

CITY OF ANDERSON POLICE DEPARTMENT

Anderson, South Carolina

DIRECTIVE TYPE General Order	EFFECTIVE DATE September 11, 2020	NUMBER 115
SUBJECT REVISED Search Warrants / Obtaining		
This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this agency for non-judicial administrative action in accordance with the laws governing employee discipline		
REFERENCE	AMENDS/SUPERSEDES All Others	
DISTRIBUTION All Personnel	RE-EVALUATION DATE Annual	NO. PAGES 5

- I. PURPOSE:** It is the purpose of this policy to provide guidelines for obtaining search warrants.
- II. POLICY:** The search warrant is one of the more powerful and valuable tools in the law enforcement arsenal. While the process of applying for and obtaining a search warrant should be familiar to most officers, there are many technical and legal pitfalls that can invalidate a search warrant, lead to the suppression of evidence or dismissal of cases, and have liability implications for involved officers. Therefore, it is the policy of the Department that all officers have a sound knowledge of the legal requirements associated with obtaining a search warrant in order to prevent suppression of evidence, support the Constitutional rights of citizens and to maintain public confidence in this department's mandate to carry out the police function in an ethical and legal manner.
- III. DEFINITION: Search Warrant:** A written order, in the name of the people, signed by a magistrate or other judicial authority, directing a peace officer to search for specified items of evidence and bring it before the magistrate.

IV. PROCEDURES: Legal Requirements for a Search Warrant

- A. The Fourth Amendment to the U.S. Constitution prohibits unreasonable searches. Officers conducting searches without a warrant—such as those noted below, bear the burden of proving that the search was reasonable. Therefore, officers should consider obtaining a search warrant whenever time and circumstances permit. Some exceptions to the search warrant requirement include the following.
- a. **Searches Incident to Arrest:** Searches of a person or the area within the immediate control of a person who has been lawfully arrested are permitted to secure weapons or evidence of a crime.
 - b. **Emergencies:** Officers may conduct searches to prevent the imminent destruction of evidence or when they believe that a person is in need of immediate assistance under life-threatening conditions, when immediate action is necessary to protect the public from harm or when, for example, an officer encounters a homicide scene and needs to search for additional victims, protect vital evidence or pursue the perpetrator.
 - c. **Vehicle Search:** A motor vehicle and containers found within may be searched when probable cause exists to believe that the vehicle may reasonably contain contraband or the fruits or instrumentalities of a crime.
 - d. **Consent Searches:** A search may be conducted pursuant to consent without a warrant and without probable cause to obtain a warrant. The consent must be voluntary, freely, and intelligently given by an appropriate party and the search must be limited to the terms of the consent. Written consent / audio and video consent should be sought whenever reasonably possible.

B. Legal Basis for Seeking a Warrant

- a. In order to obtain a search warrant, an officer must be able to show probable cause to believe that specific evidence, contraband, or fruits of a crime may be found at a particular location.
- b. Specific facts establishing probable cause shall be set forth with clarity and specificity. Officers shall not rely solely upon personal opinion or unauthenticated third-party information or hearsay. Such facts may be based on personal observation/knowledge of the officer, or information from a reliable source.
- c. When informants are used—particularly confidential informants—the reliability of the informant and information provided shall be specified. Whenever possible, officers shall corroborate informant information.

C. Affidavit Preparation

- a. An affidavit supporting application for a search warrant shall be prepared on the designated agency form. The accuracy of the affidavit is vital to the validity of the search warrant; thus, officers shall ensure that the following information is clearly and completely specified.
- b. **Offense:** The offense shall be described with reference to the criminal code section where possible.
- c. **Place or Thing to be Searched** The place or thing to be searched shall be described with specificity, and officers shall ensure that the warrant includes the specific reference(s). Where premises are to be searched, references should include:
 - i. street number and apartment number if appropriate;
 - ii. physical description of the premises;
 - iii. legal description of the premises
 - iv. name of owner or occupant;
 - v. geographical location of the property;
 - vi. map coordinates or distances from given reference points; and
 - vii. photographs, maps, or diagrams that help to specify the location in question.
- d. **Scope of the Search:** Only those things described in the search warrant can be seized. Therefore, the affidavit shall specify, and officers shall ensure that the warrant includes the following:
 - i. All areas that officers desire to search shall be designated. In cases where officers wish to conduct a complete search of a home and its surroundings, the affidavit should specify a “premises” search and its “curtilage” and should identify any outbuildings such as garages, tool sheds or barns, where appropriate.
 - ii. Motor vehicles known to be on the premises that may be searched should be specified.
- e. Searches (other than frisks for weapons) of specific persons on the premises shall be referenced in the affidavit by name if possible.
- f. The specific items to be searched for shall be detailed. Where the item may be dismantled (e.g. firearms), the warrant should authorize search for parts, pieces, or components of that item.
- g. Officers anticipating search of computers and related high-technology equipment shall consult a designated expert for appropriate language to use in the affidavit and procedures for seizure of hardware and software.

- D. **Time and Method of Search** A search warrant may be served at any time of the day or night as long as the affidavit provides good cause and permission is granted in the warrant.
- E. Anticipatory search warrants may be sought when it can be shown that the evidence in question will be at a specific location at some time in the near future.
- F. Officers may request a "no knock and announce" provision in the warrant when they have reason to believe that adherence to the knock-and-announce rule would endanger their safety or the safety of others, would enable wanted persons to escape or would likely result in the destruction of evidence before entry can be made. No Knock warrants must be approved by **Chief of Police** or designee.

NOTE: The Supreme Court of South Carolina

RE: Issuance of No-knock Search Warrants by Circuit and Summary Court Judges

ORDER

Magistrates issue the majority of search warrants in South Carolina. A recent survey of magistrates revealed that most do not understand the gravity of no-knock warrants and do not discern the heightened requirements for issuing a no-knock warrant. It further appears that no-knock search warrants are routinely issued upon request without further inquiry. In recognition of the dangers that the execution of no-knock warrants present to law enforcement and members of the public, and in order to ensure that these warrants are issued based upon the proper constitutional and statutory criteria,

I FIND it necessary to address the issuance of no-knock search warrants by circuit and summary court judges statewide.

Pursuant to Article V, Section 4 of the South Carolina Constitution,

IT IS ORDERED that a moratorium upon the issuance of no-knock warrants by all circuit and summary court judges of this state take effect immediately and remain in effect until instruction is provided to circuit and summary court judges statewide as to the criteria to be used to determine whether a requested no-knock warrant should be issued. This instruction will be provided by the South Carolina Judicial Branch.

The provisions of this order are effective immediately and remain in effect unless amended or revoked by subsequent order of the Chief Justice.

A "no-knock" warrant is one that, regardless of whether it contains the precise phrase "no-knock," allows government officials to enter a dwelling or other building without complying with the traditional requirement of the federal Fourth Amendment that officials "knock and announce" their presence prior to entering. See e.g., *Wilson v. Arkansas*, 514 U.S. 927 (1995).

s/Donald W. Beatty
Donald W. Beatty
Chief Justice of South Carolina

Columbia, South Carolina
July 10, 2020

- G. Review of the Warrant:** Officers shall review search warrants issued by judicial authorities to ensure that they include all pertinent information set forth in the affidavit accurately and completely, and that the warrant has been properly signed. Officers shall not attempt to serve any warrant that is known to contain substantive or administrative errors.
- H. Return on the Warrant:** Officers shall observe statutory and administrative requirements regarding return on the warrant to include providing a receipt to the proper person for property taken, retention and security of property taken, and return of the warrant and delivery of the property inventory to the appropriate judicial authority within specified time limits.
- I. Recording:** A record shall be maintained of all warrants issued to this agency and actions taken in response to each.
- J. Liaison with the Prosecutor's Office:** Officers seeking warrants in unusual situations or where the seriousness, nature or legal complexity of the case dictates should consider reviewing the case with the prosecutor's office prior to seeking a search warrant.

By order of:



Jim Stewart, Chief of Police

9-11-20
Date