



METROPOLITAN POLICE DEPARTMENT
NASHVILLE, TENNESSEE

Roll Call Training: Policy Briefing

MNPD FORM 101
Rev. Feb. 2020

Table with 3 columns: SUBJECT, REVISED, RESCINDS; REFERENCE, EFFECTIVE DATE, DISTRIBUTION. SUBJECT: Search Warrants, MNPD Manual, 5.10.030 & 5.10.040. REVISED: (empty). RESCINDS: RCT: Search Warrants Approval Required, dated August 19, 2020. REFERENCE: MNPD Manual, Search Warrant, 5.10.030, 5.10.040, & 5.10.050. EFFECTIVE DATE: December 8, 2020. DISTRIBUTION: All Personnel.

I. PURPOSE

The purpose of this roll call training document is to notify all employees regarding a change to MNPD Manual, 5.10.030 & 5.10.040, pending formal revision to the Manual. Employees are further reminded to review 5.10.050 regarding search warrant tracking form and the requirements of those provisions.

In accordance with the current requirements, supervisors shall ensure all employees under their command are aware of this document and acknowledging they have received notice of the information and accept responsibility to follow the directive(s) contained herein.

II. KEY POINTS TO COVER DURING ROLL CALL TRAINING

MNPD Manual, 5.10.030 & 5.10.040 are deleted in their entirety and replaced with the following:

5.10.030 Search Warrant Application

A. Process

Within the MNPD, only sworn employees may apply for a search warrant. Such employees shall ensure compliance with Tennessee law and all applicable MNPD policies and procedures.

B. Supervisor Review

1. Applications for search warrants shall be reviewed by a sworn supervisor prior to submission to a magistrate or judge for review and approval. Supervisors, in reviewing search warrants, are encouraged to use the resources available across the department (e.g. supervisors in SID, CID, Legal Resources, Police Legal Advisor, or (if assisting with the case) an assistant district attorney.

2. In reviewing search warrant applications to determine whether sufficient probable cause exists to support the issuance of a warrant, supervisors shall, at a minimum, consider:

- a. Staleness – The timeline of occurrence of the relevant facts being relied upon in order to establish probable cause for the issuance of the warrant must be established. If the information is too old, it is considered stale and cannot constitute probable cause.

- b. Nexus – Is there a sufficient nexus between the item(s) to be searched for and the place to be searched? Does the affidavit establish probable cause to believe that the items subject to seizure (i.e., evidence, contraband, fruits of crime, etc.) are *currently* in the place to be searched?
 - c. Scope – Is the scope of the warrant limited to the search of items for which the affidavit establishes there is probable cause to believe are located at the place to be searched? If the warrant is overly broad, it is considered a general warrant and invalid.
 - d. Hearsay – Does the affidavit satisfy the basis of knowledge prong and the veracity prong such that, under the totality of the circumstances, a magistrate would find there is a fair probability that contraband or evidence of a crime will be found in a particular place?
 - e. Description – Does the search warrant describe the place to be searched to the exclusion of all others? The warrant should provide a sufficient description such that an officer with no knowledge of the case can accurately locate the place to be searched. Does the warrant describe the things to be seized to the exclusion of all others? If the warrant is for the seizure of an item such as controlled substances, then a more general description will suffice. If the warrant has been issued to recover a particular item (e.g., a stolen phone, a gun used in a homicide, etc.), then the warrant should sufficiently describe that item such that no other items will be taken by mistake.
 - f. Necessity – Prior to seeking a search warrant, officers will assess the need to obtain a search warrant, weighing factors such as the reason for the search, the intrusiveness of the search, safety of the officers and the public, and whether there were reasonable and less drastic alternatives to accomplish the investigative goals (e.g., consent). Officers should also take reasonable steps to minimize the intrusiveness of a search warrant execution (e.g., obtaining consent where there is no threat to evidence or safety, using keys to minimize damage, etc.).
- C. Search warrant applications should generally be presented to the Judges of the General Sessions and Criminal Courts. In the event a judge cannot be located and a delay to find a judge would impair the investigation, commissioners/magistrates assigned to Night Court may be utilized.
- D. When a search warrant is presented to a judge or magistrate for review and approval, and such approval is denied, copies of the search warrant and affidavit shall be forwarded to Legal Resources. Only after a review of the search warrant has been completed by Legal Resources or the Police Legal Advisor, and a finding that probable cause exists to support the issuance, may the search warrant be submitted to a different judge or magistrate.

E. Search Warrant Type – Minimum Requirements for Application & Supervisory Review

1. Search Warrants Requesting No-Knock Service or Execution
No officer shall seek application for a search warrant wherein a “no-knock” service or execution is requested.
2. Search Warrants Involving a Residence or Building Where Forced Entry is Reasonably Expected or Anticipated or Body Cavity Searches
No officer shall seek application for a search warrant under this category without the explicit prior approval of no less than a Deputy Chief of Police.
3. All Other Search Warrants
No officer shall seek application for a search warrant under this category without the explicit prior approval of a sworn supervisor who has completed the departmentally approved search warrant review training program.

5.10.040 Execution and Return with Inventory

A. Prior to executing a search warrant, officers shall consider the following factors:

1. Threat assessment – Prior to the execution of a search warrant for a premises, a Threat Assessment form (MNPDP Form 375) shall be completed. The decision matrix shall be used to determine which component will execute the warrant.
2. Time – Proper consideration should be given to the time of execution of the search warrant. Is the planned execution time reasonable? Is there a time when the person in control of the premises is likely to be present and can admit officers so that damaging the property is unnecessary? If the search warrant is for a premises and doesn't involve a threat to the loss of evidence or safety of the officer or others, then the warrant should generally be executed during daytime hours.
3. Personal searches – If the search of persons is anticipated, officers of either sex should be on hand to accommodate personal searches.
4. Security – Consideration should be given to the steps necessary to secure the premises following the execution of the search warrant if forced entry is required (e.g., calling apartment maintenance, replacing a damaged lock on a storage unit, etc.).
5. Visibility – Officers executing the search warrant should be properly attired in uniform or other clothing that clearly indicates they are a law enforcement officer with the MNPDP. When a warrant is to be executed on a premises by a non-uniformed unit, at least one uniformed officer should be present and visible, unless there is an articulable threat in doing so. Where feasible, a marked unit should be positioned so as to be visible to the occupants of any premises subject to the execution of the search warrant.

B. During the execution of the search warrant, officers shall consider the following factors:

1. Knock and Announce – In conformance with constitutional requirements, absent reasonable suspicion of exigent circumstances, officers must comply the requirement to knock and announce the officer's presence and purpose.

2. Wait time – The knock and announce rule requires officers to wait a reasonable period of time to be voluntarily admitted into the location before forced entry may be made.
 3. Forced entry – Any damage sustained during the execution of a search warrant must be reasonably necessary. Care should be taken to avoid unnecessarily causing damage to property. Consideration should be given to steps which may reduce the need to force entry (e.g., waiting until someone is on hand who can provide access to the location, obtaining a key to the location, etc.)
- C. The search warrant may only be executed by the officer, or one of the officers, to whom it is directed. Other persons may aid such officer at the officer's request, but the officer must be present and participate in the execution.
 - D. If, after notice of his or her authority and purpose, an officer is not granted admittance, or in the absence of anyone with authority to grant admittance, the officer with a search warrant may break open any door or window of a building or vehicle, or any part thereof, described to be searched in the warrant to the extent that it is reasonably necessary to execute the warrant and does not unnecessarily damage the property.
 - E. The warrant must be executed within five calendar days after its date of issuance.
 - F. The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at a place from which the property was taken.
 - G. The return shall be made promptly and shall be accompanied by a written inventory of any property taken.

The return, along with a copy of the search warrant and supporting affidavits shall be sent to Legal Resources who shall maintain such copies as a confidential open case. Legal Resources shall review the documents for training purposes and maintain an analysis which summarizes statistical information and such analysis shall not contain any confidential information.

Officers are further encouraged, for any questions or concerns, to check with your supervisory chain of command, the Legal Resources Section, or a police legal advisor.