

REFERENCE TITLE: search warrants; audible notice; requirements.

State of Arizona
House of Representatives
Fifty-fifth Legislature
First Regular Session
2021

HB 2751

Introduced by
Representatives Hernandez A: Andrade, Bolding, Cano, Chávez, Dalessandro,
Espinoza, Fernandez, Hernandez D, Hernandez M, Lieberman, Longdon, Meza,
Pawlik, Powers Hannley, Rodriguez, Salman, Schwiebert, Sierra, Stahl
Hamilton, Teller, Terán

AN ACT

AMENDING SECTIONS 13-3915, 13-3916 AND 13-3922, ARIZONA REVISED STATUTES;
RELATING TO SEARCH WARRANTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-3915, Arizona Revised Statutes, is amended to
3 read:

4 13-3915. Issuance; form of warrant; duplicate original
5 warrant; telefacsimile

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

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

14 ~~E.~~ B. The warrant shall be in substantially the following form:

15 County of _____, state of Arizona.

16 To any peace officer in the state of Arizona:

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

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

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

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

1 Sec. 2. Section 13-3916, Arizona Revised Statutes, is amended to
2 read:

3 13-3916. Service of warrant; audible notice; breaking and
4 entering to execute

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

8 B. BEFORE EXECUTING A SEARCH WARRANT, A PEACE OFFICER WHO IS
9 RECOGNIZABLE AND IDENTIFIABLE AS A UNIFORMED PEACE OFFICER SHALL PROVIDE
10 AUDIBLE NOTICE OF THE OFFICER'S AUTHORITY AND PURPOSE. THE AUDIBLE NOTICE
11 MUST BE REASONABLY EXPECTED TO BE HEARD BY THE OCCUPANTS OF THE PLACE TO
12 BE SEARCHED.

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

15 1. After PROVIDING AUDIBLE notice of the officer's authority and
16 purpose, the officer receives no response within a reasonable time.

17 2. After PROVIDING AUDIBLE notice of the officer's authority and
18 purpose, the officer is refused admittance.

19 ~~3. A magistrate has authorized an unannounced entry pursuant to~~
20 ~~section 13-3915.~~

21 ~~4. The particular circumstances and the objective articulable facts~~
22 ~~are such that a reasonable officer would believe that giving notice of the~~
23 ~~officer's authority and purpose before entering would endanger the safety~~
24 ~~of any person or result in the destruction of evidence.~~

25 D. AFTER ENTERING AND SECURING THE PLACE TO BE SEARCHED BUT BEFORE
26 UNDERTAKING ANY SEARCH OR SEIZURE PURSUANT TO THE SEARCH WARRANT, THE
27 PEACE OFFICER EXECUTING THE SEARCH WARRANT SHALL PROVIDE A COPY OF THE
28 SEARCH WARRANT TO THE PERSON TO BE SEARCHED OR THE OWNER OF THE PLACE TO
29 BE SEARCHED OR, IF THE OWNER IS NOT PRESENT, TO ANY OCCUPANT OF THE PLACE
30 TO BE SEARCHED. IF THE PLACE TO BE SEARCHED IS UNOCCUPIED, THE PEACE
31 OFFICER EXECUTING THE SEARCH WARRANT SHALL LEAVE A COPY OF THE SEARCH
32 WARRANT SUITABLY AFFIXED TO THE PLACE TO BE SEARCHED.

33 ~~E.~~ E. A peace officer executing a search warrant may seize any
34 property discovered in the course of the execution of the warrant if the
35 officer has reasonable cause to believe that the item is subject to
36 seizure under section 13-3912, even if the property is not enumerated in
37 the warrant.

38 ~~F.~~ F. A peace officer executing a search warrant may make or cause
39 to be made photographs, measurements, impressions or scientific tests.

40 ~~F.~~ G. A peace officer executing a search warrant directing a
41 search of any premises or a vehicle may search any person in the premises
42 or vehicle if either of the following applies:

43 1. It is reasonably necessary to protect himself or others from the
44 use of any weapon that may be concealed ~~upon~~ ON the person.

1 2. It reasonably appears that property or items enumerated in the
2 search warrant may be concealed ~~upon~~ ON the person.

3 Sec. 3. Section 13-3922, Arizona Revised Statutes, is amended to
4 read:

5 13-3922. Controverting grounds of issuance; procedure;
6 restoration of property

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

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

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