

WEBER COUNTY SHERIFF'S OFFICE		POLICY AND PROCEDURES	
SUBJECT: Searches and Seizures, With/Without Warrant		CHAPTER/SECTION NO.: 1.8, 1.9	
EFFECTIVE DATE:10/7/03		REVIEW DATE:	
AMENDS/SUPERSEDES: See attached sheet		APPROVED: <u>**See Master File</u> Sheriff	
STANDARD NUMBER: 1.2.4			

1.8 Definitions

- 1.8.1 Exigent Circumstances: Circumstances which would cause a reasonable person to believe action was necessary to prevent physical harm to the officer or other persons, the destruction of evidence, the escape of the suspect, endangerment to public safety, or some other consequence improperly frustrating legitimate law enforcement efforts.
- 1.8.2 Frisk: A police action in which a search of a suspect is done by only touching the outside of the person's clothing and only making quick contact to check for obvious weapons. Deputies may not reach into the clothing unless an object distinctly feels like a weapon or is clearly identifiable as contraband.
- 1.8.3 Search: A police action which infringes upon a person's reasonable expectation of privacy.
- 1.8.4 Seizure of Property: A significant interference (by police) with an interest in property.
- 1.8.5 Search Warrant: an order issued by the magistrate in the name of the State and directed to a peace officer, describing with particularity the thing, place, or person to be searched and the property or evidence to be seized by him/her and brought before the magistrate. (UCA 77-23-201)

- 1.8.6 Daytime: the hours beginning at 6 a.m. and ending at 10 p.m. local time. (UCA 77-23-201)
- 1.8.7 Probable Cause: a fair probability that contraband or evidence of a crime will be found.

1.9 Policy

- 1.9.1 Warrantless searches and seizures as set out in section 1.9.2 may be conducted only when circumstances exist that justify a search without a warrant. (All items seized must be handled according to Sheriff's Office policies and procedures contained in chapters 55 and 56)
- 1.9.2 Non-Searches: The following observations or searches do not fall within the protection of the Constitution and deputies may search as necessary.
 - A. Open fields and areas outside of the area immediately surrounding a house.
 - B. A canine sniff of property which is either legally in police custody or open to the public or in semi-public locations.
 - C. Aerial surveillance.
 - D. Perception enhancement such as the use of flashlights or binoculars.
 - E. Private citizen searches not working for or at the direction of a deputy.
 - F. Abandoned property.
- 1.9.3 The following situations justify a search and/or seizure without a warrant:
 - A. Search by consent
 - 1. A Person may voluntarily give consent to search a defined area which he or she has direct control or common authority over.

2. If possible, Deputies will obtain a signature of the person being searched or someone who has proper authority to permit a search, on a Sheriff's Office "Consent to Search" form.
3. Deputies will cease a search if the person(s) being searched request that they do so.
4. Deputies will not intimidate or otherwise coerce any person into permitting a search.
5. Deputies should return any personal items belonging to the individual(s), such as driver's license, vehicle registration, etc., before asking for or starting a search.

B. Stop and frisk

1. Deputies may do a pat-down search only if they feel that there is reason to believe that the person(s):
 - a) Has committed or is in the act of committing or attempting to commit a crime (UCA 77-7-15).
 - b) Is in possession of a dangerous weapon placing the Deputies and/or other persons in danger (UCA 77-7-16).
 - i. If a weapon is found during a pat-down search, the Deputy may retain the weapon until the completion of questioning, at which time it shall either be returned to the person, if lawfully possessed, or entered into evidence upon arrest (UCA 77-7-17).

2. Deputies may do only a "first-touch" pat-down search.
 - a) If the Deputy determines that the person is not concealing a weapon, he/she may not continue with the pat-down or prolonged touching of any certain area of the person.

C. Search of a vehicle

1. Consent Search: If a vehicle is stopped for a traffic violation, the Deputy should complete the citation or warning process, including the return of the drivers' license and/or vehicle registration, before requesting permission to search a vehicle, unless the Deputy feels that there is a possibility of danger to himself/herself or any other person(s).
2. Vehicle Frisk: A Deputy may "frisk" a vehicle if he/she has reasonable fears, based on specific and articulable facts, that his/her safety is threatened by the possible presence of a weapon in the vehicle. (Terry v. Ohio ruling, 392 U.S.1, 1968).
 - a) The vehicle frisk is limited to the driver and passenger compartment area of the vehicle which is within the driver's reach.
 - b) Any contraband or other incriminating evidence found at this time, may be seized.

3. Incident to Arrest: A Deputy may search a vehicle when the search is incident to and substantially contemporaneous with the arrest of occupant(s) of the vehicle.
 - a) The Deputy may search the passenger compartment and may examine the contents of any containers, including locked containers, found therein. (N.Y. v. Belton, 453 U.S. 454, 1981)
 4. Exigent Circumstances: A Deputy may conduct a search of a vehicle if there is probable cause to believe that the vehicle contains fruits, instrumentalities or evidence of a crime or contraband and exigent circumstances exist, such as where the vehicle is moveable and the occupants are alerted.
 - a) This search may include all parts of a vehicle, bumper to bumper and includes containers or other property in the vehicle.
 - b) This search may be conducted only when there is probable cause to justify the issuance of a search warrant by a court. (State v. Christenson, 676 P.2d 408, 1984)
 5. If the Deputy has any doubts about the legality of a search, he/she should contact his/her shift supervisor for permission to detain the vehicle and its occupants until a search warrant can be obtained.
 - a) The time of detainment must not be longer than is "reasonably" necessary.
- D. Inventory: All impounded vehicles are subject to an inventory as set out in Chapter 45.41-43.

E. Search Incident to Arrest:

1. When the deputy makes an arrest the deputy may search the person arrested for the purpose of protection and to prevent the concealment or destruction of evidence.
2. The deputy may also search the area the arrestee might reach to grab a weapon or destructible evidence.
3. After an in premises arrest, a deputy may conduct a protective sweep of the area for his or her own protection.

F. Private Residence:

1. A deputy may only enter a private residence, building, or business to search without a warrant if there is probable cause AND exigent circumstances. ***If, after the residence is secure for safety reasons, and the reason for the initial exigent search is not located, a search warrant should be obtained to continue searching.***

G. Plain View: A seizure is valid under the plain view doctrine if:

1. The deputy is lawfully present;
2. The item is in plain view; and
3. The item is clearly incriminating.
4. ***After the seizure, any further searching of the premises requires a search warrant.***

H. Schools

1. There is no expectation of privacy in school lockers.
2. Searches of students by deputies require the same expectation of a warrant or exception to the search warrant requirement as any other person.

3. School officials have slightly different standards which will justify a search.

I. Deputies may conduct searches and seizures based on other situations which are authorized by state and federal constitutional provisions.

1.9.4 Searches With Warrants

A. Whenever possible, searches should be conducted based upon a properly issued search warrant. A search warrant should be issued based upon probable cause supported by oath or affirmation particularly describing the person or place to be searched and the person, property, or evidence to be seized.

B. Grounds for issuance - Property or evidence may be seized pursuant to a search warrant if there is probable cause to believe it:

1. Was lawfully issued
2. Has been used or possessed for the purpose of being used to commit or conceal the commission of an offense; or
3. Is evidence of illegal conduct.
(UCA 77-23-202)

1.9.5 Preparation of Search Warrant

A. Deputies should prepare application for search warrants and arrest warrants using the following guidelines and, if possible, with the help and input of the prosecutor. Applications for search warrants and arrest warrant will include:

1. Deputy resume: a section that introduces the deputy to the judge by outlining the background, experience, and training of the deputy.
2. Description of property: a section that describes the property being sought in detail and with particularity.

3. Grounds for Issue: a section that outlines the grounds for issuing the warrant and directs the court that the deputy is investigating a crime.
4. Description of the place to be searched: a section that describes in detail the place to be searched.
5. Probable cause statement: a statement prepared and sworn to by the deputy (Affidavit) outlining the reasons (probable cause) for the issuance of the warrant. The statement should include detailed facts indicating why the information provided is reliable and should be consistent with other information provided in the warrant.
6. Order for Warrant: an order for the magistrate to sign authorizing the warrant.
7. The warrant , and all evidence to be considered by the magistrate in issuing the warrant, must be written or recorded verbatim. Recorded information must be transcribed, certified by the magistrate and filed with the court. (UCA 77-23-204)

- B. The warrant must be issued (signed) by the magistrate before it can be executed, except in the case of an orally approved warrant. (UCA 77-23-204)

1.9.6 Execution of the Search Warrant

- A. Deputies will conduct the search authorized by the warrant during the daytime unless the warrant specifically authorizes a nighttime search. (UCA 77-23-205(1))
- B. Deputies will execute the search warrant within 10 days of its issuance. (UCA 77-23-205(2))
- C. Deputies will give notice of their authority

and that warrant is being executed before entry into a premises unless the magistrate specifically authorizes, on the warrant, entry without notice. (UCA 77-23-210)

- D. Deputies may use the force reasonably necessary to enter the place to be searched. (UCA 77-23-210)
- E. Deputies should use sufficient staff in executing the warrant to allow a safe, quick, and efficient search of the property.
- F. Deputies will only search in areas authorized in the warrant and will only look for the evidence or contraband in places where it could logically be located.
- G. If in the course of the search evidence or contraband not listed in the warrant is observed in plain view, the item may be seized.
- H. A receipt for the property taken in the search will be left with the person from whom it was taken or if no owner is present the receipt should be left in the location searched. The receipt should be signed by the person it is left with or by at least two of the individuals conducting the search. (UCA 77-23-206)
- I. After the execution of the warrant an inventory of all seized property will be completed by the deputy and returned, along with a verified return of the warrant, to the magistrate who signed the warrant. The return must state where the seized property is being held. (UCA 77-23-207)
- J. The evidence gathered will be maintained in safekeeping by the deputy who executed the warrant according to Sheriff's Office Policy. (UCA 77-23-208)