

76-10-1212 Search and seizure -- Affidavit -- Issuance of warrant -- Hearing upon claim that material seized not pornographic or harmful to minors -- Procedures cumulative.

- (1) An affidavit for a search warrant shall be filed with the magistrate describing with specificity the material sought to be seized. Where practical, the material alleged to be pornographic or harmful to minors shall be attached to the affidavit for search warrant to afford the magistrate the opportunity to examine this material.
- (2) Upon the filing of an affidavit for a search warrant, the magistrate shall determine, by examination of the material sought to be seized if attached, by examination of the affidavit describing the material, or by other manner or means that he finds necessary, whether probable cause exists to believe that the material is pornographic or harmful to minors and whether probable cause exists for the immediate issuance of a search warrant. Upon making this determination, he shall issue a search warrant ordering the seizure of the material described in the affidavit for a search warrant according to the provisions of the Utah Rules of Criminal Procedure.
- (3)
 - (a) If a search warrant is issued and material alleged to be pornographic or harmful to minors is seized under the provisions of this section, any person claiming to be in possession of this material or claiming ownership of it at the time of its seizure may file a notice in writing with the magistrate within 10 days after the date of the seizure, alleging that the material is not pornographic or harmful to minors.
 - (b) The magistrate shall set a hearing within seven days after the filing of this notice, or at another time to which the claimant might agree. At this hearing evidence may be presented as to whether there is probable cause to believe the material seized is pornographic or harmful to minors, and at the conclusion of the hearing the magistrate shall make a further determination of whether probable cause exists to believe that the material is pornographic or harmful to minors.
 - (c) A decision as to whether there is probable cause to believe the seized material is pornographic or harmful to minors shall be rendered by the court within two days after the conclusion of the hearing.
 - (d) If at the hearing the magistrate finds that no probable cause exists to believe that the material is pornographic or harmful to minors, then the material shall be returned to the person or persons from whom it was seized.
 - (e) If the material seized is a film, and the claimant demonstrates that no other copy of the film is available to him, the court shall allow the film to be copied at the claimant's expense pending the hearing.
- (4) If a motion to suppress the evidence is granted on the grounds of an unlawful seizure, the property shall be restored unless it is subject to confiscation as contraband, in which case it may not be returned.
- (5)
 - (a) Procedures under this section for the seizure of allegedly pornographic material or material harmful to minors are cumulative of all other lawful means of obtaining evidence as provided by the laws of this state.
 - (b) This section does not prevent the obtaining of allegedly pornographic material or material harmful to minors by purchase, subpoena duces tecum, or under injunction proceedings as authorized by this act or by any other provision of law of the state.

Amended by Chapter 53, 2000 General Session