

Search Warrants

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT

SEARCH WARRANT & INFORMANT MANAGEMENT

SEARCH WARRANT

I. SEARCH WARRANT AND AFFIDAVIT- DEFINITIONS AND COMMENTS

A. Introduction- Assist police officers in the preparation of valid search warrants. Dealing with the service of warrants, informant motions, court proceedings and other related topics.

B. Search Warrant Defined

1. Form of Warrant
2. Statutory grounds for issuance
3. Magistrate defined

_____C. Affidavit Defined

1. Form and Contents of Affidavit

D. Jurisdiction – Including Out of County Search Warrants

E. Search Warrant in California for Crimes Committed Outside the State

F. Use of A Search Warrant to Serve an Arrest Warrant

G. Preference Given to Search Warrant

H. United States Supreme Court Decisions Governing Search Warrants

1. Illinois v. Gates – Totality of the Circumstances Test
2. United Stated v. Leon – Good Faith Exception
3. Franks v. Delaware – Traversal of Warrant

4. People v. Wilson – Presumption of Validity

I. Other Advantages of Search Warrant

1. Ramey Problems
2. Withdrawal of Consent
3. Keeping Informant Confidential
4. Officer Protection

J. Alternatives to a Search

Warrant

1. Probation
2. Parole Search
3. Consent
4. Exigent Circumstances
5. Inspections of Auto Repair Facility
6. Search of a Car
7. Search Following Arrest
8. Plain View

K. Use of Search Warrant for AIDS Blood Test

II. DESCRIBING THE PLACES, VEHICLES, AND PERSON(S) TO BE SEARCHED

A. Introduction

1. Description in General

2. Search of Premises

B. Describing Places – Address Known – Examples

1. House

2. Apartment

3. Store or Business

C. Describing Places – Address Unknown – Examples

D. “Special” Handling Places at or Within a Location

E. Describing Vehicles

1. General Description

2. Search Warrant for “Any Vehicle”

3. Seizure of the Vehicle

F. Describing Persons – Examples

G. Use of Photographs and Diagrams

H. Including Unique Features

I. Accuracy – Mistakes Do Not Necessarily Invalidate Search Warrant

J. Number of Places, Vehicles or Persons per Warrant

K. Searches of Other Than Places, Vehicles and Persons

L. “Newsroom” Searches

M. Officer of Attorney - Doctor - Psychotherapist - Clergyman

N. Telephone Records and Computer Records in Possession of
Foreign Corporations

O. Crime Scene Searches

P. Severability

Q. "Good Faith' Exception – Description

III. DESCRIBING THE PROPERTY AND PERSON(S) TO BE SEIZED

A. Introduction

B. Controlled Substances

1. Cocain Dealer

2. Heroin Dealer

3. Marijuana

4. Methamphetamine Dealer

5. Methamphetamine Laboratory

C. Bookmaking

D. Telephone Calls

1. In Affidavit or in Statement of Probable Cause

2. In Warrant and in Combined Warrant/ Affidavit Form

E. Stolen Property

F. Property Used to Commit Felony; Property Tending to Identify
Perpetrator

G. Bank Records

1. Customer Authorization

2. Administrative Subpoena or Summons

3. Search Warrant

4. Judicial Subpoena or Subpoena Duces Tecum

5. Police Request

6. Victimized Financial Institution Turns over Records

H. Phone Records

1. Unlisted Service
2. Telephone Records
3. Certification for Non-Disclosure
4. Out-of-State Telephone Companies

I. Dominion and Control Evidence

J. Credit Balance in Bank Accounts

K. "Peer Review" Medical Records

L. Pen Registration and Trap-and-Trace Devices

M. Credit Card Information

N. Records

O. Computer Services Records Involving Foreign Corporation

P. Computer Searches

1. Overview
2. Federal Cases
3. Describing the Hardware to be Searched
4. Describing the Data to be Seized
5. Searching the Computer

Q. Fraud Cases – Business "Permeated with Fraud"

R. Evidence of Sexual Exploitation of Children and/or Minors

S. Child Molestation Cases

T. Search Warrant to Seize a Person for Whom a Warrant of Arrest
Has Been Issued

U. "Good Faith" Exception – Descriptions

V Checklist

1. Be Specific
2. Be Thorough
3. Proofread
4. Include List of Items to be Seized

IV. STATEMENT OF PROBABLE CAUSE

A. Introduction

1. Use of Informants – Two Prong Test
2. Use of Informants – Totality of Circumstances Test

B. Affiant – Establishing Identity, Training and Experience

1. Narcotics
2. Burglary
3. Explosives

C. Establishing Credibility of Informants

1. Police Officers
2. Citizen Informants
3. Tested Reliable Informants
4. Untested Informants
5. Statements Against Penal Interest of Suspects and Accomplices
6. Informant Sworn Before Magistrate
7. Information about Informants Background and Motivation to Assist Police

8. Other Sources of Information – Official Channels

D. Establishing Factual Basis of Information – Personal Knowledge

1. Confidential Reliable Informant
2. Citizen Informant
3. Declaration Against Interest
4. Observations of the Affiant

E. Double Hearsay

F. Corroboration – Detailed Information; innocent Behavior as Corroboration

1. Use of Corroboration
2. Detailed Information

G. Staleness

1. General
2. Narcotics Cases
3. Special Fact Situations
4. Information as to Suspect's Residence
5. Specific Time Reference

H. Use of Police Reports as Exhibits in Affidavit

I. Sufficiency of Information

1. Narcotics Offenses
2. Controlled Delivery/Anticipatory Search Warrant
3. Narcotics Traffic
4. Growing Marijuana
5. Burglary, Robbery and Other Offenses – Search of
Residence

Suspect's

6. Airport Searches Involving Trained Dogs

7. Sex Offenses

J. Crime Scene Searches

1. Generally

2. Arson Scene Searches

Warrant K. Covert Searches Under Warrant – “Sneak-and Peak” Search

L. Justification for Answering the Telephone

1. Bookmaking

2. Narcotics Sales

V. NIGHTTIME SEARCHES

A. Introduction

B. “Good faith” Exception – Effect of Proposition 8

C. Requirement of Magistrate’s Direction on Warrant

D. Requirement of “Good cause” in Affidavit

1. Heroin Sales at Night

2. Suspect Arrested – Confederates Outstanding

3. Arrest of an Occupant – Avoiding All Night Vigil

4. Premises Unoccupied

5. Items “Perishable”

6. Item “Consumable”

7. Prevention of Additional Crimes

8. Suspect Has Discovered Investigation

9. Probable Disposal of Stolen Items

10. Officer's Safety – Public Safety

- E. Noting Nighttime Service Request on Search Warrant Forms
- F. Serving a Nighttime Warrant
- G. Search Commences Before 10:00 PM But Continues After
10:00 PM
- H. Exceptions

VI. INFORMANTS – PROTECTING IDENTITY

- A. Introduction
- B. Informant Disclosure – General Principles
 - 1. No Disclosure to Attack Probable Cause
 - 2. Lutenberger motions
 - a. Raise a Reasonable Doubt
 - b. Specify Information Sought
 - c. Demonstrate Materiality of Information Sought
 - 3. Disclose Informant Only if “Material”
 - 4. Burden of Proof on Defendant – Exonerating Evidence Only
- C. Defendant in Possession; Overwhelming Evidence of Guilt 00 No
Disclosure
- D. Lapse of Time Since Informant's Observation
- E. Informant Not Material on All Counts; Not Material for Possession
Only
- F. Court Proceedings – Open Court Hearing, In Camera Hearing
- G. Reducing Likelihood of Disclosure
- H. Compliance With Disclosure

I. Sealing the Affidavit to Protect Informant's Identity "Hobbs Warrant"

1. "Hobbs Warrant"

2. Court Order

J. "Crimestopper" Informants

K. Narcotics Surveillance Point Disclosure

VII. MECHANICS OF PREPARATION

A. Introduction

B. Preparing the Search Warrant and Affidavit

C. Presenting the Search Warrant and Affidavit to Magistrate

D. Making Copies Affidavit and Warrant Are Signed

1. Making Copies AFTER Affidavit and Warrant Are Signed

2. Making Copies BEFORE the Affidavit and Warrant Are Signed

E. Sealing the Affidavit

1. Sealing to Protect the Identity of an Informant

2. Sealing to Protect an Ongoing Investigation

F. Return of the Warrant

VIII. SEARCH WARRANT CHECKLIST – SEARCH WARRANT FORMAT

A. Introduction

B. Checklist

C. Search Warrant Format

IX. ORAL AFFIDAVITS

A. Introduction

1. Oral Affidavits
2. Telephonically Authorized Search Warrants
3. Facsimile Search Warrants
4. Electronic Mail Search Warrants
 - B. Oral Affidavits
 1. Oral Affidavit Procedures
 - C. Telephonic Authorized Search Warrants
 1. Telephonic Procedures
 2. Failure of Recording Equipment
 3. Helpful Hints
 - D. Facsimile Search Warrant – Penal Code Section 1526(b)(2)
 - E. Electronic Mail Search Warrant – Penal Code Section 1526(b)(2)

X. SERVICE OF THE SEARCH WARRANT

- A. Time Limit for Execution of Search Warrant
- B. Occupying Premises before Search
 1. Prior Illegal Entry – Effect Thereof
 - C. Approaching the Premises; No News Media Entry
 - D. Knock and Notice Requirements – Penal Code Section 1531
 1. General Rules
 2. Evidence is not Excluded Because of Knock-Notice Violation
 3. Compliance with Penal Code Section 1531
 4. Justification for Noncompliance with Penal Code Section 1531
 - a. Knock-Notice Cannot be Excused in Advance

- b. Standard for “No-Knock” Entry
 - c. Safety of Search Team or Others
 - d. Items Sought Will Be Destroyed or Disposed
5. Substantial Compliance
- a. Officer’s Purpose Clear
 - b. Running Footsteps – Destruction of Evidence
 - c. Occupants Arming Themselves
 - d. “Walled” Residence
6. Ruse to Get Door Open
7. Vacant Premises
8. Stores
9. Inner Doors
10. Occupant Cannot Resist Entry
- E. Use of Motorized Battering Ram – “The Tank”
 - F. Conduct the Search
- 1. Only Peace Officer May Serve Search Warrants
 - 2. After Entry is Made
 - 3. Questioning Occupants
 - 4. Conduct a Thorough Search
 - 5. Searching Container Within the Premises
 - 6. Using “Evidence Collectors”
 - 7. Leave an Inventory of Item Seized
 - 8. Restraining Orders
 - 9. Warrant Authorizes Single Search

10. Continuous Search

- G. Search of a Person
- H. Reading/Seizing Documents
- I. Seizure of Items Not Described in the Warrant

1. Contraband

2. Mere Evidence

3. Preparing a Second Warrant

4. Amending the Warrant

- J. “Flagrant Disregard” of Authorized Scope of Search
- K. Safes and Locked Containers
- L. Answering Phones
- M. Special Master
- N. Return to the Search Warrant
- O. Effect of Late and Deficient Returns
- P. Releasing Property Seized Pursuant to a Search Warrant
- Q. Warrantless Arrests While Serving Warrant

XI. COURT PROCEEDINGS IN SEARCH WARRANT CASES

- A. Proposition 8 – “Truth-In-Evidence”
- B. Standard of Review – “Totality of Circumstances Test”
- C. Penal Code Section 1538.5 Motions

1. Sole Suppression Remedy

2. Five Days Notice and Written Motion Required at Preliminary Hearing

3. Precise Grounds for Suppression Must be Specified

4. One Evidentiary Hearing Only
5. Application of 1538.5, Subd. (I)
6. Dismissal on Search and Seizure Grounds – Penal Code Section 995
 - D. Standing to Challenge Search
 - E. Prosecution Should not Concede Standing
 - F. Defendant’s Disclaimer/Abandonment on Issue of Standing
1. Disclaimer
2. Abandonment
 - G. Motion to Quash Search Warrant
 - H. Motion to Traverse Search Warrant
1. General Rules
2. Procedures – Franks v. Delaware
3. Luttenberger Motions
4. Responding to Defense Affidavits
5. Details Surrounding Informant’s Criminal Background/Defense Discovery
6. Summary of Traversal Procedure
 - I. Illegally Obtain Information in Affidavit
 - J. Good Faith Exception
 - K. Sealed Affidavits Pursuant to People v. Hobbs
 - L. Severability of Search Warrant
 - M. Penal Code Section 871.5 Review of Warrants Declared Invalid
 - N. “Technical” Mistakes – Clerical Errors
 - O. Prior Illegal Entry
 - P. Court Proceedings Involving Claims of Privilege

Q. A Summary of Procedure – Practice Tips

1. Penal Code Section 1538.5 Motions
2. Establish Standing
3. Quash and Traverse Motions
4. Standard Review
5. Good Faith Exception

R. Proceeding for Return of Property of Non-Defendant

XII. SEARCH WARRANT AND AFFIDAVIT EXAMPLES

- A. Fruits of the crime
 - B. Evidence
 - C. Instrumentalities of a crime
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