Minnesota

# SEARCH WARRANT GUIDE

ANTHONY BANDIERO, ESQ.

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Blue to Gold

# Minnesota Search Warrant Guide

A REFERENCE FOR LAW ENFORCEMENT



Anthony Bandiero, JD, ALM

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#### **Common Search Warrant Questions**

Application Procedure	
1) Who may apply?	Railroad peace officer (§ 219.995(5))
2) Who has the authority to issue?	Any court other than a court exercising probate jurisdiction having jurisdiction over the place where the search is to be conducted (§ 626.06); Military judge where probable cause member of state military forces has committed offense subject to concurrent or exclusive military jurisdiction during active service (§ 192A.612)
3) Is an affidavit necessary?	Yes (§ 626.08)
4) Can sworn oral testimony replace an affidavit?	OK only in circumstances where it is reasonable to dispense with a written affidavit and if recorded electronically, stenographically or by longhand by court or applicant upon judge's permission; must be transcribed and accuracy verified by judge (Minn. R.

	Crim. P. 36.01, 36.02, 36.04). Oral testimony may be presented via telephone or radio and written submissions via facsimile transmission (Minn. R. Crim. P. 36.01) or by electronic transmission (Minn. R. Crim. P. 37.02)
5) Are there special provisions for obtaining a warrant by telephone?	Yes (Minn. R. Crim. P. 36.01)
	Note: Warrant may also be issued by facsimile (Minn. R. Crim. P. 33.05; Minn. R. Crim. P. 36.01)
6) What property can be	—Stolen or embezzled
seized?	—Used in a crime
	<ul><li>Possessed unlawfully</li></ul>
	<ul><li>Possessed with intent to use in a crime</li></ul>
	<ul><li>In possession of one for purpose of concealment</li></ul>
	<ul><li>Evidence of a crime or participation in a crime</li></ul>
	(§ 626.07)
	—Wild animals, wild rice, and aquatic vegetation taken in violation of law (§ 97A.221(1))
7) Contents of application	
a) Who or what is to be	Yes (§ 626.08)

searched?	
b) State the items being sought?	Yes (§ 626.08)
c) State the basis for probable cause?	Yes. Must appear within the affidavit (§§ 626.08, 626.10; Minn. R. Crim. P. 36.05)
d) Are there additional requirements?	Affidavit (§ 626.08)
	Court may examine on oath the person seeking warrant and any witnesses (§ 626.09)
	Where jury trial is to be held, prosecuting attorney must notify defense of evidence obtained from search or seizure (Minn. R. Crim. P. 7.01)
	Where oral testimony allowed, judge must find reasonable circumstances to dispense with written affidavit (Minn. R. Crim. P. 36.02, 36.05)
	Affidavit or other document filed with court in support of a request for a warrant not required to be notarized (§ 358.116)
The Sear	ch Warrant
1) Does it require a standard format?	No
2) Required contents	—Signature of issuing judge

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	—Name of court
	-Person/place to be searched
	-Property/things to be seized
	<ul><li>Direction to executing officers</li></ul>
	<ul><li>Names of affiants</li></ul>
	-Grounds for issuance
	—Statement that warrant may be served only in daytime, unless nighttime search authorized
	(§§ 626.11, 626.12, 626.14)
Execution	of Search Warrant
1) How soon must search warrant be executed?	Within 10 days after issuance (§ 626.15)
2) Who may execute?	Any licensed peace officer, meaning a sheriff, deputy sheriff, police officer, constable, conservation agent, agent of the bureau of criminal apprehension, agent of the division of gambling enforcement, University of Minnesota peace officer, metropolitan transit police officer, Minnesota Department of Corrections Fugitive Apprehension Unit member, state patrol trooper or any person aiding the officer in execution (§§ 626.05(1), (2),



### M.S.A. § 169A.01 Citation; application

Subdivision 1. Citation. This chapter may be cited as the Minnesota Impaired Driving Code.

Subd. 2. Application. Unless otherwise indicated, the provisions of this chapter apply to any person who drives, operates, or is in physical control of a motor vehicle within this state or on any boundary water of this state. The provisions of this chapter are applicable and uniform throughout the state and in all its political subdivisions and municipalities.

Subd. 3. Local ordinances. No local authority may enact or enforce any rule or regulation that conflicts with a provision of this chapter unless expressly authorized to do so in this chapter. Local authorities may adopt traffic regulations that do not conflict with the provisions of this chapter. However, if any local ordinance regulating traffic covers the same subject for which a penalty is provided for in this chapter, the penalty provided for the violation of the local ordinance must be identical to the penalty provided for in this chapter for the same offense.

#### M.S.A. § 169A.03 Definitions

Subdivision 1. Scope. (a) As used in this chapter, unless the context clearly indicates otherwise, the terms defined in this section have the meanings given.

- (b) If a term defined in section 169.011, but not defined in this chapter, is used in this chapter, the term has the meaning given in section 169.011, unless the context clearly indicates otherwise.
- Subd. 2. Alcohol concentration. "Alcohol concentration" means:
  - (1) the number of grams of alcohol per 100 milliliters of blood;
  - (2) the number of grams of alcohol per 210 liters of breath; or
  - (3) the number of grams of alcohol per 67 milliliters of urine.
- Subd. 3. Aggravating factor. "Aggravating factor" includes:
  - (1) a qualified prior impaired driving incident within the ten years immediately preceding the current offense;
  - (2) having an alcohol concentration of 0.16 or more as measured at the time, or within two hours of the time, of the offense; or
  - (3) having a child under the age of 16 in the motor vehicle at the time of the offense if the child is more than 36 months younger than the offender.

Subd. 3a. Artificially derived cannabinoid. "Artificially derived cannabinoid" has the meaning given in section 342.01, subdivision 6.

Subd. 3b. Cannabis flower. "Cannabis flower" has the meaning given in section 342.01, subdivision 16.

Subd. 3c. Cannabis product. "Cannabis product" has the meaning given in section 342.01, subdivision 20.

Subd. 4. Commercial motor vehicle. "Commercial motor vehicle" has the meaning given in section 169.011, subdivision 16.

Subd. 5. Commissioner. "Commissioner" means the commissioner of public safety or a designee.

Subd. 5a. Control analysis. "Control analysis" means a procedure involving a solution that yields a predictable alcohol concentration reading.

Subd. 6. Controlled substance. "Controlled substance" has the meaning given in section 152.01, subdivision 4.

Subd. 7. Driver. "Driver" has the meaning given in section 169.011, subdivision 24.

Subd. 8. Gross misdemeanor. "Gross misdemeanor" means a crime for which a person may be sentenced to imprisonment for not more than 364 days, or to payment of a fine of not more than \$3,000, or both.

Subd. 9. Repealed by Laws 2018, c. 195, art. 2, § 3, eff. Aug. 1, 2018.

Subd. 10. Head Start bus. "Head Start bus" has the meaning given in section 169.011, subdivision 34.

Subd. 10a. Hemp-derived consumer product. "Hemp-derived consumer product" has the meaning given in section 342.01, subdivision 37.

Subd. 11. Infrared or other approved breath-testing instrument. "Infrared or other approved breath-testing instrument" means a breath-testing instrument that employs infrared or other technology and has been approved by the commissioner of public safety for determining alcohol concentration.

Subd. 11a. Intoxicating substance. "Intoxicating substance" means a drug or chemical, as those terms are defined in section 151.01, that when introduced into the human body impairs the central nervous system or impairs the human audio, visual, or mental processes. The term does not include alcohol or controlled substances.

Subd. 11b. Lower-potency hemp edible. "Lower-potency hemp edible" has the meaning given in section 342.01, subdivision 50.

Subd. 12. Misdemeanor. "Misdemeanor" means a crime for which a person may be sentenced to imprisonment for not more than 90 days, or to payment of a fine of not more than \$1,000, or both.

Subd. 13. Motorboat. "Motorboat" has the meaning given in section 86B.005, subdivision 9.

Subd. 14. Motorboat in operation. "Motorboat in operation" does not include a motorboat that is anchored, beached, or securely fastened to a dock or other permanent mooring or a motorboat that is being rowed or propelled by other than mechanical means.

Subd. 15. Motor vehicle. "Motor vehicle" means every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from overhead trolley wires. The term includes motorboats in operation and off-road recreational vehicles, but does not include a vehicle moved solely by human power.



## M.S.A. § 626.04 Property; seizure, keeping, and disposal

(a) When any officer seizes, with or without warrant, any property or thing, it shall be safely kept by direction of the court as long as necessary for the purpose of being produced as evidence on any trial. If the owner of the property makes a written request to the seizing officer's agency for return of the property, and the property has not been returned within 48 hours of the request, excluding Saturday, Sunday, or legal holidays, the person whose property has been seized may file a petition for the return of the property in the district court in the district in which the property was seized. The court administrator shall provide a form for use as a petition under this section. A filing fee, equal to the civil motion filing fee, shall be required for filing the petition. The district court shall send a copy of the petition to the agency acting as custodian of the property with at least ten days' notice of a hearing date. A hearing on the petition shall be held within 30 days of filing unless good cause is shown for an extension of time. The determination of the petition must be without jury trial and by a simple and informal procedure. At the hearing, the court may receive relevant evidence on any issue of fact necessary to the decision on the petition without regard to whether the evidence would be admissible under the Minnesota Rules of Evidence. The court shall allow if requested, or on its own motion may require, the custodian or the custodian's designee to summarize the status and progress of an ongoing investigation that led to the seizure. Any such summary shall be done ex parte and only the custodian, the custodian's designee, and their attorneys may be present with the court and court staff. The court shall seal the ex parte record. After a hearing, the court shall not order the return if it finds that:

- (1) the property is being held in good faith as potential evidence in any matter, charged or uncharged;
- (2) the property may be subject to forfeiture proceedings;
- (3) the property is contraband or may contain contraband; or
- (4) the property is subject to other lawful retention.
- (b) The court shall make findings on each of these issues as part of its order. If the property is ordered returned, the petitioner shall not be liable for any storage costs incurred from the date the petition was filed. If the petition is denied, the court may award reasonable costs and attorney fees. After the trial for which the property was being held as potential evidence, and the expiration date for all associated appeals, the property or thing shall, unless otherwise subject to lawful detention, be returned to its owner or any other person entitled to possess it. Any property or thing seized may be destroyed or otherwise disposed of under the direction of the court. Any money found in gambling devices when seized shall be paid into the county treasury. If the gambling devices are seized by a police officer of

a municipality, the money shall be paid into the treasury of the municipality.

#### M.S.A. § 626.05 Definitions

Subdivision 1. Search warrant. A "search warrant" is an order in writing, in the name of the state, signed by a court other than a court exercising probate jurisdiction, directed to a peace officer, commanding the peace officer to make a search as authorized by law and hold any item seized, subject to the order of a court.

Subd. 2. Peace officer. The term "peace officer," as used in sections 626.04 to 626.17, means a person who is licensed as a peace officer in accordance with section 626.84, subdivision 1, and who serves as a sheriff, deputy sheriff, police officer, conservation officer, agent of the Bureau of Criminal Apprehension, agent of the Division of Alcohol and Gambling Enforcement, peace officer of the Commerce Fraud Bureau, University of Minnesota peace officer, Metropolitan Transit police officer, Minnesota Department of Corrections Fugitive Apprehension Unit member, State Patrol trooper as authorized by section 299D.03, or railroad peace officer as authorized by section 219.995 and United States Code, title 49, section 28101.

Subd. 3. Crime. The term "crime," as used in sections 626.04 to 626.17, includes (1) those offenses defined as crimes in section 609.02, subdivision 1, and (2) all violations of municipal ordinances for which a misdemeanor sentence may be imposed.



**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

# SEARCH WARRANT

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