

# Search Warrants

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## What is a search warrant?

- ▶ "A search warrant is a court order . . . directing a law-enforcement officer to search designated premises, vehicles, or persons for the purpose of seizing designated items."
- ▶ G.S. 15A-241



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## When do officers need warrants?

- ▶ To search areas subject to a "reasonable expectation of privacy"
- ▶ To trespass on private property in search of information
- ▶ To track a person's location over an extended period of time
- ▶ Officers can do some searches without a warrant

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## Where do the rules about warrants come from?

1. North Carolina General Statutes 15A-241 et seq.
2. United States Constitution (Fourth Amendment)
  - a. No "unreasonable searches and seizures"
  - b. No warrants without "probable cause"
  - c. Warrants must particularly describe place to be searched and items to be seized

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## Why it is important that you follow the law of search warrants

- ▶ Issuing faulty warrants violates citizens' rights
- ▶ Evidence seized under faulty warrants may be excluded from court
- ▶ Issuing faulty warrants exposes officers to civil and criminal liability

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## Plan for learning the law

- ▶ Walk through the search warrant form
- ▶ Discuss legal issues as they arise

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## Name of applicant

The screenshot shows a legal form with the following text: "(Insert name and address, or if law enforcement officer, name, rank and agency) being duly sworn, request that the Court issue a warrant to search the person, place, vehicle, and other items described in this application and 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 search warrant is to be used for searching a place to serve an arrest warrant or other process, name person to be arrested) constitutes evidence of a crime and the identity of a person participating in a crime, (name crime)".

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## Description of property to be seized (I)

- ▶ This is part of the "particularity requirement"
- ▶ Ensures that officers seize the right stuff, not the wrong stuff
- ▶ Usually the warrant describes inanimate objects: drugs, stolen property, a gun, etc.
- ▶ When a search warrant is used to enable officers to serve an arrest warrant, it describes the person to be arrested

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## Description of property to be seized (II)

- ▶ Degree of specificity depends on circumstances
  - ▶ Be more specific with common items, e.g., TVs
  - ▶ Less specificity required with contraband, e.g., drugs
  - ▶ Less specificity required when multiple types of evidence are likely to be present

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## Description of people

- ▶ Name is usually sufficient
- ▶ May include sex, DOB, height, weight, race, etc.
- ▶ Must include full description if name is not known

being duly sworn, request that the Court issue a warrant to search the person, place, vehicle, and other items described in this application and 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 search warrant is to be used for searching a place to serve an arrest warrant or other process, name person to be arrested)

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\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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## Naming the crime

- ▶ Common "short" name is OK
- ▶ Need not include all the language used in charging documents

\_\_\_\_\_

constitutes evidence of a crime and the identity of a person participating in a crime, (Name crime) \_\_\_\_\_

\_\_\_\_\_

and is located (Check appropriate box(es) and fill in specified information)

SWORN \_\_\_\_\_

Date \_\_\_\_\_

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## Description of the place to be searched

- ▶ The other aspect of the "particularity requirement"
- ▶ Purpose is to prevent an officer from searching the wrong place by mistake
- ▶ Form allows description of premises (home or business), person(s), vehicles, or other

\_\_\_\_\_

in the following paragraph(s) (Give address and if applicable, describe premises)

\_\_\_\_\_

and

in the following paragraph(s) (Give name(s) and if applicable, describe vehicle(s))

\_\_\_\_\_

and

in the following paragraph(s) (Describe article(s))

\_\_\_\_\_

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## Premises

- ▶ Include
  - ▶ Street number
  - ▶ Apartment or suite number, if applicable
  - ▶ Possessor/resident
  - ▶ Description
  - ▶ Directions
- ▶ Consider
  - ▶ Outbuildings?
  - ▶ Separate warrant for each premise?

and to locate (check appropriate boxes) and fill in specified information

in the following premises (Give address and, if useful, describe premises)

(and)

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## Person

- ▶ Include
  - ▶ Name
  - ▶ Alias, if known
  - ▶ Description (age, race, sex, etc.)

(and)

on the following person(s) (Give name(s) and, if useful, describe person(s))

(and)

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## Vehicles

- ▶ Best ways to describe
  - ▶ Plate number
  - ▶ VIN number
- ▶ Other ways to describe
  - ▶ Owner
  - ▶ Make and model
  - ▶ Year and color
  - ▶ Distinguishing features, dents, scratches

(and)

in the following vehicle(s) (Describe vehicle(s))

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## Other items

- ▶ Examples: luggage, laptops, etc.
- ▶ Provide as much detail as possible

OR SEARCH WARRANT

(and)

(Name and/or describe other places or items to be searched, if applicable)

The applicant swears or affirms to the following facts to establish probable cause for

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## Statement of probable cause (I)

- ▶ Determining whether probable cause exists is a critical task
- ▶ The application must show a fair probability that the object of the search is evidence of a crime and is located in the place to be searched

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

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## Statement of probable cause (II)

- ▶ Probable cause (or "fair probability") is a common-sense standard, no tidy legal rules
- ▶ More than suspicion, less than beyond a reasonable doubt

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

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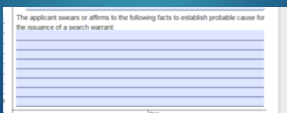
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## What you need to determine probable cause

- ▶ The whole story, in order
- ▶ Plenty of details
- ▶ Think who, what, when, where, how, why
- ▶ Don't accept the officer's conclusion or opinion that he thinks there's probable cause



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## More about probable cause

- ▶ Consider all of the circumstances
- ▶ Consider timeliness of information
- ▶ Consider the quality of the information
  - ▶ Hearsay can be considered
  - ▶ Special rules for informants
- ▶ Consider whether another magistrate has refused

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## Informants (I)

- ▶ Officers may use informants
- ▶ Types
  - ▶ Citizen informants (witnesses, victims, other officers)
  - ▶ Confidential informants
  - ▶ Anonymous informants (tipsters)
- ▶ The more you know about the informant, the more likely their information establishes probable cause

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## Informants (II)

- ▶ Always consider quality of information
- ▶ Citizen informants
  - ▶ may presume they are telling the truth
- ▶ Confidential informants
  - ▶ need a reason to believe they are telling the truth, usually past reliability or corroboration
- ▶ Anonymous informants
  - ▶ must have corroboration

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## Additional pages

- ▶ Common to use additional pages

**NOTE:** If more space is needed for any section, continue the statement on an attached sheet of paper with a notation saying "see attachment." Date the continuation and include on it the signatures of applicant and issuing official.

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## Additional affidavits

- ▶ Not as common, but still OK

Magistrate  Dep. CSD  Asst. CSD  Clerk Of Superior Court  Judge

In addition to the affidavit included above, this application is supported by additional affidavits, attached, made by \_\_\_\_\_

In addition to the affidavit included above, this application is supported by sworn \_\_\_\_\_

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## Additional testimony

- ▶ Usually happens when officer prepares shoddy application and you need to get more information from him
- ▶ But the better practice is to have the officer amend the application

In addition to the affidavit included above, this application is supported by sworn testimony, given by \_\_\_\_\_

This testimony has been (check appropriate box)  reduced to writing  
 recorded, and I have filed any such writing/recording with the clerk.

**NOTE:** If more space is needed for any section, continue the statement on an attached sheet of paper.

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## Decide whether to issue the warrant

- ▶ Decide whether probable cause exists
- ▶ Decide whether the descriptions of the place to be searched and the items to be seized are adequate

This Search Warrant is issued upon information furnished under oath or affirmation by the person(s) shown.

Date Issued	Time Issued	ALL or PART	Name (type or print)	Signature
		<input type="checkbox"/> Deputy C/SO <input type="checkbox"/> Assistant C/SO <input type="checkbox"/> C/SO <input type="checkbox"/> Sergeant <input type="checkbox"/> Constable C/S Judge <input type="checkbox"/> Superior C/S Judge		

**NOTE:** When issuing a search warrant, the issuing official must retain a copy of the warrant and warrant application and must promptly file them with the clerk. (G.S. 15A-245(b))

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## Issue the warrant

- ▶ Fill out the warrant side of the form
- ▶ Make enough copies
- ▶ Distribute them correctly

SEARCH WARRANT  
APPLICATION FOR SEARCH WARRANT

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## Execution and Return

- ▶ An officer must execute the warrant within 48 hours of issuance
- ▶ The officer must prepare an inventory, or list of items seized, and must leave a copy with the person in control of the premises
- ▶ The officer must also return the executed warrant and a copy of the inventory to the clerk

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## Search Warrants

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