



*State of New Jersey*  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF CRIMINAL JUSTICE

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**ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE No. 2002-2**

**APPROVAL OF SEARCH WARRANT APPLICATIONS, EXECUTION OF  
SEARCH WARRANTS, AND PROCEDURES TO COORDINATE  
INVESTIGATIVE ACTIVITIES CONDUCTED BY MULTIPLE LAW  
ENFORCEMENT AGENCIES**

WHEREAS, the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 et seq., declares it to be the public policy of this State "to encourage cooperation among law enforcement officers and to provide for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the State, in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State", N.J.S.A. 52:17B-98; and

WHEREAS, many law enforcement and prosecuting agencies operating at the federal, state, bi-state, county and local levels of government have overlapping territorial and subject-matter jurisdiction, creating a potential for the investigative activities of one resident agency to conflict with investigations or intelligence-gathering operations that are being undertaken by other law enforcement agencies; and

WHEREAS, it is necessary and appropriate, consistent with the Attorney General's responsibility to secure the benefits of the uniform and efficient enforcement of the criminal law, to establish and periodically refine policies, procedures and protocols to enhance cooperation among the law enforcement agencies operating within the State, and to promote the appropriate sharing of information among and between these law enforcement agencies; and

WHEREAS, the need for enhanced cooperation and coordination of law enforcement activities and efforts is especially important given the urgent need to muster all available law enforcement resources and assets to respond to the threat of terrorist activities, and in light of new enforcement initiatives to investigate and

prosecute offenses and offenders associated with criminal gangs and other violent or predatory criminal organizations that typically operate without regard to jurisdictional boundaries and beyond the jurisdiction of any one law enforcement agency; and

WHEREAS, the authority to conduct a court-authorized search of a dwelling, place of business or automobile is a vital investigative tool routinely used and relied upon by law enforcement agencies to detect and prosecute violators of the law; and

WHEREAS, it is the constitutional and statutory responsibility of the Attorney General as the State's chief law enforcement officer to ensure that search warrants are properly and effectively utilized, and that law enforcement agencies are aware of and comply with all rules and procedures established by law or Court Rules that are designed to safeguard the rights of citizens under the United States and New Jersey Constitutions to be free from unreasonable searches and seizures; and

WHEREAS, in 1985, following upon the recommendations contained in a presentment issued by a special county grand jury, the Attorney General and the County Prosecutors' Association of New Jersey issued a joint policy statement requiring that all applications for search warrants be reviewed by the Attorney General or his designees, or the appropriate County Prosecutor, or his designees, prior to submission to a court for authorization; and

WHEREAS, while the scope of prosecutorial review established in the 1985 policy statement was limited to a determination whether probable cause exists to justify the issuance of a search warrant, it is now necessary and appropriate for the Attorney General, in order to safeguard the integrity of law enforcement investigations, protect the safety of law enforcement officers, and to safeguard sources of information and investigative techniques relied upon by law enforcement agencies, to establish uniform policies and procedures concerning all aspects of the search warrant process, including the execution of search warrants and strict adherence to the principles established in R. 3:5-4, which provides that a search warrant shall be issued with all practicable secrecy and that the disclosure that a warrant has been applied for or issued, except as necessary for its execution, may constitute a contempt of court.

NOW, THEREFORE, I, DAVID SAMSON, Attorney General of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 et seq., do hereby DIRECT that all law enforcement agencies operating under the authority of the

laws of the State of New Jersey shall adhere to the policies and procedures set forth below:

1. Scope of Directive

This Directive applies to all applications made to a New Jersey Superior or Municipal Court Judge for issuance of a criminal search warrant, and shall apply to all law enforcement agencies operating under the authority of the laws of the State of New Jersey at the State, county and local levels of government. This Directive does not apply to applications for administrative search warrants, or for court orders to enter premises to retrieve weapons pursuant to N.J.S.A. 2C:25-21 (domestic violence) where the weapons to be seized are not believed to be contraband, evidence or an instrumentality of a criminal offense.

2. Requirement to Obtain Prosecutorial Approval

No law enforcement officer or agency operating under the authority of the laws of this State at any level of government shall apply to a New Jersey Judge for issuance of a search warrant without first obtaining express authorization from an Assistant Attorney General, Deputy Attorney General or Assistant County Prosecutor who has been designated in writing by the Director of the Division of Criminal Justice or a County Prosecutor pursuant to the provisions of Section 5 of this Directive. (These persons are hereinafter referred to in this Directive as "Designated Attorneys"). This rule shall apply to applications for a search warrant made in person pursuant to R. 3:5-3a, as well as to applications for a search warrant that are communicated to a Superior Court Judge by telephone, radio or other means of electronic communication pursuant to R. 3:5-3b.

3. Prosecutorial Assistance in Applying for Search Warrants

The Director of the Division of Criminal Justice and each County Prosecutor shall establish procedures to assist law enforcement officers and agencies operating within their jurisdiction to apply to an appropriate court for a search warrant. The Division of Criminal Justice and each County Prosecutor shall maintain and make available to all appropriate law enforcement agencies a list of personnel who will be available on a 24-hour, seven days per week basis to assist in preparing and making search warrant applications, and who are designated pursuant to Section 5 of this Directive to review and approve search warrant applications prior to their submission to an appropriate court. When practicable, the Assistant Attorney General, Deputy Attorney General or Assistant Prosecutor who reviews and approves the

application should accompany the applicant in appearing before the Judge.

4. Preference for Appearing Before Superior Court Judges

An Assistant Attorney General, Deputy Attorney General or Assistant Prosecutor designated to review search warrant applications pursuant to Section 3 of this Directive shall determine the appropriate Judge before whom the application for a search warrant should be made, and shall assist the applicant in contacting the Judge. Whenever practicable, the application for a search warrant should be made to a Superior Court Judge, rather than a Municipal Court Judge, since Superior Court Judges have statewide jurisdiction and their probable cause determinations are entitled to substantial deference by other Superior Court Judges who might hear any ensuing motion to suppress physical evidence. See State v. Kasabuki, 52 N.J. 110 (1968).

5. Designation of Attorneys Authorized to Approve Search Warrant Applications

The Director of the Division of Criminal Justice and each County Prosecutor shall designate in writing Assistant Attorneys General, Deputy Attorneys General, and Assistant Prosecutors who shall be authorized pursuant to this Directive to approve an application by a law enforcement officer to appear before a judge to request the issuance of a search warrant. These Designated Attorneys shall have sufficient training and experience to comply with all of the requirements of this Directive, and shall be subject to such additional training and continuing education requirements as the Attorney General may from time to time direct. The designation of an individual attorney may be limited to certain types of cases. For example, a given assistant prosecutor may be authorized in writing by the County Prosecutor only to approve applications for search warrants in cases involving narcotics, or only cases presented by certain specified law enforcement agencies. The Division of Criminal Justice shall maintain a current registry of all Assistant Attorneys General, Deputy Attorneys General and Assistant Prosecutors who have been authorized in writing to approve search warrant applications.

6. Method of Review and Approval

Approval of an application to apply to a judge for issuance of a search warrant may be given by a Designated Attorney in writing, electronically (e-mail or facsimile transmission), or orally (by telephone or radio communication). Whenever practicable, the law enforcement officer seeking permission to apply

for issuance of a search warrant (hereinafter referred to as an “applicant”) should submit to the appropriate Designated Attorney a written copy of the affidavit intended to be submitted to the court in support of issuance of the warrant, along with a completed and signed application form developed by the Division of Criminal Justice pursuant to Section 11 of this Directive. When the circumstances make it impracticable for the applicant to submit to the Designated Attorney a copy of a written affidavit and completed application form, the Designated Attorney shall be responsible for making certain that all of the requirements of this Directive have been satisfied by means of oral communication with the applicant, and the Designated Attorney shall make certain that all of the questions appearing on the application form have been answered. If the applicant has prepared a written affidavit intended to be submitted to a court, but it is not practicable to transmit a copy of the written affidavit to the Designated Attorney for review, the applicant shall read verbatim the text of the affidavit to the Designated Attorney. Where the circumstances reasonably require that the applicant rely on oral testimony in lieu of or to supplement a written affidavit in support of the application for issuance of a search warrant, the Designated Attorney shall require the applicant to provide all information that is intended to be presented to the court by means of oral testimony.

7. Authorized Actions by Designated Attorney Reviewing an Application

The Designated Attorney is authorized to deny an application for a search warrant, to approve the application, or to make approval contingent upon some further investigative step, notification and/or consultation with some other law enforcement officer or agency, or such other action to be taken by the applicant that is deemed by the Designated Attorney to be necessary to satisfy all of the requirements of this Directive. If the Designated Attorney determines that the application is in any respect deficient or otherwise in need of supplemental investigation or any other action necessary to satisfy the requirements of this Directive, the Designated Attorney shall require the applicant to conduct such supplemental investigation or to take such other steps as may be necessary to cure the deficiency or to satisfy the requirements of this Directive, and then report back to the Designated Attorney for final authorization before proceeding to submit the application to a judge. Notwithstanding the foregoing, a Designated Attorney is authorized to grant conditional approval contingent upon the satisfaction of some additional step, provided that the Designated Attorney provides clear guidance to the applicant as to the step(s) that must be taken by the applicant and the conditions that must be satisfied before the applicant is authorized to submit the application to

a judge. (Example: a Designated Attorney may conditionally approve an application contingent upon the applicant consulting with an appropriate representative from another law enforcement agency that reasonably appears to have an interest in the target of the investigation or the premises to be searched. In these circumstances, a conditional approval might provide that the applicant is authorized to apply to a court for issuance of the search warrant unless the other law enforcement agency objects to the search.)

8. Documentation of Approval Process

The Designated Attorney shall maintain a record of the application (whether denied, approved or conditionally approved), including a copy of the application form (whether prepared by the applicant or by the Designated Attorney in the case of a telephonic application) and any notations made by the Designated Attorney. The application form shall be placed in the prosecuting agency's case file and shall be subject to review and audit by the Attorney General or his designee.

9. Successive Applications

In the event that a Designated Attorney declines to approve an application, or conditionally approves the application subject to a condition that has not been satisfied, the applicant or any other person representing the applicant's law enforcement agency shall be prohibited from making an application to any other Designated Attorney without revealing in the successive application the fact that an application had previously been reviewed by another Designated Attorney. This notification requirement shall apply to any successive application involving the same criminal activities or premises to be searched that were involved in the prior application that was not approved.

10. Familiarity of Applicant with Information Necessary to Satisfy the Requirements of the Directive

The law enforcement officer who contacts a Designated Attorney seeking permission to apply to a court for issuance of a search warrant should be the actual affiant or lead case agent for the investigation (i.e., the officer most likely to be familiar with the scope and details of the investigation and who would therefore be in the best position to be able to answer all of the questions that are required to be addressed pursuant to this Directive).

11. Application Forms

The Division of Criminal Justice shall develop and disseminate to the County Prosecutors and to all law enforcement agencies operating under authority of state law blank application forms to be completed and submitted by applicants to Designated Attorneys pursuant to this Directive. The applicant shall be required to sign the application form, certifying that all of the information provided to the Designated Attorney is true and accurate to the best of the applicant's knowledge and belief. Where the application is made telephonically, the Designated Attorney shall use the form as a checklist and shall make certain that the applicant answers every question propounded on the form. Thereafter, the applicant shall be required as soon as practicable to sign the application form that was prepared by the Designated Attorney based upon information orally provided by the applicant to the Designated Attorney.

12. Substantive Review Criteria

The Designated Attorney shall be responsible for determining that the application establishes all of the following:

1. An adequately specific and detailed description of all places or premises to be searched;
2. An adequately specific and detailed description of all property to be seized;
3. In the case of telephonic applications to a court pursuant to R. 3:5-3b, the existence of exigent circumstances sufficient to excuse the failure to obtain a written warrant obtained by personally appearing before the judge; and
4. Probable cause to justify a search of each place or premises intended to be searched.

13. Use and Preservation of Confidential Sources

The Designated Attorney shall determine whether the application relies to any degree upon a confidential informant or other confidential source of information, or whether the investigation involved the use of a secret surveillance site. In addition to determining whether the confidential source provided reliable information that, based upon the totality of the circumstances, constitutes probable cause (see Section 12(4), supra), the

Designated Attorney shall inquire whether the applicant anticipates the need to seek a protective order to preclude eventual disclosure to a defense counsel or any other person of any information that might reveal the identity of the informer or other confidential information source, or the location of a surveillance site. In the event that a protective order is necessary and appropriate to protect a confidential source, the Designated Attorney shall take all appropriate steps to make certain that a timely ex parte application is made to the court for a protective order.

14. Intended Manner of Execution

The Designated Attorney shall determine from the applicant as to the intended manner of execution of the warrant (i.e., e.g., whether circumstances exist that might justify dispensing with the “knock and announce” rule.) If the applicant indicates a need to execute an unannounced or forcible entry, or to execute the warrant at any time other than during regular business hours, the Designated Attorney shall determine whether there is an adequate factual basis to justify any such proposed method of execution. The Designated Attorney shall take steps to make certain that the issuing judge is advised of these circumstances and is asked to issue a warrant expressly authorizing this manner of entry or execution. Nothing in this Directive shall be construed in any way to preclude a law enforcement officer executing a warrant from making an unannounced or forceful entry without prior judicial approval for such unannounced or forcible entry in the event that the officer at the time of execution becomes aware of unanticipated facts or circumstances that would be sufficient to justify any such unannounced or forcible entry.

15. Secrecy of Issuance and Execution of Search Warrants

A law enforcement officer involved in the application for or execution of a search warrant shall be strictly prohibited from disclosing to a non-law enforcement officer any facts contained in or concerning the application for the warrant, or the fact that a search warrant will or has been sought or executed, unless such disclosure is expressly authorized by the Director of the Division of Criminal Justice or his designee, or a County Prosecutor or his designee. No law enforcement officer shall advise or invite any non-law enforcement officer to attend, participate in or witness the execution of a search warrant, and no law enforcement officer shall permit a non-law enforcement officer to enter a premises during the execution of a warrant, unless the attendance or participation of such non-law enforcement personnel is necessary to ensure the safe and efficient execution of the warrant. (Example: civilian personnel who may be necessary to the safe and efficient execution of a warrant might include

landlords, building managers or custodians; locksmiths, child welfare officials (to take custody of minor children who may be present at the scene); or animal control officers (to assist in the control of guard dogs or other animals at the premises to be searched).

16. Preserving Secrecy of Completed Searches

Once a court-authorized search has been completely executed, all information concerning the issuance and execution of the warrant, including but not limited to the affidavit filed in support the warrant, shall be treated as if such information and document had been sealed by a court. No information concerning the search or the grounds therefor, or the nature of any evidence found during the execution of the search, shall be revealed by a law enforcement officer to any person other than to another law enforcement officer except as may be expressly authorized by a court of competent jurisdiction, or by the Director of the Division of Criminal Justice or his designee or a County Prosecutor or his designee, or except as may be expressly required by R. 3:5-5a (which requires the officer taking property under the warrant to give the person from whom or from whose premises the property is taken a copy of the warrant and a receipt for the property taken, or else requiring that the copy and receipt be left at the place from which the property was taken). It shall be the responsibility of the County Prosecutor, or, where applicable, the Division of Criminal Justice, to comply with the criminal discovery requirements set forth in R. 3:5-6c and R. 3:13-3f.

17. Coordination of Interagency Investigations

Before approving an application for permission to seek issuance of a search warrant, the Designated Attorney shall take reasonable steps to determine whether any other law enforcement agency at any level of government (federal, state, bi-state, county, local, or out-of-state agency) has an interest in a target of the investigation or the premises to be searched that might be adversely affected by execution of the warrant. In that event, it shall be the general policy of this State to notify and consult with any such interested law enforcement agency prior to approving the search warrant application.

18. Specific Information Necessary to Identify Other Law Enforcement Agencies that Might Have an Interest in the Execution of the Search

The uniform application form developed by the Division of Criminal Justice pursuant to Section 11 of this Directive shall require the applicant to

disclose to the best of the applicant's knowledge and belief the following information to be used and relied upon by the Designated Attorney in determining whether any other law enforcement agency has a sufficient interest in the target of the investigation or in the premises to be searched as to require prior notification and consultation:

a. Whether this investigation was conducted jointly with any other agency or task force, or whether any other law enforcement agency was involved in or contributed to the current investigation or to any related investigation;

b. Whether the applicant's agency in conducting the current investigation relied to any degree upon information supplied by another law enforcement agency;

c. Whether the target of the investigation or the premises to be searched is believed to be involved in or associated with terrorist activities, a sophisticated criminal enterprise, or any organized criminal activity;

d. Whether the suspected criminal activity or operation extends to any other jurisdiction beyond the territorial jurisdiction of the applicant's agency;

e. Whether the premises to be searched or any commercial business at that premises is believed to be the subject of an investigation of another law enforcement agency; and

f. Whether any target of the current investigation: (1) is a defendant in any pending criminal action; (2) is an informant or cooperating witness for any other law enforcement agency; (3) is the target of an investigation conducted by any other law enforcement agency; (4) has ever been detained or questioned by another law enforcement agency; or (5) is the subject of an arrest warrant or a be-on-the-lookout (B.O.L.O.) bulletin or advisory issued by any other law enforcement agency.

19. Steps Taken By Applicant to Identify Other Agencies in Interest

The applicant shall explain to the Designated Attorney what steps have been taken by the applicant or his agency to determine whether any of the circumstances described in Section 18 of this Directive exist that might indicate that another law enforcement agency has an interest in the target of this investigation or in the premises to be searched. The Designated Attorney shall not approve the application unless satisfied that reasonable precautions

have been taken, considering the nature of the offense and offender under investigation, to determine whether any other agency might be adversely affected by execution of the warrant. See also Section 27 of this Directive (requiring the development of a comprehensive statewide system to facilitate the collection and sharing of information and the coordination of interagency investigative activities.)

20. Notification to Interested Agencies of Intention to Execute Search Warrant

In the event that it reasonably appears that any other law enforcement agency is involved in the investigation, or has an interest in the target of the investigation or in the premises to be searched, a Designated Attorney shall not approve the application unless the applicant certifies that an appropriate representative of such other interested agency (whose name and rank shall be documented) has been consulted and does not object to the execution of the search, or that there is good and sufficient cause to execute the search without first notifying and consulting with such other interested law enforcement agency. In the event that a representative from such other interested law enforcement agency upon notification objects to the execution of a search, a Designated Attorney shall not be authorized to approve the search, but rather shall refer the matter without delay to either the County Prosecutor (in the event that the Designated Attorney is employed by the County Prosecutor and the objecting law enforcement agency is subject to the jurisdiction of the County Prosecutor) or to the Director of the Division of Criminal Justice or his designee (if the objecting law enforcement agency is not subject to the jurisdiction of the County Prosecutor employing the Designated Attorney).

21. Special Notification to Federal Authorities of Suspected Terrorist Activities

Where it reasonably appears that a target of the investigation or a premises to be searched may be involved in or associated with terrorist activities, see Section 18(c), *supra*, the Designated Attorney shall promptly notify the Assistant United States Attorney or other official who has been specifically designated to receive such notification by the United States Attorney for the District of New Jersey.

22. Notification of Searches in Multiple Jurisdictions

Where an application is made for a warrant to conduct a search in multiple locations any one of which is outside the territorial jurisdiction of the applicant's agency, or beyond the territorial jurisdiction of an assistant

prosecutor reviewing the application, the application shall not be approved and no search shall be conducted without first notifying and consulting with a representative of the County Prosecutor's Office having jurisdiction over the place to be searched, or a representative of the Division of Criminal Justice. (Example: a search warrant application reviewed by an Assistant Prosecutor of county A involves an intended search of multiple premises, one of which is located in county B. The search of the premises located in county B shall not be conducted without first notifying and consulting with a representative from the County B Prosecutor's Office.) In addition, the local police department having patrol jurisdiction over each and every place or premises to be searched shall be notified of the operation prior to execution of the search unless a Designated Attorney, for good cause shown, determines that notification to the local police department shall only be provided during the execution of the search, or at some later time.

23. Search Warrant Manual and Training Updates

The Division of Criminal Justice in consultation with the County Prosecutors shall develop, disseminate and periodically update a search warrant manual concisely explaining the law, Court Rules and all Attorney General policies and Directives concerning the issuance and execution of search warrants. The Manual shall include model forms and sample affidavits and warrants. In addition, the Division of Criminal Justice will on an ongoing basis publish training bulletins and case law updates to assist law enforcement agencies and Designated Attorneys in complying with all legal requirements for the issuance and execution of search warrants and the requirements of this Directive. The Division of Criminal Justice shall also develop a training course for all Assistant Attorneys General, Deputy Attorneys General, and Assistant Prosecutors designated and authorized pursuant to this Directive to approve search warrant applications.

24. Authority of County Prosecutors to Impose Supplemental Guidelines

Nothing in this Directive shall be construed in any way to preclude a County Prosecutor from issuing directives or guidelines to the law enforcement agencies within his or her jurisdiction setting forth additional procedural or substantive rules concerning the issuance or execution of search warrants, provided that any such directives or guidelines are not inconsistent with the policies or principles set forth in this Directive.

25. Violations and Remedial Actions

All violations of the requirements of this Directive shall be reported promptly to the Director of the Division of Criminal Justice, who shall be authorized to conduct any appropriate investigation and to take such remedial or disciplinary actions as may be necessary to enforce the terms, conditions, principles and policies of this Directive. Strict adherence to the requirements of this Directive shall be a condition of a law enforcement agency's eligibility to receive the proceeds of forfeited property disposed of and distributed pursuant to N.J.S.A. 2C:64-6 and 2C:64-7, and any failure to comply with the terms of this Directive shall be taken into account in the calculation of forfeitable assets to be distributed among agencies that contributed to the surveillance, investigation, arrest or prosecution resulting in a forfeiture. If any violation of the terms of this Directive involves a breach of the secrecy requirements generally set forth in R. 3:5-4, the Director of the Division of Criminal Justice shall promptly notify the judge who issued the warrant so as to permit the judge to determine whether any such violation constituted a contempt within the meaning of R. 3:5-4.

26. Enforcement by Third Parties

Nothing in this Directive shall be construed in any way to create any rights or promises. Nor does this Directive vest enforcement rights in any person claiming noncompliance or deviation from the policies, practices and procedures described in this Directive.

27. Establishment of Interagency Coordination Working Group

The Director of the Division of Criminal Justice shall establish and maintain a working group comprised of representatives from the County Prosecutor's Association and other appropriate law enforcement and prosecuting agencies or associations operating within the State of New Jersey, including federal law enforcement agencies. This Working Group shall develop and report to the Attorney General within 45 days of the effective date of this Directive a plan for establishing a comprehensive system, using all available resources and technologies, to ensure to the greatest extent possible that information concerning criminal activities is appropriately shared by and between law enforcement agencies, and to ensure to the great extent possible that the investigative activities of any one agency do not conflict with or jeopardize investigations or intelligence-gathering operations undertaken by other law enforcement agencies.

28. Liberal Construction

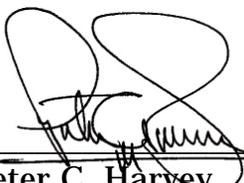
The provisions of this Directive shall be liberally construed to achieve the purposes set forth in the Preamble, and any questions concerning the meaning or implementation of this Directive shall be addressed to the Director of the Division of Criminal Justice.

29. Effective Date

This Directive shall take effect on September 2, 2002, and shall be binding upon all law enforcement agencies operating under the authority of the laws of the State of New Jersey.

Dated: August 8 2002

  
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David Samson  
Attorney General

Attest:   
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Peter C. Harvey  
First Assistant Attorney General  
Director, Division of Criminal Justice