

Washington

SEARCH WARRANT GUIDE

ANTHONY BANDIERO, ESQ.

*Amendment
The people to be secure
papers, and effects, from
searches and seizures, shall
no Warrants*

Washington Search Warrant Guide

A REFERENCE FOR LAW ENFORCEMENT



Anthony Bandiero, JD, ALM

Blue to Gold Law Enforcement Training, LLC
SPOKANE, WASHINGTON

Copyright © 2024 by Anthony Bandiero.

All rights reserved. No part of this publication may be reproduced, distributed or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher, except in the case of brief quotations embodied in critical reviews and certain other noncommercial uses permitted by copyright law. For permission requests, write to the publisher, addressed "Attention: Permissions Coordinator," at the address below.

Blue to Gold, LLC
1818 West Francis Ave #101 Spokane, WA 99205
info@bluetogold.com
www.bluetogold.com

Ordering Information:

Quantity sales. Special discounts are available on quantity purchases by government agencies, police associations, and others. For details, contact us at the address above.

Washington Search Warrant Guide
ISBN 979-8592919831
Last updated 12-2024

Additional Training Resources

We offer the Nation's best search and seizure training. View our training calendar!

Visit bluetogold.com

Is your agency interested in hosting one of our training classes?

Call 888-579-7796 or email training@bluetogold.com

Want to purchase this book for your agency?

Call 888-579-7796 for bulk discount rates

— Anthony Bandiero

TABLE OF CONTENTS



PART I

Common Search Warrant Questions

| | |
|------------------------------------|---|
| Application Procedure | 1 |
| The Search Warrant | 2 |
| Execution of Search Warrant | 3 |
| Return and Records Procedure | 6 |



PART II

Wash. Sup. Ct. Rule Rule Related to Arrest and Search Warrants

| | |
|----------------------------------|----|
| CrR 2.3 Search and Seizure | 12 |
|----------------------------------|----|



PART III

Wash. Rev. Code Related to Arrest and Search Warrants

| | |
|--|----|
| 10.79.015 Other grounds for issuance of search warrant..... | 15 |
| 10.79.020 To whom directed-Contents..... | 17 |
| 10.79.035 Issuance of search warrants by magistrates..... | 18 |
| 10.79.040 Search without warrant unlawful-Penalty..... | 19 |
| 10.79.050 Restoration of stolen property to owner-Duties of officers..... | 20 |
| 10.79.060 Strip, body cavity searches-Legislative intent..... | 21 |
| 10.79.070 Strip, body cavity searches-Definitions..... | 22 |
| 10.79.080 Strip, body cavity searches-Warrant, authorization, report..... | 23 |
| 10.79.090 Strip, body cavity searches-Medical care not precluded..... | 25 |
| 10.79.100 Strip, body cavity searches-Standards for conducting... | 26 |
| 10.79.110 Strip, body cavity searches-Actions for damages, injunctive relief | 28 |

Washington Search Warrant Laws

10.79.120 Strip, body cavity searches-Application of RCW
10.79.130 through 10.79.160..... 29

10.79.130 Strip, body cavity searches-Warrant required
Exceptions 30

.....

10.79.140 Strip, body cavity searches-Uncategorized searches-
Determination of reasonable suspicion, probable
cause-Less- intrusive alternatives..... 31

10.79.150 Strip, body cavity searches-Written record required,
contents-Unnecessary persons prohibited..... 33

10.79.160 Strip, body cavity searches-Physical examinations for
public health purposes excluded..... 35

10.79.170 Strip, body cavity searches-Nonliability when search
delayed..... 36



PART I

Common Search Warrant Questions

Application Procedure

| | |
|---|--|
| 1) Who may apply? | A peace officer or prosecuting attorney (Wash. R. Crim. P. 2.3(a)) |
| 2) Who has the authority to issue? | R. Crim. P. 2.3(a); criminal commissioners appointed in counties of more than 400,000 (§ 2.24.010(2)(a)) |
| 3) Is an affidavit necessary? | Yes (Wash. R. Crim. P. 2.3(c)) |
| 4) Can sworn oral testimony replace an affidavit? | Yes, if recorded (Wash. R. Crim. P. 2.3(c)) |
| 5) Are there special provisions for obtaining a warrant by telephone? | Yes. Telephonic statement must be electronically recorded (Wash. R. Crim. P. 2.3(c)); electronic signatures (§ 9A.72.085) |
| 6) What property can be seized? | <ul style="list-style-type: none">—Counterfeit coin, forged instruments and tools and machines for making them—Gaming apparatus—Evidence of a felony—Contraband, fruits of crime, things otherwise criminally |

Washington Search Warrant Laws

| | |
|--|---|
| | possessed —Weapons, instrumentalities used or which reasonably appear about to be used in a crime —Persons for whose arrest there is probable cause or who are unlawfully restrained (§ 10.79.015; Wash. R. Crim. P. 2.3(b)) |
| <hr/> 7) Contents of application <hr/> | |
| 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 contained in the affidavit or sworn testimony (Wash. R. Crim. P. 2.3(c)) |
| d) Are there additional requirements? | Affidavit or sworn testimony (Wash. R. Crim. P. 2.3(c)) |

The Search Warrant

| | |
|---------------------------------------|--|
| 1) Does it require a standard format? | No |
| 2) Required contents | —County of issuance —Direction to executing officer —Person/place to be searched —Property/person to be seized —Summary of evidence relied |

Washington Search Warrant Laws

upon in addition to the affidavits

—Time period in which to execute search

—Court before whom property and warrant is to be returned

(§ 10.79.020; Wash. R. Crim. P. 2.3(c))

Execution of Search Warrant

1) How soon must search warrant be executed?

Within time period specified in the warrant (not to exceed 10 days) (Wash. R. Crim. P. 2.3(c))

2) Who may execute?

The sheriff, deputy sheriff, or constable of the county (§ 10.79.020); agents of the Gambling Commission (§ 9.46.210(3)); Animal Control officers (§ 16.52.015(3)(e))

A peace officer (Wash. R. Crim. P. 2.3(c))

3) Where is the search warrant applicable?

If the jurisdiction of a district or municipal court encompasses all or part of more than one county, a judge for that district or municipal court may issue a search warrant for any person or evidence located anywhere within the state as long as the county in which the offense is alleged to have occurred is one of the counties encompassed

Washington Search Warrant Laws

| | |
|---|---|
| | within that court's jurisdiction (§ 2.20.030) |
| 4) When may warrant be executed? | |
| a) Is execution limited during daytime? | Yes (Wash. R. Crim. P. 2.3(c)) |
| b) Is execution limited during nighttime? | Yes (Wash. R. Crim. P. 2.3(c)) |
| 5) Is forced or unannounced entry allowed under the warrant? | Officer may use physical force against person when necessary to execute search warrant (§ 10.120.020(1)(g)) |
| 6) Are there limitations or specific rules regarding the search? | <p>No search warrant for evidence of a crime to be seized from premises of news media entities unless:</p> <ul style="list-style-type: none">—There is probable cause to believe that the person in possession of the evidence may be involved in the crime under investigation or—There is probable cause to believe that the evidence sought will be destroyed or hidden if subpoena duces tecum procedures are followed <p>(§ 10.79.015(3); Wash. R. Crim. P. 2.3(f))</p> |
| 7) Is leaving documentation at the scene of the search mandatory? | —Copy of warrant |



PART II

Wash. Sup. Ct. Rule CrR 2.3 Search and Seizure

(a) Authority to Issue Warrant. A search warrant authorized by this rule may be issued by the court upon request of a peace officer or a prosecuting attorney.

(b) Property or Persons Which May Be Seized With a Warrant. A warrant may be issued under this rule to search for and seize any (1) evidence of a crime; or (2) contraband, the fruits of crime, or things otherwise criminally possessed; or (3) weapons or other things by means of which a crime has been committed or reasonably appears about to be committed; or (4) person for whose arrest there is probable cause, or who is unlawfully restrained.

(c) Issuance and Contents. A search warrant may be issued only if the court determines there is probable cause for the issuance of a warrant. The evidence in support of the warrant must be in the form of affidavits, a statement as provided in GR 13, or sworn testimony establishing the grounds for issuing the warrant and may be provided to the court by any reliable means. Any sworn testimony must be recorded and made part of the court record and shall be transcribed if requested by a party if there is a challenge to the validity of the warrant or if ordered by the court. The evidence in support of the finding of probable cause shall be preserved and shall be subject to constitutional limitations for such determinations and may be hearsay

in whole or in part. If the court finds that probable cause for the issuance of a warrant exists, it shall issue a warrant or direct an individual whom it authorizes for such purpose to affix the court's signature to a warrant identifying the property or person and naming or describing the person, place or thing to be searched. The court's authorization may be communicated by any reliable means. A record shall be made of any additional evidence on which the court relies. The warrant shall be directed to any peace officer and shall command the officer to search, within a specified period of time not to exceed 10 days, the person, place, or thing named for the property or person specified. The warrant shall designate the court to which the warrant shall be returned. The warrant may be served at any time.

(d) Execution and Return With Inventory. The peace officer taking property under the warrant shall give to the person from whom or from whose premises the property is taken a copy of the warrant and a receipt for the property taken. If no such person is present, the officer may post a copy of the search warrant and receipt. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person from whose possession or premises the property is taken, or in the presence of at least one person other than the officer. The court shall upon request provide a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(e) Motion for Return of Property. A person aggrieved by an unlawful search and seizure may move the court for the return of the property on the ground that the property was illegally seized and that the person is lawfully entitled to possession thereof. If the motion is granted the property shall be returned. If a motion for return of property is made or comes on for hearing after an indictment or

information is filed in the court in which the motion is pending, it shall be treated as a motion to suppress.

(f) Searches of Media.

(1) Scope. If an application for a search warrant is governed by RCW 10.79.015(3) or 42 U.S.C. sections 2000aa et seq., this section controls the procedure for obtaining the evidence.

(2) Subpoena Duces Tecum. Except as provided in subsection (3), if the court determines that the application satisfies the requirements for issuance of a warrant, as provided in section (c) of this rule, the court shall issue a subpoena duces tecum in accordance with CR 45(b).

(3) Warrant. If the court determines that the application satisfies the requirements for issuance of a warrant and that RCW 10.79.015(3) and 42 U.S.C. sections 2000aa et seq. permit issuance of a search warrant rather than a subpoena duces tecum, the court may issue a warrant.



PART III

Wash. Rev. Code Section 10.79.015

Other grounds for issuance of search warrant

Any such magistrate, when satisfied that there is reasonable cause, may also, upon like complaint made on oath, issue search warrant in the following cases, to wit:

- (1) To search for and seize any counterfeit or spurious coin, or forged instruments, or tools, machines or materials, prepared or provided for making either of them.
- (2) To search for and seize any gaming apparatus used or kept, and to be used in any unlawful gaming house, or in any building, apartment or place, resorted to for the purpose of unlawful gaming.
- (3) To search for and seize any evidence material to the investigation or prosecution of any homicide or any felony: PROVIDED, That if the evidence is sought to be secured from any radio or television station or from any regularly published newspaper, magazine or wire service, or from any employee of such station, wire service or publication, the evidence shall be secured only through a subpoena duces tecum unless:

(a) There is probable cause to believe that the person or persons in possession of the evidence may be involved in the crime under investigation; or

(b) there is probable cause to believe that the evidence sought to be seized will be destroyed or hidden if subpoena duces tecum procedures are followed. As used in this subsection, "person or persons" includes both natural and judicial persons.

(4) To search for and seize any instrument, apparatus or device used to obtain telephone or telegraph service in violation of RCW 9.26A.110 or 9.26A.115.

Wash. Rev. Code Section 10.79.020
To whom directed-Contents

All such warrants shall be directed to the sheriff of the county, or his or her deputy, or to any constable of the county, commanding such officer to search the house or place where the stolen property or other things for which he or she is required to search are believed to be concealed, which place and property, or things to be searched for shall be designated and described in the warrant, and to bring such stolen property or other things, when found, and the person in whose possession the same shall be found, before the magistrate who shall issue the warrant, or before some other magistrate or court having cognizance of the case.

Wash. Rev. Code Section 10.79.035
Issuance of search warrants by magistrates

(1) Any magistrate as defined by RCW 2.20.010, when satisfied that there is probable cause, may[,] upon application supported by oath or affirmation, issue a search warrant to search for and seize any:

(a) Evidence of a crime;

(b) contraband, the fruits of crime, or things otherwise criminally possessed;

(c) weapons or other things by means of which a crime has been committed or reasonably appears about to be committed; or

(d) person for whose arrest there is probable cause or who is unlawfully restrained.

(2) The application may be provided or transmitted to the magistrate by telephone, email, or any other reliable method.

(3) If the magistrate finds that probable cause for the issuance of a warrant exists, the magistrate must issue a warrant or direct an individual whom the magistrate authorizes to affix the magistrate's signature to a warrant identifying the property or person and naming or describing the person, place, or thing to be searched. The magistrate may communicate permission to affix the magistrate's signature to the warrant by telephone, email, or any other reliable method.

(4) The evidence in support of the finding of probable cause and a record of the magistrate's permission to affix the magistrate's signature to the warrant shall be preserved and shall be filed with the issuing court as required by CrRLJ 2.3 or CrR 2.3.



ABOUT THE AUTHOR

Anthony Bandiero, JD, ALM

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

Washington **SEARCH WARRANT** GUIDE

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



Visit: **Bluetogold.com**
Training | Legal Updates | Free Webinars