

	<b>LANE COUNTY SHERIFF'S OFFICE POLICY</b>	Number: <b>G.O. 1.07</b>
		Issue Date: March 21, 2005
		Revision Date:
<b>CHAPTER:</b> Sheriff's Office Role and Authority	Related Policy:	
<b>SUBJECT: Search and Seizure</b>	Related Laws: ORS 131.615 (Stopping of Persons), ORS 131.625 (Frisk of Stopped Persons), ORS 133.525-133.537 (Search and Seizure, Generally), ORS 133.545-133.621 (Search and Seizure, Pursuant to Warrant), ORS 133.623-133.663 (Search and Seizure, Disposition of Things Seized), ORS 133.673-133.703 (Evidentiary Exclusion)	

**POLICY:** This Sheriff's Office will adhere to the laws of search and seizure of persons or property as specifically set forth in the Oregon Revised Statutes and all other State and Federal statutes or case law that may apply.

**RULE:** Members of the Sheriff's Office shall follow all Federal, State, and Local Laws concerning the searching and seizing of any property for evidentiary value. The items for which an officer may legally search and seize are dangerous weapons, fruits of the crime and instruments of the crime, contraband, suspect, additional victims, and physical evidence.

**PROCEDURE:**

I. Execution of Search Warrants

- A. Oregon law provides that a warrant-less search is (per se) unreasonable, unless it falls within a specific exception to the warrant requirement. Therefore, unless a specific exception applies (see Part B), any employee desiring to make a search and seizure should do so only after obtaining a search warrant from the court with proper jurisdiction, after consultation with the Field Supervisor.
- B. If a search pursuant to a warrant is going to be conducted, the Officer should contact the on-call Police Legal Advisor for the District Attorney's Office. Once an affidavit and warrant have been prepared, the Officer must obtain the approval of an Assistant District Attorney before submitting the application to the Judge.

II. Service of Warrant (Refer to ORS 133.575)

- A. Unless exigent circumstances exist, before entering premises the executing Officer shall give appropriate notice of the identity, authority, and purpose of the Officer.
- B. When acting in accordance with a search warrant, a copy of that warrant shall be read and presented to the person who has control of the location to be searched or, if no such person is available, then left in a conspicuous location at the scene of the search. A search warrant shall be executed between 0700 and 2200 hours and within five days from the date of issuance unless otherwise authorized on the face of the warrant.

### III. Seizure of Warrant Items

- A. In the execution of a search warrant, Officers will search for and seize only those items specifically named in the warrant. However, during such lawful search for such named items, Officers may also seize other contraband or evidence of crime they discover while within the scope of a lawful search. Personnel executing a search warrant shall leave a receipt for property seized with the owner of the property or the person who otherwise has control of the property. If no such person is present, the officer shall leave the receipt suitably affixed to the vehicle or premises.
- B. Such items seized as a result of the service of a search warrant shall be submitted to the Property Officer as evidence according to Sheriff's Office policy and procedure (Refer to Section 5.1).

### IV. Return of Service (Refer to ORS 133.615)

Any Officer obtaining a search warrant shall execute that warrant at the earliest convenient time and, in any case, such warrant shall be served and a return of service filed as soon as is reasonably possible and in no event later than the date specified in the warrant unless an extension is granted by the issuing magistrate.

### V. Searches Without Warrants

- A. Officers may search without a warrant if the search is within the guidelines established by the courts and within the policy and procedure of the Sheriff's Office.
- B. Officers are allowed to conduct a search and seize evidence without a warrant in the following circumstances.
  - 1. Legally abandoned property.
  - 2. Lost property, in order to identify the owner.

3. An automobile, if the Officer has probable cause that it contains evidence of a crime, and the vehicle was mobile immediately before the search.
  4. As part of a community care-taking function pursuant to ORS 133.033.
  5. Pursuant to a knowing and voluntary consent.
  6. If the Officer has probable cause to believe the premises contain evidence of a crime, and exigent circumstances exist requiring the Officer to act swiftly to prevent danger to life or serious damage to property, or to forestall a suspect's escape or the destruction of evidence.
  7. Incident to lawful arrest, if necessary to protect the Officer or if it is reasonably related to the crime for which the suspect is arrested.
  8. A lawful inventory conducted pursuant to Sheriff's Office policy.
  9. The evidence is in open view and the Officer is otherwise legally entitled to be on the premises.
  10. In order to make an arrest pursuant to an arrest warrant, if the premises are the suspect's residence and probable cause exists to believe that the suspect is currently there.
- C. "Probable cause" to search means the facts upon which the search is premised must lead a reasonable person to believe that, more likely than not, seizable things will be found in the location to be searched.

## VI. Stop and Frisk

- A. Stopping of Persons (ORS 161.615) – a peace officer who reasonably suspects that a person has committed or is about to commit a crime may stop the person and after informing the person that the peace officer is a peace officer make reasonable inquiry.
- B. Frisk of Stopped Persons (ORS 131.625) - A peace officer may frisk a stopped person for dangerous or deadly weapons if the officer reasonably believes the person is armed and dangerous to the officer or other persons present.

## VII Search of Motor Vehicles

- A. Officer Safety - Whenever possible, deputies will ensure a back up deputy is available prior to searching a motor vehicle. One deputy to monitor the occupants and one deputy conducting the search.
- B. General Provisions for Motor Vehicle Searches

1. Request owner or operator's consent to search the vehicle.
  - a. Depending upon the owner or operator's consent, the extent of the search may be limited to specific areas.
  - b. Consent search may be conducted without a warrant.
  - c. The search must be discontinued if the owner or operator withdraws consent.
2. If there is probable cause to believe criminal activity and exigent circumstances exist, a deputy may enter a motor vehicle without consent or a warrant to:
  - a. Examine a vehicle identification number or determine ownership of the vehicle.
  - b. Remove a person from a vehicle in an emergency situation.
  - c. Seize evidence or contraband in plain view.
3. Warrant Searches
  - a. If probable cause of criminal activity exists and there are no exigent circumstances, deputies shall obtain a search warrant.
  - b. Avoid damages unless reasonably necessary to carry out a safe and thorough search.
  - c. Search all areas of the vehicle unless specified otherwise in the warrant.
4. Search of containers found in a vehicle
  - a. Open containers found in a vehicle may be searched under consent, probable cause, or warrant if:
    - (1) Found within the vehicle passenger compartment; or
    - (2) Discarded from the vehicle.
  - b. Locked containers such as briefcases, suitcases or footlockers may be opened under consent or warrant only.
5. A receipt of the items seized will be made and provided to the owner or operator.

#### VIII. Strip and Body Cavity Searches

- A. Strip and body cavity searches are sometimes necessary for safety or to seize evidence of criminal activity. These searches are highly intrusive and will only be conducted within the limits of legal authority, out of public view, and with the highest regard for human dignity.

B. Strip Search – Any search of an individual requiring the removal or rearranging of clothing to permit the visual inspection of the genitals, anus, female breasts, or underclothing.

1. The decision to conduct a strip search shall be made by the highest ranking supervisor on-duty.
2. Any decision to authorize a strip search must be based upon reasonable suspicion that a weapon, evidence, or contraband is concealed on the person and could not be detected by a pat-down search.
3. Procedures
  - a. Except in the rarest of circumstances wherein a deputy has reasonable suspicion that a criminal suspect is concealing a weapon, evidence, or contraband, persons arrested for violations or minor offense of a non-violent nature shall not be subject to a strip search.
  - b. Field strip searches shall be conducted only where the life or safety of the deputy or others may be placed at risk.
  - c. Strip searches shall take place in a private area where visual access by persons not conducting the search is eliminated.
  - d. The deputy conducting the search shall be the same sex as the person being searched.
  - e. The scope of the strip search shall not be more extensive than to ascertain the concealment of a weapon, evidence, or contraband.
  - f. Clothing should be searched both visually and by touch.
    - (1) Scan clothing for bulges, signs of openings or altered sewn areas.
    - (2) In incidents where trace evidence might exist, such as rape and assault cases, carefully preserve clothing for later examination by forensics personnel.
  - g. Deputies may search the following areas during a strip search.
    - (1) Hair – comb to bring out hidden items
    - (2) Ear openings and areas behind the ears.
    - (3) Mouth, teeth and nasal openings. False teeth should be removed for search.
    - (4) Outer skin areas.

C. Body Cavity searches

1. A body cavity search may be conducted only with a search warrant and by a licensed physician or physicians assistant, or licensed practical or registered nurse under the direction of a physician.
2. Procedures

- a. If a search is granted the suspect shall be taken to a hospital, medical facility, or physician's office where the search will be conducted.
  - b. A deputy of the same sex as the person being searched shall be present to witness the search and to recover any weapons, evidence, or contraband found during the search.
3. Any time a strip or body cavity search is conducted, deputies will document circumstances in the appropriate arrest, incident, or investigative report. The report shall include:
- a. Name and sex of person searched.
  - b. Facts and circumstances underlying the deputy's probable cause the person searched was concealing weapons, evidence, or contraband.
  - c. Name of person who conducted the search.
  - d. Supervisor who authorized the search.
  - e. Time, date, and place of the search.
  - f. A list of all items recovered from the person searched.
  - g. In the case of a body cavity search, a copy of the warrant shall be attached to the report. \
  - h. Names of each person present during the search.