

	<p style="text-align: center;">ITHACA POLICE DEPARTMENT</p> <p style="text-align: center;">POLICY AND PROCEDURE GENERAL ORDER</p>	Distribution ALL PERSONNEL	General Order Number 1.02
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<p>Order Title:</p> <p>LIMITS OF AUTHORITY</p>	Accreditation Standard: NY 2.2; 2.7; 8.12; 20.5; 40.1; 47.1; 50.1; 64.1	Section 1	
	Section Title DEPARTMENT ROLE AND AUTHORITY		
<p>Rescinds: General Order # 105 issued on 01/01/18 by Chief Tyler</p>		 Dennis Naylor, Chief of Police	

This General Order is for departmental use only and does not apply in any criminal or civil proceeding. This General Order should not be construed as creation of a higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this General Order will only form the basis for departmental administrative sanctions. Violations of law will form the basis for civil and criminal sanctions in a recognized judicial setting

I. PURPOSE

The purpose of this policy is to establish and provide guidelines regarding limits of authority placed on department personnel.

II. POLICY

It is the policy of the Ithaca Police Department (“Department”) to establish and provide guidelines regarding limits of authority for all members of the department as it relates to legal authority, authority to carry weapons, authority to make arrests and conduct searches and seizures, alternatives to arrest and the use of discretion. The department shall provide periodic refresher training on such matters. Ithaca Police Department officers must uphold the civil rights of citizens, which are protected by the Constitution of the State of New York and the Constitution of the United States.

III. DEFINITIONS

Arrest: An arrest may be defined as depriving a person of liberty with the intention of holding him or her to answer to a particular charge or charges.

Bias based profiling: The detention, interdiction, frisk, search or other disparate treatment of any person *solely* on the basis of race, ethnicity, religion, gender, sexual orientation, economic status, age, cultural group, or some other identifiable common trait or characteristics of such individual.

Probable Cause: Probable cause is more than mere reasonable suspicion, but less than proof beyond a reasonable doubt. Probable cause exists if based on the facts and circumstances, a reasonable person would believe that criminal activity has occurred, is occurring, or is about to occur.

Reasonable suspicion: Also known as articulable suspicion. Suspicion that is more than a mere hunch, but is based on a set of articulable facts and circumstances that would warrant a person of reasonable caution in believing that an infraction of the law has been committed, is about to be committed, or is in the process of being committed, by the person or persons under suspicion. This can be based on the observations of a police officer combined with his or her training and experience, and/or reliable information received from credible outside sources.

Strip Search: Having an arrested person remove or arrange some or all of his or her clothing, or, if an arrested person refuses to remove or arrange his or her clothing, having a peace officer or employee of the police department remove or arrange the clothing of the arrested person so as to permit a visual inspection of the genitals, buttocks, anus, female breasts, or undergarments used to clothe said anatomical parts of the body.

IV. PROCEDURE

A. Legally Mandated Authority of Sworn Personnel

1. Sworn Ithaca Police Department officers shall support and uphold the Constitutions of the United States and the State of New York; laws and statutes of the United States and the State of New York; the Charter and ordinances of the City of Ithaca; and the policies, procedures, rules and regulations of the Ithaca Police Department.
2. Sworn Ithaca Police Department officers derive their power and authority from state and local law, as provided for in the General Statutes of the State of New York and the Ithaca City Charter.
3. New York State Constitution Article IX, Second Class Cities Law §142, General Municipal Law §209-q and Criminal Procedure Law Articles 1 & 2 detail the legal authority of New York law enforcement officers. Sworn Ithaca Police Department officers of the Ithaca Police Department shall enforce all state and federal criminal laws, including the ordinances of the City of Ithaca.

B. Authority to Carry and Use Weapons

1. The Chief of Police, by City Ordinance, is responsible for the operation of the police department and is authorized to establish rules, regulations, policies, and procedures, as necessary, including the authorization of department employees to carry and use weapons. All sworn officers as determined by the Chief of Police, are authorized to carry authorized firearms and other weapons, and to use them while acting within the scope of their duties, consistent with the laws of the United States, the Laws of the State of New York, and the written directives of the Department.

C. Compliance with Constitutional Requirements

1. Interviews:

Although interviews are generally non-accusatory conversations, officers engaged in interviews shall be aware of the nature of questions, the location of the interview, and the conditions present when conducting interviews to ensure that the subject should not reasonably believe he/she is in custody.

2. Interrogations:

An interrogation is a procedure designed to elicit an incriminating response from an arrestee. Prior to interrogating suspects that are in custody, officers must consider specific legal issues, including providing suspects with Miranda warnings. The test for determining if persons are being subjected to custodial interrogations is whether their freedom is being physically deprived in a manner beyond an Investigative Detention and equal to a Custodial Situation.

3. Access to Counsel:

Persons in custody shall be advised of the right to speak to counsel prior to questioning. Once a suspect or defendant has expressed a desire to exercise his/her right to counsel, he/she shall not be questioned until the defendant has obtained counsel, even if the questioning had already begun, unless the arrestee alone initiates the conversation and expresses a desire to speak to an officer.

Detainees may waive their right to counsel. Documentation of the waiver shall be on the appropriate form(s) and noted in the narrative portion of the officer's report. If they later request counsel at any time during the interview, the interrogating officer shall not subject them to further questioning until a lawyer has been made available or the suspects freely reinitiate the conversation.

If the arrestee invokes his/her right to remain silent the officer shall honor such right and cease any attempt to further question the arrestee. Officers may ask the arrestee if he/she wishes to answer questions again if there has been a change in location, a significant break in the time between when the arrestee was last asked, or if other Officers become involved. At no time should an officer attempt to elicit information through coercion, threat, or force.

4. Seizure Defined:

In New York, a person is seized when, by means of physical force or a show of authority, his freedom of movement is restrained. A seizure occurs when, in view of all of the circumstances, a reasonable person would believe that he/she was not free to leave. Relevant factors include the display of weapons, content and tone of language indicating that compliance is required, physical touching, blocking tactics or aggression, and use of sirens and/or flashing lights.

An officer's subjective intentions are irrelevant to the seizure inquiry unless that intent has been conveyed to the person confronted. Mere presence does not constitute a seizure. Although it is recognized that a uniformed law enforcement officer is necessarily cloaked with an aura of authority, this cannot, in and of itself, constitute a show of authority sufficient to constitute a seizure. For a seizure to occur, some indication must be given to the subject that he is not free to leave. Absent such an indication, allowing police officers to approach and interact with citizens on foot and in vehicles to make minimal inquiries serves important law enforcement purposes without jeopardizing constitutional rights.

5. Search Defined:

For constitutional purposes, a search is an intrusion into an area in which an individual has a reasonable expectation of privacy, with the specific intent of discovering evidence of a crime. A person possesses a reasonable expectation of privacy in a particular area or item if: (1) he exhibits an actual subjective expectation of privacy; and (2) that expectation is one that society is prepared to recognize as reasonable. Only persons possessing a reasonable expectation of privacy in an area or item have the right to legally challenge its being searched.

6. Warrantless Search and Seizure:

Law enforcement officers are required to obtain a search warrant issued on probable cause before conducting a search, including that of homes, persons, and vehicles. However, the courts have recognized warrantless search and seizure exceptions as follows:

a. Automobile Exception

- (1) Police may conduct a warrantless on-the-scene search of a motor vehicle based on probable cause to believe that it contains contraband or evidence of a crime. The scope of the search is defined by the nature of probable cause and includes

any place in the vehicle which is capable of containing the contraband or evidence. The search may also include the personal effects of any occupant capable of containing the item(s), whether or not probable cause was developed specifically as to a particular occupant. Whenever a search of a motor vehicle is anticipated for the purpose of seizing contraband, controlled substances, or criminal evidence, a warrant should be utilized, unless probable cause exists and at least one of the following circumstances apply:

- (a) The vehicle is moving, has recently been moved, or the officer has reason to believe that the vehicle may be moved
 - (b) The possibility exists that an alerted criminal will use the vehicle to flee
 - (c) It is impractical to post a detail to guard the vehicle pending evidence collection
 - (d) The possibility exists that time or elements may destroy the evidence
 - (e) It is an emergency situation in which the vehicle must be searched to save life, prevent injury to others, or prevent serious damage to property
- (2) Under the New York constitution, an automobile exception search is valid only if conducted on-the-scene of the stop. Once the vehicle is removed from the scene - for whatever reason - the authority to conduct an automobile exception search ends. A subsequent search of the vehicle must be conducted pursuant to a warrant or another exception to the warrant requirement, such as an inventory search.
- (3) Where probable cause develops as to a specific container **before** it is placed into a motor vehicle, once it is placed in the vehicle, police are permitted, absent further justification, to search the suspect container only, and not the entire vehicle.

b. Community Caretaking Function

The Community Caretaking Function is action taken by the police that is totally separate from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute and does not constitute a “search” for constitutional purposes. Such action is commonly referred to as “community caretaking” and relates to the safety and welfare of the community. For example, if an officer views jewelry on the front seat of an unlocked vehicle, the officer can secure the jewelry without having violated any right to privacy.

c. Consent Searches

- (1) A warrantless entry or search is permitted on the basis of the free and voluntary consent of an authorized person. An authorized person is someone with an interest in the property, usually the owner, the lessee, or a possessor. Even where officers have sufficient probable cause, they are not obligated to obtain a search warrant before trying to obtain consent.
- (2) Officers should, when practical, attempt to obtain written consent on a Consent to Search Form, which shall be attached to the officer's report. It is not coercion to advise a person that the officer will seek, apply for, or ask a judge to issue a search warrant if consent is not given. If the consent cannot be obtained in writing, the officer should carefully document the authority provided in the police report, indicating that consent was obtained and that the consent was voluntary and without coercion.
- (3) Officers should be aware that the person giving consent can legally withdraw or limit consent at any time, and the search must then stop. However, officers will retain any items already discovered that are subject to seizure, and may apply for a search warrant, if deemed necessary, to complete the search. Consent lawfully may be obtained from persons who are detained or in custody.

d. Exigent Circumstances

- (1) Officers may make entry and conduct a limited search on the basis of exigent circumstances. Exigent circumstances exist where the police reasonably believe that if an immediate arrest, search or seizure is not made, the accused would be able to destroy evidence, flee or otherwise avoid capture, or might, during the time necessary to procure a warrant, endanger the safety or property of others. The scope of any search is strictly limited by the demands of the exigency.
- (2) When an officer makes a lawful arrest and, in addition, has reasonable suspicion to believe that the premises contain another person or persons who pose a danger to the officer, a brief protective sweep may be made of the area.

e. Search Incident to Custodial Arrest

- (1) A lawful custodial arrest permits officers to conduct a full search (not just a frisk) of the arrestee's person and the area within his immediate control. The search may occur on-scene at the time of arrest or be conducted after arrest at the detention destination. The authority to conduct a search incident to arrest derives solely from the fact of custody and is not dependent upon the nature or seriousness of the charge.
- (2) As long as the two events occur contemporaneously, the search may occur momentarily before the actual arrest. Following a lawful arrest, personal effects may be taken from the arrestee and kept in official custody without any additional probable cause.
- (3) The police are authorized to search the interior compartment of a vehicle incident to the arrest of a recent occupant only if: (1) the arrestee is unsecured and within reaching distance of the vehicle at the time of the search; or (2) there is reason to believe that the vehicle contains evidence of the offense of arrest. Absent one of these two situations, a search of the vehicle is unreasonable unless the police obtain a search warrant or show that another exception to the warrant requirement applies.
- (4) Under the New York Constitution, the vehicle search is permitted *only while the arrestee remains at the scene of the arrest*. Once the arrestee is removed from the scene, for whatever reason, the authority to search the vehicle's interior under this exception ends. Where a vehicle is stopped, and the officer is authorized to make a custodial arrest, but elects instead to issue a summons or citation, a ***non-consensual*** search of the vehicle is not permitted. Even where a summons or citation is issued, and the stop technically over, the officer may attempt to secure consent to search the vehicle without informing the operator that the stop is effectively over.

f. Inventory Search

- (1) Officers are permitted to inventory vehicles and other items lawfully in their custody so long as the inventory is conducted pursuant to a standardized departmental procedure. An inventory search derives from physical possession by the police, not probable cause or other legal authority. The purpose of the search is to ensure that the item is safe and to protect the police from claims of loss.

- (2) The owner or possessor of a motor vehicle may, but does not have to, be given an opportunity to make arrangements to have the vehicle removed in lieu of impoundment. Unless being held for evidence processing by the Department.

g. Plain View

(1) Plain View

An item in the plain view of an officer may be seized without a warrant if: (a) the officer is lawfully in a position to view the item; and (b) the officer has probable cause, without further investigation, to believe that the item is contraband or evidence of a crime. Regarding motor vehicles, police may, without any need of justification, lawfully stand beside a vehicle and look inside, even with the aid of a flashlight.

h. Abandoned Property

No reasonable expectation of privacy exists in property that has been abandoned. Consequently, such property may be seized and searched without a warrant. Property that is disposed of as a result of unlawful police pursuit is not deemed abandoned. Similarly, property that is left unattended in a public place more or less out of necessity is not deemed abandoned.

7. Other Authorized Search Situations

Other situations where a warrantless search and seizure may be authorized by state and federal constitutional provisions include the following:

a. Hot Pursuit

When an officer attempts to make a lawful arrest and is in immediate pursuit of the individual, but the person flees into a home or other building, exigent circumstances exist and the officer may enter the premise to effectuate the arrest. Officers are limited to searching the location only for the fleeing suspect and are reminded to use extreme caution in such circumstances.

Officers are not authorized to enter the home of any person without a warrant or the consent of the homeowner and/or occupant except for lawful purposes that include hot pursuit and exceptions to the warrant rule.

b. Protective Sweep

Police are permitted to conduct a limited protective sweep of an area adjoining an arrest to insure their own safety and the safety of others.

(1) First Tier Sweep

Arresting officers may, as a precautionary matter and without further justification, examine areas and places *immediately adjoining* the place of arrest from which an attack could immediately be launched.

(2) Second Tier Sweep

Arresting officers may sweep areas beyond those immediately adjoining the place of arrest based on a reasonable and articulable belief that the area poses a danger to individuals on-scene.

d. Traffic Stops

(1) A routine motor vehicle violation stop constitutes a seizure of all of the occupants, so each may challenge the constitutionality of the stop. Following a valid routine motor vehicle stop, an officer may, without further justification, order the operator and/or any passengers out of the vehicle.

(2) After a vehicle is lawfully stopped for a routine motor vehicle violation, an officer may conduct a pat down of a passenger if the officer reasonably suspects that the passenger is armed and dangerous, even if the officer does not have reasonable grounds to believe that the passenger is committing, or has committed, a criminal offense. The suspicion may develop during interactions on matters unrelated to the basis of the stop.

(3) Areas of the passenger compartment capable of concealing a weapon may protectively be searched if police have a reasonable and articulable suspicion that the person is dangerous and might access the vehicle and gain control of a weapon.

e. Crime Scene Searches

(1) A search warrant must be obtained for a crime scene if:

- (a) The suspect resides at the place to be searched, regardless if the victim is the owner.
- (b) The officers leave the scene and later wish to return to conduct a search or otherwise collect evidence, or if the search will continue for an extended time after the premises are secured.
- (c) The area to be searched or evidence to be seized does not fall under one of the exceptions noted below:
 - Consent to search has been obtained by a party authorized to give consent;
 - If the evidence to be seized could be destroyed prior to obtaining a warrant; or
 - If the evidence to be seized is otherwise subject to a warrant exception.

f. Stops and Frisk Searches

An officer may stop a person for the purpose of conducting an investigatory stop only where reasonable suspicion is present. Reasonable suspicion must be more than a hunch or feeling, but does not need to meet the threshold required for probable cause to make an arrest. A frisk is authorized only when the officer has reasonable, articulable suspicion to fear for his or her safety and the scope of the frisk is narrowly tailored to those specific reasons. For Additional directions regarding stops and frisks refer to Section 1.06, *Investigatory Stop Policy*.

8. Search Warrants

- a. Officers wishing to obtain a search warrant must develop and be able to articulate probable cause under conditions that would lead a reasonable and prudent person to believe that a criminal offense has been or is being committed. There are two key components to a search warrant: (1) particularity as to the descriptions of what is to be searched and what is to be seized; (2) probable cause to believe that the items sought are (a) connected with criminality and (b) presently in

the space to be searched. A deficiency in any area will render the warrant unconstitutional and invalid.

- b. When an officer believes that he/she has developed sufficient probable cause and wishes to obtain a search warrant, the officer will first discuss the matter with his/her immediate supervisor. If, in the opinion of the supervisor, there is probable cause and sufficient evidence to obtain a search warrant, he/she will assist the officer in completing the necessary forms. A search warrant affidavit must contain sufficient information to establish probable cause to believe that the items sought: (1) are contraband, or otherwise connected with criminal activity, or will assist in an apprehension or conviction; and (2) are presently located in the place(s) to be searched.
- c. In addition to probable cause, officers attempting to secure a search warrant must have specific, reliable information to:
 - (1) Describe the place to be searched and the item(s) to be seized with sufficient detail so that the person executing it is able to determine with reasonable certainty what place is to be searched and what item(s) is to be seized.
 - (2) Describe the items as precisely as the circumstances and the nature of the criminal activity at issue permit. General descriptions should be coupled with particular criminal activity: e.g., items used in the manufacture, operation, maintenance, or detonation of explosive devices.
 - (3) Identify which law(s) are being violated, including any evidence that identifies the person or location to be searched.
 - (4) In the case of motor vehicle searches, furnish the name of the owner (if known), registration plate, make, model, VIN, color and body style of the vehicle to be searched.
 - (5) If the warrant is to be a no-knock (non-consensual entry), furnish good cause to believe that there is a risk of serious physical harm to the law enforcement officer who will execute the warrant, or sufficiently reliable evidence that the items sought will be destroyed if the knock and announce is made prior to entry (e.g., known lookouts and/or past history of destruction of evidence or contraband during searches).
- d. Supervisor Review of Search Warrants

- (1) Supervisors may be accountable for the actions of subordinate personnel. Officers and Supervisors are not relieved of liability simply because a search warrant has been reviewed by a magistrate or prosecutor. The supervisory review process is intended to ensure that warrants submitted are based on sufficient facts that establish probable cause, properly identify the person(s), places and things to be searched for, and are made out in a technically appropriate form.
- (2) Prior to serving any search warrant, the warrant must be reviewed by a supervisor, using a multi-step process that shall include, at a minimum, the following:
 - (a) A verification of probable cause;
 - (b) Assurance that the person or place to be searched and the items seized are addressed with specificity and correlate with information developed in the investigation;
 - (c) The warrant contains the correct address to be searched;
 - (d) The warrant properly addresses issues regarding nighttime and/or no knock warrants; and
- (3) The lead investigator, or officer serving the search warrant, shall document in his/her report that supervisory review of the process was completed. The documentation shall include the identity of the supervisor conducting the review and any other appropriate information.

e. Supervisory Notification for Execution of Search Warrants

A supervisor must be notified when a search warrant will be served and must coordinate the service of the warrant. The lead investigator or officer involved in obtaining or serving the warrant may execute the actual search and associated duties, subject to the supervisor's approval.

9. Arrests with and without a warrant

The following procedures pertain to arrests with, and without, a warrant.

a. Arrests with a Warrant

The issuance of an arrest warrant is based upon an independent finding of probable cause by an impartial judge. Arrest warrants shall only be served by sworn, full-time officers of the Department. The officer taking a subject into custody on the basis of an arrest warrant is responsible for checking that the warrant is valid by requesting confirmation through an E-Justice verification by the Tompkins County 911 Center, and also verifying that the subject being arrested is, in fact, the person named on the warrant. This may be accomplished by comparing the following information about the person being detained with that indicated on the warrant:

- (1) Subject's name and address, including exact spelling
- (2) The date of birth, social security number and physical description of the subject
- (3) The place of employment or other subject information
- (4) Fingerprint verification when available

b. Prioritization of Warrant Service

Quick action on the part of law enforcement agencies in serving outstanding warrants can significantly increase the likelihood of apprehension. The priority of warrant service is as follows:

- (1) **Felony warrants** - Because of the serious nature of felony offenses, all felony warrants should be served as expediently as possible.
- (2) **Misdemeanor warrants** - In the absence of any felony warrants to serve, misdemeanor warrants should be served beginning with the most serious misdemeanors.
- (3) **Failure to appear** - Failure-to-appear (FTA) warrants should be given priority depending upon degree (1st degree versus 2nd degree).
- (4) **Traffic warrants** - Traffic warrants are generally of a less serious nature and may be served anytime there are less pressing warrants waiting to be served.

c. Warrantless Arrests

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Police officers in the State of New York are authorized to make a warrantless arrest in accordance with the New York State Criminal Procedure Law Section 140.10.

The CPL provides the following authority:

1. Subject to the provisions of subdivision two, a police officer may arrest a person for:
 - a. Any Offense when he/she has reasonable cause to believe that such person has committed such offense in his or her presence; and
 - b. A crime when he or she has reasonable cause to believe that such person has committed such crime, whether in his or her presence or otherwise.
2. A police officer may arrest a person for a petty offense, pursuant to subdivision one, only when:
 - a. Such offense was committed or believed by him or her to have been committed within the geographical area of such police officer's employment or within one hundred yards of such geographical area; and
 - b. Such arrest is made in the county in which such offense was committed or believed to have been committed or in an adjoining county; except that the police officer may follow such person in continuous close pursuit, commencing either in the county in which the offense was or is believed to have been committed or in an adjoining county, in and through any county of the state, and may arrest him or her in any county in which he or she apprehends him or her.
3. A police officer may arrest a person for a crime, pursuant to subdivision one, whether or not such crime was committed within the geographical area of such police officer's employment, and he or she may make such arrest within the state, regardless of the situs of the commission of the crime. In addition, he or she may, if necessary, pursue such person outside the state and may arrest him or her in any state the laws of which contain provisions equivalent to those of section 140.55.

Sworn members of this agency will remain aware of elements of offenses which would constitute crimes and will bear in mind that an arrest for a crime must be based on probable cause and that the actual offense need not actually be witnessed in order for an arrest to be made. Officers shall complete a Case Incident Report (CIR), or other required form(s), for each warrantless arrest made.

10. Searches to be conducted by Members of the Same Sex When Possible:

- a. Whenever possible, searches of suspects will be conducted by members of the same sex as the suspect.

When circumstances require that an officer search a suspect of the opposite sex the officer will include the reasons necessitating such a search in the arrest report.