

SEARCH AND SEIZURE – FIELD SERVICES

- AUTHORITY:** California Penal Code (PC) Sections 833 – 851.93 (Arrest, by Whom and How Made)
 PC Sections 1203 and 1203.2 (The Judgment)
 PC Sections 1523-1542 (Of Search Warrants)
 PC Sections 1546.1-1546.4 (Electronic Communications Privacy Act)
 PC Section 3067 (Parolees)
 PC Section 3450 and 3465 (Postrelease Community Supervision Act of 2011)
 Fourth Amendment of the U.S. Constitution
 Article 1, Section 13 of the California Constitution.
- RESCINDS:** Procedure Manual Item 2-1-009, dated 02/17/22 (Major Revision)
- FORM:** Evidence Locker Property Record &
 Booking Procedure (F057-3203(A)AF)
- PURPOSE:** To provide guidelines to Deputy Probation Officers (DPOs), Senior Probation Officers (Senior DPOs), Supervising Probation Officers (SPOs), and sworn administrators in conducting lawful and safe searches. For the purposes of this Procedural Manual Item (PMI), the acronym DPO applies to all of the above noted classifications.

I. GENERAL INFORMATION

- A. The Fourth Amendment of the U.S. Constitution and Article 1, Section 13 of the California Constitution provide people the right to be secure in their persons, houses, papers, and effects and not to be subject to unreasonable searches and seizures. As such, this amendment provides people a reasonable expectation of privacy.
- B. All DPOs routinely involved in conducting search and seizures should complete department training and be knowledgeable in the use of search and seizure techniques. Training specific to the legality, liability, and procedures for conducting a search are required for all sworn staff. DPOs receive training in the Basic Probation Officer Core Course.
- C. Because case law regarding search and seizure is constantly changing and subject to interpretation by the courts, all seizures by this department will comply with relevant federal and state laws governing the seizure of persons and property. When the department receives information regarding case law or legislative changes related to search and seizure, the information will be shared in unit meetings, disseminated by the department via training bulletins and included in the biennial PMI updates.
- D. Searches are a necessary activity to enforce the orders of the court. Search and seizures of supervised individuals and other persons may be required as part of the job assignment. In some cases, the search will be brief, such as inspection of a

purse or pocket contents. By contrast, some searches may be time consuming, such as the search of a place of residence or business.

- E. All types of searches expose those involved to varying degrees of risk to their safety. It is, therefore, critical that every search is adequately planned and prepared for, taking into consideration all safety issues. Staff are cautioned of the potential risks of acquiring HBV or HIV infection through exposures which occur during searches and evidence handling. Penetrating injuries are known to occur, and puncture wounds or needle sticks in particular pose a hazard during searches of persons, vehicles or facility rooms, and during evidence handling. The following precautionary measures will help reduce the risk of infection:
1. Use great caution in searching a person's clothing.
 2. Always maintain a safe distance between yourself and the subject.
 3. Wear protective gloves.
 4. Carry a flashlight, even during daylight hours, to search hidden areas. Whenever possible, use long-handled mirrors and flashlights to search beneath car seats, beds, etc.
 5. When searching a purse, carefully empty the contents directly from purse, by turning it upside down over a table.
 6. Use puncture-proof containers to store sharp instruments, and clearly marked plastic bags to store other possibly contaminated items.
 7. If a staff should sustain an injury, particularly a puncture wound, while conducting a search, report the injury immediately to a Supervisor. The reporting procedures articulated in PMI 1-3-304, Workers' Compensation (Employee Injuries, Accidents, Blood/Body Fluids Exposure), are to be implemented without delay.
- F. In all cases, when it is determined a search cannot be executed within the law, or with minimal risk, the search must not be initiated or be terminated until proper planning is completed and necessary personnel are available.
- G. If in the course of exercising his/her duties, a DPO comes across evidence of a felony offense (e.g. possession for sales), the DPO is expected to contact the local law enforcement and request a police report. In the event the law enforcement agency elects not to respond, the DPO is to consult with supervisory staff on the issue of pursuing felony charges.
- H. K-9 Sniffs :It is commonly held belief that a dog sniff is not considered a search. The item subject to the sniff, however, must be in plain sight with no expectation of privacy. Otherwise a search warrant will be necessary to conduct a search. The dog's positive reaction can give the officer probable cause to seek a search warrant.

II. AUTHORITY FOR SEARCHES

In general, searches may not be conducted without a warrant. However, warrantless searches may be conducted under the following circumstances:

A. Court Order/Fourth Amendment Waiver

The person is subject to search and seizure per court order. This is commonly referred to as a "Fourth Amendment Waiver". Search and seizure pursuant to a court ordered condition of supervision is enforceable as part of the conditions of supervision. The supervised individual waived his/her constitutional right to privacy grounded in the Fourth Amendment and has "consented" to search and seizure as a condition of supervision when he/she agreed to accept the search condition.

1. Legal requirements:

- a. The order remains in effect during the course of the supervision grant or as otherwise specified by court order.
 - (1) Generally, search and seizure orders remain in effect between summary revocation and formal revocation.
 - (2) In cases with active warrants, search conditions are no longer valid if the supervision end date has passed. Verify the lawfulness of a search order prior to conducting a search on a case that has an active warrant.
- b. The search is conducted for reasons related to the rehabilitative and reformatory purposes of supervision, or other law enforcement purposes.
- c. The search is not being conducted for harassment or for arbitrary or capricious reasons.
- d. Knowledge of the search condition, at the time a search is conducted, is required; later discovery of a valid search condition cannot convert an otherwise illegal warrantless search into a legal search.
- e. Courts have wide discretion when establishing terms of probation and may not order a 4th Amendment Waiver. Thus, it is important that a DPO, before conducting a search, know the terms and conditions of a person's supervision and ensure that there is a 4th Amendment Waiver as a condition. If not, the search, without a warrant will be invalid.
- f. Pursuant to PC 3465, "Every person placed on Postrelease Community supervision, and his or her residence and possessions, shall be subject to search or seizure at any time of the day or night, with or without a warrant, by an agent of the supervising county agency or by a peace officer." Thus, if a DPO knows that the subject of his/her search is on PRCS, the person is subject to a 4th Amendment Waiver as a matter of law.

2. Scope

- a. Search and seizure pursuant to court order will be enforceable as specified by the order (usually includes search of all property,

including premises, vehicles, containers under supervised individual's control any time day or night with or without reasonable cause or suspicion. However, it is not up to the DPO to determine if a search term is legally justified; if the Order explicitly allows for the search of a particular place or thing, the DPO may conduct the search, unless clearly illegal (e.g., if a court order authorized a strip search when an individual is not being booked into a custodial facility).

- b. A refusal to permit a search by a supervised individual who has been ordered by the Court to submit his person and property to search and seizure by any police or probation officer is in violation of his conditions of supervision and may result in his arrest. After placing a supervised individual under arrest, the DPO may then complete the search.

B. Incident to a Lawful Arrest

Search of persons and seizure of contraband should be completed upon arrest and prior to the in-custody transportation of prisoners.

1. Legal Requirements

- a. Probable cause to make an arrest must exist.
- b. Reasonable belief that a violation of a specific court order or condition of supervision has occurred or is occurring is probable cause for an arrest (1203.2 PC, 3450 PC, 3455 PC).

2. Scope

- a. If there is no search and seizure condition, the DPO may search the supervised individual, at the time of arrest.
- b. The search must be “contemporaneous” to the arrest, i.e., there should be little passage of time of securing the arrestee and searching the area.
- c. The arrest must result in the supervised individual being taken into custody in order for the search incident to arrest exception to apply; if the supervised individual will be cited and released, then the search incident to arrest exception does not apply.
- d. Searches incident to arrest inside a vehicle are not justified if the arrestee is handcuffed outside the vehicle and no longer able to access the interior of the vehicle. Other exceptions might apply to justify the search of a vehicle (e.g., exigency, consent, plain view).
- e. A search incidental to a lawful arrest may also include search of the individual's immediate area that might be reached by the individual where the DPO can articulate a concern that the individual might reach a weapon or evidence.

- f. If a search and seizure condition exists, the search is not limited.

C. Consent

Search and seizure conducted in the absence of specific court order, condition of release or lawful warrant where an individual consents to the search.

1. Legal Requirement

- a. The consent must be “freely” and “voluntarily” given in order to be valid.
- b. The consent may be obtained in writing, but it is not necessary.
- c. Whether consent was freely and voluntarily given is a question of fact based upon the totality of the circumstances. Courts consider several factors in deciding whether a consent to search was freely and voluntarily given:
 - (1) Whether the person consenting was in custody.
 - (2) Whether the arresting officers had their guns drawn.
 - (3) Whether *Miranda* warnings had been given; however, *Miranda* warning is not required to validate a consent search.
 - (4) Whether the person consenting was told that he or she had a right not to consent.
 - (5) Whether the person consenting was told that a search warrant could be obtained.

2. Scope

- a. Can pertain to an individual person, residence, business or any tangible property, e.g., vehicle.
- b. May be limited by the words used by the DPO or the words of consent uttered by the individual (e.g., if the DPO asks to search the suspect’s bedroom, and the suspect responds, “yes, but not under the bed,” the consent does not reach searching under the bed).
- c. Limited to those areas the consenting person has control over.
- d. When consent is given by someone other than the suspect being investigated, one must determine under the circumstances whether:
 - (1) The person giving consent believes he or she has exclusive or joint control over the area or property involved.
 - (a) Exclusive Control

- i. If the person giving consent has exclusive control of the property to be searched, i.e., the suspect is merely present at another person's home, but the suspect has no expectation of privacy in the home as a co-tenant or co-occupant, then the suspect's objection to the search may be disregarded.

(b) Shared Control

- i. If the suspect is not present at the scene, a co-tenant's/ occupant's consent is sufficient.
- ii. If, however, the suspect is physically present at the scene, and refuses consent or objects to the search, the suspect's refusal to consent must be honored and a warrant should be obtained, unless a different exception to a warrant applies. NOTE: Physically presence is not limited to being in the room or at the doorstep. (*U.S. v. Parkins*, 92 F.4th 882, 9th Cir. 2024)

- (2) The DPO believes in good faith that the person has the authority.
- (3) Consent can be withdrawn at any time and must be honored.
- (4) A parent may give consent for search of a youth's personal property unless there is a reasonable right to privacy to the property. For example, if the youth can exclude others from areas that are exclusive to the youth (e.g. a locked box controlled only by the youth and the parents do not have the key), a warrant would be required to conduct the search of that property.

D. Plain View

DPOs are permitted to perform a warrantless search when they are lawfully present at a location and plainly see, hear, or smell something that is contraband or evidence of a crime.

E. Exigent Circumstances

Exigency occurs when a situation demands an immediate action by an officer to protect persons or property, prevent the destruction of evidence, or to prevent the escape of a suspect.

1. Legal Requirements

Circumstances known to the DPO must include articulable facts causing the DPO to suspect that:

- a. Some activity related to a crime has taken place.
- b. The person detained is involved in that activity.

2. Scope

- a. The detention and/or search must cease once the exigency/reason for the investigation has been resolved.

F. Special Needs

The “special needs” exception applies to searches and seizures conducted without individualized suspicion for the purpose of minimizing risk or harm and do not require a search warrant. Examples of “special needs” searches include searches conducted at schools, courthouses, airports, and international border crossings. Generally, DPOs do not engage in “special needs” searches. DPOs should be aware “special needs” searches exist but they require specific justification including, but not limited to whether there is a substantial governmental need or public interest served by the activity and whether the threat is real and substantial.

G. Pat Down Searches

A pat-down search, also known as “frisk,” is when a DPO pats down the outer surfaces of a person’s clothing in an attempt to find weapons.

1. Legal Requirements

- a. A person who has been legally detained can be frisked if there is a reasonable or rational belief that the person may be armed.

2. Scope

- a. Only permitted to feel over the clothing for weapons. Cannot put hand in pockets or under clothing.
- b. Cannot open purses or attaché cases.

H. Search of Electronic Devices, including cell phones

While a warrantless arrest may support seizing a cell phone or electronic device, to preserve its evidentiary value and avoid destruction of the evidence, such devices should not be searched without a warrant or without falling into one of the following circumstances:

- 1. Searches of electronic devices of persons on probation supervision or mandatory supervision are only permitted if the person is subject to clear and unambiguous court order and/or condition of probation (e.g. court-imposed sex offender terms) that authorizes the search of such devices.
- 2. Searches of electronic devices of persons on PRCS are permitted if ordered as a general PRCS term and condition of probation.

3. Specific to juvenile cases, a search condition involving electronics will require a careful justification with facts reasonably connecting the condition to either the crime for which the juvenile was convicted or to future criminality. However, a DPO is not expected to second guess whether a juvenile court ordered search condition relating to electronic devices meets this legal standard, if the Court order allows for searches of electronic devices, the DPO may conduct such a search.
4. A good faith belief that an emergency involving danger of death or serious physical injury to a person requires access to the device.
5. A good faith belief that the device is lost, stolen or abandoned and the electronic device is being searched only for the purpose of attempting to identify, verify or contact the owner or authorized possessor.
6. The person freely and voluntarily gives consent to search the electronic device.

III. PROCEDURE FOR CONDUCTING A SEARCH

- A. A search may require varying degrees of planning based on the type of search and purpose for the search (from a search of an arrestee by a single officer to a multi-agency search of a supervised individual's residence). Thorough planning for the type of search being conducted must be completed before executing a search.
- B. Never attempt to take a person into custody or conduct an extensive search of a supervised individual without enough manpower and sufficient preparation to do the job safely. Preparation and execution should include consideration of the following.
 1. Knowledge of the legal authority and scope of the search.
 2. Knowledge of the supervised individual and any danger(s) he/she may present to others.
 3. Knowledge of the area surrounding the search location.
 4. Evaluation of manpower requirements including the need for police presence.
 5. Defined responsibilities for each person involved in the search.
 6. Reevaluation of manpower and safety requirements immediately prior to initiating a search to decide whether a search should be conducted.
 7. Securing location and person(s) during search.
 8. Use of proper search techniques to conduct a thorough search.
 9. Properly controlling evidence and documenting search activity following departmental procedures.
 - a. A description of the seized item(s) and where the item(s) was/were located shall be documented via an ECR note.

- b. Seized evidence shall be photographed and a copy of the photograph shall be printed, dated, and placed into the supervised individual's file.
- C. In the event the supervised individual contests the validity of the search and/or findings, DPOs are encouraged to tape record the supervised individual's statement as evidence.
- D. Evidence Control
 - 1. All items seized as a result of a search should be handled consistent with PMI 2-1-010 (Disposition of Evidence and Contraband).
 - 2. Any witnesses to the search (e.g. civilians, family members, or others witnesses to the search) shall be documented within the ECR notes regarding the search.
 - 3. If new charges are being pursued by another agency, evidence should be released to that agency for control.
 - 4. If there is a suspicion of hazardous materials or explosives, immediately notify local law enforcement and/or the Orange County Sheriff's Hazardous Device Section for immediate control and disposal.

IV. ATTORNEY-CLIENT COMMUNICATIONS

- A. The attorney-client privilege extends to all forms of communication between the probationer and their attorney, including emails, voicemails, and text messages. No Orange County Probation personnel shall knowingly read or listen to privileged communications between a probationer and their legal counsel without a search warrant specifically authorizing access to privileged communication on the electronic device.

If during a search of an electronic device there is reason to believe that the DPO has accessed a communication with counsel, the DPO shall immediately stop reading or listening to the communication, even if the DPO discovers what appear to be inappropriate communications (e.g., ongoing crime, imminent harm, inappropriate sexual comments) prior to realizing the communication is with counsel.

If the communications appear to be inappropriate the DPO shall immediately notify their direct supervisor. To the extent possible, the DPO or the immediate supervisor will confirm that the phone number or email used belongs to an attorney by inquiring with the client, reviewing department records or open-source information.

Upon confirmation the alleged inappropriate communications were exchanged between a client and their attorney, the discovering DPO shall do the following:

- 1. Complete a Special Incident Report (SIR) that includes the client's information, the date and time the search was conducted and under what authority (search condition, consent, warrant), the information discovered and the context.

2. The supervisor will review the SIR and forward it to their respective Division Director (DD) or Assistant Division Director (ADD). Said DD/ ADD will review the incident and determine whether further review of the alleged inappropriate communications is needed.
3. If no further review of the incident is needed, the DD/ADD will provide a written response to the DPO and supervisor advising of such.

If further review of the information is warranted, the DD/ ADD will provide the SIR and any other relevant information to the Director of Juvenile Court Services or Adult Court Services as applicable.

4. The Director of Juvenile Court Services or Adult Court Services will review the SIR and determine who should be advised of the information within the court operations. The Director of Juvenile Court Services and Adult Court Services shall maintain a record and log of the information and serve as a liaison between the department and court personnel related to the matter.

REFERENCES:

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| Procedures: | 1-3-304 | Workers' Compensation (Employee Injuries, Accidents, Blood/Body Fluids Exposure) |
| | 2-1-002 | Transportation Security |
| | 2-1-010 | Disposition of Evidence and Contraband |
| | 2-1-013 | Canine Use |
| Policies: | A-21 | Liability |
| | D-7 | Search and Seizure |

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