



Carrboro Police Department

Subject: Chapter 3: SEARCH AND SEIZURE		Number: V. Subsections
Issued: 07-02-18	Revised: N/A	Pages: 1 of 8

- I. Plain View
- II. Searches Incident to Arrest
- III. Consent Searches
- IV. Motor Vehicle Searches
- V. Warrant Searches

I. PLAIN VIEW

- A. If an officer is in a place that he has a legal right to be and he observes contraband, instrumentalities, fruits or evidence of a crime, he may seize those items as evidence.
- B. The officer's discovery of the item must be inadvertent. Even if the officer had some knowledge of the item, discovery is still inadvertent as long as he did not have probable cause to believe the item was there prior to his observation of the item.
- C. The item seized must be immediately apparent as contraband or evidence of a crime. If the item must be moved or examined more closely, the plain view doctrine does not apply.
- D. Except in cases involving exigent circumstances or motor vehicles (conveyances), a plain view observation of contraband or evidence does not justify a warrantless entry into a constitutionally protected area in order to seize the item.

II. SEARCHES INCIDENT TO ARREST

- A. Search incident to a legal custodial arrest is allowable based upon probable cause and is a reasonable intrusion under the Fourth Amendment.
- B. A search subsequent to a full custody arrest is permitted for the following reasons:
 - 1. To collect and preserve evidence.
 - 2. The safety of the arresting officer.
 - 3. To prevent escape.



Carrboro Police Department

Subject: Chapter 3: SEARCH AND SEIZURE		Number: V. Subsections
Issued: 07-02-18	Revised: N/A	Pages: 2 of 8

4. To prevent weapons and contraband from entering a custodial facility.
 5. To prevent the destruction of evidence.
- C. The search must be conducted in a close time proximity to the time of arrest. Brief reasonable delays such as transporting the subject to jail are permissible.
- D. The scope of the search will be limited to the person, the person’s clothing, the area immediately within reach of the person, and articles within the person’s immediate reach. This would include a purse, a wallet, etc. The area of the subject’s immediate control may be searched after the person has been arrested and removed from that area if the search is conducted soon after the arrest. It is irrelevant that the arrestee can no longer physically reach that area when the search is conducted, if it was within his immediate control when he was being arrested.
1. **Strip and Body Cavity Searches of Prisoners** Strip searches and/or body cavity searches are authorized only in those instances in which there are sufficient reason to believe that such search is necessary to recover evidence or contraband.
 2. Strip searches will be conducted only by officers of the same sex as the prisoner; officers of the opposite sex will not be immediately present at the time such procedures are conducted. Agency personnel will not conduct body cavity searches. **Body cavity searches will be conducted by approved medical or detention personnel.** A search warrant application will be prepared and taken to the appropriate magistrate/judge for review and approval. The only way a cavity search will be performed by a medical doctor, is via search warrant. **A cavity search will not be requested of a doctor or any other medical professional without a signed search warrant ordering such search and seizure.**
 3. When a strip or body cavity search is conducted, officers shall indicate it in their report and it should include: Reason for conducting the search, Officer who conducted the strip search or requested a body cavity search with supported documentation for such search, and exact location of the search (i.e. bathroom of Police Annex).



Carrboro Police Department

Subject: Chapter 3: SEARCH AND SEIZURE		Number: V. Subsections
Issued: 07-02-18	Revised: N/A	Pages: 3 of 8

III. CONSENT SEARCHES (NC GS 15A-221)

- A. Consent searches should be used with the knowledge that they are often subject to question after the fact. Officers should always attempt to obtain consent in writing. (Use the "Consent to Search" form.) The preceding is helpful if the consent is attacked or denied in court.
- B. Consent must be voluntary and by a person who is in apparent control of the property. Officers will also advise the subject that he has the right to withhold his consent and deny the search. It is not coercion to advise the person that the officers will seek a search warrant if consent is not given if officers have lawful authority to seek the warrant.
- C. Withdrawal of the consent may occur at any time. At the moment the subject withdraws his consent, the officers will retain any sizable items they have discovered and stop the consent search. A search warrant may be required to continue the search and may include information on items already seized during the consent search.
- D. Consent searches apply to an area that can include a home, property, person or vehicle.
- E. If the consent cannot be obtained in writing, a verbal consent may suffice to fulfill legal requirements. The officer obtaining a verbal consent should attempt to have another officer witness the consent.

IV. MOTOR VEHICLE SEARCHES

- A. In general, officers do not need a warrant to stop and search a vehicle capable of being moved when you have probable cause to believe that evidence of a crime is in the vehicle. The exception is allowed because:
 - 1. The exigent circumstances created by the mobility of the vehicle.
 - 2. A diminished expectation of privacy related to a vehicle.
- B. When probable cause does exist the following circumstances make a warrant unnecessary:



Carrboro Police Department

Subject: Chapter 3: SEARCH AND SEIZURE		Number: V. Subsections
Issued: 07-02-18	Revised: N/A	Pages: 4 of 8

1. The vehicle is moving.
 2. The officer has reason to believe that persons known or unknown may move the vehicle.
 3. The possibility exists that an alerted criminal will use the vehicle to flee.
 4. The vehicle has recently been moved.
 5. It is impractical to post a detail to guard the vehicle pending a warrant.
 6. The possibility exists that time or elements may destroy the evidence.
 7. It is an emergency situation in which the vehicle must be searched to save life, prevent injury to others, or prevent serious damage to property.
- C. When an occupant of a motor vehicle has been taken into a full custodial arrest, the officer may make a warrantless search of the passenger compartment of the motor vehicle where weapons or evidence of a crime may be located. The search may include glove boxes, receptacles, luggage bags, clothing, locked cases or compartments.
- D. Upon completion of any type of vehicle search, the officer must make a complete list of the items seized, and must deliver a receipt embodying the list of items to the person who consented to the search, and, if known, to the owner of the vehicle or premises searched.

V. WARRANT SEARCHES

- A. General Responsibilities
1. Street officers can routinely develop investigations that may require the need for a search warrant.
 2. Failure to obtain a consent search will initiate the request for a search warrant if probable cause exists.



Carrboro Police Department

Subject: Chapter 3: SEARCH AND SEIZURE		Number: V. Subsections
Issued: 07-02-18	Revised: N/A	Pages: 5 of 8

3. Patrol officers will be responsible for providing the probable cause for the search warrant initiated by them.

B. Securing the Premise

1. Securing the location for the search warrant will be the responsibility of the initiating officer. Officers may enter and secure premises while obtaining a search warrant for that location when all of the following circumstances are present:
 - a. The delay caused by seeking a warrant would be crucial and would allow the destruction of the evidence, and
 - b. The officer has a reasonable belief that evidence or contraband would be removed or destroyed, and
 - c. The officer has a reasonable belief that those in possession of the evidence or contraband are aware that the police are actively attempting to secure evidence and are initiating steps to destroy the evidence, and
 - d. The evidence or contraband is readily destroyable.
2. When securing premises the officer will instruct those present and those who arrive later that no one is allowed to leave. An officer must remain with those previously inside while the search warrant is obtained.
 - a. If persons insist on staying, the officer may restrict their movement and frisk them for weapons if the officer feels it is necessary for his safety.
 - b. Persons not residing at the residence shall be denied access, unless circumstances require their presence, and should be identified.
 - c. Officers may also prevent any persons from removing items from the property.
 - d. Persons not following instructions may be arrested and may afford



Carrboro Police Department

Subject: Chapter 3: SEARCH AND SEIZURE		Number: V. Subsections
Issued: 07-02-18	Revised: N/A	Pages: 6 of 8

officers the right to search if they reasonably suspect they may find weapons or evidence which may be destroyed in that area.

C. Probable Cause

1. NC GS 15A-244 governs search warrant application. The statute requires that a search warrant shall be issued only on an affidavit sworn to or affirmed before the judge and relating facts sufficient to:
 - a. Identify or describe, as nearly as may be, the premises, person, place, or thing to be searched.
 - b. Identify or describe, as nearly as may be, the property to be searched for, seized or inspected.
 - c. Establish the grounds for issuance of the warrant, or probable cause to believe that such grounds exist.
 - d. Establish probable cause to believe that the property to be searched for, seized, or inspected is located at, in, or upon the premises, person, place, or thing to be searched.
2. The affidavit may include sworn testimony reduced to writing and signed under oath by the witnesses giving the testimony.
3. NC GS 15A-246 addresses search warrant contents. When a judge believes that probable cause exists for a search warrant, the warrant shall:
 - a. Identify or describe, as nearly as possible, the premises, person, place, or thing to be searched.
 - b. Identify or describe, as nearly as possible, the property to be searched for, seized or inspected.
 - c. State the grounds or probable cause for its issuance.
 - d. State the names of the persons whose affidavits or testimony have been taken in support thereof.



Carrboro Police Department

Subject: Chapter 3: SEARCH AND SEIZURE		Number: V. Subsections
Issued: 07-02-18	Revised: N/A	Pages: 7 of 8

4. Information obtained from a person who will not appear before a judge is considered “hearsay.” Applicable “hearsay” information includes facts indicating how the informant obtained the information (i.e. heard, saw, etc.) and facts that show that the source of the information is reliable. Types of persons include:

- a. Identified citizen;
- b. Fellow officer;
- c. Informant has made statements against their penal interest; or
- d. The unidentified informant has provided reliable information in the past and is credible.

D. Execution of the Warrant

- 1. NC GS 15A-257 addresses the execution and return of search warrants.
- 2. Unless provided for otherwise, a search warrant shall be directed to any authorized officer to execute in the county wherein the property is located. A district court judge or magistrate issuing a search warrant will direct any authorized officer to execute it in the county wherein the property is located.
- 3. The affiant should be present during the search and prepare the return. A search warrant shall be executed and returned within 48 hours of issuance.
- 4. Unless the court otherwise directs, every search warrant authorizes the officer to execute and serve the warrant at any time and to use such force as is reasonably necessary in the performance of the duties commanded by the warrant.

E. Seized Property

All property seized through the service of warrants for arrest, search warrants, and civil process will be treated as physical evidence and properly entered into



Carrboro Police Department

Subject: Chapter 3: SEARCH AND SEIZURE		Number: V. Subsections
Issued: 07-02-18	Revised: N/A	Pages: 8 of 8

evidence storage by the seizing officer unless otherwise directed by North Carolina General Statutes. The exception to this requirement is the use of the Bulk Property storage locker for arrestees that have no other option for the safe storage of small, personal items of property.