


<b>NORTHAMPTON POLICE DEPARTMENT</b> <b>Administration &amp; Operations Manual</b>		
<b>Policy: Search and Seizure</b>		<b>AOM: O-201</b>
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## I. Introductory Discussion

In order to ensure that the efforts of the police will not become lost in a maze of legal technicality, it is imperative that every police officer thoroughly understand the basic constitutional and statutory provisions involved in searching for and seizing property to be later submitted to the court as evidence in a criminal case. Failure to comply with these technicalities of the law can result in evidence being declared inadmissible for having been illegally obtained. In carrying out their duties in this regard, police officers must fulfill their responsibilities to protect the community they serve and at the same time protect the individual rights guaranteed to every citizen by the Constitution.

The Fourth Amendment of the U.S. Constitution provides as follows:

*The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and*

*particularly describing the place to be searched, and the persons or things to be seized.*

Article 14 of the Constitution of the Commonwealth of Massachusetts states that:

*Every subject has a right to be secure from all unreasonable searches and seizure, of their person, their houses, their papers, and all their possessions. All warrants, therefore, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation; and if the order in the warrant to a civil officer, to make search in suspected places, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure: and no warrant ought to be issued but in cases, and with the formalities prescribed by the laws.*

With certain limited exceptions, a search should be conducted under the authority of a valid search warrant issued by the court after the presentation of a properly executed affidavit. This affidavit must contain the facts, information, and circumstances that led the police officer to have probable cause to believe that a crime has been, is being or is about to be committed, and that seizable property or articles of that crime are present in that place or upon the person to be searched.

Many cases have been lost because an officer had sufficient basis for probable cause but did not furnish enough information in their affidavit. Any fact that is not set out in the affidavit cannot be inserted or used later for the purpose of establishing probable cause for a search.

Under certain circumstances, it is necessary to conduct searches and make seizures without a search warrant. Under the guidelines set down by the U.S. Supreme Court, all courts have now become increasingly stricter on the issue of searches without a warrant. Every officer should use good judgment in making warrantless searches and should be prepared to justify the circumstances in each case. This does not mean however, that an officer should hesitate or delay in the course of an investigation if to do so would endanger their life or the life of any other person.

It should be understood that an arrest must not be used as a pretense in order to make a search. If the arrest is unlawful the search is also unlawful. The court has also ruled that a lawful arrest must not be used as a pretext to search a suspect to uncover evidence to a totally unrelated crime. Any search made under a false or fictitious warrant or under any pretended legal authority is unlawful even if as a result consent for the search is obtained. Any evidence seized under these circumstances would be declared invalid.

In Massachusetts and in a number of other states, prior to the decisions handed down by the U.S. Supreme Court in *Mapp vs. Ohio*, 367 U.S. 643, (1961), the courts did not exclude evidence on the grounds that it was illegally obtained. The general rule was that the illegality involved in seizing the evidence did not affect its competency or its admissibility. The *Mapp* decision created the exclusionary rule, which completely changed previously legal practices of searching for and seizing

incriminating evidence. In the Mapp case the court ruled any evidence illegally obtained, no matter how incriminating, was inadmissible in any court proceeding. As a result, defendants in criminal cases in any court are entitled to file a motion to suppress seized evidence, whenever they believe that their rights guaranteed by the Fourth Amendment were violated and that illegally obtained evidence is to be used against them at their trial. The most frequent grounds for a motion to suppress evidence are the allegations that the property of the defendant was illegally seized by the police without a warrant.

## **II. General Search and Seizure Procedures**

The following procedures in sections III and IV cannot possibly cover every situation that a police officer may face, but they will provide basic guidelines that are both legal and practical in the sensitive area of searches and seizures. To ensure that they are acting within the meaning and intent of the law and that any evidence seized by them will meet the test of admissibility, all officers will carefully proceed within the following guidelines.

## **III. Searches Pursuant To a Search Warrant**

### **A. Initial Responsibilities**

1. Searches and seizures made under the authority of a valid search warrant are always preferred. The courts will more likely sustain a search and seizure if supported by a warrant. The existence of a search warrant is an important factor in determining if the search and seizure was reasonable and based upon probable cause.
2. A search warrant is an order in writing, in the name of the Commonwealth, signed and issued by a duly authorized person, directed to a person authorized to serve such warrants, ordering them to search, in daytime and/or nighttime, designated premises or persons for described articles, and to bring the described articles or persons in whose possession they are found before a court having jurisdiction.
3. An officer requiring a search warrant will contact the Officer-in-Charge (OIC) and obtain their advice and guidance before proceeding to court. If the court is not in session, the OIC will contact an authorized court official to make the necessary arrangements to secure a search warrant. Every search warrant issued and any action taken as a result will be recorded in departmental files in accordance with departmental policies and procedures.
4. An officer who wishes to obtain a search warrant must complete the following procedures under the supervision of the OIC or Detective Bureau Commander (DBC):
  - a. Complete an affidavit containing the facts, information, and circumstances upon which they rely, to establish probable cause for issuance of the warrant. The affidavit enables the Commonwealth to demonstrate in writing the fact that any given search and seizure is reasonable and based on probable cause. The affidavit cannot be solely based on rumor,

suspicion, or strong reason to suspect, nor may it be based solely upon conclusions. When making out an affidavit, an officer must be certain that:

- 1) The property to be seized is identifiable as clearly and distinctly as possible; and
  - 2) The premises or persons to be searched are identified as accurately as possible.
- b. Cause the affidavit to be reviewed by a District Attorney.
  - c. If affidavit is approved by the District Attorney, appear before a court official authorized to issue search warrants and apply for the warrant.
  - d. The warrant application must contain the written affidavit, which may be supplemented by testimony under oath before proper judicial authority that will issue the warrant. The affidavit and testimony, if any, must consist of statements of fact from which the proper judicial authority can conclude that it is more probable than not that a crime is being, has been, or is about to be committed and that the specified property is now located where the affidavit says it is located.
5. A search warrant may be issued by a court or justice authorized to issue warrants in criminal cases. As a practical matter, most search warrants are issued by a clerk of court or assistant clerk of court duly authorized to do so. A Justice of the Peace may not issue a search warrant.
  6. For guidance and/or specific procedures for drawing and executing a search warrant, officers can refer to M.G.L. c. 276, secs. 2,2a,2b.

#### B. Property/Articles/Persons to be Searched and Seized

1. The following property or articles can be searched for and seized:
  - a. Property or articles stolen, embezzled, or obtained by false pretenses, or otherwise obtained in the commission of a crime;
  - b. Property or articles which are intended for use, or which have been used, as a means of committing a crime, including, any property or article worn, carried, or otherwise used in the preparation for, perpetration of, or concealment of a crime;
  - c. Property or articles, the possession or control of which is unlawful, or which are possessed or controlled for an unlawful purpose;
  - d. The dead body of a human being; or
  - e. The live body for which we are in possession of an active arrest warrant.
2. Although not specified in the warrant, certain types of articles may nonetheless be seized if all the warrant requirements are met:
  - a. Instrumentalities or means by which the crime described in the affidavit was committed, (such as weapons, masks, ropes, and tools);

- b. Contraband, (articles which may not be legally possessed such as counterfeit money);
- c. Fruits of the crime (such as stolen property);
- d. Other evidence of the crime (such as clothing fitting the description of the criminal's);
- e. Property which bears a reasonable relationship to the purpose of the search.

**Note:** The word “property” as used in this section shall include books, papers, documents, records, and any other tangible objects.

#### C. Providing Probable Cause on the Affidavit

1. The officer requesting issuance of a warrant must establish probable cause in order for a warrant to be issued, and this may be based upon personal knowledge or hearsay information. Probable cause consists of facts and circumstances sufficient to lead a reasonable and prudent person to believe that a crime has been, is being, or is about to be committed, and that a particular article(s) of seizable evidence of that crime is present in the described location.
2. To establish probable cause it is necessary that some person, either the officer or another, must have obtained the information through their senses (sight, hearing, smell, touch, or taste). The officer may also state their conclusions based upon their experience as a police officer.
3. In the context of a search warrant, “probable cause” means reasonable grounds to believe:
  - a. That the objects sought exist;
  - b. That the objects sought are located where they are said to be; and
  - c. That the objects have a connection with the commission of a crime as to be evidence of it.
4. In preparing an affidavit for issuance of a search warrant, an officer must ensure that the affidavit provides information sufficient to lead to a finding of probable cause on all three conclusions identified in section 3 above. The officer must clearly indicate the dates and times of observations made and these must be recent enough to make it likely that the evidence to be seized is presently in the location to be searched.

#### D. Information from an Informant (See [AOM 0422 Informants](#))

1. If the officer relies on information from an informant the following must be stated:
  - a. The facts and circumstances from which the informant can prove their conclusions.
  - b. The facts and circumstances from which the officer concluded that the information was credible.

- 1) The credibility of the informant and the credibility and reliability of their information must be established.
  - 2) If the informant has provided reliable information in the past that led to the recovery of stolen property and/or a conviction, this can be used to establish credibility. All information given by informants should be corroborated as far as possible and this is particularly important in the case of an informant who has not provided information previously.
  - 3) The officer should put as much information in the affidavit as possible. If it is safe to do so, the informant should be named and their occupation given.
2. Additional factors to assist in establishing reliability of an informant include:
- a. Were they a victim of a crime?
  - b. Were they a witness to the crime?
  - c. Was the information that they provided consistent with other information already in the possession of the police?
  - d. Has the informant been arrested and/or pending charges at the time?

#### E. Execution of a Search Warrant

1. After a search warrant is obtained, the following procedures will govern its execution:
  - a. Check the warrant to ensure that it clearly describes the place to be searched and the articles to be seized.
  - b. Execute the warrant immediately, or within a reasonable time, but in any case within seven (7) days from the date of issuance.
  - c. Execute the warrant in the daytime unless it specifically provides for a nighttime search. (Nighttime for this purpose is from 10:00 P.M. to 6:00 A.M.) However, a search begun in the daytime may continue into the nighttime if such activity is reasonable and not for the purpose of harassment.
  - d. Upon arrival, again check to make certain the premises are in fact those described in the warrant.
  - e. A police officer executing a search warrant shall knock and announce their presence and purpose before forcibly entering a residence, unless authorized by a warrant to enter pursuant to subsection (a). An officer shall not dispense with the requirements of subsections (a) and (b) except to prevent a credible risk of imminent harm as defined in section 1 of chapter 6E. Evidence seized or obtained during the execution of a warrant shall be inadmissible if a law enforcement officer violates this section.<sup>1</sup>

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<sup>1</sup> See Section 94, Chapter 253 of the Acts of 2020; G.L. c. 276, § 2D

- f. Upon entering, officers shall show a copy of the warrant (not the original) to the person(s) lawfully on the premises, unless the circumstances are such that this is not practical.
- g. Officers should always seek entry as peacefully as possible, but forcible entry is authorized if after waiting a reasonable amount of time it becomes apparent:
  - 1) that the officers will not be admitted voluntarily;
  - 2) that the officers or any other person are in danger of physical harm;
  - 3) that the occupants are escaping; or
  - 4) that the evidence is being, or is in danger of being destroyed.
- h. What constitutes a “reasonable time” before making a forcible entry depends upon the circumstances of each case and the best judgement of the searching officers.
- i. An immediate forcible entry is authorized without the announcement and the usual pre-search procedure outlined above if the searching officers are in possession of a “No Knock” search warrant, or are in possession of reliable information that to follow this procedure:
  - 1) Would be likely to endanger their safety or the safety of others;
  - 2) Would be likely to enable the wanted person or persons to escape;
  - 3) Would be likely to result in the evidence being destroyed during the period between their announcement of purpose and subsequent forcible entry.

A warrant that does not require a law enforcement officer to knock and announce their presence and purpose before forcibly entering a residence shall not be issued except by a judge and only if the affidavit supporting the request for the warrant:

- 1) Establishes probable cause that if the law enforcement officer announces their presence their life or the lives of others will be endangered; and
  - 2) Includes an attestation that the law enforcement officer filing the affidavit has no reason to believe that minor children or adults over the age of 65 are in the home, unless there is a credible risk of imminent harm to the minor or adult over the age of 65 in the home.<sup>2</sup>
- j. Upon gaining entrance in a case where unannounced entry is authorized and necessary officers shall:
    - 1) Immediately identify themselves as police officers;
    - 2) State that it is their purpose to serve a valid search warrant issued by the court; and

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<sup>2</sup> See Section 94, Chapter 253 of the Acts of 2020; G.L. c. 276, § 2D

- 3) Take any other steps necessary to ensure that those officers executing the warrant are clearly identifiable as police officers if necessary to insure their safety.
  - 4) Secure all persons in the home to ensure both the officers' safety and that the property to be seized is not destroyed or removed.
- k. While search warrants are normally used for premises, an officer should obtain a warrant for a search of a person whenever they have advance information that the person will have on their person items subject to a lawful seizure.
2. A Police officer responsible for the execution of a search warrant shall:
- a. Not exceed the authority granted by the warrant.
  - b. Make a diligent effort to find all of the property listed in the warrant.
  - c. Not search beyond the area described in the warrant (if the warrant authorized a search of the first floor of a building, search of the second floor is unlawful).
  - d. Search only those areas capable of containing the property listed in the warrant (if the warrant authorizes a search for a large TV set, do not search in a small bureau drawer).
  - e. Carry out the search with the least possible damage to the premises.
  - f. Remain on the premises only for the time reasonably necessary to thoroughly search for and seize the property listed in the warrant.
  - g. Terminate the search when the listed property has been found or when it reasonably appears that such property is not on the premises.
  - h. Immediately and directly transport to the Police Station all seized property and ensure that it is properly marked, recorded and safeguarded in accordance with the departmental procedures. See *AOM 0401 Evidence & Property Identification & Collection* and *AOM S210 Evidence & Property Control*.
  - i. Return the warrant to the court of issuance as soon as possible after the completion of the search, but in any event within seven (7) days of the date of issue.
  - j. Note on the warrant, the action taken with an inventory of all property seized by authority of the warrant (if evidence is not described in the warrant seized, attach a separate sheet to the return listing all such property and state that it was seized during the execution of that warrant).
  - k. Submit a full and detailed departmental report of all action taken and submit the same to the OIC within a reasonable time following the search.

F. Arrest During Execution of A Search Warrant [1.2.5]

1. The present form of the search warrant used contains wording that would seem to authorize not only a search of certain persons, but also the seizure of the "person in whose possession" the property to be seized is found. Because of the possible inability of an arrest made solely on the basis of the language



of the search warrant, the search warrant shall not be treated as an arrest warrant and the following rules must be adhered to:

- a. Do not arrest in any case except on authority, which is independent of the search warrant.
- b. In deciding whether, when, and how to arrest an individual in whose possession goods mentioned in the warrant are found, follow the general rules with respect to the right to arrest with or without a warrant. See **AOM 0110 Arrest**.
- c. If probable cause to arrest an individual exists at the time a warrant is obtained, prepare a separate arrest warrant and make any arrest based on the authority of that separate warrant.

## IV. Searches without a Warrant [1.2.4]

### A. Types of Warrantless Searches

1. Although searches and seizures based on warrants are clearly preferred and a warrant should be obtained whenever there is sufficient time to do so, the practicalities of police work will not always permit such a procedure. Therefore, an officer may conduct a search and make a seizure under certain conditions even though a warrant has not been obtained. Those conditions include:
  - a. A search following a lawful arrest, or at the scene of a crime.
  - b. A search pursuant to consent.
  - c. A search in exigent or exceptional circumstances.
  - d. Motor Vehicle Exception.
  - e. Plain View Exception.
  - f. Inventory searches.
  - g. "Stop and Frisk".
  - h. Abandoned Property.

### B. Search Incident to an Arrest [1.2.4,d]

1. A Police Officer may search an arrested person, subject to the following conditions:
  - a. The arrest is lawful and the search is reasonably related to the circumstances of the arrest.
  - b. The search is conducted for the purposes of seizing fruits, instrumentalities, contraband, and other evidence of the crime for which the arrest was made, in order to prevent its destruction or concealment, or to remove any weapons or dangerous instrumentalities that the arrested person might use to resist arrest or affect their escape.
  - c. The arrest is not an excuse to conduct a search.

- d. The search is limited in scope to the person of the suspect and the immediate surrounding area. (Immediate surrounding area means that area from which the suspect can either obtain a weapon or destroy evidence.)
- e. The search is substantially contemporaneous with the arrest and conducted in the immediate vicinity of the arrest. An exception to this procedure is that an arrested person may be more thoroughly searched at the Police Station prior to lock up.
- f. An officer conducting a search incident to an arrest (or by search warrant) may use a degree of force reasonably necessary to:
  - 1) Protect themselves and others present.
  - 2) Prevent escape.
  - 3) Prevent the destruction of evidence.
- g. A search may also be made of articles actually in possession of the arrested person and clothing worn at the time of the arrest if such search is related to the offense for which the arrest was made.
- h. Abandoned property or discarded property may be searched by the police and seized. Examples of abandoned property include:
  - 1) Trash in collection area accessible to public.
  - 2) The contents of a hotel room wastebasket once an individual has vacated the room.
  - 3) An apartment or hotel room may be searched without a warrant provided the guest or tenant has left with an intention not to return and the landlord or owner has given permission to search.
  - 4) Items thrown on the ground by a suspect.

#### C. Consent to Search [1.2.4,a]

- 1. Consent to search without a warrant is an abandonment of a Constitutional Right and therefore, will be closely scrutinized. Whenever a search pursuant to consent is to be conducted, the officer(s) should have the person sign ***AOM 0201.a Permission to Search***.
- 2. Do not conduct a search by consent just to avoid obtaining a search warrant. The following considerations are to be satisfied:
  - a. Consent cannot be presumed from silence.
  - b. Consent is to be specifically and intelligently given.
  - c. Consent must be given freely, knowingly, and voluntarily, free of any coercion, intimidation, or threat. (Officers must avoid even the appearance of intimidation or duress.)
  - d. Consent is to be given by a person who has immediate right of possession and control of the premises. If there is any doubt as to who has the immediate right of possession and control of the premises/property, then a search warrant should be obtained.

- e. Consent is to be free of misrepresentation or fraud. Consent obtained by trick, duress, or misrepresentation voids the consent and makes evidence inadmissible.
- f. Consent is to be obtained prior to search and after the police officers have identified themselves and have notified the suspect of their right to refuse.
- g. Consent is to be limited to the area specified and such consent may be revoked at any time and search will cease upon such revocation. Evidence found prior to revocation may be retained and used as a basis for immediate arrest or as probable cause for the issuance of a search warrant.

D. Search in Exigent/Exceptional Circumstances [1.2.4,e]

An officer may conduct a search without a warrant when they are faced with an emergency situation, where delay would endanger themselves or others, or result in immediate removal or destruction of evidence. This rule allows a search conducted without consent, without an arrest, and without a search warrant. Exigent/Exceptional circumstances include the right to enter and search when in “Hot Pursuit” of a felon if there is reasonable cause to believe that the felon is therein. It is an emergency rule only and should not be relied upon in any case where there is time to get a search warrant.

E. Warrantless Searches of Motor Vehicles [1.2.4,c]

1. Searches of motor vehicles should be conducted in accordance with the following procedures:
  - a. If at all practical, a search warrant will be obtained since the court is more likely to uphold a search conducted under the authority of a warrant. The issuance of a traffic citation is not considered an arrest and would not justify the search of the offender or their vehicle.
  - b. Practical considerations often dictate that a search of a motor vehicle be conducted without a warrant because a moveable vehicle creates the possibility that it might be transported before a warrant can be obtained. A warrantless search of a motor vehicle is authorized when:
    - 1) There is probable cause to believe that there is seizable evidence in the vehicle.
    - 2) That such seizable evidence may be destroyed or concealed.
    - 3) The vehicle is moving or is capable of being quickly moved out of the jurisdiction.
  - c. If a lawful search of a motor vehicle is conducted without a warrant, anything of evidentiary value is admissible, whether or not it is related to the arrest. (For example, if an officer is justified in searching an automobile for weapons and narcotics are found, such narcotics are admissible in evidence.)

2. Officers must keep in mind that it is unlawful in the Commonwealth of Massachusetts to order an occupant out of a motor vehicle unless the officer has reasonable belief that their or the public's safety is in danger (Commonwealth v. Williams. Mass Ct. App. 1999).

F. Inventory Searches [1.2.4,f]

1. During booking, routine inventory searches of the person, their property, and where applicable, their vehicle, may be undertaken without a warrant. The justification for such routine searches is the legitimate interest in protecting the confinement area and the arrestee, and in facilitating the administrative handling of personal belongings during incarceration.
2. Keep in mind that an individual taken into protective custody is not an arrestee. Limited inventory searches are still permissible however, but they are limited to obtain identification or to reduce the threat of injury to persons.
  - a. Large containers, such as large plastic garbage bags, in the possession of an individual taken into protective custody, may be searched without a warrant. This is because objects in the possession of the individual taken into protective custody may pose a threat of injury to persons even if the object is taken into police custody. Protection of yourself and others, therefore, is a valid reason for such a limited search.

G. Plain View Searches [1.2.4,g]

1. In certain limited circumstances, a Law Enforcement Officer may make a warrantless seizure of objects in plain view. Three conditions however, have to be met before the plain view doctrine is applicable:
  - a. The initial intrusion, which afforded the view, must have been lawful.
  - b. Discovery of the evidence must have been inadvertent.
  - c. The incriminating nature of the evidence must have been immediately apparent.
2. Whenever officers in good faith, enter upon private premises in the official performance of their duties, they are not trespassers, and therefore, anything that they observe in plain view, that is subject to seizure, may be seized without a warrant. In such cases, the usual requirements of search and seizure are not necessary because no "search" is conducted. A "search" implies a prying into hidden places for concealed items, but it is not a search to observe articles that are open to plain view. It is also permissible for officers to use a flashlight to make such observations. Observant officers, utilizing the "plain view" doctrine, can often be successful in recovering stolen property, unlawful drugs, weapons, or tools used or intended to be used in the commission of a crime. Areas such as open fields, streets, or roadways, may be searched without a warrant, but this does not include "curtilage" which is the immediate yard or outbuildings of a dwelling house.

#### H. Stop and Frisk Searches [1.2.4,b]

The warrantless stop and frisk technique authorized by the United States Supreme Court in *Terry v. Ohio*, 392 US 1 (1968), is narrowly limited in scope and duration. M.G.L. c. 41, §98, as amended, provides that a police officer may examine all persons abroad whom they have reason to suspect of unlawful design and may search such persons for weapons if they reasonably suspects that he/she is in danger of death or bodily injury. (“Unlawful Design” has been defined to mean that the suspect has committed, is committing or is about to commit a crime.) Remember: once the objectives of the frisk are completed, the search must end. The scope of any weapons frisk is strictly limited to weapons or objects that can be used as such. Refer to [AOM O202 Investigative Stops/Protective Searches](#).

#### I. At the Scene of a Crime [1.2.4,d]

Search and seizure will be conducted at the scene of a crime in accordance with State and Federal statutory provisions or as previously allowed under section IV, A through H. When a search warrant is being sought, the officer will preserve the scene of the crime until such time that a search warrant has been issued. Prior to the seeking of a warrant, it may be necessary for officers to conduct a protective sweep of the premises to be searched in order to secure any parties that may be within the area for officer safety purposes. After a protective sweep has been conducted, officers should continue to preserve the scene and should follow the guidelines set forth in [AOM O400 Criminal Investigations](#).

## V. Community Caretaking and Brief Detentions

A. There are certain interactions between police officers and citizens that do not require judicial justification, as local police officers are charged with community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to violation of any criminal statute. Sometimes referred to as the community caretaking function, the police may conduct a warrantless search if they encounter a person (or possibly animal – especially a household pet) in need of immediate care, even if no criminal conduct is thought to be involved.

Opening a door of a parked vehicle to determine if the person slumped over the driver’s seat is just sleeping or is in need of medical attention is a classic example. Similarly, entering a yard to help untangle a leash that is choking a dog would fall under the category of community caretaking. However, entries into a residence or the surrounding curtilage are only allowed so long as the officer reasonably believes that a person or their property is in immediate danger.

Where the police — in their role as a *community caretaker* — find themselves compelled to enter a private dwelling “to protect or preserve life or avoid serious injury”, (e.g., neighbor reports cries of pain coming from inside dwelling), they may do so even in the absence of a criminal exigency or emergency.<sup>1</sup> Once

lawfully inside, they may effect an arrest if other previously mentioned legal requirements are met.

Caution: Officers should be aware that this state's courts have not yet ruled on whether the protection of an animal (especially a household pet) qualifies as the kind of situation that justifies a warrantless entry. Where an officer has a reasonable basis to believe that an animal (especially a household pet) is in danger, and the delay involved in obtaining a warrant would likely result in the death or serious injury to the animal, unless and until a court rules otherwise, a warrantless entry is authorized. (A report of a "barking dog" all by itself, even if the barking lasted a long time, would not be the kind of situation ordinarily justifying a community caretaking entry. However, observing a severely bleeding cat or dog through the chain link fence surrounding a pen, might well qualify.) A detailed report, documenting the officer's observations and the basis for any conclusions is essential, so that a court will be aware of the entire circumstances confronting the officer at the time the decision was made to enter premises without a warrant.

1. Under the "community caretaking doctrine," police officers are allowed, without reasonable suspicion of any criminal activity, to approach and detain citizens for community caretaking purposes.
  2. The decision of the police to make a well-being check must be reasonable in light of an objective basis for believing that a person's safety and well-being may be in jeopardy; that concern extends, in certain circumstances, to the safety of the public as well.<sup>ii</sup> One of the more common areas where the community caretaking doctrine comes into play in a situation that would otherwise appear as a threshold inquiry is dealing with disabled or stranded motorists.
  3. Even if the officer harbors a subjective belief that criminal activity may be afoot, this does not negate the officer's community caretaking responsibility. Although the officer's subjective belief of criminal activity does not affect their community caretaking responsibilities, the community caretaking activity must be authentic.
  4. The community caretaking function may come into play when the police receive a report of a dangerous operator jeopardizing public safety. If the situation is deemed to be an emergency, the reliability and basis of knowledge requirement of the reporting person may not be needed.
  5. Where a citizen reports that shots have been fired, or that a person is in possession of a clearly illegal firearm, such as a sawed-off shotgun, courts are more inclined to rule that the community caretaking doctrine will justify an investigatory stop.
- B.** The 1998 case of *Com. v. Smigliano*, contains a list of decisions where courts have held that police officers may approach and detain citizens for community caretaking purposes, and cases where courts have rejected the community caretaking function as a basis for a stop. Although many of the cases are out of state decisions, the SJC did reference these cases in their decision.

