

STATE OF OHIO



DEPARTMENT OF REHABILITATION
AND CORRECTION

SUBJECT: APA Search and Arrest Procedures	PAGE <u> 1 </u> OF <u> 11 </u>
	NUMBER: 100-APA-05
RULE/CODE REFERENCE: ORC 2921.31; 2933.22; 2935.12; 2941.46; 2951.08; 2967.131; 2967.15; 2951.02	SUPERSEDES: 100-APA-05 dated 04/16/14
RELATED ACA STANDARDS: 4-APPFS-3B-08; 3B-09; 3B-11	EFFECTIVE DATE: May 4, 2015
	APPROVED: 

I. AUTHORITY

This policy is issued in compliance with Ohio Revised Code 5120.01 which delegates to the Director of the Department of Rehabilitation and Correction the authority to manage and direct the total operations of the Department and to establish such rules and regulations as the Director prescribes.

II. PURPOSE

The purpose of this policy is to establish consistent procedures for conducting searches of premises and persons, and to establish guidelines for the confiscation and handling of contraband / evidence.

III. APPLICABILITY

This policy applies to employees of the Division of Parole and Community Services (DPCS), especially those whose duties include the supervision of offenders.

IV. DEFINITIONS

Approved Residence - Residence of the offender as recorded in the placement plan and Adult Parole Authority records.

Community Corrections Information System (CCIS) - A computerized information system used to track the criminal history and progress of offenders under the supervision of the Adult Parole Authority. Access to CCIS is restricted to essential users only.

Conditions of Supervision - Those general and special rules and regulations with which offenders are expected to comply as part of the criminal sentencing sanction of basic supervision or intensive supervision, as requirements of community control or parole supervision under former law, or as requirements of other forms of community supervision.

Contact Officer - The officer with primary responsibility to make contact with the offender and direct the activities of other officers involved in the contact.

Control Officer – The officer with primary responsibility to control third parties within the premises being entered and monitor means of entry and exit.

Evidence Officer – The officer with responsibility to exercise control over weapons, drugs, and other contraband confiscated as part of a search or search incident to arrest.

Exigent Circumstances – Situations that demand unusual or immediate action. When used in relation to justification for a warrantless search or arrest, “exigent circumstances” refers, generally, to those situations in which law enforcement agents will be unable or unlikely to effectuate an arrest, search or seizure for which probable cause exists unless they act swiftly and without seeking prior judicial authorization. Such situations may include, but are not limited to: 1) Emergency circumstances such as loss of life or bodily harm to others; 2) Destruction or removal of important evidence or other important contraband; or 3) Foot pursuit or imminent escape of a subject.

Field Officer Tablet (FOT) - Computerized data maintained by the parole officer assigned to the case that contains the chronological details involving contact with the offender, social services agencies, law enforcement, etc. The tablets also contain all demographic information pertaining to the offender and documentation of staffing decisions.

NOTE – A section in the Community Corrections Information System (CCIS) to record information regarding offender’s activity while under supervision.

Notice - Formal notification of requirements related to extradition, warrantless searches, and financial obligations in the form of supervision fees provided by a parole officer to an offender during the initial assessment first visit process.

Plain View – Law enforcement officers who are already on the scene for a lawful purpose may make a warrantless seizure of evidence if the discovery of that evidence is inadvertent, the item was in plain view, and its nature evident.

Post Release Control (PRC) – A period of supervision for an offender by the Adult Parole Authority following release from imprisonment that includes one or more post release control sanctions imposed by the Parole Board pursuant to section 2967.28 of the Revised Code.

Probable Cause - Probable cause exists when facts and circumstances are sufficiently strong in themselves to lead a reasonably cautious person to believe that a violation of the law has been committed and that the particular person to be arrested committed the violation, or is about to commit one, or that the specific items of evidence to be searched for in connection with the criminal activity will be found in the particular location to be searched.

Reasonable Grounds - A subjective suspicion supported by objective, articulable facts that would reasonably lead an experienced and prudent officer (person) to suspect that an offender is not abiding by the law or otherwise is not complying with the conditions of supervision.

Security Sweep - A systematic search of a building or residence for persons who may be concealing themselves and may pose a threat to officer safety.

Staffing – A consultation among Adult Parole Authority personnel wherein a documented exchange of information is shared with the intent of making decisions or following a course of action which will help facilitate the supervision of an offender, protection of the community, and ensure that all aspects of supervision and investigations meet agency standards.

Vehicular Pursuit - The pursuit by a law enforcement officer of a person fleeing or attempting to avoid a lawful arrest when both parties are in motor vehicles.

V. POLICY

It is the policy of the Ohio Department of Rehabilitation and Correction to exercise its supervisory and enforcement authority to protect the community while properly respecting the rights of offenders under Adult Parole Authority supervision and others with whom they may have contact.

VI. PROCEDURES

A. Placement Planning

Persons named on the placement plan as living in the approved residence shall be advised of the lowered expectation of privacy as a consequence of accepting the offender into the residence. The occupants of the residence should acknowledge this understanding clearly and the APA officer shall record the acknowledgments in the Field Officer Tablet (FOT). This procedure also shall be followed for any change of approved residence.

B. Search and Arrest Planning

Numerous courts have recognized that a person under supervision (probation or parole) has diminished Fourth Amendment expectations due to society's overriding interest in public safety and rehabilitation of the offender. Warrantless searches performed pursuant to conditions of supervision and intended to deter the commission of crime and to provide information about the progress of rehabilitative efforts are permissible. In addition, the legislature has authorized APA officers to search, with or without a warrant, the person of the offender, the place of residence of the offender, a motor vehicle, and another item of tangible or intangible personal property if the officer has reasonable grounds to believe that the offender is not abiding by the law or otherwise is not complying with the conditions of their supervision.

1. Limitations – The arrest authority of a Parole Officer is limited to those offenders currently under APA supervision. To minimize the risk of harm to Parole Officers and to facilitate the orderly completion of a search, arrest or investigation, a Parole Officer may lawfully detain/contain third persons who are not under the supervision of the Adult Parole Authority during the course of a search, arrest or investigation, but only for the limited duration necessary to complete the search, arrest or investigation.

2. Staffing – Whenever possible, any arrest or search should be staffed prior to the deployment of APA personnel. The following information shall be included in any staffing:
 - a. The offender’s background information including crime committed, sentence served, and propensity for violent behavior.
 - b. Any current violations the offender has committed or is suspected of having committed.
 - c. Physical description of the offender. A recent photograph of the offender should be made available to APA officers and any other law enforcement officers included in the search/arrest, if possible. An APA officer who can positively identify the offender by sight should accompany the search/arrest team when practical.
 - d. A description of the premises, if known. Factors to be considered include fences, side and back doors, other means of entry and exit, street access, neighborhood, animals, and other persons likely to be present.
 - e. Officer roles and assignments shall be determined at the staffing. The Unit Supervisor/designee shall determine who the lead officer is at the time of staffing. At a minimum, the contact officer, control officer, and evidence officer shall be designated at the staffing. All staffing officers must know who the lead officer is.
 - f. The appropriate local law enforcement agency shall be contacted by the unit, preferably by the lead officer, and informed of the APA’s intent and plan of action when an arrest or search is planned for outside of the APA office.
 - g. If at the scene or during the arrest / search, unforeseen events occur, additional direction from the Regional Director/designee or law enforcement backup shall be requested by the lead officer on the scene. In any event, all APA staff at the scene shall exercise sound judgment and safe tactics during arrests and searches.
3. Approved Residence, Personal Property and Other Property
 - a. If the search/arrest location is the offender’s approved residence, the offender’s personal property, or property that the offender has been given permission to use, then the officer may search the property without a warrant. However, the officer must be able to articulate the reasonable grounds for believing that the offender is not abiding by the law or otherwise not complying with the conditions of his supervision. Such reasonable grounds may be based on the circumstances as a whole, including the officer’s knowledge of the offender, and the reliability of the information upon which the officer is acting.
 - b. If the offender has signed Conditions of Supervision (DRC3019) which contains formal Notice giving a supervising officer or other representative of the Department of Rehabilitation and Correction permission to search the offender’s person, motor

vehicle, or place of residence at any time, then the officer may search the property without a warrant. However, these types of searches should be for the purposes of detecting signs of lapse into offense behavior or determining compliance with Special Conditions of Supervision. (Please refer to Section F, Administrative Inspections.)

4. Other Premises – If the search/arrest location is not the offender’s approved residence, the officer may enter and search the premises only with a warrant, consent from the occupant, or other exigent circumstances. Occupants of premises where the offender does not reside have a higher expectation of privacy and freedom from unreasonable intrusion.
5. Third Party Consent – Persons not under APA supervision can consent to reasonable intrusions upon their Fourth Amendment rights in recognition of society’s need for public safety and rehabilitation. In order for consent to be valid, it must be voluntary, with knowledge, and free from duress. Interpersonal communication skills are essential in obtaining a valid consent. The following points should be remembered when seeking consent:
 - a. The officer must realize that the occupant has every right to decline entry to the officer if a warrant has not been issued. Any express or implied threat of retaliatory action is inappropriate and may render any subsequent consent invalid.
 - b. Consent to enter a home or apartment is not consent to search.
 - c. The scope of the entry can be limited by the person giving consent in terms of areas to be searched and duration of the search. If a premise is shared with another person, then a person can grant consent to search only over those areas of “mutual use,” “joint access or control,” and “common authority.” Consent to search can be withdrawn at any time.
 - d. Two officers should be present when consent to enter is sought. The verbal grant of consent should be noted in the FOT by both officers.
 - e. In the event of an initial refusal of consent, and subsequent grant of consent, the person giving consent should acknowledge the grant of consent in writing.
 - f. In the event of a clear refusal of consent, the officers must determine if sufficient probable cause exists to seek a search warrant, or if sufficient exigent circumstances exist to justify a warrantless search. If these circumstances do not exist, the officers shall vacate the premises promptly.
 - g. The officers shall display and maintain a professional and courteous demeanor throughout the contact and search.

C. Warrant Searches

The Fourth Amendment to the United States Constitution states that: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by

oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

In the absence of any established exceptions to the general rule, a search warrant shall be obtained and executed in accordance with the Ohio Revised Code (ORC 2933), Criminal Rule 41, any applicable local rules and practices and as follows:

1. Search Warrant – A search warrant is an order in writing issued by a judge of the court of record within the appropriate jurisdiction authorizing a law enforcement officer to search for and seize specific property and is to be issued only upon the proper filing of an affidavit.
2. Affidavit – The affidavit shall name or describe the person or place to be searched and particularly describe the property to be searched for and seized, state substantially the offense in relation thereto, and state the factual basis for the affiant's belief that such property is located there. The warrant, when issued by the Court, shall command the officer(s) to search, within three business days, the person or place named for the property specified.
3. Types of Evidence Subject to Seizure – Pursuant to a search warrant or in the course of a valid warrantless search, officers may seize virtually any property for which it can establish a logical connection with criminal activity. The types of seizable evidence may include:
 - a. Instrumentality and means by which a crime is committed;
 - b. Fruits of a crime;
 - c. Weapons by which escape of the person arrested might be effected;
 - d. Specific property which when possessed is a crime;
 - e. Any evidentiary materials relating to a crime. These types of items may be seized in relation to a valid arrest or search warrant, or without a warrant under a valid exception to the warrant requirement.
4. Execution and Return – The warrant shall be executed according to its terms and as determined at a staffing prior to its execution. A copy of the warrant shall be given to the occupant of the premises being searched. If property is seized pursuant to the warrant, a copy of the inventory of property taken shall also be given to the occupant pursuant to this policy. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The warrant shall be returned to the judge who issued said warrant or to whomever he/she designates.

D. Security Sweeps

Security sweeps shall be conducted prior to any contraband search and during any fugitive search. The sweep shall proceed until all possible hiding areas have been cleared. Only armed officers shall conduct security sweeps.

E. Forced Entry or Entry without Consent

1. An APA officer may make forcible entry or entry without consent into a premise only when exigent circumstances exist and if, after notice of his/her intention to arrest or execute a warrant, he/she is refused admittance, pursuant to ORC 2935.12. Unless precluded by the seriousness of the exigent circumstances, the lead officer on the scene must obtain law enforcement assistance prior to making the forced entry and must secure approval for the forced entry from an APA Regional Administrator/designee.
2. If exigent circumstances do not exist, consent must be obtained. Consent must be given by a person authorized to give consent, such as an adult occupant. Someone the officer reasonably believes has authority to consent to the entry is sufficient. An apartment manager or landlord may assist in the entry of an offender's apartment only when forced entry or entry without consent is otherwise justified; however, the lead officer on the scene of the forced entry must take all reasonable and available precautions to safeguard the safety of the apartment manager or landlord who assists in the entry.

F. Administrative Inspections

When an offender has been issued and has signed the Conditions of Supervision, the APA officer may search, without warrant, the person of the offender, the place of residence of the offender, and the motor vehicle of the offender to ensure compliance with the conditions. These inspections shall be limited to discovering whether the offender is complying with special conditions of supervision (that is, whether the offender is relapsing into criminal behavior). Such inspections need not be based upon reasonable suspicion or probable cause.

G. Third Party Considerations

1. In arrest and search situations, the APA officer will likely encounter persons not under supervision of the APA. In such contacts, APA officers shall act pursuant to this policy, and in recognition of the higher expectations of Constitutional protection among persons not under supervision.
2. In search/arrest situations, persons not under APA supervision may be contained and controlled by APA officers to the extent necessary to ensure the safety of the officers, occupants, and the offender, for the limited duration necessary to affect the search or arrest. The amount of force used to control third parties shall be the minimum amount necessary and consistent with Department Policy 104-TAW-02, APA Use of Force. Those being restrained for safety purposes shall be so advised and that they are not under arrest. Those being restrained for safety purposes shall be patted down for weapons and a search of that person's immediate vicinity may be performed.
3. If persons being contained for safety purposes do not respond to verbal directions or commands, the APA officer shall respond in an appropriate fashion to reduce the risk of harm to themselves, officers, and others. Such response shall be consistent with Department Policy 104-TAW-02, APA Use of Force.

4. If a person being contained for safety purposes purposely prevents, obstructs, delays, hampers, or impedes an APA officer from the performance of a search or arrest, the officer may detain that person until local law enforcement arrives and places that person under arrest for obstructing official business, ORC 2921.31. The APA officer shall be knowledgeable regarding the elements of that offense and be willing to follow through with any actions necessary for the prosecution of that person.

H. Post-Search Activity

Any material evidence of a crime or contraband confiscated during a search shall be accurately inventoried using the Property Tag/Chain of Custody form (DRC3446). The completed copy of this form shall be issued to an occupant of the premises or left in a conspicuous place at the scene. An accurate chain of custody shall be established at the scene of the search or arrest pursuant to Department Policy 100-APA-01, APA Evidence and Contraband.

1. Explosives or explosive related supplies and/or chemicals shall not be moved or handled by APA officers. The assistance of law enforcement or fire department personnel shall be secured in the event that these items are found during a search.
2. The designated evidence officer shall perform the following duties as soon as practicable:
 - a. Secure and make safe any weapons located on the premises.
 - b. Photograph evidence or contraband located, if possible. Document a detailed description of the property taken, where the items were located, by whom they were found, and the time.
 - c. Issue a copy of the inventory of property taken, giving it to the occupant, or leaving it at the residence. The inventory shall be retained by the evidence officer and made a part of the report.
 - d. Maintain the property in a secure fashion for transport back to the APA office, marking it properly for identification purposes. The property shall then be turned over to the APA office property manager pursuant to Department Policy 100-APA-01, APA Evidence and Contraband.
3. The description of the property or contraband taken shall include the following information:
 - a. Firearms – List make, model, caliber, barrel length, finish, serial number, and other pertinent information (e.g. four live rounds, loaded clip found nearby, etc.)
 - b. Ammunition or Ordnance – List brand, quantity, and caliber.
 - c. Weapons Other Than Firearms – List type, brand name, size, color, serial number if available, and any distinguishing characteristics.

- d. Drugs and Medicine – List the type, amount, dosage, color, and form (pill, capsule, powder, liquid, etc.).
 - e. Alcoholic Beverages – List number of containers, container type, size, brand, alcohol content, and whether any seal has been broken.
 - f. Other Types of Property – List the type, brand name, color, size, model, serial number if any, and a brief description.
4. If property is evidence of a new crime, local law enforcement shall be contacted and the property turned over to them, as soon as practical, for its preservation as evidence and use in the prosecution of any charges.
 5. If property is evidence of violation conduct or local law enforcement cannot or will not take custody of the property, the APA officer shall inventory the property taken and issue a copy of the inventory as a receipt.
 6. If the offender has a no alcohol condition, alcoholic beverages clearly attributable to the offender may be disposed of at the scene, provided that its nature is described in detail (e.g. type, brand, container, number of containers, etc.) and its disposal are properly documented in the report.
 7. Any cash or currency found on the person of an offender being arrested shall be checked in as personal property when the violator is booked into a local detention facility. If money is found in conjunction with drugs, it shall be turned over, along with the drugs, to appropriate law enforcement officials.

I. Arrest and Reports

1. Initial Arrest
 - a. The unit supervisor or designee shall enter an arrest header into CCIS within two (2) business days of knowledge of the arrest.
 - b. The unit supervisor or designee shall enter an arrest header into CCIS within two (2) business days of knowledge of a citation or summons that results in the offender being placed into custody. (excluding minor misdemeanors and minor traffic violations). If the citation or summons does not result in an arrest it is the responsibility of the supervising officer to document the outcome into the FOT notes. (excluding minor misdemeanors and minor traffic violations).
 - c. The unit supervisor or designee shall set the appropriate follow-up date for tracking purposes.
 - i. Non-felony offenses or cases pending indictment shall require follow-up staffing to an arrest to be completed within thirty (30) calendar days that document the facts of the offense, charges, court case numbers, court movement information, and dispositions be documented in NOTEC.

- ii. A follow-up of ten (10) business days shall be set in the event that the offender is indicted on new felony charges. In these cases, a violation report shall be completed pursuant to Department Policy 100-APA-24, APA Violation Report, unless waived in the county of indictment via the procedures detailed in Department Policy 100-APA-14, Sanctions for Violations of Conditions of Supervision.
- iii. Pursuant to Department Policy 100-APA-24, APA Violation Report, a violation report shall be completed on those cases for which the unit is initiating the violation process.
- d. The unit supervisor or designee shall document specific information regarding the arrest, citation that results in the offender being placed into custody, or subsequent indictment and overall status of the case in NOTEC within two (2) business days. Documentation shall also include date of arrest, date of knowledge of arrest, and arresting agency. If the APA is the arresting agency, the date of arrest and date of knowledge are the same date. In these cases, the documentation of the date of arrest shall also document the date of knowledge.
- e. When an offender under PRC is indicted on a new felony that occurred while under supervision, the unit supervisor shall notify the prosecutor's office in the county of the new charge of the offender's supervision status utilizing the PRC Violator Notification (DRC3463). The PRC Violator Notification (DRC3463), along with a copy of the reporting order shall be sent to the Administrative Judge and the prosecutor's office within ten (10) business days of the indictment. For exceptions refer to Department Policy 100-APA-14, Sanctions for Violations of Conditions of Supervision, regarding waivers of PRC Violator Notification (DRC3463).
- f. If the unit becomes aware of an offender's arrest after the new charge has been disposed of the unit may complete one report entitled Arrest Report covering the offender's arrest, disposition, and release from custody.

2. Arrest/Violation Supplement

- a. Follow-up staffing to an arrest or pending charges shall be completed thirty (30) calendar days after the initial arrest header and every thirty (30) calendar days thereafter and documented in NOTEC. The supervising officer shall document the offender's status (change in custody status, court date, charges, or if no change in status has occurred) in the FOT notes. The unit supervisor or designee shall document the staffing in NOTEC. Arrest supplement and header follow-up dates in CCIS shall be set for every thirty (30) calendar days until the matter is resolved. After the initial supplement is completed, follow ups shall be set for every ninety (90) calendar days for offenders on mandatory five (5) year PRC with no sanction time remaining until the matter is resolved.
- b. If a violation hearing report has been completed, then a violation hearing report supplement shall be completed, if warranted. "IF WARRANTED" signifies that there

is a change in the status of a case, (i.e. new court date, etc.). If there is no change, then the supervising officer shall document the status in the FOT notes. The unit supervisor or designee shall document the staffing in NOTEC. Follow-ups shall be set for every ninety (90) calendar days for offenders on mandatory five (5) year PRC with no sanction time remaining until the matter is resolved.

3. In-Custody Status Checks and Staffing

- a. The supervising officer shall check the status of all in-custody cases that are not serving a local sentence on a weekly basis and document these checks in the FOT notes. For in-custody cases that are serving a local jail sentence, the supervising officer shall register with Vinelink and document the offender's in-custody status monthly (rather than weekly) in FOT. The supervising officer shall report any change in an offender's in-custody status within two business days of knowledge to the unit supervisor/designee and the unit supervisor/designee shall document the changes in NOTEC. This process is not necessary for offenders serving prison sanction time.
- b. The supervising officer shall staff all in-custody cases with the unit supervisor/designee on a monthly basis and document the staffing in the FOT notes. The unit supervisor/designee shall document staffing in NOTEC. This process is not necessary for offenders serving prison sanction time.
- c. If an offender is being held in an area that is outside of the supervising officer's jurisdiction and the supervising officer needs assistance serving the offender with paperwork or getting additional information, the supervising officer can contact an APA unit that covers the area where the offender is being held for assistance.

J. Vehicular Pursuit

No employee while operating a motor vehicle shall engage in a vehicular pursuit.

Related Department Forms:

Property Tag/Chain of Custody	DRC3446
Conditions of Supervision	DRC3019
PRC Violator Notification	DRC3463