

The Hon. Jennifer Green  
Criminal Department Presiding Judge  
Superior Court of Arizona, Maricopa County  
175 W. Madison Street  
Phoenix, AZ 85003  
(602) 506-0438

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:

PETITION TO AMEND RULE 2.6  
ARIZONA RULES OF CRIMINAL  
PROCEDURE

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} Supreme Court No. R-23-0024

} COMMENT OF THE SUPERIOR  
} COURT IN AND FOR MARICOPA  
} COUNTY ON THE PETITION TO  
} AMEND RULE 2.6 OF CRIMINAL  
} PROCEDURE

The Presiding Judge of the Criminal Department in Maricopa County Superior Court offers the following comment pursuant to Rule 28, Arizona Rules of the Supreme Court, in support of the Petition to Amend Rule 2.6 of the Arizona Rules of Criminal Procedure—with additional suggested amended language. In the current petition, the proposed amendments to Rule 2.6 seek to further clarify procedures for returns of search warrants and the inventories contained with the returns. This Court proposes additional amendments that will further clarify procedures for the returns and retention of search warrant records. While summarized below, Attachment “A” to this document contains the entire proposed amendments to Rule 2.6.

**1. Title of Rule 2.6**

The current title of Rule of Criminal Procedure 2.6 is “Search Warrant Applications; Data Collection.” We are suggesting amending the title to “Search Warrant Applications and Returns; Data Collection; Retention of Search Warrant Records.” This more accurately reflects the scope of the Rule with our proposed amendments.

## 2. Applicability of Rule 2.6

We propose amending the applicability section of Rule 2.6 as follows:

(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), (f), and (g), ~~which~~ pertain to returns on search warrants and, data collection, and retention of search warrant records, and apply to every issued search warrant.

This will more accurately reflect the full scope of Rule 2.6 if our proposed amendments are adopted.

## 3. Heading of proposed Rule 2.6(g)

We propose adding the language: “Retention of Search Warrant Records” to the heading of Rule 2.6(g) to reflect the fact that our proposed amendment adds rules on the retention of search warrant records.

## 4. Amendment to proposed Rule 2.6(g)(1)

We propose the following amendment to Rule 2.6(g)(1):

### **2.6 (g) Return of Search Warrant and Inventory; Retention of Search Warrant Records**

(1) Return to Issuing Court; Additional Returns. The return on a search warrant ~~must~~ shall be made to the magistrate who issued the warrant by delivering ~~the~~ a written form of return to that magistrate’s court along with a written inventory of the property taken. ~~Delivery~~ Supplemental, amended and corrected returns and inventories may be made with respect to any search warrant, and all such additional returns and inventories shall be made in compliance with this Rule. Supplemental returns and inventories shall be made within three court business days for any search warrant under which a law enforcement officer seizes or receives additional property after prior return of said warrant.

The addition of the language “written form of” return is to reflect the current practice that the return itself is now submitted on a separate form from the inventory, rather than the return simply consisting of an in-person swearing on the inventory that is submitted to the court. The additional language regarding supplemental returns takes into consideration the fact that a very large number of returns will not

contain any list of property taken because after the search warrant has been served, law enforcement is sometimes required to wait weeks or even months for a big data provider—such as banks, etc.—to comply with the warrant. The additional language makes it clear that law enforcement must file subsequent returns as they receive additional data or material.

## 5. Amendment to proposed Rule 2.6(g)(2)

We propose the following amendment to Rule 2.6(g)(2):

Rule 2.6(g)(2) Manner of Delivery. Delivery of a search warrant return and inventory may be made by facsimile, electronic means, in a manner permitted by the court, or in person. The receiving court shall provide a copy of the return and inventory ~~must~~ evidencing receipt upon request of the submitting officer or agent in a manner to be determined by the court.

The proposed amendments to paragraph (g)(2) are to clarify that the return and the inventory are two separate documents that must be delivered to the court, and to add language that a copy of the return and inventory will be provided to law enforcement by the court upon request.

## 6. Amendment to proposed Rule 2.6(g)(3)

We propose the following amendment to Rule 2.6(g)(3):

- (3) Contents of Inventory; Signed Written Oath. The return and inventory shall
- (A) recite that it contains a true and detailed account of all the property taken;
  - (B) contain a true and detailed account of all the property taken and;
  - (C) if applicable, state that further property is expected to be taken or received pursuant to the warrant (including without limitation by future compliance with a warrant by a person or entity in possession of records or other items ordered seized under the warrant); and
  - (D) be verified through a signed, written oath swearing or affirming that the information on the return and inventory is correct and complete and that the officer has personal knowledge of the information on the return and inventory. A

signed written oath on a return and inventory, including those signed electronically, shall have the same legal effect as if taken in the presence of the magistrate.

The proposed amendments are intended to more specifically provide guidance on the contents of the return and the inventory to fully comply with A.R.S. §13-2921, including the requirement that the return/inventory recite that it is a true and detailed account of all the property taken.

## **7. Amendment to Proposed Rule 2.6(g)(4):**

We propose the following amendment to Proposed Rule 2.6(g)(4):

- (4) Requests for Non-Public Retention of Search Warrant Documents. An officer may request or the court may order that any time period during which documents and records of the court relating to a search warrant are maintained in the court's discretion outside the public record be shortened or lengthened for good cause pursuant to A.R.S. § 13-3918(A). After a warrant has been executed, any request by an officer to lengthen the time before some or all of the records relating to a search warrant are open to the public as a judicial record (a "Request for Non-Public Retention") shall be submitted on a separate page accompanying the return and inventory. This requirement also applies to Requests for Non-Public Retention of documents relating to search warrants that become void as unexecuted pursuant to A.R.S. § 13-3918(A). Nothing in this rule prohibits any person from filing a motion to seal or unseal any document related to a search warrant. A Request for Non-Public Retention shall be subject to the following requirements:
  - (A) It shall state specifically whether the request pertains to (1) the application and affidavit, (2) the issued search warrant, (3) the return and inventory, (4) any other submitted document relating to the search warrant, or (5) all documents associated with the search warrant;
  - (B) It shall provide an explanation showing good cause for the request as required by A.R.S. § 13-3918;
  - (C) It shall be completed and signed by the officer returning the warrant;
  - (D) It shall, if required by the receiving court, contain language and a signature block to permit the court to indicate whether the Request for Non-Public Retention has been granted or

denied as to any or all of the documents.

- (E) For search warrants that are submitted and issued through an electronic portal approved by the Administrative Office of the Courts, a form of Request for Non- Public Retention and the court's decision thereon may be programmed or incorporated into the return and inventory documents compiled by the electronic system rather than submitted as a separate page, provided that all of the other requirements of this section are met.

The purpose of the proposed amendment is to create a process by which law enforcement can request that the court refrain from making a search warrant, return, and inventory public without actually ordering the documents sealed. Frequently, law enforcement will want search warrant documents withheld from public disclosure for a limited period of time—for a variety of reasons—but do not require the search warrant documents to be permanently sealed. This amendment would allow the documents, for good cause, to be withheld from the public (including on public facing databases) until such time as law enforcement no longer needs the documents to be confidential.

While we support the current proposed amendments to Rule 2.6, we believe additional language would help clarify the search warrant process as it is currently conducted.

RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of May, 2023.

/s/ Jennifer Green  
Honorable Jennifer Green  
Presiding Judge, Criminal Department  
Superior Court of Arizona in and for  
Maricopa County

Electronic copy filed with  
Clerk of the Arizona Supreme Court  
this 1<sup>st</sup> day of May, 2023.

1 **APPENDIX A**

2 (~~language from proposed amendment to be removed is~~  
3 ~~shown in strikethrough, new language to proposed~~  
4 ~~amendment is underlined~~)

5 **RULES OF CRIMINAL PROCEDURE**

6 **Rule 2.6. Search Warrant Applications and Returns; Data Collection;**  
7 **Retention of Search Warrant Records**

8 (a) **Applicability.** Rule 2.6(b) and (c) apply to search warrant  
9 applications requesting an unannounced entry into a structure.  
10 Rule 2.6(d) applies to applications requesting service of a  
11 search warrant at night. Rule 2.6(e), (f), and (g), ~~which~~ pertain  
12 to returns on search warrants ~~and~~, data collection, and retention  
13 of search warrant records, and apply to every issued search  
14 warrant.

14 (b) through (f) [No changes].

15 (g) **Return of Search Warrant and Inventory; Retention of**  
16 **Search Warrant Records.**

17 (1) Return to Issuing Court; Additional Returns. The return on a search  
18 warrant ~~must~~ shall be made to the magistrate who issued the warrant  
19 by delivering ~~the~~ a written form of return to that magistrate's court  
20 along with a written inventory of the property taken. ~~Delivery~~  
21 Supplemental, amended and corrected returns and inventories may  
22 be made with respect to any search warrant, and all such additional  
23 returns and inventories shall be made in compliance with this Rule.  
24 Supplemental returns and inventories shall be made within three  
25 court business days for any search warrant under which a law  
26 enforcement officer seizes or receives additional property after prior  
27 return of said warrant.

28 (2) Manner of Delivery. Delivery of a search warrant return and  
inventory may be made by facsimile, electronic means, in a manner  
permitted by the court, or in person. The receiving court shall  
provide a copy of the return and inventory ~~must~~ evidencing receipt  
upon request of the submitting officer or agent in a manner to be  
determined by the court.

1 (3) Contents of Inventory; Signed Written Oath. The return and  
2 inventory shall (A) recite that it contains a true and detailed  
3 account of all the property taken;

4 (B) contain a true and detailed account of all the property taken ~~and~~;

5 (C) if applicable, state that further property is expected to be taken  
6 or received pursuant to the warrant (including without limitation by  
7 future compliance with a warrant by a person or entity in possession  
8 of records or other items ordered seized under the warrant); and (D)

9 be verified through a signed, written oath swearing or affirming that  
10 the information on the return and inventory is correct and complete  
11 and that the officer has personal knowledge of the information on  
12 the return. and inventory. A signed written oath on a return and  
13 inventory, including those signed electronically, shall have the same  
14 legal effect as if taken in the presence of the magistrate.

15 ~~(2) A request by the officer to lengthen the time before records relating to~~  
16 ~~a search warrant are open to the public under A.R.S. § 13-3918 must~~  
17 ~~be included in the cover sheet accompanying the return along with an~~  
18 ~~explanation for the request.~~

19 (4) Requests for Non-Public Retention of Search Warrant Documents.  
20 An officer may request, or the court may order that any time period  
21 during which documents and records of the court relating to a search  
22 warrant are maintained in the court's discretion outside the public  
23 record be shortened or lengthened for good cause pursuant to A.R.S.  
24 § 13-3918(A). After a warrant has been executed, any request by an  
25 officer to lengthen the time before some or all of the records relating  
26 to a search warrant are open to the public as a judicial record (a  
27 "Request for Non-Public Retention") shall be submitted on a  
28 separate page accompanying the return and inventory. This  
requirement also applies to Requests for Non-Public Retention of  
documents relating to search warrants that become void as  
unexecuted pursuant to A.R.S. § 13-3918(A). Nothing in this rule  
prohibits any person from filing a motion to seal or unseal any  
document related to a search warrant. A Request for Non-Public  
Retention shall be subject to the following requirements:

(F) It shall state specifically whether the request pertains to (1)  
the application and affidavit, (2) the issued search warrant, (3)  
the return and inventory, (4) any other submitted document

1 relating to the search warrant, or (4) all documents associated  
2 with the search warrant;

3 (G) It shall provide an explanation showing good cause for the  
4 request as required by A.R.S. § 13-3918;

5 (H) It shall be completed and signed by the officer returning the  
6 warrant;

7 (I) It shall, if required by the receiving court, contain language and  
8 a signature block to permit the court to indicate whether the  
9 Request for Non-Public Retention has been granted or denied as  
10 to any or all of the documents.

11 (J) For search warrants that are submitted and issued through an  
12 electronic portal approved by the Administrative Office of the  
13 Courts, a form of Request for Non- Public Retention and the  
14 court's decision thereon may be programmed or incorporated  
15 into the return and inventory documents compiled by the  
16 electronic system rather than submitted as a separate page,  
17 provided that all of the other requirements of this section are  
18 met.

19 (3)(5) Maintenance of Records Relating to Search Warrants and Returns.  
20 The clerk of the court that issued the warrant shall maintain a record  
21 of the warrant and any return and inventory.

22 (h) **Definitions.** For purposes of this rule:

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

24 (2) "Structure" means any building, place, or vehicle with  
25 sides, a door, and a floor, which a reasonable person  
26 would believe is used for permanent or temporary lodging  
27 or for a business.  
28