

Colorado

SEARCH WARRANT GUIDE

ANTHONY BANDIERO, ESQ.

Colorado 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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PART I

Common Search Warrant Questions

Application Procedure

1) Who may apply?	No express provision
2) Who has the authority to issue?	Any judge of a court of record (§ 16-3-301(1); Colo. R. Crim. P. 41(a)) Any judge of a municipal court (§ 16-3-302) (See Municipal Court Rules)
3) Is an affidavit necessary?	Yes (§ 16-3-303; Colo. R. Crim. P. 41(c))
4) Can sworn oral testimony replace an affidavit?	May supplement affidavit if reduced to writing and signed under oath by witness (§ 16-3-303(2); Colo. R. Crim. P. 41(c)(2))
5) Are there special provisions for obtaining a warrant by telephone?	Application by fax: warrant, signed affidavit, and accompanying papers may be transmitted by fax to the judge; affidavit may be sworn over telephone; court must have original or faxed copy of the signed affidavit to issue warrant (Colo. R. Crim. P.

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	41(c)(3))
6) What property can be seized?	<ul style="list-style-type: none">—Stolen or embezzled—Designed or intended for criminal use—Used in a crime—Possession of which is illegal—Evidence of crime—Seizure statutorily authorized—Threat to public health or safety in violation of statute—Aid in locating any person subject to outstanding arrest warrant <p>(§ 16-3-301(2); Colo. R. Crim. P. 41(b))</p>
7) Contents of application	
a) Who or what is to be searched?	Yes (§ 16-3-303(1)(a), Colo. R. Crim. P. 41(c)(1)(I))
b) State the items being sought?	Yes (§ 16-3-303(1)(b); Colo. R. Crim. P. 41(c)(1)(II))
c) State the basis for probable cause?	<p>The grounds for issuance exist (§ 16-3-303(1)(c); Colo. R. Crim. P. 41(c)(1)(III))</p> <p>The property sought is in the location specified (§ 16-3-303(1)(d); Colo. R. Crim. P. 41(c)(1)(IV))</p>
d) Are there additional	All papers faxed to judge or

requirements?	applicant must be filed with court as if they were originals; standards for paper quality and transmission to follow Colo. Rules of Civil Procedure (Colo. R. Crim. P. 41(f))
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The Search Warrant

1) Does it require a standard format?	For alcoholic beverages being sold, bartered, exchanged, divided, or unlawfully given away (§ 12-47-905)
2) Required contents	<ul style="list-style-type: none">—Person, place or thing to be searched—Property to be searched for, seized, or inspected—Grounds for probable cause—Names of affiants—Any other orders to accomplish the purposes of the warrant (§§ 16-3-304(1), 16-3-304(2); Colo. R. Crim. P. 41(d)(1), 41(d)(2))

Execution of Search Warrant

1) How soon must search warrant be executed?	Within 14 days after its date (§ 16-3-305(6); Colo. R. Crim. P. 41(d)(5)(VI))
2) Who may execute?	Any officer authorized by law (§§ 16-3-305(1.5), 16-3-305(2),

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	16-3-305(3); Colo. R. Crim. P. 41(d)(5)(I), 41(d)(5)(II))
3) Where is the search warrant applicable?	Anywhere in the county or municipality where the property sought is located or if the property is mobile, anywhere in the state (§ 16-3-305(1); Colo. R. Crim. P. 41(d)(5)(II))
4) When may warrant be executed?	
a) Is execution limited during daytime?	Yes (§ 16-3-304(3)(a); Colo. R. Crim. P. 41(d)(3)(I))
b) Is execution limited during nighttime?	Yes, unless the court otherwise directs (§ 16-3-304(3)(a); Colo. R. Crim. P. 41(d)(3)(I)); warrant must be executed between 7 a.m. and 7 p.m. unless judge for good cause expressly authorizes another time (§ 16-3-305(7)(a))
5) Is forced or unannounced entry allowed under the warrant?	No-knock warrant shall be issued only if the affidavit complies with this section; specifically requests a no-knock warrant; has been reviewed and approved by a district attorney; and if the grounds are based on a confidential informant, the affiant states when such grounds were known or verified (§ 16-3-303(4)). The



PART II

C.R.S.A. § 16-3-301

Search warrants--issuance--grounds--exception-- definitions

- (1) A search warrant authorized by this section may be issued by any judge of a court of record.
- (2) A search warrant may be issued under this section to search for and seize any property:
- (a) Which is stolen or embezzled; or
 - (b) Which is designed or intended for use as a means of committing a criminal offense; or
 - (c) Which is or has been used as a means of committing a criminal offense; or
 - (d) The possession of which is illegal; or
 - (e) Which would be material evidence in a subsequent criminal prosecution in this state or in another state; or
 - (f) The seizure of which is expressly required, authorized, or permitted by any statute of this state; or
 - (g) Which is kept, stored, maintained, transported, sold, dispensed, or possessed in violation of a statute of this state,

under circumstances involving a serious threat to public safety or order or to public health; or

(h) Which would aid in the detection of the whereabouts of or in the apprehension of a person for whom a lawful arrest warrant is outstanding.

(3) A search warrant may be issued under this section to search for any person for whom a lawful arrest warrant is outstanding.

(4) Notwithstanding subsection (2) of this section, a court shall not issue a search warrant to search for and seize any property that relates to an investigation into a legally protected health-care activity, as defined in section 12-30-121(1)(d).

C.R.S.A. § 16-3-301.1

Court orders for the production of records--definitions

(1) A judge of a court of record may order the production of records.

(2) A court may order the production of records under this section to require the production of records in the actual or constructive control of a business entity:

(a) That have been stolen or embezzled;

(b) That are designed or intended for use as a means of committing a criminal offense;

(c) That are or have been used as a means of committing a criminal offense;

(d) The possession of which is illegal;

(e) That would be material evidence in a subsequent criminal prosecution in this state, another state, or federal court;

(f) The seizure of which is expressly required, authorized, or permitted by a statute of this state or the United States; or

(g) That would aid in the detection of the whereabouts of or in the apprehension of a person for whom a lawful arrest order is outstanding.

(3)(a) A court shall order the production of records only on receipt of an affidavit sworn to or affirmed before the judge and relating facts sufficient to:

(i) Identify or describe, as nearly as may be, the business entity that is in actual or constructive control of the records;

(II) Identify or describe, as nearly as may be, the records that shall be produced;

(III) Establish the grounds for issuance of the court order for production of records or probable cause to believe the grounds exist; and

(IV) Establish probable cause that the records described are in the actual or constructive control of the business entity.

(b) The affidavit required by paragraph (a) of this subsection (3) may include sworn testimony reduced to writing and signed under oath by the witness giving the testimony before the issuance of the court order for the production of records. A copy of the affidavit and a copy of the transcript of testimony taken in support of the request for a court order for the production of records shall be attached to the court order for the production of records filed with the court.

(4)(a) If the court is satisfied that grounds for the application exist or that there is probable cause to believe that the grounds exist, the court shall issue a court order for the production of records, which shall:

(I) Identify or describe, as nearly as may be, the business entity that is in actual or constructive control of the records;

(II) Identify or describe, as nearly as may be, the records that shall be produced;

(III) State the grounds or probable cause for its issuance; and



PART III

Crim.P. Rule 41 Search, Seizure, and Confession

(a) Authority to Issue Warrant. A search warrant authorized by this Rule may be issued by any judge of a court of record.

(b) Grounds for Issuance. A search warrant may be issued under this Rule to search for and seize any property:

- (1) Which is stolen or embezzled; or
- (2) Which is designed or intended for use as a means of committing a criminal offense; or
- (3) Which is or has been used as a means of committing a criminal offense; or
- (4) The possession of which is illegal; or
- (5) Which would be material evidence in a subsequent criminal prosecution in this state or in another state; or
- (6) The seizure of which is expressly required, authorized, or permitted by any statute of this state; or
- (7) Which is kept, stored, maintained, transported, sold, dispensed, or possessed in violation of a statute of this state, under circumstances involving a serious threat to public safety or order, or to public health.

(c) Application for Search Warrant.

(1) A search warrant shall issue only on affidavit sworn or affirmed to before the judge, except as provided in (c)(3). Such affidavit shall relate facts sufficient to:

(I) Identify or describe, as nearly as may be, the premises, person, place, or thing to be searched;

(II) Identify or describe, as nearly as may be, the property to be searched for, seized, or inspected;

(III) Establish the grounds for issuance of the warrant, or probable cause to believe that such grounds exist; and

(IV) Establish probable cause to believe that the property to be searched for, seized, or inspected is located at, in, or upon the premises, person, place, or thing to be searched.

(2) The affidavit required by this section may include sworn testimony reduced to writing and signed under oath by the witness giving the testimony before issuance of the warrant. A copy of the affidavit and a copy of the transcript of testimony taken in support of the request for a search warrant shall be attached to the search warrant filed with the court.

(2.5) A no-knock search warrant, which means, for purposes of this section, a search warrant authorized by the court to be executed by law enforcement officers through a forcible entry without first announcing their identity, purpose, and authority, shall be issued only if the affidavit for such warrant:

(I) Complies with the provisions of subsections (1) and (2) of this section (c) and section 16-3-303(4), C.R.S.;

(II) Specifically requests the issuance of a no-knock search warrant;

(III) Relates sufficient circumstances to support the issuance of a no-knock search warrant;

(IV) Has been reviewed and approved for legal sufficiency and signed by a district attorney with the date and his or her attorney registration number on the affidavit, pursuant to section 20-1-106.1(2), C.R.S.; and

(V) If the grounds for the issuance of a no-knock warrant are established by a confidential informant, the affidavit for such warrant shall contain a statement by the affiant concerning when such grounds became known or were verified by the affiant, but such statement shall not identify the confidential informant.

(3) Application and Issuance of a Warrant by Facsimile or Electronic Transmission. A warrant, signed affidavit, and accompanying documents may be transmitted by electronic facsimile transmission (fax) or by electronic transfer with electronic signatures to the judge, who may act upon the transmitted documents as if they were originals. A warrant affidavit may be sworn to or affirmed by administration of the oath over the telephone by the judge. The affidavit with electronic signature received by the judge or magistrate and the warrant approved by the judge or magistrate, signed with electronic signature, shall be deemed originals. The judge or

magistrate shall facilitate the filing of the original affidavit and original warrant with the clerk of the court and shall take reasonable steps to prevent the tampering with the affidavit and warrant. The issuing judge or magistrate shall also forward a copy of the warrant and affidavit, with electronic signatures, to the affiant. This subsection (c)(3) does not authorize the court to issue warrants without having in its possession either a faxed copy of the signed affidavit and warrant or an electronic copy of the affidavit and warrant with electronic signatures.

(d) Issuance, Contents, Execution, and Return of Warrant.

(1) If the judge is satisfied that grounds for the application exist, or that there is probable cause to believe that such grounds exist, he shall issue a search warrant, which shall:

(I) Identify or describe, as nearly as may be, the premises, person, place, or thing to be searched;

(II) Identify or describe, as nearly as may be, the property to be searched for, seized, or inspected;

(III) State the grounds or probable cause for its issuance; and

(IV) State the names of the persons whose affidavits of testimony have been taken in support thereof.

(2) The search warrant may also contain such other and further orders as the judge may deem necessary to comply with the provisions of a statute, charter, or ordinance, or to provide for the custody or delivery to the proper officer of any property seized under the warrant, or otherwise to accomplish the purposes of the warrant.



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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Colorado SEARCH WARRANT GUIDE

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