

CODE OF CRIMINAL PROCEDURE
TITLE 1. CODE OF CRIMINAL PROCEDURE

CHAPTER 18. SEARCH WARRANTS

Art. 18.01. SEARCH WARRANT.

(a) A "search warrant" is a written order, issued by a magistrate and directed to a peace officer, commanding him to search for any property or thing and to seize the same and bring it before such magistrate or commanding him to search for and photograph a child and to deliver to the magistrate any of the film exposed pursuant to the order.

Art. 18.02. GROUNDS FOR ISSUANCE.

(a) A search warrant may be issued to search for and seize:

- (1) property acquired by theft or in any other manner which makes its acquisition a penal offense;
- (2) property specially designed, made, or adapted for or commonly used in the commission of an offense;
- (3) arms and munitions kept or prepared for the purposes of insurrection or riot;
- (4) weapons prohibited by the Penal Code;
- (5) gambling devices or equipment, altered gambling equipment, or gambling paraphernalia;
- (6) obscene materials kept or prepared for commercial distribution or exhibition, subject to the additional rules set forth by law;
- (7) a drug, controlled substance, immediate precursor, chemical precursor, or other controlled substance property, including an apparatus or paraphernalia kept, prepared, or manufactured in violation of the laws of this state;
- (8) any property the possession of which is prohibited by law;
- (9) implements or instruments used in the commission of a crime;
- (10) property or items, except the personal writings by the accused, constituting evidence of an offense or constituting evidence tending to show that a particular person committed an offense;

Art. 18.021. ISSUANCE OF SEARCH WARRANT TO PHOTOGRAPH INJURED CHILD.

(a) A search warrant may be issued to search for and photograph a child who is alleged to be the victim of the offenses of injury to a child as prohibited by Section 22.04, Penal Code; sexual assault of a child as prohibited by Section 22.011(a), Penal Code; aggravated sexual assault of a child as prohibited by Section 22.021, Penal Code; or continuous sexual abuse of young child or disabled individual as prohibited by Section 21.02, Penal Code.

(b) The officer executing the warrant may be accompanied by a photographer who is employed by a law enforcement agency and who acts under the direction of the officer executing the warrant. The photographer is entitled to access to the child in the same manner as the officer executing the warrant.

Art. 18.04. CONTENTS OF WARRANT.

A search warrant issued under this chapter, Chapter 18A, or Chapter 18B shall be sufficient if it contains the following requisites:

- (1) that it run in the name of "The State of Texas";
- (2) that it identify, as near as may be, that which is to be seized and name or describe, as near as may be, the person, place, or thing to be searched;
- (3) that it command any peace officer of the proper county to search forthwith the person, place, or thing named;
- (4) that it be dated and signed by the magistrate; and
- (5) that the magistrate's name appear in clearly legible handwriting or in typewritten form with the magistrate's signature.

Art. 18.06. EXECUTION OF WARRANTS.

(a) A peace officer to whom a search warrant is delivered shall execute the warrant without delay and shall return the warrant to the proper magistrate.

Art. 18.07. DAYS ALLOWED FOR WARRANT TO RUN.

(a) Unless the magistrate directs in the warrant a shorter period for the execution of any search warrant issued under this chapter, Chapter 18A, or Chapter 18B, the period allowed for the execution of the warrant, exclusive of the day of its issuance and of the day of its execution, is:

- (1) 15 whole days if the warrant is issued solely to search for and seize specimens from a specific person for DNA analysis and comparison, including blood and saliva samples;
- (2) 10 whole days if the warrant is issued under Article 18B.354 or Subchapter G-1, Chapter 18B; or
- (3) three whole days if the warrant is issued for a purpose other than that described by Subdivision (1) or (2).

(b) The magistrate issuing a search warrant under this chapter, Chapter 18A, or Chapter 18B shall endorse on the search warrant the date and hour of its issuance.

(c) If a warrant is issued to search for and seize data or information contained in or on a computer, disk drive, flash drive, cellular telephone, or other electronic, communication, or data storage device, the warrant is considered to have been executed within the time allowed under Subsection (a) if the device was seized before the expiration of the time allowed. Notwithstanding any other law, any data or information contained in or on a device seized may be recovered and analyzed after the expiration of the time allowed under Subsection (a).

Art. 18.08. POWER OF OFFICER EXECUTING WARRANT.

In the execution of a search warrant, the officer may call to his aid any number of citizens in this county, who shall be bound to aid in the execution of the same.

Art. 18.09. SHALL SEIZE ACCUSED AND PROPERTY.

When the property which the officer is directed to search for and seize is found he shall take possession of the same and carry it before the magistrate. He shall also arrest any person whom he is directed to arrest by the warrant and immediately take such person before the magistrate. For purposes of this chapter, "seizure," in the context of property, means the restraint of property, whether by physical force or by a display of an officer's authority, and includes the collection of property or the act of taking possession of property.

Art. 18.10. HOW RETURN MADE.

(a) Not later than three whole days after executing a search warrant, the officer shall return search warrant. Upon returning the search warrant, the officer shall state on the back of the same, or on some paper attached to it, the manner in which the warrant has been executed. The officer shall also deliver to the magistrate a copy of the inventory of the property taken into his possession under the warrant. The failure of an officer to make a timely return of an executed search warrant or to submit an inventory of the property taken into the officer's possession under the warrant does not bar the admission of evidence under Article 38.23. The officer who seized the property shall retain custody of it until the magistrate issues an order directing the manner of safekeeping the property. Except as otherwise provided by Subsection (b), the property may not be removed from the county in which it was seized without an order approving the removal, issued by a magistrate in the county in which the warrant was issued; provided, however, nothing herein shall prevent the officer, or his department, from forwarding any item or items seized to a laboratory for scientific analysis.

Art. 18.11. CUSTODY OF PROPERTY FOUND.

Property seized pursuant to a search warrant shall be kept as provided by the order of a magistrate issued in accordance with Article 18.10 of this code.

Art. 18.181. DISPOSITION OF EXPLOSIVE WEAPONS AND CHEMICAL DISPENSING DEVICES.

(a) After seizure of an explosive weapon or chemical dispensing device, as these terms are defined in Section 46.01, Penal Code, a peace officer or a person acting at the direction of a peace officer shall:

- (1) photograph the weapon in the position where it is recovered before touching or moving it;
- (2) record the identification designations printed on a weapon if the markings are intact;
- (3) if the weapon can be moved, move it to an isolated area in order to lessen the danger to the public;
- (4) if possible, retain a portion of a wrapper or other packaging materials connected to the weapon;

Art. 18.183. DEPOSIT OF MONEY PENDING DISPOSITION.

(a) If money is seized by a law enforcement agency in connection with a violation of Chapter 47, Penal Code, the state or the political subdivision of the state that employs the law enforcement agency may deposit the money in an interest-bearing bank account in the jurisdiction of the agency that made seizure or in the county in which the money was seized until a final judgment is rendered concerning the violation.

Art. 18.22. TESTING CERTAIN DEFENDANTS OR CONFINED PERSONS FOR COMMUNICABLE DISEASES.

(a) A person who is arrested for a misdemeanor or felony and who during the commission of that offense or the arrest, during a judicial proceeding or initial period of confinement following the arrest, or during the person's confinement after a conviction or adjudication resulting from the arrest causes the person's bodily fluids to come into contact with a peace officer, a magistrate, or an employee of a correctional facility where the person is confined shall, at the direction of the court having jurisdiction over the arrested person, undergo a medical procedure or test designed to show or help show whether the person has a communicable disease. The court may direct the person to undergo the procedure or test on its own motion or on the request of the peace officer, magistrate, or correctional facility employee. If the person refuses to submit voluntarily to the procedure or test, the court shall require the person to submit to the procedure or test.