

## Search and Seizure

### 306.1 SEARCH AND SEIZURE 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 Unified Police Department personnel to consider when dealing with search and seizure issues.

### 306.2 SEARCH AND SEIZURE POLICY

It is the policy of the UPD 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.

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.

See UPD Search and Seizure Procedures in the supplemental manual.

### 306.3 SEARCHES

The U.S. Constitution generally provides that a valid warrant is required 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 lawful arrest
- Legitimate community caretaking interests
- Vehicle searches under certain circumstances
- Exigent circumstances

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, and when submitting items to be stored in evidence as allowed by law.

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 their 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.

**306.3.1 PAROLE SEARCHES**

Absent a search warrant or other legal authority an officer may search the residence of a person on parole only after obtaining approval from a parole officer. In other circumstances where an officer stops a parolee and conducts a search of the parolee's person, personal effects or vehicle, the officer shall notify a parole officer as soon as reasonably practicable after conducting the search (UCA 77-23-301(3)(a) and (b)).

Officers shall not request or conduct a parole search for the purpose of harassment (UCA 77-23-301(4)).

**306.3.2 IMAGING SURVEILLANCE DEVICE**

An officer may not operate an imaging surveillance device to obtain information, not otherwise directly observable, about individuals, items, or activities within a closed structure unless (UCA 77-23d-103):

- (a) A warrant has been obtained.
- (b) Testing equipment or training is being performed.
  - 1. Training or testing may not be conducted as part of a criminal investigation or law enforcement activity.
  - 2. Testing or training requires the consent of the individuals imaged and the owners of the property to be imaged.
- (c) Exigent circumstances exist.
- (d) While in fresh pursuit of a person suspected of committing a felony.

**306.4 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) Members will strive to conduct searches with dignity and courtesy.
- (b) Members 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, when practicable.

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- (d) 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 searching officer, a reasonable effort should be made to summon an officer of the same sex as the subject to conduct the search. A transgender person should be searched by an officer of the sex with which they identify. 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.
  - 2. The officer should not search areas of the body covered by tight-fitting clothing, sheer clothing, or clothing that could not reasonably conceal a weapon.

### **306.5 SEARCH AND SEIZURE DOCUMENTATION**

Officers are responsible to document any search 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 any search (e.g., asking for consent or keys)
- What force, if any, was used to execute the search
- Whether an announcement was made prior to or after entry into the premises
- 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
- If the person searched is the opposite sex, any efforts to summon an officer of the same sex as the person being searched should be documented, and should include the identification of any witness officer(s) before proceeding with an opposite sex search.

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.