

Chapter 18 SEARCH WARRANTS*

*Cross reference(s)--General penalty, <sec> 1-6; municipal court, Ch. 13.

State law reference(s)--For similar state law see Florida Statutes, <sec><sec> 933.02 through 933.15.

Sec. 18-1. Grounds for issuance.

Upon proper affidavits being made a search warrant may be issued under the provision of this chapter upon either of the following grounds:

- (a) When the property shall have been stolen or embezzled in violation of law;
- (b) When any property shall have been used:
 - 1. As a means to commit any misdemeanor or felony, or
 - 2. In connection with gambling, gambling implements, appliances, or
 - 3. In violation of laws in reference to obscene prints and literature;
- (c) When any property is being held or possessed:
 - 1. In violation of any of the laws prohibiting the manufacture, sale and transportation of intoxicating liquors, or
 - 2. In violation of the fish and game laws, or
 - 3. In violation of the laws relative to food and drugs.
- (d) When the laws in relation to cruelty to animals have been or are violated in any particular building or place, but no search shall be made in such building or place after sunset, unless specially authorized by the officer issuing the warrant upon satisfactory cause shown; in which case such property may be taken on the warrant so issued from any house or place in which it is concealed, or from any vehicle, aircraft or watercraft in which it may be found, or from the possession of any person by whom it shall have been used in the commission of any offense or from any person in whose possession it may be.

The provisions of this section shall apply also to any papers or documents used as a means of or in aid of the commission of any offense against the laws of the City.

Sec. 18-2. Destruction of obscene prints and literature.

All obscene prints and literature or other things mentioned in section 847.01, Florida Statutes, found by an officer in executing a search warrant, or produced or brought into court, shall be safely kept so long as is necessary for the purpose of being used as evidence in any case, and as soon as may be afterwards, shall be destroyed by the order of the court before whom the case is brought.

Sec. 18-3. Affidavits.

The right of the people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches shall not be violated and no search warrant shall be issued except upon probable cause, supported by oath or affirmation particularly describing the place to be searched and the person and thing to be seized.

Sec. 18-4. Issuance in blank prohibited.

A search warrant cannot be issued except upon probable cause supported by affidavit or affidavits, naming or describing the person, place or thing to be searched and particularly describing the property or thing to be seized; no such search warrant shall be issued in blank and any such warrant shall be returned within ten days after issuance thereof.

Sec. 18-5. Sworn application required before issuance.

The judge or magistrate must, before issuing the warrant, have the application of some person for such warrant duly sworn to and subscribed, and may receive further testimony from witnesses or supporting affidavits, or depositions in writing, to support the application. The affidavit and further proof, if same be had or required, must set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist.

Sec. 18-6. Issuance of search warrants.

The municipal judge upon examination of the application and proofs submitted, if satisfied that probable cause exists for the issuing of the search warrant, shall thereupon issue a search warrant signed by him with his name of office, to the chief of police or any police officer or other person authorized by law to execute process, commanding the officer or person forthwith to search the property described in the warrant or the person named, for the property specified, and to bring the same before the municipal court.

Sec. 18-7. Search warrants to be served by officers mentioned therein.

The search warrant shall in all cases be served by any of the officers mentioned in its direction, but by no other person except in aid of the officer requiring it, which officer being present and acting in its execution.

Sec. 18-8. Officer may break open door, etc., to execute warrant.

The officer may break open any outer door, inner door or window of a house, or any part of a house or anything therein, to execute the warrant, if after due notice of his authority and purpose he is refused admittance to said house or access to anything therein.

Sec. 18-9. Execution of search warrant during day or night.

A search warrant issued under the provisions of this chapter may, if expressly authorized in such warrant by the judge issuing the same, be executed by being served either in the daytime or in the nighttime, as the exigencies of the occasion may demand or require.

Sec. 18-10. Duplicate to be delivered when warrant served.

All search warrants shall be issued in duplicate. The duplicate shall be delivered to the officer with the original warrant, and when the officer serves the warrant, he shall deliver a copy to the person named in the warrant, or in his absence to some person in charge of, or living on the premises. When property is taken under the warrant the officer shall deliver to such person a written inventory of the property taken and receipt for the same specifying the same in detail, and if no person is found in possession of the premises where such property is found, shall leave the said receipt on the premises.

Sec. 18-11. Return and inventory.

Upon the return of the warrant the officer shall attach thereto or thereon a true inventory of the property taken under the warrant, and at the foot of the inventory shall verify the same by affidavit taken before some officer authorized to administer oaths, or before the issuing officer, said verification to be to the following effect:

I, A. B., the officer by whom the warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on such warrant.

Sec. 18-12. Copy of inventory shall be delivered upon request.

The judge or magistrate to whom the warrant is returned, upon the request of any claimant or any person from whom the property is taken, or the officer who executed the search warrant, shall deliver

to the applicant a true copy of the inventory of the property mentioned in the return on such warrant.

Sec. 18-13. Return of property taken under search warrant.

If it appears to the municipal judge that the property or papers taken are not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds upon which the warrant was issued, the municipal judge may order a return of the property taken.

Intoxicating liquors. No intoxicating liquor seized on any warrant from any place other than a private dwelling house shall be returned, but the same may be held for such other and further proceedings which may arise upon a trial of the cause, unless it shall appear by the sworn petition of the claimant and proof submitted by him that said liquors so seized were held, used or possessed in a lawful manner, and in a lawful place, or by a permit from the proper federal, state or City authority, the burden of proof in all cases being upon the claimant. The sworn affidavit or complaint upon which the search warrant was issued and the finding of such intoxicating liquor shall constitute prima facie evidence of the illegal possession of such liquor, and the burden shall be upon the claimant for the return thereof, to show that such liquor was lawfully acquired, possessed, held and used.

Firearms. No pistol or firearm taken by any officer with a search warrant or without a search warrant upon a view by the officer of a breach of the peace shall be returned except by an order of a circuit judge of the court of record or criminal court of record having jurisdiction.

Sec. 18-14. Impounding property.

If no cause is shown for the return of any property seized or taken under a search warrant, the judge shall order that the same be impounded for use as evidence at any trial of any criminal or penal cause growing out of the having or possession of said property, but perishable property held or possessed in violation of law may be sold where the same is not prohibited, as may be directed by the court, or returned to the person from whom it was taken. The judge shall file the same with the inventory and sworn return in the proper office, and if the original affidavit and proofs upon which the warrant was issued are in his possession, he shall apply to the officer having the same and the officer shall transmit and deliver all of the papers, proofs and certificates to the proper office where the proceedings are lodged.

Sec. 18-15. Obstruction of service or execution of search warrant; penalty.

Whoever shall knowingly and willfully obstruct, resist or oppose any officer or person aiding such officer, in serving or attempting to serve or execute any search warrant, or shall assault, beat or wound any person or officer, or his deputies or assistants, knowing

him to be such an officer or person so authorized, shall be punished as provided in section 1-6 of this Code.