



Policy: Search and Seizure

3.08.03

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Authority: Penal Code §833, §1203.71, & §3453

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Responsible for Updates: Division Directors

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Approved by

Chief Adult Probation Officer

Date

Forms

- APD-31 – Property Receipt
APD-77 – Field Plan
APD-233A – Incident Report
APD-233B – Supplemental Incident Report

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I. Principles

The Fourth Amendment to the U.S. Constitution guarantees all persons the right to be free from unreasonable search and seizure. Even when the Court has imposed a warrantless search condition, all searches must be conducted reasonably to ensure that clients' rights are protected and that any evidence obtained through a search is admissible if needed for a Court proceeding.

II. Policy

The Adult Probation Department is committed to protecting the public by providing evidence-based supervision practices and enforcing Court orders. Probation officers may use their discretion to employ their search and seizure authority for these purposes as dictated by law and as further outlined in this policy. Whether in the field or office, the safety of sworn staff, the client, and the public is of utmost importance and must be a high priority in any decision to search. All searches – whether person, vehicle, or residential – must be conducted with at least two officers. The only exception is when an exigent circumstance search is appropriate due to a perceived immediate threat or danger to any person.

Officers must always exercise caution and sound judgment to determine when it is lawful, safe, and procedurally sound to conduct search or seizure activities, and to determine when it is preferable to collaborate with law enforcement partners. Officers always have the option to disengage from a search and take alternative steps, including but not limited to: leaving the scene, requesting SFPD assistance, having the client report for an office visit, consulting the SPO, or addressing noncompliance with search conditions per Rewards and Responses to Client Behavior Policy 5.02.04.

Probable Cause:

Probable cause is a stronger standard of evidence than reasonable suspicion, but a lower threshold than what is required to secure a criminal conviction. Probable cause must exist for a law enforcement officer to make an arrest without a warrant, to obtain a search or arrest warrant from a court, or to make a plain view seizure in the belief that the property is incriminating.

Reasonable Suspicion:

Reasonable suspicion must exist for a law enforcement officer to conduct a Terry search, temporarily detain non-client third parties (not including the occupants of a residence during a search of that residence), or conduct a protective sweep of areas controlled exclusively by third parties. Reasonable suspicion is a lower threshold than probable cause but still requires specific, articulable facts to suspect that someone is engaged in criminal activity. It is more than a guess or a hunch.

Authority to Search and Seize

Officers may exercise their discretion to search as follows.

1. **Warrantless Search Condition:** All postrelease community supervision (PRCS) clients and many mandatory supervision and probation clients have warrantless search conditions for their person and property. Officers may exercise their discretion to conduct a search that falls within the scope of the search condition. Officers must always verify – and never assume – that a client has a valid search condition and is still on active supervision.
2. **Terry Search:** To ensure safety, officers may conduct a limited pat down of a person’s outer clothing to search for weapons (Terry search) if the officer has reasonable suspicion, based on specific articulable facts, which would warrant a reasonable officer to suspect that a person may possess a weapon. If the outer search identifies an object that the officer believes to be a weapon, the officer may reach inside the pockets or inner garments in order to seize the object. If the outer clothing search identifies an object that the officer immediately recognizes as contraband, the officer may seize that item. If unsure whether the object is contraband, the officer cannot conduct a more thorough search unless the client has a search condition or there is probable cause to believe the object is contraband.ⁱ
3. **Plain View Doctrine:** An item that is in an officer’s plain sight can be seized if the officer is on the premises legally (e.g., conducting a home visit) and the officer has probable cause to believe the item is incriminating.ⁱⁱ Note: See below regarding SFPD assistance for evidence that may be used in Court.
4. **Search Incident to an Arrest:** After lawfully arresting a person, officers may search the arrestee and his or her immediate belongings, and may search areas under the arrestee’s immediate control.ⁱⁱⁱ
5. **Consent Search:** In the absence of or in addition to other legal justification, officers may ask a person’s permission to search.
 - Consent must be obtained voluntarily and expressly, not as the product of explicit or implicit coercion.^{iv}
 - The person may limit the scope of a consent search (e.g., the areas to be searched or the duration) and may revoke consent at any time, at which point officers must withdraw from the search.^v
6. **Exigent Circumstance Searches:** The urgency of some situations may make a search reasonable under the Fourth Amendment. In the absence of a warrantless search condition, officers may initiate an exigency search if there is a threat of death or serious bodily harm or to aid those in distress. Officers may not initiate other types of exigency searches (hot pursuit of a suspect, imminent destruction of evidence), but may assist law

Safety

Safety is always a top priority when conducting search or seizure activities. Officers must always reevaluate safety considerations before and during a search and disengage from the search if it becomes unsafe to proceed.

Transgender Clients

Transgender refers to a person who is born with genetic traits and anatomy of one sex but who self-identifies as another sex. A transgender person can be pre-operative, post-operative, or non-operative.

When an individual is identified as a transgender person, Department employees shall respect the gender identification expressed by the individual. Staff shall not inquire about intimate details of anatomy or surgical status; proof of an individual's gender is not required.

enforcement partners with such searches that arise during authorized field assistance.

Note: A standard warrantless search condition **does not** extend to electronic devices.^{vi} Officers have authority to search electronic devices (computers, cell phones, tablets, gaming systems, etc.) only if the client is on PRCS (PC §1546.1(c)(9)), a probation or mandatory supervision client has a clear and unambiguous electronic device search condition (PC §1546.1(c)(10)), or the client specifically consents to the device's search (PC §1546.1(c)(4)).

Search and Seizure Guidelines

1. **Safety Equipment:** Officers must always have their badge and Department ID on hand, and must wear puncture-resistant gloves whenever possible. For any search in the field, each officer must also have required field gear per Safety and Field Equipment Policy 3.04.03.
2. **Person Searches:** The officer who searches the client's person should wear puncture-resistant gloves and should be of the same gender as the client whenever possible. If the client identifies as transgender, officers should ask whether the client prefers to be searched by a male or female officer and should accommodate that preference whenever possible. Officers shall not conduct strip searches under any circumstances.
3. **Residential Searches:** Officers must always exercise due diligence to be familiar with a client's circumstances, home situation, mental health, substance abuse, weapons and other history in order to determine any potential safety risk that a residential contact may pose.
 - a. Residential searches must be pre-planned and case-conferenced with the SPO. Exceptions can be made when cause to search arises unexpectedly and the search can be safely conducted with the number of officers present. SFPD backup must be obtained as needed.
 - b. Officers may search a residence in the client's absence if the client has a warrantless search condition and officers are granted access by an authorized resident of the home or a hotel manager if an APD-managed housing unit.
4. **Conduct and Disruption to Property:** Officers must always demonstrate good judgment and respect for personal property. Disruption to a client's property or residence must be limited to only that which is necessary to complete the search.
5. **Force or Resistance:** Whenever possible, officers must use verbal de-escalation skills to resolve any resistance to a search. Refusal to comply with a warrantless search condition should generally be handled as a technical violation per Rewards and Responses to Client Behavior Policy

Field Assistance Authorization

Requests for field assistance to law enforcement partners require approval as follows:

1. SPO approval if assisting SFPD or SFSD.
2. Division Director approval if assisting any other law enforcement agency.
3. Chief Adult Probation Officer approval for a Special Operation (see Special Operations with Law Enforcement Agencies Policy 3.08.01).
4. Under exigent circumstances, officers may render mutual aid to law enforcement partners without prior approval.

Note: Department staff are prohibited from assisting Immigration and Customs Enforcement (ICE) to enforce civil immigration laws, including any investigation, detention, or arrest. See Immigrant Clients and Compliance with the Sanctuary Ordinance Policy 3.06.01.

5.02.04. Reasonable force may be used to effect a search if necessary for officer, client, or public safety.

6. **Scope:** Searches must stay within the appropriate scope, which will depend on the search authority. The scope of a warrantless search condition includes the entire residence if the client lives alone. If there are co-residents, the search is limited to rooms that the officer reasonably believes are controlled solely by the client or jointly with another person; rooms under the exclusive control of third parties cannot be searched under the search condition.^{vii}
7. **Reasonableness:** All searches must be reasonable. The reasonableness depends on the circumstances and authority to search. In particular, searches pursuant to a warrantless search condition could be unreasonable if made too often; if at an unreasonable hour; if conducted after a series of recent unproductive searches and there is no reason to believe the next search will be fruitful; if unreasonably prolonged, destructive, or unnecessarily intrusive; or for other factors that illustrate arbitrary, capricious, or harassing conduct.^{viii}
8. **Children:** Children can experience trauma when witnessing their home or loved ones being searched. In line with the Department's family-focused approaches, officers must make all efforts to minimize trauma to children during searches and to avoid conducting searches in the presence of children when possible. See below for specific steps.
9. **Managing Third Parties:** Officers may detain and/or conduct Terry searches on third parties in the course of a probation search if the officer has reasonable suspicion, based on specific articulable facts, that the person has a weapon or presents an immediate safety risk. However, non-residents should not be detained for the duration of the search unless specific, articulable facts connect them to criminal activity on the premises or if they would present danger to officers if released.^{ix}
10. **Assisting Partner Agencies:** With proper authorization (see text box), officers may assist law enforcement partners to conduct searches. Note that police officers have the authority to conduct probation searches without probation assistance or permission. However, staff should advise police officers about the scope of the warrantless search condition.
11. **Seizure:** Officers may exercise their discretion to seize contraband that is in the officer's plain view or identified during the course of a properly conducted search when safe to do so. Upon finding evidence that may be presented in Court, regarding either a new crime or a technical violation, officers must request that police respond and seize the evidence. Officers may only handle the evidence in extraordinary circumstances, such as to remove a weapon from an arrestee's person or if officer safety will be at immediate risk while waiting for SFPD response. If evidence is potentially dangerous (such as a methamphetamine lab or explosives), officers must

get to safety and request SFPD response. If safe to do so, officers may also encourage or assist occupants to exit the building. DPOs must consult an SPO if unsure how or whether to handle a specific item.

III. Procedures – Search

Pre-Planning Residential Searches Pursuant to a Warrantless Search Condition

Pre-planning steps include:

1. Verify the warrantless search condition.
2. Run local and state record checks (including QCA, QRAP, QALL, QHY, QN, and QW) to ensure the officer has updated information and that the client is not already in custody.
3. Verify that it is reasonable to believe that the client lives at the search location, at least temporarily.^x A motel room can constitute a residence if the client has legal and controlled access to the room.^{xi}
4. Determine the client's history of violence, weapons, mental health issues, substance abuse, etc.
5. Whenever possible, identify the layout of the residence, including exits.
6. Attempt to determine whether anyone who is likely to be at the search location poses a safety issue. If any third parties are known to be Department clients or on parole, attempt to notify the assigned DPO or parole agent of the intended search and coordinate or share information as appropriate.
7. Ensure that necessary field safety equipment and property envelopes/forms are on hand.
8. For field searches, complete a Field Plan APD-77 and provide the SPO/covering SPO with a copy. The team can complete one Field Plan, but must submit copies to each SPO if from separate Units. See also Field Safety Policy 3.08.04.
9. Case conference with the SPO. SPO approval is required to proceed.
10. Obtain any additional assistance needed, including SFPD assistance when necessary. Consider the team's ability to communicate effectively with limited English-language speaking clients or co-residents.
 - Brief assisting officers on the above information.
 - Determine who will be the lead officer and direct all search activities at the scene.

Children and Searches

Children can experience trauma when witnessing their home or a loved one being searched. In line with APD's family-focused approaches, officers must take basic – yet important – steps to minimize trauma to children during searches.

Person Searches

A person search may be authorized either when there is a warrantless search condition, the person consents, incident to an arrest, or if the officer has reasonable suspicion that the person may possess a weapon.

- Determine who will conduct a protective sweep of the residence, monitor subjects within the residence, and serve as the “finder” and “recorder.” Finders shall locate and describe evidence/contraband and recorders shall carefully document a description of each item, where it is found, and how it is secured (e.g., placed in a property envelope).

Conducting a Person, Property, Vehicle, or Residential Search

1. Ensure authority to search, depending on the circumstances (e.g., verify the warrantless search condition, obtain written consent, determine that there is reasonable suspicion that the person may possess a weapon, etc.).
2. Use effective communication, including motivational interviewing skills, to facilitate compliance and minimize impact to the officer-client relationship. Officers shall do the following when possible:
 - Briefly explain the purpose and scope of the intended search.
 - Prior to a person search, ask whether the client has any sharp objects in his or her pockets. This is preferable to asking general or investigatory questions such as “what is in your pocket,” which may elicit an incriminating response.

Note: For *Miranda* purposes, a client is in custody during a probation search because the client is not free to leave and may be the subject of the search.^{xii} As a result, officers shall use caution when asking questions that may illicit an incriminating response without first issuing a *Miranda* warning. The client’s statements may be admissible for a probation violation but may not be admissible in a new criminal proceeding.^{xiii} See Advisement of *Miranda* Rights Policy 3.08.03.

3. For residential searches pursuant to a warrantless search condition, officers must adhere to all field safety standards. The lead officer will ensure that the following steps are taken:
 - Notify SFPD dispatch via radio upon arriving at and when leaving the location.
 - Double check arrival at the correct address before approaching the building.
 - Before officers enter under the authority of a search warrant, arrest warrant, or warrantless search condition, officers must knock and announce their presence and purpose. Officers may enter the residence if the client refuses or does not respond after a reasonable amount of time, and the officers believe the client is inside;^{xiv} most Courts require a minimum 10-20 second wait.^{xv} The level of force must be reasonable

to the circumstances, and officers must have an articulable reason that immediate entry is necessary.

- Ask if there are any animals or other people on the premises.
 - Make a protective sweep of the common areas and areas in which the client has exclusive or joint control. The protective sweep can extend to other areas of the residence, such as a third party's bedroom, only if there is reasonable suspicion, based on specific articulable facts, which would warrant a reasonable officer to suspect that there may be a person on the premises who poses a danger to officers or others.^{xvi}
 - The client may be handcuffed for the duration of the search when circumstances warrant it for safety purposes. Refer to Handcuffing Policy 3.08.05 for guidelines.
 - As stated above, a non-client third party may be Terry searched or handcuffed if the officer has reasonable suspicion, based on specific articulable facts, that the person presents an immediate safety risk.^{xvii}
4. If a child is present, make every effort to conduct the search in a manner that minimizes trauma to the child.
 5. If the client is uncooperative, the officer must handle the matter reasonably and in accordance with Use of Force Policy 3.02.01.
 6. If the officer believes he or she has identified evidence of criminal activity by a third party (including a juvenile), the officer shall immediately call for SFPD response and may not ask incriminating questions in the meantime.
 7. If at any point the officer believes that he or she has identified evidence that the client has committed a new crime, the officer shall either read the client his or her *Miranda* rights prior to proceeding with questioning, or stop questioning and allow the police to proceed with the matter. Any *Miranda* violations may result in evidence being inadmissible in Court. See Advisement of *Miranda* Rights Policy 3.08.02.
 8. If exposed to any hazards – such as a needle prick, potential communicable disease, or dangerous chemicals – officers should immediately notify the SPO and seek medical attention as needed.

IV. Procedures – Seizure

Evidence or Contraband that May be Presented in Court

Upon finding physical evidence that may be presented in Court, either regarding a new crime or a technical violation, officers must request SFPD response and allow SFPD to process and take possession of the evidence. Officers may detain the client while waiting for SFPD response.

To ensure chain of custody, officers may not handle evidence/contraband that may be presented in Court except in extraordinary circumstances, such as:

- To remove a weapon from an arrestee's person.
- If officer safety will be at immediate risk while waiting for SFPD response. Officers must meticulously document the details of the seizure on a property receipt and designate one officer to take possession of items and bring them to the nearest SFPD district station.

Contraband that Will Not be Presented in Court

For contraband that will not be presented in Court:

1. The recorder shall document each item seized on a property receipt (APD-31) or stabilization housing room check form, if applicable. Provide the client with a copy and place the other in the client's file.
2. One officer shall fill out a property envelope and place the contraband in the envelope; if too large, secure the envelope to the item.
3. One officer shall take possession of the contraband and bring it to Southern Station or the nearest district station for processing. Obtain a receipt or copy of the property log (to be retained in the client's file) and an incident report number from SFPD. If the officer at the station does not want to take the contraband, request to see a sergeant.

Follow-Up and Documentation

1. If resistance, force, injury, or other issues arise during the course of a residential search, the lead officer shall coordinate debriefing with the SPO and Department search team. The SPO shall follow up as appropriate if significant training or procedural issues are identified.
2. Per Incident Reports Policy 3.02.04, the primary reporter shall file a Department Incident Report APD-233A within one business day of each person, property, residence, or vehicle search or seizure, with the exception of standard security screenings during home visits, at the Community Service and Assessment Center (CASC), or at the Bayview office which do not result in seizure. Note whether the client was cooperative.
 - If any items were seized or an issue arose (such as force, resistance, injury), all involved officers must submit a Supplemental Incident Report APD-233B to the lead officer's SPO within one business day. If force is used, refer to Use of Force Policy 3.02.01.
3. Place a copy of the property receipt and/or SFPD receipt in the client's file.

4. The lead officer shall document details of the search and/or seizure in the Department's case management system, including:
 - Reason and legal authority.
 - Date, time, and location.
 - Evidence or contraband seized, what agency seized it, and its disposal or storage.
 - Lab results from seized items, if applicable.
 - The Department Incident Report number.
 - The SFPD Incident Report number, if applicable.
 - If a transgender client, document whether the client prefers to be searched by a male or female officer.

Compliance

The Department strives to adequately train all staff in order to ensure that staff are successful in carrying out their duties in a manner consistent with all federal, state, and local laws and all policies of the Department and the City and County of San Francisco. Violation of this policy will be reviewed on a case by case basis, but may result in discipline, up to and including termination, in accordance with appropriate progressive discipline policies and collective bargaining agreements.

ⁱ *Terry v. Ohio* (1968) 392 U.S. 1; *People v. Lee* (1987) 194 Cal.App. 3d 975; *People v. Thurman* (1989) 209 Cal.App. 3d 817

ⁱⁱ *Harris v. U.S.* (1968) 390 U.S. 234; *Coolidge v. New Hampshire* (1971) 403 U.S. 443; *U.S. v. Giannetta* (1990) 909 F.2d 571

ⁱⁱⁱ *U.S. v. Martin* (1950) 183 F.2d 436; *Chimel v. California* (1969) 395 U.S. 752; *U.S. v. Workman* (1978) 585 F.2d 1205; *Illinois v. LaFayette* (1983) 462 U.S. 640

^{iv} *Schneekloth v. Bustamonte* (1973) 412 U.S. 227

^v *Pace v. U.S.* (1990) 893 F.2d 1103

^{vi} *Riley v. California* (2014) 573 U.S. 783; *U.S. v. Lara*, No. 14-50120 (9th Cir. 2016)

^{vii} *People v. Woods* (1999) 21 Cal.4th 668

^{viii} *Griffin v. Wisconsin* (1987) 483 U.S. 868; *In re: Anthony S.* (1992) 4 Cal.App. 4th 1000; *People v. Reyes* (1998) 19 Cal.4th 229

^{ix} *People v. Thurman* (1989) 209 Cal.App. 3d 817; *People v. Glaser* (1995) 11 Cal.4th 354; *People v. Matelski* (2000) 82 Cal.App. 4th 837; *Muehler v. Mena* (2005) 544 U.S. 93; *Sanchez v. Canales* (2009) 574 F.3d 1169; *People v. Rios* (2011) 193 Cal.App.4th 584.

^x *People v. Mason* (1971) 5 Cal.3d 759; *People v. Biddinger* (1996) 49 Cal.Rptr. 2d 91; *People v. Downey* (2011) 198 Cal.App.4th 652

^{xi} *U.S. v. Franklin* (2010) 603 F.3d 652

^{xii} *People v. Wilson* (1968) 268 CA 2d 581; *People v. Farris* (1981) 120 Cal.App 3d 151.

^{xiii} *People v. Cressy* (1996) 47 Cal.App.4th 981

^{xiv} *People v. Rosales* (1968) 68 Cal.2d 299; PC 844

^{xv} *U.S. v. Allende* (1973) 486 F.2d 1351 (9th Cir.)

^{xvi} *Maryland v. Buie* (1990) 494 U.S. 325; *People v. Ledesma* (2003) 106 Cal.App.4th 857

^{xvii} *People v. Thurman* (1989) 209 Cal.App. 3d 817; *Muehler v. Mena* (2005) 544 U.S. 93; *Sanchez v. Canales* (2009) 574 F.3d 1169