

THURMONT POLICE DEPARTMENT

GENERAL ORDER	<i>Date Issued:</i> January 15, 2014	<i>Effective Date:</i> January 15, 2014	<i>Order No:</i> Chapter 1.2-A
<i>Authority: Chief of Police Gregory L. Eyer</i>		<i>Manual Page No:</i>	
<i>Subject: Search & Seizure Warrants</i>		<i>Replaces Page No:</i>	
<i>Accreditation Standard: Chapter 1.2</i>	<i>Distribution: ALL</i>	<i>Amends:</i>	<i>Number of Pages: 11</i>
<i>Related Documents:</i>		<i>Rescinds: New Policy</i>	

This Directive is for internal use only, and other than as contraindicated here this Directive does not create or enlarge this Department's, governmental entity's, any of this Department's officers, and/or any other entities' civil, criminal, and/or other accountability in any way. This Directive is not to be construed as the creation of a standard of safety or care in any sense, with respect to any complaint, demand for settlement, or any other form of grievance, litigation, and/or other action. Deviations from this Directive, if substantiated, can only form the basis for intra-Departmental administrative action(s) (including discipline and/or termination).

I. Purpose:

To specify procedures for obtaining and executing search and seizure warrants.

II. Discussion:

The Fourth Amendment to the United States Constitution and the Maryland Declaration of Rights protects against “unreasonable” searches and seizures. The standard of proof necessary to obtain a search and seizure warrant is “probable cause.” In addition, the issuance, contents, time of search, disposition or property seized and the sealing of the affidavit are enumerated in the Maryland Code: Criminal Procedure: Title 1. Definitions: General Provisions: Subtitle 2. General Provisions: 1-203. Search Warrants (CP:1-203), as amended and revised.

III. Policy:

The Thurmont Police Department will exercise appropriate care to respect personal and property rights by following carefully-defined procedures in obtaining and executing all search and seizure warrants, as well as adhering to the restrictions placed on searches conducted pursuant to the valid exceptions to the warrant requirement.

IV. Definitions:

AFFIANT: An officer who swears under oath that the information contained in an affidavit (statement of probable cause) is true.

APPLICATION AND AFFIDAVIT: A document stating facts and information that constitutes probable cause to believe that certain evidence is contained within a certain location that is sworn to before a Judge.

EVIDENCE INVENTORY FORM: A document which is used to record the seizure of specific items pursuant to the execution of a Search and Seizure Warrant.

“NO-KNOCK” SEARCH AND SEIZURE WARRANT: A search and seizure warrant that authorizes officer to enter the premises without giving prior notice to the occupants of the premises.

“KNOCK AND ANNOUNCE: SEARCH AND SEIZURE WARRANT: A search and seizure warrant that requires that officers, prior to making entry, knock, identify themselves, and await a response before making entry into the premises.

RECORDER: An officer who is designated to document and handle all items seized pursuant to a Search and Seizure Warrant. The Recorder will also file the Report and Return of Search and Seizure Warrant with the issuing Court.

REPORT AND RETURN OF SEARCH AND SEIZURE WARRANT: A document that lists all items seized by the Recorder pursuant to a Search and Seizure Warrant. This document must be filed with the issuing court within ten (10) business days of service and must be sworn to before the judge to whom the document is presented.

SEARCH AND SEIZURE WARRANT: An order in writing from a court of record, issued by a judge, which permits a peace officer to search a particular place (or person) for crime-related evidence and seize evidence. It must be based upon probable cause.

V. General:

A. Guidelines for Obtaining Search and Seizure Warrant:

1. Maryland Code CP: 1-203, which is entitled “Search Warrants,” generally governs the “issuance; contents; time of search, etc.; disposition of property seized; sealing affidavit,” and other issues relevant to search and seizure warrants. Additionally, this statute authorizes police officers who are in possession of a search and seizure

warrant to search a place or person and seize evidence that is relevant to the enumerated violations of law that are under investigation. The Application and Affidavit for each search and seizure warrant must include facts sufficient to:

- a. Identify with reasonable particularity, the violations of Maryland law that are currently under investigation;
 - b. Identify or describe, with reasonable particularity, the premises, person, place or thing to be searched;
 - c. Identify or describe, with reasonable particularity, the locations within the premises to be searched and the items to be seized; and,
 - d. Enumerate the facts established during the course of the investigation to serve as the probable cause justifying the issuance of the search and seizure warrant.
2. Officers who, during the course of an investigation anticipate the need to obtain a search and seizure warrant, as enumerated herein, shall complete the Application and Affidavit for Search and Seizure Warrant, as well as, the Search and Seizure Warrant itself. Those documents shall then be reviewed by a supervisor and the State's Attorney's Office. Upon receiving approval, an original and two (2) copies will be presented to a judge.

B. Guidelines for Service of Search and Seizure Warrant/Documentation of Evidence:

1. After the Search and Seizure Warrant has been issued, the Affiant will ensure that the original Application and Affidavit remains in the custody of the issuing court. The original and two (2) copies of the Search and Seizure Warrant, as well as the two (2) copies of the Application and Affidavit, will be retained by the investigating officer.
2. Ultimately, the original Search and Seizure Warrant will be filed with the issuing court after it has been served and proper documentation of service has been recorded on said original. This normally is done when filing the Report and Return of Search and Seizure Warrant with the issuing court. The Search and Seizure Warrant must be served within **fifteen (15) days** (date of issuance included). After the fifteenth (15th) day, the search and seizure warrant automatically, becomes null and void, and is to be returned to the issuing court. One copy of the Search and seizure Warrant, as well as the application and Affidavit will be made a part of the investigative file. The other copy of the Search and Seizure Warrant, as well as the Application and Affidavit will be delivered to the custodian of the premises at the time of service. If the premises are not occupied at the time of service, the Search and Seizure Warrant, as well as the Application and Affidavit will be posted at the premises in a conspicuous location.
3. The Recorder will seize all evidence and enumerate each seized item on the Evidence Inventory Form. Prior to removing evidence from the premises, the Recorder will present a copy of the Evidence Inventory Form to the custodian of the premises and attempt to

obtain a signature from the custodian, acknowledging that the Evidence Inventory Form is accurate. If no custodian is present, a copy of the Evidence will be attached to the other documentation that has been posted at the premises in a conspicuous location.

4. The Recorder will complete a Report and Return of Search and Seizure Warrant which notifies the Court of the items that were seized pursuant to the Search and Seizure Warrant. This Report and Return will be presented to the issuing Court within **ten (10) business days** of the execution of the Search and Seizure Warrant. Presented to the issuing court at this time also will be the original Search and Seizure Warrant on which documentation of service has been recorded.

C. Service of Search and Seizure Warrants – Premises:

1. Prior to the execution of a search and seizure warrant for a premises, the Chief of Police or designee will designate the supervisor of the operation. A briefing will be conducted that is attended by all participating officers except those who are engaged in pre-service surveillance. In all instances where a search and seizure warrant is being served at a premises, an officer the rank of Sergeant or higher will supervise the overall operation. Said supervisor will compose the written operation plan as enumerated in the succeeding paragraph. All written operation plans for the service of search and seizure warrants at a premises will be reviewed and approved by the Chief of Police or his designee.

The Written Operation Plan will include the utilization of uniformed personnel for at least the entry phase of the operation. Specific duties, including but not limited to, entry, perimeter security, room security, prisoner containment, searching, recording, prisoner transport, and canine support, will be enumerated in each Operational Plan. In those instances where entry is made by a Tactical Team, utilization of the Team will be coordinated with the team leader. The Chief or designee will authorize requests for a Tactical Team.

When indicated, pre-service surveillance of the effected premises will be conducted to make sure that current intelligence is utilized in preparing for and making entry into the premises.

D. Notifications:

Prior to the execution of any search and seizure warrant, the officer supervising the investigation shall notify all superior officers within the chain of command. The officer supervising the execution of a search and seizure warrant, just prior to service, will notify the communications dispatcher both prior to the execution and after entry has been made and control of the premises has been accomplished. This prior notification will include the location of the premises, the anticipated time of service and the primary unit conducting the investigation.

E. Manner of Entry:

The manner in which entry is made into a premises pursuant to a search and seizure warrant will be dictated by circumstances enumerated in the Application and Affidavit or elements existent at the time of service. For the purposes of this general order, procedures will be dictated by the existence of a “No Knock” clause incorporated into the Search and Seizure Warrant. Otherwise, absent exigent circumstances, all other warrants will be served as a “Knock and Announce” Search and Seizure Warrant.

“NO KNOCK WARRANT”

When considering the reasonableness of a forced entry, the Courts normally consider two (2) issues: the safety of the serving officers or the destruction of evidence. If specific information is existent prior to serving the warrant that indicates which of these issues may be existent, that specific information should be included in the Application and Affidavit, along with a request that the judge authorize entry into the premises without prior notice (“no knock”). Said justification should be as specific as possible and timely. This would include, but not be limited to recent prior violent offenses on the part of the suspect(s), current intelligence indicating the presence of weapons with an intent to use, or prior specific instances where the suspect destroyed or attempted to destroy evidence.

“KNOCK AND ANNOUNCE WARRANT”

When serving a “Knock and Announce” warrant, unless exigent circumstances are present, officers will knock, verbally identify themselves as police officers in the possession of a warrant, request entry and wait a reasonable amount of time for a response from the premises. The size and nature of the premises will be taken into account when considering what is a reasonable amount of time to await a response from within the premises. When serving a warrant at an apartment, as opposed to a large dwelling, it stands to reason that an extended response from within an apartment may indicate activity within the premises that could be considered a threat to the serving officers or an effort to destroy evidence. Conversely, a longer wait for a response may be indicated when serving a warrant at a larger dwelling where it could take longer for a person to respond.

There may be instances where forcible entry without notice may be appropriate. This would involve a situation where pre-service surveillance has established the existence of certain activity at a premises after a “knock and announce” warrant has been obtained, that constitutes justification for a “no knock” warrant, had those circumstances been existent prior to obtaining the existent search and seizure warrant.

Additionally, when serving a “Knock and Announce” warrant, certain exigencies may justify a forcible entry after a demand to enter the premises has been made. These circumstances may be justified pursuant to pre-service surveillance or activity within the premises after a demand to enter has been announced that indicates a threat to the serving officers of the imminent destruction of evidence.

When considering the level of exigency relevant to a lack of a response applicable to the

imminent destruction of evidence, the nature of the evidence sought will also be considered. Evidence such as controlled dangerous substances or documentation, by its very nature may be more easily destroyed than evidence such as a stolen auto parts or stereo equipment. Consequently that time which is considered to be reasonable in seizing controlled dangerous substances or documentation would be shorter than when seizing auto parts or stereo equipment.

On those occasions when forcible entry into a premises does occur, the facts constituting the justification for this entry, as well as a narrative describing the force used in gaining entry, will be enumerated in the narrative portion of an investigative report.

F. Officer Safety Concerns:

Once entry has been gained into a premise, officers will conduct themselves in a manner that provides security for the operation, but does not violate any person's rights or exceed a use of force necessary to provide for the safety of the operation. All occupants found in the premises or within the curtilage shall be taken to a central location within the premises where security will be maintained during the course of the operation. If individual occupants are to be interviewed at the premises, interviewing officers will escort each person to and from the location where said interview is conducted. If the warrant authorizes the search of occupants, all occupants shall be thoroughly searched in an orderly manner by officers of the same gender. All items seized from these occupants shall be taken into custody by the recorder, as enumerated herein. If the warrant does not authorize the search of occupants, reasonable suspicion to believe an occupant could be armed must be existent to conduct a "pat down" for weapons.

Persons who wish to leave the premises during the operation who are not taken into custody will be allowed to leave as soon as practicable. Once a person has left the premises, absent some exigency or special circumstance, he/she will not be allowed to return until all officers have left the premises. Persons not at the premises at the time of entry, who wish to enter the premises, may be allowed entry into the premises at the discretion of the operation supervisor. The operation supervisor will consider the reason for the request to enter the premises and the person's interest in the premises when deciding whether to admit or prohibit entry. Any person allowed entry will be subjected to a thorough search if the warrant authorizes same, or in those instances where a search of persons is not authorized, a pat-down for weapons may be conducted if there is reasonable suspicion to believe the subject to be armed, prior to entry onto the premises. Except as stipulated herein, all occupants who remain on the premises during the operation will be maintained in a central location within the premises where security of them will be maintained by an assigned officer. This officer will maintain security until all officers leave the premises upon completion of the operation. In those instances where it is necessary to separate individuals, the supervisor/commander of the operation will assign officers to accomplish this task.

G. Non-Premises Search and Seizure Warrants:

Search and Seizure Warrants may also be obtained to authorize the search of areas or items other than premises such as vehicles, motor homes, garages, businesses, etc. or authorize the seizure of items such as handwriting or physical evidence from a person.

When executing search and seizure warrants that do not involve a premises, a written operation plan is not required; however, specific duties will be assigned as enumerated hereinbefore and subjected to review by a supervisor prior to the execution of the search and seizure warrant.

H. Scope of Search:

The scope of the search will be dictated by the items enumerated in the search and seizure warrant that are the subject of the search. For example, if the warrant authorizes a search for a person, officers are authorized to search only in locations that could physically conceal a person. Conversely, if the warrant authorizes a search for controlled dangerous substances, officers are authorized to search locations where the merest trace of a controlled dangerous substance could be contained.

I. Intensity of Search:

A search and seizure warrant does not empower officers to destroy property or harass individuals. Officers will always consider the scope of the search as enumerated herein. They will treat all occupants and property with respect. If probable cause exists to believe that items sought are concealed within walls or under floors, that information will be included in the Application and Affidavit, which will result in the issuance of a search and seizure warrant that will authorize this intrusive type of search. Additionally, if circumstances existent at the time of the service of the warrant indicate such a concealment exists, officers will obtain concurrence from a prosecutor and obtain supervisory approval before searching in a manner that will require repair to the premises.

When it is necessary to cause damage to locate evidence, all affected areas will be photographed before and after the damage, to verify the extent of damage necessary to thoroughly conduct the search. Officers executing a Search and Seizure Warrant are also authorized to photograph the premises before/after a search has been conducted if there are indicators that a complaint may be filed regarding the conduct of the execution Warrant. The use of video and/or photographic imagery may be utilized, where indicated.

J. Duration of Search:

A search and seizure warrant authorizes the police to search a specific location for specific items. If a specific item is sought pursuant to the search and seizure warrant, once that item has been located, all searching must cease. When it is not possible to identify specific items, all searching will be conducted within the scope of the search stated herein. Once the officers have left the curtilage, no return to the premises to search

is authorized unless another search and seizure warrant has been obtained.

K. Use of Special Response Team:

As stated previously, the court may authorize a “no-knock” search and seizure warrant if sufficient probable cause to justify the threat to officer safety or destruction of evidence is enumerated in the Application and Affidavit. Additionally, the “no-knock” authorization will also be enumerated in the search and seizure warrant, based on the aforementioned probable cause.

A Tactical Team, from an allied agency, may be requested by the Chief or designee and they will make entry on all “no-knock” search and seizure warrants. Proper notification up the chain of command regarding the existence and anticipated execution of a “no-knock” search and seizure warrant will be made.

When serving “Knock and Announce” Search and Seizure Warrants, if information is existent indicating the possibility of resistance or violence, the Operation Supervisor will apprise the Chief, who then will determine if the Tactical Team will make entry.

L. Plain View Doctrine:

During the search of a premise, officers oftentimes will locate an item they wish to seize but is not enumerated in the statement of probable cause. For example, one might be looking for stolen auto parts from a particular investigation and locate stolen stereo components from another investigation. The “Plain View Doctrine” **may** apply. Conversely, it may be necessary to obtain another search and seizure warrant to seize this item.

The elements of the “Plain View Doctrine: are as follows:

- a. The law enforcement officer is legally present at the location where he finds the item.
- b. The discovery of the item is inadvertent.
- c. Upon discovery, it is **readily apparent** that the item is stolen/evidence/contraband.

If you move an item to read its serial number to determine if it is stolen, element (c) above does not exist, therefore to seize that item you would be required to obtain another search and seizure warrant.

M. Warrants Outside of Jurisdiction:

During the course of an investigation, it may be necessary to obtain a search and seizure warrant for a location that is not within the jurisdiction of the Thurmont Police

department. In cases such as this, the supervisor of the operation will obtain the assistance of the police agency having jurisdiction at the location of the search.

N. Assisting Other Agencies:

The Chief of Police or designee will serve as the primary unit within the Department who will assist a member of another Department who is intent on obtaining and serving a Search and Seizure Warrant within the corporate limits. In addition to assisting with the preparation of Court documents, the assigned officer will maintain contact with his/her supervisor, who will assure that all relevant mandates enumerated in this General Order are adhered to.

O. Supervisor's Task List:

- a. Review Application and Affidavit, as well as, Search and Seizure Warrant, to assure that all required elements are contained within the documents and that document is current.
- b. Assign duties to officers participating in service. For premises searches, compose written operational plan. This includes, but is not limited to, the assignment of personnel to maintain security, search, photograph, seize evidence, and transport prisoners.
- c. Coordinate with the Tactical Team Commander/Supervisor.
- d. Make notifications as enumerated herein.
- e. Coordinate service of Warrant with allied jurisdiction if outside of Corporate Limits.
- f. Assure that Search and Seizure Warrant as well as Report and Return of Search and Seizure Warrant are filed with the Court within ten (10) days of service.

P. Investigating Officer's Task List:

- a. Complete Application and Affidavit enumerating:
 - Relevant statutes that are being violated which justifies the search;
 - Complete description of the premises that is to be searched;
 - The documentation utilized to establish occupancy of the premises by the suspect;
 - A full statement of training, experience and expertise on the part of the Affiant;
 - A comprehensive statement of probable cause justifying the search;
 - A comprehensive list of the items sought;
 - Suitable language to obtain permission to search appropriate locations where items sought may be located; and, include probable cause to justify "No Knock" Search and Seizure Warrant, if applicable.

- b. Complete the Search and Seizure Warrant enumerating:
Relevant statutes that are being violated which justifies the search;
A complete description of the premises that is to be searched;
The name of the Affiant;
A comprehensive list of items to be seized;
Suitable language to instruct officers to search appropriate locations where items sought may be located; and, include “No Knock” clause, if applicable.
- c. Present original and 2 copies of Application and Affidavit, as well as, Search and Seizure Warrant before a judge.
- d. Upon issuance, leave original Application and Affidavit in the custody of the court.
- e. Insert copies of Application/Affidavit and Search/Seizure Warrant into case file.
- f. Execute Search and Seizure Warrant with the “necessary and proper assistance,” assuring that: Original Search and Seizure Warrant is “copied” at time of service; and, Copy of Application and Affidavit, Search and Seizure Warrant and Inventory are either delivered to occupant or posted in conspicuous location at premises.

Q. Recorder’s Task List:

- a. Assure that all seized evidence is photographed and handled properly when taken into custody.
- b. Complete a detailed inventory of all items seized.
- c. Review inventory with occupant and obtain signature.
- d. Compose Report and Return of Search and Seizure Warrant.
- e. File served original of the Search and Seizure Warrant as well as Report and Return of Search and Seizure Warrant with issuing court within ten (10) days of service.

DOCUMENT DATES:

Amended Date:

Review Date:

Review Date:

Review Date:

Rescinds:

Order Written By: Lt. P.A. Droneburg

Order Edited and Approved By: Chief Gregory L. Eyler

Accreditation Standards Included in this Order

CHAPTER