



# Lake Worth Police Department

## *Policy 7.05 – Search Warrants*

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Approved By: \_\_\_\_\_

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### **I. POLICY**

Both federal and state constitutions guarantee every person the right to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. U.S. Supreme Court decisions regarding search and seizure place the responsibility on the police to ensure that every person's fourth amendment rights are protected.

Officers shall scrupulously observe constitutional guidelines when conducting searches, and they will always remain mindful of their lawful purpose. Unlawful searches can result in harm to members of the community, put officers at risk, and possibly damage the department's image in the community.

Search warrants are one of the most valuable and powerful tools available to law-enforcement officers. Officers of this department shall have a thorough knowledge of the legal requirements involved in obtaining and executing search warrants.

### **II. PURPOSE**

The purpose of this policy is to establish guidelines and procedures that officers must follow when conducting searches and seizures.

### **III. DEFINITIONS**

A. Search Warrant: A written order, issued by a magistrate and directed to a peace officer commanding him/her to search for a particular item or person and to seize the same and bring it before such magistrate, or commanding him/her to search for and photograph a child and deliver to the magistrate any of the film exposed pursuant to the order. Search warrants are also issued for biological specimens.

B. Search Site: The premises to be searched, as explicitly stated in the search warrant.

C. Lead Detective: The officer primarily responsible for the investigation who will prepare, plan, and implement the search warrant.

D. Protective Sweep: A quick and limited search of premises incident to an arrest or service of an arrest warrant performed in order to locate other persons

inside who might pose a risk to the officers. Officers must be able to articulate a reasonable basis their safety concerns.

E. Curtilage: Curtilage usually refers to the yard, garden, or any piece of ground that is immediately adjacent to a premises and is used as part of the activity of the premises. While the term has no absolute definition that applies under all circumstances, the curtilage of a private residence, for instance, may be defined by the size of the lot on which the dwelling stands, whether the area around the dwelling is enclosed, the nature and use of the area, the proximity of the area to the home, and any measures taken by the owner to protect the area from observation.

#### **IV. PROCEDURES (GENERAL)**

##### **A. State Law**

1. Chapter 18 of the Texas Code of Criminal Procedure controls the use of search warrants in Texas. It states that a judge or magistrate may issue a search warrant if the following circumstances exist:

- a. There is probable cause to do so, and
- b. There is a complaint on oath supported by an affidavit.

2. Search warrants may be issued for the search of specified places, things or persons, and seizure therefrom of the following things as specified in the warrant:

- a. Weapons or other objects used in the commission of a crime.
- b. Articles or things the sale or possession of which is unlawful.
- c. Stolen property or the fruits of any crime.
- d. Any object, thing, or person, including documents, books, records, paper, or body fluids constituting evidence of a crime.

(Please see the applicable statutes for a more comprehensive listing.)

##### **B. Supreme Court Decisions**

1. The Supreme Court of the United States issues decisions that must be used as guidelines in conducting searches. Because the fourth amendment to the Constitution prohibits unreasonable searches and seizures, officers bear the burden of proving that the search is

reasonable. The court will examine reasonableness based on the answers to these questions:

- a. Was there probable cause to issue the search warrant?
- b. Was the scope of the search appropriate?
- c. Exceptions to search warrant requirements are discussed in Policy 7.04.

## **V. PROCEDURES: OBTAINING A WARRANT**

A. Prior to obtaining a search warrant, officers should consult a departmental supervisor for review of the probable cause and for approval to seek a search warrant. This review may be conducted by telephone if necessary. If the supervisor approves the warrant application, the supervisor shall notify the division commander who shall inform the Chief of the circumstances surrounding the offense and the need for the warrant if the warrant is not one routinely obtained (e.g., a blood search warrant for driving while intoxicated).

B. The lead detective will be in charge of the warrant execution. While the lead detective or officer may develop the case information, construct the affidavit, obtain the warrant, and seek assistance if needed.

1. The lead detective is responsible for the proper and safe execution of the warrant, including compliance with this policy.

### **C. Essential legal requirements**

1. To obtain a search warrant, an officer must show probable cause to believe that specific evidence, contraband, or fruits of a crime may be found at a particular place.
2. The officer shall prepare an affidavit that carefully documents specific facts that constitute probable cause. Two kinds of facts must be considered:
  - a. The facts from which the officer concluded that the person or thing is probably located at the place to be searched;
  - b. The facts that address the reliability of the source of the officer's information;
  - c. The information upon which the officer relies is not stale, within the context of the offense being investigated.

3. The court considers only those facts presented in the affidavit.
4. Conclusions and suspicions are not facts.
5. Apart from the officer's personal knowledge or observations, facts may derive from a reliable informant.
6. Reliability of facts is established by the following:
  - a. Personal observation or knowledge possessed by an officer;
  - b. Witnesses who have knowledge of information pertinent to the case;
  - c. Informants if they have proven to be reliable or if their information is corroborated by personal observation of an officer.

#### D. Affidavits

1. The accuracy of the affidavit is vital to the validity of the search warrant. CCP 18.01 requires officers to swear to the facts of the affidavit before a judge or magistrate.
2. The affidavit shall include the following elements:
  - a. A detailed description of the place, thing, or person to be searched.
  - b. A description of the things or persons to be seized pursuant to the warrant
  - c. A substantial allegation of the offense in relation to which the search is to be made.
  - d. An allegation that the object, thing, or person to be searched or searched for constitutes evidence of the commission of the offense.
  - e. Material facts that would show that there is probable cause for issuing the search warrant.
  - f. Facts that establish probable cause and that the item or person to be seized is at the location to be searched.

#### E. Language of the warrant

1. Only the things specified in the search warrant can be seized. (For a discussion of exceptions to this, such as plain-view seizures and searches incident to arrest, see Policy 7.04).
2. The warrant shall state precisely the areas to be searched.
3. If officers wish to search a home and its surroundings, the affidavit must specify a "premises" search and its curtilage, and must identify all outbuildings, such as garages or tool sheds, as appropriate.
4. If motor vehicles to be searched are on the premises, the warrant shall so specify.
5. If searches of specific persons (other than frisks) are to be included during the search, the warrant shall so specify. If the warrant states that all person's present shall be searched, probable cause to do so must be stated in the affidavit.
6. The items to be searched for shall be precisely described. If an item to be searched for may be dismantled (e.g., firearms), the warrant must specify the search for parts, pieces, or components of the item.
7. If officers anticipate searching for and seizing computers or similar complex technological items, experts must be consulted to determine the appropriate language to list in the affidavit and for outlining appropriate guidelines in the warrant for seizure of hardware and software.
8. If officers believe it is in the best interest of officer safety or that evidence may be destroyed if advanced warning is given and wish to utilize a "no-knock" warrant execution, the reasons for that belief should be clearly explained in the affidavit. The magistrate shall be requested to review and authorize the no-knock entry.

## **VI. PROCEDURES: SEARCH WARRANT EXECUTION**

### **A. When a search warrant must be executed**

1. An officer is required to execute a warrant within the limitations imposed by statute. If it has not been executed during that time, the officer shall void the warrant and return it to the magistrate who issued it.
2. An officer may execute a search warrant either during the day or at night. The time of day selected to execute the warrant should take into consideration the likelihood that a specific category of individuals will or

will not be present, e.g., children or elderly. Officer safety will also be considered in determining when to execute a warrant.

#### B. Preparing to execute the warrant

1. Before executing the warrant, a search warrant threat assessment must be completed for search warrants involving dwellings and structures. The on-duty supervisor shall review the warrant and the affidavit, applicable threat assessment, and brief the search team officers on the procedures to be followed. The supervisor shall ensure that the entire warrant process is documented. Written reports shall be supplemented with photographs or videotape, if available and appropriate.
2. All members of the search team shall be clearly identified as police department members (i.e.: Uniforms, jackets, badges, etc.)
3. All members of the search team shall wear protective body armor during the execution of all warrants. Once the scene is safe, body armor may be removed at the discretion of the on-scene supervisor.

#### C. Gaining entrance to premises

1. Prior to execution of the warrant, the lead detective shall attempt to determine if any circumstances have changed that make executing the search warrant undesirable at that time. Where possible, pre-search surveillance shall be conducted up to the point at which the warrant is executed.
2. The lead detective shall make a final assessment of the accuracy of the warrant in relationship to the location to be searched.
3. The search team shall deploy around the premises to be searched, ensuring that all exits are covered.
4. Uniformed officers shall be the most visible members of the search team and should conduct the initial entry when appropriate.
5. In most cases the officer should do all of the following before entering the premises to be searched:
  - a. He/she must announce his/her presence as a law-enforcement officer.
  - b. The officer must announce that his/her purpose is to execute a search warrant.

c. The officer must wait a reasonable time either to be admitted or refused admission to the premises.

6. When entrance is refused:

a. An officer who is refused entrance after a reasonable time may force his/her way into the premises using only that force which is applicable to the circumstances.

i. "Reasonable time," in this context, depends on the circumstances. A refusal may be expressed or implied.

7. No-knock or exigent entry:

a. In some circumstances a police officer may enter the premises to be searched without announcing his or her presence and purpose before entering. The judicial authority issuing the warrant may add a no-knock entry provision to the warrant. Absent of a no-knock issuance by a judge or exigent circumstances leading an officer to believe there is imminent harm to life, an officer shall not conduct a no-knock warrant execution.

8. If circumstances require a no-knock or exigent entry, the first officer to cross the threshold into the premises shall announce that law-enforcement officers are executing a warrant. To ensure their own safety officers shall command the occupants to take appropriate action, such as "police, search warrant, get down."

D. Conduct of the search

1. Upon entry, the occupant shall be given a copy of the search warrant.

2. The supervisory officer shall ensure that a protective sweep of the site is performed immediately.

3. After the site has been secured, a photographic and/or videotape record of the premises shall be made prior to conducting the search.

4. The search must cease when all the evidence being searched for is located.

5. Officers should exercise reasonable care in executing the warrant to minimize damage to property. If damage occurs during an entry to premises that will be left vacant, and the damage may leave the premises

vulnerable to security problems, arrangements shall be made to guard the premises until it can be secured.

6. If damage occurs, justification for actions that caused the damage and a detailed description of the nature and extent of the damage shall be documented. Photographs of the damage should be taken where possible.

7. Officers shall limit their search to the scope established within the search warrant (i.e., if the search warrant is for a large item, such as a television set, small places, such as jewelry boxes, may not be searched.)

8. An officer may seize only the property listed in the warrant with two exceptions:

a. The other evidence is reasonably related to the offense for which the search warrant was issued.

b. It is property that the officer knows or has probable cause to believe is evidence of another crime.

9. Currency taken as evidence shall be verified by a supervisor and transported to a safe as designated by department policy.

10. If items are taken from the search site, an itemized receipt shall be provided to the resident/occupant, or in the absence of the same, left in a conspicuous location at the site.

#### E. Searches of persons found on premises

1. A person's presence on the premises to be searched with a warrant does not, without more evidence than the person's mere presence, give rise to probable cause to search that person beyond a frisk for officer safety.

2. A warrant to search the premises for contraband does carry with it the authority to detain the occupants of the premises while a search is being conducted. If the search of the premises gives rise to probable cause to arrest the detainee, he or she may be arrested and his or her person searched incident to arrest.

3. A person on the premises may be searched if the officer has probable cause to believe that items listed in the warrant are concealed on the person.



4. If an officer determines a frisk is necessary, the officer must articulate the facts present that justify the frisk of the person.

## **VII. PROCEDURES: HIGH-RISK WARRANT EXECUTION**

A. A high-risk warrant is requested for any situation where it is likely that any special obstacle to the safe, effective execution of the warrant is present, the location has been fortified, or officers may meet armed resistance or other deadly force. This suspicion should be corroborated by intelligence information, for example, information from CCH, C.I. statements, history of location, or the detective's personal knowledge.

B. High-risk search warrants may utilize SWAT (or the appropriate tactical unit) for entry and the securing of the premises.

C. The supervisor in charge of executing the warrant may request the assistance of SWAT through the proper channels and will provide a copy of the warrant and the affidavit.

D. Upon notification by any supervisor that SWAT will be needed to execute a warrant, the assisting SWAT commander should contact the lead detective and obtain the details of the warrant execution. This will include a physical inspection of the target, verification of the address, and a physical description.

1. Upon completion of the scouting report, together the lead detective and the SWAT commander should formulate a plan of execution.

2. Use of on-duty patrol officers should be coordinated with the on-duty supervisor to avoid depleting manpower.

E. A warrant execution briefing will be held. The warrant execution briefing will be conducted by both the lead detective and the SWAT commander. It will include the supervisor in charge of executing the warrant, the communications supervisor, and all other officers participating in its execution or who will be at the scene. If this is a joint agency task force operation, officers from the participating agency will be present and identified as members of the warrant service team.

1. The lead detective and the SWAT commander will lay out in detail the procedures for executing the warrant to all team members. The plan will include but not necessarily be limited to the following:

- a. The specific items subject to the search as defined in the warrant, and any available information on their location.

- b. Information concerning the structure to be searched and surroundings, to include floor plans where available, mockups, photos, and diagrams of the location identifying entrances, exits, obstructions, fortifications, garages, outlying buildings, suspect vehicles, and all other points of concern.
- c. Identification of suspects and other occupants who may be present at the location—incorporating photos or sketches whenever possible—with emphasis on suspect threat potential, as well as the presence of children, the elderly, or others who may not be involved with suspects.
- d. A complete review of the tactical plan to include the staging area, route of approach, individual assignments for entry, search, management of evidence, custody and handling of seized vehicles, custody of prisoners, and post-execution duties, such as securing the location and conducting surveillance on the site for additional suspects.
- e. Listing personnel resources and the armament necessary for gaining entry, for the safety and security of officers, or for conducting the search.
- f. Contingency plans for encountering hazardous materials, canines, booby traps, fortifications or related hazards.
- g. Measures to take in case of injury or accident, to include the nearest location of trauma or emergency care facilities.
- h. Procedures for exiting the location under emergency conditions.

2. The entry team shall at all times include uniformed officers who shall be conspicuously present at the place and time the warrant is served. All non-uniformed officers shall be clearly identified as law- enforcement officers by a distinctive jacket or some other conspicuous indicator of office.

3. All members of the search team shall wear body armor or ballistic vests as designated by the lead detective.

4. Prior to execution of the warrant, the lead detective shall attempt to determine if any circumstances have changed that make executing the search warrant undesirable at that time.

5. Where possible, pre-search surveillance shall be conducted up to the point at which the warrant is executed.

6. The lead detective shall make a final assessment of the warrant's accuracy in relationship to the location to be searched.

7. The lead detective shall ensure that the entire search warrant execution process is documented from the beginning until the search team leaves the premises. This written record shall be supported by photographs and, if practical, videotaping of the entire search process.

#### F. Entry Procedures

1. If an advance surveillance team is at the target site, radio contact shall be made to ensure that the warrant can be served according to plan.

2. The search personnel shall position themselves in accordance with the execution plan.

3. An easily identifiable police officer shall knock and notify persons inside the search site, in a voice loud enough to be heard inside the premises, that he or she is a police officer and has a warrant to search the premises, and that he or she demands entry to the premises at once.

4. Following the knock-and-announce, officers shall delay entry for an appropriate period of time based on the size and nature of the target site and time of day to provide a reasonable opportunity for an occupant to respond. If there is reasonable suspicion that the delay would create a high risk to the officers or others, inhibit the effectiveness of the investigation, or permit the destruction of evidence, entry may be made as soon as practicable.

5. Once the entry has been made and the scene secured, the lead detective will perform the search as required in Section VI. D above.

#### **VIII. PROCEDURES: WARRANT RETURN**

A. An officer who has finished a search shall perform the following:

1. Note the date and time of execution on the search warrant.

2. Make an inventory of all the property seized and leave a copy with the person in charge of the premises.

3. Make return of the warrant within three days following the execution of the search (excluding Saturdays, Sundays, and legal holidays) or as otherwise required by statute. The return includes the following:

- a. The search warrant.
- b. The affidavit.
- c. Either the inventory of articles seized or a notation that nothing was seized during the search.

B. Responsibility for property seized

- 1. Officers must provide a rigorous chain-of-custody procedure for all property seized. Documentation must appear in all narrative reports pertaining to the chain of custody of any items seized. The department evidence tag shall be used to identify all seizures.
- 2. Officers shall place evidence in the property room or locker reserved for the purpose prior to the end of shift.
- 3. Officers shall observe the property and evidence procedures as detailed in Policy 12.01.