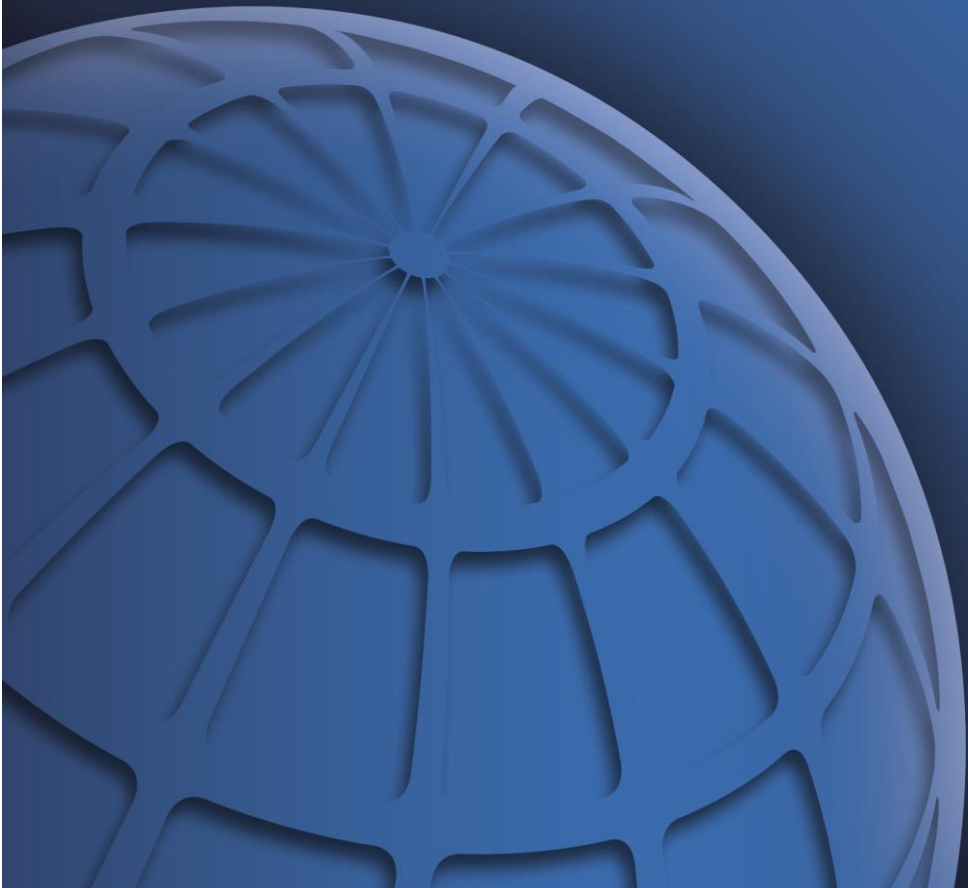


# Search Warrants

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July 2023



The IACP Law Enforcement Policy Center creates four types of documents: Model Policies, Considerations Documents, Concepts & Issues Papers, and Need to Know one-page summaries. Typically, for each topic, either a Model Policy or a Considerations Document is created, supplemented with a Concepts & Issues Paper. This file contains the following documents:

- *Considerations Document*: Offered as an alternative to the bright-line directives found in a Model Policy. Instead of providing exact policy language, the Considerations Document outlines items that agencies should address and provides options that agencies should examine when developing their own policies on the topic.
- *Concepts & Issues Paper*: Designed to provide context and background information to support a Model Policy or Considerations Document for a deeper understanding of the topic.

# Glossary

## DEFINITIONS

*Affidavit:* A written statement under oath.

*Case agent:* The officer primarily responsible for the investigation, which includes preparing, planning, and implementing the search warrant.

*Deconfliction:* The process of determining when law enforcement personnel are conducting an event in close proximity to one another at the same time, and then notifying the affected agencies or personnel regarding the identified conflict.<sup>1</sup>

*Evidence collector:* Member of the search team responsible for taking possession, packaging, sealing, and marking of items seized.

*Probable cause:* When articulable facts and circumstances within an officer's knowledge are sufficient to warrant a prudent person or one of reasonable caution to believe that the suspect has committed, is committing, or is about to commit an offense.

*Protective sweep:* A quick and limited search of premises incident to an arrest or service of a warrant performed in order to identify persons who may pose a danger to the officers or others. Officers must have reasonable articulable suspicion to believe there is someone present who poses a threat in order to conduct a protective sweep.

*Search personnel:* Law enforcement officers and supporting personnel taking part in the execution of a search warrant.

*Search site:* The object or location to be searched, as explicitly stated in the search warrant.

*Search warrant:* A written order, in the name of the people, signed by a judicial authority,<sup>2</sup> directing a peace officer to search for specified persons and/or evidence.

*Tactical coordinator:* The officer responsible for planning and supervising tactical operations including dynamic entry and other tasks requiring special weapons, equipment, and tactically trained officers.

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<sup>1</sup> National Criminal Intelligence Resource Center, [\*A Call to Action: Enhancing Officer Safety through the Use of Event Deconfliction Systems\*](#) (2015).

<sup>2</sup> Search warrants must be obtained from a judicial officer authorized by the law of the jurisdiction to issue such warrants. This is, typically, a justice of the peace, magistrate, judge, or other authorized judicial officer.

# Considerations Document

Updated: July 2023

## Search Warrants

### I. PURPOSE

It is the purpose of this considerations document to provide guidelines for obtaining and executing search warrants.

### II. POLICY

All officers should have a sound knowledge of the legal requirements associated with obtaining and executing a search warrant in order to support the rights of individuals, prevent suppression of evidence, minimize the level of intrusion experienced by those who are having their premises searched, provide for the safety of officers and all persons concerned, establish a record of the warrant execution process, and maintain public confidence in an agency's mandate to carry out the police function in an ethical and legal manner.

### III. PROCEDURES

#### A. Legal Basis for Seeking a Warrant

The Fourth Amendment to the U.S. Constitution<sup>1</sup> prohibits unreasonable searches. Therefore, officers should consider obtaining a search warrant whenever time and circumstances permit, adhering to the following guidelines:

1. To obtain a search warrant, an officer must be able to show probable cause to believe that a specific person may be found at a particular location or specific evidence, contraband, or products of a crime may be found there or on a person.
2. Specific facts establishing probable cause shall be set forth with clarity and specificity.
3. Officers shall not rely solely upon personal opinion or unauthenticated third-party information or hearsay. Evidence of probable cause may be based on personal observation/knowledge of the officer, information from another peace officer, or information from a reliable source.

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<sup>1</sup> Some state constitutions impose greater burdens upon law enforcement officers for obtaining and/or executing search warrants than does the U.S. Constitution. The requirements noted here conform with federal constitutional provisions. Officers in the United States should be familiar with any additional state constitutional requirements. Outside the United States, officers should be familiar with the applicable country's constitution or charter.

4. When informants are used—particularly confidential informants—the reliability of the informant and information provided shall be specified. Whenever possible, officers shall corroborate informant information.<sup>2</sup>

## B. Search Warrant Preparation

When there is legal basis to seek a warrant, a search warrant application and affidavit of probable cause shall be prepared on the designated agency form or those prescribed by the prosecuting or judicial authority. The accuracy of the search warrant application and affidavit is vital to the validity of the search warrant; thus, officers shall ensure that the following information is clearly and completely specified.<sup>3</sup>

1. *Offense* – The offense shall be described with reference to the criminal code section where possible.
2. *Place or Thing or Person to Be Searched* – The place, thing, or person to be searched shall be described with specificity, and officers shall ensure that the warrant includes the specific reference(s). Where premises are to be searched, references should include:
  - a. Legal description of the place, thing, or person to be searched;
  - b. Street number and apartment number, if appropriate;
  - c. Detailed physical description of the premises or container; this may include: color of the structure, affixed numbers or signage, unique identifying characteristics, and floor numbers for multiple story structures;
  - d. Name of owner or occupant;
  - e. Geographical location of the property (if applicable), which may require including Global Positioning System (GPS) coordinates or distances from given reference points or landmarks; and
  - f. Photographs, maps, or diagrams that help to specify the location in question.
3. *Scope of the Search* – Only those things described in the search warrant can be seized.<sup>4</sup> The search should be limited to evidence related to specific offenses delineated in the search warrant and to areas where that evidence could reasonably be located. Therefore, the affidavit shall specify, and officers shall ensure, that the warrant includes the following:
  - a. All areas that officers desire to search shall be designated. In cases where officers wish to conduct a complete search of a structure and its surroundings, the affidavit should specify a “premises” search and its “curtilage” and should identify any outbuildings such as garages, toolsheds, barns, or other structures where appropriate.
  - b. Motor vehicles known to be on the premises that may be searched should be specified.
  - c. Searches (other than frisks for weapons) of specific persons on the premises shall be referenced in the affidavit by name if possible.<sup>5</sup>

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<sup>2</sup> See IACP Policy Center guidance on Confidential Informants at <https://www.theiacp.org/resources/policy-center-resource/confidential-informants>.

<sup>3</sup> Specifications as to who qualifies to swear to an affidavit to establish probable cause may vary by jurisdiction. Refer to applicable laws and regulations.

<sup>4</sup> Exceptions to this include items seized incident to a lawful arrest, items reasonably related to those specified in the warrant, and evidence of another crime discovered in plain view during the search.

<sup>5</sup> If a warrant to search “all persons present” is sought, probable cause to believe that such individuals have evidence of criminal activity on their person shall be specified.

- d. The specific items to be searched for shall be detailed.<sup>6</sup> Where the item may be dismantled (e.g., firearms), the warrant should authorize search for parts, pieces, or components of that item.
- e. Officers anticipating the search of computers, phones, tablets, and related digital evidence shall consult a designated expert, if necessary and available, for appropriate language to use in the affidavit and procedures for seizure of hardware and software.

#### 4. *Time and Method of Search*

- a. A search warrant should be executed during daylight hours and in accordance with applicable laws and regulations,<sup>7</sup> unless a judicial authority, based on facts articulated in the affidavit, expressly authorizes execution at another time.
- b. Officers should knock, loudly identify themselves, and wait a reasonable amount of time for response before they attempt to enter the premises to be searched.<sup>8</sup>
- c. Officers should be clearly recognizable as law enforcement officers when executing a warrant.
- d. If the jurisdiction permits no-knock warrants, officers may seek judicial authorization to conduct a no-knock entry only if they have reasonable ground to believe at the time the warrant is sought that knocking and announcing their presence would create an imminent threat of physical violence to the officers or another person. Prior to seeking judicial authorization for a no-knock entry, officers should obtain approval from the felony-level prosecutor's office in their jurisdiction and from a supervisor within their agency.<sup>9</sup>
  - i. Once judicial authorization for a no-knock entry is obtained, officers may proceed accordingly unless they learn of facts and circumstances that would negate the need for a no-knock entry, in which case they should knock and announce themselves in accordance with this policy.
  - ii. If officers did not obtain judicial authorization for a no-knock entry but exigent circumstances arise at the scene such that knocking and announcing would create an imminent threat of physical violence to the officers or another person, officers may conduct a no-knock entry but shall immediately notify a supervisor and shall provide written notification to their felony-level prosecutor's office and the court that authorized the warrant.
- e. Anticipatory search warrants may be sought when it can be shown that the evidence in question will be at a specific location at some time in the near future.

### C. Review of the Warrant

Secure a warrant and ensure that it is thoroughly reviewed for accuracy, legal integrity, and completeness.

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<sup>6</sup> Seizure of evidentiary items that were known to be on the premises but were not listed in the warrant may result in invalidation of the seizure.

<sup>7</sup> State/provincial/local laws may impose additional limitations on when a warrant can be executed.

<sup>8</sup> What constitutes a reasonable amount of time is fact sensitive and dependent on circumstances.

<sup>9</sup> State/provincial law varies widely regarding the permissibility of and procedures surrounding no-knock searches. Officers should be trained on current state/provincial law requirements and should seek legal advice if they are unsure of their jurisdiction's applicable requirements. For guidance pertaining to the U.S., please see Section 10 of the Executive Order on Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety at <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/05/25/executive-order-on-advancing-effective-accountable-policing-and-criminal-justice-practices-to-enhance-public-trust-and-public-safety/> (2022), or visit the IACP Policy Fact Sheet on the Executive Order on Policing at <https://www.cirsa.org/wp-content/uploads/2022/06/Executive-Order-on-Policing-ICP-Policy-Fact-Sheet.pdf> (2022).



1. Officers and their supervisors shall review search warrants issued by judicial authorities to ensure that they include all pertinent information set forth in the affidavit accurately and completely, and that the warrant has been properly signed.
  - a. No-knock entries, where legally permitted and specified in the warrant, shall be conducted in accordance with state law.
  - b. The need for a no-knock warrant shall be clearly specified in the application and affidavit for a warrant.
  - c. Should nighttime service be anticipated or desired, justification shall be included in the affidavit and must be authorized in the search warrant.
  - d. The tactical team commander shall be consulted whenever a warrant calls for a no-knock entry, a nighttime entry, or service involving drugs or subjects deemed particularly dangerous.
2. Officers shall not attempt to serve any warrant that is known to contain substantive or administrative errors.

#### **D. Warrant Service Planning**

1. The case agent shall advise and receive approval from their supervisor before serving the warrant.
2. Selection of officers to serve the warrant shall be based on the officers' prior training and qualifications, if possible, in conducting warrant service consistent with the demands of the warrant service in question. If forced entry is anticipated, the use of a specially trained tactical team is desirable.
3. The case agent shall ensure the complete preparation for serving the warrant in accordance with its nature and complexity and in consultation with the prosecutor if necessary (a checklist of possible issues that may be considered in the planning process is included in [Appendix A](#)). These tasks include but are not limited to the following:
  - a. Gather intelligence on the target site to include the structure, immediate area surrounding the structure, and surrounding neighborhood.
  - b. Assess the capabilities and backgrounds of suspects to include criminal records and history of weapons usage and potential for violence.
  - c. Determine the best date and time for warrant execution. The warrant shall be executed as soon as practicable as defined by state law.
  - d. Determine equipment, team personnel, and any specialized team requirements.

#### **E. Preparation for Executing the Warrant**

1. Follow agency protocol for event deconfliction prior to serving any search warrant, and ensure this process is documented. Deconfliction is necessary to ensure the safety of other officers operating in the area where the search warrant is to be served.
2. The case agent and tactical coordinator, where required, shall work cooperatively to ensure proper preparation, planning, and service of the warrant. They shall detail procedures for executing the warrant to all team members in a warrant service briefing. If it is a joint agency task force operation, all officers participating in the warrant service shall be present at the briefing and identified as members of the warrant service team. The briefing shall be conducted by both the case agent and tactical coordinator and will include but not necessarily be limited to the following:
  - a. Description and confirmation of the target address by both case agent and tactical coordinator.

- b. Complete review of the tactical plan to include the staging area, route of approach, and individual assignments for entry, search, management of evidence, custody and handling of seized vehicles, custody of prisoners, and post-execution duties such as securing the location and conducting surveillance on the site for additional suspects. If forced entry is anticipated, the use of a specially trained tactical team is desirable.
  - c. Suspects and other occupants who may be present at the location—incorporating photos or sketches whenever possible—with emphasis on suspect threat potential, as well as the presence of children, the elderly, or others who may be involved with suspects.
  - d. Specific items subject to the search as defined in the warrant and any available information on their location.
  - e. Information concerning the structure to be searched and surroundings, to include floor plans where available, mockups, photos, and diagrams of the location identifying entrances, exits, obstructions, fortifications, garages, outlying buildings, suspect vehicles, and all other points of concern.
  - f. Personnel, resources, or armament necessary for gaining entry, for maintaining the safety and security of officers, or for conducting the search.
  - g. Contingency plans for encountering hazardous materials, canines, booby traps, fortifications, or related hazards.
  - h. Measures to take in case of injury or accident, to include the nearest location of trauma or emergency care facilities.
  - i. Procedures for exiting the location under emergency conditions.
3. Officers should be clearly recognizable as law enforcement officers when executing a warrant. All non-uniformed officers shall be clearly identified as law enforcement officers by a distinctive jacket or some other conspicuous indicator of office.
4. Prior to execution of the warrant, the case agent shall attempt to determine if any circumstances have changed that make executing the search warrant undesirable at that time. Where possible, pre-search surveillance shall be conducted up to the point at which the warrant is executed.
5. The case agent shall make a final assessment of the warrant's accuracy in relation to the location to be searched.
6. The case agent shall ensure that the entire search warrant execution process is documented until the search team leaves the premises. A written record shall be supported by photographs and, if practical, videotaping of the entire search process.

## **F. Entry Procedures**

1. If an advance surveillance team is at the target site, communication shall be made between the surveillance team and incident command to ensure that the warrant can be served according to plan.
2. The search personnel shall position themselves in accordance with the execution plan.
3. Notification
  - a. An easily identifiable law enforcement officer shall notify persons inside the search site in a voice loud enough to be heard inside the premises that the individual is a police officer, has a warrant to search the premises, and demands entry to the premises at once. When possible, a voice amplification or public address system should be used. Notification should be documented within the computer-aided dispatch (CAD) or other incident record system.
  - b. Following the knock and announce, officers shall delay entry for an appropriate period of time based on the size and nature of the target site and time of day to provide a reasonable opportunity for an occupant to respond. If there is reasonable suspicion to believe that the delay would create



unreasonable risks to the officers or others, inhibit the effectiveness of the investigation, or permit the destruction of evidence, entry may be made as soon as practicable.

## G. On-Premises Activities

1. The supervisory officer shall ensure that a protective sweep of the site is performed immediately.
2. As soon as practicable, the occupant shall be given a copy of the search warrant or, in the absence of an occupant, it shall be left in a conspicuous location.
3. After the site has been secured, a photographic and/or video record of the premises should be made prior to conducting the search. Search personnel shall then follow the plan that details the likely whereabouts of the items to be seized and the order of operation for conducting the search.
4. Items specified in the warrant may be searched for in places where they may reasonably be expected to be located and seized.<sup>10</sup>
5. Each room to be searched should be labeled, and the entire search location scene should be documented (sketched, photographed, etc.) by a designated officer. Once an item is identified to be seized, a designated photographer shall take a photograph of the evidence. The exact location, description, and condition of the item seized shall be logged, and the evidence shall be packaged and labeled. All items seized shall be turned over to the evidence custodian, laboratory, or other designated authority. To preserve potential forensic/biological evidence, gloves shall be worn at all times when handling a seized item. A new pair of gloves shall be worn for additional items seized to prevent forensic/biological cross-contamination.
6. Cash and currency taken as evidence shall be verified by a supervisor and be transported to a secure location as designated by the department's evidence handling policy.
7. Officers should exercise reasonable care in executing the warrant to minimize damage to property.
  - a. If damage occurs during an entry to premises that will be left vacant and the damage may leave the premises vulnerable to security problems, arrangements shall be made to guard the premises until it can be secured.
  - b. If damage occurs, justification for actions that caused the damage and a detailed description of the nature and extent of the damage shall be documented. Photographs of the damage should be taken where possible.
8. After the search but prior to leaving the location, document the conditions under which the location was left. This should include a photographic and/or video record of the premises.
9. An inventory of property seized and any other documents as required by law should be left at the premises at the conclusion of the execution of the warrant.
10. In a timely manner upon conclusion of the warrant service, the case agent and tactical coordinator shall conduct a debriefing of all participating officers.
11. The case agent shall thereafter prepare and submit an after-action report on the warrant service, results of actions taken, and recommendations for further investigative actions.

## H. Return on the Warrant

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<sup>10</sup> In some cases, officers may have the right to search for contraband items not specified in the warrant, but laws for these instances vary by jurisdiction. Consult local laws regarding discovery of contraband items not specified in the warrant.

Officers shall observe statutory and administrative requirements regarding return on the warrant to include providing a receipt to the proper person for property taken, retention and security of property taken, and return of the warrant and delivery of the property inventory to the appropriate judicial authority within specified time limits.

## **I. Recording**

A detailed written report shall be prepared of all warrants issued to this agency and all actions taken in response to each.

## APPENDIX A: PRE-SEARCH PLANNING CHECKLIST

### A. Target Location Considerations

1. Can the site be penetrated by gunfire?
2. Does the target site pose a fire hazard or risk of explosion?
3. Are there weapons known or suspected to be on the property?
4. Are there underground parking facilities, attached garages, or additional buildings in the curtilage?
5. Where are the ingress/egress points of the target location and surrounding streets, access points on upper and lower levels of the structure, approach concerns related to access points, and points of cover at approach point(s)?
6. Which way do doors and windows open?
7. Does the target site have an alarm system or warning device? Are there cameras on site? (CCTV, personal doorbell cameras, etc.)
8. Is there evidence of reinforced entrances or fortifications?
  - a. Barred windows or doors
  - b. Backing mesh
  - c. Appearance of double locks on doors
9. Are there any lookouts, and if so, how many, their location, warning devices and/or signals used?
10. Evidence of children, such as bicycles or swings?
11. Evidence of other persons who have a disability, or are elderly, or uninvolved.
12. Unusual obstacles to entrance?
13. Can a reasonably accurate floor plan be obtained or constructed?
14. Attitude of neighbors: hostile or friendly?
15. Evidence of dangerous animals? If so, how can they best be controlled?
16. Where are the electrical box, water shut off, and natural gas shut off, if applicable, and are they accessible?
17. Has an evacuation plan been established, in case of emergency?
18. Do environmental conditions necessitate any unique staffing plans?<sup>11</sup>

### B. Target Suspect Considerations

1. How many suspects and other people are involved at the site at particular hours?
2. Is the suspect known to carry firearms?
  - a. Previous record of weapons use
  - b. Pattern of being armed (e.g., when and how)
  - c. Military or law enforcement background
  - d. Access to weapons
  - e. Weapons registered to suspect(s)
  - f. Knowledge of use of explosives
3. Are they involved in narcotics?

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<sup>11</sup> For example, in extreme temperatures or harsh conditions, staff members may be rotated periodically to avoid prolonged exposure.

4. Is there gang involvement?
5. What is the background of the principal suspect(s)?
6. Are there recent photographs or sketches of the suspects?
7. What are the capabilities and backgrounds of suspects?
  - a. Criminal record
  - b. Social media presence
  - c. Previous method of operation
  - d. Likelihood of resistance
  - e. Physical and mental conditions of suspects
  - f. Scope of criminal involvement of suspects
  - g. Experience in martial arts
  - h. Propensity for violence
  - i. Other abilities/capacities to resist arrest
8. Does the suspect have access to transportation?
  - a. Registration and description of vehicles
  - b. Locations of involved vehicles for purpose of securing them during warrant service

### C. Preparation Considerations

1. Establish date and best time of warrant execution
2. Establish staging area
3. Establish briefing time and location
4. Additional tactical considerations:
  - a. Type of action (e.g. surround and call out, breach and hold)
  - b. Prevention of escape
  - c. Number of personnel needed and assignments
  - d. Individual and team areas of responsibility
  - e. Route to location and deployment route
  - f. Security and communications at staging area
  - g. Equipment requirements (such as breaching tools, sledgehammers, battering rams)
5. Can the location be secured upon completion of warrant service, or will officers be needed to safeguard the location following service?
6. Following service, should a surveillance team be left behind to identify other persons who might enter the location?
7. What is the best method of entry and order in which personnel should enter?
8. Will diversionary tactics be needed? If so, identify and establish a safe area to dispose of unused diversionary devices.
9. Determine an emergency medical plan (nearest hospital, who will transport, communications protocol, who to notify, etc.).

## D. Tools, Equipment, and Specialized Personnel Considerations

1. Based on the target location, suspects involved, and armament, should specialized tactical resources be used to perform the warrant service or assist? Special consideration in this matter should be given to:
  - a. Specialized equipment needed for entry (e.g., torches, sledgehammers, battering rams, other breaching tools)
  - b. Whether the site is fortified, employs lookouts, booby traps, etc.
  - c. Whether the scope, complexity, and danger of service exceeds the training and experience of officers available.
2. Raid jackets or other identification
3. Flashlights (even in daylight for darkened interiors)
4. Protective equipment
  - a. Body armor
  - b. Ballistic shields
  - c. Visors or goggles
  - d. Gloves
  - e. Gas masks
5. First aid kits
6. Breaching tools such as sledgehammer or pry bars
7. Radios
  - a. Tactical frequency needed and available
  - b. Earpieces needed
  - c. Batteries charged
8. Additional handcuffs, flex cuffs, or other restraints
9. CO2 fire extinguishers (for animal control and fires)
10. Evidence bags, boxes, and related containers consistent with the evidentiary items that need to be collected
11. Cameras and video recording equipment
  - a. Consideration should be given to taking pre- and post-warrant execution photographs of the target location. Photos may be taken by available team members or, where necessary, by evidence technicians or related forensic personnel.
  - b. All photographs taken are departmental property and shall be retained in the lead detective's casefolder and/or in evidence storage.
12. High-intensity lighting, as necessary
13. Canine teams
14. Ambulance or EMT standbys
15. Fire department standby
16. Air support
17. City, county, or state prosecutor

Every effort has been made by the IACP Law Enforcement Policy Center staff and advisory board to ensure that this document incorporates the most current information and contemporary professional judgment on this issue. However, law enforcement administrators should be cautioned that no considerations document can meet all the needs of any given law enforcement agency. In addition, the formulation of specific agency policies must take into account local political and community perspectives and customs, prerogatives, and demands; often divergent law enforcement strategies and philosophies; and the impact of varied agency resource capabilities, among other factors. Readers outside of the United States should note that, while this document promotes procedures reflective of a democratic society, its legal basis follows United States Supreme Court rulings and other federal laws and statutes. Law enforcement administrators should be cautioned that each law enforcement agency operates in a unique environment of court rulings, state laws, local ordinances, regulations, judicial and administrative decisions, and collective bargaining agreements that must be considered and should therefore consult their agency's legal advisor before implementing any policy.

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# Concepts & Issues Paper

Updated: July 2023

## Search Warrants

### I. INTRODUCTION

#### A. Purpose of the Document

This paper is designed to accompany the Considerations Document on Obtaining and Executing Search Warrants document established by the IACP Law Enforcement Policy Center. This paper provides essential background material and supporting documentation to provide greater understanding of the developmental philosophy and implementation requirements for the Considerations Document. This material will be of value to law enforcement executives in their efforts to develop an agency policy to meet the requirements and circumstances of their own communities and law enforcement agencies.

#### B. Background

The search warrant is one of the more powerful weapons in the law enforcement officer's arsenal. While the process of applying for and obtaining a search warrant should be familiar to most officers, there are many technical and legal pitfalls that can invalidate a search warrant, lead to the suppression of evidence or dismissal of cases, and have liability implications for involved officers. Properly obtained and executed, a search warrant assists police and prosecutors in finding vital evidence, securing its admission at trial, and, ultimately, obtaining a conviction. The basic criterion for a successful operation is to serve or execute the warrant without the need to resort to the use of force. One of the best ways of accomplishing this objective is to provide law enforcement with overwhelming tactical capabilities and advantages. In some instances, the use of force cannot be avoided. But adequate planning and the application of sufficient law enforcement resources can increase the safety of all parties involved.

In the United States, the Fourth Amendment of the Constitution protects community members from unreasonable searches, requiring law enforcement to obtain a search warrant from a judicial authority before searching a person, computer or electronic source, or premise. Accordingly, an officer requesting a warrant must adequately demonstrate they have probable cause to believe the proposed search area contains evidence of a crime. Mere suspicion is not valid to establish probable cause and cannot be used to obtain a search warrant.<sup>1</sup> Officers must support their probable cause with a sworn statement—or affidavit—which must detail the items or persons to be searched. A valid warrant, properly executed, vastly increases the likelihood that evidence will be ruled admissible. It also reduces the chances of a case being dismissed for lack of evidence. However, there are certain situations where a search may be conducted without a warrant—such as with consent, after an arrest, or in an emergency. These conditions apply only in exceptional situations and are very narrowly construed by the courts.

The execution of a search warrant can be a demanding and potentially dangerous activity for law enforcement officers. Some departments assign the task of executing high-risk warrants to their special weapons and tactics

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<sup>1</sup> *Aguilar v. Texas*, 378 U.S. 108, 114-15 (1964).

(SWAT) team, while other departments (because of a lack of personnel, low perceived risk, or for other reasons) may leverage detectives or other uniformed personnel. While not all warrant service personnel must be SWAT certified, those that assist in high-risk operations should at least be familiar with basic procedures and tactics common to these assignments. Neither of these approaches, however, may be suitable if sufficient care is not taken in analyzing the circumstances surrounding the offense and the suspects, the location at which the warrant will be served, and in planning an appropriate response. There are specific steps that must be taken in these situations if warrants are to be effectively and efficiently executed with a minimum risk to officers, bystanders, and suspects, alike. This document is intended to supply information on the manner of obtaining a search warrant, types of search warrants, preparation of the execution of the warrant, and executing the warrant. Not all requirements will apply to every search warrant, but the array of details presented here are intended to apply to the wide range of potential considerations for any given situation.

### C. Legal Requirements for a Search Warrant

The Fourth Amendment of the U.S. Constitution states that “...no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”<sup>2</sup>

This means that no search warrant can be obtained by any law enforcement officer unless:

- probable cause exists to conduct the search,
- probable cause is presented to a judicial authority under oath, and
- the place to be searched and the evidence being sought there are specifically described both in the application for the warrant and in the warrant itself.

In determining whether these requirements have been satisfied, the judicial officer from whom the warrant is sought “is not entitled to rely on the judgment of law enforcement officials. He or she is expected to review the material submitted and make a detached, independent judgment as to the existence of probable cause.”<sup>3</sup>

An arrest warrant may be issued if there are reasonable grounds to believe that the suspect has committed an offense, but an officer has probable cause to search only if the officer has reasonable grounds for believing that criminal evidence will be found at the specified location.<sup>4</sup>

The Supreme Court in *Steagald*, 451 U.S. 204, (1981), examined whether authorities pursuant to an arrest warrant could enter the home of a third party without first obtaining a search warrant. In that case, agents of the Drug Enforcement Administration, armed only with an arrest warrant and acting on the tip of an informant, forcibly entered the home of another party in search of a fugitive named Lyons. In searching the house, Lyons was not found, but agents did discover 43 pounds of cocaine. The owner, Steagald, was subsequently arrested and convicted on federal drug charges. The Supreme Court ruled that the cocaine evidence was properly suppressed on the ground that it was illegally obtained by agents without a search warrant.

The question in *Steagald* came down to whether or not an arrest warrant, as opposed to a search warrant, was sufficient legal grounds to search without the consent of the owner or the presence of exigent circumstances. The court held that it was not and that a search warrant was required to enter the home of the individual not named on the arrest warrant.

Thus, although probable cause to believe that a suspect has committed a crime is sufficient to justify the issuance of an arrest warrant, it is not enough for the issuance of a search warrant. In order to obtain a search warrant, it must

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<sup>2</sup> Constitution of the United States of America, Amendment IV.

<sup>3</sup> *United States v. Davis*, 714 F.2d 896 (9th Cir. 1983) *citing* *Steagald v. United States*, 451 U.S. 204 (1981).

<sup>4</sup> See *Steagald*, 451 U.S. 204.

be shown that there is probable cause to believe that the specified items are to be found at that particular location, and that these items constitute evidence of the commission of a crime.<sup>5</sup>

Probable cause does not require that it be certain that the items will be found at the location, but, on the other hand, a mere possibility is not enough. The issuing judicial authority must “make a practical, common sense decision whether, given all the circumstances set forth in the affidavit ... there is a fair probability that contraband or evidence of a crime will be found in a particular place.”<sup>6</sup> Thus, an application for a search warrant need only “enable the magistrate to conclude that it would be reasonable to seek the evidence in the place indicated.”<sup>7</sup>

Unlike probable cause to arrest, probable cause to search often grows stale quickly. The fact that there is probable cause to believe that evidence is present at a given location today does not necessarily mean that there is probable cause to believe that it will still be there tomorrow or next week.<sup>8</sup> There is no set limit to the timeliness of probable cause; this will be determined by the circumstances.<sup>9</sup> To avoid a possible judicial finding that the probable cause had grown stale prior to the issuance of the warrant, officers, upon determining that they have probable cause to search a certain location, should act promptly to obtain a search warrant before the probable cause has dissipated.

Although, as noted above, probable cause is time sensitive, it may not be necessary to show that there is probable cause to believe that the evidence is presently to be found at the specified location. If the officer can show that the evidence, though not currently at the specified location, will be found there at some point in the near future, the search warrant may be issued. These so-called “anticipatory search warrants” have been approved by the courts of a number of jurisdictions.<sup>10</sup> However, mere speculation that the evidence will be on the specified premises at a future time is not enough; it must be shown that the evidence is on a “sure course” to arrive at the location.<sup>11</sup>

As noted earlier, no warrant may be issued unless there is probable cause to search. However, it is insufficient merely that the officers have probable cause; on the contrary, the facts that show that probable cause exists must be clearly stated in the search warrant affidavit.

This is perhaps the most difficult requirement of all. Since no warrant can be issued unless the affidavit sets forth all the information necessary to show the probable cause upon which the warrant is to be based, failure to include sufficient data to enable the judicial authority and the courts to determine whether there is (or was) probable cause for the issuance of the warrant may invalidate the search.

When the warrant is sought based upon the personal observations of the officer applying for the warrant, the judicial authority’s determination of probable cause (or lack thereof) is usually relatively simple. The officer submitting the affidavit (often referred to as the “affiant”) should set forth the specific facts that constitute the basis for the officer’s belief that criminal evidence will be found at the specified location. Facts must be stated; unsupported opinions or conclusions are not sufficient.<sup>12</sup> Similarly, mere affirmation of belief or suspicion is not enough.<sup>13</sup>

To obtain a search warrant, the affiant need not allege personal observation of criminal activity.<sup>14</sup> Indeed, the majority of search warrants are sought based at least in part upon information received from some person other than

<sup>5</sup> See *United States v. Ramos*, 923 F.2d 1346 (9th Cir. 1983).

<sup>6</sup> *Illinois v. Gates*, 462 U.S. 213, 238 (1983). See also *Texas v. Brown*, 460 U.S. 730 (1983).

<sup>7</sup> *United States v. Jacobs*, 715 F.2d 1343, 1346 (9th Cir. 1983).

<sup>8</sup> See, e.g., *Sgro v. United States*, 287 U.S. 206 (1932).

<sup>9</sup> *United States v. Miles*, 772 F.2d 613 (10th Cir. 1985).

<sup>10</sup> See, e.g., *United States v. Bregu*, 948 F.3d 408 (1st Cir. 2020); *United States v. Miggins, et. al.*, 302 F.3d 384 (6th Cir. 2002); *U.S. v. Becerra*, 97 F.3d 669 (2d Cir. 1996).

<sup>11</sup> See, e.g., *United States v. Ricciardelli*, 998 F.2d 8 (1st Cir. 1993).

<sup>12</sup> See, e.g., *Illinois v. Gates*, 462 U.S. 213 (1983).

<sup>13</sup> *Nathanson v. United States*, 290 U.S. 41 (1933).

<sup>14</sup> *United States v. Packer*, 730 F.2d 1151 (8th Cir. 1984).

the affiant. In these instances, the determination of probable cause may be considerably more difficult than it is in those cases where the basis for the probable cause is the affiant's own first-hand knowledge.

For many years, the determination of probable cause in these situations was based upon a two-part test set forth by the Supreme Court in the cases of *Aguilar v. Texas*<sup>15</sup> and *Spinelli v. United States*.<sup>16</sup> This so-called “two-pronged test” required that the affidavit set forth information sufficient to show both (1) the general reliability of the informant and (2) the reliability of the specific information being provided by the informant in the particular case.

This test was very technical, and it required the affiant to use great care in the choice of language to be used in the affidavit. Usually, application of the “two-pronged test” meant that the warrant would be issued only if the informant had proven reliable in the past and the information set forth in the affidavit was based upon the informant's personal observations. Because these factors were not always present, or were not always articulated adequately, many warrants were invalidated by the courts under the “two-pronged test.”

This test remained the law until 1983, when, in the case of *Illinois v. Gates*,<sup>17</sup> the Supreme Court announced a more flexible approach. In *Gates*, the court held that probable cause should be determined not by the “two-pronged test” of *Aguilar* and *Spinelli*, but rather by “the totality of the circumstances.” Under the “totality” test, the informant's record for reliability and the apparent reliability of the specific information being provided are still regarded as significant factors. But they are not viewed as rigid requirements, and other factors may be considered as well. Notwithstanding the Supreme Court's adoption of the “totality” test, two points should be understood and remembered by all officers seeking search warrants.

First, the informant's reliability and the apparent reliability of the specific information are still “highly relevant” factors in the “totality” determination.<sup>18</sup> Indeed, any affidavit that would satisfy the older “two-pronged test” will almost certainly satisfy the “totality of the circumstances” test.

Second, despite the Supreme Court's decision in *Illinois v. Gates*, many courts continue to apply the older two-pronged test of *Aguilar* and *Spinelli*. Some state courts have formally declared that the two-pronged test, although not required by the federal constitution, is mandated by their state constitutions. Other courts, while ostensibly following the “totality of the circumstances” test, have proven reluctant to find probable cause unless the “totality of the circumstances” includes the very same factors required by the older two-pronged test.

Therefore, despite the U.S. Supreme Court's official switch to the more general “totality” test, even today the best way to ensure that the affidavit meets the probable-cause requirement is to make certain that the affidavit clearly sets forth facts that show that the informant is reliable, and facts that show that the information itself is reliable.

The affidavit must set forth facts that clearly show that the person who gave the affiant the information is a reliable source. Generally, if the information is received from another officer, from a victim, from a “solid citizen,” or from some other source that is identified by name, this alone is sufficient.<sup>19</sup> But if the information is received from an informant whose identity is confidential, the informant's name will not appear in the affidavit, and additional facts must then be set forth that show that this unnamed informant is a reliable source. It is not enough to say that “this person is a reliable informant.” That is merely an opinion or conclusion, and opinions and conclusions are not sufficient. Most courts will accept as adequate a statement that this same informant has given information on prior occasions, and that on those prior occasions the information has proven reliable. The difference between the two statements appears to be small, but it is a critical distinction.

<sup>15</sup> *Aguilar v. Texas*, 378 U.S. 108 (1964).

<sup>16</sup> *Spinelli v. United States*, 393 U.S. 410 (1969).

<sup>17</sup> *Illinois v. Gates*, 462 U.S. 213 (1983).

<sup>18</sup> *Gates*, 462 U.S. 213.

<sup>19</sup> See, e.g., *Chambers v. Maroney*, 399 U.S. 42 (1970).

Even a previously reliable informant may on occasion come forward with unreliable information. The affidavit should therefore show not only that the informant has proven reliable in the past, but also that the information being presented on this occasion is itself sound. Again, statements of fact are needed; mere statements of opinion or conclusion are not sufficient. For example, statements to the effect that the officer believes, or that the officer's informant believes, that the evidence is on the premises are insufficient. The affidavit should show that the informant knows that the evidence is there. This in turn requires that the affidavit shows how the informant knows that the evidence is present.

In general, information received by the informant from another source—that is, double hearsay—is normally regarded as insufficiently reliable. Personal knowledge of the informant, gained through the informant's own personal observation of the evidence at the location in question, is usually required.

The Fourth Amendment to the U.S. Constitution prohibits unreasonable searches.<sup>20</sup> Officers conducting searches without a warrant bear the burden of proving that the search was reasonable. Therefore, officers should consider obtaining a search warrant whenever time and circumstances permit. Some exceptions to the search warrant requirement include the following.<sup>21</sup>

1. *Searches Incident to Arrest* – Searches of a person or the area within the immediate control of a person who has been lawfully arrested are permitted to secure weapons or evidence of a crime.
2. *Emergencies* – Officers may conduct searches when they believe that a person is in need of immediate assistance under life-threatening conditions, when immediate action is necessary to protect the public from harm, or when, for example, an officer encounters a homicide scene and needs to search for additional victims, protect vital evidence, or pursue the perpetrator.
3. *Vehicle Search* – A motor vehicle and containers found within may be searched when probable cause exists to believe that the vehicle may reasonably contain contraband or the fruits or instrumentalities of a crime.
4. *Consent Searches* – A search may be conducted pursuant to consent without a warrant and without probable cause to obtain a warrant. The consent must be voluntary, freely, and intelligently given by an appropriate party and the search must be limited to the terms of the consent. Written consent should be sought whenever reasonably possible.

A *Carroll* search of an automobile always raises the question of whether there was valid probable cause to search. Under the *Carroll* doctrine,<sup>22</sup> an officer may search a vehicle without a search warrant if there is probable cause to believe the vehicle contains some relation to criminal activity. The case *Carroll v. United States*, 267 U.S. 132 (1925), commenced the allowance of searching vehicles without a warrant since vehicles are mobile and carry a limited expectation of privacy for the passengers of the vehicle. In addition, vehicles can easily be moved outside of the warrant's jurisdiction, making it difficult to obtain an accurate warrant.<sup>23</sup> Since 1924, this doctrine has been a guide for officers to commence vehicle searches. However, in 2018, *Collins v. Virginia*<sup>24</sup> challenged the authority of the *Carroll* doctrine at the United States Supreme Court, testing the validity of searching a vehicle when it is stagnant on private property. Probable cause is always a complicated legal question that is hotly debated in court. It

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<sup>20</sup> Some state constitutions or laws impose greater burdens upon law enforcement officers for obtaining and/or executing search warrants than does the U.S. Constitution. The requirements noted here conform with federal constitutional provisions. Officers should be familiar with any additional state constitutional requirements.

<sup>21</sup> Officers should refer to detailed directives and training materials of their agency relating to the execution of searches under each of these conditions.

<sup>22</sup> *Carroll v. United States*, 267 U.S. 132 (1925).

<sup>23</sup> *Carroll*, 267 U.S. 132 (1925).

<sup>24</sup> *Collins v. Virginia*, 584 U.S. \_\_\_\_ (2018). The automobile exception does not permit warrantless searches of a home or its curtilage.



is, in the end, a matter of opinion, and, if the judicial authority's opinion differs from that of the police officer, it is certainly the judicial authority's opinion that prevails.

## II. PROCEDURES

### A. Obtaining a Search Warrant

State/provincial statutes may dictate what must be included in warrant affidavits in that jurisdiction. The discussion here follows generally accepted principles. Consult your state's code to determine specific local statutory requirements.<sup>25</sup>

Search warrants must be obtained from a judicial authority. The law enforcement officer seeking the warrant should make certain of two things: (1) that the judicial official contacted has the authority to issue search warrants in that state and locality and (2) that the official has not made any errors on the face of the warrant or in the course of its issuance. If the issuing official makes a mistake in issuing the warrant, evidence seized under the warrant may in some instances<sup>26</sup> still be admissible, but the officers executing the warrant are not immune from lawsuits merely because a judicial authority has signed the warrant. Thus, it is the responsibility of the officer obtaining the warrant to make certain that the warrant is correct and has been issued properly. Consequently, after a warrant is issued (but before it is executed), the officer should scrutinize that warrant with great care to ensure that:

- The correct form has been used,
- All the blanks have been filled in,
- The information set forth is accurate and legally sufficient,
- The warrant has been properly signed by the issuing judicial authority, and
- The prosecutor has been consulted.

The search warrant will not be valid unless the affidavit upon which it is based satisfies the legal requirements for such warrants. These requirements are dictated primarily by court decisions, but state statutes may also apply. Since the affidavit is the basis for the issuance of the warrant, and since the recitations in the affidavit will normally be duplicated in the warrant itself, it is essential that the affidavit language be correct, complete, and legally sufficient. Therefore, again, it is the responsibility of the officer seeking the warrant to ensure that the affidavit is correct and accurate, just like the warrant being issued.

In order to obtain a warrant, an officer must, in most jurisdictions, file a written affidavit requesting the issuance of a warrant.<sup>27</sup> The affidavit is a signed, sworn statement setting forth certain information regarding the proposed search. The affidavit need not be a long or difficult document to prepare, but proper wording of the affidavit is vital. Improper preparation of the affidavit is the most common focus of defense lawyers seeking to attack the validity of a search warrant.

The Fourth Amendment was designed to combat the English practice of the "general warrant," as was followed in the United States during the colonial period. A general warrant, although considered a legal document, provided little protection of privacy to the person or owner of the property being searched, because it permitted the bearer to search

<sup>25</sup> For example, the Code of Virginia, Section 19.2-54, states: "No search warrant shall be issued until there is filed with the officer authorized to issue the same an affidavit of some person reasonably describing the place, thing or person to be searched, the things or persons to be searched for thereunder, alleging briefly material facts, constituting the probable cause for the issuance of such warrant and alleging substantially the offense...in relation to which such search is to be made." Statutes in other states may impose additional requirements.

<sup>26</sup> *State v. Dibble*, 159 Ohio St.3d 322 (2020); *United States v. Leon*, 468 U.S. 897 (1984).

<sup>27</sup> In some jurisdictions, a sworn oral statement may be sufficient. However, such jurisdictions usually require that the oral statement be preserved in some form, such as by tape recording. See, e.g., *State v. Lindsey*, 473 N.W.2d 857 (1991). Departments should check the law and procedure of their jurisdictions.



anywhere for anything, without probable cause and without limitation upon the places to be searched or the things to be searched for. To prevent the continued use of general warrants, the drafters of the Bill of Rights required that all warrants be specific as to where authorities are to search and for what they are to search.<sup>28</sup>

To satisfy this constitutional requirement of specificity, a search warrant affidavit should clearly state the following:

- The offense in relation to which the search is being conducted.
- The person, place, or thing to be searched.
- The items to be searched for.
- The probable cause for believing that such items are to be found at that location.

If any of these elements is lacking, incomplete, erroneous, or otherwise insufficiently stated, the affidavit is insufficient, and any warrant issued based upon that affidavit is invalid. Further, if any personnel to be tasked during the search are not sworn law enforcement personnel, their assistance should also be specified in and authorized through the warrant. Exact specifications required may vary by jurisdiction.

The officer applying for the warrant must make certain that enough information is expressly set forth in the affidavit to satisfy each of the foregoing requirements. In most jurisdictions, the judicial authority may consider only the information found within the “four corners” of the affidavit—the information expressly stated in the affidavit itself—when the judicial authority is determining whether probable cause exists to issue the warrant. Only those statements will be considered by a court subsequently called upon to review the case.<sup>29</sup>

While the bare minimum of information may be enough to make the affidavit legally sufficient, an officer can sometimes increase the chances of a successful prosecution by adding wording beyond that which is strictly necessary to obtain a valid warrant. A few additional words in the right place can broaden the scope of the warrant and increase the chances that what is discovered during the search will be admitted into evidence. Possible additional wording for the various portions of the affidavit will be discussed later.

Whenever possible, an officer applying for a warrant based upon an informant’s information should try to confirm the accuracy of the informant’s statements by obtaining corroboration from another source. Perhaps the best source of corroboration is the affiant’s own observations. If the affiant has been able to verify from personal observation any aspect of the informant’s information, and so states in the affidavit, this often establishes probable cause in situations where the informant’s information alone would not be enough. Therefore, before applying for a warrant based upon an informant’s information, an officer should attempt to obtain corroboration of the informant’s information through personal observation or other sources.

The affidavit should identify the offense in relation to which the search is to be made. Although the police officer may not be required to identify a particular code section as having been violated, the affidavit should at least describe an offense that is punishable under the law of that jurisdiction. A warrant that does not describe, either expressly or by implication, a punishable offense will be held invalid.<sup>30</sup>

<sup>28</sup> As to the objectionability of general warrants, including the infamous “writs of assistance,” see *Brower v. County of Inyo*, 489 U.S. 593 (1989); *Andresen v. Maryland*, 427 U.S. 463 (1976); *United States v. Rabinowitz*, 339 U.S. 56 (1950); *State v. Tucker*, 575 A.2d 810 (N.H. 1990).

<sup>29</sup> The validity of a search warrant depends upon the sufficiency of what is found within the four corners of the underlying affidavit.” *United States v. Taylor*, 716 F.2d 701, 705 (9th Cir. 1983). See, e.g., *United States v. Huguez-Ibarra*, 954 F.2d 546 (9th Cir. 1992). In some states, additional information provided to the magistrate may be used to establish probable cause. See, e.g., *State v. Dibble*, 150 N.E.3d 912 (2020); *Boyer v. Arizona*, 455 F.2d 804 (9th Cir. 1972).

<sup>30</sup> See, e.g., *In re Grand Jury Proceedings*, 716 F.2d 493 (8th Cir. 1983); *Voss v. Bergsgaard*, 774 F.2d 402 (10th Cir. 1985).

1. *Premises Searches* – The Fourth Amendment prohibits the issuance of a warrant that does not particularly describe the “place to be searched.” Any warrant that does not meet this constitutional “particularity requirement” is invalid.<sup>31</sup> Therefore, the affidavit must describe specifically what it is that the police desire to search, for example, a specific house, a specific person, or a specific automobile. This detailed description should appear in both the affidavit and the warrant itself.<sup>32</sup>

Where premises are to be searched, those premises must be described with particularity. A vague or otherwise inadequate description of the target premises may render the search invalid. A proper description of the premises concerned is therefore essential.

Where specific premises are to be searched, the descriptions of those premises may utilize such items as the following:

- Street numbers and, if applicable, apartment numbers
- Physical description of the premises
- Legal description of the property
- The name of the owner or occupant
- Geographical location of the property
- GPS coordinates or distances from given point(s)
- Other pertinent information

Photographs, diagrams, maps, coordinates, and similar reliable descriptive material may be attached to the affidavit and/or warrant to assist the executing officers.

Which method or methods of description will be used will vary with the circumstances, and no single one of these items is considered by the courts to be essential. The methods of description listed are examples only; any means of description that adequately identifies the property is acceptable. However, the description, whatever its nature, must be sufficiently precise to make it clear to the officers executing the warrant which premises are to be searched. The description should thus be sufficiently detailed, and sufficiently accurate, that the executing officers “can with reasonable effort ascertain and identify the place intended.”<sup>33</sup>

Omission of a street or apartment address from the description is not necessarily fatal if the description is otherwise adequate. However, where a street or apartment address exists, it is desirable that this be stated, as this is usually the most accurate form of identification and may, by itself, be sufficient.<sup>34</sup> Many departments find it helpful to include both the street address and, if applicable, apartment number, and a physical description of the premises. Where addresses are lacking (such as in rural areas), physical descriptions, map references, or other information may be sufficient.

If the building in question is divided into several units, care must be taken that the precise unit to be searched is specified. In the case of an apartment building, stating the apartment number is usually sufficient, provided that the apartment number stated is the correct one. If the executing officers discover

<sup>31</sup> See *Massachusetts v. Sheppard*, 468 U.S. 981 (1984); *Dalia v. United States*, 441 U.S. 238 (1979).

<sup>32</sup> If the affidavit is physically attached to the warrant and the warrant by its express terms incorporates the affidavit by reference, a specific description in the affidavit may be regarded as supplementing a more general description in the warrant. See, e.g., *State v. Schmitz*, 474 N.W.2d 249 (N.D. 1991). The better practice, however, is to set forth a full and specific description in the warrant itself.

<sup>33</sup> *Steele v. United States*, 267 U.S. 498, 503 (1925). “An erroneous description of premises to be searched does not necessarily render a warrant invalid. The Fourth Amendment requires only that the search warrant describe the premises in such a way that the searching officer may ‘with reasonable effort ascertain and identify the place intended.’” *United States v. Burke*, 784 F.2d 1090, 1092 (11th Cir. 1986), citing *United States v. Weinstein*, 762 F.2d 1522, 1532 (11th Cir. 1985).

<sup>34</sup> See, e.g., *United States v. Dancy*, 947 F.2d 1232 (5th Cir. 1991).

that the wrong apartment has been specified, it is highly preferable that a new warrant be obtained for the correct apartment number, as the designation in the warrant of the wrong apartment will usually invalidate any search of the correct apartment under the defective warrant.<sup>35</sup>

A search conducted under a warrant may not exceed the limits defined in the warrant; therefore, the warrant must describe, either expressly or by implication, all of the areas that the officers desire to search. Some of the issues associated with the scope of the search are outlined below.

A question sometimes arises as to exactly how far the search of specified “premises” may extend or what “premises” means. Usually, authorization to search the “premises” at a given location is regarded by the courts as including authority to search not only the house or other principal structure at that location, but also the land upon which the principal structure is located and any outbuildings associated with that principal structure.

The issue of the “homeless” has surfaced recently regarding the definition of “premises” and its relationship to the warrant requirement in search and seizure. A fundamental component of the Constitution is that people have an expectation of privacy in their homes and personal effects. However, the issue of what constitutes a “home” or place of residence and the reasonable expectation of privacy can have different meanings when placed in the context of persons experiencing homelessness. Some courts have found that persons experiencing homelessness have an expectation of privacy in the locations that they use as homes, even though those locations are not residences in the customary or conventional sense. Brief examination of one case may make this point clearer and may shed some additional light on the issue of premises.

In *State v. Mooney*,<sup>36</sup> police, acting on information from an accomplice, secured and served an arrest warrant for Mooney on a murder charge. At the time, Mooney was living under a highway bridge abutment where he had been with his possessions for about one month. Upon his arrest, officers opened and searched his duffel bag and cardboard box and discovered incriminating evidence of the crime. These containers and other possessions were then inventoried at the police station.

The defendant argued at trial that his possessions were illegally seized without a warrant, but the trial court found that the defendant had no reasonable expectation of privacy in possessions that were seemingly “abandoned” through their public exposure. On appeal, the state supreme court held that while the defendant did not have a reasonable expectation of privacy in the public place under the bridge abutment, he did have reasonable privacy expectations in the contents of his closed containers. As such, officers should have secured a search warrant prior to opening and searching these items.

Although this is the finding of only one court, other rulings and public sympathy for the plight of persons experiencing homelessness<sup>37</sup> suggest that the places being used as residences and the possessions of persons experiencing homelessness may gain greater Fourth Amendment protections. Therefore, officers are well advised to procure a warrant for purposes of search and seizure where consent or exigent circumstances do not exist.

<sup>35</sup> See, e.g., *United States v. Rodriguez*, 768 F.Supp. 16 (D.P.R.1991). In rare instances, a description of the wrong apartment may be counterbalanced by other descriptive information or circumstances that make the correct unit definitely identifiable (see, e.g., *United States v. Owens*, 848 F.2d 462 (4th Cir. 1988) (warrant valid despite incorrect apartment number where target apartment was the only occupied apartment on that floor, and no other apartment fit the description given), but this possibility should not be relied upon by the executing officers.

<sup>36</sup> *State v. Mooney*, 218 Conn. 85; 588 A.2d 145 (1991).

<sup>37</sup> *Community for Creative Non-violence v. U.S. Marshals Service*, 797 F.Supp. 1 (D.D.C. 1992).

One of the more important concepts related to the search of premises is the “curtilage.” The term “curtilage”<sup>38</sup> is usually construed to include not only the residence itself, but also the land immediately surrounding a residence and any outbuildings found upon that land. For example, if a house has a fenced yard, that yard is usually considered to be the dwelling’s curtilage, and the land and buildings within that area may be searched under a warrant for the search of the dwelling and its curtilage.

Courts will often construe a search warrant for a specified dwelling to cover a search of the dwelling’s curtilage even though the term “curtilage” is not used. However, this is not always the case. It is, therefore, quite common for a search warrant to include an express statement that the search is to include the “curtilage” of the named premises.

If the warrant indicates that the search is to be of, for example, “the dwelling at 123 Main Street and the curtilage thereof,” areas or structures found to be outside of the curtilage may not be searched unless they are separately identified in the warrant.

Unfortunately, the extent of the curtilage is not always clearly defined by definite boundaries, as with a fenced yard. The Supreme Court of the United States has stated that the extent of the curtilage of a particular dwelling is determined by the following principal factors:

- The proximity of the area in question to the home
- Whether the area is included within an enclosure surrounding the home, such as a fence
- The nature of the area’s uses
- The steps taken by the resident to shield the view of the area from passersby<sup>39</sup>

Because the extent of the curtilage may be uncertain in a given case, it is often desirable to include specific references to a garage, toolshed, barn, or other building in the warrant description if such buildings are known to be present or if their presence is anticipated.

2. “*Sneak-and-Peak*” Warrants – In the realm of premise searches, the so-called “sneak-and-peak” warrant deserves brief consideration. These warrants are so labeled because they authorize law enforcement officers to make a clandestine entry, examine the premises, and then depart without seizing tangible evidence. They are, in effect, warrants authorizing information-gathering incursions onto the suspect’s premises. These warrants are sometimes controversial because they permit both the entry and information gathering to be conducted without any notice to or knowledge of the occupants of the premises.

Defense lawyers and civil libertarians oppose them on the grounds that they violate the Fourth Amendment, in that they involve covert entries without notice and permit the seizure of “intangible” evidence (that is, information). These warrants are sometimes compared to wiretap or electronic surveillance activities. Like sneak-and-peak entries, electronic surveillance operations are also covert and involve no contemporaneous notice to the target. For these very reasons, electronic surveillance is subject to rigid warrant requirements and severe operational limitations under both federal<sup>40</sup> and state<sup>41</sup> law.

Although there is not yet a Supreme Court case that directly addresses the validity of “sneak-and-peak” warrants, the Second Circuit Federal Court of Appeals has upheld the use of such warrants. In *United States v. Villegas*,<sup>42</sup> the Second Circuit held that “sneak-and-peak” warrants do not offend the

<sup>38</sup> See *Oliver v. United States*, 466 U.S. 170 (1984).

<sup>39</sup> See *United States v. Dunn*, 480 U.S. 294 (1987).

<sup>40</sup> Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. Section 2510-2520.

<sup>41</sup> Title III of the Omnibus Crime Control and Safe Streets Act of 1968 permits states to enact enabling legislation to permit electronic surveillance by state and local police officers. Many states have enacted such legislation.

<sup>42</sup> *United States v. Villegas*, 899 F.2d 1324 (2d Cir. 1990).

Fourth Amendment. The court noted that the federal courts have upheld both the concept of a covert entry<sup>43</sup> and the seizure of intangible evidence.<sup>44</sup> Accordingly, the court upheld use of the “sneak-and-peak” warrant. However, the decision sets forth two requirements that must be met if such searches are to be valid:

- First, the court should not allow the officers to dispense with advance or contemporaneous notice of the search unless they have made a showing of reasonable necessity for the delay.<sup>45</sup>
- Second, if a delay in notice is to be allowed, the court should nevertheless require the officers to give the appropriate person notice of the search within a reasonable time after the covert entry.<sup>46</sup>

The court noted that what constitutes a reasonable time will depend on the circumstances of each individual case. However, the court also stated that notice should not be delayed longer than seven days, subject to extensions upon a showing of need for further delay.

While this case involved federal agents and is not binding authority outside the Second Circuit, other federal circuits and many state courts may accept its validity.<sup>47</sup> In the absence of local case law to the contrary, officers should conform to these requirements when seeking a warrant of this type.

3. *Motor Vehicle Search Warrants* – Most motor vehicle searches today are either consent searches or searches with probable cause under the *Carroll* doctrine. This in no way alters the fact that, when a vehicle is to be searched, it is always preferable to obtain a warrant. This is especially true where the circumstances are such that the *Carroll* doctrine may not be applicable. The *Carroll* doctrine applies only when the vehicle is still mobile; where this mobility is lacking, the doctrine may not apply, and a warrant may be necessary.

For example, a motor home, although a motor vehicle, may be treated as a residence for purposes of search and seizure. If the motor home is parked in a mobile home park or campground, especially if the vehicle is hooked up to electric, water, and/or sewer lines, a warrant will normally be required prior to search. Where a warrant is required for the search of a motor vehicle, the warrant must describe the vehicle with particularity, under the same general principles described above in connection with premises searches.

A warrant for the search of specified premises is usually constructed to include authority to search motor vehicles found in the garage, parked in the driveway, or otherwise within the curtilage of those premises.<sup>48</sup> Such authorization is implied if (1) the objects of the search could reasonably be found within the vehicle and (2) the vehicle(s) are actually owned by or under the control of the premises’ owner.<sup>49</sup> However, to minimize possible challenges to the search of such vehicles, it is often preferable to have the warrant description include specific authorization to search vehicles found on the premises. If particular

<sup>43</sup> See: *Dalia v. United States*, 441 U.S. 238 (1979) (entry for electronic surveillance).

<sup>44</sup> *Berger v. New York*, 388 U.S. 41 (1967) (interception of conversations); *United States v. Biasucci*, 786 F.2d 504 (2d Cir. 1986) (gathering visual information with video camera); and *United States v. Tabor*, 635 F.2d 131 (2d Cir. 1980) (viewing private area with telescope).

<sup>45</sup> “Though we do not suggest that the officers must meet as rigorous a standard as that imposed by Title III...The officers must at least satisfy the issuing authority that there is good reason for the delay.” *United States v. Villegas*, 899 F.2d 1324, 1337 (2d Cir. 1990).

<sup>46</sup> *Villegas*, 899 F.2d 1324.

<sup>47</sup> See also, *ACLU v. United States DOJ*, 265 F. Supp. 2d 20 (2003).

<sup>48</sup> See, e.g., *U.S. v. Cottchalk*, 915 F.2d 1459 (10th Cir. 1990); *In re One 1970 Ford Van*, 533 P.2d 1157 (Ariz. 1975). However, this may not be true of a vehicle belonging to someone other than the owner or occupant of the premises and parked only temporarily on the premises.

<sup>49</sup> See, for example: *United States v. Percival*, 756 F.2d 600, 612 (7th Cir. 1985).



vehicles are known to be located at that address, these may of course be specifically identified in the warrant.

In addition to the above, it has been ruled that “vehicles voluntarily driven [emphasis added] onto the premises by persons named in a warrant during the course of a valid search”<sup>50</sup> or arriving simultaneously on the premises with the police<sup>51</sup> are also subject to search as long as the above two criteria are met. In spite of these provisions, when officers are aware that they will be searching vehicles during a premises search, they should, if possible, specify the vehicle in question with as much precision as possible or ensure that the warrant provides for the search of vehicles on the premises.

4. *Search of Persons* – Where probable cause exists, a search warrant may be obtained for the search of a specific person to include bodily matter (this may include DNA, hair, bodily fluids, or other bodily evidence) as specified in the warrant.<sup>52</sup> Normally, the person is named in the warrant, but this is not an absolute requirement. Where the person is unnamed, however, the description of the person to be searched must be sufficiently detailed to enable the officers executing the warrant to identify and search the correct individual.

A person may not be searched merely because that person is found upon premises that are the subject of a search warrant. Such persons may, under appropriate circumstances, be frisked for weapons, but a complete search of such persons is not authorized by a premises search warrant merely because those persons happen to be present at the time that the officers arrive.<sup>53</sup>

On the other hand, many courts hold that if the warrant expressly authorizes a search of all persons found on the premises, this is sufficient to authorize the officers executing the warrant to conduct a complete search of any persons present at the time that the premises search warrant is executed. However, even in jurisdictions recognizing these “all persons present” warrants, there must be a showing of probable cause to search such persons before the searches will be upheld. Only if there is reason to believe that such persons may have evidence of criminal activity on their persons is an “all persons present” warrant valid.

Some jurisdictions do not permit “all persons present” searches,<sup>54</sup> therefore, departments should check with local legal advisors before attempting to search persons under such authorization.

5. *Search of Digital Devices* – Digital items such as computer hardware and software are being used increasingly to support criminal activity. Once the sole haven of white-collar criminals, the personal computer, with its broad access to the public through information networks and social media, is being used to support an array of criminal activities and enterprises such as child pornography, prostitution, drug marketing, and the like. Officers who anticipate the confiscation and search of such equipment must tailor the search warrant to include seizure of the specified equipment. Examples include (but are not limited to) hardware, memory, manuals, software, routers, modems, printers, cryptocurrencies, crypto wallets, cellphones, tablets, cameras, memory cards, and all other particulars of the system. Specific expertise is necessary and advisable in order to craft the exact and most current language in the affidavit for legal recovery of all essential system components and information and the actual physical search/seizure thereof.

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<sup>50</sup> United States v. Alva, 885 F.2d 250, 252 (5th Cir. 1989).

<sup>51</sup> See United States v. Cole, 628 F.2d 897,899 (5th Cir.).

<sup>52</sup> See, e.g., Ybarra v. Illinois, 444 U.S. 85 (1979).

<sup>53</sup> See Ybarra v. Illinois, 444 U.S. 90 (1979); Guy v. Wisconsin, cert. denied, 509 U.S. 914 (1993)(No. 92-7985); Maryland v. Pringle, 540 U.S. 366 (2003).

<sup>54</sup> Courts in these jurisdictions often regard “all persons present” warrants as general warrants, which are constitutionally objectionable. See, e.g., People v. Jackson, 446 N.W.2d 891 (Mich. Ct. App. 1989).



6. *Search for Specific Items* – The “particularity” requirement of the Fourth Amendment that requires detailed identification of the person, place, or thing to be searched also mandates that the warrant describe specifically the items to be searched for.<sup>55</sup> For this reason, it is necessary that when applying for a warrant, officers list in detail the items being sought. Setting forth a detailed description of the items to be searched for will not necessarily prevent the admission of other evidence found at the scene; unlisted items of evidence or contraband discovered during the execution of a lawful search may be admissible. However, if the officers applying for the warrant have probable cause to believe that a certain item will be found at the location specified, these items should be listed. The seizure of evidentiary items that were known to be on the premises but not listed in the warrant may result in an invalidation of the seizure of those items.

It may be wise to include in the description of the things to be searched for a statement that the search is not just for the entire item itself, but also for parts or pieces of that item. This is important because under the so-called “elephant in a matchbox” rule,<sup>56</sup> police are limited to searching only those portions of the premises, person, or vehicle that could conceal the type of item being sought. For example, a warrant to search a residence for large items (such as a stolen console television set or automatic weapons) may not authorize the search of a nightstand drawer, a medicine cabinet, or other small spaces, because the items being sought are too large to be concealed there. However, parts of a television set or weapon could be hidden in such places, hence the value of including terminology as to parts or pieces of large items.

Some items, such as electronic equipment, may have instruction documents and warranty cards included with them when they are stolen. Discovery and seizure of these documents may be significant in establishing guilt. Like “parts,” they may be easily concealed, and thus may be searched for in very small places. Therefore, a mention of such documents in the affidavit may be helpful.

Two other issues deserve brief treatment in the context of search warrants. The first of these—the search of trash—has been the subject of debate for some years even though the legal basis supporting the warrantless search of refuse is generally well established. In *California v. Greenwood*, the U.S. Supreme Court held that trash left outside the curtilage of one’s home is openly exposed and subject to such public scrutiny that its owner cannot expect it to be protected under the Fourth Amendment. As the court noted, “It is common knowledge that plastic garbage bags left on or at the side of a public street are readily accessible to animals, children, scavengers, snoops, and other members of the public [and are placed at curbside] for the express purpose of conveying it to a third party, the trash collector, who might himself have sorted through trash or permitted others, such as the police, to do so.”<sup>57</sup>

The lack of Fourth Amendment protection of abandoned personal trash holds true even in situations where an individual makes purposeful attempts to destroy the nature of the trash (such as by shredding documents).<sup>58</sup> However, a few state courts hold police to a higher standard under their state constitutions and, in such cases, police inspection of trash for specified or unspecified investigatory purposes requires a warrant.<sup>59</sup>

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<sup>55</sup> See, e.g., *Coolidge v. New Hampshire*, 403 U.S. 443 (1971).

<sup>56</sup> See *Wilkerson v. State*, 88 Md.App. 173, 594 A.2d 597, 605 n. 3 (1991).

<sup>57</sup> *California v. Greenwood*, 486 U.S. 35, 108 S.Ct. 1625 (1988).

<sup>58</sup> See, in particular, *United States v. Scott*, 975 F.2d 927 (1st Cir. 1992).

<sup>59</sup> Officers should be familiar and must comply with any additional state, provincial, or local requirements.

## B. Review of the Warrant

The Fourth Amendment's restrictions on searches and seizures were designed to prevent the use of the so-called general warrant, that is, a warrant that empowered its bearers to search anywhere, anytime, or for any reason. A search warrant must be very specific and detailed if it is to receive the approval of the courts.

The judicial authority's issuance of the warrant is a major step on the road to a valid search for, and seizure of, admissible evidence. However, the mere possession of a piece of paper labeled "search warrant" does not make it absolutely certain that the warrant is valid or that evidence found during the search will be admissible.

Upon receipt of an approved warrant, officers should examine the warrant carefully to make certain that it sets forth all the affidavit information accurately and completely, and that it has been signed in the proper place by the issuing judicial authority. Only rarely does someone forget to sign a warrant, but it does happen. When it does, the warrant is absolutely worthless. A search under an unsigned, or improperly signed, warrant will almost certainly be held invalid, and the officers involved will not be protected from civil liability.

Failure to provide sufficient detail in the affidavit, and the warrant itself, will render the warrant invalid or prevent its issuance entirely. The following details must be included:

1. *Nature of the Offense.* The affidavit and the warrant must describe an actual criminal offense and must do so with sufficient specificity so that anyone reading the warrant will clearly understand what crime is or what crimes are being investigated.
2. *Place to be Searched.* The place to be searched must be described with specificity. Ensure that the address provided is complete and accurate (see [Section II.A.1](#), above). Warrants may also be issued to search persons as well as places. When a warrant is issued for the search of a person, it must clearly identify the individual or individuals to be searched (see [Section II.A.4](#), above).
3. *Items Being Sought.* The items to be searched for must be specified in the affidavit and the warrant (see [Section II.A.5-6](#), above).
4. *Probable Cause.* No warrant may be issued unless there is probable cause to believe that the named items will be found upon the named premises. The determination of the existence of probable cause is based upon the statements made in the affidavit. It is therefore essential that the affidavit expressly set forth sufficient information to enable the judicial authority to determine whether there is indeed probable cause for the search (see [Section I.C](#), above).

## C. Organization of and Responsibilities for Serving Warrants

Organization of personnel and resources to serve a search warrant is the responsibility of the case agent, that is, the officer who has primary responsibility for the criminal investigation and for warrant service. In high-risk warrant operations—as defined in the evaluation process discussed below—the case agent will work directly with the assigned tactical coordinator if deemed necessary. Normally, a tactical coordinator is also required whenever the warrant provides for a no-knock entry<sup>60</sup> or is to be served at night. The tactical coordinator is the officer responsible for planning and supervising tactical operations to include entry and other tactics requiring trained SWAT officers.

Officers assigned to serve warrants require particular attention. Warrant service requires training and experience even in the realm of low-risk warrants to ensure that the warrant is served legally, safely, and effectively. Therefore, officers who are assigned to warrant service duty should be fully aware of acceptable procedures involved and should

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<sup>60</sup> For guidance pertaining to the U.S., please see Section 10 of the Executive Order on Advancing Effective, Accountable Policing and Criminal Justice Practices To Enhance Public Trust and Public Safety, <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/05/25/executive-order-on-advancing-effective-accountable-policing-and-criminal-justice-practices-to-enhance-public-trust-and-public-safety/> (2022).

have received some prior training in warrant service planning and execution. The skills and experience of the officers involved should match the perceived demands and level of risk involved in any warrant service. Only officers trained in special tactics and operations should be permitted to serve warrants designated as high risk.

The case agent should be assigned the responsibility of preparing for warrant service in accordance with its nature and complexity. This includes coordinating efforts in the following types of areas:

- Gathering intelligence on the target site to include the structure, immediate area surrounding the structure, and surrounding neighborhood.
- Collecting pertinent information on the capabilities and backgrounds of suspects to include but not be limited to criminal records, history of weapons usage, and potential for violence and resistance.
- Determining the best date and time for executing the warrant. The warrant in all cases should be served as soon as practicable as defined by state law.
- Determining equipment requirements, team personnel, and any specialized team requirements.
- Securing the search warrant and ensuring that it is thoroughly reviewed for accuracy, legal integrity, and completeness. Where state law permits no-knock entries, their need should be clearly outlined in the application for a warrant. Justification for time or day for service of a warrant may also be necessary.<sup>61</sup>

#### D. Classifying Search Warrants

All law enforcement agencies should establish criteria for classifying search warrants. Obviously, not all warrants are high risk and will not require the use of specialized tactics and equipment. Development of criteria for categorizing search warrants from low to high risk will reduce much of the guesswork involved in deciding the scope of efforts involved in executing the search warrant. Many of the factors to be taken into consideration are included in the checklist contained in [Appendix A](#) of the Considerations document.

There are several factors that dictate when special tactical measures should be employed in the execution of a search warrant. These include, in particular, the presence of a fortified location, such as is often found when confronting narcotic traffickers or gang members; surveillance systems that would alert occupants of the search warrant team's approach; known shooters, or anyone that has a history of armed violence; the presence of weapons; service involving drugs; and any other situation that suggests that violence may be encountered. These and related factors are generally known to officers and investigators prior to their application for a search warrant. If there are questions, however, about the potential for violence, the difficulty in gaining entrance to the location to be searched, or about any other risk factors in execution of a search warrant, officers should undertake a detailed evaluation process before designing the operation. The tactical coordinator should become involved in the planning process whenever a warrant calls for no-knock entry, nighttime entry subjects deemed particularly dangerous, or a warrant service location that is or is reasonably likely to be fortified or booby-trapped. All members of the team should evaluate the totality of the circumstances.

The evaluation process for categorizing search warrants is designed to gather as much information about the location, its surroundings, and the individuals involved, as possible. This information will be essential in determining the type of entry that will be made, the number of officers required, and the types of armament and equipment necessary. Much of this information can be obtained through surveillance and, on occasions, through confidential informants or undercover officers.

If possible, interior diagrams of the location should be obtained or developed. Officers or investigators that have had access to the location in the past should be contacted for assistance. In the case of tract homes or other commonly

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<sup>61</sup> State/provincial/local laws may impose additional limitations on when a warrant can be executed and requires additional justification.

styled facilities, floor plans may also be obtained by examination of proximate locations or through contact with a cooperative and trustworthy realtor.

Consideration should also be given to the type of area that surrounds the location. Are there underground parking facilities, an attached garage, or additional buildings on the property that will need to be secured and searched or is there direct access to vehicles that could pose an opportunity for escape?

Whenever possible, photographs should be taken or obtained of the location and the immediate surroundings. If legal and available, a drone<sup>62</sup> or helicopter is ideal for taking photographs. Photographs can identify safe approach routes and provide views of areas obstructed by vegetation, fencing, walls, or other natural or manmade obstacles that could affect the approach or entry. Other useful photographs can be easily obtained from a surveillance location such as a stationery or moving vehicle or a commercial vendor. For example, if it is a detached home, the officer should note the proximity of adjoining homes and should attempt to determine who occupies these locations. If occupants of those locations are sympathetic to or in conspiracy with suspects at the target site, they may serve to alert the suspects to either police surveillance or their approach to the location. On the other hand, if neighbors or others occupying locations in the immediate area are cooperative and trustworthy, they may allow authorities to utilize their locations briefly for purposes of surveillance. Video cameras are also very useful in this regard as they may cover more area in a shorter time frame and add greater continuity to photographic coverage.

The same type of information should be established for multiple family units with added emphasis on safety should it be necessary to use firearms. The volume and nature of pedestrian and vehicular traffic in the immediate area should be established at the time of day in which the warrant will be executed. This information will have obvious safety implications for the operation, dictate whether special consideration should be given to traffic control, and will also help to establish whether there is a need to deal with lookouts or other accomplices that may be operating in the area.

In conducting the surveillance, one should pay particular attention to the following:

- *Fences or Walls.* If these structures must be scaled to gain access to the location, the need for ladders or other means to scale these obstructions must be considered. Exterior standalone walls and fences may also be rigged with additional obstructions on top or inside to thwart entry and they may be monitored by surveillance equipment. The house and/or the exterior perimeter may also be booby-trapped (or be equipped with alarm or warning devices) making it important that as much information is obtained as possible about the perimeter.
- *Windows.* Windows can be excellent entry points particularly when considering that most suspects expect law enforcement officers to enter through the door. They may also pose opportunities for the escape of suspects where, for example, they are located on upper levels adjoining rooftops of other buildings. However, as entry points, windows may be restrictive due to their limited size and distance from the ground. If windows are to be used, officers involved should be trained in breaking, raking, and entering techniques. It should be noted that in some fortified locations suspects have been known to replace window glass with Plexiglass and to install security bars or backing mesh on the interior of windows as well as install alarms.
- *Doors.* Doors should be assessed in terms of their locations and accessibility; their composition; locking or other security mechanisms; and the direction in which they open. Doors are better suited to entry but are also more predictable as entry points and consequently, more dangerous. The front door is normally the strongest in the dwelling and may be more difficult to breach than other exterior doors.
- *Occupants.* In addition to profiling the suspects in question, one should determine whether there are others in the structure that may require special consideration during the entry. This may include

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<sup>62</sup> State/provincial/local laws may impose additional limitations on what sort of surveillance is permissible.

children, disabled persons, or the elderly who may or may not be directly involved as suspects. In addition, one should determine whether there are animals on the premises. Dogs may pose particular problems but can generally be controlled or subdued without injury by being sprayed with a chemical fire extinguisher or other techniques.

- *Route to Location.* The surveillance team should identify the best route for approaching the location keeping in mind the low-profile nature of the approach and the need to deploy personnel systematically at the site. All drivers should drive the pre-planned route in advance in order to ensure that they arrive at the proper location. Additionally, drivers should be familiar with alternative routes as well as the location of hospitals within closest proximity to the route of travel and the warrant location in case of accident or injury.
- *Fortifications and Armament.* It is very important to gather as much information as possible about the location in terms of fortification of doors and windows. For example, as noted before, the officer should determine, whenever possible, the types and number of door locks employed; whether doors or windows are reinforced from within; and whether there are any other fortifications or booby traps inside or outside the premises. This information is often difficult to obtain without the assistance of reliable informants or others who have had prior contact with the suspects inside the location.
- *Suspects.* The more that is known about the suspects the better, particularly the principal suspects. Pertinent information includes the number of suspects involved at the site and the hours when they are present; what types of crime they may be involved in; if they are involved with gangs; the availability of recent photos, criminal records, history of violence, and resistance to arrest; their physical and mental conditions; and a description of vehicles that suspects use or that are seen at the search location. Of particular importance is the number and type of weapons available to the suspects.

## E. Preparation for Execution of a Warrant

Once an operational plan has been developed, it is necessary to draw the operational team together, make assignments, and review the operational plan. The case agent and tactical coordinator, where required, work cooperatively to ensure proper preparation, planning, and execution of the warrant. They should present the plan in detail to all members of the team in a warrant service briefing. Again, the extent of the briefing and pre-deployment planning will be dictated by the sophistication and level of risk involved in the operation. For the purposes of the present discussion, it is assumed that a relatively high degree of risk exists. Actual field situations involving lesser risk will correspondingly require fewer personnel and incorporate fewer tactical decisions. The following are among the issues that should be covered:

- *Warrant.* Officers should be briefed on the nature of the warrant to be executed. Officers should pay particular attention to the types of substances or items subject to the search and likely places where they may be found.
- *Location.* The location should be described in detail from both exterior and interior perspectives. At a minimum, officers should be provided with details concerning the structure; its construction; its location in relation to surrounding buildings; and floor plan (if available). These details should be presented in the form of mockups, photos, and diagrams that identify entrances, exits, obstructions, fortifications, obstacles, garages, and outlying buildings that are part of the curtilage, suspect vehicles, and other points of concern. Information on neighbors and the exterior surroundings of the location should also be included as it may affect the operation.
- *Suspects.* The suspects should be described in detail to include scars, tattoos, clothing, criminal background, gang affiliations, and photographs provided as available. Detailed information should also be provided on the suspects' weapons and propensity for violence when confronted with arrest.



- *Equipment.* The availability of needed equipment to effectively execute the warrant is an essential consideration. If a SWAT team is involved, the tactical coordinator should be responsible for ensuring that all potential equipment needs are met. A list of the primary types of equipment that may be required should be included in the checklist but does not have to be a totally inclusive list of possible equipment requirements. When making equipment lists it is better to prepare for contingencies that are reasonably possible than to be faced with equipment deficiency on site.
- *Contingency Plans.* Contingency plans should be established to cover potential situations that could thwart the execution of the operation. These include such eventualities as breakdowns in essential equipment; injuries or death to officers or others; escape of suspects; presence of snipers or armed resistance from inside the location; plans for emergency withdrawal; and encounters with dangerous substances such as explosives, booby traps, and chemicals, among many other possibilities.
- *Search Plan.* In order to conform with the limitations of the search warrant, to complete the search in a reasonable amount of time as required by law, and to maximize the likelihood of locating the items of the search, the search supervisor should develop a detailed search plan for the location. Once the target search location is secure, officers should be assigned specific responsibilities for conducting the search in the order in which these actions need to be taken and in relation to the layout of the house or other facility. For example, officers should be assigned to photograph the entire search as it is being conducted and document the condition of the location prior to conducting the search in case claims for damage are made. Officers should be assigned in teams to search and others to collect, and mark both materials being sought and any other evidence or contraband in plain sight.
- *Tactical Plan.* It is essential that the plan of operation be fully explained and that each officer has an exact understanding of responsibilities in relationship to those of all other team members. If it is a joint agency task force operation, all officers participating in the warrant service must be present and identified as members of the warrant service team. Written assignments should be established around the plan and given to each officer.

A tactical plan is often in the form of a written schematic that allows officers to visualize their precise assignment in relationship to all others and specifies the officers' basic responsibilities, specialized equipment assignment, and vehicle assignment. In addition to its operational usefulness, this document is helpful for debriefing purposes and for use as a record of the operation.

A tactical plan does not need to be complicated. For example, all sides of a target location are numbered in parentheses and consecutively, beginning at the front of the house and moving clockwise. All officers are assigned to one of two entry teams, either the primary team (red) or the secondary team (blue). The blue team is used to gain entry only if the red team is thwarted in its attempt and the blue team is called to assist.

*In a hypothetical scenario, the initial entry point is the front door with the rear door as a secondary option. Officers are assigned numbers. Officers 1, 2, and 3 are the primary entry team being used to breach the front door and appear on the schematic accordingly. Officers 4 and 5 are being used primarily to cover the entry. They will break and rake the window designated S-2/2 simultaneously with the breaching of the front door and join the entry team inside the residence. A noise flash diversionary device will also be deployed within the residence at the time of entry. Officers 6 and 7 are primarily used for containment of sides (3) and (4) to ensure that no suspect is able to escape from windows or doors on these sides. Officers 8 and 9 are designated as the secondary entry team assigned to breach the rear door and to freeze and cover anyone inside. Officer 10 is the supervisor in control of the overall operation.*

This particular operational plan requires nine officers and one supervisor. The actual number of officers required for any given operation, however, will vary substantially depending on the findings of the evaluation stage of the operation and the personnel resources available to the department. Under certain



circumstances at the same location, the deployment of one or two officers on every window or door may be warranted.

Once the foregoing types of information are available, concrete decisions can be made concerning the number of officers required and methods of entry that will be used. If the warrant is designated as low risk, there will be fewer tactical considerations to be resolved. However, in the case of high-risk search warrants, a portion of that decision will be based on the types of equipment available to the entry team and their training in its use. A specialized tactical team is recommended for high-risk situations.

As previously noted, it is important that the entire search warrant execution process be documented from beginning to end. This will greatly assist officers and the department in any latter examination of tactics and procedures for operational purposes as well as in defending against charges of unlawful, improper conduct, excessive force, unwarranted destruction of property, and illegal search techniques; among other potential claims that could damage the case and subject the department to civil litigation. Extensive still photography of the operation and the premises is helpful, however, audio and video recording provide a much more extensive and useful record and should be employed whenever possible.

## F. Executing a Search Warrant

Even though a valid warrant has been issued, a search may be invalid if the warrant is executed improperly. The warrant must be executed in a timely manner, or the search will be invalid. There are two types of time limitations of which the executing officers must be aware. The first is by statute; statutes may require that a warrant must be executed within a specified period following its issuance. Any search executed after the expiration of the stated period will be invalid.

In addition, the warrant must be executed within a reasonable time following its issuance to avoid the warrant becoming “stale.” Probable cause for a warrant is issued based on facts known to the affiant at the time of its writing. However, the facts that support probable cause may be perishable and could become stale, which could lead to the warrant being invalidated. In cases where variables, such as an uncontrolled search location, people who are not under surveillance, objects that are small and easily removed from the scene, etc., the probable cause has a shorter “shelf life.” Thus, investigators must take steps to mitigate the degradation of the information, such as surveillance, seizure pending a search, or expeditious service of a warrant.

Several facts and circumstances may influence the haste in which a search warrant must reasonably be served. Safety of personnel and/or security/condition of evidence and persons are basic factors. Under certain circumstances, it may be reasonable to delay execution of the warrant for a short period. For example, where a number of searches are to be conducted at the same time, it may be necessary to delay execution of a given warrant until the various searches can be coordinated; it is a matter of what is reasonable under the circumstances. Consider the following:

- *Time of day* – Normally, searches should be conducted during daylight hours. This is especially true if a residence is involved. If a nighttime search is necessary, the reasons that make it necessary should be clearly articulated in the affidavit and, depending upon the law of the jurisdiction, it may be necessary for the warrant to specify that a nighttime entry is authorized.<sup>63</sup>
- *Tactical team* – Once the operational plan has been developed and officers involved are briefed on their assignments and the overall plan, the team is ready to execute the warrant. The objective of the tactical team is to secure the location and suspects within. In most cases, the tactical objective of

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<sup>63</sup> Some states also restrict days of the week on which warrants can be executed. Officers must comply with state/provincial requirements.

securing the location is separated from that of the actual search that is turned over to investigative or other law enforcement personnel.

- *Preparation* - All equipment that will be used in the operation should be inspected and an inventory conducted of all equipment that is required to ensure successful completion of the mission. All personnel involved in the execution process should be clearly identifiable as law enforcement officers and should be equipped with body armor of appropriate resistance rating (in accordance with department policy). Identification of law enforcement personnel carries added importance when officers from several jurisdictions are working together. Basic and advanced tactics of arrival, contact/cover, service, transport away, medical transport, and exit should be discussed and potentially role-played, if necessary, during preparation. It is very important that a supervised rehearsal be conducted to ensure that all officers are familiar with their responsibilities and the equipment that they will utilize. For example, officers who are assigned to carry ladders or other specialized equipment need to ensure that they can easily exit vehicles without encumbering or obstructing the movement of other officers. As a precaution against possible sniping, the first officer outside the vehicle should be assigned the responsibility of covering all other members of the warrant team (see [Appendix A](#) of the Considerations document for additional information on preparation for a search warrant).
- *Surveillance* – If the search location is suitable for pre-operational surveillance, a team should be used and contact should be made prior to departure to ensure that the warrant can be served as planned and, where appropriate, that suspects are on site.
- *Announcement* – Normally, the executing officers should enter the premises only after they have announced their presence and requested admission. When authorized, no-knock entries should be conducted only where clearly justified by the circumstances and, even then, only in strict accordance with the law of the jurisdiction.<sup>64</sup> Unless the search is based on a no-knock warrant, an easily identifiable police officer or team leader should knock and notify persons inside the search site (in a voice loud enough to be heard inside the premises) that he or she is a police officer and has a search warrant for the premises and demands entry at once. Where possible, this announcement should be recorded or keyed in by a radio transmission to communications. Where a response is not obtained immediately, officers should delay forced entry for a period that is reasonable for an occupant to respond. Normally, this period need not exceed 15 to 20 seconds unless exigent circumstances dictate a shorter period.<sup>65</sup>

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<sup>64</sup> State/provincial law varies widely regarding the permissibility of and procedures surrounding no-knock searches. Officers should be trained on current state/provincial law requirements and should seek legal advice if they are unsure of their jurisdiction's applicable requirements. For guidance pertaining to the U.S., please see Section 10 of the Executive Order on Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety at <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/05/25/executive-order-on-advancing-effective-accountable-policing-and-criminal-justice-practices-to-enhance-public-trust-and-public-safety/> (2022), or visit the IACP Policy Fact Sheet on the Executive Order on Policing at <https://www.cirsa.org/wp-content/uploads/2022/06/Executive-Order-on-Policing-ICAP-Policy-Fact-Sheet.pdf> (2022).

<sup>65</sup> *United States v. Banks*, 540 U.S. 31 (2003). In this case, the U.S. Supreme Court analyzed the standard of reasonableness in connection with the length of time police with a search warrant must wait before entering without permission in a felony case. The court pointed out the facts known to the police at the time is what counts when judging a reasonable waiting time. Whether the occupants are in a section of the house where they cannot hear the announcement (in this case the suspect claimed he was in the shower) or is otherwise unable to hear the announcement or respond to it on time does not matter. In *Banks*, exigent circumstances were upheld because officers were searching for illegal narcotics that could easily be disposed of in a short period of time. In other cases, the same justification may not be valid where officers are searching for items that are not as easily disposed of (e.g., motor

- *Entry* – Even where it is necessary to use force to gain entry to the premises, the force employed should be the minimum reasonably necessary to accomplish the entry. What is reasonable depends upon the circumstances.
- *Search* – Once the premises have been secured, the search may be turned over to the search team. If occupants are on hand, a copy of the search warrant should be given to them. If not available, it should be left in a conspicuous place. Prior to conducting the search, a photographic and video recording of the premises should be made. Search personnel may then follow the search plan detailing the order of operation and likely whereabouts of items to be searched for as defined in the warrant. An officer, designated in the search plan, should be responsible or have overall responsibility for ensuring the proper collection, preservation, and documentation of items seized in the search until they are transferred to the department's evidence custodian, laboratory, or other authority. Items specified in the warrant may be searched for in places where they may reasonably be expected to be located. Cash and currency taken as evidence should be verified by a supervisor and transported to a safe or other designated secure location.

Like the entry, the search itself should also be conducted with minimum damage. Excessive destruction of the premises or of personal belongings found on the premises should be avoided. A detailed search may reasonably require that some damage be done, but such damage should be limited to that absolutely necessary to carry out the search in a thorough and professional manner. Wanton destruction during the search may lead to civil liability.

There is normally no specific limit to the duration of the search. The search may continue for whatever period of time is reasonably necessary in order for the search to be conducted properly and completely. This will depend upon the circumstances of the case. However, any search that continues for more than a few hours is likely to be scrutinized very closely by the court. Excessive prolongation of the search may result in exclusion of evidence.

Upon the conclusion of the search, the premises must be properly secured. If the entry has caused damage to doors, locks, or security devices, and the premises will be left vacant after the search has terminated, appropriate measures must be taken to protect the premises and the contents within. If damage occurs during the search operation, a report, accompanied by appropriate photographic documentation, should be prepared that details the nature and extent of the damage. Photos should be taken of the damage whenever possible.

In many jurisdictions, anticipatory search warrants may be issued. An anticipatory warrant is sometimes issued when the items being sought are not on the premises at the time of issuance, but there is probable cause to believe that they will be found on the premises at a given time in the immediate future. Such warrants should, of course, be executed during the period when the presence of the items on the premises is expected.

## G. Post-Search Requirements and Operational Critique

There are certain primary post-search legal requirements that should be observed. If items are taken from the dwelling, an itemized receipt should be provided to the resident or occupant, or in the absence of such persons, left in a conspicuous location at the site. Evidence seized must be transferred to the person or facility that will retain it pending trial. The proper chain of custody must be maintained and documented, or the evidence may be rendered inadmissible. In addition, the jurisdiction may require that the warrant and other papers associated with the search be returned to the clerk of the court for that jurisdictional area. A failure to make a proper return will not normally cause

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vehicle parts). The final analysis of what constitutes a reasonable delay depends on the totality of the circumstances but, according to the court, "need not be extensive" so as to facilitate escape of suspects, allow them to arm themselves or take other actions detrimental to police actions and purposes. While this was the ruling of the U.S. Supreme Court, state courts may be more stringent. Officers should be familiar and must comply with any additional state, provincial, or local requirements.

the evidence to be inadmissible, but it may lead to civil penalties or disciplinary action. Since states vary widely on this point, local law should be consulted and followed.

Immediately following the operation, it is important that the executing team assemble to formally critique the assignment. These operations can be highly valuable learning exercises if the necessary time is taken to identify areas that can be improved upon. The case agent and the tactical coordinator, when used, should conduct these debriefings and all participants should be required to attend.

Members of the team should begin with an examination of the overall operational plan and compare the anticipated or perceived operation with the actual way in which it unfolded. Any deficiencies in intelligence concerning the plan's development should be identified, as well as means for rectifying any similar problems in the future. It is also important to identify any training or equipment needs and any problems with department policy or tactical procedures that may have become apparent in the operation and explore means toward filling these voids.

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