



MINNESOTA JUDICIAL TRAINING UPDATE



(Read Time – Less than 15 minutes)

SEARCH WARRANT BASICS

Ten (10) Questions & Answers Every Judge and Attorney Should Know



1) WHAT IS THE LEGAL STANDARD FOR ISSUING A SEARCH WARRANT?

A search warrant may be issued only upon probable cause, supported by affidavit, naming or describing the person, particularly describing the property or thing to be seized, and particularly describing the place to be searched. *Minn. Stat. § 626.08*. Probable cause is determined by examining the **totality of the circumstances**. For example:

- a) **The issuing judge must make a practical, common-sense decision** whether the facts stated in the affidavit establish a fair probability that contraband or evidence of a crime will be found in the particular place to be searched. *Illinois v. Gates*, 462 U.S. 213, 238 (1983); *State v. Souto*, 578 N.W.2d 744, 747 (Minn. 1998); *State v. Yarbrough*, 841 N.W.2d 619, 622 (Minn. 2014).
- b) **The affidavit must establish a sufficient nexus** between the alleged crime, the evidence sought, and the specific place to be searched. Probable cause to believe a person committed a crime does not, by itself, establish probable cause to search that person's home, vehicle, phone, or other property.
- c) **When the application relies on a confidential informant**, the judge should consider the informant's reliability, veracity, basis of knowledge, motivation, detail, freshness, and police corroboration. Corroboration is not always required, but it remains an important factor under the totality of the circumstances. *State v. Nagle*, 26 N.W.3d 585 (Minn. 2025).
- d) **Staleness matters**. The affidavit must show a fair probability that evidence will be found at the time of the search, not merely that criminal activity occurred in the past. Consider the age of the information, the nature of the crime, the type of evidence sought, and whether the activity appears ongoing.

2) WHAT IS THE STANDARD FOR ISSUING A "NO KNOCK" WARRANT?

Police must generally knock and announce their presence and purpose before entering. A "no-knock warrant" may be issued only if the statutory requirements in *Minn. Stat. § 626.14* are satisfied. **For example:**

A judge may not issue or approve a no-knock warrant unless the application articulates specific, objective facts establishing probable cause to believe that:

- i. the warrant cannot be executed while the premises is unoccupied; and
- ii. the occupants present an imminent threat of death or great bodily harm to officers executing the warrant or other persons. *Minn. Stat. 626.14, subd. 2a.*

The application must include detailed facts explaining why no-knock entry is necessary, why a knock-and-announce warrant cannot be safely executed, what investigative steps were taken, who may be present, whether children may be present, and whether daylight execution is possible. The chief law enforcement officer or designee and another superior officer must also review and approve the application, and the agency must document both approvals. For no-knock warrants, the application must also include a sworn affidavit as provided in *Minn. Stat. § 626.08. Minn. Stat. § 626.14, subd. 3.*

A no-knock warrant may not be issued when the only alleged crime is possession of a controlled substance unless there is probable cause to believe the controlled substance is for other than personal use. *Minn. Stat. § 626.14, subd. 3(d).*

Note: Minnesota’s current statutory restrictions on no-knock warrants took effect August 1, 2023. Although the older “reasonable suspicion” standard remains useful constitutional background, judges and attorneys must now apply the stricter statutory requirements in *Minn. Stat. § 626.14.*

3) WHAT IS THE STANDARD FOR AUTHORIZING A “NIGHTTIME SEARCH”?

A search warrant may be served only between 7:00 a.m. and 8:00 p.m. unless the court determines, based on facts stated in the affidavits, that a nighttime search outside those hours is necessary to prevent the loss, destruction, or removal of the objects of the search, or to protect the searchers or the public. The warrant must state whether nighttime execution is authorized. *Minn. Stat. § 626.14, subd. 1.*

- The affidavit must establish at least a **reasonable suspicion** that nighttime execution is necessary to preserve evidence or protect officer/public safety. Boilerplate language about the risks associated with all drug cases is not enough. The affidavit must connect the need for nighttime execution to the facts of the particular case. *State v. Bourke*, 718 N.W.2d 922, 927–28 (Minn. 2006); *State v. Lien*, 265 N.W.2d 833 (Minn. 1978).

4) WHAT KIND OF PEACE OFFICER HAS AUTHORITY TO EXECUTE A SEARCH WARRANT?

A search warrant must be directed to and executed by a “peace officer.” *Minn. Stat. § 626.05, subds. 1–2.* For search-warrant purposes, “peace officer” has the meaning given in *Minn. Stat. § 626.84, subd. 1(c)*, and generally includes POST-licensed law enforcement officers and other officers specifically included in that statutory definition.

- **Examples include** sheriffs, deputy sheriffs, police officers, State Patrol troopers, BCA agents, conservation officers, Alcohol and Gambling Enforcement agents, Metropolitan Transit police officers, Department of Corrections Fugitive Apprehension Unit officers, and railroad peace officers. *Minn. Stat. §§ 626.05, subd. 2; 626.84, subd. 1(c).*

5) WHAT TYPE OF CRIME MUST BE INVOLVED BEFORE A SEARCH WARRANT CAN ISSUE?

A search warrant may issue for evidence connected to a “crime,” which includes any felony, gross misdemeanor, or misdemeanor — meaning an offense for which the actor may be sentenced to imprisonment, with or without a fine. It also includes violations of municipal ordinances for which a misdemeanor sentence may be imposed (e.g., operating a business without a required city license.) *Minn. Stat. §§ 626.05, subd. 3; 609.02, subd. 1; 626.07.*

- **A petty misdemeanor**, standing alone, is not a “crime” because it is not punishable by imprisonment. *Minn. Stat. § 609.02, subd. 4a.*

6) WHO HAS JURISDICTION TO ISSUE A SEARCH WARRANT?

Search warrants may be issued by any district court judge, other than a judge acting in probate jurisdiction, who has jurisdiction over the area where the place to be searched is located. *Minn. Stat. § 626.06.* In ordinary practice, that means a judge may issue a search warrant for any county within the judge’s judicial district. A judge from another judicial district should issue the warrant only if properly assigned or otherwise authorized to act in the district where the search will occur.

7) HOW IS A SEARCH WARRANT APPLICATION SIGNED AND SUBMITTED?

The officer applying for the search warrant is commonly referred to as the affiant or applicant. The application must be supported by written facts establishing probable cause. Traditionally, this was done through a written affidavit signed under oath. *M.S. 626.08 -09*.

Under *Minn. R. Crim. P. 37*, as amended effective October 1, 2016, the application may now be supported by:

a) a written affidavit signed under oath;

This is the traditional affidavit method. The officer signs a written affidavit and swears to it before a judge, notary, or other person authorized to administer oaths.

b) a signed statement attested to under oath;

This is also oath-based, but less formal than a traditional affidavit. The officer signs a written statement of facts and then orally swears or affirms that the statement is true before a judge or another person authorized to administer oaths.

c) a written statement signed under penalty of perjury under Minn. Stat. § 358.116.

This is the modern method. No separate oath is required. The officer signs the statutory declaration stating that the contents are true and correct under penalty of perjury. This method helps facilitate electronic search-warrant practice.

Note: Rule 37 modernized search-warrant practice by allowing warrant applications, warrants, and related orders to be submitted, signed, and transmitted electronically. The “penalty-of-perjury” declaration is one mechanism that makes that process workable without requiring the officer to appear personally before a judge or notary. The declaration should be placed immediately above the officer’s signature and state:

- “I declare under penalty of perjury that everything I have stated in this document is true and correct.”

The document should also state the date of signing and the county and state where it was signed. If the officer knowingly makes a false material statement, the officer may be prosecuted for perjury. *Minn. Stat. §§ 358.116, 609.48*.

8) MAY A SEARCH WARRANT BE ISSUED TO AN OFFICER OUTSIDE THE OFFICER'S JURISDICTION?

If the judge finds probable cause, the judge issues a signed search warrant, naming the judge's judicial office, **to a peace officer inside or outside the officer's jurisdiction.** *Minn. Stat. § 626.11.*

- "Naming the judge's judicial office" means the warrant should identify the issuing judge's official court position, such as "Judge of District Court, Tenth Judicial District," so it is clear the warrant is being issued by a judicial officer with authority to issue it.
- It does **not** mean the warrant has to list the judge's chambers address or administrative office location.

The warrant may be served anywhere within the issuing judge's jurisdiction by any officer named in the warrant, and by others only if they are assisting the named officer while the officer is present and acting in execution of the warrant. *Minn. Stat. § 626.13.*

Example: If an Anoka County officer seeks a warrant to search a residence in Hennepin County, the warrant should be issued by a judge with jurisdiction over the place to be searched. The warrant itself may be issued to the Anoka County officer even though that officer is outside the officer's usual jurisdiction. *Minn. Stat. §§ 626.06, 626.11, 626.13.*

- However, before service and execution, the officer **must** notify the local chief of police or, if there is no organized full-time police department, the county sheriff or deputy sheriff where the warrant will be served. *Minn. Stat. § 626.13.*
- As a matter of common and prudent law enforcement practice, the outside-county officer will usually coordinate with the local agency. The warrant may also name a local officer to assist in the search, although naming a local officer is not required if the out-of-county officer is named in the warrant and otherwise complies with *M.S. § 626.13.*

9) ONCE A SEARCH WARRANT IS ISSUED, HOW QUICKLY MUST IT BE EXECUTED AND RETURNED?

Except for financial institution warrants, a search warrant must be **executed and returned** to the issuing court within **10 days after the date of the warrant**. After that time, the warrant is void unless it was previously executed. *Minn. Stat. § 626.15(a)*. Financial institution warrants have a separate statutory timing rule. *Minn. Stat. § 626.15(b)*.

Practice Point: The 10-day period begins to run from the date the warrant is signed/issued. In computing the 10 days, exclude the date of issuance and include the last day; if the last day falls on a Saturday, Sunday, or legal holiday, that day is omitted from the computation. *Minn. Stat. § 645.15*.

- If the warrant is executed within the 10-day period but returned after the 10-day period, the late return does not automatically invalidate the search. However, the officer still has a statutory duty to immediately return the warrant to the court and deliver a written inventory of the property or things taken. *Minn. Stat. § 626.17*.

10) AFTER EXECUTION WHO GETS COPIES OF THE WARRANT & INVENTORY?

When a search warrant is executed, the officer must give a copy of the warrant to the person in whose possession the premises, property, or things were found. If property or things are taken, the officer must also give that person a receipt describing the items taken in detail.

- If no person is present, the officer must leave a copy of the warrant and receipt at the place searched. *Minn. Stat. § 626.16*.

The officer must also return the executed warrant to the issuing court. If property or things were taken, the officer must deliver a written inventory to the court, verified by the officer's certificate. *Minn. Stat. § 626.17*.

Note: The "receipt" and "inventory" may contain the same list of seized items, but they serve different purposes. The receipt is given to the person at the scene, or left at the place searched, to identify what was taken. The inventory is returned to the court with the warrant and must be verified by the officer's certificate. *Minn. Stat. §§ 626.16, 626.17*.

PRACTICE TIPS:**TELEPHONIC WARRANTS, ELECTRONIC WARRANTS & DIGITAL DEVICES**

Telephonic Search Warrant: An officer may request a search warrant based on sworn oral testimony communicated by telephone, radio, or similar means. *Minn. R. Crim. P. 36.01*. This “telephonic” procedure may be used only when circumstances make it reasonable to dispense with a written affidavit or a written statement signed under penalty of perjury. *Minn. R. Crim. P. 36.02*. If the judge proceeds under Rule 36, the judge must place the applicant under oath, make a record of the testimony, and follow the procedures in *Minn. R. Crim. P. 36.03–36.08*.

Telephonic vs Electronic Search Warrant: Traditional “telephonic” search warrants under Rule 36 are now best understood as the older method for obtaining a warrant remotely. They still exist and may be used when circumstances make it reasonable to dispense with a written affidavit or written penalty-of-perjury statement. But in modern practice, most remote warrant requests are handled electronically under Rule 37: the officer submits the written application electronically, verifies it by oath or penalty-of-perjury declaration, and the judge signs and returns the warrant electronically. *Minn. R. Crim. P. 36–37*.

Digital-Device Practice Point: Because phones and computers can contain vast amounts of private information, digital-device warrants require careful attention to both nexus and particularity. The affidavit should explain why evidence of the specific crime is likely to be found on the device, and the warrant should describe the categories of data to be searched or seized with enough particularity to avoid becoming a general rummaging search. *Riley v. California*, 573 U.S. 373 (2014); *State v. Holland*, 865 N.W.2d 666 (Minn. 2015); *State v. Harvey*, 932 N.W.2d 792 (Minn. 2019).

THE WARRANT IS NOT A FORMALITY: A valid search warrant is more than a signed piece of paper. It is a constitutional safeguard. Understanding these basic requirements helps judges issue warrants correctly, helps officers execute them lawfully, and helps attorneys evaluate them intelligently.



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