

Search Warrants

323.1 PURPOSE AND SCOPE

It is the policy of the Newark Police Department to accurately gather information leading to the identification of locations and persons that will be subject to search warrant service. This policy encompasses the proper authoring and service of the warrant, in compliance with state law.

323.2 DEFINITIONS

Search warrant as defined by the California Penal Code §1523. A search warrant is an order in writing, in the name of the people, signed by a magistrate, directed to a peace officer, commanding him or her to search for a person or persons, a thing or things, or personal property, and, in the case of a thing or things or personal property, brings same before the magistrate. California Penal Code §1534 defines that a search warrant shall be executed and returned within 10 days after the date of issuance. A warrant executed within the 10-day period shall be deemed to have been timely executed and no further showing of timeliness need be made. After the expiration of 10 days, the warrant, unless executed, is void.

323.3 ELEMENTS OF A SEARCH WARRANT

- (a) Warrant: A search warrant is a court order directing officers to search a certain person, place, or thing for specific property. Note that because a warrant is a court order, officers must execute it.
- (b) Affidavit: A search warrant affidavit is a document signed under penalty of perjury that contains
 - 1. the facts establishing probable cause, and
 - 2. certain technical information required by law.
- (c) Property inventory and Return of Service: A return and inventory must be filed with the court within 10 days after the warrant is issued.

323.4 AFFIDAVIT PURPOSE

The purpose of this policy is to establish an accurate and uniform procedure for gathering and reporting information used in the search warrant affidavit and to specify mandatory supervisory review prior to the submission of the affidavit to a magistrate and prior to the service of the warrant.

323.5 PROCEDURE

323.5.1 PRIOR TO JUDICIAL REVIEW

This procedure will apply to all search warrants authored by Newark Police Personnel whether or not the location to be searched is within the City of Newark. Prior to judicial review, a Newark Police Department supervisor will review the checklist, affidavit and warrant, and either approve

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or disapprove the sufficiency of the information. If, in the opinion of the supervisor, the information is insufficient, the author will provide additional information that meets the sufficiency requirement. In the absence of sufficient information the warrant affidavit will not be presented to a magistrate for approval. While conducting his/her review, the supervisor shall not only evaluate the technical completeness of the affidavit, but shall constantly consider its necessity and relevancy in light of the mission of the Newark Police Department.

323.5.2 AFTER JUDICIAL REVIEW AND PRIOR TO SERVICE

After a Newark Police Supervisor approves the checklist and warrant, and a magistrate issues a warrant, the Affiant or other police personnel will contact the supervisor in charge at the time of actual execution of the warrant. That supervisor will review the checklist, warrant, and any other pertinent information, including verbal updates. If, in the supervisor's opinion, the information is still sufficient for warrant service, he/she will approve service. If current information renders the information insufficient, service will not be approved until such time as sufficient information is presented. Prior to the service of a search warrant the supervising Commander shall be notified.

323.5.3 PHOTOS

Photos should be taken "before and after" the service of a search warrant when safe to do so. These photos will be retained for administrative purposes. Photos taken as evidence will be processed as outlined in the Property and Evidence Manual.

After the search warrant is served, the checklist will be forwarded to the supervising Commander of the Affiant's respective division for review. If necessary, any follow-up action or activity will be assigned to the Affiant and/or the officer in charge of the warrant service.

323.5.4 NOTIFICATION OF DIVISION COMMANDER

The Division Commander will be immediately notified, through the Chain of Command, of any special circumstances, including the following:

- (a) Service at the wrong location
- (b) Property damage or injury
- (c) Use of the SWAT Team or special equipment
- (d) Any potential civil or criminal liability

323.6 SEARCH WARRANT CHECKLIST FORM

The search warrant checklist form will be provided with the proposed search warrant for supervisor review. The checklist will be signed both by the author of the search warrant and the reviewing supervisor. The checklist will be filed with the original incident report accompanying the search warrant.

Refer to Appendix 1 for the Search Warrant Checklist form.