

I.C.R. 41. Search and Seizure.

Idaho Criminal Rule 41. Search and Seizure.

(a) Authority to issue warrant. A search warrant authorized by this rule or by the Idaho Code may be issued by a district judge or magistrate within the judicial district wherein the county of proper venue is located upon request of a law enforcement officer or any attorney for the state of Idaho. Where it does not appear that the property or person sought is currently within the territorial boundaries of the state of Idaho, such warrant may still be issued; however, no such issuance will be deemed as granting authority to serve said warrant outside the territorial boundaries of the State.

(b) Property or person which may be seized with a warrant. A warrant may be issued under this rule to search for and seize

(1) evidence of the commission of a criminal offense; or

(2) contraband, the fruits of crime, or things otherwise criminally possessed; or

(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 and content. A warrant shall issue only on an affidavit or affidavits, which include written certifications or declarations under penalty of perjury, or by testimony under oath and recorded and establishing the grounds for issuing a warrant. If the district judge or magistrate is satisfied that there is probable cause to believe that the grounds for the application exist, the judge or magistrate shall issue a warrant identifying the property or person and naming or describing the person or place to be searched. The finding of probable cause shall be based upon 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. Before ruling on a request for a warrant the district judge or magistrate may require the affiant to appear personally and may examine under oath the affiant and any witnesses affiant may produce, provided that such proceeding shall be taken down by recording equipment and shall be considered a part of the affidavit. The warrant shall be directed to any peace officer authorized to enforce or assist in enforcing any law of the state of Idaho. It shall command the officer to search, within the specified period of time, not to exceed fourteen (14) days, the person or place named for the property or person specified. The warrant shall be served in the daytime, unless the issuing authority, by appropriate provision in the warrant, and for reasonable cause shown, 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.

(d) Execution and return with inventory. The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for property taken or shall leave a copy and receipt at the place from which the property was taken. A verified return, which may be a written certification or declaration under penalty of perjury, shall be promptly made to a district court judge or magistrate in the county where a warrant for the seizure of property or a person was issued. The inventory shall be made by one of the

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officers executing the warrant in the presence of the person from whose possession or premises the property was taken; provided, if such person is not present, the executing officer shall make the inventory in the presence of at least one (1) credible person of age. The district judge or magistrate 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. The district judge or magistrate before whom the warrant is returned shall attach to the warrant a copy of the return, inventory and all other papers in connection therewith and shall file them with the clerk of the district court for the county in which the warrant was issued or served.

(e) Motion for return of property. A person aggrieved by a search and seizure may move the district court for the return of the property on the ground that the person is entitled to lawful possession of the property and that it was illegally seized. The motion for the return of the property shall be made only in the criminal action if one is pending, but if no action is pending a civil proceedings may be filed in the county where the property is seized or located. The court shall receive evidence on any issue of fact necessary to the decision on the motion. If the motion is granted the property shall be restored and it shall not be admissible in evidence at any hearing or trial. If a motion for return of property is made or comes on for hearing after a complaint, indictment or information is filed, it shall be treated also as a motion to suppress under Rule 12.

(f) Motion to suppress. A motion to suppress evidence shall be made in the trial court as provided in Rules 5.1(b) and 12.

(g) Telegraphic or facsimile copy of a search warrant. After the issuance of a search warrant in the form set forth in subsection (c) above, a copy of the search warrant may be sent by telecommunication process or by facsimile process to any peace officer or other officer serving the search warrant.

(Adopted December 27, 1979, effective July 1, 1980; amended March 30, 1984, effective July 1, 1984; amended March 20, 1985, effective July 1, 1985; amended June 15, 1987, effective November 1, 1978; amended March 23, 1990, effective July 1, 1990; amended March 18, 2011, effective July 1, 2011; amended February 9, 2012, effective July 1, 2012; amended June 20, 2013, effective July 1, 2013.)

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