



**WINCHESTER POLICE DEPARTMENT OPERATION ORDER**

**NOTE:** This policy is for internal use only, and does not enlarge an employee's civil liability in any way. It should not be construed as the creation of a higher standard of safety or case in an evidentiary sense, with respect to third party claims. Violation of this policy, if proven, can only form the basis of a complaint by this Department, and then only in a non-judicial administrative setting.

Number 2-36		Effective Date September 15, 2020	Review Date August 1, 2020	Reviewing Division Administration
Subject <b>SEARCH WARRANTS</b>	References  VLEPSC: ADM.02.02 - .03, OPR.02.06  CALEA	<input type="checkbox"/> New Policy  <input type="checkbox"/> Amends  <input type="checkbox"/> Replaces  <input checked="" type="checkbox"/> Revised		This policy shall apply to personnel assigned to the following divisions:  <input checked="" type="checkbox"/> All Personnel  <input type="checkbox"/> Patrol Division  <input type="checkbox"/> Administration Division  <input type="checkbox"/> Investigation Division
<p style="text-align: center;"><u>John R. Piper</u> Chief of Police or Designee</p>		<p style="text-align: center;"><u>September 15, 2020</u> Date</p>		

**I. PURPOSE**

The purpose of this policy is to establish guidelines and procedures that officers must follow for obtaining and executing search warrants and for conducting searches and seizures.

**II. POLICY**

The Fourth Amendment to the U.S. Constitution guarantees every citizen the right to secure their persons, houses, papers, and effects against unreasonable searches and seizures. Supreme Court decisions regarding search and seizure place the responsibility on law enforcement to ensure that citizens' Fourth Amendment rights are protected. Officers shall scrupulously observe constitutional guidelines when conducting searches and always remain mindful of their lawful purpose. Search warrants, in particular, are one of the most valuable and powerful tools available to law enforcement officers. Because of the potential harm to citizens, the risks to officers' safety and to the Department image in the community, officers shall have a thorough knowledge of the legal requirements in obtaining search warrants.

**III. DEFINITIONS**

**A. Search Warrant**

A written order, signed by a judicial authority, directing a police officer to search for specified personal or business property.

B. Curtilage

Curtilage usually refers to the yard, garden, or piece of ground which adjoins a private residence. While the term has no absolute definition that applies under all circumstances, the curtilage of a private residence, for instance, is determined by whether the area 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.

C. Warrant Risk Assessment Matrix

A form that will help guide the officer/supervisor in determining the risks associated with the service of a search warrant that is obtained by a member of this Department. The Warrant Risk Assessment Matrix will also be completed in order to track the number of search warrants the Department generates and serves in any given year.

D. Tactical Analysis Worksheet

This form is a guide to assist the officer/detectives to properly plan for the search warrant, or other activities, such as undercover operations, surveillance, etc. when the SWAT team is not going to be utilized

#### IV. PROCEDURES

A. Legal Authority

1. A judge, magistrate, or any other authorized judicial authority may issue a search warrant if the following circumstances exist:
  - a. There is a reasonable and 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.

B. Essential Legal Requirements

1. The Supreme Court of the United States issues decisions which 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 a search was reasonable. The court and/or magistrate

will examine reasonableness and probable cause to issue the search warrant and appropriateness of the search warrant scope.

2. To obtain a search warrant, an officer must show probable cause to believe that a person or items may be found at a particular place.
3. Officers shall carefully document 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; and
  - b. The facts which address the reliability of the source of the officer's information.
4. Courts considers only those facts presented in the search warrant and affidavit. Conclusions and suspicions are not facts. Facts must be recent. The reliability of facts are established by:
  - a. Personal observation or knowledge by an officer;
  - b. Eyewitnesses who have firsthand knowledge; and
  - c. Informants.
5. The search warrant must be acquired in the jurisdiction that the place or person to be searched is located.

C. Affidavits

1. The accuracy of the affidavit is vital to the validity of the search warrant. Virginia Code requires officers to swear to the facts of the affidavit before a judge, magistrate, or authorized judicial authority.
2. On the designated affidavit form, officers shall provide the following information:
  - a. A detailed description of the place, item, or person to be searched, including map coordinates or distances from given reference points, if necessary;
  - b. A description of the things or persons to be searched;
  - c. Why the search is to be made;
  - d. An explanation of how the object, thing, or person to be searched constitutes evidence of the commission of the offense; and

- e. Material facts which would show that there is probable cause for issuing the search warrant.

#### D. Search Warrant Components

##### 1. Verification of Search Warrant

The officer preparing the search warrant shall ensure that a Department member observes the site of the search before a warrant is obtained, and have it verified by the officer in charge of the search warrant, when practical. All reasonable measures shall be taken to establish the ownership, occupancy, and interior and exterior description of the search site.

##### 2. A search warrant shall specify the following:

- a. The areas to be searched. If officers wish to search a home and its surroundings, the affidavit must specify a "premises" search and its curtilage and must identify outbuildings and garages, as appropriate;
- b. If motor vehicles to be searched are on the premises;
- c. If searches of specific persons (other than frisks) are to be included during the search. If the search warrant states that all persons present shall be searched, then probable cause to do so must be listed in the affidavit;
- d. The items to be searched for. If an item to be searched for may be dismantled such as firearms, then the search warrant must specify the search for parts, pieces, or components of the item; and
- e. If officers anticipate searching for and seizing computers or similar, complex technology, then individuals with expertise in that field may be consulted to determine the appropriate language to list in the affidavit and for outlining guidelines in the search warrant for seizure of hardware and software.

#### V. **EXECUTING A SEARCH WARRANT**

##### A. When to Execute a Search Warrant

- 1. An officer may execute a search warrant either during the day or at night. However, when circumstances exist in which time is not of the essence, search warrants should be executed during daylight or normal business hours.
- 2. Officers are required to execute a search warrant within fifteen (15) days of the date the search warrant was issued. If the search warrant has not been

executed during that time, the officer shall void the search warrant and return it to the issuing judicial authority.

B. Warrant Risk Assessment Matrix & Tactical Analysis Worksheet

1. A Warrant Risk Assessment Matrix Worksheet shall be completed on all search warrants prior to their execution. If criteria is met, according to the matrix, consultation with the SWAT commander shall be made.
2. The Warrant Risk Assessment Matrix may require consultation with the SWAT team commander to determine if the team and/or enhanced tactics will be used to execute a search warrant based on the various risk factors referenced in the two forms.
3. The Tactical Analysis Worksheet shall be completed for all Search Warrants where SWAT consultation is required but will not be used, or where completion is mandated by a supervisor. If an incident occurs in which a physical address is secured by Department personnel prior to obtaining a search warrant, a Tactical Analysis Worksheet will not be required.
4. At a minimum the Warrant Risk Assessment shall be completed prior to the execution of any search warrant that is obtained by a member of the Winchester Police Department and will be approved by the officer's immediate supervisor or the on-duty supervisor if after hours.
5. A copy of the Tactical Analysis Worksheet and Warrant Risk Assessment will be kept in the officer or detective's case file.

C. Supervisor Responsibilities

1. Before executing a search warrant, the on-duty supervisor or his/her designee shall review the search warrant and the affidavit.
2. The Warrant Risk Assessment and, if applicable, the Tactical Analysis Worksheet shall be reviewed by the supervisor. If criteria are met, the supervisor will consult with the SWAT commander.
3. The supervisor or his/her designee will assist in organizing an operations plan with the assistance of the Tactical Analysis Worksheet, if applicable.
4. A supervisor will ensure that the entire search warrant process is documented. Written reports shall be supplemented with photographs and body worn camera footage. The Warrant Risk Assessment and Tactical Analysis Worksheet will be turned over to the Patrol Administrative Assistant by the end of shift, who is responsible for scanning them into the Police Department folder.

D. Gaining Entrance to the Premises

1. When enhanced tactics are warranted, the search team shall first deploy around the premises to be searched, ensuring that all exits are covered. Uniformed officers shall be the most visible members of the search team and shall conduct the entry, unless a Special Weapons and Tactics (SWAT) team is utilized.
2. In most cases, officers shall do all of the following before entering the premises to be searched:
  - a. Announce the police presence;
  - b. Announce that the purpose is to execute a search warrant; and
  - c. Wait a reasonable time either to be admitted or refused admission to the premises.
3. If officers are refused entrance after a reasonable time, they may enter by using force applicable to the circumstances. "Reasonable time" in this context depends on the circumstances. A refusal may be expressed or implied. A refusal can be implied in two circumstances:
  - a. No one has admitted officers within a time in which it would be reasonable to expect someone to let officers enter; and
  - b. Officers waiting to be admitted see or hear suspicious circumstances, such as flushing toilets or footsteps running away from the door, which indicate that someone might be concealing or destroying evidence or trying to escape. A much more common example is someone looks out a door or window and retreats back into the house
4. In some circumstances, officers may enter a location to be searched without announcing their presence and purpose before entering. The judicial authority issuing the search warrant may add a no-knock entry provision to the warrant. If not, the decision to make a no-knock entry shall be made by the Chief of Police after consultation with the Office of the Commonwealth's Attorney. The decision shall be based on facts that would lead him or her to believe that an announcement would result in:
  - a. Bodily harm either to the officer or to someone within the location to be searched;
  - b. The escape of the person to be searched or arrested; or
  - c. The destruction of evidence.
5. If circumstances require a no-knock or exigent entry, then the first officer to cross the threshold into the premises shall announce that police officers are

executing a search warrant. Officers shall also command the occupants to take the appropriate action to ensure their safety.

6. In executing any search warrant, officers may use whatever force is reasonably necessary under the circumstances to affect a lawful purpose.

E. Conduct of the Search

1. Once all the evidence being searched for is located, the search must cease.
2. Officers shall only search in locations where the items to be seized could reasonably be found.
3. An officer may seize only the property listed in the search warrant with two exceptions:
  - a. The other evidence is reasonably related to the offense for which the search warrant was issued; and
  - b. It is property which the officer knows or has probable cause to believe is evidence of another crime. In this situation, it may be necessary to consult with a supervisor or Commonwealth's Attorney to determine if an additional search warrant is needed.
4. All property seized during a search must follow a rigorous chain of custody procedure. The chain of custody for all items seized must be documented. Department evidence collection, evidence processing, and evidence submittal and storage procedures must be followed at all times.

F. Searches of Persons Found on Premises

1. A person's presence on the premises to be searched with a search warrant does not give 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 probable cause to arrest the detainee, they may be arrested and searched incident to arrest.
3. A person on the premises may be searched if officers have probable cause to believe that items listed in the search warrant are concealed on that person or the search warrant gives authorization to search.

G. Filing of the Search Warrant

1. Under oath, an officer must make an inventory of all property seized during the search.

2. Within three (3) days of the date of the search (excluding Saturdays, Sundays, or legal holidays) an officer must file the search warrant in the circuit court clerk's office of the jurisdiction where the search was made. Items required to be filed with the court are:
  - a. The executed search warrant;
  - b. Either the inventory of articles seized, which must be notarized, or a notation that nothing was seized during the search; and
  - c. The affidavit, unless the affidavit was made by voice or videotape recording.