

<b>Directive</b>	<b>Legal Process</b>	<b>600-14</b>	<b>1 of 4</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 establish policy and procedures for the service of legal process documents in accordance with existing laws.

#### II. POLICY

It is the policy of the Wilkesboro Police Department to efficiently and effectively execute all legal process documents issued to its care and custody.

#### III. DEFINITIONS

- A. Citation. A directive, issued by a law enforcement officer or other person authorized by statute, that a person appear in court and answer a misdemeanor or infraction charge or charges.
- B. Criminal Process. Those writs, summonses, mandates, warrants, order for arrest, or other process issued by a judicial official compelling a person to answer for a felony or misdemeanor violation of the law. The term also includes processes issued to aid in crime detection or suppression, such as search warrants.
- C. Legal Process. A document of civil or criminal process that is valid on its face and is to be served or executed by a law enforcement agency.
- D. Search Warrant. Legal process initiating an authorized search of persons, places, or property.
- E. Subpoena. Legal process notifying a person to appear in a court of law or furnish certain materials or documents.
- F. Summons. Process notifying a person to appear in a court of law to answer charges of a criminal or civil violation.
- G. Warrant. Criminal process issued to initiate a person being taken into custody and restrained pending review by a judicial official.

<b>Directive</b>	<b>Legal Process</b>	<b>600-14</b>	<b>2 of 4</b>
<b>Effective Date</b>	<b>January 1, 2010</b>		

#### IV. ADMINISTRATION

- A. The primary responsibility for the recording, maintenance, and forwarding of legal processes will be assigned to the Records Section.
- B. The shift Patrol Commander working on day shift, or his/her designee, is responsible for taking all legal process papers and citations to be returned to the Clerk of Court's Office or Sheriff's Office on a daily basis (Monday through Friday).
- C. Legal process documents arriving by mail from agencies outside of North Carolina are entered into the Wilkesboro Police Department's Records Management System then forwarded to the Wilkes County Sheriffs Office. Legal processes are served by the Wilkes County Sheriff's Office.

#### V. CIVIL PROCESS

- A. Normally Civil Process is a function of the Office of the Sheriff of the County. Executions of orders for civil arrest or writs requiring the seizure of real or personal property are served by the sheriff's office utilizing sworn deputies.
- B. Involuntary Commitments are a civil responsibility that is required by General Statute, 122C-251. The procedures for involuntary commitments shall be:
  1. When a magistrate or clerk determines that an involuntary commitment order shall be issued and the respondent is within the Town of Wilkesboro, the Wilkesboro Police Department is responsible for transporting the respondent to an area facility for examination.
  2. An officer shall be assigned to obtain the documentation, and;
  3. Without unnecessary delay after assuming custody take the respondent to the Wilkes Medical Center for examination by a physician or eligible psychologist;
  4. If a physician or eligible psychologist is not available at the Wilkes Medical Center the respondent shall be taken to any physician or eligible psychologist locally available.
  5. If a physician or eligible psychologist is not immediately available, the respondent may be temporarily detained in an area facility, if one is available; if an area facility is not available, the respondent may be detained under appropriate supervision in the respondent's home, in a

<b>Directive</b>	<b>Legal Process</b>	<b>600-14</b>	<b>3 of 4</b>
<b>Effective Date</b>	<b>January 1, 2010</b>		

private hospital or a clinic, in a general hospital, or in a State facility for the mentally ill, but not in a jail or other penal facility.

6. Transportation of Involuntary Commitments shall be in compliance with state law and department policy (see Detainee Transport, Involuntary Commitments and North Carolina General Statute 122C-251 and 122C-263)

## VI. CRIMINAL PROCESS

- A. The execution of criminal process documents will be conducted by Departmental personnel only within their legal jurisdiction, and within time limitations set forth by a process and relevant statute.
- B. Officers serving a criminal process document will sign and date the return and return to the magistrate or clerk of court.
- C. Upon the execution of an arrest warrant, officers will transport the person arrested to a judicial official without unnecessary delay.
- D. Officers may arrest violators without a warrant, as provided by law. Upon arrest, the officer will transport the arrested person to a judicial official to obtain the necessary legal process, providing that a criminal citation may be issued, at the officer's discretion, for a misdemeanor violation.
- E. When executing criminal process documents, or making arrests without a warrant, the response to aggression will be kept to the minimum amount necessary to affect the arrest.
- F. Immunity guaranteed by federal law must be considered in any arrest situation. Supervisory personnel are to be notified in such circumstances.
- G. Criminal process execution in locations outside Departmental jurisdiction must be conducted in accordance with 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.
- H. Only sworn officers will execute criminal processes issued to the Wilkesboro Police Department. These documents will include arrest warrants, criminal summonses, orders for arrest, juvenile summonses, and search warrants.

<b>Directive</b>	<b>Legal Process</b>	<b>600-14</b>	<b>4 of 4</b>
<b>Effective Date</b>	<b>January 1, 2010</b>		

## VII. PROPERTY

- A. It is the responsibility of the Sheriff's Department to acquire property through the civil process but should the Wilkesboro Police Department come to possess property received or confiscated through the service or execution of legal process, such as asset forfeiture, it shall be disposed of in accordance with relevant statute and departmental policy.
- B. Property received through the service of legal process is to be documented by appropriate Departmental report. If the property is returned to the owner prior to entry into the Departments evidence/property system, it is to be noted in the report.
- C. Property retained is to be entered into the Departments evidence/property system in accordance with established policy and procedures.
- D. Disposal of property will be managed through the Evidence Custodian. Disposal may be accomplished by the return to the rightful owner, physical destruction, or public sale. Proceeds from sold properties will be dispensed as provided by state law. The Evidence Custodian will maintain records of property disposition.

## VIII. REFERENCES

N.C.G.S. 122C-251  
N.C.G.S. 122C-263  
CALEA Chapter 74