



SOUTH MIAMI POLICE DEPARTMENT

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CFA STANDARD: SUBJECT: <i>Legal Process –</i> CRIMINAL PROCESS	NEW (X) RESCINDS (X) AMENDS () OTHER ()	By Order Of:  Rene Landa, CHIEF OF POLICE	

SECTIONS:

- 32.3.1 **Procedures, Criminal Process**
- 32.3.2 **Arrest Warrants and Search Warrants**

RESCINDS: All existing orders in conflict.

PURPOSE: To establish departmental policy and guidelines for the service of criminal process and search warrants.

SCOPE: All departmental personnel.

POLICY: Criminal court orders are normally served by the Miami-Dade Police Department (i.e. wanted violent offenders and offenses). Local warrants, such as property crimes and non-violent offenses, may be served and executed by the South Miami Police Department. Although Officers participate in multi-agency task force operations, South Miami Police Department officers will not serve criminal court orders outside the City of South Miami jurisdiction.

DEFINITIONS:

Arrest Capias: An order for the arrest of a defendant that is obtained after a case is formally filed by the State Attorney's Office. The issuance of a capias by a judge means that the complete filing decision has been made, and information or an indictment has been filed with the Clerk of the Court.

Arrest Warrant: An arrest warrant is issued by a judge upon probable cause (no case has been filed), and is generally used when an immediate arrest by warrant is required. An arrest warrant is different from a capias in that upon issuance of an arrest warrant, the filing decision has not been made and information has not been filed with the court.

Criminal Process: Those writs, summonses, mandates, warrants, or other process issuing from a court of law compelling a person to answer for a felony or misdemeanor. The term also includes process issued to aid in crime detection or suppression, such as search warrants.

Execution: The performance of an act required by the writ, warrant, or other process commanding the seizure of a person or thing, as opposed to mere delivery of an instrument without any accompanying seizure.

Misdemeanor Summons: A misdemeanor summons is issued by the State Attorney's Office and commands an "at large" defendant to appear in court to face misdemeanor or ordinance violation charges resulting from information filed by the State Attorney's Office. Service of a misdemeanor summons is **not** an arrest, and the defendant is **not** incarcerated.

Search Warrant: An order, in writing, issued by a judge, directing a law enforcement officer to search a particular area, item, person, conveyance, or structure for contraband, fruits of a crime, or other evidence.

Service: The delivery of any item of civil process that is complete with the act of delivery and does not require physical or legal seizure of a person or thing.

PROCEDURE:

32.3.1 Procedures, Criminal Process

In the event that South Miami Police Department officers serve or participate in the service of criminal process, they must be familiar with the following procedures and requirements:

- A. Warrant requirements for arrests in residences are as follows:
 1. In general, arrest warrants must be obtained for the arrest of felony suspects in a place of residence. The arrest of a suspect may occur in the residence of a third party. Entry into a residence of a third party to search for a suspect, without consent or the presence of urgent circumstances, should be preceded by a search warrant. Officers will consult with their supervisor if they are unsure of the necessity for a warrant;
 2. An arrest warrant may be obtained when:
 - a. An officer has probable cause to believe a felony has been committed;
 - b. An officer can identify a suspect by name or adequate physical description; and
 - c. An officer believes that the arrest of the suspect will occur at the suspect's residence.

3. A South Miami police officer may file a felony charge with the Miami-Dade County SAO, but cannot file a misdemeanor charge directly unless:
 - a. The officer is the victim;
 - b. The misdemeanor is one of the misdemeanor exceptions;
 - c. The crime is against the county or a municipality;
 - d. The officer observed the misdemeanor.

Misdemeanor crimes must be filed directly by the victim. The South Miami Police Department can assist in the filing. Arrest warrants/capias are not normally filed in misdemeanor cases and, if they are, they are issued by the SAO.

B. An officer shall file for an arrest warrant or capias in the following manner:

1. Contact the Intake Section of the SAO for an appointment to file affidavits to secure an arrest warrant. In exceptional circumstances or emergencies, the SAO may accept the affidavit on a walk-in basis. Documents that must be submitted to the SAO when filing for a warrant include:
 - a. Witness/Evidence lists and any statements, written or taped, and other evidence referred to on the list;
 - b. All reports, including any report written by other officers, all supplements, and, if applicable, any crash reports;
 - c. FCIC/NCIC criminal history printout;
 - d. SAO filing information form.
2. When an officer files for an arrest warrant or capias, he/she shall complete a supplemental report which shall contain the following information:
 - a. The date the filing was initiated;
 - b. The charge(s) that was filed;
 - c. The name, date of birth, race, and sex of the person on whom the charge(s) was filed;
 - d. How the filing was completed based on one of the following:
 - (1) Forwarded to the SAO;
 - (2) Filed directly by the officer with an Assistant State Attorney (ASA); or
 - (3) Filed directly by the officer with an ASA and then walked through the remainder of the process to the point of the warrant being issued.
 - e. Any additional information obtained by the officer which will aid in locating and/or identifying the wanted person;
 - f. If the case is rejected by the SAO and an arrest warrant or capias is not issued, the filing officer shall report this information in a supplement.
 - g. If an officer makes an arrest of the subject prior to the warrant being put into the computer, the officer making the arrest shall

immediately contact the Intake Office of the SAO, notifying them of the following:

- (1) Name of the person who was arrested;
 - (2) Date of filing for the arrest warrant or capias;
 - (3) Name of the officer who filed for the arrest warrant or capias;
 - (4) Name of the ASA with whom the information was filed.
- h. In certain cases, the on-call state attorney must be notified (i.e. sexual battery). There is an on-call state attorney for each major crime. However, when an arrest warrant is served, there is no requirement to call the SAO unless there is a notation in the body of the warrant requiring it to be done.
3. All warrants issued in Miami-Dade County are issued by the Eleventh Judicial Circuit Court and directed to and executed by the Miami-Dade Police Department (MDPD) pursuant to FS 901.
- a. A South Miami police officer may arrest a person when he/she has knowledge that an arrest warrant has been issued and is being held by another officer for execution (a computer hit is sufficient for knowledge) pursuant to FS 901.
 - b. If the South Miami Police Department initiates a warrant, a copy of the warrant will be delivered to the MDPD Warrants Section and a copy is retained by the South Miami Police Department. Personnel in the MDPD Warrants Section will be advised at this time whether the South Miami Police Department will effect the arrest or allow the MDPD Warrants Section to effect the arrest. The warrant will be executed by a MDPD officer at the MDPD Warrants Section, or, if the warrant is from another county or state, it will be executed by the proper law enforcement officer from that jurisdiction.
4. Officers of the South Miami Police Department shall assist law enforcement officers and court officers from other jurisdictions with serving and executing criminal process within the City of South Miami, when requested.
5. When officers of the South Miami Police Department obtain an arrest warrant, the following guidelines will apply:
- a. An arrest affidavit will be completed when the arrest is affected and a photocopy of the affidavit will be turned in with all appropriate reports;
 - b. A supplemental report will be completed if the arrest warrant was issued on a previously assigned case number.

32.3.2 Arrest Warrants and Search Warrants

- A. The execution of an arrest warrant requires sworn service, and will be performed only by a sworn law enforcement officer.

- B. A search warrant can be obtained only when an officer has probable cause or a reasonable belief or received from a verified, confidential source that an offense has been or is being committed and evidence of that offense can be seized. A search warrant may be issued for the following purposes:
1. To recover property that has been stolen or embezzled (fruits of a crime);
 2. To seize property used as a means of committing an offense (instrumentalities);
 3. To seize property, the mere possession of which is a violation of law (contraband);
 4. To seize property in the possession of any person who intends to use it as a means to commit an offense, or in the possession of another to whom it may have been delivered for the purpose of concealing or preventing it from being discovered;
 5. To seize property or things that constitute any evidence which tends to show that a particular offense has been committed, or tends to show that a particular person has committed an offense (items of evidentiary value only);
 6. When a person sought is the subject of an outstanding arrest warrant.
 7. A search warrant may be obtained from any judge in the State of Florida, including Supreme and Superior Court Judges. Officers should first attempt to have the judge in the jurisdiction (i.e. Miami-Dade County) where the warrant is to be served sign the search warrant. Supreme and Superior Court Judges should not be considered a primary source for search warrants in most cases, especially in those instances occurring outside of normal business hours.
 8. A completed Affidavit for Search Warrant and the completed Search Warrant will be presented to the judge who, if satisfied that probable cause exists, will sign the warrant. [CFA15.08M(b)]
 - a. Search warrants will be written and submitted by a sworn member of the Criminal Investigations Division and will be approved by a supervisor prior to being submitted.
 - b. All search warrants will be sent through the chain-of-command, to be approved by the CID Lieutenant, prior to their submission to the judge.
 - c. Only sworn testimony, in addition to the affidavit, can be appropriately considered by the judge prior to issuance of the warrant.
 - d. Detectives are reminded that any communication, verbal or written, in support of the affidavit must be made under oath.
 - e. The completed original affidavit and a copy of the search warrant should be left with the judge.
 9. Drafting of a warrant will depend on the sworn affidavit of the officer with the most information in the case, usually the lead investigative on the case. [CFA15.08M(a)] The affidavit presented to a judge must be based on the

personal knowledge of the applicant or another police officer and/or information received from a reliable informant whose element of criminal reliability must be established at the time warrant is issued.

10. An affidavit lacking sufficient facts for a judge to exercise the necessary judgment, even though the warrant is issued, will likely lead to suppression of the evidence seized on the warrant.
 - a. Detectives must be extremely careful to describe exactly those premises composed of apartments, duplexes, or any places where more than one family lives;
 - b. When an automobile is to be searched, the vehicle will be described and set forth distinctly;
 - c. Each item that is the object of the search will be enumerated, including any person sought as the subject of an outstanding arrest warrant;
 - d. A warrant to search a premises cannot be automatically extended by itself to include the search of a person, therefore, if it is considered necessary to search the occupants of the premises, they will be described particularly in the affidavit and the warrant;
 - e. When drafting an affidavit specifically requesting a nighttime search, the detective must be able to allege that there is good cause for searching then, rather than waiting until daytime.

C. The following procedures must be used when applying for and obtaining a search warrant:

1. Probable cause, based on the facts in the Complaint Affidavit, must be shown (this includes a narrative relating all relevant facts and/or photographs);
2. Directions to proper law enforcement agency;
3. The warrant must contain a complete description of property to be searched, location of property to be searched, and items to be searched for; [CFA15.08(d)]
4. Notation of Florida statute violated;
5. Freshness of information;
6. Expressly providing that the detective (applicant) may search during the day, at night, or on Sunday;
7. Must be signed by the judge;
8. Once the search warrant is obtained by the South Miami Police Department, there will be a warrant affidavit filled out by the detective obtaining the warrant, with the time and date received, type of process, nature of document, source of document, name of plaintiff/complainant or defendant/respondent, detective assigned for execution, date of assignment, court docket number, and date the execution is due;

9. If the warrant is not to be executed immediately, the obtaining detective will give it to his/her immediate supervisor who will then forward it, via the chain of command, to the CID Lieutenant for retention until it is executed;
 10. The CID Lieutenant will ensure that the warrant is executed before the expiration date;
 11. Every attempt to execute the warrant shall be logged on the warrant affidavit. Once the warrant is executed, the date and time, name of executioner, to whom it was executed, method of service, and location of execution shall also be logged on the affidavit. The warrant affidavit will then be forwarded to the Records Unit for retention. A copy of the signed search warrant must be left at the place that was searched.
 12. All items seized pursuant to the service of the warrant will be included on the Inventory and Return Form. [CFA15.08(e)] An Inventory and Return form must be filed with the Clerk of the Circuit Court within ten (10) days of the execution of the search warrant. [CFA15.08(f)]
- D. The affidavit for a search warrant must present timely information, and the warrant must be properly executed. No private person may serve a search warrant except while assisting an officer, and then a sworn officer must be present to act in its execution.
1. It is necessary that the officer/detective who makes the warrant affidavit be present at its execution.
 2. Officers may break in a door, window, or any part of a house, building, or vehicle to execute a search warrant if, after announcing the authority and purpose, they are denied admittance.
 3. Issuing judges will normally state in the warrant that it is to be executed in the day time.
 4. When the affidavit indicates that there is good cause for searching at night (property sought might be gone by daylight, for example), a judge may direct that the warrant be executed at any time of the day or night.
 5. To protect officers and other persons from incidents of mistaken identity, doubt of credibility, or any other situation of misunderstanding, the following instructions will be followed by officers/detectives of this department when a search warrant is to be served:[CFA15.08(c)]
 - a. Before execution of the search warrant, the appropriate Patrol Lieutenant or designee in command at time of the execution of the warrant will be notified;
 - b. It will be the appropriate Patrol Lieutenant's responsibility to evaluate personnel needs and safety factors by reviewing circumstances surrounding the request for the warrant, and to determine what procedures for the actual execution have been planned;

- c. When the appropriate commanding Patrol Lieutenant is aware of any unusual conditions, he/she will immediately notify the on-duty supervisor in charge of the team of officers planning execution of the warrant;
- d. An on-duty supervisor will be in charge of all search warrant executions;
- e. Supervisors will direct a detective who is thoroughly familiar with the facts of the case to have a copy of the search warrant in their possession, hand it directly to the person being served with the warrant, and explain its purpose at that time;
- f. Any uniformed officer may be assigned to accompany detectives when it is extremely difficult or not logical for a plainclothes supervisor to be in uniform while serving a search warrant;
- g. The Patrol Lieutenant in command will take into consideration the fact that even though the first officer at the door of the house or building will be a supervisor or officer in uniform, other officers present and in view should also be in uniform or other identifiable dress, such as a raid jacket, if circumstances involve surrounding the building, guarding the back door, etc.
- h. Uniformed officers will be assigned, as necessary, to ensure that persons inside the building are aware that police officers are initiating the action;
- i. Undercover officers whose dress and appearance are not conventional for law enforcement personnel, should not be involved in the actual execution of a search warrant, unless their particular training and knowledge is necessary for the execution of the search itself;
- j. Undercover officers will not be among the first officers to enter the premises, and normally will not be in view of any persons inside the premises until entry has been accomplished;
- k. A memorandum will be directed to the Chief of Police, through the chain-of-command, as to the location and circumstances surrounding a search where the supervisor believes the department is likely to receive a citizen's complaint as a result of the search process;
- l. Photographs will be taken of any damage caused by the execution of warrant.

6. Any deviation from the procedures for executing search warrants as stated herein will be cleared through the CID Lieutenant for permission to change the procedure prior to notifying the Assistant Chief.

E. Warrant exceptions: Search warrant exceptions and warrant exceptions in general:

1. The target of the investigation has no standing or expectation of privacy.
2. Consent is given (consent to search form signed by owner or person in charge).
3. Exigent circumstances exist.
4. Auto exception: *Carroll v. U.S.* and *Chambers v. Maroney*; the opportunity to search is fleeting since a vehicle is readily moveable; mobility is “removed” if the vehicle is impounded.
 - a. Inventory search is conducted pursuant to legal guidelines.
 - b. Search is made under the provisions of the “Plain View Doctrine”.
 - c. Narcotics search (probable cause with automobile); “Plain Smell Doctrine”.
5. Searches incidental to arrest: In all cases where a physical arrest is made, the arrested person and area (wingspan) of arrest will be thoroughly searched.