

**8 GCA CRIMINAL PROCEDURE  
CH. 35 SEARCH WARRANTS**

**CHAPTER 35  
SEARCH WARRANTS**

- § 35.10. *Search Warrant Defined.*
- § 35.15. What a Warrant May be Issued For.
- § 35.20. When Warrant Issued; Executed; Grounds.
- § 35.25. Who May Execute.
- § 35.30. Forced Entry of Premises; After Notice and Refusal.
- § 35.35. Warrant and Receipt Required to be Given.
- § 35.40. Custody of Seized Property.
- § 35.45. Return of Seized Property; How Sought.
- § 35.50. Documents to be Filed by Judge.

**NOTE:** References to Department of Public Safety changed to Guam Police Department by P.L. 17-78:1, which repealed § 5102 GC providing for the Department of Public Safety, and reenacted § 5102 establishing the Guam Police Department.

**§ 35.10. *Search Warrant Defined.***

(a) A *search warrant* is a written order issued by a judge of the Superior Court directing a peace officer to conduct a search for the purpose of seizing property and holding any property seized pending further order of the court.

(b) As used in this Chapter, the term property includes documents, books, papers and any other tangible object.

**NOTE:** Subsection (a) of § 35.10 is substantively the same as former § 1523 except that it limits the authority to issue a search warrant to judges of the Superior Court. This limitation is in accord with Subdivision (a) of former Rule 41. Compare Fed. R. Crim. F. 41(a); Cal. Pen. Code § 1523.

Subsection (b) is substantively the same as a portion of Subdivision (h) of former Rule 41. See also Fed. R. Crim. P. 41(h) (same)

**§ 35.15. What a Warrant May be Issued For.**

A warrant may be issued to search for and seize any (a) property that constitutes evidence of the commission of an offense, (b) contraband, the fruits of crime, or things otherwise criminally possessed, or (c) property designed or intended for use or which is or has been used as the means of committing an offense.

**NOTE:** Section 35.15 is substantively the same as former Rule 41(b) Rule 41(b) of the Federal Rules of Criminal Procedure. See also Cal. Pen. Code § 1524 (substantively the same). See generally 8A Moore, Federal Practice ¶41.03[2] (1974)

**8 GCA CRIMINAL PROCEDURE  
CH. 35 SEARCH WARRANTS**

**§ 35.20. When Warrant Issued; Executed; Grounds.**

(a) A warrant shall issue only on an affidavit sworn to before the judge and establishing grounds for issuing the warrant. The finding of probable cause may be based upon hearsay evidence in whole or in part. Before ruling on a request for a warrant the judge may require the affiant to appear personally and may examine under oath the affiant and any witness he may produce. Such proceeding shall be taken down by a court reporter or recording equipment and made part of the affidavit.

(b) If the judge is satisfied that grounds for the application exist, or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched. The warrant shall be directed to a peace officer authorized to enforce or assist in enforcing any law and shall command the officer to search, within a specified period of time not to exceed ten (10) days, the person or place named for the property specified, and shall designate the judge to whom the warrant shall be returned.

(c) The warrant shall be executed in the daytime, unless the court, by appropriate provision in the warrant and for reasonable cause shown, authorizes its execution at times other than daytime. The term "daytime" means the hours from 6:00 a.m. to 10:00 p.m.

**COURT DECISIONS:** DISTRICT COURT, APP. DIV. 1980. When there are reasonable grounds to believe that imminent destruction of materials subject to seizure is threatened, a search, even without a warrant, is not precluded by the 4th Amendment. *People v. Chargualaf*, App. Div. D.C., #79-015A.

**NOTE:** Section 35.20 is substantively the same as Subdivision (c) and a portion of Subdivision (h) of former Rule 41. See also Fed. R. Crim. P. 41(c), (h) (same). Compare former §§ 1525 to 1529 and 1533 to 1534 of the Penal Code. See generally 8A Moore, Federal Practice ¶¶41.03-41.06 (1974).

**§ 35.25. Who May Execute.**

A search warrant may be executed by any peace officer specifically named in the warrant or by any peace officer assisting him provided that one of the officers specifically named in the warrant is present at the location.

**NOTE:** Section 35.25 is substantively the same as former § 1530. See also Cal. Pen. Code § 1530. In some circumstances, an officer will require the aid or another person in taking an inventory of the property taken. See § 35.35

**8 GCA CRIMINAL PROCEDURE  
CH. 35 SEARCH WARRANTS**

**§ 35.30. Forced Entry of Premises; After Notice and Refusal.**

To execute a search warrant a peace officer may break open the door the or window of any house if, after giving notice of his authority and purpose, he is refused admittance.

**NOTE:** Section 35.30 is substantively the same as former § 1531. See also Cal. Pen. Code § 1531. See generally 8A Moore, Federal Practice ¶41.06[1] (discussion of identical requirement of announcement). Compare § 20.50 (same requirements for entry to make arrest).

**§ 35.35. Warrant and Receipt Required to be Given.**

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 the property taken or shall leave the copy and receipt at the place from which the property was taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for 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 or the person from whose possession or premises the property was taken, and shall be verified by the officer. The judge 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.

**NOTE:** Section 35.35 is identical to former Rule 41(d). See also Fed. R. Crim. P. 41(d) (same). This Section also supersedes former §§ 1535, 1537 and 1538 which were substantively similar

**§ 35.40. Custody of Seized Property.**

All property seized pursuant to a search warrant shall be retained by the officer in his custody, subject to the order of the court to which he is required to make his return or of any other court in which the offense in respect to which the property taken is triable.

**NOTE:** Section 35.40 supersedes former § 1536 and has been revised to conform to § 1536 of the California Penal Code. The former statute seemed to require actual delivery to the magistrate who in turn was to deliver it to the clerk of the court. The actual practice, however, was for the Guam Police Department to retain custody pending further disposition.

**8 GCA CRIMINAL PROCEDURE  
CH. 35 SEARCH WARRANTS**

**§ 35.45. Return of Seized Property; How Sought.**

(a) A person aggrieved by an unlawful search and seizure may move the court for the return of the property on the ground that he is entitled to lawful possession of the property which was illegally seized. The judge 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. A motion for return of property may also be treated as a motion to suppress under § 65.15.

(b) Nothing in Subsection (a) shall limit the right of a defendant to make a motion to suppress evidence in the court of trial as provided in Chapter 65 (commencing with § 65.10).

**COURT DECISIONS:** DISTRICT COURT, APP. DIV. 1978. Only the one whose rights have been violated has standing to object to the introduction of illegally obtained evidence. *People v. Reyes*, D.C. Guam, App. Div., Cr. App. #77-003A. Decided 03/03/78. [Decided under former Penal Code of Guam.]

NOTE: Section 35.45 is substantively the same as Subdivisions (e) and (f) of former Rule 41. See also Fed. R. Crim. P. 41(e), (f) (same). Compare Cal. Pen. Code §§ 1538.5-1540. See generally 8A Moore, Federal Practice ¶41.08 (1974). It supersedes former §§ 1539 and 1540. The basic purpose of Subsection (a) is to afford a person from whom property was wrongfully seized and who is entitled to its possession an expeditious remedy for its return. The procedure provided may also serve as a method of suppressing evidence but Subsection (b) makes clear that the requirements of Subsection (a) do not limit a defendant's separate right to move to suppress evidence where appropriate.

**§ 35.50. Documents to be Filed by Judge.**

The judge who has issued a search warrant 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 court.

NOTE: Section 35.50 is identical to former Rule 41(g). See also Fed. R. Crim. P. 41(g); former § 1541 (same in substance).

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