

CHAPTER 125

SEARCH WARRANTS

H. F. 190

AN ACT to define the term "search warrant"; to declare the conditions under which search warrants may issue; to amend, revise, and codify various statutes pertaining to search warrants, in order to provide a uniform procedure governing search warrant proceedings, and to this end to repeal chapter six hundred seventeen (617) of the code, 1931, and to enact a substitute therefor; also to amend sections two thousand ten (2010), thirty-one hundred fifty-nine (3159), and thirteen thousand two hundred three (13203) of said code; also to repeal the following chapter and sections of said code, as amended, to wit:

1. Sections fifteen hundred seventy-eight (1578) to fifteen hundred eighty-one (1581), inclusive.
2. Section thirty-one hundred sixty (3160).
3. Chapter ninety-six (96).
4. Sections thirteen thousand two hundred (13200), thirteen thousand two hundred one (13201), and sections thirteen thousand two hundred four (13204) to thirteen thousand two hundred nine (13209), inclusive.
5. Sections thirteen thousand two hundred eleven (13211) to thirteen thousand two hundred fifteen (13215), inclusive.

Be It Enacted by the General Assembly of the State of Iowa:

1 Chapter six hundred seventeen (617), code, 1931, is hereby repealed
2 and the following is enacted in lieu thereof, to wit:

1 "SECTION 1. Definition. A search warrant is an order in writing in
2 the name of the state, signed by a magistrate, other than a judge of the
3 supreme court, directed to a peace officer, commanding him to search
4 for personal property, and bring it before the magistrate.

1 "SEC. 2. Docketing—Trial—Nature of proceedings. Search warrant
2 proceedings shall be docketed in the name of the state against the prop-
3 erty seized and shall be tried as an ordinary action, the county attorney
4 appearing for the state.

1 "SEC. 3. When authorized. A search warrant may be issued:

- 2 1. For property which has been stolen or embezzled.
- 3 2. For property which has been used as a means or as one of the
- 4 means of committing or of accomplishing the commission of a felony.
- 5 3. For property which is in the possession of a person with the intent
- 6 to use it as a means of committing a public offense, or which has been
- 7 delivered by such person to another for the purpose of concealing it.
- 8 4. For property which is being used or employed in carrying on, keep-
- 9 ing or maintaining a place of any description for the purpose of gam-
- 10 bling for money or for any other thing of value.
- 11 5. For personal property of the character enumerated in section thir-
- 12 teen thousand two hundred three (13203) of the code.
- 13 6. For property of the character specifically enumerated in section
- 14 thirteen thousand two hundred ten (13210) of the code.
- 15 7. For cigarettes and cigarette papers, and the containers thereof,
- 16 received, possessed, kept, stored, sold or given away in violation of any
- 17 law of this state, or with intent to violate any such law.
- 18 8. For intoxicating liquors, including alcohol, brandy, whiskey, rum,
- 19 gin, beer, ale, porter, wine, spirituous, vinous, and malt liquors, manu-
- 20 factured, sold, kept for sale, owned, or possessed in violation of any law

21 of this state, including all instrumentalities, containers, equipment,
 22 articles or things used or employed or intended to be used or employed
 23 in effecting said unlawful acts or any of them.

24 9. For any other property which is legally subject to a search war-
 25 rant by any law of this state.

1 "SEC. 4. Information. Any credible resident of this state may make
 2 application for the issuance of a search warrant by filing before any
 3 magistrate, except a judge of the supreme court, a written informa-
 4 tion, supported by his oath or affirmation, and alleging therein the ex-
 5 istence of any ground or grounds specified in this chapter as ground
 6 for the issuance of a search warrant and that he believes and has sub-
 7 stantial reason to believe that said ground or grounds exist in fact.
 8 Said information shall describe with reasonable certainty the person
 9 or premises, or both, to be searched, the property to be seized, and the
 10 person, if known, in possession of said premises and property.

1 "SEC. 5. Issuance of warrant. If the magistrate is satisfied from his
 2 examination of the applicant, and of other witnesses, if any, and of the
 3 allegations of the information, of the existence of the grounds of the
 4 application, or that there is probable cause to believe their existence,
 5 he shall issue a search warrant, signed by him with his name of office,
 6 directed to any peace officer in the county, commanding him forthwith
 7 to search the person or place named for the property specified, and bring
 8 said property before him.

1 "SEC. 6. Form of warrant. The warrant may be in substantially the
 2 following form:

3 County of..... }
 4 State of Iowa }
 5 To any peace officer of said county :
 6 Proof having been this day made before me as provided by law that
 7 (here, with reasonable certainty and in accordance with the information
 8 and other proof obtained by the magistrate, designate the property, its
 9 location, the person in possession thereof, and the unlawful use or pur-
 10 pose to which it has been, or is being employed or held)
 11 and being satisfied that the foregoing recital relative to said prop-
 12 erty is probably true, now, therefore, you are commanded to make imme-
 13 diate search of (here state whether the search is of the person of a
 14 named person or of said premises, or of both) and if said property or
 15 any part thereof be found you are commanded to bring said property
 16 forthwith before me at my office.
 17 Dated at..... this..... day of.....
 18 193.....
 19
 20 (Official title)

1 "SEC. 7. Service of warrant. A search warrant may in all cases be
 2 served by any peace officer, but by no other person, except in aid of the
 3 officer on his requisition, he being present and acting in its execution.

1 "SEC. 8. Execution of warrant. The peace officer to whom such war-
 2 rant shall be delivered shall, in the daytime or in the nighttime, forth-
 3 with obey and execute, as effectually as possible, the commands of said

4 warrant, and forthwith make return of his doings to said magistrate,
5 who shall securely keep all property so seized and the vessels, if any,
6 containing said property until final action be had thereon.

1 "SEC. 9. Breaking in to execute warrant. The officer may break
2 open any outer or inner door or window of a house, or any part thereof,
3 or anything therein, to execute the warrant, if, after notice of his
4 authority and purpose, he is refused admittance.

1 "SEC. 10. Liberating person assisting in execution. He may break
2 open any outer or inner door or window of a house for the purpose of
3 liberating a person who, having entered to aid him in the execution of
4 the warrant, is detained therein, or, when necessary, for his own
5 liberation.

1 "SEC. 11. Arrest of persons. The officer serving a search warrant,
2 shall, in connection therewith, and in addition thereto, make arrest of
3 persons under all circumstances justifying an arrest without a warrant,
4 and take said persons before said magistrate to be dealt with as pro-
5 vided by law.

1 "SEC. 12. Return of warrant. A search warrant must be executed
2 and returned to the magistrate who issued it within ten days after its
3 date. After the expiration of such time the warrant, unless executed,
4 is void.

1 "SEC. 13. Receipt for property. When the officer takes any property
2 under the warrant, he must, on demand, give to the person from whom
3 it was taken, or in whose possession it was found, an itemized receipt
4 therefor.

1 "SEC. 14. Inventory. The officer must forthwith return the warrant
2 to the magistrate, with a complete inventory of the property taken,
3 made publicly or in the presence of the person from whose possession
4 it was taken and of the applicant for the warrant, if they be present.

1 "SEC. 15. Copy of inventory. The magistrate, if required, must
2 deliver a copy of the inventory to the person from whose possession
3 the property was taken, and to the applicant for the warrant.

1 "SEC. 16. Notice of hearing. Said magistrate, in the event of a
2 seizure under said warrant, shall, within forty-eight hours after the
3 officer's return is filed with him, issue a notice of hearing on said seiz-
4 ure, which notice shall:
5 1. Be addressed:
6 a. To the person or persons named or described in said information
7 as the owner or keeper or possessor of said property.
8 b. To all persons whom it may concern.
9 2. Describe said property so seized with reasonable certainty, and
10 state where, when, and why the same was seized.
11 3. Summon said persons and all others whom it may concern to ap-
12 pear before said magistrate within the county at a place and time named
13 in said notice, which time shall not be less than five nor more than fif-
14 teen days after the filing of said return, and show cause, if any they

15 have, why said property, together with the containers in which the
16 same are contained, if any, should not be forfeited.

17 4. Be signed by said magistrate.

1 "SEC. 17. Service of notice. Said notice shall be served at least
2 three days prior to the hearing:

3 1. By posting a copy thereof in some conspicuous place on or about
4 the building or place where said property was seized.

5 2. If the person or persons named or described in the information as
6 owner or keeper of the property so seized be resident of said county,
7 then by personally serving said notice on said person, or by leaving a
8 copy of said notice at the last known usual place of residence of said
9 person with some adult member of his family if found at said residence.

1 "SEC. 18. Hearing. The magistrate must, at the time so fixed, or at
2 an adjournment thereof, proceed to take testimony in relation to the
3 property so seized.

1 "SEC. 19. Substitute magistrate. Should the magistrate issuing the
2 warrant be absent or for any reason be unable to serve at the time of
3 the hearing aforesaid, any other magistrate of the county, designated
4 by the absent magistrate or by the county attorney, shall act.

1 "SEC. 20. Procedure. The procedure in the trial of cases not com-
2 menced before a judge of the district court may be the same, substan-
3 tially as in case of misdemeanors triable before justices of the peace.
4 Proceedings commenced before a judge of the district court may be
5 treated as pending in the district court and be disposed of under the
6 general procedure therein provided except as it may be herein modified.

1 "SEC. 21. Right to contest forfeiture. At the time and place pre-
2 scribed in said notice, the person named in said information, or any
3 other person claiming an interest in said property, or in any part there-
4 of, may appear and show specific and legal cause why the same should
5 not be forfeited.

1 "SEC. 22. Insufficient description—Effect. When any property shall
2 have been seized by virtue of any such warrant, the same shall not be
3 discharged or returned to any person claiming the same, by reason of
4 any alleged insufficiency of description in the warrant, but the claim-
5 ant shall only have a right to be heard on the merits of the case.

1 "SEC. 23. Property restored. If it appears that the property taken
2 is not the same as that described in the warrant, or that there is no
3 probable cause for believing the existence of the grounds on which the
4 warrant was issued, the magistrate shall cause it to be restored to the
5 person from whom it was taken.

1 "SEC. 24. Execution, return, and costs. The officer shall obey said
2 order and make return thereon to the court of his acts thereunder and
3 the costs of the proceeding in such case attending the restoration shall
4 be taxed to and paid by the state.

1 "SEC. 25. Judgment of forfeiture and destruction. If the magis-
2 trate finds that the property or any part thereof seized under the search
3 warrant is of the illegal nature or character alleged in the information,

4 he shall enter judgment of forfeiture to the state of said property, or
5 of the part thereof, as the case may be, and shall, in addition to said
6 judgment of forfeiture, enter an order directing the immediate destruc-
7 tion of all such property which does not have a legitimate use and the
8 sale of all property other than money which may be used legitimately,
9 unless said latter property is otherwise disposed of as in this chapter
10 provided.

1 "SEC. 26. Execution—Sale—Destruction. Execution shall issue for
2 the sale of all property, except money, which may have a legitimate
3 use, and for the destruction of all property having no legitimate use.
4 Sales shall be made as provided by section eleven thousand seven hun-
5 dred twenty-four (11724), of the code. Due return of the execution
6 shall be made thereon by the officer executing it.

1 "SEC. 27. Limitation on sale. Property seized under search war-
2 rant and forfeited to the state and ordered sold shall be sold only to
3 persons who have legal right to purchase or receive such property.

1 "SEC. 28. Stamping cigarettes, etc. In the sale of cigarettes and
2 cigarette papers which have been seized on search warrant and for-
3 feited, the officer shall be exempt from the provisions of the law re-
4 quiring the stamping of such articles before sale.

1 "SEC. 29. Proceeds. The proceeds derived from a sale and the money
2 seized and forfeited, if any, shall be paid by the peace officer to the
3 county treasurer and by him credited to the school fund of the county.

1 "SEC. 30. Disposition of stolen or like property. If the property
2 taken by virtue of a search warrant was stolen or embezzled, it must
3 be restored to the owner, upon his making satisfactory proof to the
4 magistrate of his ownership thereof, or of his right of possession
5 thereto, as provided in chapter five hundred sixteen (516). If it
6 was taken on a warrant issued on the grounds stated in the second or
7 third subdivision of section three (3) hereof, the magistrate must
8 retain it in his possession, subject to the order of any other court having
9 jurisdiction to try the offense which the property taken was used as
10 a means of committing, or so intended to be.

1 "SEC. 31. Utilizing condemned liquors. When a judgment has been
2 entered decreeing a forfeiture of any intoxicating liquors, the mag-
3 istrate shall direct the disposition of such liquors and the vessels con-
4 taining the same:

- 5 1. By ordering the destruction thereof; or
- 6 2. By ordering any portion thereof consisting of alcohol, brandies,
7 wine, or whiskey, to be delivered, for medicinal or scientific purposes,
8 to any state or reputable hospital in the county, or in adjoining coun-
9 ties, or to the board of control of state institutions, or to any reputable
10 educational institution in the state for scientific purposes.

1 "SEC. 32. Dispensation by board of control. Liquors delivered to
2 the board of control shall be dispensed by it to any state institution
3 or reputable hospital in this state and solely for medical or scientific
4 purposes.

1 "SEC. 33. Transportation by carrier. When any such liquor is
2 ordered delivered or shipped, the magistrate shall securely attach, or

3 cause to be attached, to the box or package containing the same, a certi-
4 fied copy of the order of the court and thereupon any common carrier
5 may receive, transport, and deliver such liquor to the consignee.

6 The cost of packing and transportation shall be paid by the con-
7 signee receiving such liquor.

1 "SEC. 34. Utilizing other property. When property seized under
2 search warrant has been finally forfeited to the state, and is of a na-
3 ture useful to peace officers in law enforcement, the magistrate may
4 order it delivered to any state, county, or city law-enforcing agency,
5 and in such case the head, chief, or superintendent of such agency
6 shall receipt to the magistrate therefor, and hold and use such prop-
7 erty solely in effecting law enforcement, and deliver the same to his
8 successor and shall be liable therefor on his bond.

1 "SEC. 35. Costs. If no person be made defendant, or if judgment
2 be in favor of all the defendants who appear and are made such,
3 then the costs of the proceeding shall be paid as in ordinary criminal
4 prosecution where the prosecution fails.

5 If the judgment shall be against only one party defendant, he shall
6 be adjudged to pay all the costs of the proceedings.

7 If such judgment shall be against more than one party defendant
8 claiming distinct interests in said property, the costs of said proceed-
9 ings and trial shall be, according to the discretion of said magistrate,
10 equitably apportioned among said defendants.

11 Execution shall be issued on said judgments against said defend-
12 ants for the amount of costs so adjudged against them.

1 "SEC. 36. Seizure of other property—Disposition. When any offi-
2 cer in the execution of a search warrant shall find any stolen or em-
3 bezzled property, or shall seize any other things for which a search
4 warrant is allowed by this chapter, all the property and things so
5 seized shall be safely kept, by the direction of the court or magistrate,
6 so long as shall be necessary for the purpose of being produced as
7 evidence on any trial; and as soon as may be afterwards all such
8 stolen and embezzled property shall be restored to the owner thereof,
9 and all other things seized by virtue of such warrant may be de-
10 stroyed, or otherwise disposed of, under the direction of the court or
11 magistrate.

1 "SEC. 37. Searching prisoner. When a person charged with an
2 offense is supposed by the magistrate before whom he is brought to
3 have upon his person a dangerous weapon, or anything which may be
4 used as evidence of the commission of the offense, the magistrate may
5 direct him to be searched in his presence, and the weapon or evidence
6 to be retained, subject to his order, or the order of the court in which
7 the defendant may be tried.

1 SEC. 38. Maliciously suing out warrant. Whoever maliciously and
2 without probable cause procures a search warrant to be issued and
3 executed is guilty of a misdemeanor.

1 "SEC. 39. Officer exceeding authority. A peace officer who, in ex-
2 ecuting a search warrant, wilfully exceeds his authority, or exercises
3 it with unnecessary severity, is guilty of a misdemeanor.

1 "SEC. 40. Appeal by claimant. Any person appearing as aforesaid
2 may, when the proceedings are not before a judge of the district court,
3 appeal to the district court from said judgment or forfeiture, as to
4 the whole or any part of said property.

1 "SEC. 41. Appeal—How taken. Said appeal shall be taken by filing
2 with the magistrate, within two days after the entry of forfeiture, a
3 written notice of appeal specifically stating the part of the judgment
4 of forfeiture appealed from, and a bond in such reasonable sum as the
5 magistrate may fix and approve, conditioned to pay all costs of the
6 proceedings in case appellant is unsuccessful on his appeal.

1 "SEC. 42. Appeal by state. Where the judgment is against the
2 state, it shall have the same right of appeal, and on the same condi-
3 tions, except that no bond shall be required.

1 "SEC. 43. Stay of proceedings. If an appeal be taken, the same
2 shall operate as a stay of proceedings and the property seized under
3 the warrant and involved in the appeal shall not be returned to any
4 claimant thereof nor sold or destroyed or otherwise disposed of until
5 final determination is had.

1 "SEC. 44. Applicability. Search warrant proceedings instituted
2 after the taking effect of this chapter shall, in all cases, be governed
3 by this chapter. Search warrant proceedings instituted before the
4 taking effect of this chapter shall be governed by the law under which
5 such proceedings were instituted even though herein repealed."

1 SEC. 45. The following chapter and sections of the code, 1931, as
2 amended, are hereby repealed, to wit:

3 1. Sections fifteen hundred seventy-eight (1578) to fifteen hundred
4 eighty-one (1581), inclusive.

5 2. Section thirty-one hundred sixty (3160).

6 3. Chapter ninety-six (96).

7 4. Sections thirteen thousand two hundred (13200), thirteen thou-
8 sand two hundred one (13201), and thirteen thousand two hundred
9 four (13204) to thirteen thousand two hundred nine (13209), in-
10 clusive.

11 5. Sections thirteen thousand two hundred eleven (13211) to thir-
12 teen thousand two hundred fifteen (13215), inclusive.

1 SEC. 46. Section thirty-one hundred fifty-nine (3159), code, 1931,
2 is amended by adding after the last word thereof, the words, "as pro-
3 vided in chapter six hundred seventeen (617)."

1 SEC. 47. Section thirteen thousand two hundred three (13203),
2 code, 1931, is amended by striking out the last 3 lines of said section,
3 and by inserting in lieu of said stricken words, the following words,
4 to wit: "and said personal property may be seized and disposed of
5 under chapter six hundred seventeen (617) of the code."

1 SEC. 48. Section two thousand ten (2010), code, 1931, is amended
2 by striking from paragraph one (1), line 3, the word and figures
3 "section 1973" and by inserting in lieu thereof the following, to wit:
4 "chapter six hundred seventeen (617)."

House File 190. Approved April 15, 1935.