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Consent Searches of Private Residences
(Re-issue DB 17-083)

This Department Bulletin provides information and guidance to members conducting investigations during which members enter a suspect's residence or domicile to conduct a consent search of the location. The Department recognizes that there will be extraordinary circumstances and incidents that may make this policy impractical. Those cases will be evaluated on a case-by-case basis.

The Fourth Amendment to the United States Constitution prohibits police officers from conducting unreasonable, warrantless searches. However, there are some widely recognized exceptions to the warrant requirement, including consent, parole, probation (if the defendant has a search clause), exigent circumstances and searches conducted for community caretaking needs.


In cases involving consensual searches of a defendant's residence (e.g. hotel/motel rooms, private offices, or other domiciles) by police officers, the District Attorney (prosecution) has the burden of proving that the defendant freely, voluntarily and unequivocally granted the officers permission to search the location. To prove voluntary consent, the prosecution must present clear and convincing evidence through testimony or other material evidence that will enable the Court to determine whether the consent given by the defendant was, in fact, voluntary.

The Court will review the presented evidence and will, based on the totality of the circumstances, determine whether a reasonable person would have believed that he/she could have denied the officer's request to search the location. The Court will also decide whether the defendant had the actual or apparent authority to consent to the search, based on the evidence presented.

To sustain this burden of proof, members are required to obtain explicit consent (permission) in writing or verbally. Written consent shall be documented using the Permission to Search Form (SFPD 468). Verbal consent shall be recorded using the Body Worn Camera and/or a digital recorder. Written or verbal consent shall be obtained prior to conducting a consent search of a suspect's residence.

Members are reminded of their requirement to check all crime scenes and scenes of police action to determine the existence of any video recordings that may have evidentiary value. If a video recording exists, the members shall attempt to obtain it and book it into evidence. If a member believes a recording exists but is unable to retrieve it, the member shall include the name of the person in possession or contact person, address, description of the location (i.e., name of the hotel/motel) and/or location of the recording equipment in the narrative portion of the incident report. Members shall document their efforts to locate recording device evidence in the narrative of the incident report.

Evidence of written or verbal consent to search and any other property seized during a consent search shall be handled in accordance with Department General Order (DGO) 6.02 - Physical Evidence and Crime Scenes, DGO 6.15 - Property Processing, and DGO 10.11 - Body Worn Cameras.


WILLIAM SCOTT
Chief of Police

Per DB 19-070, sworn members are required to electronically acknowledge receipt and review of this Department Bulletin in HRMS. Any questions or clarification regarding this policy should be made to sfpd.writtendirectives@sfgov.org who will provide additional guidance about the directive.

