

Search and Seizure - Places

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Policy Statement

Case law regarding search and seizure is ever changing and frequently subject to interpretation under the varying facts of each situation. This policy is intended to provide a few of the basic guidelines that may assist a deputy in evaluating search and seizure issues. Specific situations should be handled according to current training, guidance from the prosecuting attorney, and a deputy's familiarity with clearly-established case law.

This policy is focused on searches of *places* – entry by deputies into areas where individuals may have a reasonable expectation of privacy such as residences and vehicles. Many of the same principles apply to searches of *persons*. Guidance on searches of persons is available in other Sheriff's Office directives.

Persons Affected

All commissioned personnel.

Reasonable Expectation of Privacy

Both the United States and the Washington Constitutions provide every individual with the right to be free from unreasonable governmental intrusion. "A search occurs whenever a law enforcement officer intrudes upon a reasonable expectation of privacy."¹

Plain View

Because an individual does not have an expectation of privacy as to items that are in plain view, no search has taken place in a constitutional sense when an object is viewed from a location where the deputy has a right to be.

An item in plain view may generally be seized when all of the following conditions exist:

1. It was viewed from a lawful location.
2. There is probable cause to believe that the item is linked to criminal activity.
3. The location of the item can be legally accessed.

It is important to note that the so-called "Nexus Rule" requires that even items in plain view must not be seized unless there is probable cause to believe that the item will aid in an investigation. Such a nexus should be described in any related reports.

Residences

Every person has a reasonable expectation of privacy inside his or her home. Individuals do not, however, generally have a reasonable expectation of privacy in areas around their home where the general public (e.g., mail carriers and solicitors) would reasonably be permitted to go.

¹ Means, R. (2007). *The law of policing: Federal constitutional principles*. Portland: LRIS.

Search Warrant Requirement

Members of this agency who wish to physically enter any area where an individual has a reasonable expectation of privacy in order to conduct a search or seizure must have a valid search warrant before doing so, unless there are **exigent circumstances** or valid **consent** has been obtained.

Deputies may not request a no-knock provision when applying for a search warrant, and will announce their office and purpose before executing a warrant.

Exigent Circumstances

Exigent circumstances permitting entry into places without a warrant or valid consent generally include any of the following:

- Imminent danger of injury or death.
- Imminent escape of a serious and/or dangerous criminal offender.
- The destruction of evidence of a serious crime.
- Imminent threat of substantial property damage.

An exigency created by the deputy's own conduct as an excuse for a warrantless entry is not generally permitted.

Consent

Consent must be obtained as the product of a free will. It cannot be obtained through submission to authority, either expressed or implied.

Entry for the purpose of conducting a search for any item reasonably believed relevant to any investigation is permitted once valid consent has been obtained. A search by consent, however, is only valid if the following criteria are met:

1. Consent is given voluntarily and is clear, specific, and unequivocal.
2. Consent is obtained from a person with authority to give the consent.
3. The search does not exceed the scope of the consent given.

Search Protocol

Consent Searches

Pre-Search Advisement

Prior to conducting a consensual search, deputies shall inform all persons from whom consent to search is requested of the following, and document this in related reports:

1. The person(s) may refuse to give consent if they so choose.
2. The person(s) may withdraw consent at any point during the search.
3. The person(s) may limit the scope of the search.
4. Any evidence found during the search may be used against them or others in court.

When practicable, deputies should use the Consent to Search form to make this advisement. When doing so, deputies should provide the person with the opportunity to read the form, inquire if the person has any questions about its content, and ask the person to sign the form. The deputy should then give the person a copy of the signed form.

Opportunity for Consenter to Revoke

A person with authority to consent to the search should be present or otherwise in a position to communicate a withdrawal of consent should they so desire. Absent other legal justification, any related search should be discontinued at any point that consent is withdrawn.

Entry into Secured Areas or Containers

Members of this agency should attempt to gain keys to locked property when a search is anticipated and the time and effort required to gain the keys makes it a practical option.

Post-Search Property Condition

Members of this agency will conduct property searches in a manner that returns the condition of the property to its pre-search status as nearly as reasonably practical.

Deputies should take photographs of the property and fully document the circumstances surrounding a search when:

- Forced entry was made to gain access.
- Property is damaged.
- There is indication that a claim may be filed against the county.