

## MINNESOTA JUDICIAL TRAINING UPDATE

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### SEARCH WARRANTS: Answers To 12 Core Questions Every Judge and Attorney Should Know



#### 1) WHAT IS THE LEGAL STANDARD FOR ISSUING A SEARCH WARRANT?

A search warrant may issue only upon “probable cause, supported by affidavit, naming or describing the person, and particularly describing the property or thing to be seized, and particularly describing the place to be searched.” *M.S. 626.08*. Probable Cause is determined by examining the totality of the circumstances:

- a) the task of the issuing [judge] is simply to make a practical, common-sense decision whether, given all the circumstance set forth in the affidavit before him, including the ‘veracity’ and ‘basis of knowledge’ of persons supplying hearsay information (e.g. confidential informants), there is a fair probability that contraband or evidence of a crime will be found in a particular place. *Illinois v. Gates*, 462 U.S. 213, 238 (1983); *State v. Souto*, 578 N.W.2d 744, 747 (Minn. 1998); *State v. Yarbrough*, 841 N.W.2d 619, 622 (Minn. 2014); *State v. Ross*, 676 N.W.2d 301, 304 (Minn. App. 2004) (The court articulated six factors assessing the reliability of a confidential informant).

#### 2) WHAT IS THE STANDARD FOR ISSUING A “NO KNOCK” (unannounced entry) WARRANT?

Police must have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances of that case, would be dangerous or futile, or would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence. You need advanced authorization for a no-knock warrant supported by specific facts. *State v. Wasson*, 615 N.W.2d 316, 320 (Minn. 2000); *Richard v. Wisconsin*, 520 U.S. 385 (1997).

- a) Although the showing required to justify an unannounced entry is not high, a generalized showing of drug trafficking is not sufficient justification for an unannounced entry because evidence of drug trafficking does not, *ipso facto*, equate to a conclusion that an announced entry would be dangerous or futile, or that it would result in the destruction of evidence. *State v. Garza*, 632 N.W.2d 633 (Minn.2001).

**3) WHAT IS THE STANDARD FOR AUTHORIZING A “NIGHTTIME SEARCH”?**

“A search warrant may be served only between the hours of 7:00 a.m. and 8:00 p.m. unless the court determines on the basis of facts stated in the affidavits that a nighttime search outside those hours is necessary to prevent the loss, destruction, or removal of the objects of the search or to protect the searchers or the public. The search warrant shall state that it may be served only between the hours of 7:00 a.m. and 8:00 p.m. unless a nighttime search outside those hours is authorized.” *M.S. 626.14; State v. Lien*, 265 N.W.2d 833 (Minn. 1978).

- a) The application must establish at least a reasonable suspicion that a nighttime search is necessary to preserve evidence or to protect officers or public safety. *State v. Bourke*, 718 N.W.2d 922, 927 (Minn. 2006). Boilerplate language about the risks associated with all drug cases is not sufficient. *State v. Bourke*, at 928.

**4) WHAT KIND OF PEACE OFFICER HAS AUTHORITY TO EXECUTE A SEARCH WARRANT?**

The term “peace officer” means a sheriff, deputy sheriff, police officer, conservation officer, agent of the Bureau of Criminal Apprehension (BCA), agent of the Division of Alcohol and Gambling Enforcement, peace officer of the Commerce Fraud Bureau; Univ of Minn police officer, Metropolitan Transit Police officer, Minn Dept of Corrections Fugitive Apprehension Unit member, or State Patrol trooper. *M.S. 626.05 Subd.2*.

**5) WHAT TYPE OF CRIME MUST BE INVOLVED BEFORE A SEARCH WARRANT CAN ISSUE?**

Any felony, gross misdemeanor or misdemeanor (i.e. any offense for which the actor may be sentenced to imprisonment, with or without a fine), including violations of municipal ordinances for which a misdemeanor sentence may be imposed. *M.S. 626.05, subd.3; M.S. 626.07*, listing 5 grounds upon which a search warrant may be issued.

**6) WHO HAS JURISDICTION TO ISSUE A SEARCH WARRANT?**

Search warrants may be issued by any court, other than probate court, having jurisdiction in the area where the place to be searched is located. *M.S. 626.06*. A search warrant can be served anywhere within the issuing judge’s county by any of the officers named in its directions. *M.S. 626.13*.

**7) WHO MUST SIGN THE APPLICATION FOR A SEARCH WARRANT?**

The peace officer that is seeking the search warrant and who provides the probable cause affidavit in support of the search warrant is called the “affiant.” The affiant must sign the application and swear to its accuracy before the judge. *M.S. 626.09; Minn. R. Crim. P. 37.01*.

**8) WHO DOES THE JUDGE ACTUALLY ISSUE THE SEARCH WARRANT TO?**

- a) A search warrant can be issued to a peace officer from inside or outside the officer's jurisdiction. *M.S. 626.11*.
- b) For example: if an Anoka County peace officer were to seek a search warrant to be executed in Hennepin County, the Anoka County officer would be the affiant and would sign the application for search warrant; the search warrant itself must be signed by a Hennepin County judge but the warrant could be issued to any peace officer (i.e. a peace officer inside or outside Hennepin County).

**9) ONCE A SEARCH WARRANT IS ISSUED HOW QUICKLY MUST IT BE EXECUTED?**

A search warrant must be executed within ten (10) days of being signed by the judge. After the expiration of this time, the warrant is void unless previously executed. *M.S. 626.15(a)*. The statute allows for an extension of time if a financial institution fails to produce requested documents within 10 days. See *M.S. 626.15(b)* for specifics.

**10) WHEN EXECUTED WHO GETS COPIES OF THE WARRANT & PROPERTY INVENTORY?**

At the time the search warrant is executed, a copy of the warrant and a copy of the written inventory of all property seized must be given to the person in whose possession the premises and/or seized property were found. OR: In the absence of such a person, a copy of the warrant and property inventory must be left in open view in the place where the search was executed. *M.S. 626.16*.

**11) ONCE EXECUTED WHAT MUST BE RETURNED TO THE ISSUING COURT?**

The officer must immediately return the warrant to the court and deliver to the court a written inventory of the property or things taken, verified by the certificate of the officer at the foot of the inventory. *M.S. 626.17*. Once executed, the warrant must be returned even if nothing is found.

**12) WHAT IS THE STANDARD FOR OBTAINING A TELEPHONIC SEARCH WARRANT?**

- a) An officer may request a search warrant upon sworn oral testimony presented via telephone, radio, or other similar means of communication. Written testimony may be presented by facsimile or other appropriate means. *Minn. R. Crim. P. 36.01*.
- b) An oral request may only be made in circumstances that make it reasonable to dispense with a written affidavit as determined by the judge. *Minn. R. Crim. P. 36.02*.
- c) The procedure that must be followed is set out in *Minn. R. Crim. P. 36.03 – 36.08*.

**Refence:** Minnesota Judges Criminal Benchbook, 7<sup>th</sup> Edition, 2016 (Updated 2020), Chapter 1.