

Texas

SEARCH WARRANT GUIDE

ANTHONY BANDIERO, ESQ.

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



Blue to Gold

Texas Search Warrant Guide

A REFERENCE FOR LAW ENFORCEMENT



Anthony Bandiero, JD, ALM

Blue to Gold Law Enforcement Training, LLC
SPOKANE, WASHINGTON

Texas Search Warrant Laws

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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?	A magistrate (art. 18.01(a); Government Code § 54.2306(e)); jail magistrate (Government Code § 54.2806(c)); criminal law magistrate (Government Code § 54.2811(9))
Note: Only a judge of a municipal court of record who is an attorney licensed by the state, statutory county court, district court, court of criminal appeals, or supreme court may issue a warrant to seize evidence of an offense (arts. 18.01(c) & (h), 18.02(10) & (12)), but in a county that does not have a municipal court of record with a courtroom located in that county and a judge who is an attorney licensed by the state, a county court judge who is an attorney licensed by the state, or a statutory county court judge, any magistrate may issue a search	

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	warrant to seize evidence of an offense (arts. 18.01(i), 18.02(a)(10) & (12))
	Note: A subsequent warrant to search same person, place, or thing subjected to prior search must be issued by judge of statutory county court, district court, court of appeals, court of criminal appeals, or supreme court (Tex. Code Crim Pro. art. 18.01(d))
3) Is an affidavit necessary?	Yes (art. 18.01(b))
4) Can sworn oral testimony replace an affidavit?	No express provision
5) Are there special provisions for obtaining a warrant by telephone?	Yes, telephone or other reliable electronic means (art. 18.01(b-1))
6) What property can be seized?	<p>—Acquired in a crime (art. 18.02(a)(1))</p> <p>—Designed or commonly used in a crime (art. 18.02(2))</p> <p>—Arms and munitions kept in preparation for insurrection or riot (art. 18.02(a)(3))</p> <p>—Weapons prohibited by the Penal Code (art. 18.02(a)(4))</p> <p>—Gambling devices or equipment (art. 18.02(a)(5))</p>

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—Obscene materials prepared for commercial distribution or exhibition (art. 18.02(a)(6))

—Drugs, controlled substances, immediate precursors, chemical precursors, or other controlled substance property, including apparatus or paraphernalia, kept, prepared, or manufactured unlawfully (art. 18.02(a)(7))

—Property the possession of which is unlawful (art. 18.02(a)(8))

—Instruments/implements used in a crime (art. 18.02(a)(9))

—Evidence of a crime or participation in a crime (art. 18.02(a)(10))

Note: this category does not include the personal writings of the accused (art. 18.02(a)(10))

Note: Items seized under subdivision (a)(10) require a showing of probable cause that the alleged crime has been committed, that the property to be seized constitutes evidence of its commission or that a particular person participated in it, and that the items are located on the person or place to be searched (art. 18.01(c)); warrant issued by district court under art. (a)(10) to

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	collect DNA specimen may be executed in any county (art. 18.065) only items specified in subdivisions (1) through (10) may be seized, but a subsequent search warrant may be issued under subdivision (10) to search the same person, place or thing subjected to a prior search
	—Persons (art. 18.02(a)(11))
	—Contraband subject to forfeiture (art. 18.02(a)(12))
	Note: Items seized under subdivision (a)(12) require a showing of probable cause that specified felony offense has been committed and that the contraband is located on the person, place or thing to be searched (art. 18.01(g))
	Location information held in electronic storage (§§ art. 18B.321, et seq.)
7) Contents of application	
a) Who or what is to be searched?	Yes (art. 18.01(c) & (g))
b) State the items being sought?	Yes (art. 18.01(c) & (g))
c) State the basis for probable cause?	Yes. Must be found in the affidavit (art. 18.01(b) & (c))
d) Are there additional	Affidavit (art. 18.01(b))



PART II

Vernon's Ann.Texas C.C.P Rules Related to Arrest and Search Warrants

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Vernon's Ann. Texas C.C.P. Art. 18.01 Search Warrant

(a) A "search warrant" is a written order, issued by a magistrate and directed to a peace officer, commanding him to search for any property or thing and to seize the same and bring it before such magistrate or commanding him to search for and photograph a child and to deliver to the magistrate any of the film exposed pursuant to the order.

(b) No search warrant shall issue for any purpose in this state unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause does in fact exist for its issuance. A sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested. Except as otherwise provided by this code, the affidavit becomes public information when the search warrant for which the affidavit was presented is executed, and the magistrate's clerk shall make a copy of the affidavit available for public inspection in the clerk's office during normal business hours.

(b-1)(1) For purposes of this article, a magistrate may consider information communicated by telephone or other reliable electronic means in determining whether to issue a search warrant. The magistrate may examine an applicant for a search warrant and any person on whose testimony the application is based. The applicant or other person must be placed under oath before the examination.

(2) If an applicant for a search warrant attests to the contents of an affidavit submitted by reliable electronic means, the magistrate must acknowledge the attestation in writing on the affidavit. If the magistrate considers additional testimony or exhibits, the magistrate must:

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(A) ensure that the testimony is recorded verbatim by an electronic recording device, by a court reporter, or in writing;

(B) ensure that any recording or reporter's notes are transcribed and that the transcription is certified as accurate and is preserved;

(C) sign, certify the accuracy of, and preserve any other written record; and

(D) ensure that the exhibits are preserved.

(3) An applicant for a search warrant who submits information as authorized by this subsection must prepare a proposed duplicate original of the warrant and must read or otherwise transmit its contents verbatim to the magistrate. A magistrate must enter into an original search warrant the contents of a proposed duplicate original that are read to the magistrate. If the applicant transmits the contents by reliable electronic means, the transmission received by the magistrate may serve as the original search warrant.

(4) The magistrate may modify a search warrant that is submitted as described by Subdivision (3). If the magistrate modifies the warrant, the magistrate must:

(A) transmit the modified version to the applicant by reliable electronic means; or

(B) file the modified original and direct the applicant to modify the proposed duplicate original accordingly.

(5) A magistrate who issues a search warrant for which information is provided by telephone or reliable electronic means must:

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(A) sign the original documents;

(B) enter the date and time of issuance on the warrant; and

(C) transmit the warrant by reliable electronic means to the applicant or direct the applicant to sign the judge's name and enter the date and time on the duplicate original.

(6) Evidence obtained pursuant to a search warrant for which information was provided in accordance with this subsection is not subject to suppression on the ground that issuing the warrant in compliance with this subsection was unreasonable under the circumstances, absent a finding of bad faith.

(c) A search warrant may not be issued under Article 18.02(a)(10) unless the sworn affidavit required by Subsection (b) sets forth sufficient facts to establish probable cause: (1) that a specific offense has been committed, (2) that the specifically described property or items that are to be searched for or seized constitute evidence of that offense or evidence that a particular person committed that offense, and (3) that the property or items constituting evidence to be searched for or seized are located at or on the particular person, place, or thing to be searched. Except as provided by Subsections (d), (i), and (j), only a judge of a municipal court of record or a county court who is an attorney licensed by the State of Texas, a statutory county court judge, a district court judge, a judge of the Court of Criminal Appeals, including the presiding judge, a justice of the Supreme Court of Texas, including the chief justice, or a magistrate with jurisdiction over criminal cases serving a district court may issue warrants under Article 18.02(a)(10).

(d) Only the specifically described property or items set forth in a search warrant issued under Article 18.02(a)(10) or property, items or contraband enumerated in Article 18.02(a)(1), (2), (3), (4), (5), (6), (7), (8), (9), or (12) may be seized. A subsequent search warrant may be



PART III

Vernon's Ann.Texas C.C.P Rules Related to Arrest and Search Warrants

**Vernon's Ann.Texas C.C.P. Art. 18A.001
Definitions**

In this chapter:

(1) "Access," "computer," "computer network," "computer system," and "effective consent" have the meanings assigned by Section 33.01, Penal Code.

(2) "Aggrieved person" means a person who was a party to an intercepted wire, oral, or electronic communication or a person against whom the interception was directed.

(3) "Aural transfer" means a transfer containing the human voice at any point between and including the point of origin and the point of reception.

(4) "Communication common carrier" means a person engaged as a common carrier for hire in the transmission of wire or electronic communications.

(5) "Computer trespasser" means a person who accesses a protected computer without effective consent of the owner and has no reasonable expectation of privacy in a communication transmitted to, through, or from the protected computer. The term does not include a person who accesses the protected computer under an existing contractual relationship with the owner or operator of the computer.

(6) "Contents," with respect to a wire, oral, or electronic communication, includes any information concerning the substance, purport, or meaning of that communication.

(7) "Covert entry" means an entry that is made into or onto premises and that, if not authorized by a court order under this chapter, would violate the Penal Code.

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(8) “Department” means the Department of Public Safety of the State of Texas.

(9) “Director” means:

(A) the public safety director of the department; or

(B) if the public safety director is absent or unable to serve, the assistant director of the department.

(10) “Electronic communication” means a transfer of any signs, signals, writing, images, sounds, data, or intelligence transmitted wholly or partly by a wire, radio, electromagnetic, photoelectronic, or photo-optical system. The term does not include:

(A) a wire or oral communication;

(B) a communication made through a tone-only paging device; or

(C) a communication from a tracking device.

(11) “Electronic communications service” means a service that provides to users of the service the ability to send or receive wire or electronic communications.

(12) “ESN reader,” “pen register,” and “trap and trace device” have the meanings assigned by Article 18B.001.

(13) “Intercept” means the aural or other acquisition of the contents of a wire, oral, or electronic communication through the use of an interception device.

(14) “Interception device” means an electronic, mechanical, or other device that may be used for the nonconsensual interception of wire, oral, or electronic communications. The term does not include a telephone or telegraph instrument, the equipment or a facility used

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for the transmission of electronic communications, or a component of the equipment or a facility used for the transmission of electronic communications if the instrument, equipment, facility, or component is:

(A) provided to a subscriber or user by a provider of a wire or electronic communications service in the ordinary course of the service provider's business and used by the subscriber or user in the ordinary course of the subscriber's or user's business;

(B) provided by a subscriber or user for connection to the facilities of a wire or electronic communications service for use in the ordinary course of the subscriber's or user's business;

(C) used by a communication common carrier in the ordinary course of the carrier's business; or

(D) used by an investigative or law enforcement officer in the ordinary course of the officer's duties.

(15) "Interception order" means an order authorizing the interception of a wire, oral, or electronic communication.

(16) "Investigative or law enforcement officer" means:

(A) an officer of this state or a political subdivision of this state who is authorized by law to investigate or make arrests for offenses described by Article 18A.101; or

(B) an attorney authorized by law to prosecute or participate in the prosecution of those offenses.

(17) "Judge of competent jurisdiction" means a judge described by Article 18A.051.



PART IV

Vernon's Ann.Texas C.C.P Rules Related to Arrest and Search Warrants

Vernon's Ann.Texas C.C.P. Art. 18A.201
Definitions

In this subchapter:

(1) "Immediate life-threatening situation" means a hostage, barricade, or other emergency situation in which a person unlawfully and directly:

(A) threatens another with death; or

(B) exposes another to a substantial risk of serious bodily injury.

(2) "Member of a law enforcement unit specially trained to respond to and deal with life-threatening situations" means a peace officer who, as evidenced by the submission of appropriate documentation to the Texas Commission on Law Enforcement:

(A) receives each year a minimum of 40 hours of training in hostage and barricade suspect situations; or

(B) has received a minimum of 24 hours of training on kidnapping investigations and is:

(i) the sheriff of a county with a population of 3.3 million or more or the sheriff's designee; or

(ii) the police chief of a police department in a municipality with a population of 500,000 or more or the chief's designee

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Vernon's Ann.Texas C.C.P. Art. 18A.202 Possession and Use of Interception Device in Emergency Situation

(a) The prosecutor in a county in which an interception device is to be installed or used shall designate in writing each peace officer in the county, other than a commissioned officer of the department, who is:

- (1) a member of a law enforcement unit specially trained to respond to and deal with life-threatening situations; and
- (2) authorized to possess an interception device and responsible for the installation, operation, and monitoring of the device in an immediate life-threatening situation.

(b) A peace officer designated under Subsection (a) or Article 18A.301(c) may possess, install, operate, or monitor an interception device if the officer:

- (1) reasonably believes an immediate life-threatening situation exists that:
 - (A) is within the territorial jurisdiction of the officer or another officer the officer is assisting; and
 - (B) requires interception of communications before an interception order can, with due diligence, be obtained under this subchapter;
- (2) reasonably believes there are sufficient grounds under this subchapter on which to obtain an interception order; and
- (3) before beginning the interception, obtains oral or written consent to the interception from:
 - (A) a judge of competent jurisdiction;

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(B) a district judge for the county in which the device will be installed or used; or

(C) a judge or justice of a court of appeals or of a higher court.

(c) If a peace officer installs or uses an interception device under Subsection (b), the officer shall:

(1) promptly report the installation or use to the prosecutor in the county in which the device is installed or used; and

(2) within 48 hours after the installation is complete or the interception begins, whichever occurs first, obtain a written interception order from a judge of competent jurisdiction.

(d) A peace officer may certify to a communication common carrier that the officer is acting lawfully under this subchapter.



PART V

Vernon's Ann.Texas C.C.P Rules Related to Arrest and Search Warrants

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Vernon's Ann.Texas C.C.P. Art. 18A.251 Definition

In this subchapter, "correctional facility" means:

- (1) a place described by Section 1.07(a)(14), Penal Code; or
- (2) a "secure correctional facility" or "secure detention facility" as defined by Section 51.02, Family Code.

Texas Search Warrant Laws

Vernon's Ann.Texas C.C.P. Art. 18A.252 Use of Interception Device by Inspector General

(a) Notwithstanding any other provision of this chapter or Chapter 18B, the office of inspector general of the Texas Department of Criminal Justice may:

(1) without a warrant, use an interception device to detect the presence or use of a cellular telephone or other wireless communications device in a correctional facility;

(2) without a warrant, intercept, monitor, detect, or, as authorized by applicable federal laws and regulations, prevent the transmission of a communication through a cellular telephone or other wireless communications device in a correctional facility; and

(3) use, to the extent authorized by law, any information obtained under Subdivision (2), including the contents of an intercepted communication, in a criminal or civil proceeding before a court or other governmental agency or entity.

(b) When using an interception device under Subsection (a), the office of inspector general shall minimize the impact of the device on a communication that is not reasonably related to the detection of the presence or use of a cellular telephone or other wireless communications device in a correctional facility.

Texas Search Warrant Laws

Vernon's Ann.Texas C.C.P. Art. 18A.251 Definition

In this subchapter, "correctional facility" means:

- (1) a place described by Section 1.07(a)(14), Penal Code; or
- (2) a "secure correctional facility" or "secure detention facility" as defined by Section 51.02, Family Code.



PART VI

Vernon's Ann.Texas C.C.P. Rules Related to Arrest and Search Warrants

**Vernon's Ann.Texas C.C.P. Art. 18B.001
Definitions**

In this chapter:

Text of (1) as amended by Acts 2023, 88th Leg., ch. 901 (H.B. 4906), §1

(1) "Authorized peace officer" means:

- (A) a sheriff or deputy sheriff;
- (B) a constable or deputy constable;
- (C) a marshal or police officer of a municipality;
- (D) a ranger or officer commissioned by the Public Safety Commission or the director of the department;
- (E) an investigator of a prosecutor's office;
- (F) a law enforcement agent of the Texas Alcoholic Beverage Commission;
- (G) a law enforcement officer commissioned by the Parks and Wildlife Commission;
- (H) an enforcement officer appointed by the inspector general of the Texas Department of Criminal Justice under Section 493.019, Government Code;
- (I) an investigator commissioned by the attorney general under Section 402.009, Government Code;
- (J) a member of an arson investigating unit commissioned by a municipality, a county, or the state; or

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(K) a peace officer commissioned under Section 37.081 or 51.203, Education Code.

Text of (1) as amended by Acts 2023, 88th Leg., ch. 950 (S.B. 1727), § 2

(1) “Authorized peace officer” means:

- (A) a sheriff or deputy sheriff;
- (B) a constable or deputy constable;
- (C) a marshal or police officer of a municipality;
- (D) a ranger or officer commissioned by the Public Safety Commission or the director of the department;
- (E) an investigator of a prosecutor’s office;
- (F) a law enforcement agent of the Texas Alcoholic Beverage Commission;
- (G) a law enforcement officer commissioned by the Parks and Wildlife Commission;
- (H) an enforcement officer appointed by the inspector general of the Texas Department of Criminal Justice under Section 493.019, Government Code;
- (I) a law enforcement officer appointed by the inspector general of the Texas Juvenile Justice Department under Section 242.102, Human Resources Code;
- (J) an investigator commissioned by the attorney general under Section 402.009, Government Code; or

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(K) a member of an arson investigating unit commissioned by a municipality, a county, or the state.

(2) “Communication common carrier,” “electronic communication,” “electronic communications service,” “user,” and “wire communication” have the meanings assigned by Article 18A.001.

(3) “Department” means the Department of Public Safety of the State of Texas.

(4) “Designated law enforcement office or agency” means:

(A) the sheriff’s department of a county with a population of 3.3 million or more;

(B) a police department in a municipality with a population of 200,000 or more;

(C) the office of inspector general of the Texas Department of Criminal Justice; or

(D) the office of inspector general of the Texas Juvenile Justice Department.

(5) “Domestic entity” has the meaning assigned by Section 1.002, Business Organizations Code.

(6) “Electronic communications system” means:

(A) a wire, radio, electromagnetic, photo-optical, or photoelectronic facility for the transmission of wire or electronic communications; and

(B) any computer facility or related electronic equipment for the electronic storage of wire or electronic communications.



PART VII

Vernon's Ann.Texas C.C.P. Rules Related to Arrest and Search Warrants

Texas Search Warrant Laws

Vernon's Ann.Texas C.C.P. Art. 18B.201 Definition

In this subchapter, "mobile tracking device" means an electronic or mechanical device that permits tracking the movement of a person, vehicle, container, item, or object.

Texas Search Warrant Laws

Vernon's Ann.Texas C.C.P. Art. 18B.202 Order Authorizing Installation and Use of Mobile Tracking Device

(a) A district judge may issue an order for the installation and use of a mobile tracking device only on the application of an authorized peace officer.

(b) An application must be written, signed, and sworn to before the judge.

(c) The affidavit must:

(1) state the name, department, agency, and address of the applicant;

(2) identify the vehicle, container, or item to which, in which, or on which the mobile tracking device is to be attached, placed, or otherwise installed;

(3) state the name of the owner or possessor of the vehicle, container, or item identified under Subdivision (2);

(4) state the judicial jurisdictional area in which the vehicle, container, or item identified under Subdivision (2) is expected to be found; and

(5) state the facts and circumstances that provide the applicant with probable cause to believe that:

(A) criminal activity has been, is, or will be committed; and

(B) the installation and use of a mobile tracking device is likely to produce information that is material to an ongoing criminal investigation of that criminal activity.

Texas Search Warrant Laws

Vernon's Ann.Texas C.C.P. Art. 18B.203 Jurisdiction

(a) A district judge may issue an order for the installation and use of a mobile tracking device in the same judicial district as the site of:

(1) the investigation; or

(2) the person, vehicle, container, item, or object the movement of which will be tracked by the device.

(b) The order may authorize the use of a mobile tracking device outside the judicial district but within the state, if the device is installed within the district.

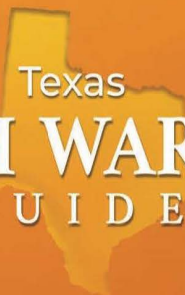


ABOUT THE AUTHOR

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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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Texas

SEARCH WARRANT GUIDE

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