

Stowe Police Department

General Order: 2.12 Home Searches (Search and Seizure Dwellings)	Related General Orders: 2.11 Stop, Arrest and Search of Persons
This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.	
Applicable Vermont Statutes: Vermont Constitution Chapter 1 Article 11; V.R. Cr. P. Rule 41	
Date Implemented: 03/15/2013	Date Revised:

I. PURPOSE:

1. The purpose of this policy is to direct officers and supervisors with respect to dwelling entries.

II. POLICY:

1. The policy of this Department is to protect and serve the constitutional rights of all citizens when conducting dwelling entries while balancing the needs of law enforcement in solving crime for the protection of the community.

III. DEFINITIONS:

Probable Cause (search): Facts and circumstances based upon observations or information that would lead a reasonable law enforcement officer to believe that evidence of crime exists and that the evidence exists at the place to be searched.

Exigent Circumstances Entry: Entry of a dwelling without a warrant due to some existing emergency that would not allow an officer time to get a warrant.

Emergency Aid Exception: An entry and search which is not motivated by intent to arrest and seize evidence but rather there is an emergency at hand and immediate need for police assistance for the protection of life or property.

Search Incident to Arrest: A search of the arrestee and their immediate area of control that is allowed whenever a custodial arrest is made.

Consent: The voluntary granting of permission for an officer to enter an area that is protected by the 4th Amendment, by a person who has a reasonable appearance of authority over that area.

Dynamic Entry: The utilization of a special team i.e. SWAT, ERU etc. when executing a high-risk warrant, entering to control a barricaded subject, or similar high risk event.

IV. PROCEDURE:

1. At the outset officers are directed that there are only three lawful methods upon which he or she may enter a person's dwelling. These methods include a warrant (arrest or search-with differing rules for each), exigent circumstances, or consent.

- A. **Risk Assessment Matrix:** Unless exigent circumstances exist officers shall compile a risk assessment matrix prior to planning any entry of dwellings or other buildings.
- B. **Written Operations Plan:** Unless exigent circumstances exist officers shall complete a written operations plan prior to executing any warrant entry of a dwelling or other building.
- C. **Knock and Announce:** Prior to considering a forced entry into a dwelling, officers must knock at the entrance and announce their identity and purpose unless one of the following circumstances exist:
 - a. The officer's purpose is already known to the occupant.
 - b. When the personal safety of the officer or others would be jeopardized by the announcement.
 - c. When the delay caused by the announcement may enable the suspect to escape.
 - d. When a prisoner has escaped and retreated to his dwelling.
 - e. When the announcement may cause evidence to be destroyed.
 - f. **NOTE:** If officers believe that one of the above circumstances exist prior to obtaining the warrant, they should seek judicial approval for a "no-knock" warrant by outlining the factors believed to exist in their affidavit.
 - g. In determining how long an officer must wait before forcing entry following the knock and announcement, officers should consider the nature of the item sought and how long it would take to destroy the item. The United States Supreme Court found 15-20 seconds to be a reasonable amount of time in a drug warrant case.

2. **Arrest Warrant-Felony or Misdemeanor:** An officer may enter the dwelling of the subject of an arrest warrant in cases where the officer also has probable cause to believe the subject is inside the dwelling.

- A. Knock and Announce Rules Apply
- B. Search Incident to Arrest-3 Zones
 - a. Officers may, at the time of the arrest, search the arrestee's immediate area of control while the subject is present.

- b. Officers may, at the time of arrest, also look into, but not go into, areas adjoining the room of arrest, from which an attack could be launched.
 - c. Officers may conduct a protective sweep, limited to those places where a person could be, in cases where the officers have reasonable suspicion to believe someone else on the premises poses a danger to the officer.
 - d. Under Vermont law, containers in possession of an arrestee, or in the arrestee's immediate area of control, cannot be searched incident to arrest unless there is probable cause to believe the container contains evidence or contraband and there are exigent circumstances such that the items will be destroyed in the time it would take to obtain a warrant. Exigency does not exist once an officer has control of the container.
 - C. Officers must obtain a search warrant before entering the residence of a third party in order to search for the subject of an arrest warrant unless exigency or consent exists.
- 3. **Search Warrants-** Officers must have probable cause to believe that evidence of a crime exists and must have probable cause to believe it will be located at the place to be searched.
 - A. Knock and Announce Rules Apply: All necessary and reasonable force may be used to effect an entry into any building or part thereof to execute a search warrant if, after verbal notice or a good faith attempt at verbal notice by the officer executing the warrant which states the officer's authority and purpose:
 - a. He or she is refused admittance;
 - b. The person or persons on the premises refuse to acknowledge the verbal notice or the presence of persons inside the building is unknown to the officer; or
 - c. The building or property is unoccupied.
 - d. Note: where the officer has reasonable grounds to believe that the announcement will place the officer in greater peril or lead to the immediate destruction of evidence, the officer may dispense with the knock and announce requirement.
 - B. The court issuing the warrant may authorize the officer executing the warrant to make entry without first knocking and announcing his or her office if it finds, based upon a showing of specific facts, the existence of the following exigent circumstances:
 - a. The officer reasonably believes that if notice were given a weapon would be used;
 - (i) Against the officer executing the search warrant; or
 - (ii) Against another person.

- b. That if notice were given there is an imminent danger that evidence will be destroyed.
- C. The search warrant itself must particularly describe the place to be searched and must also particularly describe the items to be seized.
- D. The scope of a search warrant is limited by information (i.e. information developed indicates that items are stored in a specific location). Scope may also be limited by the size of the item; (i.e. if looking for a stolen piano, one would not open a bureau drawer).
- E. All searches warrants must be executed in a reasonable manner.
- F. Under Vermont rules:
 - a. Searches must be conducted within a specified period of time, not to exceed ten days from the issuance of the warrant.
 - b. The warrant shall be served between the hours of 6:00 a.m. and 10:00 p.m. unless the warrant directs that it may be served at anytime.
 - c. While not the preferred method, a search warrant may be obtained by fax under the following circumstances:
 - (i) A judicial officer is not reasonably available;
 - (ii) When an attorney for the state has reviewed and authorized the application and affidavit;
 - (iii) When the warrant could not have been applied for when a judicial officer was reasonably available; and
 - (iv) When there is reasonable cause for issuance of the warrant before the time when the judicial officer would reasonably become available.
 - d. If the warrant affidavit is based upon hearsay from a confidential informant, it must be established:
 - (i) The confidential informant is an inherently credible [reliable] source i.e. provided information in the past that led to charges/convictions; or
 - (ii) That the information provided by the confidential informant in this instance was credible i.e. show that the information provided was against the informant's penal interest or that the officers have corroborated the information to the point where it would be reasonable to rely on the information as accurate.

- G. **Detention and Search of Persons on the Premises:** When executing a search warrant, the officer may reasonably detain, and in some cases frisk any person in the place at the time under the following limitations (these limitations apply even in cases where the warrant calls for the “search of any person present”):
- a. **Frisk-**To protect him or herself from attack when the officer has reasonable suspicion, based upon specific facts, to believe that the individual present is armed and poses a threat.
 - b. **Search:** To prevent the disposal or concealment of any item particularly described in the warrant where there is probable cause, based upon specific facts, to believe that the person to be searched is in possession of said item.
 - c. **Detain:** Officers may detain any person who is present at the scene of a residence where officers are executing a search warrant. Where officers are executing a dangerous search warrant, all persons present may be handcuffed while officers conduct their search. If at anytime it is determined that the person restrained in handcuffs is not dangerous, the handcuffs should be removed.
- H. **Consensual Entry-** Officers may, without reasonable suspicion or probable cause, enter a dwelling based upon the consent of a person who appears to have authority over the premises.
- a. Consent must be voluntary
 - b. Consent need not be in writing, but written documentation will assist officers in proving that the consent was voluntary.
 - c. Officers may not enter a dwelling in a case where a co-occupant is present and objecting to the entry.
 - d. If it is clear that the area to be searched is under the exclusive control of a party who is not present, the room or area shall not be searched.
 - e. The scope of a consensual entry and search rests with the consenting party who controls both how long the entry and search may last as well as what locations within the residence may be searched.
 - f. Officers should not rely on the consent of a juvenile under the age of 15.
- I. **Exigent Entry-** An officer may enter a dwelling based on emergency circumstances when any of the following circumstances exist:
- a. Hot pursuit of a fleeing felon.
 - b. Imminent destruction of evidence for any jailable offense.
 - c. Need to prevent suspect’s escape.
 - d. Risk of danger to police or others inside or outside the dwelling.
 - e. Once exigency has ended, officers should secure the scene and obtain a search warrant.

- f. The fact that an area is a crime scene does not create automatic exigency- There is not crime scene exception to the warrant requirement.

J. Emergency Aid Exception:

- a. Officer has objectively reasonable grounds to believe that there is an emergency at hand and an immediate need for the officer's assistance for the protection of life or property;
- b. There is an objectively reasonable basis approximating probable cause to associate the emergency with the area or the place to be searched; and
- c. The search is not primarily motivated by intent to arrest and seize evidence.

K. **Dynamic Entry:** Whenever entering a residence in a manner designed to anticipate a potential deadly force encounter, a specially trained team should be utilized to ensure the safety of all persons involved. This determination as to whether a dynamic entry is necessary is done through the completion of an assessment.

- a. Due to the nature of executing this high-risk entry, extreme care must be utilized in order to ensure that only the proper residence is entered. When considering the use of a dynamic entry, the following precautions must be followed:
 - (i) A supervisor must be present and take responsibility for reviewing and approving the warrant as well as the affidavit prior to the execution of the warrant.
 - (ii) If the warrant involves narcotics, ensure that a purchase has been made or contraband observed within the 24 hour period preceding the execution of the warrant.
 - (iii) If utilizing an informant for a narcotics purchase, an investigator must ensure that the informant has been observed at all possible times.
 - (iv) If necessary, the officer supervising the special team or other designated officer will conduct a drive-by of the location with the lead investigator or other designated officer using the legal description on the warrant to locate the residence to ensure that the residence to be entered is verified with the warrant. If any discrepancies exist or if the house cannot be located by the description on the warrant, the warrant shall not be served.
 - (v) Prior to execution of the warrant, all available data bases will be checked (telephone, electric, real estate etc.) to ensure that the residence matches the suspect of the investigation.
 - (vi) A written operations plan will be prepared identifying the specific mission for the team, intelligence considered, a description of the

targeted subjects and location, and the specific tasks assigned to each member of the entry team.

- (vii) The lead investigator will accompany the special team during the execution of the warrant and direct officers to the doorway of the residence to ensure that the correct residence is entered.
- (viii) Upon completion of the operation, photographs of all entry-ways into the building shall be taken to document both damage and lack of damage.

- L. The Chief of Police or his designee will be notified anytime there is a search warrant obtained for a residence or any other dwelling. The Chief of Police will be notified and must approve any request for any specialized team to assist in the execution of a search warrant.

V. DISCIPLINE:

- 1. Any violation of this policy may be grounds for disciplinary action consistent with any applicable collective bargaining agreement, statute, Department policy or Town policy.

Issued by: _____

Donald Hull
Chief of Police