

# Search Warrant FAQ's

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One Day Criminal Law Seminar for Magistrates

# Question

- ▶ Law enforcement appears before you. They are attempting to arrest a person and have located him in someone else's apartment. They are asking for a search warrant to go into the residence to arrest them, although they already have an arrest warrant. What should you issue?

A new arrest warrant

A search warrant

# Answer

- ▶ When law enforcement is seeking to arrest someone, and they have an arrest warrant, they are authorized to enter that person's residence in order to arrest them.
  - ▶ G.S. 15A-401(e)(1) permits entry by law enforcement on private premises or vehicle when they are in possession of an arrest warrant for the person.
- ▶ If the person subject to arrest is in another person's residence, law enforcement need additional authority to enter, such as:
  - ▶ Exigent circumstances
  - ▶ Consent
  - ▶ A search warrant
- ▶ How is law enforcement supposed to fill out the AOC form where it asks for connection to a crime? Do you put the crime, or the reason for the arrest warrant? What about orders for arrest?

# Question

- ▶ Officer Allen appears before you. He says he responded to a car accident where other officers were already there. He says Officer Brown told him to come get a search warrant for blood for one of the drivers. Officer Allen describes what Officer Brown told him. It sounds like PC but Officer Allen did not see any of it personally, and is only relaying Officer Brown's account. May you issue the search warrant?

Yes

No

# Slight Change

- ▶ Officer Allen appears before you. He says he responded to a car accident where other people were already there. He says a local shop owner Gravis Mushnik saw what happened and described it to him. Officer Allen describes what Mushnik told him. It sounds like PC but Officer Allen did not see any of it personally, and is only relaying Mushnik's account. May you issue the search warrant?

Yes

No

# Answer

- ▶ Sources of information for probable cause
- ▶ Hearsay is permissible, but not all hearsay is the same
- ▶ Citizen informants
  - ▶ May be relied on without additional assurances or indicia of reliability
- ▶ Anonymous tips
  - ▶ Must have some corroboration that the information is true
- ▶ Confidential informants
  - ▶ Must either provide corroboration that the information is true, or provide evidence of a track record of reliability.

# Question

- ▶ You are reviewing a search warrant. The property to be seized is described as “Green and yellow 2024 John Deere Z315E ZTrak 42-in 20-HP V-twin Gas Zero-turn Riding Lawn Mower with an “I’ll kick your grass” sticker on it.” The place to be searched is described as “20’x50’ wood barn made of distressed gray pine with a loft, built in 1986 by H.G. Wells construction, on the east edge of Farmer Covington’s sweet potato field 100 feet north from the intersection of Blueberry Street and Apple Cider Lane.” Is the place to be searched described particularly enough?

Yes

No

# Context



# Question

- ▶ You are reviewing a search warrant. The property to be seized is described as “Green and yellow 2024 John Deere Z315E ZTrak 42-in 20-HP V-twin Gas Zero-turn Riding Lawn Mower with an “I’ll kick your grass” sticker on it.” The place to be searched is described as ~~“20’x50’ wood barn made of distressed gray pine with a loft, built in 1986 by H.C. Wells construction,~~ on the east edge of Farmer Covington’s sweet potato field 100 feet north from the intersection of Blueberry Street and Apple Cider Lane.” Is the place to be searched described particularly enough?

# Answer

- ▶ Descriptions of the place to be searched need to be particular enough so there is no ambiguity as to which premise or building is subject to the warrant.
- ▶ This is very context specific.
- ▶ They do not have to include outbuildings within the curtilage or attached to the premise...but if it's better to include them when possible.
- ▶ Separate structures may be subject to search when there is probable cause for that location as well - if established in the warrant application.

# Question

- ▶ Law enforcement suspects the local "Build-a-Bear" is distributing drugs in the stuffed animals. You issued a search warrant to look for cocaine in the business. The applicant did not ask for any persons to be included in "places to be searched." While executing the warrant, law enforcement detained employees of the business but did not find any cocaine. They call you, asking if they need to apply for another warrant to search the employees. What do you tell them?

Search

Don't search

# Answer

## ► G.S. 15A-256

- Officers may detain and subsequently search persons not mentioned in the warrant, found on the premises subject to a search warrant when:
  - The items to be seized are not found, and
  - The items to be seized are able to be concealed, BUT
- Only items of the same "type of property" may be seized and may be used for prosecution.
  - All controlled substances are the same type of property
  - Limits prosecutions of anything else found during the search
- Would including "an all persons on the premises" been ok in this situation?
- What about "all employees of the business suspected of criminal activity, to be identified by Detective Teddy during the search"?

# Question

- ▶ You are reviewing a search warrant. The law enforcement officer is investigating a reported robbery of a cell phone. He's unsure if it's a common law robbery or an armed robbery. The victim reports they were robbed walking home one night, but doesn't know which county he was in. Law enforcement has pinged the phone, and it is showing up inside a residence in your county at 21 Bubblegum Boulevard. Can you issue a search warrant with this information?

Yes

No

# Answer

- ▶ Investigations commonly don't have all of the answers at the beginning.
- ▶ The statement of probable cause is not the same as determining probable cause for an offense.
- ▶ Is there a reasonable probability the item sought is subject to seizure and is located in the place to be searched?
- ▶ Item subject to seizure - evidence of a crime or is contraband
- ▶ County only matters when it comes to where the subject property or person is potentially located - not location of offense.

Questions



# Issuing Process for New Criminal Offenses

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Let's do a deep  
dive

also a reminder

"Better Call Belal"  
(or email)

# Exposing a child to a controlled substance

- ▶ G.S. 14-318.7, effective for offenses on or after December 1, 2025
- ▶ Establishes five new offenses...or does it?
- ▶ Another way to look at it - one new offense, with four lesser included offenses
- ▶ G.S. 14-318.7(f): A person who knowingly, intentionally, or with reckless disregard for human life causes or permits a child to be exposed to a controlled substance and, as a result, the child ingests the controlled substance, and the ingestion is the proximate cause of death, is guilty of a Class B1 felony.

# Exposing a child to a controlled substance

- ▶ G.S. 14-318.7(f): A person who knowingly, intentionally, or with reckless disregard for human life causes or permits a child to be exposed to a controlled substance and, as a result, the child ingests the controlled substance, and the ingestion is the proximate cause of death, is guilty of a Class B1 felony.
- ▶ Knowingly, intentionally, or with reckless disregard
- ▶ Causes or permits
- ▶ A child
- ▶ Exposed
- ▶ Controlled Substance
- ▶ Ingests
- ▶ Proximate cause
- ▶ Death

# Exposing a child to a controlled substance

- ▶ Knowingly, intentionally, or with reckless disregard
- ▶ Causes or permits
- ▶ A child
  - Defined in 14-318.7 - less than 16 years old
- ▶ Exposed
- ▶ Controlled Substance
  - Defined in 14-318.7 - "controlled substance, controlled substance analogue, drug, marijuana, narcotic drug, opiate, opioid, opium poppy, poppy straw, or targeted controlled substance, all as defined in G.S. 90-87"
- ▶ Ingests
  - Defined in 14-318.7 - "Any means used to take into the body, to eat or drink, or otherwise consume or absorb into the body in any way."
- ▶ Proximate cause
- ▶ Death

# Exposing a child to a controlled substance

- ▶ G.S. 14-318.7(e): A person who knowingly, intentionally, or with reckless disregard for human life causes or permits a child to be exposed to a controlled substance and, as a result, the child ingests the controlled substance, resulting in serious bodily injury as defined in G.S. 14-318.4, is guilty of a Class C felony.
- ▶ Knowingly, intentionally, or with reckless disregard
- ▶ Causes or permits
- ▶ A child
- ▶ Exposed
- ▶ Controlled Substance
- ▶ Ingests
- ▶ Resulting in
- ▶ Serious bodily injury as defined in G.S. 14-318.4

# Exposing a child to a controlled substance

- ▶ G.S. 14-318.7(d): A person who knowingly, intentionally, or with reckless disregard for human life causes or permits a child to be exposed to a controlled substance and, as a result, the child ingests the controlled substance, resulting in serious physical injury as defined in G.S. 14-318.4, is guilty of a Class D felony.
- ▶ Knowingly, intentionally, or with reckless disregard
- ▶ Causes or permits
- ▶ A child
- ▶ Exposed
- ▶ Controlled Substance
- ▶ Ingests
- ▶ Resulting in
- ▶ Serious physical injury as defined in G.S. 14-318.4

# Exposing a child to a controlled substance

- ▶ G.S. 14-318.7(c): A person who knowingly, intentionally, or with reckless disregard for human life causes or permits a child to be exposed to a controlled substance and, as a result, the child ingests the controlled substance is guilty of a Class E felony.
- ▶ Knowingly, intentionally, or with reckless disregard
- ▶ Causes or permits
- ▶ A child
- ▶ Exposed
- ▶ Controlled Substance
- ▶ Ingests
- ▶ ~~Resulting in~~
- ▶ ~~Serious physical injury as defined in G.S. 14-318.4~~

# Exposing a child to a controlled substance

- ▶ G.S. 14-318.7(b): A person who knowingly, intentionally, or with reckless disregard for human life causes or permits a child to be exposed to a controlled substance is guilty of a Class H felony.
- ▶ Knowingly, intentionally, or with reckless disregard
- ▶ Causes or permits
- ▶ A child
- ▶ Exposed
- ▶ Controlled Substance
- ▶ ~~Ingests~~
- ▶ ~~Resulting in~~
- ▶ ~~Serious physical injury as defined in G.S. 14-318.4~~

# Exposing a child to a controlled substance

- ▶ What about a parent giving their kid prescribed medicine?
- ▶ G.S. 14-318.7(h) This section does not apply to a person that intentionally gives a child a controlled substance that has been prescribed for the child by a licensed medical professional when given to the child in the prescribed amount and manner.
- ▶ For more discussion on this offense and others, see the blog post [New Crime of Exposing a Child to Controlled Substances and Other 2025 Drug Law Changes](#) by Phil Dixon.

# Exposing a child to a controlled substance

- ▶ Let's work through some examples
- ▶ A babysitter is watching a 4-year-old in the child's home. The child's parent, who uses liquid THC concentrate recreationally, left a small unlabeled vial on the kitchen counter next to the child's juice boxes. The babysitter, unaware of what the vial contains, moves it to the fridge door shelf to clear space.
- ▶ Later, the child opens the fridge, mistakes the vial for a juice shot, and drinks it. The child suffers a seizure and dies. Toxicology confirms the THC concentrate was the proximate cause of death.

# Exposing a child to a controlled substance

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# Exposing a child to a controlled substance

- ▶ A mother keeps her prescribed fentanyl patches in a drawer next to her child's cold medicine. One morning, her 5-year-old son wakes up vomiting and lethargic. She assumes it's the flu and gives him over-the-counter medication. Hours later, his condition worsens and he's hospitalized.
- ▶ Doctors discover trace amounts of fentanyl in his system, but also note he tested positive for influenza. The child recovers after two days in the hospital. Toxicologists cannot conclusively determine whether the fentanyl ingestion caused the symptoms or merely compounded the illness.
- ▶ The mother is charged under the statute for permitting exposure to a controlled substance resulting in injury.

# Habitual Domestic Violence

- ▶ Applies to offenses committed December 1, 2025 or later
- ▶ Establishes new Class H felony in G.S. 14-32.6
  - ▶ How is this different from Habitual Misdemeanor Assault?
  - ▶ Felony class goes up each time a person is convicted, limited to Class C.
- ▶ Not all domestic violence counts for habitual domestic violence - may be more helpful to think of new offense as “Habitual Domestic Violence Assaults”

# Habitual Domestic Violence

- ▶ First Requirement: person has been charged with misdemeanor crime of domestic violence (G.S. 14-32.5) OR charged with assault against another person who is:
  - ▶ A current or former spouse, parent, or guardian of the victim.
  - ▶ A person with whom the victim shares a child in common.
  - ▶ A person who is cohabitating with or has cohabitated with the victim as a spouse, parent, or guardian.
  - ▶ A person similarly situated to a spouse, parent, or guardian of the victim.
  - ▶ A person who has a current or recent former dating relationship with the victim.

(the same list as MCDV in 14-32.5)

# Habitual Domestic Violence

- ▶ Second Requirement: two or more convictions within the prior 15 years that include EITHER of the following combinations:
  - ▶ Two or more convictions of misdemeanor crime of domestic violence or its equivalent from another jurisdiction, or
  - ▶ One conviction of misdemeanor crime of domestic violence or its equivalent from another jurisdiction, and at least one prior conviction involving an assault with a victim who is included in the relationship list from 14-32.5.

# Speaking of Habitual Assault

- ▶ G.S. 14-33.2 has been amended - effective for offenses committed on or after December 1, 2025
- ▶ Current version requires a person to be charged with a violation of G.S. 14-33 and cause injury (misdemeanor assault) or G.S. 14-34 (assault by pointing a gun) to be eligible for habitual misdemeanor assault.
- ▶ Prior convictions have to be either misdemeanor or felony assaults (no injury required) within the prior 15 years.
- ▶ In December, misdemeanor crime of domestic violence will be included BOTH as a qualifying offense and a qualifying prior conviction.

# Burglary

- ▶ Newly defined - and different - as of December 1, 2025.
- ▶ Currently, burglary is “defined at the common law”
  - ▶ “The elements of burglary in the first degree are the (1) breaking and (2) entering, (3) in the nighttime, (4) of a dwelling house, (5) of another, (6) which is actually occupied, (7) with the intent to commit a felony therein.” *State v. Williams*, 308 N.C. 47, 65 (1983). “Burglary in the second degree consists of all the elements of burglary in the first degree save the element of actual occupancy.” *State v. Jolly*, 297 N.C. 121, 127 (1979).
- ▶ In December, burglary will be defined by G.S. 14-51(a) (first-degree) and G.S. 14-51(b) (second degree).

# Burglary

- ▶ G.S. 14-51(a) Burglary in the First Degree. - Any person who shall break and enter the dwelling house or room used as a sleeping apartment of another with the intent to commit any felony or larceny therein and any person is in the actual occupation of any part of said dwelling house or sleeping apartment at the time of the commission of such crime, it shall be burglary in the first degree.
- ▶ G.S. 14-51(b) Burglary in the Second Degree. - Any person who shall break and enter the dwelling house or room used as a sleeping apartment of another with the intent to commit any felony or larceny therein and the property was not actually occupied at the time of the commission of the crime, it shall be burglary in the second degree.
- ▶ No longer limited to offenses committed during nighttime.
- ▶ How is Second Degree Burglary different from Felony Breaking or Entering?

# Burglary

- ▶ A college student rents out her apartment on Airbnb while she's away for the weekend. She leaves personal belongings in her locked bedroom but is physically absent. A guest checks in Friday night.
- ▶ At 2 a.m., the defendant climbs through the kitchen window and enters the apartment. He quietly opens the locked bedroom door and begins rummaging through drawers. The Airbnb guest, asleep in the living room, hears the noise and calls 911.

# Burglary

- ▶ Another hypothetical
- ▶ A man breaks into a lakeside cabin at 11 p.m. on a Friday night. The cabin is fully furnished, used regularly by the owner, but unoccupied at the time. The intruder doesn't intend to steal anything—instead, he plans to set up surveillance equipment to secretly record future guests for online distribution.
- ▶ What is the correct offense, if any?

# Burglary

- ▶ Enhancement created: G.S. 14-52(b), also effective December 1, 2025
- ▶ Currently, G.S. 14-52 establishes that First Degree Burglary is a Class D felony (unchanged) and Second Degree Burglary is a Class G felony (unchanged)
- ▶ Subsection (b) enhances the felony class one level if the person had a firearm during the offense - and requires this to be included in any indictment or information used to prosecute the offense.

# Assaulting a Utility Worker

- ▶ New subsection added to G.S. 14-33(b) effective December 1, 2025.
- ▶ Any person assaults a utility or communications worker (employee, agent, or contractor with an organization, entity, or company, public or private, that provides electricity, natural gas, liquid petroleum, water, wastewater services, telecommunications, or internet access services) while the worker is readily identifiable (wearing a uniform, hat, or other outerwear with a logo of the company) and discharging or attempting to discharge their duties.
- ▶ Assaults
- ▶ Utility or communications worker
- ▶ Who is readily identifiable
- ▶ And discharging or attempting to discharge their duties

# Assaulting a Utility Worker

- ▶ Let's consider a hypothetical
- ▶ A cable technician finishes installing internet service at a residence and walks across the street to sit on a bench and eat lunch. He's still wearing his company-logoed shirt and hat. While eating, he takes a personal call on his cellphone.
- ▶ A neighbor, angry about a previous service issue, approaches and begins yelling at the technician. The technician stands up and tries to walk away, but the neighbor shoves him and says, "That's for messing up my Wi-Fi last month."
- ▶ Police arrive and charge the neighbor with assaulting a utility worker under the statute.

The background features a dark, textured field of numerous question marks in various shades of brown and gold. A large, white, 3D-style question mark is prominently displayed in the center-right. On the right side, there are several overlapping, translucent green geometric shapes, including triangles and polygons, creating a modern, abstract design.

# Questions?

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