

## Utah Rules of Criminal Procedure

### 2 Summary

3 **Rule 40. Search Warrants.** The changes incorporate procedural provisions from the Utah  
4 Code on search warrants. The changes also create procedures to implement the requirements of  
5 Anderson v. Taylor, 2006 UT 55. The rule requires a magistrate to retain search warrant  
6 documents from the time a search warrant is issued. The rule also addresses access to and  
7 sealing of search warrant files.

### 8 **Rule 40. Remotely Communicated Search Warrants**

#### 9 (a) Definitions.

10 As used in this rule:

11 (1) "Daytime" means the hours beginning at 6 a.m. and ending at 10 p.m. local time.

12 (2) "Recorded " or "recording" includes the original recording of testimony, a return or other  
13 communication or any copy, printout, facsimile, or other replication that is intended by the  
14 person making the recording to have the same effect as the original.

15 (3) "Search warrant" is an order issued by a magistrate in the name of the state and directed to a  
16 peace officer, describing with particularity the thing, place, or person to be searched and the  
17 property or evidence to be seized and includes an original written or recorded warrant or any  
18 copy, printout, facsimile or other replica intended by the magistrate issuing the warrant to have  
19 the same effect as the original.

#### 20 (b) Grounds for issuance.

21 Property or evidence may be seized pursuant to a search warrant if there is probable cause to  
22 believe it:

23 (1) was unlawfully acquired or is unlawfully possessed;

24 (2) has been used or is possessed for the purpose of being used to commit or conceal the  
25 commission of an offense; or

26 (3) is evidence of illegal conduct.

#### 27 (c) Conditions precedent to issuance.

28 (1) A search warrant shall not issue except upon probable cause, supported by oath or  
29 affirmation, and shall particularly describe the person or place to be searched and the person,  
30 property, or evidence to be seized.

31 (2) If the item sought to be seized is evidence of illegal conduct, and is in the possession of a  
32 person or entity for which there is insufficient probable cause shown to the magistrate to believe  
33 that such person or entity is a party to the alleged illegal conduct, no search warrant shall issue  
34 except upon a finding by the magistrate that the evidence sought to be seized cannot be obtained  
35 by subpoena, or that such evidence would be concealed, destroyed, damaged, or altered if sought  
36 by subpoena. If such a finding is made and a search warrant issued, the magistrate shall direct  
37 upon the warrant such conditions that reasonably afford protection of the following interests of  
38 the person or entity in possession of such evidence:

39 [(a)] (A) protection against unreasonable interference with normal business;

40 [(b)] (B) protection against the loss or disclosure of protected confidential sources of

41 information; or  
42 [(e)] (C) protection against prior or direct restraints on constitutionally protected rights.

43 (d) Search warrant served in readable form.

44 A copy of a search warrant shall be served in a readable form upon the person or place to be  
45 searched.

46 (e) Time for service -- Officer may request assistance.

47 (1) The magistrate shall insert a direction in the warrant that it be served in the daytime, unless  
48 the affidavit or recorded testimony states sufficient grounds to believe a search is necessary in the  
49 night to seize the property prior to its being concealed, destroyed, damaged, altered, or for other  
50 good reason; in which case the magistrate may insert a direction that it be served any time of the  
51 day or night.

52 (2) The search warrant shall be served within ten days from the date of issuance. Any search  
53 warrant not executed within this time shall be void and shall be returned to the court or  
54 magistrate as not executed.

55 (3) An officer may request other persons to assist in conducting the search.

56 (f) Receipt for property taken.

57 The officer, when seizing property pursuant to a search warrant, shall give a receipt to the person  
58 from whom it was seized or in whose possession it was found. If no person is present, the officer  
59 shall leave the receipt in the place where the property was found.

60 (g) Return -- Inventory of property taken.

61 The officer, after execution of the warrant, shall promptly make a signed return of the warrant to  
62 a magistrate of the issuing court and deliver a written or recorded inventory of anything seized,  
63 stating the place where it is being held.

64 (h) Safekeeping of property.

65 The officer seizing the property shall be responsible for its safekeeping and maintenance until the  
66 court otherwise orders.

67 (i) Magistrate to retain and file copies - Documents sealed for twenty days - Forwarding of  
68 record to court with jurisdiction.

69 (1) At the time of issuance, the magistrate shall retain and seal a copy of the search warrant, the  
70 application and all affidavits or other recorded testimony on which the warrant is based and shall,  
71 within a reasonable time, file those sealed documents in court files which are secured against  
72 access by the public. Those documents shall remain sealed until twenty days following the  
73 issuance of the warrant unless that time is extended or reduced under Section (m). Unsealed  
74 search warrant documents shall be filed in the court record available to the public.

75 (2) Sealing and retention of the file may be accomplished by:

76 (A) placing paper documents or storage media in a sealed envelope and filing the sealed  
77 envelope in a court file not available to the public;

(B) storing the documents by electronic or other means under the control of the court in a

70 manner reasonably designed to preserve the integrity of the documents and protect them against  
71 disclosure to the public during the period in which they are sealed; or

81 (C) filing through the use of an electronic filing system operated by the State of Utah which  
82 system is designed to transmit accurate copies of the documents to the court file without allowing  
83 alteration to the documents after issuance of the warrant by the magistrate.

84 (j) Findings required for service without notice.

85 If the magistrate finds upon proof, under oath, that the object of the search may be quickly  
86 destroyed, disposed of, or secreted, or that physical harm may result to any person if notice were  
87 given, the magistrate may direct that the officer need not give notice of authority and purpose  
88 before entering the premises to be searched.

89 (k) Violation of health, safety, building, or animal cruelty laws or ordinances -- Warrant to  
90 obtain evidence.

91 In addition to other warrants provided by this rule, a magistrate, upon a showing of probable  
92 cause to believe a state, county, or city law or ordinance, has been violated in relation to health,  
93 safety, building, or animal cruelty, may issue a warrant for the purpose of obtaining evidence of a  
94 violation. A warrant may be obtained from a magistrate upon request of a peace officer or state,  
95 county, or municipal health, fire, building, or animal control official only after approval by a  
96 prosecuting attorney. A search warrant issued under this section shall be directed to any peace  
97 officer within the county where the warrant is to be executed, who shall serve the warrant. Other  
98 concerned personnel may accompany the officer.

99 (l) Remotely communicated search warrants.

100 ~~(a)~~ (1) Means of communication. When reasonable under the circumstances, a search warrant may  
101 be issued upon sworn or affirmed testimony of a person who is not in the physical presence of the  
102 magistrate, provided the magistrate is satisfied that probable cause exists for the issuance of the  
103 warrant. All communication between the magistrate and the peace officer or prosecuting attorney  
104 requesting the warrant may be remotely transmitted by voice, image, text, or any combination of  
105 those, or by other means.

106 ~~(b)~~ (2) Communication to be recorded. All testimony upon which the magistrate relies for a finding  
107 of probable cause shall be on oath or affirmation. The testimony and content of the warrant shall be  
108 recorded. Recording shall be by writing or by mechanical, magnetic, electronic, photographic storage  
109 or by other means.

110 ~~(c)~~ (3) Issuance. If the magistrate finds that probable cause is shown, the magistrate shall issue a  
111 search warrant.

112 ~~(d)~~ (4) Signing warrant. Upon approval, the magistrate may direct the peace officer or the  
113 prosecuting attorney requesting ~~the~~ a warrant from a remote location to sign the magistrate's name  
114 on ~~the~~ a warrant at a remote location.

115 ~~(e)~~ (5) Filing of warrant and testimony. The warrant and recorded testimony shall be retained and  
116 filed [with] the court pursuant to section (i). Filing may be by writing or by mechanical, magnetic,  
117 electronic, photographic storage or by other means.

119 ~~[(f) Original testimony and warrant. "Recorded testimony" includes the original recording of~~  
120 ~~testimony or any copy, printout, facsimile, or other replication of testimony that is intended by the~~  
121 ~~person making the recording to have the same effect as the original testimony. "Warrant" includes~~  
122 ~~an original written or recorded warrant or any copy, printout, facsimile or other replica intended by~~  
~~the magistrate issuing the warrant to have the same effect as the original.]~~

123 ~~[(g)]~~ (6) Usable copies made available. Except as provided in Sections (i) and (m) of this rule, any  
124 person having standing [to request suppression of evidence discovered as a result of the search]  
125 may request and shall be provided with a copy of the warrant and a copy of the recorded testimony  
126 submitted in support of the application for the warrant. The copies shall be provided in a reasonably  
127 usable form.

128 (m) Sealing and Unsealing of Search Warrant Documents

129 (1) Application for sealing of documents related to search warrants. A prosecutor or peace  
130 officer may make a written or otherwise recorded application to the court to have documents or  
131 records related to search warrants sealed for a time in addition to the sealing required by  
132 Subsection (i)(1). Upon a showing of good cause, the court may order the following documents  
133 to be sealed:

134 (A) applications for search warrants;

135 (B) search warrants;

136 (C) affidavits or other recorded testimony upon which the search warrant is based;

137 (D) the application, affidavits or other recorded testimony and order for sealing the  
138 documents.

139 (2) Sealing of search warrant documents. Search warrant documents are public record that may  
140 be sealed in entirety or in part and not placed in the public file if all or part of the information in  
141 them would:

142 (A) cause a substantial risk of harm to a person's safety;

143 (B) pose a clearly unwarranted invasion of or harm to a person's reputation or privacy; or

144 (C) pose a serious impediment to the investigation.

145 Sealed documents shall be maintained in a file not available to the public. If a document is not  
146 sealed in its entirety, the court may order a copy of the document with the sealed portions  
147 redacted to be placed in the public file and an un-redacted copy to be placed in the sealed file.  
148 Except as required by Section (i), no document may be designated as "Filed under Seal" or  
149 "Confidential" unless it is accompanied by a court order sealing the document.

150 (3) Unsealing of documents. Any person having standing may file a motion to unseal search  
151 warrant documents with notice to the prosecutor and law enforcement agency. If the prosecutor  
152 or law enforcement agency files an appropriate and timely objection to the unsealing, the court  
153 may hold a hearing on the motion and objection. Where no objection to unsealing the documents  
154 is filed, the defendant may prepare an order for entry by the court. The court may order the  
155 unsealing of the documents or order copies of the documents to be delivered to a designated  
156 person without unsealing the documents and require the person receiving the documents not to  
157 disclose the contents to any other person without the authorization of the court.

158 (4) Length of time documents may remain sealed. The documents may remain sealed until the court finds, for good cause, that the records should be unsealed.

160 **URCrP 40**

161 Advisory Committee Notes

162 (a) This section is adapted from former Sec. 77-23-201 Utah Code Ann.

163 (b) This section is adapted from former Sec. 77-23-202 Utah Code Ann.

164 (c) This section is adapted from former Sec. 77-23-203 Utah Code Ann.

165 (d) This section is adapted from former Sec. 77-23-204 Utah Code Ann.

166 (e) This section is adapted from former Sec. 77-23-205 Utah Code Ann.

167 (f) This section is adapted from former Sec. 77-23-206 Utah Code Ann. The statute contained the  
168 words "Failure to give or leave a receipt does not render the evidence seized inadmissible at trial."  
169 This rule is not a departure from that original legislative intent. While the committee did not  
170 consider it necessary to address admissibility in a procedural rule, the elimination of that language  
171 does not suggest that failure to comply with the receipt requirement should be a basis for exclusion  
172 of the evidence seized.

173 (g) This section is adapted from former Sec. 77-23-207 Utah Code Ann.

174 (h) This section is adapted from former Sec. 77-23-208 Utah Code Ann.

175 (i) Subsection (1) is added in compliance with the order of the Utah Supreme Court in Anderson v.  
176 Taylor 2006UT55 (filed September 22, 2006). Subsection (2) is added to allow for a planned  
177 electronic search warrant system operated by the Utah Bureau Of Criminal Identification, or other  
178 systems which might be employed by a magistrate. This provision supercedes the supervisory orders  
179 of the Court in Anderson v. Taylor for that purpose. (j) This section is adapted from former Sec. 77-  
180 23-210(2) Utah Code Ann.

181 (k) This section is adapted from former Sec. 77-23-211 Utah Code Ann.

182 (l) This section was formerly Rule 40 Remotely Communicated Search Warrants. Terms used are  
183 intended to be interpreted liberally in order to facilitate remote communications as a means of  
184 applying for and issuing search warrants while at the same time preserving the integrity of the  
185 probable cause application and the terms of warrants that are authorized.

186 (m) (New section)

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