

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-22-0002
RULE 2.6, RULES OF CRIMINAL)
PROCEDURE)
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) FILED 08/29/2022

**ORDER ADOPTING NEW RULE 2.6
OF THE RULES OF CRIMINAL PROCEDURE**

A petition having been filed proposing the adoption of a new Rule 2.6 to the Rules of Criminal Procedure, and comments and a reply having been received, upon consideration,

IT IS ORDERED that Rule 2.6 of the Rules of Criminal Procedure is adopted in accordance with the attachment to this order, effective March 1, 2023.

DATED this 29th day of August, 2022.

/s/
ROBERT BRUTINEL
Chief Justice

TO:

Rule 28 Distribution
David K Byers
Patricia A Starr
Hon Patricia A Starr
Rosemarie Pena-Lynch
Gary M Kula
Steve B Koestner
Sherri McGuire Lawson
David J Euchner

ATTACHMENT

NEW RULE 2.6

RULES OF CRIMINAL PROCEDURE

Rule 2.6. Search Warrant Applications; Data Collection

(a) Applicability. Rule 2.6(b) and (c) apply to search warrant applications requesting an unannounced entry into a structure. Rule 2.6(d) applies to applications requesting service of a search warrant at night. Rule 2.6(e) and (f), which pertain to data collection, apply to every issued search warrant.

(b) Required Findings for an Unannounced Entry into a Structure.

(1) A magistrate may not authorize an unannounced entry into a structure under A.R.S. § 13-3915(B) unless the magistrate finds that:

(A) a supervising law enforcement officer in the affiant's agency has approved the search warrant application;

(B) the application discusses specific facts and safety factors that demonstrate why an announced entry would endanger the safety of any person or would result in the destruction of evidence sought by the warrant; and

(C) if the application requests an unannounced entry based on the potential destruction of evidence, the application explains the likelihood of destruction of that evidence, and the magistrate has weighed that likelihood against the risk to personal safety associated with an unannounced entry.

(2) The magistrate's signature on a search warrant confirms that the magistrate has made the required findings.

(c) Safety Factors for an Unannounced Entry into a Structure. An application for an unannounced entry into a structure must discuss safety factors, as determined by surveillance or other investigative methods, that apply to the circumstances of the case. Safety factors include but are not limited to the following:

(1) *Criminal Activity.* The nature of the criminal activity that forms the basis for the search.

(2) *Violence.* Any history of violence, or the violence potential, of persons known to live at or occupy the place to be searched.

(3) *Weapons.* Weapons that the affiant reasonably believes are at the place to be searched, including the number and type of weapons and whether any occupant has previously used or threatened to use a weapon during criminal activity.

(4) *Security Characteristics.* Particular characteristics of the exterior or interior of the place to be searched, such as the presence of gates, locks, alarms, guard dogs, or other

animals that might pose a risk to officers; security screens or window bars; security cameras or other security devices; and explosives, fortifications, booby traps, or other dangerous conditions.

(5) *Hostages*. The presence at the place to be searched of any persons held against their will.

(6) *Occupants*. The number of occupants at the place to be searched and the identity of known occupants; the presence of children, the elderly, and persons with disabilities; and whether any occupant of the place to be searched is experiencing a mental health crisis.

(7) *Other information*. Any other relevant information.

(d) Nighttime Service. An application requesting service at any time of the day or night under A.R.S. § 13-3917 must contain specific facts that provide good cause why service only during the day would not be reasonable or feasible.

(e) Cover Sheet for the Return. The return on a warrant must be accompanied by a cover sheet completed and signed by the affiant or the officer returning the warrant. The cover sheet must be in a format, and contain information, as determined by the Director of the Administrative Office of the Courts. The cover sheet must specify whether service of the warrant required entry into a structure. If service of the search warrant required entry into a structure, the cover sheet also must indicate whether the warrant:

- (1) authorized an unannounced entry and was executed by an unannounced entry;
- (2) authorized an unannounced entry but was executed by knocking and announcing before entry;
- (3) did not authorize an unannounced entry and was executed by knocking and announcing before entry;
- (4) did not authorize an unannounced entry but was executed by an unannounced entry;
- (5) authorized nighttime service; and/or
- (6) was executed at night.

(f) Court Data.

(1) Each court must collect and maintain the following data:

(A) the total number of search warrants the court authorized during the reporting period; and

(B) the total number of warrants for each of the categories identified in the cover sheets submitted to the court under Rule 2.6(e).

(2) Courts must submit this data as directed by the Director of the Administrative Office of the Courts.

(g) Definitions. For purposes of this rule:

(1) “Night” means the period from 10 p.m. to 6:30 a.m.

(2) “Structure” means any building, place, or vehicle with sides, a door, and a floor, which a reasonable person would believe is used for permanent or temporary lodging or for a business.