

# **Affidavit Writing Made Easy: Create an Outstanding Warrant Application Every Time**

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Even for the most experienced law enforcement officers, writing an affidavit can be a daunting task. Ensuring your affidavit is legally sufficient, organized, easy to read, and even interesting, is challenging in the best of circumstances. The undertaking is often compounded by time constraints and the demands of prosecutors and judges. But with simple guidelines and a few easily accessible tools, every prospective affiant can create an impressive warrant application.

## The Basics

Every search and arrest warrant application is governed by rules. The primary rule is found in the Fourth Amendment to the U.S. Constitution: each warrant requires probable cause, supported by oath or affirmation, and particularity. More specific rules governing warrants are located within each jurisdiction's rules of criminal procedure. Affiants need to be familiar with those rules, as they govern every stage of the process, from content to issuance to service of warrants.

To satisfy Constitutional and procedural requirements, warrant applications are accompanied by affidavits, designed to satisfy the court that the evidence in the case is sufficient to establish probable cause. The affiant swears or affirms the provided information is true and correct. Affidavits can, and usually do, contain hearsay information, because generally the rules of evidence do not apply. They can, and usually do, contain supportive information from multiple sources, including other officers and agents, documents, forensic examinations, expert analysis, witnesses, victims, and the affiant's training and experience. Affidavits do *not* need to contain all information known by the

affiant – they need only reach the level of probable cause to support the request. Probable cause only requires a fair probability, given all the facts and circumstances provided in the affidavit, along with the training and experience of those contributing to the affidavit, that evidence will be found (for a search warrant) or the subject committed a crime (for an arrest warrant).<sup>1</sup>

Every request for a warrant is made in furtherance of a criminal case, which means criminal statutes are involved. Because an affidavit must contain proof of the violation of at least one particular statute, knowledge of that statute is imperative. Do not assume knowledge of what the statute says. Read it.

After reading the statute, the affiant will need to know its elements. The best source of this information is the criminal jury instructions book in your jurisdiction. Most are available online. They are written plainly, for an audience with no legal experience, and are easy to understand. More importantly, the elements specified in the jury instructions tells the affiant what evidence is relevant and necessary to support a finding of probable cause.

### Building the Affidavit

Having identified your offense elements and verified you have enough evidence in support of each and every element to obtain a warrant, outline the affidavit. Arrest warrant affidavits are commonly more concise and less detailed than search warrant affidavits because they are usually followed by an additional probable cause finding, like a preliminary hearing or grand jury presentment. But both types of affidavits require the affiant to establish probable cause, so the basic purpose and structure are the same.

Each paragraph should be numbered and the document formatted to your court's specifications, if any. A solid basic structure can look like this:

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<sup>1</sup> *Illinois v. Gates*, 462 US 213 (1983)

1. *Affiant's name, title, experience, jurisdictional authority.*  
Emphasize training, experience and knowledge relevant to the type of crime named in the warrant. Remember, training and experience add to probable cause.
2. *Statutory violations involved in investigation and other relevant legal citations* (i.e., definition statutes, regulations, authority).
3. *Statement of purpose of affidavit.* "This application is submitted in support of my request for the issuance of a search warrant for the residence located at 1234 Main Street, Anytown, State."
4. *Overview/summary of investigation.* The more complex the investigation, the more important this "executive summary" section becomes.
5. *Statement of probable cause.* "This affidavit establishes probable cause to believe evidence of controlled substance distribution, in violation of 21 USC 841(a)(1)&(b), will be found at the residence located at 1234 Main Street, Anytown, State" or "there is probable cause to believe James Blow committed the offense of controlled substance distribution, in violation of..."
6. *Statement of limited presentation of facts.* "This affidavit does not include all of the facts known to me, but only those facts relevant and sufficient to establish probable cause."
7. *Definition section, if necessary.* Include definitions if you need to use special terminology in the affidavit.
8. *Facts,* to include support for each and every element of the offense or item to be seized (addressed next).
9. *Conclusion.* Tie the facts together, and ask for what you want.

Much of the content of most affidavits is standard ("boilerplate") language and can be reused in multiple affidavits. For example, affiants can create one basic paragraph about themselves and their training, experience, and jurisdictional authority, then simply tailor it for each case. Also, certain types of affidavits should contain specialized information which can be taken from other similar affidavits. Computer searches, child pornography investigations,

and complex fraud cases, for instance, contain established language which the affiant can obtain and insert into the affidavit. The prosecutor will have access to much of this standard language. The Department of Justice (DOJ) is another resource. The Computer Crimes and Intellectual Property (CCIPS) and Child Exploitation and Obscenity (CEOS) Sections of the DOJ, along with several other special DOJ sections, can provide advice and warrant language.

### The Facts Section

Armed with knowledge of the applicable statutes and an outline of the affidavit, build the facts section. Most are written chronologically, but this style is not required if another is more effective. Background information offered prior to the pertinent facts can be helpful for context, but less is better. Do not presume knowledge of any fact or technical subject, and even some legal issues should be spelled out clearly.

If you have exculpatory information or information discrediting any of your sources of facts, consult with the prosecutor about whether to include it in the affidavit.

Facts included in an affidavit must be attributed to their source. The court must determine the credibility of the information, and cannot do so without knowing from where it came. If using informants, names can be withheld, but information about their credibility and the basis of their knowledge is important. Also, if you are “cutting and pasting” from other reports, proofread carefully to smooth out transitions and to remove repetitive or sensitive information.

Active voice is usually preferred over passive voice. Say, “Officer Jones interviewed witness Cheryl Adams” rather than, “Cheryl Adams was interviewed by Officer Jones.”

The use of the term “Your Affiant” to refer to the writer is common but archaic. Consider the simpler version; just call yourself “I” instead.

Certain types of information should be avoided in the facts section:

1. *Discredited information.* If information or its source has been found to be unreliable, do not include it.
2. *Argument.* Affiants should appear objective throughout the fact section.
3. *Conclusory statements.* Avoid references such as, “we investigated, and determined this...” or “a confrontation occurred and a struggle ensued.” Include factual descriptions and attribution instead: “According to witness Smith, Jones ran toward Harris and demanded money. Immediately thereafter, Harris grabbed Jones’ arm and pulled Jones to the ground.”
4. *Repetitive statements.* Say it once and move on.
5. *Police jargon.* For example, avoid use of military time or terms like “BOLO.”
6. *Technical terminology.* If you must use it, define it accurately.
7. *PII.* Personally identifiable information (“PII”) could potentially become part of the public record, so avoid it if possible. Courts are becoming accustomed to references such as “year of birth 1985” or “date of birth x/x/1985.” If PII must be used, be prepared to redact it prior to any disclosure of the affidavit. Courts usually have redaction procedures in place.

## Conclusion

Writing an affidavit need not be difficult. Once you have read the statutes and rules, and become familiar with all the facts of the case, the pieces will fall into place. Get organized, find time to write uninterrupted and get to work. Remember your best resource is always your prosecutor.

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