

Bowie Police Department - General Orders



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AUTHORITY Chief John K. Nesky	ACCREDITATIONS STANDARDS CALEA STANDARDS: 1.2.4, 1.2.9, 74.1.2,	TOTAL PAGES 13
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I. POLICY

It is the policy of the City of Bowie Police Department that all searches and seizures of private property will be conducted within well-defined, lawful and constitutional guidelines. As such, this policy will serve as a standard for all matters concerning search and seizure.

II. PROCEDURES

A. Rules Governing Search and Seizure: Officers are reminded that orders and regulations concerning the subject of search and seizure are extremely difficult to set forth. The instructions and guidelines in this policy cover as many phases of the subject as possible. However, the application of these instructions must not be arbitrary. Officers will adhere to them as closely as possible, keeping in mind that the variations inherent in search and seizure are endless, and that court decisions are constantly changing their application.

1. The Prince George's County State's Attorney's Office is available to provide assistance concerning interpretation of search and seizure rules and the legality of a search and seizure procedure.
2. Under emergency conditions, when it is believed that legal counsel is needed at other than normal business hours, the Prince George's County State's Attorney's Office may be contacted with permission of a supervisor. The investigating officer may contact the on-call State's Attorney or the State's Attorney's liaison for the Department.

B. Reasonable Search and Seizure:

1. All citizens and their property are protected against unreasonable search and seizure.
2. Plain View Exception:
 - a. An object or contraband, in plain view of an officer who has the right to be at a location to have that view, may provide probable cause for a seizure.
 - i. It is not a search to observe that which is in the open and visible in either daylight or artificial light.

ii. It is not a search when lawful entry has been made into a residence and contraband is exposed to view.

iii. It is not a search for an officer to peer through the window of a detained vehicle.

3. The legal course of action available to officers for conducting a reasonable and legal search are as follows:

- a. With a valid search warrant issued on probable cause.
- b. By consent of the owner or person having authority to give consent.
- c. Incidental to a lawful arrest.
- d. Emergency situation, whereby the safety of the public/officer is endangered. (Probable cause exists, but there is not time to obtain a warrant.)
- e. Vehicle search based on probable cause without warrant.
- f. Incidents where probable cause exists and any delay could result in the destruction of the evidence.

4. Searches not listed in paragraph B.2 are generally considered unreasonable and illegal.

C. Search Warrants

1. A search warrant will be issued only on probable cause and must be supported by a sworn affidavit naming and describing particularly the property or person to be seized and the persons and/or premises to be searched. When an officer possesses an arrest warrant, a search warrant need not be obtained to enter the suspect's own residence. However, before entering, the officer must have reason to believe the suspect may be in the residence (i.e., lights on at night, stereo on, etc.) A suspect's residence is considered the place where the suspect permanently resides. The knock and announce provision of Maryland Law must be complied with, giving the suspect the opportunity to surrender.

- a. A warrant may be issued for the following purposes:
 - i. To recover property that has been stolen or embezzled (fruits of a crime).
 - ii. To seize property used as means of committing a public offense (instrumentalities).
 - iii. To seize property, the mere possession of which is a violation of law (contraband).
 - iv. To seize property in the possession of any person who intends to use it as a means to commit a public offense, or in the possession of another to whom it may have been delivered for the purpose of concealing or preventing it from being discovered.
 - v. To seize property or things which constitute any evidence which tends to show that a particular offense has been committed, or tends to show

that a particular person has committed an offense (items of evidentiary value only).

vi. To search for the subject of an arrest warrant in a third party's residence absent consent or exigent circumstances.

2. Completing an Affidavit for Search Warrant: The Affidavit for Search Warrant presented to a judge should be based on the personal knowledge of the applicant or another law enforcement officer and/or information received from a reliable informant whose reliability should be established at the time the warrant is issued. In rare cases, the judge may find probable cause based on the totality of circumstances, even though the informant is anonymous or otherwise is not a past proven reliable informant.

a. The officer attempting to obtain a search warrant will submit the affidavit to his/her supervisor for review prior to contacting an Assistant State's Attorney for review.

b. Affidavits lacking sufficient facts for the Assistant State's Attorney to exercise the necessary judgment, even though the warrant is issued, will likely lead to the suppression of the evidence seized on the warrant.

c. The officer must be extremely careful to describe exactly those premises to be searched, especially those composed of apartments or any places where more than one family lives. If a vehicle is to be searched, it will be described as accurately as possible.

d. Each item that is the object of the search will be enumerated.

e. A warrant to search premises cannot be automatically extended by itself to include the search of a person. If it is considered necessary to search the occupants of the premises, they will be described particularly in the affidavit and the warrant.

3. Obtaining a Search Warrant

a. A search warrant may be obtained from a District Court or Circuit Court Judge. Officers are reminded that District Court judges have jurisdiction over the entire State of Maryland; however Circuit Court judges only have jurisdiction over counties within their circuit. Prince George's County is in the 7th Judicial Circuit covering Calvert, Charles, Prince George's and St. Mary's Counties.

i. Officers will attempt to obtain a search warrant from the Circuit Court Chambers Judge during normal business hours.

ii. During non-business hours officers will contact the District Court Commissioner and request to be put in touch with the on-call judge. A brief explanation will be given why the search warrant must be signed at that time and why the officer cannot wait until normal business hours.

iii. Officers will take three (3) copies of the Affidavit with them for the judge's signature: Copy distribution as follows:

(a) Issuing Judge;

(b) To accompany the return of service; and,

(c) Officer's case file.

4. Executing a Search Warrant: A search warrant may be served by a City of Bowie Police Officer anywhere within the City.

a. If a search warrant is for a person, residence or vehicle outside the City, the investigating officer will need to have a co-affiant from that jurisdiction.

b. It is not necessary that the officer completing the warrant affidavit be present at its execution.

c. To protect officers and other persons from incidents of mistaken identity, doubt of credibility, or any other situation of misunderstanding, the following procedures will be used by officers of this Department when a search warrant is to be served:

i. Before the execution of the search warrant.

(a) The Investigative Services Division Commander will be notified. If the search warrant is a high profile warrant, or involves exigent circumstances, the Chief of Police will be notified.

(b) Communications will be notified of the location of the execution of the warrant and any other pertinent information.

(c) If the warrant is served anywhere outside the City of Bowie, the jurisdiction in which the warrant is to be served will be notified and requested to have a local officer present at the execution of the warrant.

(d) Risk Analysis: Prior to the execution of any search warrant or any planned operation where the potential of violence may exist, the squad / unit supervisor responsible for the warrant service or planned operation shall complete a risk analysis. The risk analysis is a tool to determine the level of threat the suspect(s) may pose to officers executing a search warrant or planned operation. If the risk analysis shows a potential for violence, the unit supervisor will request assistance from the Prince George's County Police Department's Emergency Services Team for warrants to be executed within the City or those executed by another agency within the State of Maryland.

(1) The risk analysis will assist the squad / unit supervisor of appropriate tools in the execution of the operation.

(2) PGPD's EST personnel should execute all of the following search/arrest warrants:

[a.] Narcotics offenses.

[b.] High violence potential.

[c.] Where the crime involved the use of or threatened use of physical force.

[d.] Buy bust operations

ii. During normal business hours (M-F 0800-1700):

(a) The supervisor responsible for the service of a search warrant will notify Communications prior to the execution of any search warrant. This notification will be made as soon as practical following the court signing of a warrant affidavit. In addition, the responsible supervisor will notify the Investigative Services Commander.

(b) The supervisor of the squad / unit attempting to execute a search warrant is responsible for ensuring the following information is included in the accompanying continuation report.

(1) Date and time that service was executed or attempted.

(2) Name of officer(s) and supervisor(s) present when executing or attempting service of the search warrant.

(3) Name of person on whom the search warrant was executed or attempted.

(4) Method of service or reason for non-service.

(5) Address of service attempt.

(c) Communications must be notified at the time any warrant is served. If the time frame of service is within two hours of the signing of the warrant, the responsible police supervisor may advise Communications of this during their initial notification of warrant service. If there is an unexpected delay beyond the two (2) hour time frame, Communications will be notified of the change.

(d) With the service of any search warrant, Communications must be notified of the time frame of service, regardless of time delays. Notification will also be required if it is determined a warrant will not be served following the Court signing of same.

(1) Other than normal business hours: The supervisor responsible for the service of the warrant will make notification to Communications and the Investigative Services Commander or his/her designee as they would do during normal business hours. The same information will be logged concerning date, time, address, etc.

(2) "Buy-Bust" or "Reversals"

[a.] When Department personnel are involved in a "buy-bust" or "reversal" investigation, they will notify the Communications Supervisor and the Investigative Services Division Commander as soon as the location and

approximate time of occurrence has been determined.

[b.] At the time of execution of the buy-bust or reversal, Communications will be notified by radio of the time the buy-bust or the reversal was completed or canceled.

(3) Search Warrant or “Buy Bust” by Allied Agency: When an employee of the Department is advised by another law enforcement agency of that agency’s intention of executing a search warrant, buy-bust or reversal within the City of Bowie, the employee will notify his/her immediate supervisor. The supervisor will then notify the on duty Commander and Communications of the circumstances.

(4) A sworn supervisor will be in charge of all search warrant executions. If it is not possible for a plainclothes detail supervisor to be in uniform, any uniformed officer of the Department may be assigned to accompany the officers with the approval of the Shift Supervisor. A copy of the signed search warrant will be presented to the occupant of the residence. If the location is not occupied, the search warrant copy will be left at the location in a visible position.

[a.] The supervisor of the squad or detail executing the search warrant is expected to be in attendance and in uniform, if possible.

[b.] The supervisor of the squad or detail executing the search warrant is responsible for all notifications, warrant information review, warrant procedure conduct and security, appropriate memos, and other tactical or administrative details regarding the procedures.

[c.] Uniform patrol supervisors and officers will be used as situations dictate but will be returned to their regular duty assignments as soon as reasonably practical.

[d.] Officers who must be present to further the investigation process may enter the scene after the on-site Supervisor or PGPD’s EST Leader has declared the scene non-hostile and has authorized entry.

(5) The Investigative Services Division Commander or his/her designee will take into consideration the fact that even though the first officer at the door of the house or building will be a supervisor in uniform (not when EST is used), other officers present and in view should also be in

uniform if circumstances so dictate (surrounding the building, at the back door etc.).

(6) Other Agencies: When a search warrant involves plainclothes officers from another agency, the Department's on-duty Shift Supervisor, when practical, will meet with the on-scene Supervisor from the other agency before execution of the search warrant to discuss arrangements, provide for appropriate notifications, and ensure that all plainclothes officers involved will be wearing adequate apparel to provide immediate recognition as officers. A group assembly of involved personnel should be held to promote recognition between participants should time and logistics allow.

[a.] Although this Department cannot dictate to an allied agency how their personnel should be dressed, this agency expects allied agencies to wear garments that are conspicuously marked to provide immediate recognition as an officer.

[b.] The assigned on-duty Shift Supervisor, when practical, will meet with the other agency's on-scene Supervisor prior to the execution of the search warrant to request that the directive of this chapter is met.

[c.] If the other agency's tactical event plan does not meet the reasonable expectations or requirement of Departmental policy, i.e., inadequate staffing, inadequate current knowledge of the structure and occupants or other safety concerns, plainclothes officers recognition or the absence of an agency supervisor on scene, the Department on-duty Shift Supervisor is to inform the other agency of the inadequacies and that Department personnel will not become further involved until the inadequacies have been resolved.

(7) Undercover officers whose dress and appearance are not conventional for law enforcement personnel will not be involved in the actual execution of a search warrant unless their particular training and knowledge is necessary for the execution of the search itself. In any event, they will not be among the first officers to enter the premises, and normally will not be in view of any person inside the premise until entry has been accomplished.

NOTE: Body armor will be worn by all officers involved in the initial entry.

(8) Forced Entry: The amount of force used to enter a building in compliance with the search and arrest laws and procedures must be reasonable under the circumstances.

An officer and their supervisor may be held civilly liable when unreasonable force is used resulting in the destruction of property. When the supervisor of the detail executing the search warrant anticipates forcing entry into an occupied structure and/or using force against the occupants, they will comply with the following and include that information in their tactical plan:

[a.] Determine and make provision for communications and specialized equipment needs.

[b.] Coordinate required assistance from specialized support units.

[c.] Consider availability of medical resources.

[d.] Discuss strategies and tactics for approaching, entering, securing, and leaving the structure.

[e.] Develop the threat potential and the anticipated necessity for using force and making arrests with all members of the entry and search teams.

[f.] When the potential for violence is imminent and considered significant, the supervisor-in-charge of the search warrant event will review the plan of execution with PGPD's EST supervisor and the on-duty Shift Supervisor to evaluate effectiveness and approve the necessity of action.

(9) Any deviation from the execution of search warrant procedures will be cleared through Investigative Services Commander or his/her designee.

(10) Photographs: Photographs will be taken before the search, after the search, and of any damage caused by the execution of the warrant.

5. Seizure of Property: Although several officers may engage in the search, an officer should be designated the "finder" in order that one officer is responsible for documenting the circumstances of the search for the search and seizure of property.

a. Officers executing a search warrant are not necessarily limited to seizing only items described on the warrant. During the execution of the warrant, officers may seize contraband, items of property which the officer has probable cause to believe are stolen, instrumentalities of a crime, or items of evidentiary value, even though such property is not named on the warrant. Such articles may be seized only if they have been found within the course of a proper search under the warrant.

Example: A warrant for a stolen television set would not justify the seizure of a pistol found in a dresser drawer.

b. When an officer, by virtue of a search warrant, seizes property, a detailed receipt for the property seized will be given to the person from whom it was taken or in whose possession it was found.

(1) If the property is seized when a person is not present, a receipt will be left at the location where the property was found.

(2) The Search Warrant Inventory Return Form shall be signed by the individual designated as the Finder and left at the scene.

6. Returning a Search Warrant: A warrant must be executed within fifteen (15) days and returned to the issuing judge within ten (10) days of execution. No warrant shall be served once it expires. A written list of all property seized as the result of the warrant will be returned to the issuing judge along with a copy of the warrant.

7. Obtaining Physical Evidence from a Person: An officer must apply for a search warrant to obtain physical evidence (i.e. fingerprints, photographs, handwriting sample, blood sample, urine sample, etc).

D. Confidential Informants

1. When information leading to the request for a search warrant has been supplied by a confidential informant, the underlying circumstances demonstrating that the informant is credible or that his/her information is reliable, and the underlying circumstances which led the informant to conclude that the contraband, fruits of a crime, instrumentalities of a crime, items of evidentiary value, would be where they claimed it to be, must be stated in the affidavit.

a. When the informant's information is used to establish the probable cause and they need to remain confidential, the reason will be substantiated in the affidavit.

i. The officer will make certain that the informant is not present when the search takes place, because if the informant becomes a material witness to the crime charged, the court will order his identity disclosed.

ii. When possible, the officer who is using the informant should be the affiant for the search warrant.

2. Individuals on probation or parole, or who are currently charged with an offense: An officer shall not solicit a person on probation or parole to act as an information source when these activities would result in violating any of the terms of the probation or parole, without first obtaining the approval of the individual's probation or parole officer and an Assistant State's Attorney. Prior to contacting the subject's probation/parole officer or the State's Attorney, the investigator will obtain consent from the Investigative Services Division Commander.

E. Consent to Search (Without a Warrant)

1. If the person against whom the search is directed consents to the search of his/her person, a search may be made and any fruits of a crime, instrumentalities of a crime, weapons or contraband may be seized.

- a. Courts are sometimes reluctant to find that consent was in fact voluntary when given by a person in custody who might not be fully aware of his/her constitutional right to refuse permission for a search.
- b. Reliance upon the supposed consent of the defendant is risky because it cannot be anticipated how the facts surrounding the alleged consent, as testified to by the officer and the defendant will appear to the court.
- c. A search may be directed against a defendant's property if consent is given by a person who jointly occupies the premises with the defendant or if the person has an equal right to the use and possession of the premises. However, if the defendant, or anyone with standing, objects to the search, a warrant will be obtained prior to the search.
- d. Equal rights can usually be inferred when the person has a property right or other connection with the premises or with the defendant which establishes that he is entitled to bring guest into the premises. This includes a spouse.
- e. While it is permissible to conduct searches under such circumstances, it is unwise as a matter of general practice to rely upon the arrested person giving consent at the time of his/her arrest if it is possible to obtain a search warrant in advance of the arrest.
- f. Any consent to search must be voluntary, without fear, threats, or promises and given by a person having authority to give consent or when the facts surrounding the consent would lead a police officer to believe that the person has such authority.
- g. Consent may be withdrawn at any time and, should this occur, the search must be terminated.
- h. Consent searches are limited to areas which reasonably appear to be within the scope of the consent given.
- i. Consent searches should be in writing on the Consent to Search Departmental Form and should be signed by the person having legal authority to consent to the search.
- j. If the person who was asked for consent does not respond, silence is not considered to be an affirmative answer.

F. Search Incidental to Lawful Arrest

- 1. Warrantless searches incidental to a lawful arrest are justified:
 - a. For officer safety concerns to search for weapons.
 - b. To seize the means the suspect might use to effect his escape.
 - c. To prevent the destruction of the fruits or instrumentalities of the crime, or evidentiary items of the crime for which the arrest was made.

2. Search for items beyond the person must be limited to those areas which remain within the reach of the arrestee.

a. Reach is not confined to arm's length but includes the areas reachable by the person if they made a lunge or quick move to gain possession of a weapon or of destructible evidence.

b. If it is necessary for the person arrested to move about after their arrest to put on clothing or assemble belongings, those areas to which they continue to have access may also be searched for weapons or destructible evidence (another room to get dressed, bathroom etc.).

3. Protective Sweeps: A cursory search of premises or limited search of the area around the arrestee which is based on reasonable suspicion.

G. Emergency Search (Without a Warrant)

1. Whenever there is a need to conduct a search of a place (even of the location where it is anticipated the arrest will be made), and if the arrest does not have to be made immediately, the proper approach is to obtain a search warrant before the arrest so that it may be executed at the time of the arrest.

a. A search warrant is not required when exigent circumstances exist. Exigent circumstances may include the following types of situations:

i. Response to an emergency (medical, fire, bomb scare, etc.)

ii. Hot pursuit of a felony suspect (some sort of chase).

iii. Possibility of violence (hostage/barricade situation, sexual assault, etc.)

2. When reporting facts in an Incident Report which pertain to a search and seizure based upon exigent circumstances, officers should articulate specific information that caused them to take immediate action. For example:

a. Whether or not the suspect was believed to be armed.

b. Whether or not there was a likelihood that the suspect would have escaped if not immediately arrested (prior record of escapes).

c. The seriousness of the offense.

d. Whether or not the likelihood of evidence being destroyed existed.

3. Whenever there is a need to conduct a search of a place, but it is necessary to make an arrest before a search warrant can be obtained to preclude the suspect's escape or the loss of evidence, the officer will consider the following alternatives:

a. Whether there are grounds to arrest any other person present at the place of arrest so they will not have an opportunity to dispose of the evidence while a search warrant is being sought.

b. Whether there is some risk, even though no one else is within the premises, that someone might enter and dispose of the evidence while a search warrant is being obtained. One officer may be left to guard the premises while another obtains the search warrant.

c. When other persons are present who cannot be lawfully arrested or whenever another officer cannot be summoned to guard the premises, it may be permissible to proceed with the search of the premises at the time of arrest without a search warrant.

H. While Searching for Suspect: Police lawfully on premises for the purpose of making an arrest may search the premises for the purpose of finding the individual to be arrested:

1. When the person is known to be present and armed, it is permissible for officers conducting the search to look into small places where they might have a weapon hidden until the individual has been located and placed under arrest.

2. Evidence found may be seized without a warrant if there is probable cause to believe that the evidence will aid in the particular apprehension or conviction.

I. Stop and Frisk: The stop and frisk right applies only when a police officer observes suspicious conduct that, based upon his/her training, knowledge and experience, indicated criminal activity occurred or may occur and he/she reasonably fears that the individual observed may be presently armed and dangerous to him/her or to others.

1. Officer may carefully conduct a limited frisk of the outer clothing of the suspected person for the purpose of discovering weapons which might be used to assault them.

2. Suspicious activity alone will not allow a frisk for illegal drugs, instrumentalities, etc. It is reasonable suspicion of dangerous weapons only that creates the reasonableness of this type of frisk without a warrant.

3. Officers will not stop an individual based only on race, religion, national origin, gender, sexual orientation or economic status.

4. Officers will record all self-initiated stop and frisk incidents on an Incident Report and forwarded them with supervisory endorsement to the Records Unit.

J. Searching a Vehicle Without a Warrant:

1. Automobiles and other conveyances may be completely searched without a search warrant only if there is probable cause to believe that the vehicle contains seizable articles.

2. If the search of the vehicle is incidental to arrest, the entire passenger compartment, including closed containers, may be searched.

3. If the vehicle has no connection with the offense, the search can be only within that area immediately accessible to the arrestee.

4. If probable cause exists to search a vehicle that was in a mobile condition when it came into the custody of an officer, a warrantless search may extend anywhere in the vehicle, including closed containers, in which the items being searched for may be found.

5. If probable cause exists to search a container which is in a vehicle, a search warrant is not necessary to search the container even though there is no probable cause to search the entire vehicle.

K. Arrest Warrants: An arrest warrant may be obtained for the purpose of entering a residence to arrest a suspect when other lawful means are not available (exigent circumstances, consent, etc.).

1. The need of the community will be considered as a factor in determining the requirement for obtaining an arrest warrant.

2. Only sworn officers shall affect a physical arrest during the execution of an arrest warrant.

L. Telephonic Search Warrants: Currently, judges in Prince George's County will approve search warrants in person.