




Illinois

SEARCH WARRANT GUIDE

ANTHONY BANDIERO, ESQ.

*Fourth Amendment
The people to be secure in
their persons, papers, and effects against
unreasonable searches and seizures, shall not
be searched, and no Warrant shall*



Illinois Search Warrant Guide

A REFERENCE FOR LAW ENFORCEMENT



Anthony Bandiero, JD, ALM

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SPOKANE, WASHINGTON

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— Anthony Bandiero

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PART I

Common Search Warrant Questions

Application Procedure

| | |
|---|--|
| 1) Who may apply? | Any person (§ 5/108-3(a)) |
| 2) Who has the authority to issue? | Any judge (§ 5/108-3(a)) |
| 3) Is an affidavit necessary? | Yes (art.1, § 6) |
| 4) Can sworn oral testimony replace an affidavit? | Requires written complaint made under oath or affirmation (§ 5/108-3(a)); when offense is terrorism or related offense, the circumstances may make it reasonable to dispense with written affidavit and judge may issue warrant upon sworn testimony communicated by phone, fax, or other appropriate means (§ 5/108-4(b)) |
| 5) Are there special provisions for obtaining a warrant by telephone? | May be issued electronically or electromagnetically by use of e-mail or fax or simultaneous video and audio transmission (§ 5/108-4(a)) |

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| | |
|---------------------------------|--|
| 6) What property can be seized? | <ul style="list-style-type: none">–Designed or intended for use or used in or evidence of a criminal offense–Contraband, fruits of crime, or things illegally possessed–Any person kidnapped and now concealed within this state–Any human fetus or human corpse (§ 5/108-3(a)) |
|---------------------------------|--|

7) Contents of application

| | |
|--|---|
| a) Who or what is to be searched? | Yes (§ 5/108-3(a)) |
| b) State the items being sought? | Yes (§ 5/108-3(a)) |
| c) State the basis for probable cause? | Yes (§ 5/108-3(a)) |
| d) Are there additional requirements? | Sworn complaint in writing (§ 5/108-3(a)) |

The Search Warrant

| | |
|---------------------------------------|---|
| 1) Does it require a standard format? | No |
| 2) Required contents | <ul style="list-style-type: none">–Direction to officer–Time of issuance–Date of issuance–Name of issuing judge–Person/place to be searched |

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–Property sought
(§§ 5/108-4, 5/108-7)

Execution of Search Warrant

| | |
|--|---|
| 1) How soon must search warrant be executed? | Within 96 hours from time of issuance (§ 5/108-6) |
| 2) Who may execute? | Any peace officer of the state (§ 5/108-5); policemen or marshals of the jurisdiction (ch. 65, § 5/3.1-15-25(b)) Note: judge may direct execution by any person specially mentioned in the warrant |
| 3) Where is the search warrant applicable? | No express provision |
| 4) When may warrant be executed? | |
| a) Is execution limited during daytime? | Yes (§ 5/108-13) |
| b) Is execution limited during nighttime? | Yes (§ 5/108-13) |
| 5) Is forced or unannounced entry allowed under the warrant? | May use all necessary and reasonable force to effect an entry into any property to execute a search warrant (§ 5/108-8(a)) No-knock warrant may be issued where officer reasonably believes weapon would be used against officer |

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| | |
|--|--|
| | or another person or there is imminent danger evidence will be destroyed (§ 5/108-8(b)) |
| 6) Are there limitations or specific rules regarding the search? | <p>Where search is of the work product of anyone in the news media, search is to be authorized only where:</p> <ul style="list-style-type: none">—Such person has committed or is committing a crime—Articles to be seized will be destroyed or removed from the state if search warrant is not issued <p>In the execution of warrant, persons on the premises may be searched</p> <ul style="list-style-type: none">—To protect executing officer from attack—To prevent disposal or concealment of property sought <p>(§§ 5/108-3(b), 5/108-9)</p> |
| 7) Is leaving documentation at the scene of the search mandatory? | Copy of warrant (§ 5/108-6) |
| 8) Are there safeguards against abuse of the search warrant process? | Perjury— knowingly making a false statement, under oath, in a proceeding where an oath is required, and where the statement is a material part of the issue in question (Class 3 felony) (ch. 720, § 5/32-2) |



PART II

725 ILCS 5/108-1

Formerly cited as IL ST CH 38 ¶ 108-1

Search without warrant

(1) When a lawful arrest is effected a peace officer may reasonably search the person arrested and the area within such person's immediate presence for the purpose of:

- (a) Protecting the officer from attack; or
- (b) Preventing the person from escaping; or
- (c) Discovering the fruits of the crime; or
- (d) Discovering any instruments, articles, or things which may have been used in the commission of, or which may constitute evidence of, an offense.

(2) (Blank).

(3) A law enforcement officer may not search or inspect a motor vehicle, its contents, the driver, or a passenger solely because of a violation of Section 12-603.1 of the Illinois Vehicle Code.

725 ILCS 5/108-1.01

Formerly cited as IL ST CH 38 ¶ 108-1.01

Search During Temporary Questioning

Search During Temporary Questioning. When a peace officer has stopped a person for temporary questioning pursuant to Section 107-14 of this Code and reasonably suspects that he or another is in danger of attack, he may search the person for weapons. If the officer discovers a weapon, he may take it until the completion of the questioning, at which time he shall either return the weapon, if lawfully possessed, or arrest the person so questioned.

725 ILCS 5/108-2

Formerly cited as IL ST CH 38 ¶ 108-2

Custody and Disposition of Things Seized

Custody and Disposition of Things Seized. An inventory of all instruments, articles or things seized on a search without warrant shall be given to the person arrested and a copy thereof delivered to the judge before whom the person arrested is taken, and thereafter, such instruments, articles or things shall be handled and disposed of in accordance with Sections 108-11 and 108-12 of this Code. If the person arrested is released without a charge being preferred against him all instruments, articles or things seized, other than contraband, shall be returned to him upon release.

725 ILCS 5/108-3
Formerly cited as IL ST CH 38 ¶ 108-3
Grounds for search warrant

(a) Except as provided in subsection (b), upon the written complaint of any person under oath or affirmation which states facts sufficient to show probable cause and which particularly describes the place or person, or both, to be searched and the things to be seized, any judge may issue a search warrant for the seizure of the following:

(1) Any instruments, articles or things designed or intended for use or which are or have been used in the commission of, or which may constitute evidence of, the offense in connection with which the warrant is issued; or contraband, the fruits of crime, or things otherwise criminally possessed.

(2) Any person who has been kidnaped in violation of the laws of this State, or who has been kidnaped in another jurisdiction and is now concealed within this State, or any human fetus or human corpse.

(b) When the things to be seized are the work product of, or used in the ordinary course of business, and in the possession, custody, or control of any person known to be engaged in the gathering or dissemination of news for the print or broadcast media, no judge may issue a search warrant unless the requirements set forth in subsection (a) are satisfied and there is probable cause to believe that:

(1) such person has committed or is committing a criminal offense; or

(2) the things to be seized will be destroyed or removed from the State if the search warrant is not issued.



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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Illinois

SEARCH WARRANT

GUIDE

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