

TRAINING



BULLETIN

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"Department Training Bulletins shall be used to advise members of current police techniques and procedures and shall constitute official policy."

SEARCH WARRANTS

I. Purpose

The purpose of this Training Bulletin is to set forth procedures for drafting, obtaining, and serving a search warrant.

II. Definitions

- A. Affiant: An affiant is the person who authors the search warrant and who declares under penalty of perjury that the information contained in the affidavit, based upon his/her personal knowledge, and including all incorporated documents, is true.
- B. Search warrant: 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 or her to search for a person or persons, a thing or things, or personal property. In the case of a thing or things or personal property, a search warrant compels an officer to bring them before the magistrate (Penal Code 1523).
- C. Affidavit: An affidavit is a legal document signed under penalty of perjury containing the facts upon which probable cause is based. The affidavit(s) must set forth the facts tending to establish the grounds of the application, or probable cause for believing that they exist. The affidavit shall contain the descriptions of the place(s), person(s), vehicle(s), and item(s) to be searched and the evidence to be seized (Penal Code 1527).
- D. Controlled Purchase –"X-Buy": A controlled purchase is commonly known as an "X-buy." An "X-buy" is when a controlled purchase of contraband (i.e. narcotics, controlled substances, firearms, stolen property, etc.) is made to establish the probable cause for a search warrant. Generally, undercover law enforcement officers and/or confidential informants purchase the contraband from the subjects of the investigations at residences, businesses, and public locations.
- E. Presumptive Test: A presumptive test is a limited and preliminary chemical test conducted on suspected narcotics and/or controlled substances that may indicate the presence of a specific compound (e.g., cocaine, heroin, methamphetamine, marijuana, MDMA, etc.). A presumptive test is not merely determining the presence or absence of a compound through one's sensory perception (i.e., sight, smell, or touch).

III. Background

The Fourth Amendment to the U.S. Constitution prohibits unreasonable searches and seizures. One mechanism for assuring that a search is reasonable is by obtaining a search warrant. In considering whether to issue a search warrant, a magistrate relies upon the search warrant affidavit prepared by the affiant. Thus, the search warrant is one of the more powerful and valuable tools available to law enforcement.



While the general process of seeking a search warrant should be familiar to most officers, there are many technical and legal pitfalls that must be avoided. These pitfalls may result in the violation of constitutional rights, suppression of evidence, invalidation of the search warrant, and dismissal of the case. The pitfalls may expose the officer(s) to complaints, disciplinary action, civil liability, and criminal prosecution. Furthermore, the pitfalls may expose the Department to civil liability and court oversight and may negatively impact community relations. Therefore, officers must have a sound knowledge of Departmental and legal requirements associated with search warrants.

Every officer who authors a search warrant and affidavit shall ensure the contents of each are true and correct to the best of the officer's knowledge. The officer shall review the entire search warrant and affidavit and verify all information. The officer shall not rely on assumptions to represent any facts asserted in the search warrant and affidavit. The officer shall be aware that any material errors, omissions, or misstatements of the factual basis for the search warrant, whether intentional or not, may negatively impact the officer, the Department, and law enforcement. The officer shall submit the search warrant and affidavit to a supervisor and a commander for approval prior to submission to a magistrate.

IV. Preparation of Search Warrant and Affidavit

- A. Search Warrant: A search warrant shall be prepared on an appropriate form accepted by the court (Penal Code 1529). To satisfy the constitutional requirement of specificity, a search warrant must clearly describe the following:
1. Location(s) to be Searched: The location(s) shall contain sufficient details so that any officer can, with "reasonable effort," identify the location(s) to be searched.
 2. Person(s) to be Searched: Each person's information should include, if known: name, date of birth, height, weight, hair color, eye color, complexion, and distinguishing marks (i.e. tattoos, birth marks). If applicable, the affiant should include the CDL, PFN, and CII numbers.
 3. Vehicle(s) to be Searched: Each vehicle's information should include, if known: the year, make, model, color, number of doors, distinguishing characteristics (i.e. custom wheels, tinted windows, damage), vehicle identification number, and license plate number.
 4. Item(s) to be Searched: The search warrant must contain a "reasonably particular" description of the thing or container to be searched and its locations.
 5. Evidence to be Seized: The description must contain all information that is both reasonably available and reasonably necessary. This means that if officers can provide a detailed description, they should do so. But if they have little descriptive information about an item, they need only provide what they can. To the extent possible, the description must provide sufficient information so that officers can, with reasonable effort, identify the property to be seized. It should not be presumed that officers serving the warrant have knowledge of the case.

Search warrants which fail to describe property with reasonable particularity are considered "general exploit warrants" and are forbidden by both the United States and California Constitutions. General warrants are invalid and any items seized during their execution are subject to suppression.
 6. Special Instructions: Special instructions include: night service, no-knock entry, special master, sealing order, nondisclosure order, anticipatory warrant, federal agents' assistance, and any additional request(s) deemed necessary during the investigation.



- B. Affidavit: In order to obtain a search warrant, the affiant must prepare a written affidavit showing probable cause for the issuance of the search warrant. The affiant must state the facts establishing probable cause for the seizure of specific evidence. Probable cause is shown by articulating that specific evidence of a crime may be found on or at the described location(s), person(s), vehicle(s), and item(s) to be searched. Specific facts establishing probable cause shall be set forth with clarity and specificity. Such facts shall be based on personal observation and knowledge of the affiant, law enforcement officer(s), official source(s), confidential informant(s), and citizen(s). The affiant shall not rely solely upon personal opinion, assumptions, hearsay, or information from an unconfirmed third-party.

To satisfy the constitutional requirement of specificity, an affidavit must clearly state and describe the following:

1. Location(s) to be Searched: The location(s) shall contain sufficient details so that any officer can, with "reasonable effort," identify the location(s) to be searched.
2. Person(s) to be Searched: Each person's information should include, if known: name, date of birth, height, weight, hair color, eye color, complexion, and distinguishing marks (i.e., tattoos, birth marks). If applicable, the affiant should include the CDL, PFN, and CII numbers.
3. Vehicle(s) to be Searched: Each vehicle's information should include, if known: the year, make, model, color, number of doors, distinguishing characteristics (i.e., custom wheels, tinted windows, damage), vehicle identification number, and license plate number.
4. Item(s) to be Searched: The search warrant must contain a "reasonably particular" description of the thing or container to be searched and its locations.
5. Evidence to be Seized: The evidence from the crime is currently or will be on or at the listed location(s), person(s), vehicle(s), and item(s). The evidence to be seized shall not be purposely overbroad to include items without good cause.
6. Offense: A specific offense was committed, is being committed, or will be committed. The applicable offense(s) shall be listed and described with reference to the criminal code section.

If any of these elements are lacking, incomplete, erroneous, or otherwise insufficiently stated, the affidavit is insufficient, and any search warrant issued based upon an affidavit with lacking probable cause may be found to be invalid.

V. Controlled Purchases-Narcotics and Controlled Substances

It is important for officers to understand the process and legality regarding controlled purchases, commonly referred to as "X-Buys." Officers and Sergeants shall attend the in-house OPD Search Warrant and Informant Management Course (40 hours) OR the four (4) hour "X-Buy" specific search warrant training course prior to conducting "X-Buys" and writing "X-Buy" search warrants.

Upon completion of an "X-Buy," officers shall package the narcotics and/or controlled substances in OPD narcotic evidence envelopes (#216-336-331). The envelopes are to be completed and submitted into evidence per policy.

A positive narcotic and/or controlled substance test regarding the evidence recovered from the "X-Buy" is not required to establish probable cause to believe the evidence is in fact narcotics and/or controlled substances. Therefore officers have the option to proceed with drafting the search warrant with or without narcotic and/or controlled substance testing:



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- A. Without a Narcotic and Controlled Substance Test: An affiant's statement in the affidavit can be sufficient to establish the necessary probable cause to obtain a search warrant without a narcotic and controlled substance test. The affiant shall describe:
1. Common Street Terminology: A confidential informant or undercover officer used common street terminology for narcotics and/or controlled substances during the investigation such as "dime," "twenty," "solid," "white," "black," "boy," "girl," "tree," "purple," "syrup," etc. when he/she made the purchase.
 2. Packaging: The suspected narcotic and/or controlled substance is packaged in a particular manner such as knotted clear plastic, toy balloon, clear plastic Ziploc-type baggie etc.
 3. Appearance: The suspected narcotic and/or controlled substance have a distinct appearance, such as a chunky off-white material, a green leafy substance, a black sticky substance, a tablet with an inscribed image or cartoon character (e.g., Mickey Mouse).
 4. Odor: The suspected narcotic and/or controlled substance has a distinct odor; for example, heroin may exhibit an odor similar to vinegar.
 5. Other Descriptors that indicate to a reasonable officer a fair probability that the evidence is a narcotic and/or controlled substance.

The affiant shall document his/her training and experience which led to the affiant's belief that the item seized is a narcotic and/or controlled substance.

- B. With a Narcotic and Controlled Substance Test: Officers shall not conduct presumptive chemical tests. Presumptive chemical tests shall be conducted by qualified criminalists assigned to the Criminalistics Division.

Narcotics and controlled substances seized during "X-buys" are not automatically tested at the Criminalistics Division. If the investigating officer wants the Crime Lab to test the narcotics, the requesting officer shall complete and submit the Drug Analysis Examination Request (TF-3341) form to the Narcotics Charging Unit via Department email, addressed to DL – OPD – Drug Test.

The Narcotics Charging Unit shall submit all narcotics and controlled substances requests to the Criminalistics Division on the Drug Inventory and Analysis Request Log (TF-3341-1).

The OPD procedure concerning submission of evidence to the crime laboratory provides additional instructions regarding requests for narcotics and/or controlled substances tests. The Criminalistics Division will normally be able to conduct the test and provide a Drug Analysis Exam results within 1-3 business days (not including weekends and holidays).

The Criminalistics Division assigns tracking numbers, also known as "D" numbers, to all suspected narcotics and/or controlled substances evidence received. The "D" number does not indicate that the suspected narcotics and/or controlled substances have been tested. Suspected narcotic and/or controlled substance evidence will therefore have a tracking number but may not necessarily have been tested.

Officers requesting test results, documented in the Chemical Analysis Report (TF-708) prepared by the Criminalistics Division, may contact the Drug Analysis Unit directly at 238-3901. Although test results may be obtained via the phone or email, a search warrant affidavit stating that the Criminalistics Division tested the narcotics and/or controlled substances shall include the Chemical Analysis Report.



VI. Informants

Informants shall be handled and utilized in accordance with the provisions of the OPD Informant policy. When informants are used, particularly confidential informants, the reliability of the informant and information provided shall be specified in the affidavit. If the CI # is contained in the sealed portion of the affidavit, officers do not have to include the CI # in the Search Warrant Approval Tracking Sheet (TF-3343). Whenever possible, officers shall corroborate informant information.

VII. Search Warrant Signing Procedure

A. Search Warrant Packets shall include the following documents:

1. Search warrant
2. Affidavit
3. Search Warrant Approval Tracking Sheet (TF-3343)
4. Attachment(s) or exhibit(s) if applicable:
 - a. Search warrant sealing order(s)
 - b. Sealed document(s)
 - c. Chemical Analysis Report (TF-708)
 - d. Crime report(s)
 - e. Photo(s)
 - f. Diagram(s)

B. Supervisor and Command Review

A supervisor and a commander shall review all of the documents within the search warrant and affidavit for completeness and accuracy **prior to submission** to a magistrate. The reviewing supervisor and commander shall document their review and approval of the search warrant and affidavit on the Search Warrant Approval Tracking Sheet (TF-3343).

Supervisors and commanders shall not sign and/or initial search warrants and affidavits.

Due to the immediate dissipation of the blood alcohol or drugs in the body, and reduce the likelihood of losing evidence, Commander approval is not required for DUI search warrants.

C. Magistrate Review, Issuance, and Processing of Search Warrants

1. During normal regular Business Hours: The affiant may meet a magistrate at any County of Alameda Superior Court.
2. After normal Business Hours: The affiant may contact the Alameda County Sheriff's Office (ACSO) Communications Center at (510) 667-7777. ACSO contacts the on-duty magistrate and provides the affiant's name and phone number. The magistrate contacts the affiant. The magistrate and the affiant may choose one of the following procedures:
 - a. In Person: The Magistrate and affiant meet at a designated location (magistrate's residence, police department, business etc.)



b. Email

- 1) The oath is administered before the search warrant and affidavit is emailed to the magistrate.
- 2) The affiant converts a copy of the search warrant and affidavit into a Portable Document Format (PDF).
- 3) The affiant signs the affidavit and any attachments or exhibits if applicable.
- 4) The affiant emails the search warrant and affidavit to the magistrate.
- 5) The magistrate reviews the search warrant and affidavit.
- 6) If the magistrate determines that probable cause to search exists, he/she will print the search warrant and affidavit. The magistrate signs and dates the search warrant and affidavit. The magistrate notes that the oath was administered over the phone.
- 7) The magistrates convert the signed copy of the search warrant and affidavit into a Portable Document Format (PDF).
- 8) The magistrate emails the search warrant and affidavit to the affiant.
- 9) The affiant prints the search warrant and affidavit. The affiant writes "Duplicate Original" on the affiant's copy of the search warrant.
- 10) The magistrate writes "Original Warrant" on the magistrate's copy of the warrant.

c. Fax

- 1) The oath is administered before the search warrant is faxed to the magistrate.
- 2) The affiant signs the affidavit and any attachments or exhibits if applicable.
- 3) The affiant faxes the search warrant and affidavit to the magistrate.
- 4) The magistrate reviews the search warrant and affidavit.
- 5) If the magistrate determines that probable cause to search exists, he/she signs and dates the search warrant and affidavit. The magistrate notes that the oath was administered over the phone.
- 6) The magistrate faxes the search warrant and affidavit to the affiant.
- 7) The affiant writes "Duplicate Original" on the affiant's copy of the search warrant.
- 8) The magistrate writes "Original Warrant" on the magistrate's copy of the warrant.

d. Telephonic

- 1) The affiant phones the magistrate and records the conversation.
- 2) The oath is administered over the phone.
- 3) The affiant relates the facts of the investigation to the magistrate.
- 4) If the magistrate determines that probable cause to search exists, the affiant writes "Duplicate Original" on the search warrant. The affiant writes the magistrate's name and time of issuance on the affiant's copy of the search warrant and affidavit. The time of search warrant service must be noted on the "Duplicate Original."

e. Consolidated Records Information Management System (CRIMS)

Refer to TB I-F.1 *CRIMS E-Warrants* for the application, review, issuance, and processing search warrants via the CRIMS EProcess, E-Warrants.

VIII. SEARCH WARRANT SERVICE

- A. Prior to commencing the search, officers shall use a Person Digital Recording Device (PDRD) while conducting a pre-search walk-through of the location or area to be searched to document the condition of the location or area. If a PDRD is not available, officers shall use an alternate video recording device to record the walk-through.



- B. Upon completion of the search, officers shall use a PDRD while conducting a post-search walk-through of the location or area to be searched to document the condition of the location or area. Officers shall focus on damages to or destruction of property caused during the search warrant service. If a PDRD is not available, officers shall use an alternate video recording device to record the walk-through.
- C. Upon completion of the search warrant service, the affiant shall ensure the following:
 - 1. A copy of the signed search warrant is left at the location of the search. There is no Departmental or legal requirement to leave the affidavit.
 - 2. If property is seized, a copy of the Search Warrant Inventory is provided to the person from whom it was taken, or in whose possession it was found. In the absence of a person, a copy of the Search Warrant Inventory and Return (TF-3079-1) shall be left at the location (Penal Code 1535).
 - 3. If no occupant is available and/or authorized to take custody of the residence at the completion of the search service, officers shall properly secure the residence. If officers are unable to secure the residence, due to damaged property, officers shall contact the Department of Public Works to secure the residence.

IX. CRIME REPORTS

The crime report packet shall include:

- A. A copy of the search warrant
 - B. A copy of the affidavit
 - C. A copy of Search Warrant Inventory and Return (TF-3079-1)
 - D. A copy of Search Warrant Inventory and Return Continuation (TF-3079-2)
 - E. A crime report
- Any search warrant service shall be documented in a crime report regardless of whether evidence is recovered. The officer shall document any known damages resulting from the search warrant service (e.g. broken doors, safes, fences).
- F. Any additional related documents

X. SEARCH WARRANT RETURNS

A. OPD Search Warrant Return

- 1. The Affiant, or designee, shall submit the search warrant return packet to the Search Warrant Coordinator at CID. The search warrant return packet includes the following documents:
 - a. The original Search Warrant Approval Tracking Sheet (TF-3343)
 - b. A copy of the search warrant
 - c. A copy of the affidavit
 - d. A copy of Search Warrant Inventory and Return (TF-3079-1)
 - e. A copy of Search Warrant Inventory and Return Continuation (TF-3079-2)
- 2. Search Warrant Coordinator shall:
 - a. Review the search warrant search warrant, affidavits, Chemical Analysis Reports, Search Warrant Inventory and Returns, and Search Warrant Tracking Approval Sheets for completeness and accuracy.
 - b. Forward the search warrant return packet to the CID Commander for final review.
 - c. Once reviewed and determined to be in compliance, scan the search warrant return packet into a PDF.
 - d. Store the search warrant return packet PDF in an electronic folder for a period of (5) years.
- 3. The CID Commander shall:



- a. Review the OPD search warrant, affidavits, Chemical Analysis Reports, Search Warrant Inventory and Returns, and Search Warrant Tracking Approval Sheets for completeness and accuracy.
- b. Ensure the above mentioned documents are in compliance with this Training Bulletin.
- c. Document the results of the inspections/reviews in the Management Report(s).

B. County of Alameda Superior Court Search Warrant Return

1. Affiant, or designee, shall submit the Court's search warrant return packet to the Court Clerk at any County of Alameda Superior Court Clerk Office. The Court's search warrant return packet includes the following documents:

- a. The original or "Duplicate Original" search warrant
- b. A copy of the affidavit
- c. The original Search Warrant Inventory (TF-3079-1) and Return (TF-3079-2), if applicable, unless the Search Warrant Return and Inventory form was submitted to the Court via E-Warrants.

2. The County has the following process for search warrant returns:

A search warrant shall be executed and returned within 10 days from the date of issuance. If the 10th day is a court holiday or weekend, the next court day is permitted. After 10 days, the warrant, unless executed, is void.

The documents and records of the court relating to the warrant need not be open to the public until the execution and return of the warrant or the expiration of the 10-day period after issuance. Thereafter, if the warrant has been executed, the documents and records shall be open to the public as a judicial record (Penal Code 1534).

XI. MONTHLY REPORTS

Unit Commanders shall document the number of search warrants reviewed and approved in their Monthly Management Reports (TF-3312). Copies of the Search Warrant Approval Sheets shall be included with the report. The reports are submitted to the Unit Commander's respective Division Commander.

XII. ANNUAL AUDITS

The Office of Inspector General shall conduct an internal annual compliance audit of the following documents:

- A. Search warrants
- B. Affidavits
- C. Chemical Analysis Reports used to support the affidavit(s) (TF-708)
- D. Search Warrant Inventory and Returns (TF-3079-1)
- E. Search Warrant Inventory and Returns Continuation (TF-3079-2)
- F. Search Warrant Approval Tracking Sheets (TF-3343)
- G. Related arrest reports
- H. Related crime reports

XIII. SEARCH WARRANT TRAINING

- A. All sworn members shall complete the online "Search Warrant Fundamentals" course through the POST Learning Portal website.



- B. The Training Section shall develop and present additional search warrant and confidential informant management courses as needed.

Common Myths about Search Warrants and Narcotic and Controlled Substance Testing

- **Myth:** A positive chemical test result is required to obtain a search warrant for narcotic and controlled substances.

No test is required. A statement establishing probable cause to believe narcotic and controlled substance evidence was obtained and additional narcotics and controlled substances will be located in the place to be searched at the time of the search is sufficient.

- **Myth:** A 72-hour time limit to obtain a search warrant begins when the suspected narcotic and controlled substance are purchased.

There is no predetermined time limit. There is no 72 hour time limit rule. The only “limit” is if the probable cause for the search warrant no longer exists due to changing conditions, or a significant amount of time passes, and this is known to the affiant.

- **Myth:** All suspected narcotic and controlled substance evidence submitted to the Oakland Police Department Crime Lab is tested.

This is not true. Narcotic and controlled substance evidence is only tested upon request. Narcotic and controlled substance analysis requests from Department personnel must be submitted in writing to the narcotics charging officer. Simply submitting a narcotic envelope to the lab does not constitute a written request to test the suspected narcotic and controlled substance evidence.

- **Myth:** Suspected drug evidence “cases” assigned a Drug Number (“D” Number) were tested and the test result is positive.

Reality: Drug Numbers (“D” Numbers) do **not** indicate test results or that a test was performed. Drug Numbers are tracking numbers only. Drug Numbers are assigned to all narcotic and controlled substance evidence when received by the lab, regardless of testing status. The number does not have any significance other than to identify and track the suspected narcotic evidence.

- **Myth:** Officers can perform a “visual presumptive test” in the field.

Reality: There is no such thing as a “visual presumptive test.” A presumptive test is a chemical test where a sample of the suspected narcotic and controlled substance evidence is introduced to a chemical designed to indicate the possible presence of a specific chemical compound or group of compounds. Merely observing the size, color, odor and texture of suspected narcotic and controlled substance evidence is not a test. However, these observations are important and may establish the necessary level of suspicion and/or probable cause to believe the suspected drug evidence is real.



Search Warrant Checklist

A. Search Warrant

- ☐ The descriptions of the location(s), person(s), vehicle(s) and item(s) to be searched have sufficient particularity as contained in the search warrant.
- ☐ The descriptions of the items to be seized have sufficient particularity as contained in the search warrant. The items listed shall not be overly broad; list only those items for which there are probable cause to believe that the items as described will be found.
- ☐ The special instruction boxes are checked off.

B. Affidavit

- ☐ The affiant's name is listed in the affidavit.
- ☐ The appropriate statutory grounds for issuance is/are checked off.
- ☐ The affiant's "hero sheet" reflects his/her accurate background, training, and experience.
- ☐ If an informant is utilized in the investigation, include the type of informant (i.e. citizen, untested, tested and reliable etc.). If an informant is tested and reliable, include the facts that support his/her reliability. Also include the informant motive (i.e. financial compensation, leniency on pending case).
- ☐ If the informant conducted an "X-buy," accurately describe the procedure used during the controlled purchase. Officers shall include the fact that the informant was searched before and after the controlled purchase and no contraband was recovered (except the purchased contraband). Officers shall also confirm whether the informant was in view during the controlled purchase. This should be the case, except when the informant was in a vehicle or within the target residence.
- ☐ The descriptions of the location(s), person(s), vehicle(s) and item(s) to be searched have sufficient particularity.
- ☐ The descriptions of the items to be seized have sufficient particularity. Each item listed shall not be overly broad; list only items for which there is probable cause to believe the items will be recovered.
- ☐ Each item to be seized should be supported by probable cause.
- ☐ The probable cause which supports the issuance of the search warrant is satisfactorily articulated.
- ☐ The attachments and exhibits are complete, legible and labeled.
- ☐ The offense(s) is/are listed.
- ☐ The affiant must conclude that the items sought are at or within the location(s), person(s), vehicle(s) and item(s) to be searched.
- ☐ The document does not contain boilerplate language.



C. Chemical Analysis Report

If the suspected narcotics and/or controlled substances evidence was/were tested by the Criminalistics Division, the affiant confirms the results of the test with a criminalist by obtaining the written Chemical Analysis Report prepared by the OPD Criminalistics Division. A statement documenting receipt of the Chemical Analysis Report shall be included in the affidavit. In addition, the following information shall also be included in the affidavit:

1. Name of Criminalist providing test result information
2. Date and time the Chemical Analysis Report was obtained
3. Test results