

Tennessee

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 Warrants



Blue to Gold

Tennessee 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.

Tennessee Search Warrant Guide
ISBN 979-8292810223
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 6



PART II
Tennessee Code Provisions Related to Arrest and Search Warrants

40-6-101. Definitions..... 13

40-6-102. Grounds..... 14

40-6-103. Probable cause and affidavit..... 15

40-6-104. Complainants and witnesses; examination..... 16

40-6-105. Issuance; “no knock” warrants..... 17

40-6-106. Form..... 18

40-6-107. Execution and return..... 19

40-6-110. Cell phone data; warrants; evidence..... 20

40-6-111. Blood alcohol and drug testing..... 22

31



PART III
Rule of Criminal Procedure Related to Arrest and Search Warrants

Rule 41. Search and Seizure..... 23

Rule 42. Criminal Contempt..... 29



PART I

Common Search Warrant Questions

Application Procedure

1) Who may apply?	A district attorney general or assistant or criminal investigator or any other law-enforcement officer (Tenn. R. Crim. P. 41(a))
2) Who has the authority to issue?	<p>A magistrate (§§ 40-6-101, 40-6-105(a); Tenn. R. Crim. P. 41(a)); judicial commissioners (§ 40-1-111(e)(1)); judges of chancery and circuit courts (§ 40-1-106)</p> <p>Note: No search warrant may be issued by any county, state, or city official whose compensation is contingent upon the issuance of the warrant (§ 40-5-106)</p>
3) Is an affidavit necessary?	Yes (§§ 40-6-103, 40-6-104; Tenn. R. Crim. P. 41(c)(1))
4) Can sworn oral testimony replace an affidavit?	Yes, if reduced to writing and subscribed by the witness (§ 40-6-104)
5) Are there special provisions	Yes, telephone or other reliable

Tennessee Search Warrant Guide

for obtaining a warrant by telephone?	electronic means (§ 40-6-109; Tenn. R. Crim. P. 41(c)(2))
6) What property can be seized?	<ul style="list-style-type: none">—Stolen or embezzled—Used in a crime or felony—Possessed with intent to use in a crime or possessed by another for purpose of concealment—Contraband, fruits of crime, things otherwise criminally possessed—Persons for whose arrest there is probable cause or who are unlawfully detained (§ 40-6-102; Tenn. R. Crim. P. 41(b)) <ul style="list-style-type: none">—Medical records or test to determine alcohol or drug content of person's blood (§§ 40-1-106, 55-10-406(3)(A), 55-10-406(g))
7) Contents of application	
a) Who or what is to be searched?	Yes. Must be found in the affidavit (§ 40-6-103)
b) State the items being sought?	Yes. Must be found in the affidavit (§ 40-6-103)
c) State the basis for probable cause?	Yes. Must be found in the affidavit (§ 40-6-103) Note: The Rules of Criminal Procedure require

Tennessee Search Warrant Guide

	establishment of the grounds of issuance (Tenn. R. Crim. P. 41(c)(3))
d) Are there additional requirements?	Magistrate must endorse on warrant hour, date, and name of officer to whom delivered for execution (Tenn. R. Crim. P. 41(d))

The Search Warrant

1) Does it require a standard format?	Yes (§ 40-6-106)
2) Required contents	<ul style="list-style-type: none">—Property to be seized—Person/place to be searched—Direction to executing officer—Name of executing officer—Time of issuance—Date of issuance—Name of issuing magistrate—Names of affiants—Basis for probable cause (§§ 40-6-105, 40-6-106; Tenn. R. Crim. P. 41(c)(3))

Execution of Search Warrant

1) How soon must search warrant be executed?	Within 5 days after its date (§ 40-6-107; Tenn. R. Crim. P. 41(e)(3))
2) Who may execute?	Only the officer named in the

Tennessee Search Warrant Guide

	warrant. Such person may be the sheriff, any deputy sheriff, any constable or any other peace officer of the county where the warrant was issued (§§ 40-6-101, 40-6-105; Tenn. R. Crim. P. 41(e)(1)); duly authorized revenue officers (§ 67-1-1441); office of cooperative disability investigation special agents (§ 4-45-104(b)); environmental investigation law enforcement officers (§ 11-1-101(2)(a)(I))
3) Where is the search warrant applicable?	Within the county of the issuing magistrate (Tenn. R. Crim. P. 41(a))
4) When may warrant be executed?	
a) Is execution limited during daytime?	Yes (§ 40-6-107)
b) Is execution limited during nighttime?	Yes (§ 40-6-107)
5) Is forced or unannounced entry allowed under the warrant?	No-knock warrants not permitted (§ 40-6-105(b)) If, after notice of his authority and purpose, executing officer is not admitted, he may break any door or window to the extent reasonably necessary to execute the warrant (Tenn. R.



PART II

T. C. A. § 40-6-101

Definitions

A search warrant is an order in writing in the name of the state, signed by a magistrate, directed to the sheriff, any constable, or any peace officer of the county, commanding the sheriff, constable or peace officer to search for personal property, and bring it before the magistrate.

**T. C. A. § 40-6-102
Grounds**

A search warrant may be issued on any one (1) of the following grounds:

- (1) Where the property was stolen or embezzled;
- (2) Where the property was used as the means of committing a felony;
- (3) Where the property is in the possession of any person with the intent to use it as a means of committing a public offense, or in the possession of another to whom the person may have delivered it, for the purpose of concealing it, or preventing its discovery; and
- (4) Any other ground provided by law.

T. C. A. § 40-6-103
Probable cause and affidavit

A search warrant can only be issued on probable cause, supported by affidavit, naming or describing the person, and particularly describing the property, and the place to be searched.

T. C. A. § 40-6-104
Complainants and witnesses; examination

The magistrate, before issuing the warrant, shall examine on oath the complainant and any witness the complainant may produce, and take their affidavits in writing, and cause them to be subscribed by the persons making the affidavits. The affidavits must set forth facts tending to establish the grounds of the application, or probable cause for believing the grounds exist.



PART III

Tenn. R. Crim. P., Rule 41 Search and Seizure

(a) **Authority to Issue Warrant.** A magistrate with jurisdiction in the county where the property sought is located may issue a search warrant authorized by this rule. The district attorney general, assistant district attorney general, criminal investigator, or any other law-enforcement officer may request a search warrant.

(b) **Persons or Property Subject to Seizure by Warrant.** A magistrate may issue a warrant under this rule to search for and seize any of the following:

- (1) evidence of a crime;
- (2) contraband, the fruits of crime, or items otherwise criminally possessed;
- (3) property designed or intended for use, or that has been used in a crime;
- (4) a person whose arrest is supported by probable cause; or
- (5) a person who is unlawfully restrained.

(c) Issuance and Content of Warrant.

(1) Issuance. A warrant shall issue only on an affidavit or affidavits that are sworn before the magistrate and establish the grounds for issuing the warrant.

(2) Requesting a Warrant by Electronic Means. A magistrate may issue a warrant based on information communicated by telephone or other reliable electronic means. The proposed warrant, the signed affidavit, and accompanying documents may be transmitted by electronic facsimile transmission (fax) or by electronic transfer with electronic signatures to the magistrate, who may act upon the transmitted documents as if they were originals. If the warrant is being sought by electronic means rather than face-to-face, the warrant affidavit shall be sworn to or affirmed by administration of the oath by audio-visual means by the magistrate, and the examination of the affiant by the magistrate shall also be by audio-visual means: provided, the warrant affidavit shall be in writing and received by the magistrate prior to the administration of the oath and examination of the affiant. The affidavit with electronic signature received by the magistrate and the warrant approved by the magistrate, signed with electronic signature, shall be deemed originals. The magistrate shall facilitate the filing of the original warrant with the clerk of the court and shall take reasonable steps to prevent tampering with the warrant. The issuing magistrate shall retain a copy of the warrant as part of his or her official records. The issuing magistrate shall issue a copy of the warrant, with electronic signatures, to the affiant. This section does not alter the requirement that the affidavit be submitted

to the magistrate in writing regardless of the means of transmission.

(3) Content. If the magistrate is satisfied that there is probable cause to believe that grounds for the application exist, the magistrate shall issue a warrant as follows:

(A) The warrant shall, as the case may be, identify the property or place to be searched, or name or describe the person to be searched; the warrant also shall name or describe the property or person to be seized.

(B) The search warrant shall command the law enforcement officer to search promptly the person or place named and to seize the specified property or person.

(C) The search warrant shall be directed to and served by:

(i) the sheriff or any deputy sheriff of the county where the warrant is issued; or

(ii) any constable or any other law enforcement officer with authority in the county.

(D) The magistrate shall endorse on the search warrant the hour, date, and name of the officer to whom the warrant was delivered for execution.

(4) Hearsay. The magistrate may base a finding of probable cause on hearsay evidence in whole or in part.

(d) Copies and Record of Warrant. The magistrate shall prepare an original and two exact copies of each search warrant. The magistrate shall keep one copy as a part of his or her official records. The other

copy shall be left with the person or persons on whom the search warrant is served. The exact copy of the search warrant and the endorsement are admissible evidence.

(e) Procedures to Execute Warrant

(1) Who May Execute. The search warrant may only be executed by the law enforcement officer, or one of them, to whom it is directed. Other persons may aid such officer at the officer's request, but the officer must be present and participate in the execution.

(2) Authority for Forcible Entry. If, after notice of his or her authority and purpose, a law enforcement officer is not granted admittance, or in the absence of anyone with authority to grant admittance, the peace officer with a search warrant may break open any door or window of a building or vehicle, or any part thereof, described to be searched in the warrant to the extent that it is reasonably necessary to execute the warrant and does not unnecessarily damage the property.

(3) Timely Execution. The warrant must be executed within five days after its date.

(4) Leaving Copy of Warrant and Receipt. The officer executing the warrant shall:

(A) give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property; or

(B) shall leave the copy and receipt at a place from which the property was taken.



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

Tennessee SEARCH WARRANT GUIDE

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



Visit: [Bluetogold.com](https://bluetogold.com)
Training | Legal Updates | Free Webinars