

Arrest Warrants

The Supreme Court has routinely encouraged officers to seek arrest warrants whenever possible because the warrant procedure enables “a neutral judicial officer [to] assess whether the police have probable cause.”¹ Still, the Court has acknowledged that it has “never invalidated an arrest supported by probable cause solely because the officers failed to secure a warrant.”² So, why should they seek one?

There are five reasons: (1) a warrant also constitutes authorization for officers to enter the arrestee’s home to take him into custody, (2) a warrant allows officers to enter the data contained in the warrant into various warrant databases, (3) it stops the statute of limitations from running³ (4) it authorizes officers to arrest a suspect for a misdemeanor that was not committed in their presence, and (5) it makes it likely that the arrest will be upheld under the good faith rule if a court later determines that probable cause did not exist.⁴

General Rules

DEFINED: An arrest warrant is a court order in which a judge directs officers to arrest a certain person if and when they locate him. In the words of the Supreme Court, “An arrest warrant is issued by a magistrate upon a showing that probable cause

exists to believe that the subject of the warrant has committed an offense.”⁵

TYPES OF ARREST WARRANTS: The main types of arrests warrants are conventional warrants, *Ramey* warrants, and *Steagald* warrants. Less common, but still important, are probation violation warrants,⁶ parole violation warrants (a.k.a. parolee-at-large warrants),⁷ grand jury indictment warrants,⁸ and bench warrants for failing to appear in court.⁹

WHEN AN ARREST WARRANT TERMINATES: An arrest warrant remains in effect until it is executed or recalled by the court; i.e., it does not become “stale.”¹⁰

POSTPONING AN ARREST: Although arrest warrants are court orders, officers are not *required* to execute them immediately upon locating the suspect as there are several legitimate reasons for delaying an arrest or seeking its recall.¹¹

INVESTIGATING THE WARRANT’S VALIDITY: Officers are not required to investigate the validity of an arrest warrant that appears valid on its face.¹² They may not, however, ignore information that reasonably indicates the warrant had been executed or recalled, or that probable cause no longer exists.¹³

CONFIRMING THE WARRANT: To make sure that an arrest warrant listed in a database had not been executed or recalled, officers will ordinarily confirm that it remains outstanding.¹⁴

¹ *Steagald v. United States* (1981) 451 U.S. 204, 212.

² *Gerstein v. Pugh* (1975) 420 U.S. 103, 113.

³ See *People v. Robinson* (2010) 47 Cal.4th 1104, 1111.

⁴ See *Steagald v. United States* (1981) 451 U.S. 204, 212.

⁵ *Steagald v. United States* (1981) 451 U.S. 204, 213. Also see Pen. Code § 813 *et seq.*

⁶ See Pen. Code § 1203.2.

⁷ See Pen. Code §§ 3060, 3062, 3081; *People v. Hunter* (2006) 140 Cal.App.4th 1147, 1153-54.

⁸ See Pen. Code § 945.

⁹ See Pen. Code § 978.5. Also see Pen. Code §§ 813(c), 853.8, 983.

¹⁰ See *People v. Bittaker* (1989) 48 Cal.3d 1046, 1071; *People v. Case* (1980) 105 Cal.App.3d 826, 834.

¹¹ See *U.S. v. Pelletier* (8th Cir. 2012) 700 F.3d 1109, 1117; *U.S. v. Wagner* (7th Cir. 2006) 467 F.3d 1085, 1090.

¹² See *Herndon v. County of Marin* (1972) 25 Cal.App.3d 933, 937.

¹³ See *Milliken v. City of South Pasadena* (1979) 96 Cal.App.3d 834, 842.

¹⁴ See *U.S. v. Martin* (7th Cir. 2005) 399 F.3d 879, 881.

WARRANTS SENT BY EMAIL OR FAX: A warrant or an abstract sent from one agency to another via email or fax has the same legal force as the original warrant.¹⁵

WHEN WARRANTS MAY BE SERVED: Felony arrest warrants may be served at any time.¹⁶ Misdemeanor warrants may not be served between the hours of 10 P.M. and 6 A.M. unless (1) the arrest was made in a public place, (2) the arrestee was already in custody for another offense, or (3) the warrant authorized night service.¹⁷

The question sometimes arises: If officers are lawfully inside the home after 10 P.M. because, for example, they have made a consensual entry to take a police report, can they arrest an occupant if they learn he is wanted on a warrant that is not endorsed for night service? Although there is no case law directly on point, the Court of Appeal has noted that the purpose of the temporal limitations “is the protection of an individual’s right to the security and privacy of his home, particularly during night hours and the avoidance of the danger of violent confrontations inherent in unannounced intrusion at night.”¹⁸ It seems likely that none of these concerns would be implicated if officers had already been invited in.

Conventional Arrest Warrants

A conventional arrest warrant (also known as a “complaint warrant”) is issued by a judge after prosecutors have filed a complaint against the suspect for a felony or misdemeanor.¹⁹ A warrant

will not, however, be issued automatically simply because a complaint had been filed. Instead, as with search warrants, officers must provide the judge with an affidavit containing the facts upon which probable cause was based. Such a declaration or affidavit may include police reports or written statements by witnesses so long as there was reason to believe the source of the information was reliable.²⁰

REQUIRED INFORMATION: The warrant must include the name of the person to be arrested, the date and time it was issued, the city or county in which it was issued, the name of the court, the amount of bail (if any), and the judge’s signature.²¹ Furthermore, the warrant must contain sufficient information about the suspect to make it reasonably likely that officers will arrest the right person. This information typically includes such things as his address, occupation, places he frequents, his known associates and the places they frequent, and a description of the vehicles he has been known to drive.²²

The amount of information that will be required will ordinarily depend on what information the officers possess about the arrestee or information they could have obtained with reasonable effort.²³ Before arresting someone on a warrant, officers may not, of course, ignore objective circumstances that reasonably indicate the arrestee was not the subject of the warrant.²⁴

“DOE” WARRANTS: If officers do not know the suspect’s name they may be able to obtain a John Doe warrant.²⁵ With Doe warrants it is especially important to include enough information about the

¹⁵ See Pen. Code § 850; *People v. McCraw* (1990) 226 Cal.App.3d 346, 349.

¹⁶ See Pen. Code § 840.

¹⁷ See Pen. Code § 840.

¹⁸ *People v. Whitted* (1976) 60 Cal.App.3d 569, 572.

¹⁹ See *Lohman v. Superior Court* (1977) 69 Cal.App.3d 894, 903; Pen. Code §§ 813, 1427; *In re Walters* (1975) 15 Cal.3d 738, 747 [“[A] person charged with the commission of a misdemeanor may also be arrested pursuant to a warrant.”]; *U.S. v. Clayton* (8th Cir. 2000) 210 F.3d 841, 843 [“We agree with those courts that have held that this principle applies with equal force to misdemeanor warrant.” Citations omitted.].

²⁰ See *In re Walters* (1975) 15 Cal.3d 738, 748.

²¹ See Pen. Code §§ 815, 815a.

²² See *People v. Robinson* (2010) 47 Cal.4th 1104, 1138; Pen. Code § 815.

²³ See *People v. Robinson* (2010) 47 Cal.4th 1104, 1132; *People v. Tockgo* (1983) 145 Cal.App.3d 635, 640.

²⁴ See *Robinson v. City and County of San Francisco* (1974) 41 Cal.App.3d 334, 337.

²⁵ See *People v. Robinson* (2010) 47 Cal.App.4th 1104, 1138.

suspect (including a photo if available) to sufficiently reduce the possibility that someone else might be arrested by mistake.²⁶ Note that for purposes of tolling the statute of limitations, an arrestee is sufficiently described in a Doe warrant if the warrant lists his DNA profile.²⁷

Ramey Warrants

A *Ramey* arrest warrant—also known as a “Warrant of Probable Cause for Arrest”²⁸—may be issued when officers have probable cause to arrest the suspect for a felony or misdemeanor, but prosecutors have not yet filed a criminal complaint against him.²⁹ *Ramey* warrants are commonly used when officers lack proof of guilt beyond a reasonable doubt, which is the standard required for filing a complaint. In such cases, officers may seek a *Ramey* warrant in order to obtain enough evidence for charging if, after arresting the suspect, they are able to question him, place him in a lineup, obtain consent to search, or obtain his fingerprints or DNA.

REQUIRED INFORMATION: As with conventional arrest warrants, *Ramey* warrants must contain sufficient information to effectively reduce the chances of arresting the wrong person. In addition, *Ramey* warrants must contain the name of arrestee, the name of the court, name of the city or county in which the warrant was issued, a direction to peace officers to bring the arrestee before a judge, signature and title of issuing judge, time the warrant was issued, and the amount of bail (if any).³⁰ We have included a sample *Ramey* warrant on page 12.

IF ADDRESS IS INCLUDED: Although *Ramey* arrest warrants may contain the arrestee’s last known address, this does not constitute authorization to

search that address for the suspect. Instead, it is merely an aid in locating him.³¹ As discussed in the accompanying article “Entry to Arrest,” officers are permitted to enter a home to execute an arrest warrant only if they reasonably believed the arrestee “lives” there and is presently inside.

Steagald Warrants

A *Steagald* warrant is a combination search and arrest warrant that authorizes officers to enter a home or other structure for the purpose of searching for and arresting a wanted suspect who does not live on the premises; i.e., the home belongs to the suspect’s friend, relative, or other third party.³² Like any arrest warrant, a *Steagald* warrant can only be issued if an officer submits an affidavit that establishes probable cause to arrest the suspect.

Steagald warrants are different, however, because they cannot be issued unless the affidavit also establishes probable cause to believe that (1) the arrestee was inside the residence when the warrant was issued, and (2) he would still be there when the warrant is executed.³³ And this can be difficult to do because it is often hard to prove the arrestee will still be inside the residence when officers arrive. As the Justice Department noted in its argument in *Steagald*, “[P]ersons, as opposed to objects, are inherently mobile, and thus officers seeking to effect an arrest may be forced to return to the magistrate several times as the subject of the arrest warrant moves from place to place.” For this reason, the Court noted that officers can avoid the need for a *Steagald* warrant if they obtain a standard arrest warrant then wait until he is inside his home or a public place before arresting him.

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²⁶ See *People v. Montoya* (1967) 255 Cal.App.2d 137, 142; *Powe v. City of Chicago* (7th Cir. 1981) 664 F.2d 639, 647.

²⁷ See *People v. Robinson* (2010) 47 Cal.4th 1104, 1136.

²⁸ See Pen. Code § 817.

²⁹ See *Payton v. New York* (1980) 445 U.S. 573; Pen. Code §§ 840, 1427; *People v. Ramey* (1976) 16 Cal.3d 263, 275.

³⁰ See Pen. Code §§ 815, 815a, 816; *People v. McCraw* (1990) 226 Cal.App.3d 346, 349.

³¹ See *U.S. v. Bervaldi* (11th Cir. 2000) 226 F.3d 1256, 1263; *U.S. v. Lauter* (2nd Cir. 1995) 57 F.3d 212, 215.

³² See *Steagald v. United States* (1981) 451 U.S. 204; Pen. Code § 1524(a)(6); *People v. Dyke* (1990) 224 Cal.App.3d 648, 658; *Watts v. County of Sacramento* (9th Cir. 2001) 256 F.3d 886, 889; *U.S. v. Litteral* (9th Cir. 1990) 910 F.2d 547, 553; *U.S. v. Lovelock* (2nd Cir. 1999) 170 F.3d 339, 344 [“[Payton] does not authorize entry into a residence in which the officers do not believe the suspect is residing but believe he is merely visiting.”].

³³ See *Steagald v. United States* (1981) 451 U.S. 204, 221-22.