

Alabama

SEARCH WARRANT GUIDE

ANTHONY BANDIERO, ESQ.

Amendment
people to be secure in their persons, papers, and effects, against unreasonable searches and seizures, shall
no Warrants



Blue to Gold

Alabama Search Warrant Laws

A REFERENCE FOR LAW ENFORCEMENT



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— Anthony Bandiero

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PART I

Common Search Warrant Questions

Application Procedure	
1) Who may apply?	Law enforcement officer or district attorney (Ala. R. Crim. P. 3.7)
2) Who has the authority to issue?	Any judge or magistrate authorized by law in Alabama (§ 15-5-1; Ala. R. Crim. P. 3.6, 3.7)
3) Is an affidavit necessary?	Yes (§ 15-5-3; Ala. R. Crim. P. 3.9)
4) Can sworn oral testimony replace an affidavit?	Not permitted (§ 15-5-3); yes, if telephonic or other appropriate means, including fax (Ala. R. Crim. P. 3.8(b); Ala. R. Crim. P. 3.9(a))
5) Are there special provisions for obtaining a warrant by telephone?	Yes (Ala. R. Crim. P. 3.8(b))
6) What property can be seized?	<ul style="list-style-type: none">—Stolen or embezzled—Used in a felony—In possession with intent to use it in a public offense—In possession of one to whom it may have been delivered in order to conceal it or prevent its discovery

(§ 15-5-2)

—controlled substances grown, manufactured, distributed, dispensed, or acquired illegally

—raw materials, products, and equipment used with controlled substances

—monies, negotiable instruments, securities, or other things of value exchanged for controlled substance and proceeds traceable to such exchange

—property used as container for controlled substances

—conveyances used to facilitate transportation, sale, receipt, possession, or concealment of controlled substances

—books, records, research products and materials used with controlled substances

—imitation controlled substances

—real property or fixtures used with controlled substances

—property derived from proceeds from violation of law relating to controlled substances

(§ 20-2-93(b))

7) Contents of application

a) Who or what is to be searched?	Yes (§ 15-5-3)
b) State the items being sought?	Yes (§ 15-5-3)
c) State the basis for probable cause?	Yes (§ 15-5-4; Ala. R. Crim. P. 3.9)
d) Are there additional requirements?	Affidavit (§ 15-5-4; Ala. R. Crim. P. 3.9)

The Search Warrant

1) Does it require a standard format?	Yes (§ 15-5-6; Ala. R. Crim. P. Form CR-1-b)
2) Required contents	<ul style="list-style-type: none"> —Name of issuing judge or magistrate —Date and time of issuance —Names of affiants —Direction to executing officer —Person/place to be searched —Property sought —Recital of probable cause —Time of execution, unless the property to be seized includes a controlled substance —Judge or magistrate to whom an inventory shall be returned <p>(§§ 15-5-1, 15-5-6, 15-5-8; Ala. R. Crim. P. 3.10)</p>

Execution of Search Warrant

1) How soon must	Within 10 days (§ 15-5-12; Ala. R.
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search warrant be executed?	Crim. P. 3.10)
2) Who may execute?	Sheriff or constable of any county or any officer to whom it is directed or any officer, employee, or agent of the state or any political subdivision who is required by law to maintain public order or investigate or make arrests for offenses; director of Clay County Community Corrections Program and employees; director of Etowah County Punishment & Corrections Authority and employees (§§ 15-5-1, 15-5-5, 15-5-7; Ala. R. Crim. P. 1.4 (p), 3.6, 3.10)
3) Where is the search warrant applicable?	No express provision
4) When may warrant be executed?	
a) Is execution limited during daytime?	Yes, except when the property includes a controlled substance or explosive device or chemical, biological or nuclear materials to be used for such a device, in which case warrant may be executed at any time of day or night (§ 15-5-8; Ala. R. Crim. P. 3.10)
b) Is execution limited during nighttime?	If affidavit states positively that the property sought is on the person or place to be searched and the warrant expressly authorizes nighttime execution (§ 15-5-8; Ala. R. Crim. P. 3.10) or if the property to be seized includes not only a controlled substance, but also explosive material



PART II

ARCrP Rules Related to Arrest and Search Warrants

ARCrP Rule 3.1. Issuance of Arrest Warrant or Summons

(a) Issuance. Upon return of an indictment, or upon a finding of probable cause made pursuant to Rule 2.4, the judge or magistrate shall immediately cause to be issued an arrest warrant or a summons, as provided in Rule 3.2.

(b) Summons. If the defendant is not in custody, if the offense charged is bailable as a matter of right, and if there is no reason to believe that the defendant will not respond to the summons, a summons may be issued, at the sole discretion of the issuing judge or magistrate.

(c) Subsequent Issuance of Writ of Arrest. If a defendant who has been duly summoned fails to appear, or if after issuance of a summons there is reasonable cause to believe that the defendant will fail to appear, or if for any reason the summons cannot be served or delivered, a writ of arrest shall issue. More than one writ of arrest or summons may issue on the same complaint or indictment.

(d) Docketing Case. A case shall be docketed upon service of a summons or upon the defendant's arrest.

ARCrP Rule 3.2

Rule 3.2. Contents of Arrest Warrant or Summons

(a) Arrest Warrant. An arrest warrant issued upon a complaint shall be signed by the issuing judge or magistrate. An arrest warrant issued upon an indictment shall be signed by the circuit judge presiding, by the circuit clerk, or by a judge or other magistrate designated to do so by the presiding judge of the circuit court by order entered on the minutes of the court. The arrest warrant shall contain the name of the defendant, or if the name is unknown, a name or description by which the defendant can be identified with reasonable certainty; it shall state the offense with which the defendant is charged; and it shall command that the defendant be arrested and brought before the issuing judge or magistrate, or, if the issuing judge or magistrate is unavailable, before the nearest or most accessible district or circuit judge or magistrate in the same county. If the defendant is bailable as a matter of right, the arrest warrant may state the conditions of the defendant's release on his or her own recognizance under Rule 7.2 or an amount of an appearance bond or a secured appearance bond predetermined by the court.

(b) Summons. The summons shall be in the same form as the arrest warrant, except that it shall summon the defendant to appear at a stated time and place within a reasonable time from the date of issuance. At the discretion of the issuing judge or magistrate, the summons may command the defendant to report to a designated place to be photographed and fingerprinted prior to appearance in response to the summons. Failure to so report for photographing or fingerprinting shall result in issuance of a warrant for the defendant's arrest unless good cause for such failure is shown. If, upon the defendant's appearance, the defendant has not been photographed and fingerprinted, the issuing judge or magistrate shall direct that the defendant be taken promptly for such photographing and fingerprinting.

ARCrP Rule 3.3

Rule 3.3. Execution and Return of Arrest Warrant

(a) By Whom. The arrest warrant shall be directed to and may be executed by any law enforcement officer within the State of Alabama.

(b) Manner of Execution. An arrest warrant shall be executed by arrest of the defendant.

(c) Return. The law enforcement officer executing an arrest warrant shall endorse thereon the manner and date of execution, shall subscribe his name, and shall return the arrest warrant to the clerk of the court specified in the arrest warrant.



PART III

ARCrP Rules Related to Arrest and Search Warrants

Ala.Code 1975 § 15-5-1
§ 15-5-1. "Search warrant" defined.

A "search warrant" is an order in writing in the name of the state signed by a judge, or by a magistrate authorized by law to issue search warrants, and directed to the sheriff or to any constable of the county, commanding him to search for personal property and bring it before the court issuing the warrant.

Ala.Code 1975 § 15-5-2
§ 15-5-2. Grounds for issuance.

A search warrant may be issued on any one of the following grounds:

- (1) Where the property was stolen or embezzled;
- (2) Where it was used as the means of committing a felony; or
- (3) Where it is in the possession of any person with the intent to use it as a means of committing a public offense or in the possession of another to whom he may have delivered it for the purpose of concealing it or preventing its discovery.

Ala.Code 1975 § 15-5-3

§ 15-5-3. Probable cause and affidavit required.

A search warrant can only be issued on probable cause, supported by an affidavit naming or describing the person and particularly describing the property and the place to be searched.

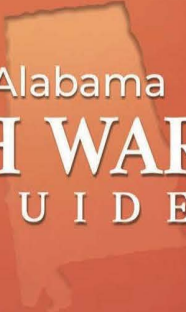


ABOUT THE AUTHOR

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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



Alabama SEARCH WARRANT GUIDE

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