

Procedure

3.1

**EFFECTIVE
DATE
8-1-04**

Eugene Police Department



Search Warrants

3.1.1 PURPOSE AND SCOPE

The authority for police officers to conduct searches is based on the United States and Oregon constitutions, Oregon Revised Statutes, and existing case law. We recognize and respect the rights of all individuals to be secure in their persons and property against unreasonable searches and seizures. We will exercise care to respect the personal and property rights of individuals when serving search warrants. Since officers conducting searches without a warrant bear the burden of proving that the search was reasonable, it is generally advisable to obtain a search warrant when time and circumstances permit.

PART I - Responsibilities and Procedures for All Personnel

- A. Authority
- B. Obtaining a warrant
- C. Serving the warrant
- D. Seizure of blood samples
- E. Seizure of other fluids
- F. Telephonic search warrants (Eugene Municipal Court)

PART II - Responsibilities and Procedures for Supervisors and Command Personnel

- A. Supervisor

3.1.2 RESPONSIBILITIES AND PROCEDURES ALL PERSONNEL

A. Authority

1. Searches must be conducted under one of the following authorities:
 - Consent
 - Incident to arrest
 - Probable cause and exigent circumstances
 - Pursuant to a lawfully obtained warrant
2. Searches may be conducted for any of the following:
 - Persons (including seizure of DNA samples)

- Evidence of a crime
 - Fruits of a crime
 - Instrumentalities of a crime
 - Contraband
 - Means of escape
3. You are expected to keep current on statutory and case law with respect to search and seizure, to guard against the suppression of valuable evidence.
 4. You have the authority to seize property:
 - which is obtained pursuant to a lawful search (see paragraph 3.1.2, A. 1 above);
 - for inventory purposes;
 - pursuant to a community caretaking function;
 - under authority of a court order;
 - which is contraband in plain view;
 - which is abandoned property; or
 - which is subject to civil forfeiture.
 5. Except in cases of fresh pursuit, consent, or when exigent circumstances exist, a search warrant will be obtained prior to making entry into premises to serve an arrest warrant, unless the subject of the warrant resides in those premises and there is probable cause to believe s/he is present at that time.

B. Obtaining a warrant

1. Inform your supervisor of your intent to apply for a search warrant.
2. Consult with the appropriate prosecutor regarding elements and language needed for the search warrant and affidavit.
3. Obtain a description of the items to be sought.
4. Obtain a legal description of the premises to be searched. Include address, color, and any distinctive features (e.g., number of levels, type of construction). If the warrant involves a vehicle, obtain the complete vehicle description, including license and VIN.

5. When dealing with premises, verify any facts that link your person or evidence with the premises (e.g., local computer records; DMV records; EWEB, Qwest, or other utility where subscriber information can be utilized).
6. Obtain as much information as possible about the physical layout of the place to be searched and background information on any persons likely to be present when the warrant is served.
7. Discuss any safety issues with a supervisor and evaluate risk factors to determine if SWAT service of the warrant may be appropriate. Complete a [Planned Operation Risk Matrix](#) form and follow procedures listed in *Procedure 5.9 - Special Investigations Unit* if the criteria listed in that policy are met.
8. Prepare the affidavit and the warrant, and review them with a supervisor and a Deputy District Attorney prior to presenting them to a judge. Discuss with the Deputy District Attorney issues regarding notice (i.e., “knock and announce”) required before entering the premises to serve the warrant.
9. Present two copies of the affidavit and at least three copies of the search warrant to the appropriate court judge. The judge will retain one signed copy of the warrant and one signed affidavit. You will retain the remaining signed copies of the warrant and the other signed affidavit. (The extra signed affidavit is for your records or may be attached to your report regarding the execution of the search warrant.) One copy of the warrant will be read to the occupant/defendant, and will stay with that person along with a list of the items seized. The final copy of the warrant will be submitted with the return of search warrant.

C. Serving the warrant

1. Coordinating Officer
 - a. The affiant will normally serve as the coordinating officer, unless another person is assigned to do so by a supervisor.
 - b. Ensure the Watch Commander and Communications Supervisor of the appropriate jurisdiction are aware of the location to be searched and the officers involved.
 - c. Coordinate the service of the warrant. After securing the premises, but prior to the actual search, ask subjects if there is any money or property of unusual value present and photograph the entire area to be searched in order to document the condition of items when police arrived.
 - d. Ensure that the warrant is read to the person in charge of the premises and give him/her a copy. If the premise is unoccupied, leave a copy of the warrant in a conspicuous place. (The affidavit is not part of the warrant.)

- e. Inventory all cash and property of unusual value. If not seized as evidence, return it to the custody of the owner. Have the owner sign the inventory listing, acknowledging return of the items.
 - f. Count substantial amounts of cash in the presence of the owner and another officer.
 - g. If the person in possession of valuables is to be arrested, that person is responsible to arrange for the safe storage of the property. Take any reasonable steps to comply with the wishes of the property owner.
 - h. If you discover valuables during the search of an unoccupied premise, take all reasonable steps necessary, including seizure of the property for safekeeping, to ensure its safety.
 - i. Photograph and document (via police report or memorandum) any damage caused by officers during service of the search warrant. Officers should take care to avoid damaging property whenever possible.
 - j. Photograph all areas searched to document the condition of items and property when the search is concluded.
 - k. Secure and compile reports by officers.
 - l. Return the search warrant within five days after service. A signed copy of the warrant along with an itemized list of the items seized during service of the warrant will accompany the return.
2. Evidence Officer
- a. Seize all items which are to be taken as evidence. Maintain custody and create a written record of the items and the location where they were found.
 - b. Whenever practical, ensure that each item to be seized is photographed as found, before it is moved.
 - c. Prepare a complete evidence report listing all items seized which will be the basis for the return of the search warrant. Give a copy of the evidence report to the person in charge of the premises. When premises are unoccupied, leave a copy of the evidence report with the copy of the warrant that you leave.
 - d. Mark, package, and submit the evidence.
3. Photographer
- a. Consider the desirability of videotaping the scene.

- b. Take video or photographs which depict the overall condition of each room prior to the search and after the search.
 - c. Videotape or photograph any property damage ensuing from entry or search.
 - d. When reasonable to do so, photograph each item to be seized in its original location prior to moving it.
4. Search Officer
- a. Search each room or area of the premises in a careful, thorough, and orderly manner.
 - b. Wear surgical gloves when necessary to protect evidence (e.g., latent prints) and/or for personal safety.
 - c. Notify the Photographer and Evidence Officer when you find an item to be seized.

D. Seizure of blood samples

1. You may draw blood after consent or with a search warrant.
 - a. First, attempt to obtain consent from the suspect, witnessed by some other person.
 - b. The County Health Department nurse is retained by contract with the District Attorney's Office and will respond only at their authorization.
 - c. The nurse supplies the seizure kit and will generally draw two specimens, one hour apart, to determine the dissipation rate. You must, prior to and between the two collections, remain with the suspect to prevent ingestion of substances which could alter test results.
 - d. If no breath test is given, mark the evidence sheet "No Breath Test Given."
 - e. Complete any applicable "Order for Blood Alcohol or Drug Level Test" forms if the seizure occurs in a medical care facility.
 - f. Refer also to Procedure 4.11 - *DUII Enforcement* for information regarding blood samples related to DUII enforcement.
2. Compelling a blood draw
 - a. With a search warrant, a County Health Nurse can draw blood, despite any objections by the medical facility, unless an attending physician determines that drawing blood will jeopardize the patient's medical condition.

- b. The warrant must be based upon probable cause for a crime (other than DUII) in which being under the influence of alcohol or a controlled substance is a material element.
3. The D.A.'s office will review all affidavits for search warrants to seize blood. There is a sample affidavit and search warrant available in the Violent Crimes Unit and the Watch Commander's Office.
4. Take custody of blood specimens and lodge them at ECU in accordance with ECU procedures. Do not expose samples to excessive heat (e.g., car heater, engine hood, direct sunlight).

E. Seizure of other fluids

Consult the Violent Crimes Unit Supervisor or D. A. Legal Advisor.

F. Telephonic search warrants (Eugene Municipal Court)

This procedure is for use in incidents involving violations of the Eugene Municipal Code related to prohibited noise when people in control of the involved premises do not consent to police entry or search of the property.

1. Inform your supervisor of your intent to apply for a warrant.
2. Prepare the application for a search warrant using the form provided by the City Prosecutor.
3. Upon completion of the application, contact the on-call City Prosecutor. Read the document to him/her, and get verbal authorization to contact the Municipal Court Judge.
4. Contact a judge (whose name is on the list provided by Municipal Court) by telephone and apply for the warrant.
 - a. Make sure the conversation is tape-recorded. We are responsible to make the recording, which must begin immediately upon contact with the judge.
 - b. After you explain your need for the warrant, the judge will place you under oath. Read the application to the judge, and s/he will make a determination if probable cause has been established.
 - c. If the judge authorizes a search warrant, you or the City Prosecutor will be given verbal authorization to prepare the search warrant using the form provided by the City Prosecutor.
 - d. There will be three copies of the warrant: one which is served, one for your reports, and one to be returned to the judge. The judge will sign the original warrant returned to him/her and include it in the court file.

5. Once the warrant has been authorized and completed, notify your supervisor and arrange for service of the warrant (refer to section 3.1.2, C, above.)
6. The search warrant, an inventory of items seized, the original tape recording, and a transcription of the telephone recording must be returned to the judge within 5 days following the execution of the warrant.
 - a. It is your responsibility to ensure the judge receives these items. You may ask for assistance from Court Liaison if you are unable to return them yourself.
 - b. Normally, the Patrol Division Administrative Aide will be available to transcribe the telephone recording.
7. Your police report package should include:
 - incident and/or custody report
 - details of the incident, including a list of evidence seized
 - the application for the search warrant
 - the search warrant
 - a copy of the transcription of the telephone conversation
8. A copy of the tape recording should be made and placed in evidence.
9. Route a copy of all completed reports and accompanying documents to the appropriate watch commander.

3.1.3 RESPONSIBILITIES AND PROCEDURES FOR SUPERVISORS AND COMMAND PERSONNEL

A. Supervisor

1. Read the affidavit for search warrant and verify probable cause and any information that links the person of interest to the property to be searched.
2. Ensure that the appropriate prosecuting attorney has been consulted.
3. Supervise the warrant execution. Designate the coordinating officer, photographer, evidence officer, and searching officer(s).
4. Consider the need for a SWAT team. Refer to factors outlined in *Policy 901 - Special Weapons and Tactics* in making that assessment, and ensure that a *Planned Operation Risk Assessment* form is completed if the criteria in that general order are met.
5. If not a high-risk warrant, arrange for an adequate number of officers to serve the warrant. Tell them their specific assignments.

6. Ensure participants wear protective body armor. Plainclothes officers should also wear police raid jackets and caps, unless circumstances preclude doing so.
7. Consider restricting radio traffic on the radio channel being used before serving the warrant. Clear the restriction as soon as operational conditions allow.
8. Ensure all needed reports are written, and together comprise a complete package.
9. If there are injuries or significant property damage, route memoranda and accompanying reports to division administration, Internal Affairs Coordinator, and Risk Management.