JOPLIN POLICE DEPARTMENT	6-11 STANDARD OPERATING GUIDELINE
SUBJECT: Search Warrants	**REVIEW DATE: Annually - June**
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I. POLICY

The Fourth Amendment to the U.S. Constitution guarantees every person the right to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. Supreme Court decisions regarding search and seizure place the responsibility on the police to ensure that citizens' Fourth Amendment rights are protected. Officers shall scrupulously observe constitutional guidelines when conducting searches and always remain mindful of their lawful purpose. Search warrants are one of the most valuable and powerful tools available to law-enforcement officers. Because of the potential harm to citizens, the risks to officers' safety, and to the department image in the community, officers shall have a thorough knowledge of the legal requirements in obtaining search warrants.

II. PURPOSE

The purpose of this general order is to establish guidelines and procedures, which police officers must follow when conducting searches and seizures.

III. DEFINITIONS

A. Search warrant

A written order, signed by a judicial authority, directing a police officer to search for specified personal (or business) property and bring it before the judicial officer.

B. Curtilage

Curtilage usually refers to the yard, garden, or piece of ground that adjoins a private residence. While the term has no absolute definition that applies under all circumstances, the curtilage of a private residence, for instance, is determined by whether the area is enclosed; the nature and use of the area; the proximity of the area to the home; and any measures taken by the owner to protect the area from observation.

IV. PROCEDURES - General

A. Legal authorities (74.3.1)

1. *Missouri Revised Statutes* § 542.276 states that a valid search warrant is one that:

a. Is issued by a judge; and

b. Is issued after a written application has been filed and verified; and

c. Is based on probable cause; and

d. Is issued in the proper county; and

e. Describes the person, place, or thing to be searched or the property, article, material, substance, or person to be seized with sufficient certainty; and

f. Is signed by the judge who issued it; and

g. Will be executed and the search warrant return made within ten (10) days after the date of the making of the application. (74.3.1)

2. § 542.271. States that a warrant may be issued to search for and seize, or photograph, copy or record any of the following:

a. Property, article, material, or substance that constitutes evidence of the commission of a criminal offense; or

b. Property which has been stolen or acquired in any other manner declared an offense by chapters 569 and 570, RSMo; or

c. Property owned by any person furnishing public communications services to the general public subject to the regulations of the public service commission if such person has failed to remove the property within a reasonable time after receipt of a written notice from a peace officer stating that such property is being used as an instrumentality in the commission of an offense; or

d. Property for which possession is an offense under the law of this state; or

e. Property for which seizure is authorized or directed by any statute of this state; or

f. Property which has been used by the owner or used with his acquiescence or consent as a raw material or as an instrument to manufacture or produce any thing for which possession is an offense under the laws of this state.

g. A warrant may be issued to search for and rescue a kidnapped person.

h. A warrant may be issued to search for any person for whom a valid felony arrest warrant is outstanding.

i. A warrant may be issued to search for and seize any deceased human fetus or corpse, or part thereof.

B. Supreme Court decisions

The Supreme Court of the United States issues decisions, which must be used as guidelines in conducting searches. Because the Fourth Amendment to the Constitution prohibits unreasonable searches and seizures, officers bear the burden of proving that the search was reasonable. The court will examine reasonableness according to the answers to these questions:

1. Was there probable cause to issue the search warrant?

2. Was the scope of the search appropriate?

V. PROCEDURES - Obtaining a search warrant

A. Essential legal requirements

1. To obtain a search warrant, an officer must show probable cause to believe that specific evidence, contraband, or fruits of a crime may be found at a clearly defined place.

2. The officer shall carefully document specific facts that constitute probable cause. Two kinds of facts must be considered:

    a. The **facts** from which the officer concluded that the person or thing is probably located at the place to be searched.

    b. The **facts** that address the reliability of the source of the officer's information.

3. The court considers only those facts presented in the application and affidavit(s).

4. Conclusions and suspicions are not facts.

5. Facts must be recent.

6. Apart from the officer's personal knowledge or observations, facts may derive from a reliable informant.

7. Reliability of facts is established by:

    a. Personal observation or knowledge by an officer.

    b. Eyewitnesses who have first-hand knowledge.

    c. Informants – When seeking to obtain a search warrant on the basis of an informant, it is important to document facts regarding the reliability of the informant, police corroboration of the informant's information, and whether the informant has made declarations against his or her interest.

B. Where to obtain a search warrant

1. A search warrant may be obtained from any of the following sources, according to § 542.266:

    a. Appellate judge.

    b. Any judge of a court having original jurisdiction of criminal offenses within the territorial jurisdiction where the person, place, or movable or immovable thing to be searched is located at the time of the making of the application.

C. Application

1. The application shall:

    a. Be in writing;

    b. State the time and date of the making of the application;

    c. Identify the property, article, material, substance or person which is to be searched for and seized, in sufficient detail and particularity that the officer executing the warrant can readily ascertain it;

d. Identify the person, place, or thing which is to be searched, in sufficient detail and particularity that the officer executing the warrant can readily ascertain whom or what he is to search;

e. State facts sufficient to show probable cause for the issuance of a search warrant;

f. Be verified by the oath or affirmation of the applicant;

g. Be filed in the proper court;

h. Be signed by the prosecuting attorney of the county where the search is to take place, or his designated assistant.

D. Affidavits

1. The application may be supplemented by a written affidavit verified by oath or affirmation. Such affidavit shall be considered in determining whether there is probable cause for the issuance of a search warrant and in filling out any deficiencies in the description of the person, place, or thing to be searched or of the property, article, material, substance, or person to be seized.

2. The affidavit shall include the following elements:

a. A detailed description of the place, thing, or person to be searched, including map coordinates or distances from given reference points, if necessary.

b. A description of the things or persons to be searched for.

c. A substantial allegation of the offense in relation to which the search is to be made.

d. An allegation that the object, thing, or person to be searched constitutes evidence of the commission of the offense.

e. Material facts, which would show that there is probable cause for issuing the search, warrant.

E. Language of the warrant

Only the things specified in the search warrant can be seized (exceptions to this would be plain-view seizures and searches incident to arrest). The warrant shall specify the following:

1. The areas to be searched shall be precisely stated. If officers wish to search a home and its surroundings, the affidavit must specify a "premises" search and its curtilage and must identify outbuildings, garages, as appropriate.

2. If motor vehicles to be searched are on the premises, the warrant shall so specify.

3. If searches of specific persons (other than frisks) are to be included during the search, the warrant shall so specify. If the warrant states that all people present shall be searched, then probable cause to do so must be justified in the affidavit.

4. The items to be searched for shall be precisely described. If an item to be searched for may be dismantled (e.g., firearms), then the warrant must specify the search for parts, pieces, or components of the item.

5. If officers anticipate searching for and seizing computers or similar, complex technology, then experts must be consulted to determine the appropriate language to list in the affidavit and for outlining appropriate guidelines in the warrant for seizure of hardware and software.

VI. PROCEDURES - Executing a search warrant

A. When a search warrant must be executed

1. A search warrant shall be executed as soon as practicable and shall expire if it is not executed and the return made within ten (10) days after the date of the making of the application (§ 542.276). (74.3.1)

2. The search may be made at night if making it during the day is not practicable (§ 542.291).

B. Preparing to execute the warrant

1. The investigating officer and his/her supervisor shall be responsible for ensuring that the search warrant is valid and that the property about to be searched is the property listed on the warrant.

2. The investigating officer or his/her supervisor shall develop a search team that will be responsible for the actual search.

3. The investigating officer, with approval from his/her supervisor, will determine if the search warrant will be served with the assistance of the Special Weapons and Tactics team.

4. Prior to entering the premises, the investigating officer or his/her supervisor shall conduct a pre-entry briefing of the execution process with all entry and search team personnel. The briefing shall include a review of the actual order of operations and procedures the entry team and search personnel will follow, a simulation of the conditions of the entry and search (using maps, charts and diagrams, when appropriate) and tactics and equipment to be used in the event of forced entry.

5. The investigating officer or his/her supervisor shall attempt to determine if any circumstances have changed that make executing the search warrant at that time undesirable.

6. The investigating officer shall ensure that the entire search warrant execution process is documented, from beginning to end, and continued until the search team leaves the premises. A written record shall be supported by photographs and videotaping when necessary.

C. Gaining entrance to premises

1. The entry team shall first deploy officers around the premises to be searched, ensuring that all exits are covered. Officers outfitted to be clearly identified as police officers shall conduct the entry.

2. In most cases the officer shall do all the following before entering the premises to be searched:

   a. He or she must knock.

   b. He or she must announce his presence as a law-enforcement officer.

c. The officer must announce that his purpose is to execute a search warrant.

d. The officer must wait a reasonable time either to be admitted or refused admission to the premises.

e. If the element of surprise is not deemed essential by the supervising officer, the officer may try and obtain consent to search the premises before indicating the existence of the search warrant.

3. When entrance is refused.

If the officer is refused entrance after a reasonable time, he may force his way into the premises using force applicable to the circumstances. "Reasonable time" in this context depends on the circumstances. A refusal may be expressed or implied. A refusal can be implied in two circumstances:

a. No one has admitted the officer within a time in which it would be reasonable to expect someone to let the officer in if he or she is going to be admitted at all.

b. The officer waiting to be admitted sees or hears suspicious circumstances, such as flushing toilets or footsteps running away from the door, which indicate that someone might be concealing or destroying evidence or trying to escape.

4. No-knock or exigent entry.

In some circumstances a police officer may enter the premises to be searched without announcing his or her presence and purpose before entering. The judicial authority issuing the warrant may add a no-knock entry provision to the warrant. If not, the entry team should knock and announce (as stated in C 2) unless the officer executing the warrant can articulate facts that would lead him or her to believe that an announcement would result in:

a. Bodily harm either to the officer or to someone within the premises to be searched.

b. The escape of the person to be searched or arrested.

c. The destruction of evidence.

5. If circumstances require a no-knock or exigent entry, then the first officer to cross the threshold into the premises shall announce that law-enforcement officers are executing a warrant. Officers shall also command the occupants to take the appropriate action to ensure their safety. Sample commands:

a. "Police, search warrant, get down."

b. "Police, search warrant, stay where you are."

c. "Police, search warrant, put your hands up."

6. In executing any warrants, officers may use whatever force is reasonably necessary under the circumstances to affect a lawful purpose. (74.3.1)

D. <u>On Premises Activities</u>

1. After the search site and all subjects have been secured, all officers, except the designated search team and any officers that are stationed as security, shall leave the search site. The

site should be considered a crime scene, and nothing should be handled or searched by any officers other than those assigned to the search team.

2. Search personnel should develop a prioritized strategy that details the likely whereabouts of the items to be seized and an order of operation for conducting the search.

3. One person shall be designated as responsible for collecting, preserving, and documenting all items seized until possession is transferred to the evidence custodian.

4. If damage occurs during an entry to premises that will be left vacant, and the damage may leave the premises vulnerable to security problems, every possible effort shall be made to secure the premises.

5. If damage occurs, a supplemental report shall be prepared on the actions that caused the damage and a detailed description of the nature and extent of the damage. The supervisor of the entry team will ensure that this report is completed.

E. Conduct of the search (1.2.5)

1. Once evidence being searched for is located, the search must cease at that point.

2. Officers shall not use a search warrant to conduct a fishing expedition, i.e., if the search warrant is for a television, or large item, small places such as jewelry boxes may not be searched.

3. An officer may seize **only the property listed in the warrant** with **two exceptions**:

   a. The other evidence is reasonably related to the offense for which the search warrant was issued.

   b. It is property that the officer knows or has probable cause to believe is evidence of another crime.

4. All officers who are involved in the search shall make a supplement to the original report in which they will describe their actions and any other pertinent information which they are witness to.

F. Searches of persons found on premises (1.2.5)

1. A person's presence on the premises to be searched with a warrant does not, without more, give rise to probable cause to search that person beyond a frisk for officers' safety.

2. A warrant to search the premises for contraband does carry with it the authority to detain the occupants of the premises while a search is being conducted. If the search of the premises gives rise to probable cause to arrest the detainee, he or she may be arrested and his or her person searched incident to arrest.

3. A person on the premises may be searched if the officer has probable cause to believe that items listed in the warrant are concealed on the person. Mere presence on premises does not constitute probable cause.

VII. PROCEDURES - Return of the search warrant

A. Per § 542.276 & 542.291, after an officer has finished a search, he/she shall perform the following:

1. The warrant with a return attached, signed by the officer making the search, along with a copy of an itemized receipt, shall be delivered to the judge who issued the warrant.

2. If any property is seized, the officer shall give to the person from whose possession it is taken, if they are present, a copy of the warrant and an itemized receipt of the property taken. If no person is present, the officer shall leave the copy of the warrant and the receipt at the site of the search.

3. The return shall show the date and manner of execution, what was seized, and, if known, the name of the possessor and of the owner of the seized property.

4. A copy of the itemized receipt of any property taken shall be delivered to the office of the prosecuting attorney in the county where the property was taken within two (2) working days of the search.

B. Responsibility for property seized

1. All property seized must follow a rigorous chain-of-custody procedure. Documentation must appear in all narrative reports pertaining to the chain-of-custody of any items seized.

2. Officers shall properly package and tag all evidence seized and place the evidence in a locker reserved for the purpose.

VIII. COMPLIANCE

Violations of this policy, or portions thereof, may result in disciplinary action as described in the City of Joplin's Personnel Rules or the Joplin Police Department's Rules and Regulations and General Orders. Members of the Joplin Police Department, while assigned to or assisting other agencies, shall comply with this policy.

IX. APPLICATION

This document constitutes department policy, is for internal use only, and does not enlarge an employee's civil or criminal liability in any way. It shall not be construed as the creation of a higher legal standard of safety or care in an evidentiary sense, with respect to third party claims insofar as the employee's legal duty as imposed by law. Violations of this policy, if proven, can only form a basis of a complaint by this department, and then only in a non-judicial administrative setting.