

Warrants

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Constitutional Protections



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The Constitution of the U.S.

- The Constitution allows the Government to “intervene” into people’s lives only in very specific circumstances/for very specific reasons.



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★ 4th Amendment

- “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”



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Warrantless Search

- Common, relevant exceptions:
 - Consent
 - Plain view
 - Protective sweep
 - Abandonment
 - Exigent circumstances



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What is a Warrant?



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What is a Warrant?

- A document signed by a judge (or magistrate) authorizing a search of a property/vehicle/building (or an arrest)
- The person involved in the warrant cannot refuse entry or deny the execution of the warrant.



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Requirements of a Warrant



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Requirements of a Warrant

- Issued by a neutral magistrate
- Fulfill requirements set forth in IC 35-33-5-2



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★ Particularity Requirement

- 123 N Main St does not suffice
- 123 N Main St, a tan house with brown roof and trim, with the main door facing east, and the numbers “123” affixed to the gray mailbox at the end of the driveway



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Curtilage

Cornell Law School

Legal Information Institute [LII]
OPEN ACCESS TO LAW SINCE 1992

ABOUT LII ▶ GET THE LAW ▶ LAWYER DIRECTORY LEGAL ENCYCLOPEDIA ▶ HELP OUT ▶

Curtilage

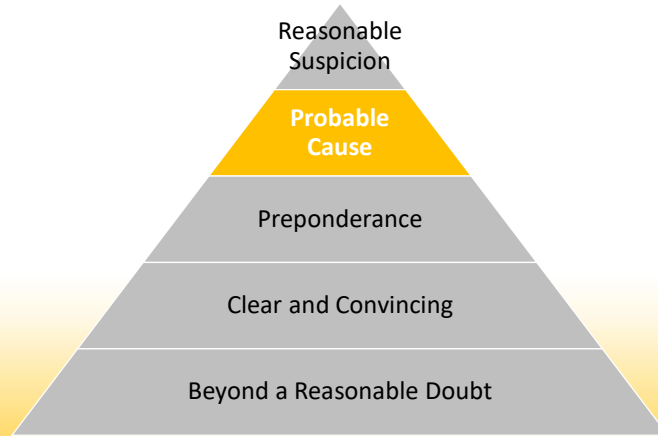
Curtilage includes the area immediately surrounding a dwelling, and it counts as part of the home for many legal purposes, including searches and many self-defense laws. When considering whether something is in a dwelling's curtilage, courts consider four factors:

1. The proximity of the thing to the dwelling;
2. Whether the thing is within an enclosure surrounding the home;
3. What the thing is used for.
4. What steps, if any, the resident took to protect the thing from observation/ access by people passing by.



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★ Standard of Proof



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Obtaining & Serving a Warrant



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★ Probable Cause Affidavit

- “Fair probability that a search will result in evidence of a crime being discovered”
- Two sources:
 - LEO’s knowledge
 - Hearsay
 - Legitimate: other LEOs, Dispatchers, previously legitimized informants, eyewitnesses/victims
 - Not legitimate: concerned citizens (but not an eyewitness/victim)



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PCA, *cont.*

- Particularly describe house/location to be searched
- Particularly describe what you are searching for
- Allege the criminal offense suspected
 - Ensure the items being searched for are relevant
- State why you believe the items will be found
- State why you believe there is probable cause

(Link the crime to the item to the location)



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Obtaining & Serving a Warrant

(c) An affidavit for search substantially in the following form shall be treated as sufficient:

STATE OF INDIANA)


) SS:

COUNTY OF _____)

A B swears (or affirms, as the case may be) that he believes and has good cause to believe (here set forth the facts and information constituting the probable cause) that (here describe the things to be searched for and the offense in relation thereto) are concealed in or about the (here describe the house or place) of C D, situated in the county of _____, in said state.

In accordance with [Indiana Trial Rule 11](#) , I affirm under the penalties for perjury that the foregoing representations are true.

(Signed) Affiant Date



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Obtaining & Serving, *cont.*

- Must knock (typically) at main entrance
- Secure, detain, and pat down all occupants
- Read warrant to owner/occupant and provide copy
- Thoroughly search any specifically named persons
- Execute the search



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Where to Look

- You may **ONLY** look where object may be...

- If you are looking for



- It *doesn't* make sense to look in



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Where to Look, *cont.*

- You may ONLY look where object may be...

- If you are looking for



- It *does* make sense to look in



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Where to Look, *cont.*

- You may ONLY look where object may be...

- You may only look for the smallest item...

Guns have ammo...

TVs have remotes...

Cockfighters have spurs...

Dogfighters have records...



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Warrant Staleness

- How long is a warrant good for? Factors:

- Nature of item searching for
- Nature of criminal activity
- Mobility or concealability
- (Consumability of item)



MUST be executed within 10 days



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Return of Writ

- ★ • This is the court's record:

- Was it served?
- What was located?



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Bonding Statute



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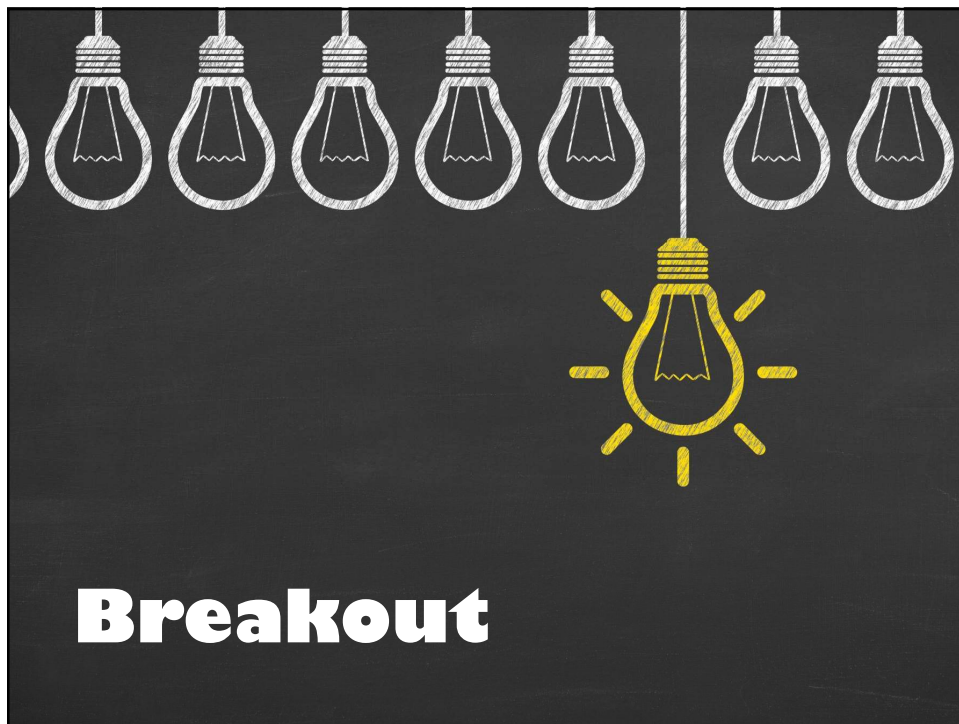
★ IC 35-46-3-6

- Even with a warrant, the stipulations set forth in IC 35-46-3-6 still apply:

- ★ • You cannot take immediate possession of an animal.
- The 10-day period begins on the date the warrant was served and the animals were impounded.
- An owner must post a bond to prevent disposition.
- Probably cause should be already clearly established.



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