



Sheridan Police Department
Policies and Procedures
10.4 Replaces 406.2
Chapter 10 – Search & Seizure
Section 4 – Searches With and Without Warrants

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Signature:

The Fourth Amendment to the U.S. Constitution and Article 1 Section 4 of the Wyoming Constitution guarantees every person the right to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. It is the responsibility of the police to ensure that citizens' Fourth Amendment rights are protected. Search warrants are one of the most valuable and powerful tools available to law enforcement officers. Officers shall observe constitutional guidelines when conducting searches and always remain mindful of their lawful purpose. Because of the potential harm to citizens, the risks to officer's safety, and the risk to the department image, officers shall have a thorough knowledge of how to obtain search warrants and execute searches.

Definitions

Judicial Officer - Justices of the supreme court, district judges, circuit judges, magistrates, municipal judges, and district court commissioners.

10.4.1 Search Warrants

A. General Requirements

1. The Fourth Amendment to the U. S. Constitution prohibits unreasonable searches. Officers conducting searches without a warrant bear the burden of proving that the search was reasonable. Therefore, officers should consider obtaining a search warrant whenever time and circumstances permit.
2. In order to obtain a search warrant an officer must be able to show probable cause to believe that specific persons or property to be seized may be found at a particular location.
3. Rule 41 of the Wyoming Rules of Criminal Procedure (W.R.Cr.P) governs procedures relating to the issuance, form, execution and return of search warrants.

B. Obtaining a Search Warrant

1. A search and seizure warrant may be obtained under the conditions established in Rule 41, W.R.Cr.P. Application for a search and seizure warrant must be made in the form of a sworn affidavit that will be reviewed by a judicial officer, who, upon finding of probable cause, will issue the warrant.
2. The procedure for obtaining a search and seizure warrant is as follows:
 - a. An investigation is conducted to determine if criminal activity has taken place;
 - b. A decision is made that a search and seizure warrant will aid the investigation;
 - c. The lead officer, with the option of working with the Sheridan County Attorney's Office prepares an affidavit for a search and seizure warrant, describing:

- i. The location to be searched in sufficient detail and particularity that the officer executing the warrant can readily ascertain whom or what is to be searched:
 - If officers wish to search a home and its surroundings, the affidavit must specify premises and its curtilage and must identify outbuildings as appropriate;
 - If motor vehicles to be searched are on the premises, the affidavit shall so specify;
 - The affidavit shall specify if searches of specific persons (other than frisks) are to be included during the search.
 - ii. The items to be seized in sufficient detail and particularity that the officer executing the warrant can readily ascertain it;
 - iii. The specific crime committed;
 - iv. The specific facts that constitute probable cause. This includes the facts from which the officer concluded that the person or thing is probably located at the place to be searched, and the facts which address the reliability of the source of the officer's information. Reliability of facts is established by:
 - The age of the facts – facts must be recent;
 - Personal observation or knowledge by an officer;
 - Eyewitnesses who have first-hand knowledge;
 - Informants history and intent - When seeking to obtain a search warrant on the basis of an informant, it is important to document facts regarding the reliability of the informant, police corroboration of the informant's information, and whether the informant has made declarations against his or her interest.
 - d. The affiant presents the affidavit and warrant to a judicial officer having jurisdiction where the place or thing to be searched is located;
 - f. The judicial officer, upon finding probable cause, signs the search warrant.
- C. Preparation for Execution of Warrant
 - 1. Review - Before executing the warrant, the person coordinating the search and a supervisor will review the affidavit and warrant. They shall ensure the warrant is valid. If the warrant is for a building or residence, they should consider:
 - a. Staffing needed to:
 - i. Secure the residence and occupants; and
 - ii. Conduct the search and process the evidence.
 - b. A determination should be made if a tactical team is needed. If a tactical team is to be used to facilitate safe entry a commanding officer will approve and facilitate the use of the tactical team.
 - c. The need for standby of medical personnel;
 - d. The need for standby of animal control;
 - e. The need to limit radio transmissions to emergencies until entry is gained and the scene is stabilized.
 - 2. Briefing – For all searches of buildings the supervisor will conduct an operational briefing prior to the execution of any search and seizure warrant. All officers involved

in the execution of the warrant will attend the briefing. During the briefing the supervisor will consider all pertinent information that is available including:

- a. Case investigative history;
 - b. Floor plan of location to be searched;
 - c. Photographs and/or video of location to be searched;
 - d. Criminal history of all known subjects possibly present;
 - e. Photographs of subjects possibly present;
 - f. Statement as to the existence of criminal charges;
 - g. Statement as to the presence of children or elderly and their approximate ages;
 - h. Statement as to the presence of animals;
 - i. Statement as to the presence of weapons;
 - j. Statement as to where the items to be searched for may be located; and
 - k. Statement as to what radio frequency will be used.
3. Equipment - The supervisor conducting the operational briefing shall ensure that the required specialized equipment is available and officers are properly equipped.
 4. Notifications - Prior to execution of a search warrant of a building the supervisor will notify the following of the pending warrant execution:
 - a. Patrol commander; and
 - b. Communications center staff.
 5. Time Limitations - A search warrant shall be executed within ten days of the date it was issued.
 6. Hours of service - Absent court approval, a search and seizure warrant shall be executed between the hours of 0600 and 2200.

D. Executing a Search Warrant

1. Approach - Typically, the initial approach to the place to be searched will be covert, providing an advantage of surprise to the execution team. If a surveillance team is on the scene, radio contact shall be made to ensure that it is an appropriate time to serve the search warrant.
2. Gaining entrance to the premises
 - a. The entry team shall deploy officers around the premises to be searched, ensuring that all exits are covered.
 - b. In all search warrant executions, a uniformed officer will accompany the search warrant team to ensure the occupants are aware of the police identity.
 - c. In most cases the officer shall do all of the following before entering the premises to be searched:
 - i. The officer must knock;
 - ii. The officer must announce his or her presence and identity as a law-enforcement officer;
 - iii. The officer must announce that the purpose for being there is to execute a search warrant; and
 - iv. The officer must wait a reasonable time to either be admitted or refused admission to the premises.
 - d. If the element of surprise is not deemed essential, the officer may try making contact before indicating the existence of the search warrant.
 - e. If the officer is refused entry after a reasonable time, entry may be forced using force appropriate to the circumstances. "Reasonable time" in this context is

dependent on the circumstances. A refusal may be expressed or implied. A refusal can be implied in two circumstances:

- i. No one has admitted the officer within a time in which it would be reasonable to expect someone to let the officer in if he or she is going to be admitted at all; or
 - ii. The officer waiting to be admitted sees or hears suspicious circumstances, such as flushing toilets or footsteps running away from the door, which indicate that someone might be concealing or destroying evidence or trying to escape.
 - f. No knock or exigent entry - In some circumstances a police officer may enter the premises to be searched without announcing his or her presence and purpose before entering. Information may be provided in the affidavit giving the judicial authority issuing the warrant sufficient cause to add a no-knock entry provision to the warrant. If not, the entry team should knock and announce as previously stated unless the officer executing the warrant obtains additional facts that would lead him or her to believe that an announcement would result in:
 - i. Bodily harm to the officer or to someone within the premises to be searched;
 - ii. The escape of the person to be searched or arrested; or
 - iii. The destruction of evidence.
 - g. If new information or circumstances that become known after obtaining the warrant, but prior to execution, require a no-knock or exigent entry, the first officer to cross the threshold into the premises shall announce that law-enforcement officers are executing a warrant.
3. On premises activities
- a. Upon initial entry, the search site and all subjects should be secured by the entry team.
 - b. After the search site and all subjects have been secured, all officers, except the designated search team and any officers that are stationed as security shall leave the search site. The site should be considered a crime scene, and nothing should be handled or searched by any officers other than those assigned to the search team.
 - c. Search personnel should develop a prioritized strategy that details the likely whereabouts of the items to be seized and an order of operation for conducting the search.
 - d. One person should be designated as being responsible for collecting, preserving and documenting all items seized until possession is transferred to the evidence custodian.
 - e. Items seized will be documented, noting their location and the name of the seizing officer.
 - f. Once all evidence being searched for is located, the search must cease.
 - g. Officers must be reasonable in the manner of their search. If the search warrant is for a large item such as a television, small places such as jewelry boxes may not be searched.
 - h. An officer may seize only the property listed in the warrant with two exceptions:

- i. The other evidence is reasonably related to the offense for which the search warrant was issued;
 - ii. It is property, which the officer knows or has probable cause to believe is evidence of a crime.
 - i. Unless stated on the warrant, a person's presence on the premises to be searched with a warrant does not, without more, give rise to probable cause to search that person beyond a frisk for officer's safety.
 - j. A warrant to search premises for contraband carries with it authority to detain the occupants of the premises while a search is being conducted when the detention is neither prolonged nor unduly intrusive. If the search of the premises gives rise to probable cause to arrest the detainee, he or she may be arrested and searched incident to arrest.
 - k. If damage occurs during an entry into premises:
 - i. And the damage may leave the premises vulnerable to security problems, every possible effort shall be made to secure the premises if the premises will be left vacant; and
 - ii. The damage will be documented with a report and photographs.
 - l. The investigating officer and supervisor shall ensure that the entire search warrant execution process is documented in the report.
- E. Return of the Search Warrant
 - 1. If any property is seized, the officer shall give to the person from whose possession it is taken, a copy of the warrant and an itemized receipt of the property taken. If no person is present, the officer shall leave the copy of the warrant and the receipt in a prominent location at the site of the search.
 - 2. The return of inventory and receipt must be returned to the court within five days of the execution of the search warrant.

10.4.2 Warrantless Searches

Several exceptions to the requirement that searches be conducted with a warrant have been recognized by the courts.

A. Incident to Arrest

- 1. A search incident to arrest allows for a complete search of the arrestee and the area within the arrestee's immediate control for the purpose of locating weapons, means of escape, and evidence of the crime.
- 2. Also included within the scope of this search is the authority to search containers or other items of personal property within the arrestee's immediate control. This area is generally referred to as the "lunge" area. Arresting officers shall immediately or as soon as practical conduct a thorough search of the arrestee and any containers or clothes in the possession of or in close proximity to the arrestee.
- 3. The scope of a search of a vehicle incident to an arrest is limited:
 - a. To the area of the passenger compartment when the arrestee is unsecured and within reaching distance at the time of the search; or
 - b. It is reasonable to believe the vehicle contains evidence of the offense leading to the arrest.

B. Consent

- 1. A search warrant is not necessary when a person who has authority over the place or thing to be searched consents to the search. Officers do not need to have reasonable

suspicion nor probable cause to make a consent search. The officer may merely ask for permission from someone with control over the premises. If that person grants permission, the search may take place. The officer should consider whether the person has legal standing to grant consent and whether the consent was given freely, voluntarily, and with the understanding by the person he or she had the right to refuse consent. By virtue of the role of law enforcement in our society police officers have considerable influence on the actions of others. Care must be exercised to avoid coercion by the officer. Consent searches must observe the following rules:

- a. Generally, the person granting consent must use, access, or control the property;
 - b. If two or more persons have joint ownership of property, any may give consent, however if one of the parties denies consent you must obtain a search warrant for the premises;
 - c. A landlord, including a hotel or motel manager, cannot consent to a search of a tenant's premises, unless the tenant has been evicted or has abandoned the property;
 - d. A husband or wife, or one member of a cohabiting unmarried couple, may consent to a search of areas in common ownership or use, but if either one is present and denies the search no search can be conducted without a warrant;
 - e. A parent may consent to a search of premises occupied by a dependent child if the parent also has access to the premises;
 - f. Employees cannot give valid consent to a search of employer's premises unless they have been left in custody of the premises;
 - g. An employer may generally consent to a search of premises used by employees, except premises used solely by an employee (e.g., a locker).
2. The officer will have the burden of demonstrating consent was voluntary.
 3. Consent may be given orally, however whenever possible, the consent should be in writing and documented on a permission to search form.
 4. A person who initially gives consent may withdraw it at any time. Officers shall then secure the premises and seek a warrant if probable cause exists.
 5. Refusal to give consent, in itself, cannot justify further law-enforcement action.
 6. The scope of a consent search is limited to the area for which consent has been given, and within this area officers may search only into areas where the objects sought could reasonably be hidden.

C. Emergency Searches/Exigent Circumstances

1. This exception allows for an officer to make a warrantless search in situations where an officer has probable cause necessary to obtain a warrant but the urgency of the situation prevents it. The exception recognizes in some circumstances if the officer does not immediately conduct the search the suspect will escape or evidence will be lost forever.
2. The following are factors that should be considered in determining if exigent circumstances exist:
 - a. Whether the officers have probable cause;
 - b. The degree of urgency involved and the time required in getting a warrant;
 - c. The seriousness of the offense committed;
 - d. Danger to life including whether officers reasonably believe the suspects are armed;

- e. Danger presented if allowed to escape and the likelihood that the subject(s) will escape if not immediately apprehended;
 - f. The possibility of danger to others;
 - g. Officer's reasonable belief that contraband is about to be removed or destroyed;
 - h. Information that the possessors of contraband are aware that police are on their trail;
 - i. Whether the officers have strong reason to believe the suspects are present on the premises;
 - j. A reasonable belief that someone on the premises is in distress and in need of emergency assistance.
3. If officers enter premises with probable cause to believe that critical evidence may be destroyed or removed unless immediate action is taken, they shall secure the premises and obtain a search warrant before proceeding further unless they have obtained consent to search, or some new circumstances arise necessitating another warrantless search.
 4. Hot pursuit is a form of exigent circumstances. To justify warrantless entry during hot pursuit:
 - a. The arrest process must have begun away from the premises;
 - b. The offender must know that he or she is under arrest; and
 - c. The offender fled inside a structure to avoid arrest.
 5. One of the most widely recognized exigent circumstances is the "Welfare Check". These are situations in which the health and well being of a person are questioned. In most cases there is no reason for officers to suspect that criminal activity has taken place. In these cases, entry into private premises will only be made under the following circumstances:
 - a. After obtaining the name and information of the complainant and why the complainant is requesting the check;
 - b. Reasonable efforts to make contact have failed; and
 - c. After consulting with the shift supervisor.

D. Plain View

1. Technically, a plain-view seizure does not result from a search. To make a plain-view seizure of property (contraband, fruits, or instrumentalities of the crime), three requirements must be met:
 - a. From a lawful vantage point, the officer must observe contraband left in open view;
 - b. It must be immediately apparent to the officer that the items observed may be evidence of a crime, contraband, or otherwise subject to seizure; and
 - c. The item(s) must have been inadvertently discovered.
2. Limitations to plain view seizures include:
 - a. Artificial devices that aid in or enhance the officer's view can not be used; however, a flashlight is generally acceptable, provided that the officer has the right to be where he or she is when using it;
 - b. Moving or rearranging items to note serial numbers is not supported by the "Plain View Doctrine".
3. The "Plain View Doctrine" can apply during warrant searches. In this case, two questions must be answered:

- a. Does the officer have the right to be there? and
 - b. Does the officer have probable cause to believe the item is evidence or contraband?
- E. Abandoned Property and Open Fields
 - 1. A search warrant is not required for property that has been abandoned.
 - 2. To constitute abandoned property, two conditions must apply:
 - a. Property was voluntarily abandoned; and
 - b. Property was discarded outside the area in which someone has a reasonable expectation of privacy.
 - 3. Open fields are not protected by the Fourth Amendment, but officers must distinguish them from curtilage, searches of which require a warrant. Curtilage is the area of a dwelling, which is necessary, convenient, and habitually used by the family for domestic purposes. The extent of curtilage of a private residence is determined by whether the area is enclosed; the nature and use of the area; the proximity of the area to the home; and any measures taken by the owner to protect the area from observation.
- F. Inventories of Impounded Vehicles
 - 1. Inventories are non-investigatory in nature.
 - 2. Inventories are conducted by police officers for the following reasons:
 - a. An inventory protects the owner of the property;
 - b. The inventory protects the officer and the department against claims by the owner that the property is stolen or has been lost;
 - c. It allows for the officer and the department to discover any potential danger that may exist because of the contents of the property.
 - 3. The department requires officers to inventory any lawfully impounded vehicle. Vehicles shall be inventoried per departmental procedure, which requires an inventory of the entire contents, including closed containers (provided they can be opened without damage). Ref: 18.3.3.
- G. Crime Scene Searches
 - 1. Actions taken at the outset of an investigation at a crime scene can play a critical role in the resolution of a case. Carefully approaching, identifying, and securing a crime scene, with due regard for legal considerations, is key to ensuring potential evidence is not tainted.
 - 2. A crime scene is a location where a crime has very recently occurred and where there is an apparent need for investigative action or emergency services. Upon arriving at a crime scene in a private premise, the officer may enter without a warrant under conditions arising to exigent circumstances. (See section C above.) This exception only extends to the termination of the emergency.
 - 3. In most cases where an officer has to conduct a search of a crime scene there will not be an issue as to whether or not the officer will have permission to conduct the search. The police will have been called to the scene by a victim who has the authority and will allow the officers access. In other cases, the officer should obtain permission from the owner, resident, or caretaker of the property before searching for evidence or processing the scene. Permission should be documented in the police report and in most cases, a consent to search form should be completed. If the crime scene includes a constitutionally protected area, and a possible suspect might have a reasonable expectation of privacy at the scene, a search warrant must be obtained.

4. Officers may conduct protective sweeps of a crime scene for their protection prior to securing the scene pending a warrant or consent.

H. Stop and Frisk

1. While not a true search, officers may stop and frisk a person even though they do not have probable cause to arrest. A frisk is no more than a pat down of the outer clothing to discover weapons.
2. To justify a frisk, officers must have a reasonable suspicion to fear for their safety based on specific objective facts and logical conclusions that the officer's experience enables him or her to draw from those facts. The officer must be able to articulate that suspicion.
 - a. Officers must have knowledge of facts that reasonably lead them to believe that the suspect is involved in criminal activity and may be armed and dangerous;
 - b. Officers must identify themselves as police officers and make reasonable inquiries as to the suspect's conduct. The frisk is justified if the person's response does not relieve the officer's suspicions and fears of danger to the officer and others.
3. Stops and frisks usually involve on-going criminal conduct, but officers are permitted to stop and, if appropriate, frisk someone suspected of being involved in an already-committed crime.
4. Officers may use information to stop and frisk from sources of information other than their own personal observations including:
 - a. Training;
 - b. Education; and
 - c. Prior experience in similar situations.
5. A motorist or pedestrian may be stopped and frisked if the aforementioned criteria are met. If an officer reasonably suspects that a motorist is dangerous and may be able to gain control of a weapon in the vehicle, the officer may conduct a brief search of the vehicle limited to areas where a weapon might be reached.
6. During a stop and frisk, items cannot be removed from a person's clothing that are not reasonably believed to be weapons, unless identified as contraband or evidence and the officer can articulate those facts. The "Plain Feel Doctrine" requires the nature of the contraband is "immediately apparent" to the officer based on the feel of the object through the subject's clothing during the pat down.

I. Vehicle Exception

1. There are two reasons that are given for allowing the search of a vehicle with probable cause, but without a warrant:
 - a. The first is that a vehicle does not share the expectations of privacy accorded to a residence or other personal property; and
 - b. Second, the obvious mobility of an automobile makes it sometimes impractical to require the police to first obtain a search warrant.
2. Police officers who have legitimately stopped an automobile and who have probable cause to believe contraband is concealed somewhere within it may conduct a warrantless search of the vehicle. Examples of probable cause to search a vehicle include:
 - a. If officers smell the distinctive odor of illegal drugs they would have probable cause to search the entire vehicle;

- b. When an occupant tells an officer of evidence or contraband in the vehicle.
- 3. When police officers have probable cause to search an entire vehicle, they may conduct a warrantless search of every part of the vehicle and its contents, including all containers and packages that may conceal the object of the search. The scope of the search is defined by the object of the search and the places in which there is probable cause to believe it may be found.