

<b>Directive</b>	<b>Conducting Searches</b>	<b>600-13</b>	<b>1 of 14</b>
<b>Effective Date</b>	<b>January 1, 2010</b>		



## **Wilkesboro Police Department**

### **Electronic Written Directives Document**

#### I. PURPOSE

The purpose of this directive is to set forth the procedures for conducting searches of persons, premises and vehicles.

#### II. POLICY

It is the policy of the Wilkesboro Police Department to conduct all searches and seizures in a lawful manner. Lawful searches and seizures protect the constitutional rights of our citizens and prevent the suppression of seized evidence.

#### III. DEFINITIONS

- A. Body Cavity Search: A visual or manual inspection for contraband or weapons of the suspect's rectal or genital body cavities.
- B. Consent Search: A clear and voluntary expression by an individual to allow an officer to search the person or property of the consenting party or property over which the consenting party has apparent control. Consent may be requested at any time and for evidentiary purposes should be in writing or obtained before a witness.
- C. Crime Scene: A location where a crime has occurred or where evidence of a crime is located and there is an apparent need for investigative action and/or emergency services. (Examples: homicide scenes, fire scenes, scenes of burglaries or break-ins, etc.) Note: The mere presence of contraband or evidence in private premises does not make such premises a "crime scene" for purposes of this definition.
- D. Frisk: The patting down of a person's outer clothing when the person is lawfully detained, or a limited search of a structure or vehicle when an officer has reasonable suspicion the person has a weapon and it may be used against an officer.
- E. High Risk Warrant: An arrest or search warrant for which one or more of the following factors is reasonably likely to exist (note: the more factors that exist, the higher the risk).

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1. The subject of the warrant has a history of violence and/or has several arrests for violent offenses, or has violently resisted apprehension in the past.
  2. The occupants of the structure or area to be searched are armed with dangerous weapon(s) and armed resistance is likely.
  3. The structure is fortified or barricaded and special equipment is needed to gain entry.
  4. The safe execution of the warrant requires the use of specialized skills, tactics, and/or equipment.
- F. Non-consensual Entry: An entry into premises which is made by officers without first obtaining consent from a person who has lawful authority to give consent. Such an entry may or may not be accompanied by some degree of force or damage to the premises.
- G. Search: The organized, planned search of a person, vehicle, structure, or an area to locate and to secure evidence and/or apprehend suspects.
- H. Search Attire: Officers must be wearing a bulletproof vest, police duty gear, handcuffs, flashlight and a gun. If not in uniform the outer most garments must be immediately recognizable as a police officer.
- I. Search Incident to Arrest: The automatic right of an officer to search a person placed under arrest to prevent the arrestee's use of a weapon or the destruction of evidence. The scope of the search will depend on the location of the arrest.
- J. Search Warrant: A written order, signed by a magistrate or other judicial authority, directing a police officer to search a specific location for specified property or persons.
- K. Strip Search: A search for contraband or weapons by removal or partial removal of a person's clothing for inspection of the skin surface, inspecting the genital area, buttocks or female breasts.
- L. Supervisor: A person of the rank of Senior Police Officer or higher.
- M. Vehicle Exception: A warrantless search of a vehicle located in a public place based on probable cause.

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#### IV. WARRANTLESS SEARCHES

##### A. Consent Searches

###### 1. Requirements

The consent to search must be voluntary and obtained from either:

- a. The person to be searched.
- b. The registered owner of a vehicle to be searched or the person in apparent control of the operation and contents of the vehicle at the time the consent is given. If the registered owner is present, his or her consent must be obtained.
- c. A person who by ownership or otherwise is entitled to give consent to a search of premises.
- d. Note that when a physically present co-occupant of a dwelling refuses to consent, it is a refusal even if other occupants consent to a search.

###### 2. Scope of the search

- a. The scope of the search is governed by the terms of the consent.
- b. Officers may not destroy property, such as portions of a vehicle, based solely on a general consent.
- c. Officers must request specific consent to search the genital areas of an individual

###### 3. Withdrawn consent

The person who consents to the search may at any time during the course of the search withdraw that consent. It is not required, however, that police officers advise the person that he or she can withdraw consent, or that he or she has a right to refuse consent.

###### 4. Probable cause exception

If consent is withdrawn, the search will cease immediately, unless probable cause to arrest or continue the search has been established prior to consent being withdrawn. If probable cause to arrest has been established the rules related to search incident to arrest should be

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followed. If probable cause has been established to continue the search of a vehicle, rules related to the vehicle exception should be followed. If probable cause is established to continue searching in a dwelling, a search warrant should be obtained unless there are exigent circumstances.

5. Advantages of voluntary consent

Officers should always consider requesting voluntary consent because the consent given may exceed the scope authorized by law.

B. Frisk of persons

1. Requirements

Officers may conduct a frisk of an individual when:

- a. Officers have a legitimate reason to be with the person or at the location (consent, reasonable suspicion,) and
- b. Officers have reasonable suspicion that the person is armed and presents a threat to their safety or the safety of others (observations of person, information about person and violent nature of suspected criminal activity).

2. Scope of search

- a. Officers may pat the outer clothing and remove weapons or immediately identifiable contraband.
- b. Reasonable suspicion to frisk does not authorize a search of a person.

C. Frisk of vehicles and structures

1. Requirements

- a. Officers have a legitimate reason to be at the location (consent, reasonable suspicion).
- b. Officers have reasonable suspicion to believe a person is dangerous and that a weapon could be nearby and used to harm them.

2. Scope of the search

- a. Vehicle: Officers may frisk the interior passenger area of a vehicle and

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any containers that are accessible and capable of containing a weapon.

- b. Structures: Officers may frisk a structure when they have reasonable suspicion that dangerous people may be present. The scope of the structure frisk is limited to searching for people.

D. Search incident to arrest

1. Requirements

Officers must have probable cause to place a person under arrest and officers must intend to arrest the individual. Officers automatically have the right to search incident to arrest; they need not consider the suspect's dangerousness or the likelihood of destruction of evidence before they conduct the search.

2. Scope of search

a. Arrest of an individual

- (1) Officers may search all unlocked containers or objects within the arrestee's immediate control.
- (2) Officers may search the arrestee's person.
- (3) A strip search is permitted if an officer has reason to believe contraband or weapons will be located. The suspect's privacy should be protected by conducting the search away from public view by an officer of the same sex unless exigent circumstances exist.
- (4) A visual body cavity search is permitted if an officer has reason to believe contraband or weapons will be located. The same privacy protections should be observed as in a strip search.
- (5) When a visual body cavity search reveals contraband, the suspect should be told to remove the item. If the contraband is located in a body cavity the suspect will be informed that if they fail to remove the item, the officer will seek a search warrant and the item will be retrieved by medical personnel.

b. Arrest of an occupant or recent occupant of vehicle

Officers may search the arrestee, the entire interior of the vehicle,

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including the glove compartment or any other compartment whether locked or unlocked and all containers found within the interior as long as probable cause is established based on the circumstances of the arrest. The trunk of a vehicle is not subject to search as incident to an arrest.

c. Arrest of an occupant of structure

Officers may search the arrestee, the area and unlocked containers or objects within the arrestee's immediate control and closets or other places immediately adjoining the place of arrest from which an attack on them from another person could occur.

E. Vehicle Exception

The vehicle exception provides that if an officer has probable cause to believe that a readily mobile vehicle has evidence or contraband located in it, a search of that vehicle may be conducted without first obtaining a warrant.

1. Requirements

- a. There must be probable cause to believe that evidence of a crime or contraband is located in the vehicle to be searched.
- b. The vehicle must be located in a public place. The vehicle need not be moving at the time it is encountered, but must be capable of ready movement.

2. Scope of search

- a. Search every part of the vehicle where the object of the search could be located including locked and unlocked containers and the trunk.
- b. A search conducted pursuant to the vehicle exception may be conducted at the scene or after the vehicle has been impounded.

F. Warrantless Emergency / Exigent Entry

There are limited circumstances when officers may enter a residence without an arrest or search warrant and the requirements for such entries are set forth below. When officers are unsure if the exception is applicable, they should consider securing a warrant. Entering a residence in hot pursuit of a fleeing misdemeanor offender is not justified unless one of the following requirements is met.

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1. Requirements for Entry to Arrest

Officers may enter private premises without a warrant or consent in order to arrest someone in the premises only if:

- a. Someone is likely to be killed or seriously injured unless immediate warrantless action is taken; or
- b. A serious and/or dangerous criminal offender is likely to escape apprehension and/or prosecution unless immediate warrantless action is taken, and:
  - (1) There is probable cause to arrest the person sought; and
  - (2) There is probable cause to believe that the person to be arrested is physically present in the premises at the time of the entry.

2. Requirements for Entry to Preserve Evidence

- a. When determining whether exigent circumstances exists bases on imminent destruction of evidence, the presumption is that the entry was unlawful; the court considers the following factors in determining whether exigent circumstances existed when officers claim the reason for entry was based on the destruction of evidence:
  - (1) The seriousness of the offense;
  - (2) The degree of urgency and the amount of time needed to obtain a search warrant;
  - (3) The officers' reasonable belief the contraband is about to be removed or destroyed;
  - (4) The possibility of dangers to officers guarding the site;
  - (5) Information that possessors of contraband are aware of police presence; and
  - (6) The ready destructibility of the contraband.
- b. Once the premises are secured, no further search can be conducted unless or until:

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- (1) A search warrant for the premises is on the scene;
- (2) Consent to search has been obtained; or
- (3) New or additional emergency circumstances arise that creates the need for an additional warrantless search.

### 3. Requirements for Entry of Crime Scene

- a. An officer may enter a private premises crime scene, without a warrant or consent, in order to:

- (1) Locate and secure suspects; and/or
- (2) Provide assistance to injured persons or others requiring emergency assistance; and/or
- (3) Locate and secure evidence which is likely to be lost or destroyed due to the passage of time.

- b. Once the actions described above are completed, no further search will be conducted unless or until:

- (1) A search warrant for the premises is on the scene; or
- (2) Consent to search has been obtained; or
- (3) New or additional emergency circumstances arise necessitating a further search.

### 4. Entering Structures, Vehicles and Premises during an Emergency

- a. Requirements

When an officer reasonably believes that doing so is urgently necessary to save life, prevent serious bodily harm, or avert or control public catastrophe, pursuant to N.C.G.S 15A-285, the officer may take one or more of the following actions:

- (1) Enter structures, vehicles, and other premises,
- (2) Limit or restrict the presence of persons in premises or area, or
- (3) Exercise control over the property of others.

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b. Scope of Action

An action taken to enforce the law or to seize a person or evidence for criminal prosecution cannot be justified by authority of this section.

c. Reports

An incident report must be completed following a search conducted pursuant to N.C.G.S. 15A-285.

5. Requirements for Entry to Secure a Structure

An officer who enters an unoccupied structure or residence during the course of an investigation of an alarm call or an unsecured structure will document the entry in their Activity Log and notify his/her supervisor.

G. Notification Procedures for Warrantless Non-Consensual Entries

1. Officers will notify their supervisor of their intent to conduct a warrantless nonconsensual entry prior to entering the premises to conduct a search.
2. When, due to exigent circumstances, the officer has no opportunity to contact a supervisor prior to such a search, the supervisor will be notified as soon possible.
3. The supervisor will respond to the scene, review the circumstances, and determine if the search should continue.
4. An incident report will be completed following the search with special emphasis placed on the facts that precipitated the search and gave rise to exigent circumstances.

V. SEARCH WARRANT PROCEDURE

A. Preparation of the Plan for Execution of the Search

1. Responsibilities of the Division Commander

- a. The Division Commander will review the search warrant application prior to presentation to the magistrate.
- b. The Division Commander will designate the police supervisor to be present at the scene and in charge of the search.

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- c. The Division Commander or police supervisor may request assistance from the SWAT Team if he or she determines the warrant to be high risk.
2. When a search warrant is initiated by an officer assigned to Criminal Investigations Section, his or her supervisor of the rank of Lieutenant or above may assume the responsibilities of the Division Commander as outlined above.
  3. In the event a Division Commander is not available, a Criminal Investigations Section supervisor of the rank of Lieutenant or above may assume the responsibilities of the Division Commander.
  4. The supervisor directing the search will:
    - a. Review the affidavit and search warrant for accuracy and validity. The supervisor does not sign or initial the affidavit or search warrant.
    - b. Identify any existing hazards.
    - c. Determine the personnel needed, giving consideration to utilizing on duty officers with special training.
      - (1) The supervisor may request the assistance of SWAT.
      - (2) If it is determined to be a high risk warrant not needing the assistance of SWAT, the personnel conducting the entry must have successfully completed Basic SWAT Training.
    - d. Determine the equipment needed, (e.g., camera, extra handcuffs, and weapons).
    - e. Instruct participating officers of the plan for the search and of their job assignments; ensure that each individual understands his/her role and if necessary reduce each assignment to writing. All officers involved in the search must participate in the pre-search briefing. If exigent circumstances develop during the search that requires additional personnel, they may be called.
    - f. The supervisor must be present at the scene of the search.
    - g. Ensure that the first officer to enter the premises is a uniformed officer.

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- h. Ensure that all non-uniformed personnel are wearing proper WPD search attire, if the supervisor in charge of the search has reason to believe that forced entry into the premises may be required, or if the possibility of imminent danger exists.
- i. Ensure that a sketch is made of the premises to be searched. Every reasonable effort should be made to ensure that the correct premises are being entered by verifying the address and by verifying the house or structure description.

## B. Conducting the Search

### 1. Entry into the premises

- a. The search party must knock, and before entering, give appropriate notice of its identity and purpose to the person in apparent control of the premises to be searched. If the search party has probable cause to believe that the giving of notice would endanger the life or safety of any person, the force necessary to effect entry may be used without notice having been given.
- b. If it is unclear whether anyone is present at the premises to be searched, notice must be given in a manner likely to be heard by anyone who is present.
- c. After announcing identity and purpose, and if the search party reasonably believes that admittance is being denied or unreasonably delayed, or that the premises is unoccupied, the force necessary to effect the entry may be used.
- d. The first person(s) to enter the premises must be in police uniform. Non-uniformed officers will wear proper WPD search attire.

### 2. When entry is made, officers will assist in securing the premises and its occupants, guarding exits, and providing communications support to the officers conducting the search.

### 3. After the occupants are secure, the officer in charge of the search, or his/her designee, must read the warrant (excluding application) and give a copy of the warrant application and affidavit to the person in charge of the premises. If the premises are unoccupied, a copy of the warrant must be attached to the premises in a conspicuous location.

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4. Securing the Occupants of the Premises

- a. Prior to beginning the search, any person present can be patted down (frisk only) if the officer reasonably suspects that the person is armed.
- b. Persons present at a search of a private premise (or a vehicle other than a common carrier) may be detained by the search party. If the search fails to produce the items named in the warrant, and those items may be concealed upon a person, then those persons present may then be searched for the same type of items which, if found, may be seized and used as evidence. (All controlled substances are considered the same type of property if any controlled substances are listed in the warrant.) Any other type of property found during a search of persons under such circumstances may not be used for prosecution, but may be seized if it is contraband or stolen property.

5. Photographs of the premises will be taken before and after the search.

6. The officer who swears to the affidavit is assigned to be the primary searcher, to limit the number of officers who will be required to testify in court. This officer is responsible for collecting and submitting evidence.

7. Every effort should be made to associate evidence with one of the occupants of the premises.

8. Evidence discovered in different locations on the premises will be placed in separate envelopes or containers by the officer responsible for collecting evidence, and marked to indicate where it is was found and by whom.

9. Notes describing the location of evidence.

10. The officer who obtains the search warrant will make every reasonable effort to determine the identity of the owner or occupant of record for the premises where the search was conducted.

C. Raid and Search Report

1. At the completion of the search, the supervisor in charge will initiate an Incident Report prior to the supervisor completing his/her shift.

2. A copy of all Incident Reports documenting searches involving vice activity will be forwarded to the Support Operations Commander.

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#### D. Execution of Search Warrant

A search warrant must be executed and the search completed within 48 hours of issuance. If the search is not completed within that time period, a new search warrant must be obtained. After service, the officer responsible for drawing the search warrant will return the warrant, with a written inventory of the seized items, to the Magistrate's Office. The inventory must be signed and sworn to by the officer who obtained the warrant.

#### E. Errors

If an officer executing a search warrant discovers that an incorrect person, vehicle, or place has been searched in error, the supervisor in charge of the search will:

1. Explain clearly that the WPD made an error and, if possible, why the error was made.
2. Apologize for any inconvenience.
3. Notify the chain of command in writing.
4. Complete an Incident Report detailing the event.

#### F. Receipt after Seizure of Property

If property is seized during the course of a search, even if by consent, the officer in charge will deliver a copy of the WPD Inventory, listing the property taken, to the party from whom the property was taken, or to the party in charge of the premises or vehicle from which the property was taken. If no one is present to accept a copy of the form, the officer will leave the copy in a conspicuous location in the premises or vehicle that was searched.

### VI. SEARCHING DEFENDANTS PREMISES WITH ARREST WARRANT

#### Non-consensual Entry into a Private Premises to Locate and Arrest

- A. Officers may make a non-consensual entry into a suspect's premises to arrest only if an arrest warrant for that person has been obtained, a copy of the warrant is at the scene, the officer has confirmed the warrant is at the Wilkes County Intake Center, officers reasonably believe that the place to be entered is the defendant's residence, and there is probable cause to believe that the suspect is on the premises, unless exigent circumstances justify entry without an arrest warrant.

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- B. Officers may make a non-consensual entry into a third party's premises to arrest the subject of an arrest warrant only if a search warrant has been obtained for the premises, it is at the scene, and there is probable cause to believe that the suspect is on the premises, unless exigent circumstances justify an entry without a search warrant.
- C. Before entering, officers must knock and give appropriate notice of their identity and purpose to the person in apparent control of the premises to be entered. After announcing their identity and purpose, and if the officers believe that admittance is being denied or unreasonably delayed, the force necessary to effect the entry may be used.
- D. If probable cause exists to believe that the giving of notice would endanger the life or safety of any person, the force necessary to effect entry may be used without giving notice.

## VII. REFERENCES

N.C. Gen. Stat. §§ 15A-221 -257  
CALEA 1.2.4, 1.2.8