

WARRANTLESS ENTRIES

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I. General Considerations and Guidelines

- A.** In the course of their activities, police officers sometimes encounter situations that require immediate action on their part to protect their safety and the safety of others or their property, and to prevent the destruction or concealment of evidence of crimes. Both criminal and noncriminal emergency situations may require the police to exercise their inherent authority to enter premises and conduct reasonable searches to protect the public safety and prevent or detect crime.
- B.** On some occasions, the need for immediate measures to ensure public safety and/or to prevent the destruction or concealment of evidence is apparent, as when police encounter a crime in progress or hear screams or cries which lead one to suspect criminal acts, or an officer uncovers indications of recent criminal activity which must be pursued without delay. On the other hand, police may

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also encounter emergency situations that do not, at least on the surface, involve criminal activities. They may nonetheless require immediate police response, including entries and searches. These noncriminal emergencies include medical emergencies, fires and burning buildings, man-made disasters and natural calamities.

Note: while this state's courts have not yet ruled on whether rescuing critically endangered animals, especially household pets, comes within the emergency exception to the warrant requirement, it appears that the strong public policy favoring the preservation of the life of such animals will justify a warrantless entry under appropriate circumstances.

II. POLICY

It is the policy of this police department to secure a warrant before entering private property except where it is impractical to obtain a warrant in a timely fashion and there exist clear circumstances, such as a public emergency, or the entry is made pursuant to their community caretaking role, justifying a warrantless entry.

III. DEFINITIONS:

- A. *Community Caretaking Function:*** Immediate police action focused on rendering aid, assessing and responding to situations posing an imminent serious threat to life or property, and protecting the public health from imminent serious harm.
- B. *Public Emergency:*** A natural or man-made event that requires a police officer to act immediately to render aid to injured victims of the event, or to minimize or neutralize a serious threat of death or serious bodily injury or property damage.ⁱ

IV. PROCEDURES

I. NON-CONSENSUAL ENTRIES: EMERGENCIES

1. Many entries and searches conducted in emergency situations require police to take action without first obtaining a warrant from a judicial magistrate. These searches - conducted without a warrant because of the immediate need for police action to protect public safety - are referred to as searches justified by exigent or emergency circumstances. Police officers are peace officers and are empowered with authority to protect and preserve the public peace and the public safety.
2. A reasonable belief as to the potential loss or destruction of evidence may create exigent circumstances permitting a warrantless search and seizure of evidence.ⁱⁱ
3. Warrantless searches in a dwelling are presumptively unreasonable under Art. 14 of the Declaration of Rights of the Massachusetts Constitution and the Fourth Amendment to the United States Constitution. In the absence of a warrant, two conditions must be met in order for a nonconsensual entry to be valid: there must be probable cause and there must be exigent circumstances.ⁱⁱⁱ

4. The “Forde Factors”

While the police may enter premises or a private dwelling to make an arrest with a warrant, they may only do so without a warrant where exigent or emergency circumstances are present. The police must be able to show that it was impractical to obtain an arrest warrant.^{iv}

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The exigency exception to the warrant requirement comes into play in cases where there is probable cause, but where taking the time to obtain a warrant would thwart its purpose, because, for example, the suspect may flee, evidence may be destroyed, or danger may be posed to the police or others.^v

In *Com. v. Forde*^{vi} the court delineated some factors which would tend to support a finding of exigency, justifying warrantless search, including:

- a. A showing that the crime was one of violence, or that the suspect was armed;
- b. A clear demonstration of probable cause;
- c. A strong reason to believe that the suspect is in the dwelling;
- d. A likelihood that the suspect will escape if not apprehended;
- e. Whether the entry is peaceable; and
- f. Whether the entry is in the nighttime.^{vii}

Not all of these factors need be satisfied to support a finding of exigent circumstances.^{viii} Additionally, the *Forde Factors* are also not the only factors which may lead to an exigent situation. Officers should document in their report the factors that led them to conclude that a warrantless entry was necessary and reasonable.

5. *Victim Or Person In Danger*

The police may make a warrantless search of an area or premises occupied by a homicide suspect to arrest the

suspected killer and to locate and protect any victim or others who may be in danger. A key factor is that there must be some indication that someone is in danger. However, once the exigency is over the police must thereafter obtain a warrant to continue to search once the premises are secured.^{ix} Similarly, pursuant to M.G.L. c. 209A, § 6, a police officer is required to use all reasonable means to prevent harm in domestic abuse situations. In such a situation, an officer may have the right to make a warrantless entry into a house.^x Officers should prepare a detailed report explaining all the circumstances surrounding such warrantless entry.

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 emergency that justifies a warrantless entry. Where an officer has a reasonable basis to believe that a person is engaging in a crime involving animal cruelty, 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 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.

6. *Dangerous Weapons*

When confronted with an emergency situation, especially where their own safety may be at stake, police may make a speedy and thorough search for weapons that could be used against them or to thwart an arrest.

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7. *Police may not create the exigency*

In order for exigent circumstances to be valid, the exigency must not have been created by the police. If the police create the exigency the exception will not apply. For example, the police may not have probable cause to secure a warrant but, in lieu of a warrant, knock on the door to create an exigency and thus do away with the warrant requirement.

8. *Exigency must still exist at the time of the entry*

Police must be able to point to exigent or emergency circumstances in order to justify a warrantless entry and search under the “hot pursuit” exception to the warrant requirement.

9. *Once the pursuit or exigency has ended a warrant is required*

Once the original “hot pursuit” has ended and the suspect has been captured and the premises are secured, all other searching must stop until a warrant can be obtained.^{xi}

10. *BURNING BUILDING, EMERGENCIES, DISASTERS*

A burning building presents an exigent or emergency situation and may be entered immediately and without a warrant to save lives and property. Once police (or fire officials) enter such a building, they may seize evidence found in plain view and may remain there a reasonable length of time to investigate the cause of the fire.^{xii}

Situations that are analogous to a burning building in which police have the right to make an emergency warrantless entry to save lives or property are natural disasters or man-made calamities. When entering a dwelling without a warrant in

response to a public safety emergency, the police will be required to show that they could not have reasonably obtained a warrant before entry.^{xiii}

11. *Enter premise to quell a breach of the peace*

The courts have permitted, in rare circumstances, the police to enter private property, including dwellings, in order to quell a breach of the peace.

12. *Consent*

Police officers may enter private property to make a warrantless arrest when they have been granted permission by someone with authority, or *apparent authority*, over the premises.

13. *The Threshold*

Assuming there is probable cause, a warrantless arrest on a threshold of a dwelling is valid as occurring in a public place.^{xiv} Should a suspect thereafter flee from the threshold inside a building, the police may pursue him or her if they believe that a failure to do so would result in the loss or destruction of evidence, or if *exigent circumstances* are present which otherwise justify the warrantless entry of a dwelling.^{xv}

However, if the police approach the defendant's home with probable cause to make an arrest of a known suspect, they must have a valid warrant or exigent circumstances in order to make an arrest. The SJC, in *Com. v. Marquez*, ruled the arrest of a suspect on the threshold of his residence is

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impermissible because it may encourage police officers to forego the arrest warrant requirement.^{xvi}

14. *Private Business*

Business premises, where their occupants have a legitimate expectation of privacy, are entitled to constitutional protections (although not to the same degree as dwelling places).^{xvii} In the absence of exigent circumstances or consent, the police must obtain a warrant before entering private business or commercial premises to make an arrest.^{xviii}

B. COMMUNITY CARETAKING AND BRIEF DETENTIONS

1. 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.^{xix} 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.^{xx} 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.^{xxi} 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.

2. 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.^{xxii}

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3. 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.^{xxiii} 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.
4. 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 his or her community caretaking responsibilities, the community caretaking activity must be authentic.
5. 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.
6. 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.
7. The appendix to 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 its decision.

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ⁱ Police Powers During Public Emergencies, Police Authority to Act Without a Warrant or Court Order Under the Community Caretaking Doctrine, Kurt N. Schwartz, Assistant Attorney General, December 9, 2003.

ⁱⁱ See *Com. v. Ortiz*, 435 Mass. 569, 572, 760 N.E.2d 282 (2002); *Com. v. Martino*, 412 Mass. 267, 276, 588 N.E.2d 651 (1992).

ⁱⁱⁱ See *Kirk v. Louisiana*, 536 U.S. 635, 122 S.Ct. 2458, 2459, 153 L.Ed.2d 599 (2002); *Coolidge v. New Hampshire*, 403 U.S. 443, 478, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971); *Vale v. Louisiana*, 399 U.S. 30, 34-35, 90 S.Ct. 1969, 26 L.Ed.2d 409 (1970); *Com. v. Paniaqua*, 413 Mass. 796, 798, 604 N.E.2d 1278 (1992); *Com. v. Pietrass*, 392 Mass. 892, 897, 467 N.E.2d 1368 (1984).

^{iv} *Com. v. Forde*, 367 Mass. 798, 329 N.E.2d 717 (1975).

^v See *Com. v. Forde*, 367 Mass. 798, 807, 329 N.E.2d 717 (1975); *Com. v. Pietrass*, *supra* at 898-899, 467 N.E.2d 1368; *Com. v. Middi*, 46 Mass. App. Ct. 591, 594, 708 N.E.2d 124 (1999).

^{vi} See *Com. v. Forde*, 367 Mass. 798, 807, 329 N.E.2d 717 (1975).

^{vii} *Com. v. Viriyahiranpaiboon*, 412 Mass. 224, 227, 588 N.E.2d 643 (1992).

^{viii} *Ibid.*

^{ix} See *Mincey v. Arizona*, 437 U.S. 385, 98 S.Ct. 2408 (1978); See also, *Thompson v. Louisiana*, 469 U.S. 17, 105 S.Ct. 409 (1984); *Com. v. Lewin*, 407 Mass. 617, 555 N.E.2d 551 (1990).

^x *Com. v. Rexach*, 20 Mass. App. Ct. 919, 478 N.E.2d 744 (1985), *rev. den.* 482 N.E.2d 328 (1985).

^{xi} See *Mincey v. Arizona*, 437 U.S. 385, 98 S.Ct. 2408 (1978); *Com. v. Hall*, 366 Mass. 790, 323 N.E.2d 319 (1975).

^{xii} *Com. v. Ploude*, 44 Mass. App. Ct. 137, 688 N.E. 2d 1028 (1998).

^{xiii} *Com. v. Bates*, 28 Mass. App. Ct. 217, 548 N.E.2d 889 (1990).

^{xiv} *U.S. v. Santana*, 427 U.S. 38, 96 S.Ct. 2406 (1976); *Com. v. Boswell*, 374 Mass. 263, 372 N.E.2d 237 (1978). *U.S. v. Santana*, 427 U.S. 38, 96 S.Ct. 2406 (1976); *Com. v. Boswell*, 374 Mass. 263, 372 N.E.2d 237 (1978).

^{xv} *Id.* See also, *Com. v. Forde*, 367 Mass. 798, 329 N.E.2d 717 (1975).

^{xvi} *Commonwealth v. Marquez*, 434 Mass. 370, 749 N.E.2d 673 Mass. (2001).

^{xvii} *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 98 S.Ct. 1816 (1978).

^{xviii} *Com. v. Olivares*, 30 Mass. App. Ct. 596, 571 N.E.2d 416 (1991).

^{xix} *Com. v. McDevitt*, 57 Mass. App. Ct. 733, 786 N.E.2d 404 (2003); *Cady v. Dombrowski*, 413 U.S. 433, 441, 93 S.Ct. 2523, 37 L.Ed.2d 706 (1973); *Com. v. Evans*, 436 Mass. 369, 372, 764 N.E.2d 841 (2002).

^{xx} *Mincey v. Arizona*, 437 U.S. 385, 98 S.Ct. 2408 (1978); *Com. v. Rexach*, 20 Mass. App. Ct. 919, 478 N.E.2d 744 (1985), *rev. den.* 482 N.E.2d 328 (1985).

^{xxi} *Com. v. Bates*, 28 Mass. App. Ct. 217, 548 N.E.2d 889 (1990); *Mincey v. Arizona*, 437 U.S. 385, 98 S.Ct. 2408 (1978).

^{xxii} *Com. v. Murdough*, 44 Mass. App. Ct. 736, 694 N.E. 2d 15 (1998); S.C., 428 Mass. 760, 704 N.E. 2d 1184 (1999); quoting from *Cady v. Dombrowski*, 413 U.S. 433, 93 S. Ct. 2523, 37 L. Ed. 2d 706 (1973).

^{xxiii} *Com. v. Murdough*, 428 Mass. 760, 762, 704 N.E.2d 1184 (1999).