

# **Serving Warrants on Private Premises**



**Prepared by:**

**Toni Smith  
Assistant City Attorney  
June 2010**

## **Executing Warrants on Private Premises**

- I. Possession of proper documents:** If a law enforcement officer does not have in his or her possession the documents indicated below, entry into private premises will not be authorized absent valid consent or exigent circumstances.\*

*See G.S. 15A-401*

- A. Suspect's Home:** Officer must have in his or her possession an original arrest warrant (or a copy if the original is in the possession of a law enforcement officer in Durham County) *and* probable cause to believe the suspect is in the residence.
- B. Third Party's Home:** Officer must have in his or her possession an original arrest warrant (or a copy as noted above) *and* an original search warrant *and* probable cause to believe suspect is in the residence.

## **II. Notice and Entry Requirements**

### **A. Time of Execution**

1. Arrest Warrants: Remain valid until served or recalled by a judicial official.  
*See G.S. 15A-301*
2. Search Warrants: Must be executed within 48-hours of issuance.  
*See G.S. 15A-248*

---

*\*As noted above, probable cause to believe the person to be arrested is in the location to be entered is required prior to execution of an arrest warrant. Thus, knowledge that a suspect is in a residence does not, by itself, create exigent circumstances to enter private premises without the appropriate warrant(s). Officers who believe a suspect is in private premises for which they do not have the appropriate warrant(s) should generally set up a perimeter on public property while obtaining the necessary warrant(s). If the suspect attempts to leave the residence while the warrant(s) is/are being obtained, officers may make a warrantless arrest once the suspect enters public property.*

## **B. Knocking and Announcing**

1. An officer must knock and announce his/her presence unless doing so would endanger the lives of the officers or the public.  
*See G.S. 15A-401 and 15A-249, and State v. Lyons, 340 N.C. 646, 459 S.E.2d 770 (1995)*
2. The general nexus between narcotics and weapons will not be sufficient articulation of danger to excuse knocking and announcing. *See Richards v. Wisconsin, 520 U.S. 385, 117 S. Ct. 1416, 137 L. Ed. 2d 615 (1997)*
3. Officers may use force to break and enter the premises only if admittance is denied or unreasonably delayed.  
*See G.S. 15A-401 and 15A-251*

## **III. Searches and Seizures Within the Residence**

### **A. Protective Sweep of a Home**

When officers arrest a person in a home or other premises, they may as incident to that arrest automatically search closets and other large spaces immediately adjoining the place of arrest from which an attack could occur. Officers may make a warrantless sweep of the rest of the premises only if there is reasonable suspicion that the place to be searched may harbor a person who is a danger to the officers.

*See Maryland v. Buie, 494 U.S. 325, 110 S. Ct. 1093, 108 L. Ed. 2d 276 (1990)*

### **B. Where Officers May Search**

Officers may only search in places they reasonably may find the object(s) which the warrant permits them to seize. For example, if a search warrant is issued to seize a suspect who is believed to be located in a third party's residence, officers may only look in areas that the suspect may reasonably be located. Once the object(s) of the search is/are located, no further search pursuant to the warrant is allowed.

### **C. Seizure of Items In Plain View**

Officers may seize property that they find inadvertently in plain view, if they have probable cause to believe it is evidence of a crime.

*See Horton v. California, 496 U.S. 128, 110 S. Ct. 2301, 110 L. Ed. 2d 112 (1990) and G.S. 15A-253*

**D. Search Incident to Arrest**

1. Search must be contemporaneous with valid arrest  
*See Rawlings v. Kentucky, 448 U.S. 98, 100 S. Ct. 2556, 65 L. Ed. 2d 633 (1980)*
2. Scope of search: The scope of a search incident to arrest (excluding those searches made incident to the arrest of a vehicle occupant) is limited to a search of the arrestee's person and the area and objects within the arrestee's immediate control excluding locked containers.  
*See Chimel v. California, 395 U.S. 752, 89 S. Ct. 2034, 23 L. Ed. 2d 685 (1969) and State v. Thomas, 81 N.C. App. 200, 343 S.E.2d 588 (1986)*

**E. Searching Persons Not Named in the Warrant**

1. Public place: Officers may not detain persons who are present but not named on an arrest or search warrant as the person to be seized unless the officer can articulate reasonable suspicion that the particular person is involved in criminal activity. In addition, officers may not frisk persons who are present but not named on the arrest or search warrant as the person to be seized unless the officer has reasonable suspicion to detain the person and reasonable suspicion to believe that he or she is armed and dangerous.  
*See Ybarra v. Illinois, 444 U.S. 85, 100 S. Ct. 338, 62 L. Ed. 2d 238 (1979)*
2. Private place: Officers executing a search warrant may detain, when they enter and while conducting the search, anyone who is on the premises. Officers may frisk such persons if they can articulate reasonable suspicion that the person is armed and dangerous.  
*See G.S. 15A-256*