



# GENERAL ORDER

DURHAM POLICE DEPARTMENT  
DURHAM, NC

NUMBER:

4004 R-5

## WARRANTLESS SEARCHES & SEIZURES

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### INTRODUCTION

It is the policy of the Durham Police Department to conduct all seizures and searches within the parameters of applicable constitutional, federal and state laws. This general order is intended to provide guidance to officers for conducting seizures and searches without a warrant, court process or other court order.

### GOVERNING AUTHORITY

The following North Carolina statutes regulate warrantless seizures and searches: § [15A-221](#) through [15A-231](#); [15A-285](#); and [15A-401](#).

### INVESTIGATIVE STOPS/DETENTIONS WITH REASONABLE SUSPICION

An officer may conduct an investigative stop or detention if the officer has reasonable suspicion that the person stopped or detained has committed, is committing, or is about to commit a crime. Factors which may be considered in determining whether reasonable suspicion exists include, but are not limited to:

- The officer's observation of conduct that, in light of the officer's training and experience, appears to be criminal;
- Information the officer receives from other officers, citizens or informants;
- The time of day or night;
- Whether the area is a high-crime area;
- The suspect's proximity to a location where a crime was recently committed or to a home, car, or business where criminal activity may be taking place;
- Whether the suspect is a stranger to the area;
- The suspect's reaction to the officer's presence, including flight after seeing the officer;
- The officer's knowledge of the suspect's prior criminal record and activities, if they are relevant to the crime the suspect may be committing;
- The suspect's flight from the scene of a crime.

Investigative stops/detentions are generally limited to that period of time which is reasonably necessary to confirm or dispel the reasonable suspicion which initially justified the stop. Continuing the stop or detention for  
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any prolonged period afterwards requires consent of the party being detained or additional articulable reasonable suspicion. Prolonged periods of detention which are not justified by consent or additional reasonable suspicion may be considered the functional equivalent of an arrest which would then have to be supported by probable cause.

## **INVESTIGATIVE STOPS/DETENTIONS WITHOUT REASONABLE SUSPICION**

**Driver's License, Vehicle Registration and Impaired-Driving Checks:** Refer to [G.O. 4012 Checking Stations](#).

## **ARRESTS**

An officer may make a warrantless arrest of a person when the officer has probable cause to believe that the person has committed a felony. An officer may make a warrantless arrest for a misdemeanor in the circumstances set forth in North Carolina General Statute §15A-401. The factors used to establish probable cause are the same as those indicated above, which are used to establish reasonable suspicion. Although a warrantless arrest may be justified, an officer may nonetheless need to obtain an arrest warrant, a search warrant, or both, in order to enter the defendant's or a third party's home to effectuate the arrest.

## **UNARREST**

For the purpose of this policy, an "unarrest" means the release from custody of a person after an arrest has been fully effectuated, prior to completing normal post-arrest processing (i.e., transport to and appearance before a magistrate). "Unarrest" is an administrative term and does not mean the arrest did not occur. It means the person was released from custody and the basis for that release must be documented, particularly because North Carolina General Statute generally requires a person arrested without a warrant to be taken before a judicial official without unnecessary delay ([N.C.G.S. § 15A-511](#)).

### **When an Unarrest is Permitted**

Once an arrest has been fully effectuated, an arrestee may be unarrested and released when:

- New, credible evidence (i.e., a credible recantation or clear exculpatory evidence), eliminates probable cause for all possible charges. At that point, continued detention becomes an unreasonable seizure, and the Fourth Amendment requires release; or
- Even if probable cause still exists to continue the arrest, an arrestee may be released when doing so will further the investigation of the current offense (and potentially other criminal activity) by allowing additional evidence to be gathered (e.g., to further an ongoing investigation, develop additional evidence, protect investigative integrity, or pursue follow-up leads).

In either case, a supervisor must approve the unarrest and it will be documented appropriately in the case file. This approval decision should be made with careful consideration of the circumstances and ramifications of the arrest, including any force used, the arrestee's condition, the public's safety, and any evidence obtained or observed as a result of the arrest (including evidence located during a search incident to arrest). If possible, the reason to unarrest should be captured with BWC/ICC video. When practical, the released person should be returned to the arrest location or a reasonably requested location.

## When an Unarrest is not Authorized

This authority shall not be used in the following circumstances:

- Probable cause has only weakened, but still exists for any charge related to the incident;
- A search incident to arrest did not produce evidence of additional crimes;
- For the purpose of issuing a citation for remaining misdemeanor charges when probable cause for the primary charge no longer exists;
- When the arrestee has a valid arrest warrant, probation violation, indictment or similar court process;
- An unarrest shall never be used for the convenience of the officer or to avoid required processing. If an arrest has been effectuated or officers have taken actions functionally equivalent to an arrest (e.g., search incident to arrest, transporting the person to a new location, etc.), officers shall not resolve the matter by issuing a citation in lieu of transporting the arrestee to the magistrates office.”

## SEIZURE AND SEARCH BY VALID CONSENT

Officers who may not otherwise have sufficient justification under the Fourth Amendment to conduct a search may nonetheless do so if a person voluntarily consents.

### People Who Are Entitled to Give Valid Consent

Officers must obtain consent to search from a person whose reasonable expectation of privacy may be invaded by the proposed search. When two or more people share a reasonable expectation of privacy in the same place, any of the parties may give valid consent, however, when more than one person with equal expectations of privacy is present and one person objects, consent of another party may not be relied upon.

- **Spouses and Roommates:** Generally, a spouse or roommate may give valid consent to search commonly used areas, but may not give valid consent to search an area used exclusively by the other spouse or roommate.
- **Parents and Children:** Generally, parents may consent to a search of a minor child’s room unless the child has established exclusive use of and access to the room. A parent does not have the authority to give valid consent to search personal possessions that are within a child’s room if the child has established exclusive use of and access to those items. Generally, minor children may not provide valid consent to search their parents’ home.
- **Landlords and Tenants, Owners/Managers and Guests:** Only a tenant may consent to a search of leased property. After the tenant has permanently left the property, either voluntarily or through the eviction process, the landlord may provide valid consent. Only a guest of rented real property (such as a hotel or motel) may consent to a search of the property. After the guest has permanently left the property, either voluntarily or by trespass, the owner or person otherwise in charge of the property may provide valid consent. Only an overnight guest may consent to a search of a room set aside for the exclusive use of the guest. After the guest has permanently abandoned use of the room, either voluntarily or by trespass, the homeowner or person otherwise in charge of the property may provide valid consent to search the room.
- **Employers and Employees:** Employees may consent to a search of their employer’s property only if their employment includes authorization to exercise control over the property. Employers may consent

to a search of their entire property except for any area that has been set aside for their employees' exclusive use in such a way that employees have a reasonable expectation of privacy in the area to be searched.

- **School Administrators and Students:** Officers should not rely upon the consent of a school administrator in order to search a student's locker, dormitory room, or personal possession.
- **Drivers and Owners of Vehicles:** Either the driver or registered owner of an automobile may consent to a search of the vehicle. If both the driver and owner are present, officers should defer to the wishes of the owner since the owner's expectation of privacy is superior to that of the driver.

## **Content of a Valid Consent**

### ***Documentation of Consent:***

- Consent must be expressed clearly. Officers attempting to obtain written consent shall use the Consent to Search form (Attachment 1). When conducting a consent search within this agency's territorial jurisdiction, the form must be completed for searches of residences, businesses, property that is not within a person's possession or immediate control, electronics and vehicles. If consent of the aforementioned locations or property is denied, the form must still be completed and the denial of the consent to search documented on the form.
- If officers of another agency are assisting the Durham Police Department pursuant to a mutual aid agreement, the supervising officer coordinating the operation/assistance shall ensure that all officers obtain written consent in accordance with this policy. If officers of the Durham Police Department are assisting another agency outside of their territorial jurisdiction pursuant to a mutual aid agreement, Durham Police officers may obtain lawful consent in the form allowed by the requesting agency.

**Voluntariness:** Consent must be voluntary and not the result of either express or implied duress or coercion.

**Warnings:** An officer is not required to provide any specific warnings to a person prior to asking for consent to search.

## **Scope of a Valid Consent Search**

Scope of a consent search is governed by the terms of the consent given. General consent to search a person, however, does not include inspecting the person's genitals. A reasonable person must understand that he or she is agreeing to a strip search for such examination to be within the scope of a consent search. General consent to search a vehicle does not include damaging or dismantling the vehicle. A reasonable person must understand that he or she is agreeing to a search in a manner that would likely damage or dismantle the vehicle in order for such a search to be within the scope of the consent provided.

A person who consents may limit or revoke the consent in any way. To search an area thus barred, an officer would need some other legal justification.

## **Inventory Form**

All property seized pursuant to a consent search shall be inventoried on AOC Form CR-206. A copy shall be provided to the person who consented to the search and, if known, to the owner of the vehicle or premises searched.

## **EXIGENT CIRCUMSTANCES**

A residence may be entered, and persons and property may be searched, without a warrant, if probable cause to search and exigent circumstances exist. Factors which may be considered in determining whether exigent circumstances exist include, but are not limited to:

- Whether an officer had probable cause to obtain a search warrant before the exigency was created;
- Whether an officer had an objectively reasonable belief that destruction or removal of evidence was imminent;
- The likelihood that violence might be committed against the officers;
- The gravity of the offense;
- How long it would take to obtain a search warrant.

After the residence has been entered and secured so that the exigent circumstances no longer exist, a search warrant or valid consent must be obtained before any further search of the house may occur.

## **PUBLIC EMERGENCIES**

An officer may enter buildings, vehicles and other premises; limit or restrict the presence of persons in premises or areas; or exercise control over the property of others when an officer reasonably believes that doing so is urgently necessary to save life, prevent serious bodily harm, or avert or control public catastrophe. This statutory authority may not be used however to justify an action taken to enforce the criminal law or to seize a person or evidence.

## **PLAIN VIEW**

When an officer is in a public place, an area not protected by the Fourth Amendment (such as open fields), or an area in which the officer otherwise has a lawful right to be (such as a home pursuant to valid consent or a warrant), property which the officer sees, smells, touches, tastes, or hears in “plain view” (or other appropriate description when knowledge is gained through a sense other than sight), which the officer has probable cause to believe is evidence of a crime, may be seized without a warrant.

## **FRISKS**

A frisk is a pat-down of a person’s outer clothing to determine whether the person has a weapon. Officers may frisk a person when the person has been lawfully stopped, and either the officer can articulate reasonable suspicion that the person is armed and dangerous or the officer has reasonable suspicion to believe the suspect has committed a violent crime or a crime associated with violence and the possession of weapons (such as controlled substance violations). Factors which may be used in determining whether reasonable suspicion to frisk exists, include, but are not limited to:

- The kind of crime for which the person was stopped;
- Whether officers reasonably believed, based upon personal knowledge or information received from others, that the person was armed and dangerous;
- The behavior of the person frisked;
- A bulge in the person’s clothing;
- The person’s prior criminal record and history of dangerousness.

When an officer has articulable reasonable suspicion to frisk a person, if an officer of the same sex as the suspect is not readily available to perform the frisk, the officer should attempt to frisk the suspect in a manner that minimizes potential accusations of improper touching such as using the back of the officer's hand or having a witness. If the frisk indicates that a weapon is present, officers may make a warrantless seizure of the weapon. If, during a lawful frisk, an officer feels an object that is immediately apparent to be contraband, although not a weapon, the officer may make a warrantless seizure of the evidence. An officer may not turn or manipulate the object during the frisk in order to develop probable cause to believe the object is contraband.

### **Car Frisks**

An officer with reasonable suspicion that an occupant of a vehicle is dangerous and that a weapon is located in the vehicle, rather than on the person, may search the vehicle only to the extent necessary to discover the weapon. The search may not include areas which are not readily accessible, such as a trunk.

## **SEARCH INCIDENT TO ARREST**

A search incident to arrest may be made if the person to be searched is arrested. If an officer decides to issue a citation rather than formally arresting the defendant, a search incident to arrest may not be made. The search may not be remote in time from the arrest.

### **Scope of Search – Generally**

Outside of the vehicle context, the scope of a search incident to arrest is limited to a search of the arrestee's person, any containers on the arrestee's person, and the area and objects within the arrestee's immediate control. In determining the latter, the court will consider whether or not the arrestee was unsecured and reasonably able to access the container at the time of the search.

### **Scope of Search – Occupant of a Vehicle**

The scope of a search incident to the arrest of an occupant of a vehicle is limited to a search of the arrestee's person and, only if certain circumstances exist, the passenger compartment of the vehicle. The passenger compartment of the vehicle, including any locked or unlocked containers within it, may be searched if the arrestee is unsecured and within reaching distance of the passenger compartment of the vehicle at the time of the search. However, the United States Supreme Court has noted that because officers usually have many means available to secure an arrestee, such as back-up, handcuffs, and patrol cars in which an arrestee may be placed, it should be the rare case in which this situation arises. Otherwise, the passenger compartment of the vehicle, including any locked or unlocked containers within it, may only be searched if the officer reasonably believes that the vehicle contains evidence related to the crime for which the occupant has been arrested.

Every reasonable effort should be made for an officer of the same gender as the arrestee to respond to the scene and conduct the Search Incident to Arrest. This may require assistance from an officer, investigator or supervisor from the arresting officer's unit or another unit or division, or an officer that is currently on a call but can assist within a reasonable amount of time. The arrestee may be required to wait at the scene of the arrest for a reasonable amount of time for an officer of the same gender to respond.

If all options have been exhausted and there are simply no officers of the same gender available at the time of the arrest, then the arresting officer shall conduct a search incident to arrest prior to transporting the arrestee. The arresting officer shall arrange for a second officer, preferably a supervisor, to witness the search.

If an officer has probable cause to believe a vehicle is itself evidence of a crime or an instrument of a crime, the vehicle may be seized from a public place without a search warrant.

If an officer has probable cause to believe a vehicle contains evidence of a crime and the vehicle is in a public place, the vehicle may be seized without a search warrant, and may be searched without a search warrant at the place where it was seized or at a law enforcement facility or other location. The scope of the warrantless search includes any place within the vehicle that the evidence could reasonably be found, including containers such as suitcases, briefcases, purses and bags.

## **IMPOUNDMENT AND INVENTORY OF VEHICLES**


An officer impounding a vehicle for safekeeping must conduct an inventory search. Although these searches must be reasonable, officers do not need a search warrant because the purpose of the search is not to locate evidence. Officers conducting impoundment searches must follow the guidelines set forth in [General Order 4044 – Towed & Stored Vehicles](#). Officers should use the inventory form used with all seized property and should record all objects found in the passenger compartment (including the glove box and console) and trunk. Property with evidentiary value and firearms shall be seized and submitted into the property room. Paper currency and jewelry (excluding costume) shall be seized and submitted into the property room if the person in charge for the vehicle is unable or unwilling to take possession. Officers must open all closed, but not locked, containers if the contents cannot be ascertained from the exterior of the container. Officers shall not open locked containers in the course of an inventory search, however, because a “sniff” by a K-9 is not a search, officers may have a K-9 sniff and impounded vehicle and then seek a search warrant for examination of the entire vehicle.

## **PROPERTY SUBJECT TO FORFEITURE**

North Carolina statutes authorize the forfeiture of vehicles and other property used in certain criminal activities. Officers must obtain an order from a district or superior court judge to seize property subject to forfeiture unless authorized by statute or other legal justification.

## **RECORDING SEARCHES**

Prior to conducting a search incident to arrest, probable cause, inventory or consent search, Officers will make every reasonable effort to ensure that the in-car camera system is recording (both video and audio) footage of the traffic stop.

  
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CHIEF OF POLICE