

North Dakota

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 searched and seized, no Warrants*



Blue to Gold

North Dakota Search Warrant Guide

A REFERENCE FOR LAW ENFORCEMENT



Anthony Bandiero, JD, ALM

Blue to Gold Law Enforcement Training, LLC
SPOKANE, WASHINGTON

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North Dakota Search Warrant Guide
ISBN 979-8292810506
Last updated 7-2025

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— Anthony Bandiero

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PART I

Common Search Warrant Questions

Application Procedure

1) Who may apply?	No express provision
2) Who has the authority to issue?	Any state or federal magistrate acting within or for the territorial jurisdiction where the property sought is located or from which it has been removed (§ 29-29-01; N.D. R. Crim. P. 41(a))
3) Is an affidavit necessary?	Yes (N.D. R. Crim. P. 41(c)(1))
4) Can sworn oral testimony replace an affidavit?	Yes, if recorded by a court reporter or voice recording device (N.D. R. Crim. P. 41(c)(2))
5) Are there special provisions for obtaining a warrant by telephone?	Applicant shall prepare duplicate original warrant and read it verbatim to the magistrate who shall record it verbatim on original warrant. Such testimony shall be made under oath and recorded using a voice recording device or using verbatim stenographic or longhand notes. Transcription

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	of the voice recording or stenographic notes shall be made and its accuracy certified by the magistrate. Magistrate shall sign and enter the time of issuance on the original warrant (N.D. R. Crim. P. 41(c)(2))
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, intended for use, or used in a crime—Persons for whose arrest there is probable cause or who are unlawfully restrained (N.D. R. Crim. P. 41(b))—Electronic storage media (§§ 29-29.1-01.1(3), 29-29.1-02(1))
7) Contents of application	
a) Who or what is to be searched?	No express provision
b) State the items being sought?	No express provision
c) State the basis for probable cause?	Yes. Must be described in the affidavit or other testimony (N.D. R. Crim. P. 41(c)(1))
d) Are there additional requirements?	Affidavit or other testimony (N.D. R. Crim. P. 41(c)(1))

The Search Warrant

1) Does it require a standard format?	No (Illustrative form: N.D. R. Crim. P. 41, Form 10)
2) Required contents	<ul style="list-style-type: none">—Signature of issuing magistrate—Person/property to be seized—Person/place to be searched—Direction to executing officer—Time within which warrant is to be served (not to exceed 10 days) <p>(§ 29-29-01; N.D. R. Crim. P. 41(c)(1))</p> <p>Optional:</p> <ul style="list-style-type: none">—State or federal magistrate to whom warrant must be returned (if not to be returned to issuing magistrate) <p>Telephone warrants only:</p> <ul style="list-style-type: none">—Time of issuance <p>(N.D. R. Crim. P. 41(c)(2)(f))</p>

Execution of Search Warrant

1) How soon must search warrant be executed?	Within time designated in the warrant (not to exceed 10 days) (§ 29-29.1-04; N.D. R. Crim. P. 41(c)(1)(D))
2) Who may execute?	A peace officer (§ 29-29-01; N.D. R. Crim. P. 41(c)(1)) or any

	officer of the bureau of criminal investigation designated by the attorney general (§ 19-03.1-32(1)(b)); police officers for warrants issued by municipal judge within the city for violation of city ordinance (§ 40-20-05(3)); highway patrol officers for warrants relating to enforcement of laws regulating vehicles or highways (§ 39-03-09(6))
3) Where is the search warrant applicable?	Within the territorial jurisdiction of the issuing magistrate or for the territorial jurisdiction where the property or person sought is located or from which it has been removed (N.D. R. Crim. P. 41(a))
4) When may warrant be executed?	
a) Is execution limited during daytime?	Yes. Between 6:00 A.M. and 10:00 P.M. (N.D. R. Crim. P. 41(c)(1), 41(h))
b) Is execution limited during nighttime?	Yes. If reasonable cause for such authority is shown and the warrant authorizes nighttime execution (N.D. R. Crim. P. 41(c)(1))
5) Is forced or unannounced entry allowed under the	Executing officer may break any outer or inner door or



PART II

NDCC, 29-29-01 Search warrant defined

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

NDCC, 29-29-08
Execution of warrant--Use of force

An officer directed to serve a search warrant may break open an outer or inner door or window of a house, or any part of the house, or anything therein, to execute the warrant:

1. If, after notice of the officer's authority and purpose, the officer is refused admittance; or
2. Without notice of the officer's authority and purpose if the warrant was issued by a magistrate who is learned in the law and who has inserted a direction therein that the officer executing it shall not be required to give such notice.

The magistrate may so direct only upon written or recorded oral petition and proof under oath, to the magistrate's satisfaction, that the property sought may be easily and quickly destroyed or disposed of, or that danger to the life or limb of the officer or another may result, if such notice were to be given.

NDCC, 29-29-09

Liberating self or assistant--Use of force

To execute a search warrant, an officer may break open any outer or inner door or window of a house for the purpose of liberating a person who, having entered to aid the officer in the execution of the warrant, is detained therein, or when necessary for the officer's own liberation.

NDCC, 29-29-18

**Causing issuance of search warrant on false information--
Penalty**

A person who recklessly and without probable cause causes a search warrant to be issued and executed is guilty of a class A misdemeanor.



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

North Dakota
SEARCH WARRANT
GUIDE

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