

# BERKELEY POLICE DEPARTMENT

DATE ISSUED: May 27, 2005

GENERAL ORDER S-6

SUBJECT: SEARCH WARRANTS

## PURPOSE

- 1 - The purpose of this General Order is to establish policies and procedures regarding the preparation and execution of search warrants.

## DEFINITION

- 2 - A search warrant is a legal order, signed by a magistrate, allowing the search of a specified person and/or place. A search warrant consists of three parts -- the affidavit to support the issuance of the search warrant; the actual warrant, which is a court order to perform a specific search, and the return of service, which is a receipt for all items seized during the course of the search.

## POLICY

- 3 - It is the policy of the Berkeley Police Department that all search warrants be obtained and served in compliance with prescribed procedures. Detailed guidelines and instructions for obtaining and processing all search warrants are contained in designated chapters in both the Special Enforcement Unit Procedural Manual and the Detective Bureau Manual. It is the policy of the Berkeley Police Department to videotape or photograph structures (i.e., residences, apartments, businesses, etc.) to document the condition of the structure before and after the service of these types of search warrants.

## LEGAL

- 4 - Per Penal Code Section 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 to search for personal property, and bring it before the magistrate."
  - (a) Property seized must be subject to seizure (1524 PC). Items seized must be stolen or embezzled property, contraband or evidence of a crime.
  - (b) The property sought must be described with particularity.
- 5 - Penal Code Section 1531 allows the officer to "break open any outer door or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant if, after notice of his authority and purpose, he is refused admittance."
- 6 - Unless the search warrant is authorized for night service by a magistrate, the warrant shall only be served between the hours of 0700 to 2200 hours.
- 7 - Penal Code Section 1535 requires a detailed receipt be provided for the property

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seized pursuant to the search warrant.

- 8 - If the videotape/photographs are to be used as evidence in the criminal prosecution, judicial approval for videotaping/photographing must be obtained in the search warrant prior to the execution of the warrant.

### PRELIMINARY PROCEDURES

- 9 - The "case officer" is responsible for coordinating the investigation which relates to the search warrant. Generally, the case officer is the one who has prepared the affidavit and obtained the warrant.
- 10 - Prior to any briefing or service of a search warrant, the case officer should prepare an operation plan, including personnel and equipment assignments, strategies and tactics for search and entry, and emergency/contingency plans.
- 11 - The case officer shall review the plan with a supervisory officer, obtaining approval before proceeding. A supervisor should be present during the briefing and actual warrant service.
- 12 - The case officer is responsible for notifying the Communications Center and the Patrol Division Watch Commander prior to serving the search warrant.
  - (a) If a warrant is to be served in another jurisdiction, the Watch Commander for that agency should also be notified.
- 13 - A briefing with all personnel involved in the actual search process shall be conducted by the case officer. This review shall address the overall operations plan.

### SEARCH PROCEDURES

- 14 - The on-scene supervisor is responsible for directing the efforts of all personnel involved during the actual service of the search warrant, insuring adherence to the guidelines contained in the aforementioned procedural manuals.
  - (a) If there is no supervisor present on the scene, the case officer assumes the supervisory responsibilities delineated in this order.
- 15 - The supervisor is responsible for determining the manner in which entry itself is to be effected, including all aspects involved in "knock and announce," and "no knock" search warrant services.
  - (a) The supervisor also has the responsibility of making the determination of when forced entry should be attempted given the totality of the circumstance involving the specific search warrant.

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- 16 - The ultimate goal behind every search is to locate all possible items of evidence, contraband, stolen or embezzled property.
  - (a) During all searches, it is essential to keep in mind that no evidence is so important as to unnecessarily warrant injury and/or death of a human being.
- 17 - Searches should be conducted in a thorough, organized and systematic manner. Focus should be on leaving nothing undiscovered within the limit/scope sanctioned by the warrant, **without causing unnecessary damage to the location or property.**
- 18 - Immediately upon entry, the entire premises are to be secured, moving all occupants within the specified location into a central area. No occupant shall be left unattended during service of the search warrant.
  - (a) The on-scene supervisor shall determine the extent of the personal search conducted on each occupant present during the search warrant service.
    - (i) The case officer, whenever possible, should be the "designated finder" in the searching process. Other officers may be assigned to assist the designated finder in this search system. Conformity and accountability are the primary reasons for this process.
  - (b) It is the responsibility of the on-scene supervisor to insure specific personnel assignments have been made relative to rooms or areas to be searched. The supervisor shall document the locations searched by assigned personnel, referencing this information under the assigned case number.
  - (c) After entering the structure to be searched the person assigned to videotape/photograph the service of the search warrant is responsible for filming the condition of the premises both prior to and after the search.
- 19 - The on-scene supervisor shall insure any damage to property incurred during service of the search warrant is repaired or secured in compliance with the mandates set forth in General Order C-16.
- 20 - The on-scene supervisor shall insure that a copy of the search warrant and handwritten inventory is given to the subject of the search if that person is present. If no one is present during the search, he/she shall insure that a copy of this information is left at the search location.
  - (a) The case officer shall insure the search warrant, affidavit and return of service are completed and processed back to the designated court within the time frames mandated by the Penal Code.

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- 21- At the conclusion of the service of the search warrant, the case officer is responsible for insuring that the videotape/photographs of the event have been marked with the appropriate case number and placed in the property room, if they are to be utilized as evidence. Otherwise, the videotape/photographs shall be stored with the case file in Special Enforcement Unit, Detective Division, or Traffic Division for at least one year.

References: Detective Bureau Procedural Manual  
Special Enforcement Unit Procedural Manual  
General Order C-16  
Training and Information Bulletin No. 124