

Ohio

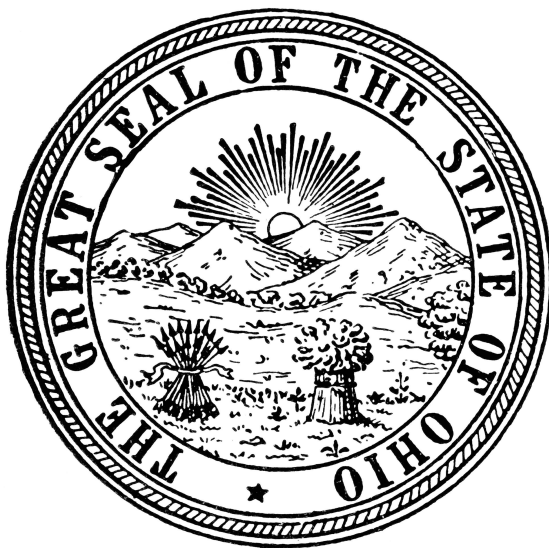
SEARCH WARRANT GUIDE

ANTHONY BANDIERO, ESQ.

*the Amendment
the people to be secure in
houses, papers, and effects, against
searches and seizures, shall not
and no Warrants*

Ohio 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

TABLE OF CONTENTS



PART I
Common Search Warrant Questions

Application Procedure 1

The Search Warrant 3

Execution of Search Warrant 3

Return and Records Procedure 5



PART II
Ohio Revised Code Related to Arrest and Search Warrants

2933.21. Search warrant..... 12

2933.22. Probable cause..... 14

2933.23. Affidavit for search warrant..... 15

2933.231. Waiver of statutory precondition for nonconsensual entry..... 16

169A.095. Determining number of aggravating factors..... 19

2933.241. Inventory of property taken..... 20

2933.25. Form of search warrant..... 21

2933.26. Property seized to be kept by court..... 22

2933.27. Disposition of property before trial..... 23

2933.29. Property seized liable for fines..... 24

2933.30. Search for dead bodies..... 25

2933.31. Search in case of animals..... 26



PART II
Criminal Rules Related to Arrest and Search Warrants

Rule 41. Search and seizure..... 27



PART I

Common Search Warrant Questions

Application Procedure

1) Who may apply?	A prosecuting attorney or law enforcement officer (Ohio R. Crim. P. 41(A))
2) Who has the authority to issue?	A judge of a court of record (§ 2933.21; Ohio R. Crim. P. 41(A))
3) Is an affidavit necessary?	Yes (§ 2933.23; Ohio R. Crim. P. 41(C))
4) Can sworn oral testimony replace an affidavit?	May supplement the affidavit if recorded and transcribed (Ohio R. Crim. P. 41(C))
5) Are there special provisions for obtaining a warrant by telephone?	Yes, warrant may be obtained by reliable electronic means (Ohio R. Crim. P. 41(C)(1))
6) What property can be seized?	<ul style="list-style-type: none">—Evidence of a crime—Contraband, fruits of crime, or things otherwise criminally possessed—Weapons or other instrumentalities used or about to be used in a crime—Stolen or embezzled

- Forged or counterfeit coins, stamps, or other instruments
 - Obscene materials
 - Gambling equipment and materials
 - Evidence of any conditions which are or may become hazardous to the public health, safety, or welfare where premises are subject to inspection
- (Ohio R. Crim. P. 41(B); § 2933.21)

7) Contents of application

- | | |
|--|---|
| a) Who or what is to be searched? | Yes. Must appear in the affidavit (§§ 2933.22, 2933.23; Ohio R. Crim. P. 41(C)) |
| b) State the items being sought? | Yes. Must appear in the affidavit §§ 2933.22, 2933.23; Ohio R. Crim. P. 41(C)) |
| c) State the basis for probable cause? | Yes. Must appear in the affidavit (§§ 2933.22, 2933.23; Ohio R. Crim. P. 41(C)) |
| d) Are there additional requirements? | Affidavit (§ 2933.23)

Statement of the criminal offense that makes property seizable (§ 2933.23; Ohio R. Crim. P. 41(C))

Warrant to conduct inspection of property shall issue only |

upon probable cause to believe that conditions exist upon such property which are or may become hazardous to public health, safety, or welfare (§ 2933.22(B))

The Search Warrant

1) Does it require a standard format?

Yes (§ 2933.25)

Note: Warrant must substantially conform to form

2) Required contents

—Property sought
—Person/place to be searched
—Direction to executing officer
—Copy of affidavit attached
—Judge or magistrate before whom seized property and warrant are to be brought
—Date of issuance
—Name of issuing judge
—County from where warrant issued
(§§ 2933.23, 2933.24 2933.25; Ohio R. Crim. P. 41(C))

Execution of Search Warrant

1) How soon must search warrant be executed?

3 days (§ 2933.24(A); Ohio R. Crim. P. 41(C))

2) Who may execute?

A law enforcement officer or

Ohio Search Warrant Guide

	other authorized individual (§ 2933.24; Ohio R. Crim. P. 41(C))
3) Where is the search warrant applicable?	Within the territorial jurisdiction of the issuing court (Ohio R. Crim. P. 41(A))
4) When may warrant be executed?	
a) Is execution limited during daytime?	Yes. Between 7 A.M. and 8 P.M. (§ 2933.24(A); Ohio R. Crim. P. 41(F))
b) Is execution limited during nighttime?	Yes. If urgent necessity for nighttime execution and such is authorized in the warrant (§ 2933.24(A); Ohio R. Crim. P. 41(C))
5) Is forced or unannounced entry allowed under the warrant?	Yes. Must make special request and showing to magistrate (§ 2933.231)
6) Are there limitations or specific rules regarding the search?	The term “property” is used to include documents, books, papers and any other tangible objects (Ohio R. Crim. P. 41(F))
7) Is leaving documentation at the scene of the search mandatory?	—Copy of warrant —Receipt for property taken (§ 2933.241; Ohio R. Crim. P. 41(D))
8) Are there safeguards against abuse of the search	Any person who knowingly makes a false statement under



PART II

R.C. § 2933.21 **Search warrant**

A judge of a court of record may, within his jurisdiction, issue warrants to search a house or place:

- (A) For property stolen, taken by robbers, embezzled, or obtained under false pretense;
- (B) For weapons, implements, tools, instruments, articles or property used as a means of the commission of a crime, or when any of the objects or articles are in the possession of another person with the intent to use them as a means of committing crime;
- (C) For forged or counterfeit coins, stamps, imprints, labels, trade-marks, bank bills, or other instruments of writing, and dies, plates, stamps, or brands for making them;
- (D) For obscene materials and materials harmful to minors involved in a violation of section 2907.31 or 2907.32 of the Revised Code, but only so much of such materials shall be seized as are necessary for evidence in a prosecution of the violation;
- (E) For gaming table, establishment, device, or apparatus kept or exhibited for unlawful gaming, or to win or gain money or

other property, and for money or property won by unlawful gaming;

(F) For the existence of physical conditions which are or may become hazardous to the public health, safety, or welfare, when governmental inspections of property are authorized or required by law.

The enumeration of certain property and material¹ in this section shall not affect or modify other laws for search and seizure.

R.C. § 2933.22
Probable cause

(A) A warrant of search or seizure shall issue only upon probable cause, supported by oath or affirmation particularly describing the place to be searched and the property and things to be seized.

(B) A warrant of search to conduct an inspection of property shall issue only upon probable cause to believe that conditions exist upon such property which are or may become hazardous to the public health, safety, or welfare.

R.C. § 2933.23
Affidavit for search warrant

A search warrant shall not be issued until there is filed with the judge or magistrate an affidavit that particularly describes the place to be searched, names or describes the person to be searched, and names or describes the property to be searched for and seized; that states substantially the offense in relation to the property and that the affiant believes and has good cause to believe that the property is concealed at the place or on the person; and that states the facts upon which the affiant's belief is based. The judge or magistrate may demand other and further evidence before issuing the warrant. If the judge or magistrate is satisfied that grounds for the issuance of the warrant exist or that there is probable cause to believe that they exist, he shall issue the warrant, identifying in it the property and naming or describing the person or place to be searched.

A search warrant issued pursuant to this chapter or Criminal Rule 41 also may contain a provision waiving the statutory precondition for nonconsensual entry, as described in division (C) of section 2933.231 of the Revised Code, if the requirements of that section are satisfied.



PART III

Crim. R. Rule 41 Search and seizure

(A) Authority to Issue Warrant. Upon the request of a prosecuting attorney or a law enforcement officer:

(1) A search warrant authorized by this rule may be issued by a judge of a court of record to search and seize property located within the court's territorial jurisdiction; and,

(2) A tracking device warrant authorized by this rule may be issued by a judge of a court of record to install a tracking device within the court's territorial jurisdiction. The warrant may authorize use of the device to track the movement of a person or property within or outside of the court's territorial jurisdiction, or both.

(B) Property Which May Be Seized With a Search Warrant. A search warrant may be issued under this rule to search for and seize any:

(1) evidence of the commission of a criminal offense; or

(2) contraband, the fruits of crime, or things otherwise criminally possessed; or

(3) weapons or other things by means of which a crime has been committed or reasonably appears about to be committed.

(C) Issuance and Contents.

(1) A warrant shall issue on either an affidavit or affidavits sworn to before a judge of a court of record or an affidavit or affidavits communicated to the judge by reliable electronic means establishing the grounds for issuing the warrant. In the case of a search warrant, the affidavit shall name or describe the person to be searched or particularly describe the place to be searched, name or describe the property to be searched for and seized, state substantially the offense in relation thereto, and state the factual basis for the affiant's belief that such property is there located. In the case of a tracking device warrant, the affidavit shall name or describe the person to be tracked or particularly describe the property to be tracked, and state substantially the offense in relation thereto, state the factual basis for the affiant's belief that the tracking will yield evidence of the offense. If the affidavit is provided by reliable electronic means, the applicant communicating the affidavit shall be placed under oath and shall swear to or affirm the affidavit communicated.

(2) If the judge is satisfied that probable cause exists, the judge shall issue a warrant identifying the property to be seized and naming or describing the person or place to be searched or the person or property to be tracked. The warrant may be issued to the requesting prosecuting attorney or other law enforcement officer through reliable electronic means. The finding of probable cause may be based upon hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished. Before ruling on a request for a warrant, the judge may require the affiant to appear personally or by reliable electronic means, and may examine under oath the affiant and any witnesses the affiant may produce. Such testimony shall be admissible at a

hearing on a motion to suppress if taken down by a court reporter or recording equipment, transcribed, and made part of the affidavit. The warrant shall be directed to a law enforcement officer. A search warrant shall command the officer to search, within three days, the person or place named for the property specified. A tracking device warrant shall command the officer to complete any installation authorized by the warrant within a specified time no longer than 10 days, and shall specify the time that the device may be used, not to exceed 45 days. The court may, for good cause shown, grant one or more extensions of time that the device may be used, for a reasonable period not to exceed 45 days each. The warrant shall be executed in the daytime, unless the issuing court, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at times other than daytime. The warrant shall provide that the warrant shall be returned to a designated judge or clerk of court.

(D) Execution and Return of the Warrant.

(1) Search Warrant. The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken, or shall leave the copy and receipt at the place from which the property was taken. The return shall be made promptly, either in person or by reliable electronic means, and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the officer. The judge shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to

the applicant for the warrant. Property seized under a warrant shall be kept for use as evidence by the court which issued the warrant or by the law enforcement agency which executed the warrant.

(2) Tracking Device Warrant. The officer executing a tracking device warrant shall enter onto the warrant the exact date and time the device was installed and the period during which it was used. The return shall be made promptly, either in person or by reliable electronic means, after the use of the tracking device has ended. Within 10 days after the use of the tracking device has ended, the officer executing a tracking device warrant must serve a copy of the warrant on the person who was tracked or whose property was tracked. Service may be accomplished by delivering a copy to the person who, or whose property, was tracked; or by leaving a copy at the person's residence or usual place of abode with an individual of suitable age and discretion who resides at that location and by mailing a copy to the person's last known address. Upon the request of a prosecuting attorney or a law enforcement officer, and for good cause shown, the court may authorize notice to be delayed for a reasonable period.

(E) Return of Papers to Clerk. The law enforcement officer shall attach to the warrant a copy of the return, inventory, and all other papers in connection therewith and shall file them with the clerk or the judge, if the warrant so requires.

(F) Definition of Property and Daytime. The term "property" is used in this rule to include documents, books, papers and any other tangible objects. The term "daytime" is used in this rule to mean the hours from 7:00 a.m. to 8:00 p.m.

(G) Definition of Tracking Device. The term "tracking device" means an electronic or mechanical device which permits the tracking of the movement of a person or object.



ABOUT THE AUTHOR

Anthony Bandiero, JD, ALM

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.

View his bio at BlueToGold.com/about



Ohio SEARCH WARRANT GUIDE

This booklet is a straightforward and essential resource for anyone involved in writing or executing search warrants in Ohio. 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 Ohio Code and Ohio 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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