



Search Warrants: Overview

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Fourth Amendment U.S. Constitution

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and 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.

G. L. c. 276, § 1

Massachusetts Search Warrant Statute

“A court or justice authorized to issue warrants in criminal cases may, upon complaint on oath that the complainant believes that any of the property or articles hereinafter named are concealed in a house, place, vessel or vehicle or in the possession of a person anywhere within the commonwealth and territorial waters thereof, if satisfied that there is probable cause for such belief, issue a warrant identifying the property and naming or describing the person or place to be searched and commanding the person seeking such warrant to search for the following property or articles...”

SEARCH WARRANTS

What Is Required

- * Probable Cause to believe a crime has been committed;
- * Probable Cause to believe evidence—described with particularity—of that crime will be found; and
- * Reasonably likely that specified items will be found in the place to be searched (Nexus)

REMEMBER TO ALWAYS CONSIDER
STALENESS

SEARCH WARRANTS

When are they required?

Executing an ARREST WARRANT

- No need to obtain a search warrant to enter the residence of a third party to arrest a suspect for whom an arrest warrant has been issued so long as officers have *reasonable belief* the suspect will be present
- Search warrant is still **REQUIRED** for any further evidence searched or seized

SEARCH WARRANTS

When are they required?

Third-Party Consent:

- Consent to enter vs. consent to search
- Scope of consent questionable
 - Authority over premises
 - Permission granted or mere acquiescence to authority
- Evidence seen in plain view

SEARCH WARRANTS

What Is Required

Parts of a Search Warrant

- Application
- Affidavit
- Search Warrant
- Search Warrant Return

SEARCH WARRANTS

The Application

1. Enter the Department of Trial Court that will issue warrant— either Superior or District. If District, also enter appropriate division of District Court— e.g. Concord.

The Application

2. Enter Affiant's name
3. Enter Affiant's rank, specialized unit, and law enforcement agency
4. Search warrant docket number— added by clerk, not affiant
5. The affidavit— always attached to application. Include total number of pages, incl. attachments.

The Application

6. Check appropriate box or boxes characterizing property sought as stolen goods, unlawfully possessed evidence, instrumentalities of crimes, or “other”
7. Describe evidence as particularly as possible, incorporating any Addenda
8. Describe premises to be searched, incorporating any Addenda or pictures

The Application

9. Indicate whether you have previously applied for this warrant.
10. Print name of affiant
11. Sign affidavit in presence of issuing clerk/judge
12. Be sure clerk/judge signs both application and affidavit.
13. Be sure clerk/judge has filled in date.

Commonly Requested Permissions

- For many search warrants, consider requesting permission to:
 - Search and seize evidence indicating ownership, acquisition, sale, or control of specific items *and* target premises
 - Video/photograph search for either documentation or substantive/corroborative use
 - Obtain civilian assistance in conducting the search or analysis (forensics, trace evidence, computers)

The Warrant Itself

Carbon copy— much of the info on the application transfers to the warrant itself.

Additional Information only on Warrant form:

- Nighttime Search
- No Knock
- Any persons present
- Fill in name of court where warrant will be returned— the district court where crime occurred

The Warrant Itself, Cont.

- Fill in date
- Be sure clerk/judge signs the warrant itself- NOT just the application!!!
- Have clerk/judge print name
- Print name of witness- the presiding justice of the district court division or the Administrative Justice of Superior Court
- Include Addendum copies to attach to the search warrant itself

SEARCH WARRANT EXECUTION

Who & What Should Be At The Scene

- No search can be conducted until SW is actually on the premises
- SW should be shown to person in control of the premises (if possible) and a copy may be left at the scene
- Make sure all referenced documents describing place to be searched and/or items to be seized are *attached* to SW

SEARCH WARRANTS

Securing the Premises

- Police may secure perimeter of premises from the *outside* (post a guard, prevent entry, etc.) for a reasonable time while obtaining SW where there are legitimate concerns that evidence is about to be destroyed or removed
- Officers may not enter premises in order to secure from within unless there is *specific information* supporting an objectively reasonable belief (amounting to probable cause) that evidence will be destroyed or removed
- Search of premises must not begin until SW actually issues & arrives at scene

Securing the Premises

- From the Outside Only if:
 - No objectively reasonable belief premises are occupied
 - Occupants have left the premises

SEARCH WARRANT EXECUTION

Entering the Premises

- Required to knock & announce identity and purpose, then wait a few seconds (unless no-knock SW – see below)
 - Timing?
 - Exceptions?
 - Forcible entry?
 - Use of ruse to gain entry?
 - Detain occupants?

“No Knock” Entry

Permission for “No Knock” requested on SW:

- In SW affidavit, must show probable cause to believe a legitimate fear for police safety, destruction of evidence, inherent danger of evidence (weapons, explosives, chemical or biological materials) exists;

AND

- Prior to execution at the scene of the location where SW is to be executed, police must make a **threshold re-appraisal** of the underlying reason for the “no knock” at the target location before entering without knocking.

SEARCH WARRANT EXECUTION

Scope of the Search: “Curtilage”

- Proximity of area to home
- Whether area is included within enclosure surrounding home
- Use of area
- Steps taken by resident to protect area from observations by passers-by
- If known, consider including in warrant request
- Automobiles

SEARCH WARRANT EXECUTION

Scope of the Search (cont.)

- Locked or unlocked containers on the premises that reasonably could contain or conceal an item described in the SW may be opened and searched
- Police may damage or destroy property in order to execute SW if necessary
- When evidence is located it should be marked, photographed or videotaped

SEARCH WARRANT EXECUTION

Plain View Observations

- It must be readily apparent that item is incriminating
- Evidence must be observed from a location that police have a right to be
- Discovery of the item must be inadvertent

“Inadvertence Requirement” of the Plain View Doctrine

- Items Should be Listed on Warrant
 - Items viewed while on permissive entry
 - Items viewed while securing premises
 - Items viewed while executing prior search warrant
 - Outside scope of first warrant (e.g. to broaden scope of search)
 - Not readily incriminating during prior search

SEARCH WARRANT EXECUTION

Time Limitations

- SW must be executed AND returned as soon as is reasonably possible, but in no event later than 7 days after issuance
 - The day on which the warrant issued is not included in the computation
 - Saturdays, Sundays & legal holidays are included

SEARCH WARRANT RETURN

- SW must be returned within 7 days of issuance
- Return should be completed by officer who executed the warrant (not necessarily affiant)
- List ALL property seized
- Have clerk attest to the signature on return

SEARCH WARRANT RETURN

- File return within 7 days **EVEN IF** still waiting on response from service provider, i.e. Apple or Verizon **OR** completion of forensic examination
- Include the following information:
 - Date search warrant was faxed to provider
 - Notation that provider statutorily permitted 14 days to respond
 - Will comply with all discovery obligations in turning over to items returned to the defense

IMPOUNDMENT

- Typically, file motion to impound or redact on same day as SW return
- In a sexual assault investigation, we suggest using the victim's name only ONCE in the affidavit and then refer to victim throughout the affidavit. Contact ADA regarding motion to impound.
- Impoundment may be appropriate in ongoing investigations where the perpetrator(s) remain at-large or witness safety or evidence gathering would be jeopardized