

Rule 201. Purpose of Warrant.

A search warrant may be issued to search for and to seize:

[(1)](a) contraband, the fruits of a crime, or things otherwise criminally possessed;
[or]

[(2)](b) property that is or has been used as the means of committing a criminal offense; **[or]**

[(3)](c) property that constitutes evidence of the commission of a criminal offense[.]
; or

(d) a person for whom a bench or arrest warrant has been issued.

Comment: Concerning the provisions of **[paragraph (1)] subdivision (a)** see *United States v. Rabinowitz*, 339 U.S. 56 (1950), overruled as to other points, *Chimel v. California*, 395 U.S. 752, 786 (1969). Also compare, *Cooper v. California*, 386 U.S. 58 (1967), with *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693 (1964).

Warrants may not be issued unless the affidavit alleges a pre-existing crime. See *United States ex. rel. Campbell v. Rundle*, 327 F.2d 153, 161 (3rd Cir. 1964), followed *sub nom. Commonwealth ex rel. Ensor v. Cummings*, 207 A.2d 230 (Pa. 1965) and *Commonwealth ex rel. Campbell v. Russell*, 207 A.2d 232 (Pa. 1965). **[The Third Circuit's opinion cited with approval *Commonwealth v. Patrone*, 27 D&C 2d 343 (Philadelphia Co. 1962); *Commonwealth v. Rehmeyer*, 29 D&C 2d 635 (York Co. 1962); and *Simmons v. Oklahoma*, 286 P.2d 296, 298 (Okla. Cr. 1955).]**

Concerning the provisions of **[paragraph (3)] subdivision (c)**, see *Warden v. Hayden*, 387 U.S. 294 (1967).

Subdivision (d) clarifies that a person is a proper subject of a search warrant when the person is also the subject of a bench or arrest warrant. In such circumstances, the search warrant is to effectuate the arrest by permitting the search of a premises other than the residence of the subject of the bench or arrest warrant. The search warrant does not take the place of the underlying bench or arrest warrant.

[Official Note: Rule 2002 adopted March 28, 1973, effective 60 days hence; renumbered Rule 201 and amended March 1, 2000, effective April 1, 2001.]

Committee Explanatory Reports:

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).]

Rule 205. Contents of Search Warrant.

[(A)](a) Each search warrant shall be signed by the issuing authority and shall:

- (1) specify the date and time of issuance;
- (2) identify specifically the property **or person** to be seized;
- (3) name or describe with particularity the person or place to be searched;
- (4) direct that the search be executed either;

[(a)](i) within a specified period of time, not to exceed 2 days from the time of issuance, or;

[(b)](ii) when the warrant is issued for a prospective event, only after the specified event has occurred;

- (5) direct that the warrant be served in the daytime unless otherwise authorized on the warrant, *provided that*, for purposes of the rules of Chapter 200, Part A, the term “daytime” shall be used to mean the hours of 6 a.m. to 10 p.m.;
- (6) designate by title the judicial officer to whom the warrant shall be returned;
- (7) certify that the issuing authority has found probable cause based upon the facts sworn to or affirmed before the issuing authority by written affidavit**[(s)]** attached to the warrant; and
- (8) when applicable, certify on the face of the warrant that for good cause shown the affidavit**[(s)]** is sealed pursuant to Rule 211 and state the length of time the affidavit**[(s)]** will be sealed.

[(B)](b) A warrant under **[paragraph (A)] subdivision (a)** may authorize the seizure of electronic storage media or of electronically stored information. Unless otherwise specified, the warrant authorizes a later review of the media or information consistent with the warrant. The time for executing the warrant in **[(A)(4)(a)] subdivision (a)(4)(i)** refers to the seizure of the media or information, and not to any later off-site copying or review.

Comment: **[Paragraphs (A)(2) and (A)(3)] Subdivisions (a)(2) and (a)(3)** are intended to proscribe general or exploratory searches by requiring that searches be directed only

towards the specific items, persons, or places set forth in the warrant. Such warrants should, however, be read in a common sense fashion and should not be invalidated by hypertechnical interpretations. This may mean, for instance, that when an exact description of a particular item is not possible, a generic description may suffice. See *Commonwealth v. Matthews*, 285 A.2d 510, 513-14 (Pa. 1971).

Subdivision (a)(2) reflects the provision of Rule 201(d) that provides that a person may be the subject of a search warrant when the person is also the subject of a bench or arrest warrant. In such circumstances, the search warrant is to effectuate the arrest by permitting the search of a premises other than the residence of the subject of the bench or arrest warrant. The search warrant does not take the place of the underlying bench or arrest warrant.

[Paragraph (A)(4)] Subdivision (a)(4) is included pursuant to the Court's supervisory powers over judicial procedure to supplement *Commonwealth v. McCants*, 299 A.2d 283 (Pa. 1973), holding that an unreasonable delay between the issuance and service of a search warrant jeopardizes its validity. **[Paragraph (A)(4)] Subdivision (a)(4)** sets an outer limit on reasonableness. A warrant could, in a particular case, grow stale in less than two days. If the issuing authority believes that only a particular period which is less than two days is reasonable, he or she must specify such period in the warrant.

[Paragraph (A)(4)(b)] Subdivision (a)(4)(ii) provides for anticipatory search warrants. These types of warrants are defined in *Commonwealth v. Glass*, 754 A.2d 655 (Pa. 2000), as "a warrant based upon an affidavit showing probable cause that at some future time (but not presently) certain evidence of crime will be located at a specified place."

[Paragraph (A)(5)] Subdivision (a)(5) supplements the requirement of Rule 203(E) that special reasonable cause must be shown to justify a nighttime search. A warrant allowing a nighttime search may also be served in the daytime.

[Paragraph (A)(6)] Subdivision (a)(6) anticipates that the warrant will list the correct judicial officer to whom the warrant should be returned. There may be some instances in which the judicial officer who issues the warrant may not be the one to whom the warrant will be returned. For example, it is a common practice in many judicial districts to have an "on-call" magisterial district judge. This "on-call" judge would have the authority to issue search warrants anywhere in the judicial district but may not be assigned to the area in which the search warrant would be executed. There may be cases when the warrant is incorrectly returned to the judge who originally issued the warrant. In such cases, the issuing judge should forward the returned search warrant to the correct judicial officer. Thereafter, that judicial officer should administer the search warrant and supporting documents as provided for in these rules, including the Rule 210 requirement to file the search warrant and supporting documents with the clerk of courts.

[Paragraph (A)(8)] Subdivision (a)(8) implements the notice requirement in Rule 211(C). When the affidavit[(s)] is sealed pursuant to Rule 211, the justice or judge issuing

the warrant must certify on the face of the warrant that there is good cause shown for sealing the affidavit[(s)] and must also state how long the affidavit will be sealed.

For purposes of this rule, the term “electronically stored information” includes writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained. This definition is intended to cover all current types of computer-based information and to encompass future changes and developments.

For purposes of this rule, the term “seizure” includes the copying of material or information that is subject to the search warrant. This includes the copying of electronically stored information for later analysis.

For the procedures for motions for return of property, see Rule 588.

[Official Note: Rule 2005 adopted October 17, 1973, effective 60 days hence; amended November 9, 1984, effective January 2, 1985; amended September 3, 1993, effective January 1, 1994; renumbered Rule 205 and amended March 1, 2000, effective April 1, 2001; amended October 19, 2005, effective February 1, 2006; *Comment* revised October 22, 2013, effective January 1, 2014; amended July 31, 2017, effective October 1, 2017.]

Committee Explanatory Reports:

Report explaining the September 3, 1993 amendments published at 21 Pa.B. 3681 (August 17, 1991).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court’s Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the October 19, 2005 amendments to paragraph (4) and the Comment published with the Court’s Order at 35 Pa.B. 6087 (November 5, 2005).

Final Report explaining the October 22, 2013 revisions to the Comment regarding the return of the search warrant published at 43 Pa.B. 6649 (November 9, 2013).

Final Report explaining the July 31, 2017 amendment regarding search warrants for electronically stored information published with the Court’s Order at 47 Pa.B. 4680 (August 12, 2017).]

Rule 206. Contents of Application for Search Warrant.

Each application for a search warrant shall be supported by **a** written affidavit**[(s)]** signed and sworn to or affirmed before an issuing authority, which affidavit**[(s)]** shall:

- [(1)](a)** state the name and department, agency, or address of the affiant;
- [(2)](b)** identify specifically the items, **[or] property, or person** to be searched for and seized;
- [(3)](c)** name or describe with particularity the person or place to be searched;
- [(4)](d)** identify the owner, occupant, or possessor of the place to be searched;
- [(5)](e)** specify or describe the crime which has been or is being committed;
- [(6)](f)** set forth specifically the facts and circumstances which form the basis for the affiant's conclusion that there is probable cause to believe that the items, **[or] property, or person** identified are evidence or the fruit of a crime, or are contraband, or are expected to be otherwise unlawfully possessed or subject to seizure, and that these items or property are or are expected to be located on the particular person, **or that these items, property, or persons are or are expected to be located** at the particular place described;
- [(7)](g)** if a "nighttime" search is requested (*i.e.*, 10 p.m. to 6 a.m.), state additional reasonable cause for seeking permission to search in nighttime;
- [(8)](h)** when the attorney for the Commonwealth is requesting that the affidavit(s) be sealed pursuant to Rule 211, state the facts and circumstances which are alleged to establish good cause for the sealing of the affidavit(s); and
- [(9)](i)** a certification that the application complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* regarding confidential information and documents.

Comment: For the contents of the search warrant, see Rule 205.

[While this rule continues to require written affidavits, the form of affidavit was deleted in 1984 because it is no longer necessary to control the specific form of written affidavit by rule.]

Subdivisions (b) and (f) reflect the provision of Rule 201(d) that provides that a person may be the subject of a search warrant when the person is also the subject of a bench or arrest warrant. In such circumstances, the search warrant is to effectuate the arrest by permitting the search of a premises other than the

residence of the subject of the bench or arrest warrant. The search warrant does not take the place of the underlying bench or arrest warrant.

[The 2005 amendments to paragraph (6) recognize] Subdivision (f) recognizes anticipatory search warrants. To satisfy the requirements of **[paragraph (6)] subdivision (f)** when the warrant being requested is for a prospective event, the application for the search warrant also must include a statement explaining how the affiant knows that the items to be seized on a later occasion will be at the place specified. See *Commonwealth v. Coleman*, 830 A.2d 554 (Pa. 2003)**], and] ;** *Commonwealth v. Glass*, 754 A.2d 655 (Pa. 2000).

When the attorney for the Commonwealth is requesting that the search warrant affidavit**[(s)]** be sealed, the affidavit**[(s)]** in support of the search warrant must set forth the facts and circumstances the attorney for the Commonwealth alleges establish that there is good cause to seal the affidavit**[(s)]**. See also **[Rule] Pa.R.Crim.P. 211(B)(2)**. Pursuant to Rule 211(B)(1), when the attorney for the Commonwealth requests that the search warrant affidavit be sealed, the application for the search warrant must be made to a judge of the court of common pleas or to an appellate court justice or judge, who would be the issuing authority for purposes of this rule. For the procedures for sealing search warrant affidavit**[(s)]**, see Rule 211.

See Rule 113.1 regarding the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania and the requirements regarding filings and documents that contain confidential information.

[Official Note: Previous Rule 2006 adopted October 17, 1973, effective 60 days hence; rescinded November 9, 1984, effective January 2, 1985. Present Rule 2006 adopted November 9, 1984, effective January 2, 1985; amended September 3, 1993, effective January 1, 1994; renumbered Rule 206 and amended March 1, 2000, effective April 1, 2001; amended October 19, 2005, effective February 1, 2006; amended June 1, 2018, effective July 1, 2018.

Committee Explanatory Reports:

Report explaining the September 3, 1993 amendments published at 21 Pa.B. 3681 (August 17, 1991).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the October 19, 2005 amendments to paragraph (6) and the Comment published with the Court's Order at 35 Pa.B. 6087 (November 5, 2005).

Amendment regarding the Court's public access policy published with the Court's Order at 48 Pa.B. 3575 (June 16, 2018).]

Rule 208. Copy of Warrant; Receipt for Seized Property.

[(A)](a) A law enforcement officer, upon taking property or person pursuant to a search warrant, shall leave with the person from whom or from whose premises the property or person was taken a copy of the warrant and affidavit**[(s)]** in support thereof, and a receipt for the property seized. A copy of the warrant and affidavit**[(s)]** must be left whether or not any property or person is seized.

[(B)](b) If no one is present on the premises when the warrant is executed, the officer shall leave the documents specified in **[paragraph (A)] subdivision (a)** at a conspicuous location in the said premises. A copy of the warrant and affidavit**[(s)]** must be left whether or not any property or person is seized.

[(C)](c) Notwithstanding the requirements in **[paragraphs (A) and (B)] subdivisions (a) and (b)**, the officer shall not leave a copy of an affidavit that has been sealed pursuant to Rule 211.

Comment: Subdivisions (a) and (b) include the provision of Rule 201(d) that provides that a person may be the subject of a search warrant when the person is also the subject of a bench or arrest warrant. In such circumstances, the search warrant is to effectuate the arrest by permitting the search of a premises other than the residence of the subject of the bench or arrest warrant. The search warrant does not take the place of the underlying bench or arrest warrant.

[Official Note: Rule 208 adopted October 17, 1973, effective 60 days hence; amended September 3, 1993, effective January 1, 1994; renumbered Rule 208 and amended March 1, 2000, effective April 1, 2001.]

Committee Explanatory Reports:

Report explaining the September 3, 1993 amendments published at 21 Pa.B. 3681 (August 17, 1991).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).]

Rule 209. Return With Inventory.

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Comment:

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[~~See~~See Rule **[205(A)(6)] 205(a)(6)** regarding the circumstances under which the issuing authority to whom the warrant is returned may differ from the one that issued the warrant.

As provided in Rule **[205(A)(4)] 205(a)(4)**, search warrants generally authorize execution within a period not to exceed two days. Paragraph (B) requires that an unexecuted warrant be returned to the issuing authority upon expiration of this period.

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Rule 211. Sealing Search Warrant Affidavits.

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Comment:

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District justices, **[bail commissioners]** **arraignment court magistrates**, and municipal court judges do not have authority to seal an affidavit(s). In cases in which it is believed that there is good cause to seal the affidavit(s), the application for the search warrant must be presented to a judge of the court of common pleas or a justice or judge of an appellate court. See *a/so* **[Rule 206(8)] Pa.R.Crim.P. 206(h)**.

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Rule 540. Preliminary Arraignment.

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Comment:

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Paragraph (D) requires that the defendant receive copies of the arrest warrant and the supporting affidavit(s) at the time of the preliminary arraignment. See also Rules 513(A), **[208(A)] 208(a)**, and 1003. See Rule 513.1(F) concerning a defendant's access to arrest warrant information that has been sealed.

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Rule 1003. Procedure in Non-Summary Municipal Court Cases.

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Comment:

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Paragraph (D)(3)(c) requires that the defendant's attorney, or if unrepresented the defendant, receive copies of the arrest warrant and the supporting affidavits at the preliminary arraignment. This amendment parallels Rule 540(C). See *also* **[Rules 208(A)] Pa.R.Crim.P. 208(a)** and 513(A).

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