

WOLFEBORO POLICE DEPARTMENT

SOP 4.4

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[Note: This written directive is for the internal governance of the Wolfeboro Police Department and, as provided by RSA 516:36, is not intended and should not be interpreted to establish a higher standard of care in any civil or criminal action than would otherwise be applicable under existing law.]

By Order of:
Dean J. Rondeau, Chief of Police

SEARCHES & SEIZURES

Policy The Wolfeboro Police Department places the highest priority on maintaining the Constitutional rights of all individuals. All searches and seizures of private property will be conducted and performed in compliance with applicable federal and state laws and in a manner that provides for the highest degree of safety for all involved parties.

PURPOSE The purpose of this directive is to cover

Searches	Crime Scenes
Execution of warrants	Searches without an arrest warrant
Definitions	

Definitions *Exigent Circumstances:* as those which present a compelling need for immediate official action and a risk that the delay, inherent in obtaining a warrant, will present a substantial threat of imminent danger to life or public safety (**State v Theodosopoulos 119 NH 573 (1979)**)

General Guidelines Officers must comply with the “Law Enforcement Manual” issued by the Office of the Attorney General.

- Search by consent.
- Exigent circumstances.
- Other situations.

Searches & seizures made under the authority of a warrant are always preferred.

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Searches & Seizures

Prior to obtaining a search warrant, members shall contact a supervisor if available and:

- Review the case with them.
- Plan the execution of the warrant.
- Have them respond for the execution of the warrant.

Procedures for Obtaining a Warrant

Only Police Officers or Prosecuting Attorney can make applications for a search warrant. **(RSA 595-A:7)**

Search warrants can only be issued by a Judge who is neutral and detached from the case.

Court approved forms must be used.

Step	Description
1	A warrant and application must: <ul style="list-style-type: none"> • Contain a written affidavit which must consist of statement of facts • That allows a Judge to conclude that it is more probable than not that a crime is being or has been committed • And that the specific property is now located where the applicant says it is located
2	Applicant must be certain that: <ul style="list-style-type: none"> • Property is identified as clearly and distinctly as possible • Premises or persons to be searched are identified as accurately as possible
3	Property or articles that can be searched for and seized with a valid search warrant are: <ul style="list-style-type: none"> • Stolen, embezzled or obtained by false pretenses or otherwise obtained in the commission of a crime • Which are intended for use, or which have been used as a means of preparing for, committing or concealing a crime • The possession or control of which is unlawful
4	Follow any Court Procedures determined by that Court
5	Testify and swear to the affidavit before a Judge

Step	Description
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Execution of a
 Search
 Warrant

The following steps should be taken:

1	<p>A supervisor or senior officer will be designated in charge to:</p> <ul style="list-style-type: none"> • Coordinate the execution • Ensure safety of participants • All paperwork is complete and accurate • It clearly describes place(s) to be searched • Article(s) to be seized
2	<p>Executed immediately or within a reasonable time</p> <ul style="list-style-type: none"> • In daytime unless specifically states nighttime search • A search started in daytime can continue into the nighttime if reasonable and not done for the purpose of harassment
3	<p>Upon arrival, warrant reviewed again to confirm the correct premises</p>
4	<p>Police Officers will be used during the execution of the search warrant. Officers in plain clothes must wear raid jackets or visible outdoor wear that readily identifies them as Police Officers.</p>
5	<p>Officers should knock, identify themselves as Police Officers, and announce that they have a warrant and demand entrance. Except:</p> <ul style="list-style-type: none"> • Exigent circumstances dictate otherwise; • Flagrant destruction of evidence will occur or; • It would be a useless gesture (State v. Jones. 127 NH 515 (1985))
6	<p>Entry should always be sought as peacefully as possible But forcible entry is authorized if after a reasonable time it becomes apparent that:</p> <ul style="list-style-type: none"> • The officers will not be admitted voluntarily • Officers or other persons are in danger of physical harm • The occupants are escaping • Evidence is being, or in danger of being, destroyed
7	<p>In unannounced entries or forcible entries, officers shall</p> <ul style="list-style-type: none"> • Immediately identify themselves as Police Officers • State their purpose to serve a valid search warrant issued by the Court • Take any other steps to ensure that officers are clearly identifiable, for their safety

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Scope of Search Is not defined by the nature of a container, but by the object of the search and places in which there is probable cause to believe that the evidence may be found.

- Containers searched must be a likely place for the item to be found.
- If a lawful search is being conducted, anything of evidentiary value will be admissible, whether or not it is related to the arrest.

Search Responsibilities An officer conducting the execution of a search warrant must:

- Not exceed the authority granted by the warrant.
- Make a diligent effort to locate all the property listed.
- Not search beyond the area described in the warrant..
- Search only the areas capable of containing the property listed in the warrant
- Seize evidence (ex: contraband) not named in the warrant if it was discovered inadvertently. (plain view)
- Remain on the premises only for a time reasonably necessary to thoroughly search for the property.
- May detain the occupants of the premises until the search is complete.
- Terminate the search when the listed property has been found or
- When it appears that such property is not on the premises.
- Carry out the search with the least possible amount of damage to the premises.

Inventory Will be made of all property seized.
The Inventory will be made in the presence of the applicant for the warrant and the person from whom the property was taken.
Or in the presence of at least one credible person other than the applicant or the person from whom the property was taken and will be verified by the officer. **(RSA595-A:5)**

Receipt A receipt will be prepared for all articles seized and will be given to the person whose premises, property or person it was taken from.
If no person is present, a copy of the receipt will be left in a visible area
Copies of the warrant only will also be provided.

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Returns to Court The officer responsible for the return of the search warrant will sign it and swear to its truth before a Justice of the Peace.

- The warrant and return will be submitted to the District Court named on the warrant.
- The return shall be made as soon as it has been served, **but no later than seven days from the date of issuance. (RSA 595-A:7)**
- All officers involved will submit a full & detailed report of all actions taken, to the officer in charge or prosecutor, before returning the warrant to the court.
- Search Warrants & Affidavits are public documents and the court can seal the records in certain situations. The prosecutor shall make the request if needed to preserve confidentiality.

High-Risk Situations All Search warrants have the potential for risk;

- A pre-execution meeting is held by a Supervisor.
- Tactics developed for approaching, entering, executing and leaving
- Bulletproof vest will be worn by all.
- The Supervisor can request the assistance of other agencies, if additional manpower or specialized equipment needed.

Arrests Search warrants shall not be treated as an arrest warrant. Arrests will be made independently from that of a search warrant. If probable cause to make an arrest exists at the time a search warrant is obtained, a separate arrest warrant should be obtained.

Detention Occupants of a premise being searched on a warrant **can be detained** during the search. Officers should;

- Obtain all identifying information.
- Allow them to leave, if satisfied it does not interfere with the search.

Search Incident to an arrest An officer may search a lawfully arrested person subject to the following conditions:

- To seize evidence and contraband of the crime in order to prevent its destruction or concealment.
- Removing weapons or other instruments that might be used to resist arrest or escape.
- Area searched must be limited to the arrested subject and immediate surrounding area. (**Chimel v. CA**)
- It should be made at the time of the arrest and in the same vicinity.

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To conduct a search incident to an arrest the amount of force used must comply with the SOP's and is necessary to:

- Protect themselves or others.
- Prevent escape.
- Prevent the destruction of evidence.

An arrest must not be made as an excuse to conduct a search.

Consent Searches

Consent must be voluntary, knowing and intelligently given.

It must be free of any coercion, intimidation or threat.

It must be specifically given and cannot be presumed from silence.

It must be given by a person who has the immediate right of possession and control of the premises – If any doubt obtain a search warrant.

It must be free of misrepresentation and fraud.

Obtained prior to the search and after the officer has properly identified themselves.

It can be limited to a specific area and revoked at any time. The search then must cease any evidence obtained prior to this may be retained.

Consent forms will be utilized.

Exigent circumstances

In an emergency situation a search is allowed where probable cause exists and there is no time to obtain a warrant, where a delay would:

- Endanger the officer or others.
 - Result in the immediate destruction or removal of evidence.
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Plain View

A warrantless seizure of items in plain view can be made if three conditions are met:

- The initial intrusion must be lawful;
- The items must be inadvertently discovered and;
- It must be immediately apparent to the officer that the item has evidentiary significance.

The plain view doctrine allows for:

- Anything that enhances an officer's senses. (i.e.: Flashlight)
- Open fields, streets and roadways.
- Aerial observations are justified as are views that can be made from a vantage point that renders activities plainly visible.

If doubt exists as to a plain view exception, **obtain a warrant.**

Crime Scene

The courts have ruled under the Fourth Amendment that the police may enter a location in an emergency.

Situation	Officer can:
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Assault Homicide Victim assistance Medical Removal of Body	Enter - no warrant is necessary Attend to the scene Render medical assistance Protect the scene where there is a homicide Victim
Suspect hiding at premises of homicide or assault	Search for suspect Do not search places that cannot conceal the suspect
Owner provide consent	Continue to process the crime scene
Owner refuses	Stay until the situation stabilizes Then leave the location and secure it Until a warrant is obtained

Forms

Court approved forms will be used.

Consent Form – Used by officers to obtain consent of a search and turned in at end of tour – placed in incident file.