

GENERAL ORDER

Subject: Departmental Authority		Number: 1-6
Date: April 1, 2005	Amends: None	
Supersedes: 1Intro-1	Page 1 of 4 Pages	
Approved By: Chief Curtis W. Bigelow Asst. VC for Police and Public Safety	Signature: <i>Curtis W. Bigelow</i>	

PURPOSE

The purpose of this directive is to define and elaborate on the legally mandated authority vested in sworn personnel of the North Carolina Agricultural and Technical State University Department of Police and Public Safety.

(1.2.1, 1.2.2)

POLICY

The Constitution of the United States guarantees every citizen certain basic rights that may not be infringed upon by the government. Such guarantees place limitations on the authority of police officers to enforce the laws of the nation, state, city, and county. An officer's authority is also limited by other legal documents such as the state constitution, federal and state statutes, and locally enacted ordinances. Therefore, officers of the North Carolina Agricultural and Technical State University Department of Police and Public Safety, must be aware of the guidelines set forth in this directive concerning the limits of law enforcement authority.

(1.2.1)

PROCEDURE

I. Authority to Enforce Laws

- A.** N.C. General Statute 116-40.5 grants the Board of Trustees of any constituent institution of the University of North Carolina the authority to establish a campus law enforcement agency and employ campus police officers. Pursuant to this statute, the Board of Trustees of the North Carolina Agricultural and Technical State University established the Department of Police and Public Safety. As such, the Department is a legally appointed entity whose sworn personnel have all the powers of law enforcement officers generally.
- B.** N.C. General Statute 116-44.4 grants the Board of Trustees of any constituent of the University of North Carolina the authority to adopt ordinances which prohibit, regulate, direct, control, and limit pedestrian or vehicular traffic and the parking of motor vehicles and other modes of conveyance on the campus, and to adopt ordinances which provide for the registration of motor vehicles operated on the campus by students, faculty members, and employees.
- C.** N.C. General Statute 116-40.5 requires that officers of the North Carolina Agricultural and Technical State University Department of Police and Public Safety, upon entering their office, take an oath whereby they swear to support the Constitution of the United States and the State of North Carolina.

(1.2.1, 1.2.2)

II. Limitations on Law Enforcement Authority

Limitations on law enforcement authority are derived from statutes; federal, state, and local judicial interpretations of laws; opinions of the Attorney General; Departmental policies, rules and regulations; and city and county administrative decisions.

A. Statutory Limitations

- 1.** N.C. General Statute 116-40.5 limits the territorial jurisdiction of the North Carolina Agricultural and Technical State University Department of Police and Public Safety to all property owned or leased to the University and that portion of any public road or highway passing through such property and immediately adjoining it, wherever located.

Subject: Departmental Authority	Number: 1-6
Date April 1, 2005	Page 2 of 4 Pages

2. The subject matter jurisdiction of the North Carolina Agricultural and Technical State University Department of Police and Public Safety is limited to criminal offenses that are committed within the Department's territorial jurisdiction.
3. N.C. General Statute 15A-401 sets limitations on arrest by a law enforcement officer based on:
 - a. possession/non possession of a warrant;
 - b. seriousness of offense;
 - c. offense committed in or out of presence of officer;
 - d. proper identification of officer;
 - e. use of force; and
 - f. entry on private premises or into a vehicle.
4. N.C. General Statute 15A-402 authorizes duly commissioned campus law enforcement officers to arrest outside their territorial jurisdiction for offenses committed in their territorial jurisdiction during the accused immediate and continuous flight from the commission of a crime.

B. Judicial Limitations

Courts constantly interpret laws that place limitations on the authority of police officers. Some common judicial limitations include Miranda rights/warnings, rulings on search and seizure, and eyewitness identification.

1. Limitations Imposed by Miranda

- a. If a person is taken into custody and subject to interrogation, Miranda warnings must be given. A person is in custody if the person is not free to leave, and reasonably believes he is not free to leave the police officer's presence.
- b. In determining if a suspect **feels** free to leave the police officer's presence, a court will look at the circumstances of the interview.
- c. If officers conduct routine, preliminary questioning near or at the scene of an investigation, no "custodial interrogation" exists and Miranda is not required.
- d. Miranda warnings must be given when:
 - (1) The suspect is in custody; and,
 - (2) The suspect believes he cannot leave; and,
 - (3) The suspect is subject to interrogation.
- e. In order to achieve uniformity in giving Miranda warnings, officers will advise suspects, verbatim:
 - (1) You have the right to remain silent.
 - (2) Anything you say can and will be used against you in a court of law.
 - (3) You have the right to talk to a lawyer and have him present while you are being questioned.
 - (4) If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish one.
- f. Juveniles will be given the following version of Miranda:
 - (1) You have the right to remain silent.
 - (2) Anything you say can and will be used against you in a court of law.
 - (3) You have the right to talk to a lawyer and have him present while you are being questioned.
 - (4) If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish one.
 - (5) You have the right to have a parent, guardian, or custodian present during questioning.
- g. After the warning and in order to secure a waiver, the following questions should be asked and an affirmative reply secured to each question:
 - (1) Do you understand each of these rights I have explained to you?
 - (2) Having these rights in mind, do you wish to talk to us now?
- h. After the rights have been read, understood, and the person wishes to waive them, the officer will have the suspect sign the Rights Waiver Form.

Subject: Departmental Authority	Number: 1-6
Date April 1, 2005	Page 3 of 4 Pages

- i. When a juvenile is less than 14 years of age, no in-custody admission or confession resulting from interrogation may be admitted into evidence unless the confession or admission was made in the presence of the juvenile's parent, guardian, custodian, or attorney.
2. Limitations on Search and Seizure
 - a. The Fourth Amendment guarantees protection against unreasonable searches and seizures. The Supreme Court is constantly interpreting the Fourth Amendment as it applies to police conduct. Illegally seized items of evidence will not be admitted in court, may cause a lost criminal case, and may invite civil suits under the Civil Rights Act.
 - b. To ensure that Fourth Amendment rights are protected, officers will obtain search warrants upon probable cause in all appropriate criminal cases except the following:
 - (1) Consent Searches: The consent must be voluntarily given by someone who has the authority to relinquish their right. If consent is voluntarily given, the officer will obtain a "Permission to Search" in writing before conducting the search. Consent may be withdrawn at any time, in which case the search must be discontinued until a warrant can be obtained.
 - (2) Exigent Circumstances: An emergency must exist, the primary motive must be to protect property or people, and the area searched must be associated with the emergency.
 - (3) Plain View: The officer must be in a place which he is legally permitted to be when the evidence is seen. The officer must have a lawful right of access to the evidence when he seizes it. The evidence must have been in the officer's plain view and must have been immediately apparent as fruits of a crime, contraband, instrumentality, or evidence.
 - (4) Abandoned property: all property to which the owner has relinquished all right, title, claim, and possession, with intention of not reclaiming it or resuming its ownership, possession, or enjoyment.
 - (5) Inventory searches of vehicles: Impounded vehicles may be inventoried of all property in plain view or in unlocked containers.
 - (6) Incident to arrest: Only that area within the immediate control of the person may be searched.
 - (7) Fresh pursuit: Refers to common-law right of police officers to cross jurisdictional lines in order to arrest a felon.
 - (8) Stop and Frisk: An officer may frisk a person when he is confronting the person for a legitimate reason, and he has a reasonable suspicion that the person is armed and presents a threat to his safety or the safety of others. A frisk is not an extensive full search of the type permitted during a search incident to an arrest. During the pat-down, the officer may search more thoroughly if he believes that a weapon is located in a particular place on a person's body.
 - (9) Movable Vehicle Exception: Probable cause that a movable motor vehicle in a public area contains evidence of a crime. (Carroll Search)
 3. Probable Cause

Most searches and all arrests are based on the police officer's perception of probable cause. According to the Supreme Court, probable cause exists where the facts and circumstances within the arresting officer's knowledge of which there was reasonably trustworthy information are sufficient in themselves to warrant a reasonable man to believe that an offense has been or is being committed.
 4. Limitations Pertaining to Eyewitness Identification

Eyewitness identifications generally do not provide reliable evidence during criminal investigations. Consequently, the Supreme Court has addressed this issue in numerous cases and set forth guidelines to be followed when officers solicit eyewitness identifications.

Subject: Departmental Authority	Number: 1-6
Date April 1, 2005	Page 4 of 4 Pages

Eyewitness identifications may take the following form:

- a. On-Scene Investigation: One-on-one identifications have been held constitutional as long as the period of time between the offense and the identification is brief. One hour would be a reasonable amount of time **based on the seriousness of the crime.**
- b. Line-ups: Line-ups should be conducted using a minimum of six persons having similar physical characteristics as the suspect. The accused has the right to have an attorney present during the line-up and the line-up may not take place until that attorney is present.
However, the attorney may only observe and may not offer any suggestions concerning the conduct of the line-up. All line-ups must be documented in writing by the police as to date, time, and place, name of participants and witnesses, and location of suspect and participants on the line-up.
- c. Photo Line-ups: In conducting photo-lineups, the photos must depict persons displaying similar physical characteristics as the suspect. Simply showing an eyewitness a single photo of the suspect has been ruled unconstitutional. As a general rule, a photo line-up containing 6-8 photos would be reasonable. Photographs shown to witnesses will not contain any identifying information. Photo line-ups will be documented in writing.

5. Compliance with Constitutional Requirements During Criminal Investigations

When conducting criminal investigations, all officers will take all precautions necessary to ensure that all persons involved are afforded their constitutional safeguards. Officers will ensure that:

- a. All statements or confessions are voluntary.
- b. All persons are advised of their rights in accordance with this directive.
- c. All arrested persons are taken promptly before a magistrate for formal charging.
- d. All persons accused or suspected of a criminal violation for which they are being interrogated are afforded an opportunity to consult with an attorney.
- e. Prejudicial pre-trial publicity of the accused is avoided so as not to interfere with a defendant's right to a fair and impartial trial.

6. Limitations on Intelligence Activity

- a. Departmental intelligence gathering activities will be limited to information concerning criminal conduct that relates to activities that present a threat to the community.
- b. Departmental personnel and equipment will only be used in conjunction with intelligence gathering activities as defined above, in full compliance with all laws, and only with the advance approval of the Operations Division Commander and the Asst. VC for Police and Public Safety.
- c. Intelligence information will be collected, used and processed in full compliance with all laws and Department Directives (see Chapter 8 of the General Orders Manual).

C. Limitations on Authority by the Attorney General

The Attorney General may occasionally issue opinions to the Department that may impose limitations on officers. These areas include, but are not limited to:

1. Prosecution of certain cases
2. Extradition
3. Enforcement of certain statutes pending opinions from the Attorney General's office.

D. Limitations on Authority by the City, County, or Asst. VC for Police and Public Safety

Limitations on police enforcement actions may be imposed by the city, county, or Asst. VC of Police and Public Safety concerning:

1. The enforcement of city and county ordinances.
2. Departmental policies, rules, and regulations concerning the use of force, etc.

E. Changes in Laws/Interpretation Limitations

Periodically, changes will occur which may impose new limitations on police authority, or remove or alter existing limitations.