



# BUFFALO POLICE DEPARTMENT TRAINING BULLETIN

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## **TRAINING BULLETIN 2015- 15 SEARCH AND SEIZURE**

PURPOSE: TO UPDATE OFFICERS ON THE POLICY OF THE BUFFALO POLICE DEPARTMENT, NYS LAWS AND THE UNITED STATES CONSTITUTION REGARDING SEARCHES AND SEIZURES.

### **Buffalo Police Department MOP Chapter 3**

#### **4.0 SEARCHES AND SEIZURES**

##### **4.1 POLICY**

It is the policy of the Buffalo Police Department to thoroughly investigate criminal activity, and to search for and seize evidence, contraband and instrumentalities of crime. All searches and seizures must be conducted with due regard for the safety of Department members. The constitutional rights of the parties involved must be safeguarded and the integrity of the Department must not be compromised.

##### **4.2 SEARCHES AND SEIZURES - GENERALLY**

Questions of law concerning the constitutional validity of a search and seizure are decided on a case by case. It is beyond the scope of a Police Manual of Procedures to address in detail the intricacies of this complex and ever changing area of law. Consequently, only general principles can be presented here.

- A. "Unreasonable searches and seizures" are prohibited by the US Constitution. Generally, any search conducted without a search warrant is "unreasonable" and therefore, impermissible unless it falls within the limited number of exceptions to the search warrant requirement.
- B. A search and seizure pursuant to a search warrant (as opposed to a warrantless search) more readily withstands the scrutiny of the court and can offer some measure of insulation from civil liability.
- C. Searches and seizures, with or without a search warrant, must be based on probable cause to believe that the property to be seized is stolen, unlawfully possessed, evidence, or an instrumentality of a crime.
- D. The extent of any search is constrained by the nature of the probable cause. (e.g. It would be impermissible to search in a jewelry box when the property sought is a stolen couch.).
- E. All searches should be conducted in the least intrusive manner, with a minimum of disruption to the person and physical property being searched.



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F. While searches shall be thorough they should also be conducted in the shortest amount of time possible.

### 4.3 EXCEPTIONS TO THE SEARCH WARRANT REQUIREMENT

In the following circumstances, where the requisite level of probable cause exists, a legal search can be conducted without the necessity of first obtaining a search warrant. The critical factor is whether the defendant has an "expectation of privacy" in the place or thing to be searched.

A. Arrest Warrant Exception: If there exists an active arrest warrant, an Officer may search any premise for the defendant, including the defendant's home, if there is probable cause to believe that the defendant is in that premise at the time of the search. This exception does not permit the Officers to search for the defendant in the dwelling of a third person not named in the warrant. The search is strictly limited to locating the defendant and cannot include searching for evidence.

B. Search Incident to Arrest: After an arrest has been made a thorough search of the defendant may be undertaken as well as any area within the physical reach of the defendant.

C. Consent to Search: Any consent to search must be made knowingly, voluntarily and affirmatively (silence and acquiescence are insufficient). Consent must be given by a person who has control of the property and has legal authority to grant such consent. It is always better to obtain written consent although that is not a legal requirement. Consent can be withdrawn at any time.

D. Frisk: A frisk is a pat down search for weapons

1. A "stop." When an Officer has reasonable suspicion to believe that a person is committing, has committed, or is about to commit a misdemeanor or felony as defined in the Penal Law, the Officer may stop that person and ask the person's name, address and for an explanation of the conduct (CPL 140.50).

2. During the "stop" if the officer reasonably suspects (s)he is in danger of physical injury, the Officer may conduct a pat down search for anything that is readily capable of causing serious physical injury and of a kind not ordinarily carried in public by law abiding citizens. (CPL 140.50-1).

E. Plain View Observation: An Officer may seize anything that is within his/her plain view and that the Officer has probable cause to believe is evidence or contraband. The key is to establish that the Officer has a legitimate reason for being in the place from which the evidence or contraband was observed.



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- F. Abandoned or Discarded Property: A person relinquishes his/her expectation of privacy in any property that (s)he abandons or discards, including property discarded at the approach of a police officer. Property falling into this category may be searched thoroughly.
- G. Open Fields Exception: Buildings, homes and yards have constitutional protection. Open fields, woods and pastures that are neither fenced nor posted to exclude trespassers, can be searched without a warrant.
- H. Automobile Searches: Automobiles can be searched when the Officer has probable cause to believe that there is evidence in the vehicle. The extent of the search is dictated by the probable cause. An entire automobile may be searched, as well as containers in the automobile, if the probable cause so dictates.
- I. Inventory Search: An inventory search requires that the property lawfully came into the possession of the police (e.g., vehicle towed after an accident) and the inventory is conducted pursuant to a standard Department policy.
- J. Exigent Circumstances: There must be probable cause to believe that a crime has been committed or is being committed, and that immediate action is necessary to terminate the crime, or that someone will suffer physical injury or death, or that evidence of the crime will be destroyed. The search must be made at the time of occurrence under circumstances in which there is no time to secure a search warrant. This exception should be used only in true emergency situations.
- K. Administrative Searches: These are not searches for evidence, but rather inspections to assure compliance with governmental laws and regulations of specific businesses. An administrative search requires a pervasive and detailed regulatory scheme for the specified business. Examples include:
1. firearms dealers and gunsmiths,
  2. pawnbrokers,
  3. junk dealers,
  4. scrap processors,
  5. wholesale and retail off-premise sellers of alcoholic beverages.



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L. Searches Expressly Allowed by Statute: There are certain very limited circumstances in which statutes have authorized warrantless searches. Knowledge of current statutes and case law is highly recommended.

#### 4.4 SEARCH WARRANTS

Members shall be guided by Article 690 of the Criminal Procedure Law in obtaining and executing search warrants, and processing property seized by search warrants.

#### 4.5 OBTAINING SEARCH WARRANTS

Supervisors shall take an active part in assisting subordinate officers in obtaining, executing, and following up with search warrants. Search warrants shall not be sought without the Supervisor's prior knowledge and approval. All narcotic related search warrants must have the prior approval of a Narcotics Lieutenant, Detective Sergeant or the Detective Division Captain. Information on narcotics related search warrants is contained in the Narcotics Unit Operations Manual.

#### 4.6 EXECUTING SEARCH WARRANTS - LEGAL REQUIREMENTS

Execution of search warrants is governed by CPL Section 690. Refer to this section for regulations and laws concerning search warrants. All applicable sections of CPL 690 shall be followed.

#### 4.7 EXECUTING SEARCH WARRANTS - STRATEGIC PLANNING

A. The Officer obtaining the search warrant must attempt to gather information concerning the physical layout of the place to be searched, persons who may be present, the possibility that the search will be met with resistance, and whether weapons are present that could pose a serious risk to the safety of the officers executing the search warrant. In those circumstances in which the risk to the Officers executing the search warrant is high or where there is reliable information indicating the presence of weapons in the place to be searched, the SWAT Team Commander must be contacted for assistance.

B. The ranking officer involved in executing a search warrant must a Supervisor or above. (S)he shall conduct a pre-execution briefing with all members involved in the search. The following factors should be addressed:

1. clearly establish the officer who is to be in command;
2. all circumstances leading up to the search warrant;
3. the type and scope of the warrant issued;
4. the name and physical description of the person sought or the kind or property authorized to be seized;



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5. a complete description of the physical layout of the location to be searched;
  6. the roles of each officer involved in the search warrant execution;
  7. tactics and strategies that may be used to gain entry;
  8. special hazards that may exist and persons who may be encountered;
  9. equipment to be used and the attire to be worn (e.g., plainclothes officers must wear clothing that clearly identifies them as members of the Buffalo Police Department).
- C. A member of the team of Officers executing the search warrant shall be designated to notify the Radio Dispatcher of the location of the search. The notification shall be made simultaneous with entry or immediately thereafter, if prior notification would jeopardize Officer safety.
- D. The Officers executing the search warrant must announce their presence and purpose unless specified otherwise in the search warrant. Only the amount of force sufficient to gain entry shall be used. All persons encountered in the premises must be immediately controlled. The owner or person responsible for the premise shall be given a copy of the search warrant.
- E. An orderly and coordinated search of the premises shall be conducted, consistent with the scope of the warrant. Officers will be assigned specific areas to search. The ranking officer shall ensure that all areas authorized to be searched are searched thoroughly. (S)he must also assure that the extent of the search does not exceed the scope of the warrant.
- F. After the search warrant is executed, a copy of the warrant and a receipt for property taken must be left at the scene and the premises must be secured as best as possible.
- G. All property seized must be inventoried and delivered to the Court without unnecessary delay along with the original search warrant and the Application for a Search Warrant. The ranking Officer shall document on Intra- Departmental Correspondence any damage caused in executing the search warrant or any injuries suffered by any person involved in the search, including police personnel, defendants or other civilians.
- H. All members participating in the execution of the search warrant shall participate in a critique of the entire search warrant operation ranging from the pre-execution briefing, notification of the Dispatcher, the entry, the search and the post execution documentation.