



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

Idaho Criminal 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.

(g) Motion to Suppress. A defendant may move to suppress evidence in the court where the trial will occur as provided in Rules 5.1(b) and 12.

(h) Electronic Transmission of a Search Warrant. After a search warrant is issued, a copy of the warrant may be sent electronically to any peace officer or other officer serving the search warrant.

(Adopted February 22, 2017, effective July 1, 2017.)

Source URL: <https://isc.idaho.gov/icr41>