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# Vermont Search Warrant Rules - Annotated

## *V.R.Cr.P. Rule 41*

### VERMONT COURT RULES ANNOTATED

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\*\*\* Rules current as amended through January 3, 2012 \*\*\*

RULES OF CRIMINAL PROCEDURE  
IX. SUPPLEMENTARY AND SPECIAL PROCEEDINGS  
V.R.Cr.P. Rule 41 (2012)

#### Rule 41. Search and Seizure

(a) Authority to Issue **Warrant**. -- A search **warrant** authorized by this rule may be issued only by a judicial officer upon request of a law enforcement officer, an attorney for the state, or any other person authorized by law.

(b) Grounds for Issuance. -- A **warrant** may be issued under this rule to

(1) search for and seize any

(A) evidence of the commission of a criminal offense, or

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

(C) weapons or other things by which a crime has been committed or is about to be committed, or

(D) person who has been kidnapped or unlawfully imprisoned or restrained in violation of the laws

of this state, or who has been kidnapped in another jurisdiction and is now concealed within this state,

or any human fetus or human corpse, or

(2) search for a person whose arrest is authorized by law; or

(3) monitor conversations for which one party has consented in order to obtain evidence of the commission of a crime.

(c) Issuance and Contents.

(1) Probable Cause. -- A judicial officer shall issue the **warrant** if the judicial officer is satisfied that there is probable cause to believe that grounds for the application exist based upon an affidavit or affidavits or sworn testimony or both. 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 for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished.



(2) Particularity. -- The **warrant** shall identify:

- (A) the property or other object of the search and name or describe the person or place to be searched, or
- (B) the conversations to be monitored.

(3) Requesting a **Warrant** in the Presence of a Judicial Officer.

(A) **Warrant** on an Affidavit. When a law enforcement officer, an attorney for the state, or other person authorized by law presents an affidavit in support of a **warrant**, the judicial officer may require the affiant to appear personally and may examine under oath the affiant and any witness the affiant produces.

(B) **Warrant** on Sworn Testimony. The judicial officer may wholly or partially dispense with a written affidavit and base a **warrant** on sworn testimony if doing so is reasonable under the circumstances.

(C) Recording Testimony. Testimony taken in support of a **warrant** shall be recorded by a court reporter or by a suitable recording device, and the transcript or recording shall be filed with the clerk, along with any affidavit.

(4) Requesting a **Warrant** by Reliable Electronic Means.

(A) In General. When a law enforcement officer, an attorney for the state, or other person authorized by law so requests, a judicial officer may issue a **warrant** based on information communicated by reliable electronic means.

(B) Transmitting and Affirming Affidavits. Upon learning that an applicant is requesting a **warrant** under Rule 41(c)(4), a judicial officer shall inform the applicant that a signed or unsigned affidavit shall be transmitted electronically to the judicial officer. The **warrant** affidavit shall be sworn to or affirmed by administration of the oath over the telephone by the judicial officer. The administration of the oath need not be made part of the affidavit or recorded, but the judicial officer shall note on the affidavit that the oath was administered. The determination of probable cause for issuance of the **warrant** shall be made solely on the contents of the affidavit or affidavits provided.

(C) **Warrant** by Reliable Electronic Means. If the judicial officer proceeds under this subsection, the following additional procedures apply:

- (i) Transmission to a Judicial Officer. The applicant shall prepare an original **warrant** and shall transmit it to the judicial officer by reliable electronic means.
- (ii) Modification. The judicial officer may modify the original **warrant**. The judge shall transmit a copy of the modified **warrant** to the applicant by reliable electronic means.
- (iii) Signing the **Warrant**. Upon determining to issue the **warrant**, the judicial officer shall immediately sign the original **warrant** with any modifications, enter on its face the exact date and time it is issued, and transmit a copy by reliable electronic means to the applicant.
- (iv) Filing of the **Warrant**. The judicial officer shall file with the clerk by an appropriate means



the signed original or modified **warrant** and the affidavit. The clerk shall enter the signed original or modified **warrant** on the docket when filed. At the time of making the return, a copy of the **warrant** as served shall be filed with the clerk.

(5) Contents of the **Warrant**.

(A) In General. The **warrant** shall be directed to a law enforcement officer of the state of Vermont authorized to enforce or assist in enforcing any law thereof. The **warrant** shall command the officer to search the person or place named for the property or other object specified and seize the property or object and, if appropriate, the person specified. The **warrant** shall also command the officer to:

- (i) serve the **warrant** within a specified period of time not to exceed 10 days from issuance;
- (ii) serve the **warrant** between the hours of 6:00 A.M. and 10:00 P.M. unless the judicial officer for reasonable cause shown authorizes execution at other times; and
- (iii) return the **warrant** to the court designated in the **warrant**.

(B) **Warrant** for Monitoring a Conversation. The **warrant** shall be directed to a law enforcement officer of the state of Vermont authorized to enforce or assist in enforcing any law thereof. The **warrant** shall command the officer to monitor conversations for which one party has consented. The **warrant** shall identify the nonconsenting parties to the conversation, if known. The **warrant** may indicate that multiple conversations may be monitored and that it may be executed on multiple occasions. The **warrant** shall command the officer to:

- (i) execute the **warrant** within a specified period of time not to exceed 10 days from issuance;
- (ii) execute the **warrant** between the hours of 6:00 A.M. and 10:00 P.M. unless the judicial officer for reasonable cause shown authorizes execution at other times; and
- (iii) return the **warrant** to the court designated in the **warrant**.

(d) Execution and Return of the **Warrant**.

(1) Execution. -- The officer taking property under the **warrant** shall:

(A) give to the person from whom or from whose premises the property was taken a copy of the **warrant** and a receipt for the property taken; or

(B) shall leave the copy and receipt at the place from which the property was taken.

(2) Inventory. -- A written inventory of any property taken shall be made in the presence of the applicant for the **warrant**, or the officer serving the **warrant**, and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the **warrant**, officer serving the **warrant** or the person from whose possession or premises the property was taken, and shall be verified by the officer.



(3) Return. -- The return shall be made promptly and shall be accompanied by the inventory. The clerk of the court to which the **warrant** was returned 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**.

(4) Execution and Return of a **Warrant** for Monitoring A Conversation.

(A) Noting the Time. A law enforcement officer executing a **warrant** for monitoring a conversation shall enter on the **warrant** the exact date and time that the **warrant** was executed and the period of time that any monitoring occurred.

(B) Return. If the **warrant** is executed a return shall be made within 90 days. Upon certification by a law enforcement officer, an attorney for the state, or any other person authorized by law that an investigation related to the **warrant** is ongoing, a judicial officer may authorize an extension of the time for making the return for such period as the judicial officer deems reasonable. The return shall identify:

- (i) the identity of any nonconsenting parties to the conversation, if known;
- (ii) the date and time of any monitored conversations; and
- (iii) the approximate length of any monitored conversations.

(C) Service. At the time the return is made, the law enforcement officer executing a **warrant** for

monitoring a conversation shall serve a copy of the **warrant** on any known nonconsenting parties to the conversation. Service may be accomplished by delivering a copy to the known nonconsenting parties; or by leaving a copy at the person's residence or usual place of abode with an individual of suitable age and discretion who resides at that location; or by mailing a copy to the person's last known address. Upon certification by a law enforcement officer, an attorney for the state, or any other person authorized by law that an investigation related to the **warrant** is ongoing, a judicial officer may authorize an extension of the time for serving the return for such period as the judicial officer deems reasonable. Service need not be made upon any person against whom criminal charges have been filed related to the execution of the **warrant**.

(e) Motion for Return of Property. -- A person aggrieved by an unlawful search and seizure may move the court to which the **warrant** was returned or the court in the county or territorial unit where property has been seized without **warrant** for the return of the property on the ground that the movant is entitled to lawful possession of the property which was illegally seized. The judicial officer shall receive evidence on any issue of fact necessary to the decision of 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. After an indictment or information is filed, a motion for return of property shall be made or heard only in the county or territorial unit of trial and shall be treated as a motion to suppress under Rule 12(b)(3).

(f) Motion to Suppress. -- A defendant aggrieved by an unlawful search and seizure may make a motion to suppress evidence in the county or territorial unit of trial as provided in Rule 12(b)(3). If the motion is granted, the evidence shall not be admissible at the trial or at any future hearing or trial.



(g) Definitions. -- The following words wherever used in this rule shall have the following meanings:

(1) The term "property" is used in this rule to include documents, books, papers, and any other tangible objects except those listed in Rule 41.1(m)(3); and

(2) The term "reliable electronic means" shall include facsimile transmission, electronic mail, or other method of transmitting a duplicate of an original document.

**HISTORY:** Amended Dec. 19, 1973, eff. Jan. 1, 1974; March 17, 1977, eff. May 1, 1977; Dec. 8, 1981, eff. March 1, 1982; 1997, No. 44, § 1; April 19, 2007, eff. April 19, 2007; Sept. 22, 2010, eff. Nov. 22, 2010.

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