

**CHAPTER 6  
SEARCH AND SEIZURE**

**601. SEARCH WITHOUT SEARCH WARRANT**

**Rule 601 SEARCH WITHOUT SEARCH WARRANT**

When a lawful arrest is effected a law enforcement officer may reasonably search the person arrested and the area within such person's immediate presence for the purpose of:

- a. Protecting the officer from attack;
- b. Preventing the person from escaping; or
- c. Discovering the fruits, instrumentalities, or evidence of the crime.

**602. SEARCH WARRANTS; ISSUANCE; PROCEEDINGS AUTHORIZED;  
AVAILABILITY OF AFFIDAVITS AND TESTIMONY IN SUPPORT OF PROBABLE  
CAUSE REQUIREMENT**

**Rule 602 SEARCH WARRANTS; ISSUANCE; PROCEEDINGS AUTHORIZED;  
AVAILABILITY OF AFFIDAVITS AND TESTIMONY IN SUPPORT  
OF PROBABLE CAUSE REQUIREMENT**

- a. A search warrant shall be issued only upon written statement of any person under oath or affirmation which states facts sufficient to show probable cause that a crime has been or is being committed and which particularly describes a person, place or means of conveyance to be searched and things to be seized. If the Judge is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, the Judge may issue a search warrant for the seizure of the following:
  1. Any things which have been used in the commission of a crime, or any contraband or any property which constitutes or may be considered a part of the evidence, fruits or instrumentalities of a crime under the laws of the Nation. The term "fruits" as used in this code shall be interpreted to include any property into which the thing or things unlawfully taken or possessed may have been converted.
  2. Any person who has been kidnapped in violation of the laws of the Nation or who has been kidnapped in another jurisdiction and is now concealed within the territorial jurisdiction of the Nation.
  3. Any human fetus or human corpse.

4. Any person for whom a valid felony arrest warrant has been issued in the Nation or in another jurisdiction.
- b. Before ruling on a request for a search warrant, the Judge may require the affiant to appear personally and may examine under oath the affiant and any witnesses that the affiant may produce. Such proceeding shall be recorded and made part of the application for a search warrant.
- c. Affidavits or sworn testimony in support of the probable cause requirement of this section shall not be made available for examination without a written order of the court, except that such affidavits or testimony when requested shall be made available to the defendant or the defendant's counsel for such disposition as either may desire.

#### **603. TERRITORIAL LIMITATIONS ON EXECUTION OF CERTAIN SEARCH WARRANTS**

##### **Rule 603 TERRITORIAL LIMITATIONS ON EXECUTION OF CERTAIN SEARCH WARRANTS**

Search warrants issued by the judge may be executed only within the territorial jurisdiction of the Nation.

#### **604. ISSUANCE OF SEARCH WARRANT**

##### **Rule 604 ISSUANCE OF SEARCH WARRANT**

All search warrants shall show the time and date of issuance. The statement on which the warrant is issued need not be filed with the clerk of the court until the warrant has been executed or has been returned "not executed."

#### **605. PERSONS AUTHORIZED TO EXECUTE SEARCH WARRANTS**

##### **Rule 605 PERSONS AUTHORIZED TO EXECUTE SEARCH WARRANTS**

A search warrant shall be issued in duplicate and shall be directed for execution to all law enforcement officers of the Nation, or to any law enforcement officer specifically named therein.

## **606. EXECUTION OF SEARCH WARRANTS**

### **Rules 606 EXECUTION OF SEARCH WARRANTS**

A search warrant shall be executed within ten (10) days from the time of issuance. If the warrant is executed the duplicate copy shall be left with any person from whom any things are seized or if no person is available the copy shall be left at the place from which the things were seized. Any warrant not executed within such time shall be void and shall be returned to the court as "not executed."

## **607. COMMAND OF SEARCH WARRANT**

### **Rule 607 COMMAND OF SEARCH WARRANT**

A search warrant shall command the person directed to execute the same to search the person, place or means of conveyance particularly described in the warrant and to seize the things particularly described in the warrant.

## **608. USE OF FORCE IN EXECUTION OF SEARCH WARRANT**

### **Rule 608 USE OF FORCE IN EXECUTION OF SEARCH WARRANT**

All necessary and reasonable force may be used to effect an entry into any building or property or part thereof to execute a search warrant.

## **609. DETENTION AND SEARCH OF PERSON ON PREMISES**

### **Rule 609 DETENTION AND SEARCH OF PERSON ON PREMISES**

In the execution of a search warrant the person executing the same may reasonably detain and search any person in the place at the time:

- a. To protect himself from attack, or
- b. To prevent the disposal or concealment of any things particularly described in the warrant.

## **610. WHEN SEARCH WARRANT MAY BE EXECUTED**

### **Rule 610 WHEN SEARCH WARRANT MAY BE EXECUTED**

A search warrant may be executed at any time of any day or night.

## **611. NO WARRANT QUASHED FOR TECHNICALITY**

### **Rule 611 NO WARRANT QUASHED FOR TECHNICALITY**

No search warrant shall be quashed or evidence suppressed because of technical irregularities not affecting the substantial rights of the accused.

## **612. CUSTODY AND DISPOSITION OF PROPERTY SEIZED**

### **Rule 612 CUSTODY AND DISPOSITION OF PROPERTY SEIZED**

1. Property seized under a search warrant or validly seized without a warrant shall be safely kept by the officer seizing the same unless otherwise directed by the Judge, and shall be so kept as long as necessary for the purpose of being produced as evidence at trial. The property seized may not be taken from the officer having it in custody so long as it is or may be required as evidence in any trial. The officer seizing the property shall give a receipt to the person detained or arrested particularly describing each article of property being held and shall file a copy of such receipt with the Judge before whom the person detained or arrested is taken. Where seized property is no longer required as evidence, the court may transfer the same to the jurisdiction of any other court, including courts of another Indian Nation, state or federal court, where it is shown to the satisfaction of the court that such property is required as evidence in any prosecution in such other court.
2. When property seized is no longer required as evidence, it shall be disposed of as follows:
  - A. Property stolen, embezzled, obtained by false pretenses, or otherwise obtained unlawfully from the rightful owner thereof shall be restored to the owner.
  - B. Money shall be restored to the owner unless it was used for an unlawful purpose, in which case it shall be forfeited, and shall be paid to the Nation.
  - C. Property which is unclaimed or the ownership of which is unknown shall be sold at public auction and the proceeds, less the cost of sale and any storage charges incurred in preserving it, shall be paid to the Nation.
  - D. Articles of contraband shall be destroyed, except that any such articles the disposition of which is otherwise provided by law, shall be dealt with as so provided, and any such articles the disposition of which is not otherwise provided by law and which may be capable of innocent use may

in the discretion of the court be sold and the proceeds paid to the Nation.

- E. Firearms, ammunition, explosives, bombs and like devices, which have been used in the commission of crime shall be destroyed by the Oneida Indian Nation Police.
- F. Controlled substances shall be destroyed.
- G. Unless otherwise provided by law, all other property shall be disposed of in such manner as the court in its sound discretion shall direct.