

SAMPLE SEARCH AND SEIZURE POLICY STATEMENT

Part I. PURPOSE

The policy provides guidance for those situations in which a search is necessary to meet the objectives of supervision. It governs the authorization and execution of searches and seizures by probation/parole Officers pursuant either to a special condition of release permitting such searches or to the voluntary consent of the person under supervision. The policy outlines when plain view seizures may be conducted in the absence of a search and provides procedures for the storage of seized evidence or contraband.

Part II. GENERAL

Probation and Parole Cases

For purposes of this policy, the word “offender” will be used to refer to all persons under probation/parole supervision.

The policy requires the officer to document the reasons to search, conduct searches in a lawful and reasonable manner, and document the results of the searches. The policy further outlines a procedure for internal administrative review prior to any search being conducted by, or on behalf of, the probation/parole office.

The authority to conduct searches is limited to offenders under supervision and may not be extended to other persons who may be residing with, or are otherwise closely associated with the offender, except for reasons of officer safety. If the circumstances reasonably require it, a limited “pat down” search for weapons of persons present may be conducted to insure the safety of all parties involved.

Probation/parole officers must be mindful of the fact that the offenders retain Fourth Amendment rights against unreasonable searches and seizures. The authority to conduct searches pursuant to conditions or the consent of the offender does not extend the authority of probation officers beyond those set by agency policy.

Therefore, it is recommended that searches be conducted with the assistance of law enforcement authorities, when appropriate. However, evidence from the search will be controlled by the probation/parole office in a manner consistent with this policy. The

manner and extent of the search will be solely under the control and discretion of the probation/probation office.

Under this policy, the offender's person, residence, and any property under the offender's control, may be searched without a warrant by a probation/parole officer, or by any law enforcement officer under the personal and immediate supervision of the probation officer, when:

- The probation/parole officer has reasonable suspicion to believe that the offender is in violation of the conditions of release and that the search will produce evidence of the suspected violation; and
- The Court/Parole Board has ordered, as a special condition of supervision, that the offender submit to a warrantless search by the probation/parole officer; or
- The probation/parole officer has obtained a valid written consent to search from the offender; or
- The Court has authorized a search order.

When a special search condition is not in effect, a probation officer must apply for an order to search. To initiate this process, the assigned officer should consult with their Supervising Probation/parole Officer. If the officer requires assistance in drafting an affidavit and search order, the local prosecutor or legal agency counsel can be called upon for assistance.

Part III.

PLAIN VIEW SEIZURE

The nature of work performed by the Probation/Parole Officer places officers in situations where evidence of criminal activity or a violation of a supervision condition may be observed plainly within the sight of the officer. These situations are not searches but present similar issues because a lawful seizure may result from this type of contact. Such situations are guided by the "plain view doctrine" which provides that contraband may be seized if the following criteria are met:

- The probation/parole officer is legally on the premises where the item is seen (e.g. conducting a home contact);
- The contraband is within the plain sight of the probation/parole officer; and
- It is immediately apparent that the item is contraband with respect to the offender.

Officers are encouraged to exercise caution and sound judgment in applying the plain view doctrine. Situations may arise where it is lawful, but not prudent or safe, to seize evidence. Leaving the area and contacting a supervisor for guidance or another law enforcement agency in some circumstances may be the safer and more productive course of action.

Part IV. THE IMPOSITION OF A SPECIAL CONDITION

Imposition of a special condition requiring an offender to submit to a search without a warrant is recommended only when the condition is necessary to enforce the conditions of release or to protect the public. The condition may be imposed at the time of sentencing or as a modification during the course of supervision. If added during or upon commencement of a term of parole or probation, it may be imposed only after notice, and generally, a hearing.

Part V. MODEL SEARCH CONDITION

Although variations of the search condition may be imposed by the jurisdictional authority, the following special condition is recommended in the Model Search and Seizure Guidelines established by the Committee on Criminal Law, as endorsed by the Judicial Conference of the United States, and approved by the U.S. Parole Commission:

“The defendant shall submit his person, residence, office or vehicle to a search, conducted by the United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition or release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.”

This special condition is gender specific and may be modified when applied to female offenders. In addition, the composition of the search condition may be modified to include a place of business (if other than an office), computer hardware and software, personal digital assistance devices, and other locations and items as determined by the Court. It can also be modified for use by state and local probation or parole departments.

Part VI.

REQUESTING A SEARCH CONDITION

Search conditions will be considered under two general criteria:

High Risk Cases: Where the offense or the offender's history meets the following criteria, the probation/parole officer should seriously consider a special condition is necessary to enforce the conditions of supervision:

- Brandishing or use of a weapon in connection with the instant offense or any involvement in a significant gun trafficking offense.
- Offenses involving sexual misconduct or exploitation targeting minors.
- Cases involving threats to national security, judicial employees, and government workers.
- Drug trafficking cases or cases involving drug use.

Considered Cases: The second category is those cases where the specific factors underlying the offense of conviction, and/or the criminal history suggest that a special condition for search and seizure may be necessary for the probation/parole officer to adequately supervise the offender once released to the community. In these instances, the assigned probation/parole officer should, in consultation with his or her supervisor (or their designee), consider requesting the imposition of a special search condition. Factors which may trigger consideration for a search condition include, but are not limited to: dangerousness, persistence of criminal conduct, significant violations of prior community release terms, the pattern of using a residence, business, or other site specific location to maintain contraband or carry out a criminal enterprise or scheme, or the inability to reasonably monitor the recurrence of the criminal conduct in any other manner.

Part VII.

APPROVAL TO CONDUCT A SEARCH

Justification

Administrative approval should be required prior to any probation/parole officer conducting a search by consent or special condition. Search of an offender may be justified by the probation/parole officer's reasonable suspicion or belief that the offender is in violation of the conditions of supervision, or is violating the law and that the search will produce evidence of these violations. A reasonable belief is more than a hunch; it is based on specific and articulated facts together with rational inferences from those facts. The facts leading to the decision to search must be

current. A reasonable person should conclude from the justification that evidence of the violation will be found in the place or on the person to be searched. The reason may result from specific inferences drawn from the probation/parole officer's observations and experience. Factors considered may include, but are not limited to, the following:

- information received from a reliable informant;
- probation/parole officer's observations of the offender's physical appearance and demeanor;
- laboratory urinalysis results indicating use of a controlled substance;
- observations regarding accumulation of material possessions without sufficient apparent legal income or reasonable explanation by the offender;
- information indicating the offender is associating with individuals involved in criminal offenses;
- evidence observed in plain view during home contacts;
- behavior patterns associated with individuals involved in child pornography or pedophile offenses.

Documentation

A request to search form should be completed by a probation/parole officer, in consultation with their supervisor (or the supervisor's designee). In exigent circumstances, approval to conduct a search may be obtained by telephone. In such situations, all of the issues addressed in the approval form will be thoroughly addressed and documented during the conversation or immediately upon return to the office.

Part VIII. CONDUCT OF SEARCHES

Subsequent to approving a search, the approving authority, shall select a team of probation/parole officers to conduct the search. The number of probation/parole officers selected will be determined by the scope and nature of the search. Probation/parole officers will be selected on the basis of overall experience, training, specific area of expertise, and sound judgment. Participation in searches is voluntary. Due to the inherent dangerousness of search activities, participating probation/parole officers will be required to have successfully completed an officer safety training program in addition to search training. The probation/parole officer supervising the offender may attend for consultation regarding the case or to improve the communication with the offender or persons with whom the offender resides. A search coordinator will be designated by the approving authority.

Time of Search

Searches will be conducted during day time hours unless there is a compelling reason for conducting the searches at other times.

Place of Search

Searches will generally be conducted at the place of residence of the offender, the offender's place of business (owned by the offender), automobile or other vehicles. A garage or similar structure on the offender's property may also be searched for cause. In situations in which a search is based on consent, unless the offender is the sole occupant of the residence, only those areas occupied by the offender or areas of common habitation may be searched. In these circumstances, the probation/parole officer is not authorized to search property occupied or controlled solely by other persons.

Manner in Which Search is Conducted

Safety of the probation/parole officers, and other persons present, should be the primary concern during a search. Decisions regarding search activities should reflect this value. An initial security sweep of the premises should be conducted to ascertain the presence of third parties or other hazards. A pat down search of an offender or third party may be conducted to reduce the risk concealed weapons might present to any person in the area of the search.

Searches conducted by the probation/parole office must demonstrably serve supervision goals (i.e. rehabilitation, enforcement of supervision conditions, or protection of the public) and must be initiated by, and be under the supervision of, the probation/parole officer. However, the probation/parole officer should request the assistance of law enforcement officers if there is a potential for danger or a need for expert assistance. It is recommended that law enforcement assistance be requested to reduce the risk to the personal safety of the probation/parole officer and to take custody of evidence if new criminal prosecution is contemplated.

A search must not be conducted without the offender or some representative of the offender being present, except for compelling

reasons. The probation/parole officer must inform the offender of the probation/parole officer's intent to conduct a search. If the court/parole board has ordered a search condition or issued a search order, it is not necessary to obtain the offender's consent to conduct the search, nor is it necessary to inform the offender in specific terms of the source of information used to justify the search at the scene. It is the jurisdictional authority, not the offender, who will determine if the basis for the search is reasonable. If the probation/parole officer is being assisted by law enforcement officers or other probation/parole officers, these individuals must be identified and the offender must be informed that the probation/parole officer has requested that they assist the probation/parole officer in conducting the search.

Good judgment and respect for the personal property of the offender must be shown at all times during the search. Disruption of the offender's home and property must be limited to only that which is necessary to complete the search, and not result in more than minimal damage to property.

The scope of the search must be limited to areas of possible concealment of contraband or evidence outlined in the approval. For example, if the probation/parole officer has reason to believe that the offender possesses a firearm and is conducting a search for the weapon, areas where the firearm could not possibly be concealed, such as the offender's wallet, must not be searched. If during a proper search for a firearm, other contraband is discovered, that discovery may justify expansion of the scope of the search. The search coordinator will make the determination to expand the scope of the search if necessary.

Managing Third Parties

Probation/parole officers must receive training by their agency on whether they are authorized to restrain third parties. Resistant third parties who reside with the offender should be reminded that they were previously notified of the condition of supervision authorizing a search, and of the consequences to the offender should they actively interfere with the condition. Third parties may choose to leave the premises during the search. If third parties are present who present a risk to any person conducting the search or to the offender, or if the officer becomes aware of any reasonably foreseeable danger to any person, the officer may consider abandoning the search.

Use of Force to Overcome Resistance to the Search

Physical force is not to be used to enforce compliance with any condition of supervision, including a condition requiring the offender to submit to a warrantless search. The special condition authorizing the search is a lawful order of the Court and does not require the consent of the offender to initiate, however, as with all supervision conditions, it does require cooperation. If the offender refuses admittance to their residence or threatens to physically resist the search by the probation/parole officer, the offender should be informed that resistance to the lawful search may be alleged as a violation of supervision. If the purpose of the search is not related to public safety, refusal to submit to the search, along with those factors on which the decision to search was based, may be alleged as a violation of supervision with no further effort to conduct the search. If the probation/parole officer has reason to believe that the offender is involved in crimes of violence or where the cause for the search is related to public safety, the probation/parole officer should release the information upon which the search was based along with the facts of the offender's refusal to adhere to the condition to an appropriate law enforcement agency. The combination of these factors may provide a probable cause basis to obtain a search warrant. The probation/parole officer should immediately request a warrant for the offender's arrest from the jurisdictional authority.

Post-Search Documentation

The search team coordinator will compile a complete report for submission to the approving authority, the sentencing judge or the Parole Board within 72 hours following the search. This report should indicate the reasons for the search, the date, time and place of the search, and identify the individuals who assisted the probation/parole officer in the search. The report must also indicate the nature of the property seized during the search and the disposition of that property. Any unusual statements or occurrences during the search should be recorded in the follow up report.

Part IX. CONSENT SEARCH

A probation/parole officer may request that an offender consent to a search, in the absence of a special condition, when the probation/parole officer has reasonable suspicion to believe an offender has violated the law or a condition of release, and that a search will produce evidence of such conduct. Administrative approval is required prior to a probation/parole officer requesting

an offender to consent to a search (see Part VII. Approval to Conduct a Search).

Consent to search is provided when an offender voluntarily makes an affirmative decision to agree to the search after deliberation and without interference or duress. Due to the inherent nature of the authority the probation/parole officer may exercise over the offender, it is necessary for the probation/parole officer to demonstrate that the consent was freely and voluntarily given and that the offender is not simply acquiescing to the requirement that he or she follow the probation/parole officer's instructions. Therefore, consent searches will only be conducted when an offender provides written consent for the search, and the offender is advised that failure to provide consent will not be used as a basis to request a revocation (see Consent to Search form).

When a search is conducted on this voluntary basis, the offender maintains a degree of control throughout the search and can limit the scope of the search or revoke consent at any time, thus preventing the search from continuing.

To effectuate a search based upon the consent of the offender that goes beyond plain view, the following conditions must be met:

- it shall be proceeded by approval in the same manner as searches pursuant to a special condition;
- the request or consent to search should be related to a supervision issue and based upon reasonable suspicion that such a search would reveal the presence of contraband or evidence of a violation of the conditions of release;
- the consent must be in writing;
- the probation/parole officer shall advise the offender, before the consent is given, that the consent may be refused without a revocation of supervision or release; and
- a search based upon consent may not exceed the scope of the consent.

Part XI. PROCESSING EVIDENCE SEIZED IN SEARCHES

Safeguarding Evidence

Integrity of the chain of custody of evidence requires that procedures used to seize, record, and store evidence substantiate that the evidence presented at any judicial or administrative proceeding is actually the evidence which was seized at the time of the search.

Law Enforcement Assisted Searches

If law enforcement agencies assist the probation/parole officer in the search, and contraband is found during the search, the probation/parole officer may relinquish it to the law enforcement officer at the scene. If the evidence is relinquished to a law enforcement officer, the probation/parole officer should document the seizure and obtain a copy of the police agency inventory of evidence seized for use in subsequent revocation proceedings. This process of releasing evidence should rarely be utilized in the performance of a search, however, this process would be justified in cases involving the discovery of clandestine laboratories or where there is a threat to officer safety.

Evidence Seized and Retained by the Probation/Parole officer

Evidence relating only to a violation of supervision, or evidence of a new criminal offense which is not within the jurisdiction or prosecutorial guidelines of assisting law enforcement officers, should be seized, inventoried, and retained by the probation/parole officer.

Documentation

Inventory / Receipt: Upon initial entry, the residence and occupants will be secured in a manner consistent with this policy. A video recording will be made of the residence, or location to be searched, to document the condition of the residence upon entry. A video recording will also be made of the residence immediately following the search in order to document the condition of the residence upon departure. The video recordings will be maintained for use in any subsequent revocation hearing. All items received by the probation/parole officer during the search will be listed on the inventory receipt form. The original of this form will remain with the evidence. One copy of the inventory form will be presented to the offender. A second copy will be retained in the case file. The inventory list will include the following information:

- The date of seizure and the name of the case number of the offender searched.
- A description of where the evidence was found.
- The signature of the probation/parole officer who conducted the search.
- An itemized list of any property seized, including descriptive data such as serial numbers, make, model, color, etc. If the evidence is suspected to be an illegal drug,

a description of the package or estimates of the weight of the substance should be included in the descriptive data.

- Opinions or conclusions regarding the identity of any items should not be recorded. For example, the description of suspected heroin should be white or brown powder, not heroin. Suspected marijuana should be described as green or brown leafy substance, not as marijuana.
- If the alleged contraband seized is evidence of constructive possession, facts describing the place the evidence was found which would support a finding of constructive possession should be recorded. Further, if other persons have access to the area, facts relating to dominion and control are also important to document.

Marking Evidence for Identification: Each item of evidence or contraband seized during the search should be tagged or sealed in an envelope or other suitable container. The probation/parole officer will clearly mark and tag a container with the following information:

- the date the item was seized;
- a description of where the evidence was found;
- the item number corresponding to the inventory list number; and
- the name or initials of the person who seized the item.

Record of Chain of Custody: It is essential that a record of the chain of custody of the seized evidence be maintained from the time of the seizure until disposition of the property. On the inventory form which accompanies the evidence, there is a chain of custody log. The probation/parole officer will use this log to indicate the seizure and any subsequent change of the custody or relocation of the property seized as evidence. If evidence is released to a law enforcement officer at the scene of the search, a copy of the inventory form used by that agent will be sufficient to complete the probation/parole officer's record of the search. The chain of custody log should indicate by item number all property released and to whom it is released. It is not necessary to include identifying data other than the item number which appears on the inventory form.

Storage of Evidence: If it is not released to a law enforcement agency, evidence seized during a search will be retained by the probation/parole office. Under these circumstances, the probation/parole officer conducting the search should release the evidence to the evidence custodian. Release of evidence by the

probation/parole officer will be indicated on the chain of custody log and the evidence custodian will indicate receipt of that property on the same log. The chain of custody log will indicate any subsequent change(s) in the location of the evidence and the final disposition of the evidence. All retained evidence will be stored in a locked area with limited access.

Disposal of Evidence or Contraband: The assigned probation/parole officer is responsible for disposal of contraband or evidence that is no longer required for the purpose of revocation. If the property is not illegal, it will be returned to the owner after final disposition of the Court/Parole proceedings. The probation/parole officer returning the property will obtain the owner's signature on the chain of custody log, which will constitute a receipt for the property returned. Illegal weapons or controlled substances will be returned to the appropriate federal, state, or local law enforcement agency for disposal. When appropriate, the probation/parole officer may contact the Court to issue an order directing the disposal of the evidence seized as a result of the search.

Part XII. FORMS

- Defendant Search Acknowledgment
- Resident Search Acknowledgment
- Search Waiver
- Inventory Sheet / Property Receipt
- Receipt for Returned Property
- Search and Seizure Information
- Search Summary
- Evidence Transport Form / Chain of Custody
- Notice of Destruction of Seized Property

Part XII. REFERENCES

- Federal Criminal Code and Rules, 2001 Edition (March 9, 2001)
- U.S. Parole Commission Rules & Procedures Manual, (March 1, 2001)
- Guide to Judiciary Policies and Procedures (Vol. X, Probation Manual)
- Search and Seizure Policy Statement (Middle District of Florida, June 1999)
- Search and Enforcement Team Manual (Northern District of Oklahoma)
- Search and Seizure Training Reference Guide (Federal Judicial Center, 1995)
- Criminal Law Committee, Memorandum on Search and Seizure (May 3, 1993)

- *United States v. Giannetta*, 909 F.2d 571, 579 (1st Cir. 1990)
- *Griffin v. Wisconsin*, 483 U.S. 868, 107 S.Ct. 3164 (1987)