

**FERGUSON POLICE DEPARTMENT
GENERAL ORDER**

TITLE: Search Warrants TOPIC: Policy and Procedure governing search warrants		GENERAL ORDERS: 20-8.27
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I. Purpose

The purpose of this policy is to establish procedures for obtaining, executing, reporting, and reviewing search warrants.

II. Policy Statement

It is the policy of the Ferguson Police Department ("FPD" or the "Department") to obtain and execute search warrants as part of a comprehensive strategy to prevent crime, consistent with the community's priorities for enforcement. All search warrants will be obtained and executed in a manner that conforms to the constitution of the United States and federal civil rights laws, and reflects the Department's commitment to procedural fairness and justice and community-oriented policing. FPD officers will not conduct any search, of person or property, without probable cause and a warrant or an exception to the warrant requirement, including but not limited to a search incident to arrest or exigent circumstances. Officers will not use race, color, ethnicity, national origin, religion, gender, sexual orientation, disability, or other protected characteristics as a factor, to any extent or degree, in searching any person, except as part of an actual and credible description of a specific suspect in an ongoing criminal investigation. Officers must document the request, approval, and execution of all search warrants using specific, articulable objective facts in accordance with the procedures set forth in this general order.

III. Definitions

Exigent Circumstances: emergencies in which a reasonable person would believe that imminent bodily harm to a person or persons or the destruction of evidence is likely.

Frisk or pat down: an officer passing his or her hands over the outer clothing of a person in a search for weapons.

Limited English Proficient ("LEP"): a person who does not speak English as his/her primary language and has a limited ability to read, write, speak, or understand English. LEP individuals may be competent in certain types of communication (e.g., speaking or understanding), but still be LEP for other purposes (e.g., reading or writing).

Probable Cause: the facts and circumstances known to the officer at the time would justify a prudent person in believing the person committed or was committing an offense. Probable cause is based upon an objective assessment of the facts and circumstances presented to the officer and requires a higher level of evidence than reasonable suspicion.

Procedural Fairness and Justice: The process of building trust with members of the community by adopting and carrying out the following principles: treating community members with dignity and respect, giving individuals voice during encounters, being unbiased and transparent when making decisions, and communicating trustworthy motives. This includes the idea of fairness in the processes that resolve disputes and allocate resources, including the administration of justice and legal proceedings

Protected characteristics: include, but are not limited to, race, color, ethnicity, national origin, religion, gender, gender identity, sexual orientation, age, immigrant status, disability, housing status, occupation, or limited English proficiency.

Reasonable Suspicion: articulable facts that, within the totality of the circumstances, lead an officer to reasonably believe that the suspect has committed, is committing, or is about to commit a crime.

Search Incident to Arrest (“SITA”): a warrantless search that is an exception to the general Fourth Amendment search warrant requirement. It is limited to the immediate areas in which the arrestee might obtain a weapon or evidentiary items.

Search Warrants: documents that give police specific rights or powers such as the right to search something or somebody.

Seizure: occurs when an officer’s words or actions convey to a reasonable person that he or she is not free to leave.

IV. Principles

- A. Officers will not search any person or property without:
 1. probable cause; and
 2. a warrant or an exception to the warrant requirement, including but not limited to a search incident to arrest or exigent circumstances.
- B. Officers will not use race, color, ethnicity, national origin, religion, gender, sexual orientation, disability, or other protected characteristics as a factor, to any extent or degree, in searching any person, except as part of an actual and credible description of a specific suspect in an ongoing criminal investigation.
- C. Officers will not use or rely on information known to be materially false or incorrect in conducting any search or obtaining any search warrant.
- D. Officers will conduct searches in a dignified and courteous manner
- E. Officers will explain to the person being searched the reason for the search and how the search will be conducted.
- F. Officers will conduct searches with due regard and respect for private property interests and in a manner that minimizes damage. Officers will leave property in a condition as close as reasonably possible to its pre-search condition.
- G. In order to minimize the need for forcible entry, and where doing so would not place officers at heightened risk, officers will attempt to obtain keys, combinations or access codes when a search of locked property is anticipated.
- H. Not every investigatory stop or detention justifies conducting a pat-down or frisk. The purpose and scope of a frisk (also called a “pat down”) is to discover weapons or other items which pose a danger to the officer or those nearby. It is not a generalized search of the entire person. The justification of a pat down or frisk is officer safety and the safety of others nearby. An officer may only conduct a frisk of an individual who has lawfully been stopped or detained, and only when the officer has an articulable reasonable suspicion that the person is armed **and** presently dangerous. Officers may **not** frisk for the purposes of discovering evidence or the proceeds or instrumentalities of a crime. An officer must not pat down or frisk a bag or item of personal property unless the member has a reasonable suspicion that the person is armed and presently dangerous and the bag or item could contain a weapon and is within the person’s reach.
- I. When an officer is to search a person not of the same gender as the searching officer, the officer will make a reasonable effort to summon an officer of the same gender as the person to conduct the search. When it is not practicable to summon an officer of the same gender as the subject, the searching officer will:
 1. Have another officer or a supervisor witness the search.
 2. Not search areas of the body covered by tight-fitting clothing, sheer clothing or clothing that could not reasonably conceal a weapon.
- J. Officers will not frisk any person for the purpose of determining that person’s gender or to view or touch the person’s genitals. Where same-gender searches are required by law or Department policy, the officer will respect the gender identification expressed by the individual. Where the individual does not self-identify and the gender identity is not clear to a reasonable person or the officer is uncertain, the officer

will take reasonable, non-invasive steps to determine the gender identity, such as asking the individual how the individual would like to be addressed.

- K. If an officer has a specific, articulable objective basis to remove a religiously significant garment or object in order to conduct an adequate search, the officer shall remove it respectfully and, if known and possible, in accordance with the individual's religious beliefs. Officers shall return to the individual any removed religiously significant garment or object upon the conclusion of the encounter.
- L. Officers will activate their body-worn camera recorders ("BWVR") during all searches, including any request for consent to conduct a search, vehicle searches, and all other searches, except where specifically articulated and approved privacy considerations require that a search not be recorded. See *General Order X.X.X. Body Worn Video Recorders*
- M. Officers must document all searches using specific, articulable objective facts in accordance with the procedures set forth in this general order.

V. Requirements and Procedures

A. Search Warrant Preparation

1. Officers must work with the Detective Bureau when drawing up and applying for a search warrant. Before any officer assigned to the Bureau of Field Operations attempts to obtain a search warrant, the officer's supervisor will contact the Detective Bureau. Detective Bureau personnel will assist the individual officer(s) in drawing up, applying for, and executing the search warrant.
2. If no detective is on duty at the time in which a search warrant is deemed to be proper for the continuation of a criminal investigation, the commander of the Detective Bureau (who has an "on call cell phone") will be contacted and advised of the circumstances.
3. The officer requesting the warrant will contact the St. Louis County Police Dispatcher at 314-889-2341 and obtain the name of the prosecutor who is on call and contact him or her for instructions and search warrant protocol.
4. Officers will provide an accurate, complete, and clear statement of probable cause, the source(s) of information forming the basis for probable cause, a description of the offense, the place or thing to be searched, the scope of the search, and the time and method of the search in any affidavit or sworn declaration supporting an application for a search warrant.
5. The building or location to be searched must be described in detail in the search warrant application (i.e. numerical address, one- or two-story building residence or apartment building, brick or frame, colors, direction building faces, number of rooms, exact location of building to be searched) and any other descriptive information characteristics of the particular building.
6. Items being sought in the warrant must be described in as much detail as possible, serial numbers are generally required in the search warrant on items which were numbered by the manufacturer (TV, guns, radios, tape recorder, etc.). The location of the items within the residence, if known, should also be mentioned on the warrant (i.e. bedroom, closet, chest, etc.).
7. Supervisors will review each request for a search warrant, including each affidavit or declaration before it is filed by an officer in support of a warrant application, for appropriateness, legality, and conformance with Department policy.
8. Supervisors will assess warrant applications, and all supporting documents for: accuracy and authenticity; "canned," boilerplate, or conclusory language; inconsistent information; and inadequate articulation of a legal basis for the police action taken.
9. If a confidential informant is being utilized, on rare occasions a prosecuting attorney or judge might request to speak to the confidential informant. In those instances, a FPD supervisor will make arrangements to bring the confidential informant to the courtroom as requested.

B. Risk Determination and Planning of Search Warrants in Ferguson

1. The execution of search warrants entails various levels of risk, which need to be assessed prior to warrant execution. The determination of risk associated with a particular search warrant is made by the supervisor who will ultimately be on-scene supervisor working with the officer(s) who will execute the warrant. The risk assessment dictates who handles the warrant and the associated documentation requirements.

2. There are three basic categories of risk that can be associated with the execution of a search warrant:
 - a. **No Risk** – The person, item, vehicle or structure is securely in police custody and control or the documentation/item subject to the warrant is in the custody of an organization or business in a stable, safe environment posing no threat. FPD will **not** call a tactical unit to assist in the execution of a no-risk search warrant. The scene must be stable and/or secured. Examples include:
 - i. A crime scene that has been completely secured and no suspects or persons other than police personnel are on the scene.
 - ii. The item or vehicle is secured, impounded or in custody.
 - iii. The structure is empty of persons or animals other than police personnel.
 - iv. Video from surveillance cameras at a business/residence.
 - v. Business records from a company.
 - vi. Buccal swabs only.
 - b. **Moderate Risk** – Everything that is not classified as no-risk or high-risk. Moderate-risk search warrants pose some level of risk but are not so risky as to require automatically the involvement of a another municipal, county, or state law enforcement agency's tactical unit. If the warrant does not fall into the no-risk or high-risk category, the on-scene supervisor may choose to execute the warrant or may contact the tactical unit of another municipal, county, or state law enforcement agency ("outside agency") for their availability to execute the warrant. Supervisors shall consider and provide solutions to the factors in *Appendix A: Risk and Planning Factors* in the operational plan to execute a search warrant (see Section IV.C.4 below). Where a supervisor reasonably believes that additional tactical support is needed to protect officer and public safety during execution of a moderate risk warrant or there are any questions whether the warrant is a high-risk warrant, the supervisor may contact the tactical unit of an outside agency, advise the on-duty tactical unit supervisor at that agency of the assessment, and inquire if that agency's tactical unit wishes to execute the warrant. In such cases, the FPD supervisor shall document in the operational plan the reasons for contacting an outside agency's tactical unit. If contacted, the outside agency's tactical unit supervisor has the discretion to execute a moderate-risk warrant or leave the execution to the FPD field supervisor and officers. If there is a disagreement about the risk level between on-scene FPD supervisor and the outside agency's tactical unit supervisor, the assessment and classification made by the outside agency's tactical unit supervisor shall be considered conclusive. Examples of moderate-risk warrants include:
 - i. A search warrant for stolen TVs in an occupied house.
 - ii. A search warrant to collect evidence with DNA (other than a buccal swab) associated with a sex crime.
 - c. **High Risk** – Warrants that pose a significant safety risk and require the expert planning, specialized equipment and execution by the tactical unit of an outside agency to maximize safety and effectiveness. Warrants are determined to be high risk by evaluating the automatic high-risk factors or after discussion between the on-scene supervisor and the outside agency's tactical unit supervisor. **High-risk warrants are ONLY executed by the tactical unit of an outside agency.** The factors that automatically trigger the high-risk category include:
 - i. The suspect is associated with a paramilitary, terrorist, or violent extremist organization or an identifiable criminal gang.
 - ii. The suspect is known or believed to possess fully automatic weapons or explosives.
 - iii. There are armed counter surveillance personnel present at the site.
 - iv. The site is known or believed to be booby-trapped.
 - d. In the event that an outside agency's tactical unit is called to execute a moderate- or high-risk search warrant, FPD will communicate to that outside agency's tactical unit the limitations and requirements for their participation in the operation, including:
 - i. the outside agency tactical unit shall only conduct the duties of the Entry Team;
 - ii. FPD officers will conduct the related search and any arrests; and
 - iii. any other limitations and requirements related to force, arrests, and officer uniforms.

3. Officer Responsibilities

- a. The officer requesting the warrant will prepare and provide the on-scene supervisor and any other officers involved in the warrant's execution a sketch/photograph of the target location, as well as any other information relevant to the risk associated with executing the warrant or information necessary to protect the safety of anyone present at the location to be searched. Such relevant information may include:
 - i. the presence and/or location of known risk factors (e.g., weapons, animals, locked gates, or cohabitants)
 - ii. whether there is known gang affiliation or violent criminal history, police or military experience, or a known history of drug or alcohol abuse
 - iii. the possible presence of infants, small children, elderly or disabled persons, persons with medical conditions, mental illness, or other physical or developmental disabilities.
- b. Prior to execution of the search warrant, officers shall conduct surveillance of at least one square block around the location to be searched. Officers shall pay special attention to locate unmarked vehicles and plainclothes members who may be at the location to be searched or in the immediate area.

4. Supervisor Responsibilities

- a. Prior to executing a search warrant other than a no-risk search warrant, the on-scene supervisor shall meet with the officer who applied for the warrant in order to assess probable cause factors which led to the issuance of the warrant, confirm the location to be searched, and develop an operational plan for execution of the warrant.
- b. The operational plan must include:
 - i. Each officer to be involved in the execution of the warrant and the duties of each officer.
 - ii. Plan for approach (e.g., how will the building be covered, who will be where, etc.)
 - iii. Measures to prioritize and ensure the safety of any infants, small children, elderly or disabled persons, persons with medical conditions, mental illness, or other physical or developmental disabilities who may be present at the location to be searched.
 - iv. Measures (including the presence of equipment) to properly manage any animals that may be present without using deadly force.
 - v. A proposed hospital route in case any officer or individual is injured during the execution of the warrant.
- c. After the operational plan is drafted, the on-scene supervisor will conduct an operational meeting with all officers participating in the execution of the search warrant. An operational meeting will not be conducted in the field unless exigent circumstances preclude all participating officers from meeting at a designated location. During the operational meeting, the supervisor will assign officers to the following duties:
 - i. Entry Team
 - ii. Arrest Team (if applicable)
 - iii. Search/Recovery of Evidence Team
 - iv. Emergency Withdrawal Team (ensures police safety, once the command is given, if an immediate withdraw of members from the premises becomes necessary).

C. Search Warrants in Other Jurisdictions

1. When an officer seeks a search warrant in another jurisdiction or unincorporated area of St. Louis County, the officer will notify the Detective Bureau. The Detective Bureau personnel will assist with drawing up, applying for, and executing the search warrant consistent with this general order (*Section V.B* above).
2. The Commander of the Detective Bureau will notify the law enforcement agency within the jurisdiction of the search warrant in advance of the actual execution of the search warrant and request their assistance request for the execution phase.

VI. Executing Search Warrants

- A. Once a search warrant is obtained, it must be executed as soon as possible after the required risk assessment has been conducted and any necessary operational plan drafted.
- B. No search warrant will be executed until it is on scene.
- C. Officer Responsibilities
 - 1. All officers participating in the execution of a search warrant requiring an operational plan shall review that plan, which will detail each participating officer's duties, and participate in the operational meeting with all officers participating in the execution of the search warrant as described in Section V.C.4.c of this General Order.
 - 2. Each participating officer must learn his or her duties, review the information on location to be searched, and understand any other relevant information in the plan prior to arrival at the site.
 - 3. All officers must adhere to the operational plan throughout the entire warrant execution process, except in exigent circumstances.
 - 4. At least one of the officers present on the scene will be in uniform and all others will wearing vests identifying them as police officers.
 - 5. All officers participating in the execution of a search warrant shall activate their BWVR prior to execution. *See General Order X.X.X: Body Worn Video Recorders – (BWVR).*
 - 6. All officers participating in the execution of a search warrant shall continually monitor and assess the level of threat present, up to the knock. If additional risk factors arise, officers will notify the on-scene supervisor immediately.
 - 7. Upon arrival at the scene, the officers executing the search warrant are required to first knock forcefully, identify themselves as police officers and state their purpose in a loud voice, and wait a reasonable amount of time an occupant would take to access the door based on the size of the residence before effecting entry.
 - 8. No-knock warrants require particularized exigent circumstances. The exigent circumstances for allowing a no-knock warrant are when the officer(s) has an articulable reasonable suspicion of:
 - a. threat of violence or harm to members;
 - b. probability of harm to occupants;
 - c. escape of suspects; or
 - d. destruction of evidence.
 - 9. Prior knowledge of the suspect alone, without additional factors, is not enough to justify a no-knock warrant.
 - 10. One officer will show a signed copy of the search warrant, complete with the judge's signature and the names of any individuals to be searched pursuant to the warrant, to the owner/agent in charge of the location, unless the warrant is sealed. Nothing in this provision is intended to limit officers from conducting warrantless searches or seizures for which they have sufficient legal basis (e.g., pat down/frisk SITA).
 - 11. Officers may gather all persons inside the premises together and keep them at one location inside the premises for a reasonable period of time while the search is being conducted.
 - a. Officers are not permitted by law to search individuals found inside of a searched location during the execution of a search warrant unless those individuals are specifically named in the search warrant.
 - b. While executing a search warrant in a public place, officers may detain individuals present only if they have reasonable suspicion that those individuals have committed, are committing, or are about to commit a crime.
 - 12. Officers will conduct the search one room or area at a time. In executing the search, officers will not exceed the scope of the search warrant.

13. One officer will inventory any items seized during execution of the warrant.
14. If any property is seized, the officer shall give to the person from whose possession it is taken, if they are present, a copy of the warrant and an itemized receipt of the property taken. If no person is present, the officer shall leave the copy and the receipt at the site of the search.

D. Supervisor Responsibilities

1. Absent exceptional circumstances, supervisors will be present for the execution of the search warrant. A supervisor will document in a memorandum to the case file the exceptional circumstances preventing his or her presence.
2. The decision to use force to enter the building or area to be searched will be made by the supervisor only and when in his or her judgment, no reasonable alternative exists.

VII. Reporting Search Warrants

A. Requirements for Documenting Execution of Search Warrants

1. Officers will complete an incident report to document the execution of the search warrant. Officers will append the search warrant and all supporting documentation to the incident report prior to completing the report.
2. The original copy of the completed search warrant and a copy of the inventory and return sheet will be posted in a conspicuous place inside the building prior to the officer's departure when there is no occupant present to accept it.
3. FPD will maintain centrally a log listing:
 - a. each search warrant
 - b. the case file where a copy of such warrant is maintained
 - c. the officer who applied for the search warrant
 - d. each supervisor who reviewed the application for the search warrant; and
 - e. documentation if the application is disapproved by a reviewing supervisor, including why it was disapproved and what remedial actions, if any, were taken by the supervisor (disciplinary or training). The supervisor shall document corrective action in the Supervisor Feedback Log (see *General Order X.X.X Non-Disciplinary Response to Minor Violations*) or by initiating a formal disciplinary investigation (see *General Order X.X.X Professional Standards and Internal Investigations Disciplinary Guidelines*).
4. The completed 2nd and 3rd copies of the "warrant" and the "return and inventory" sheet are to be returned to the issuing judge within 10 days from the date of issue. The officer who obtained the warrant should return it in person to the judge or his clerk.
5. Officers completing search documentation will include all information required by the required reports, in addition to the following:
 - a. Any complications or delays that contributed to an inability to fill out all information required by this general order; and
 - b. The existence of any BWVR and/or in-car camera audio and/or video footage. (*General Order X.X.X. Body Worn Video Recorders and General Order X.X.X. In-Car Camera (Mobile Video/Audio Recorders)*).
6. Officers will not use conclusory statements, boilerplate, or canned language (e.g., "furtive movements" or "fighting stance") to document searches. Instead, officers will clearly articulate the specific circumstances and objective facts that supported their finding of reasonable suspicion justifying the investigative stop or detention.
7. Officers will turn completed all required search documentation into their supervisor prior to the end of their shift for corrections.

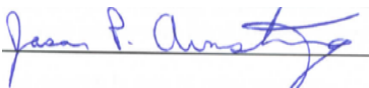
B. Failure to Comply with Procedures for Documenting Search Warrants

1. Any FPD officer who conducts a search but does not report that search consistent with this general order will be subject to discipline, up to and including termination.
2. FPD officers who submit documentation of a search that contains material omissions or inaccuracies will be subject to corrective action, including discipline as appropriate.
3. Where material omissions or inaccuracies are found to be deliberate, FPD officers will be terminated. See *General Order 1.1.2: Duty of Candor*
4. Policies governing the disciplinary process are included in the *General Order X.X.X Disciplinary Matrix*.

VIII. Reviewing Documentation

- A. Supervisors will review each incident report and all required accompanying documentation completed by all officers under their supervision before the end of their shift that follows the shift during which the officer executed a search warrant. If, however, such a warrant execution resulted in a person being taken into custody and placed in a detention facility, the supervisor will review that incident report prior to the of the supervisor's shift. In reviewing their assigned officers' incident reports, supervisors will check for completeness, accuracy, legal sufficiency, and compliance with FPD policy.
- B. Supervisors will assess incident reports for: accuracy and authenticity; "canned," boilerplate, or conclusory language; inconsistent information; and inadequate articulation of a legal basis for the police action taken.
- C. Supervisors will return incomplete or inaccurate incident reports to officers for completion and correction.
- D. Each supervisor will document those searches that are legally unsupported, are in violation of FPD policy, or that indicate a need for corrective action or review of Department policy, strategy, tactics, or training.
- E. The supervisor will take appropriate action to address violation or deficiencies, including recommending non-disciplinary corrective action for the involved officer(s), and/or referring the incident for administrative or criminal investigation.
- F. For each subordinate, the supervisor will track each violation or deficiency and the corrective action taken, to identify officers needing repeated corrective action.
- G. A commander will review, in writing, all supervisory reviews related to searches that the supervisor has determined to be supported by proper legal justification, in violation of FPD policy, or indicative of a need for corrective action or review of agency policy, strategy, tactics, or training. The commander will complete this review within seven (7) days of receiving the document reporting the even in question.
- H. The commander will evaluate the corrective action and recommendations in the supervisor's written report and ensure that all appropriate corrective action is taken, including referring the incident for an internal or criminal investigation, if warranted.

By Order of:



Jason P. Armstrong
Chief of Police