

	MEDFIELD POLICE DEPARTMENT	POLICY NO. 1.10
<h2 style="text-align: center;">SEARCH WARRANT AFFIDAVITS</h2>		
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: NONE		DATE OF ISSUE: 05/14/2023
ISSUING AUTHORITY: Michelle Guerette Chief of Police		EFFECTIVE DATE: 05/14/2023 REVISION DATE: 11/07/2025

PURPOSE:

An affidavit is a formal declaration or statement of facts, in writing, made voluntarily and confirmed by oath or affirmation before a person having the legal authority to administer such oath or affirmation. It is a written statement of facts sworn to as the truth. Although affidavits have a number of legal purposes, their preparation to establish probable cause for the issuance of a search warrant imposes a most important responsibility on the police. For this purpose an affidavit must contain the facts, information, and underlying circumstances which have led a police officer to reasonably believe that a particular crime has been, is being, or is about to be committed, and that evidence connected with that crime is likely to be found in the place, or upon the person to be searched.

The basic requirements for affidavits and search warrants are found in the Fourth Amendment to the U.S. Constitution, which provides as follows:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."

Similar wording is also found in Article XIV of the Massachusetts Declaration of Rights, contained in the state Constitution.

A police officer seeking a search warrant must appear personally before a judge or other court official authorized to issue search warrants in criminal cases, and present an affidavit containing the facts, information and circumstances upon which the officer relies to establish sufficient grounds for the issuance of the warrant.¹ The judge or court official issuing the warrant must retain the affidavit and deliver it to the court to which the warrant is returnable. Upon the return of the warrant, the affidavit must be attached to the warrant and filed therewith. The affidavit is not a public document until the warrant is returned. These requirements were enacted into law "to ensure that the Commonwealth can demonstrate by a writing that any given search and seizure was reasonable and was based on probable cause."² However, the fact that search warrant affidavits are "public records" does not mean that the court lacks impoundment authority. A judge must determine whether good cause for impounding exists and must tailor the scope of the impoundment order so that it does not exceed the need for impoundment.³

Justices of the Supreme Judicial Court, the Superior Court Department, and the various District Court Departments, and Clerk Magistrates, Assistant Clerk Magistrates, Temporary Clerk Magistrates, and Temporary Assistant Clerk Magistrates of the District Court Departments are authorized to determine the justification for, and the issuance of, search warrants upon the application and suitable affidavit of a police officer.⁴ A judge or clerk may issue a search warrant for execution anywhere in the Commonwealth. However, a warrant to search a person's body cavity may only be issued by a judge on a strong showing of particularized need supported by a high degree of probable cause.⁵

I. POLICY:

This policy pertains only to standard search warrants sought under the provisions of M.G.L. c. 276 § 1-7. All officers should 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 the Department.

II. PROCEDURES:

A. Affidavit Requirements

1. Any officer applying for a search warrant shall notify and receive approval from a supervisor before submission to the court. The officer submitting the affidavit shall sign the affidavit and personally appear before a judge or magistrate.

¹M.G.L. c. 276, s. 2B

²*Com. v. Monosson*, 351 Mass. 327, 221 N.E.2d 220 (1966)

³*Newspapers of New England v. Clerk-Magistrate*, 403 Mass. 628, 531 N.E.2d 1261 (1988) cert. den'd 490 U.S. 1066, 109 S.Ct. 2064 (1989)

⁴ M.G.L. c. 218, s. 33

⁵*Rodriguez v. Furtado*, 410 Mass. 878, 575 N.E.2d 1124 (1991)

2. The officer submitting the affidavit shall clearly identify himself and briefly explain in the affidavit any expertise or special training he has which pertains to the crime being investigated.

3. The officer should disclose all relevant information in the affidavit and do so in a complete, yet concise, and logical fashion. The affidavit must disclose facts and information that furnish probable cause to believe that a specific crime has been, is being, or will be committed. The affidavit must also disclose facts and information that furnish probable cause to believe that particular items are connected to that crime and are, or will be located at a particular place, or found on a particular person.

4. Many cases have been lost because an officer had sufficient basis for probable cause but did not furnish enough information in the affidavit. Any fact that is not set out in the affidavit cannot be inserted or used later for the purpose of establishing probable cause.

5. Probable cause to justify the issuance of a search warrant must exist at the time the warrant is issued. If the information specified in the affidavit is "stale", it may prevent a finding of probable cause to conduct a search.⁶ There is no specific time period specifying when probable cause becomes "stale"; each affidavit is judged on its individual facts. Affidavits containing information showing ongoing illegal activity may lessen the impact of staleness.

6. The affidavit should disclose how and when the facts and other information came to the officer's attention. If information was provided from another person the affidavit must disclose why the person who provided those facts and information is reliable.

7. If an attachment to an affidavit depicts or describes the place to be searched or items to be seized, a second copy of the attachment should be provided to the issuing judge or clerk so that he/she may attach it to the warrant when it is issued.

8. The affidavit must describe with particularity the place or person(s) to be searched and the persons or items to be seized. The degree of specificity required when describing goods to be seized may vary depending on the circumstances or the types of items to be seized.⁷

9. Misstatements in an affidavit that amount to a knowing and intentional falsehood, or reckless disregard for the truth, will render a search warrant invalid.⁸ However,

⁶*Com. v. Higgenbotham*, 11 Mass. App. Ct. 912, 415 N.E.2d 229 (1981); *Com. v. Morton*, 26 Mass. App. Ct. 949, 526 N.E.2d 1074 (1988)

⁷ *Com. v. Rutkowski*, 406 Mass. 673, 675, 550 N.E.2d 362, 364 (1990)

⁸ *Franks v. Delaware*, 438 U.S. 154 (1978)

inaccuracies that do not affect the integrity of an affidavit do not destroy probable cause for a search.⁹

10. Police officers preparing search warrant affidavits should be aware that Assistant District Attorneys at the office of the Norfolk District Attorney are available for consultation on legal issues related to the issuance of search warrants.

B. Informant Information

1. In assessing and establishing the credibility of an informant, and the reliability of the informant's information, an officer should disclose in the affidavit the informant's basis of knowledge, and the factors that support his/her reliability. In some cases, an informant's basis of knowledge or the factors supporting his/her reliability may tend to identify him. In such cases, officers should weigh the value of disclosing that information against the need to protect the informant's identity.

2. The existence of any corroboration that supports the information provided by the informant is valuable. Corroboration may come in the form of similar information received from other informants, or direct observations or investigations by the police.

C. Property Which May Be Seized

1. Under the provisions of M.G.L. c. 276, s. 1, the following types of property or articles may be seized under a search warrant:

- a. Property or articles stolen, embezzled, obtained by false pretenses, or otherwise obtained in the commission of a crime.
- b. Property or articles which are intended for use, or which are or have been used, as a means or instrumentality of committing a crime, including, but not in limitation of the foregoing, any property or article worn, carried, or otherwise used, changed or marked in the preparation for or perpetration of or concealment of a crime.
- c. Property or articles, the possession or control of which is unlawful, or which are possessed or controlled for an unlawful purpose; except property subject to search and seizure under Chapter 138 (alcoholic beverages), sections 42 through 56, inclusive (see c. 138, s. 56 for warrantless arrest and seizure of alcohol until warrant obtained. Note: c. 138, s. 46 makes it a fineable offense to search for or seize illegal alcoholic beverages in a dwelling without a warrant).
- d. The dead body of a human being.
- e. The body of a living person for whom a current arrest warrant is outstanding.

⁹ *Com. v. Rugaber*, 369 Mass. 765, 343 N.E.2d 865 (1976); *Com. v. Hanneus*, 390 Mass. 136, 453 N.E.2d 1053 (1983)

2. In addition, the police may seek a search warrant authorizing the seizure of "mere evidence." The phrase "mere evidence" refers to any item or object that would tend to prove the commission of a crime or the identity of the criminal. For example, while executing a search of a murder suspect's home pursuant to a warrant, officers found and seized bloody clothing. Although that clothing did not fit into any of Items (a) through (e) above, it was seize-able as "evidence" of the commission of a crime and, having been located in the defendant's home, the clothing also tended to establish the identity of the criminal.¹⁰

3. The proliferation of computers has posed new challenges for police officers, particularly in the area of search and seizure. Officers should be aware that computers may represent the fruits of a crime, instrumentalities of crime, they may be stolen, and they may contain mere evidence of a crime. Officers considering the seizure or search of a computer should seek assistance from an officer experienced in computer forensics and case law in the area of computer searches.

¹⁰*Com. v. Murray*, 359 Mass. 541, 269 N.E.2d 641 (1971)