




Clayton County Police Department PROCEDURES

Subject Legal Process		Procedure # D38	
Authorizing Signature 	Effective 07-30-2021	<input type="checkbox"/> New <input checked="" type="checkbox"/> Amended <input type="checkbox"/> Rescinds	Total Pages 5

This section addresses areas of departmental procedure and discretion in the execution and recording of the legal process. This policy is designed to ensure sufficiency of information, accuracy, timeliness, and accessibility in the delivery of legal process services. Because the law relating to legal process is subject to change at any time, officers will be responsible for keeping themselves current on the laws of arrest and search and seizure.

I. GOOD FAITH

Whenever a sworn law enforcement officer in the Department executes any phase of the legal process function, that officer will do so in good faith and pursuant to all federal, state, and local laws, and in accordance with Departmental procedures and policies.

II. TYPES OF LEGAL PROCESS

A. Criminal Process

Criminal process is defined as those services performed by law enforcement officers that are sanctioned by the courts and by the law which supports the judicial function relating to criminal matters. These services may include executing arrest warrants, search warrants, and affidavits, administrative warrants, or any other type of service ordered by

the courts which directly results from a criminal matter. Only sworn law enforcement officers shall execute arrest or search warrants.

B. Civil Process

Civil process is defined as those services performed by law enforcement officers that are sanctioned by the courts and by the law which supports the judicial function relating to civil matters. The Clayton County Sheriff's Office supports the judicial system by the service of civil process.

III. EXECUTION OF CRIMINAL PROCESS

A. Criminal Arrest Warrants

1. Only sworn and certified law enforcement officers will have the authority, pursuant to state law, to arrest an individual pursuant to a valid criminal arrest warrant.
2. Criminal arrest warrants may not be executed by citizens or civilian Departmental employees.
3. Wanted Persons not arrested shall be entered on the Georgia Crime Information Center (GCIC) and National Crime Information Center (NCIC).

B. Search Warrants/Affidavits

1. Only sworn and certified law enforcement officers will search a person, property, or premises pursuant to a valid search warrant.
2. Once a law enforcement officer has obtained probable cause to search a person, property, or premise, and a warrant is required by law, the officer should obtain a search warrant by completing an affidavit and presenting it to the appropriate judicial officer.
3. Upon a judicial officer signing the search warrant, it will be the responsibility of the officer to execute the warrant as soon as practicably possible as prescribed by law. Even though a search warrant should be executed as soon as practicably possible, certain situations may cause a delay in the execution of the search warrant.

If a delay is necessary, approval of the officer's supervisor is necessary and, in no event, will a search warrant be executed after ten (10) days from the date of issuance.

4. Return on the Warrant

Officers shall observe statutory and administrative requirements regarding return on the warrant to include providing a receipt to the proper person for property taken, retention and security of property taken, and return of the warrant and timely delivery of the property inventory to the appropriate judicial authority.

- a. Pursuant to O.C.G.A. § 17-5-25, If the warrant is executed, a duplicate copy shall be left with any person from whom any instruments, articles, or things are seized; or, if no person is available, the copy shall be left in a conspicuous place on the premises from which the instruments, articles, or things were seized.
- b. Pursuant to O.C.G.A. § 17-5-29, A written return of all instruments, articles, or things seized shall be made without unnecessary delay before the judicial officer named in the warrant or before any court of competent jurisdiction. An inventory of any instruments, articles, or things seized shall be filed with the return and signed under oath by the officer executing the warrant.
- c. It shall be the policy of the Clayton County Police Department to have the written return of the warrant and the property inventory completed and submitted to the appropriate judicial authority within three (3) business days, after the execution of such search warrant. Saturdays, Sundays, or any other day observed as a legal holiday by the County shall not be used in computing the three (3) day filing period.

C. Requirements

1. A record system is maintained for criminal arrest warrants on a twenty-four (24) hour basis. This information is accessible through these sources:
 - a. Clayton County Sheriff's Office
 - b. GCIC or NCIC

- c. Clayton County E-911 Communications Center
2. Information regarding each item of all warrants is to be recorded and shall include the following elements:
 - a. Date and time received
 - b. Type of process
 - c. Nature of document
 - d. Source of document
 - e. Name of complainant and defendant
 - f. Officer involved
 - g. Date served/inactive and date service is due by
 - h. Warrant number
3. Officers attempting to serve criminal warrants will record on the warrant or in an official report the address where service was attempted, date, time and name of officer attempting to serve the warrant, and the reason for non-service.
4. Officers successfully serving criminal arrest warrants and/or search warrants must include the following elements in their report:
 - a. Date and time served
 - b. Location of Incident
 - c. Defendant's name (or on whom the search warrant was executed)
 - d. Name of officers serving and method of service
 - e. Property/evidence seized and its disposition
5. Any execution of the criminal process in other counties of the state shall be accomplished through the Clayton County Sheriff's Office and/or the local law enforcement authority having venue. Furthermore, any execution of the criminal process in any other

state or foreign jurisdiction shall be accomplished through the Clayton County Sheriff's Office and/or the local law enforcement authority having venue.

IV. PROPERTY RECEIVED THROUGH LEGAL PROCESS

Anytime property comes into the possession of a law enforcement officer who has executed an arrest or search warrant, or through orders by the courts, the officer will be responsible for that property and will immediately place the property in the Evidence Room in accordance with Departmental procedures and policies. See procedure *E3: Evidence & Property Control*.

V. CANCELLATIONS

This procedure amends and supersedes the following standard operating procedure: *D38: Legal Process dated October 15, 2009*.