

Search and Seizure

318.1 PURPOSE AND SCOPE

Both the Federal and State Constitutions provide every individual with the right to be free from unreasonable searches and seizures. This policy provides general guidelines for Yolo County Probation Department personnel to consider when dealing with search and seizure issues.

318.2 POLICY

It is the policy of the Yolo County Probation Department to respect the fundamental privacy rights of individuals. Members of this Department will conduct searches in strict observance of the constitutional rights of persons being searched. All seizures by this Department will comply with relevant federal and state law governing the seizure of persons and property.

In accordance with the Training Policy, the Department will provide relevant and current training to officers as guidance for the application of current law, local community standards and prosecutorial considerations regarding specific search and seizure situations, as appropriate.

318.3 SEARCHES

The U.S. Constitution generally provides that a valid warrant is required in order for a search to be valid. There are, however, several exceptions that permit a warrantless search.

Examples of law enforcement activities that are exceptions to the general warrant requirement include, but are not limited to, searches pursuant to the following:

- Valid consent
- Incident to a lawful arrest
- Legitimate community caretaking interests
- Vehicle searches under certain circumstances
- Exigent circumstances
- Probation or Parole Authorization

Certain other activities are recognized by Federal and State courts and by certain statutes as legitimate law enforcement activities that also do not require a warrant. Such activities may include seizure and examination of abandoned property, and observations of activities and property located on open public areas.

Because case law regarding search and seizure is constantly changing and subject to interpretation by the courts, each member of this Department is expected to act in each situation according to current training and his or her familiarity with clearly established rights as determined by case law.

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Whenever practicable, officers are encouraged to contact a Supervisor to resolve questions regarding search and seizure issues prior to electing a course of action.

318.4 SEARCH PROTOCOL

Although conditions will vary and officer safety and other exigencies must be considered in every search situation, the following guidelines should be followed whenever circumstances permit:

- (a) Officers of this Department will conduct searches with dignity and courtesy.
- (b) Officers should explain to the person being searched the reason for the search and how the search will be conducted.
- (c) Searches should be carried out with due regard and respect for private property interests and in a manner that minimizes damage. Property should be left in a condition as close as reasonably possible to its pre-search condition.
- (d) In order to minimize the need for forcible entry, an attempt should be made to obtain keys, combinations or access codes when a search of locked property is anticipated.
- (e) When the person to be searched is of the opposite sex as the officer, a reasonable effort should be made to summon an officer to conduct the search who is of the same sex as the subject. When it is not practicable to summon an officer of the same sex as the subject, the following guidelines should be followed:
 1. Another officer or a Supervisor should witness the search.

318.5 DOCUMENTATION

Officers are responsible for documenting searches that result in a subsequent arrest, detention or warrant further action and to ensure that any required reports are sufficient including, at minimum, documentation of the following:

- Reason for the search;
- Any efforts used to minimize the intrusiveness of the search (e.g., asking for consent or keys);
- What, if any, injuries or damage occurred;
- All steps taken to secure property;
- The results of the search, including a description of any property or contraband seized and
- If the subject searched is of the opposite sex, any efforts to summon an officer of the same sex as the subject to conduct the search or the identity of any witness of the search.

A property and evidence report shall be completed every time officers seize evidence or property from a residence or person.

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Supervisors shall review reports to ensure the reports are accurate, that actions are properly documented and that current legal requirements and Department policy have been met.

318.6 PROBATION SEARCHES

All probation searches shall be conducted in accordance with this policy in a thorough and professional manner that demonstrates consideration for the rights and property of the probationers and public.

All searches shall be related to a proper probation purpose. This includes searches done to deter further offenses by the probationer and searches to ascertain whether the probationer is complying with the terms of probation. A search shall be consistent with the scope of the probation order and shall not be conducted for harassment or for arbitrary and capricious reasons (*People v. Bravo*).

Any peace officer may apply the search and seizure condition of probation if authorized by the Court order granting probation. Sworn Department staff shall verify the existence of a valid search condition upon request from any law enforcement agency. If a law enforcement agency contacts the Department during duty hours requesting assistance for a probation search, the sworn peace officer shall advise his or her supervisor of the request. A copy of the Court order that includes the search condition should be faxed to the requesting law enforcement officer. The sworn peace officer should document the date and time, the name of the officer to whom the information was provided and the agency. If for any reasons, it is unclear whether a valid search can be conducted, the Supervisor shall either contact the District Attorney's Office or refer the requesting law enforcement agency to the District Attorney's Office.

Probation searches are limited to areas and property governed by the search order. Within those areas, probation searches are permitted of the probationer's property and those areas that the probationer jointly controls (*People v. Palmquist*). Consent of the probationer or any other person sharing occupancy or ownership is not required, but should be sought and obtained if practical.

Neither the probationer's presence nor the presence of any other common occupant or owner is necessary for the search of the residence, vehicle, or property of the probationer (*People v. Lilienthal*). The probationer must be given notice of the reason and purpose of the search in advance of the search only if the probation condition actually requires such advance notice (*People v. Mason*). For purposes of officer safety, the probationer or any person present may be handcuffed during the search.

For residential searches, Penal Code sections 844 and 1531 prescribe "knock and notice" rules which permit entry in the absence of any occupant and permit entry of any residence without consent for good cause.

Peace Officer safety is the controlling factor during any search. In the event of a perceived threat to life or limb, when practical, officers are directed to withdraw and seek immediate assistance from local law enforcement.

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Unarmed probation officers conducting residential searches should be accompanied either by armed probation officers or local law enforcement. A probation officer shall not conduct any residential search alone, except as absolutely necessary for officer safety or other valid reasons.

318.6.1 MULTI-AGENCY SEARCHES

Multi-agency searches initiated by the Probation Department shall be conducted as follows:

- (a) A Unit Supervisor or his or her designee shall be present as Officer in Charge (OIC) if the multi-agency search is being directed by this Department.
- (b) Each team will have a designated probation officer leader who will have final authority as to how the search will be conducted and shall keep the Officer in Charge advised of any unusual circumstances including those issues that may generate a citizen complaint.
- (c) A search plan will be prepared for each planned individual search.
- (d) A probation case agent will be assigned for each planned individual search. The assigned officer of the probationer being searched, shall prepare the necessary reports, collect evidence and forward copies to the appropriate Supervisor and the case file.