

South Dakota

SEARCH WARRANT GUIDE

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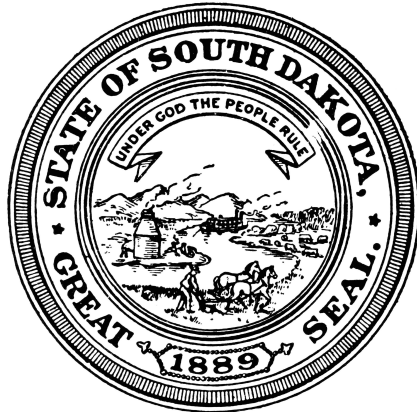
Fourth Amendment
the people to be secure in their persons, papers, and effects against unreasonable searches and seizures, shall not be
Warranted



Blue to Gold

South Dakota Search Warrant Guide

A REFERENCE FOR LAW ENFORCEMENT



Anthony Bandiero, JD, ALM

Blue to Gold Law Enforcement Training, LLC
SPOKANE, WASHINGTON

South Dakota Search Warrant Guide

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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 committing magistrate in the county where the property sought is located (§ 23A-35-2); a magistrate judge (§ 16-12B-5)
3) Is an affidavit necessary?	Yes (S.D. Const. art. VI, § 11; § 23A-35-4)
4) Can sworn oral testimony replace an affidavit?	Yes, if recorded and made part of the affidavit (§ 23A-35-4)
5) Are there special provisions for obtaining a warrant by telephone?	Yes, electronic transmission okay where circumstances make it reasonable to do so. Oral statement must be recorded, transcribed and certified by the issuing magistrate. Magistrate shall authorize his signature on the duplicate original warrant and shall record the time of issuance of the duplicate original warrant on the original

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	warrant. Magistrate may receive affidavit by fax and may issue warrant by fax with the same force and effect as original (§§ 23A-35-4.2, 23A-35-5, 23A-35-6)
6) What property can be seized?	<ul style="list-style-type: none">—Evidence of a crime—Contraband, fruits of crime, things otherwise criminally possessed—Designed or intended for use or used in a crime (§ 23A-35-3)
7) Contents of application	
a) Who or what is to be searched?	Yes
b) State the items being sought?	Yes
c) State the basis for probable cause?	Yes. Grounds for issuance must be established in the affidavits (§ 23A-35-4)
d) Are there additional requirements?	Affidavit may be sent to magistrate by fax and search warrant may be issued by same method (§ 23A-35-4.2) Note: Form 35 for affidavit

The Search Warrant

1) Does it require a standard format?	Yes (Form 36); Affidavit (Form 35); Warrant on Oral Testimony (Form 37);
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	Inventory (Form 39)
2) Required contents	<ul style="list-style-type: none">—Direction to a law enforcement officer—Command to execute within time period specified—Name of affiant(s)—Person/place to be searched—Property to be seized—Command to execute in the daytime (unless otherwise authorized)—Committing magistrate to whom warrant shall be returned—Date of issuance—Signature of issuing magistrate Telephone warrants only: <ul style="list-style-type: none">—Time of issuance (§§ 23A-35-4; 23A-35-6; Form 36) Fax warrants: <ul style="list-style-type: none">—Executing officer must receive proof that committing magistrate has signed warrant (§ 23A-35-4.2) NOTE: Special provisions for contents of affidavits and warrants for tracking devices,

including GPS, cellular devices,
and electronic video
surveillance (§ 23A-35-4.3)

Execution of Search Warrant

1) How soon must search warrant be executed?	Within time provided in the warrant (not to exceed 10 days) (§ 23A-35-4; Form 36)
2) Who may execute?	A law enforcement officer (§ 23A-35-4)
3) Where is the search warrant applicable?	Within the territorial jurisdiction of the issuing magistrate (§ 23A-35-2)
4) When may warrant be executed?	
a) Is execution limited during daytime?	Yes, 8 A.M. to 8 P.M. (§ 23A-35-4; Form 36)
b) Is execution limited during nighttime?	Yes, if reasonable cause is shown and nighttime execution is expressly authorized in the warrant (§ 23A-35-4) Note: Special provision for Sunday search
5) Is forced or unannounced entry allowed under the warrant?	Executing officer may break open any building or structure if, after notice of his authority and purpose, he is refused admittance Executing officer may break open any building or structure to liberate any person assisting him in execution of the warrant



PART II

SDCL § 23A-35-1

Definition of search warrant

A search warrant is a written order, issued in the name of the state, signed by a committing magistrate, directed to a law enforcement officer, commanding him to search for designated personal property and to bring it to the magistrate.

SDCL § 23A-35-2

(Rule 41(a)) Magistrate issuing warrant--Officer requesting

A search warrant authorized by this chapter may be issued by a committing magistrate in the county where the property sought is located, on the request of a law enforcement officer or prosecuting attorney.

SDCL § 23A-35-3

Property for which warrant may be issued

A warrant may be issued under this chapter to search for and seize any:

- (1) Property that constitutes evidence of the commission of a criminal offense;
- (2) Contraband, the fruits of crime, or things otherwise criminally possessed; or
- (3) Property designed or intended for use in, or which is or has been used as the means of, committing a criminal offense.

SDCL § 23A-35-4

**Affidavits furnishing probable cause for warrant--
Examination of witnesses by magistrate--Record of
proceedings--Contents of warrant**

A warrant shall be issued only on evidence set forth in an affidavit or affidavits presented to a committing magistrate, which establishes the grounds for issuing the warrant. If the committing magistrate is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property to be seized and naming or describing the person or place to be searched. The finding of probable cause may be based upon hearsay evidence in whole or in part. Before ruling on a request for a warrant the committing magistrate may require the affiant to appear personally and may examine under oath the affiant and any witnesses he may produce. Such proceeding shall be taken down by a court reporter, stenographer, or recording equipment and made part of the affidavit. The warrant shall be directed to a law enforcement officer. It shall command the officer to search, within a specified period of time not to exceed ten days, the person or place named for the property specified. The warrant shall be served in the daytime, unless the committing magistrate, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at night. It shall designate a committing magistrate to whom it shall be returned.



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

South Dakota SEARCH WARRANT GUIDE

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