OUTLINE FOR INVESTIGATIVE SUBPEONAS AND SEARCH WARRANTS

(Courtesy of Judith Basin County)

**INVESTIGATIVE SUBPOENAS: 46-4-301**

* Only from Supreme Court Justice or District Court Judge
* Affidavit of CA must include “administration of justice” or “compelling state interest” and offense has been committed
* Testimony, books, papers and documents (this info already exists, custody issue only)
* Affidavit and petition of Judge
* CA serves the subpoena and does the return with the Clerk of Court

CA determines if information is CCJI and makes request to file all under seal (especially medical records). SEE CCCJI: 44-5-301, MCA

**SEARCH WARRANTS: 46-5-201**

* Officer or CA may apply for SW (this is when we are looking for new info)
* JP for that county or DC Judge for the state
* APPLICATION (written or telephone) made under oath or affirmation (signed, sworn and acknowledged) that states:
  + PC – a crime has been committed and PC that evidence is at the place to be searched (46-5-221[2]); and
  + Particularly describes the place, object or persons to be searched; and
  + Particularly describes what is to be seized;
* Directed to specific Peace Officer
* For: evidence including blood for drugs or alcohol; contraband; or for a person for whom there is P C for arrest or has an outstanding warrant.
* Blood for DUI must be 2nd or prior refusal;
* Served any time day or night BUT MUST BE SERVED within ten (10) days of issuance;

**CUSTODY 46-5-310:** The Judge keeps the application until the Search Warrant and return are brought back to him and sworn to by the officer and then the Judge files them with the Court. The Judge determines what should be filed under seal and filed under seal for how long based on the return and contents of application and Search Warrant.

**SEALING: 46-11-701:** 6(b) When completing the return, the peace officer must make a request to the Judge to seal based on the contents of the return:

* If it affects Defendant’s right to a fair trial, it must be sealed until trial is completed;
* Judge must make finding from the evidence that the demand of individual privacy clearly exceeds the merits of public disclosure and may order the Search Warrant sealed until:
  + A certain date;
  + Filing of a charge related to execution of the search warrant; or
  + Such other time as the Judge deems appropriate;