



PAWNEE COUNTY SHERIFF'S OFFICE
 SHERIFF DARRIN VARNELL

Policy # Search and Seizure: Residences	Related Policies: Search Warrant Execution; SWAT
<i>This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by the Pawnee County Sheriff's Office for non-judicial administrative action in accordance with the laws governing employee discipline.</i>	
Applicable Oklahoma Statutes Title 22. Criminal Procedure §22-1225. Requisites of search warrant - Issuing magistrate.	
CALEA Standard:	

- I. **Purpose:** The purpose of this policy is to direct deputy s and supervisors with respect to home entries.
- II. **Policy:** The policy of the Pawnee County Sheriff's Office is to protect and serve the constitutional rights of all citizens when conducting home entries while balancing the needs of law enforcement in solving crime for the protection of the community.
- III. **Definitions:**
 - A. **Probable Cause:** (search): Facts and circumstances based upon observations or information that would lead a reasonable law enforcement deputy to believe that evidence of crime exists and that the evidence exists at the place to be searched.
 - B. **Exigent Circumstances Entry:** Entry of a dwelling without a warrant due to some existing emergency that would not allow an deputy time to get a warrant.
 - C. **Search Incident to Arrest:** A search of the arrestee and their immediate area of control that is allowed whenever a custodial arrest is made.
 - D. **Consent:** The voluntary granting of permission for an deputy to enter an area that is protected by the 4th Amendment, by a person who is either an owner or a third party with common authority over the premises.
 - E. **Dynamic Entry:** The utilization of a special team i.e. SWAT, ERU etc. when executing a high-risk warrant, entering to control a barricaded subject, or similar high risk event.

- IV. Procedure:** At the outset deputy are directed that there are only three lawful methods upon which he or she may enter a person's dwelling. These methods include a warrant (arrest or search-with differing rules for each), exigent circumstances, or consent.
- A. Risk Assessment Matrix:** Unless exigent circumstances exist, deputy s shall compile a risk assessment matrix prior to planning any entry of homes or other buildings.
 - B. Written Operations Plan:** Unless exigent circumstances exist, deputy s shall complete a written operations plan prior to executing any warrant entry of a home or other building.
 - C. Knock and Announce:** Prior to considering a forced entry into a dwelling, deputy s must knock at the entrance and announce their identity and purpose unless one of the following circumstances exist:
 - a. The deputy 's purpose is already known to the occupant.
 - b. When the personal safety of the deputy or others would be jeopardized by the announcement.
 - c. When the delay caused by the announcement may enable the suspect to escape.
 - d. When a prisoner has escaped and retreated to his home.
 - e. When the announcement may cause evidence to be destroyed.
 - f. **NOTE:** If deputy s believe that one of the above circumstances exist prior to obtaining the warrant, they should seek judicial approval for a "no-knock" warrant by outlining the factors believed to exist in their affidavit.
 - g. In determining how long an deputy must wait before forcing entry following the knock and announcement, deputy s should consider the nature of the item sought and how long it would take to destroy the item. The United States Supreme Court found 15-20 seconds to be a reasonable amount of time in a drug warrant case.
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 - D. Arrest Warrant-Felony or Misdemeanor:** Deputy may enter the home of the subject of an arrest warrant in cases where the deputy also has probable cause to believe the subject is home.
 - a. Knock and Announce Rules Apply
 - b. Search Incident to Arrest-3 Zones
 - i. Deputy s may, at the time of the arrest, search the area in the immediate control of subject where the arrest occurs.
 - ii. Deputy s may, at the time of arrest, also look into, but not go into, areas adjoining the room of arrest, from which an attack could be launched.
 - iii. Deputy s may conduct a protective sweep, limited to those places where a person could be, in cases where the deputy s have reasonable suspicion to believe someone else on the premises poses a danger to the deputy .
 - c. Deputy s must obtain an arrest warrant with the address where the suspect is located before entering the residence of a third party in order to search for the subject of an arrest warrant unless exigency or consent exists.

- E. Search Warrants-** Deputy s must have probable cause to believe that evidence of crime exists and must have probable cause to believe it will be located at the place to be searched.
- a. If a magistrate be thereupon satisfied of the existence of grounds of the application, or that there is probable cause to believe their existence, he must issue a search warrant, signed by him, with his name of office, to a peace deputy of this state, commanding him forthwith to search the person or place named, for the property specified, and to bring it before the magistrate, and also to arrest the person in whose possession the same may be found, to be dealt with according to law.
 - b. In addition to any other procedure authorized by law, a proposed search warrant, affidavit or both search warrant and affidavit may be communicated to the magistrate by telephone or by electronic mail or any similar electronic communication which delivers a complete printable image of the warrant or affidavit.
 - c. If the proposed search warrant is communicated telephonically, the affiant shall:
 - i. recite information establishing probable cause to support issuance of the search warrant, and
 - ii. recite the proposed search warrant to the magistrate verbatim and obtain the oral permission of the magistrate to print the name of the magistrate on the search warrant along with the date and time of the signature.
 - iii. The oral recorded authorization of the magistrate to print the name of the magistrate on the search warrant shall constitute issuance of the search warrant under this section. The conversation establishing probable cause, reciting the contents of the search warrant verbatim and any authorization to sign by the magistrate shall be audio-recorded, transcribed and filed together with the warrant.
 - d. If communication of the proposed affidavit is made by electronic mail or other electronic communication, the affidavit may contain a notarized acknowledgement or the affiant may swear to the affidavit by telephone. A magistrate administering an oath telephonically shall endorse upon the face of the affidavit the date and time which the affiant undertook the oath by telephone.
 - e. A warrant may be issued by the magistrate by physically signing a printed copy of the affidavit and proposed warrant and transmitting said documents back to the affiant by electronic mail or other electronic communication. The printed copy received by the affiant shall constitute a search warrant and be executed as such. After execution, the search warrant shall be filed along with the printed copy of the affidavit received by the affiant. A magistrate may also issue a warrant without printing and signing a physical copy of the affidavit and warrant by return electronic communication to the affiant authorizing issuance of the warrant as submitted, or as modified by the magistrate, provided a copy of the modified document is included with the return electronic communication to the affiant.
 - f. A search warrant may be issued by any magistrate for a search of a person or property within the judicial district in which the magistrate presides or outside the judicial district if there was probable cause to believe the property was within the

judicial district when the warrant was sought, but moved outside the judicial district before the warrant was executed.

- g.** Knock and Announce Rules Apply: The deputy executing a search warrant may break open any building, structure, or container or anything therein to execute the warrant if, after giving notice of his authority and purpose, he is refused admittance and

 - i.** He or she is refused admittance;
 - ii.** The person or persons on the premises refuse to acknowledge the verbal notice or the presence of persons inside the building is unknown to the deputy ;
or
 - iii.** The building or property is unoccupied.
 - iv.** Note: where the deputy has reasonable grounds to believe that the announcement will place the deputy in greater peril or lead to the immediate destruction of evidence, the deputy may dispense with the knock and announce requirement.
 - h.** The search warrant itself must particularly describe the place to be searched and must also particularly describe the items to be seized.
 - i.** The scope of a search warrant is limited by information (i.e. information developed indicates that items are stored in a specific location). Scope may also be limited by the size of the item; (i.e. if looking for a stolen piano, one would not open a bureau drawer).
 - j.** All searches warrants must be executed in a reasonable manner.
 - k.** Detention and search of persons on premises. When executing a search warrant, the deputy may reasonably detain, and in some cases frisk any person in the place at the time under the following limitations (these limitations apply even in cases where the warrant calls for the “search of any person present”):

 - i.** Frisk-To protect him or herself from attack when the deputy has reasonable suspicion, based upon specific facts, to believe that the individual present is armed and poses a threat.
 - ii.** Search: To prevent the disposal or concealment of any item particularly described in the warrant where there is probable cause, based upon specific facts, to believe that the person to be searched is in possession of said item.
 - iii.** Detain: Deputy s may detain any person who is present at the scene of a residence where deputy s are executing a search warrant. Where deputy s are executing a dangerous search warrant, all persons present may be handcuffed while deputy s conduct their search. If at anytime it is determined that the person restrained in handcuffs is not dangerous, the handcuffs should be removed.
- F. Consensual Entry / Search** - Deputy s may, without reasonable suspicion or probable cause, enter a dwelling based upon the consent of a person who appears to have authority over the premises.
- (a) NOTE: These provisions apply to Knock and Talk events**
 - b.** Consent must be voluntary

- c. Consent need not be in writing but written documentation will assist deputy s in proving that the consent was voluntary.
 - d. Deputy s may not enter a dwelling in a case where a co-occupant is present and objecting to the entry.
 - e. The scope of a consensual entry and search rests with the consenting party who controls both how long the entry and search may last as well as what locations within the residence may be searched.
 - f. Deputy s should not rely on the consent of a juvenile under the age of 15.
- G. Exigent Entry-** An deputy may enter a home based on emergency circumstances when any of the following circumstances exist:
- a. Hot pursuit of a fleeing felon.
 - b. Imminent destruction of evidence for any jailable offense.
 - c. Need to prevent suspect's escape.
 - d. Risk of danger to police or others inside or outside the dwelling.
 - e. Deputy s may enter a home without a warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such an injury.
 - f. Once exigency has ended, deputy s should secure the scene and obtain a search warrant.
 - g. The fact that an area is a crime scene does not create automatic exigency- There is not crime scene exception to the warrant requirement.
- H. Dynamic Entry:** Whenever entering a residence in a manner designed to anticipate a potential deadly force encounter, the specially trained team should be utilized to ensure the safety of all persons involved. This determination as to whether a dynamic entry is necessary is done through the completion of a risk assessment matrix.
- a. Due to the nature of executing this high-risk entry, extreme care must be utilized in order to ensure that only the proper residence is entered. When considering the use of a dynamic entry, the following precautions must be followed:
 - i. A supervisor must be present and take responsibility for reviewing and approving the warrant as well as the affidavit prior to the execution of the warrant.
 - ii. The deputy supervising the special team will conduct a drive-by of the location with the lead investigator using the legal description on the warrant to locate the residence to ensure that the residence to be entered is verified with the warrant. If any discrepancies exist or if the house cannot be located by the description on the warrant, the warrant shall not be served.
 - iii. Prior to execution of the warrant, all available data bases will be checked (telephone, electric, real estate etc.) to ensure that the residence matches the suspect of the investigation.
 - iv. A written operations plan will be prepared identifying the specific mission for the team, intelligence considered, a description of the targeted subjects and location, and the specific tasks assigned to each member of the entry team.

- v. The lead investigator will accompany the special team during the execution of the warrant and direct deputy s to the doorway of the residence to ensure that the correct residence is entered.
- vi. Upon completion of the operation, photographs of all entry-ways into the building shall be taken to document both damage and lack of damage.