

## **SEARCH AND SEIZURE**

### **AUTHORITY**

#### **California Code Section(s):**

Welfare and Institutions Code (WIC) Sections 625 and 727  
Penal Code (PC) Sections 833, 1203, and 3453(f)

#### **Related Probation Officer Procedures:**

C12 Release of Property in Evidence  
E3 Arrest of Juveniles and Adults  
F2 Continuum of Force  
F8 Arming: Use of Firearms  
G1 Case Supervision Assignment and Initial Contact  
G2 Caseload Supervision Levels

### **INTRODUCTION**

Allowing warrantless search, as well as seizure of illegal or prohibited items, is often a condition of probation or community supervision. Searches conducted as a condition of supervision do not have to meet the test of “probable cause” required to obtain a search warrant. Further, prior to conducting a search, a probation officer shall verify the offender has a condition allowing search and seizure. The probation officer shall also understand the limitations, if any, of the search and seizure condition, including items that may be seized and locations that can be searched.

When searching, a probation officer may seize illegal items, or items that were specifically prohibited by Court order or other applicable law, located during the search. These items are then booked into evidence and/or disposed at the EDSO Property Section, as described further in this procedure.

As soon as possible after a search occurs, the probation officer shall complete the “Contact Event” in PRIORS documenting the circumstances of the contact, search, and the disposition of all evidence seized in the search.

### **SAFETY**

The safety of probation officers and all persons present is the primary concern at all times during any type of search. If at any time a probation officer believes the initiation or completion of a search will jeopardize the officer’s safety or the safety of others, the probation officer shall not initiate or shall terminate the search immediately. All situations call for a probation officer to use discretion and professional judgment.

### **TYPES OF SEARCHES**

There are three types of searches, as discussed in this procedure:

1. A formal search of an offender’s property is a complete search which consists of thoroughly searching an offender’s property. This type of search may progress into a tense or stressful situation for the offender and the probation officer; therefore, safety of all parties involved is of utmost concern. All formal searches of an offender’s property shall be conducted by at least two probation officers or one probation officer with law enforcement assistance. If the offender is unknown to the probation officer or viewed as a potential problem, the probation officer may request law enforcement assistance.

2. A  cursory search of an offender's property  may include basic search tactics such as observing the offender's bedroom, opening dresser drawers, looking in a closet, etc., but is not a formal search. Further, a probation officer may conduct a cursory search while working alone if safe to do so. If a probation officer working alone observes contraband and believes assistance is necessary, the probation officer shall leave the scene and seek follow-up assistance. If the offender is compliant, a probation officer can seize the contraband before seeking assistance.
3. A  search of an offender's person  can occur at any time and for any reason, including officer safety, depending on the situation. A probation officer may conduct a search of an offender's person while working alone if safe to do so.

### AUTHORIZATION TO SEARCH

It is the policy of the Probation Department that officers occupying the positions of Deputy Probation Officer II, Senior Deputy Probation Officer, Supervising Deputy Probation Officer, Deputy Chief Probation Officer, Assistant Chief Probation Officer and Chief Probation Officer, who have successfully completed Arrest, Search & Seizure training pursuant to §832 PC and Probation Officer CORE training, are authorized to search pursuant to these procedures. The above officers are authorized to conduct a search of an offender's person when necessary. However, supervisory consultation and approval regarding a formal search of property prior to the actual search is always preferred and should occur when possible, but is not mandatory for the positions listed above when the need for a search develops suddenly during regular business hours, or the search occurs during non-business hours. The supervisor shall be notified as soon as possible by the probation officer during business hours after a formal search of property has taken place.

Officers occupying the position of Deputy Probation Officer I are authorized to conduct a cursory search of property or a search of an offender's person pursuant to these procedures after successful completion of Arrest, Search & Seizure training pursuant to §832 PC. However, a DPO I must obtain prior supervisory approval to conduct a formal search of property, under the guidance and in the presence of a higher ranking officer. If a formal search becomes necessary during a situation with an offender, the DPO I shall contact the supervisor, in person or by telephone, of the location and circumstances. If the probation officer cannot contact his/her supervisor, the officer shall attempt any other available supervisor.

For training purposes, prior to successful completion of Arrest, Search & Seizure training pursuant to §832 PC, a DPO I may only conduct and/or assist in any search under the guidance and in the presence of a higher ranking officer, with supervisory approval.

### GENERAL PROCEDURES

When conducting a search, these general procedures shall be followed:

- Residences with no response will not be entered, except for emergency situations and with prior approval from the supervisor, if possible.
- If armed law enforcement officers are securing a residence, a probation officer shall remain out of the "line of fire" in safe proximity to the residence. A probation officer can enter the residence, but the probation officer must follow after all law enforcement officers have entered. Probation officers are trained for defensive purposes only, not to take the lead role in tactical operations, i.e. securing residences, etc.

- Generally, it is good practice to inform an offender of the intent to search when appropriate, i.e., when the scene is safe, when case management needs have been discussed, etc. One probation officer (or law enforcement officer) shall direct and ensure the offender remains in a safe area of the residence, while the second probation officer (or law enforcement officer) conducts the search. The probation officer observing the offender shall attempt to keep the offender calm and compliant. If the offender becomes agitated or non-compliant, the probation officer may choose to secure the offender in handcuffs, for the safety of the offender and of all officers; the offender shall only remain in handcuffs as long as necessary to complete the search and ensure the offender is exhibiting safe behavior. The probation officer shall use discretion and professional judgment in dealing with each situation, as stated above, as safety of all involved is the primary concern.
- A probation officer shall not “sniff, taste or otherwise ingest” any substance seized in a search for the purpose of identification. The container/package of substance (including residue) may be submitted to EDSO for lab analysis.
- Extreme caution is appropriate in any search situation. As some areas are difficult to see prior to searching, all areas shall be searched cautiously, avoiding running fingers in unseen areas. Latex/vinyl or safety gloves are recommended when searching.
- Intentional property damage during a search is prohibited.

#### FORMAL SEARCHES WITH LAW ENFORCEMENT

Law enforcement officers sometimes inquire about an offender’s conditions of search and seizure, either by contacting the probation officer during business hours, or a Juvenile Detention Facility (JDF) after business hours. When law enforcement officers solicit probation officer assistance for conducting a search of an offender’s property, the probation officer shall ascertain the circumstances that led the officer to want to search the offender’s property. Further, in a formal search of an offender’s property involving law enforcement officers when the probation officer is present, the probation officer must maintain control of the search at all times and discuss the parameters of the search with the officers.

If the information provided by the law enforcement officer to the probation officer is questionable, the probation officer may decline to be involved; if this occurs, the probation officer should make it clear to the law enforcement officer(s) that should they search anyway, it is not a probation-authorized formal search. Questionable reasons presented should be discussed with the supervisor.

#### SEIZURE OF EVIDENCE

If an item is seized, the probation officer must issue an El Dorado County Probation Department Field Property Receipt (form #4) to the offender, listing all items seized. The original Property Receipt shall be retained and attached to the completed incident report, whichever is appropriate: the Probable Cause and Probation Violation Incident Report (form #256), the Mandatory Community Supervision Violation Incident Report (form #339), or the Post Release Community Supervision Incident Report (form #340). In the appropriate incident report, the probation officer shall include the date and time the evidence was booked into the EDSO Property Section, for the purposes of the record of chain of custody. Further, the offender shall be issued the copy of form #4.

Item(s) seized shall be handled by one of the following options:

- If the item(s) are seized for evidence and completing a violation of probation/supervision is the intent, the items(s) are booked into the EDSO Property Section.

- If the item(s) are seized for destruction and are not intended as the basis of a violation, the item(s) are booked into the EDSO Property Section. An example would be a pocket knife or razor blade.
- If the item(s) are seized for destruction and may or may not be used as the basis for a violation, the item(s) can be disposed of informally by the probation officer without booking into EDSO. The probation officer must first take a picture of the item(s) and clearly indicate how the item(s) was disposed of, or destroyed, in the appropriate incident report. For example, if a probation officer locates full, unopened beer cans in a minor's bedroom, the beer cans are confiscated and the offender is provided a copy of form #4. The beer cans are transported to the probation office and photographed. The contents are emptied and the empty beer cans are disposed of in the trash. The appropriate incident report is completed, and a picture of the item(s) seized and the original Property Receipt are attached.

The exception to the above options is syringes; a syringe can be booked for evidence, but cannot be booked for destruction. If booking a syringe for evidentiary purposes, the probation officer shall place the syringe in a "syringe container" at the EDSO Property Section and then book the syringe container. However, if a probation officer is booking a syringe for destruction, the probation officer takes a photograph of the syringe and attaches the photograph to the appropriate incident report. This information shall be discussed in the EDSO online report; the completion process of the online report is described below. The probation officer then disposes of the syringe in the "sharps" container at the EDSO Property Section.

If an item is seized and is not booked for evidentiary purposes or for destruction, then the item shall be returned to the offender. A probation officer shall not keep any seized item for personal or professional use, nor as a "trophy." If a probation officer believes it appropriate to keep a seized item for professional use, such as a training prop, the probation officer shall discuss the item with his/her supervisor.

### EVIDENCE BOOKING PROCESS

After a search where evidence was seized and must be booked into the EDSO Property Section, the probation officer shall contact the EDSO Dispatch Center to request a case number. The probation officer shall:

- advise the dispatcher that the purpose of obtaining a case number is to book evidence,
- provide his/her name, as well as the Probation Department as the agency name, and
- provide the location where the evidence was seized, and the name(s) of the offender(s) involved.

Once the case number is obtained, the probation officer shall complete the EDSO online report. The online report can be accessed at <http://www.edcgov.us/sheriff/>. To complete the online report, the probation officer shall complete the following steps:

1. Select the "File an Online Report" under the "Online Services" Menu.
2. Scroll to the bottom of the page to select the button named "Law Enforcement Only."
3. The system will then ask for a "password" which is "evidence;" enter "evidence" and select the button named "Submit."
4. After the blank report has loaded, complete all required and relevant fields related to the evidence seizure. In the "Description of Crime" area of the form, the probation officer must write a brief reason explaining why the evidence is being booked, for example:

“While conducting a probation search of the offender’s residence, the following items were seized,” or “The following items were seized from the offender and are being booked for destruction.” It is necessary to submit a report for each offender involved in the seizure; however, the same EDSO case number must be used for a single event.

5. Check the document for spelling, grammar, and typographical errors before proceeding to the next task in this section.
6. Print two copies of the form; one copy shall be attached to the appropriate incident report, and one copy shall be submitted with the evidence being booked. The probation officer must print all copies of the online report before final submission; once the online report is submitted, there is no way of printing any copies.
7. After ensuring that all information is correct and all necessary copies of the report have been printed, the probation officer shall enter the security prevention “text image” at the bottom of the page and select the “Submit Crime Report” button. This will automatically submit the report to the EDSO Community Service Officer who will complete all documentation needed by EDSO.

On the West Slope, all evidence seized shall be booked by the probation officer in the EDSO Property Section between 8:00 a.m. and 5:00 p.m. If evidence is seized outside of these hours, and upon supervisor approval, the evidence shall be stored in the approved storage area in the office. During the next business day, the evidence shall be booked as soon as possible into the EDSO Property Section. The probation officer shall:

1. Package all evidence pursuant to the most updated EDSO instructions, which are posted in the EDSO Property Section.
2. Place all appropriately packaged evidence in a secured storage locker in the EDSO Property Section with a copy of the online report.
3. Place the key to the storage locker in the appropriate receptacle in the EDSO Property Section.

In South Lake Tahoe, after completing the online report, the probation officer shall contact the EDSO Dispatch Center so arrangements can be made for a deputy sheriff to meet the probation officer at the EDSO Property Section; this is necessary because there is no staff member on-duty at the EDSO Property Section to assist a probation officer with evidence booking. The probation officer shall provide the deputy sheriff with a copy of the online report, who will assist in completing the booking process.

#### DISPOSITION OF PROPERTY

When property seized in a search by the probation officer is booked into the EDSO Property Section but is not used for prosecution, the property shall be released or destroyed as authorized by the probation officer. It is the responsibility of the probation officer to complete an Authorization for Booked Juvenile Property form (#3) and submit to the EDSO Property Section, specifying the release or destruction of the property, when addressing property seized from juvenile offenders. For property seized from adult offenders that is to be released or destroyed, the probation officer shall complete the Authorization to Release Evidence to EDSO form (#5).