

Policy 1109



Subject

WARRANTLESS SEARCHES

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Page

1 of 10

By Order of the Police Commissioner

POLICY

It is the policy of the Baltimore Police Department (BPD) to respect the fundamental privacy rights of all persons. Members will conduct Searches in strict accordance with the rights secured and protected by the Constitution and laws of the United States and the State of Maryland. All Searches shall be conducted with concern for safety, dignity, courtesy, and respect for privacy.

See Policy 1007, *Search and Seizure Warrants*, Policy 1013, *Strip Searches and Body Cavity Searches*, and Policy 1112, *Field Interviews, Investigative Stops, Weapons Pat-Downs, and Searches* for directives regarding other types of Searches that are not fully covered in this policy.

CORE PRINCIPLES

Constitutional Searches. BPD members will conduct Searches in compliance with the 4th and 14th Amendments to the Constitution as well as Maryland law and Declaration of Rights.

Non-Discriminatory Policing. BPD members shall not consider, to any extent or degree, the following actual or perceived personal characteristics when exercising discretion to conduct a warrantless Search, except as part of an actual and apparently credible description of a specific suspect in any criminal investigation: age, race, ethnicity, disability, economic status, gender expression, gender identity, immigration status, homelessness, national origin, political ideology, sexual orientation, HIV status, religion, veteran status, social status, or familial status.

DEFINITIONS

Probable Cause to Search — Where facts and circumstances, known to the member and taken as a whole, would lead a reasonable member to believe that, based on their training and experience, either contraband or evidence of a crime will be found in a particular location.

Reasonable Articulable Suspicion (RAS) — A well founded suspicion based on specific, objective, articulable facts, taken together with the member's training and experience, that a subject has committed, is committing, or is about to commit a crime.

Search — An inspection, examination, or viewing of persons, places, items, or information in which a person has a legitimate expectation of privacy. A Search need not be visual; it may include grasping, prying into or manipulating persons or objects (e.g., reaching into a purse or pocket, feeling inside of the trunk of a car, physical manipulation of a duffel bag, etc.). An entry into the home or the curtilage (area immediately around the home) will generally be considered a search. In some circumstances, a dog sniff may constitute a Search as well. See Policy 1602, *Canine Procedures*.

Search Warrant – A written order, issued by the court, authorizing and directing a member to seize and Search a specified person, premises, vehicle, dwelling or other location in order to seek and recover contraband or evidence related to the commission of a crime. A Search Warrant generally consists of a Search Order, a Warrant Application, and an Affidavit in Support of the Search Warrant.

SEARCHES

1. A Search occurs when law enforcement intrudes on a person's reasonable expectation of privacy.
2. The U.S. Constitution generally requires law enforcement to obtain a Search Warrant prior to conducting a Search. There are, however, *limited* exceptions to the warrant requirement. The most common of these exceptions are:
 - 2.1. Probable Cause Search of a Vehicle;
 - 2.2. Exigent Circumstances;
 - 2.3. Search Incident to Arrest; and
 - 2.4. Consent Search.
3. Because case law regarding Searches is constantly changing and subject to interpretation by the courts, members shall be alert to legal updates sent by the Department regarding Searches. **When in doubt as to the existence or applicability of an exception to the Search Warrant requirement, the member should take the time to obtain a Search Warrant. See Policy 1007, Search and Seizure Warrants.**
4. Reasonable Articulate Suspicion and Probable Cause should be founded on specific and objective facts or observations about how a person behaves, what the person is seen or heard doing, and the circumstances or situation in regard to the person that is either witnessed or known by the member. Accordingly, Reasonable Articulate Suspicion and Probable Cause must be based on facts or observations about a particular person's actions or the particular circumstances that a member encounters.
 - 4.1. The physical characteristics of a person, including generic clothing descriptions, are never, by themselves, sufficient. Instead, those characteristics must be combined with other factors, including a specific, non-general description matching the suspect or the observed behaviors of the person. A mere hunch or suspicion is not enough.
 - 4.2. An anonymous tip must be sufficiently detailed and all facts and circumstances must provide indicia of the tip's reliability to give rise to RAS. Mere allegation that a person is carrying a gun is not sufficient. Neither is a very general description based on race and clothing.
5. Discoveries made during a warrantless Search under exigent circumstances may be used to establish Probable Cause for a Search Warrant.

DIRECTIVES

General Procedures

Required Actions

6. BPD members shall strive to conduct Searches courteously and in a way that promotes the dignity of the person Searched.
7. BPD members shall explain to the person being Searched the reason for the Search and how the Search will be conducted.
8. Since all Searches are investigative in nature, members shall record every Search on their BWC. BPD members shall attempt to record the activity on which they base their reasonable suspicion on their BWC, to the extent practicable and safe. Consistent with Policy 824, *Body-Worn Camera*, members must activate their BWC at the onset of any call for service or activity that is investigative or enforcement related in nature.
9. As a general rule, a person shall only be Searched by a BPD member of the same gender, unless the person expresses health or safety reasons for a cross-gender search. Absent exigent circumstances, the person's preferences for health or safety reasons with respect to the gender of the member conducting a Search will be honored. When it is not practicable to summon a member of the mandated or preferred gender, the member shall have another member or a supervisor witness the Search. See Policy 1013, *Strip Searches and Body Cavity Searches*, and Policy 720, *Interactions with Lesbian, Gay, Bisexual, Transgender, and Queer/Questioning (LGBTQ) Individuals* for further guidance.
10. BPD members shall carry out Searches with due regard and respect for private property interests and in a manner that minimizes damage. Members shall leave property as close as reasonably possible to its pre-Search condition.
11. In order to minimize property damage and the need for forcible entry, and where doing so would not place BPD members at heightened risk, members shall attempt to lawfully obtain keys, combinations, or access codes when a Search of locked property is anticipated.
12. BPD members shall use accurate and specific descriptive language and not rely on "boilerplate" or "pat" language in any reports documenting Searches. Articulation of RAS and Probable Cause shall be specific and clear.

Prohibited Actions

13. BPD members shall not conduct a Search beyond the scope of the underlying justification for the Search. Any Search conducted past that point requires either a Search Warrant or another exception to the Search Warrant requirement.
14. BPD members shall not use or rely on information known to be materially false or incorrect to justify any type of Search.
15. Items or contraband recovered from a Search which was not permissible under this policy shall not be used as justification for the Search.

16. BPD members shall not Search, seize, or otherwise coerce (implicitly or explicitly) production of recorded images, videos or sounds without obtaining a warrant, unless the person voluntarily provides the recorded material or the below exigency exists:
 - 16.1. If the person declines to voluntarily provide recordings but there is Probable Cause to believe that the recording contains critical evidence related to a crime, and if such evidence is in immediate danger of being tampered with, altered, deleted, or destroyed, then a BPD member may temporarily secure the recording device while a legal subpoena, Search Warrant or other valid court order is obtained.
 - 16.2. See policy 1016, *Public Observation/Recording of Officers* for full guidance.

Probable Cause Searches of Vehicles

Since operable vehicles are capable of movement, members may conduct a warrantless Search if there is Probable Cause to believe the vehicle contains evidence of a crime or contraband.

Required Action

Prior to conducting a warrantless Search of a movable vehicle, members shall:

17. When practical, first seek to obtain consent to the Search prior to Searching a person or a movable vehicle without a warrant (See Policy 1112, *Field Interviews, Investigative Stops, Weapons Pat-Downs & Searches*).
18. Members must have Probable Cause to Search in order to conduct a warrantless Search.
 - 18.1. If a member has Probable Cause to Search a vehicle, the member may Search anywhere in the vehicle where the evidence or contraband sought may reasonably be found.
 - 18.2. This may include containers within the vehicle regardless of the ownership of those containers.

NOTE: Members are encouraged to seek out a Search Warrant where practical prior to conducting a Search that will likely cause damage to a vehicle.

Prohibited Action

19. Members shall not conduct a warrantless Search of a vehicle located in a driveway or within the curtilage of a home (area immediately surrounding a home).

Exigent Circumstances

Required Action

20. A Search may be justified by exigent circumstances where there is:
 - 20.1. Probable Cause, AND
 - 20.2. Substantial risk that waiting for a warrant would result in:

- 20.2.1. Harm to a person,
- 20.2.2. Destruction of evidence, or
- 20.2.3. Escape of someone subject to arrest.

Entry into Residences and Non-Public Structures

- 21. Warrantless arrests in the home are generally disfavored as physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed to guard. The United States Supreme Court has long adhered to the view that the warrant procedure minimizes the danger of needless intrusions. Therefore, absent **exigent circumstances**, law enforcement must obtain a warrant before entering into a private **residence** or non-public building where there is a reasonable expectation of privacy to make an arrest or conduct a Search.
- 22. There are three types of exigent circumstances that would justify a warrantless entry into a residence or non-public building where there is a reasonable expectation of privacy:
 - 22.1. **Hot Pursuit of Fleeing Felons:** Officers may enter a residence or non-public building where there is a reasonable expectation of privacy if they are in hot pursuit of a fleeing felony suspect. Officers are not allowed to make a warrantless hot pursuit entry when there is only probable cause of a misdemeanor or a minor offense. Examples of misdemeanors include DUI, traffic offenses, curfew violations, citation offenses, and non-arrestable violations (See Policy 1018, *Quality of Life Offenses – Core Legal Elements*).
 - 22.2. **Destruction of Evidence:** The law allows entry into a residence or non-public building where there is a reasonable expectation of privacy if the officers have a reasonable belief that evidence of a felony is about to be removed or destroyed. If entry is made to prevent the destruction of evidence, except in exceptional circumstances such as danger to members or the public, members shall not seize the evidence or contraband. Members shall secure the premises and the evidence, freeze the scene to include all occupants while allowing for occupants to leave if they wish, and await the arrival of a search warrant.
 - 22.3. **Protection of the Police or the Public:** When members have reasonable grounds to believe there was an immediate need to ensure their safety and the safety of others, they may make a warrantless entry into a residence or non-public building where there is a reasonable expectation of privacy to guarantee the safety of themselves and others. Prior to the entry the members must:
 - 22.3.1. Have a reasonable belief that there is an immediate need to protect the lives or safety of themselves or the public;
 - 22.3.2. Conduct the search absent a motivation or desire to discover evidence or make an arrest; and
 - 22.3.3. Have a reasonable basis, approaching probable cause, to associate the emergency with the place to be searched.
- 23. A warrantless Search conducted due to exigent circumstances is valid only as long as the exigent circumstances last. When the exigency has ended, any further Search must be justified by a warrant or another exception to the warrant requirement.

Searches Incident to Arrest

Required Action

24. A member must have Probable Cause to arrest, the authority to arrest, and the intent to arrest before performing a Search incident to arrest.
25. A Search incident to arrest shall include a weapons pat-down and Search of the individual's pockets. It may also include Search of any articles of property found on the person, and the minor manipulation of clothing that does not expose a person's groin/genital area, buttocks, female breasts, or more than the waistband or upper portions of the undergarments.
26. The areas included in this Search are the person being arrested and the area in their immediate control.

NOTE: Once the arrestee has been removed from the area and has been rendered incapable of gaining "immediate control" of items in that area, a warrantless Search incident to arrest may no longer be conducted of that area.

- 26.1. If an arrestee is an occupant or was recently an occupant of a vehicle, a limited Search of the passenger compartment of the vehicle (including glove box, center console or containers therein) may be conducted, if:
 - 26.1.1. The arrestee is unsecured and within reaching distance of the passenger compartment at the time of the Search, or
 - 26.1.2. There is RAS that a Search of the passenger compartment will uncover evidence related to the crime for which the occupant was arrested.
27. See Policy 1104, *Arrest Warrants*, Policy 1106, *Warrantless Arrest and Probable Cause Standard* and Policy 1114, *Persons in Police Custody*.

Consent Searches

Required Action

28. To request to conduct a consent Search of a person or property for contraband or other evidence of a crime, members must have (1) RAS that a crime has been committed, and (2) RAS that the person is involved in the crime or possesses evidence of the crime or the place to be searched contains evidence of the crime.
29. Prior to a consent Search, the member shall provide a Permission to Search, Form 29 (see Appendix A), to the person whose person or property they wish to Search and shall explain the purpose of the form. The member shall affirmatively explain that the person has a right to refuse, limit, and revoke consent at any time that the person will not be punished or detained longer if they refuse.
 - 29.1. If the person requests further explanation of their rights or if it is apparent that the person giving consent has difficulty reading or understanding their rights, the member shall explain until the person acknowledges their full understanding of the consent. If applicable,

refer to Policy 1103, *Communicating with Individuals who are Deaf and Hard of Hearing* or Policy 1735, *Language Access Services for Limited English Proficient (LEP) Persons*.

- 29.2. If the person gives verbal consent to Search but refuses to sign the form, the member may proceed with the Search but MUST document the person's verbal consent and refusal to sign the Permission to Search form.
 - 29.1.1. Record on Body-Worn Camera (BWC) if the member has a BWC.
 - 29.1.2. If member does not have a BWC, document the verbal consent but refusal to sign the Permission to Search on the Permission to Search, Form 29.
- 29.3. Include on the back of the Permission to Search, Form 29:
 - 29.3.1. The events giving rise to RAS for a search.
 - 29.3.2. How consent was obtained (i.e., verbally or in writing).
 - 29.3.3. How the search was conducted.
 - 29.3.4. The location of any contraband or evidence that was discovered, and the name of the member who found and seized the evidence.
 - 29.3.5. If anything was seized during the search.
 - 29.3.6. Whether the search resulted in an arrest.

NOTE: Members may instead attach a copy of the incident report to the form so long as it contains the above information.

30. Consent can only be given by a person who the member can demonstrate, or that the member can reasonably articulate, has the authority to give consent to Search the property.
31. If two or more people with equal apparent authority over the property are present and disagree about permission to Search, the consent Search shall not be conducted. This includes situations in which a parent gives permission to search but a youth refuses permission to search areas of the home which are in control of the youth, such as the youth's room, closet, or bags stored in the home.
32. The scope of the Search must be established and may be limited in any way the person wishes. If the Search exceeds the authorized scope, it must be justified by another exception or will be unlawful.
33. The person providing consent may stop the Search at any point and must be able to communicate their request to stop the Search.
34. If the consent Search has begun, but the person then decides to revoke their consent:
 - 34.1. The member must stop the Search unless another exception to the Search Warrant requirement applies. Consent may be withdrawn at any time by any person with apparent authority over the property, and the Search must be terminated immediately should this occur;

- 34.2. The member must not use threats or other forms of coercion to obtain or induce the person not to revoke consent; and
- 34.3. Even if property return is requested, the member may retain custody of evidence or contraband lawfully seized prior to revocation of consent.
35. For consent searches of Youth, please see Policy 1202, *Youth: Consensual, Non-Custodial Contacts and Custody Procedures*.

Prohibited Action

36. Members may not conduct a Search until the person has signed the Permission to Search form, unless the circumstances under 2.2. above are met.
37. Members shall not use a person's refusal to give consent to Search as a factor in establishing reasonable suspicion or Probable Cause.
38. Members shall not tell a person that refusal to provide consent may lead to adverse consequences, such as arrest or warrantless seizure of their property.

APPENDICES

- A. Permission to Search, Form 29

ASSOCIATED POLICIES

- Policy 317, *Fair and Impartial Policing*
Policy 824, *Body-Worn Camera*
Policy 720, *Interactions with Lesbian, Gay, Bisexual, Transgender, and Queer/Questioning (LGBTQ) Individuals*
Policy 1007, *Search and Seizure Warrants*
Policy 1013, *Strip Searches and Body Cavity Searches*
Policy 1016, *Public Observation/Recording of Officers*
Policy 1103, *Communicating with Individuals who are Deaf and Hard of Hearing*
Policy 1112, *Field Interviews, Investigative Stops, Weapons Pat-Downs & Searches*
Policy 1114, *Persons in Police Custody*
Policy 1401, *Control of Property and Evidence*
Policy 1602, *Canine Procedures*
Policy 1735, *Language Access Services for Limited English Proficient (LEP) Persons*

COMMUNICATION OF POLICY

This policy is effective on the date listed herein. Each employee is responsible for complying with the contents of this policy.

APPENDIX A

Permission to Search, Form 29

<p>POLICE DEPARTMENT BALTIMORE, MD</p> <p>PERMISSION FOR SEARCH Form 29</p> <p><u>Right to Refuse</u></p> <p><i>The Baltimore Police Department would like to conduct a search of your person, residence, vehicle and/or other property described below. You have the right to refuse this search. If you agree, you may limit and/or revoke consent at any time.</i></p> <p>By signing below, I affirm that I understand my right to refuse, limit and revoke consent at any time.</p> <p>PRINTED NAME: _____</p> <p>SIGNATURE: _____</p> <p><u>Scope of Search</u></p> <p>I, _____, having been informed of my rights, hereby authorize _____ of the Baltimore Police Department to conduct a search of</p> <p><input type="checkbox"/> my person;</p> <p><input type="checkbox"/> my residence located at _____ and/or</p> <p><input type="checkbox"/> my vehicle (year/make/model/license #) _____</p> <p><input type="checkbox"/> other: _____</p> <p>My consent is:</p> <p><input type="checkbox"/> not subject to any limitation</p> <p><input type="checkbox"/> limited to _____</p> <p>_____</p> <p>This officer is authorized by me to take from my person, residence, vehicle or other property herein described, any letters, papers, materials or other property related to a law enforcement investigation or action, subject to any limitation described above.</p> <p>This written permission is being given by me to the above-named officer voluntarily and without threats or promises of any kind.</p> <p>SIGNED: _____</p> <p>DATE: _____ 20____ TIME _____ M.</p> <p>WITNESSES: _____</p> <p>_____</p> <p>_____</p> <p>Rev. 7/24/18</p>
