



ACTON POLICE DEPARTMENT

DEPARTMENT MANUAL; P&P: Operations		
POLICY & PROCEDURE # 1.35	DATE OF ISSUE: 03/09/2020	EFFECTIVE DATE: 03/16/2020
SUBJECT: CRIMINAL PROCESS PROCEDURES	ISSUING AUTHORITY: Chief Richard Burrows	
REFERENCE(S): Massachusetts Police Accreditation Commission # 74.1.3; 74.3.1; 74.3.2	<input type="checkbox"/> NEW <input checked="" type="checkbox"/> AMENDS <input type="checkbox"/> RESCINDS	

I. POLICY

Only sworn officers are allowed to serve criminal process which includes search and arrest warrants as well as serving criminal summonses. **[74.3.2]**

II. ARREST WARRANTS

- A. An arrest warrant is an order in writing, issued by an authorized court official, directed to officers authorized to serve criminal process and commanding them to arrest the named person or described person therein and bring such person before the court to answer to a charge of a crime. An arrest warrant may be executed anywhere within the Commonwealth. **[74.3.1(2A)]**
- B. An officer should arrange for sufficient manpower prior to executing a search or arrest warrant through the shift commander - a minimum of two officers is recommended. Any arrests made on a warrant must be backed up by documentation that some agency has that warrant in its possession, and that to the best of their knowledge, it is still in effect or that the warrant is active in the Warrant Management System. No officer shall make an arrest on a warrant unless they confirm the present status of the warrant immediately before making the arrest. All criminal process is accessible twenty-four (24) hours a day. **[74.1.3(4)]**
- C. MGL Chapter 276, Section 24 states, "Upon a complaint or indictment for any offense, a summons shall issue instead of a warrant, unless, in the judgment of the court or justice, there is reason to believe that the defendant will not appear upon summons." Therefore, officers of this Department may request a summons from the court instead of a warrant for complaints, unless there is reason to believe that the defendant will not appear upon summons. **[74.3.1(2C)]**
- D. The officer does not need the warrant in his possession at the time of an arrest. However, upon request, he must show the defendant the warrant as soon as possible. If the officer does not have the warrant in his/her possession at the time of the arrest, he/she shall then inform the defendant of the offense charged and that a warrant has been issued. The officer shall inform the defendant thereof within a reasonable amount of time after said arrest.

- E. A defendant arrested on a warrant shall be brought before the Court if it is in session and if not, at its next session unless he has been released on bail. The officer executing the warrant shall make the proper "return" and document the arrest by having the incident logged in the CAD System with an incident report attached. Additionally, officers shall submit the warrant to the shift supervisor. The shift supervisor shall be responsible for ensuring the warrant is located in CJIS/WMS.
- F. When an officer arrests a person named in an arrest warrant, he/she must inform the accused of the existence of the arrest warrant and of the offense charged. The officer should show a copy of the warrant to the arrestee. If the officer does not have a copy with him/her, the officer should explain that the arrestee will be shown the warrant at the police station. This is in keeping with Mass Rules of Criminal Procedure 6 (3). The arresting officer should show the warrant to the arrestee as soon as it is safe to do so. An officer who refuses to answer the arrestee's questions as to the reason for the arrest or who answers falsely or who neglects to exhibit the warrant is subject to penalties of MGL Chapter 263, Section 1.
 1. If an officer encounters a person in an unexpected manner and the officer has reasonable grounds to believe that there might be an arrest warrant for that person, the officer may detain that person briefly to make inquiries and to request a warrant check, *US vs. Hensley*.
 2. If initial attempts to serve a warrant are unsuccessful and further attempts at the present time appear fruitless, the warrant may be kept on file. If the accused is encountered or apprehended at a later day, an arrest may be made under the warrant. No time limit is imposed on the validity of an arrest warrant as there is with search warrants. In such cases, however, care should be taken to make sure the warrant is still valid when the arrest is made.
- G. To affect an arrest of a suspect inside a dwelling, the United States Supreme Court has stated that a police officer needs:
 1. To obtain an arrest warrant before entering the residence of a suspect in order to arrest him/her. If the dwelling to be entered belongs to the person who is to be arrested, the arresting officer(s) needs only the arrest warrant. There is no need for a search warrant in this circumstance.
 2. However, if the dwelling to be entered does not belong to the suspect, then the officer(s) need both an arrest warrant and a search warrant to enter the property.

There are several **exceptions** to this rule:

- The property owner gives the officers knowledgeable consent to enter.
- If the officer(s) are in hot, continued and fresh pursuit of a suspect who enters a dwelling.

- The officer(s) reasonably believe that the persons inside the dwelling or property are in danger should the arrest be delayed. It should be noted that an officer needs no warrant should the area or property he/she enters upon is public. There exists no expectation of privacy in that situation.

III. SEARCH WARRANTS

A. Search Warrants Generally

1. Authority to Issue Warrants

- a. Justices of the Supreme Judicial Court, the Superior Court Department and the various District Court Departments, and Clerk/Magistrates, Assistant Clerk/Magistrates, Temporary Clerk/Magistrates, and Temporary Assistant Clerk/Magistrates of the District Court Departments are authorized to issue search warrants.
- b. A judge or clerk may issue a search warrant for execution anywhere in the Commonwealth.
- c. Warrants for body cavity searches may only be issued by a judge on a strong showing of particularized need supported by a high degree of probable cause.
- d. Warrants in criminal cases must identify the property to be searched for and name or describe the person or place to be searched.

2. Obtaining a Search Warrant [74.3.1(2B)]

- a. The legal procedure for obtaining a search warrant is specified by M.G.L. c. 276, § 2B.
- b. M.G.L. c. 276, § 2B states, that the officer seeking the warrant must submit a warrant application and affidavit upon oath that [s]he believes that the property or articles named in the application for the warrant are concealed in a house, place, vessel or vehicle or in the possession of a person anywhere within the Commonwealth and/or territorial waters.
- c. The affiant must satisfy the justice or clerk before whom the warrant is sought that there is probable cause to believe that the property or person sought is located at the place to be searched.

3. Serving the Warrants [74.3.1(2B)]

Officers conducting a search based upon a search warrant are limited to searching the locations named in the body of the warrant and only in such places that the property sought may be concealed. (For example, searching a small drawer for a 50" TV is not reasonable, when searching for drugs almost any place is reasonable.)

4. Affidavit Requirements

Format - The standard affidavit form provided by the various courts to be prepared to support an application for a search warrant must be substantially in accordance with the provisions of M.G.L. c. 276, § 2B (See sample Affidavit for Search Warrant at end of this policy.)

5. Introduction

- a. The officer submitting the affidavit shall clearly identify himself/herself and briefly describe the officer's education and experience.
- b. The officer must explain in the affidavit any expertise or special training that pertains to his/her belief that a given crime has been committed and that given items are connected to that crime.

6. Establishing Probable Cause

- a. The officer should disclose all relevant information in the affidavit and do so in a complete, yet concise and logical (perhaps chronological) fashion.
- b. The affidavit must disclose facts and information that furnishes probable cause to believe that a specific crime has been, is being, or will be committed.
 - Many cases have been lost because an officer had a sufficient basis for probable cause but did not furnish enough supporting information in his/her affidavit.
 - Any fact that is not set out in the affidavit cannot be inserted or used later for the purpose of establishing probable cause.
 - The Supreme Judicial Court declared that the "contents of an affidavit supporting a search warrant cannot be buttressed by oral testimony as to what was stated to the magistrate at the time the search warrant was issued."
- c. The affidavit must disclose facts and information that furnish probable cause to believe that a particular person or those particular items are connected to that crime and that:
 - That person or those items are (or will be) at a particular place.
 - Those items are (or will be) found on a particular person or persons.
- d. Probable cause to justify the issuance of a search warrant must exist at the time the warrant is issued. If the information specified in the affidavit is "stale," it may prevent a finding of probable cause to conduct a search. Two examples of cases where "staleness" came into question were:
 - *U.S. v. Charest*, 602 F.2d 1016 (1st Cir. 1979) - A sixteen-day lag between the commission of a murder and the issuance of a search warrant for a

murder weapon was too long for a finding of probable cause that the gun was still at the defendant's premises.

- *Com. v. Blye*, 5 Mass. App. Ct. 817, 362 N.E.2d 240 (1977) and *Com. v. Malone*, 24 Mass. App. Ct. 70, 506 N.E.2d 163 (1987) - The Appeals Court held that where the affidavit furnished information of continuing illegal activity and a substantial basis for concluding that the property sought was probably still on the premises to be searched, the time factor or "staleness" was not found to be of serious importance and the warrant issued in this case was declared valid.
- e. The affidavit should disclose how and when the facts and information came to the officer's attention.
 - If information from a confidential informant is relied on, the informant must be reliable and have a basis of knowledge.
 - The affidavit must disclose why the persons who provided those facts and information are reliable.
- f. If there are additional pages attached to the affidavit, the affidavit should refer to them as "see attached pages" or "addendums" in the appropriate places. There is no requirement that all attached pages be signed.
- g. The affidavit must describe with a particularity:
 - 1) The place or person(s) to be searched.
 - Describe the place to be searched in detail including address, location, type of building, color, construction, etc. Include a photo of the building if practical. Include the apartment number, floor, location, etc. if applicable.
 - Describe the person to be searched. Include a photograph, if available. Traditional characteristics include such things as race, height, weight, hair color, scars, tattoos, and other personally identifiable features.
 - 2) The item or items for which the search will be conducted.
 - The degree of specificity required when describing goods to be seized may necessarily vary according to the circumstances and types of items required.
 - Include a request to authorize a search for documents supporting ownership and control of the property if that information is pertinent.

7. Inaccurate Information

- a. Misstatements in an affidavit that amount to a knowing and intentional falsehood or reckless disregard for the truth will render a search warrant invalid.
- b. Inaccuracies, which do not affect the integrity of an affidavit, do not destroy probable cause for a search.
 - Officers should use extreme care to read, reread and verify all the important facts stated on the warrant application.
 - Simple misspellings or the reversal of numbers can be fatal errors to an affidavit.
- c. Negligent misrepresentations in affidavits do not require suppression. However, they may have to be explained during a motion, hearing or trial.

8. Affidavit Review

- a. The affidavit should receive the advice and approval of the District Attorney's Office.
- b. The Officer's immediate supervisor should be notified that the Department is seeking a search warrant and describe the nature of the case before the search warrant is executed.

9. Submission of the Affidavit

The officer submitting the affidavit shall personally appear before a judge or magistrate and sign the affidavit.

10. Application for Search Warrant Form

- a. Trial Court Form:
 - 1) The Trial Court provides forms that may be used for preparing a search warrant.
 - 2) Instructions for preparing the warrant are usually included on the cover page.
 - 3) An affidavit form is included which may be used but is not required.

11. Issuing Justice or Clerk Magistrate

- a. The issuing official will make the determination whether or not:
 - The search may be conducted at night, between the hours of 10:00 p.m. & 6:00 am.
 - Entry may be made without knocking and announcing.

- Any persons present may be searched.
- b. The issuing official must sign the search warrant.
- c. M.G.L. Chapter 276 §2B states, the person issuing the warrant shall retain the affidavit and shall deliver it within three days after the issuance of the warrant to the court to which the warrant is returnable. Upon the return of said warrant, the affidavit shall be attached to it and shall be filed therewith, and it shall not be a public document until the warrant is returned.

12. Informants

In General, when using information from an informant to establish probable cause in a search warrant the credibility of the informant must be established by the affiant. The affiant must also prove that the informant is reliable and the informant has a basis of knowledge.

Reliability - Factors that support the informant's reliability:

- a. Did the informant provide accurate useful information in the past - if so, did that information in the past contribute to successful arrests, searches or convictions?
- b. Whether the informant is admitting his/her own involvement in crime (a statement against penal interest). However, if the identity of the informant is unknown, any statements against his/her penal interest cannot buttress his/her credibility.
- c. Whether the informant is an inherently reliable person, such as the victim, an eyewitness, a reputable citizen or a person named in the affidavit.

Note: Be sure not to name a confidential informant, as this may jeopardize such person's safety and reduce their usefulness in the future.

Basis of Knowledge - Factors that establish an informant's basis of knowledge:

- a. Did the informant make personal, direct observations or is the informant relating hearsay information?
- b. How recently did the informant acquire his/her information - is it still valid or has it become stale?
- c. How detailed is the informant's information?

Collaboration - The existence of any corroboration that supports the informant:

- a. Similar information received from other informants.
- b. Direct observations or investigations by the police.

13. Property Which May be Seized

Generally – A copy of the search warrant must be present at the scene of the search before the search can begin. It must be presented upon demand of the occupant.

a. Property that may be searched for:

- 1) Under the provisions of G.L. c. 276, s. 1, the following types of property or articles may be seized under a search warrant:
 - a) Property or articles stolen, embezzled, obtained by false pretenses or otherwise obtained in the commission of a crime.
 - b) Property or articles which are intended for use, or which are or have been used, as a means or instrumentality of committing a crime, including, but not in limitation of the foregoing, any property or article worn, carried, or otherwise used, changed or marked in the preparation for or perpetration of or concealment of a crime.
 - c) Contraband, property or articles, the possession or control of which is unlawful, or which are possessed or controlled for an unlawful purpose; except property subject to search and seizure under Chapter 138 (alcoholic beverages), sections 42 through 56, inclusive (see c. 138, s. 56 for warrantless arrest and seizure of alcohol until warrant obtained. Note: c. 138, s. 46 makes it a fineable offense to search for or seize illegal alcoholic beverages in a dwelling without a warrant.
 - d) The dead body of a human being.
 - e) The body of a living person for whom a current arrest warrant is outstanding.

b. The word "property" includes books, papers, documents, records, and any other tangible objects.

Mere Evidence

- a. In addition to items listed in c. 276, s. 1, the police may seek a search warrant authorizing the seizure of "mere evidence."
- b. The phrase "mere evidence" refers to any item or object that would tend to prove the commission of a crime or the identity of the criminal. (For example, while executing a search of a murder suspect's home pursuant to a warrant, officers found and seized bloody clothing. Although that clothing did not fit into any of the items (a) through (e) above, it was able to be seized as "evidence" of the commission of a crime. Since the clothing was located in the defendant's home, the clothing also tended to establish the identity of the criminal.)

Items Not Mentioned in the Warrant – While searching for items specified in the Warrant, illegal items, in plain view, not mentioned in the warrant may be seized.

14. Return of a Warrant

- a. A return of the warrant must be made to the court of issue by the officer executing the warrant within seven (7) days of the warrant's issuance.
- b. The back of the warrant must be completed and includes the following:
 - 1) The date that the warrant was issued.
 - 2) A list of the property taken pursuant to the search warrant.
 - 3) A list of persons present when the inventory was made.
- c. The officer making the return must appear before the clerk magistrate to whom the return is made, and swear that the inventory is a true and detailed account of all the property taken pursuant to the search warrant.
- d. The officer may request to the court in writing, a longer period of time to return the warrant with particular reasons why a return within seven days is not attainable.

15. Impounding the Warrant

- a. The affidavit is not a public document until the warrant is returned. At that time, it is open to public inspection "to ensure that the Commonwealth can demonstrate by writing that any given search and seizure was reasonable and was based on probable cause."
- b. A search warrant affidavit may be impounded.
- c. A judge must determine whether good cause for impounding exists and must tailor the scope of the impoundment order so that it does not exceed the need for impoundment.

16. Department Reporting Requirements

In every case where a search is conducted with a warrant, the police officers involved shall make a written report of the circumstances. The officers shall include all important facts relative to the incident and an inventory of any evidence seized.

CRIMINAL PROCESS PROCEDURES INFORMATION

History: Manual I, Section III.