

**Section I – Rule Changes of Major Importance to Law Enforcement**

**Caution:** This is a very broad and summarized overview of the changes. It is not a substitute for reading the amended Rules, and in many cases, the Committee Notes. (<http://www.uscourts.gov/rules/newrules6.html#cr0804>). For a “red-line” version of the new Rule 41, click [here](#). For a clean version of the same Rule, click [here](#).

Rule	Old	New
<p><b>41 – Search and Seizure</b></p> <p><i>(Tracking devices)</i></p>	<p>1. No definition of “tracking devices” (as the old rule did not address them.)</p> <p>2. No mention that a magistrate may issue a warrant to install and use a tracking device.</p> <p>3. No mention of contents of tracking warrant.</p> <p>4. No mention of returns on tracking warrants.</p>	<p>1. “Tracking devices” definition in <a href="#">18 U.S.C. § 3117(b)</a> adopted.</p> <p>2. A magistrate may issue a warrant to install tracking devices within his district, and the warrant may permit monitoring in or outside the district. <i>NOTE:</i> Committee note makes clear that the Rule change says nothing about <i>when</i> warrants are required; the Rule applies only <i>if</i> a warrant is required. In other words, this change does not affect current law of when a warrant might be required.</p> <p>3. Specific guidance what a warrant must contain: who/what to be tracked; how long device may be used (45 days, with authority for 1 or more extensions of 45 days each); install the device within ten days, and unless good cause shown, in the day time; and requirement for a return.</p> <p>4. Officer executing warrant must make return to magistrate and target within ten days after tracking ended. Magistrate can authorize delay.</p>

<sup>1</sup> Unless Congress blocks implementation.

Rule	Old	New
<p><b>41 – Search and Seizure</b></p> <p><i>(Telephonic Warrants)</i></p>	<p>1. Could issue warrant by other “appropriate means” including facsimile.</p> <p>2. Contemplated that in many cases, requesting officer would read the warrant to the magistrate, and the magistrate “must enter the contents of the proposed duplicate warrant into an original warrant” and record the call.</p> <p>3. If magistrate decides to issue warrant, she signs the original and directs requestor to sign the magistrate’s name on the duplicate original.</p>	<p>1. “Facsimile” deleted, and substituted therefore is “or other reliable electronic means.” Committee notes say that includes fax, provided the fax is “reliable”. (This is probably code for “email attachments”.)</p> <p>2. Same provision as before, but adds that if the requester transmits the contents “by reliable electronic means,” that transmission will serve as the original warrant. Magistrate can modify what is sent (duplicate original warrant) and issue her own “original warrant.”</p> <p>3. Now, magistrate can transmit the signed warrant and dispense with having the agent sign the duplicate original.</p>

## Section II – Rule Changes of Interest to Law Enforcement

Rule	Old	New
<p><b>41 – Search and Seizure</b></p> <p><i>(Authorizing delays in returns)</i></p>	<p>No mention in Rules that a magistrate could issue a delay to a requirement to make a return, though there are provisions in statutes that would allow such a delay.</p>	<p>Rules explicitly allow magistrate to approve government requested delays in making a return if such a delay is authorized by statute.</p> <p>Examples of such statutes:</p> <p>1. Modified Rule 41 to delay return on tracking warrant. (The Rules are themselves eventually codified as statutes.)</p> <p>2. See <a href="#">18 USCS § 3103a</a> for the broad authority to grant delays on returns and notice provisions. Includes sneak and peek.</p>

**Section III – Rule Change of *Only Some Interest* to Most of Law Enforcement**

Rule	Old	New
<p><b>58(b)(2)(G) – Petty Offenses and Other Misdemeanors</b></p> <p><i>[Advising of right to preliminary hearing.]</i></p> <p><i>and</i></p> <p><b>5(c)(3)(C) – Initial Appearance</b></p> <p><i>[Initial appearance - out of district arrests]</i></p>	<p>1. Rule 58(b)(2)(G) could be interpreted to indicate that only those held in custody had to be told at the initial appearance they had a right to a preliminary hearing under Rule 5.1.</p> <p>2. Rule 5(c)(3)(C) referred to Rule 58(b)(2)(G). (See above)</p>	<p>1. Rule amended to say that anyone entitled to a preliminary hearing under Rule 5.1 must be advised of that fact during an initial appearance, and not just those held in custody.</p> <p>2. Rule deleted reference to Rule 58(b)(2)(G), leaving Rule 5.1 as the authority of whom is entitled to a preliminary hearing.</p>
<p><b>5(c)(3)(D) – Initial Appearance</b></p> <p><i>[Initial appearance - out of district arrests]</i></p>	<p>Rule required government to produce the arrest warrant, certified copy, a facsimile or “other appropriate form of either.”</p>	<p>Amendment deletes “facsimile” and substitutes “reliable electronic form”. That would include facsimile, email attachments, or those documents filed electronically.</p>

Rule	Old	New
<p><b>6(e) (Disclosing GJ proceedings)</b></p>	<p>Technical wording changes only. No change in substance.</p>	
<p><b>32.1 Supervised Release</b></p>	<p>Permits copies of judgment, warrant, and warrant application to be presented to the magistrate by “reliable electronic means.”</p>	
<p><b>40 Arrest for failing to Appear in Another District</b></p>	<p>Did not explicitly authorize arrest in District A for violating conditions of release imposed in District B (except for failure to appear).</p>	<p>Violating any conditions of release (and not just failure to appear) imposed in one district grounds for arrest in another district.</p>

**Federal Rule of Criminal Procedure Rule 41. Search and Seizure.**  
**“Red line” version showing changes.**

Underlined: Language added by the Dec 1, 2006 amendments.  
Strike through: Language deleted by the Dec 1, 2006 Amendments.

Click [here](#) for clean version (effective December 1, 2006)

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**Federal Rule of Criminal Procedure 41. Search and Seizure**

**(a) Scope and Definitions.**

(1) Scope. This rule does not modify any statute regulating search or seizure, or the issuance and execution of a search warrant in special circumstances.

(2) Definitions. The following definitions apply under this rule:

(A) "Property" includes documents, books, papers, any other tangible objects, and information.

(B) "Daytime" means the hours between 6:00 a.m. and 10:00 p.m. according to local time.

(C) "Federal law enforcement officer" means a government agent (other than an attorney for the government) who is engaged in enforcing the criminal laws and is within any category of officers authorized by the Attorney General to request a search warrant.

(D) "Domestic terrorism" and "international terrorism" have the meanings set out in 18 U.S.C. § 2331.

(E) "Tracking device" has the meaning set out in 18 U.S.C. § 3117(b).

**(b) Authority to Issue a Warrant.** At the request of a federal law enforcement officer or an attorney for the government:

(1) a magistrate judge with authority in the district--or if none is reasonably available, a judge of a state court of record in the district--has authority to issue a warrant to search for and seize a person or property located within the district;

(2) a magistrate judge with authority in the district has authority to issue a warrant for a person or property outside the district if the person or property is located within the district when the warrant is issued but might move or be moved outside the district before the warrant is executed; ~~and~~

(3) a magistrate judge--in an investigation of domestic terrorism or international terrorism (~~as defined in 18 U.S.C. § 2331~~) ~~having~~ -- with authority in any district in which activities related to the terrorism may have occurred, ~~may~~ has authority to issue a warrant for a person or property within or outside that district; ~~and~~

(4) a magistrate judge with authority in the district has authority to issue a warrant to install within the district a tracking device; the warrant may authorize use of the device to track the movement of a person or property located within the district, outside the district, or both.

**(c) Persons or Property Subject to Search or Seizure.** A warrant may be issued for any of the following:

- (1) evidence of a crime;
- (2) contraband, fruits of crime, or other items illegally possessed;
- (3) property designed for use, intended for use, or used in committing a crime; or
- (4) a person to be arrested or a person who is unlawfully restrained.

**(d) Obtaining a Warrant.**

(1) **Probable Cause. In General.** After receiving an affidavit or other information, a magistrate judge -- or if authorized by Rule 41(b), ~~or~~ a judge of a state court of record -- must issue the warrant if there is probable cause to search for and seize a person or property or to install and use a tracking device. ~~under Rule 41(e).~~

(A) **Warrant on an Affidavit.** When a federal law enforcement officer or an attorney for the government presents an affidavit in support of a warrant, the judge 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 judge 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 must be recorded by a court reporter or by a suitable recording device, and the judge must file the transcript or recording with the clerk, along with any affidavit.

(2) **Requesting a Warrant in the Presence of a Judge.**

(A) **Warrant on an Affidavit.** When a federal law enforcement officer or an attorney for the government presents an affidavit in support of a warrant, the judge 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 judge may wholly or partially dispense with a written affidavit and base a warrant on sworn testimony if doing so is reasonable under the circumstances.

(3) **Requesting a Warrant by Telephonic or Other Means.**

(A) **In General.** A magistrate judge may issue a warrant based on information communicated by telephone or other reliable electronic means. ~~appropriate means, including facsimile transmission.~~

(B) **Recording Testimony.** Upon learning that an applicant is requesting a warrant under Rule 41(d)(3)(A), a magistrate judge must:

(i) place under oath the applicant and any person on whose testimony the application is based; and

(ii) make a verbatim record of the conversation with a suitable recording device, if available, or by a court reporter, or in writing.

(C) **Certifying Testimony.** The magistrate judge must have any recording or court reporter's notes transcribed, certify the transcription's accuracy, and file a copy of the record and the transcription with the clerk. Any written verbatim record must be signed by the magistrate judge and filed with the clerk.

(D) **Suppression Limited.** Absent a finding of bad faith, evidence obtained from a warrant issued under Rule 41(d)(3)(A) is not subject to suppression on the ground that issuing the warrant in that manner was unreasonable under the circumstances.

**(e) Issuing the Warrant.**

(1) In General. The magistrate judge or a judge of a state court of record must issue the warrant to an officer authorized to execute it.

(2) Contents of the Warrant.

(A) Warrant to Search for and Seize a Person or Property. Except for a tracking-device warrant, The ~~the~~ warrant must identify the person or property to be searched, identify any person or property to be seized, and designate the magistrate judge to whom it must be returned. The warrant must command the officer to:

~~(A)~~ (i) execute the warrant within a specified time no longer than 10 days;

~~(B)~~ (ii) execute the warrant during the daytime, unless the judge for good cause expressly authorizes execution at another time; and

~~(C)~~ (iii) return the warrant to the magistrate judge designated in the warrant.

(B) Warrant for a Tracking Device. A tracking-device warrant must identify the person or property to be tracked, designate the magistrate judge to whom it must be returned, and specify a reasonable length of time that the device may be used. The time must not exceed 45 days from the date the warrant was issued. The court may, for good cause, grant one or more extensions for a reasonable period not to exceed 45 days each. The warrant must command the officer to:

(i) complete any installation authorized by the warrant within a specified time no longer than 10 calendar days;

(ii) perform any installation authorized by the warrant during the daytime, unless the judge for good cause expressly authorizes installation at another time; and

(iii) return the warrant to the judge designated in the warrant.

(3) Warrant by Telephonic or Other Means. If a magistrate judge decides to proceed under Rule 41(d)(3)(A), the following additional procedures apply:

(A) Preparing a Proposed Duplicate Original Warrant. The applicant must prepare a "proposed duplicate original warrant" and must read or otherwise transmit the contents of that document verbatim to the magistrate judge.

(B) Preparing an Original Warrant. If the applicant reads the contents of the proposed duplicate original warrant the ~~The~~ magistrate judge must enter ~~the~~ those contents of the proposed ~~duplicate original warrant~~ into an original warrant. If the applicant transmits the contents by reliable electronic means, that transmission may serve as the original warrant.

(C) Modifications. The magistrate judge may modify the original warrant. The judge must transmit any modified warrant to the applicant by reliable electronic means under Rule 41(e)(3)(D) or direct the applicant to modify the proposed duplicate original warrant accordingly. ~~In that case, the judge must also modify the original warrant.~~

~~(D) Signing the Original Warrant and the Duplicate Original Warrant.~~ Upon determining to issue the warrant, the magistrate judge must immediately sign the original warrant, enter on its face the exact date and time it is issued, and transmit it by reliable electronic means to the applicant or direct the applicant to sign the judge's name on the duplicate original warrant.

**(f) Executing and Returning the Warrant.**

**(1) Warrant to Search for and Seize a Person or Property.**

~~(1)(A)~~ Noting the Time. The officer executing the warrant must enter on ~~it its face~~ the exact date and time it ~~is~~ was executed.

~~(2)~~ (B) Inventory. An officer present during the execution of the warrant must prepare and verify an inventory of any property seized. The officer must do so in the presence of another officer and the person from whom, or from whose premises, the property was taken. If either one is not present, the officer must prepare and verify the inventory in the presence of at least one other credible person.

~~(3)~~ (C) Receipt. The officer executing the warrant must: ~~(A)~~ give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken; or ~~(B)~~ leave a copy of the warrant and receipt at the place where the officer took the property.

~~(4)~~ (D) Return. The officer executing the warrant must promptly return it--together with a copy of the inventory--to the magistrate judge designated on the warrant. The judge must, on request, give 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.

**(2) Warrant for a Tracking Device.**

(A) Noting the Time. The officer executing a tracking-device warrant must enter on it the exact date and time the device was installed and the period during which it was used.

(B) Return. Within 10 calendar days after the use of the tracking device has ended, the officer executing the warrant must return it to the judge designated in the warrant.

(C) Service. Within 10 calendar days after the use of the tracking device has ended, the officer executing a tracking-device warrant must serve a copy of the warrant on the person who was tracked or whose property was tracked. Service may be accomplished by delivering a copy to the person who, or whose property, was tracked; 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 and by mailing a copy to the person's last known address. Upon request of the government, the judge may delay notice as provided in Rule 41(f)(3).

(3) Delayed Notice. Upon the government's request, a magistrate judge--or if authorized by Rule 41(b), a judge of a state court of record--may delay any notice required by this rule if the delay is authorized by statute.

**(g) Motion to Return Property.** A person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property's return. The motion must be filed in the district where the property was seized. The court must receive evidence on any factual issue necessary to decide the motion. If it grants the motion, the court must return the property to the movant, but may impose reasonable conditions to protect access to the property and its use in later proceedings.

**(h) Motion to Suppress.** A defendant may move to suppress evidence in the court where the trial will occur, as Rule 12 provides.

**(i) Forwarding Papers to the Clerk.** The magistrate judge to whom the warrant is returned must attach to the warrant a copy of the return, of the inventory, and of all other related papers and must deliver them to the clerk in the district where the property was seized.

**Federal Rule of Criminal Procedure Rule 41. Search and Seizure.**  
**“Clean Version” effective December 1, 2006**

Red-Line version [here](#).

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(3) a magistrate judge--in an investigation of domestic terrorism or international terrorism --with authority in any district in which activities related to the terrorism may have occurred, has authority to issue a warrant for a person or property within or outside that district; and

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**(d) Obtaining a Warrant.**

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(A) Warrant on an Affidavit. When a federal law enforcement officer or an attorney for the government presents an affidavit in support of a warrant, the judge 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 judge may wholly or partially dispense with a written affidavit and base a warrant on sworn testimony if doing so is reasonable under the circumstances.

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(i) execute the warrant within a specified time no longer than 10 days;

(ii) execute the warrant during the daytime, unless the judge for good cause expressly authorizes execution at another time; and

(iii) return the warrant to the magistrate judge designated in the warrant.

(B) Warrant for a Tracking Device. A tracking-device warrant must identify the person or property to be tracked, designate the magistrate judge to whom it must be returned, and specify a reasonable length of time that the device may be used. The time must not exceed 45 days from the date the warrant was issued. The court may, for good cause, grant one or more extensions for a reasonable period not to exceed 45 days each. The warrant must command the officer to:

(i) complete any installation authorized by the warrant within a specified time no longer than 10 calendar days;

(ii) perform any installation authorized by the warrant during the daytime, unless the judge for good cause expressly authorizes installation at another time; and

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(3) Warrant by Telephonic or Other Means. If a magistrate judge decides to proceed under Rule 41(d)(3)(A), the following additional procedures apply:

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(C) Modifications. The magistrate judge may modify the original warrant. The judge must transmit any modified warrant to the applicant by reliable electronic means under Rule 41(e)(3)(D) or direct the applicant to modify the proposed duplicate original warrant accordingly.

(D) Signing the Warrant. Upon determining to issue the warrant, the magistrate judge must immediately sign the original warrant, enter on its face the exact date and time it is issued, and transmit it by reliable electronic means to the applicant or direct the applicant to sign the judge's name on the duplicate original warrant.

**(f) Executing and Returning the Warrant.**

(1) Warrant to Search for and Seize a Person or Property.

(A) Noting the Time. The officer executing the warrant must enter on it the exact date and time it was executed.

(B) Inventory. An officer present during the execution of the warrant must prepare and verify an inventory of any property seized. The officer must do so in the presence of another officer and the person from whom, or from whose premises, the property was taken. If either one is not present, the officer must prepare and verify the inventory in the presence of at least one other credible person.

(C) Receipt. The officer executing the warrant must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken or leave a copy of the warrant and receipt at the place where the officer took the property.

(D) Return. The officer executing the warrant must promptly return it--together with a copy of the inventory--to the magistrate judge designated on the warrant. The judge must, on request, give 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.

(2) Warrant for a Tracking Device.

(A) Noting the Time. The officer executing a tracking-device warrant must enter on it the exact date and time the device was installed and the period during which it was used.

(B) Return. Within 10 calendar days after the use of the tracking device has ended, the officer executing the warrant must return it to the judge designated in the warrant.

(C) Service. Within 10 calendar days after the use of the tracking device has ended, the officer executing a tracking-device warrant must serve a copy of the warrant on the person who was tracked or whose property was tracked. Service may be accomplished by delivering a copy to the person who, or whose property, was tracked; 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 and by mailing a copy to the person's last known address. Upon request of the government, the judge may delay notice as provided in Rule 41(f)(3).

(3) Delayed Notice. Upon the government's request, a magistrate judge--or if authorized by Rule 41(b), a judge of a state court of record--may delay any notice required by this rule if the delay is authorized by statute.

**(g) Motion to Return Property.** A person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property's return. The motion must be filed in the district where the property was seized. The court must receive evidence on any factual issue necessary to decide the motion. If it grants the motion, the court must return the property to the movant, but may impose reasonable conditions to protect access to the property and its use in later proceedings.

**(h) Motion to Suppress.** A defendant may move to suppress evidence in the court where the trial will occur, as Rule 12 provides.

**(i) Forwarding Papers to the Clerk.** The magistrate judge to whom the warrant is returned must attach to the warrant a copy of the return, of the inventory, and of all other related papers and must deliver them to the clerk in the district where the property was seized.

## **18 U.S.C. § 3117. Mobile tracking devices**

(a) In general. If a court is empowered to issue a warrant or other order for the installation of a mobile tracking device, such order may authorize the use of that device within the jurisdiction of the court, and outside that jurisdiction if the device is installed in that jurisdiction.

(b) Definition. As used in this section, the term "tracking device" means an electronic or mechanical device which permits the tracking of the movement of a person or object.

## **18 U.S.C. § 3103a. Additional grounds for issuing warrant**

(a) In general. In addition to the grounds for issuing a warrant in section 3103 of this title [18 USCS § 3101], a warrant may be issued to search for and seize any property that constitutes evidence of a criminal offense in violation of the laws of the United States.

(b) Delay. With respect to the issuance of any warrant or court order under this section, or any other rule of law, to search for and seize any property or material that constitutes evidence of a criminal offense in violation of the laws of the United States, any notice required, or that may be required, to be given may be delayed if--

(1) the court finds reasonable cause to believe that providing immediate notification of the execution of the warrant may have an adverse result (as defined in section 2705 [18 USCS § 2705]), except if the adverse results consist only of unduly delaying a trial;

(2) the warrant prohibits the seizure of any tangible property, any wire or electronic communication (as defined in section 2510 [18 USCS § 2510]), or, except as expressly provided in chapter 121 [18 USCS §§ 2701 et seq.], any stored wire or electronic information, except where the court finds reasonable necessity for the seizure; and

(3) the warrant provides for the giving of such notice within a reasonable period not to exceed 30 days after the date of its execution, or on a later date certain if the facts of the case justify a longer period of delay.

(c) Extensions of delay. Any period of delay authorized by this section may be extended by the court for good cause shown, subject to the condition that extensions should only be granted upon an updated showing of the need for further delay and that each additional delay should be limited to periods of 90 days or less, unless the facts of the case justify a longer period of delay.

(d) Reports.

(1) Report by judge. Not later than 30 days after the expiration of a warrant authorizing delayed notice (including any extension thereof) entered under this section, or the denial of such warrant (or request for extension), the issuing or denying judge shall report to the Administrative Office of the United States Courts--

(A) the fact that a warrant was applied for;

(B) the fact that the warrant or any extension thereof was granted as applied for, was modified, or was denied;

(C) the period of delay in the giving of notice authorized by the warrant, and the number and duration of any extensions; and

(D) the offense specified in the warrant or application.

(2) Report by Administrative Office of the United States Courts. Beginning with the fiscal year ending September 30, 2007, the Director of the Administrative Office of the United States Courts shall transmit to Congress annually a full and complete report summarizing the data required to be filed with the Administrative Office by paragraph (1), including the number of applications for warrants and extensions of warrants authorizing delayed notice, and the number of such warrants and extensions granted or denied during the preceding fiscal year.

(3) Regulations. The Director of the Administrative Office of the United States Courts, in consultation with the Attorney General, is authorized to issue binding regulations dealing with the content and form of the reports required to be filed under paragraph (1).