



# GENERAL ORDER

DURHAM POLICE DEPARTMENT  
DURHAM, NC

NUMBER:

4054 R-5

## SERVICE OF LEGAL PROCESS

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### INTRODUCTION

Police agencies are charged with the responsibility of executing legal process documents. The functioning of the judicial system is affected by the prompt service of court documents; thus the effectiveness of the criminal justice system is dependent upon the effective and timely service of these documents. The service of legal process documents issued to the care and custody of the Durham Police Department (DPD) will be executed efficiently and effectively by Department personnel only within the jurisdiction of the City of Durham and within any limitation set forth by a process and relevant statute, to include time.

### DEFINITIONS

*Arrest Warrant:* Criminal process that charges a person with either a felony or misdemeanor and orders an officer with authority and jurisdiction to execute the warrant by arresting the person and bringing them without unnecessary delay before a judicial official to answer to the charge.

*Citation:* Criminal process issued by a law enforcement officer or other person authorized by statute, directing a person to appear in court and answer a misdemeanor or infraction charge or charges.

*Criminal Process:* Legal process which compels a person to answer for a felony or misdemeanor violation of the law. It includes arrest warrants, orders for arrest, criminal summons and citations.

*Criminal Summons:* Criminal process issued by a judicial official charging a person with a misdemeanor or infraction, and directing the person to appear in a court of law to answer the charge or charges.

*Juvenile Pick-up Order:* A court issued order that directs a law enforcement officer to take physical custody of a juvenile person.

*Involuntary Commitment Order:* A non-criminal process where a clerk or magistrate issues an order to take a respondent into custody and deliver them to a physician or eligible psychologist for examination.

*Legal Process:* A valid document used by the court in either a criminal or civil proceeding to acquire or exercise its jurisdiction over a person or property.

*NCAWARE:* A web-based system that was designed, developed, and implemented by the North Carolina Administrative Office of the Courts (NCAOC). The system maintains detailed information about criminal processes, such as arrest warrants, magistrate orders, citations that lead to an arrest, criminal summons, orders for arrest, release orders, and appearance bonds. It also tracks information for all people and businesses

involved in such processes. With NCAWARE, law enforcement can view and print the unserved process. Officers are also able to pre-fill arrest and arrest warrant information before appearing before the magistrate, thus decreasing processing time.

*Order for Arrest:* Criminal process issued by a judicial official that directs a law enforcement officer to take a person into custody.

*Search Warrant:* A document issued by a judicial official directing law enforcement officers to search and seize specified persons, places, or property.

*Subpoena:* A command to appear at a certain time and place to give testimony upon a certain matter or to furnish certain materials or documents in either a civil or criminal matter.

## **RESPONSIBILITIES**

In accordance with N.C.G.S. § [160A-285](#), all sworn officers of DPD are vested with the authority to serve both criminal and civil legal process; however, the Durham County Sheriff's Department is primarily responsible for the service of civil process in Durham County.

On a daily basis, DCI/Warrant Control will electronically receive all criminal process records via NCAWARE. A system notice listing all felony warrants that were obtained by DPD officers during the previous 24 hours is generated and forwarded to sworn personnel. The warrant will be assigned to the district where the defendant's last known address exists.

Each District Commander will ensure that all legal process documents with addresses in their District are served or attempted to be served in a timely and expeditious manner.

Felony warrants will be entered into NCIC and the agency's RMS within 72 hours of issuance. It is the responsibility of the officer taking out any felony warrant to ensure a wanted person entry form is completed and turned into DCI/Warrant Control, along with a copy of the warrant. The warrant will be assigned to the officer obtaining it in RMS.

The assigned investigator/officer must generate a clearance supplement for all criminal processes served by another agency, and the following will be documented:

- Exceptional clearance entered into the *Suggested Status* field.
- Date/time the process status was changed to "served";
- Person and agency making the change; and
- Details from the event history in NCAWARE.

To ensure clearance supplements are completed for criminal processes served by other law enforcement agencies, DCI/Warrant Control personnel will conduct an audit, based on reports from NCAWARE, of all criminal processes served the previous day. If another agency serves an arrest warrant or criminal summons, DCI/Warrant control will notify the assigned investigator, who is responsible for appropriate follow-up and generating the clearance supplement. If there is no assigned investigator, the DCI/Warrant Technician will generate a clearance supplement.

The Records section is responsible for auditing all criminal processes served each day to ensure the appropriate Arrest, and Supplemental Reports are submitted based on the jurisdiction serving the process, and all applicable clearances are applied.

DCI/Warrant Control receives an updated list of active juvenile pickup orders for Durham County, which are not contained in NCAWARE. Any hits from the list must be confirmed with the subject's caseworker, or on-call representative from the Department of Juvenile Justice before the juvenile is taken into secure custody and transported to the approved facility.

## **WARRANT SERVICE PRIORITIES**

The priority of warrant services is as follows:

1. ***Felony Warrants***- Because of the serious nature of felony offenses, all felony warrants should be served as expeditiously as possible.
2. ***Failure to Appear***- Failure to appear and Failure to Comply warrants should be given a high priority, as there is a greater likelihood that those who willfully fail to appear may not remain in the area for long.
3. ***Misdemeanor Warrants***- In the absence of any felony warrants, misdemeanor warrants should be served to begin with the most serious misdemeanors.

## **RECORDS**

All felony legal process documents are to be entered into RMS and their status maintained by the DCI/Warrant Control unit, including a geo-verified address for the defendant. Non-felony legal process documents will be maintained in NCAWARE. These systems will permit 24-hour access to arrest warrants on file.

For each process, the following information will be documented:

- Date and time received by the Department;
- Type of process;
- Nature of the document;
- Source of the document;
- Name of complainant or defendant;
- Obtaining Officer/Assigned Beat;
- District assigned for service;
- Date of assignment;
- Court document number;
- Date service due.

For all warrants in the NCAWARE system, execution will be documented as served in NCAWARE. A record on the execution or unsuccessfully attempted service of a legal process will be maintained and shall include:

- Date and time service was executed/or attempted;
- Name and employee number of Officer executing or attempting service;
- Name of person on whom the legal process was served;
- Method of service/reason for non-service. Reason for non-service should be brief (e.g. "subject, not home," or "subject moved to out of state" etc.);
- Address of service attempt.

The above information for unsuccessful attempts at service will be documented in NCWARE under "Process Tracking." The above information for executed warrants will be documented in the appropriate systems. Such records will be maintained in the agency's RMS for all felony warrants, and NCAWARE for all other criminal process documents. While officers will record execution and attempted service of legal process directly in NCAWARE, DCI/Warrant Control must be contacted if either event occurs involving a felony warrant. In the case of a felony warrant being executed, the officer shall notify DCI of such service before clearing the Magistrate's Office.

## **CONTROL OF SERVICE OF LEGAL PROCESS**

In many cases, the service of a legal process, such as a warrant, will clear a case that an officer in the Department has investigated. It is important to document in RMS that a particular legal process has been served so that another officer will not attempt to serve the same process, and therefore unjustly detain a citizen. **An officer shall never arrest on the basis of a computer "hit" through NCIC, DCI, or RMS until they have confirmed that the legal process exists and can be located.**

To make sure that the service of a legal process is accurately documented, the following procedures will be followed:

- Any officer who takes out a charge on a warrant, criminal summons, or other legal process that will clear a case investigated by any member of the Department, shall record the Incident Report number in the *Local Case Number* field on the legal process in NCAWARE at the time of issuance of the legal process.
- Any officer who serves a legal process that is in the custody of the Department in the DCI/Warrant Control Office shall make sure that it is cleared out of RMS/NCIC as having been served by contacting DCI/Warrant Control Office and asking the Warrant Control Technician to clear out the warrant. The Technician will note the employee number of the serving officer in RMS.
- Refer to G.O. 4061 *Documenting Arrest Information* for the procedures on recording arrest information.

## **CRIMINAL PROCESS**

Only sworn officers will execute arrest warrants issued to DPD. Search warrants may be executed by appropriate designated personnel.

Upon the execution of an arrest warrant or another legal process that authorizes a custodial arrest, the arresting officer shall transport the person arrested to a judicial official without unnecessary delay.

Officers may, as provided by N.C.G.S. § [15A-401\(b\)](#), arrest violators without a warrant. Upon such arrest, the officer shall transport the arrested person to a judicial official to obtain the necessary legal process. In lieu of a custodial arrest, a criminal citation may be issued, at the officer's discretion, for misdemeanor violations.

Diplomatic immunity guaranteed by law and addressed in G.O. 4011 *Special Processing Requirements* must be considered in any arrest situation. Supervisory personnel will be notified immediately in such circumstances.

Criminal process execution in locations outside DPD's jurisdiction must be conducted in accordance with the requirements of state law and the governing agencies involved. When it is necessary to arrest persons outside the Department's jurisdiction, officers of the agency having jurisdiction are to be utilized for the actual execution of the criminal process.

## OTHER LEGAL PROCESS

In accordance with N.C.G.S. § [8-59](#), subpoenas for obtaining the testimony of witnesses in criminal cases may be served on an individual in person or by telephone by any agency employee.

G.O. 4007 *Response to Individuals with Mental Illness* establishes procedures for the service of Custody Orders for Involuntary Commitments.

The service of civil process documents, including *Temporary Restraining Orders*, to include N.C.G.S. § [50B Domestic Violence Protection Orders](#), are served by the Durham County Sheriff's Office. The Department regularly enforces temporary Restraining Orders. A copy of the order is generally delivered to the Department through the office of the attorney representing the victim. The Records Unit will retain a copy of each order until the case is disposed of in a court of law or one year from date of issue, whichever comes first. Inactive orders will be maintained on file per the Department's records retention schedule.

## PROPERTY

Property received, acquired or confiscated through the service or execution of criminal process will be disposed of per relevant statute and Departmental policy. G.O. 4058 - *Property and Evidence Control* establishes the policies and procedures for the retention, return and disposal of all property. Property returned to the owner before entry into the Departmental evidence/property system must be documented in the report.

  
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CHIEF OF POLICE