

**GENERAL ORDER**

April 2016

Immediately

**V.6:4**

Distribution: All Employees

Subject: **WARRANTLESS ENTRIES AND SEARCHES**

Index as:	Abandonment of Building Consent Controlled Drug Buys Destruction of Evidence Entry with a Warrant Entry without a Warrant	Exceptions to Warrant Requirement Exigent Circumstances Flight or Escape Risk Hot Pursuit Inventory Plain View	Probable Cause Protective Sweeps Search Incident to Arrest Search Warrant Exceptions Searches, Warrantless Warrantless Entries and Searches
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Accreditation Standards: 1.2.4, 1.2.5  
 Cross Reference: G.O. III-9, Towing and Impounding Vehicles  
 I.O. V.6:3, Warrantless Felony Arrests  
 Florida Constitution, Article 1, Section 11  
 §901.19 and §933.09, F.S.S.  
 U.S. Constitution, Fourth Amendment  
 Replaces: I.O. V.6:4, Warrantless Entries and Searches (February 9, 2001)

This Order establishes guidelines for warrantless entries into a residence or other buildings, and for conducting searches of structures, vehicles, vessels and persons. It consists of the following sections:

- I. Policy
- II. Constitutional and Statutory Provisions
- III. Entry With a Warrant
- IV. Entry Without a Warrant
- V. Exceptions to the Search Warrant Requirement
- VI. Motor Vehicles and Vessels
- VII. After the Entry/Arrest; Scope of the Search

**I. POLICY**

Absent the recognized exceptions explained in this Order, it is the policy of the St. Petersburg Police Department that Officers shall comply with the requirements of the Fourth Amendment to the U.S. Constitution; Article 1, Section 12 of the Florida Constitution, and Florida’s Knock and Announce Statutes (§901.19 and §933.09, F.S.S.), when entering any building, motor vehicle, or vessel for the purpose of making an arrest or conducting a search or investigation.

**II. CONSTITUTIONAL AND STATUTORY PROVISIONS**

A. The Fourth Amendment to the U.S. Constitution provides that:

“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.”

B. Article 1, Section 12 of the Florida Constitution provides, in pertinent part, that:

“The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained.”

C. Both the U.S. Constitution and the Florida Constitution protect only against unreasonable searches and seizures, and in the case of the Florida Constitution, unreasonable interception of private communications as well.

D. Sections §901.19(1) and §933.09, F.S.S., provide that an Officer may not use force to enter any building, with or without a warrant, unless admittance is refused or denied, after first announcing the Officer’s authority and purpose.

#### IIV. ENTRY WITH A WARRANT

A. Generally, entry into a building (provided Officers have complied with the “knock and announce” provisions of Florida law), motor vehicle or vessel, pursuant to a warrant, will be deemed reasonable.

B. For buildings, failure to comply with the “knock and announce” requirement must be supported by one or more of the exceptions set forth in this Order.

#### IV. ENTRY WITHOUT A WARRANT

A. Generally, entry into any building without a warrant or without compliance with “knock and announce” provisions will be viewed as unreasonable.

B. However, the courts have established certain recognized exceptions that apply to both the warrant and “knock and announce” requirements. Under these narrowly drawn exceptions Officers are permitted to enter buildings and conduct limited searches.

C. Motor vehicles and vessels are not subject to the “knock and announce” requirement.

#### V. EXCEPTIONS TO THE SEARCH WARRANT REQUIREMENT

##### A. Consent

1. Consent to enter a building has been long recognized as an exception to both the warrant and “knock and announce” requirement.

a. When an entry or search is based on consent, the state will have the burden of proving the consent was freely and voluntarily given.

b. During a consensual encounter or a valid *Terry* stop, consent must be proven by a preponderance of the evidence.

c. If the consent was obtained after *illegal* police action (a bad stop), the state must prove the consent by clear and convincing evidence, a significantly higher standard (*State v. Gaine*y, 688 So.2d 997 [Fla. 2<sup>nd</sup> DCA 1997]).

2. Consent may be limited in scope or duration.

a. Consent may be withdrawn at any time during the search.

b. The scope or duration may be limited verbally or by actions.

##### B. Exigent Circumstances

1. *Black’s Law Dictionary* (10<sup>th</sup> Edition, 2014) defines Exigent Circumstances as:

“Situations that demand unusual or immediate action. Exigent circumstances, in relation to justification for warrantless arrest or search, refer generally to those situations in which law enforcement agents will be unable or unlikely to effectuate an arrest, search or seizure for which probable cause exists unless they act swiftly and without seeking prior judicial authorization.”

2. The courts have carved out several types of circumstances which will justify entry into a building without a warrant or complying with the “knock and announce” requirement.

3. In 1992, the Florida Supreme Court said: “Exigent circumstances do not necessarily involve ‘hot pursuit’ of a fleeing criminal. Factors which indicate exigent circumstances include (1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) a reasonable belief that the suspect is armed; (3) probable cause to believe that the suspect committed the crime; (4) strong reason to believe that the suspect is in the premises being entered; (5) a likelihood that delay could cause the escape of the suspect or the destruction of essential evidence, or jeopardize the safety of Officers or the public” (*Wike v. State*, 596 So. 2d 1020 [Fla. 1992]).

### C. Hot Pursuit

1. Hot Pursuit, as defined by this agency, (see [J:\Research\GeneralOrders\V\\_Instructional\\_Orders\V6-03 Warrantless Felony Arrests.pdf](J:\Research\GeneralOrders\V_Instructional_Orders\V6-03_Warrantless_Felony_Arrests.pdf)) is a pursuit during which one or more of the Officers involved:

- a. Is in an actual pursuit of the suspect;
- b. Has reason to believe that the suspect is aware of the pursuit;
- c. Actually observes the suspect enter a residence or other building; and
- d. Is in such close pursuit as to be able to enter the residence or other building immediately after the suspect.

2. The U.S. Supreme Court has held that:

- a. A hot pursuit means some sort of a chase, but it need not be an extended hue and cry in and about the public streets (*U.S. v. Santana*, 427 U.S. 38 [1976]).
- b. Police Officers may make a warrantless entry into a dwelling when they reasonably believe that a felon may be therein when they are in hot pursuit of that felon (*Warden v. Hayden*, 387 U.S. 294 [1967]).

### D. Danger to Police or Others

Danger to law enforcement personnel or to others clearly justifies entry without a warrant. It is best expressed by the circumstances described in:

1. In *Warden v. Hayden*, 387 U.S. 294 (1967), the U.S. Supreme Court ruled the police acted reasonably where, after receiving information about an armed robbery in progress, they entered a house and began to search for a man meeting the description given to them and for weapons, which that person had used in the robbery or might use against them.

a. The Florida Supreme Court cited *Hayden* in *Jones v. Florida*, 440 So.2d 570 (1983), in what the Court described as a “potentially deadly situation.”

b. The Court remarked “That exigent circumstances existed is without doubt. ... One man lay mortally wounded from a sniper’s bullet while the sniper himself remained at large in a densely populated residential section. The very nature of such a brutal and random attack required swift and effective police action in order to prevent additional harm to innocent members of society.”; and,

c. Quoting from *Hayden*, “The Fourth Amendment does not require police officers to delay in the course of an investigation if to do so would endanger their lives or the lives of others.”

2. In *Wike v. State*, 596 So.2d 1020 (Fla. 1992), the Florida Supreme Court upheld the arrest of Wike after police developed probable cause to believe that he had kidnapped two young girls, raped one of them and cut her throat, and killed the other girl by cutting her throat. When Officers developed probable cause to believe that Wike was in a home which he shared with a child, an elderly woman, and a man confined to a wheelchair, they had a dispatcher telephone the house. Wike answered the telephone and was directed to exit the house, which he did. After Wike was arrested, Officers conducted a sweep of the house to determine the status of the other individuals believed to be inside. The Florida Supreme Court upheld the arrest and the seizure of items that were later located.

### E. Crime in Progress

1. In *State v. Mann*, 440 So. 2d 406 (4<sup>th</sup> DCA 1983), the Court found that Officers had probable cause to believe that a burglary had been or was being committed inside an apartment and, therefore, could enter and search without a warrant. While searching a closet for the burglar, an Officer found marijuana in a clear plastic bag. Subsequently the suspect was arrested and the entry of the marijuana into evidence was held proper.

2. In *Guin v. City of Riviera Beach*, 388 So. 2d 604 (4th DCA 1980), the Court held that observation by an Officer of open doors to a shed and the private residence, in light of recent burglary of adjacent premises, gave probable cause to support entry and search of the shed and the residence. The possibility that the burglary was in progress and the thief within the premises constituted sufficient exigent circumstances to excuse the requirement of a search warrant.

3. In *Florida v. Garcia*, 374 So. 2d 601, (3rd DCA 1979), the Court noted that when lawful performance of his duty requires a Law Enforcement Officer to enter upon private property to make a general inquiry, such entry is justifiable. The court added: "Inasmuch as the Officers lawfully were on the property, it cannot be said that their looking into the back of the open truck and observing bales of marijuana in plain view constituted a search. ...[I]t is not a search to observe what is so placed where it may be seen by an Officer who is where he has a legal right to be. The court concluded: "... the Officers had probable cause to believe that a crime was being committed, justifying a search of the premises."

#### F. Homicide/Crime Scenes

1. There is no crime-scene exception to the Fourth Amendment.

2. The courts agree that Police Officers responding to a crime scene have the right to make warrantless entries when they reasonably believe that either a person within is in immediate need, or to see if a killer is still on the premises [*Mincey v. Arizona*, 437 U.S. 385 (1978)].

3. "Once in the residence, police officers may seize any evidence that is in plain view during the course of their legitimate emergency activities." [*Zeighler v. State*, 402 So. 2d 365 (Fla. 1981)]; (*Zeighler* involved the homicide of four individuals in a store by the owner who attempted to make it look like a burglary/robbery committed by someone else.) The *Zeighler* Court said "The reasonableness of an entry by the police upon private property is measured by the totality of existing circumstances. The right of police to enter and investigate an emergency, without an accompanying intent either to seize or arrest, is inherent in the very nature of their duties as peace officers ..."

4. Similarly, *State v. Boyd*, 615 So. 2d 786 (2<sup>nd</sup> DCA 1993) said, "When the issue is narrowly the right of the police to enter and investigate a constitutionally protected area in an emergency or because of exigent circumstances without the accompanying intent either to seize or arrest, the standard becomes the reasonableness of the belief of the police as to the existence of the emergency or exigent circumstances, and **not the existence of the emergency or exigent circumstances in fact...**" The Court concluded "... to allow a warrantless entry into a person's home in an emergency situation, there must be objectively reasonable circumstances that convey to the police officer an articulable, reasonable belief that an emergency exists. An emergency need not, in fact, exist so long as the Officer reasonably believes it to exist because of objectively reasonable facts."

5. Where police have a reasonable belief that a person is injured, dead or dying inside the home, they may enter without a warrant under the exigent circumstances exception [*Lara v. State*, 464 So. 2d 1173 (Fla. 1985)]. In *Lara* the Court stated "...the exigent circumstances exception (to the warrant requirement) applies when police are called to the scene of a homicide and that it allows an immediate warrantless search of the area to determine the number and condition of the victims or survivors, to see if the killer is still on the premises, and to preserve the crime scene."

#### G. Medical Emergency

1. An emergency situation requiring investigation, and with the intent of rendering aid to a victim, is another exception justifying a warrantless entry into an otherwise constitutionally protected area. The medical emergency only justifies the warrantless entry. Once on the premises, the Officers may act as they would in any other place. Whether the Officer may go inside the premises is governed by the nature of the emergency and the action that the Officer is reasonably required to take in response to that emergency.

2. A warrantless entry and arrest were upheld when police responded to a report of an emergency involving an abused child. The court also upheld the later entry by detectives when the father argued that the "emergency" was over before the detectives arrived. The court viewed this as a part of one continuous episode, initially justified by exigent circumstances [*Wooten v. State*, 398 So. 2d 963 (1<sup>st</sup> DCA 1981)].

3. In *Campbell v. State*, 477 So. 2d 1068 (2<sup>nd</sup> DCA 1985), Campbell called an emergency number and reported she had overdosed on cocaine. Two paramedics were sent and a police officer was sent to protect the paramedics. The court upheld the introduction of drugs which were found in plain view while the Officers were lawfully on the premises.

## H. Destruction of Evidence

1. When there is a legitimate need for police to act quickly and to prevent a reasonably expected destruction of evidence, they may make a warrantless entry into a defendant's premises.

2. Officers must be prepared to relate the facts that justify their reasonable belief that evidence was about to be destroyed. Where such circumstances are present, a warrantless entry without complying with the "knock and announce" requirement may be made. However, the courts have made it clear that an Officer, with or without probable cause, may not approach such premises, create the likelihood or actuality of evidence destruction and then act upon it. Likewise, Officers cannot delay the application or preparations to apply for a search or arrest warrant.

3. In *Leisure v. State*, 437 So. 2d 751 (1<sup>st</sup> DCA 1983) for example, the warrantless seizure of a defendant's apartment until a search warrant could be obtained was upheld because of a reasonable fear of the destruction of evidence. Leisure and a co-defendant were arrested for burglary, and while Leisure exercised his right to remain silent, the co-defendant confessed and told the police that property stolen in an earlier burglary was in Leisure's apartment. Further, the co-defendant told the police that by prearranged plan, a third accomplice would destroy all of that evidence if Leisure did not immediately return from their present burglary. A warrantless entry and arrest of the implicated third party was reasonable and justified under the circumstances.

## I. Flight or Escape Risk

1. As previously explained in *Wike* (VI.D.2. above), the Florida Supreme Court has recognized that the risk of escape is a factor which is an exigent circumstance that will justify a warrantless entry into a suspect's home to arrest the person.

2. In *Engle v. Dugger*, 576 So. 2d 696 (Fla. 1991), police had a witness who was willing to testify and fully implicate Engle in the kidnap, rape, and murder of a store clerk, but would not do so unless his wife and children were taken into protective custody. When the police and witness went to the witness's home for the purpose of taking his wife and children into protective custody, they encountered Engle's accomplice and others. Police had good reason to believe that the accomplice would warn Engle of the cooperation of the witness and flee so they proceeded directly to Engle's home and arrested him without a warrant.

## J. Abandonment of Building

1. The courts have determined that a person, who truly and voluntarily abandons a building, including a dwelling, has no expectation of privacy in it. Abandonment will be determined on a case-by-case basis.

2. In *Morse v. State*, 604 So. 2d 496 (1<sup>st</sup> DCA 1992), Morse had been living at a motel for about six (6) weeks, paying rent semimonthly. Morse was current on his rent when the manager, who was intoxicated, blamed Morse for causing trouble at the motel and told him that he had 30 minutes to pack and leave or he would call the police and have him arrested. Morse loaded most of his belongings in a car and left, intending to return and get the rest. The manager called the police and a detective accepted the manager's invitation to look in Morse's room. The detective located a stolen cable converter box that had been taken in a burglary. The cable box was suppressed after the court determined that Morse had not truly abandoned the room.

## K. Controlled Drug Buys

1. This exception to the warrant and "knock and announce" requirements concerns situations where an Officer in an undercover capacity, is invited into a defendant's premises. While inside and once the transaction is completed, other Officers enter the home without a warrant and without knocking and announcing. Once inside, they arrest the defendant and seize any contraband in plain view.

2. In *State v. Hume*, 512 So. 2d 185 (Fla. 1987), the Florida Supreme Court said, "Once Hume invited the undercover agent into his apartment and openly engaged in criminal conduct, he relinquished his right to assert a violation of his reasonable expectation of privacy and immediately subjected himself to arrest and the contraband in plain view to seizure. Under these circumstances, we do not find that the statutory provisions require the arresting Officers 'knock and announce' after the undercover agent within the premises has summoned them to assist in safely arresting a defendant and seizing the contraband. Since the undercover agent has already lawfully intruded into Hume's apartment and since he

could have arrested Hume inside the premises at any time, we find that the enlistment of additional Officers waiting outside the home did not constitute an intrusion offensive to [the “knock and announce” requirement] or Hume’s claimed expectations of privacy”.

## VI. MOTOR VEHICLES AND VESSELS

A. Under appropriate circumstances, search warrants may be issued for the search of motor vehicles and vessels (vehicles). However, there are a number of exceptions to the warrant requirement.

### B. Exceptions

1. Consent – As with buildings, a vehicle may be searched with the consent of the owner or person in control of the vehicle. However, the state will have the burden of proving that the consent was freely and voluntarily given.

2. Search Incidental to Arrest – The U.S. Supreme Court case, *Arizona v. Gant*, 129 S. Ct. 1710 (2009), narrowed this exception to the warrant requirement for automobile searches. The Court articulated a two-part test, and if either prong is met, a reasonable search of the vehicle incident to the arrest of a vehicle occupant can be justified. Under the first prong, the defendant must still have a real possibility of access to the vehicle in order to search the vehicle. This will be a fact-specific determination for the officer to make at the scene. Factors to be included in this analysis are whether or not the subject is handcuffed, the proximity of the subject to the vehicle to be searched, whether the subject is secured in a police vehicle, etc. Under the second prong of the test, if the arrestee no longer has access to the passenger compartment of the vehicle, the officer must determine whether it is reasonable to believe that evidence of the offense for which the suspect has been arrested is inside the passenger compartment of the vehicle to be searched. For example, if an officer arrests a vehicle occupant on probable cause of a recent burglary and theft, it is reasonable for the officer to believe that evidence of those crimes may be within the vehicle, justifying a search of the vehicle incident to arrest. Another example of a permissible search incident to arrest is if the driver was arrested for driving while intoxicated. If an officer reasonably believes that evidence of intoxicants may be within the vehicle, a search incident to arrest would be justified. The officer’s reasonable belief of related evidence is a lower standard than probable cause.

3. Plain View – If the vehicle is legally stopped and contraband is located in “plain view,” it may be seized. Upon the arrest of the operator or occupant(s), a search of the entire passenger compartment and containers located therein may be searched.

4. Inventory – Impounded vehicles shall be inventoried, including containers. If contraband or evidence of a crime is located, it may be immediately seized.

### 5. Probable Cause –

a. When there is probable cause to believe the vehicle contains contraband or evidence of a crime, the vehicle may be stopped and/or searched. This exception is due to the mobility of the vehicle and the fact that a reasonable expectation of privacy in a vehicle or boat is less than that in a private dwelling, and is therefore more open to legitimate governmental intrusion.

b. Probable cause under this exception must rise to the level that would be needed to convince a judge to issue a search warrant. If that level of probable cause is present, this exception may be used.

## VII. AFTER THE ENTRY/ARREST; SCOPE OF THE SEARCH

A. Consent – When entry to, and search of a building is gained by consent, the search is limited in duration and scope as described in this Order.

B. Arrest – If a lawful arrest is made within the building, whether entry was gained by consent or due to exigent circumstances, Officers may search the area within the arrestee’s immediate control. The area that may be searched depends on the circumstances of each case. The defendant may be a gymnast or he may be crippled. The room that he is in may be large or small with many hiding places or none. The defendant may meekly surrender or lead Officers on a chase throughout the premises. If a search is made of an area incident to arrest, an Officer must be able to testify to facts that show that the area was within the arrestee’s control.

### C. Protective Sweeps

1. According to the U.S. Supreme Court, absent a reasonable belief based on specific and articulable facts which, taken with the rational inferences from those facts, would warrant a reasonably prudent Officer into believing that the area to be swept harbors an individual posing a danger to those on the arrest scene, the Fourth Amendment permits a warrantless protective sweep in conjunction with an in-home arrest (arrest warrant) "...extending only to a cursory inspection of those spaces where a person may be found, lasting no longer than is necessary to dispel the reasonable suspicion of danger, and in any event no longer than it takes to complete the arrest and depart the premises." [*Maryland v. Buie*, 494 U.S. 325 (1990)].

2. A sweep may also be conducted when entry is made under exigent circumstances into a crime scene involving a homicide or other crime of violence. As in *Buie*, the sweep will be limited to searching for persons who may be in immediate need or to see if the offender is still within the premises. The sweep will also be limited to searching those areas where a person may be concealed.

3. Evidence or contraband located during a lawful protective sweep may be used in a subsequent prosecution.

4. At homicide/violent crime scenes, once the sweep has been concluded and the scene secured, serious consideration should be given to obtaining a search warrant in order to minimize the possibility of a successful motion to suppress.

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