



GENERAL POLICE ORDER CLEVELAND DIVISION OF POLICE



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SUBJECT: WARRANT SERVICE			
ASSOCIATED MANUAL:		RELATED ORDERS: 3.2.09	
CHIEF OF POLICE: <i>Calvin D. Williams, Chief</i>			

Substantive changes are in italics

PURPOSE: To ensure that search warrants are served in a legal and constitutional manner that ensures the safety of all *members* involved as well as the safety of innocent bystanders and subjects; *retrieval of evidence is a secondary concern after safety issues are addressed.* To provide guidelines for documenting and serving search warrants so they are documented and served in a uniform manner throughout the Division.

POLICY: *Members* of the Cleveland Division of Police shall obtain a review and approval of search warrants from their immediate supervisor before contacting the court. *Members* shall consult with the appropriate prosecutor for advice in drafting the search warrant and affidavit. The primary goal of any high-risk, tactical operation is always safety.

Search warrants are one of the most valuable and powerful tools available to law enforcement officers. They aid in detecting and arresting persons who have committed crimes and in procuring evidence in criminal cases. They prevent the suppression of evidence and dismissal of cases on procedural grounds. Search warrants develop public confidence in the Division when carried out ethically, lawfully, protecting the constitutional rights of citizens, and protecting against civil liability. Successful search warrant service is comprised of three components: planning, execution, and documentation.

PROCEDURES:

- I. Members shall comply with the following mandates.
 - A. Unless specifically requested by the judge, *members* shall not take confidential informants to the judge's home when applying for a search warrant.
 - B. If the judge makes such a request, the involved supervisor shall contact the judge to set an appointment.

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- C. Affiant *members* and their supervisors will direct and control those who aid in the service of search warrants.
 - D. Final responsibility for proper service of search warrants remains with the affiant *member* and the supervisor in charge.
 - E. *Members* shall notify their immediate supervisor before aiding in the service of a search warrant obtained by another law enforcement agency. The supervisor will respond to ensure the search warrant meets Divisional standards.
 - F. *Members* shall seek permission from their immediate supervisor before allowing a third party into the home during the execution of a warrant. Permission shall only be granted if the third party's presence will aid in the execution of the warrant.
 - G. Every effort should be made to conduct searches involving school or adjacent school property at times other than arrival or dismissal or any other time children are likely to be present.
 - H. When conducting a search on or near school property the supervisor in charge shall ensure that the Communications Control Section (CCS) is notified. CCS shall notify the Chief of the Cleveland Metropolitan School District (CMSD) prior to any search on CMSD property or adjacent areas. CCS shall notify the appropriate authority for schools other than CMSD.
 - I. If a search is required for a student in class.
 - 1. The supervisor shall advise the principal and request security assistance.
 - 2. *Members* shall make every effort not to enter a classroom. When ever possible, the student shall be brought to a secured office area.
- II. Obtaining a Search Warrant.
- A. An affidavit is the basis for a search warrant. A search warrant is valid when the affidavit satisfies the legal requirements for such warrants. Members shall prepare the affidavit stating the following information.

1. The nature of the offense. The affidavit and warrant must describe the actual criminal offense being investigated.
2. A precise description of the place to be searched. Affiant *members* must have knowledge or verify the exact location in order to obtain the warrant, (e.g., house, apartment, floor, and door where officers will enter to serve the search warrant). Supervisors shall confirm that affiant *members* have this personal knowledge before approving plans for serving the search warrant.
3. Where possible, use the actual street addresses. Ensure the address given is complete and accurate. Include a brief description of the premises and exact portion of the house or other building to be searched. Example: Apartment #28, 5th floor, inside the large brown brick apartment building located at 3500 Main St., Cleveland, Ohio.
4. When searching a motor vehicle, include the name of the owner (if known), the make and license number of the vehicle, (e.g.: a 1976 Chevrolet Cavalier, red in color, bearing Ohio license plate number 123ABC. License plates on said vehicle are registered to John Doe, 550 Madison Ave., Cleveland, Ohio).
5. Specify in the affidavit and warrant the items or persons sought. When searching for evidence there are four categories of items that may be the subject of a search warrant:
 - a. Evidence of the commission of a criminal offense.
 - b. Fruits of a crime.
 - c. Instruments of a crime, weapons or other things by means of which a crime has been committed or reasonably appears about to be committed.
 - d. Contraband or things otherwise criminally possessed.
6. Absent consent or exigent circumstances, an arrest warrant is required to search a subject's home, or place where he/she is expected to be living, for that subject.

7. Absent consent or exigent circumstances, and if probable cause exists to believe that the subject of an arrest warrant is in a third party home not mentioned in the arrest warrant itself, a search warrant must be obtained to search that home for the suspect.
 - a. Although the person wanted on the arrest warrant does not have his individual right to privacy violated by an entry into a third party home without a search warrant, the homeowner's right to privacy cannot be overcome in these situations with an arrest warrant alone.
 - b. If a search of the premises where the person wanted on an arrest warrant is conducted by officers who have **only an arrest warrant for that person**, any evidence seized during the search that can be used against the homeowner will likely be suppressed and civil liability exists, even if the subject of the arrest warrant is found to be present.

- B. *Members* may seize items discovered during the search.
 1. That are named or described in the warrant, or
 2. That are not named or described in the warrant, are discovered in plain view, or in any area or container capable of holding the evidence or person(s) sought in the warrant, and sufficient cause exists that they are related to the crime being investigated or are evidence of other crimes.

- C. Probable cause.
 1. Probable cause for a search warrant is comprised of facts and circumstances strong enough by themselves to cause a prudent officer to believe articles subject to seizure are being held on the property, or that the person wanted in the arrest warrant is present.
 2. *Members* may have either first or second-hand knowledge of the facts.
 - a. If second-hand knowledge involves information from an undisclosed informant, the *member* must be able to support the informant's trustworthiness. Explain how the informant had a reasonable basis for obtaining the information.

b. Independent corroboration by *members* of investigative details will assist in showing reliability of second hand knowledge.

D. Complete the search warrant form in duplicate.

E. Direct the search warrant to the head of the local law enforcement agency where service will occur.

III. Requesting a “No Knock” Search Warrant.

A. *In addition to the probable cause listed in Section II. C. to obtain a “No Knock” search warrant, the affiant member shall include four points.*

1. Show why the police need a "No Knock" waiver (e.g., risk of serious physical harm to the law enforcement officers who execute the warrant, violent history of suspect).

2. Give the names and descriptions of armed suspects he believes may try to harm officers during the search.

3. Give a statement showing a connection between the address in question and the criminal activity. (e.g., the building owner states Jane Doe is the resident on record for apt. #5, 1234 Smith St. Jane Doe is the wife of suspect John Doe.)

4. Add the waiver, just above the judge’s signature on the warrant: "Furthermore, for good cause shown, I waive the statutory precondition for nonconsensual entry."

B. After review by a supervisor, contact the appropriate city, county, or federal prosecutor. The prosecutor will review the warrant and affidavit for accuracy and completeness. Arrangements shall be made for the judge to review and sign two original copies of the search warrant.

C. *The SWAT Unit, Gang Impact Unit members trained in warrant execution, or another (local, state, or federal) tactical team shall assist in executing all "No Knock" search warrants.*

IV. Service of the Warrant.

A. Search warrant service normally occurs during daylight hours defined by State law as 0700 hours to 2000 hours. If a nighttime search is required, the reasons that make it so shall be clearly stated in the affidavit.

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- B. Without the nighttime entry specification, the warrant restricts the officer to a daytime entry. A detailed and thorough search starting during the daytime may extend into the night without becoming an illegal search.
- V. Supervisor's responsibility before entry.
- A. Have members of the affiant unit, if available and circumstances allow, begin watching the premises approximately one hour before serving the search warrant.
 - 1. Estimate the number, nature, and sex of probable occupants.
 - 2. Determine whether there are others in the premises requiring special consideration during the entry (e.g., children, elderly, dog).
 - 3. It is recommended that a uniformed basic patrol officer(s) be present prior to entry.
 - B. Determine how many *members* it will take to safely enter the premises and conduct a thorough controlled search. Limit the size of the search party to the number of personnel needed to carry out the search properly.
 - C. Ensure the Pre-Entry Planning Report (*Attachment*) is completed.
 - D. Obtain the aid of the SWAT Team in the service of high-risk search or arrest warrants.
 - 1. A high risk search warrant is one where the officers expect at least one of the following situations:
 - a. Fortified locations.
 - b. Armed subject.
 - c. Subject has an outstanding warrant for Homicide, Rape, Felonious Assault, Aggravated Robbery, or Aggravated Assault.
 - d. Any other situation where the potential for violence is great (No-Knock search warrants).

- e. A probate warrant with sufficient information to believe that situations A-D (above) may exist.
 2. When possible, submit requests to use SWAT through the SWAT commander before preparing the warrant.
 3. SWAT personnel shall handle the entry phase of all high-risk searches and shall secure the premises. The unit obtaining the search warrant is responsible for the actual search.
- E. Conduct a detailed briefing.
1. Include the use of charts, photographs, floor plans, etc., where available.
 2. Assign specific duties to each individual.
 3. Select a specific radio channel to use during service of the search warrant.
 4. Inform all officers involved of the type of warrant being served, the exact location and description of the residence or facility in question.
 5. Describe the suspects in detail.
 6. Assess doors for their locations and accessibility. Include their direction of opening, material construction, and locking devices.
 7. Identify the best route for approaching the location.
 8. Assess the types of weapons and fortification expected, including possible booby traps.
 9. Complete a detailed Pre-Entry Planning Report. Supervisors shall ensure that DECONFLICTION through the HIDTA is completed.
 10. Know the location of the nearest hospital.
 11. Determine the evacuation command word. When announced this term serves to signal the immediate evacuation of the premises due to the presence of a *safety hazard* (e.g., *methamphetamine lab*, *booby traps*).

12. Ensure that all involved *members* are wearing body armor.

VI. Gaining entry.

- A. A supervisor shall be on the search warrant scene during the service of all search warrants.
- B. A supervisor shall ensure the perimeter of the premises is secure before entry. Have all doors and windows under observation.
- C. *Members shall* clearly notify persons inside the search site of their authority and purpose. Example: “Police officers, search warrant, open the door”.
- D. Use force to enter the premises only after waiting a reasonable amount of time for an occupant to open the door.
 - 1. A reasonable amount of time is that time necessary for an occupant to reach the door from the furthest part of the premises.
 - 2. If, while waiting for the door to open, there is some sign the occupant is fleeing, fortifying their position, destroying evidence or contraband, or taking action that would jeopardize the safety of the *members*, force the door open immediately.
 - 3. Upon entry, have one *member* continue to announce the identity and purpose of the entering *members*.
 - 4. *Members not in uniform will display proper identification (e.g., badge, ID, raid jacket) when serving the search warrant.*
 - 5. *A uniformed local law enforcement officer will be present during a search executed outside of the City of Cleveland.*

VII. Search procedures.

- A. The supervisor in charge of the search warrant scene shall ensure that officers do a security sweep of the entire premises immediately after entry.
- B. Secure and identify any occupants by location. After securing any weapons, direct all occupants to a previously searched area. Assign one or more *members* to remain with the subjects.

- C. The supervisor in charge shall ensure an officer presents and explains the search warrant to the responsible occupant. **A signed copy of the search warrant shall be given to the occupant or left behind if no one is present.**

- D. Search the premises in a thorough, orderly and systematic fashion. Upon discovering an article subject to seizure, the finding *member* will summon a witnessing *member*. If practical, videotape or photograph the article in the location where it was found.
 - 1. Assign one person to collect, preserve, and document all items seized until possession is completed.
 - 2. A supervisor shall witness the counting and handling of large sums of money and other valuables.

- E. *When on-site counting of seized currency is impractical (e.g., large volume of paper money or coins), the on-scene supervisor may determine the counting should be done at another location.*
 - 1. *On those occasions, the money shall be secured by the recovering detective and a supervisor in large drug bags. The drug bag containing the currency shall be sealed at the scene and marked in red ink with the name and badge number of:*
 - a. *Member(s) who located the currency.*
 - b. *Witnessing member(s).*
 - c. *Witnessing supervisor(s).*
 - 2. *The number of the drug bag containing the currency shall be listed on the inventory sheet or pink property held in evidence receipt and on the RMS report.*
 - 3. *The drug bag containing the currency shall be transported and secured in a safe unless arrangements are made with a federal agency.*

- F. *A member shall be assigned to complete the Search Warrant Inventory List (C of C 71-2635), available at the Supply Unit, for all evidence seized. The supervisor shall confirm the items being seized and sign the Search Warrant Inventory List prior to leaving the scene with the items. The copies of the Search Warrant Inventory List shall be distributed as described on the form.*

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- G. Special care shall be given to the elderly, handicapped or juveniles present at the premises. Custodial interrogations of a juvenile require the presence of a supervisor, and where appropriate, a parent or a guardian.

VIII. Post-search requirements.

- A. Properly secure the premises upon completion of the search.
- B. Note the nature and extent of any damage caused during the entry and, when applicable, use the appropriate RMS report to document any damage.
- C. *Members* taking property under the authority of a search warrant shall:
 - 1. Give the person from whom or from whose premises the property was taken a copy of the warrant and completed return portion of the search warrant as receipt for the property taken.
 - 2. Make the property inventory in the presence of the applicant or their designee for the warrant and the person from whose possession or premises the property was taken if they are present. If no one is present, make the inventory in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken.
 - 3. If the person is not present, leave the copy and return portion of the search warrant at the place from which the property was taken.
 - 4. Return the affidavit, the warrant itself, and the completed return as soon as practical to the issuing judge. The evidence taken in the search warrant must be available to the judge accepting the return if requested.
 - 5. Deliver the affidavit, warrant, and return to the Clerk of Courts after review by the judge accepting the return.
- D. *When a large volume of currency is seized and removed from the search location, as described in section VII. E., the following shall apply:*
 - 1. *Arrangements shall be made to have the currency counted as soon as practical.*

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2. *The currency shall be counted in the presence of at least one supervisor and one detective using a money counting machine. A Form-1 report shall be completed with the following:*
 - a. *The location of the counting.*
 - b. *The amount of the seized currency.*
 - c. *A list of those present when the currency was counted (e.g., civilians, supervisor(s), transporting detectives)*
3. *The disposition of the money (e.g., deposited in a federal case or property room).*

IX. Executing Arrest and Probate Warrants.

- A. The same general search and seizure legal principles apply when executing an Arrest or Probate Warrant.
- B. In the case of probate warrant service:
 1. Every reasonable and appropriate effort shall be made to take a person into custody in the least conspicuous manner possible.
 2. The person named in the warrant shall be advised of the name, professional designation, and agency affiliation of the officer taking the person into custody. The person shall also be advised that the custody-taking is not a criminal arrest and that the person is being taken for examination by mental health professionals at a specified mental health facility identified by name, (reference pertinent parts of Ohio Revised Code Chapter 5122).
- C. Ohio Revised Code 2935.12 allows non-consensual forcible entry by a police officer executing a warrant to break down an outer or inner door or window of a dwelling house or other building, if, after notice of the officer's intention to make the arrest or to execute the warrant or summons, the officer is refused admittance. The *member* shall enter only that house or building being described in the warrant.