



# POLICY & PROCEDURE

## PORTAGE POLICE DEPARTMENT

SUBJECT: **SEARCH WARRANTS**

SCOPE: All Department Personnel  
DISTRIBUTION: Policy & Procedures Manual

REFERENCE: WI State Statutes 968.12 through 968.21

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WILEAG 6<sup>TH</sup> EDITION  
STANDARDS: 6.3.12

**PURPOSE:** The purpose of this Policy & Procedure is to establish the procedures all sworn Portage Department personnel must adhere to when applying for, obtaining, executing, collecting evidence from, and the returning of a search warrant, including a no-knock search warrant.

This Policy & Procedure consists of the following numbered sections:

- I. INTRODUCTION
- II. POLICY
- III. DEFINITIONS
- IV. PROCEDURES

### I. INTRODUCTION

- A. The 4<sup>th</sup> Amendment to the Constitution reads, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."

### II. POLICY

- A. It is the policy of the Portage Department to follow the procedures outlined in State Statutes when applying for and obtaining a search warrant, along with executing a search warrant, collecting evidence during the execution of a search warrant, and the procedures for the return of a search warrant. In addition, a no-knock search

warrant requires additional considerations and the procedures for this type of search warrant shall strictly be adhered to.

### III. DEFINITIONS

- A. **KNOCK-AND-ANNOUNCE SEARCH WARRANT:** The announcement of the presence of police with a search warrant prior to the execution of the search warrant. The announcement, "Police, Search Warrant," is usually preceded by knocking on the structure prior to entry. The purpose is to provide occupants of the premises notice that a search warrant is about to be served.
- B. **NO-KNOCK SEARCH WARRANT:** Not every law enforcement entry based on a search warrant must be preceded by knocking and announcing. A no-knock search warrant may be issued by a Judge or Court Commissioner when a law enforcement officer establishes there is reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous, or futile, or that it would inhibit the effective investigation of the crime.
- C. **SEARCH WARRANT:** An order signed by a Judge or Court Commissioner directing a law enforcement officer to conduct a search of a designated person, a designated object, or a designated place for the purpose of seizing designated property or kinds of property. A Judge or Court Commissioner issues a search warrant only if probable cause is shown.

### IV. PROCEDURES

- A. When conducting any investigation, officers should utilize all available resources to develop information to resolve the investigation, including obtaining a search warrant where applicable. When information becomes available that may be used in the development of an application for a search warrant, all of this information must first be verified by the officer. When it becomes apparent that a search warrant may be required, the officer shall contact a supervisor and inform them of the circumstances.
  - 1. In cases involving a confidential informant, the officer shall make every effort to verify the information provided by informant. This should include at a minimum, having the informant show the officer the location to be searched and all other information that can be verified. Also refer to Policy & Procedure 6.12: Informants.
  - 2. In cases involving OWI offenses such as a search warrant for OWI evidence or a search warrant for a forcible blood draw, refer to Policy & Procedure 6.08: Impairment Due to Alcohol and/or Drugs.
- B. The officer shall then prepare either a written affidavit or prepare to use the information gathered in the investigation to be presented before a Judge or Court Commissioner that outlines the probable cause for seeking a search warrant.
- C. The officer shall then review the affidavit and review the information to be presented

with the appropriate supervisor.

- D. When approved by a supervisor, the officer shall contact the Columbia District Attorney's Office to present the affidavit and search warrant application form for review or to go over the information for oral testimony. After approval from the District Attorney, the officer shall then contact the Judge or Court Commissioner to present the affidavit and information of the search warrant.
  - 1. If oral testimony is given, the Judge or Court Commissioner may place the officer under oath via telephone, radio, or other means of electronic communication, without the requirement of face-to-face contact, to swear to the complaint or affidavit. The Judge or Court Commissioner shall indicate on the search warrant that the person so swore to the complaint or affidavit.

A search warrant may be based upon sworn oral testimony communicated by telephone, radio or other means of electronic communication, under the procedure prescribed in this subsection or may be in writing. The contents of a warrant upon oral testimony shall be the same as the contents of a warrant upon affidavit.

Whether an officer calls or meets in person, the Judge or Court Commissioner will place under oath each person whose testimony forms a basis of the application and each person applying for the warrant. If the testimony was via electronic means or through a voice call, arrangements shall be made for all sworn testimony to be recorded either by a court reporter or by means of a voice recording device. The Judge or Court Commissioner shall have the record transcribed. The transcript, when certified as accurate shall be filed with the court.

The officer who is requesting the warrant shall sign their own name on the warrant and deliver or transmit it to the Judge or Court Commissioner, who may modify the warrant. If the Judge or Court Commissioner determines that there is probable cause for the warrant, they shall order the issuance of a warrant by signing the warrant and entering on the face of the warrant the exact time when the warrant was ordered to be issued. The Judge or Court Commissioner shall immediately transmit or hand the signed warrant to the person who requested it.

- E. A search warrant may authorize a search to be conducted anywhere in the State and may be executed pursuant to its terms anywhere in the State.
- F. An officer requesting a warrant and a Judge or Court Commissioner issuing a warrant may sign by using an electronic signature, a handwritten signature, or a handwritten signature that is electronically imaged.
- G. A search warrant shall be issued with all practicable secrecy. Disclosure concerning a search warrant prior to its execution is subject to criminal sanction unless that disclosure is necessary to its execution.

#### H. Executing a search warrant.

1. The search warrant must be executed and returned not more than five days after the date of issuance.
2. The procedure for the execution of a search warrant is established in Policy & Procedure 6.19: Special Investigations, II. K.
3. While State Statute 968.14 provides for “all necessary force to be used to execute a search warrant or to affect an entry into any building or property or part thereof to execute a search warrant”, Officers are reminded to use only the force necessary when executing the search warrant.
4. When executing the warrant, the officer in charge of the search may take the following actions before entering the premises to be searched:
  - a) Attempt to make contact with any persons that may be in the residence.
  - b) Allow a reasonable amount of time for any occupants to allow the search party to enter.
  - c) Announce and identify as a police officer.
  - d) A copy of the warrant will be left at the location it was served and/or given to the occupant or care taker of the location.

#### I. No-Knock Search Warrants

1. In *Richards v. Wisconsin*, 520 U.S. 385, the U.S. Supreme Court held the Fourth Amendment does not permit a blanket exception to the knock-and-announce requirement for felony drug investigations. It is the responsibility of the Judge tasked with reviewing the warrant to determine whether the facts and circumstances known at the time, justify the issuance of a no-knock warrant. Factors that may authorize the issuance of a no-knock warrant include reasonable suspicion of the following element(s):
  - Presence of weapons\*
  - Possibility of physical violence
  - Fear of the destruction of evidence
  - Flight risk of the suspect(s)

*\*The mere presence of weapons alone does not necessarily obligate a judge to grant a no-knock search warrant. Additional aggravating circumstances may need to be present.*

2. Although an officer need not take affirmative steps to make an independent re-verification of the circumstances already recognized by a Judge in issuing a

no-knock warrant, such a warrant does not entitle officers to disregard reliable information clearly negating the existence of exigent circumstances when they actually receive such information before the execution of the warrant.

3. The officer must obtain approval from the chief or designee **prior** to the application of a no-knock search warrant. The chief or designee will confirm all the elements required for the request of a no-knock search warrant were verified and documented based on thorough investigation and pre-operational surveillance.
4. It shall be incumbent on the officer applying for the no-knock search warrant to take into account high risk safety considerations. There may be numerous safety items to consider; but at a minimum, the officer must make reasonable attempts to determine whether children or vulnerable adults are present within the target structure.

Consideration shall also be given and documented if the target structure is a multi-family/multi-unit building where uninvolved occupants may share common walls, ceilings and/or floors (if a multi-level structure),

The reviewing supervisor must weigh the risks versus benefits to executing a no-knock search warrant. If approved, appropriate measures to mitigate the risks to children, vulnerable adults and/or innocent bystanders. Such tactics shall be documented and discussed during the pre-operational briefing.

5. A chief or designee must approve the execution of a no-knock search warrant. The chief or designee shall:
  - Review the no-knock search warrant affidavit and information
  - Review and attend the pre-operational briefing
  - Verify that reasonable measures have been taken to mitigate risks to bystanders based on the most current known information
6. In *Ker v. California*, 374 U.S. 23, and later *Richards*, the Court held, a knock-and-announce warrant may be executed as a no-knock-warrant if certain exigent circumstances become apparent to the officers at the time the warrant is being executed.

These circumstances include reasonable suspicion of the following:

- Where the persons within already know of the officers' presence and authority
- Where the officers are justified in the belief that the officers or persons within the premise are in imminent peril of bodily harm
- Where those within, made aware of the presence of someone outside, are then engaged in activity which justifies the officers in the belief that an escape or the destruction of evidence is being attempted

7. The supervisor overseeing the execution of a knock-and-announce search warrant which becomes executed in a no-knock manner will notify the chief as soon as practical. The reason(s) will be articulated in the supervisor's supplemental report documenting the reasons for the change in execution.
8. As soon as attempts are made to breach the structure subject to search, officers will begin to loudly and clearly announce, "Police, Search Warrant" and will continue announcing law enforcement presence and purpose until the structure is deemed safe and secure.

J. Person(s) located on the premises where a search warrant is executed.

1. The team executing the search warrant may reasonably detain and search any person on the premises at the time to protect themselves from attack or to prevent the disposal or concealment of any item particularly described in the search warrant. SS 968.16.

K. Property subject to seizure.

1. Any property or item(s) described in a search warrant may be legally seized by the officer.
2. After the structure has been cleared of people, the search must be terminated if the specific item listed in the warrant is found such as a red sofa.
3. In order for evidence, including contraband not particularly described in the warrant, to be validly seized, the four requirements which must be met are:
  - a) The item is discovered in the course of a lawful search.
  - b) The item by itself or with facts known to the officer before the search provides a connection between the item and criminal activity.
  - c) The item is discovered in the physical area properly searchable within the purposes for which the search was started (i.e., the proper scope of the search).
  - d) The item is discovered while the officer is actually searching for objects within the purpose for which the search was started.
  - e) In some cases, it may be preferable to contact the District Attorney for advice or for an additional search warrant when contraband or potential contraband is located that is outside the scope of the search warrant. Example: when searching for drugs, Officers locate numerous tools that appear to be stolen.
4. All seized property from the execution of a search warrant shall be inventoried, recorded, and secured according the procedures in the policies in Chapter 11.

- a) Any person claiming the right to possession of property frozen or seized pursuant to a search warrant or seized without a search warrant, may apply for its return to the Circuit Court for the county in which the property was seized or where the search warrant was returned, refer to SS 968.20.

L. A copy of the signed and dated search warrant shall be left in the place searched.

M. Return of the Search Warrant.

1. The search warrant, along with a written inventory of any property seized, shall be returned to the County or Municipal Clerk from the same jurisdiction of the judge or court commissioner who signed the warrant not more than five days after the date of issuance and within forty-eight hours after execution of the search warrant
2. The officer shall file with the clerk an affidavit made in support of the issuance of the warrant within five business days after the date of the execution of the warrant.
3. Property seized shall be kept in accordance with the department evidence policy.
4. All property other than contraband not required for evidence or used in further investigation should be returned to the person from whom it was seized.

N. Reporting of Search Warrants to the Wisconsin Department of Justice

1. The department will comply with the Wisconsin Department of Justice request to report search warrant activity on physical premises as per Wis Act 183 Wis Stat 165.25(20).

Keith J. Klafke  
Chief of Police

This Policy & Procedure cancels and supersedes any and all written directives relative to the subject matter contained herein.

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