

Arizona Constitution and Statutes

Arizona Constitution, Article II (“Declaration of Rights”)

Right to privacy

Section 8. No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

Arizona Revised Statutes, Title 13 (“Criminal Code”), Chapter 38 (“Miscellaneous”), Article 8 (“Search Warrant”)

13-3911. Definition

A search warrant is an order in writing issued in the name of the state of Arizona, signed by a magistrate, directed to a peace officer, commanding him to search for personal property, persons or items described in section 13-3912.

13-3912. Grounds for issuance

A search warrant may be issued upon any of the following grounds:

1. When the property to be seized was stolen or embezzled.
2. When the property or things to be seized were used as a means of committing a public offense.
3. When the property or things to be seized are in the possession of a person having the intent to use them as a means of committing a public offense or in possession of another to whom he may have delivered it for the purpose of concealing it or preventing it being discovered.
4. When property or things to be seized consist of any item or constitute any evidence which tends to show that a particular public offense has been committed, or tends to show that a particular person has committed the public offense.
5. When the property is to be searched and inspected by an appropriate official in the interest of the public health, safety or welfare as part of an inspection program authorized by law.
6. When the person sought is the subject of an outstanding arrest warrant.

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13-3913. Conditions precedent to issuance

No search warrant shall be issued except on probable cause, supported by affidavit, naming or describing the person and particularly describing the property to be seized and the place to be searched.

13-3914. Examination on oath; affidavits

A. Before issuing a warrant, the magistrate may examine on oath the person or persons seeking the warrant, and any witnesses produced, and must take his affidavit, or their affidavits, in writing and cause the affidavit to be subscribed by the party or parties making the affidavit. Before issuing the warrant, the magistrate may also examine any other sworn affidavit submitted to him which sets forth facts tending to establish probable cause for the issuance of the warrant.

B. The affidavit or affidavits must set forth the facts tending to establish the grounds of the application, or probable cause for believing the grounds exist.

C. In lieu of, or in addition to, a written affidavit, or affidavits, as provided in subsection A, the magistrate may take an oral statement under oath which shall be recorded on tape, wire or other comparable method. This statement may be given in person to the magistrate or by telephone, radio or other means of electronic communication. This statement is deemed to be an affidavit for the purposes of issuance of a search warrant. If a recording of the sworn statement is made, the statement shall be transcribed at the request of the court or either party and certified by the magistrate and filed with the court.

13-3915. Issuance; form of warrant; duplicate original warrant; telefacsimile

A. If the magistrate is satisfied that probable cause for the issuance of the warrant exists, the magistrate shall issue a search warrant commanding a search by any peace officer of the person or place specified, for the items described.

B. On a reasonable showing that an announced entry to execute the warrant would endanger the safety of any person or would result in the destruction of any of the items described in the warrant, the magistrate shall authorize an unannounced entry.

C. The warrant shall be in substantially the following form:

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County of _____, state of Arizona.

To any peace officer in the state of Arizona:

Proof by affidavit having been this day made before me by (naming every person whose affidavit has been taken) there is probable cause for believing that (stating the grounds of the application) according to section 13-3912, you are therefore commanded in the daytime (or in the night, as the case may be, according to section 13-3917) to make a search of (naming persons, buildings, premises or vehicles, describing each with reasonable particularity) for the following property, persons or things: (describing such with reasonable particularity), and if you find such or any part thereof, to retain such in your custody subject to section 13-3920.

Given under my hand or direction and dated _____ (judge, justice of the peace or magistrate.)

D. The magistrate may orally authorize a peace officer to sign the magistrate's name on a search warrant if the peace officer applying for the warrant is not in the actual physical presence of the magistrate. This warrant shall be called a duplicate original search warrant and shall be deemed a search warrant for the purposes of this chapter. In such cases, the magistrate shall cause to be made an original warrant and shall enter the exact time of issuance of the duplicate original warrant on the face of the original warrant. Upon the return of the duplicate original warrant, the magistrate shall file the original warrant and the duplicate original warrant as provided in section 13-3923.

E. A magistrate may affix the magistrate's signature on a telefacsimile of an original warrant. The telefacsimile of the original warrant is deemed to be a search warrant for the purposes of this chapter. On return of the telefacsimile of the original warrant, the magistrate shall file the original warrant and the telefacsimile of the original warrant as provided in section 13-3923.

13-3916. Service of warrant; breaking and entering to execute

A. A search warrant may be served by any peace officer but by no other person except in aid of an officer engaging in service of the warrant.

B. An officer may break into a building, premises or vehicle or any part of a building, premises or vehicle, to execute the warrant when:

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1. After notice of the officer's authority and purpose, the officer receives no response within a reasonable time.
 2. After notice of the officer's authority and purpose, the officer is refused admittance.
 3. A magistrate has authorized an unannounced entry pursuant to section 13-3915.
 4. The particular circumstances and the objective articulable facts are such that a reasonable officer would believe that giving notice of the officer's authority and purpose before entering would endanger the safety of any person or result in the destruction of evidence.
- C. A peace officer executing a search warrant may seize any property discovered in the course of the execution of the warrant if the officer has reasonable cause to believe that the item is subject to seizure under section 13-3912, even if the property is not enumerated in the warrant.
- D. A peace officer executing a search warrant may make or cause to be made photographs, measurements, impressions or scientific tests.
- E. A peace officer executing a search warrant directing a search of any premises or a vehicle may search any person in the premises or vehicle if either of the following applies:
1. It is reasonably necessary to protect himself or others from the use of any weapon that may be concealed upon the person.
 2. It reasonably appears that property or items enumerated in the search warrant may be concealed upon the person.

13-3917. Time of service; exception

Upon a showing of good cause therefor, the magistrate may, in his discretion insert a direction in the warrant that it may be served at any time of the day or night. In the absence of such a direction, the warrant may be served only in the daytime. For the purposes of this section night is defined as the period from ten p.m. to six-thirty a.m.

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13-3918. Time of execution and return

A. A search warrant shall be executed within five calendar days from its issuance and returned to a magistrate within three court business days after the warrant is executed. Upon expiration of the five-day period, the warrant is void unless the time is extended by a magistrate. The time for execution of the warrant may be extended for no longer than five calendar days. The documents and records of the court relating to the search warrant need not be open to the public until the return of the warrant or the warrant is deemed void pursuant to this section unless a magistrate orders the time to be shortened or lengthened for good cause. Thereafter, if the warrant has been executed, the documents and records shall be open to the public as a judicial record.

B. If a duplicate original search warrant has been executed, the peace officer who executed the warrant shall enter the exact time of its execution on its face.

13-3919. Receipt for property; definitions

A. If an officer takes any property under the warrant, the officer shall give a detailed receipt for the property taken to the person from whom it was taken or in whose possession it was found. If the property was not taken from a person, the officer shall leave the receipt at the place where the property was found.

B. The court may delay for a reasonable period the service of the detailed receipt required by subsection A of this section if all of the following apply:

1. The court finds that there is reasonable cause to believe that the delay is necessary to protect the safety of any person or to prevent flight from prosecution, tampering with evidence, intimidation of witnesses or jeopardizing an investigation.

2. Unless the court finds reasonable necessity for the seizure, the warrant prohibits the seizure of any tangible property, any wire or electronic communication or, except as expressly provided in section 13-3016, any stored wire or electronic information.

3. The warrant provides for service of a detailed receipt within a reasonable period after the execution of the warrant. Extensions for a reasonable period of time may be granted, but only on an application and judicial finding.

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C. For the purposes of this section:

1. "Electronic communication" has the same meaning prescribed in section 13-3001.
2. "Wire communication" has the same meaning prescribed in section 13-3001.

13-3920. Retention of property

All property or things taken on a warrant shall be retained in the custody of the seizing officer or agency which he represents, subject to the order of the court in which the warrant was issued, or any other court in which such property or things is sought to be used as evidence.

13-3921. Return of warrant and inventory; copy of inventory

A. The officer shall return the warrant to the magistrate and at the same time deliver to him a written inventory of the property taken. The inventory shall be made publicly, or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they are present. The inventory shall be verified by the affidavit of the officer which shall be taken by the magistrate at the time it is delivered to the magistrate. The affidavit shall recite that the inventory contains a true and detailed account of all the property taken.

B. The magistrate shall, if requested, deliver a copy of the inventory to the person from whose possession the property was taken and to the applicant for the warrant.

13-3922. Controverting grounds of issuance; procedure; restoration of property

A. If an owner of seized property controverts the grounds on which the warrant was issued, the magistrate shall proceed to take testimony relative thereto unless a proceeding pursuant to chapter 39 of this title is or has been initiated relating to the same property interest. The testimony given by each witness shall be reduced to writing and certified by the magistrate. If it appears that the property taken is not the same as that described in the warrant and is not within section 13-3916, subsection C, D or E or section 13-3925, subsection C, or that probable cause does not exist for believing the items are subject to seizure, the magistrate shall cause the property to be restored to the person from whom it was taken if the property is not such that any interest in it is subject to forfeiture or its possession would constitute a criminal offense.

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B. Any order under this section as to a property interest is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of that person in all actions pursuant to this title. Other orders are appealable, if permitted by the Arizona rules of civil procedure.

C. No stay may issue on the forfeiture of seized property or its use in an action pursuant to this title while contravention of the warrant is being litigated.

13-3923. Filing and transmittal of papers

The magistrate shall annex the affidavits, the search warrant and return, and the inventory, and if he does not have jurisdiction to inquire into the offense in respect to which the warrant was issued, he shall at once file the warrant, and return the affidavits and inventory to the court having jurisdiction to inquire into the offense.

13-3924. Unlawful procurement of search warrant without probable cause

A person who, with intent to harass and without probable cause, causes a search warrant to be issued and executed, is guilty of a class 2 misdemeanor.

13-3925. Unlawful search or seizure; admissibility of evidence; definitions

A. Any evidence that is seized pursuant to a search warrant shall not be suppressed as a result of a violation of this chapter except as required by the United States Constitution and the constitution of this state.

B. If a party in a criminal proceeding seeks to exclude evidence from the trier of fact because of the conduct of a peace officer in obtaining the evidence, the proponent of the evidence may urge that the peace officer's conduct was taken in a reasonable, good faith belief that the conduct was proper and that the evidence discovered should not be kept from the trier of fact if otherwise admissible.

C. The trial court shall not suppress evidence that is otherwise admissible in a criminal proceeding if the court determines that the evidence was seized by a peace officer as a result of a good faith mistake or technical violation.

D. This section does not limit the enforcement of any appropriate civil remedy or criminal penalty in actions pursuant to other provisions of law against any individual or government entity found to have conducted an unreasonable search or seizure.

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E. This section does not apply to unlawful electronic eavesdropping or wiretapping.

F. For the purposes of this section:

1. "Good faith mistake" means a reasonable judgmental error concerning the existence of facts that if true would be sufficient to constitute probable cause.

2. "Technical violation" means a reasonable good faith reliance on:

(a) A statute that is subsequently ruled unconstitutional.

(b) A warrant that is later invalidated due to a good faith mistake.

(c) A controlling court precedent that is later overruled, unless the court overruling the precedent orders the new precedent to be applied retroactively.

Arizona Revised Statutes, Title 13 (“Criminal Code”), Chapter 4 (“Justification”)

13-404. Justification; self-defense

A. Except as provided in subsection B of this section, a person is justified in threatening or using physical force against another when and to the extent a reasonable person would believe that physical force is immediately necessary to protect himself against the other's use or attempted use of unlawful physical force.

B. The threat or use of physical force against another is not justified:

1. In response to verbal provocation alone; or

2. To resist an arrest that the person knows or should know is being made by a peace officer or by a person acting in a peace officer's presence and at his direction, whether the arrest is lawful or unlawful, unless the physical force used by the peace officer exceeds that allowed by law; or

3. If the person provoked the other's use or attempted use of unlawful physical force, unless:

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(a) The person withdraws from the encounter or clearly communicates to the other his intent to do so reasonably believing he cannot safely withdraw from the encounter; and

(b) The other nevertheless continues or attempts to use unlawful physical force against the person.

13-405. Justification; use of deadly physical force

A. A person is justified in threatening or using deadly physical force against another:

1. If such person would be justified in threatening or using physical force against the other under section 13-404, and

2. When and to the degree a reasonable person would believe that deadly physical force is immediately necessary to protect himself against the other's use or attempted use of unlawful deadly physical force.

B. A person has no duty to retreat before threatening or using deadly physical force pursuant to this section if the person is in a place where the person may legally be and is not engaged in an unlawful act.