

## SEALING WARRANTS

Michael Crowell, UNC School of Government (Jan. 2015)

### Contents

I.	Public Records Law .....	1
II.	Constitutional Issues in Sealing Warrants .....	1
III.	Procedure.....	1

**I. Public Records Law.** Under the Public Records Law (G.S. Chapter 132) arrest and search warrants become public records once they have been served by law enforcement and returned to the clerk, unless they are sealed by court order. See G.S. 132-1.4(k). The statute provides no further guidance on when warrants should be sealed or the procedure to be followed. The statutes do not specify how soon a warrant is to be returned to the clerk after being executed.

**II. Constitutional Issues in Sealing Warrants.**

**A. First Amendment.** There is no First Amendment right of public access to warrants. *In re Investigation into Death of Cooper*, 200 N.C. App. 180 (2009).

**B. North Carolina Constitution.** There is, however, a qualified right of access under Art. 1, § 18 of the North Carolina Constitution (“All courts shall be open.”). *Cooper; Virmani v. Presbyterian Health Services Corp.*, 350 N.C. 449 (1999). The qualified right of public access to warrants may be restricted by sealing warrants when doing so is “essential to preserve higher values and is narrowly tailored to serve that interest.” *Cooper*, 683 S.E. 2d at 427, quoting *Baltimore Sun Company v. Goetz*, 886 F.2d 60, 65 (4th Cir. 1989).

1. **Higher Values.** Higher values that may justify sealing a warrant include protection of the defendant’s right to a fair trial, maintenance of the integrity of an ongoing investigation, protection of the state’s right to prosecute a defendant, protecting the privacy rights of an innocent third party, and protection of witnesses and third parties.
2. **Narrowly Tailored.** The “narrowly tailored” requirement means that a warrant should not be sealed if there is a lesser alternative that serves the need for protection, such as redacting a portion of the warrant or sealing only the affidavit accompanying the warrant application. It also means that the warrant should not remain sealed any longer than necessary to serve the purpose; e.g., if a search warrant needs to be sealed to protect an ongoing investigation, it should not remain sealed after an arrest has been made.
3. **Contents of Order.** The order sealing a warrant must include specific findings justifying the action. The order may adopt the facts presented by the prosecution but the decision must be made by the court. *Cooper*, 200 N.C. App.180

**III. Procedure.** Some districts have local rules or administrative orders about sealing warrants. The rules may specify, for example, who may apply for an order sealing a warrant, who hears the request, and how long the warrant remains sealed.

- It is recommended that the request for sealing be made by written motion.

- It is recommended that the motion be signed by a district attorney.
- It is recommended that the motion be accompanied by a supporting affidavit. The affidavit may be sealed.
- Sometimes, before the warrant is served, law enforcement will seek an order sealing the inventory of items seized. Generally a request to seal the inventory should not be made until the warrant has been served and the officers know what has actually been seized and the court can determine whether confidentiality really is needed, but there may be occasions where it is clear in advance that revelation of the inventory will compromise an ongoing investigation.
- It is recommended that a public log or record be maintained showing that a sealing order has been issued, who applied for the order, the judge who signed the order, when the order was signed and when the order expires.
- It is recommended that an order sealing a warrant include an expiration date, subject to extension upon proper motion.