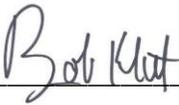


	<b>SAN MARCOS POLICE DEPARTMENT</b>	
	<b>Policy 7.5 Search Warrants</b>	
	<b>Effective Date:</b> September 6, 2019 <b>Revised Date:</b> June 22, 2020	<b>Replaces:</b> GO 208
	<b>Approved:</b> <div style="text-align: center;">             _____         </div>	
	<b>Chief of Police</b>	
<b>Reference:</b> TBP: 7.06		

**I. POLICY**

Both federal and state constitutions guarantee every person the right to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. United States Supreme Court decisions regarding search and seizure place the responsibility on the police to ensure that every person’s fourth amendment rights are protected.

Officers shall scrupulously observe constitutional guidelines when conducting searches, and they will always remain mindful of their lawful purpose. Unlawful searches can result in harm to members of the community, put officers at risk, and possibly damage the department’s image in the community.

Search warrants are one of the most valuable and powerful tools available to law-enforcement officers. Officers of this department shall have a thorough knowledge of the legal requirements involved in obtaining and executing search warrants.

**II. PURPOSE**

The purpose of this policy is to establish guidelines and procedures that 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/her to search for a particular property or thing and to seize the same and bring it before such magistrate, or commanding him/her 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 who will prepare, plan, and implement the search warrant.
- D. SWAT Commander: The officer responsible for planning and supervising tactical operations to include hostage rescue and other tasks requiring special weapons and tactically trained officers.

- E. Protective Sweep: A quick and limited search of premises incident to an arrest or service of a warrant performed in order to locate other persons inside who might pose a risk to the officers. Officers must be able to articulate a reasonable basis their safety concerns.
- F. Curtilage: Curtilage usually refers to the yard, garden, or any piece of ground that 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 (CCP) 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 specified places, things or persons, and seizure 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 or thing, or person, including documents, books, records, paper, electronic data or body fluids constituting evidence of a crime;
  - e. Criminal instruments;
  - f. Arms and munitions kept or prepared for insurrection or riot;
  - g. Gambling devices or equipment;
  - h. Obscene materials kept for commercial distribution;
  - i. Illegal drugs, controlled substances, precursors or drug paraphernalia;
  - j. Persons;
  - k. Contraband subject to civil forfeiture under CCP Ch. 59; or
  - l. A cellular telephone or wireless communications device seized incident to a person's arrest.
3. A search warrant may also be issued to search for and photograph a child who is the victim of certain offenses as specified in CCP Article 18.021.

##### **B. Federal Law**

1. The issue of federal warrants is determined under Title 18, Chapter 205 of the United States Code and Rule 41 of the Federal Rules of Criminal Procedure.
2. Local officers are encouraged to consult with a federal law enforcement officer or an Assistant US Attorney prior to obtaining a federal warrant.

#### **V. OBTAINING A SEARCH WARRANT**

- A. Prior to obtaining a search warrant, officers should consult a departmental supervisor for review of the probable cause and for approval to seek a search warrant. This review may be conducted by telephone if necessary.
- B. Affidavits
  - 1. To obtain a search warrant, an officer shall prepare an affidavit that carefully documents the specific facts that constitute probable cause to believe that specific evidence, contraband, fruits of a crime or persons may be found at a particular place.
  - 2. The accuracy of the affidavit is vital to the validity of the search warrant. CCP 18.01 requires officers to swear to the facts of the affidavit before a judge or magistrate.
  - 3. When determining whether or not to issue a warrant, the court considers only those facts presented in the affidavit. Officers should remain aware that conclusions and suspicions are not facts.
  - 4. Apart from the officer's personal knowledge or observations, facts may derive from the knowledge or observations of other law enforcement officers, a reliable informant or a credible witness.
  - 5. The affidavit shall include the following elements:
    - a. Description of the place to be searched;
    - b. Description of the item(s) to be seized;
    - c. Facts and circumstances that establish a probability that a search of the place described will yield the thing and/or person described.
    - d. If probable cause also exists that a person committed an offense, combination search and arrest warrants are permitted. The affidavit must allege the commission of a particular offense, list the elements of the offense and the Affiant's probable cause, backed up by articulable facts, that the person(s) committed that offense.
  - 6. If time and opportunity permit, the affidavit and warrant may be reviewed by the district attorney prior to presenting it to a magistrate.
- C. Language of the Warrant
  - 1. A warrant shall run in the name of "The State of Texas";
  - 2. A warrant shall identify, as near as may be, that which is to be seized and name or describe, as near as may be, the person, place or thing to be searched;
  - 3. A warrant shall command any peace officer of the proper county to search forthwith the person, place or thing named;
  - 4. A warrant shall be dated and signed by the magistrate and that magistrate's name shall appear in clearly legible handwriting or in typewritten form with the magistrate's signature.

## **VI. EXECUTING A SEARCH WARRANT**

- A. 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.

B. When a Search Warrant Must be Executed

1. An officer is required to execute a warrant within the limitations of time imposed by the magistrate or 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 anytime during the day or at night based on the following considerations:
  - a. The execution should occur when the property to be seized is believed to be present;
  - b. The execution should occur when the least resistance is expected, or when resistance can best be controlled;
  - c. Other such considerations of safety, success, and convenience as may be applicable; and
  - d. There are no time limits on the continuous search of a location once actual entry has been made.

C. Pre-warrant Briefing:

1. Prior to the execution of a search warrant, the lead officer will identify any high risk or threats to officers and will advise the supervisor of the existence of any potential threat factors. If necessary, the SWAT Commander or his designee will be consulted.
2. Prior to the execution of a search warrant, a meeting will be held of all participating officers where duties and responsibilities will be assigned. Personnel who are not present at this briefing will not actively assist in the actual entry and securing of the scene, though they may be called upon afterwards to assist in security, prisoner control or processing the scene.
3. A diagram of the location will be made during the briefing showing a layout of the premises and officers will be assigned to their positions for the entry to the location.
4. Officers who are serving the warrant will be made aware of any potential threats.
5. A sufficient number of officers will be assigned to execute the search warrant safely and to conduct a thorough search.
6. The supervisor will notify the police communications/dispatch of the location and approximate time of execution of the warrant.
7. Departmental approved raid jackets or other attire properly identifying the officer(s) as law enforcement officers will be worn by each plainclothes officer involved in the execution of the search warrant.
8. Body armor will be worn by each officer involved in the execution of the search warrant.
9. The requirements listed under this section do not apply to the execution of evidentiary search warrants for items already in police custody such as containers, vehicles, computers and cell phones.

D. 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.
  2. The lead detective shall make a final assessment of the accuracy of the warrant in relationship to the location to be searched.
  3. In most cases the lead officer shall do all of the following before entering the premises to be searched:
    - a. Officers must announce their presence as a law-enforcement officer.
    - b. Officers must announce that their purpose is to execute a search warrant.
    - c. Officers must wait a reasonable time either to be admitted or refused admission to the premises.
  4. When Entrance is Refused  
Officers who are refused entrance after a reasonable time may force their way into the premises using only that force which is applicable to the circumstances. "Reasonable time," in this context, depends on the circumstances. A refusal may be expressed or implied, including:
    - a. No one has admitted the officer within a time that a reasonable person would 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
    - a. 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 them to believe that an announcement would result in bodily harm either to the officer or to someone within the premises.
    - b. If circumstances require a no-knock or exigent entry, the first officer to cross the threshold into the premises shall announce that law-enforcement officers are executing a warrant. To ensure their own safety officers shall command the occupants to take appropriate action, such as "police, search warrant, get down."
    - c. No-knock warrants shall not be used solely for evidence preservation.
    - d. Exigent entries may be used to preserve life.
- E. Conduct of the Search

1. The supervisory officer shall ensure that a protective sweep of the site is performed immediately.
2. When the scene is secure, the occupant shall be given a copy of the search warrant but not the affidavit.
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. A search warrant will be executed and the search made only at the place or places described in the warrant.
5. The search may extend to all buildings or structures within the curtilage of the described place where the items sought may be kept.
  - a. A warrant describing the place to be searched as a limited portion of larger premises may not be extended to other, unnamed portions.
  - b. Vehicles located upon multi-unit dwelling premises, such as apartment complexes, will not be searched unless specifically named in the warrant. This does not apply to vehicles for which probable cause exists to believe that the vehicle contains contraband or evidentiary items.
  - c. The search is limited to discovering those items named in the warrant, and examining those places or things that could contain or conceal the items described in the warrant.
6. Items discovered during a lawful search, but not named in the search warrant may be seized if:
  - a. They were found in a place reasonably within the scope of the search; and
  - b. There is reason cause to believe they are stolen, or are evidence or instruments of a crime.
7. The search must cease when all the evidence being searched for is located.
8. 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 shall be made to guard the premises until it can be secured.
9. 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.
10. Currency taken as evidence shall be count verified by at least two officers and the chain of custody maintained as designated by department policy. Large amounts of currency which are impractical to accurately count at the scene may be secured and counted later at the police station or a financial institution.
11. 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 along with a copy of the search warrant.

F. Searches of Persons Found on Premises

1. A person's presence on the premises to be searched with a warrant does not, without more evidence than the person's mere presence, give rise to probable cause to arrest or search that person beyond a frisk for officer safety if there is reason to believe that the person is armed or dangerous.
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.
4. Any person(s) the officers develop reasonable suspicion to believe is armed or dangerous may be frisked.
5. The officer(s) may search persons found on the premises to prevent the disposal or concealment of any instruments, articles, or things particularly described in the warrant, if there is probable cause that the person(s) may have such items upon his person. In determining whether probable cause exists, officers will consider:
  - a. The nature and physical characteristics of the item sought;
  - b. The ease with which the item may be disposed of, if so concealed;
  - c. If true, the fact that the item has not yet been located upon the premises;  
and
  - d. The relationship of the person to the premises, including ownership, residence, frequenter, and to those in control of the premises.

G. High-Risk Warrant Execution

1. 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 expect they may meet armed resistance or other deadly force. This suspicion should be corroborated by intelligence information, for example, information from the offender's criminal history, informant or witness statements, history of location, or the detective's personal knowledge.
2. High-risk search warrants may utilize SWAT (or the appropriate tactical unit within the jurisdiction) for entry and the securing of the premises.
3. The supervisor in charge of executing the warrant will notify the SWAT Commander or his designee through the proper channels of any high-risk warrant situation.
4. Upon notification by any supervisor that SWAT may be needed to execute a warrant, the SWAT commander will consult with the supervisor and lead detective and proceed according to the SWAT unit policies and procedures.

## VII. RETURN OF THE SEARCH WARRANT

- A. An officer who has finished a search shall perform the following:
1. Make timely return of the warrant to the issuing magistrate.
  2. The return includes the following:

- a. The search warrant, noting the date of the execution on the back of the warrant or on a page attached.
- 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. Officers must provide a rigorous chain-of-custody procedure for all property seized. 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. Officers shall observe the property and evidence procedures as detailed in Policy 12.1 Evidence and Property.