

# Checklist for Issuing Search Warrant

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.
- 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 - i.e. one or more of the following:
  - "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 of 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.
  - ask if averments in affidavit are true to the best of affiant’s information and belief.
  - ask affiant to sign affidavit. [MCL 780.651\(2\)](#).
- Sign and date the affidavit and original copy of search warrant.
- Retain original affidavit and original copy of search warrant.
- 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.

