

IN THE COURT OF APPEALS OF MARYLAND
SECOND AMENDED ADMINISTRATIVE ORDER ON
THE IMPLEMENTATION OF
ELECTRONIC SEARCH WARRANTS

WHEREAS, The *Administrative Order on the Implementation of Electronic Search Warrants* having been issued on June 26, 2015, to facilitate the implementation of amendments to Maryland Rule 4-601 to reflect statutory amendments authorizing the electronic submission of applications for search warrants, the electronic issuance of search warrants, and the electronic submission of search warrant returns; and

WHEREAS, Maryland Rule 4-601 requires the State Court Administrator to specify the electronic text format for the submission of search warrant documents and search warrant returns from law enforcement officers; and

WHEREAS, the State Court Administrator previously having specified the secured PDF as the electronic text format for submission of electronic search warrant documents and search warrant returns by law enforcement officers; and

WHEREAS, The Court Technology Committee of the Judicial Council (Court Technology Committee) having proposed, in 2015, a uniform procedure to the Judicial Council that would assist judges in ensuring that they maintain an acceptable level of security when receiving and approving search warrants through the electronic medium and that uniform procedure having been accepted by the Judicial Council and the Chief Judge of the Court of Appeals, who appended it to the *Administrative Order on the Implementation of Electronic Search Warrants*, issued June 26, 2015; and

WHEREAS, The Court Technology Committee having undertaken a review of electronic text formats, given the passage of time and advances in other secured electronic formats, and concluded the transmission of search warrant documents and search warrant returns in a Microsoft

WORD document to be as secure as PDF format transmissions when transmitted from an official law enforcement domain with the required security certification and when the document and transaction details are preserved upon signing using Adobe Sign or DocuSign software; and

WHEREAS, The Court Technology Committee having prepared an amended report recommending that the additional text format be considered for use, consistent with the report's recommended electronic warrant and return procedures, and its chair having presented the report to the Judicial Council on June 11, 2020; and

WHEREAS, The Judicial Council, previously having expressed the need for standards of security related to the processing of electronic search warrants, having adopted the recommendations in the Court Technology Committee's amended report; and

WHEREAS, The State Court Administrator further having informed the Chief Judge of the Court of Appeals that she is specifying, consistent with Maryland Rule 4-601, Microsoft WORD documents as one of the electronic text formats that may be utilized, in tandem with the requisite transmission security and preservation upon signing as recommended by the Court Technology Committee in its amended report; and

WHEREAS, An *Amended Administrative Order on the Implementation of Electronic Search Warrants* having been issued on June 17, 2020, to reflect such requirements; and

WHEREAS, The Court Technology Committee having recommended that the First Amended Court Technology Committee Report to Judicial Council Regarding Electronic Search Warrant Procedure be amended to include an additional requirement that does not require a policy consideration by the Judicial Council,

NOW, THEREFORE, I, Mary Ellen Barbera, Chief Judge of the Court of Appeals and administrative head of the Judicial Branch, pursuant to the authority conferred by Article IV, § 18 do hereby order this 14th day of April 2021, that

1. The First Amended Court Technology Committee Report to Judicial Council Regarding Electronic Search Warrant and Search Warrant Return Procedure henceforth shall be, and hereby is, referred to as the Report on Electronic Search Warrant and Warrant Return Procedure, effective April 14, 2021, until such time that it is further updated, and is appended to this Order as an exhibit; and
2. The first sentence of Paragraph Nine (9.) of the Report on Electronic Search Warrant and Warrant Return Procedure shall be, and hereby is, amended to read as follows: “If the judge approves the warrant, the judge, using a digital signature program supplied by the Judiciary, shall sign and date the warrant, including the time of the issuance, and affix the Maryland Judiciary Seal.”; and
3. The administrative judges in the respective Circuit and District Courts in each jurisdiction shall meet to revise, if necessary, their adopted protocols for the implementation of electronic search warrants, giving consideration to the amended procedures for the appropriate security standards for the receipt and issuance of electronic search warrant documents; and
4. Established protocols that provide for the use of electronic mail as a means for transmission of search warrant documents shall continue to require a written certification from the law enforcement agency indicating that the domain from which the documents are sent is secured by a Secure Sockets Layer (SSL) certificate; and
5. Any established protocols that provide for transmission via fax shall continue to require all search warrant documents to be sent from a fax machine controlled by the law enforcement agency directly to the judge’s fax machine or to a fax machine that, for the purposes of receiving and sending documents related to the search warrant, is controlled by the judge; and
6. Administrative judges shall adopt the secured PDF or Microsoft WORD document or any other format that the State Court Administrator may from time to time approve as the electronic text format for search warrant documents and search

warrant returns as designated by the State Court Administrator pursuant to Rule 4-601; and

7. The *Amended Administrative Order on the Implementation of Electronic Search Warrants*, filed June 17, 2020, shall be and hereby is rescinded effective immediately.

/s/ Mary Ellen Barbera
Mary Ellen Barbera
Chief Judge
Court of Appeals of Maryland

Filed: April 14, 2021

/s/ Suzanne C. Johnson
Suzanne C. Johnson
Clerk
Court of Appeals of Maryland

Pursuant to Maryland Uniform Electronic Legal
Materials Act
(§§ 10-1601 et seq. of the State Government Article) this document is authentic.



Suzanne C. Johnson, Clerk

Report on
Electronic Search Warrant and
Warrant Return Procedure, effective April 14, 2021

Introductory notes:

- Of the two authorized electronic methods, secure and reliable electronic mail and by secure facsimile (fax), fax is the least favored. Fax transmission presents issues of security and secrecy. Fax machines are frequently placed in common areas and are accessible to persons other than the intended recipient. Before accepting any electronic search warrant, by fax or e-mail, the judge should take whatever steps he or she deems necessary to ensure that the security and secrecy of the warrant process is preserved. In the case of fax, this may include insuring that the recipient is physically present at the fax machine at the time of the transmission.
- The issuing judge is ultimately responsible for compliance with the governing rules.

Recommended Electronic Warrant and Return Procedures

1. Absent a County or District protocol to the contrary, the law enforcement officer should contact the judge prior to transmitting the search warrant and supporting documents or search warrant return to determine whether the judge is amenable to receiving an electronic search warrant or return application by secure fax or secure electronic mail.
2. The judge must take such steps as he or she deems necessary to verify the identity of the officer. If the judge is not comfortable with the identity of the officer or the officer's ability to deliver the warrant and related papers or return by secure fax or e-mail, the judge should require the warrant and related papers to be delivered in person.
3. To ensure the secrecy and security of electronic process, it is essential that the means of transmission be to and from the following:
 - a. In the case of e-mail, the e-mail must be sent from an official law enforcement domain that has a Secure Sockets Layer (SSL) certificate.

The law enforcement agency should be required to provide a written certification that it complies with this requirement before warrants or returns are accepted from the agency. The law enforcement officer must use the secure agency e-mail account. The law enforcement officer must send the e-mail to the judge's secure judiciary e-mail account. The judge must return the warrant or return to the law enforcement officer's secure agency email address via the judge's secure judiciary e-mail account or a secure e-mail client contained within the program provided by the Judiciary for applying the electronic signature. At the time that this report is submitted, either Adobe Sign or DocuSign, contained within Microsoft Outlook, is the Judiciary's approved method for applying the judge's signature and returning the application, affidavit and warrant or return to the law enforcement official.

b. In the case of fax transmission, the law enforcement officer must send the warrant and related papers or return from a fax machine controlled by the law enforcement official's agency to the judge's personal fax machine or a fax machine controlled by the judiciary. The parties should arrange for the recipient to be present at the fax machine to receive the transmission personally.

4. If the warrant and related papers or return are sent by e-mail, the complete text of the application, affidavit and search warrant or return shall be sent in a format approved by the State Court Administrator. At the time that this report is submitted, the approved formats are either a PDF file or a Microsoft Word document. The application, affidavit and search warrant must be in one file/document.

5. If a warrant or return are submitted by facsimile, the signed application, supporting affidavit, and the proposed search warrant or return must be sent to the judge in triplicate.

6. The affidavit or return must be signed and dated prior to transmission to the judge. If not signed, it can be signed and re-submitted by the affiant. The application must be affirmed under the penalties of perjury to be true and set forth a declaration that the facts contained within are based on the personal knowledge of the affiant and that there is probable cause pursuant to Criminal Procedure §1-203 and Maryland Rule 1-202. There is no requirement that the law enforcement official swear a verbal oath.

7. The judge may discuss the search warrant with the applicant in person, by telephone, video conferencing, or other electronic means. The discussion between the applicant and the judge may be explanatory in nature but may not be for the purpose of adding or changing any statement in the affidavit. Any facts that are not contained within the “four corners” of the warrant should not be considered.
8. The judge should review the warrant and make changes, if any, by strike-throughs or insertions of text into the warrant.
9. If the judge approves the warrant, the judge, using a digital signature program supplied by the Judiciary, shall sign and date the warrant, including the time of the issuance, and affix the Maryland Judiciary Seal. At the time that this report is submitted, either Adobe Sign or DocuSign are the approved applications for judges to sign warrants and returns. Once the warrant is signed, either Adobe Sign or DocuSign will “flatten” the document, meaning that it will not be able to be altered further. DocuSign will prompt the judge to facilitate the transmission of the signed warrant and supporting documents or return to the law enforcement official’s secure email address.
10. The judge must retain a printed copy of the application, affidavit and warrant until the warrant is returned, executed or unexecuted.
11. The officer shall file a return of the search warrant to the judge as required by Maryland Rule 4-601(f). Delivery of the return, warrant, and verified inventory may be in person, by secure facsimile, or by secure electronic mail that permits the judge to print the complete text of the documents. The printed signed and dated warrant and the printed inventory report and return shall be filed with the clerk of the court.