

CAL/EPA RECOMMENDED GUIDANCE ON SEARCH WARRANTS

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A. Introduction

Enforcement of environmental laws may on occasion necessitate the service of a search warrant in order to find and seize evidence of environmental crime. The guidelines laid out below are basic precepts that the investigator should keep in mind during the preparation and execution of a search warrant. While most of Cal/EPA's constituent boards and departments have staff who may conduct investigations, only DTSC has investigators who are peace officers. Since a search warrant service is required to be served by a peace officer, if the investigating agency does not have peace officers on staff, assistance from a peace officer from an outside agency such as a District Attorney's Office or Sheriff's Office will be required.

B. Drafting the Warrant

As soon as it is determined that a search warrant will be needed, the investigator should notify his immediate supervisor. In addition, the investigator should advise the appropriate prosecutor (e.g., Assistant US Attorney (AUSA) or Deputy District Attorney (DDA) as soon as practical. Any other internal protocols such as notice to or assignment of internal legal counsel should be followed.

The following materials are available to investigators to assist in the preparation and service of search warrants:

1. Sample search warrants and affidavits (available from the Office of the Secretary).
2. The latest edition of the CDAA Search Warrant Manual published by the California District Attorneys Association.
3. The California Peace Officers Legal Sourcebook.
4. The Criminal Law and Procedure Sourcebook published by the Continuing Legal Education of the Bar (CEB).
5. Preprinted search warrant forms. Check with the local District Attorney's Office.

C. Investigator Duties

The duties of the investigator may include the following:

1. Acting as liaison among the various agencies to ensure there will be the necessary numbers of participants with the needed expertise at the service of the search warrant (computers, industrial equipment operation).
2. Arranging for a pre-execution search warrant briefing of all involved personnel in order to review team member responsibilities during the execution of the warrant.
3. Reconnaissance and surveillance of the location to be searched to insure the success of the warrant.
4. Contacting other law enforcement agencies including the local police department and District Attorney's office.
5. Arranging for a uniformed peace officer to be present for execution of the search warrant.
6. Ensuring that investigative staff have the appropriate equipment at search warrant location, including communications equipment, lights, sampling equipment, and personal protective equipment.
7. Ensuring that additional blank search warrant applications and forms, and a list with names and telephone numbers of judicial officers available for supplemental search warrant application is brought to the location of the search.
8. Coordinating a post-execution search warrant briefing to be held after the execution of the warrant. This briefing will be designed to inventory and review evidence seized pursuant to the warrant, discuss any additional investigations that may be indicated, and assign any additional responsibilities for the team members.
9. Ensuring that prosecutors or other appropriate legal staff are available by telephone during the execution of the warrant to assist with legal questions that rise during the execution of the warrant.

Upon execution of the warrant, the investigator should notify its supervisor of the status of the situation by telephone as soon as it is practical after securing the site.

D. Execution of the Search Warrant

1. Right to Leave the Scene

In most instances, persons present at the search warrant scene who are not members of the search warrant team have the right to leave the location without interference by any member of the search warrant team. This is subject to a determination by the peace officer responsible for executing the search warrant that no security issues exist in their departure (e.g., that persons leaving are not taking with them materials described in the search warrant). If a person (employee, customer, etc.) leaves the scene of the search warrant, he/she should not be allowed back on the scene without the consent of the peace officer responsible for executing the search warrant.

2. Presence of the Defense Counsel

Defense counsel has no legal right to be present on the site during the service of the warrant. Law enforcement personnel have control of the premises and make the determination as to who enters the site.

3. Claims of Attorney/Client Privilege

All relevant documents authorized under the warrant should be seized. Defense counsel or suspects may not dictate what is to be seized. A potential area of controversy may revolve around documents claimed to be subject to a statutory privilege (such as the attorney-client privilege). If, during service of the search warrant, members of the search warrant team find documents within the scope of the warrant that appear to be protected by an attorney-client privilege, those documents should be seized, sealed, and clearly marked in separate boxes and envelopes. The prosecutor for the case will determine how these materials are to be handled.

In preparing an application for a search warrant, if it appears that a person authorized or reasonably believed by the client to be authorized to practice law in any state or nation or is a physician, clergy, or psychotherapist, has offices in the location to be searched, and the person is not a suspect, legal counsel should be consulted to decide if a Special Master is needed pursuant to Penal Code section 1524.

4. Access to Copying of Seized Documents

Unless ordered by a court, no one has a right to a copy of the seized documents until a case is filed in court. The peace officer who executes the warrant is to control access to the documents until the case is filed by the prosecutor or as otherwise ordered by a court of competent jurisdiction. The peace officer in charge of the execution of the warrant may decide whether or not to allow copies to be made of seized original documents on site during the execution of the warrant.

5. Media Access to the Site

The media have no right to enter a search warrant scene during execution of a warrant. Also the media should not be advised of the execution of the warrant before the fact.

One member of the search warrant team should be designated as media liaison in the event any members of the media do come to the search location. During and after execution of the warrant, the normal response to any contact by the media or an interested party is "No comment" and the media representative should be directed to the media liaison. All information released to the media must be approved by the peace officer in charge of the execution of the warrant.

6. Return of Service

Only peace officers can serve warrants and file the return of service.

7. Maintaining Materials Seized

Items seized shall remain in the possession of the person designated in the search warrant until a court orders otherwise. A chain of custody shall be maintained at all times for all items seized.

8. Returning Materials Seized

The case prosecutor shall determine whether and when seized items are to be returned to their owner. Normally, seized items are returned to the owner only when the case has been adjudicated and the appeal or the time for the appeal has run; or where it has been determined that a case will not be filed and there is no reasonable possibility of utilizing the material in a future investigation of the suspect. Return of seized items require authorization from the court.

9. Transfer of Materials Seized

The prosecutor for the case will determine under what circumstances any seized items or copies of seized documentation may be transferred to another government agency and whether approval from the court issuing the warrant is necessary.