POLICY & PROCEDURE

STURGEON BAY POLICE DEPARTMENT

SUBJECT: **SEARCH WARRANTS**	NUMBER: 6.37
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SCOPE: All Department Personnel	EFFECTIVE: 11/17/2021
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	STANDARDS: 6.3.12

INDEX AS: Affidavit for Search Warrant
No-Knock Search Warrant
Search Warrants

PURPOSE: The purpose of this Policy & Procedure is to establish the procedures all sworn Sturgeon Bay Police Department personnel must adhere to when applying for, obtaining, executing, collecting evidence from, and the returning of a search warrant, including a no-knock search warrant.

This Policy & Procedure consists of the following numbered sections:

I. INTRODUCTION

II. POLICY

III. DEFINITIONS

IV. PROCEDURES

I. INTRODUCTION

A. The 4th Amendment to the Constitution reads, “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.”

II. POLICY

A. It is the policy of the Sturgeon Bay Police Department to follow the procedures outlined in State Statutes when applying for and obtaining a search warrant, along with executing a search warrant, collecting evidence during the execution of a search warrant, and the procedures for the return of a search warrant. In addition, a no-knock search warrant requires additional considerations and the procedures for this type of search warrant shall strictly be adhered to.

III. DEFINITIONS

A. KNOCK-AND-ANNOUNCE SEARCH WARRANT: The announcement of the presence of police with a search warrant prior to the execution of the search warrant. The announcement, "Police, Search Warrant," is usually preceded by knocking on the structure prior to entry. The purpose is to provide occupants of the premises notice that a search warrant is about to be served.

B. NO-KNOCK SEARCH WARRANT: Not every law enforcement entry based on a search warrant must be preceded by knocking and announcing. A no-knock search warrant may be issued by a Judge or Court Commissioner when a law enforcement officer establishes there is reasonable suspicion that knocking and announcing his/her presence, under the particular circumstances, would be dangerous, or futile, or that it would inhibit the effective investigation of the crime.

C. SEARCH WARRANT: An order signed by a Judge or Court Commissioner directing a law enforcement officer to conduct a search of a designated person, a designated object, or a designated place for the purpose of seizing designated property or kinds of property. A Judge or Court Commissioner shall issue a search warrant only if probable cause is shown.

IV. PROCEDURES

A. When conducting any investigation, Officers should utilize all available resources to develop information to resolve the investigation, including obtaining a search warrant where applicable. When information becomes available that may be used in the development of an application for a search warrant, all of this information must first be verified by the Officer. When it becomes apparent that a search warrant may be required, the Officer shall contact a Supervisor and inform him/her of the circumstances.

1. In cases involving a confidential informant, the Officer shall make every effort to verify the information provided by the Officer. This should include at a minimum, having the informant show the Officer the location to be searched and all other information that can be verified. Also refer to Policy & Procedure 6.12: Informants.

2. In cases involving OWI offenses such as a municipal search warrant for OWI evidence or a search warrant for a forcible blood draw, refer to Policy &

Procedure 6.08: Impairment Due to Alcohol and/or Drugs.

B. The Officer shall then prepare either a written affidavit or prepare to use the information gathered in the investigation for oral testimony before a Judge or Court Commissioner that outlines the probable cause for seeking a search warrant.

C. The Officer shall then review the affidavit or review the information for oral testimony with the appropriate Supervisor. The Officer shall also prepare a search warrant application form that is utilized by the Department.

D. When approved by a Supervisor, the Officer shall contact the Door County District Attorney's Office to present the affidavit and search warrant application form for review or to go over the information for oral testimony. After approval and notarizing the affidavit, the District Attorney shall then contact the Judge or Court Commissioner for the application of the search warrant.

1. The District Attorney shall then either present the affidavit and search warrant to the Judge or Court Commissioner or have the Officer present them.

2. If oral testimony will be given, the Judge or Court Commissioner may place a person under oath via telephone, radio, or other means of electronic communication, without the requirement of face-to-face contact, to swear to the complaint or affidavit. The Judge or Court Commissioner shall indicate on the search warrant that the person so swore to the complaint or affidavit.

A search warrant may be based upon sworn oral testimony communicated by telephone, radio or other means of electronic communication, under the procedure prescribed in this subsection. The contents of a warrant upon oral testimony shall be the same as the contents of a warrant upon affidavit.

When a caller informs the Judge or Court Commissioner that the purpose of the call is to request a warrant, the Judge or Court Commissioner shall place under oath each person whose testimony forms a basis of the application and each person applying for the warrant. Arrangements shall be made for all sworn testimony to be recorded either by a court reporter or by means of a voice recording device. The Judge or Court Commissioner shall have the record transcribed. The transcript, when certified as accurate shall be filed with the court.

The person who is requesting the warrant may sign his or her own name on the warrant and transmit it to the Judge or Court Commissioner, who may modify the warrant. If the Judge or Court Commissioner determines that there is probable cause for the warrant, he/she shall order the issuance of a warrant by signing the warrant and entering on the face of the warrant the exact time when the warrant was ordered to be issued. The Judge or Court Commissioner shall immediately transmit the signed warrant to the person who requested it.

E. A search warrant may authorize a search to be conducted anywhere in the State

and may be executed pursuant to its terms anywhere in the State.

F. A person requesting a warrant and a Judge or Court Commissioner issuing a warrant may sign by using an electronic signature, a handwritten signature, or a handwritten signature that is electronically imaged.

G. A search warrant shall be issued with all practicable secrecy. Disclosure concerning a search warrant prior to its execution is subject to criminal sanction unless that disclosure is necessary to its execution.

H. Executing a search warrant.

1. The search warrant must be executed and returned not more than five days after the date of issuance.

2. The procedure for the execution of a search warrant is established in Policy & Procedure 6.19: Special Investigations, II. K.

3. While State Statute 968.14 provides for "all necessary force to be used to execute a search warrant or to affect an entry into any building or property or part thereof to execute a search warrant", Officers are reminded to use only the force necessary when executing the search warrant.

4. When executing the warrant, the officer in charge of the search may take the following actions before entering the premises to be searched:

a) Attempt to contact the residence.

b) Allow a reasonable amount of time for any occupants to allow the search party to enter.

c) Announce and identify as an Officer.

d) Announce the purpose to search, read the warrant, and place on the warrant the time and date of execution.

I. No-Knock Search Warrants

1. In *Richards v. Wisconsin*, 520 U.S. 385, the U.S. Supreme Court held the Fourth Amendment does not permit a blanket exception to the knock-and-announce requirement for felony drug investigations. It is the responsibility of the Judge tasked with reviewing the warrant to determine whether the facts and circumstances known at the time, justify the issuance of a no-knock warrant. Factors that may authorize the issuance of a no-knock warrant include reasonable suspicion of the following element(s):

- Presence of weapons*
- Possibility of physical violence

- Fear of the destruction of evidence
- Flight risk of the suspect(s)

**The mere presence of weapons alone does not necessarily obligate a judge to grant a no-knock search warrant. Additional aggravating circumstances may need to be present.*

2. Although an Officer need not take affirmative steps to make an independent re-verification of the circumstances already recognized by a Judge in issuing a no-knock warrant, such a warrant does not entitle Officers to disregard reliable information clearly negating the existence of exigent circumstances when they actually receive such information before the execution of the warrant.

3. The Officer must obtain approval from the Captain (or above) **prior** to the application of a no-knock search warrant. The reviewing Supervisor will confirm all the elements required for the request of a no-knock search warrant were verified and documented based on thorough investigation and pre-operational surveillance.

4. It shall be incumbent on the Officer applying for the no-knock search warrant to consider high risk safety considerations. There may be numerous safety items to consider; but at a minimum, the Officer must make reasonable attempts to determine whether children or vulnerable adults are present within the target structure.

   Consideration shall also be given and documented if the target structure is a multi-family/multi-unit building where uninvolved occupants may share common walls, ceilings and/or floors (if a multi-level structure),

   The reviewing supervisor must weigh the risks versus benefits to executing a no-knock search warrant. If approved, SWAT should take appropriate measures to mitigate the risks to children, vulnerable adults and/or innocent bystanders. Such tactics shall be documented and discussed during the pre-operational briefing.

5. The Captain (or above) must approve the execution of a no-knock search warrant. The Captain (or above) shall:

   - Review the no-knock search warrant
   - Review or attend the SWAT pre-operational briefing
   - Verify that reasonable measures have been taken to mitigate risks to bystanders based on the most current known information

6. In *Ker v. California*, 374 U.S. 23, and later *Richards*, the Court held, a knock-and-announce warrant may be executed as a no-knock-warrant if certain exigent circumstances become apparent to the officers at the time the warrant is being executed.

   These circumstances include reasonable suspicion of the following:

- Where the persons within already know of the officers' presence and authority
- Where the officers are justified in the belief that persons within are in imminent peril of bodily harm
- Where those within, made aware of the presence of someone outside, are then engaged in activity which justifies the officers in the belief that an escape or the destruction of evidence is being attempted

7. The SWAT Team Leader supervising the execution of a knock-and-announce search warrant who executes said search warrant in a no-knock manner will notify the SWAT Team Commander. The reason(s) will be articulated in the SWAT Team Leader's supplemental report documenting its execution, and the SWAT Team Leader will also notify a Lieutenant (or above) as soon as possible.

   No-knock search warrants may also be executed in a knock-and-announce fashion if probable cause still exists, but circumstances used to justify a no-knock search warrant are no longer present.

8. As soon as attempts are made to breach the structure subject to search, SWAT members will begin to loudly and clearly announce, "Police, Search Warrant" and will continue announcing law enforcement presence and purpose until the structure is deemed safe and secure.

J. Person(s) located on the premises where a search warrant is executed.

1. The team executing the search warrant may reasonably detain and search any person on the premises at the time to protect themselves from attack or to prevent the disposal or concealment of any item particularly described in the search warrant. SS 968.16.

K. Property subject to seizure.

1. Any property or item(s) described in a search warrant may be legally seized by the officer.

2. When items named in the warrant are found, the search must be terminated.

3. In order for evidence, including contraband not particularly described in the warrant, to be validly seized, the four requirements which must be met are:

   a) The item is discovered in the course of a lawful search.

   b) The item by itself or with facts known to the officer before the search provides a connection between the item and criminal activity.
   c) The item is discovered in the physical area properly searchable within the purposes for which the search was started (i.e., the proper scope of the

search).

d) The item is discovered while the officer is actually searching for objects within the purpose for which the search was started.

e) In some case it may be preferable to contact the District Attorney for advice or for an additional search warrant when contraband or potential contraband is located that is outside the scope of the search warrant. Example: when searching for drugs, Officers locate numerous items that appear to be stolen.

4. All seized property from the execution of a search warrant shall be inventoried, recorded, and secured according the procedures in the policies in Chapter 11.

a) An Officer seizing any items without a search warrant shall give a receipt as soon as practicable to the person from whose possession they are taken.

b) Any person claiming the right to possession of property frozen or seized pursuant to a search warrant or seized without a search warrant, may apply for its return to the Circuit Court for the county in which the property was seized or where the search warrant was returned, refer to SS 968.20.

L. A copy of the signed and dated search warrant shall be left in the place searched.

M. Return of the Search Warrant.

1. The search warrant shall be returned to the County or Municipal Clerk designated in the warrant accompanied by a written inventory of any property seized not more than five days after the date of issuance and within forty-eight hours after execution of the search warrant.

2. The Officer shall file with the Clerk an Affidavit made in support of the issuance of the warrant within five business days after the date of the execution of the warrant.

3. Property seized shall be kept in accordance with the Department evidence policy.

4. All property other than contraband not required for evidence or used in further investigation should be returned to the person from whom it was seized.

Clinton Henry
Chief of Police

This Policy & Procedure cancels and supersedes any and all written directives relative to the subject matter contained herein.