

# WATERTOWN POLICE DEPARTMENT GENERAL ORDER



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CHIEF OF POLICE

Effective Date: January 1, 2010	Rescinds: Amends:	Number: B-135
Subject: Search and Seizure Buildings	Re-evaluationDate: January 2013	
Distribution: ALL PERSONNEL	Related CALEA Standards:	

This order consists of the following numbered sections:

1. Purpose
2. Policy
3. Definitions
4. Procedures

## 1. PURPOSE

The purpose of this policy is to direct officers and supervisors with respect to building entries.

## 2. POLICY

The policy of this department is to protect and serve the constitutional rights of all citizens when conducting building entries while balancing the needs of law enforcement in solving crime for the protection of the community.

## 3. DEFINITIONS

- a. **CONSENT:** The voluntary granting of permission for an officer to enter an area that is protected by the 4<sup>th</sup> Amendment, by a person who is either an owner or a third party with common authority over the premises.
- b. **DYNAMIC ENTRY:** The utilization of a special team i.e. SWAT when executing a high-risk warrant, entering to control a barricaded subject, or similar high risk event.
- c. **EXIGENT CIRCUMSTANCES ENTRY:** Entry of a dwelling without a warrant due to some existing emergency that would not allow an officer time to get a warrant.
- d. **PROBABLE CAUSE (SEARCH):** Facts and circumstances based upon observations or information that would lead a reasonable law enforcement officer to believe that evidence of crime exists and that the evidence exists at the place to be searched.
- e. **SEARCH INCIDENT TO ARREST:** - When a lawful arrest is affected, an officer may search the person arrested and the area within the person's immediate presence for the purpose of protecting the officer from attack, discovering the fruits of a crime, or preventing the person from escaping or destroying evidence. The officer may seize all instruments, articles, or things discovered on the person arrested or within the person's immediate control, the seizure of which is reasonably necessary to protect the officer from attack, prevent the person's escape, or ensure subsequent lawful custody of the fruits of a crime or the articles used in the commission of a crime.

## 4. PROCEDURE: There is only three lawful methods upon which an officer may enter a person's dwelling or building. These methods include a warrant (arrest or search-with differing rules for each), exigent circumstances, or consent.

- a. **Risk Assessment Matrix:** Unless exigent circumstances exist officers shall compile a risk assessment matrix prior to planning any execution of any warrant entry of homes or other buildings.
- b. **Written Operations Plan:** Unless exigent circumstances exist officers should complete a written operations plan prior to executing any warrant entry of a home or other building.
- c. **Knock and Announce:** Prior to considering a forced entry into a dwelling or building, officers must knock at the entrance and announce their identity and purpose unless one of the following circumstances exist:
  - i. The officer's purpose is already known to the occupant.
  - ii. When the personal safety of the officer or others would be jeopardized by the announcement.
  - iii. When the delay caused by the announcement may enable the suspect to escape.
  - iv. When a prisoner has escaped and retreated to his home.
  - v. When the announcement may cause evidence to be destroyed.

- vi. If officers believe that one of the above circumstances exist prior to obtaining the warrant, they should seek judicial approval for a “no-knock” warrant by outlining the factors believed to exist in their affidavit.
- vii. In determining how long an officer must wait before forcing entry following the knock and announcement, officers should consider the nature of the item sought and how long it would take to destroy the item.
  - 1. The United States Supreme Court found 15-20 seconds to be a reasonable amount of time in a drug warrant case.
- d. Arrest Warrant-Felony or Misdemeanor: Officer may enter the home of the subject of an arrest warrant in cases where the officer also has probable cause to believe the subject is home.
  - i. Knock and Announce Rules Apply
  - ii. Search Incident to Arrest.
    - 1. Officers may, at the time of the arrest, search the room the subject is arrested in once a lawful arrest is made.
    - 2. Officers may, at the time of the subject’s arrest, also look into, but not go into, areas adjoining the room of arrest, from which an attack could be launched.
    - 3. Officers may conduct a protective sweep, limited to those places where a person could be, in cases where the officers have reasonable suspicion to believe someone else on the premises poses a danger to the officer.
  - iii. Officers must obtain a search warrant before entering the residence of a third party in order to search for the subject of an arrest warrant unless exigency or consent exists.
- e. Search Warrants- Officers must have probable cause to believe that evidence of crime exists and must have probable cause to believe it will be located at the place to be searched.
  - i. Knock and Announce Rules Apply: The officer executing a search warrant may break open any building, structure, or container or anything therein to execute the warrant if, after giving notice of his or her authority and purpose, he or she is refused admittance and
    - 1. The person or persons on the premises refuse to acknowledge the verbal notice or the presence of persons inside the building is unknown to the officer; or
    - 2. The building or property is unoccupied.
    - 3. Where the officer has reasonable grounds to believe that the announcement will place the officer in greater peril or lead to the immediate destruction of evidence, the officer may dispense with the knock and announce requirement.
  - ii. The search warrant itself must particularly describe the place to be searched and must also particularly describe the items to be seized.
  - iii. The scope of a search warrant is limited by information (i.e. information developed indicates that items are stored in a specific location). Scope may also be limited by the size of the item; (i.e. if looking for a stolen piano, one would not open a bureau drawer).
  - iv. All search warrants must be executed in a reasonable manner.
    - 1. Search warrants shall be executed within a reasonable time of issuance, not to exceed ten days.
    - 2. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be signed under oath by the officer.
    - 3. An officer taking property under a warrant shall give to the person from whom or from whose premises the property was taken, a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken.
  - v. Detention and Search of Persons on the Premises: When executing a search warrant, the officer may reasonably detain, and in some cases frisk any person in the place at the time under the following limitations (these limitations apply even in cases where the warrant calls for the “search of any person present”):
    - 1. Frisk-To protect him or herself from attack when the officer has reasonable suspicion, based upon specific facts, to believe that the individual present is armed and poses a threat.

2. Search: To prevent the disposal or concealment of any item particularly described in the warrant where there is probable cause, based upon specific facts, to believe that the person to be searched is in possession of said item.
  3. Detain: Officers may detain any person who is present at the scene of a residence where officers are executing a search warrant. Where officers are executing a dangerous search warrant, all persons present may be handcuffed while officers conduct their search. If at any time it is determined that the person restrained in handcuffs is not dangerous, the handcuffs should be removed.
- f. Consensual Entry / Search - Officers may, without reasonable suspicion or probable cause, enter a dwelling based upon the consent of a person who appears to have authority over the premises.
- i. A consent search is a well-recognized exception to the search warrant requirement.
    1. Consent to search may be valid if:
      - a. The consent is given with the suspect's knowledge that he or she has the right not to consent to a search.
      - b. The suspect freely gives voluntary consent to search without duress or coercion.
      - c. The consent to search is specific and absolutely clear, not merely implied.
    - ii. Informing the suspect of his or her right to consent:
      1. Reliance on consent to search does not require that an officer advise the person consenting that he or she has the right to refuse prior to the search. An officer will routinely give warnings prior to obtaining consent to search. In so doing, the officer is in an advantageous position to support an argument that the person consenting is knowledgeable of the 4th Amendment protection he or she is yielding. This will be a factor in determining the voluntariness of the consent.
    - iii. Prior to conducting a consent search, an officer must:
      1. Not make threats or engage in physical intimidation, actual or implied. Mere silence, submission, or non-resistance to the authority of an officer does not constitute a waiver of a person's constitutional rights. Obtaining verbal consent is permissible, but questions of fact may arise as to whether the verbal consent was in fact given, and whether it was given knowingly and voluntarily. Officers may attempt to obtain consent in writing.
    - iv. Officers will not construe a mere invitation by a person to enter a residence as consent given to search the premises. If there is consent to enter, what the officer observes in plain view may be seized if subject to seizure.
    - v. Officers will not obtain consent by fraud, misrepresentation, coercion, or duress.
    - vi. If consent to search is given without any limitation, an officer may search all areas within the scope of the consent. Consent may be revoked or limited at any time before the completion of the search. Evidence obtained prior to revocation or limitation may be used as evidence or may be used to establish probable cause.
    - vii. Who May Give Consent to Search
      1. A person's constitutional rights cannot ordinarily be waived by another person. Therefore, only the person whose privacy is invaded, or the person who has a right to the lawful use and control of the property, may legally consent to a search without a warrant and not incident to arrest. The words "use" and "control" as related to property do not necessarily imply ownership.
      2. Owners of leased premises cannot give an officer consent to search the tenant's premises.
      3. If two or more persons have full right of occupancy of a premises (common tenancy), one may give legal consent to an officer to search the area over which the consenting occupant has joint use or control. If either party with legal standing is present, and does not give consent to search, the search cannot be conducted.
      4. An officer can receive consent to search a premises from either the husband or wife, where no objection is made by the other. The court may rule any evidence located as a result of such consent can only be admissible against the party giving consent.
      5. Where a child is residing with his or her parents, a parent generally may give consent for an officer to search the child's living quarters. If the individual pays rent, a landlord-tenant relationship arises regardless of the family situation between the parties, and specific tenant consent must be obtained by the officer to search any area of the premises set aside for the tenant's exclusive use.
      6. Officers should not rely on the consent of a juvenile under the age of 15.

- g. Exigent Entry- An officer may enter a home based on emergency circumstances when any of the following circumstances exist:
  - i. Hot pursuit of a fleeing felon.
  - ii. Imminent destruction of evidence for any jailable offense.
    - 1. Destruction of Evidence: “The Now or Never Doctrine”
      - a. An Officer may conduct a warrantless search if:
        - i. there is probable cause to search; and
        - ii. there is probable cause to believe the evidence is in danger of immediate destruction or removal.
      - b. This type of exigent circumstance extends to building, containers, vehicles, individuals, or any other area.
  - iii. Need to prevent suspect’s escape.
  - iv. Risk of danger to police or others inside or outside the dwelling.
  - v. Officers may enter a home without a warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such an injury.
  - vi. Once exigency has ended, officers should secure the scene and obtain a search warrant.
  - vii. An emergency search must be limited in scope to responding to that emergency, i.e., in the case of a drug overdose victim; the officer could look in the medicine cabinet for medications to assist emergency personnel.
  - viii. An emergency does not give an officer the right to conduct a general search.
  - ix. If the exigency arises because the officer has deliberately and unreasonably delayed in getting a warrant, it is not an “exigent circumstance” or if the conduct of the officer deliberately creates the emergency, it is not an “exigent circumstance”. The officer must not deliberately cause the “exigent circumstance”.
  - x. The fact that an area is a crime scene does not create automatic exigency- There is not crime scene exception to the warrant requirement.
- h. Dynamic Entry: Whenever entering a residence in a manner designed to anticipate a potential deadly force encounter, the SWAT team should be utilized to ensure the safety of all persons involved. This determination as to whether a dynamic entry is necessary is done through the completion of a risk assessment matrix.
  - i. Due to the nature of executing this high-risk entry, extreme care must be utilized in order to ensure that only the proper residence is entered. When considering the use of a dynamic entry, unless exigent entry is required, the following precautions should be followed:
    - 1. A supervisor must be present and take responsibility for reviewing and approving the warrant as well as the affidavit prior to the execution of the warrant.
    - 2. The officer supervising the SWAT team will conduct a drive-by of the location with the lead investigator using the legal description on the warrant to locate the residence to ensure that the residence to be entered is verified with the warrant. If any discrepancies exist or if the house cannot be located by the description on the warrant, the warrant shall not be served.
    - 3. Prior to execution of the warrant, all available data bases will be checked (telephone, electric, real estate etc.) to ensure that the residence matches the suspect of the investigation.
    - 4. A written operations plan will be prepared identifying the specific mission for the team, intelligence considered, a description of the targeted subjects and location, and the specific tasks assigned to each member of the entry team.
    - 5. The lead investigator will accompany the SWAT team during the execution of the warrant and direct officers to the doorway of the residence to ensure that the correct residence is entered.
    - 6. Upon completion of the operation, photographs of all entry-ways into the building should be taken to document both damage and lack of damage.
- i. Search of Public Buildings - When a building or dwelling has been voluntarily opened to the public, the owner is deemed to have consented to officers entering areas that are open to the public. Officers may seize contraband, etc., that is in open view.
- j. Search of Premises Licensed to Sell Alcoholic Beverages
  - i. All licensed premises are subject to search by an officer during business hours.
  - ii. Officers will not abuse their authority to search.
  - iii. All areas of the licensed premises are subject to search.

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