “reasonable” and police must provide specific details on efforts made to get warrant to justify length of the detention.

OTHER LAWFUL EXCEPTIONS TO THE WARRANT REQUIREMENT:

- **PROTECTIVE WEAPONS SEARCH** – This is a limited search for weapons based on an officer’s *reasonable suspicion that a defendant has access to weapons and poses a threat to the officer*, e.g., furtive movements, extreme nervousness, nighttime, high-crime area, evasiveness, etc.
 - Officer may only search those areas of the passenger compartment that are accessible to the vehicle’s occupants

Practice Point: Be as specific as possible about what led to your suspicion. General references to “furtive movements” or “high crime area” will not be sufficient. Instead actually describe the furtive movements, give details about crime in that particular neighborhood, explain why the defendant seemed overly nervous, etc. Details are critical!

- **VOLUNTARY CONSENT TO SEARCH** – Remains a valid exception so long as (1) the encounter between police and citizen is lawful; and (2) the consent is voluntary.
 - Lawful encounters
 - Mere encounter – citizen free to leave
 - Investigative detention – supported by reasonable suspicion and can only last as long as necessary to confirm or dispel suspicion
 - Custodial detention (arrest) – supported by probable cause
 - Voluntariness –
 - Consent cannot be product of express or implied coercion.
 - Measured by totality of the circumstances
 - Some factors considered in determining voluntariness:
 - Maturity/sophistication/mental state/age of defendant
 - Whether defendant was advised he could refuse
 - Whether a defendant was *Mirandized*
 - Show of force (number of officers involved/unholstered weapons)

- Whether defendant signed a written consent form.

Practice point: You can inform a defendant that you will be obtaining a warrant if he does not consent. This does not render the consent involuntary and is only one factor considered by the courts.

Practice point: Written consent forms or audio/video recorded consent are highly encouraged as that weighs heavily in favor of voluntariness.

Practice Point: When obtaining consent, be sure that consent includes authority to search any containers within the vehicle.

- **INVENTORY SEARCHES** – Searches that are conducted not as part of a criminal investigation to obtain evidence but are part of the police’s care-taking function to protect property inside vehicle, to protect against claims of theft, and to protect police from hidden weapons.
 - The vehicle must have been legally impounded. For example,
 - 75 Pa. C.S. §3352
 - 75 Pa. C.S. §6309.2
 - Inventory search must be performed in accordance with a reasonable, standard policy of routinely securing and inventorying the contents of an impounded vehicle.
 - If during an inventory search you discover contraband or other evidence of a crime, stop the inventory search and obtain a warrant.

Practice Point: Be able to articulate under what authority the car needed to be impounded and adhere to your department’s inventory search policy. Be prepared to produce that written policy during discovery as well so it can be made part of the record at a suppression hearing.