



FROSTBURG CITY POLICE DEPARTMENT

37 BROADWAY, FROSTBURG, MD 21532 • 301-689-3000 (P) 301-687-0642 (F)

Kevin G. Grove
Commissioner of Public Safety

Nicholas J. Costello
Chief of Police

Search and Seizure Warrants

I. Purpose:

The purpose of this policy is to provide guidelines consistent with law and best practices for search and seizure warrants.

II. Definitions:

- A. **“No Knock Search Warrant”** means a Search Warrant that authorizes the executing law enforcement officer to enter a building, apartment, premises, place, or thing to be searched without giving notice of the officer's authority or purpose.
- B. **“Police Officer”** means a person holding certification from the Maryland Police Training Commission as a police officer **and** who is employed as such.
- C. **“Search Warrant” or “Search and Seizure Warrant”** means a warrant issued by a judge with proper jurisdiction that authorizes the executing Police Officer to search a person, place, or thing, and to seize evidence therefrom.

III. Policy:

- A. A Police Officer of the Frostburg City Police Department will obtain and execute Search and Seizure Warrants in accordance with law and the procedures outlined here.
 - 1. This policy recognizes that the laws of search and seizure are regularly evolving and interpreted by the courts, with new holdings, various fact patterns, and a preference for analyzing each case under the totality of its own unique circumstances leaving some matters open to interpretation and unclear until ruled upon by a court of competent jurisdiction. Officers should keep up-to-date on search and seizure matters through training and departmental updates and should consult with the Allegany County State’s Attorney’s Office when reasonably possible to seek guidance on unclear matters. Deliberate, wanton, and bad faith violations of the laws of search and seizure are unequivocally prohibited by this policy; innocent, unclear, and minor or harmless technical errors are best remedied through the court system or new training programs. *See Comment 2 below.*



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- B.** A Police Officer of the Frostburg City Police Department executing a Search and Seizure Warrant shall do so with the utmost professionalism, having respect toward persons and their property.

IV. Procedures:

A. Search Warrants Generally. A Police Officer may request a Search Warrant by providing an application and affidavit, along with a draft search warrant, to a judge of the District Court of Maryland or to a judge of the Circuit Court.

1. When time, safety, and circumstances permit, the Police Officer should first receive approval to proceed with obtaining or executing a Search Warrant from a supervising Police Officer, who will review the request.
2. Whenever reasonably possible, the supervisor should be at the scene when a Search Warrant is executed.

B. Grounds for Search Warrant. A Circuit Court judge or District Court judge may issue a search warrant whenever it appears to the judge, by application that there is probable cause to believe that:

1. a misdemeanor or felony is being committed by a person or in a building, apartment, premises, place, or thing within the territorial jurisdiction of the judge; or
2. property subject to seizure under the criminal laws of the State is on the person or in or on the building, apartment, premises, place, or thing.

C. Application. An application for a search warrant shall be:

1. in writing;
2. signed, dated, and sworn to by the applicant; and
3. accompanied by an affidavit that:
 - i. sets forth the basis for probable cause; and
 - ii. contains facts within the personal knowledge of the affiant that there is probable cause.



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D. Submission of Application. An application for a search warrant may be submitted to a judge:

1. by in-person delivery of the application, the affidavit, and a proposed search warrant;
2. by secure fax, if a complete and printable image of the application, the affidavit, and a proposed search warrant are submitted; or
3. by secure electronic mail, if a complete and printable image of the application, the affidavit, and a proposed search warrant are submitted.

E. Communication with Judge. The applicant and the judge may converse about the search warrant application:

1. in person;
2. via telephone; or
3. via video.

F. Issuance. The judge may issue the search warrant:

1. by signing the search warrant, indicating the date and time of issuance on the search warrant, and physically delivering the signed and dated search warrant, the application, and the affidavit to the applicant;
2. by signing the search warrant, writing the date and time of issuance on the search warrant, and sending complete and printable images of the signed and dated search warrant, the application, and the affidavit to the applicant by secure fax; or
3. by signing the search warrant, either electronically or in writing, indicating the date and time of issuance on the search warrant, and sending complete and printable images of the signed and dated search warrant, the application, and the affidavit to the applicant by secure electronic mail.

G. No Knock Search Warrant. If (1) approved in writing by a police supervisor and the State's Attorney, an application for a search warrant may contain a request that the search warrant be a no-knock search warrant, on the ground that there is reasonable suspicion to



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believe that, without the authorization the life or safety of the executing officer or another person may be endangered.

1. An application for a no-knock search warrant under this subparagraph shall contain:
 - i. a description of the evidence in support of the application;
 - ii. an explanation of the investigative activities that have been undertaken and the information that has been gathered to support the request for a no-knock search warrant;
 - iii. an explanation of why the affiant is unable to detain the suspect or search the premises using other, less invasive methods;
 - iv. acknowledgment that any police officers who will execute the search warrant have successfully completed the same training in breach and call-out entry procedures as SWAT team members;
 - v. a statement as to whether the search warrant can effectively be executed during daylight hours and, if not, what facts or circumstances preclude effective execution in daylight hours; and
 - vi. a list of any additional occupants of the premises by age and gender, as well as an indication as to whether any individuals with cognitive or physical disabilities or pets reside at the premises, if known.
2. A no-knock search warrant shall be executed between 8:00 a.m. and 7:00 p.m., absent exigent circumstances.

H. Search Warrant Execution.

1. **10 Day Period.** The search and seizure under the authority of a search warrant shall be made within 10 calendar days after the day that the search warrant is issued. After the expiration of the 10-day period, the search warrant is void.
2. **Planning Briefing.** The Police Officer responsible for leading the execution of a Search Warrant should, with the on-duty police supervisor, hold a planning briefing with the team executing the search warrant. The briefing should be of the size and scope reasonably appropriate to the anticipated search. The lead Police Officer should assess risk factors such as occupants, animals, weapons, history of violence or resisting, team size, time of day, type of crime under investigation, access points, and coordination with other agencies as needed.



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3. **Identifiable Officers Required.** While executing a search warrant, a Police Officer shall be clearly recognizable and identifiable as a Police Officer, wearing a uniform, badge, and tag bearing the name and identification number of the Police Officer.
 4. **Knock and Announce Period.** Unless executing a no-knock search warrant, a Police Officer shall allow a minimum of 20 seconds for the occupants of a residence to respond and open the door before the police officer attempts to enter the residence, absent exigent circumstances.
 5. **Tactic Restrictions.** A Police Officer may not use flashbang, stun, distraction, or other similar military-style devices when executing a search warrant, absent exigent circumstances.
 6. **Provide Copy of Warrant.** The executing Police Officer shall give a copy of the search warrant, the application, and the affidavit to an authorized occupant of the premises searched or leave a copy of the search warrant, the application, and the affidavit at the premises searched.
 7. **Complete Search Warrant Return.** The executing Police Officer shall prepare a detailed search warrant return which shall include the date and time of the execution of the search warrant.
 - i. The executing law enforcement officer shall:
 - a. give a copy of the search warrant return to an authorized occupant of the premises searched or leave a copy of the return at the premises searched; and
 - b. file a copy of the search warrant return with the court in person, by secure fax, or by secure electronic mail.
- I. **Property Release.** Property seized under a search warrant issued may be returned to the person to whom the property belongs without the necessity of that person bringing an action for replevin or any other legal proceeding if:
1. the criminal case in which the property was seized is disposed of because of a nolle prosequi, dismissal, or acquittal;
 2. the State does not appeal the criminal case in which the property was seized; or
 3. the time for appeal has expired.



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J. Sealing Order. A Circuit Court judge or District Court judge, on a finding of good cause, may order that an affidavit presented in support of a search and seizure warrant be sealed for a period not exceeding 30 days.

1. A finding of good cause required by paragraph (1) of this subsection is established by evidence that:
 - i. the criminal investigation to which the affidavit is related is of a continuing nature and likely to yield further information that could be of use in prosecuting alleged criminal activities; and
 - ii. the failure to maintain the confidentiality of the investigation would:
 - a. jeopardize the use of information already obtained in the investigation;
 - b. impair the continuation of the investigation; or
 - c. jeopardize the safety of a source of information.
 - d. A court may grant one 30-day extension of the time that an affidavit presented in support of a search and seizure warrant is to remain sealed if:
 - e. law enforcement provides continued evidence as described in paragraph (2) of this subsection; and
 - f. the court makes a finding of good cause based on the evidence.
 - iii. After the order sealing the affidavit expires, the affidavit shall be:
 - a. unsealed; and
 - b. delivered within 15 days:
 - i. to the person from whom the property was taken; or
 - ii. if that person is not on the premises at the time of delivery, to the person apparently in charge of the premises from which the property was taken.

Comments:

Comment 1. Much of the language and organization in this document is taken directly from Md. Code Ann., Crim. Proc. § 1-203, which describes in detail the procedures for obtaining and executing a search warrant.

Comment 2. The laws of Search and Seizure are governed by the United States Constitution and the Maryland Declaration of Rights, as interpreted, from time to time, by the courts. Upholding the Constitution of the United States and the Constitution and Laws of the State of Maryland are part of a Police Officer's sworn duties. In practice, Fourth Amendment jurisprudence is widely regarded in the legal community as inconsistent and unclear in application. That, combined with the judicial tendency to analyze searches and seizures on a case-by-case basis with the unique



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facts and circumstances of each case and thorough judicial analysis by courts and professional jurists playing an important role in determining how the laws of search and seizure are to be applied and interpreted leaves it unjust to penalize a Police Officer acting in good faith for a technical, unclear, or minor and harmless error.