


PINE BLUFF POLICE DEPARTMENT POLICY & PROCEDURES MANUAL

	SUBJECT:	POLICY NUMBER 350
	OBTAINING A SEARCH WARRANT	ISSUE DATE 02/19/2008
	CHAPTER: INVESTIGATIONS	EFFECTIVE DATE 02/19/2008
	ISSUED By: Chief of Police John E. Howell	TOTAL PAGES 4

I. PURPOSE

It is the purpose of this policy to provide guidelines for obtaining search warrants.

II. POLICY

The search warrant is one of the more powerful and valuable tools in the law enforcement arsenal. While the process of applying for and obtaining a search warrant should be familiar to most officers, there are many technical and legal pitfalls that can invalidate a search warrant, lead to the suppression of evidence or dismissal of cases, and have liability implications for involved officers. Therefore, it is the policy of this agency that all officers have a sound knowledge of the legal requirements associated with obtaining a search warrant in order to prevent suppression of evidence, support the Constitutional rights of citizens and to maintain public confidence in this agency's mandate to carry out the police function in an ethical and legal manner.

III. DEFINITIONS

SEARCH WARRANT: A written order, in the name of the people, signed by a magistrate or other judicial authority, directing a peace officer to search for personal property, contraband or person and bring it before the magistrate.

IV. PROCEDURES

A. LEGAL REQUIREMENTS FOR A SEARCH WARRANT

The Fourth Amendment to the U.S. Constitution prohibits unreasonable searches. Officers conducting searches without a warrant-such as those noted below bear the burden of proving that the search was reasonable. Therefore, officers should consider obtaining a search warrant whenever time and circumstances permit. Some exceptions to the search warrant requirement include the following.

1. **SEARCHES INCIDENT TO ARREST.** Searches of a person or the area within the immediate control of a person who has been lawfully arrested and permitted to secure weapons or evidence of a crime.
2. **EMERGENCIES.** Officers may conduct searches when they believe that a person is in need of immediate assistance under life-threatening conditions, when immediate action is necessary to protect the public from harm or when, for example, an officer encounters a homicide scene and needs to search for additional victims, protect vital evidence or pursue the perpetrator.
3. **VEHICLE SEARCH.** A motor vehicle and containers found within may be searched when probable cause exists to believe that the vehicle may reasonably contain contraband or the fruits or instrumentalities of a crime.
4. **CONSENT SEARCHES.** A search may be conducted pursuant to consent without a warrant and without probable cause to obtain a warrant. The consent must be voluntary, freely and intelligently given by an appropriate party and the search must be limited to the terms of the consent. Written consent should be sought whenever reasonably possible. Consenting party must be told they have the right to refuse consent. A consent search is not authorized if a physically-present co-occupant expressly refuses consent. Georgia v. Randolph, U.S. Sup Ct.

B. LEGAL BASIS FOR SEEKING A WARRANT

1. In order to obtain a search warrant an officer must be able to show probable cause to believe that specific evidence, contraband or fruits of a crime may be found at a particular location.
2. Specific facts establishing probable cause shall be set forth with clarity and specificity. Officers shall not rely solely upon personal opinion or unauthenticated third-party information or hearsay. Such facts may be based on:
 - a. Personal observation/knowledge of the officer; or
 - b. Information from a reliable source.
3. When informants are used, particularly confidential informants, the reliability of the informant and information provided shall be specified. Whenever possible, officers shall corroborate informant information.

C. AFFIDAVIT PREPARATION

An affidavit supporting application for a search warrant shall be prepared on the designated agency form. The accuracy of the affidavit is vital to the validity of the search warrant; thus, officers shall ensure that the following information is clearly and completely specified.

1. **Offense.** The offense shall be described with reference to the criminal code section where possible.

2. Place or thing to be searched. The place or thing to be searched shall be described with specificity and officers shall ensure that the warrant includes the specific reference(s). Where premises are to be searched, references should include if known;
 - a. Street number and apartment number if appropriate;
 - b. Physical description of the premises;
 - c. Legal description of the premises;
 - d. Name of owner or occupant;
 - e. Geographical location of the property;
 - f. Photographs, maps or diagrams that help to specify the location in question.

3. Scope of the search. Only those things described in the search warrant can be seized. Therefore, the affidavit shall specify and officers shall ensure that the warrant includes, but not limited to, the following:
 - a. All areas that officers desire to search shall be designated. In cases where officers wish to conduct a complete search of a home and its surroundings, the affidavit should specify a “premises” search and its “curtilage” and should identify any outbuildings such as garages, tool sheds, or barns, where appropriate.
 - b. Motor vehicles known to be on the premises that may be searched should be specified.
 - c. Searches (other than frisks for weapons) of specific persons on the premises shall be referenced in the affidavit by name if possible
 - d. The specific items to be searched for shall be detailed. Where the item may be dismantled (e.g. firearms), the warrant should authorize search for parts, pieces or components of that item.
 - e. Officers anticipating search of computers and related high-technology equipment shall consult a designated expert for appropriate language to use in the affidavit and procedures for seizure of hardware and software.

4. Time and method of search.
 - a. A search warrant may be served at any time of the day or night as long as the affidavit provides good cause and permission is specifically granted in the warrant.
 - b. Anticipatory search warrants may be sought when it can be shown that the evidence in question will be at a specific location at some time in the near future.

- c. Officers may request from the issuing judicial officer a "no knock and announce" provision in the warrant when they have advance reason to believe that adherence to the knock and announce rule would endanger their safety or the safety of others, would enable wanted persons to escape or would likely result in the destruction of evidence before entry can be made. This section shall not be construed to prohibit a "no knock and announce" entry should intervening circumstances warrant a "no knock and announce" entry.

D. REVIEW OF THE WARRANT

Officers shall review search warrants issued by judicial authorities to ensure that they include all pertinent information set forth in the affidavit accurately and completely, and that the warrant has been properly signed. Officers shall not attempt to serve any warrant that is known to contain substantive or administrative errors.

E. RETURN ON THE WARRANT

Officers shall observe statutory and administrative requirements regarding return on the warrant to include providing a receipt to the proper person for property taken, retention and security of property taken, and return of the warrant and delivery of the property inventory to the appropriate judicial authority within specified time limits.

F. RECORDING

A record shall be maintained of all warrants issued to this agency and actions taken in response to each.

G. LIAISON WITH THE PROSECUTOR'S OFFICE

Officers seeking warrants in unusual situations or where the seriousness, nature or legal complexity of the case dictates should consider reviewing the case with the prosecutor's office prior to seeking a search warrant.