



# Roll Call Training Bulletin

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## SEARCH WARRANT ISSUES AND CONCERNS

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Sacramento County Superior Court has instituted the E-Warrant Portal (See RCTB #99 for details). In conjunction with that portal, the District Attorney's Office provided templates for multiple types of search warrants. The templates are on the "**X-Drive**" in the folder titled "Search Warrant Patrol Resources".

Personnel using these templates must tailor them to the particular facts and circumstances of their case(s). Officers should not use boilerplate language (defined below) that is not supported by probable cause.

The following is an example of misusing boilerplate in search warrant language that was recently noted by the Court: An officer wrote a warrant with language requesting authorization to search **every person** on the premises of a residence, the residence being the subject of an otherwise proper search warrant. "[A] search or seizure of a person must be supported by probable cause particularized with respect to that person." {*Ybarra v. Illinois*, 444 U.S. 85 (1979)} It does not pass constitutional muster to ask the magistrate for the ability to search everyone on the premises of a residence or business without individualized probable cause for each person.

However, officers should remember that in addition to persons named in the warrant, you are entitled to detain and pat-search (for weapons) persons who have demonstrated a connection with the premises, such as by already being inside, or by having a key, walking in without knocking, etc. "An officer's authority to detain incident to a search is categorical; it does not depend on the 'quantum of proof justifying detention or the extent of the intrusion to be imposed by the seizure.'" {*Muehler v. Mena* 544 U.S. 93, 98 (2005); *Michigan v. Summers* 452 U.S. 692 (1981)}

The **Alameda County District Attorneys' Office "Point of View"** publication has several articles regarding search warrants. (available at [https://le.alcoda.org/publications/point\\_of\\_view/](https://le.alcoda.org/publications/point_of_view/))

As noted in a recent "Point of View" article, other common search warrant issues include:

**"OVERBROAD" WARRANTS:** A warrant is "overbroad" if its statement of probable cause fails to demonstrate probable cause to search for one or more items of listed evidence.

**"UNPARTICULAR" WARRANTS:** A warrant is "unparticular" if it fails to clearly describe (1) the places and things that officers may search, and (2) the property they are permitted to search for and seize.

**"GENERAL" WARRANTS:** A warrant is deemed "general" if it contains no meaningful restriction on where officers may search; e.g., a warrant to search for "all evidence," "all stolen property," or "all persons."

**"BOILERPLATE" LANGUAGE:** In the context of search warrants, the term "boilerplate" refers to language that affiants have copied verbatim from other warrants or affidavits. Boilerplate can cause problems. Specifically, unless it has been carefully edited, the descriptions may have little or no resemblance to the evidence for which there is probable cause in a particular case.

**"WILD CARD" LANGUAGE:** Indefinite language that may render a description insufficiently particular if, when considered in context, it authorizes an unrestricted search.



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For example, in (*Aday v. Superior Court* (1961) 55 Cal.2nd 789) the California Supreme Court invalidated a warrant to search for “all other records and paraphernalia” connected with the defendant’s business because this description was “so sweeping as to include virtually all personal business property on the premises and placed no meaningful restriction on the things to be seized.”

This does not mean that officers are precluded from using wildcard language. For example, this language has been used without serious objection when an affidavit has established probable cause to search for a category of evidence (e.g., indicia, drug paraphernalia, credit cards) but the affiant could not be expected to know precisely what each item would look like. In such cases, the courts may interpret the language as merely providing examples of seizable evidence.

As the Second Circuit observed, “In upholding broadly worded categories of items available for seizure, we have noted that the language of a warrant is to be construed in light of an illustrative list of seizable items.” (*U.S. v. Riley* (2nd Cir. 1990) 906 F.2d 841, 844) In another case, a warrant to search the suspect’s home authorized a search for indicia “including, but not limited to, utility company receipts, rent receipts, [and] cancelled mail.” On appeal, the court ruled that the language “but not limited to” did not invalidate the warrant because the investigating officers clearly had probable cause to search for evidence of dominion and control, but they “could not be expected to divine in advance of their entry the precise nature of such evidence—whether mail, bills, checks, invoices, other documents, or keys.” (*People v. Rogers* (1986) 187 Cal.App.3d 1001, 1009)

**Officers must remember that for each type of evidence listed in the warrant, the affidavit must contain facts that establish probable cause to search for it.**