

 <p>Cambridge Police Department</p>	POLICY & PROCEDURES		No. 450
	Subject/Title: Search & Seizure Guidelines		
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	Robert C. Haas Police Commissioner		Issue Date: July 29, 2014 Effective Date: September 30, 2014 Rescinds:
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I. PURPOSE:

The purpose of this set of guidelines is to describe how officers of this department will perform searches and seizures under various circumstances to include the following:

- Search by consent;
- Stop and frisk of an individual under circumstances where the officer has articulable reasons to fear for his/her safety;
- Search of a vehicle under a movable vehicle exception;
- At the scene of a crime;
- Exigent circumstances, as where the public safety is endangered;
- Inventory searches of seized vehicles or other property; and
- Other circumstances authorized by state and federal constitutional provisions.

II. POLICY:

It is the policy of this department that warrants shall be obtained for all searches whenever possible and practicable. Also, all searches shall be conducted in strict observance of the constitutional rights of the parties involved, and with due regard for the safety of all officers, other persons and property involved.

III. GENERAL CONSIDERATIONS AND GUIDELINES:

The term “search and seizure” includes the examination of persons or places for the discovery of contraband, property stolen or otherwise unlawfully obtained or held, or of evidence of the commission of crime, and the taking into legal custody of such property or evidence for presentation to the court. Failure to comply with the legal technicalities

that govern these procedures results in more failures to obtain convictions than any other source. The Fourth Amendment to the U.S. Constitution has been interpreted by the U.S. Supreme Court to require that, whenever possible and practicable, with certain limited exceptions, a police officer should always obtain a valid search warrant in advance.¹

The Fourth Amendment of the U.S. Constitution declares:

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 XIV of the Massachusetts Constitution provides as follows:

Every subject has a right to be secure from all unreasonable searches, and seizures, of his person, his houses, his papers, and all his 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 arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or object of search, arrest, or seizure; and no warrant ought to be issued but in cases, and with the formalities prescribed by the laws.

It is very frustrating to a police officer to learn that evidence which would most certainly lead to a finding of guilty, has been ruled inadmissible and excluded because of the manner in which it was obtained. In order to ensure that their efforts will not become lost in the maze of legal technicalities, it is imperative that all police officers thoroughly understand the basic constitutional and statutory requirements involved in searching for and seizing criminal evidence.

The Fourth Amendment to the U.S. Constitution prohibits "unreasonable" searches and seizures and the Supreme Court has consistently held that unless they come within one of the few carefully limited exceptions to the search warrant requirement, warrantless searches and seizures are considered unreasonable.² Searches with prior judicial approval with a valid search warrant are preferred. The burden of showing that a valid exception exists rests upon the government when the circumstances of a warrantless search are challenged in the courts.³

The following procedures have been prepared to provide basic guidelines that are both legal and practical in the technical area of searches and seizures. In their implementation, officers should consider all related department policies on the following topics: ***Arrests, Stop and Frisk and Threshold Inquiries, Field Interviews and Observations, Search Warrant Affidavits, the Use of Informants and the Collection and Preservation of Evidence.***

¹ *Mincey v. Arizona*, 437 U.S. 385 (1978).

² *Stoner v. California*, 376 U.S. 483 (1964).

³ *Commonwealth v. Antobenedetto*, 366 Mass. 51, 57 (1974).

IV. DEFINITIONS:

- ***Affidavit:*** A formal declaration or statement of facts, in writing, made voluntarily and confirmed by oath or affirmation before a person having the legal authority to administer such oath or affirmation.
- ***Exigent Circumstances:*** Situations in which law enforcement officials will be unable or unlikely to effectuate a search or seizure for which probable cause exists unless they act swiftly and without prior judicial authorization.⁴ Searches based on probable cause and exigent searches may be conducted on automobiles, premises, and, on rare occasions, individuals.
- ***Probable Cause:*** The facts observed, information obtained from others and personal knowledge and experience that is sufficient to lead a reasonable and prudent person to believe that a particular crime has been, is being, or is about to be committed, and that seizable evidence of crime is likely to be found in a specific location or on a specific person and which would justify a judge or magistrate to issue a search warrant.

V. SEARCH WARRANTS:

- A. Obtaining A Search Warrant:** The legal procedure specified by M.G.L. c. 276, § 1 for the issuance of a search warrant is as follows:
1. A court or justice authorized to issue warrants in criminal cases may, upon complaint on oath that the complainant believes that any of the property or articles hereinafter named are concealed in a house, place, vessel or vehicle or in the possession of a person anywhere within the commonwealth and territorial waters thereof, if satisfied that there is probable cause for such belief, issue a warrant identifying the property and naming or describing the person or place to be searched and commanding the person seeking such warrant to search for the following property or articles:
 - 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 are or have been used, as a means or instrumentality of committing a crime, including, but not in limitation of the foregoing, any property or article worn, carried or otherwise used, changed or marked in the preparation for or 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; except property subject to search and seizure under sections forty-two through fifty-six, inclusive, of chapter one hundred and thirty eight;

⁴ *U.S. v. Campbell*, 581 F.2d 22 (2d Cir. 1978).

- d. The dead body of a human being; and
- e. The body of a living person for whom a current arrest warrant is outstanding.

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

2. *Seizure of Evidence:* A search warrant may also authorize the seizure of evidence.⁵
3. *Form of Search Warrant:* A search warrant shall:⁶
 - a. Designate and describe the building, house, place, vessel or vehicle to be searched;
 - b. Particularly describe the property or articles to be searched for;
 - c. Be substantially in the form prescribed in G.L. c. 276, § 2A; and
 - d. Be directed to a sheriff or his/her deputy or to a constable or police officer, commanding him/her to search in the daytime, or if the warrant so directs, in the nighttime, the building, house, place, vessel or vehicle where the property or articles for which he/she is required to search are believed to be concealed, and to bring such property or articles when found, and the persons in whose possession they are found, before a court having jurisdiction.
4. *Administrative Review:* An officer requiring a search warrant should consult with his/her superior and obtain his/her advice and guidance before proceeding to court. If the court is not in session, the Shift Commander shall communicate with an authorized court official to make the necessary arrangements to secure a search warrant.
 - a. If legal assistance is required for the preparation of the search warrant affidavit, the District Attorney's office should be contacted. Officers seeking assistance may call the main number of the District Attorney's Office during the day at (781) 897-6825 and ask for the Search Warrant Team. For urgent matters on nights and weekends, please call the Search Warrant Team's cell phone at (617) 756-3670.
 - b. Every search warrant issued and any action taken on such warrant should be recorded in police department files in accordance with standard departmental procedures.

B. Executing Search Warrants:

1. After a search warrant is obtained, a police officer shall:
 - a. Check the warrant to ensure that it is signed and it clearly describes the place to be searched and the articles to be seized;

⁵ *Warden v. Hayden*, 387 U.S. 294 (1967).

⁶ M.G.L. c. 276, s. 2.

- b. Execute the warrant immediately, or within a reasonable time, but in any case, within seven days from date of issuance;⁷
 - c. Execute the warrant in the daytime unless it specifically provides for nighttime search. Nighttime for this purpose is from 10:00 p.m. until 6:00 a.m.;⁸
 - d. Searches begun in the daytime may continue into the nighttime if such activity is reasonable and not for the purpose of harassment.
2. *Service of Search Warrant:*
- a. Upon arrival at the location to be searched, officers shall check to make certain that the premises are in fact those described in the warrant.
 - b. Upon entering, show a copy of the warrant (not the original) to the person or persons lawfully on the premises unless the circumstances are such that this is not practical.
 - c. The number of officers assigned to execute a search warrant should be dependent upon the particular circumstances. It is a good practice for at least one of the searching officers to be in police uniform, unless this would jeopardize the success of the search.
 - d. A search warrant should not be executed in or on any premises in the absence of the owners, unless there is good reason to believe that the occupants do not intend to return for an extended period of time (or that they do not intend to return at all); or that the property or articles designated in the search warrant will be removed or destroyed if the premises are not searched immediately. In all such cases, the manner of entry shall be made with the least possible destruction of property and a copy of the warrant left in a conspicuous place on the premises.
3. *Knock and Announce Requirement for Dwellings:*
- a. When serving a warrant at a private dwelling, police officers must knock, identify themselves as police officers, announce that they have a warrant to search the premises and demand entrance, except in limited circumstances.⁹

⁷ *Commonwealth v. Grimshaw*, 413 Mass. 73 (1992); *Commonwealth v. Cromer*, 365 Mass. 519, 524 (1974). Note: The day on which the warrant issued is not included in the computation of time. However, Saturdays, Sundays, and legal holidays are counted as part of the seven-day period. Because the search warrant must be executed AND returned to the issuing court within seven (7) days of its issuance, the affiant is advised to plan execution of the warrant accordingly in order to meet this deadline.

⁸ *Grimshaw*, 413 Mass. at 81.

⁹ *Richards v. Wisconsin*, 520 U.S. 85(1997); *Commonwealth v. Scalise*, 387 Mass. 413 (1982); *Commonwealth v. Gondola*, 28 Mass. App. Ct. 286 (1990).

- i. Officers may knock on the door and gain entry by deception or by means of a ruse, if this will result in a safe, practical and successful execution of the search warrant with less destruction of property.¹⁰
 - b. Officers shall always seek entry as peacefully as possible, but forcible entry is authorized if, after waiting a reasonable time, it becomes apparent that:
 - i. The officers will not be admitted voluntarily;¹¹
 - ii. The officers or any other persons are in danger of physical harm;
 - iii. The occupants are escaping; or
 - iv. Evidence is being, or is in danger of being destroyed.¹²
4. *No Knock Entry*:
 - a. An immediate, forcible entry (or one gained by a ruse or trick) is authorized -- and the usual knock and announce procedure may be disregarded if the searching officers are in possession of reliable information that the person inside the dwelling to be entered has knowledge of the officers' purpose and presence¹³ or where to follow the knock and announce procedure:
 - i. Would be likely to endanger their safety or the safety of others;¹⁴
 - ii. Would be likely to enable the wanted person(s) to escape; or
 - iii. Would be likely to result in the evidence being destroyed during the period between their announcement of purpose and subsequent forcible entry.¹⁵
 - b. Officers shall apply for a "no knock and announce" warrant, if they have probable cause to believe the knock and announce rule should not be observed when the warrant will be executed.

Note: If the circumstances that would justify disregarding the knock and announce rule are no longer present when the warrant is executed, the knock and announce rule must be followed.¹⁶

¹⁰ *Commonwealth v. Sepulveda*, 406 Mass. 180 (1989). See also *Commonwealth v. Goggin*, 412 Mass. 200, 202 (1992) (noting that "use of the 'Somerville Pop Warner' ruse by the police to have the door opened was not improper"); *Commonwealth v. Watson*, 36 Mass. App. Ct. 252, 258 (1994) (undercover officer knocked on door to do drug buy, door answered and opened, police advanced, announced purpose, and pushed undercover officer and target into apartment).

¹¹ *Commonwealth v. Yazbeck*, 31 Mass. App. Ct. 769, 773-774 (1992).

¹² *Commonwealth v. Carrasco*, 405 Mass. 316, 319-320, 325 (1989) (forced entry justified after police announced their identity and then heard running footsteps inside the door).

¹³ *Commonwealth v. Antwine*, 417 Mass. 637 (1994).

¹⁴ *Commonwealth v. Eller*, 66 Mass. App. Ct. 564, 572 (2006) (suspect is known to have a violent record); *Commonwealth v. Munera*, 31 Mass. App. Ct. 380, 384 (1991) (suspect is known to be armed).

¹⁵ *Commonwealth v. West*, 55 Mass. App. Ct. 467, 469-470 (2002) (facts in affidavit examined as a whole to determine whether probable cause exists to believe evidence would be destroyed if police required to knock and announce).

- c. Upon gaining entry, the searching officers should immediately identify themselves as police officers and should state that it is their purpose to serve a valid search warrant issued by the court.
5. *Search Responsibilities:* The police officer responsible for the execution of a search warrant:
- a. Shall not exceed the authority granted by the warrant;
 - b. Shall make a diligent effort to find all the property listed in the warrant;
 - c. Shall not search beyond the area described in the warrant unless consent is obtained or exigent circumstances exist. (If the warrant authorizes a search of the first floor of a building, e.g., a search of the second floor is unlawful.);
 - d. Shall 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. Shall carry out the search with the least possible damage to the premises;
 - f. Shall remain on the premises only for the time reasonably necessary to thoroughly search for and seize the property listed in the warrant;
 - g. Shall terminate the search when the listed property has been found or when it reasonably appears that such property is not on the premises;
 - h. Shall make adequate provisions for the security of the searched premises before leaving unless the person in control of such premises refuses or rejects such police protection;
 - i. Shall 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 policies on *Collection and Preservation of Evidence* and *Evidence and Property Control* (*are new policies going to be issued on these topics?*);
 - j. Shall complete the Return section of the warrant and deliver it to the court as soon as reasonably possible after the completion of the search, but no later than seven days from the date it was issued;¹⁷
 - k. Shall note on the warrant the action taken with an inventory of all property seized by authority of the warrant. (If evidence not described in the warrant is seized, attach a separate sheet to the Return listing all such property and state that it was seized during the execution of that warrant); and
 - l. Shall make a full departmental report of all action taken on a search warrant, to be submitted to the appropriate supervisor before returning the

¹⁶ *Commonwealth v. Jimenez*, 438 Mass. 213, 216-217 (2002).

¹⁷ M.G.L. c. 276, § 3A.

warrant to the court. In cases where an arrest is effectuated, the Shift Commander will review the report.

6. *Plain View*: When police officers lawfully enter a dwelling with a valid search warrant, they may seize objects reasonably believed by them to be connected with criminal activity if in plain view even though not mentioned in the search warrant.¹⁸ Refer to Section V.I. of this directive concerning The “Plain View” Doctrine relative to the legal requirements to seize items in plain view.
7. *Search of Persons on the Premises*:
 - a. In order to ensure an orderly and safe search, all persons present on the premises¹⁹ when the police arrive may be detained and prevented from moving about. However, at least one of the occupants should be permitted to witness all aspects of the search, if this is practical under the particular circumstances.
 - b. Persons not named in or referred to in the search warrant may not be searched unless either:²⁰
 - i. Probable cause exists in regard to the individual to be searched (however mere presence at a location where criminal activity has taken place is not enough to constitute probable cause);²¹ or
 - ii. The officer has reasonable suspicion to believe that such person is armed and dangerous and then he/she may be frisked for weapons.
8. *Search of Area outside Scope of Warrant*: If during the execution of a search warrant it appears that there is probable cause to believe that seizable property is located in an area of the premises outside of the scope of the present warrant, a new warrant shall be obtained immediately, unless consent is granted or exigent circumstances are present. While the new warrant is being sought, any occupants of the premises may have their activities restricted.

¹⁸ *Commonwealth v. Bond*, 375 Mass. 201 (1978). See also *Commonwealth v. Pierre*, 71 Mass. App. Ct. 58 (2008) (counterfeited CDs were properly seized during execution of search warrant for narcotics under plain view doctrine where their incriminating nature was apparent due to absence of markings, photocopied covers on cases, organization into like groups, and quantity and presence amid ammunition and electronic scales).

¹⁹ *Michigan v. Summers*, 452 U.S. 692 (1981); *Commonwealth v. Charros*, 443 Mass. 752, 760 (2005). But see *Bailey v. United States*, 568 U.S. ___ (2013) (noting that persons to be detained during the execution of a search warrant must be within a line of sight of the target premises).

²⁰ Note that in limited circumstances, officers may apply for an “any person present” warrant. Examples of some extremely rare circumstances in which this box properly may be checked include situations involving a “floating crap game” or a “crack house.” *Commonwealth v. Baharoian*, 25 Mass. App. Ct. 35, 38-39 (1987). See also *Commonwealth v. Perez*, 68 Mass. App. Ct. 282, 285 (2007) (“any person present” warrant properly issued to search single family residence where affiant observed large number of individuals, some known to have drug convictions, entering premises and staying five minutes or less – conduct consistent with narcotics distribution – and fact that marijuana could be easily concealed on persons present). Compare *Commonwealth v. Souza*, 42 Mass. App. Ct. 186, 188-191 (1997) (search of defendant, who was “clearly not young enough to be in high school,” under “any person present” warrant was improper because affidavit described drug operation targeted at high school students and did not establish probable cause to believe that drug sales were aimed at others).

²¹ *Ybarra v. Illinois*, 444 U.S. 85 (1979).

V. SEARCHES WITHOUT A WARRANT:²²

A. Exceptions to Warrant Requirement:

1. Officers may make a warrantless search only when one of the following major exceptions to the search warrant applies:
 - a. Warrantless stopping, questioning and frisking (investigative detention);
 - b. Search incident to arrest (including protective sweep);
 - c. Exigent or emergency circumstances search (including "hot pursuit");
 - d. Consent searches;
 - e. Motor vehicle searches;
 - f. Pre-incarceration and inventory searches;
 - g. Protective custody searches; and
 - h. Administrative searches.
2. The following are not considered invasions of any privacy interest and, therefore, do not come under the search warrant requirement of the Fourth Amendment generally:
 - a. The "plain view" doctrine;
 - b. The "open fields" doctrine; and
 - c. Abandoned property.
3. A police officer should never rely on one of these exceptions whenever it is possible, under the particular circumstances, to obtain a search warrant in advance.
4. In every case where a search is conducted without a warrant, the police officers involved shall make a written report of the circumstances to include all important facts relative to the incident and an inventory of any evidence seized, in accordance with departmental procedures.²³

²² CALEA Std. 1.2.4 – A written directive governs search and seizure without a warrant by agency personnel, to include the following situations:

- a. search by consent;
- b. stop and frisk of an individual under circumstances where the officer has articulable reasons to fear for his/her safety;
- c. search of a vehicle under a movable vehicle exception;
- d. at the scene of a crime;
- e. exigent circumstances, as where the public safety is endangered;
- f. inventory searches of seized vehicles or other property; and
- g. other situations authorized by state and federal constitutional provisions.

²³ For purposes of this section, the use of "written report" can be construed to mean written documentation that could be in the form of an FIO report, MV Citation, Data Collection form, aside an Incident Report or Arrest Report.

B. Warrantless Stopping, Questioning and Frisking (Investigative Detention):²⁴

Both the Fourth Amendment and Chapter 41, section 98 of the Massachusetts General Laws authorize police officers to briefly detain suspicious persons, to question such persons and, if the officer reasonably believes the person may be armed or dangerous, to frisk that person for weapons. These procedures are sometimes referred to as a "threshold inquiry." This type of warrantless search and seizure is covered in depth in the departmental policy and procedure entitled **#424.1 – Stop, Frisk and Threshold Inquiries.**

C. Search Incident to Lawful Arrest:²⁵

1. *Criteria:* A warrantless search of an arrested person may be conducted under 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 only for the purposes of:
 - i. Seizing fruits, instrumentalities, contraband and other evidence of the crime for which the arrest was made in order to prevent its destruction or concealment; and/or
 - ii. To remove any weapons that the arrested person might use to resist arrest or to affect his/her escape;²⁶
 - c. The search is limited in scope to the person of the arrestee and the immediate surrounding area. Immediate surrounding area means that area from which the arrestee can either obtain a weapon or destroy evidence;²⁷ and
 - d. The search is substantially contemporaneous with the arrest and conducted in the immediate vicinity of the arrest; however, if safety requires, the officer may delay the search and conduct it at a safe location.
2. *Use of Force:* The officer conducting the search may use the degree of force reasonably necessary to:
 - a. Protect him/herself and others present;
 - b. Prevent escape; and
 - c. Prevent the destruction of evidence.

²⁴ CALEA Std. 1.2.4 (b).

²⁵ CALEA Std. 1.2.4 (d).

²⁶ M.G.L. c. 276, § 1. See also *Commonwealth v. Madera*, 402 Mass. 156, 158-161 (1988).

²⁷ *Commonwealth v. Elizondo*, 428 Mass. 322, 323-325 (1998) (upholding seizure of false bottomed deodorant can located in bathroom while the defendant remained handcuffed and secured four to five feet away as a search incident to arrest); *Commonwealth v. Quilter*, 81 Mass. App. Ct. 808 (2012) (upholding search incident to arrest of defendant after arrest on trespassing warrant; defendant requested clothing, was escorted to bedroom for clothing and firearm was located under mattress while clothing was being retrieved).

3. *Search of Possessions and Clothing:* A search may also be made of items actually in possession of the arrested person and clothing worn at the time of arrest if such search is related to the offense for which the arrest was made.²⁸
4. *Protective Sweep:* In addition to a careful search of the area within the arrested person's immediate control, an examination of the entire premises may also be justified at the time of or immediately following a valid arrest if there is a reasonable belief that it was imperative for the officers' safety because of the presence of others in the house or apartment.²⁹
 - a. This search is limited to areas where an accomplice or other person who might come to the aid of the arrestee might reasonably be hiding.
 - b. Any item or object recognizable as criminal evidence discovered in plain view during a justifiable "protective sweep" may be properly seized.³⁰
 - c. An arrest shall not be used as a pretext in order to make a search.

D. Searches In Emergency or Exigent Circumstances:³¹

1. *Criminal Acts:* A police officer is authorized to conduct a search without a warrant when faced with an emergency situation where delay would endanger the officer's or the public's safety or might result in the escape of the offender or the destruction of evidence.³²
 - a. The authority of the police to make warrantless entries in emergency situations, whether criminal or non-criminal is based upon their fundamental responsibility to preserve the peace and to protect the public safety.³³
 - b. The doctrine that permits warrantless entries and searches because of emergency or exigent circumstances requires justification by the police

²⁸ *Commonwealth v. Phifer*, 463 Mass. 790 (2012) (upholding search of cell phone seized incident to drug arrest for incoming and outgoing calls); *Commonwealth v. Berry*, 463 Mass. 800 (2012) (upholding search of cell phone seized during drug arrest for most recently dialed number); *Commonwealth v. White*, 2013 WL 1788019 (2013) (upholding search incident to arrest of defendant's "One Touch" diabetic testing kit after arrest on warrant for drug offense); *Commonwealth v. Starkweather*, 79 Mass. App. Ct. 791, 796-798 (2011) (warrantless search of defendant's automobiles was lawful as incident to arrest even though defendant was arrested, handcuffed, and placed in cruiser because there was probable cause to believe that evidence relating to crime of arrest would be found in vehicles).

²⁹ *Maryland v. Buie*, 494 U.S. 325 (1990). See also *Commonwealth v. Bui*, 419 Mass. 392, 395-396 (1995) (police were entitled to act for their own safety when they entered apartment pursuant to arrest warrant, kicked over mattress and found gun); *Commonwealth v. Matos*, 78 Mass. App. Ct. 156, 159 (2010) (sweep justified where target had record of violent felonies and firearm possession charges, even though arrest warrant was for non-violent drug charge); *Commonwealth v. DeJesus*, 70 Mass. App. Ct. 114, 119-20 (2007) (sweep justified where target of warrant for armed carjacking, a violent crime, had record of violent offenses, even though target answered door and immediately submitted to arrest).

³⁰ *Commonwealth v. Bowden*, 379 Mass. 472 (1980).

³¹ CALEA Std. 1.2.4 (e).

³² *Warden v. Hayden*, 387 U.S. 294 (1967); *Commonwealth v. Moran*, 370 Mass. 10 (1976).

³³ *Thurlow v. Crossman*, 336 Mass. 248 (1957).

that it was impractical for them to obtain a search warrant in advance and that the warrantless search was truly necessitated by the emergency circumstances which could not have been anticipated.³⁴

- c. While conducting a lawful search justified by emergency or exigent circumstances, a police officer may seize any incriminating evidence inadvertently discovered in plain view.³⁵
2. *Public Safety*: Many emergencies justifying a warrantless entry and search do not necessarily involve criminal acts; for example, when a police officer hears a call for assistance, when the officer observes smoke or flame, or when the officer learns of an actual or potential natural or man-made calamity or disaster, the officer has the duty and obligation to respond immediately. To justify this “Community Caretaking Function,” the Commonwealth bears the burden of demonstrating that there were reasonable grounds for the police to believe that an emergency existed, and the actions of the police were reasonable.³⁶
3. *Burning Buildings*: A warrantless entry into a burning building is permissible in an emergency and officials may remain for a reasonable time to investigate the cause of the fire and any evidence of arson discovered is admissible at trial. Any reentry after the fire has been extinguished and officials have left the scene should be made pursuant to a search warrant, unless the re-entry is justified by a recognized exception to the warrant requirement such as consent, emergency or abandonment.³⁷
4. *Explosives/Other Dangerous Items*: When an officer has reasonable cause to believe premises contain things imminently likely to burn, explode, or otherwise cause death, serious bodily harm, or substantial destruction of property, an officer may, without a search warrant, enter and search such premises to the extent reasonably necessary for the prevention of such death, bodily harm or destruction.³⁸
5. *Fresh and Continued Pursuit*: The Supreme Judicial Court³⁹ has set out factors supporting justification of exigent circumstances under this doctrine including:
 - a. There is fresh and continued pursuit of the suspect;
 - b. A crime of violence was involved;
 - c. There was a strong possibility that the suspect was armed;

³⁴*Commonwealth v. Guaba*, 417 Mass. 746 (1994).

³⁵*Commonwealth v. DiGeronimo*, 38 Mass. App. Ct. 714, 723 (1995) (warrantless entry based on exigency requires probable cause to believe a crime has been committed “unless it is a ‘pure’ emergency where entry was effected solely to avert a dangerous situation that threatened life or safety in which case any incriminating evidence within plain view may legitimately be seized”).

³⁶*Commonwealth v. McDermott*, 448 Mass. 750, 766-767 (2007).

³⁷*Michigan v. Tyler*, 436 U.S. 499 (1978); *Michigan v. Clifford*, 464 U.S. 287 (1984).

³⁸*Commonwealth v. Marchione*, 384 Mass. 8 (1981).

³⁹*Commonwealth v. Moran*, 370 Mass. 10 (1976). See also *U.S. v. Santana*, 427 U.S. 39 (1976).

- d. The suspect was known or reasonably believed to be in the building;
- e. There was a likelihood that the suspect might escape unless immediately apprehended; and
- f. There was sufficient justification for failure to obtain a search warrant.

Note: Where the above or other emergency factors are not present, police may stake out the building or premises until a warrant is obtained.⁴⁰

E. Search by Lawful Consent:⁴¹

1. *Conditions of Consent Searches:* Because such issues as who may give lawful consent to a police entry and search or whether the consent was given voluntarily will be carefully scrutinized by the court, police should not unduly rely on such consent. On the other hand, when properly elicited, consent to a search may expedite a criminal investigation. Police may engage in a warrantless search after obtaining consent even in circumstances where they do not have probable cause.
2. *Elements for Consent Searches:* For there to be a valid consent to search, the following two elements must be satisfied:
 - a. The consenting party must have sufficient lawful authority over the premises or property to be able to give consent to a search of that premises or property, and
 - b. Consent may be obtained from any person who has the right of ownership, possession or control of the premises or property.⁴² If there is serious doubt, a search warrant should be obtained.⁴³
3. *Authority to Give Consent:*
 - a. *Jointly Owned Property:* Generally, if property, such as a house, apartment or business, is owned jointly by two or more persons, any one of them may consent to a search of the common areas of the premises.⁴⁴

⁴⁰ *U.S. v. Adams*, 621 F.2d 41 (1st Cir. 1980).

⁴¹ CALEA Std. **1.2.4 (a)**.

⁴² *Commonwealth v. Porter P.*, 456 Mass. 254 (2010) (Actual authority to consent may be established where the third party (typically a landlord) “shows the police a written contract entitling that person to allow the police to enter the home to search for and seize contraband or evidence.”).

⁴³ Any claim of “apparent authority” will be strictly scrutinized by the court. See *Commonwealth v. Lopez*, 458 Mass. 383 (2010) (suppressing the evidence because the officer did not make a sufficient inquiry as to whether the third party had authority to consent to entry in to the premises).

⁴⁴ *U.S. v. Matlock*, 415 U.S. 164 (1973); *Commonwealth v. Maloney*, 399 Mass. 785 (1987). See also *Commonwealth v. Connolly*, 356 Mass. 617, 624 (1970) (consent by one tenant is valid as to co-tenants with regard to common areas); *Commonwealth v. Noonan*, 48 Mass. App. Ct. 356, 362 (1999) (valid consent given by defendant’s estranged girlfriend where she and defendant occupied apartment pursuant to month-to-month unwritten rental agreement and used apartment as ordinary married couple would). [Police may search a home without a](#)

- b. *Spouse*: A spouse may give consent to a police search of a jointly owned home, even without the knowledge or permission of the other spouse.⁴⁵
 - c. *Parent*: A parent may give consent to search premises under the parent's control although it involves searching a child's room and the parent has general access to the child's room.⁴⁶ However, where the child, whether or not an adult, has exclusive access, often locked, to certain areas or property, the parent's consent may not be enough.⁴⁷
 - d. *Children*: Generally, a child may not give consent to a police search of premises or property owned by the child's parents.
 - e. *Roommate*: A roommate may be able to give consent to a police search of common areas of the apartment but the roommate probably cannot give consent to a search of areas exclusively reserved for the suspect, such as his/her bedroom, luggage or closet.⁴⁸
 - f. *Landlord*: Generally, a landlord cannot give consent to the search of a tenant's apartment.⁴⁹ However, a landlord may give consent to searches of common areas such as hallways and stairwells.
 - g. *Hotels*: A hotel or motel owner or manager cannot give consent to a search of a guest's lodgings.⁵⁰
4. *Consent must be Voluntary*: Consent must be freely and voluntarily given.⁵¹
 - a. Officers should notify the person from whom consent is sought of their right to refuse to give consent.⁵²
 - b. A consent to search may be given orally but preferably, it should be in writing.⁵³
 - c. Consent cannot be presumed from silence.

warrant when two occupants disagree about allowing officers to enter, and the resident who refuses access is arrested. *Fernandez v. California*, 571 U.S. __ (2014).

⁴⁵ *Commonwealth v. Martin*, 358 Mass. 282 (1970) (wife's consent valid since she had equal control over premises as defendant, despite fact that relationship was antagonistic); *Commonwealth v. Podgurski*, 44 Mass. App. Ct. 929, 930-931 (1998) (wife's consent valid though she was temporarily living in shelter at time).

⁴⁶ *Commonwealth v. Ortiz*, 422 Mass. 64 (1996); *Commonwealth v. Farnsworth*, 76 Mass. App. Ct. 87 (2010).

⁴⁷ *U.S. v. DiPrima*, 472 F.2d 550 (1st Cir. 1973); *Farnsworth*, 76 Mass. App. Ct. at 97-98.

⁴⁸ *Commonwealth v. Connolly*, 356 Mass. 617, 624 (1970) (consent by one tenant is valid as to co-tenants with regard to common areas).

⁴⁹ *Niro v. U.S.*, 388 F.2d 535 (1st Cir. 1968). See also *Porter P.*, 456 Mass. at 263-264 (shelter's manual allowed staff to enter room to make repairs, exterminate pests, and monitor cleanliness, but did not permit staff to allow police to enter to search for contraband or evidence).

⁵⁰ *Stoner v. California*, 376 U.S. 483, 84 S.Ct. 889 (1964).

⁵¹ *Commonwealth v. McGrath*, 365 Mass. 631 (1974).

⁵² *Commonwealth v. Sanna*, 424 Mass. 92 (1997) (Although there is no legal requirement that a person be advised of their right to refuse to give consent to a police search, this is one of the factors that the court will consider in determining whether the consent was voluntarily given.).

⁵³ *Commonwealth v. Reed*, 417 Mass. 558 (1994). See also *Commonwealth v. Carr*, 458 Mass. 295, 299-302 (2010) (evidence of students' consent to search dorm room was equivocal where consent to search forms were incomplete and testimony regarding oral consent was "discrepant").

- d. Consent must be free of any coercion, intimidation, or threat, so officers must avoid even the appearance of intimidation or duress.⁵⁴
 - e. Officers shall not gain consent through the use of misrepresentation or fraud.⁵⁵
 - f. Consent shall be requested prior to search and after the police officers have identified themselves.
5. *Limited to a Specific Area*: A consent search shall be limited to the area specified.⁵⁶
 6. *Revocation of Consent*: Consent may be revoked at any time and the search shall cease upon revocation, unless additional factors or information have come to light that justify a continued warrantless, nonconsensual search. For example, evidence found prior to revocation of consent may be retained and used as a basis for an immediate arrest or as probable cause for a further search (if exigent circumstances exist) or for obtaining a search warrant.
 7. *Consent Required for Loud Parties*: A police officer cannot effect an entry into a dwelling house in response to a loud party complaint without having received consent from the occupant prior to entry, unless the officer is in possession of a search (or arrest) warrant or where there is some other lawful basis for entry without a warrant.⁵⁷

F. Motor Vehicle Searches:⁵⁸

1. Officers are prohibited from stopping motor vehicles without reasonable suspicion of criminal activity or motor vehicle violations.⁵⁹
2. If it is at all possible and practicable, a search warrant should always be obtained in the prescribed manner in advance of a motor vehicle search, as the courts generally prefer this procedure.
3. A warrantless search of a motor vehicle may be conducted under the following circumstances:
 - a. *Warrantless stopping, questioning and frisking of motor vehicle operator or occupants*: A "stop and frisk" type of protective search when the officer reasonably believes that his/her safety or the safety of others is in danger in order to determine whether a suspect is armed, with the search confined

⁵⁴ *Commonwealth v. Cantalupo*, 380 Mass. 173, 177-178 (1980).

⁵⁵ *Commonwealth v. Harris*, 387 Mass. 758, 766-767 (1982). But see *Commonwealth v. Gaynor*, 443 Mass. 245, 253-255 (2005) (defendant need not be informed of all purposes for which blood sample may be used in investigation).

⁵⁶ *Commonwealth v. Thomas*, 67 Mass. App. Ct. 738, 741-742 (2006) (where defendant asked arresting officers to lock apartment door, officers could search for key in entranceway but not search drawers in defendant's bedroom).

⁵⁷ *Commonwealth v. Kiser*, 48 Mass. App. Ct. 647 (2000).

⁵⁸ CALEA Std. 1.2.4 (c).

⁵⁹ *Delaware v. Prouse*, 440 U.S. 648 (1979); *Commonwealth v. Feyenord*, 445 Mass. 72, 75 (2005).

to the area of the motor vehicle from which a suspect might gain possession of a weapon.⁶⁰

- b. *Ordering Occupants Out of a Vehicle:* An officer will be required to have a reasonable belief that the officer's safety, or the safety of others, is in danger, before ordering a driver (presumably the occupants, as well) out of a motor vehicle.⁶¹
- c. *Search of Motor Vehicle Incident to Arrest of Operator or Occupant:* A search incident to a lawful arrest limited to the area from which the person could obtain a weapon or reach destructible evidence.⁶²
- d. *Exigent Circumstances Search:* A warrantless search of a vehicle may be made when the following elements are satisfied:
 - i. The vehicle must be lawfully stopped on a public way or is found parked in a public place,⁶³ and
 - ii. There is probable cause to believe that the vehicle contains contraband or other evidence at the initiation of the search.
 - iii. Exigent circumstances are presumed: In *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996), the Supreme Court held that police may conduct a warrantless search of a motor vehicle stopped in transit or seized in a public place solely on the basis of having probable cause to believe that seizable items are located in the vehicle, thereby eliminating the requirement of showing exigent circumstances to justify the warrantless search. The Supreme Judicial Court has adopted the *Labron* rule under article 14 of the Massachusetts Declaration of Rights. *Commonwealth v. Motta*, 424 Mass. 117, 123-124 (1997).
- e. *Consent:* A search may be conducted with the voluntary consent of the person in lawful control of the vehicle.⁶⁴
- f. *Roadblocks:* Roadblock stops (for example, to detect drivers under the influence of alcohol) are permissible if the following criteria are met:
 - i. The selection of motor vehicles to be stopped is not arbitrary;
 - ii. The safety of the public is assured by taking necessary precautions;
 - iii. The motorists' inconvenience is minimized; and

⁶⁰ *Commonwealth v. Stampley*, 437 Mass. 323, 328 (2002); *Commonwealth v. Gonsalves*, 429 Mass. 658 (1999), rejecting *Penn. v. Mimms*, 434 U.S. 106, 98 S.Ct. 330 (1977); *Commonwealth v. Silva*, 366 Mass. 402 (1974).

⁶¹ *Commonwealth v. Stampley*, 437 Mass. 323, 328 (2002); *Commonwealth v. Gonsalves*, 429 Mass. 658 (1999).

⁶² *Commonwealth v. Clermy*, 37 Mass. App. Ct. 774 (1995). See also *Commonwealth v. Starkweather*, 79 Mass. App. Ct. 791, 796-798 (2011) (warrantless search of defendant's automobiles was lawful as incident to arrest even though defendant was arrested, handcuffed, and placed in cruiser because there was probable cause to believe that evidence relating to crime of arrest would be found in vehicles).

⁶³ *Commonwealth v. Wunder*, 407 Mass. 909 (1990).

⁶⁴ *Commonwealth v. Lanoue*, 356 Mass. 337 (1969).

- iv. The roadblock procedure is conducted pursuant to a plan devised by law enforcement supervisory personnel.⁶⁵
 - iv. In addition, if police have a description of a suspect vehicle, they may stop all vehicles fitting that description.
 - g. *Plain View Observations*: If a police officer has lawfully stopped a motor vehicle and is questioning the operator, any incriminating item in or on the vehicle observed in plain view, including anything observed with the use of a flashlight, may furnish probable cause to search the vehicle and seize the item observed without a warrant.⁶⁶
 - h. *Motor Vehicle Inventory*:⁶⁷ If the vehicle is impounded, the vehicle shall be searched and all personal property found in the vehicle shall be inventoried and kept in safe custody in accordance with the departmental policy and procedure entitled # 640 – *Vehicle Inventory Policy*.
 - i. *Administrative Searches*: Motor vehicles are subject to various types of administrative searches that do not require search warrants. For example, the annual motor vehicle inspection procedure is, in effect, a warrantless search.
4. All police officers shall be especially watchful and alert when stopping and searching a motor vehicle or its occupants as many officers have been seriously injured, some fatally, in taking this police action which should never be considered "routine."
- a. In stopping and searching motor vehicles, officers shall take all reasonable precautions for their personal safety, such as directing the occupants to alight from the vehicle and frisking them for weapons when the officer has a reasonable belief that they may be armed and dangerous.⁶⁸

G. Inventory Searches during Booking Process:⁶⁹ Prior to incarcerating a detainee in a police lockup, police shall conduct an inventory search of his/her person and inspection of his/her belongings in accordance with the departmental policies and procedures entitled #665 – *Detainee Booking Process* and #660 – *Holding Facility Operations*. This shall be done to uncover and safeguard any weapons or implements the detainee could use to injure him/herself or others, to safeguard valuables and to protect the police against false claims of theft or loss of the detainee's belongings.

⁶⁵ *Commonwealth v. McGeoghegan*, 389 Mass. 137 (1983).

⁶⁶ *Commonwealth v. Cavanaugh*, 366 Mass. 277 (1974); *Commonwealth v. Doulette*, 414 Mass. 653 (1993).

⁶⁷ CALEA Std. 1.2.4 (f).

⁶⁸ *Commonwealth v. Stampley*, 437 Mass. 323, 328 (2002); *Commonwealth v. Gonsalves*, 429 Mass. 658 (1999) rejecting *Penn. v. Mimms*, 434 U.S. 106 (1977).

⁶⁹ CALEA Std. 1.2.4 (g).

H. Administrative Searches:⁷⁰ The police may, under certain circumstances, engage in warrantless searches or inspections as part of their administrative functions. For example, it is proper to search a person who is about to visit a detainee. See the departmental policy and procedure entitled **#665 – Detainee Booking Process** and **#660 – Holding Facility Operations**.

I. The “Plain View” Doctrine:⁷¹

1. Officers may seize contraband or evidence without a warrant under the "plain view" exception to the warrant requirement if the following conditions are met⁷²:
 - a. The officer must have an independent justification for the intrusion into the place where the item is located ;
 - b. The item seized must be visible from the place where the officer had the right to be;⁷³ and
 - c. The item seized must be "immediately apparent" as contraband or evidence of crime.
2. The first prerequisite — that police had independent justification for the intrusion into the place where the item is located — may be satisfied in a number of ways:
 - a. Entry with a valid warrant;⁷⁴
 - b. Entry to make a lawful warrantless arrest;
 - c. Entry as a result of lawful consent;⁷⁵
 - d. Entry without a warrant based upon exigent circumstances;⁷⁶
 - e. Entry in an emergency to render necessary aid or assistance as part of the community caretaking function;⁷⁷
 - f. During a valid *Terry* stop;⁷⁸

⁷⁰ CALEA Std. **1.2.4 (g)**.

⁷¹ CALEA Std. **1.2.4 (g)**.

⁷² *Horton v. California*, 496 U.S. 128 (1990); *Commonwealth v. Franco*, 419 Mass. 635, 641 (1995); *Commonwealth v. Pietrass*, 392 Mass. 892, 901 n.12 (1984); *Commonwealth v. Hason*, 387 Mass. 169, 176 (1982).

⁷³ *Commonwealth v. Santana*, 420 Mass. 205 (1995) (reasonable for officer to seize bag of cocaine in plain view when officer leaned into car merely to return item to place from where defendant had taken it); *Commonwealth v. Battle*, 365 Mass. 472, 475-476 (1974) (finding that where an officer conducting a station house inventory search of an arrestee’s belongings and in the course of the inventory sees controlled substances, the officer may seize them); *Commonwealth v. McCollum*, 79 Mass. App. Ct. 239, 250-251 (2011) (where suspect’s violent flight from police justified protective sweep of apartment in which they found him, discovery of holster in closet was permissible plain view discovery).

⁷⁴ *Commonwealth v. Accaputo*, 380 Mass. 435 (1980) (valid search warrant); *Commonwealth v. Franco*, 419 Mass. 635, 641 (1995) (valid arrest warrant).

⁷⁵ *Commonwealth v. Cantalupo*, 380 Mass. 173 (1980).

⁷⁶ *Commonwealth v. Moore*, 54 Mass. App. Ct. 334, 338 (2002).

⁷⁷ *Commonwealth v. Buckman*, 461 Mass. 24, 41 (2011).

- g. During an inventory search of a person or a motor vehicle;⁷⁹ and
 - h. During an administrative search.⁸⁰
3. Items are immediately apparent as contraband if the officer has probable cause to believe they are:
- a. Instrumentalities or means by which any crime was committed, (such as weapons, masks, tools, etc.);⁸¹
 - b. Contraband (articles which may not be legally possessed, such as counterfeit money or controlled substances, etc.);⁸²
 - c. Fruits of any crime (such as stolen property);⁸³
 - d. Other evidence of any crime (such as clothing or other items fitting the description of the criminal offender);⁸⁴ or
 - e. Property which bears a reasonable relationship to the purpose of the search (such as documents establishing who owns the premises searched if ownership is an element of the crime).⁸⁵

J. Abandoned Property:⁸⁶

1. Abandoned or discarded property may be searched by the police and seized. Examples of abandoned property include:
- a. Trash in collection area accessible to the public.⁸⁷
 - b. The contents of a hotel room wastebasket once an individual has vacated the room.⁸⁸

⁷⁸ *Commonwealth v. Santana*, 420 Mass. 205 (1995); *Commonwealth v. King*, 389 Mass. 233, 241-243 (1983).

⁷⁹ *Commonwealth v. Gliniewicz*, 398 Mass. 744, 750 (1986); *Commonwealth v. Figueroa*, 412 Mass. 745, 749-750 (1992).

⁸⁰ *Commonwealth v. Eagleton*, 402 Mass. 199, 206-207 (1988).

⁸¹ *Commonwealth v. Accaputo*, 380 Mass. 435 (1980).

⁸² *Commonwealth v. Accaputo*, 380 Mass. 435 (1980); *Commonwealth v. Rosado*, 84 Mass. app. Ct. 208 (2013) (officer properly seized weapon in plain view believing that it was nunchucks, a per se dangerous weapon).. Compare *Commonwealth v. King*, 67 Mass. App. Ct. 823, 829 (2006) (officer who saw “green leafy substance” during traffic stop but was not able to say it was contraband was not authorized to seize it) with *Commonwealth v. Irwin*, 391 Mass. 765, 771 (1984) (officer’s “testimony that he was trained in the identification of marijuana and that he could see the color and shape of the contents with sufficient clarity to identify them as marijuana was sufficient to support the judge’s finding of probable cause”).

⁸³ *Commonwealth v. Accaputo*, 380 Mass. 435 (1980); *Commonwealth v. Anselmo*, 33 Mass. App. Ct. 602, 615 (1992).

⁸⁴ *Commonwealth v. LaPlante*, 416 Mass. 433 (1993) (wet sock found during search was evidence of murders by drowning).

⁸⁵ *Commonwealth v. Scalise*, 387 Mass. 413 (1982). See also *Commonwealth v. Fields*, 2 Mass. App. Ct. 679, 682 (1974) (utility bill, addressed to defendant and found during search pursuant to warrant for narcotics, tended to prove ownership of premises).

⁸⁶ CALEA Std. 1.2.4 (g)

⁸⁷ *California v. Greenwood*, 486 U.S. 35 (1988) (no reasonable expectation of privacy in garbage left outside curtilage of home); *Commonwealth v. Pratt*, 407 Mass. 647 (1990) (same).

- c. 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.⁸⁹
- d. Items thrown on the ground by a suspect.⁹⁰

K. Open Fields:⁹¹

1. An open field is that portion of privately owned land surrounding a person's dwelling that is too remote or removed from the physical dwelling to be considered part of the "house" such that it is protected by the Fourth Amendment.⁹²
 - a. The "house" that is protected by the Fourth Amendment includes the grounds and buildings immediately surrounding the dwelling.⁹³
2. Open fields may be searched without a warrant even though the terrain in question is not easily accessible to the public and even though the owner may have posted "No Trespassing" signs and may even have a locked gate.⁹⁴

L. Reporting Requirements: In every case where a search is conducted without a warrant, the police officer involved shall make a written report. This report will incorporate all of the circumstances surrounding the facts that led up to the search, to include all important facts relative to the incident (Incident Report) and an inventory of any property and/or evidence seized (Property and Evidence Report), in accordance with departmental procedures.

M. Searches by Persons other than Law Enforcement Officers:

1. *Private Individual:* Evidence obtained by a private individual, as a result of searching someone else's property, who is not acting as an employee or agent of the government, is admissible.⁹⁵

⁸⁸ *Abel v. U.S.*, 362 U.S. 217 (1960); *Commonwealth v. Netto*, 438 Mass. 686 (2003).

⁸⁹ *Commonwealth v. Lanigan*, 12 Mass. App. Ct. 913 (1981); *Commonwealth v. Netto*, 438 Mass. 686 (2003).

⁹⁰ *Commonwealth v. Wedderburn*, 36 Mass. App. Ct. 558 (1995). But see *Commonwealth v. Rodriguez*, 456 Mass. 578 (2010) (noting that "if the defendant dropped the drugs on the ground *after* he had been stopped by the police, that is, after a reasonable person in view of all the surrounding circumstances would have believed that he was not free to leave, the drugs, even though found on the ground, could have been suppressed as the fruit of an unconstitutional seizure of his person in violation of art. 14 of the Massachusetts Declaration of Rights if the stop were not supported by reasonable suspicion").

⁹¹ CALEA Std. 1.2.4 (g). Note that the Supreme Judicial Court has not formally adopted the "open fields doctrine" under the Massachusetts Declaration of Rights. *Commonwealth v. John G. Grant & Sons, Inc.*, 403 Mass. 151 (1988) ("This court has not adopted a parallel principle under art. 14 of the Massachusetts Declaration of Rights, which defines the scope of its protection in language somewhat different from that of the Fourth Amendment.").

⁹² *Hester v. U.S.*, 265 U.S. 57 (1924).

⁹³ *Rozencrantz v. U.S.*, 356 F.2d 310 (1st Cir. 1969).

⁹⁴ *Oliver v. U.S.*, 466 U.S. 170 (1984); *Hester v. U.S.*, 265 U.S. 57 (1924).

2. *Police Officer Acting as Security Guard:* Evidence discovered as a result of the warrantless search conducted by a police officer acting as a private security guard is not admissible if the officer acts beyond the scope of the private employer's business.⁹⁶

⁹⁵ *Commonwealth v. Leone*, 386 Mass. 329 (1982) (“Evidence discovered and seized by private parties is admissible without regard to the methods used, unless State officials have instigated or participated in the search.”).

⁹⁶ *Id.* (“[W]e conclude that an investigation by a special police officer privately employed as a security guard does not violate the Fourth Amendment when it is conducted on behalf of the private employer, in a manner that is reasonable and necessary for protection of the employer's property. If, on the other hand, the officer steps outside this sphere of legitimate private action, the exclusionary rule applies as it would to any State officer.”)
