

	ROSENBERG POLICE DEPARTMENT	
	General Order 7.05 Search Warrants	
	Effective Date: 5-13-2013	Replaces: N/A
	Approved:  Chief of Police	
Reference: TBP 7.06		

I. POLICY

The federal and state constitutions guarantee every person the right to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. Supreme Court decisions regarding search and seizure place the responsibility on the police to ensure that person's Fourth Amendment rights are protected. Officers shall scrupulously observe constitutional guidelines when conducting searches and always remain mindful of their lawful purpose. Search warrants, in particular, are one of the most valuable and powerful tools available to law-enforcement officers. Because of the potential harm to members of the community, the risks to officers' safety and to the department image in the community, officers shall have a thorough knowledge of the legal requirements in obtaining and executing search warrants.

II. PURPOSE

The purpose of this general order is to establish guidelines and procedures which officers must follow when conducting searches and seizures.

III. DEFINITIONS

- A. Search Warrant: A written order, issued by a magistrate, and directed to a peace officer, commanding him to search for any property or thing and to seize the same and bring it before such magistrate or commanding him to search for and photograph a child and deliver to the magistrate any of the film exposed pursuant to the order.
- B. Search Site: The premises to be searched, as explicitly stated in the search warrant.
- C. Lead Detective: The officer primarily responsible for the investigation, and preparing, planning, and implementing the search warrant.

- D. SWAT Commander: The officer responsible for planning and supervising tactical operations to include dynamic entry and other tasks requiring special weapons and tactically trained officers.
- E. Protective Sweep: Quick and limited search of premises incident to an arrest or service of a warrant performed in order to identify weapons or other dangers to officers or others. Officers must be able to articulate a reasonable basis for conducting a protective sweep.
- F. Curtilage: Curtilage usually refers to the yard, garden, or piece of ground which adjoins a private residence. While the term has no absolute definition that applies under all circumstances, the curtilage of a private residence, for instance, is determined by whether the area is enclosed; the nature and use of the area; the proximity of the area to the home; and any measures taken by the owner to protect the area from observation.

IV. PROCEDURES - General

A. State Law

1. Chapter 18 of the Texas Code of Criminal Procedure controls the use of search warrants in Texas. It states that a judge or magistrate may issue a search warrant if the following circumstances exist:
 - a. There is probable cause to do so, and
 - b. There is a complaint on oath supported by an affidavit.
2. Search warrants may be issued for the search of or for specified places, things or persons, and seizure there from of the following things as specified in the warrant:
 - a. Weapons or other objects used in the commission of a crime.
 - b. Articles or things the sale or possession of which is unlawful.
 - c. Stolen property or the fruits of any crime.
 - d. Any object, thing, or person including documents, books, records, paper, or body fluids constituting evidence of a crime.

B. Supreme Court decisions

1. The Supreme Court of the United States issues decisions which must be used as guidelines in conducting searches. Because the Fourth Amendment to the Constitution prohibits unreasonable searches and seizures, officers bear the burden of proving that the search was reasonable. The court will examine reasonableness according to the answers to these questions:
 - a. Was there probable cause to issue the search warrant?
 - b. Was the scope of the search appropriate?

C. Exceptions to search warrant requirements are discussed in Policy 7.04.

V. PROCEDURES - Obtaining a search warrant

A. Prior to obtaining a search warrant, officers should consult a departmental supervisor for review of the probable cause and approval to seek a search warrant. This review may be conducted by telephone if necessary. If the supervisor approves the warrant application, the supervisor shall notify the Division Commander of the circumstances surrounding the offense and the need for the warrant.

B. The approving supervisor will be in charge of the warrant execution. While the lead detective or officer may develop the case information, construct the affidavit, obtain the warrant and seek assistance from SWAT if needed, the approving supervisor is responsible for the proper and safe execution of the warrant including compliance with this policy.

C. Essential legal requirements

1. To obtain a search warrant, an officer must show probable cause to believe that specific evidence, contraband, or fruits of a crime may be found at a particular place.
2. The officer shall carefully document in an affidavit specific facts that constitute probable cause. Two kinds of facts must be considered:
 - a. The facts from which the officer concluded that the person or thing is probably located at the place to be searched.
 - b. The facts which address the reliability of the source of the officer's information.
3. The court considers only those facts presented in the warrant and affidavit. Conclusions and suspicions are not facts. Facts must be recent.
4. Apart from the officer's personal knowledge or observations, facts may derive from a reliable informant.
5. Reliability of facts is established by:
 - a. Personal observation or knowledge by an officer.
 - b. Eyewitnesses who have first-hand knowledge.
 - c. Informants (if proven reliable or corroborated by personal observation of an officer).

D. Affidavits

1. The accuracy of the affidavit is vital to the validity of the search warrant. On the designated form, officers shall provide the information listed below. CCP 18.01 requires officers to swear to the facts of the affidavit before a judge or magistrate.
2. The affidavit shall include the following elements:
 - a. A detailed description of the place, thing, or person to be searched.
 - b. A description of the things or persons to be searched for.
 - c. A substantial allegation of the offense in relation to which the search is to be made.
 - d. An allegation that the object, thing, or person to be searched constitutes evidence of the commission of the offense.
 - e. Material facts which would show that there is probable cause for issuing the search warrant.
 - f. Facts that establish probable cause and that the item to be seized is at the location to be searched.

E. Language of the warrant

1. Only the things specified in the search warrant can be seized (for a discussion of exceptions to this, such as plain-view seizures and searches incident to arrest, see Policy 7.04). The warrant shall specify the areas to be searched shall be precisely stated. If officers wish to search a home and its surroundings, the affidavit must specify a "premises" search and its curtilage and must identify outbuildings, garages, as appropriate.
2. If motor vehicles to be searched are on the premises, the warrant shall so specify.
3. If searches of specific persons (other than frisks) are to be included during the search, the warrant shall so specify. If the warrant states that all persons present shall be searched, then probable cause to do so must be justified in the affidavit.
4. The items to be searched for shall be precisely described. If an item to be searched for may be dismantled (e.g., firearms), then the warrant must specify the search for parts, pieces, or components of the item.
5. If officers anticipate searching for and seizing computers or similar, complex technology, then experts must be consulted to determine the appropriate language to list in the affidavit and for outlining appropriate guidelines in the warrant for seizure of hardware and software.

6. If time and opportunity permit, the affidavit and warrant may be reviewed by the District Attorney prior to presenting it to a magistrate.
7. If officers believe it is in the best interest of officer safety or that evidence may be destroyed if advanced warning is given and wish to utilize a “no-knock” warrant execution, the reasons for that belief should be clearly explained in the affidavit. The magistrate should be requested to review and authorize the no-knock entry.

VI. PROCEDURES - Executing a search warrant

A. When a search warrant must be executed

1. An officer is required to execute a warrant within the limitations imposed by statute. If it has not been executed during that time, the officer shall void the warrant and return it to the magistrate who issued it.
2. An officer may execute a search warrant either during the day or at night. The time of day selected to execute the warrant should take into consideration the likelihood that specific individuals will or will not be present. (Example: children or elderly.) Officer safety will also be considered in determining when to execute a warrant.

B. Preparing to execute the warrant

1. Before executing the warrant, the on-duty supervisor shall review the warrant and the affidavit; and brief the search team officers on the procedures to be followed. The supervisor shall ensure that the entire warrant process is documented. Written reports shall be supplemented with photographs or videotape, if available and appropriate.
2. All members of the search team shall be in uniform or have “POLICE” visible in large letters on the front and back.
3. All members of the search team shall wear protective body armor during the execution of all warrants.

C. Gaining entrance to premises

1. Prior to execution of the warrant, the lead detective 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. The lead detective shall make a final assessment of the warrant’s accuracy in relationship to the location to be searched.
2. The search team shall first deploy around the premises to be searched, ensuring that all exits are covered.

3. In most cases the officer shall do all of the following before entering the premises to be searched:
 - a. He or she must announce his presence as a law-enforcement officer.
 - b. The officer must announce that his purpose is to execute a search warrant.
 - c. The officer must wait a reasonable time either to be admitted or refused admission to the premises.

4. When entrance is refused

If the officer is refused entrance after a reasonable time, he may force his way into the premises using force applicable to the circumstances. "Reasonable time" in this context depends on the circumstances. A refusal may be expressed or implied. A refusal can be implied in two circumstances:

- a. No one has admitted the officer within a time in which it would be reasonable to expect someone to let the officer in if he or she is going to be admitted at all.
- b. The officer waiting to be admitted sees or hears suspicious circumstances, such as flushing toilets or footsteps running away from the door, which indicate that someone might be concealing or destroying evidence or trying to escape.

5. No-knock or exigent entry

In some circumstances a police officer may enter the premises to be searched without announcing his or her presence and purpose before entering. The judicial authority issuing the warrant may add a no-knock entry provision to the warrant. If not, the decision to make a no-knock entry may be made by the on-scene supervisor based on facts that would lead him or her to believe that an announcement would result in:

- a. Bodily harm either to the officer or to someone within the premises to be searched.
- b. The escape of the person to be searched or arrested.
- c. The destruction of evidence.

6. If circumstances require a no-knock or exigent entry, then the first officer to cross the threshold into the premises shall announce that law-enforcement officers are executing a warrant. Officers shall also

command the occupants to take the appropriate action to ensure their safety, such as "Police, search warrant, get down."

D. Conduct of the search

1. Upon entry, the occupant shall be given a copy of the search warrant.
2. The supervisory officer shall ensure that a protective sweep of the site is performed immediately.
3. After the site has been secured, a photographic and/or videotape record of the premises shall be made prior to conducting the search.
4. Once all the evidence being searched for is located, the search must cease at that point.
5. Officers shall not use a search warrant to conduct a fishing expedition, i.e., if the search warrant is for a television, or large item, small places such as jewelry boxes may not be searched.
6. An officer may seize only the property listed in the warrant with two exceptions:
 - a. The other evidence is reasonably related to the offense for which the search warrant was issued.
 - b. It is property which the officer knows or has probable cause to believe is evidence of another crime.
7. Cash and currency taken as evidence shall be verified by a supervisor and be transported to a separate safe as designated by department policy.
 - a. Officers should exercise reasonable care in executing the warrant to minimize damage to property. 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 should 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. If items are taken from the search site, an itemized receipt shall be provided to the resident/occupant, or in the absence of the same, left in a conspicuous location at the site.

E. Searches of persons found on premises

1. A person's presence on the premises to be searched with a warrant does not, without more, give rise to probable cause to search that person beyond a frisk for officers' safety.
2. A warrant to search the premises for contraband does carry with it the authority to detain the occupants of the premises while a search is being conducted. If the search of the premises gives rise to probable cause to arrest the detainee, he or she may be arrested and his or her person searched incident to arrest.
3. A person on the premises may be searched if the officer has probable cause to believe that items listed in the warrant are concealed on the person. Mere presence on premises does not constitute probable cause.

VII. PROCEDURES: High Risk Warrant Execution

- A. A High Risk Warrant is any situation where it is likely that any special obstacle to the safe, effective execution of the warrant is present, the location has been fortified or officers may meet armed resistance and/or deadly force. This suspicion should be corroborated by intelligence information (i.e., CCH, C.I. statements, history of location, Detective's personal knowledge).
- B. High Risk Search Warrants will utilize SWAT for entry and the securing of the premises.
- C. The Supervisor in charge of the Warrant's execution will notify the SWAT Commander through the proper channels and will provide a copy of the Warrant and Affidavit.
- D. Upon notification by any Supervisor that SWAT will be needed to execute a Warrant, the SWAT Commander will contact the Lead Detective and obtain the details of the Warrant execution. This will include a physical inspection of the target and verification of the address and physical description.
 1. Upon completion of the scouting report, together they will formulate a plan of execution.
 2. The SWAT Commander will notify the number of SWAT officers required and when/where they are to report.
 3. Use of on-duty patrol officers should be coordinated with the on-duty supervisor to avoid depleting manpower.
- E. A Warrant Execution briefing will be held. The Warrant execution briefing will include the Supervisor in charge of the warrant's execution, the Lead Detective, the SWAT Commander, the Communications Supervisor, and will include all officers participating in its execution or who will be at the scene.

1. They shall detail procedures for executing the warrant to all team members in a warrant service briefing. The plan briefing shall be conducted by both the Lead Detective and the SWAT Commander and will include but not necessarily be limited to the following:
 - a. The specific items subject to the search as defined in the warrant and any available information on their location.
 - b. 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.
 - 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 not be involved with suspects.
 - d. A complete review of the tactical plan to include the staging area, route of approach; 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.
 - e. Personnel, resources, or armament necessary for gaining entry, safety and security of officers, or for conducting the search.
 - f. If a joint agency task force operation, all officers participating in the warrant service shall be present and identified as members of the warrant service team.
 - g. Contingency plans for encountering hazardous materials, canines, booby traps, fortifications or related hazards; measures to take in case of injury or accident, to include the nearest location of trauma or emergency care facilities.
 - h. Procedures for exiting the location under emergency conditions.
2. The entry team shall at all times include uniformed officers who shall be conspicuously present where the warrant is served. All non-uniformed officers shall be clearly identified as law enforcement officers by a distinctive jacket or some other conspicuous indicator of office.
3. All members of the search team shall wear body armor or ballistic

vests as designated by the Lead Detective

4. Prior to execution of the warrant, the Lead Detective 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 Lead Detective shall make a final assessment of the warrant's accuracy in relationship to the location to be searched.
6. The Lead Detective 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, radio contact shall be made 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. An easily identifiable police officer shall 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 warrant to search the premises, and that he or she demands entry to the premises at once.
4. 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 (normally between 15 and 20 seconds). 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 would permit the destruction of evidence, entry may be made as soon as practicable.
5. Once the entry has been made and the scene secured, the Lead Detective will perform the search as required in Section VI. D above.

VIII. PROCEDURES - Return of the search warrant

- A. After an officer has finished a search, he or she shall perform the following:
 1. Note the date of execution on the search warrant.
 2. The officer must make an inventory of all the property seized and leave a copy with the person in charge of the premises.

3. Within three days following the execution of the search (excluding Saturdays, Sundays, or legal holidays) make return of the warrant to the magistrate who issued the warrant. The following
 - a. The search warrant.
 - b. The affidavit.
 - c. Either the inventory of articles seized or a notation that nothing was seized during the search.

B. Responsibility for property seized

1. All property seized must follow a rigorous chain-of-custody procedure. Documentation must appear in all narrative reports pertaining to the chain of custody of any items seized. The department evidence tag shall be used to identify all seizures.
2. Officers shall place evidence in the property room or locker reserved for the purpose prior to the end of shift.
3. Observe the property and evidence procedures as detailed in Policy 12.01.