

## Search Warrants

### 600.1 SEARCH WARRANTS

Best Practice **MODIFIED**

- (a) In General (CPL 690.05)
  1. **Search Warrant** - A court order and process directing a police officer to conduct a search of designated premises, or of a designated person, for the purpose of seizing designated property or kinds of property, and to deliver any property so obtained to the court which issued the warrant; or
  2. a search of a designated premises for the purpose of searching for and arresting a person who is the subject of:
    - (a) a warrant of arrest, a superior court warrant of arrest, or a bench warrant for a felony, where the designated premises is the dwelling of a third party who is not the subject of the arrest warrant; or
    - (b) a warrant of arrest issued by any other state or federal court for an offense which would constitute a felony under the laws of this state, where the designated premises is the dwelling of a third party who is not the subject of the arrest warrant.
- (b) Property subject to seizure (CPL 690.10)
  1. Personal property is subject to seizure pursuant to a search warrant if there is reasonable cause to believe that it:
    - (a) Is stolen; or
    - (b) Is unlawfully possessed; or
    - (c) Has been used, or is possessed for the purpose of being used to commit or conceal the commission of an offense against the laws of this state or another state, provided however, that if such offense was against the laws of another state, the court shall only issue a warrant if the conduct comprising such offense would, if occurring in this state, constitute a felony against the laws of this state; or
    - (d) Constitutes evidence or tends to demonstrate that an offense was committed in this state or another state, or that a particular person participated in the commission of an offense in this state or another state, provided however, that if such offense was against the laws of another state, the court shall only issue a warrant if the conduct comprising such offense would, if occurring in this state, constitute a felony against the laws of this state.
- (c) What and who are subject to search there under (CPL 690.15)
  1. A search warrant must direct a search of one or more of the following:

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- (a) Designated or described place or premises;
  - (b) A designated or described vehicle
  - (c) A designated or described person.
2. A search warrant which directs a search of a designated or described place, premises or vehicle, may also direct a search of any person present there at or therein.
- (d) Where executable (CPL 690.20)
1. A search warrant issued by a district court, the New York City criminal court or a superior court judge sitting as a local criminal court may be executed pursuant to its terms anywhere in the state.
  2. A search warrant issued by a city court, a town court or a village court may be executed pursuant to its terms only in the county of issuance or an adjoining county.
- (e) To whom addressable and by whom executable (CPL 690.25)
1. A search warrant must be addressed to a police officer whose geographical area of employment embraces or is embraced or partially embraced by the county of issuance. The warrant need not be addressed to a specific police officer but may be addressed to any police officer of a designated classification, or to any police officer of any classification employed or having general jurisdiction to act as a police officer in the county.
  2. A police officer to whom a search warrant is addressed, as provided in subdivision one, may execute it pursuant to its terms anywhere in the county of issuance or an adjoining county, and he or she may execute it pursuant to its terms in any other county of the state in which it is executable if:
    - (a) His geographical area of employment embraces the entire county of issuance or
    - (b) He is a member of the police department or force of a city located in such county of issuance.
- (f) When executable (CPL 690.30)
1. A search warrant must be executed not more than ten days after the date of issuance and it must thereafter be returned to the court without unnecessary delay.
  2. A search warrant may be executed on any day of the week. It may be executed only between the hours of 6:00 a.m. and 9:00 p.m., unless the warrant expressly authorizes execution thereof at any time of the day or night.
- (g) Application for a search warrant (CPL 690.35)

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1. An application for a search warrant may be in writing or oral. If in writing, it must be made, subscribed and sworn to by a police officer, district attorney or other public servant acting in the course of his official duties. If oral, it must be made by such a public servant and sworn to and recorded in the manner provided in CPL 690.36.
2. The application shall be made to:
  - (a) A local criminal court, having preliminary jurisdiction over the underlying offense, or geographical jurisdiction over the location to be searched when the search is to be made for personal property.
    1. If a town court has such jurisdiction but is not available to issue the search warrant, the warrant may be issued by the local criminal court of any village within such town or, any adjoining town, village embraced in whole or in part by such adjoining town, or city of the same county;
    2. If a village court has such jurisdiction but is not available to issue the search warrant, the warrant may be issued by the town court of the town embracing such village or any other village court within such town, or, if such town or village court is not available either, before the local criminal court of any adjoining town, village embraced in whole or in part by such adjoining town, or city of the same county; and
    3. If a city court has such jurisdiction but is not available to issue the search warrant, the warrant may be issued by the local criminal court of any adjoining town or village, or village court embraced by an adjoining town, within the same county as such city.
  - (b) A local criminal court, with geographical jurisdiction over the location where the premises to be searched is located, or which issued the underlying arrest warrant, when the search warrant is sought pursuant to this procedure, for the purpose of arresting a wanted person. any search warrant issued pursuant to this section shall be subject to the territorial limitations defined in this procedure.
3. The application must contain:
  - (a) The name of the court and the name and title of the applicant; and
  - (b) A statement that there is reasonable cause to believe that the property sought may be found in or upon a designated or described place, vehicle or person, or, in the case of an application for a search warrant, a statement that there is reasonable cause to believe that the person who is the subject of the warrant of arrest may be found in the designated premises; and

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- (c) Allegations of fact supporting such statement. such allegations of fact may be based upon personal knowledge of the applicant or upon information and belief, provided that in the latter event the sources of such information and the grounds of such belief are stated. The applicant may also submit depositions of other persons containing allegations of fact supporting or tending to support those contained in the application;
  - (d) A request that the court issue a search warrant directing a search for and seizure of the property or person in question; and
  - (e) In the case of an application for a search warrant as defined in this procedure, a copy of the warrant of arrest and the underlying accusatory instrument.
4. The application may also contain:
- (a) "Night endorsement" request (a request that the search warrant be made executable at any time of the day or night, upon the ground that there is reasonable cause to believe that...):
    - (a) It cannot be executed between the hours of 6:00 a.m. and 9:00 p.m., or
    - (b) The property sought will be removed or destroyed if not seized forthwith, or
    - (c) In the case of an application for a search warrant as defined in this procedure, the person sought is likely to flee or commit another crime, or may endanger the safety of the executing police officers or another person if not seized forthwith or between the hours of 9:00 p.m. and 6:00 a.m.; and
  - (b) "No-knock" request (A request that the search warrant authorize the executing police officer to enter premises to be searched without giving notice of his authority and purpose, upon the ground that there is reasonable cause to believe that:
    - 1. The property sought may be easily and quickly destroyed or disposed of, or
    - 2. The giving of such notice may endanger the life or safety of the executing officer or another person, or
    - 3. In the case of an application for a search warrant as defined in this procedure for the purpose of searching for and arresting a person who is the subject of a warrant for a felony, the person sought is likely to commit another felony, or may endanger the life or safety of the executing officer or another person. any request made pursuant to this subdivision must be accompanied and supported by allegations of fact.

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#### (h) Oral applications

1. An oral application for a search warrant may be communicated to a judge by telephone, radio or other means of electronic communication.
2. Where an oral application for a search warrant is made, the applicant therefore must identify himself and the purpose of his communication. After being sworn as provided in number three of this section, the applicant must also make the statement required by g-2-b of this procedure and provide the same allegations of fact required by g-3 of the is procedure; provided, however, persons, properly identified, other than the applicant may also provide some or all of such allegations of fact directly to the court. Where appropriate, the applicant may also make a request specified in g-4 of this procedure.
3. Upon being advised that an oral application for a search warrant is being made, a judge shall place under oath the applicant and any other person providing information in support of the application. Such oath or oaths and all of the remaining communication must be recorded, either by means of a voice recording device or verbatim stenographic or verbatim longhand notes. if a voice recording device is used or a stenographic record made, the judge must have the record transcribed, certify to the accuracy of the transcription and file the original record and transcription with the court within twenty-four hours of the issuance of a warrant. If longhand notes are taken, the judge shall subscribe a copy and file it with the court within twenty-four hours of the issuance of a warrant.

#### (i) Dispositions of seized property

1. Upon receiving property seized pursuant to a search warrant, the court must either:
  - (a) Retain it in the custody of the court pending further disposition thereof; or
  - (b) Direct that it be held in the custody of the person who applied for the warrant, or of the police officer who executed it, or of the governmental or official agency or department by which either such public servant is employed, upon condition that upon order of such court such property be returned thereto or delivered to another court.
2. A local criminal court which retains custody of such property must, upon request of another criminal court in which a criminal action involving or relating to such property is pending, cause it to be delivered thereto.