

GENERAL ORDER 42.6.1

Search & Seizure

GENERAL ORDER CROSS-REFERENCE: None.

SUMMARY

Establishes a procedure for searches and/or seizures of items by members of the Department.

DISCUSSION

The Department must establish guidelines for the execution of searches and the seizure of items in fulfilling the goals and objectives established in providing service to the community.

Search and seizure is a constitutional issue perpetually under review by the courts. The legislature has attempted to provide guidance to law enforcement by enacting statutory law. Decisions by the appellate courts at the State and Federal levels influence the process by their respective interpretations of the statutes by evaluating the acts of law enforcement in view of the language of the State and Federal Constitutions.

It is incumbent upon members of the Department to maintain a contemporary understanding of the laws of search and seizure in order to fulfill the obligations of the Police Department.

POLICY

I

Members of the Department shall comply with all laws established by the courts and legislature applicable to law enforcement. Members who respond to the scene of a crime should give consideration to all of the facts surrounding the circumstances in assessing their authority to execute a search and select the appropriate lawful method to conduct crime scene tasks.

II

Probable cause to search means reasonable cause to believe that:

1. A crime has been or is being committed, and
2. Items of evidence pertaining to that criminal offense are on a person or in a place you wish to search.

Probable cause to seize means reasonable cause to believe that the item located during a search is evidence of a criminal offense.

III

A search without a warrant may be made when:

1. A search incident to arrest is restricted by Oregon case law to allow a search incident to arrest only for the following reasons: (1) a search of the person and person's immediate belongings for evidence reasonably related to the purpose of arrest; (2) to prevent the destruction of evidence, and; (3) for officer safety. A search incident to arrest justified by the latter two reasons must be confined to the arrestee's person and does not include the immediate area around the arrestee.
2. Voluntary consent to search is given by a person who has standing to provide such consent.
3. Exigent circumstances exist in conjunction with probable cause to search. The exceptional circumstances must provide reason to believe that evidence of a crime exists that will be destroyed or otherwise unavailable for seizure.

Law enforcement must not create the exigent circumstances to circumvent the requirement of obtaining a warrant.

4. A vehicle may be searched without a warrant if: (1) the vehicle was lawfully stopped and ; (2) probable cause exists to search the vehicle for evidence. The probable cause can exist prior to the stop or be developed in the course of the stop and the officer may search the vehicle with the same scope and intensity as would be allowed if the officer obtained a search warrant. This includes the search of locked glove boxes, the trunk, and all closed containers if the evidence being sought could reasonably be found there in.

When a search of a vehicle is conducted based on exigent circumstances, the search should be conducted at the scene. If the vehicle is impounded, the exigent circumstances no longer exist therefore a search warrant or consent must be obtained.

5. The Oregon Court of Appeals in State v. Custer has raised certain questions regarding the authority of police departments in the state of Oregon to conduct inventory searches without outside judicial authority. The City of Springfield Common Council has adopted resolution 94-82 which authorizes such searches. All vehicles and items impounded and/or taken into police custody shall be searched and all property itemized.
6. In addition to Federal and State case decisions, the Oregon Revised Statutes provide for the frisk of persons stopped by officers as described in ORS 131.625.

An officer may frisk a stopped person for dangerous or deadly weapons if the officer reasonably suspects that the person is armed and presently dangerous to the officer or other person present. If in the course of the frisk, the officer feels an object which the officer reasonably believes is a dangerous or deadly weapon, the officer may take such action as is reasonably necessary to take possession of the weapon.

IV

A search warrant is a written order of a court directing an officer to search a specified person or place for specific items named in the warrant.

A search warrant may not be issued absent one or more affidavits establishing probable cause. The affidavit shall set forth the facts and circumstances relied upon to justify the search and tending to show that the objects of the search are in the places to be searched. If the affidavit is based in whole or in part on hearsay, the affiant shall set forth facts bearing on any unnamed informant's reliability and shall disclose, as far as possible, the means by which the information was obtained. Hearsay from another officer needs no showing of reliability for purposes of the affidavit.

Property to be seized shall be identified as clearly and completely as possible. The premises, vehicle or person to be searched should be identified as accurately as possible. The description of such place or person to be searched must be sufficiently detailed to allow others to identify it with reasonable effort.

A circuit court judge may authorize execution of a search warrant outside of the judicial district in which the court is located, if the judge finds from the application that one or more of the objects of the search relate to an offense committed or triable within the judicial district in which the court is located.

Affidavits and search warrants may be prepared by a police officer and reviewed by a prosecutor prior to presentation to a magistrate for signature.

A search warrant may be issued to search for and seize any evidence of a crime, contraband, the fruits of the crime, things otherwise criminally possessed, property that has been used, or is possessed for the purpose of being used to commit or conceal the commission of a crime or a person for whose arrest there is probable cause or who is unlawfully held in concealment.

A search warrant may be directed toward persons, places and vehicles. A search warrant shall be dated and shall be addressed to and authorize its execution by a police officer. The warrant shall state or describe with particularity:

1. The identity of the judge issuing the warrant and the date the warrant was issued.
2. The name of the person to be searched, or the location and designation of the premises or places to be searched.

3. The things constituting the object of the search and authorized to be seized.
4. The period of time, not to exceed five days after execution of the warrant within which the warrant is to be returned to the issuing authority.

A search warrant shall be served as soon as possible and within five days of issuance. An extension may be granted by the court upon request. A search warrant shall be served between the hours of 7:00 a.m. and 10:00 p.m. unless endorsed for service at any time.

An officer serving a search warrant shall knock and announce his purpose and identity prior to the entry into any premise. The delay in making entrance shall be reasonable giving consideration to the totality of the circumstances at the time of the search relating to the safety of officers, citizens and evidentiary items.

Officers may use that amount of force reasonably necessary to gain entrance and that amount of reasonable force necessary to protect themselves during the execution of the search warrant.

Physical security within the premises shall be established upon entry into any building for the purpose of safety to officers and others. The search warrant shall be read and a copy provided to the person in control of the premises to be searched. In the event there is no person in control of the premises, a copy shall be left plainly visible within the premises.

A search must be reasonably conducted and is limited in scope by the warrant authorizing the search. Searches may be conducted in locations where the object of the search could reasonably be found. The search will terminate when the items specified in the warrant are located and seized. An additional search warrant may be necessary to seize additional items. Items discovered incident to the search that an officer has cause to believe are subject to seizure and shall be seized. This additional evidence may create cause to extend the scope of the search. The police legal advisor should be contacted to advise on the necessity for an additional warrant.

Upon completion of the search, an officer shall ensure that a list of the items seized is recorded and a receipt embodying that list is delivered to the person from whose possession are taken, or the person in apparent control of the premises or leave such receipt suitably affixed to the vehicle or premises.

An officer who has executed a search warrant shall return the warrant to the issuing court with a list of those items seized, setting forth the date and time of the search as soon as is reasonably possible and in no event later than the date specified in the warrant.

An officer questioning the validity or scope of a search warrant shall contact his supervisor.

The police legal advisor in the District Attorney's Office is available for legal assistance on a 24 hour basis by telephoning the police legal advisor.

Richard L. Lewis
Chief of Police