

**SUPREME COURT OF PENNSYLVANIA
CRIMINAL PROCEDURAL RULES COMMITTEE
NOTICE OF PROPOSED RULEMAKING**

**Proposed Amendment of Pa.R.Crim.P. 201 and
Revision to the *Comment* to Pa.R.Crim.P. 515**

The Criminal Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Rule 201 (Purpose of Warrant) and the revision of the *Comment* to Rule 515 (Execution of Arrest Warrant) for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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All communications in reference to the proposal should be received by **no later than Friday, May 3, 2019**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

March 12, 2019

BY THE CRIMINAL PROCEDURAL RULES COMMITTEE:

*Brian W. Perry
Chair*

RULE 201. PURPOSE OF WARRANT.

A search warrant may be issued to search for and to seize:

(1) contraband, the fruits of a crime, or things otherwise criminally possessed;
or

(2) property that is or has been used as the means of committing a criminal offense; or

(3) property that constitutes evidence of the commission of a criminal offense [.]
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(4) a person for whom a bench or arrest warrant has been issued, or a person for whom there is probable cause to believe is a victim of a crime and for whom there is no other means of access.

COMMENT: Concerning the provisions of paragraph (1) see *United States v. Rabinowitz*, 339 U.S. 56 (1950), overruled as to other points, *Chimel v. California*, 395 U.S. 752, 786 (1969). Also compare, *Cooper v. California*, 386 U.S. 58 (1967), with *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693 (1964).

Warrants may not be issued unless the affidavit alleges a pre-existing crime. See *United States ex. rel. Campbell v. Rundle*, 327 F.2d 153, 161 (3rd Cir. 1964), followed *sub nom. Commonwealth ex rel. Ensor v. Cummings*, 207 A.2d 230 (Pa. 1965) and *Commonwealth ex rel. Campbell v. Russell*, 207 A.2d 232 (Pa. 1965). The Third Circuit's opinion cited with approval *Commonwealth v. Patrone*, 27 D&C 2d 343 (Philadelphia Co. 1962); *Commonwealth v. Rehmeier*, 29 D&C 2d 635 (York Co. 1962); and *Simmons v. Oklahoma*, 286 P.2d 296, 298 (Okla. Cr. 1955).

Concerning the provisions of paragraph (3), see *Warden v. Hayden*, 387 U.S. 294 (1967).

Paragraph (4) was added in 2019 to clarify that a person is a proper subject of a search warrant when the person is also the subject of an arrest warrant. In such circumstances, the search warrant is to effectuate the arrest by permitting the search of a premises other than the residence of the subject of the arrest warrant. The search warrant does not take the place of the underlying arrest warrant. For the use of an arrest warrant to search the residence of the subject of the arrest warrant, see *Payton v. New York*, 445 U.S. 573 (1980); *Steagald v. United States*, 451 U.S. 204 (1981); and *Commonwealth v. Romero and Commonwealth v. Castro*, 183 A.3d 364 (Pa. 2018). Additionally, a search warrant may be utilized to obtain access to the victim of a crime, such as a victim of child or elderly abuse when exigent circumstances do not exist to perform a search without a warrant.

NOTE: Rule 2002 adopted March 28, 1973, effective 60 days hence; renumbered Rule 201 and amended March 1, 2000, effective April 1, 2001 [.] ; amended _____, 2019, effective _____, 2019.

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Report explaining the proposed amendment regarding persons being subjects of search warrants published for comment 49 Pa.B. (_____, 2019).

RULE 515. EXECUTION OF ARREST WARRANT.

- (A) A warrant of arrest may be executed at any place within the Commonwealth.
- (B) A warrant of arrest shall be executed by a police officer.
- (C) When the warrant has been issued by a magisterial district judge, and the defendant cannot be found, the case shall remain in the magisterial district, and shall not be forwarded to the court of common pleas for further proceedings.

COMMENT: No substantive change in the law is intended by paragraph (A) of this rule; rather, it was adopted to carry on those provisions of the now repealed Criminal Procedure Act of 1860 that had extended the legal efficacy of an arrest warrant beyond the jurisdictional limits of the issuing authority. The Judicial Code now provides that the territorial scope of process shall be prescribed by the Supreme Court's procedural rules. 42 Pa.C.S. §§ 931(d), 1105(b), 1123(c), 1143(b), 1302(c), 1515(b).

For the definition of police officer, see Rule 103.

Section 8953 of the Judicial Code, 42 Pa.C.S. § 8953, provides for the execution of warrants of arrest beyond the territorial limits of the police officer's primary jurisdiction. See also *Commonwealth v. Mason*, 507 Pa. 396, 490 A.2d 421 (1985).

For the use of an arrest warrant to search the residence of the subject of the arrest warrant, see *Payton v. New York*, 445 U.S. 573 (1980); *Steagald v. United States*, 451 U.S. 204 (1981); and *Commonwealth v. Romero and Commonwealth v. Castro*, 183 A.3d 364 (Pa. 2018).

Pursuant to Rule 540, the defendant is to receive a copy of the warrant and the supporting affidavit at the time of the preliminary arraignment.

For purposes of executing an arrest warrant under this rule, warrant information transmitted by using advanced communication technology has the same force and effect as an original arrest warrant. This rule does not require that the transmitted warrant information be an exact copy of the original warrant. Nothing in this rule, however, is intended to curtail the Rule 540(D) requirement that the issuing authority provide the defendant with an exact copy of the warrant.

See Rule 513 (Requirements for Issuance).

Paragraph (C) abolishes the traditional practice known as “NEI” or “*non est inventus*” as being no longer necessary.

NOTE: Formerly Rule 124, adopted January 28, 1983, effective July 1, 1983; amended July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; renumbered Rule 122 and *Comment* revised August 9, 1994, effective January 1, 1995; renumbered Rule 515 and amended March 1, 2000, effective April 1, 2001; *Comment* revised May 10, 2002, effective September 1, 2002; amended February 12, 2010, effective April 1, 2010; *Comment* revised July 31, effective November 1, 2012; *Comment* revised September 21, 2012, effective immediately [.] ; **Comment revised _____, 2019, effective _____, 2019.**

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COMMITTEE EXPLANATORY REPORTS:

Report explaining the August 9, 1994 *Comment* revisions published at 22 Pa.B. 6 (January 4, 1992); *Final Report* published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

***Final Report* explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1477 (March 18, 2000).**

***Final Report* explaining the May 10, 2002 *Comment* revision concerning advanced communication technology published with the Court's Order at 32 Pa.B. 2582 (May 25, 2002).**

***Final Report* explaining the February 12, 2010 changes adding new paragraph (C) and the *Comment* revision published with the Court's Order at 40 Pa.B. 1071 (February 27, 2010).**

***Final Report* explaining the July 31, 2012 revision of the *Comment* changing the citation to Rule 540(C) to Rule 540(D) published with the Court's Order at 42 Pa.B. 5340 (August 18, 2012).**

***Final Report* explaining the September 21, 2012 revising the last paragraph of the *Comment* by correcting a typographical error**

published with the Court's Order at 42 Pa.B. 6247 (October 6, 2012).

Report explaining the proposed Comment revision regarding searches conducted pursuant to an arrest warrant published for comment at 49 Pa.B. (, 2019).

REPORT

Proposed Amendment of Pa.R.Crim.P. 201 *Proposed Revision of the Comment to Pa.R.Crim.P. 515*

SEARCHES PURSUANT TO ARREST WARRANT

The Committee has been examining the manner in which arrest warrants are used as the authority for searches of premises to apprehend the subjects of the arrest warrants. This examination was prompted by the Court's opinion in the companion cases of *Commonwealth v. Romero* and *Commonwealth v. Castro*, 183 A.3d 364 (Pa. 2018). In *Romero*, a majority of the Court found that the defendants' Fourth Amendment rights were violated by police officers' search without a search warrant of their home while looking for the defendant's brother-in-law who was the target of an arrest warrant. The Court held that entry into a home to execute an arrest warrant must be explicitly authorized by a magisterial determination of probable cause to search that home for the arrestee. In this case, it was not clear if the defendant's home was the residence of the brother-in-law nor was it clear that the police had presented to the issuing authority the information they relied upon to believe the defendant's home was the brother-in-law's residence.

In reaching this position, the Court examined the U.S. Supreme Court cases of *Payton v. New York*, 445 U.S. 573 (1980) and *Steagald v. United States*, 451 U.S. 204 (1981). In *Payton*, the U.S. Supreme Court held that the Fourth Amendment prohibits law enforcement officers from making a warrantless and nonconsensual entry into a residence to conduct a routine felony arrest. The Court in *Payton* stated that a warrant requirement for arrests in the home placed no undue burden on law enforcement, and that "an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within." *Id.* at 603. In *Steagald*, the U.S. Supreme Court held that a warrant for an individual's arrest does not authorize an entry into the home of a third party not named in the arrest warrant. To protect third parties' interests in the privacy of their homes, the *Steagald* Court held that the Fourth Amendment's warrant requirement mandates a magistrate's determination of probable cause before police may enter those

homes in order to search the premises for the individual named in the arrest warrant. These cases suggest that an arrest warrant authorizes law enforcement to enter the home of the subject of an arrest warrant in order to effectuate his arrest, but that a separate search warrant is required to enter the home of a third party.

There was not clear agreement among the Justices as to how that authorization must come.

The Committee concluded that the extent to which the police may search a residence pursuant to an arrest warrant is primarily a substantive issue. However, because it is likely that non-attorney police will be those initially seeking and executing search and arrest warrants, the Committee believes that the rules should provide some alert as to this issue. Therefore, citations to the key cases in this area, *Payton*, *Steagald*, and *Romero* would be added to the *Comments* to Rules 201 (Purpose of Warrant) and 515 (Execution of Arrest Warrant).

While studying Rule 201, the Committee also concluded that the rule text itself might cause some confusion by not including “persons” as a proper subject of a search warrant. The Committee considered the situations in which a search warrant might be necessary to enter a residence to seek a person. The most obvious is the situation in which the police are seeking to execute an arrest warrant by searching a premise that is not the residence of the subject of the warrant. Additionally, the Committee concluded that a search warrant might be necessary in cases of elder or child abuse where access to a believed victim cannot be obtained absent a warrant, such as when exigent circumstances cannot be demonstrated at the time of entry to the premises. A new paragraph (4) would be added to Rule 201 to state that a person could be the subject of a search warrant in the above two circumstances.

The terminology used in the rule is that the warrant permits both “search” and “seizure.” The Committee was concerned that the term “seizure” would suggest that the search warrant could replace the need for an arrest warrant in the first circumstance. Therefore, the proposed language specifically states that an arrest warrant must be issued for the person to be the subject of a search warrant. An arrest warrant would not be needed if the person sought is believed to be the victim of a crime. This would be further clarified by language added to the *Comment*.