

12.700 SEARCH WARRANTS/CONSENT TO SEARCH

References:

Ohio Revised Code 2933.21, Search Warrant
Ohio Revised Code 2933.22, Probable Cause
Ohio Revised Code 2933.23, Affidavit for Search Warrant
Ohio Revised Code 2933.231, Waiving Statutory Preconditions for Non-Consensual Entry
Ohio Revised Code 2933.241, Inventory of Property Taken
U.S. Supreme Court No. 98-83, Wilson v. Layne
U.S. Supreme Court United States v. Spikes, (6th Cir.1998).
Ohio Supreme Court, Middletown v. Flinchum
Procedure 12.131, Confidential Informant Management and Control
Procedure 12.175, Special Weapons and Tactics Unit
Procedure 12.540, Body Worn Camera System
Procedure 12.735, Federal and State Forfeitures
Procedure 12.701, Electronic Search Warrants

Purpose:

Aid in detecting and arresting persons committing crimes and in procuring evidence in criminal cases.

Prevent the suppression of evidence and dismissal of cases on procedural grounds.

Develop public confidence in the Police Department by carrying out the police function in an ethical and lawful manner.

Protect the constitutional rights of citizens.

The primary goal of any high-risk tactical operation is always safety. That means the safety of all officers involved as well as innocent bystanders and subjects. A secondary concern is the retrieval of evidence. Retrieval of evidence is considered only after safety issues are addressed. A successful search warrant service is comprised of three components: planning, execution, and documentation.

General Information:

The life of all Ohio search warrants is 72 hours from the time of issuance by the judge. Excluded in the strict 72-hour time limit are the day the warrant was issued, Saturdays, Sundays, and legal holidays. The search warrant is good for only one search. All search warrants must be served within 72 hours of issuance to prevent probable cause staleness unless an extension is granted by the court.

The U.S. Supreme Court ruled that it is a violation of the Fourth Amendment for police to bring members of the media or other third parties into a home during the execution of a warrant when the presence of the third parties in the home was not in aid of the execution of the warrant.

The Ohio Supreme Court has ruled officers may make warrantless entries into a wanted person's home for a misdemeanor following the fresh pursuit of misdemeanor offenders.

Policy:

Obtain supervisory review and approval of search warrants before contacting the court. For advice in drafting the search warrant, contact members of the Vice Squad or Criminal Investigation Section. If requiring additional legal information, Emergency Communications Center (ECC) has a list of home phone numbers of on-call members of the Municipal Court Prosecutor's Office.

Unless specifically requested by the judge, do not take confidential informants to the judge's home when applying for a search warrant.

Affiant officers and their supervisors will direct and control others that aid in the service of search warrants. Final responsibility for proper service of search warrants remains with the affiant officer and supervisor in charge.

Officers will notify their immediate supervisor before aiding in the service of a search warrant obtained by another law enforcement agency. The supervisor will respond to ensure the search warrant meets Department standards.

Officers will notify their immediate supervisor before allowing a third party into the home during the execution of a warrant and permission will only be granted if the third party's presence will aid in the execution of the warrant.

Officers must weigh "risk vs. reward" when deciding if it would be a prudent investigative technique to disconnect or interrupt a power source or utility service to a residence. Absent exigent circumstances, when officers believe this to be a necessary tactic, they will request a supervisor to respond to the scene. The supervisor will determine if the benefits of such a tactic outweigh the possible risks which include danger to the officers and/or residents, and liability to both the Department and the City of Cincinnati.

Procedure:**A. Consent Searches:**

1. **All** requests to search without a warrant, including searches of persons, buildings, or vehicles, will be recorded with a Body Worn Camera (BWC). Both audio and video recordings will be made of the request and consent when practical.
2. When consent is captured via BWC, officers are required to complete the BWC Request Form via RMS.
 - a. After completion, the BWC Request Form will be work-flowed to Police Records who will categorize the footage for proper retention.
3. On-site searches, which require the use of data-reading software to examine electronic data contained in computers or other electronic devices, are to be conducted by authorized Department personnel only. Personnel should refer to Procedure 12.701, Electronic Search Warrants, prior to conducting a search.

4. Request individuals to sign a Form 601 or Form 601PV before conducting **all** consent searches including vehicles, persons, buildings, areas, computers, electronic devices, or residences **except** when capturing consent via BWC.
 - a. Notify a supervisor if an individual gives verbal consent but refuses to sign the Form 601 or Form 601PV.
 - 1) Supervisors will respond to the scene to verify the consent was given.
 - 2) Do not search until a signature is obtained or a supervisor confirms receipt of verbal consent.
 - 3) Document on Form 601 or Form 601PV - "REFUSED SIGNATURE" in the space provided for the signature of the consenting person.
 - b. Contact a Vice Squad supervisor for questions regarding consent to search procedures.
 - c. When consent is captured via BWC, completion of and obtaining a signature on Form 601 or Form 601PV is not required; however, officers are required to complete the BWC Request Form via RMS.
 - 1) Upon completion, the BWC Request Form will be work-flowed to Police Records, who will categorize the footage for proper retention.
 5. When completing a Form 601 or Form 601PV, document all pertinent information related to the consensual search.
 - a. The inventory portion of the Form 601 or Form 601PV should be completed in the presence of the person who signed the form.
 - b. The individual is to be given the white-citizen copy of the completed Form 601 or Form 601PV as a receipt of all items confiscated during the search.
 - c. Officers must have a supervisor sign the Form 601 or Form 601PV before securing his/her shift.
- B. Obtaining a Search Warrant:
1. For searches of computers, computer files, or any other electronic data storage devices refer to Procedure 12.701, Electronic Search Warrants.
 2. An affidavit is the basis for a search warrant. A search warrant is valid when the affidavit satisfies the legal requirements for such warrants. Prepare the affidavit stating:
 - a. The nature of the offense.
 - 1) The affidavit and warrant must describe the actual criminal offense being investigated.

- b. Give a precise description of the place to be searched. Affiant officers must see the exact location (e.g., house, apartment, floor, and door) where officers will correctly enter to serve the search warrant. Supervisors will confirm affiant officers have this personal knowledge before approving plans for serving the search warrant.
- 1) Where possible, use actual street addresses. Ensure the address given is complete and accurate. Include a brief description of the premises and exact portion of the house or other building to be searched.

Example: Apartment #28, on the 5th floor inside the large brown brick apartment building located at 3500 Reading Road, Cincinnati, Ohio.
 - 2) When searching a motor vehicle, include the name of the owner (if known) and the make and license number of the vehicle.

Example: A 1976 Chevrolet Camaro, red in color, bearing Ohio license plate number 123 ABC. License plates on said vehicle are registered to John Doe at 5220 Madison Road, Cincinnati, Ohio.
- c. Specify in the affidavit and warrant the items sought.
- 1) There are four categories of items which may be the subject of a search warrant:
 - a) Fruits of a crime.
 - b) Instruments of a crime.
 - c) Evidence of a crime.
 - d) Contraband.
 - 2) Officers may seize items discovered:
 - a) Unexpectedly during the search for items named in the warrant, or
 - b) Incidental to a lawful arrest. Seizure is permissible without the need of a second search warrant.
- d. Probable cause:
- 1) Probable cause for a search warrant is facts and circumstances strong enough to cause a reasonably prudent officer to believe articles subject to seizure are being held on the property.
 - 2) An officer may have either first or second-hand knowledge of these facts.

- a) If the second-hand knowledge involves information from an undisclosed informant, the officer must support the informant's trustworthiness. Explain prior dealings with this source have shown a pattern of reliability and the informant had a reasonable basis for obtaining the information.
- 3) Affidavits for search warrants will be based upon fresh probable cause.
 - a) Timely facts must be present to justify the conclusion that evidence of a crime remains at the premises to be searched. The staleness of the evidence is based on the totality of the circumstances including the nature of the crime, the suspect, the thing(s) to be seized, and the place to be searched.
3. Complete the search warrant form in duplicate.
 - a. Direct the search warrant to the head of the local law enforcement agency where service will occur.
 - b. Search warrant service must occur during daylight hours, unless the judge approves a night search. State law defines daylight hours as the hours between 0700 - 2000. If a nighttime search is necessary, clearly state in the affidavit the reasons which make it necessary.
 - 1) Without the nighttime entry specification, the warrant restricts the officer to a daytime entry. However, a detailed and thorough search starting during the daytime may extend into the night without becoming an illegal search.
4. After review by a supervisor contact the scheduled duty judge who will review and sign the search warrant. During normal court hours (8:00 a.m. to 4:00 p.m. Monday through Friday), the judge can be found in his/her usual courtroom.
 - a. Any search warrant involving a residence, business, any type of structure where a person(s) is likely to be present, likely to involve forced entry, or any search warrant containing an operational plan **must** be reviewed by a command officer (captain or above) before contacting the duty judge.
 - b. The duty judge is also the contact judge for search warrants from 4:00 p.m. to 8:00 a.m., Monday through Friday. To contact a judge after normal court hours, officers will:
 - 1) Advise the Clerk of Courts of the need for a judge to secure a search warrant.
 - 2) The Clerk of Courts will contact the judge by telephone or pager.
 - 3) The judge will contact the officer and make the necessary arrangements to have the search warrant reviewed and issued.

- c. From 4:00 p.m. Friday until 8:00 a.m. Monday, the Room A judge is the contact judge for search warrants.
 - 1) This judge can be located in Room A at 9:00 a.m. on Saturday and some Sundays. This judge will be available at all other weekend times through the Clerk of Courts' office.
5. Requesting a "No Knock" search warrant.
 - a. A "No Knock" search warrant permits officers serving a warrant to force entry immediately upon announcing their presence because of the risk of serious harm caused by waiting for consensual entry. A "No Knock" warrant does not waive the requirement that officers announce their presence or that they have a search warrant
 - b. Officers will only seek a "no knock" search warrant when there is probable cause to believe a risk of serious harm to persons exists, requiring immediate entry. The involvement of the subject of the investigation in trafficking or in possession of drugs is, by itself, not sufficient to obtain a "No Knock" search warrant.
 - c. The affiant officer must add the following four points in addition to the probable cause listed in Section B.2.d. above.
 - 1) The affiant officer must show there is a risk of serious physical harm to the individuals executing the warrant (e.g., violent history of suspect or statements by the subject of the warrant that he will harm police officers).
 - 2) The affiant officer must give specific facts supporting the risk of serious physical harm including the names and descriptions of suspects at the particular location he believes may try to harm officers during the search.
 - 3) The affiant officer must give a statement showing a connection between the address in question and the criminal activity (e.g., the building owner states Jane Doe is the resident on record for apt. #5 at 1234 Smith St. and Jane Doe is the wife of suspect John Doe).
 - 4) The affiant officer must add the following waiver just above the area where the judge signs the warrant: "Furthermore, for good cause shown, I waive the statutory precondition for nonconsensual entry."
 - d. After review by a command officer (captain or above), contact the City Prosecutor. The City Prosecutor will contact a judge and arrange for a court reporter to record the proceedings.
 - 1) If other than normal business hours, contact the City Prosecutor through ECC.
 - e. All "No Knock" search warrants are high risk search warrants requiring the use of SWAT.

- 1) For all warrants that will be executed as “No Knock” warrants, the SWAT Commander or SWAT Coordinate must document on the Search Warrant Service Form 610, Risk Assessment Matrix the circumstances that make immediate entry necessary to avoid harm to persons rather than other tactics.

C. Supervisor's Responsibility:

1. Ensure a captain or above reviews every search warrant involving a residence, business, any type of structure where a person(s) is likely to be present, likely to involve forced entry or any search warrant containing an operational plan, before contacting the duty judge and/or City Prosecutor.
 - a. All other search warrants require a supervisory review only.
2. Complete a Search Warrant Service Form 610, Risk Assessment Matrix including the following information to determine if SWAT is needed to serve the search warrant:
 - a. The approximate age, gender, apparent medical condition, or other special circumstances of persons that the officers anticipate encountering during the execution of the warrant at the premises (e.g., children, elderly, dogs, etc.).
 - b. Any other special circumstances that increase the risk of serving the warrant such as dogs or barricades.
3. Have members of the affiant unit begin watching the premises a minimum of two hours immediately prior to serving the search warrant.
4. Determine how many officers it will take to safely enter the premises and conduct a thorough, controlled search. Limit the size of the search party to the number of personnel needed to carry out the search properly.
5. Obtain the aid of the SWAT Team in the service of high-risk search warrants.
 - a. A high-risk search warrant is one where the officers expect:
 - 1) Fortified locations.
 - 2) Armed subject.
 - 3) Subject has an outstanding warrant for Homicide, Rape, Felonious Assault, Aggravated Robbery, or Aggravated Assault.
 - 4) Any other situation where the potential for violence is great (No Knock search warrants).
 - b. When possible, submit requests to use SWAT through the SWAT Commander or SWAT Coordinator before preparing the search warrant.
 - c. When advance notice is not possible, notify the district commander or Night Chief (when during his tour of duty) for approval to request SWAT. Request SWAT by calling ECC.

- 1) ECC will use the standard SWAT notification procedure.
 - d. SWAT personnel will handle the entry phase of the search and secure the premises. The unit obtaining the search warrant is responsible for the actual search.
6. Contact the Asset Forfeiture Squad when expecting seizure of contraband, currency, or vehicles subject to forfeiture (see Procedure 12.735).
 7. Conduct a detailed briefing.
 - a. Include the use of charts, photographs, floor plans, etc., where necessary.
 - b. Assign specific duties to each individual.
 - c. Select a specific radio channel to use during service of the search warrant. Inform an ECC supervisor of this channel and the location of the warrant service.
 - d. Inform all officers involved of the type of warrant being served and the exact location and description of the residence or facility in question.
 - e. Describe the suspects in detail.
 - f. Assess doors for their locations and accessibility. Include their direction of opening, material construction, and locking devices.
 - g. Identify the best route for approaching the location.
 - h. Assess the types of weapons and fortification expected including possible booby traps.
 - i. Complete a detailed check-off list. The check off list will contain, but is not limited to, the following information:
 - Name and description of offender.
 - Criminal history.
 - Address and description of premises.
 - Phone number.
 - Type of vehicles, (QR/QD).
 - Weapons.
 - Employer's name and address.
 - Children (ages), girlfriend/wife.
 - Dogs, etc.
 - Type of door.
 - Officers needed to secure inside and outside of premises.
 - Check with other units and agencies.
 - Location of drugs.
 - Vest, weapons, flashlights.
 - Any additional items.

D. Gaining Entry:

1. A supervisor will be present on all search warrants including, when forced entry is needed or an occupied premise is being entered.
2. Secure the perimeter of the premises before entry. Have all doors and windows under observation.
3. All officers who are members of the team tasked with forcing entry to a residential or occupied premises and securing it shall be in uniform (Class A or Operational Uniform) and wearing body armor. Officers in plain clothes may enter the premises in an emergency to assist the entry team or once the premises is secured.
4. Upon exiting vehicles to execute a search warrant that involves forced entry to an occupied or residential premises, officers involved in securing the premises will activate their Body Worn Camera System.
5. Officers will clearly notify persons inside the search site of their presence and request admission.

Example: "Police officers, search warrant, open the door."

6. Use force to enter the premises only after waiting a reasonable amount of time for an occupant to open the door unless there are exigent circumstances or officers are serving a "No Knock" warrant.
 - a. A reasonable amount of time is that time necessary for an occupant to reach the door from the furthest part of the premises.
 - b. If, while waiting for the door to open, there is some sign the occupant is fleeing, fortifying their position, destroying evidence or contraband, or taking action that would jeopardize the safety of the officers, force open the door immediately.
 - c. Upon entry, have one officer continue to announce the identity and purpose of the entering officers.
 - 1) Officers not in uniform will display proper identification (e.g., badge, ID, etc.) when serving the search warrant.
 - 2) A uniformed officer of the local law enforcement agency will be present during the search.
7. The supervisor in charge will complete an after-action report when warrant service required forced entry.

E. Search Procedures:

1. The supervisor in charge of the search warrant scene will ensure officers make a security sweep of the entire premises immediately after entry.

2. Secure, search, and identify any occupants. After searching all the occupants for weapons, direct them to a previously searched area. Assign an officer to remain with the subjects.
 - a. Officer(s) will complete a Form 534, Contact Card, for all subjects on scene and check the "Other" box under the "Reason for Stop" section. Write "Search Warrant" in the Interview Information section on the back of the Form 534.
 3. The supervisor in charge will ensure an officer presents and explains the search warrant to the responsible occupant.
 4. Search the premises in a thorough, orderly fashion. Upon discovering an article subject to seizure, the finding officer will summon a witnessing officer. If practical, videotape or photograph the article in the location where officers found it.
 - a. Assign one person to collect, preserve, and document all items seized until possession is transferred to Court Property.
 - 1) A supervisor will witness the collecting and counting of currency and other valuables at the scene of the search warrant, absent exigent circumstances.
 - 2) The copy of the completed return portion of the search warrant **must** include the amount of currency and other valuables seized.
 - 3) In the event a supervisor is unable to witness the collecting and counting of currency and other valuables at the scene of the search warrant, the officer assigned to collect and count currency and other valuables will summon a witnessing officer to the scene who will verify the amount seized with his signature.
- F. Post-Search Requirements:
1. Properly secure the premises upon completion of the search.
 - a. Note the nature and extent of any damage caused during the entry and searching procedure. When applicable, prepare a Form 17 and a RMS Case Report.
 2. Officers taking property under the authority of a search warrant will:
 - a. Give the person from whom or from whose premises the property was taken a copy of the warrant and completed return portion of the search warrant as receipt for the property taken.
 - 1) Make the inventory in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken if they are present. If one is not present, make the inventory in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken.

- b. If the person is not present, leave the copy and return portion of the search warrant at the place from which the property was taken.
 - c. Promptly return the affidavit, the warrant itself, and the completed return to the issuing judge. Make the return to the judge assigned to Room A when the issuing judge is unavailable. The evidence taken in the search warrant must be available to the judge accepting the return if requested.
 - 1) Deliver the affidavit, warrant, and return to the Clerk of Courts after review by the judge accepting the return.
3. Forward a copy of **all** documents, photos, drawings, etc. regarding the search warrant to the district/section/unit designee responsible for entering search warrants into the Search Warrant Tracking System for entry.