

MISSOULA POLICE DEPARTMENT POLICY MANUAL



<i>Subject:</i> OBTAINING SEARCH WARRANTS		
<i>Effective Date:</i> 6/8/2017	<i>Original Date:</i> 12/01/2007	<i>Next Review:</i> 6/8/2018
<i>Chapter</i> 6	<i>Policy #</i> 6.50	<i>Distribution:</i>
<i>References:</i> <i>Search and Seizure General</i>		

I. Purpose

It is the purpose of this policy to provide guidelines for obtaining & executing 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 this agency 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 agency's mandate to carry out the police function in an ethical and legal manner.

III. Definitions

Search Warrant: A written order, in the name of the state, signed by a magistrate or other judicial authority, authorizing law enforcement officers to conduct a search of a place (such as a house or vehicle) or person and also to seize evidence.

Probable Cause: A reasonable ground in fact and circumstance for a belief in the existence of certain circumstances (as that an offense has been or is being committed, that a person is guilty of an offense, that a particular search will uncover contraband, that an item to be seized is in a particular place, or that a specific fact or cause of action exists)

46-5-220. Authority to issue search warrant. (1) A peace officer, the city or county attorney, or the attorney general may apply for a search warrant.

- (2) A search warrant may be issued by:
 - (a) a city or municipal court judge or justice of the peace within the judge's geographical jurisdiction; or
 - (b) a district court judge within this state.

46-5-221. Grounds for search warrant. A judge shall issue a search warrant to a person upon application, in writing or by telephone, made under oath or affirmation, that:

- (1) states facts sufficient to support probable cause to believe that an offense has been committed;
- (2) states facts sufficient to support probable cause to believe that evidence, contraband, or persons connected with the offense may be found;
- (3) particularly describes the place, object, or persons to be searched; and
- (4) particularly describes who or what is to be seized.

46-5-222. Search warrants issued by telephone.

(1) Whenever an application for a search warrant is made by telephone, the applicant shall, in addition to the requirements contained in [46-5-221](#), state reasons to justify immediate issuance of a search warrant.

(2) All testimony given over the telephone that is intended to support an application for a search warrant must be given on oath or affirmation and must identify the person testifying. For the purpose of this section, the judge is authorized to administer an oath or affirmation by telephone.

(3) (a) Sworn or affirmed testimony given over the telephone must be electronically recorded by the judge or a peace officer on a recording device in the custody of the judge or peace officer when the application is made.

(b) If the recording is made by the judge, the recording must be retained in the court records and must be transcribed verbatim as soon as possible after the application is made. The recording must include the time and date it was recorded.

(c) If the recording is made by a peace officer, the recording must be transcribed verbatim as soon as possible after the application for the warrant is made. The recording must contain the time and date when it was recorded. The peace officer making the recording shall, as soon as possible, provide the judge with the original recording and a transcription of the recording so that the judge may expeditiously verify the accuracy of the transcription. The original recording must be retained in the court records. The peace officer making the recording shall secure a copy of the recording and transcription of the recording in the same manner as other evidence is secured.

(4) If the judge approves a warrant over the telephone, the peace officer serving the warrant shall sign the search warrant in the officer's own name and in the judge's name. The peace officer signing the judge's name shall initial the judge's name indicating the signature was authorized by the judge but signed by the officer.

(5) Any search warrant issued by telephone must be signed by the issuing judge or the judge's successor as soon as possible after it has been issued.

IV. Procedures

A. Legal Requirements for a Search Warrant

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.

1. **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.
2. **Exigent Circumstances**
Officers may conduct searches 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
3. **Plain View**
First, the item to be seized must be in plain view and its incriminating character must also be "immediately apparent". Second, not only must the officer be lawfully located in a place from which the object can be plainly seen, but he or she must also have a lawful right of access to the object itself. (*Don't have to open a car door to get to it or enter a house to gain access to the item.*)
4. **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 should be sought whenever reasonably possible.

B. Legal Basis for Seeking a Warrant

1. 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.
2. 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:

- a. personal observation/knowledge of the officer;
or
 - b. information from a reliable source.
3. 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

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.

Officers shall also use the Municipal Court Search Warrant template for the Municipal Court, the Justice Court template for a Justice of the Peace and a District Court template for a District Court Judge. However, if a District Court search warrant is completed and a District Court Judge is unavailable, a Justice of the Peace may sign the warrant. If this occurs, ensure the judge changes the signature block to reflect it was signed by a Justice of the Peace.

The Affidavit in Support of Telephonic Search Warrant and the Search Warrant forms issued by the Montana Attorney General's Office will be used to apply for and serve a warrant to obtain a blood sample when it is appropriate to do so for DUI or related offenses.

1. **Offense**

The offense shall be described with reference to the criminal code section where possible.

2. **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, the references should include:

- a. street number and apartment number if appropriate;
- b. physical description of the premises;
- c. legal description of the premises;
- d. name of owner or occupant;
- e. geographical location of the property
- f. map coordinates or distances from given reference points; and
- g. photographs, maps or diagrams that help to specify the location in question.

3. 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:

- a. 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.
- b. Motor vehicles known to be on the premises that may be searched should be specified.
- c. 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.
- d. 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.

4. Time and Method of Search

- a. A search warrant may be served at any time of the day or night within ten (10) days from time of issuance.
- b. All necessary and reasonable force may be used to serve a search warrant or to affect an entry into any building, property, or object to serve a search warrant.
- c. The person serving the search warrant may reasonably detain and search any person on the premises being searched at the time of the search:
 - 1) For self-protection
 - 2) To prevent the disposal or concealment of any evidence, contraband or persons particularly described in the warrant.
- d. Officers may request a “quick entry” 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. (*Without this provision, officers must knock on the door announcing their presence and wait a reasonable amount of time prior to making entry to the residence*).

- e. All search warrants for an occupied structure or occupied vehicle will have an operational plan completed. The Operational Plan will include a risk assessment and be completed prior to the execution of the warrant. The operational plan and risk assessment will be reviewed and approved by a supervisor.

See Appendix

- f. Officers will notify supervisors of their intent to execute search warrants, except in the case of a standard telephonic DUI search warrant for blood referred to in section IV. C. above. Prior supervisory approval is necessary.

5. **Miscellaneous**

- a. The wording of "Place to be Searched" and "Items to be Seized" must be the same on both the Application for Search Warrant and the Search Warrant itself.
- b. Applicants shall make two copies of the Application for Search Warrant and have the Judge sign both. One is kept by the Court and the other is for Police Records and should be attached to the report.
- c. Applicants shall make three copies of the Search Warrant and have the Judge sign all three. One for the court, one for the Defendant and the last one for Police Records (attached to the report).

D. Review of the Warrant

Unless prior approval is obtained from a supervisor or the search warrant is a standard telephonic DUI search warrant for blood referred to in section IV. C. above, the County or City Attorney's office shall, if possible, review all search warrants prior to presentation to a judge.

Officers shall not attempt to serve any warrant that is known to contain substantive or administrative errors.

E. Return on the Warrant

If the warrant is not served within ten days then it must be returned to the Judge and specify on its face, "Not Served".

Once the search is complete, a Property Receipt must be completed detailing what evidence was seized. A copy of this receipt should be given to the defendant or left at the property if the owner is not present.

A Warrant Return needs to be completed detailing the evidence seized. Officers can attach a copy of the Property Receipt or type a list of the evidence seized. The Warrant Return needs to be received by the Judge "within a reasonable amount of time" (no later than ten days).

Applicant shall make two copies of the Warrant Return and have the Judge sign both (one to be kept by the Judge and one for Police Records). The return must be made before the judge who issued the warrant or, if the judge is absent or unavailable, before the nearest available judge.

F. Location of forms and templates

The required forms and document templates can be located on department computers in the "Templates" file. These forms include separate search warrant templates for both vehicles and premises in all three courts. Templates for the Warrant Return, Operation Plan and Risk Assessment are also available.

G. Telephonic Search Warrants

Prior to calling the judge, the application and search warrant will be completed.

By following the above search warrant SOP, MCA 46-5-222 allows for approval of search warrants over the phone, as long as the following conditions are met:

1. The judge must place the applicant under oath.
2. The application must be read verbatim and recorded by the judge.
3. The recording must be retained in the court records and be transcribed as soon as possible after the application is made. Since the warrant application is transcribed verbatim, the applicant should rehearse it prior to calling the judge.
4. The recording must include the time and date it was recorded.
5. If the judge approves the application, then the officer signs the warrant in both the judge and officer's name. The officer initials by the judge's name indicating it was the officer signing.
6. The judge, or judge's successor, must sign the warrant as soon as possible after it has been issued.

H. MPD Vehicle Storage Building

Generally, vehicles seized as evidence, or to be searched, will be towed to the MPD Vehicle Storage Building. The tow will be done by the currently contracted tow company. In certain circumstances, it may be more appropriate to tow a vehicle to a different location for processing, such as the Montana State Crime Lab. This must be approved by a supervisor.

Nobody is allowed in the Vehicle Storage Building unless authorized with card reader access, or accompanied by an authorized MPD employee. An authorized MPD employee must be present with visitors at all times. Anyone entering the Vehicle Storage Building accompanied by an authorized MPD employee must sign in and sign out at the point of entry.

Vehicles will remain in the MPD Vehicle Storage Building until it is no longer required that we retain the vehicle.

Once it is determine the MPD no longer needs to retain a vehicle, the lead investigator or designee is responsible for the following:

1. Immediately, make a reasonable attempt, to notify the registered owner that the vehicle is being released to our contracted tow company and explain they may have storage fees from the tow company.
2. Arrange with contracted tow company to meet their representative and release the vehicle. Provide the tow company representative with a completed "Vehicle Release Form.
3. Mail the MPD "Vehicle Release" form letter to the registered owner and send a copy to Records to be attached to the report.