

Alaska

SEARCH WARRANT GUIDE

ANTHONY BANDIERO, ESQ.

*Fourth Amendment
The people to be secure in
their houses, papers, and effects, against
unreasonable searches and seizures, shall not
be searched, and no Warrants*

Alaska Search Warrant Laws

A REFERENCE FOR LAW ENFORCEMENT



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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?	No express provision
2) Who has the authority to issue?	Any judge or magistrate (§ 12.35.010; Alaska R. Crim. P. 37(a)(2))
3) Is an affidavit necessary?	Yes (Alaska R. Crim. P. 37(a)(1)) Sworn affidavit can be submitted by fax (§ 12.35.010)
4) Can sworn oral testimony replace an affidavit?	Yes, sworn oral testimony given over telephone or otherwise or sworn by affidavit transmitted by fax (§§ 12.35.010(b), 12.35.015(a)) Sworn testimony must be taken on the record and establish grounds for issuing the warrant (Alaska R. Crim. P. 37(a)(1))
5) Are there special provisions for obtaining a warrant by telephone?	Applicant must write his information and read it verbatim to issuing officer who shall transcribe it verbatim.

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	Issuing officer shall authorize his signature upon applicant's warrant, at which time applicant shall also enter time of issuance on his warrant (§ 12.35.015(a), (c) & (d))
6) What property can be seized?	<ul style="list-style-type: none">– Stolen or embezzled– Used in a crime– Possession with intent to use in a crime or to conceal to prevent its discovery– Possession with intent to conceal– Evidence of a crime or some party's participation in a crime– Inspection for air pollution hazard (§ 12.35.020)
7) Contents of application	
a) Who or what is to be searched?	Yes (§ 12.35.010(a); Alaska R. Crim. P. 37(a)(2))
b) State the items being sought?	Yes (§ 12.35.010(a))
c) State the basis for probable cause?	Yes (§ 12.35.010(a); Alaska R. Crim. P. 37(a)(2))
d) Are there additional requirements?	Affidavit or other testimony (§§ 12.35.015(a), 12.35.015(b))

The Search Warrant

1) Does it require a standard	No
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format?

2) Required contents	<ul style="list-style-type: none">–Names of affiants–Name of judicial officer to whom warrant shall be returned–Date of issuance–Time of issuance–Time to be served–Place/person to be searched–Property sought–Recitation of probable cause–Shall command officer to search within a reasonable period, not to exceed 30 days–Direction to an authorized peace officer <p>(§ 12.35.010(a); Alaska R. Crim. P. 37(a)(3))</p>
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Execution of Search Warrant

1) How soon must search warrant be executed?	Within 10 days of issuance unless court, for good cause, extends period for not more than 30 days (Alaska R. Crim. P. 37(b))
2) Who may execute?	A peace officer of the state (§ 12.35.120)289.290(1))
3) Where is the search warrant applicable?	A place or property located either in the state or outside

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the state (§ 12.35.010(a))

4) When may warrant be executed?

a) Is execution limited during daytime?

Yes, Between 7 A.M. and 10 P.M. (Alaska R. Crim. P. 37(a)(3)(C))

b) Is execution limited during nighttime?

Yes. If issuing authority by provision in warrant, for reasonable cause shown, authorizes its execution (Alaska R. Crim. P. 37(a)(3)(C))
Note: On warrants issued by telephone or fax, exact time of execution must be placed on face of warrant (§ 12.35.015(e))

5) Is forced or unannounced entry allowed under the warrant?

Following refusal of admittance after officer has announced the authority and purpose of entry, the officer may use the necessary and proper means to gain entry, including breaking open any door or window and overcoming forcible resistance and calling on others to aid the officer (§§ 12.25.100, 12.35.040)
If the property is concealed in a building or enclosure, the officer shall publicly demand its delivery and if not delivered, the officer may break in and



PART II

Rules of Criminal Procedure, Rule 37

Search and Seizure

(a) Search Warrant Issuance and Contents.

(1) A search warrant authorized by law shall issue only on affidavit sworn to before a judge or magistrate judge or any person authorized to take oaths under the law of the state, or sworn testimony taken on the record and establishing the grounds for issuing the warrant.

(2) If the judge or magistrate judge is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, the judge or magistrate judge shall issue a warrant identifying the property and naming or describing the person or place to be searched.

(3) The warrant shall be directed to a peace officer of the state authorized to enforce or assist in enforcing any law thereof; and

(A) shall state the ground or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof; and

(B) shall command the officer to search the person or place named for the property specified within a reasonable period not to exceed 30 days of the issuance of the warrant; and

(C) shall direct that it be served between 7:00 a.m. and 10:00 p.m., unless the issuing authority by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at other than this time; and

(D) shall designate the court, judge, or magistrate judge to whom it shall be returned.

(b) Execution and Return With Inventory. The warrant shall be executed and returned within 30 days after its date of issuance. However, upon sworn application made before the expiration of the initial 30 day period or any subsequent extension, the court may for good cause extend the execution period for a reasonable time not to exceed 30 days. Good cause includes protecting the confidentiality of an ongoing investigation and protecting a person working with law enforcement authorities on an investigation. The officer taking property under the warrant

(1) shall give to the person from whom or from whose premises the property was taken a copy of the warrant, a copy of the supporting affidavits, and receipt for the property taken, or

(2) shall leave the copies and the receipt at the place from which the property was taken.

The return shall be made promptly and shall be accompanied by a written inventory of any property taken as a result of the search pursuant to or in conjunction with the warrant. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be signed by the officer under the penalty of perjury pursuant to AS 09.63.020 or sworn to in front of a judge or magistrate judge, or a notary public. The judge, magistrate judge, or the court to which the return is made shall upon request deliver 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.

(c) Motion for Return of Property and to Suppress Evidence. A person aggrieved by an unlawful search and seizure may move the court in the judicial district in which the property was seized or the court in which the property may be used for the return of the property and to suppress for use as evidence anything so obtained on the ground that the property was illegally seized.

(d) In Camera Hearing. A person who challenges the validity of a search and seizure predicated on information gained from an informant used either in

(1) support of an application for a warrant, or

(2) as the basis of a search without warrant may move the court for disclosure of the identity of the informant pursuant to Rule 16. In the event the court determines that disclosure of the identity of the informant is not required under Rule 16, the court shall conduct an in camera recorded hearing in which it shall investigate and take evidence so as to determine whether or not a search based on the informant's information was justified. Following the in camera hearing, the court shall grant or deny the motion to suppress on the record, and shall make written findings concerning the validity of the search based on the informer's information. The written findings, together with the record of the hearing, shall be sealed, and if the validity of the search is upheld the sealed testimony and findings shall, on appeal of a conviction in which evidence of the search was admitted, be transmitted to the court of appeals and the supreme court for automatic review of the motion to suppress.

(e) Access to Warrant Information.

(1) When Records are Sealed. The record of proceedings under this rule and all documents related to those proceedings, including search warrants, affidavits, receipts and inventories, must be kept sealed until

(A) the warrant is identified in a charging document or in a notice filed by the prosecutor under paragraph (2),

(B) the record is ordered unsealed by the court, or

(C) four years have elapsed since the issuance of the warrant. The court may order prior release of these documents for good cause shown.

(2) When Records are Public. After the warrant is identified in a charging document or in a notice filed by the prosecutor, the record of proceedings and all related documents shall be open to public inspection unless the court, for good cause shown, orders that the documents remain sealed for a further period. The initial charging document in all prosecutions must be accompanied by a listing of the numbers of all warrants issued in relation to the case unless the court waives this requirement for good cause shown. The prosecutor shall file notice of subsequent warrants issued in relation to the case once executed.

(3) When Records are Confidential. If four years have elapsed since the issuance of the warrant and no charges related to the warrant have been filed, the record of proceedings and all related documents shall be unsealed and shall thereafter be deemed “confidential” as defined in the Administrative Rules and Bulletins. For good cause shown, the court may delay the unsealing.

(4) Protection of Victim and Witness Information. The court will provide access to the record of proceedings and related documents to defense counsel upon request. In accordance with AS 12.61.120(a), defense counsel shall not disclose the address and telephone number of a victim or witness to the defendant. If the defendant is proceeding without counsel and requests access to the records, the court shall protect the address and telephone number of a victim or witness as provided in AS 12.61.120(b).



PART III
Alaska Statutes Title 12, Chapter 35

AS § 12.35.010

Issuance of search warrant; extraterritorial jurisdiction

(a) A judicial officer may issue a search warrant upon a showing of probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the thing to be seized. The court may issue a search warrant for a place or property located either in the state or outside the state.

(b) A judicial officer may issue a search warrant upon the sworn oral testimony of a person communicated by telephone or other appropriate means, or sworn affidavit submitted by facsimile machine, in accordance with AS 12.35.015.

AS § 12.35.015

Issuance of search warrant upon testimony communicated by telephone or other means

(a) A judicial officer may issue a search warrant upon the sworn oral testimony of a person communicated by telephone or other appropriate means, or sworn affidavit transmitted by facsimile machine.

(b) A judicial officer shall place under oath each person whose oral testimony forms a basis of the application and each person applying for the search warrant. The judicial officer shall record the proceeding by using a voice recording device.

(c) If a facsimile search warrant cannot be transmitted to the applicant under (g) of this section, the applicant shall prepare a document to be known as a duplicate original warrant and shall read it verbatim to the judicial officer. The judicial officer shall enter, verbatim, on an original search warrant what is read to the judicial officer. The judicial officer may direct that the duplicate original search warrant be modified.

(d) Except as provided in (g) of this section, if a search warrant is issued under this section, the judicial officer shall orally authorize the applicant to sign the judicial officer's name on the duplicate original search warrant. The judicial officer shall immediately sign the original search warrant and enter on the face of the original search warrant the exact time when the search warrant was ordered to be issued.

(f) Repealed by SLA 2008, ch. 75, § 39, eff. July 1, 2008.

(e) The person who executes a search warrant issued under this section shall enter the exact time of execution on the face of the facsimile search warrant issued under (g) of this section or the duplicate original search warrant.

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(g) A search warrant issued by a judicial officer may be transmitted by facsimile machine to the applicant. The facsimile search warrant shall serve as an original.



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 blue map of the state of Alaska is centered in the background of the top half of the page.

Alaska
SEARCH WARRANT
GUIDE

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