

Massachusetts

SEARCH WARRANT GUIDE

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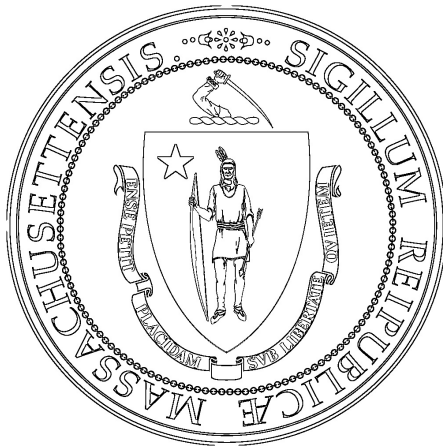
*The Amendment
the people to be secure in
their persons, papers, and effects, against
unreasonable searches and seizures, shall not
be violated, and no Warrants shall issue, but upon
probable cause, supported by Oath or affirmation,
and particularly describing the place to be searched,
and the persons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



Blue to Gold

Massachusetts Search Warrant Guide

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?	No express provision
2) Who has the authority to issue?	A court or justice authorized to issue warrants in criminal cases (§ 1)
3) Is an affidavit necessary?	Yes (§ 2B)
4) Can sworn oral testimony replace an affidavit?	Requires complaint on oath establishing basis for probable cause for issuance of search warrant (§ 1)
5) Are there special provisions for obtaining a warrant by telephone?	Signature on warrant may be electronic (§ 2A)
6) What property can be seized?	<ul style="list-style-type: none">—Stolen, embezzled, obtained by false pretenses or in commission of a crime—Used or intended to be used in a crime—Evidence of commission of or concealment of a crime—Possession or control of that which is unlawful

Massachusetts Search Warrant Laws

- Human corpse
 - Any person subject to outstanding arrest warrant
- (§ 1)
-

7) Contents of application

a) Who or what is to be searched?	Yes (§§ 1, 2B)
b) State the items being sought?	Yes (§§ 1, 2B)
c) State the basis for probable cause?	Yes (§§ 1, 2B)
d) Are there additional requirements?	Sworn complaint and affidavit, name of affiant, signature, position/office of affiant, name of judicial officer hearing complaint, date complaint filed (§§ 1, 2B) Note: Affidavit form (§ 2B)

The Search Warrant

1) Does it require a standard format?	Yes (§ 2A)
2) Required contents	<ul style="list-style-type: none">—Place to be searched—Person/articles to be searched for—Direction to executing officer—Name of issuing court, judicial officer—Names of affiants

Massachusetts Search Warrant Laws

—Name of court before whom
seized property is to be
brought

—Date of issuance

(§§ 2, 2A)

Execution of Search Warrant

1) How soon must search warrant be executed?	No later than 7 days from date of issuance (§ 3A)
---	--

2) Who may execute?	Sheriff or his deputy, a constable or police officer (§ 2)
---------------------	---

3) Where is the search warrant applicable?	Anywhere within state (§ 2A)
---	------------------------------

4) When may warrant be executed?	
-------------------------------------	--

a) Is execution limited during daytime?	Yes (§ 2)
--	-----------

b) Is execution limited during nighttime?	Yes. If the warrant so directs (§ 2)
--	---

5) Is forced or unannounced entry allowed under the warrant?	No express provision
--	----------------------

6) Are there limitations or specific rules regarding the search?	Restrictions on documentary evidence in possession of lawyer, psychotherapist, or clergyman (§ 1) Search incident to arrest provisions (§ 1)
--	---

7) Is leaving documentation at	No express provision
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Massachusetts Search Warrant Laws

the scene of the search
mandatory?

8) Are there safeguards
against abuse of the search
warrant process?

Anyone willfully falsifying a
return of process service
regarding the fact that service
has been made or the manner
in which service was made

Imprisonment for up to 1 year
or fine of up to \$500 (ch. 268, §
6B)

Return and Records Procedure

1) When must search warrant
be returned?

As soon as served and not later
than 7 days from date of
issuance (§ 3A)

2) To which authority or
jurisdiction must the warrant
be returned?

Issuing court (§ 3A)

3) Documentation when
property seized

a) Is a detailed inventory
required?

No express provision

b) Must the inventory be filed
with the court?

No express provision

c) Does the executing officer
need to provide sworn
verification of the inventory?

No express provision

d) Must inventory verification
be witnessed by a neutral
party?

No express provision

e) Is the magistrate required to

No express provision



PART II

M.G.L 276 § 1

Complaint for issuance of search warrant; warrant for designated property or articles; search incident to arrest; documentary evidence subject to privilege

A court or justice authorized to issue warrants in criminal cases may, upon complaint on oath that the complainant believes that any of the property or articles hereinafter named are concealed in a house, place, vessel or vehicle or in the possession of a person anywhere within the commonwealth and territorial waters thereof, if satisfied that there is probable cause for such belief, issue a warrant identifying the property and naming or describing the person or place to be searched and commanding the person seeking such warrant to search for the following property or articles:

First, property or articles stolen, embezzled or obtained by false pretenses, or otherwise obtained in the commission of a crime;

Second, property or articles which are intended for use, or which are or have been used, as a means or instrumentality of committing a crime, including, but not in limitation of the foregoing, any property or article worn, carried or otherwise used, changed or marked in the preparation for or perpetration of or concealment of a crime;

Third, property or articles the possession or control of which is unlawful, or which are possessed or controlled for an unlawful purpose; except property subject to search and seizure under sections forty-two through fifty-six, inclusive, of chapter one hundred and thirty-eight;

Fourth, the dead body of a human being.

Fifth, the body of a living person for whom a current arrest warrant is outstanding.

A search conducted incident to an arrest may be made only for the purposes of seizing fruits, instrumentalities, contraband and other evidence of the crime for which the arrest has been made, in order to prevent its destruction or concealment; and removing any weapons that the arrestee might use to resist arrest or effect his escape. Property seized as a result of a search in violation of the provisions of this paragraph shall not be admissible in evidence in criminal proceedings.

The word “property”, as used in this section shall include books, papers, documents, records and any other tangible objects.

Nothing in this section shall be construed to abrogate, impair or limit powers of search and seizure granted under other provisions of the General Laws or under the common law.

Notwithstanding the foregoing provisions of this section, no search and seizure without a warrant shall be conducted, and no search warrant shall issue for any documentary evidence in the possession of a lawyer, psychotherapist, or a clergyman, including an accredited Christian Science practitioner, who is known or may reasonably be assumed to have a relationship with any other person which

relationship is the subject of a testimonial privilege, unless, in addition to the other requirements of this section, a justice is satisfied that there is probable cause to believe that the documentary evidence will be destroyed, secreted, or lost in the event a search warrant does not issue. Nothing in this paragraph shall impair or affect the ability, pursuant to otherwise applicable law, to search or seize without a warrant or to issue a warrant for the search or seizure of any documentary evidence where there is probable cause to believe that the lawyer, psychotherapist, or clergyman in possession of such documentary evidence has committed, is committing, or is about to commit a crime. For purposes of this paragraph, “documentary evidence” includes, but is not limited to, writings, documents, blueprints, drawings, photographs, computer printouts, microfilms, X-rays, files, diagrams, ledgers, books, tapes, audio and video recordings, films or papers of any type or description.

M.G.L. 276 § 1A
Search warrants for articles belonging to subversive organizations

A justice of the superior court, upon application of the attorney general or a district attorney, and upon complaint on oath that the complainant believes that any of the property or articles hereinafter named are concealed in a particular house or place, if satisfied that there is a reasonable cause for such belief, may issue a warrant to search for the following property or articles: books, records, files, membership lists, funds, referred to in sections eighteen and twenty-one of chapter two hundred and sixty-four, or written or printed documents, paper or pictorial representations, referred to in section eleven of said chapter two hundred and sixty-four, belonging to a subversive organization as defined in said section eighteen, or used, provided for, or intended to be used for, the purposes specified in said section eleven.

M.G.L. 276 § 1B
Search warrants for records possessed by foreign corporations providing electronic communication or remote computing services

(a) As used in this section, the following words shall have the following meanings:--

“Adverse result”, occurs when notification of the existence of a search warrant results in:--

- (1) danger to the life or physical safety of an individual;
- (2) a flight from prosecution;
- (3) the destruction of or tampering with evidence;
- (4) the intimidation of a potential witness or witnesses;
- or
- (5) serious jeopardy to an investigation or undue delay of a trial.

“Electronic communication services”, shall be construed in accordance with sections 2701 to 2711 Title 18, of the United States Code. This definition shall not apply to corporations that do not provide electronic communication services to the general public.

“Foreign corporation”, any corporation or other entity that makes a contract or engages in a terms of service agreement with a resident of the commonwealth to be performed in whole or in part by either party in the commonwealth. The making of the contract or terms of service agreement shall be considered to be the agreement of the foreign corporation that a search warrant or subpoena which has been properly

served on it has the same legal force and effect as if served personally within the commonwealth.

“Massachusetts corporation”, any corporation or other entity that is subject to chapter 155 or chapter 156B.

“Properly served”, delivery of a search warrant or subpoena by hand, by United States mail, by commercial delivery service, by facsimile or by any other manner to any officer of a corporation or its general manager in the commonwealth, to any natural person designated by it as agent for the service of process, or if such corporation has designated a corporate agent, to any person named in the latest certificate filed pursuant to section 15.03 of chapter 156D.

“Remote computing services”, shall be construed in accordance with sections 2701 to 2711, inclusive, of Title 18, of the United States Code. This definition shall not apply to corporations that do not provide those services to the general public.

“Subpoena”, a grand jury or trial subpoena issued in the course of a criminal proceeding or an administrative subpoena issued pursuant to section 17B of chapter 271.

(b) A court or justice authorized to issue warrants in criminal cases may, upon complaint on oath that the complainant believes that any of the records hereinafter named are actually or constructively possessed by a foreign corporation that provides electronic communication services or remote computing services, if satisfied that probable cause has been established for such belief, issue a warrant identifying those records to be searched for and commanding the person seeking such warrant to properly serve the warrant upon the foreign corporation:--

- (1) those records which would reveal the identity of a customer using those services;
 - (2) data stored by or on behalf of a customer;
 - (3) records of a customer's usage of those services;
 - (4) records of the source of communications sent to or the recipient or destination of communications sent from a customer; or
 - (5) the content of those communications stored by an electronic communication or remote commuting service.
- (c) The following provisions shall apply to any search warrant issued pursuant to this section and to any subpoena issued in the course of a criminal investigation or proceeding directed to a foreign corporation that provides electronic communication services or remote computing services:
- (1) when properly served with a search warrant issued by any court of the commonwealth or justice pursuant to this section or a subpoena, a foreign corporation subject to this section shall provide all records sought pursuant to that warrant or subpoena within 14 days of receipt, including those records maintained or located outside the commonwealth;
 - (2) if the applicant makes a showing and the court or justice finds that failure to produce records within less than 14 days would cause an adverse result, a warrant may require production of records within less than 14 days;
 - (3) a court or justice may reasonably extend the time required for production of the records upon finding that the foreign



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

Massachusetts **SEARCH WARRANT** GUIDE

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