

Electronically Issuing Search Warrant Checklist

The following checklist is based on [MCL 780.651 et seq.](#) and [SCAO Form MC 231](#).

Note: A district court magistrate has jurisdiction to issue a search warrant, if authorized to do so by a district court judge. [MCL 600.8511\(g\)](#).

- ☐ Examine the affidavit and search warrant. If the request for the search warrant is over the telephone, have the affiant read the affidavit and search warrant aloud.
- ☐ Determine that the person, property, or thing to be searched for and seized is described with particularity. [MCL 780.651\(1\)](#).
- ☐ Determine that the property or other thing to be searched for and seized is a proper subject for seizure.
 - ☐ “A warrant may be issued to search for and seize any property or other thing that is 1 or more of the following:
 - (a) Stolen or embezzled in violation of a law of this state.
 - (b) Designed and intended for use, or that is or has been used, as the means of committing a crime.
 - (c) Possessed, controlled, or used wholly or partially in violation of a law of this state.
 - (d) Evidence of crime or criminal conduct.
 - (e) Contraband.
 - (f) The body or person of a human being or of an animal that may be the victim of a crime.
 - (g) The object of a search warrant under another law of this state providing for the search warrant. If there is a conflict between [[MCL 780.651 et seq.](#)] and another search warrant law, [[MCL 780.651 et seq.](#)] controls.” [MCL 780.652\(1\)](#).
 - ☐ “A warrant may be issued to search for and seize a person who is the subject of either of the following:

(a) An arrest warrant for the apprehension of a person charged with a crime.

(b) A bench warrant issued in a criminal case.” [MCL 780.652\(2\)](#).

❑ [MCL 780.652a\(1\)](#) provides that “[i]f the court has probable cause to believe that an individual violated [[MCL 750.520b\(1\)\(b\)\(ii\)](#), [MCL 750.520b\(1\)\(h\)\(i\)](#), [MCL 750.520c\(1\)\(b\)\(ii\)](#), [MCL 750.520c\(1\)\(h\)\(i\)](#), [MCL 750.520d\(1\)\(d\)](#), or [MCL 750.520e\(1\)\(g\)](#)], the court shall, upon proper petition for a search warrant, authorize the search and seizure of hair or tissue, or blood or other fluid samples from all of the following:

(a) Any individual whom the court has probable cause to believe committed that violation.

(b) If the court has probable cause to believe that the violation resulted in the birth of a child, that child.

(c) If the court has probable cause to believe that the violation resulted in a pregnancy that was terminated before the birth of a child, the remains of that unborn child.” “[[MCL 780.652a](#)] does not prohibit the court from issuing a search warrant for other evidence as considered appropriate by the court.” [MCL 780.652a\(2\)](#).

❑ Michigan statutes also permit search warrants to be issued for the following items:

- Gaming implements. [MCL 750.308](#).
- Game and fish. [MCL 324.1602](#).
- Alcoholic liquor, containers, implements, or conveyances. [MCL 436.1235](#).
- Controlled substances. [MCL 333.7502](#).
- Pistols, weapons, or devices that are unlawfully possessed or carried. [MCL 750.238](#).
- Articles or instruments especially designed or adapted to torture or inflict wounds upon any animal or to aid in the fighting or baiting of any animal. [MCL 750.54](#).

❑ Determine that probable cause exists to justify the search. [US Const, Am IV](#); [Const 1963, art 1, § 11](#); [MCL 780.651\(1\)](#).

- ☐ “Probable cause to issue a search warrant exists where there is a ‘substantial basis’ for inferring a ‘fair probability’ that contraband or evidence of a crime will be found in a particular place.” *People v Kazmierczak*, 461 Mich 411, 417-418 (2000), quoting *People v Russo*, 439 Mich 584, 604 (1992). “Furthermore, the search warrant and underlying affidavit must be read in a commonsense and realistic manner to determine whether a reasonably cautious person could have concluded that there was a substantial basis for finding probable cause.” *People v Martin*, 271 Mich App 280, 298 (2006).
- ☐ If the affidavit is based on information supplied to the complainant by a *named person*, determine that the affidavit contains affirmative allegations from which the judge or district court magistrate may conclude that the named person spoke with personal knowledge of the information. [MCL 780.653\(a\)](#).
- ☐ If the affidavit is based on information supplied to the complainant by an *unnamed person*, determine that the affidavit contains affirmative allegations from which the judge or district court magistrate may conclude:
 - ☐ that the unnamed person spoke with personal knowledge or the information; AND
 - ☐ that the unnamed person is credible OR that the information is reliable. [MCL 780.653\(b\)](#).
- ☐ Swear affiant:
 - ☐ administer oath or affirmation.
 - “If an oath or affirmation is orally administered by electronic or electromagnetic means of communication under [[MCL 780.651](#)], the oath or affirmation is considered to be administered before the judge or district court magistrate.” [MCL 780.651\(6\)](#).
 - ☐ ask if averments in affidavit are true to the best of affiant’s information and belief.
 - ☐ ask affiant to sign affidavit. [MCL 780.651\(2\)](#).
 - “Proof that the affiant has signed the affidavit may consist of an electronically or electromagnetically transmitted facsimile of the signed affidavit or an

electronic signature on an affidavit transmitted over a computer network.” [MCL 780.651\(2\)\(b\)](#).

- A search warrant based on an unsigned affidavit is presumed invalid, but the presumption may be rebutted by showing that the facts in the affidavit supporting issuance of the search warrant were made under oath to the judge or district court magistrate who authorized the issuance of the search warrant. See *People v Mitchell*, 428 Mich 364, 368-369 (1987).

☐ Sign and date the affidavit and search warrant.

☐ “A judge or district court magistrate may issue a written search warrant . . . by any electronic or electromagnetic means of communication, including by facsimile or over a computer network.” [MCL 780.651\(3\)](#).

☐ “A judge or district court magistrate may sign an electronically issued search warrant when he or she is at any location in this state.” [MCL 780.651\(4\)](#).

☐ “The peace officer or department receiving an electronically or electromagnetically issued search warrant shall receive proof that the issuing judge or district court magistrate has signed the warrant before the warrant is executed.” [MCL 780.651\(5\)](#). “Proof that the issuing judge or district court magistrate has signed the warrant may consist of an electronically or electromagnetically transmitted facsimile of the signed warrant or an electronic signature on a warrant transmitted over a computer network.” *Id.*

☐ Retain affidavit and copy of search warrant.

☐ “If an affidavit for a search warrant is submitted by electronic or electromagnetic means of communication, or a search warrant is issued by electronic or electromagnetic means of communication, the transmitted copies of the affidavit or search warrant are duplicate originals of the affidavit or search warrant and are not required to contain an impression made by an impression seal.” [MCL 780.651\(7\)](#).

☐ Direct the police officer to leave a completed copy of the search warrant and a tabulation (a written inventory) of all property taken with the person from whom the property was taken or at the premises.

☐ Direct the police officer to promptly return the search warrant and tabulation to the court after the search warrant is executed.