

New York

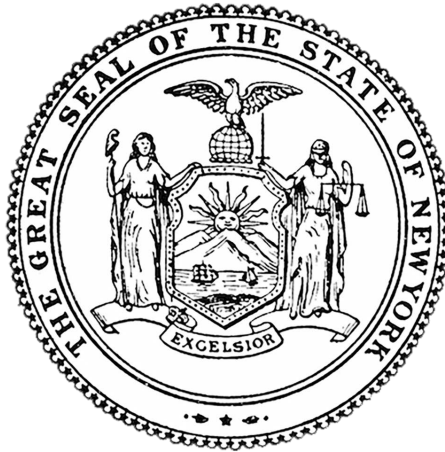
SEARCH WARRANT GUIDE

ANTHONY BANDIERO, ESQ.

*4th Amendment
the people to be secure in
houses, papers, and effects against
unreasonable searches and seizure, shall not
be, and no Warrants*

New York Search Warrant Guide

A REFERENCE FOR LAW ENFORCEMENT



Anthony Bandiero, JD, ALM

Blue to Gold Law Enforcement Training, LLC
SPOKANE, WASHINGTON

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

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— Anthony Bandiero

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PART I

Common Search Warrant Questions

Application Procedure

1) Who may apply?	A law enforcement officer or prosecuting attorney (§ 23A-35-2)
2) Who has the authority to issue?	A judge of a local criminal court or superior court (§§ 690.05(1), 10.20)
3) Is an affidavit necessary?	No express provision
4) Can sworn oral testimony replace an affidavit?	May be used if oral statement is made by public servant, is recorded (see § 690.36), and is sworn to by the person making the statement (§ 690.35(1))
5) Are there special provisions for obtaining a warrant by telephone?	Applicant must identify himself, be sworn by the judge hearing his testimony, and make his statement in compliance with § 690.35. Statement must be recorded, transcribed, and have its accuracy certified by the court (§ 690.36)
6) What property can be seized?	—Stolen —Unlawfully possessed

	<ul style="list-style-type: none">—Used or possessed for use in commission or concealment of a crime—Evidence that tends to demonstrate that an offense was committed or participation in a crime—Related to crimes committed in other states if conduct would constitute a felony in New York (§ 690.10)
<hr/> 7) Contents of application <hr/>	
a) Who or what is to be searched?	Yes (§ 690.35(3)(b))
b) State the items being sought?	Yes (§ 690.35(3)(b))
c) State the basis for probable cause?	<p>Yes. Requires statement of reasonable cause (§ 690.35(3)(b))</p> <p>Note: requirement that hearsay testimony be supported by sufficient facts to establish reliability</p>
d) Are there additional requirements?	<p>Name of court, name and title of the applicant (§ 690.35(3)(a))</p> <p>Formal request for issuance of search warrant (§ 690.35(3)(d))</p> <p>If applicable:</p> <p>Formal request that search warrant be made executable at any time, formal request that</p>

search warrant authorize execution without giving prior notice of authority and purpose (§ 690.35(4))

Search for a person in the dwelling of a third party: application, request that warrant be made executable at any time, request that warrant authorize entry without prior notice (See Forms § 690:9 to 11)

The Search Warrant

1) Does it require a standard format?

No (But see Form § 690:12)

Search of dwelling of third party (See Form § 690:13)

2) Required contents

—Name of the issuing court

—Signature of issuing judge (except telephone warrants)

—Name of office of executing officer

—Property to be seized

—Person/place to be searched

—Direction that search is to be executed between 6 A.M. and 9 P.M. or if the warrant so authorizes that the warrant be executable at any time

—If applicable, direction that

the executing officer may execute search without giving prior notice

—Direction to seize named property and return it and the warrant to the issuing court without unnecessary delay

—Date of issuance

For telephone warrants only:

—Time of issuance

(§§ 690.05(2), 690.45; Form 690:12)

Note: form for search warrant also requires the name of affiant/applicant

Execution of Search Warrant

1) How soon must search warrant be executed?	Not more than 10 days after the date of issuance (§ 690.30(1))
2) Who may execute?	Any police officer whose geographical area of employment embraces or is partly embraced by the county of issuance. If the warrant specifies, it must be served by the designated officer. An officer may serve a warrant in any county adjoining a county where he is employed. (§ 690.25) Village police officers (Village §



PART II

McKinney's CPL § 690.05

Search warrants; in general; definition

1. Under circumstances prescribed in this article, a local criminal court may, upon application of a police officer, a district attorney or other public servant acting in the course of his official duties, issue a search warrant.

2. A search warrant is a court order and process directing a police officer to conduct:

(a) a search of designated premises, or of a designated vehicle, or of a designated person, for the purpose of seizing designated property or kinds of property, and to deliver any property so obtained to the court which issued the warrant; or

(b) a search of a designated premises for the purpose of searching for and arresting a person who is the subject of: (i) a warrant of arrest issued pursuant to this chapter, a superior court warrant of arrest issued pursuant to this chapter, or a bench warrant for a felony issued pursuant to this chapter, where the designated premises is the dwelling of a third party who is not the subject of the arrest warrant; or

(ii) a warrant of arrest issued by any other state or federal court for an offense which would constitute a felony under the laws of this state, where the

designated premises is the dwelling of a third party who is not the subject of the arrest warrant.

McKinney's CPL § 690.10

Search warrants; property subject to seizure thereunder

Personal property is subject to seizure pursuant to a search warrant if there is reasonable cause to believe that it:

1. Is stolen; or
2. Is unlawfully possessed; or
3. Has been used, or is possessed for the purpose of being used, to commit or conceal the commission of an offense against the laws of this state or another state, provided however, that if such offense was against the laws of another state, the court shall only issue a warrant if the conduct comprising such offense would, if occurring in this state, constitute a felony against the laws of this state; or
4. Constitutes evidence or tends to demonstrate that an offense was committed in this state or another state, or that a particular person participated in the commission of an offense in this state or another state, provided however, that if such offense was against the laws of another state, the court shall only issue a warrant if the conduct comprising such offense would, if occurring in this state, constitute a felony against the laws of this state.

McKinney's CPL § 690.15
Search warrants; what and who are subject to search
thereunder

1. A search warrant must direct a search of one or more of the following:
 - (a) A designated or described place or premises;
 - (b) A designated or described vehicle, as that term is defined in section 10.00 of the penal law;
 - (c) A designated or described person.
2. A search warrant which directs a search of a designated or described place, premises or vehicle, may also direct a search of any person present thereat or therein.



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



New York **SEARCH WARRANT** GUIDE

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