

 <p>KENTUCKY CORRECTIONS Policies and Procedures</p>	Policy Number	Total Pages
	Date Filed	Effective Date
Authority/References	Subject	
KRS 16.220, 196.030, 196.035, 196.070 196.075, 218A.500, 237.090, 431.005, 439.348, 439.430, 439.470, 439.480, 500.080, 500.090, 533.050, 533.060 P&P ACA 3B-11, 3C-01	SEARCH, SEIZURE, AND PROCESSING OF EVIDENCE	
	27-16-01	10
	August 11, 2015	October 2, 2015

I. DEFINITIONS

“Chain of custody” means documentation of the movement and location of evidence from the time it reaches the officer’s custody until the time it is offered as evidence, or the knowledge or record of each person who has come into possession of a physical object from the time it is discovered until it is presented in a hearing.

“Contraband” means an article or thing that an offender under the jurisdiction of Probation or Parole is prohibited from obtaining, possessing, or exercising control over, either by statute, departmental policy and procedure, or special condition set by the releasing authority or special instruction of the officer.

“Dangerous instrument” is defined in KRS 500.080(3).

“Deadly weapon” is defined in KRS 500.080(4).

“Drug paraphernalia” is defined in KRS 218A.500(1).

“Reasonable suspicion” means a less stringent standard than probable cause, which requires that the authority acting be able to point to specific and articulable facts that, taken together with rational inferences from those facts, reasonably warrant a belief that a condition of probation or parole has been or is being violated.

“Search warrant” means an order signed by a judge or his designee, directing a law enforcement officer to conduct a search of a designated object, place or person, for the purpose of seizing designated property or kinds of property.

II. POLICY and PROCEDURE

A. An offender shall be subject to a search of his person, residence, or any other property under his control. The basis for any search shall be consent, a search

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warrant, or reasonable suspicion that the search will produce evidence of a violation of the offender's conditions of supervision. (3B-11)

- B. Any evidence confiscated from an offender shall be properly secured and the chain of custody shall be fully documented. (3C-01)
- C. If an officer conducts a warrantless search, a consent search, or a search pursuant to a warrant, he shall file an approved supervision report.
- D. Search Without Consent
 - 1. If an officer has reasonable suspicion to believe that an offender is in possession of contraband or in violation of the conditions of his supervision, the officer may conduct an investigation and search to validate the suspicion or information received. Each case shall be discussed with the District Supervisor or designee, if possible, before any action is taken by the officer and the purpose of the search articulated.
 - 2. Warrantless Search
 - a. If reasonable suspicion exists to believe that an offender is violating a condition of supervision or the officer has possession of evidence of a violation of the terms and conditions of his supervision, an officer may search without a warrant.
 - b. If exigent or emergency circumstances exist, an officer may search without a warrant. Exigent circumstances shall include the following:
 - (1) If delay may endanger the life of the officer or the lives of others;
 - (2) If there is a likelihood that the offender will escape if not swiftly apprehended;
 - (3) To prevent the imminent destruction of evidence; and
 - (4) When officers are in hot pursuit of a fleeing felon.
- E. Consent Search
 - 1. If an offender under the jurisdiction of the Department of Corrections gives his consent to the officer to search his property or person, it shall be considered a lawful and reasonable search if the consent is freely and

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voluntarily given. In these cases, the officer shall have the offender sign a statement giving his consent to the search, when practicable. If the offender refuses to sign the consent and circumstances support a warrantless search, the officer may proceed, but shall note this on a consent document and have that document witnessed by any third party present at the time.

2. Consent may be given to search a residence by a third party who possesses common authority over or other sufficient relationship to the premises or effects sought to be inspected. The scope of the search shall be limited to the area over which the consenting occupant has joint use or control.

F. Warrants

1. If time permits, the officer may obtain a warrant prior to searching an offender's residence or vehicle. In the absence of exigent circumstance or consent, if the search is based on probable cause to believe that a new crime has been committed and not because of reasonable suspicion that a condition of supervision has been violated, a warrant shall be obtained.
2. The officer shall follow the guidelines for obtaining a search warrant as set out in his judicial district.
3. The search warrant shall be executed without unnecessary delay. The officer shall obtain assistance from other Probation and Parole officers or local law enforcement officials. The officer shall not execute a search warrant alone.
4. If a search warrant is obtained, upon arrival at the designated location, the officer shall knock on the door, identify himself, state his purpose, and await refusal or silence before forcing entry into the premises. The officer shall show the occupants a copy of the search warrant if possible. A copy of the warrant and accompanying affidavits shall be present, prior to the search being conducted.

G. Pat Down Frisk

The officer may frisk an offender if there is reasonable suspicion to believe that the offender is concealing contraband on or about his person or where the officer has reason to believe the suspect is armed and dangerous.

H. Conducting the Search

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1. The officer shall be accompanied by another Probation and Parole officer or a local law enforcement official for the purpose of conducting the search of an offender's residence, auto, or other property.
2. The search shall be conducted in a reasonable manner.
3. Only those areas occupied solely by the offender and those areas of common habitation may be searched.
4. If the offender is not the sole occupant of the residence or owner of the vehicle or other property, an effort shall be made to determine ownership before any property is removed.

I. Plain View Doctrine

Any object falling in plain view of an officer, who has the authority to be in a position to have that view, may be seized and used as evidence. The plain view doctrine may be applied to anything that an officer becomes aware of by use of his five senses while in a lawful position.

J. Evidence

1. Probation and Parole Officer's Immediate Responsibility
 - a. Any evidence of a new crime shall be collected and processed by local law enforcement or the Kentucky State Police.
 - b. If the items confiscated will only be used as proof of a violation of the conditions of supervision and not as fruits of a new crime, the items may be secured in the local Probation and Parole office with designated evidence security and with the proper documentation attached. If the evidence is confiscated at a time other than normal working hours, when the evidence custodian or a supervisor is unavailable, the officer may maintain the evidence in his custody until the evidence can be secured. (3C-01)
 - c. All monies confiscated under subparagraph b. shall be transported to the Department of Corrections Central Office for safe keeping no later than the first business day following confiscation.
 - d. Any firearm confiscated under subparagraph b. shall be stored in a state that renders it safe and not readily usable, while in the custody of Probation and Parole.

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- (1) All confiscated firearms shall be unloaded and all ammunition removed at the time of collection. Staff shall obtain assistance from a supervisor or designee if they are unfamiliar with the unloading procedures for the firearm.
 - (2) If the firearm has an external hammer then a nylon zip tie shall be placed on the firearm in a manner that shall prevent the firearm from being cocked. The nylon zip tie shall be cinched tight.
 - (3) If the firearm is a semi-automatic, the slide shall be removed from the weapon, if feasible. Then a nylon zip tie shall be placed through the magazine well of the weapon and secured. If the slide cannot be removed, the nylon zip tie shall be placed through the magazine well and the ejection port. The nylon zip tie shall be cinched tight and the slide shall be allowed to move forward.
 - (4) If the firearm is a revolver, the nylon zip tie shall be placed through the empty chamber in the cylinder and cinched tight.
- e. Any ammunition and magazines confiscated under subparagraph b. shall be collected and stored separately from any firearm.
 - f. Any edged weapon shall be stored in a manner to render it safe. A plastic tube may be utilized to contain the weapon or a piece of cardboard secured to the blade with nylon zip ties may be utilized to render the edge weapon safe.
 - g. A needle, syringe, or sharp instrument shall be stored in a safe manner. A plastic tube or non-penetrable container shall be used to contain a sharp instrument.
2. District Supervisor's Responsibilities
- a. The District Supervisor shall maintain an evidence binder. The evidence binder shall contain:
 - (1) A copy of each active chain of custody document at the time it was placed in the evidence locker. Any supporting documentation shall be attached to the chain of custody document.

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- (2) All final copies of the chain of custody document including any supporting documentation.
 - (3) Copy of any court order authorizing destruction or return of evidence.
 - (4) Documentation showing any return of property to a third party or destruction of evidence.
 - (5) Documentation of all inventories of the evidence locker and a section to maintain completed pages from the evidence log.
- b. The District Supervisor or designee shall be the evidence custodian and shall possess the key to the secured evidence.
- (1) The loss of a key to the evidence security area shall be reported immediately to the Director of the Division of Probation and Parole through the regional Branch Manager. The loss and reporting of the missing key shall be documented via a memorandum to the Director of the Division of Probation and Parole through the regional Branch Manager.
 - (2) The loss of a key shall necessitate an immediate replacement of the evidence locker's lock and key.
 - (3) A staff member who is assigned a key to the secured evidence area may be required to testify in Court that the key to the evidence remained in their possession at all times and to their knowledge, no other individual had access to the secured evidence.

3. Marking Evidence for Identification

- a. If possible, a confiscated item shall be placed in an envelope or bag prior to transporting to the designated evidence custodian or supervisor. If property is confiscated, a chain of custody document shall be used. A separate chain of custody document shall be used for each envelope, bag, or piece of evidence.
- b. When using a bag to store evidence, a clear plastic bag shall be preferable but a non-clear plastic bag or brown paper bag shall also be acceptable if a clear plastic bag is not available.

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c. The following information shall be listed on the document for identification purposes:

(1) Firearm

List caliber, brand, type, barrel length, finish, model number, serial number, and the number of detachable magazines that are with the firearm.

(2) Ammunition

List caliber, brand, and number of rounds.

(3) Weapon (Other than Firearm)

List the type, brand name, size, color, and serial number, if applicable.

(4) Drugs and Medications

List the type and amount and specify if pill or liquid form.

(5) Alcoholic Beverages

List the number of containers, container type, size, brand, and alcohol content. Indicate whether the seal is broken on the container.

(6) Other Types of Property and Evidence

List type of item, brand name, color, size, model, and serial number, if applicable, and brief description of the evidence.

(7) Money

The total amount shall be noted. The denominations, serial numbers, particular number of bills or coins, and any distinguishing characteristics like tears, discoloration, or marks shall be indicated. All monies shall be photocopied with a copy filed in the evidence binder maintained by the District Supervisor.

4. Removal or Examination of the Evidence from the Secured Location

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- a. All evidence stored at a Probation and Parole office shall be maintained by the evidence custodian or supervisor on an evidence log so as to have a contemporaneous inventory of all evidence held. All activities involving any piece of evidence shall also be recorded on that log. The log shall be maintained in direct proximity to the secured evidence area.
- b. Kentucky State Police Lab Examination
 - (1) If the evidence requires examination by the Kentucky State Police Lab, a designated officer shall:
 - (a) Personally transport the evidence to the crime lab;
 - (b) If feasible, upon approval of the District Supervisor or designee, coordinate the transportation of evidence with another law enforcement agency; or
 - (c) Send the evidence through the U.S. Mail by certified mail.
 - (2) A receipt of verification shall be maintained with the evidence log sheet.
 - (3) The original examination result document shall, following receipt from the Kentucky State Police Lab, be filed with the evidence in the secured location. One (1) copy shall be maintained in the District Supervisor's evidence binder, one (1) copy shall be maintained with the evidence log and one (1) copy shall be maintained in the case record.
- c. Examination or Removal of Evidence:
 - (1) If the evidence is viewed, examined, or taken from the secured area, for a specific legitimate purpose, there shall be two (2) persons present when the locker is opened.
 - (2) If the item is removed from the secured area for court or a hearing, the appropriate portion of the chain of custody document shall be completed. The officer removing the evidence shall take responsibility for the item.

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(3) If the evidence is removed for the purpose of administration, court, or examination, the evidence shall be promptly returned to the secured area and the date and time of return shall be noted on the evidence envelope.

d. If evidence is released to the custody or control of another authorized person, he shall sign the evidence out on the chain of custody section, including date and time obtained, for accountability.

5. Disposal of Evidence

a. Time Tables

(1) If the evidence, except a firearm, is seized by an officer from an offender and the evidence is not used for a revocation procedure, the evidence shall be disposed of within thirty (30) days of confiscation.

(2) Evidence that is used in revocation proceedings may be disposed of one (1) year from the date of final disposition of the case involving the evidence.

b. Method of Disposal

(1) Evidence may be disposed of in accordance with a court order.

(a) Property forfeited to the Division for use shall be added to the Division inventory and placed at the discretion of the Director or his designee.

(b) Monies forfeited to the Division shall be deposited and spent at the discretion of the Director or his designee for purposes of Division administration.

(2) If the court order is not specific regarding the method of disposal, the officer shall consult the District Supervisor or designee before any action is taken. Methods of disposal may include:

(a) Turning the evidence over to the State Police or local law enforcement agency for disposal;

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- (b) Pouring alcoholic beverages down a drain in the presence of two (2) witnesses;
 - (c) Burning at a designated location. The District Supervisor or designee and one (1) witness shall be present if evidence is disposed of in this manner; or
 - (d) Syringes or needles shall be disposed of per medical waste management protocols.
 - (d) If the officer uses a firearm as evidence in a revocation hearing, the firearm shall be transferred to the Kentucky State Police pursuant to the requirements of KRS 16.220, 237.090, and 500.090.
- (3) Methods of disposal, other than those listed above, shall have the prior approval of the Director of the Division of Probation and Parole or his designee.
 - (4) If evidence is ordered sold by the court, it shall be done in accordance with Corrections Policies and Procedures regarding disposal of Surplus Property (CPP 2.10).
 - (5) The District Supervisor or designee shall inventory evidence in a secure area on a semi-annual basis to ensure disposal according to timetables outlined. The inventory shall be documented by a memorandum to the regional Branch Manager. A copy of this inventory shall be maintained in the District Supervisor's evidence binder.
6. Proof of Ownership or Return to a Third Party
- a. Evidence that is not contraband, and is seized by an officer during a search, shall be returned to its lawful owner if proper proof of ownership is established.
 - b. If a media device is confiscated which contains explicit images or audio which is considered contraband or is in violation of special conditions of supervision, it shall be erased prior to return.
 - c. If a firearm is confiscated during a search of an offender's residence, and others reside there, a co-tenant may prove ownership and take possession of the firearm. The firearm shall be released to the firearm's owner with a nylon zip tie placed on the

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firearm in a manner that continues to render it safe and inoperable at the time of the exchange.

- d. Prior to releasing any evidence to a third party, the releasing authority or District Supervisor or designee shall be advised. A document shall be signed by the third party and witnessed by two (2) employees acknowledging receipt of the item confiscated. The signed document shall be maintained in the case record and in the District Supervisor's evidence binder.