

Utah

SEARCH WARRANT GUIDE

ANTHONY BANDIERO, ESQ.

*4th Amendment
the people to be secure in
their persons, papers, and effects, against
unreasonable searches and seizures, shall not
be violated, and no Warrants shall issue, but upon
probable cause, supported by Oath or affirmation,
and particularly describing the place to be searched,
and the persons or things to be seized.*



Blue to Gold

Utah Search Warrant Guide

A REFERENCE FOR LAW ENFORCEMENT



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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?	No express provision
2) Who has the authority to issue?	Magistrate (Utah R. Crim. P. 40(a)(3))
3) Is an affidavit necessary?	Issuance of a search warrant requires probable cause supported by oath or affirmation (Utah R. Crim. P. 40(c)(1))
4) Can sworn oral testimony replace an affidavit?	No express provision
5) Are there special provisions for obtaining a warrant by telephone?	Yes, where reasonable circumstances exist, a search warrant may be issued upon sworn or affirmed testimony remotely transmitted by voice, image, text, or any combination of those, or by other means between the magistrate and officer or prosecuting attorney requesting the warrant. The testimony and content of the warrant must be recorded. (Utah R. Crim. P. 40(l))

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6) What property can be seized?	<ul style="list-style-type: none">—Unlawfully acquired or possessed—Used or possessed for use in committing or concealing a crime—Evidence of illegal conduct (Utah R. Crim. P. 40(b); Utah Code Ann. § 77-11a-201(1))
7) Contents of application	
a) Who or what is to be searched?	Yes (Utah R. Crim. P. 40(c)(1))
b) State the items being sought?	Yes (Utah R. Crim. P. 40(c)(1))
c) State the basis for probable cause?	Yes (Utah R. Crim. P. 40(c)(1))
d) Are there additional requirements?	No

The Search Warrant

1) Does it require a standard format?	No
2) Required contents	<ul style="list-style-type: none">—Direction to executing officer—Thing, place or person to be searched—Property or evidence to be seized (Utah R. Crim. P. 40(a)(3))

Execution of Search Warrant

1) How soon must search warrant be executed?	Within 10 days from date of issuance (Utah R. Crim. P. 40(e)(2))
2) Who may execute?	A peace officer or any other person requested by officer to assist (Utah R. Crim. P. 40(e)(3); Utah Code Ann. § 77-23-205)
3) Where is the search warrant applicable?	No express provision
4) When may warrant be executed?	
a) Is execution limited during daytime?	Yes (Utah R. Crim. P. 40(e)(1)); Daytime is 6 a.m. to 10 p.m. local time (Utah R. Crim. P. 40(a)(1); §§ 77-7-5(1), 77-7-8(1), 77-7-8.1(1))
b) Is execution limited during nighttime?	Yes, if sufficient grounds to believe nighttime execution is necessary to prevent destruction or concealment of property or for other good reason and the warrant expressly authorizes (Utah R. Crim. P. 40(e)(1); §§ 77-8(9), 77-7-8.1(4)(b))
5) Is forced or unannounced entry allowed under the warrant?	Peace officer executing a lawful knock and announce warrant may forcibly enter premises. Officer must: wear readily identifiable markings including badge and vest or

clothing with distinguishing label or other writing identifying as law enforcement officer; audibly identify as law enforcement officer; knock and demand admission more than once; wait reasonable time for occupant to admit access; and explain the purpose for which admission is desired. Officer may use only force which reasonable and necessary to forcibly enter premises. Forcible entry not allowed for alleged possession or use of controlled substance or drug paraphernalia.

(Utah Code Ann. 77-7-8, 77-7-8.1, 77-23-210)

Special reporting required after execution of search warrant using forcible entry (§ 77-7-8.5)

6) Are there limitations or specific rules regarding the search?

Where search is for evidence of a crime and item sought is possessed by any person for whom there is not probable cause linking him to the crime, no search warrant shall issue for that item unless it is likely that such evidence would be destroyed or concealed if sought by subpoena. Issuing



- vehicles, vessels, or outboard motors (§ 41-1a-1101)
 - livestock (§ 76-6-111)
 - 5) Issuance of search warrants by juvenile court (§ 78A-6-106)
 - 6) Warrantless searches of parolees (§ 77-23-301)
 - 7) Warrantless removal of neglected child from child's home (§ 78A-6-902)
 - 8) Warrantless access to medical cannabis card after law enforcement encounter (§ 26-61a-103(g)(I))
 - 9) Reporting warrant information for electronic recording (§ 53-10-213)
 - 10) Police misconduct searching without warrant or lawful exception to warrant requirement (§ 53-6-210.5(d)(ii))
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PART II

U.C.A. 1953 § 77-23-205 Officer may request assistance

An officer who is serving a search warrant may request other persons to assist in conducting the search.

U.C.A. 1953 § 77-23-210

Force used in executing a search warrant--When notice of authority is required as a prerequisite

(1)(a) No later than July 1, 2015, any law enforcement agency that seeks a warrant under this section shall comply with guidelines and procedures which are, at a minimum, in accordance with state law and model guidelines and procedures recommended by the Utah Peace Officer Standards and Training Council created in Section 53-6-106.

(b) Written policies adopted pursuant to this section shall be subject to public disclosure and inspection, in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

(2) When a search warrant has been issued authorizing entry into any building, room, conveyance, compartment, or other enclosure, the officer executing the warrant may enter:

(a) if, after giving notice of the officer's authority and purpose, there is no response or the officer is not admitted with reasonable promptness; or

(b) without notice of the officer's authority and purpose as provided in Subsection (3).

(3)(a) The officer may enter without notice only if:

(i) there is reasonable suspicion to believe that the notice will endanger the life or safety of the officer or another person;

(ii) there is probable cause to believe that evidence may be easily or quickly destroyed; or

(iii) the magistrate, having found probable cause based upon proof provided under oath that the object of the search may be easily or quickly destroyed, or having found reason to believe that physical harm may result to any person if notice were given, has directed that the officer need not give notice of authority and purpose before entering the premises to be searched under the Rules of Criminal Procedure; or

(iv) the officer physically observes and documents a previously unknown event or circumstance at the time the warrant is being executed which creates probable cause to believe the object of the search is being destroyed, or creates reasonable suspicion to believe that physical harm may result to any person if notice were given.

(b) The officer shall identify himself or herself and state the purpose for entering the premises as soon as practicable after entering.

(4) An officer executing a warrant under this section may use only that force which is reasonable and necessary to execute the warrant.

(5) An officer executing a warrant under this section shall wear readily identifiable markings, including a badge and vest or clothing with a distinguishing label or other writing which indicates that he or she is a law enforcement officer.

(6)(a) An officer executing a warrant under this section shall comply with the officer's employing agency's body worn camera policy when the officer is equipped with a body-worn camera.

(b) The employing agency's policy regarding the use of body-worn cameras shall include a provision that an officer executing a warrant under this section shall wear a body-worn

camera when a camera is available, except in exigent circumstances where it is not practicable to do so.

(7)(a) The officer shall take reasonable precautions in execution of any search warrant to minimize the risks of unnecessarily confrontational or invasive methods which may result in harm to any person.

(b) The officer shall minimize the risk of searching the wrong premises by verifying that the premises being searched is consistent with a particularized description in the search warrant, including such factors as the type of structure, the color, the address, and orientation of the target property in relation to nearby structures as is reasonably necessary.

(8) Notwithstanding any provision in this chapter, a warrant authorizing forcible entry without prior announcement may not be issued under this section, solely for:

(a) the alleged possession or use of a controlled substance; or

(b) the alleged possession of drug paraphernalia as provided in Section 58-37a-3.



PART III

Utah Rules of Criminal Procedure Rule 40 Search Warrants

(a) Definitions. As used in this rule:

(1) “Daytime” means the hours beginning at 6 a.m. and ending at 10 p.m. local time.

(2) “Recorded” or “recording” includes the original recording of testimony, a return or other communication or any copy, printout, facsimile, or other replication that is intended by the person making the recording to have the same effect as the original.

(3) “Search warrant” is an order issued by a magistrate in the name of the state and directed to a peace officer, describing with particularity the thing, place, or person to be searched and the property or evidence to be seized and includes an original written or recorded warrant or any copy, printout, facsimile or other replica intended by the magistrate issuing the warrant to have the same effect as the original.

(b) Grounds for Issuance. Property or evidence may be seized pursuant to a search warrant if there is probable cause to believe it:

(1) was unlawfully acquired or is unlawfully possessed;

(2) has been used or is possessed for the purpose of being used to commit or conceal the commission of an offense; or

(3) is evidence of illegal conduct.

(c) Conditions Precedent to Issuance.

(1) A search warrant shall not issue except upon probable cause, supported by oath or affirmation, and shall particularly describe the person or place to be searched and the person, property, or evidence to be seized.

(2) If the item sought to be seized is evidence of illegal conduct, and is in the possession of a person or entity for which there is insufficient probable cause shown to the magistrate to believe that such person or entity is a party to the alleged illegal conduct, no search warrant shall issue except upon a finding by the magistrate that the evidence sought to be seized cannot be obtained by subpoena, or that such evidence would be concealed, destroyed, damaged, or altered if sought by subpoena. If such a finding is made and a search warrant issued, the magistrate shall direct upon the warrant such conditions that reasonably afford protection of the following interests of the person or entity in possession of such evidence:

(A) protection against unreasonable interference with normal business;

(B) protection against the loss or disclosure of protected confidential sources of information; or

(C) protection against prior or direct restraints on constitutionally protected rights.

(d) Search Warrant Served in Readable Form. A copy of a search warrant shall be served in a readable form upon the person or place to be searched.

(e) Time for Service--Officer May Request Assistance.

(1) The magistrate shall insert a direction in the warrant that it be served in the daytime, unless the affidavit or recorded testimony states sufficient grounds to believe a search is necessary in the night to seize the property prior to its being concealed, destroyed, damaged, altered, or for other good reason; in which case the magistrate may insert a direction that it be served any time of the day or night.

(2) The search warrant shall be served within ten days from the date of issuance. Any search warrant not executed within this time shall be void and shall be returned to the court or magistrate as not executed.

(3) An officer may request other persons to assist in conducting the search.

(f) Receipt for Property Taken. The officer, when seizing property pursuant to a search warrant, shall give a receipt to the person from whom it was seized or in whose possession it was found. If no person is present, the officer shall leave the receipt in the place where the property was found.

(g) Return--Inventory of Property Taken. The officer, after execution of the warrant, shall promptly make a signed return of the warrant to

a magistrate of the issuing court and deliver a written or recorded inventory of anything seized, stating the place where it is being held.

(h) Safekeeping of Property. The officer seizing the property shall be responsible for its safekeeping and maintenance until the court otherwise orders.

(i) Magistrate to Retain and File Copies--Documents Sealed for Twenty Days--Forwarding of Record to Court with Jurisdiction.

(1) At the time of issuance, the magistrate shall retain and seal a copy of the search warrant, the application and all affidavits or other recorded testimony on which the warrant is based and shall, within a reasonable time, file those sealed documents in court files which are secured against access by the public. Those documents shall remain sealed until twenty days following the issuance of the warrant unless that time is extended or reduced under Section (m). Unsealed search warrant documents shall be filed in the court record available to the public.

(2) Sealing and retention of the file may be accomplished by:

(A) placing paper documents or storage media in a sealed envelope and filing the sealed envelope in a court file not available to the public;

(B) storing the documents by electronic or other means under the control of the court in a manner reasonably designed to preserve the integrity of the documents and protect them against disclosure to the public during the period in which they are sealed; or



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

A faint, light-colored outline of the state of Utah is positioned behind the word "Utah" and the main title.

Utah SEARCH WARRANT GUIDE

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