

Montana

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
no Warrants

Montana Search Warrant Guide

A REFERENCE FOR LAW ENFORCEMENT



Anthony Bandiero, JD, ALM

Blue to Gold Law Enforcement Training, LLC
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— Anthony Bandiero

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PART I

Common Search Warrant Questions

Application Procedure

1) Who may apply?	A peace officer, the city or county attorney, or the attorney general (§ 46-5-220(1)); municipality with general powers (§ 7-1-4124(16))
2) Who has the authority to issue?	A city or municipal court judge or justice of the peace within the judge's jurisdiction or a district court judge within the state (§§ 3-6-103(4), 46-5-220(2))
3) Is an affidavit necessary?	Yes (§ 46-5-221)
4) Can sworn oral testimony replace an affidavit?	Application for warrant may be made in writing, by telephone, or electronically (§ 46-5-221)
5) Are there special provisions for obtaining a warrant by telephone?	Yes, judge may issue a warrant upon application in writing or by telephone or electronically (§ 46-5-221) Applicant shall state reasons to justify immediate issuance of warrant (§ 46-5-222(1)) and all information must be given

under oath with identification of the person testifying (§ 46-5-222(2)) Telephonic testimony must be electronically recorded by the issuing judge or a peace officer on a recording device in the custody of the judge at the time the application is made (§ 46-5-222(3))

Note: the issuing judge must subsequently sign the warrant in order for it to be valid and the executing officer must sign his or her name and judge's name, initialling the latter (§ 46-5-222(5))

6) What property can be seized?

—Evidence, including blood samples that may yield evidence of any measured amount or detected presence of alcohol or drugs in a person's body when subjected to testing

—Contraband

—Person for whose arrest there is probable cause and arrest warrant issued or who is unlawfully restrained

(§ 46-5-224)

7) Contents of application

a) Who or what is to be searched?

Yes (§ 46-5-221(3))

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b) State the items being sought?	Yes (§ 46-5-221(3))
c) State the basis for probable cause?	Yes (§§ 46-5-221(1) and (2))
d) Are there additional requirements?	Statement that an offense has been committed (§ 46-5-221(1)) Note: the statute requires that these elements appear in the application

The Search Warrant

1) Does it require a standard format?	No
2) Required contents	No express provision

Execution of Search Warrant

1) How soon must search warrant be executed?	Within 10 days from the time of issuance (§ 46-5-225) Note: unexecuted warrants are void and must be returned to issuing court, marked “not served” (§ 46-5-225)
2) Who may execute?	The peace officer specifically named in the warrant (§§ 46-5-223, 46-5-226)
3) Where is the search warrant applicable?	No express provision
4) When may warrant be executed?	

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a) Is execution limited during daytime?	Yes (§ 46-5-225)
b) Is execution limited during nighttime?	Yes (§ 46-5-225)
5) Is forced or unannounced entry allowed under the warrant?	All necessary and reasonable force may be used to serve a search warrant or to effect an entry into a building or property or part thereof to serve a search warrant (§ 46-5-228(1))
6) Are there limitations or specific rules regarding the search?	Person executing the warrant may reasonably detain and search any person found on the premises in the least restrictive manner consistent with the safety of the person serving or assisting service of the warrant: —For self-protection or —To prevent the disposal or concealment of anything described in the warrant (§ 46-5-228(2))
7) Is leaving documentation at the scene of the search mandatory?	—Receipt for all articles taken —Copy of the warrant (§ 46-5-227)
8) Are there safeguards against abuse of the search	Any person who knowingly makes a false statement under



PART II

MCA 46-5-212

Pawnbroker to surrender stolen property--warrant

(1) When a peace officer informs a pawnbroker or dealer who buys and sells secondhand merchandise that property pawned to or purchased by the pawnbroker or dealer is stolen property, as defined in 45-2-101, the pawnbroker or dealer who buys and sells secondhand merchandise shall hold the property for 30 days upon issuance of an administrative warrant by a peace officer. Following the expiration of the 30-day period, the pawnbroker or dealer shall surrender the property to the peace officer upon demand. The peace officer shall give the pawnbroker or dealer a receipt for any property surrendered by the pawnbroker or dealer. During the 30-day period, the pawnbroker or dealer may appeal the validity of the administrative warrant in justice's court or in municipal court.

(2) As used in this section, "administrative warrant" means a warrant:

- (a) issued by the administrative head, or the administrative head's designee, of the investigating agency of the jurisdiction;
- (b) that describes the property to be held; and
- (c) that states that the pawnbroker or dealer shall hold the property for 30 days from the date of receipt.

MCA 46-5-220
Authority to issue search warrant

(1) A peace officer, the city or county attorney, or the attorney general may apply for a search warrant.

(2) A search warrant may be issued by:

- (a) a city or municipal court judge or justice of the peace within the judge's geographical jurisdiction; or
- (b) a district court judge within this state.

MCA 46-5-221
Grounds for search warrant

A judge shall issue a search warrant to a person upon application, in writing, by telephone, or electronically, made under oath or affirmation, that:

- (1) states facts sufficient to support probable cause to believe that an offense has been committed;
- (2) states facts sufficient to support probable cause to believe that evidence, contraband, or persons connected with the offense may be found;
- (3) particularly describes the place, object, or persons to be searched; and
- (4) particularly describes who or what is to be seized.

MCA 46-5-222

Search warrants issued electronically or by telephone

(1) Whenever an application for a search warrant is made by telephone, the applicant shall, in addition to the requirements contained in 46-5-221, state reasons to justify immediate issuance of a search warrant.

(2)(a) All testimony given over the telephone or electronically that is intended to support an application for a search warrant must be given on oath or affirmation and must identify the person testifying. For the purpose of this section, the judge is authorized to administer an oath or affirmation by telephone.

(b) All testimony in support of an application for a search warrant issued electronically must be:

(i) subscribed by the applicant in accordance with 1-6-105; and

(ii) attached to or logically associated with the electronic signature of the applicant as provided in 30-18-110.

(3)(a) Sworn or affirmed testimony given over the telephone must be electronically recorded by the judge or a peace officer on a recording device in the custody of the judge or peace officer when the application is made.

(b) If the recording is made by the judge, the recording must be retained in the court records and must be transcribed verbatim as soon as possible after the application is made. The recording must include the time and date it was recorded.

(c) If the recording is made by a peace officer, the recording must be transcribed verbatim as soon as

possible after the application for the warrant is made. The recording must contain the time and date when it was recorded. The peace officer making the recording shall, as soon as possible, provide the judge with the original recording and a transcription of the recording so that the judge may expeditiously verify the accuracy of the transcription. The original recording must be retained in the court records. The peace officer making the recording shall secure a copy of the recording and transcription of the recording in the same manner as other evidence is secured.

(4)(a) For a search warrant issued electronically, the applicant shall transmit to the judge an electronic record that is capable of being retained by the judge at the time the following are received:

- (i) the application with an electronic signature that is attached to or logically associated with the application; and

- (ii) as soon as possible after issuance, a copy of any warrant a judge signs by electronic signature.

(b) The electronic record transmitted pursuant to this subsection (4) must include the date and time of transmission and be retained in the court records.

(5)(a) If the judge approves a warrant over the telephone, the peace officer serving the warrant shall sign the search warrant in the officer's own name and in the judge's name. The peace officer signing the judge's name shall initial the judge's name indicating the signature was authorized by the judge but signed by the officer.

(b) If the judge signs the warrant by electronic signature, the peace officer serving the warrant shall initial the electronic signatures of the peace officer and the judge to indicate that



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.

View his bio at BlueToGold.com/about



Montana **SEARCH WARRANT** GUIDE

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