Article 11.

Search Warrants.

§ 15A-241. Definition of search warrant.

A search warrant is a court order and process directing a law-enforcement officer to search designated premises, vehicles, or persons for the purpose of seizing designated items and accounting for any items so obtained to the court which issued the warrant. (1868-9, c. 178, subch. 3, s. 38; Code, s. 1171; Rev., s. 3163; C.S., s. 4529; 1941, c. 53; 1949, c. 1179; 1955, c. 7; 1965, c. 377; 1969, c. 869, s. 8; 1973, c. 1286, s. 1.)

§ 15A-242. Items subject to seizure under a search warrant.

An item is subject to seizure pursuant to a search warrant if there is probable cause to believe that it:

(1) Is stolen or embezzled; or
(2) Is contraband or otherwise unlawfully possessed; or
(3) Has been used or is possessed for the purpose of being used to commit or conceal the commission of a crime; or
(4) Constitutes evidence of an offense or the identity of a person participating in an offense. (1868-9, c. 178, subch. 3, s. 38; Code, s. 1171; Rev., s. 3163; C.S., s. 4529; 1941, c. 53; 1949, c. 1179; 1955, c. 7; 1965, c. 377; 1969, c. 869, s. 8; 1973, c. 1286, s. 1.)

§ 15A-243. Who may issue a search warrant.

(a) A search warrant valid throughout the State may be issued by:
  (1) A Justice of the Supreme Court.
  (2) A judge of the Court of Appeals.
  (3) A judge of the superior court.
(b) Other search warrants may be issued by:
  (1) A judge of the district court as provided in G.S. 7A-291.
  (2) A clerk as provided in G.S. 7A-180 and 7A-181.
  (3) A magistrate as provided in G.S. 7A-273. (1868-9, c. 178, subch. 3, s. 38; Code, s. 1171; Rev., s. 3163; C.S., s. 4529; 1941, c. 53; 1949, c. 1179; 1955, c. 7; 1965, c. 377; 1969, c. 869, s. 8; 1973, c. 1286, s. 1.)

§ 15A-244. Contents of the application for a search warrant.

Each application for a search warrant must be made in writing upon oath or affirmation. All applications must contain:

(1) The name and title of the applicant; and
(2) A statement that there is probable cause to believe that items subject to seizure under G.S. 15A-242 may be found in or upon a designated or described place, vehicle, or person; and
(3) Allegations of fact supporting the statement. The statements must be supported by one or more affidavits particularly setting forth the facts and circumstances establishing probable cause to believe that the items are in the places or in the possession of the individuals to be searched; and
(4) A request that the court issue a search warrant directing a search for and the seizure of the items in question. (1973, c. 1286, s. 1.)

§ 15A-245. Basis for issuance of a search warrant; duty of the issuing official.

(a) Before acting on the application, the issuing official may examine on oath the applicant or any other person who may possess pertinent information, but information other than that contained in the affidavit may not be considered by the issuing official in determining whether probable cause exists for the issuance of the warrant unless the information is either recorded or contemporaneously summarized in the record or on the face of the warrant by the issuing official. The information must be shown by one or both of the following:

(1) Affidavit.

(2) Oral testimony under oath or affirmation before the issuing official.

(3) Repealed by Session Laws 2021-47, s. 10(c), effective June 18, 2021, and applicable to proceedings occurring on or after that date.

(b) If the issuing official finds that the application meets the requirements of this Article and finds there is probable cause to believe that the search will discover items specified in the application which are subject to seizure under G.S. 15A-242, he must issue a search warrant in accordance with the requirements of this Article. The issuing official must retain a copy of the warrant and warrant application and must promptly file them with the clerk. If he does not so find, the official must deny the application. (1973, c. 1286, s. 1; 2005-334, s. 1; 2021-47, s. 10(c).)

§ 15A-246. Form and content of the search warrant.

A search warrant must contain:

(1) The name and signature of the issuing official with the time and date of issuance above his signature; and

(2) The name of a specific officer or the classification of officers to whom the warrant is addressed; and

(3) The names of the applicant and of all persons whose affidavits or testimony were given in support of the application; and

(4) A designation sufficient to establish with reasonable certainty the premises, vehicles, or persons to be searched; and

(5) A description or a designation of the items constituting the object of the search and authorized to be seized. (1868-9, c. 178, subch. 3, s. 39; Code, s. 1172; Rev., s. 3164; C.S., s. 4530; 1961, c. 1069; 1969, c. 869, s. 8; 1973, c. 1286, s. 1.)

§ 15A-247. Who may execute a search warrant.

A search warrant may be executed by any law-enforcement officer acting within his territorial jurisdiction, whose investigative authority encompasses the crime or crimes involved. (1868-9, c. 178, subch. 3, s. 38; Code, s. 1171; Rev., s. 3163; C.S., s. 4529; 1941, c. 53; 1949, c. 1179; 1955, c. 7; 1965, c. 377; 1969, c. 869, s. 8; 1973, c. 1286, s. 1.)

§ 15A-248. Time of execution of a search warrant.

A search warrant must be executed within 48 hours from the time of issuance. Any warrant not executed within that time limit is void and must be marked "not executed" and returned without unnecessary delay to the clerk of the issuing court. (1973, c. 1286, s. 1.)

§ 15A-249. Officer to give notice of identity and purpose.

The officer executing a search warrant must, before entering the premises, give appropriate notice of his identity and purpose to the person to be searched, or the person in apparent control of the premises to be searched. If it is unclear whether anyone is present at the premises to be searched, he must give the notice in a manner likely to be heard by anyone who is present. (1973, c. 1286, s. 1.)

§ 15A-250. Reserved for future codification purposes.

§ 15A-251. Entry by force.

An officer may break and enter any premises or vehicle when necessary to the execution of the warrant if:

(1) The officer has previously announced his identity and purpose as required by G.S. 15A-249 and reasonably believes either that admittance is being denied or unreasonably delayed or that the premises or vehicle is unoccupied; or

(2) The officer has probable cause to believe that the giving of notice would endanger the life or safety of any person. (1973, c. 1286, s. 1.)

§ 15A-252. Service of a search warrant.

Before undertaking any search or seizure pursuant to the warrant, the officer must read the warrant and give a copy of the warrant application and affidavit to the person to be searched, or the person in apparent control of the premises or vehicle to be searched. If no one in apparent and responsible control is occupying the premises or vehicle, the officer must leave a copy of the warrant affixed to the premises or vehicle. (1973, c. 1286, s. 1.)

§ 15A-253. Scope of the search; seizure of items not named in the warrant.

The scope of the search may be only such as is authorized by the warrant and is reasonably necessary to discover the items specified therein. Upon discovery of the items specified, the officer must take possession or custody of them. If in the course of the search the officer inadvertently discovers items not specified in the warrant which are subject to seizure under G.S. 15A-242, he may also take possession of the items so discovered. (1973, c. 1286, s. 1.)

§ 15A-254. List of items seized.

Upon seizing items pursuant to a search warrant, an officer must write and sign a receipt itemizing the items taken and containing the name of the court by which the warrant was issued. If the items were taken from a person, the receipt must be given to the person. If items are taken from a place or vehicle, the receipt must be given to the owner, or person in apparent control of the premises or vehicle if the person is present; or if he is not, the officer must leave the receipt in the premises or vehicle from which the items were taken. (1973, c. 1286, s. 1.)

§ 15A-255. Frisk of persons present in premises or vehicle to be searched.

An officer executing a warrant directing a search of premises or of a vehicle may, if the officer reasonably believes that his safety or the safety of others then present so requires, search for any dangerous weapons by an external patting of the clothing of those present. If in the course of such a frisk he feels an object which he reasonably believes to be a dangerous weapon, he may take possession of the object. (1973, c. 1286, s. 1.)

§ 15A-256. Detention and search of persons present in private premises or vehicle to be searched.

An officer executing a warrant directing a search of premises not generally open to the public or of a vehicle other than a common carrier may detain any person present for such time as is reasonably necessary to execute the warrant. If the search of such premises or vehicle and of any persons designated as objects of the search in the warrant fails to produce the items named in the warrant, the officer may then search any person present at the time of the officer's entry to the extent reasonably necessary to find property particularly described in the warrant which may be concealed upon the person, but no property of a different type from that particularly described in the warrant may be seized or may be the basis for prosecution of any person so searched. For the purpose of this section, all controlled substances are the same type of property. (1973, c. 1286, s. 1.)

§ 15A-257. Return of the executed warrant.

An officer who has executed a search warrant must, without unnecessary delay, return to the clerk of the issuing court the warrant together with a written inventory of items seized. The inventory, if any, and return must be signed and sworn to by the officer who executed the warrant. (1973, c. 1286, s. 1.)

§ 15A-258. Disposition of seized property.

Property seized shall be held in the custody of the person who applied for the warrant, or of the officer who executed it, or of the agency or department by which the officer is employed, or of any other law-enforcement agency or person for purposes of evaluation or analysis, upon condition that upon order of the court the items may be retained by the court or delivered to another court. (1973, c. 1286, s. 1.)

§ 15A-259. Application of Article to all warrants; exception as to inspection warrants and special riot situations.

The requirements of this Article apply to search warrants issued for any purpose, except that the contents of and procedure relating to inspection warrants are to be governed by the provisions of Article 4A of Chapter 15 and warrants to inspect vehicles in riot areas or approaching municipalities during emergencies are subject to the special procedures set out in G.S. 14-288.11. Nothing in this Article is intended to alter or affect the emergency search doctrine. (1957, c. 496; 1969, c. 869, s. 8; 1971, c. 872, s. 4; 1973, c. 1286, s. 1.)