

Rules and Procedures

Rule 334

June 14, 2006

Rule 334 - SEARCH WARRANT APPLICATION AND EXECUTION

In conformance with Rule 112, Sec. 2, Special Order 95-5, "Search Warrant Application and Execution," issued January 18, 1995, is hereby incorporated as Rule 334. The provisions of this Rule are effective immediately and all previously issued Rules, Orders, Memorandums and Directives on this subject are hereby rescinded and replaced by its provisions.

PURPOSE:

To ensure that the application for and execution of search warrants meet constitutional requirements and properly safeguard the rights and safety of all parties.

Sec. 1 GENERAL CONSIDERATIONS: The Fourth Amendment of the Constitution of the United States and Article XIV of the Declaration of Rights of the Commonwealth of Massachusetts protect persons from unreasonable search and seizure. Except in certain well defined circumstances, a warrant is required to conduct any searches and seizures. In addition, individuals who are subject to a legal search and seizure have a right to expect that their other rights, their health and their safety will be properly safeguarded.

Sec. 2 SEARCH WARRANT APPLICATION PROCEDURES:

1. Affiant Responsibilities:

A police officer conducting an investigation who has probable cause to believe that a crime has been committed and that evidence of that crime is concealed at a specific location may apply for a search warrant. No police officer or detective shall submit an application for a search warrant to any court without first seeking and obtaining the approval of his/her immediate supervisor. If at any time during the preparation of a search warrant application the affiant's immediate supervisor becomes unavailable, the affiant will immediately notify the detective unit commander who will assign a supervisor to assist the affiant.

The procedures for such application are:

- A. Review the check list (BPD Form 2700). Note that not all of the items on the check list will apply to or be necessary for every warrant. After completing a review of BPD Form 2700, the affiant shall initial the form and submit it to his/her immediate supervisor when he/she submits the affidavit for approval.
- B. Complete an affidavit for a search warrant using an Application for Search Warrant form in accordance with the provisions of M.G.L. c.276, s. 1-7 or applicable statute and include all relevant information that the check list indicates is both applicable and necessary. Officers shall attempt to gain additional corroboration or substantiation of information that is supplied by an informant and include such information in their affidavit.

- C. Submit the completed affidavit to their supervisor for review and approval. Once the supervisor has approved and initialed the affidavit, have the application, affidavit, and warrant form reviewed by an Assistant District Attorney prior to submitting it to the court.
- D. If approved by the supervisor and if no changes are made following the review by the Assistant District Attorney, submit the completed application, affidavit, and warrant form to the court. If changes are going to be made or suggested by the Assistant District Attorney, or if the affidavit is disapproved by the supervisor, conduct additional investigation or obtain additional corroboration prior to resubmitting the affidavit to the supervisor for another review.
- E. Notify the supervisor who approved the affidavit of the result of the application for a search warrant prior to the execution of the warrant (i.e., approved or disapproved and if disapproved the reason therefor in writing).

Note: In order to maximize the safety of police officers and preserve the integrity of evidence in drug cases, officers are reminded that they must coordinate all drug connected activities, arrests and investigations through the Drug Control Unit Commander. Detectives or officers planning to conduct investigations based on information received or from observations, will contact the Drug Control Unit Commander prior to initiating investigations. The Drug Control Unit Commander will maintain a record of all locations that are the target of drug investigations. After consulting this record, he/she will inform the requesting detective or officer whether or not the specified location is, or has been, under investigation by another officer. If the location is not under current investigation, the Drug Control Unit Commander will document the new location and authorize initiation of a drug investigation by the requesting officer. Onsite arrests are a valid exception to this procedure.

2. Supervisor Responsibilities:

The immediate supervisor of the affiant police officer is responsible for reviewing and approving the content of all search warrant affidavits.

- A. To ensure that the review process is thorough and complete and that the affidavit contains all relevant information, the supervisor shall refer to the check list appearing on BPD Form 2700 when evaluating the information contained in affidavits submitted for review. It should be noted that not all items in the checklist will apply to every warrant and that some items may not be necessary.
- B. The supervisor shall ensure that affidavits meet the following criteria:
 - i. Establish that probable cause exists to believe that a crime has been committed and that the place to be searched and items to be seized are located in the place specified in the affidavit;
 - ii. Include enough information to allow an individual, not previously connected to the investigation, to properly identify the place or premises to be searched and the item(s) to be seized;

- iii. Include information that establishes both the basis of knowledge and the veracity (credibility or reliability) of an informant for all warrants relying on the use of such informant, or include additional substantiation or corroboration to make up for any deficiencies in establishing the informant's basis of knowledge or veracity;
 - iv. Include additional corroboration or substantiation to support a warrant which relies on information supplied solely by an informant.
- C. In addition, supervisors shall ensure that affidavits seeking "No Knock" warrants, "Nighttime" warrants, "Anticipatory" warrants and warrants to search "All persons Present" are adequately and properly supported.
- D. Affidavits that a supervisor deems insufficient shall be returned to the affiant police officer who shall be instructed to seek additional investigation and/or corroboration prior to resubmitting the affidavit for another review.
- E. If an affiant police officer has had an affidavit returned for insufficiency by his/her supervisor and is not successful in attempts to obtain additional corroboration, the affidavit may be resubmitted, through the supervisor, to be considered for approval by the Detective Supervisor Commander. In all such cases, only the Detective Supervisor Commander may approve such affidavit.
- F. The supervisor shall instruct the affiant to contact an Assistant District Attorney to review the application, affidavit, and warrant form prior to submitting the affidavit to the court. On weekends and during evening hours, the on-call Assistant District Attorney will be contacted.
- G. The supervisor shall instruct the affiant police officer to submit the application for the search warrant to the court, if no changes are made following review by the Assistant District Attorney. The affiant police officer shall further be instructed to return the affidavit to the supervisor for further review if changes are going to be made following review by the Assistant District Attorney. The supervisor shall review any recommendation made by the Assistant District Attorney prior to permitting the affiant to submit the affidavit to the court.
- H. Upon being informed by the affiant that a search warrant has been granted, the supervisor shall notify the Detective Unit Commander (if unavailable, the on-duty BFS Commander), who shall ensure that a superior officer is present and in charge of the search.

3. Special Operations Division Commanders Responsibilities:

The Commanding Officer of the Special Operations Division is responsible for establishing, maintaining and updating procedures utilized by the Boston Police SWAT Team; the Commander will also ensure that no person shall be assigned to the Entry & Apprehension Team without first being trained in such procedures.

Sec. 3 SEARCH WARRANT EXECUTION PROCEDURES:

1. Entry Considerations:

- A. Upon learning that a search warrant has been granted, the supervisor in charge of the search shall prepare a Search Warrant Execution Supervisor Checklist (BPD Form 2703)

and be responsible for determining how entry is to be made. The primary responsibility of all supervisors involved in the execution of search warrants is the safety of the officers involved and the inhabitants of the target location. Toward that end, if force is to be used, the supervisor shall make the determination as to whether or not the Boston Police SWAT Team will be utilized. The Boston Police SWAT Team should be utilized whenever a supervisor feels it is necessary and shall be utilized whenever:

- i. A Board of Probation check indicates a prior history of violations involving the use of firearms; or
 - ii. The presence of firearms is reasonably suspected.
- B. Requests by the supervisor to utilize the Boston Police SWAT Team should, whenever possible, be made at least 24 hours in advance of the execution of the warrant. If this is not possible, notification will be as soon as practicable.
Prior to the pre-search briefing the supervisor in charge of the search will be responsible for checking the Detective Case Management System and, at his discretion, other resources to see if the pending search location has been the sight of any recent search warrant activity. If there is any recent search warrant activity at the target location, the supervisor will make every effort to apprise himself of any conditions which may effect the pending search warrant execution.

2. Pre-Search Briefing:

- A. After deciding how entry is to be gained to the place to be searched, the supervisor in charge of the search shall make a determination as to the size and make-up of the search team and shall schedule a pre-search briefing. With the exception of evidentiary search warrants, all search warrants shall require the presence of at least one (1) supervisor and six (6) officers. Whenever practicable, a uniformed officer shall accompany the search team.
- B. The pre-search briefing shall be held by the supervisor in charge of the search. All personnel participating in the search including Boston Police SWAT Team personnel, if utilized, must attend the pre-search briefing. No officer may participate in the search unless they attend the pre-search briefing, except in an emergency, and only after being cleared by the supervisor in charge of the search.
- C. At the pre-search briefing, the supervisor in charge of the search, with the assistance of the affiant police officer, shall make a detailed presentation of all relevant information. The briefing should include a summary of the investigation and its objectives; a review of the physical description of the target location; information concerning the person(s) occupying the premises and their propensity for violence and any other safety concerns.
- D. The supervisor in charge of the search shall ensure that the Search Warrant Execution Supervisor Checklist details the roles, the call signs, the assignments and the responsibilities of each member of the entry and search teams.
- E. Every member of the entry and search teams will be given a written copy of the Search Warrant Execution Supervisor Checklist at the pre-search briefing.
- F. Except for those using subterfuge to gain entry, all personnel not in uniform shall wear a raid jacket and display their badge on or over their outer garment.
- G. All personnel participating in the entry and/or the search shall wear body armor.

- H. Except for masks and/or face covers used by the Boston Police SWAT Team personnel for protection while gaining entry, personnel shall not wear any mask or face cover.

3. Entry Procedures:

When entry is made by force, damages should be kept to a minimum to facilitate securing the premises after the search is complete.

- A. The affiant police officer shall point out to the entry personnel the premises to be entered and searched. When the premises to be entered and searched is an individual unit in a multi-unit dwelling, the affiant police officer shall point out to entry personnel the particular unit to be entered and searched.
- B. Entry to the premises shall be made by the entry personnel or the Boston Police SWAT Team. Until such time as entry is made and the premises are declared secure, command and control of the premises rests with the supervisor of the entry personnel or, when utilized, the Entry and Apprehension Team. Where the Entry and Apprehension Team is not utilized, the supervisor in charge of the entry personnel and the supervisor in charge of the search may be the same person.
- C. Entry personnel are responsible for:
 - i. Containment of the area perimeter and target structure(s);
 - ii. Effecting entry to the target location;
 - iii. Preventing the destruction of evidence;
 - iv. Gaining control of all persons inside the target location using that amount of force as is reasonably necessary;
 - v. Conducting a protective sweep of the premises, frisking anyone found inside the target location for weapons and, if appropriate, detaining them at a central location; and
 - vi. Establishing that the target location is secure and subsequently turning over responsibility for the premises to search team personnel.

Once the premises have been declared secure, the supervisor in charge of the entry personnel shall relinquish command and control of the premises and turn that responsibility over to the supervisor in charge of the search.

Unless operational considerations or a need for secrecy mandate otherwise, the supervisor in charge of the entry personnel shall notify the dispatcher for the District of the location where the search is being conducted immediately upon gaining entry.

4. Search Procedures:

- A. Once the premises have been declared secure and prior to initiating the search, the supervisor in charge of the search shall evaluate the premises. In the unlikely event that the supervisor determines that the wrong premises have been entered, the search shall immediately terminate. In all such cases, the supervisor shall submit copies of all written reports on the entire operation to the District Commander of the District of occurrence who shall forward such copies to the Bureau Chief in command of the supervisor.

- B. Upon initiating the search, the supervisor in charge of the search will ensure that all search personnel continue with their pre-assigned duties (i.e., perimeter security; prisoner control; evidence officer; search teams etc.) unless reassigned.
- C. Perimeter security personnel are responsible for:
 - i. Ensuring that no unauthorized persons escape from or enter the premises while the search is being conducted;
 - ii. Recovering any evidence thrown from the premises; and
 - iii. Remaining on their posts until ordered otherwise by the supervisor in charge of the search, or in the case of an emergency; and
 - iv. Remaining outside the premises until ordered to enter by the supervisor in charge of the search, or in the case of an emergency.
- D. Prisoner control personnel are responsible for:
 - i. Ensuring that all persons being detained but not placed under arrest are held in a central location, using that amount of force or restraint reasonably necessary;
 - ii. Ensuring that all persons have been frisked for weapons, if appropriate, and that persons being placed under arrest have been properly searched;
 - iii. Ensuring that FIOFS's are completed on all persons found inside the premises; and
 - iv. Ensuring that all persons placed under arrest are transported to the District of occurrence for booking.
- E. Search team personnel are responsible for:
 - i. Searching all persons present inside the target location, when permitted by the warrant;
 - ii. Conducting a complete and thorough search of all areas assigned to them;
 - iii. Notifying the evidence officer when any weapons, money, evidence or contraband is found; and
 - iv. After the evidence officer has noted its location, bagging and marking the weapons, money, evidence and contraband for identification and delivering same to the evidence officer for safekeeping.
- F. Evidence officers are responsible for:
 - i. Making a complete sketch of the interior of the premises searched;
 - ii. Noting the names of the officers that are assigned to search individual rooms;
 - iii. Noting and sketching the location of any evidence found and the names of the officers who found it; and
 - iv. Taking custody of any weapons, money, evidence and contraband for safekeeping in accordance with existing Department procedures and the following rules and/or orders:
 - a. Weapons – Rule 311, Ballistics Procedures and Special Order 91-11, Fingerprint Examination of Firearms;
 - b. Money – Rule 309A, Handling and Disposition of Seized Money

The duties of other personnel with special assignments, such as pre-raid and postraid surveillance personnel, will vary and will be defined within the Search

Warrant Execution Supervisor Checklist.

G. The supervisor in charge of the search is responsible for:

- i. Ensuring that all personnel carry out their assigned duties;
- ii. Counting all found money not seized as evidence in the presence of at least one other officer and the person claiming ownership at the search location, when feasible. The supervisor in charge of the search shall obtain a receipt from the person to whom the money is given.
- iii. Counting all money seized as evidence in the presence of at least one other officer and the person claiming ownership at the search location, when feasible. Whenever it is not possible to count seized money at the search location, a Form 26 shall be submitted to the Unit Commander stating the reasons therefore. The supervisor in charge of the search shall give a receipt to the person claiming ownership of the money, if any;
- iv. Ensuring that all weapons, money, evidence and contraband has been accounted for, properly marked for identification, transported to the respective District or Unit and handled in accordance with applicable Department procedures;
- v. Ensuring that all prisoners are transported to the respective District station for prisoner processing; and
- vi. Ensuring that the premises are properly secured, if left vacant after the search has been completed.

5. Post Search Procedures:

A. The supervisor in charge of the search shall be responsible for:

- i. Ensuring that all necessary reports and FIOFS's are completed and that such reports are thorough and accurate;
- ii. Ensuring that all weapons, evidence, contraband and money that is seized are recorded on the return of the search warrant and on the Incident Report (BPD Form 1. 1);
- iii. Ensuring that the completed search warrant is returned to the court within seven (7) days of it issuance;
- iv. Ensuring that all controlled substances seized are secured in the proper safe or storage area until transported to the Evidence Management Division.
- v. Ensuring that all firearms seized are properly stored until they are transported to the Ballistics Unit in accordance with the provisions of Rule 311;
- vi. Ensuring that a Seized Money Form, (BPD Form 2292B) is completed for all money seized and that the money is properly secured until transported to the custody of the Financial Evidence Officer in accordance with the provisions of Rule 309A, Handling and Disposition of Seized Money;
- vii. Ensuring that all other evidence is handled in accordance with applicable Department procedures;

- viii. Holding a post-search debriefing session with the members of the search team for the purpose of enhancing the efficiency of future operations;
- ix. When it becomes available, entering the affiant's name, the name of the supervisor in charge of the search and the specific search location named on the search warrant into the Detective Case Management System;
- x. Forwarding a copy of the Search Warrant Execution Supervisor Checklist to the Chief, Bureau of Investigative Services; and
- xi. Maintaining a complete file of all documents associated with the search warrant and execution.

The supervisor in charge of the Boston Police SWAT Team, if utilized, shall be responsible for submitting an after-action report, through channels, to the Chief, Bureau of Field Services.

To the maximum extent possible the above policies and procedures shall be adhered to with respect to the execution of all searches, with or without a warrant.

Sec. 4 Evidentiary Search Warrants

At the discretion of the supervisor in charge of the search, search warrants that are being executed for the sole purpose of gathering evidence or fruits of a crime, where there is no anticipated possibility of a confrontation, may be conducted with one detective supervisor and at least one other sworn officer.

Sec. 5 Outside Agencies

Outside agencies seeking the assistance of the Department in the execution of their search warrants shall be directed to contact the Chief, Bureau of Investigative Services who shall determine the appropriate unit to provide the necessary assistance and the level of assistance to be provided.

The Boston Police SAWAT Team may be utilized to assist outside agencies only with the permission of the Chief, Bureau of Investigative Services and the concurrence of the Chief, Bureau of Field Services.

Sec. 6 Searches Conducted Outside the City of Boston

Boston officers attempting to serve a search warrant outside the City of Boston shall contact the local police department wherein the search target is located and seek their assistance in serving the warrant. If there is a conflict between the policies and procedures mandated by this rule and the policies and procedures of the local police department, the policies and procedures of the local police department shall prevail.

Albert E. Goslin
Superintendent in Chief
Acting Police Commissioner

Notes:

- Amended by Special Order 07-056, issued October 3, 2007, "Entry and Apprehension Team" or "Entry Team" in Boston Police Rules and Procedures and Special Orders changed to "Boston Police SWAT Team" in the following sections:

Sec. 2 - line 3

Sec. 3 - line 1 sub-paragraph "A" & "B"

line 2 sub-paragraph "B" & "H"

line 3 sub-paragraph "B"

line 5 - bottom

Sec. 5 – paragraph 2

[Click here to view or print out a Search Warrant Checklist: Dept. Form 2700](#)

Albert E. Goslin
Superintendent in Chief
Acting Police Commissioner