

Idaho

SEARCH WARRANT GUIDE

ANTHONY BANDIERO, ESQ.

Amendment

the people to be secure in

houses, papers, and effects

searches and seizures

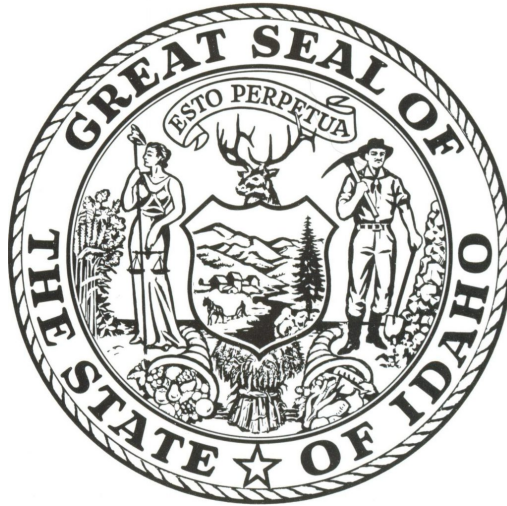
and no Warrants



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Idaho Search Warrant Guide

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Anthony Bandiero, JD, ALM

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Idaho Search Warrant Guide

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

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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 or state attorney (Idaho Crim. R. 41(a)); medicaid fraud investigators employed by the Attorney General (§ 56-227C(4))
2) Who has the authority to issue?	A district judge or magistrate within district where property sought is located (§ 19-4401; Idaho Crim. R. 41(a))
3) Is an affidavit necessary?	Yes (§ 19-4403; Idaho Crim. R. 41(c))
4) Can sworn oral testimony replace an affidavit?	Yes. If under oath and recorded (Idaho Crim. R. 41(c)), magistrate may take oral statement over telephone if under oath, recorded and transcribed; person testifying must identify self; affidavit or recording must be filed with court (§ 19-4404); magistrate may verbally authorize signature; duplicate original warrant must be returned to

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	magistrate for endorsement and dating (§ 19-4406)
5) Are there special provisions for obtaining a warrant by telephone?	Secure electronic transmission may be used for application for and issuance of warrant (§ 179.045(2)); magistrate may orally authorize a peace officer to sign the magistrate's name to a duplicate original warrant (§ 179.045(4))
6) What property can be seized?	–Evidence of criminal offense –Weapons or things used in a crime –Contraband, fruits of crime, or things criminally possessed –A person named in an arrest warrant (§ 19-4402; Idaho Crim. R. 41(b))
7) Contents of application	
a) Who or what is to be searched?	Yes (§ 19-4403; Idaho Crim. R. 41(c))
b) State the items being sought?	Yes (§ 19-4403; Idaho Crim. R. 41(c))
c) State the basis for probable cause?	Yes (§ 19-4403; Idaho Crim. R. 41(c))
d) Are there additional requirements?	Affidavit or recorded testimony (§ 19-4403; Idaho Crim. R. 41(c))

The Search Warrant

1) Does it require a standard format?	Yes (§ 19-4407)
2) Required contents	<ul style="list-style-type: none">– Person/place to be searched– Person/property sought– Date of issuance– Signature of issuing judicial officer– Office of issuing judicial officer– Names of affiants– Statement of grounds or probable cause– Specified period of time for execution of warrant– Command to bring property seized before magistrate (§§ 19-4406, 19-4407; Idaho Crim. R. 41(c))

Execution of Search Warrant

1) How soon must search warrant be executed?	Within period of time specified in warrant not to exceed 14 days (§ 19-4412; Idaho Crim. R. 41(c))
2) Who may execute?	A peace officer within territorial jurisdiction of issuing judicial officer (§§ 19-4406, 19-4408; Idaho Crim. R.

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	41(c)); medicaid fraud investigators employed by the Attorney General (§ 56-227C(4)) State police (§ 67-2901(5)(j))
3) Where is the search warrant applicable?	Within territorial jurisdiction of issuing judicial officer (§ 19-4406; Idaho Crim. R. 41(a))
4) When may warrant be executed?	
a) Is execution limited during daytime?	Yes (§§ 19-4407, 19-4411; Idaho Crim. R. 41(c))
b) Is execution limited during nighttime?	Yes. If affiants are positive that property is on person/place to be searched. Issuing judicial officer must authorize nighttime execution in the warrant (§§ 19-4407, 19-4411) Yes. If issuing authority by provision in warrant and for reasonable cause shown, authorizes (Idaho Crim. R. 41(c))
5) Is forced or unannounced entry allowed under the warrant?	"No-knock": in order to liberate any person assisting in the execution of the warrant (§ 19-4410) Forced Entry: if, after notice of his authority and purpose, executing officer is refused admittance (§ 19-4409)



PART II

I.C. § 19-4401

Search warrant defined

A search warrant is an order in writing, in the name of the state of Idaho, signed by a magistrate, judge or justice directed to an officer or officers named therein, or other officer authorized by law to execute search warrants directing the officer to search for and seize property or intangibles.

**I.C. § 19-4402
Use of search warrant**

(1) A search warrant may be issued to search for and seize:

1. Any property or intangible that constitutes evidence of a criminal offense.
2. Contraband, the fruits of crime, or things otherwise criminally possessed.
3. Weapons or other things by means of which a crime has been committed or reasonably appears about to be committed.
4. A person named in an arrest warrant.

**I.C. § 19-4403
Affidavit of probable cause**

A search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person, and particularly describing the property and the place to be searched.

I.C. § 19-4404

Oral affidavit--Telephonic affidavit--Procedures

In lieu of a written affidavit, the magistrate may take an oral statement under oath which shall be recorded and transcribed. The judge is authorized to administer an oath or affirmation by telephone, and to take testimony by telephone. All testimony given over the telephone that is intended to support an application for a search warrant must be given on oath or affirmation and must identify the person testifying. The affidavit or oral testimony as recorded must be filed with the clerk of the court.



PART III

Idaho Criminal Rules (I.C.R.), Rule 41

Formerly cited as ID R RCRP Rule 41

Search and Seizure

(a) Authority to Issue Warrant. At the request of a law enforcement officer or any attorney for the state of Idaho, a search warrant may be issued by a district judge or magistrate within the judicial district where the county of proper venue is located. If it does not appear that the property or person sought is currently within the State of Idaho, the warrant may still be issued; however, the fact the warrant is issued is not deemed as granting authority to serve the warrant outside the territorial boundaries of the State.

(b) Property or Person Subject to Search and Seizure. A warrant may be issued for any of the following:

- (1) evidence of a crime;
- (2) contraband, fruits of crime, or other items illegally possessed;
- (3) weapons or other things by means of which a crime has been committed or reasonably appears about to be committed; or
- (4) a person named in an arrest warrant issued pursuant to Rule 4 of these rules.

(c) Issuance of Warrant.

(1) In General.

After receiving an affidavit or other information, a judge may issue a warrant if the judge finds there is probable cause to believe that the grounds for the application exist. The finding of probable cause must be based on substantial evidence, which may be hearsay in whole or in part, provided there is a substantial basis, considering the totality of the circumstances, to believe probable cause exists for the warrant.

(2) Warrant on an Affidavit.

When a law enforcement officer or an attorney for the government presents an affidavit or declaration in support of a warrant, the judge may require the affiant to appear personally and may examine under oath the affiant and any witness the affiant produces.

(3) Warrant on Sworn Testimony.

The judge may wholly or partially dispense with a written affidavit and base a warrant on sworn testimony if doing so is reasonable under the circumstances. Testimony taken in support of a warrant must be recorded and is considered part of the affidavit.

(4) Requesting a Warrant by Telephonic or Other Reliable Electronic Means.

A judge may issue a warrant based on information communicated by telephone or other reliable electronic

means.

(d) Content and Service. The warrant must:

- (1) identify the property or person by naming or describing the person or place to be searched;
- (2) be directed to any peace officer authorized to enforce or assist in enforcing any law of the state of Idaho;
- (3) command the officer to search, within a specified period of time, not to exceed 14 days; and
- (4) be served in the daytime, unless for reasonable cause shown, the judge by appropriate provision in the warrant authorizes its execution at times other than daytime. "Daytime" means the hours between 6:00 a.m. and 10:00 p.m. according to local time.

(e) Executing and Returning the Warrant with Inventory.

(1) Inventory.

An officer present during the execution of the warrant must prepare and verify an inventory of any property seized. The officer must do so in the presence of the person from whom, or from whose premises, the property was taken. If this person is not present, the officer must prepare and verify the inventory in the presence of at least one other credible person of age.

(2) Receipt.

The officer executing the warrant must give a copy of the

warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken or leave a copy of the warrant and receipt at the place where the officer took the property.

(3) Return.

The officer executing the warrant must promptly return it, together with a copy of the inventory, to a judge in the county where the warrant was issued. The officer may do so by reliable electronic means. The magistrate judge to whom the warrant is returned must attach to the warrant a copy of the return, the inventory, and of all other related papers and must deliver them to the clerk in the county where the warrant was issued or served. On request, the judge must give 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.

(f) Motion to Return Property.

A person aggrieved by an unlawful search and seizure of property may move for the property's return. The motion must be filed in the criminal action if one is pending, but if no action is pending then a civil proceeding may be filed in the county where the property is seized or located. The court must receive evidence on any factual issue necessary to decide the motion. If it grants the motion, the court must return the property to the movant and it is not admissible in evidence at any hearing or trial. A motion for return of property made or heard after a complaint, indictment or information is filed, must also be treated as a motion to suppress under Rule 12.



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](https://www.BlueToGold.com/about)



Idaho
SEARCH WARRANT
GUIDE

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