

ROLL CALL TRAINING
FROM NORTH CAROLINA'S 24/7 POLICE
ATTORNEY LAW FIRM

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"SPECIAL EDITION"

TOPIC:

Rules for Entry to Arrest on Private Premises.
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SR&S SEMINAR ATTENDEES:

As promised, this "Special Edition" Roll Call is posted for attendees of the SR&S Seminar "Developing and Revising Departmental Policies and Procedures" presented May 2nd at the Sampson Community College. The following topic will of course be of interest to all supervisors and regular subscribers to Roll Call Legal Training.

DISCUSSION:

Let's begin by reviewing the three legal theories that allow officers to enter private premises to make an arrest.

1. **Legal Theory #1 – CONSENT.** This theory requires little elaboration here.
2. **Legal Theory #2 – WARRANT.** An officer may enter and arrest an individual in his home without consent if:
 - (i) a proper arrest warrant has been issued; and
 - (ii) the officer has the warrant in his possession (or sometimes a mere copy of the warrant will do – see G.S. § 15A-401(e)(1)); and
 - (iii) the officer has probable cause to believe that the defendant is at home at the time of the planned entry.

CAUTION ON THEORY #2: If the defendant is in the home of a third party (such as a neighbor, girlfriend, etc.), then the officer will need a search warrant in addition to an arrest warrant.

3. **Legal Theory #3 – EXIGENT CIRCUMSTANCES.** And it is theory #3, ladies and gentlemen, that often causes the most confusion and uncertainty! So, as reviewed during Friday's Seminar, here are the factors that courts deem most important in determining whether officers have a sufficient exigency to justify entry without consent or a warrant to make an arrest:

- (i) Hot pursuit of a suspect;
- (ii) Danger to the public or law enforcement officers outside or inside the dwelling if an immediate warrantless entry is not made;
- (iii) The need to prevent the imminent destruction of evidence;
- (iv) The need to prevent a suspect's escape;
- (v) Whether the suspect is armed;
- (vi) The gravity (seriousness) of the offense for which the suspect is to be arrested.

Quick Commentary on Exigent Circumstances – Please bear in mind that the above exigency factors apply to situations where officers wish to enter private premises to make an *arrest*. Where officers wish to enter private premises with the goal of *seizing evidence*, courts may consider a slightly different set of factors:

- (i) Whether officers had probable cause to obtain a search warrant before the exigency was created so that they could have obtained a search warrant earlier;
- (ii) Whether officers had an objectively reasonable belief that destruction or removal of the evidence was imminent, including whether it was likely that people within the house might destroy or remove the evidence because they were aware of the officers' knowledge of the evidence inside the house;
- (iii) The likelihood that violence might be committed against the officers;
- (iv) The gravity of the offense for which the officers are searching for evidence; and
- (v) How long it would take to obtain a search warrant.

Remember that after officers enter the house and secure it so that the exigent circumstances no longer exist, they must obtain a search warrant (absent consent to search) to conduct any further search of the house. Naturally any evidence seen in plain view while properly entering and securing the house may be seized without a search warrant. For more information, see Farb, *Arrest Search & Investigation in North Carolina*, pp. 48-52, pp.99-100 (2nd edition 1992 and 1997 Supplement), Institute of Government, The University of North Carolina at Chapel Hill.

YOUR DEPARTMENTAL POLICY:

Entry to private premises to make arrests or to seize evidence is clearly a high-liability exposure for officers and agencies. A departmental policy on entry of premises to arrest (or to seize evidence) should reflect legal guidelines such as those set forth above. And, while the following topics were not discussed during our seminar Friday, a proper departmental policy should also address

- (i) Providing notice of authority and purpose prior to entry (see e.g. G.S. § 15A-401(e)(1)c.); and
- (ii) “Urgent Necessity” entries pursuant to G.S. § 15A-285.

IN CLOSING:

We would like to thank all of the fine agencies who participated in our seminar May 2nd. We trust that the issues discussed and the materials provided will benefit and update your policy manuals. Stay safe, and stay tuned for the next edition of Roll Call Legal Training (provided by SR&S as a courtesy to North Carolina Law Enforcement Commanders).