

PROBATION SEARCH AND SEIZURE

- AUTHORITY:** Section 1203 California Penal Code (PC), Sections 833-851.85 PC., Sections 1523-1542 PC, Section 1302.2. PC and Section 835 PC
- RESCINDS:** Procedure Manual Item 2-1-009, dated 12/20/11
- FORM:** Evidence Locker Property Record (F0502-3012)
Search and Seizure Planning Guide (Attachment)
- PURPOSE:** To provide guidelines for conducting probation searches and seizures in a legal and safe manner.

I. GENERAL INFORMATION

- A. Searches are a necessary activity to enforce the orders of the Court. Search and seizures on probationers and other individuals 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 will be long and time consuming such as the search of a place of residence or business.
- B. 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 cells, and during evidence handling. The following precautionary measures will help reduce the risk of infection:
1. Use great caution in searching an individual's clothing.
 2. Always maintain a safe distance between yourself and the subject.
 3. Wear protective gloves if exposure to blood is likely to be encountered.
 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, Employee Injuries, are to be implemented without delay.

- C. 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.
- D. The law states that search and seizures may be made only under the authority of a warrant. However, there are **four** accepted reasons a search can be conducted without a warrant. They are:
1. **Consent – an individual waives his/her constitutional right to privacy and allows an officer to search.**
 2. Exigency - when a situation demands an immediate action by an officer to protect persons, property, destruction of evidence or to prevent the escape of a suspect. Example situations include searches incidental to lawful arrest, pre-transportation searches, detentions (detaining persons for investigatory purposes), searching personal property of a nonresident (where someone had an opportunity to conceal contraband immediately prior to execution of search), and pat-downs for weapons only.
 3. Forfeiture - Loss of an expectation of privacy through conduct. Example situations include:
 - a. Plain sight seizures, (where an officer is able to reasonably identify evidence of a crime from a position where the officer had a legal right to be), booking searches, and the seizure of abandoned property.
 - b. K-9 Sniffs. (It is commonly held 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.)
 4. Waivers - A knowing, voluntary, intelligent giving up of constitutional rights. Example situations include consent searches (where a person knowingly, intelligently and voluntarily waives his constitutional right), and condition of probation searches. (Note: A parent may give consent for search of minor's personal property unless there is a reasonable right to privacy for the property. The parents prior actions may give the minor the belief that there is a reasonable right to privacy, i.e., a locked box controlled by the minor. In such a case a warrant will be required to conduct the search of the property.)
- E. Know the legal authority regarding searches and making arrests on probationers and non-probationers. A search is an intrusion into an individual's right to privacy guaranteed by the Fourth Amendment and Article 1, Section 13 of the California Constitution.

The *legal requirements* for a warrantless search and the scope of the search will vary depending on the situation. However, in all cases the deputy must be prepared to articulate his belief that the individual had:

1. No reasonable expectation to privacy (**consent**, waiver or forfeiture) or;

2. If there was an expectation of privacy, was the search reasonable due to existing exigency.

F. If in the course of exercising your duties, a Deputy Probation Officer comes across evidence of a felony offense (i.e., felony amounts of drugs), the deputy 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 deputy is to consult with supervisory staff on the issue of pursuing felony charges.

II. PROCEDURE

A. Guidelines for Searches Conducted by Probation

The following is a guideline for warrantless searches and seizures commonly conducted by probation. Additionally, staff should attend departmental training and have a thorough knowledge of the legal requirements and scope in order to properly conduct a search.

1. Pursuant to court-ordered condition of probation

Search and seizure pursuant to court order is enforceable as part of the conditions of probation. The probationer waived his constitutional right to an expectation of privacy when he agreed to accept the search condition.

a. Legal requirements:

- (1) The order remains in effect during the course of supervision grant or as otherwise specified by court order.
- (2) The search is conducted for reasons related to the rehabilitative and reformatory purposes of probation or other law enforcement purposes.
- (3) The search is not being conducted for harassment or for arbitrary or capricious reasons.

b. Scope:

- (1) 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 probationers control any time day or night with or without reasonable cause or suspicion.)
- (2) A refusal to permit a search by a probationer 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 probation and will result in his arrest. After placing a probationer under arrest, the Deputy may then complete the search.

2. Incidental to Arrest (Exigent):

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

a. Legal Requirements:

- (1) Probable cause to make an arrest must exist.
- (2) Reasonable belief that a violation of a specific court order or condition of probation is probable cause for an arrest (1203.2 PC).

b. Scope:

- (1) If there is no search and seizure condition the deputy may search the probationer and the area where probationer may reach for weapons of evidence. However, these words should not be taken literally. To justify a warrantless search incidental to a lawful arrest one must be able to articulate an exigency (for protection of persons, property, or evidence).
- (2) If a search and seizure condition exists, the search is not limited.

3. Consent Searches (Waiver):

Search and seizure conducted in the absence of specific court order or lawful warrant where individual waives his expectation of privacy.

a. Legal Requirement:

- (1) Intelligent waiver of rights prior to the search and seizure.
- (2) If person is being detained or is under arrest, the deputy must be able to articulate facts to justify detention or arrest.

b. Scope:

- (1) Can pertain to an individual person, residence, business or any tangible property, e.g., vehicle;
- (2) May be limited by the words used by the deputy or the words of consent uttered by the individual;
- (3) Also limited to those areas the person giving consent has control over;
- (4) When consent is given by someone other than the suspect being investigated, one must determine under the circumstances whether:

- (a) The person giving consent believes he or she has exclusive or joint control over the area involved;
 - (b) The deputy believes in good faith that the person has the authority.
- (5) Consent can be withdrawn at any time and must be honored.

4. Detention (Exigent):

Temporarily disturbing an individual's right to be left alone for investigatory purposes (a seizure of a person).

a. Legal Requirements:

Circumstances known to the officer must include articulated facts causing the officer to suspect that;

- (1) Some activity related to a crime has taken place.
- (2) The person detained is involved in that activity.

b. Scope:

A detention must cease once the reason for the investigation has been resolved.

5. Pat downs or frisks (Exigent):

Touching on the clothing of a suspect for concealed objects that might be used as a weapon.

a. Legal Requirements:

A person who has been legally detained can be frisked if unusual conduct is observed that indicates the person might be armed and presently dangerous.
(Suspicious circumstances + fear = reason to frisk)

b. Scope:

- (1) Only permitted to feel, from the outside for weapons. Cannot put hand in pockets or under clothing;
- (2) Cannot open purses or attaché cases.

B. CONDUCTING A SEARCH

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 probationer's residence.) Thorough planning for the type of search being conducted must be completed before executing a search.

Never attempt to take an individual into custody, or conduct an extensive search of a probationer 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 probationer and any danger(s) he 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.

All staff routinely involved in conducting search and seizures should complete department training and be knowledgeable in the use of search and seizure techniques. Attachment A of this Procedure contains a thorough planning guide for search and seizures.

C. EVIDENCE CONTROL

1. Record where evidence was found and who found it, labeling and packaging separately by location.
(Do not commingle cash located in separate locations).
2. Provide receipts for personal property to owner or person in control noting:
 - a. Person from whom property was taken;
 - b. Location;
 - c. Description of property;
 - d. Date and officer giving receipt;
 - e. If no one claims property, leave name blank and post copy in conspicuous location on premises;
 - f. Keep original of receipt and give copy to person in control of property;

3. Booking Evidence:
 - a. In Probation Department evidence lockers:
 - (1) Follow evidence storage procedures;
 - (2) Notify Department Forfeiture Coordinator if appropriate.
(See Forfeiture Procedures)
 - b. With Police Department:
 - (1) If new charges are being pursued by another agency, any evidence should be released to that agency for control.
 - c. Suspected hazardous materials or explosives:

Notify Hazardous Materials Team or Sheriff Bomb Disposal Team for immediate control and disposal.

REFERENCES:

Procedures:	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

Attachment

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APPROVED BY:

SEARCH AND SEIZURE PLANNING GUIDE

I. SEARCH PREPARATION

A. Gather Information

1. Know the purpose and authority for the search.
 - a. To monitor probationer's compliance with court order.
 - b. In response to information obtained amounting to alleged illegal activity or a probation violation.
 - c. To make an arrest.
2. Know the scope of the search.
 - a. Verify search and seizure order and note any restrictions.
 - b. Any limitation on area/place being searched.
3. Gather probationer identification information.
 - a. AKA's and nicknames.
 - b. Most recent photograph and physical description.
4. Obtain probationer background information.
 - a. Prior record/profile of probationer's past behavior.
 - b. Potential for violence.
 - c. Known to be armed/prior use or guns.
 - d. Any gang affiliation.
 - e. Recent drug usage.
 - f. Associates and their background.
 - g. Current police/other agency information regarding activities of probationer.
 - h. Known vehicles.
 - 1) Description
 - 2) License number(s)
5. Location of search and physical surroundings.

- a. Confirm address of search location.
- b. Note peculiarities about the house, location, parking problems, or a hostile neighborhood.
- c. Note any physical conditions to consider in reference to the location such as dilapidated or unsafe condition.
- d. Note information from prior searches of location by whom and when.
 - 1) Floor plan.
 - 2) Security of building (doors, bars on windows, deadbolts, etc.)
 - 3) Area surrounding location.
 - a) fences/walls
 - b) escape routes
 - c) approach routes
 - d) obstructions
 - e) points of entry
- e. Are there any security problems to be encountered?
 - 1) If an apartment, can a pass key be obtained? Forced entry?
 - 2) Potential danger to neighbors as a result of search activity.
- f. Note vehicles that may be present and are they subject to search?
- g. Note if there are cohabitants. Note probation/parole status.
 - 1) Note search and seizure conditions (all adult paroles are subject to search).
 - 2) Any background information on cohabitants
 - a) Propensity for violence.
 - b) Armed.
- h. Are there dogs?
- i. Have any other residents in the neighborhood been searched in the recent past to warrant hostility from the neighborhood.

B. Planning the Search

1. Prepare for the type of contraband expected
 - a. Weapons
 - 1) Be prepared to disarm.
 - 2) Safely control weapons, (Bomb Disposal Team).
 - b. Drugs, drug money, or drug lab
 - 1) Resource agencies (DOJ, DEA, Hazardous Materials Disposal, IRS, ATF).
 - 2) Forfeiture procedures.
 - c. Stolen property
 - 1) Checking for stolen
 - 2) Evidence handling (vehicles?)
2. Determine manpower and equipment needs.
 - a. Other agencies needed/number of people needed
 - 1) Police
 - 2) Animal Control
 - 3) B&E Lab Crews
 - 4) Fire Department
 - 5) Protective Services for children
 - 6) Code Enforcement
 - b. Secure proper equipment.
 - 1) Search Kit
 - 2) Raid jackets
 - 3) Protective vests
 - 4) Radios
 - 5) Flashlights
 - 6) Property receipts

- 7) Gloves, disinfectant
3. Plan for emergency medical contingencies.
 - a. Closest emergency hospital location.
 - b. Any medical needs that may be necessary for probationer, cohabitants.
 4. Develop contingency plans if something goes wrong.
 5. Contact required assisting agencies in advance for planning input and to allow time to arrange for needed personnel.
- C. Brief All Participants
1. Establish a meeting place away from location (Probation Office).
 2. All participating members should be at briefing.
 3. Hand out prepared Briefing Form and any other relevant information.
 - a. Photos
 - b. Location diagrams
 4. Assigned deputy is in charge and conducts briefing.
 - a. Review and answer any questions.
 - b. Explain what each team member will do and make assignments.
 - 1) Entry
 - 2) Containment
 - 3) Control and security
 - 4) Recording and maintaining evidence
 - 5) Searchers
 - 6) Transportation and custody of prisoners
 - 7) Communications
 - 8) Emergency response
 - c. Check equipment needed.
 - d. Establish staging area, signals.

- e. Does anyone present have additional current information that will add to the success of the search?
- f. Check to make sure all information is current and accurate.

II. SEARCH EXECUTION

A. Upon arrival at search location:

- 1. Make sure you have the right place.
- 2. Look at the location.
 - a. Vehicles
 - b. Persons
 - c. Obstacles
 - d. Unplanned problems
- 3. Establish positions at search location.
- 4. Make entry.
 - a. Knock and announce compliance.
 - b. Secure premises.
 - 1) Cursory search for any additional occupants.
 - 2) Notify other team members when Code 4 (secured).
 - c. Detain occupants in centralized secured area and pat down before commencing search.
 - d. Explain intentions to probationer.
- 5. Assign search areas to team members and complete search.
- 6. Secure the premises upon leaving.
- 7. Debrief the search with all personnel.

III. COORDINATING PROBATION SEARCHES WITH OTHER LAW ENFORCEMENT AGENCIES

- A. Probation is responsible for planning and implementing the search and determining what will be done. The case agent is responsible for the conduct of all team members.

- B. Safety issues take precedence over all others. When working with police and safety is a concern, police procedures will be followed to control and secure the situation.
- C. If a new law violation is discovered during the course of the search, the case agent, will confer with the other agency to determine if new charges will be pursued. If the other agency seeks new charges, control of the continuing investigation (search) is handed to that agency.
- D. Probation will provide an incident (violation) report to the police agency providing authority for the search and all relevant case facts.

VI. DOCUMENTATION - IN CASE FILE AS APPROPRIATE

- A. Date and results of search and seizure
- B. Incident (violation) report
- C. Police crime report
- D. Property receipts
- E. Property booking slips