



KANSAS CITY, MO. POLICE DEPARTMENT

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SUBJECT

State Search Warrant Procedures

AMENDS

REFERENCE

RSMo - Chapter 542

RESCINDS

PI: 03-16 & 03-16A

***I. INTRODUCTION**

Provide legal guidelines and procedures for obtaining, serving, and executing search warrants by department personnel.

***II. TABLE OF ANNEXES**

This directive is arranged in annexes for easy reference.

- Annex A Search Warrant Application Process
- Annex B Pre-Execution of the Search Warrant
- Annex C Execution of the Search Warrant
- Annex D Post-Execution of the Search Warrant
- Annex E Requests to Serve/Execute Search Warrants by Outside Agencies

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Chief of Police

Adopted by the Board of Police Commissioners this _____ day of _____ 2009.

Mark C. Thompson
Board President

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SEARCH WARRANT APPLICATION PROCESS

- *A. A search warrant may be obtained to search for and seize, photograph, copy, or record, any property, article, material, or substance, that constitutes evidence of the commission of a criminal offense. Also, to search for kidnapped persons, persons with valid outstanding felony warrants, or a deceased human fetus or corpse, or part thereof. (RSMo Section 542.271)

- B. For guidelines regarding federal law violations for which a search warrant may be obtained, the investigative element supervisor will contact the appropriate federal agency for assistance.

- *C. Personnel assigned to the Investigations Bureau, the Special Operations Division, and the Property Crimes Section are responsible for obtaining and coordinating the execution of all search warrants.

- D. The Office of the General Counsel should be consulted for clarification on any legal matters relative to obtaining and executing search warrants prior to the execution of the warrant.

- E. When an officer believes probable cause exists for the application of a search warrant, consent must be obtained from an element commander/supervisor before contacting the applicable investigating element.
 - *1. If a search is warranted, Investigations Bureau, Special Operations Division, or Property Crimes Section personnel will prepare the Application for Search Warrant, State Form OSCA-CR20, and the Affidavit/Application for Search Warrant, Form 264B P.D. The forms will include appropriate supporting data and be presented, preferably on an external memory device (flash drive), to the appropriate prosecutor's office for signature.

 - *2. All search warrant documentation must be signed utilizing a writing instrument with blue ink.

 - *3. After obtaining the signature from the prosecutor's office, the forms will be hand delivered to the court within that jurisdiction for review by the judge.

PRE-EXECUTION OF THE SEARCH WARRANT

- A. The commander of the element responsible for the execution of the warrant will assign a commander/supervisor (Officer-in-Charge) to be in charge of all matters pertaining to the execution of the warrant, i.e., coordinating with other unit commanders for the use of uniformed entry personnel, Crime Scene Investigators, or HazMat personnel.
- B. The Officer-in-Charge will:
1. Ensure that the address of the location to be searched, as well as the name of the owner or occupants, is checked through the computer for warrants or warrants.
 - *2. Ensure that "Safetynet Deconflictions" are conducted through Midwest HIDTA to determine if there are case linkages or on-going investigations.
 3. Request the Communications Unit supervisor to assist in contacting appropriate commanders/supervisors, if needed.
 4. When practical and prior to the execution of the search warrant, have photographs taken of the exterior of the structure or area to be searched, as well as area diagrams prepared to assist in effectively executing the search warrant. These photographs and diagrams will be maintained in the case file of the respective investigative element requesting them.
 5. Determine the number of personnel required to effectively execute the warrant. Uniformed/tactical entry personnel will be used for making entry during the execution of all search warrants. Not every search warrant will require the presence of uniformed/tactical entry personnel, e.g., warrants served on a safe deposit box or an impounded vehicle.
 6. Conduct a thorough briefing prior to the execution of the search warrant. The briefing should include all available information, descriptions, assignments, and instructions that may effect the execution.
 7. Identify problem areas where innocent members of the public could be exposed to danger. Tactical plan development and implementation should minimize or eliminate danger to innocent members of the public, e.g., stopping traffic, evacuation of nearby residences.
 8. Ensure that all necessary equipment and supplies needed to safely execute the search warrant are assembled, e.g., flashlights, protective vests, handheld radios, report forms, property tags.
 9. Prior to initiating efforts to gain entry at the location to be searched, notify the appropriate zone dispatcher, via telephone, of the location and time that the warrant is to be executed and the radio frequency to be used. If there is a possibility of forced entry, a "Special Operations" radio frequency may be requested through dispatch to reduce outside radio interference.

EXECUTION OF THE SEARCH WARRANT

- *A. A Search Warrant must be executed and returned within ten (10) days from the date on the Application of Search Warrant, State Form OSCA-CR20, and the Affidavit/Application for Search Warrant, Form 264B P.D., to the judge who issued the warrant. Include copies of the Search Warrant, State Form OSCA-CR160, the Return/Receipt for Search Warrant, Form 264 P.D., and if applicable, the Return/Receipt for Search Warrant Supplemental, Form 264A P.D. (RSMo 542.276.8 & 9)
- B. Searches for, and seizures of property will be conducted in a manner which is in compliance with all federal and state legal requirements to ensure the admissibility of evidence in a court of law. For further information, refer to the Procedural Instruction entitled, "Detaining and Questioning Persons; Arrest; Search and Seizure."
- *C. The search shall be conducted in a reasonable manner and may be made at night if making it during the daytime is not practicable. (RSMo 542.291.1)
 - 1. Executing search warrants during daytime would increase the level of compliance to the verbal commands of the uniformed entry personnel and reduce the potential for incidents involving use of force.
 - 2. Exceptions to the above time guideline would be when circumstances can be articulated, e.g., the serving of the warrant while the occupant(s) is sleeping to provide for additional officer safety, the urgency of the investigation, or the probability that evidence will be removed or destroyed.
- D. When serving a search warrant, entry personnel must knock and announce their presence. The knock and announce must occur prior to any forced entry.
- *E. Knock and Announce
 - 1. The U.S. Supreme Court ruled that search warrant and arrest warrant entries must be preceded by a knock and an announcement. For further information refer to Legal Bulletin 95-5 entitled, "Knock and Announce Requirement for Execution of Search Warrants." The only exception is where the officer can reasonably establish one of the three factors listed below.
 - a. Circumstances exist that present a threat of physical violence.
 - b. When a prisoner escapes and retreats to his dwelling.
 - c. Reasonable belief that evidence is being or may be destroyed.
 - *2. Other cases have held that after knocking the police only have to wait a small amount of time before making forced entry. For further information refer to Legal Bulletin 99-01 entitled, "Knock and Announce Requirement," and Legal Bulletin 03-03 entitled, "Execution of Search Warrants."

3. The U.S. Supreme Court recognizes that when a warrant application establishes that some exigent circumstance exists or that knocking would be futile, a judge may authorize a “no-knock” entry at the time the warrant is issued. If circumstances support a reasonable suspicion of some exigent circumstance when the officers arrive at the door, they may dispense with the “knock and announce” requirement. For further information refer to Legal Bulletin 03-3 entitled, “Execution of Search Warrants.”
 - *4. The detention of the occupants of a premise during the execution of a proper search warrant is authorized based on the substantial justification of preventing flight in the event incriminating evidence is found, minimizing the risk of harm to the officers, and facilitating the orderly completion of the search. Officers may generally ask questions of an individual without the need for reasonable suspicion. For further information refer to Legal Bulletin 05-3 entitled, “Handcuffing Occupants of a Residence During the Execution of a Search Warrant.”
 5. Any police report involving a forced entry or search warrant entry will indicate that entry personnel knocked and announced prior to entry. The report should also show how long entry personnel waited from the time they knocked until they forced entry.
 - *6. Further “Knock and Announce” requirements can be found in Legal Bulletin 97-7 entitled, “Federal and State Knock and Announce Requirements in the Execution of Search Warrants” and Legal Bulletin 06-5 entitled, “Effect of a Violation of the Knock and Announce Rule on the Admission of Evidence.”
- F. After entry has been gained, entry personnel will conduct a protective sweep to ensure that all persons present are brought under control. These personnel will maintain control of all persons present and provide security at any entrances/exits to eliminate any unauthorized persons from entering/leaving the scene.
- G. If, during the execution of a search warrant, and prior to finding the property listed thereon, other evidence or contraband is located, for further information, refer to the Procedural Instruction entitled, “Property Seizure and Forfeiture”; such property may be seized if one of the following conditions is present:
1. The property is either in plain view from a location where the officer(s) has a legal right to be, or in a place where the officer(s) may reasonably search for the items listed in the search warrant.
 2. Items are immediately recognizable as contraband; e.g., illegal weapons, illicit drugs.
- H. When personnel executing a search warrant seize any evidence that is related to a crime but is not normally investigated by their element of assignment, the commander/supervisor of the appropriate investigative element will be contacted from the scene. For further information refer to the Procedural Instruction entitled, “Recovered Property Procedure.”

- *I. When executing a search warrant, be aware of the Exclusionary Rule. For further information, refer to United States v. Herring.
 - 1. The rule that evidence secured by illegal means and in bad faith cannot be introduced in a criminal trial.
 - 2. A technical error in a search warrant made in good faith will not cause exclusion of the evidence obtained under that warrant.

- J. Upon rendering the area safe, entry personnel will notify investigative personnel that they may enter and conduct their investigation. Investigative personnel will not enter the area until so notified. Police identification cards will be worn and displayed in plain view by all non-uniformed investigative personnel during the execution of a search warrant.

- *K. A copy of both, the Search Warrant, State Form OSCA-CR160, the Return/Receipt for Search Warrant, Form 264 P.D., and if applicable, the Return/Receipt for Search Warrant Supplemental, Form 264A P.D., will be left with the person in charge of the premises or in plain view at the place of execution if any property is seized.
(RSMo 542.291.4)

- L. Prior to relinquishing custody of the scene, entry personnel will ensure that all serving/executing tasks have been completed.

- *M. All arrests will be handled in accordance with Procedural Instructions entitled, "Arrest Guidelines" and "Arrest Procedures - Possession of Controlled Substance."

POST-EXECUTION OF THE SEARCH WARRANT

- A. Officers should carefully document, in detail, any exigent circumstances, which presented themselves at the time of the execution of the search warrant in any report completed following the service of the warrant.
- *B. Copies of the Search Warrant, State Form OSCA-CR160, and the Return/Receipt for Search Warrant, Form 264 P.D., and if applicable, the Return/Receipt for Search Warrant Supplemental, Form 264A P.D., listing all property recovered, will be returned to the prosecutor in the county where the property was seized within two (2) working days of the seizure of the property. (RSMo 542.291.5)
- *C. Upon final completion of any search which concludes after the expiration of time for delivering the original Search Warrant, State Form OSCA-CR160, the Return/Receipt for Search Warrant, Form 264 P.D., and if applicable, the Return/Receipt for Search Warrant Supplemental, Form 264A P.D., shall be delivered to the issuing judge, e.g. computer media searches. (RSMo 542.276.8)
- D. All property seized under the warrant, and not returned to the person entitled to it, can only be disposed of by the court in application form by the officer having custody of the property.

REQUESTS TO SERVE/EXECUTE SEARCH WARRANTS BY OUTSIDE AGENCIES

- A. When an outside agency requests assistance in serving a search warrant within Kansas City, Missouri, every effort will be made to assist them in the timely execution of the warrant.
- B. Requests for assistance will be referred to the appropriate element that would investigate the type of crime that has resulted in the search warrant being issued.
 - 1. During hours when a representative of the appropriate element is not available, the agency will be referred to the Patrol Bureau duty-officer who will contact a commander/supervisor from the appropriate element.
 - 2. The commander/supervisor will determine if the circumstances warrant the deployment of personnel required to effectively execute the warrant.
- C. When it is determined that the search warrant will be executed, established procedures listed in Annex's B, C, and D, of this written directive, will apply. Any exceptions to the procedures of this written directive, involving the execution of outside agencies search warrants will be approved by the appropriate bureau commander.
- D. An official from the outside agency will be present at the location, but will not participate in the execution of the search warrant.
- E. All property recovered and suspects arrested will be processed in accordance with department procedures.