



**Parole and Probation  
DIVISION DIRECTIVE MANUAL**

AG REVIEW BY:	ORIGINATION DATE: <b>10/08/1998</b>	APPROVED BY: <b>JOHN ALLAN GONSKA, CHIEF</b> <i>(original signature on file)</i>
REFERENCES:	DATE EFFECTIVE: <b>06/01/2006</b>	SUBJECT: <b>Search and Seizure</b>
PROCESSED BY: <b>CHARLES C. COMBS</b>	REVISION DATE: <b>05/25/2006</b>	DIRECTIVE NUMBER: <b>6.2.109</b>

A. **PURPOSE:**

To set forth the conditions governing the lawful search and seizure of evidence and contraband from parolees, probationers or other criminal offenders.

B. **POLICY:**

1. **Search**

Any search conducted by a Parole and Probation Officer shall be lawful. There are six situations under which a lawful search can be conducted:

- a. Incident to a lawful arrest;
- b. Supported by a lawful search warrant;
- c. With consent from the person;
- d. Subject to a parole or probation search condition (pursuant to reasonable suspicion);

- e. Pursuant to the plain view doctrine;
- f. Exigent circumstances (pursuant to probable cause).

2. **Seizure**

Any property seized under the color of authority will be stored, returned, disposed of, or forfeited in accordance with the law and Department policy.

C. **DEFINITIONS:**

1. **Contraband**

Any property which is unlawful to produce or possess;

2. **Evidence**

Something to be legally presented before the Court or Parole Board, which bears on or establishes the point in question;

3. **Probable Cause**

Knowledge of facts and circumstances known by a peace officer which are sufficient to warrant a prudent person to believe that a crime has been or is about to be committed;

4. **Reasonable Suspicion**

A suspicion founded upon circumstances sufficiently strong to warrant a reasonable person to believe something may be true;

5. **Search**

A thorough examination of a person, property, residence or vehicle for contraband or evidence of guilt to be used in the prosecution of a criminal action or parole/probation violation;

6. **Seizure**

The taking control of physical evidence or contraband related to the prosecution of a criminal action or parole/probation violation;

7. **Exigent Circumstances**

Conditions which would dictate that an officer must act immediately to preserve evidence of a crime.

D. **PROCEDURE:**

1. General Guidelines

The protection of the constitutional rights of citizens and the safety of individual officers are of paramount concern. If the officer has lawful cause to search, he/she must remain within the "scope and intensity" of the search situation.

- a.. On no occasion shall a search be conducted for harassment purposes;
- b. Officers shall not conduct a search at the request of an outside agency. However, information received from outside agencies may be taken into consideration and used to formulate reasonable cause for the officer to conduct an independent search;
- c. If a search is deemed appropriate, but the distance and travel time would be excessive, jeopardizing the integrity of the investigation or the safety of officers involved, an officer may request the assistance of an outside agency to conduct the search for the Division. A supervisor shall be notified as soon as reasonable after completion of a search by an outside agency;
- d. The responsibility of the search shall be that of the assigned case officer, or in their absence, the senior officer on scene. This includes a situation where an outside agency is assisting in the search;
- e. In all cases, pursuant to NRS 171.123, an officer, who reasonably believes that a threat to officer safety exists, may conduct a "pat down" of all individuals for weapons;
- f. In all cases, a copy of the DPS Evidence Impound Report signed by the officer shall be left at the sight for any seized item;
- g. All searches shall be recorded in the chronological record of the offenders record in OTIS, detailing the establishment of reasonable cause and the officers and witnesses present at the scene.

2. Preparation and Planning

- a. Whenever practical, searches should not be conducted alone. A well planned search should include sufficient personnel to secure the area and to ensure a safe and proper search;
- b. A search shall only be conducted in the presence of the offender or, in the event of his absence, a spouse, roommate, relative or an individual representing the offender. The entry of an unoccupied building for the purpose of locating a fugitive does not permit any other type of search;

- c. In all cases, when a search is to be conducted in an area where persons are unknown to the officers, extreme caution should be exercised. If there is any reason to suspect a threat to the safety of the searching officers, the search shall be discontinued and the area secured until the search can be conducted with sufficient personnel and tactical planning to ensure a safe entry and control of the occupants;
- d. Prior to conducting a search of a residence or other building, officers shall conduct a protective search of any area of those premises that they reasonably believe could conceal persons who might pose a threat to the safety of the officers;
- e. If a suspect is to be restrained and placed in a certain location, that area shall be searched for the presence of any weapon that could be used against the officer.

### 3. Third Party Searches

If an offender is residing with a third party:

- a. The officer's scope of search pursuant to a search clause shall be limited to the offender's living area and any common living areas, such as the living room, bathroom, kitchen, patio or garage; or any area to which the offender has access;
- b. Any area not frequented by the offender shall not be searched.
- c. If an offender is sharing an area with a third party, the officer shall not search any property in that area which obviously belongs to the third party.

### 4. Search Warrants

- a. To secure a search warrant, the presence of probable cause is required and an affidavit must be sworn before a magistrate;
- b. Detailed case information must be presented to the District Attorney or magistrate as follows:
  - 1). Date;
  - 2). Affiant's name;
  - 3). Specific evidence to be sought;
  - 4). Physical location of the evidence;
  - 5). Alleged offense and classification;
  - 6). Exact physical location to be searched;

7). For a night search, a showing of good cause.

- c. The warrant must be signed by a Magistrate;
- d. Upon issuance, the warrant must be executed and returned within ten days from the date of issue. The return shall be forwarded to the Clerk of the Court of issuance. A DPS Evidence Impound Report may be used for the return;
- e. All reasonable and necessary force may be used to effect an entry into any building or property to execute a search warrant;
- f. The officer shall give to the person from whom the property was taken, a copy of the warrant and a copy of the DPS Evidence Impound Report. In the absence of a responsible party, a copy of both documents shall be posted.

5. Consensual Searches

- a. On no occasion shall consent to search be obtained through deception or coercion; it must be voluntarily given in order for the resulting search to be valid;
- b. Because the burden is upon the State to show the voluntariness of consent, the officer should always attempt to obtain a voluntary consent to search in writing, utilizing the Division's Consent to Search form, and have a third party witness the document;
- c. The person giving consent must have the legal capacity to do so;
- d. If the person elects to limit or withdraw consent, the search must be limited or terminated immediately.

6. Search and Seizure as it pertains to Plain View

If an Officer is in a physical position where he/she is legally entitled to be, and sees an item of contraband or evidence of a crime in plain view, the item may be seized without a warrant.

7. Exigent Circumstances

A search executed under exigent circumstances must be based on probable cause. The circumstances warranting the search must be thoroughly documented.