

Arkansas

SEARCH WARRANT GUIDE

ANTHONY BANDIERO, ESQ.

*Fourth Amendment
The people to be secure in
their persons, papers, and effects against
unreasonable searches and seizures, shall not
be compelled to give testimony against themselves
and no Warrants*

Arkansas Search Warrant Guide

A REFERENCE FOR LAW ENFORCEMENT



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Blue to Gold Law Enforcement Training, LLC
SPOKANE, WASHINGTON

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— Anthony Bandiero

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PART I

Common Search Warrant Questions

Application Procedure

1) Who may apply?	No express provision
2) Who has the authority to issue?	Any judicial officer of the state (Ark. R. Crim. P. 13.1(a))
3) Is an affidavit necessary?	Yes (Ark. R. Crim. P. 13.1(b))
4) Can sworn oral testimony replace an affidavit?	Yes, if recorded and summarized (Ark. R. Crim. P. 13.1(b), 13.1(c))
5) Are there special provisions for obtaining a warrant by telephone?	Yes, where “circumstances make it reasonable to dispense with a written affidavit.” “Duplicate original warrant” must be prepared and read to magistrate. Magistrate shall prepare and sign “original warrant” and direct person requesting warrant to sign magistrate’s name on duplicate original warrant. Telephone call should be recorded where recording device available; otherwise, verbatim record must be made. No motion to suppress available on this

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	ground unless finding of bad faith. (§ 16-82-201(a) to (g))
6) What property can be seized?	Persons or things specified in the warrant application (Ark. R. Crim. P. 13.1(b))
7) Contents of application	
a) Who or what is to be searched?	Yes (Ark. R. Crim. P. 13.1(b))
b) State the items being sought?	Yes (Ark. R. Crim. P. 13.1(b))
c) State the basis for probable cause?	Allegations of grounds for search and seizure establishing reasonable cause to believe that things subject to seizure will be found in a particular place (Ark. R. Crim. P. 13.1(b))
d) Are there additional requirements?	Affidavit or oral testimony (§ 16-82-201; Ark. R. Crim. P. 13.1(b)) Note: The proceedings upon application for a search warrant shall be conducted with such secrecy as the issuing judicial officer deems appropriate (Ark. R. Crim. P. 13.1(f))

The Search Warrant

1) Does it require a standard format?	No
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2) Required contents	<ul style="list-style-type: none">—Identity of issuing judicial officer—Date and place where application made—Person/place to be searched—Persons/things to be seized—Property sought—Recitation of reasonable cause—Period of time not to exceed 5 days within which warrant is to be returned <p>(Ark. R. Crim. P. 13.2(b))</p>
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Execution of Search Warrant

1) How soon must search warrant be executed?	Within a reasonable time, authorized by issuing judicial officer and specified in warrant, not to exceed 60 days (Ark. R. Crim. P. 13.2(c))
2) Who may execute?	Any officer; may be accompanied by other officers or persons as may be reasonably necessary for execution of warrant (Ark. R. Crim. P. 13.3(a)); constables (§ 14-15-1101(c))
3) Where is the search warrant applicable?	No express provision
4) When may warrant be	

executed?	
a) Is execution limited during daytime?	<p>Yes. Between 6:00 A.M. and 8:00 P.M. (Ark. R. Crim. P. 13.2(c))</p> <p>Note: if warrant based on oral testimony, executing officer must enter at the exact time specified on the duplicate original warrant (Minn. R. Crim. P. 36.08)</p>
b) Is execution limited during nighttime?	<p>Yes. Where there is reasonable cause to believe that:</p> <ul style="list-style-type: none">—Place to be searched not easily accessible—Objects to be seized in danger of imminent removal, or—Safe and successful execution of warrant only possible at night or at uncertain time <p>(Ark. R. Crim. P. 13.2(c))</p> <p>Warrant relating to drug offenses may be served at any time of day or night (§ 20-64-104)</p> <p>Authorization for nighttime execution must be specified in warrant</p> <p>(Ark. R. Crim. P. 13.2(c))</p>
5) Is forced or unannounced entry allowed under the	<p>Executing officers may use such force short of deadly</p>



PART II

A.C.A. § 16-82-201

Issuance of search warrants upon oral testimony

(a) GENERAL RULE. If the circumstances make it reasonable to dispense with a written affidavit, any judicial officer of this state may issue a warrant based upon sworn oral testimony communicated by telephone or other appropriate means.

(b) APPLICATION.

(1) The person who is requesting the warrant shall prepare a document, in a form approved by the Arkansas Judicial Council, to be known as a duplicate original warrant and shall read such duplicate original warrant verbatim to the judicial officer.

(2) The judicial officer shall enter verbatim what is so read to such magistrate on a document to be known as an original warrant.

(3) The judicial officer may direct that the warrant be modified.

(c) ISSUANCE.

(1) If the judicial officer is satisfied that the circumstances are such as to make it reasonable to dispense with a written affidavit and that grounds for the application exist or that

there is probable cause to believe that they exist, the judicial officer shall order the issuance of a warrant by directing the person requesting the warrant to sign the judicial officer's name on the duplicate original warrant.

(2) The judicial officer shall immediately sign the original warrant and enter on the face of the original warrant the exact time when the warrant was ordered to be issued.

(3) The finding of probable cause for a warrant upon oral testimony may be based on the same kind of evidence as is sufficient for a warrant upon affidavit.

(d) RECORDING AND CERTIFICATION OF TESTIMONY.

(1) When a caller informs the judicial officer that the purpose of the call is to request a warrant, the judicial officer shall immediately place under oath each person whose testimony forms a basis for the application and each person applying for that warrant.

(2)(A) If a voice recording device is available, the judicial officer shall record by means of the device all of the call after the caller informs the judicial officer that the purpose of the call is to request a warrant.

(B) Otherwise, a stenographic or longhand verbatim record shall be made immediately.

(C) If a voice recording device is used or a stenographic record made, the judicial officer shall have the record transcribed, shall certify the accuracy of the transcription, and shall file a copy of the original record and the transcription with the court.

(D) If a longhand verbatim record is made, the judicial officer shall file a signed copy with the court.

(e) CONTENTS. The contents of a warrant upon oral testimony shall be the same as the contents of a warrant upon affidavit.

(f) ADDITIONAL RULE OF EXECUTION. The person who executes the warrant shall enter the exact time of execution on the face of the duplicate original warrant.

(g) MOTION TO SUPPRESS PRECLUDED. Absent a finding of bad faith, evidence obtained pursuant to a warrant issued under this section is not subject to a motion to suppress on the ground that the circumstances were not such as to make it reasonable to dispense with a written affidavit.

A.C.A. § 16-82-301
Refusal and consent

No person may refuse to be subjected to a search of his or her body cavities pursuant to Rule 12.3 of the Arkansas Rules of Criminal Procedure, and written consent from the person searched shall not be necessary.



PART III

Arkansas Rules of Criminal Procedure, Rule 12.1 Permissible Purposes

An officer who is making a lawful arrest may, without a search warrant, conduct a search of the person or property of the accused for the following purposes only:

- (a) to protect the officer, the accused, or others;
- (b) to prevent the escape of the accused;
- (c) to furnish appropriate custodial care if the accused is jailed;
or
- (d) to obtain evidence of the commission of the offense for which the accused has been arrested or to seize contraband, the fruits of crime, or other things criminally possessed or used in conjunction with the offense.

Arkansas Rules of Criminal Procedure, Rule 12.2
Search of the Person: Permissible Scope

An officer making an arrest and the authorized officials at the police station or other place of detention to which the accused is brought may conduct a search of the accused's garments and personal effects ready to hand, the surface of his body, and the area within his immediate control.

Arkansas Rules of Criminal Procedure, Rule 12.3
Search of the Person: Search of Body Cavities

(a) Search of an accused's blood stream, body cavities, and subcutaneous tissues conducted incidental to an arrest may be made only:

(i) if there is a strong probability that it will disclose things subject to seizure and related to the offense for which the individual was arrested; and

(ii) if it reasonably appears that the delay consequent upon procurement of a search warrant would probably result in the disappearance or destruction of the objects of the search; and

(iii) if it reasonably appears that the search is otherwise reasonable under the circumstances of the case, including the seriousness of the offense and the nature of the invasion of the individual's person.

(b) Any search pursuant to this rule shall be conducted by a physician or a licensed nurse.

Arkansas Rules of Criminal Procedure, Rule 12.4
Search of Vehicles: Permissible Circumstances

(a) If, at the time of the arrest, the accused is in a vehicle or in the immediate vicinity of a vehicle of which he is in apparent control, and if the circumstances of the arrest justify a reasonable belief on the part of the arresting officer that the vehicle contains things which are connected with the offense for which the arrest is made, the arresting officer may search the vehicle for such things and seize any things subject to seizure and discovered in the course of the search.

(b) The search of a vehicle pursuant to this rule shall only be made contemporaneously with the arrest or as soon thereafter as is reasonably practicable.



ABOUT THE AUTHOR

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Anthony is an attorney and retired law enforcement officer with experience as both a municipal police officer and sergeant with a state police agency. Anthony has studied constitutional law for over twenty years and has trained countless police officers around the nation in search and seizure.

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Arkansas SEARCH WARRANT GUIDE

This booklet is a straightforward and essential resource for anyone involved in writing or executing search warrants in Arkansas. Consolidating relevant statutes and procedural rules and offering clear answers to common questions and addressing real-world challenges.

Designed to be a quick reference, this booklet covers key topics such as warrant application, execution, and return procedures, as well as critical provisions from the Arkansas Code and Arkansas Rules of Criminal Procedure. Whether clarifying authority to issue warrants, addressing defects, or ensuring compliance with execution and return requirements, this guide provides the tools you need for accuracy and legal compliance.



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