

Search Warrants

506.1 VERSION

Review Date	Effective Date	Approving Authority
02/25/19	07/09/18	Eric D. English, Chief of Police

506.2 POLICY AND PURPOSE

The purpose of this policy is to detail responsibilities, procedures, and considerations in the execution of search warrants. The described approach of executing a search warrant is intended to result in a fruitful search which withstands the rigors of court, as well as to uphold the rights of citizens. It is the policy of the Harrisonburg Police Department to provide techniques to accomplish a thorough and legal search, observe the constitutional rights of the person(s) the warrant is being served upon, minimize the level of intrusion experienced by those who are having their premises searched, provide for the highest degree of safety for all persons concerned and establish a record of the entire search warrant execution process.

506.3 ACCOUNTABILITY STATEMENT

All employees are expected to fully comply with the guidelines and timelines set forth in this policy. Responsibility rests with the supervisor to ensure that any violations of policy are investigated and appropriate training, counseling and/or disciplinary action is initiated. This directive is for internal use only, and does not enlarge an employee's civil liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violation of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

506.4 PROCEDURES

Officers should receive authorization from a supervisor before preparing a search warrant application. Once authorization is received, the officer will prepare the affidavit and search warrant, consulting with the applicable prosecuting attorney as needed. The officer will also perform a risk assessment with his/her supervisor to determine the level of risk associated with the proposed warrant. Refer to Operations Planning and Deconfliction Policy.

Under review and control of a supervisor, the investigating officer should have responsibility for the execution of the warrant. The lead officer should:

- Ensure the accuracy of the warrant.
- Consider deconfliction of any search warrant (refer to the Operations Planning and Deconfliction Policy).
- Conduct the briefing prior to the execution.
- Comply with all legal requirements related to search warrants.
- Ensure proper documentation of all pertinent facts during the execution.

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506.5 PRELIMINARY CONSIDERATIONS

506.5.1 PREPARATION

The following factors shall be recognized in the preparation of search warrants:

- (a) Probable cause to support the search or arrest, including relevant dates and times
- (b) A clear explanation of the affiant's training, experience and relevant education
- (c) A nexus between the place to be searched and the persons or items central to the investigation. The facts supporting this nexus should be clear and current. For example, the affidavit shall explain why there is probable cause to believe that a particular person is currently present at a particular location or that the items sought are present at a particular location
- (d) Full disclosure of known or suspected residents at the involved location and any indication of separate living spaces at the involved location. For example, it should be disclosed that several people may be renting bedrooms at a single location, even if the exact location of the rooms is not known
- (e) A specific description of the location to be searched, including photographs of the location, if reasonably available
- (f) A sufficient description of the items to be seized
- (g) The search warrant must state the crime for which the search warrant is being obtained

506.5.2 VERIFICATION

The lead detective/officer or the detective/officer preparing the search warrant should personally observe the site of the search before a warrant is obtained. Reasonable measures should be taken to establish the ownership, occupancy, and interior and exterior description of the search site.

506.5.3 PROMPTNESS IN EXECUTION

Warrants shall be served forthwith and as soon as practicable, but no more than 15 days after being obtained. Prompt execution will decrease the possibility that the target of the search will be aware of the warrant's existence and will prevent the warrant from becoming stale due to passage of time and possible loss of probable cause. There may be an exception if circumstances indicate that a reasonable delay in serving the warrant is appropriate.

506.5.4 PRESENCE OF UNIFORMED OFFICER

Search teams should include at least one uniformed officer while executing a search warrant.

506.5.5 NOTIFICATIONS

Supervisors shall make the following notifications:

- (a) Requests for assistance from the SWAT Team will be made to the appropriate Commander. The appropriate Commander will notify the Special Operations Bureau Commander to evaluate the utilization of the SWAT team.

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- (b) When feasible, the appropriate Division Commander, when on-duty, or the Duty Officer should be advised of every search warrant that will be executed. Requests for assistance from uniformed officers shall be made during this contact.
- (c) The Emergency Communications Center supervisor should be contacted and advised of all pending search warrant executions. The supervisor should coordinate with the Emergency Communications Center supervisor to ensure a clear channel during the warrant execution until the search site is secured, if required or warranted.

506.6 BRIEFING

The supervisor, lead detective/officer or other designee should conduct the briefing prior to execution with all officers of the search team present. The following shall be presented at the briefing:

- (a) Review of site characteristics (ie security measures)
- (b) Description of potential occupants and any associated dangers they may pose
- (c) Description of items sought at the search site and any indication of their possible locations
- (d) Assignment of responsibilities for members of the search team
- (e) Review of facts of the case
- (f) Previous calls for service
- (g) Animals at the residence
- (h) Medical plan
- (i) Contingencies

506.7 CONDUCT IMMEDIATELY PRIOR TO ENTRY

506.7.1 RECORDING

A member of the search team should record the entire execution of a search warrant when practical. Officers equipped with BWC's will operate in accordance with the Audio/Video Recorders Policy.

506.7.2 ANNOUNCEMENT OF PURPOSE AND AUTHORITY

"Knock and Announce":

The lead detective/officer, a member of the SWAT Team or a uniformed officer shall notify persons inside the search site of the team's presence, and shall announce, in a voice loud enough to be heard inside the search site, that they are with the Harrisonburg Police Department and they have a warrant to search the premises.

The amount of time police must wait to enter after knocking depends on the totality of the circumstances (U.S. v. Banks 2003). If items listed on the warrant are readily disposable, the search team shall delay entry for a sufficient amount of time proportionate to the circumstances such as:

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- (a) Size of dwelling
- (b) Location of subjects
- (c) Time of day, etc.

If the items listed on the warrant are not readily disposable, the search team shall delay entry for a reasonable amount of time following the announcement, unless exigent circumstances exist.

The delay requirement is waived if officers gain entry by consent.

"No Knock":

The announcement of authority and purpose is not required whenever there is reasonable suspicion to believe that such announcement will cause jeopardy to the search teams or others, or the items listed in the warrant could be destroyed if an announcement is made. When such information is known at the time the affidavit supporting the warrant is drafted, the information should be entered as part of the affidavit. Factors that will contribute to reasonable suspicion to believe that safety is endangered or destruction is imminent, if an announcement is made, are:

- (a) Reasonable suspicion that an occupant of the premises is armed and dangerous, or
- (b) Reasonable suspicion that an occupant has a history of violence involving threats or attacks upon any individual, or
- (c) Reasonable suspicion that an occupant would intend to obstruct searches by destroying seizable items following an announcement of authority and purpose, or
- (d) Reasonable suspicion that some occupants would be endangered by other occupants if announcement of authority and purpose is made.

When information, as indicated above, is developed at the time of entry, immediate entry is justified for reasons of safety and security.

506.8 ENTRY

Whenever possible, premises shall be entered in a courteous and non-destructive manner. No forced entry shall be initiated unless reasonably necessary.

A copy of the search warrant, with a copy of the affidavit attached, shall be served on the appropriate person located at the search site. In the absence of persons at the site, a copy of the warrant and affidavit shall be placed in view at the site unless the search warrant is sealed by order of the court.

506.9 PERSONS WITHIN THE PREMISES

506.9.1 PERMISSIBLE SEARCH OF PERSONS

Mere presence at a search site is not a factor which gives sufficient reason to search a person within the premises. In order for the search to be valid, the detective/officer must articulate facts or circumstances within the search warrant affidavit which provide probable cause to support the

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action taken. The affidavit must identify the persons to be searched by name and the basis for such search or the search warrant includes all persons found on said premises.

506.9.2 ARRESTS

Probable cause to arrest a person at the search site may arise during the execution of a search warrant. In that event, a search incidental to that arrest and independent of the warrant may be conducted.

506.9.3 PERMISSIBLE FRISK OF PERSONS

Any person within the premises at the time the warrant is executed or any person that voluntarily enters the premises after the search has commenced may be frisked, if the detective/officer reasonably suspects that such person has a concealed weapon or dangerous instrument. In order for the frisk to be proper, the detective/officer must be able to articulate facts or circumstances which provide reasonable suspicion to support the action taken.

506.9.4 RESTRICTING MOVEMENT OF PERSONS

Restrictions may be placed on the movement of any person at the search site. This restriction is essential to prevent interference with the search and to safeguard the search team and other persons involved. The restriction shall be limited to the time needed to ensure security. Persons not under arrest or detained should be permitted to leave the premises as soon as practical.

506.10 SEIZURE OF ITEMS IN PLAIN VIEW

If contraband items are found in plain view, but not listed in the search warrant, they may be seized when the item could logically be seen within the scope of the warrant, in an area controlled by the search warrant. If new items are to be searched based on the plain view seizure, a new warrant shall be obtained to continue the expanded scope.

506.11 ACTIONS AFTER SEARCH

506.11.1 PROTECTING DAMAGED PROPERTY

If damage occurs during entry, a supervisor at the scene shall evaluate the need to ensure the protection of the search site.

506.11.2 WARRANT RETURN

The lead officer shall return the warrant to the appropriate court as soon as practical, within the three days according to Virginia Code Section §19.2-57. A copy of the list of items seized shall be sworn to under oath, and such fact shall be stated in the inventory sheet before return to the Court. If nothing is seized, a statement to that effect shall be filed with the Clerk of Circuit Court of the jurisdiction where it was seized within the 3-day requirement.

The supervisor shall ensure that all affidavits, warrants, receipts and returns, regardless of any associated cases, are filed with the appropriate court as soon as reasonably possible, but in any event no later than any date specified on the warrant.

A copy of the search warrant will be turned into the Professional Standards Unit (for structures).

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506.11.3 RETURN OF NON-CONTRABAND ITEMS

Whenever non-contraband items seized during the execution of a warrant are no longer needed for prosecution, they may be returned to the proper person, with authority of the Commonwealth's Attorney.