

Hawaii

SEARCH WARRANT GUIDE

ANTHONY BANDIERO, ESQ.

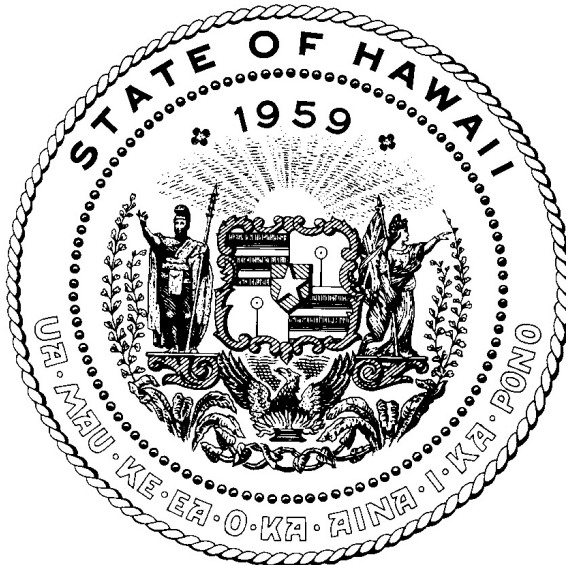
Fourth Amendment
the people to be secure in
houses, papers, and effects against
unreasonable searches and seizures, shall not
be Warranted



Blue to Gold

Hawaii Search Warrant Guide

A REFERENCE FOR LAW ENFORCEMENT



Anthony Bandiero, JD, ALM

Blue to Gold Law Enforcement Training, LLC
SPOKANE, WASHINGTON

Copyright © 2024 by Anthony Bandiero.

All rights reserved. No part of this publication may be reproduced, distributed or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher, except in the case of brief quotations embodied in critical reviews and certain other noncommercial uses permitted by copyright law. For permission requests, write to the publisher, addressed "Attention: Permissions Coordinator," at the address below.

Blue to Gold, LLC
12402 N Division St #119 Spokane, WA 99205
info@bluetogold.com
www.bluetogold.com

Ordering Information:

Quantity sales. Special discounts are available on quantity purchases by government agencies, police associations, and others. For details, contact us at the address above.

Hawaii Search Warrant Guide
ISBN 979-8293755530
Last updated 7-2025

Additional Training Resources

We offer the Nation's best search and seizure training. View our training calendar!

Visit bluetogold.com

Is your agency interested in hosting one of our training classes?

Call 888-579-7796 or email training@bluetogold.com

Want to purchase this book for your agency?

Call 888-579-7796 for bulk discount rates

— 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
Hawaii Revised Statutes Related to Arrest and Search Warrants

803-31. Search warrant; defined..... 11

803-32. Purposes..... 12

803-33. Affidavit..... 13

803-33.5. Warrants issued on oral statements or electronic communications..... 14

803-34. Contents..... 18

803-35. Deputies or police officers may serve..... 19

803-36. Notice to applicant..... 20

803-37. Power of officer serving..... 21

803-38. Munitions of war..... 22

803-41. Definitions..... 23

803-42. Interception, access, and disclosure of wire, oral, or electronic communications, use of pen register, trap and trace device, and mobile tracking device prohibited..... 29

803-43. Devices to intercept wire, oral, or electronic communications and advertising of same prohibited; penalty; forfeiture. 39

803-44. Application for court order to intercept wire, oral, or electronic communications..... 40

803-44.5. Application for a pen register or a trap and trace

device..... 42

803-44.6. Issuance of an order for a pen register or a trap and
trace device..... 43

803-44.7. Application for authorization to install and use a
mobile tracking device..... 45

803-45. Authorization for disclosure and use of intercepted wire,
oral, or electronic communications..... 47

803-46. Procedure for interception of wire, oral, or electronic
communication..... 49



PART III

**Hawai'i Rules of Penal Procedure Related to Arrest and
Search Warrants**

Rule 40. Post-Conviction Proceeding..... 64

Rule 41. Search and Seizure..... 71

Rule 42. Filing Procedure by the Clerk..... 75

Rule 42.1. Ex Officio Filing..... 77

Rule 42.2. Withdrawal of Documents..... 78

Rule 42.3 Procedures for Processing Post-Conviction
Documents..... 79



PART I

Common Search Warrant Questions

Application Procedure

1) Who may apply?	No express provision
2) Who has the authority to issue?	A district or circuit judge (Hawaii R. Penal P. 41(a)) or other magistrate (§ 803-31) Note: "Application therefor should be made to a district judge wherever practicable." (Hawaii R. Penal P. 41(a))
3) Is an affidavit necessary?	Yes (§ 803-33; Hawaii R. Penal P. 41(c))
4) Can sworn oral testimony replace an affidavit?	Yes, only if due to circumstances of time and place, delay in obtaining warrant in writing may result in destruction or disappearance of person, place, or thing to be searched or items to be seized, and provided it is taken down by court reporter or recording equipment and made part of affidavit (§ 803; Hawaii R. Penal P. 41(c), 41(g))
5) Are there special provisions	Yes (Minn. R. Crim. P. 36.01)

Hawaii Search Warrant Guide

for obtaining a warrant by telephone?

6) What property can be seized?

—anything possession of which (or anticipated possession of which) is unlawful

—anything taken by theft, false pretenses, fraud

—forged instruments, counterfeit coin to be circulated, or anything used for their production

—arms or munitions for purpose of riot

—evidence of crime or evidence designed or intended for use in crime

—contraband, fruits of crime or things otherwise criminally possessed

(§ 803-32; Hawaii R. Penal P. 41(b))

7) Contents of application

a) Who or what is to be searched?

No express provision

b) State the items being sought?

Yes (§ 803-34)

c) State the basis for probable cause?

Yes. Must be contained in affidavit (§ 803-33; Hawaii R. Penal P. 41(c))

d) Are there additional

Affidavit (§ 803-33; Hawaii R.

Hawaii Search Warrant Guide

requirements?	Penal P. 41(c)
The Search Warrant	
1) Does it require a standard format?	No
2) Required contents	<ul style="list-style-type: none">—Signature of issuing judicial officer—Name of issuing court—Person/place to be searched—Property sought—Command to bring possessor of said property before issuing judicial officer (§ 803-34; Hawaii R. Penal P. 41(c))—Direction to officer—Prohibition against nighttime search unless specified—Judge to whom it shall be returned—Specified time period for search <p>(Hawaii R. Penal P. 41(c))</p> <p>Note: telephone warrants must include time of issuance (Hawaii R. Penal P. 41(h))</p>
Execution of Search Warrant	
1) How soon must search warrant be executed?	Within period of time specified in warrant not to exceed 10 days (Hawaii R. Penal P. 41(c))

Hawaii Search Warrant Guide

2) Who may execute?	Chief of police, sheriff, deputies, or other officers of justice (§§ 803-31, 803-34, 803-35; Hawaii R. Penal P. 41(c))
3) Where is the search warrant applicable?	Within the circuit where the property is located (Hawaii R. Penal P. 41(a))
4) When may warrant be executed?	
a) Is execution limited during daytime?	Between 6:00 A.M. and 10:00 P.M. (Hawaii R. Penal P. 41(c))
b) Is execution limited during nighttime?	<p>Yes. If specified in warrant (Hawaii R. Penal P. 41(c))</p> <p>Warrant based on sworn oral statement or sworn statement communicated electronically shall not be executed between 10:00 p.m. and 6:00 a.m. unless judge or magistrate permits execution then (§ 803(d))</p>
5) Is forced or unannounced entry allowed under the warrant?	<p>Executing officer may enter without permission if open, or, following announcement of his office and business, may break doors if not immediately opened.</p> <p>Executing officer may likewise break any barrier to any portion of the premises to be searched</p>



PART II

HI Rev Stat § 803-31 Search warrant; defined

A search warrant is an order in writing or issued otherwise pursuant to section 803-33.5 made by a judge or other magistrate, directed to an officer of justice, commanding the officer to search for certain articles supposed to be in the possession of, or anticipated to be in the possession of, one who is charged with having obtained them illegally, or who keeps them illegally, or with the intent of using them as the means of committing a certain offense. A search warrant may identify an individual or entity authorized pursuant to section 803-37 to provide technical assistance to the officer.

HI Rev Stat § 803-32 Purposes

The power of granting this writ is one in the exercise of which much is necessarily left to the discretion of the magistrate, but, except in cases where this power is elsewhere specially granted by statute, search warrants can be granted only for the following purposes:

- (1) To seize any article or thing the possession of which is prohibited by law;
- (2) To discover property taken by theft or under false pretenses, or found and fraudulently appropriated;
- (3) To seize forged instruments in writing, or counterfeit coin intended to be passed, or the instruments or materials prepared for making them
- (4) To seize arms or munitions prepared for the purpose of insurrection or riot;
- (5) To discover articles necessary to be produced as evidence or otherwise on the trial of any one accused of a criminal offense.

**HI Rev Stat § 803-33
Affidavit**

A search warrant can be granted in no case but on an affidavit setting forth sufficient facts in the opinion of the magistrate to justify the issuing of the warrant.

HI Rev Stat § 803-33.5
Warrants issued on oral statements or electronic
communications

(a) A judge or magistrate may grant the issuance of a search warrant pursuant to this section based upon a sworn oral statement communicated in person or by telephone, or based upon a sworn statement communicated electronically.

(b) In the case of an application for a warrant based on a sworn oral statement that is communicated in person or by telephone:

(1) The application may only be granted if the judge or magistrate finds that due to circumstances of time and place, a delay in obtaining a search warrant in writing or pursuant to subsection (c) may result in the destruction or disappearance of the person, place, or thing to be searched or the items to be seized;

(2) The applicant shall make a recording of all communications between the applicant and the judge or magistrate, or between any other person who provides information that is relied upon to support the application and the judge or magistrate;

(3) The judge or magistrate shall place the applicant under oath;

(4) The applicant's sworn oral statement shall be made under penalty of perjury and shall be deemed the affidavit;

(5) The judge or magistrate may examine, under oath, the applicant and any other person who provides information that is relied upon to support the application for a warrant;

(6) The judge or magistrate may examine any exhibits that are

relied upon to support the application for a warrant;

(7) The application shall not be granted unless the judge or magistrate finds that there is probable cause for the issuance of the warrant;

(8) If the judge or magistrate is satisfied that there is probable cause for the issuance of a warrant, the judge or magistrate shall identify the person, place, or thing to be searched and the items to be seized;

(9) The recording of communications between the applicant and the judge or magistrate, or between any person who provides information to support the application and the judge or magistrate, shall be transcribed. A copy of the transcript shall be filed with the clerk of the court, and the recording shall be deemed the warrant; and

(10) The applicant shall provide or clearly play an audio copy of the recording to the person to be searched or from whom, or from whose premises, property is to be seized; provided that the judge or magistrate may issue a protective order that limits disclosure, which shall be subject to further order of the court.

(c) In the case of an application for a warrant based upon a sworn statement communicated electronically:

(1) The application shall consist of an affidavit and a formatted unsigned search warrant, and may be supported by exhibits;

(2) The applicant shall electronically sign the affidavit under penalty of perjury, using the "/s/ (title) (full name), (date)" format. An affidavit that is signed in accordance with this paragraph shall be deemed a sworn affidavit;



PART II

Hawai'i Rules of Penal Procedure, Rule 40 Post-Conviction Proceeding

(a) Proceedings and Grounds. The post-conviction proceeding established by this rule shall encompass all common law and statutory procedures for the same purpose, including habeas corpus and coram nobis; provided that the foregoing shall not be construed to limit the availability of remedies in the trial court or on direct appeal. Said proceeding shall be applicable to judgments of conviction and to custody based on judgments of conviction, as follows:

(1) From Judgment. At any time but not prior to final judgment, any person may seek relief under the procedure set forth in this rule from the judgment of conviction, on the following grounds:

- (i) that the judgment was obtained or sentence imposed in violation of the constitution of the United States or of the State of Hawai'i;
- (ii) that the court which rendered the judgment was without jurisdiction over the person or the subject matter;
- (iii) that the sentence is illegal;
- (iv) that there is newly discovered evidence; or

(v) any ground which is a basis for collateral attack on the judgment.

For the purposes of this rule, a judgment is final when the time for direct appeal under Rule 4(b) of the Hawai'i Rules of Appellate Procedure has expired without appeal being taken, or if direct appeal was taken, when the appellate process has terminated, provided that a petition under this rule seeking relief from judgment may be filed during the pendency of direct appeal if leave is granted by order of the appellate court.

(2) From Custody. Any person may seek relief under the procedure set forth in this rule from custody based upon a judgment of conviction, on the following grounds:

- (i) that sentence was fully served
- (ii) that parole or probation was unlawfully revoked; or
- (iii) any other ground making the custody, though not the judgment, illegal.

(3) Inapplicability. Rule 40 proceedings shall not be available and relief thereunder shall not be granted where the issues sought to be raised have been previously ruled upon or were waived. Except for a claim of illegal sentence, an issue is waived if the petitioner knowingly and understandingly failed to raise it and it could have been raised before the trial, at the trial, on appeal, in a habeas corpus proceeding or any other proceeding actually conducted, or in a prior proceeding actually initiated under this rule, and the petitioner is unable to prove the existence of extraordinary circumstances to

justify the petitioner's failure to raise the issue. There is a rebuttable presumption that a failure to appeal a ruling or to raise an issue is a knowing and understanding failure.

(b) Institution of Proceedings. A proceeding for post-conviction relief shall be instituted by filing a petition with the clerk of the court in which the conviction took place. The clerk shall then docket the petition as a special proceeding, and in cases of pro se petitions, promptly advise the court of the petition

(c) Form and Content of Petition.

(1) In General. The petition shall be in substantially the form annexed to these rules. Petitions in the prescribed form shall be made available without charge by the clerks of the various circuit and district courts to applicants upon their request. The petition shall specify all the grounds for relief which are available to the petitioner and of which the petitioner has or by the exercise of reasonable diligence should have knowledge and shall set forth in summary form the facts supporting each of the grounds thus specified. It shall also state the relief requested. The petition shall be typewritten or legibly handprinted and shall be signed and sworn to by the petitioner.

(2) Nonconforming Petition. Where a post-conviction petition deviates from the form annexed to these rules, it shall nevertheless be accepted for filing and shall be treated as a petition under this rule provided that the petition (i) claims illegality of a judgment or illegality of "custody" or "restraint" arising out of a judgment, (ii) is accompanied by the necessary filing fee or by a well-founded request to proceed without

paying filing fees, and (iii) meets minimum standards of legibility and regularity.

When treating a nonconforming petition as a petition under this rule, the court shall promptly clarify by written order that the requirements of this rule apply and, if the information in the petition is incomplete, may require the petitioner to file a supplemental petition in the form annexed to these rules before requiring the state to respond.

(3) Separate Cause of Action. If a post-conviction petition alleges neither illegality of judgment nor illegality of post-conviction “custody” or “restraint” but instead alleges a cause of action based on a civil rights statute or other separate cause of action, the court shall treat the pleading as a civil complaint not governed by this rule. However, where a petition seeks relief of the nature provided by this rule and simultaneously pleads a separate claim or claims under a civil rights statute or other separate cause of action, the latter claim or claims shall be ordered transferred by the court for disposition under the civil rules.

(d) Response. The State of Hawai‘i shall be named as the respondent in the petition, and the petitioner shall serve the petition on the respondent by delivering a filed copy thereof to the prosecutor. Service may be made by the attorney for the petitioner, or the petitioner in a pro se case. If it appears that the petitioner is unable to effect prompt service of a filed copy of the petition or other pleading under this rule, the court shall direct court staff to effect service on behalf of the petitioner. Within 30 days after the service of the petition or within such further time as the court may allow, the respondent may answer or otherwise plead, but the court may require the State to answer at any time. Where the petition makes a showing




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



Hawaii **SEARCH WARRANT** GUIDE

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



Blue to Gold
Publications

Visit: Bluetogold.com

Training | Legal Updates | Free Webinars