

Nebraska

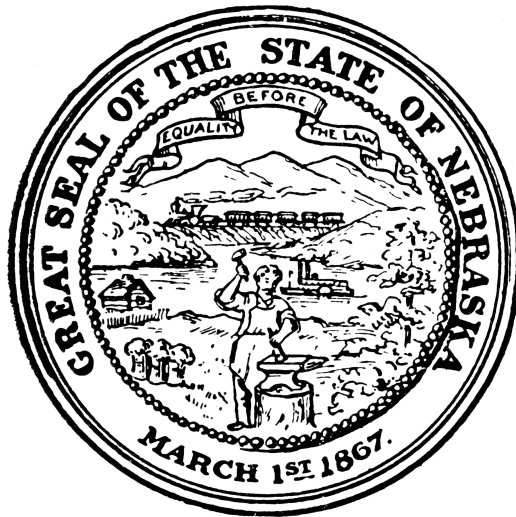
SEARCH WARRANT GUIDE

ANTHONY BANDIERO, ESQ.

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

Nebraska 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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— Anthony Bandiero

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PART I

Common Search Warrant Questions

Application Procedure

1) Who may apply?	A law enforcement officer accompanied by a government attorney; in unusual circumstances, the officer need not be accompanied by a government attorney (Neb. Dist. Ct. Crim. R. 41.1)
2) Who has the authority to issue?	Any district court, Court of Appeals, or Supreme Court judge or any county judge or any clerk magistrate when no county or district judge is available (§§ 24-519, 29-812)
3) Is an affidavit necessary?	Yes (§ 29-814.01)
4) Can sworn oral testimony replace an affidavit?	Sworn oral testimony instead of or in addition to affidavit if recorded using a voice recording device in the custody of judge or magistrate or taken stenographically. Such recording must be transcribed and its accuracy certified by the judge or magistrate (§ 29-814.02)

5) Are there special provisions for obtaining a warrant by telephone?

Applicant must contact county attorney or deputy county attorney to explain reasons for applying for telephone warrant. If the attorney is satisfied of the necessity of a telephone warrant, he shall contact the issuing magistrate or judge with his recommendation. The magistrate or judge shall contact the applicant and shall make a voice recording of his testimony. The recording shall be transcribed and its accuracy certified by the issuing judge or magistrate. The applicant shall complete a duplicate original search warrant that shall include a statement of grounds for issuing a telephone warrant. The issuing judge or magistrate shall record the time of issuance on the original search warrant (§§ 29-814.03, 29-814.05)

Note: if the original of the oral or telephonic statement is lost, destroyed, or unintelligible, in whole or critical portion, any warrant issued pursuant to such statement is invalid (§ 29.814.06)

Affidavit may also be submitted by fax or other

	electronic means (§ 29-814.01)
6) What property can be seized?	1) Stolen, embezzled, or obtained under false pretenses 2) Used or designed or intended for use in a crime 3) Possessed, controlled, used or intended for use in violation of any law of the state making such possession, control, use or intent for use a crime 4) Evidence of a crime or participation in a crime (§ 29-813(1))
7) Contents of application	
a) Who or what is to be searched?	Yes. Must be described in the affidavit or other testimony (§ 29-814.01)
b) State the items being sought?	Yes. Must be described in the affidavit or other testimony (§ 29-814.01)
c) State the basis for probable cause?	Yes. Must be described in the affidavit or other testimony (§ 29.814.01)
d) Are there additional requirements?	Affidavit or transcription of other testimony (§ 29-814.02)

The Search Warrant

1) Does it require a standard format?	No
2) Required contents	—Person/place to be searched

-
- Person/property to be seized
 - Name and/or office of executing officer
 - Basis for issuance
 - written affidavit and/or oral statement
 - Names of affiants
 - Directions for execution
 - Magistrate or judge to whom warrant shall be returned
- Telephone warrants only:
- Date of issuance
 - Time of issuance
 - Identification as telephone warrant
- (§§ 29-814.04, 29-814.05)
-

Execution of Search Warrant

- | | |
|--|---|
| 1) How soon must search warrant be executed? | Within 10 days after its date (§ 29-815) |
| 2) Who may execute? | The law enforcement officer named in the warrant (§ 29-814.04) |
| 3) Where is the search warrant applicable? | <p>Search warrants issued by district court judges or State Supreme Court Judges—anywhere within State</p> <p>All other search warrants—within district or county</p> |



PART II

Neb.Rev.St. § 29-812 **Search warrant; issuance**

A search warrant authorized by sections 29-812 to 29-821 may be issued by any judge of the county court, district court, Court of Appeals, or Supreme Court for execution anywhere within the State of Nebraska or for service upon any publicly or privately held corporation, partnership, or other legal entity located within or outside the State of Nebraska. A similar search warrant authorized by such sections may be issued, subject to section 24-519, by any clerk magistrate within the county in which the property sought is located.

Neb.Rev.St. § 29-813

Search warrant; issuance; limitation; terms, defined

(1) A warrant may be issued under sections 29-812 to 29-821 to search for and seize any property (a) stolen, embezzled, or obtained under false pretenses in violation of the laws of the State of Nebraska, (b) designed or intended for use or which is or has been used as the means of committing a criminal offense, (c) possessed, controlled, designed, or intended for use or which is or has been possessed, controlled, designed, or used in violation of any law of the State of Nebraska making such possession, control, design, or use, or intent to use, a criminal offense, or (d) which constitutes evidence that a criminal offense has been committed or that a particular person has committed a criminal offense.

(2) Notwithstanding subsection (1) of this section, no warrant shall be issued to search any place or seize anything in the possession, custody, or control of any person engaged in procuring, gathering, writing, editing, or disseminating news or other information for distribution to the public through a medium of communication unless probable cause is shown that such person has committed or is committing a criminal offense. For purposes of this subsection, the terms person, information, and medium of communication shall be defined as provided in section 20-145.

Neb.Rev.St. § 29-814.01

Search warrant; issuance on affidavit; procedure

A search warrant may be issued under section 29-814.04 pursuant to written affidavit sworn to before a magistrate, a judge, or any other person authorized to administer oaths under the laws of this state by the person making it. Such affidavit shall particularly describe the persons or places to be searched and the persons or property to be seized. Such affidavit shall set forth the facts and circumstances tending to show that such person or property is in the place, or the property is in the possession of the person, to be searched. Such affidavit may be submitted to the magistrate or judge in person or by facsimile or other electronic means and the warrant may be issued to the affiant in person or by facsimile or other electronic means.

Neb.Rev.St. § 29-814.02

Search warrant; issuance on oral statement; procedure

In lieu of, or in addition to, written affidavit, a search warrant may be issued under section 29-814.04 pursuant to an oral statement given in person and under oath to a magistrate or judge. The oral statement shall be taken by means of a voice recording device in the custody of the magistrate or judge. If no voice recording device is available, the statement may be taken stenographically. The magistrate or judge shall direct that the recorded or stenographic statement be transcribed and the magistrate or judge shall certify the accuracy of the transcription. The magistrate or judge shall file with the clerk of the district court of the county in which the property was seized the original of the record and the transcribed statement. Such filing shall be made at the same time the warrant, copy of the return, inventory, and all other papers connected with the warrant are filed pursuant to section 29-816. For purposes of sections 29-814.01 to 29-814.06, an oral statement authorized by this section shall be considered to be an affidavit.



PART III

Nebraska Criminal Rule 41.1 Search Warrant Applications

(a) To Judge. A search warrant application should be presented to a magistrate judge, but may be presented to a district judge if no magistrate judge is reasonably available. When no federal judge is reasonably available, including emergency circumstances as stated in Nebraska Criminal Rule 41.1(a)(3), the warrant application may be presented to a state judicial officer.

1. Request. Copies of the application, the proposed search warrant, and any supporting affidavits must be delivered to the judge for private review before presentation of the warrant to the judge for signing. In an emergency situation, the judge may waive this requirement. If authorized by law, and consented to by the judge considering the application, a search warrant may be considered and issued by telephone or other means.
2. Government Attorney. Ordinarily, an officer presenting a search warrant application to a judge should be accompanied by a government attorney. In unusual circumstances, a judge may entertain a search warrant application from an officer not accompanied by a government attorney.

3. Emergency. In an emergency, a magistrate judge may be contacted away from the courthouse, including at home, to consider a search warrant application. If no magistrate judge is reasonably available, a district judge may be contacted away from the courthouse, including at home, to consider a search warrant application.

(b) Sealing of Search Warrant Documents. Unless the court orders otherwise, search warrants, all affidavits filed in support of search warrants, and all search warrant returns, must be filed by the clerk under seal within 14 days after the executed warrant is returned.



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

Nebraska **SEARCH WARRANT** GUIDE

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