



County of Fairfax, Virginia

MEMORANDUM

DATE: 12/11/18

TO: Fairfax County Board of Supervisors
Colonel Edwin C. Roessler Jr.
Chief of Police
Major Gervais Reed
Commander - Internal Affairs Bureau

FROM: Richard G. Schott
Independent Police Auditor

SUBJECT: Policy Change Recommendation

Unrelated to any individual incident investigation review, I have reviewed General Order 610.3 SEARCH WARRANT PROCEDURES, and recommend the following policy changes for your consideration:

G.O. 610.3 III. PRELIMINARY CONSIDERATIONS

C. Promptness in Execution

REPLACE:

Warrants should be served within 15 days after being obtained. Prompt execution will decrease the possibility that the target of the search will be aware of the warrant's existence and will prevent the warrant from becoming stale due to passage of time and possible loss of probable cause. There may be an exception if circumstances indicate that a reasonable delay in serving the warrant is appropriate.

WITH:

Warrants *must* be served within 15 days after being obtained. Prompt execution will decrease the possibility that the target of the search will be aware of the warrant's existence and will prevent the warrant from becoming stale due to passage of time and possible loss of probable cause.

REASON: Virginia Code § 19.2-56 dictates that “[a]ny search warrant not executed within 15 days after issuance thereof shall be returned to, and voided by, the officer who issued such search warrant.” Therefore, any search warrant must be served within 15 days. Also, because the code section does not contemplate an exception, the last sentence should be eliminated.

G.O. 610.3 IV. BRIEFING

ADD to the end of ¶ B.: “,to include the presence of domesticated animals.” so that G.O. 610.3 IV. B. reads:

The lead supervisor or lead detective/officer shall conduct a briefing prior to execution with all members of the search team present. The following factors shall be presented at the briefing:

- B. Description of potential occupants and any associated dangers they may pose, *to include the presence of domesticated animals.*

REASON: This addition will make the provision more consistent with G.O. 540.10 I. B., which, in relevant part, states that “Less-lethal force strategies should be developed to establish control over domesticated animals when planning all operations.”

G.O. 610.3 V. CONDUCT IMMEDIATELY PRIOR TO ENTRY

Re-title ¶ B. to “Documenting,” and in ¶ B change “record” to “document” so that G.O. 610.3 V. B. reads:

- B. Documenting

A member of the search team shall *document* the entire execution of a search warrant,

REASON: Simply to clarify that the entire search is not being audio or video recorded using technological recording equipment.

G.O. 610.3 VI. ENTRY

ADD to the language which follows ¶ C. 3., so that G.O. 610.3 VI. C reads:

3. Executing the warrant at another time would cause substantial inconvenience and improperly waste staff time.

Whenever entry into a vacant site is undertaken, the search team should seek entry with a key when available. A copy of the search warrant, with affidavit attached, shall be placed in view at the site unless sealed by order of the court.

The knock and announce requirements set forth in G.O. 610.3 V. D. and E. still apply when entry is made into a search site thought to be unoccupied.

REASON: To avoid the misperception that because a search site is known or thought to be vacant, that the knock and announce requirements prior to entry do not apply.

G.O. 610.3 VII. PERSONS WITHIN THE PREMISES

Change ¶ C. by either removing the last sentence, or by adding to the end of it so that G.O. 610.3 VII. C. reads:

C. Permissible Frisk of Persons

Nothing in this section should be construed as limiting the initial entry team personnel from frisking those persons already present to ensure their own safety and the safety of others present, *if the entry team personnel reasonably suspects that those persons have a concealed weapon or dangerous instrument.*

REASON: To clarify that no frisk can occur unless the officer conducting the frisk can articulate reasonable suspicion that the individual frisked is armed and poses a danger. Currently, ¶ C seems to imply that the initial entry team can automatically frisk individuals who are present at a search site.

G.O. 610.3 IX. ACTION, AFTER SEARCH

In ¶ B, replace the clause “it was seized” with “the warrant was issued” so that G.O. 610.3 IX. B. reads:

B. Warrant Return

The leads detective/officer shall return the warrant to the issuing authority as soon as practical, within the 72 hours required by statute. A copy of the list of items seized shall be sworn to under oath, and such fact shall be stated in the inventory sheet before return to the court. If nothing is seized, a statement to that effect shall be filed with the Clerk of Circuit Court of the jurisdiction where *the warrant was issued* within 72 hours. An electronic copy of the executed search warrant, affidavit, and list of items seized shall be provided to the PIO, unless the warrant is sealed.

REASON: To eliminate the confusing language “it was seized,” and to make the language consistent with the introduction part of that sentence stating that nothing was seized.

Enclosure: G.O. 610.3 Search Warrant Procedures, 1-1-13

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I. PURPOSE

The purpose of this General Order is to detail responsibilities, procedures, and considerations in the execution of search warrants. The described approach of executing a search warrant is intended to result in a fruitful search which withstands the rigors of court, as well as upholds the rights of citizens.

II. RESPONSIBILITIES

The detective/officer with responsibility for the case involving a search warrant shall be the lead detective/officer. The lead detective/officer shall have responsibility for the execution of the warrant, under the review and control of a first line supervisor. The lead detective/officer shall:

- A. Ensure the accuracy of the warrant.
- B. Complete a risk assessment and submit it to his supervisor and commander for review. A determination of resources needed to execute the search warrant will be made by the commander. If SWAT is deemed appropriate, coordination shall be done by the commander of the requesting entity to the commander of the Special Operations Division.
- C. Conduct the briefing prior to the execution.
- D. Ensure proper recording of all pertinent facts during the execution.
- E. Comply with all legal requirements related to search warrants.

III. PRELIMINARY CONSIDERATIONS

A. Search Warrant Preparation

The following factors shall be recognized in the preparation of search warrants:

- 1. The search warrant must state the CRIME for which the search warrant is being obtained.

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2. The issuing magistrate shall retain the original copy of the affidavit at the time of issuance.
3. A copy of the search warrant, with a copy of the affidavit attached, shall be served on the appropriate person located at the search site. In the absence of persons at the site, a copy of the warrant and affidavit shall be placed in view at the site unless the search warrant is sealed by order of the court.

B. Verification of Search Warrant

The lead detective/officer or the detective/officer preparing the search warrant shall personally observe the site of the search before a warrant is obtained, and have it verified by the controlling supervisor when practical. All reasonable measures shall be taken to establish the ownership, occupancy, and interior and exterior description of the search site.

C. Promptness in Execution

Warrants should be served within 15 days after being obtained. Prompt execution will decrease the possibility that the target of the search will be aware of the warrant's existence and will prevent the warrant from becoming stale due to passage of time and possible loss of probable cause. There may be an exception if circumstances indicate that a reasonable delay in serving the warrant is appropriate.

D. Presence of Uniformed Officer

Search teams shall include at least one uniformed officer in all instances, except tracking device search warrants. The Electronic Surveillance Section supervisor or designee shall coordinate safety procedures for tracking device installation, maintenance, or removal.

E. Notifications

First-line supervisors shall make the following notifications:

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1. Requests for assistance from SWAT will be made to the bureau commander by the supervisor coordinating the search. SWAT will be requested, when circumstances are such that their special expertise is required to make a safe entry of the target location.
2. The appropriate district station commander, the duty officer, appropriate patrol bureau supervisor, and PLC shall be advised of every search warrant that will be executed. Requests for assistance from uniformed officers shall be made during this contact.
3. The supervisor of the Criminal Investigations Section in the affected district will be advised, whenever possible, of the warrant.

The supervisor may assign a detective from the Criminal Investigations Section to accompany the search team as an observer.

4. The DPSC supervisor shall be contacted and advised of all pending search warrant executions. It shall be requested that the supervisor coordinate with DPSC personnel to ensure a clear channel during the warrant execution until the search site is secured.
5. The commander of the Helicopter Division or designated officer shall be notified of the location of the execution site of all search warrants. If it is deemed appropriate by a division commander, supervisor, or SWAT supervisor, the Helicopter Division will be requested to have a helicopter airborne during the execution of the warrant.

IV. BRIEFING

The lead supervisor or lead detective/officer shall conduct a briefing prior to execution with all members of the search team present. The following factors shall be presented at the briefing:

- A. Review of site characteristics.
- B. Description of potential occupants and any associated dangers they may pose.

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- C. Description of items sought at the search site and any indication of their possible locations.
- D. Assignment of responsibilities for members of the search team.
- E. Review of facts of the case.

V. CONDUCT IMMEDIATELY PRIOR TO ENTRY

A. Evaluation of Search Site

The first-line supervisor and lead detective/officer shall take reasonable precautions to make certain that the premises/vehicle listed in the warrant are the premises/vehicle sought to be searched, and that the premises/vehicle about to be entered are the premises/vehicle listed on the warrant. The lead detective/officer should be alert for any change in circumstances that negates the reason for the search.

If the first-line supervisor and/or lead detective/officer are not certain that the premises/vehicle to be entered are the same as those listed in the warrant, or that the reason for the search no longer exists, no entry shall be made.

B. Recording

A member of the search team shall record the entire execution of a search warrant, beginning with a statement of time before approaching the search site and continuing until the search team has left the search site. The record shall reflect the identity of all members of the search team, occupants of the search site, items seized, and any other pertinent information related to the warrant execution.

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C. Positioning Search Team

The search team shall position itself as circumstances dictate. Special Operations Division SWAT supervisory personnel will coordinate positioning of all team members when SWAT is involved in the execution of the warrant.

1. Exits from the premises are to be covered, where possible, at the diagonal corners of buildings.
2. The uniformed officer, when practical, should be the most visible member of the search team at the time of entry.
3. If SWAT is involved, no member of the search team (detectives, supervisors, etc.) shall enter the dwelling until they are authorized to do so by the SWAT supervisor.
4. Members of the search team with responsibility for the areas of the site farthest from the entrance shall enter first, followed by members with responsibility for areas nearer to the entrance.

D. Announcement of Authority and Purpose

The lead detective/officer, a member of SWAT, or a uniformed officer shall notify persons inside the search site of the team's presence, and shall announce, in a voice loud enough to be heard inside the search site, that they are the Fairfax County Police and they have a warrant to search the premises and they demand admission to the premises at once (also see Section VI, ENTRY).

The announcement of authority and purpose is NOT REQUIRED whenever there is probable cause to believe that such announcement will cause jeopardy to the search teams or others, or the items listed in the warrant could be destroyed if an announcement is made. When such information is known at the time the affidavit supporting the warrant is drafted, the information shall be entered as part of the affidavit. The only factors that will contribute to probable cause to believe that safety is endangered or destruction is imminent, if an announcement is made, are:

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1. Firm indication that an occupant of the premises is armed and dangerous, or
2. Specific information that an occupant has a history of violence involving threats or attacks on any individual, or
3. Specific knowledge that an occupant would intend to frustrate searches by destroying seizable items following an announcement of authority and purpose,
4. Specific knowledge that some occupants would be endangered by other occupants if announcement of authority and purpose is made.

When information, as indicated above, is developed at the time of entry, immediate entry is justified for reasons of safety and security.

E. Delay Following Announcement

1. If items listed on the warrant are readily disposable, the search team shall delay entry for at least 20 seconds following the announcement, unless:
 - a. They are admitted to the site by an occupant; or
 - b. There is substantial indication that there is a willful delay in responding to the announcement.
2. If the items listed on the warrant are not readily disposable, the search team shall delay entry for at least 60 seconds following the announcement, unless conditions exist as above.

VI. ENTRY

Whenever possible, premises shall be entered in a courteous and non-destructive manner. No force shall be initiated unless resistance is made by a person in the premises, or factors identified in Section V, D, are present.

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A. Forceless Entry

The knock and announce requirement previously discussed applies to all entries accomplished by force. Use of force includes the opening of a closed door, entry through an open door, or the use of a pass key to gain entry. Entry without force does not require a knock and announce. Examples of forceless entry include:

1. Entering by invitation; or
2. Entering by ruse or trick.

B. Firearms

The use of firearms and non-lethal weapons shall be in accordance with General Order 540.1, Use of Force.

C. Vacant Search Sites

Entry into a vacant search site is permissible only if one or more of the following circumstances exist:

1. The occupants will not be returning to the premises for an extended period of time, if at all;
2. The investigation would be hampered if the premises are not immediately searched; or
3. Executing the warrant at another time would cause substantial inconvenience and improperly waste staff time.

Whenever entry into a vacant site is undertaken, the search team should seek entry with a key when available. A copy of the search warrant, with affidavit attached, shall be placed in view at the site unless sealed by order of the court.

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D. Immediate Examination of Search Site

The search site shall be secured. Each room of the premises shall be immediately examined for persons that may interfere with the warrant's execution.

VII. PERSONS WITHIN THE PREMISES

Persons within the premises shall be treated with as much restraint and courtesy as possible under the circumstances.

A. Permissible Search of Persons

Mere presence at a search site is not a factor which gives sufficient reason to search a person within the premises. In order for the search to be valid, the detective/officer must articulate facts or circumstances within the search warrant affidavit which provide probable cause to support the action taken. The affidavit must identify the persons to be searched by name and the basis for such search or the search warrant includes all persons found on said premises.

B. Arrests

Probable cause to arrest a person at the search site may arise during the execution of a search warrant. In that event, a search incidental to that arrest and independent of the warrant may be conducted.

C. Permissible Frisk of Persons

Any person within the premises at the time the warrant is executed or any person that voluntarily enters the premises after the search has commenced may be frisked, if the detective/officer reasonably suspects that such person has a concealed weapon or dangerous instrument. Mere presence at the search site is not a sufficient reason to frisk a person within the premises. In order for the frisk to be proper, the detective/officer must be able to articulate facts or circumstances which provide reasonable suspicion to support the action taken. Nothing in this section should be construed as limiting the initial entry team personnel from frisking those

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persons already present to ensure their own safety and the safety of others present.

D. Restricting Movement of Persons

Restrictions may be placed on the movement of any person at the search site. This restriction is essential to prevent interference with the search and to safeguard the search team and other persons involved. The restriction shall be limited to the time needed to ensure security. Persons not under arrest shall be permitted free movement as soon as practical after no security interest is in jeopardy.

VIII. SEIZURE OF ITEMS INADVERTENTLY FOUND

If contraband items are found, but not listed in the search warrant, they may be seized when the item could logically be seen within the scope of the warrant, in an area controlled by the search warrant.

IX. ACTION, AFTER SEARCH

A. Protecting Damaged Property

If damage occurs during entry, a supervisor at the scene shall evaluate the need to ensure the protection of the search site until repairs can be made. If it is in the Department's best interests, the supervisor shall assign personnel for protection of the property until the person in control of the property is able to ensure security.

B. Warrant Return

The lead detective/officer shall return the warrant to the issuing authority as soon as practical, within the 72 hours required by statute. A copy of the list of items seized shall be sworn to under oath, and such fact shall be stated in the inventory sheet before return to the court. If nothing is seized, a statement to that effect shall be filed with the Clerk of Circuit Court of the jurisdiction where it was seized within 72 hours. An electronic copy of the

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executed search warrant, affidavit, and list of items seized shall be provided to the PIO, unless the warrant is sealed.

C. Return of Non-Contraband Items

Whenever non-contraband items seized during the execution of a warrant are no longer needed for prosecution, they may be returned to the proper person, with authority of the Commonwealth's Attorney.

X. TRACKING DEVICE SEARCH WARRANT

Code of Virginia §19.2-56.2 regulates the application and issuance of search warrants for tracking devices, as well as their installation and use. The installation and use of tracking devices by department personnel are coordinated by the Electronic Surveillance Section supervisor.

A. Definitions

Tracking Device: An electronic or mechanical device that permits a person to remotely determine or track the position or movement of a person or object. "Tracking device" includes devices that store geographic data for subsequent access or analysis, and those that allow for real-time monitoring of movement.

B. Procedures

1. The detective/officer with responsibility for the case involving the search warrant may apply for the warrant in the jurisdiction in which the tracking device will be installed or the jurisdiction where the offense has been, is, or will be committed.
2. The affidavit submitted in the search warrant application shall include:
 - a. Identity of applicant (detective/officer) and law enforcement agency.

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- b. The identity and owner or possessor (if known) of the vehicle, container, item or object the tracking device will be affixed and the jurisdiction in which is expected to be found (if known).
 - c. Material facts constituting probable cause alleging the offense in relation to the tracking device use, that the information likely to be obtained will be evidence of the commission of the offense, and the name of the county or city where the offense has been, is, or will be committed.
 3. Issued search warrants will authorize the installation of the tracking device within 15 days, and use of a tracking device for no more than 30 days, from the issuance of the warrant. Extensions of the tracking period, no longer than 30 days each, may be granted by the circuit court. The search warrant, affidavit, return and other related materials shall be sealed by the court.
 4. Within ten days after the use of the tracking device has ended, the device shall be removed, the executed search warrant shall be returned to the court that issued the warrant, and a copy of the executed search warrant shall be served on the person who was tracked and the person whose property was tracked. Service may be accomplished by:
 - a. Delivering a copy to the person who, or whose property, was tracked; or
 - b. Leaving a copy with any individual found at the person's usual place of abode who is a member of the person's family, other than a temporary sojourner or guest, and who is 16 years of age or older, and by mailing a copy to the person's last known address.
 5. Upon request, and for good cause shown, the circuit court may grant one or more extensions for such service for a period not to exceed 30 days each. Good cause shall include, but not be limited to, a continuing criminal investigation, the potential for intimidation, the endangerment of an individual, or the preservation of

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evidence.

XI. LEGAL REFERENCE

Code of Virginia

§§19.2-52 through 19.2-60

XII. ACCREDITATION STANDARDS REFERENCE

VLEPSC

OPR.

03.03

This General Order becomes effective January 1, 2013, and rescinds all previous rules and regulations pertaining to the subject.

ISSUED BY:

APPROVED BY:



Chief of Police



County Executive