

**Indiana University of Pennsylvania
Department of Criminology
Center for Research in Criminology**

A MODEL POLICY AND BEST PRACTICE

**SEARCH WARRANT ALERT MEDICAL PROCEDURE (SWAMP):
POLICE AND EMERGENCY DEPARTMENT JOINT RESPONSE**

By

* R. Paul McCauley, Ph.D., FAFCE
Professor of Criminology

John P. Cawley, M.D., FACEP
Director of Emergency Services

Thomas G. Johnson, J.D.
Attorney at Law

William Sutton, M.P.A.
Chief of Police

* Contact: R. Paul McCauley, Principal Investigator,
Department of Criminology, Indiana University of
Pennsylvania, 209 Wilson Hall, Indiana, Pennsylvania 15705.
Telephone (724) 349-9676, fax (724) 349-6477, email:
mccauley@iup.edu

The opinions and views expressed in this
document are those of the author(s) and do
not necessarily represent the official
position or policies of Indiana University
of Pennsylvania or the State System of
Higher Education.

January 2009

PREFACE

The attached Model Policy-Best Practice is titled SEARCH WARRANT ALERT MEDICAL PROCEDURE (SWAMP):POLICE AND EMERGENCY DEPARTMENT JOINT RESPONSE. SWAMP provides police and emergency medical departments with an alternative policy when a law enforcement officer is confronted with the common and specific situation when an arrestee/person in-custody places a suspect/unknown object in his/her mouth and refuses to remove/expel it. SWAMP is a rapid, electronic, judicially approved process consistent with the demands of due process and ethical medical approaches.

The conflicts created by the demands for due process and crime control are compounded when a law enforcement officer is confronted with a situation that reasonably requires medical expertise. The developing relationships between the criminal justice system and the medical profession have a long history. This history includes situations where medical actions are taken with and without a warrant. The judicially mandated drawing of blood in some DUI related cases, taking cell samples for DNA testing, and searching of body cavity are examples of acceptable reasonable police-medical relationships.

This Model Policy-Best Practice is offered as a foundation to stimulate a national discussion and guide law enforcement agencies and medical emergency departments as they develop policies and procedures as appropriate and consistent with local needs and practices. The authors are well aware of the medical ethics issues involved, but feel compelled to offer this as an important first step for the law enforcement and medical communities to advance policies and procedures for the preservation of both justice and human life.

SEARCH WARRANT ALERT MEDICAL PROCEDURE (SWAMP):
POLICE AND EMERGENCY DEPARTMENT JOINT RESPONSE

I. INTRODUCTION

In the normal course of police work officers are likely to encounter individuals during traffic and Terry stops, and arrests, that during the encounter/arrest process, place drugs, weapons, substances, and other suspect or harmful objects and/or evidentiary materials in their mouths. These objects may include raw/open drugs, contained drugs (ex. bags) handcuff keys, razor blades, and other objects both identified by or unknown to officers. Although, the specific identity and content of these objects and the intent of the in-custody person may or may not be known to the officer, the officer is confronted with a question: "Is, whatever the arrestee put in his/her mouth, considering the totality of the circumstances, likely to cause injury or death to the arrestee, to the officer, or to others?"

In situations where the officer determines an object or substance has been swallowed or remains in the arrestee's mouth reasonable action must be taken for medical, safety, and evidentiary reasons. However, the officer's actions and/or inactions may have serious physical/medical, departmental, professional, and legal consequences.

Currently, it is common police practice for officers to use some level of force to remove the object/substance from an arrestee's mouth. This force includes verbal commands to spit it out, pinch the arrestee's nose, apply pressure to pressure points behind the ear/jaw, apply pepper spray or Taser, and use choke holds, often with the assistance of a flashlight or baton placed on the neck or throat. Such approaches can create a greater danger for the arrestee with devastating medical and legal consequences. Clearly, an officer may not kill an arrestee to save him.

In these situations officers must be provided with an alternative to forceful physical attempts to open a human mouth to remove harmful, dangerous, and/or evidentiary items. The alternative must not increase unreasonably the

risk of harm to the arrestee and at the same time protect the officer, evidence, and the investigation, generally.

Law enforcement and medical facility emergency services policies must be coordinated and compatible to better provide arrested persons with reasonable systemic custodial care.

II. PURPOSE

The purpose of this policy is to provide law enforcement officers and medical facility emergency department medical staff with guidelines to address the enforcement and medical issues associated with an arrested/in-custody person whom the officer reasonably believes has ingested drugs or other harmful, dangerous, deadly objects or substances.

The primary objective is the care, safety, health, and well-being of both the officer and the arrestee. The secondary objective is the potential retrieval and admissibility of any evidence the arrestee has ingested. *The value of evidence is secondary to the value of human life.*

This policy considers the human mouth a body cavity requiring all applicable legal and medical ethical safeguards. This policy reflects a best practice, in that it better safeguards the subject/arrestee from physical harm while, at the same time, protecting law enforcement officers and agencies, and medical personnel and facilities from liability through the use of an approved judicial process.

III. JOINT COORDINATED POLICY

A. Law Enforcement:

It is the policy of this law enforcement agency for officers to assume that anything ingested by an arrestee during and as a result of an arrest is dangerous and the situation must be managed and the ingested matter removed safely.

Officers will not use physical force in an attempt to open and remove anything from an arrestee's mouth but rather

immediately consider the situation a medical emergency requiring supervised transportation to a medical facility.

B. Medical Emergency Department:

It is the policy of this medical facility to provide arrestees/persons in-custody of law enforcement officers, with appropriate legal and ethical medical services.

C. Law Enforcement-Medical Emergency Department Co-Ordination:

Community law enforcement agencies and medical facilities' policy makers will engage in a formal joint effort to create a SWAMP that permits law enforcement officers to take an arrestee who has ingested drugs or other harmful, dangerous, deadly objects or substances to an emergency department and apply for and obtain a valid search warrant **IN LESS THAN THIRTY MINUTES**. The thirty minutes begin when the arrestee and officer arrive at the emergency department. This will better assure the safe custody of the arrested person and the lawful and expeditious treatment of that person.

SWAMP will be reviewed and approved by the responsible prosecutor(s), judicial officer(s) in the service area jurisdiction(s), and the medical facilities' ethics committee.

D. Prosecutor and Court Review:

Each jurisdiction's chief prosecutor and senior judicial officer or court administrator, will review, supervise, and endorse the SWAMP process, in advance of its implementation. This policy may not be implemented without these endorsements--signatures required.

IV. DEFINITIONS

A. *Medical Facility Emergency Department Medical Personnel and Staff*: Any licensed medical facility staffed by a licensed medical doctor(s) who is present

to provide direct and immediate medical supervision. This does *NOT* include emergency medical service technicians or paramedics.

- B. *Ingested-Holding*: Anything placed in an arrestee's mouth that is perceived by the officers as being harmful, dangerous, deadly, or of evidentiary value that has not been swallowed as evidenced by the arrestee's refusal to open his/her mouth for inspection.
- C. *Ingested-Swallowed*: Anything placed in an arrestee's mouth that is perceived by the officers as being harmful, dangerous, deadly, or of evidentiary value that has been swallowed as evidenced by the arrestee's appearance, symptoms, actions, or voluntary inspection of his/her mouth.
- D. *Reasonable Belief*: An officer who has evaluated the situation considering the totality of the circumstances and determines that the arrested/in-custody person has ingested (placed something in his/her mouth) drugs, harmful, dangerous, or deadly object or substance, or evidentiary objects consistent with the law and department policies.
- E. *Use of force*: An officer may use the amount of force necessary to make a lawful arrest, as is consistent within the law and department policies. However, an officer will use only verbal commands and directions necessary to remove drugs, harmful, dangerous and deadly objects, and substances voluntarily from an arrestee's mouth. Ingested-holding situations will be considered an exigent circumstance but *WILL NOT* justify a forced/involuntary warrantless search of the arrestee's mouth.

V. OPERATIONAL PROCEDURES

A. Use of force

Officers may use reasonable force to make a lawful arrest consistent with the law and department policies.

Officers will handcuff or otherwise restrain an arrestee consistent with the law and department policies.

B. Retrieval-Non-Retrievable Options

Once restrained, the officer will verbally ask/instruct/order the arrestee, who the officer has observed and/or reasonably believes to have ingested drugs, a dangerous or deadly object, or substance, or evidentiary objects to voluntarily remove/spit-out the material.

Ingestion-holding of drugs, a harmful, dangerous or deadly object, or substance, or evidentiary objects *WILL NOT* be considered an exigent circumstance justifying a forced warrantless search of the arrestee's mouth. This *WILL BE considered a MEDICAL EMERGENCY*.

Officers *WILL NOT* use pepper spray, Taser, choke-hold, pressure points, or any other physical application to force the arrestee to open his/her mouth.

When the arrestee removes/spits out the material and the officer is satisfied reasonably the arrestee has not swallowed other drugs, harmful, dangerous, deadly object, substance, or evidentiary objects the arrestee will be processed consistent with lawful criminal procedures.

If the arrestee complies with an officer's request to open his/her mouth and the officer's inspection does not reveal anything in the mouth the officer *WILL ASSUME* the arrestee has swallowed drugs, harmful,

dangerous or deadly object, or substance, or evidentiary objects. This *WILL constitute a MEDICAL EMERGENCY.*

If at anytime during the arrest encounter, the officer observes any materials, object, or debris (ex. powder, paper or plastic fragments) in or around the arrestee's mouth, which would reasonably indicate the arrestee has ingested drugs or a baggie/bundle of drugs or other substance/material opened in his/her mouth, this *WILL BE considered a MEDICAL EMERGENCY.*

Officers will not insert any object including fingers, into an arrestee's mouth, unless the arrestee is visibly choking and the officer can clear his/her airway as first-aid. Otherwise, such actions are considered medical and may be done by emergency medical services (EMS) personnel in the field or medical facility emergency department staff.

Transportation of an arrestee with a medical emergency may be done by police vehicle or ambulance/EMS/rescue squad, consistent with department policies.

Officers are responsible for the custody of arrestees, their transportation, and the chain of evidence. Therefore, an officer should accompany the arrestee and continuously observe to maintain the evidentiary chain of custody. However, since the primary objective is the arrestee's safety and health, maintaining the chain of custody, under these circumstances is discretionary.

C. Communication-Transition of Responsibility:

Officers will communicate to medical facility emergency department staff, in detail, his/her observations, perceptions, and actions taken. This will include at a minimum, the seriousness and nature of the offense (domestic violence, drug violation, prostitution, etc.), what the officer observed on and near the arrestee, what the arrestee likely ingested, what if anything did the arrestee remove/spit-out, any verbal or physical indicators the arrestee is in mental or physical distress, others.

D. The Medical Facility Emergency Department (ER staff)

Medical facility emergency department staff, upon receiving an individual who is in police custody who has swallowed and/or is holding drugs, objects or substances in any form, in his mouth or any body cavity, will be considered a medical emergency and treated accordingly. SWAMP is a legal safeguard to allow for the detention of an arrestee for appropriate medical examination and treatment. SWAMP is NOT intended to require any specific treatment or circumvent medical ethics.

Emergency Department staff will make a medical assessment based on detailed information elicited from the police officers and medical observations of the arrestee/patient.

If the arrestee is coherent and capable of making rational choices and consents to treatment the ER staff will appropriately treat the patient, based upon the patients clinical presentation.

If the arrestee is coherent and capable of making rational choices but refuses treatment the emergency department staff will observe the patient until a search warrant is obtained. Once a search warrant has been obtained, the emergency department staff appropriately will treat the patient, if only continuing observation.

If the arrestee, coherent or not coherent, exhibits symptoms of physical distress the emergency department staff will assume emergency consent and appropriately treat the patient based upon his/her clinical presentation.

In the event the medical facility is medically/ethically unable to intervene after reasonable consideration and evaluation, the emergency department will determine whether the arrestee is medically fit for incarceration and issue the appropriate certification. The arrestee will then be transported by police to the appropriate detention facility.

The arresting police officer, in consultation with medical staff, will determine if a SEARCH WARRANT ALERT MEDICAL PROCEDURE (SWAMP) is required.

VI. SEARCH WARRANT ALERT MEDICAL PROCEDURE (SWAMP) PROCESS

A. *Emergency Department Medical Facilities and Services*

When law enforcement officers and emergency department staff are confronted with the need for an immediate mouth search warrant, the medical facility will provide the police officer access to an operational telephone, computer terminal with internet capability, facsimile, and video-audio teleconference services as provided for in the SWAMP agreement. These services are essential for the speedy application and procurement of a valid search warrant authorizing medical treatment under these conditions.

This law enforcement agency will provide each officer with a pre-drafted, appropriately worded search warrant application form, on computer disk/CD, or preprogrammed on the police vehicle mobile data system, requiring only the insertion of specific incident information before filing the application.

Search warrant application should be conspicuously labeled at the top **IMMEDIATE ATTENTION REQUIRED** SEARCH WARRANT ALERT MEDICAL PROCEDURE EMERGENCY, which *will require immediate judicial review.*

B. SWAMP Equipment Checks and Readiness

SWAMP related *medical facility* equipment including telephone, computer terminal with internet capability, facsimile, and video-audio teleconference services will be constantly maintained and ready.

SWAMP related *police department* computer disk/CD, or preprogrammed on the police vehicle mobile data system, facsimile and video-audio teleconference services will be constantly maintained and ready.

SWAMP related *prosecutor and judicial* telephone, computer terminal with internet capability, facsimile, and video-audio teleconference services will be constantly maintained and ready.

C. Secure Custody/Detention in the Medical Facility

During the SWAMP process the medical facility will provide an area in which the arrestee can be held and observed by an officer. This may include an examination room or a police holding cell in facilities so equipped.

SWAMP generally requires two (2) officers, the arresting officer to complete the SWAMP administration and a second officer to continuously observe the arrestee while in the holding area. A second officer is not required when officers decide not to maintain an evidentiary chain of custody AND if the arrestee can be held in a secure area and observed safely by medical staff.

While in the holding area the arrestee will be handcuffed behind his/her back and observed at ALL TIMES. No medical staff may be left alone with an unsecured arrestee. If an evidentiary chain of custody is to be maintained, a police officer MUST be present at ALL times to observe and collect any evidence once it is removed from the arrestee's body whether voluntarily or involuntarily.

A violent resisting arrestee in a medical facility must be controlled and reasonable force may be used to gain and maintain control. The medical facility will provide the necessary equipment to apply four-point soft or leather restraints to the arrestee. Pepper spray or other chemical weapon should not be used in a medical facility because of potential contamination.

Should the arrestee acquire a weapon, the primary objective of the officer is to separate the arrestee from the weapon and isolate the arrestee from other persons. The policies and procedures for the use of force are applicable, as well as those related to barricaded persons, and emotionally disturbed persons.

When the SWAMP results in the issuance of a valid search warrant the officer will provide the medical facility with a copy.

D. Execution of Search Warrant

The medical facility staff assumes responsibility for all medical procedures used to remove the materials from the arrestee's body. The officer may assist only in the physical control of the arrestee/patient.

Police will collect ALL materials removed from the arrestee's body and contain, label, mark, and secure it as evidence consistent with department policies.

The admissibility/inadmissibility of this material as evidence will be determined by due process.

Retention and destruction of this material/evidence will be consistent with department policies and procedures.

E. Reports and Communication Logs

Law enforcement officers and medical staff will include detailed incident reports of their observations, actions, and the rationale for their decisions. Law enforcement radio communications and cell phone logs will be maintained to record an accurate chronology of events. The SWAMP Search Warrant Application/Affidavit, the Search Warrant, and the Statement of Search Warrant Execution/Service, and evidence log will be maintained consistent with department policies.

Emergency department staff will generate a standard emergency department chart once consent or a search warrant has been obtained.

Financial responsibility, billing, and payment arrangements will be agreed upon by the medical facility and the prosecutor.

F. Training

Law enforcement officers will be trained in this policy and tested for knowledge and understanding of same.

Medical Emergency Department staff will be trained in this policy and tested for knowledge and understanding of same.

Court administration and clerical personnel will be trained in this policy and tested to recognize an **IMMEDIATE ATTENTION** Search Warrant Alert Medical Procedure and follow the SWAMP procedure which will require court staff to present it *immediately to the judicial officer, wait for judicial decision and return the signed approval/disapproval AUTHORIZATION to the sending/applicant/affiant officer immediately.*

G. Policy Review

This policy will be reviewed *ANNUALLY* on or before the anniversary date of policy implementation or upon request of the police department, medical facility, prosecutor, or the court.

H. Warrant Application, Affidavit of Probable Cause, and Authorization Forms

The style, format, and other particulars may vary according to local procedures. The addendum offers a model designed to satisfy the law and achieve the primary objective of a SWAMP application-IMMEDIATE ATTENTION AND RAPID RESPONSE. (See Addendum for Sample)

POLICY APPROVAL OF SEARCH WARRANT ALERT MEDICAL PROCEDURE (SWAMP): POLICE AND EMERGENCY DEPARTMENT JOINT RESPONSE

Signed, approved, and implemented by:

Chief of Police

Medical Facility Administrator

ADDENDUM

(PAGE 1 of 4)
(RETURN ALL PAGES)

*******IMMEDIATE ATTENTION REQUIRED*******

SEARCH WARRANT ALERT MEDICAL PROCEDURE
(SWAMP)

TRANSMISSION

TO: _____/_____/_____
(Judicial Officer's Name/Title/Office Code) Date Time/hours

SENT VIA/TO

- Email _____
(Address)
- Teleconference _____
(Connection/Telephone/Code)
- Facsimile _____
(Telephone number)
- Other _____
(Explain)

FROM: _____
(Officer's Name/ Badge Number/other ID.)

RETURN TO/VIA Connection/telephone/code _____

APPLICATION, AFFIDAVIT, and AUTHORIZATION

I, _____ a duly sworn and certified law enforcement
(Affiant)
officer and member of the _____ police/sheriff's department, have
(Law enforcement agency/organization)
in physical custody _____, having been
(Arrestee's name if known/Unknown)

- Arrested as a person named in a valid arrest warrant
- Arrested incidental to the execution of a valid search warrant
- Arrested for a crime with probable cause and/or in the officer's view but without a warrant

The initial and underlying offense or circumstance was a:

- Terry stop
- Traffic violation
- Misdemeanor in officer's view
- Felony

Statement of Probable Cause

On _____ at approximately _____ at _____
(day/mo/yr) (time/hrs) (location/address)
within my jurisdiction and during the arrest, the arrestee, while in my view, ingested something that based upon my training, education, and experience as a law enforcement officer and considering the totality of the circumstances leads me reasonably to believe the arrestee ingested evidence, drugs, or other dangerous objects or substances which may cause serious injury or death to the arrestee, officers, and others.

- A. Having observed the arrestee ingest evidence, drugs, or other dangerous objects or substances and upon the arrestee voluntarily opening his/her mouth for my inspection finding nothing, it is my reasonable belief that the evidence, drugs, or other dangerous objects or substances have been swallowed.
- B. Having observed the arrestee ingest evidence, drugs, or other dangerous objects or substances and the arrestee refusing to comply with my requests to open his/her mouth for my inspection; it is my reasonable belief that the evidence, drugs, or other dangerous objects or substances are being held in his/her mouth.

These facts create exigent circumstances requiring inspection of the arrestee's mouth and/or stomach, however, the use of force by officers to open and inspect the arrestee's mouth is likely to create a greater danger and result in serious injury or death. Therefore, the affiant reasonably believes medical intervention is a reasonable and necessary measure to: (1) remove the risk of danger to the arrestee, officers or others; (2) prevent the destruction of evidence or contraband, ; and, (3) render aid or assistance to the arrestee who the affiant reasonably believes is in need of assistance.

The arrestee presently is in the physical custody of law enforcement officers and is in the _____, a recognized medical facility and in the
(Name of medical facility)
presence of recognized medical doctors/physicians.

Evidence to be Seized

Evidence, drugs, or other dangerous objects or substances being held in the arrestee's mouth/stomach that

- ___ tends to show a crime has been committed,
- ___ tends to show a risk of danger to the arrestee, officers or others, or
- ___ tends to show a legitimate need for medical aid or assistance to the arrestee.

I declare under penalty of perjury that the information within my personal knowledge contained in this affidavit, including all incorporated documents are true.

_____/_____
DATE TIME/HOURS AFFIANT

WARRANT AUTHORIZATION

SEARCH WARRANT TO LAW ENFORCEMENT OFFICER: Whereas, facts have been sworn to or affirmed before me (personally or electronically consistent with local practices) by written affidavit(s) attached hereto from which I have found probable cause, I do authorize you to search the body of the person described, and to seize, secure, inventory, and make return according to the laws of [THIS STATE]

This **SEARCH WARRANT ALERT MEDICAL PROCEDURE EMERGENCY** shall be served in the above stated medical facility as soon as practicable and by acceptable medical procedures, as determined by **MEDICAL STAFF in attendance**.

Issued under my hand this _____ day of _____, 200-
at _____ M, o'clock.

(SEAL)

_____/_____/_____
Signature of Issuing Authority Title Date Commission Expires

IMPORTANT: ALL FOUR (4) PAGES MUST BE IN THE POSSESSION OF THE AFFIANT AT TIME OF EXECUTION OF WARRANT