



**SEARCH WARRANTS FOR BLOOD**

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**ON THE MENU**

- When must the State obtain a search warrant?
- What is the standard for evaluating the warrant application?
- How may search warrants for blood be executed?

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**WHEN MUST THE STATE OBTAIN A SEARCH WARRANT?**

- Taking a blood sample or administering a breath test is a search governed by the Fourth Amendment.
- Fourth Amendment requires that searches be reasonable.
- That usually means that they must be based on probable cause and carried out with a warrant.

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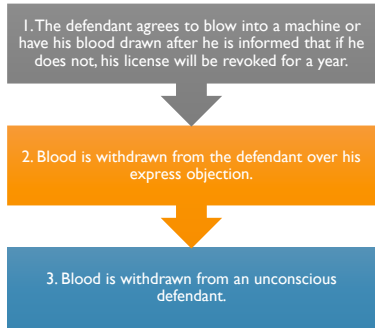
**EXCEPTIONS TO WARRANT REQUIREMENT**

- Search incident to arrest (exception to PC and warrant requirement)
- Consent search (exception to PC and warrant requirement)
- Special governmental needs (exception to PC and warrant requirement)
- Exigent circumstances (warrant exception)

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THREE WAYS TO TEST

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The defendant agrees to blow into a machine or have his blood drawn after he is informed that if he does not, his license will be revoked for a year.

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Blood is withdrawn from the defendant over his express objection.

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**SCHMERBER V. CALIFORNIA,  
384 U.S. 757 (1966)**

- Warrant requirement applies generally to searches that intrude into human body
- But warrantless blood draw permissible as officer might reasonably have believed that delay necessary to obtain a warrant threatened the destruction of evidence, given the natural dissipation of alcohol from a person's blood
- So, at least in some circumstances, an exigency exception applies

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MISSOURI V. MCNEELY,  
569 U.S. 141 (2013)

- Natural dissipation of alcohol does not create a per se exigency
- If officer can obtain warrant without "significantly undermining" search, must do so
- Whether nonconsensual warrantless blood draw is reasonable must be determined case by case on totality of circumstances
  - May have exigency w/o accident
  - Warrant procedures relevant
  - Availability of magistrate relevant

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WHEN IS THERE AN EXIGENCY?

- *State v. Dahlquist*, 231 N.C.App. 100 (2013)
- Four to five hour delay created exigency
- Dicta.
  - G.S. 15A-245 allows search warrant to be issued based on audiovisual transmission of oral testimony under oath
  - Better practice is to verify waiting times

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WHEN IS THERE AN EXIGENCY?

- *State v. Granger*, 235 N.C. App. 157 (2014)
- Exigent circumstances justified warrantless, nonconsensual blood draw
  - Blood drawn 1.5 hours after defendant drove
  - Would have taken an additional 40 minutes to get warrant
  - Lone investigating officer could not leave D at hospital

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WHEN MUST THE  
STATE OBTAIN A  
WARRANT?

- If there is no consent and no exigency, the State needs a warrant to withdraw the defendant's blood for analysis in a DWI case.

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Blood is withdrawn from an unconscious defendant

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G.S. 20-16.2(B):  
UNCONSCIOUS PERSON  
MAY BE TESTED

“[I]f the person is unconscious or otherwise in a condition that makes the person incapable of refusal, the law enforcement officer may direct the taking of a blood sample”

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STATE V. ROMANO,  
369 N.C. 678 (2017)

- Warrantless withdrawal of blood from unconscious DWI suspect violated Fourth Amendment, notwithstanding G.S. 20-16.2(b).

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MITCHELL V. WISCONSIN,  
588 U.S. \_\_\_\_ (2019)

- A state statute authorizing a blood draw from an unconscious motorist does not provide an exception to the warrant requirement.
- But there is “almost always” an exigency in these cases.  
There is a compelling need that may leave the officer without time to seek a warrant.  
And in an unusual case, the D can show that blood would not otherwise have been withdrawn and the warrant application would not interfere with other pressing needs/duties.

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STATE V. BURRIS,  
 \_\_\_ N.C. APP. \_\_\_, 890 S.E.2D 539 (2023)

- State established exigent circumstances pursuant to *Mitchell*.
- Defendant was unconscious at the scene and transported to the hospital for treatment of serious injuries. Officer spent an hour investigating the crash and securing the scene and then went directly to the hospital.
- Given the severity of the defendant's injuries, the officer was concerned that the defendant might have to undergo surgery. The officer also was unsure how long it would take to secure a warrant.

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WHEN MUST THE  
 STATE OBTAIN A  
 WARRANT?

No warrant is required to carry out breath testing incident to an arrest for DWI

A warrant is required to carry out blood testing unless there are exigent circumstances or the defendant consents.

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WHAT IS THE  
 STANDARD  
 FOR ISSUING  
 A WARRANT?

To issue a search warrant, the magistrate must be able to find probable cause from facts or circumstances shown in the affidavit submitted to him that:

- (1) a crime has been committed; and
- (2) evidence of the crime may be in the place to be searched.

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APPLICATION FOR SEARCH WARRANT FOR BODILY FLUIDS

Name of Person to be Searched: \_\_\_\_\_

Address of Person to be Searched: \_\_\_\_\_

Offense Charged:  Commercial DWI, G.S. 20-436.2  DWI, G.S. 20-138.1  Death by Vehicle, G.S. 20-141.4  Impaired DWI, G.S. 20-138.6  Other (specify): \_\_\_\_\_

I, the law enforcement officer named above, being duly sworn, request that the Court issue a warrant to search the person of the individual named above, who may be found at the location described above, and to seize sample(s) of the above specified bodily fluid(s) of that individual.

I swear to the following facts to establish probable cause for the issuance of a search warrant:

I am a sworn law enforcement officer of the above-named agency. As such, I am empowered to search for and seize evidence described in N.C. General Statutes Chapter 14, Criminal Law, Chapter 20, Motor Vehicle Law, and Chapter 56, Controlled Substances. I have received training in the detection and apprehension of impaired drivers and the investigation of motor vehicle collisions. I have been a sworn law enforcement officer for over \_\_\_\_\_ years and during that time I have investigated \_\_\_\_\_ incidents of offenses related to impaired driving.

I, \_\_\_\_\_, rely on the facts stated in the following report(s), of which a copy or copies are attached and incorporated by reference (attach a copy of the report(s) attached herein if available and if other contains relevant facts):  
 Affidavit and Narration Report (ADC-CVR-1A)(RHS-390)  
 Driving While Impaired Report Form/Alcohol Inference Report Form

The following facts establish an or about the \_\_\_\_\_ city of \_\_\_\_\_ at \_\_\_\_\_  Alt. C/PK, the individual named above was operating a \_\_\_\_\_ commercial motor vehicle to wit: type, make and year: \_\_\_\_\_ at \_\_\_\_\_ highway/road \_\_\_\_\_ public, restricted area at \_\_\_\_\_ County at or near the location of \_\_\_\_\_ is violation of the state's criminal statute.

The above-named individual admitted to me operating the described vehicle at the time and place indicated.

On or about the date stated above, at \_\_\_\_\_ Alt.  Alt.  PM I detected a \_\_\_\_\_ strong  moderate  faint odor of alcohol coming from the breath of the above-named person  
 at the scene  
 at the following location: \_\_\_\_\_  
 at other location: \_\_\_\_\_

I observed the following behavior of the individual named above, which evidence impairment of the person's mental and/or physical faculties as follows:

The above-named individual stated to me that before or while operating the described vehicle he/she:  
 had consumed alcohol  
 was consuming alcohol  
 had consumed controlled substance, to wit: \_\_\_\_\_  
 had consumed other impairing substance, to wit: \_\_\_\_\_

The above-named individual refused to submit to a chemical analysis.

I observed the following facts:

Other reliable persons stated to me the following facts: (NOTE: Name officer or witness and no facts related to movement, restraint operation, etc.)

The above-named individual has previously been convicted of one or more offenses involving impaired driving.

Based on all the foregoing, and on my training in detecting impaired driving violations and

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**APPLICATION FOR SEARCH WARRANT**

1. Trooper Matthew T. Bryan, NCSHP  
(Print name and address, or if the affiant is a police officer, name, rank and address)

being duly sworn, alleges that the Court issues a warrant to search the person, place, vehicle, and other items described in this application in order to find and seize the property and person described in this application. There is probable cause to believe that (describe property to be seized, or if assets were seized, to be used for securing a plea or to serve an arrest warrant or other process, name, address to be searched)

Blood kit for an implied consent offense of G.S. 20-111(a)(2) will be drawing blood from the defendant.

constitutes evidence of a crime and the identity of a person participating in a crime. (Also state)

and is entitled (check appropriate boxes and/or question information)

in the following precinct (give address and, if legal, precinct number)

and

on the following person(s) (give name) and, if legal, describe person(s)

and

None of the above

The applicant swears or affirms to the following facts to establish probable cause for the issuance of a search warrant:

The defendant was involved in a motor vehicle collision where a violation of G.S. 20-111.4(a)(2) occurred.

Subscribed and sworn to before me this 7-23-2015 day of July at Charlotte, NC

Matthew T. Bryan  
(Signature of Affiant)

Matthew T. Bryan  
(Print Name of Affiant)

In addition to the affiant included above, this application is supported by additional officers, attached, made by

In addition to the affiant included above, this application is supported by sworn testimony, given by

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- I have been a sworn law enforcement officer for 3 years and have investigated 15 incidents of offenses related to impaired driving.
- On or about the 1<sup>st</sup> day of November 2021, at 3:20 pm, the individual named above was operating a motor vehicle on Charity Avenue, a street in the county named above in the city of Raleigh.
- On or about the 1<sup>st</sup> day of November 2021 at 3:20 p.m., I responded to a vehicle crash and after arriving at the scene, I ascertained that the above named individual was operating the described vehicle at the time and place stated from the following facts: James Jones stated he was driving, described the motor vehicle accident to me. There were no other persons on the scene who could have driven the vehicle. Blood from Mr. Jones wound (which he got during the accident) was smeared on the driver's side interior of the vehicle.
- G.S. 90-21.20B gives a law enforcement officer the authority to request a search warrant for the purposes of determining impairment after driving when the person is involved in a vehicle crash.

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## HOW MAY SEARCH WARRANTS FOR BLOOD BE EXECUTED?

You are commanded to take the person named in the application to a physician, registered nurse, emergency medical technician or other qualified person to obtain sample(s) of blood and/or urine described in the application from the person named in the application. You are to seize the sample(s), have the sample(s) tested for one or more impairing substances and keep the unconsumed sample(s) subject to court order and process the person according to law.

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## WHAT ARE THE MEDICAL PROVIDER'S OBLIGATIONS?

Medical providers must withdraw blood upon officer's request.

Medical provider may refuse "if it reasonably appears that the procedure cannot be performed without endangering the safety of the person collecting the sample or the safety of the person from whom the sample is being collected."

G.S. 20-139.1(c), (d1).

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How much force may be used to execute?

Use of force must be reasonable

State v. Hoque, 269 N.C.App. 347 (2020) (reasonable for two officers and two nurses to hold the handcuffed defendant down to draw blood after defendant refused to comply with warrant)

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## Medical Records

May these be disclosed pursuant to a search warrant? Yes. *State v. Smith*, 248 N.C. App. 804 (2016) (Medical records establishing his defendant's blood alcohol concentration after he crashed his motorcycle were properly obtained pursuant to a search warrant and properly admitted at trial).

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The image shows a 'SEARCH WARRANT' form from the State of North Carolina. The form is titled 'SEARCH WARRANT' and includes fields for 'JUDICIAL DISTRICT', 'COUNTY', and 'TOWN'. It contains instructions for the officer and a section for the return of the warrant. The form is partially filled out with handwritten text and signatures.

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