

CHAPTER 3

Searches and Seizures

SECTIONS

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§ 301. Searches and seizures in connection with arrests.

(1) Every person making an arrest may take from the person arrested all offensive weapons which he may have about his person and may also search the person arrested and the premises where the arrest is made, so far as the premises are controlled by the person arrested, for the instruments, fruits, and evidences of the criminal offense for which the arrest is made, and, if found, seize them.

(2) Any property taken or seized shall be promptly delivered to a policeman or an official authorized to issue a warrant, to be disposed of according to law.

(3) No search warrant shall be required for the actions authorized by this section.

Source: TT Code 1966 § 460; TT Code 1970, 12 TTC 101; TT Code 1980, 12 TTC 101.

Cross-reference: FSM Const., art. IV, § 5. The provisions of the Constitution are found in Part I of this code.

Case annotations: A constitutional search may be conducted without a warrant if the search is incidental to a lawful arrest. *Ludwig v. FSM*, 2 FSM R. 27, 32 (App. 1985).

A police officer making an arrest has a limited right to conduct a search incident to that arrest. This right to search is for the limited purposes of preventing the arrested person from reaching concealed weapons to injure the officer or others, and from destroying evidence. Although the right to search is of limited scope, it plainly authorizes a reasonable search of the person being arrested. *Ludwig v. FSM*, 2 FSM R. 27, 34 (App. 1985).

The standard announced in the second sentence of FSM Const. art. IV § 5 for issuance of a warrant must be employed in determining the reasonableness of a search or seizure. Imposition of a standard of probable cause for issuance of a warrant in FSM Const. art. IV, § 5 implies that no search or seizure may be considered reasonable unless justified by probable cause. *Ludwig v. FSM*, 2 FSM R. 27, 32 (App. 1985).

§ 302. Forcing entrance to make arrest.

Whenever it is necessary to enter a building or ship to make an arrest and entrance is refused, any person making an arrest for a felony committed in his presence or a policeman making an arrest may force an entrance. Before breaking any door or other barrier, he shall first demand entrance in a loud voice and state that he desires to execute a warrant of arrest or an oral order in place of a warrant, or, if it is a case in which arrest is lawful without a warrant, he must substantially state that information in a loud voice. Whenever practicable, this demand and statement shall be made in a language generally understood in the locality.

Source: TT Code 1966 § 461; TT Code 1970, 12 TTC 102; TT Code 1980, 12 TTC 102.

§ 303. Authority to issue a search warrant.

The following officials are authorized to issue a search warrant:

- (1) any court;
- (2) any judge;
- (3) the clerk of courts for a district subject to such limitations as the Chief Justice of the High Court may impose;
- (4) any other person authorized in writing by the High Commissioner, provided a certified copy of such authorization is filed with the clerk of courts for the district in which he acts.

Source: TT Code 1966 § 446; TT Code 1970, 12 TTC 103; TT Code 1980, 12 TTC 103.

Cross-reference: FSM Const., art. IV, § 5. The provisions of the Constitution are found in Part I of this code.

§ 304. Property for which search warrant may be issued.

(1) Except where otherwise expressly authorized by law, search warrants shall be issued only to search for and seize the following:

- (a) property the possession of which is prohibited by law; or
- (b) property stolen or taken under false pretenses or embezzled or found and fraudulently appropriated; or
- (c) forged instruments in writing, or counterfeit coin intended to be passed, or instruments or materials prepared for making them; or
- (d) arms or munitions prepared for the purpose of insurrection or riot; or
- (e) property necessary to be produced as evidence or otherwise on the trial of anyone accused of a criminal offense; or
- (f) property designed or intended for use as, or which is, or has been used as, the means of committing a criminal offense.

(2) The term "property" as used herein includes documents, books, papers and any other tangible objects.

Source: TT Code 1966 § 477; TT Code 1970, 12 TTC 104; TT Code 1980, 12 TTC 104.

Cross-reference: FSM Const., art. IV, § 5. The provisions of the Constitution are found in Part I of this code.

§ 305. Procedure for issuance of search warrants.

(1) Anyone desiring the issuance of a search warrant shall personally appear and make application therefor under oath, within the district where the property sought is alleged to be, before an official authorized to issue a warrant.

(2) The application shall set forth the grounds for issuing the warrant and may be supported by statements of others made under oath before the official.

(3) The application and statements may be either written or oral, but, whenever the official hearing the application deems practicable, they shall be reduced to writing, signed by the person or persons making them, and bear a record of the oath signed by the person who administered it.

(4) If the official hearing the application is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a search warrant identifying the property and naming or describing the person or place to be searched, except that any official other than a judge of a district court may refuse to act if he deems that the public interest does not require action before the matter can reasonably be presented to a judge

of a district court.

Source: TT Code 1966 § 478; TT Code 1970, 12 TTC 105; TT Code 1980, 12 TTC 105.

Cross-reference: FSM Const., art. IV, § 5. The provisions of the Constitution are found in Part I of this code.

Cross-reference: The statutory provisions on the Judiciary and the FSM Supreme Court are found in title 4 (Judicial) of this code. The statutory provisions the Executive and the President are found in title 2 (Executive) of this code.

§ 306. Contents of search warrant.

(1) A search warrant shall command a policeman to search forthwith the person or place named, for the property specified.

(2) The warrant shall direct that it be served in the daytime, except that, if the statements under oath in support of the application are positive that the property is on the person or in the place to be searched, the warrant may, at the discretion of the official issuing it, direct that it be served at any time.

(3) It shall designate some official authorized to issue a warrant, to whom it shall be returned, and, whenever consistent with the reasonable expeditious handling of the matter, the official so designated shall be a judge of a district court.

(4) It shall designate the time within which it may be executed and returned. This time shall not exceed ten days, plus whatever time the official issuing the warrant determines will be reasonably required for the policeman to travel to the point where the search is to be made and to return such warrant to the appropriate official.

Source: TT Code 1966 § 479; TT Code 1970, 12 TTC 106; TT Code 1980, 12 TTC 106.

Cross-reference: FSM Const., art. IV, § 5. The provisions of the Constitution are found in Part I of this code.

§ 307. Execution of search warrant and return with inventory.

(1) The policeman taking property under a search warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken, or shall leave the copy and receipt at the place from which the property was taken.

(2) The policeman executing a search warrant shall promptly, upon completion of his search, endorse upon the warrant and sign a brief statement of the action he has taken pursuant to the warrant, showing the date on which the search was made, the person or place searched, the person to whom he gave a copy of the warrant and a receipt for the property taken, or the place where he left the copy and receipt.

(3) He shall then deliver the warrant, accompanied by a written inventory of any property taken, and the

property seized, to the official before whom the warrant is returnable.

(4) The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by a statement signed and sworn to by the policeman to the effect that the inventory is a true account of all property taken under the warrant.

(5) The official before whom a search warrant is returned shall, upon request, deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

Source: TT Code 1966 § 480; TT Code 1970, 12 TTC 107; TT Code 1980, 12 TTC 107.

§ 308. Hearing upon return of search warrant.

(1) If the grounds on which the warrant was issued are controverted, the official to whom a search warrant is returned shall proceed to take testimony in relation thereto, and the testimony of each witness shall be reduced to writing and subscribed by the witness.

(2) If it appears that the property taken is not the same as that described in the warrant or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the official must cause the property to be restored to the person from whom it was taken; but if it appears that the property taken is the same as that described in the warrant and that there is probable cause for believing the existence of the grounds on which the warrant was issued, then the official shall order the same retained in the custody of the person seizing it or otherwise disposed of according to law.

Source: TT Code 1966 § 481; TT Code 1970, 12 TTC 108; TT Code 1980, 12 TTC 108.

§ 309. Filing of search warrant and accompanying papers.

The official to whom a search warrant is returned shall attach to the warrant the inventory and all other papers in connection therewith, including any order made as to the disposition of the property seized, and shall file such documents with the clerk of courts for the district in which the property was seized.

Source: TT Code 1966 § 482; TT Code 1970, 12 TTC 109; TT Code 1980, 12 TTC 109.

§ 310. Oral order in lieu of search warrant.

(1) A municipal court or any judge thereof may, if the public interest so requires, issue an oral order in place of a search warrant. Such oral order shall have the same force and effect within the territorial jurisdiction of that court as a search warrant and shall be returnable before the issuing court or judge.

(2) An oral order in place of a search warrant may be orally communicated to the person from whom or from whose premises the property is taken, and no inventory shall be required in such case, but the property seized shall be

brought promptly before the court or judge issuing the order, and the policeman executing it may orally report his actions thereon.

(3) The court or judge shall, upon request, allow the applicant for the order and the person from whom or from whose premises the property was taken to view the property taken, and shall report all actions in the matter to the clerk of courts for the district as soon as possible.

(4) If the grounds on which the order was issued are controverted, the court or judge shall proceed to take testimony orally. Such testimony need not be reduced to writing.

Source: TT Code 1966 § 483; TT Code 1970, 12 TTC 110; TT Code 1980, 12 TTC 110.

§ 311. Entering building or ship to execute search warrant.

(1) If a building or ship or any part thereof is designated as the place to be searched, the policeman executing the warrant or oral order in place of a warrant may enter without demanding permission if he finds the building or ship open.

(2) If the building or ship be closed, he shall first demand entrance in a loud voice and state that he desires to execute a search warrant or an oral order in place thereof as the case may be. If the doors, gates, or other bars to the entrance be not immediately opened, he may force an entrance, by breaking them if necessary. Having entered, he may demand that any other part of the building or ship, or any closet, or other closed space within the place designated in the search warrant in which he has reason to believe the property is concealed, be opened for his inspection, and, if refused, he may break them. Whenever practicable these demands and statements shall be made in a language generally understood in the locality.

Source: TT Code 1966 § 484; TT Code 1970, 12 TTC 111; TT Code 1980, 12 TTC 111.

§ 312. Motion for return of property and to suppress evidence.

(1) A person aggrieved by an unlawful search and seizure may move the Trial Division of the High Court or a district court in the district in which the property was seized for the return of the property and to suppress for use as evidence anything so obtained. The motion to suppress evidence may also be made in the court where the trial is to be held and in which the evidence is sought to be used.

(2) The motion shall be made before trial or hearing unless opportunity therefor did not exist before trial or hearing or the accused was not aware of the ground for the motion, but the court in its discretion may entertain the motion at the trial or hearing.

(3) Upon such motion the court shall review any order previously made by the official before whom any search warrant, or oral order in place thereof, was returned, and shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored unless otherwise subject to lawful detention and it shall not be admissible in evidence at any hearing or trial.

Source: TT Code 1966 § 485; TT Code 1970, 12 TTC 112; TT Code 1980, 12 TTC 112.

Case annotations: The FSM Supreme Court is vested, by statute, with authority to suppress, or exclude, evidence obtained by unlawful search and seizure. *FSM v. Tipen*, 1 FSM R.

§ 313. Sale of perishable property.

Seized property which is perishable may be ordered sold and the proceeds brought into court.

Source: TT Code 1966 § 490; TT Code 1970, 12 TTC 113; TT Code 1980, 12 TTC 113.

§ 314. Effect of irregularities in proceedings to issue search warrant.

The proceedings before a court or an official authorized to issue a search warrant shall not be invalidated, nor any finding, order, or sentence set aside for any error or omission, technical or otherwise, occurring in such proceedings, unless in the opinion of the reviewing authority or a court hearing the case on appeal or otherwise it shall appear that the error or omission has prejudiced the accused.

Source: TT Code 1966 § 497; TT Code 1970, 12 TTC 114; TT Code 1980, 12 TTC 114.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions the President and the Executive are found in title 2 of this code.