

SEARCH WARRANT-PATROL

Santa Clara County, Office of the Sheriff – 2270

CCN: 2270-24261-21-001 | POST Certification II | Reimbursable Plan IV | 8 Hours

STATEMENT OF PURPOSE AND COURSE OBJECTIVES:

The course will provide the trainee with the foundational knowledge on how to obtain a search warrant, what can be seized, and the essential elements of a well written warrant that will gain judicial approval.

COURSE OBJECTIVES:

Through group discussions and exercises, the trainee will:

1. Demonstrate knowledge of the components of a search warrant
2. Identify when a search warrant is needed
3. Identify operational concerns regarding search warrants
4. Demonstrate procedural knowledge of the search warrant process

Minimum standards of performance shall be tested by an instructor observing the trainee during their performance of each exercise. If the trainee does not meet minimum standards, as established by the presenter, remediation will be provided until the standard is met.

EXPANDED COURSE OUTLINE

I. INTRODUCTION

- a. Instructor introduction
- b. Course objectives and overview

II. SEARCH WARRANT COMPONENTS

- a. Search Warrant defined (1523 PC)
- b. Why are search warrants necessary?
 - i. 4th Amendment of the Constitution
- c. When can you search without a search warrant?
 - i. Probation, parole, consent, etc.
- d. Examples of times a search warrant is required
- e. Common reasons search warrants are not written.
- f. Searches with a warrant versus without a warrant
 - i. Legal advantages of obtaining a warrant
 - ii. Searches with a warrant are presumed lawful
 - iii. Burden is placed on defense to prove invalid
 - iv. You can search the entire premise

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- g. Statutory grounds for issuance (1524 PC)
- h. Probable cause for search warrant versus probable cause for arrest: Can you have one without the other?
- i. Hours warrants can be served - Nighttime service
 - i. Normal hours of service are 7:00am-10:00 pm.
 - ii. How to articulate the necessity for night service
 - iii. Advantages of nighttime service
- j. Eight things that **MUST** appear on a search warrant (1529 and 1533 PC.)
 - i. Names of all the affiants
 - ii. Statutory grounds for issuance (Penal Code 1524)
 - iii. Description of the places and/or persons to be searched
 - iv. Description of the things or property to be seized
 - v. Indication by the magistrate if night service is authorized
 - vi. County of issuance
 - vii. Magistrate's signature
 - viii. Date issued
- k. Components of a search warrant
 - i. Search Warrant
 - ii. Affidavit
 - iii. Probable Cause Statement
 - iv. Search Warrant Return

III. PREPARING A SEARCH WARRANT

- a. Nexus between crime and location to be searched
 - i. How to articulate the nexus in the affidavit /probable cause
 - ii. Visual confirmation/multiple sources
- b. Describing location to be searched
 - i. Elements of a good legal description
 - ii. Describe location so non-involved deputy/officer could locate
 - iii. Using other sources (photos, google maps, etc.) if needed
- c. Describing property to be searched
 - i. Requirement to describe property with specificity
 - ii. How to meet “reasonable specificity” standard
 - iii. Describing property when exact the description isn’t known
- d. Requesting of specific orders
 - i. Delay notification
 - ii. Order of custodian’s declaration
 - iii. Order of production of records

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- iv. Order of timely compliance with the warrant
- e. Hero sheet
 - i. Formal education
 - ii. Police academy training
 - iii. Specialty assignments held
 - iv. Advanced officer training (POST classes)
 - v. Years of experience
- f. Expertise, Training, and Experience
 - i. Canned expertise language “Based on my training and experience”
 - ii. The use of canned language to save time writing your warrant
 - iii. Proofreading canned language to confirm that it applies to your current warrant
 - iv. Experience vs. the experience of others you have spoken to
 - v. Expertise can be gained by your own personal experience
 - vi. Expertise can be gained by consulting with officers/experts
- g. Case Summary and probable cause
 - i. Detail investigation and events in chronological order
 - ii. Be thorough while still being concise
 - iii. Every item must be justified and supported in the affidavit
 - iv. Double check addresses to make sure they are correct
 - v. If cutting/pasting, make sure to check text for errors
- h. Review of search warrant by a supervisor or peers
- i. Review of search warrant by District Attorney
 - i. While not required by law, it is the procedure required by the Presiding Judge of Santa Clara County
 - ii. Upon review, the District Attorney will ensure the warrant is legally sound, but will not provide advice on case
- j. Presenting the search warrant and affidavit to the Judge via email
 - i. Email Magistrate a copy of signed search warrant documents
 - ii. Include name of DA who reviewed the search warrant
 - iii. After-hours procedures
 - iv. Include “URGENT” in title of email if the warrant is time sensitive
- k. Common issues with search warrants
 - i. Lacking details
 - ii. Spelling and grammar errors
 - iii. Spacing and font
 - iv. Lacking enough probable cause

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IV. EXECUTION OF SEARCH WARRANT AND RETURN

- a. Time limits for service
 - i. Warrant must be executed within ten days of being signed
 - ii. Weekends and holidays are included
- b. Operation Planning
 - i. Pre-operation surveillance
 - ii. Briefing considerations
 - iii. Documenting property seized
 - iv. Advantages of using one finder
 - v. Property receipts
 - vi. Only leaving a copy of the warrant face page, not the affidavit / probable cause
- c. Taking pre and post search photographs
 - i. Documents condition of location looked when you arrived and when you left
 - ii. Liability claims against the Sheriff's Office
- d. Seizing of property listed on warrant
 - i. Leaving a receipt for property seized (1535 PC)
 - ii. Photographing items in place prior to seizing
- e. Discovering other contraband during search (Plain view)
 - i. Seizing obvious contraband
 - ii. Seizing contraband from other cases
 - iii. Articulating why items are contraband
 - iv. "Piggyback" warrants
- f. Time limits for return
 - i. Warrant must be returned within ten days of being signed
 - ii. Search warrant returns are no longer required to be signed by a Judge
 - iii. File original signed search warrant document along with a search warrant return to get a search warrant number

V. SPECIAL CIRCUMSTANCES

- a. Sealing Search Warrants
 - i. Hobbs (Informants)
 - ii. Night service
 - iii. CA Rule of court 2.550
- b. Special Masters: Warrants for the records of the clergy, attorneys, and physicians may require a special master to execute

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VI. CALIFORNIA ELECTRONIC COMMUNICATIONS PRIVACY ACT: SB 178 (CAL ECPA)

- a. Definitions
 - i. Authorized Possessor
 - ii. Electronic communication
 - iii. Electronic communication service
 - iv. Electronic device
 - v. Electronic device information
 - vi. Electronic information
 - vii. Government entity
 - viii. Service provider
- b. Restrictions placed on government entities by CAL ECPA Act
 - i. Shall not compel information from service provider
 - ii. Shall not compel information from person of possessor
 - iii. Shall not access device by physical interaction
- c. Exceptions to restrictions place on government entities: Electronic COMMUNICATION information.
 - i. Pursuant to a Search Warrant
 - ii. Pursuant to a wiretap
 - iii. Pursuant to an order for electronic reader records
 - iv. Pursuant to a subpoena
 - v. Pursuant to a pen register
- d. Exceptions to restrictions place on government entities: Electronic DEVICE information.
 - i. Pursuant to a Search Warrant
 - ii. Pursuant to a wiretap
 - iii. With specific consent of authorized possessor
 - iv. With specific consent of owner when device is stolen
 - v. When government entity believes device is stolen
 - vi. When device is in possession of inmate
 - vii. When device is seized from possessor who is on parole
 - viii. When device is seized from possessor on probation with
 - ix. Specific search terms concerning electronic devices
 - x. In response to a 911 call from the device
- e. Electronic device Search Warrant specifics
 - i. Shall describe with particularity

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1. Information to be seized
 2. Appropriate and reasonable time periods
 3. Targeted individuals or accounts
 4. Applications or services
 5. Types of information
- ii. Unrelated information must be sealed
 - iii. Notice of search must be given to owner within ten days;
Extensions up to 90 days allowed

VII. PRACTICAL EXERCISE

- a. Search Warrant Scenario
 - i. Example of an investigation involving a search warrant
 - ii. Step by step explanation from the start of the patrol incident to the completion of a search warrant
- b. Scenario Video: Car Stop example
 - i. Does the crime fall within the parameters of 1524 PC?
 - ii. Can a nexus be shown between the crime, location, and suspect?
 - iii. Is there identifiable property that can be articulated in the warrant?
- c. Group exercise
 - i. Break into 3 groups
 1. Group 1: Search warrant and affidavit
 2. Group 2: Hero page
 3. Group 3: Probable cause statement
 4. Group presentation and discussion

VIII. CLOSING

- a. Review
- b. Questions and Answers
- c. Resources provided
 - i. Search warrant examples located on the shared drive
- d. Course Evaluations