



SEARCH WARRANTS

Directive: 15-112

Date of Issue: July 2013 Amends/Cancel: 14-123

I. PURPOSE

The purpose of this Directive is to establish policies and procedures in regards to the application of and execution of search warrants.

II. POLICY

DGS-MCP will obtain, execute and return all Search and Seizure Warrants in adherence to all constitutional and statutory provisions. Search warrants will be executed in a manner that respects the individual rights of all persons and minimizes the possibility of unnecessary damage to property or injury to persons. Searches and seizures will be done in a professional manner, and will be thoroughly and accurately documented.

III. BACKGROUND

The United States Constitution and the Maryland Constitution guarantee all citizens the right to be protected against unreasonable searches and seizures by the government. Specifically, law enforcement officers must have a search warrant authorizing them to conduct a search and seizure; unless the situation falls within one of the exceptions to the requirement. Further, a law enforcement officer must present a judge with an application and an affidavit that establishes probable cause to believe that evidence, contraband or some item or person subject to seizure by the police can be found at a given location. Whenever a court determines that a search and seizure was illegal, any evidence obtained by the police, as a result of that the action, will become subject to the exclusionary rule and will not be admissible in court as evidence against the defendant.

IV. DEFINITIONS

- A. Affiant – The person that makes and signs an affidavit.
- B. Affidavit - A written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation.
- C. Application – The official request to the court for a search and seizure warrant, which is attached to the affidavit.

- D. Contempt of court – Any act which is calculated to embarrass, hinder, or obstruct a court in the administration of justice, or which is calculated to lessen its authority or its dignity. Committed by a person who does any act in willful contravention of its authority or dignity, or tending to impede or frustrate the administration of justice, or by one who, being under the court’s authority as a party to a proceeding therein, willfully disobeys its lawful orders or fails to comply with an undertaking which the court has given.
- E. Search Warrant – An order, issued by the court, authorizing and directing an officer to search a specified person, premises, vehicle, dwelling, etc., for items related to the commission of a crime.

V. PROCEDURES

A. Authority & Jurisdiction

- 1. A circuit court judge or District Court judge may issue forthwith a search warrant whenever it is made to appear to the judge, by application as required by law, that there is probable cause to believe that:
 - a. A misdemeanor or felony is being committed by a person or in a building, apartment, premises, place, or thing within the territorial jurisdiction of the judge; or
 - b. Property subject to seizure under the criminal laws of the State is on the person or in or on the building, apartment, premises, place, or thing. *Criminal Procedure Article §1-203(a)(1)*
- 2. District Court Judge – A District Court judge has the authority to issue a search warrant for execution in any county of this State. This scope of authority includes District Court judges in Baltimore City, because the city is a district within the jurisdiction of the court, and its judges have statewide uniform jurisdiction to issue search warrants anywhere in Maryland. *Opinion of the Attorney General – July 14, 1992*
- 3. Circuit Court Judge – The jurisdiction of a circuit court judge is limited to the geographical confines of the county in which the court sits. *Opinion of the Attorney General – 1976*

B. Application for Search Warrant

- 1. An application for a search warrant shall be:
 - a. In writing;
 - b. Signed and sworn by the applicant; and
 - c. Accompanied by an affidavit that:
 - (1) Sets forth the basis for probable cause that a misdemeanor or felony is being committed by a person or in a building, apartment, premises, place or thing or property subject to seizure under the criminal laws of the State is on the person or in or on the building, apartment, premises, place, or thing; and

- (2) Contains facts within the personal knowledge of the affiant that there is probable cause. *Criminal Procedure Article §1-203(a)(2)*
2. The officer (affiant) should include in the affidavit a listing of all training and experiences that the officer has had that establishes the officer's competency and knowledge in the type of criminal behavior that is the subject of the warrant. The officer should include the following:
 - a. A synopsis of the training that the officer has received at the police academy, seminars, schools, etc., concerning the recognition of contraband, means and methods of criminals to commit crimes and attempt to conceal evidence, etc. For example, an application for a warrant authorizing the officer to search for controlled dangerous substance should include any training received that enables the officer to recognize drugs, know and recognize the means and methods that traffickers use to transport, package, and prepare drugs for sale on the illicit drug market, and store drugs prior to making the sale; and,
 - b. Prior investigative experiences relevant to the case at hand, including, but not limited to, the application, issuance and results of prior search and seizure warrants for similar criminal activity. For example, if an officer is applying for a warrant authorizing the search of a dwelling for controlled dangerous substance, it would be helpful to state in the affidavit, if applicable, that the officer has conducted prior drug investigations that led to the issuance of search warrants, subsequent seizure of quantities of controlled dangerous substances, and criminal arrests and convictions.
3. The officer must include in the affidavit facts known to himself or herself that establishes probable cause to believe that a criminal activity is occurring and/or property subject to seizure can be located at a specific location. In applying for a search warrant, officers need to pay attention to the particularity with which persons, places and items are described. For example, if an officer is asking for authorization to search a house, a description of the house, including the house numbers and their location, should be included in the affidavit.
4. The officer (affiant) does not sign the application for the Search and Seizure Warrant until the officer is in the presence of the judge who is going to witness the signature, review the document, and issue the search warrant.
5. Applications for search and seizure warrants will be reviewed for legal sufficiency by an assistant State's Attorney, if one is available, before presentment to a judge.

C. Search Warrant

1. The search warrant shall be directed to a police officer and authorize the officer to search the suspected person, building, apartment, premises, place, or thing and to seize any property found subject to seizure under the criminal laws of the State. The warrant authorizes the officer to utilize the assistance of other persons, including police officers.

2. In addition to conducting the search and seizure, the search warrant also directs the officer to leave a copy of the warrant and an inventory of the any and all property seized, and to return a copy of the warrant and inventory to the judge within ten days after the execution of the warrant. If the warrant is not executed, the officer is instructed to return it to the judge promptly, but not later than five days after the expiration date.
3. The warrant shall name or describe, with reasonable particularity, the following:
 - a. The person, building, apartment, premises, place, or thing to be searched;
 - b. The grounds for the search; and
 - c. The name of the applicant on whose application the search warrant was issued. *Criminal Procedure Article §1-203(a)(3)*
4. The search warrant must be executed within fifteen (15) days of the issuance (starting from the day of issuance). If the search warrant is not executed within the fifteen days, the search warrant is void.

D. Sealing Affidavits

1. An affidavit may be sealed for a period of time not exceeding thirty days if a criminal investigation is being conducted by a law enforcement unit, grand jury, or the Office of the State's Attorney, and the suspected criminal activity is one or more of the following:
 - a. Violations of the Controlled Dangerous Substance laws;
 - b. Murder; or
 - c. Pornography.
 - d. Picture of place to be searched.
2. A circuit court or District Court judge, on a finding of good cause, may order the affidavit presented in support of a search and seizure warrant sealed. A finding of good cause must be established by evidence that:
 - a. The criminal investigation to which the affidavit is related is of a continuing nature and likely to yield further investigation that could be of use in prosecuting alleged criminal activities; and
 - b. The failure to maintain the confidentiality of the investigation would:
 - (1) Jeopardize the use of information already obtained in the investigation;
 - (2) Impair the continuation of the investigation; or
 - (3) Jeopardize the safety of a source of information.

3. After the order sealing the affidavit expires, the affidavit shall be unsealed and delivered within fifteen days:
 - a. To the person from whom property was seized; or
 - b. If that person is not on the premises at the time of delivery, to the person apparently in charge of the premises from which the property was seized. *Criminal Procedure Article §1-203(e)*

E. Execution of Warrant

1. As a general rule DGS-MCP warrants will be executed by the primary law enforcement agency within the jurisdiction where the warrant is to be served.
2. DGS-MCP will contact the appropriate allied law enforcement agency and coordinate efforts to execute the warrant.
3. When a search warrant is going to be executed solely by DGS-MCP the following guidelines should be applied:
 - a. A briefing will be conducted with all officers participating in the serving of the warrant.
 - b. Assignment should be made giving consideration to:
 - (1) Those who will search for evidence/contraband
 - (2) Those who will be members of an entry team if applicable
 - (3) One officer should be assigned to the documentation of evidence/contraband discovered, the location where discovered, officer who made discovery
 - c. All intelligence concerning risk factors and other relevant information including diagrams of the target site should be disseminated at this time.
4. Just prior to serving the warrant surveillance should be conducted of at least one square block around the target site.
5. Search warrants to be served in a residential setting will normally be executed between the hours of 0700 and 2300 unless special circumstances exist. Recognized special circumstances that would justify a deviation from this policy include, but are not limited to, officer safety issues, destruction or loss of evidence, and the seriousness of the crime.
6. All officers will visibly display items that readily identify them as police officers, such as badges and/or jackets with the word "POLICE" on them. Uniformed officers should be among the first officers to enter a structure.
7. "One element of the reasonableness inquiry governing the lawfulness of searches under the Fourth Amendment is that police officers must knock and announce their presence before entering the premises to be searched...Further, the principle is not a rigid rule and slows for an unannounced entry when there are important countervailing law enforcement interests

such as the safety of the officers or prevention of the destruction of evidence.” *Wilson v. Arkansas* (1995) (U.S. Supreme Court) “There is no rule providing that a specific amount of time must elapse before law enforcement officers may use force to enter a dwelling after announcing their presence. A reasonable time is ordinarily brief.” *United States v. One Parcel of Real Property* (1989) When there are no factors justifying unannounced entry, officers should knock forcefully on the door and identify themselves as police officers. The officers should immediately state that they have a search warrant and demand that the door be opened. If the door is not opened within twenty seconds, the officers may forcefully enter. It is understood that circumstances may develop that would justify waiting a shorter period of time before making forced entry. Such circumstances will be documented.

8. The U.S. Supreme Court has stated that a police officer has the authority to exercise independent judgment concerning the wisdom of a no-knock at the time the warrant is being executed. *Richards v. Wisconsin* (1997) In the event that circumstances at the time of execution indicate that entry without announcement is justified, officers are authorized to do so. However, the decision not to knock and announce one’s authority and purpose and the underlying justification must be documented.
9. It is imperative that police officers loudly identify themselves immediately after making entry into the place to be searched.
10. With respect to detaining residents and occupants of a home while a search and seizure warrant is being executed, the U.S. Supreme Court has stated: “If the evidence that a citizen’s residence is harboring contraband is sufficient to persuade a judicial officer that an invasion of the citizen’s privacy is justified, it is constitutionally reasonable to require that citizen to remain while officers of the law execute a valid warrant to search his home.” “In assessing the justification for the detention of an occupant of premises being searched for contraband pursuant to a valid warrant, both the law enforcement interest and the nature of the ‘articulable facts’ supporting the detention are relevant. Most obvious is the legitimate law enforcement interest in preventing flight in the event that incriminating evidence is found. Less obvious, but sometimes of greater importance, is the interest in minimizing the risk of harm to the officers.” “A judicial officer has determined that police have probable cause to believe that someone in the home is committing a crime. Thus a neutral magistrate rather than an officer in the field has made the critical determination that the police should be given a special authorization to thrust themselves into the privacy of a home. The connection of an occupant to that home gives the police officer an easily identifiable and certain basis for determining that suspicion of criminal activity justifies a detention of that occupant.” *Michigan v. Summers* (1981)
11. Additionally, the U.S. Supreme Court re-stated this position in their ruling in *Muehler v. Mena* (March, 2005). The Court stated “Officers executing a search warrant for contraband have the authority to detain the occupants of the premises while a proper search is conducted. Such detentions are appropriate because the character of the additional intrusion caused by detention is slight and because the justifications for detention are substantial. The detention of an occupant is surely less intrusive than the search itself and the presence of a warrant assures that a neutral magistrate has determined that probable cause exists to search the home. Against this incremental intrusion, there are three legitimate law enforcement interests that provide substantial justification for detaining an occupant: (1)

preventing flight in the event that incriminating evidence is found; (2) minimizing the risk of harm to the officers; and (3) facilitating the orderly completion of the search as detainees' self-interest may induce them to open locked doors or locked containers to avoid the use of force." "Inherent in the Fourth Amendment caselaw's authorization to detain an occupant of the place to be searched is the authority to use reasonable force to effectuate the detention."

12. The Maryland Court of Appeals has also stated that when police officers execute a search warrant that gives them authority to search "in and upon" a dwelling, the officers may detain, read Miranda warnings to, and briefly question any individuals found in and upon the premises, including the areas outside the dwelling. For officer safety, such persons may be subject to a pat down of their outer clothing to determine if they are carrying any weapons that could place the officers in danger. *Cotton v State (April, 2005)*
13. Therefore, officers will conduct a protective search for suspects immediately upon gaining entry into the structure. All persons and dangerous weapons located must be rendered safe. The use of handcuffs and other authorized, issued restraining devices is authorized. All persons located within the structure to be searched will be placed in one room and monitored at all times while the search is conducted. All occupants will be identified and a wanted check completed on each individual. The lead investigator will ensure that the names and other identifying information are documented in his report.
14. The search warrant will be read to the property owner or resident as soon as practical.
15. Property is not to be unnecessarily damaged or soiled. It is understood that some damages are unavoidable, especially at the point of forced entry.
16. Photographs should be taken after the scene has been rendered safe and before the search begins, and again after the search has been completed. Photographs should be taken of the point of entry and all property that is going to be seized while the property is in the exact location where it was found.
17. After the search is completed and no probable cause exists to make an arrest, all persons may be released. Those persons placed under arrest will be transported from the scene before other persons are released.
18. Only property particularly described in the search warrant and any other instrumentalities, fruits of crime or contraband located, while searching for the items listed in the search warrant, may be seized. All confiscated property and contraband will be handled and processed as provided for elsewhere in the manual.
19. The officer charged with the investigation of the case that lead to the execution of the search warrant will complete a police report detailing the preparations made prior to the execution of the search warrant, the facts and circumstances surrounding the execution of the warrant, and the results of the operation. Any injuries or damaged property should be noted and explained in the report. A copy of the application for the search warrant, affidavit, search warrant, and inventory will be attached to the police report when it is forwarded to the Chief of Police.

20. Civilians, including members of the media, will not accompany officers during the execution of search and seizure warrants. The Chief of Police will make any exceptions to this policy.

F. Inventory/Return

1. “An officer shall make and sign a written inventory of all property seized under a search warrant. At the time the search warrant is executed, a copy of the inventory together with a copy of the search warrant, application, and supporting affidavit, except an affidavit that has been sealed by order of court, shall be left with the person from whom the property is taken if the person is present or, if that person is not present, with the person apparently in charge of the premises from which the property is taken. If neither of those persons is present at the time the search warrant is executed, the copies shall be left in a conspicuous place at the premises from which the property is taken.” *Maryland Rule 4-601(c)*
2. In the event that an affidavit has been sealed by order of the court, a copy of the Sealing Order should be left at the location searched in lieu of the affidavit.
3. “An executed warrant shall be returned to the issuing judge, or if that judge is not immediately available, to another judge of the same circuit if issued by a circuit court, or of the same district if issued by the District Court, as promptly as possible and in any event within ten days after the day the search warrant is executed or within any earlier time set forth in the search warrant for its return. The return shall be accompanied by the verified inventory. A search warrant unexecuted within 15 days after its issuance shall be returned promptly to the issuing judge.” *Maryland Rule 4-601(d)*

G. Obtaining Evidence from a Person

1. Search warrants may be necessary to obtain evidence from a person, such as clothing worn, fingernail clippings, hair samples, body fluids, body cavity searches, etc.
2. If an officer knows in advance that a person has or will have on their person items subject to lawful seizure, then the officer should get a search warrant. Officers should not rely upon the person’s consent as the authorization for the search.
3. If a person refuses when asked to provide exemplars for comparison, the officer should discuss the case with the Assistant State’s Attorney before applying for a search warrant.
4. If the person refuses to permit an authorized search, the officer may use reasonable force to complete the search and seizure. If the search is one that needs to be conducted in a private place, such as a strip search, the officer may use reasonable force to transport the person to a proper place and conduct the search. Strip searches may only be performed by members of the same sex and out of view of members of the opposite sex and other persons not involved in the search.
5. To execute a search warrant for the search of a person, premises may be entered under the same circumstances and in the same manner as allowed in the execution of an arrest warrant, and reasonable force may be used to make the search.

6. While a search may be made only for those things described in the warrant, if, while making such a search, an officer comes upon some other evidence of this or any other crime, it may be seized.
 - a. A weapon carried in violation of the law may be seized.
 - b. If a weapon is being carried legally, officers may still seize it temporarily to protect themselves. The suspect must be told where the item may be retrieved when the search is finished.
7. When a search warrant authorizes examination of a body cavity for evidence and/or contraband, only a licensed doctor or nurse, working under sanitary conditions and in a medically approved way, will conduct the examination. Officers may use reasonable force to overcome any resistance on the part of the person being searched.

H. Contempt - Disclosure

1. “Except for disclosures required for the execution of a search warrant or directed by this Rule or by order of court issued pursuant to this Rule, a person who discloses before its execution that a search warrant has been applied for or issued, or a public officer or employee who discloses after its execution the contents of a search warrant or the contents of any other paper filed with it, may be prosecuted for criminal contempt of court.”
Maryland Rule 4-601(h)
2. A police officer that applies for, obtains, or executes or causes to be executed, a search and seizure warrant will not reveal any information whatsoever concerning the application, affidavit or search warrant to anyone who does not have a genuine “need to know.” Any other police officer that is entrusted with information concerning the application, affidavit, search warrant, or underlying case will not reveal the information, or any part thereof, to anyone without the express permission of the officer that applied for or obtained the search warrant. This mandate will be strictly enforced because the success of the investigation, as well as the safety of all concerned, depends upon the exercise of sound discretion and strict confidentiality.