Wisconsin

# SEARCH WARRANT GUIDE

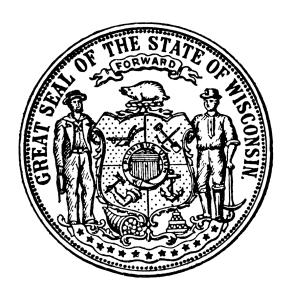
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# Wisconsin Search Warrant Guide

A REFERENCE FOR LAW ENFORCEMENT



Anthony Bandiero, JD, ALM

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— Anthony Bandiero

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

Application Procedure		
1) Who may apply?	No express provision	
2) Who has the authority to issue?	A judge (§ 968.12(1))	
3) Is an affidavit necessary?	Yes, or sworn complaint or testimony recorded by phonographic reporter (§ 968.12(2))	
	Note: Illustrative form for affidavit (§ 968.23)	
4) Can sworn oral testimony replace an affidavit?	Yes (§ 968.12(2))	
5) Are there special provisions for obtaining a warrant by telephone?	Yes	
	Person requesting warrant may swear to the complaint or affidavit before a notarial officer or before a judge, or a judge may place a person under oath via telephone, radio, or other means of electronic communication, without the	

requirement of face-to-face contact, to swear to the complaint or affidavit. Judge shall indicate on warrant that the person so swore to the complaint or affidavit. (§ 968.12(2))

Applicant shall prepare testimony on duplicate original warrant and read it verbatim to the judge who shall record it verbatim on the original warrant. If the judge finds probable cause for issuance of the warrant, the judge shall authorize his or her signature on the duplicate original warrant and the person requesting the warrant shall also sign his or her name. Judge shall sign original warrant and enter time of issuance on it. Electronic signatures may be used.

(§§ 968.12(3)(b), 968.12(3)(c), 968.12(5))

Note: telephonic statement shall be made under oath, recorded by stenographic reporter or voice recording device, transcribed and its accuracy certified by the judge; transcript to be filed with the court (§ 968.12(3)(d))

6) What property can be	—Contraband	
seized?	<ul> <li>Fruit of crime or operating under influence of intoxicant or used in a crime</li> </ul>	
	<ul><li>Evidence of a crime or operating under influence of intoxicant (except documents)</li></ul>	
	<ul> <li>Documents as evidence of crime if probable cause is shown that they are possessed by person reasonably suspected to be concerned in the commission of that crime</li> </ul>	
	(§ 968.13)	
7) Contents of application		
a) Who or what is to be searched?	Yes (§ 968.23)	
b) State the items being sought?	Yes (§ 968.23)	
c) State the basis for probable cause?	Yes (§ 968.23)	
d) Are there additional requirements?	Affidavit (§ 968.23)	
	Note: illustrative form for affidavit	
The Search Warrant		
1) Does it require a standard format?	Yes (§ 968.23)	
	Note: the forms are merely	

	illustrative	
2) Required contents	—County of issuance	
	-Name of issuing court	
	-Direction to executing officer	
	-Names of affiants	
	<ul><li>Recital of facts establishing probable cause</li></ul>	
	<ul><li>Alleged crime that is basis for warrant</li></ul>	
	-Premises to be searched	
	—Things to be seized	
	<ul><li>Court before which warrant and property is to be brought</li></ul>	
	—Date of issuance	
	<ul><li>Command that warrant is to be returned within 48 hours of execution</li></ul>	
	<ul><li>Indorsement of executing officer</li></ul>	
	—Time of issuance	
	(§ 968.12(3)(c), 968.23)	
Execution of Search Warrant		
1) How soon must search warrant be executed?	Within 5 days after date of issuance (§ 968.15)	
	Note: unexecuted warrants must be returned to issuing judge	



### W.S.A. 968.10 Searches and seizures; when authorized

A search of a person, object or place may be made and things may be seized when the search is made:

- (1) Incident to a lawful arrest;
- (2) With consent;
- (3) Pursuant to a valid search warrant;
- (4) With the authority and within the scope of a right of lawful inspection;
- (5) Pursuant to a search during an authorized temporary questioning as provided in s. 968.25; or
- (6) As otherwise authorized by law.

#### W.S.A. 968.11 Scope of search incident to lawful arrest

When a lawful arrest is made, a law enforcement officer may reasonably search the person arrested and an area within such person's immediate presence for the purpose of:

- (1) Protecting the officer from attack;
- (2) Preventing the person from escaping;
- (3) Discovering and seizing the fruits of the crime; or
- (4) Discovering and seizing any instruments, articles or things which may have been used in the commission of, or which may constitute evidence of, the offense.

#### W.S.A. 968.12 Search warrant

- (1) Description and issuance. A search warrant is an order signed by a judge directing a law enforcement officer to conduct a search of a designated person, a designated object or a designated place for the purpose of seizing designated property or kinds of property. A judge shall issue a search warrant if probable cause is shown.
- (2) Warrant upon affidavit. A search warrant may be based upon sworn complaint or affidavit, or testimony recorded by a phonographic reporter or under sub. (3)(d), showing probable cause therefor. The complaint, affidavit or testimony may be upon information and belief. The person requesting the warrant may swear to the complaint or affidavit before a notarial officer authorized under ch. 140 to take acknowledgments or before a judge, or a judge may place a person under oath via telephone, radio, or other means of electronic communication, without the requirement of face-to-face contact, to swear to the complaint or affidavit. The judge shall indicate on the search warrant that the person so swore to the complaint or affidavit.
- (3) Warrant upon oral testimony. (a) General rule. A search warrant may be based upon sworn oral testimony communicated to the judge by telephone, radio or other means of electronic communication, under the procedure prescribed in this subsection.
  - (b) Application and issuance.
    - 1. "Duplicate originals." The person who is requesting the warrant may prepare a duplicate original warrant and read the duplicate original warrant, verbatim, to the judge. The judge shall enter, verbatim, what is read on the original warrant. The judge may direct that the

warrant be modified. If the judge determines that there is probable cause for the warrant, the judge shall order the issuance of a warrant by directing the person requesting the warrant to sign the judge's name on the duplicate original warrant. In addition, the person shall sign his or her own name on the duplicate original warrant. The judge shall immediately sign the original warrant and enter on the face of the original warrant the exact time when the warrant was ordered to be issued.

- 2. "Electronic transmission." The person who is requesting the warrant may sign his or her own name on the warrant and transmit it to the judge. The judge may modify the warrant. If the judge determines that there is probable cause for the warrant, the judge shall order the issuance of a warrant by signing the warrant and entering on the face of the warrant the exact time when the warrant was ordered to be issued. The judge shall immediately transmit the signed warrant to the person who requested it.
- (c) Probable cause. The finding of probable cause for a warrant upon oral testimony shall be based on the same kind of evidence as is sufficient for a warrant upon affidavit.
- (d) Recording and certification of testimony. When a caller informs the judge that the purpose of the call is to request a warrant, the judge shall place under oath each person whose testimony forms a basis of the application and each person applying for the warrant. The judge or requesting person shall arrange for all sworn testimony to be recorded either by a court reporter or by means of a voice recording device. The



**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 G U I D E

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