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<http://www.doc.state.ok.us/Offtech/op040110.htm>

<b>Section-04 Security</b>	<b>OP-040110</b>	<b>Page: 1</b>	<b>Effective Date: 11/30/05</b>
<b>Search and Seizure Standards</b>	<b>ACA Standards: 2-CO-3A-01, 4-4192, 4-4193, 4-4194, 4-4231, 4-4282, 4-4503, 4-ACRS-2C-01, 4-ACRS-2C-02, 4-ACRS-2C-04, 4-ACRS-2C-05, 4-ACRS-2C-06</b>		
<b>Justin Jones, Director Oklahoma Department of Corrections</b>		<b>Signature on File</b>	

## **Search and Seizure Standards**

The Oklahoma Constitution, Article 2, Section 30 and the Fourth Amendment to the United States Constitution and the cases interpreting these constitutional provisions constitute the law that governs searches in Oklahoma. This procedure is a statement of practice by the Oklahoma Department of Corrections, in consideration of time and resources, which would best serve to protect the public, employees, and offenders. Therefore, the following standards for conducting searches are adopted for the interdiction, control and seizure of contraband or evidence. (2-CO-3A-01, 4-4192, 4-ACRS-2C-01, 4-ACRS-2C-02)

### **I. General Guidelines**

#### **A. Guidelines for Conducting Reasonable Searches and Seizures (4-4282)**

1. All searches will be conducted, whenever possible, in a manner so as not to damage property. Property will be left in as close to the original state as possible.
2. The searches normally should be conducted by staff or officers trained in search techniques and procedures unless otherwise dictated by emergency circumstances.
3. Searches will be conducted at a reasonable time of day or night, unless emergency circumstances exist and require otherwise.
4. Searches are not to be conducted for arbitrary, capricious, oppressive, unreasonable reasons or harassment.
5. Searches will be conducted in a manner that causes the least disruption and affords respect and privacy for the property or person searched. Staff will avoid unnecessary force or embarrassment.

6. Whenever practical and where there is no undue risk to the officers or employees conducting the search, the person or offender to be searched will remain within view of the property being searched.
7. All items seized will be properly tagged and identified according to procedures outlined in [OP-040109](#) entitled "Control of Contraband and Physical Evidence."
8. Items that are discovered during a search which are either evidence of a crime or contraband will be seized and processed for appropriate disposal as required by law or regulation. (4-4231)
9. When practicable, canine search teams, metal detectors, sensors, x-ray equipment and other technological devices are authorized for department use. Mirrors should be used in hard to reach spaces and in areas where sharps could be placed causing potential injury to staff.
10. Definition of terms used in this procedure are located in [Attachment A](#) (attached) entitled "Search Definitions".

(Section II, removed)

### III. Searches of Offender/Inmates Arrested/Apprehended in the Community

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#### A. Additional Guidelines for Probation and Parole Officers, CERT Members, and Fugitive Warrants Division Members

In addition to the guidelines listed in Section I. item A. above, probation and parole officers, CERT members, and fugitive apprehension agents, when conducting searches of offenders under community supervision or when conducting an arrest or apprehension:

1. Will not unreasonably invade the privacy of a third party not under Department of Corrections supervision. When conducting a search where the offender is a cohabitant, the search will entail only those areas under joint control of the cohabitant and single control of the offender;
2. Private areas/rooms within the residence, not under control of the offender, will not be searched unless the third party agrees to a search of their area by signing "Oklahoma

Department of Corrections Consent to Search" ([DOC 040110A](#), attached).

3. Upon making an arrest or apprehension, a protective sweep search is authorized to ensure the safety of the officer and to inform habitat occupants of the official business if there is reason to believe other persons are present in the residence and that said persons pose a danger to the staff present.
4. Officers are not authorized to break and enter an offender's residence or business to conduct a warrantless search without exigent circumstances.
5. Warrantless searches will be executed reasonably and with particularity regarding the premises being searched and the item or contraband to be seized, and within a reasonable time after approval (usually within 24 hours unless special circumstances and with permission of a supervisor providing for an extension of time).

B. Person Search

1. Any time an arrest/apprehension is made, the person arrested will be pat searched. The search will be limited to the person being arrested/apprehended and the immediate area under the person's control that is described as the area within reach of the person arrested
2. When an arrest/apprehension is not being made but there is reasonable suspicion to believe that an offender/inmate may possess contraband on his/her person, a pat search may be conducted.
3. Any contraband/evidence found on the person will be handled in accordance with [OP-040109](#) entitled "Control of Contraband and Physical Evidence."

C. Transporting of Offenders

Persons being transported from one custody site to another will be searched according to [OP-040111](#) entitled "Transportation of Inmates."

D. Vehicle Searches

A vehicle owned by or under the control and/or possession of an offender/inmate may be searched upon reasonable suspicion that contraband or evidence is present in the vehicle.

E. Seizures Conducted by Probation and Parole Officers

1. If any items are seized during searches, officers conducting the search will prepare a seizure report in the following manner:
  - a. Date, time, specific location, specific description of items seized
  - b. Authority for conducting the search
  - c. Officers conducting the search
  - d. Names and addresses of any witnesses or persons present
  - e. Disposition of seized property
  - f. Inventory of seized property
2. Chain of custody for seized items will be in accordance with [OP-040109](#) entitled "Control of Contraband and Physical Evidence."
3. If a seizure occurs and the item seized is turned over to another law enforcement agency, the probation and parole officer will complete a seizure report and forward the report through the chain of command to the district supervisor.
4. A copy of the inventory of seized property will be given to the suspect or an adult at the scene.

F. Field Visits/Home Visits

A probation and parole officer may enter an offender's place of residence or business under the following authorities:

1. Rules and Conditions
  - a. A residence or business entry that is authorized by either:

- (1) The court order as a rule or condition of probation or which incorporates by reference the department's rules for supervising a probationer, or
  - (2) The parole certificate as a rule or condition of parole or which incorporates by reference the department's rules for supervising a parolee, or
  - (3) The rules and conditions of the department for those offenders assigned to PPCS/SSP/HA/EMP or similar program.
  - (4) The offender is an adult with apparent authority and extends an invitation to enter the residence or business.
- b. A home or business visit may grow into a search, if reasonable suspicion or probable cause to conduct a search arises during the visit. If circumstances prevent the officer from seeking supervisor approval prior to the search, a supervisor will be notified upon the officer departing the offender's residence. The officer will submit a written report outlining all action taken regarding the search and why.

## 2. Warrantless Search

- a. Evidence of a rule violation or evidence of a crime

Where there is a reasonable suspicion that an offender/inmate under supervision by the Department of Corrections located in the community is in violation of a rule or condition or in violation of the law, a warrantless search may be conducted for evidence of a rule or law violation if all the following factors are complied with:

- (1) A conference is held with the district supervisor or designee granting approval which is documented in the chronological file of the offender/inmate wherein the following criteria is weighed:

- (a) Failure to search may result in a threat to the public, employees, or offender, and
- (b) Any activity or information provided by the offender/inmate that is relevant to whether the offender/inmate has violated a rule or condition and possesses contraband;
- (c) Any prior seizures of contraband from the offender/inmate.
- (d) The supervising officer's experience with the offender/ inmate has documented a need for close supervision.
- (e) The reliability of the informant and the information provided when weighing the totality of the circumstances.
- (f) Present and/or past offenses for which the offender is under supervision along with the experience of the officer with the inmate/offender or any similar experiences in addition to reliability of the informant information, i.e., offender/ inmate on supervision for drug and/or weapon offense and information received that the offender may be in possession of illegal substances and/or weapons.
- (g) The search is not the result of an assistance request from other law enforcement officers who have been unable to obtain a search warrant.

3. A warrantless search may be conducted without prior notification of the district supervisor or his designee only when emergency circumstances demand the immediate search to protect the officer against the loss of life or serious bodily injury. The district supervisor will be notified at the first available opportunity after the search begins.

4. Search Warrant

Staff may obtain a search warrant through the court of proper jurisdiction. If this is obtained, staff will enlist the cooperation of the proper law enforcement authority to assist in the search. This does not preclude staff from conducting the search if other law enforcement officials are unavailable.

5. Consent Search

If none of the above provisions of Section III. F. items 2. or 3. of this procedure apply and if an offender/inmate verbally agrees to a search, a "Oklahoma Department of Corrections Consent to Search" ([DOC 040110A](#)) will be signed by the offender/inmate before a search of an offender's/inmate's residence or business property is performed.

6. Reports

Every time a warrantless search is conducted of an offender/inmate on any form of community supervision the officers will prepare a report setting forth the facts requiring the search. The report will be submitted through the chain of command to the district supervisor or designee and will be made a part of the offender's/inmate's field file. If the search is incident to an arrest, this information may be submitted in the arrest report.

IV. References

Policy Statement No. P-040100 entitled "Security Standards for the Department of Corrections"

OP-040109 entitled "Control of Contraband and Physical Evidence"

OP-040111 entitled "Transportation of Inmates"

OP-040113 entitled "Master Roster and Staffing Analysis"

OP-050108 entitled "Use of Force Standards and Reportable Incidents"

Art. 2 § 27, Oklahoma Constitution

4th Amendment, U.S. Constitution

21 O.S. § 445

22 O.S. § 1221 et seq

22 O.S. § 1327

57 O.S. § 21

63 O.S. § 2-507 and 2-508

70 O.S. § 3311.B.9

Pennsylvania Board of Probation and Parole v. Scott, 118 S. Ct. 2014 (1998)

Romo v. Champion, 46 F.3d 1013 (10<sup>th</sup> Cir. 1995)

United States v. Knights, 121 S.Ct. 1955 (2001)

Boren v. Deland, 958 F.2d. 987 (10th Cir. 1992)

Griffin v. Wisconsin, 107 S.Ct. 3164 (1987)

Law Enforcement Employees v. Carey, 737 F.2d 187 (2d.Cir. 1984)

Ohio Civil Service Employees v. Seiter, 858 F.2d. 1171 (6th Cir. 1988)

O'Connor v. Ortega, 107 S. Ct. 1492 (1987)

State v. King, 868 P.2d 743 (Okla. Cr. 1994)

V. Action

The deputy director for each division will be responsible for compliance with this procedure for their respective units.

The deputy director of Legal Services will be responsible for the annual review and revisions.

Any exceptions to this procedure require prior written approval from the director.

This procedure will be effective as indicated.

Replaced: Operations Memorandum No. OP-040110 entitled "Search and Seizure Standards" dated May 3, 2004

Distribution: Policy and Operations Manual (4-ACRS-2C-01)



## Department Website

<u>Referenced Forms</u>	<u>Title</u>	<u>Located In</u>
<a href="#">DOC 040110A</a>	"Oklahoma Department of Corrections Consent to Search"	Attached

<u>Referenced Attachments</u>	<u>Title</u>	<u>Located In</u>
<a href="#">Attachment A</a>	"Search Definitions"	Attached