



# Arkansas Community Correction

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## **ADMINISTRATIVE DIRECTIVE: 17-32 Searches for, Control, and Disposition of Contraband and Evidence**

**TO:** Arkansas Community Correction Employees

**FROM:** Sheila Sharp, Director

**SUPERSEDES:** AD 08-03

**APPROVED:** \_\_\_\_\_ **Signature on File**

**EFFECTIVE:** August 28, 2017

- I. APPLICABILITY.** This policy applies to Arkansas Community Correction (ACC) employees, visitors, offenders and ACC agents. For the purpose of this policy, ACC agents include volunteers, interns, vendors, and contractors working in transitional houses and reentry centers.
- II. POLICY.** ACC will conduct searches to discover and control contraband and evidence and to deter the introduction, possession, and/or manufacture of contraband in ACC offices and facilities. (4-APPFS-3B-11)
- III. DEFINITIONS.**
  - A. Contraband.** Items that are:
    1. illegal or are against policy or rules; or
    2. prohibited by conditions of supervision; or
    3. not being used for their intended purpose; or
    4. not issued or authorized by ACC.
  - B. Evidence.** Anything that may be helpful in forming a conclusion or judgment about illegal or unauthorized activity. Testimony, writings, or material objects offered in proof of an allegation.
  - C. Nuisance Contraband.** Any authorized item maintained in an excessive amount or size that creates a hazard, impedes security, or is disruptive.
  - D. Pat Search.** A means for detecting contraband hidden on a person's body that involves patting or sliding the hands along the fully-clothed body of a person.

#### IV. GUIDANCE.

**A. Reasonable Suspicion.** In certain circumstances reasonable suspicion must exist to justify conducting a search. Reasonable suspicion exists when there is a degree of certainty based on facts and reasonable inferences that cause a person to believe a law, conditions of supervision, or policy have been violated. To act pursuant to “reasonable suspicion,” employees must be aware of specific facts, from which they make reasonable inferences and upon which they are justified in concluding that reasonable suspicion exists. Unspecified suspicions or mere hunches fall short of providing reasonable grounds for actions that are permitted only on a basis of “reasonable suspicion.” The following are a few criteria that may be considered when determining reasonable suspicion:

1. demeanor of individual
2. gait and manner
3. prior background or character
4. what the person is or appears to be carrying
5. manner of dress
6. the time of day or night the individual is observed
7. overheard conversations
8. information received from a third person
9. whether the offender is with others whose conduct is reasonably suspect
10. apparent effort to conceal an article or activity
11. apparent effort to avoid identification or confrontation by officials.

**B. Searches of Property/Facilities on ACC Owned or Leased Property.** Any personal or State property, including vehicles, is subject to search when on ACC owned or leased property. Searches are subject to the following guidelines:

1. Searches must be thorough and systematic
2. Supervisor concurrence should be obtained in advance of the search when practical; however, routine contraband searches at residential facilities do not require advance supervisor concurrence
3. Employees must use care when conducting searches
4. Evidence/contraband collected must be documented appropriately and reported to the supervisor, and
5. The supervisor should conduct periodic post-search reviews to ensure that searches are conducted in accordance with policy, procedures, or other guidance.

**C. Searches of Persons and Personal Items.**

1. **Pat Search of Offenders.** Authorized ACC employees may pat search offenders of the same gender at any time with or without reasonable suspicion. In addition, authorized ACC employees may conduct cross-gender pat searches of offenders in exigent situations. An exigent situation is an urgent situation requiring immediate action. When a male pat searches a female offender in an exigent situation, the circumstances must be documented. During a pat search, the employee may conduct a visual inspection of the mouth, ear canal and nose, and may require removal of footwear, socks, hats and outerwear such as gloves, sweaters and coats. (PREA 115.215(c))

2. Pat Search of Other Persons. Any person on ACC owned or leased property may be pat searched by an authorized person of the same gender when there is reasonable suspicion. However, reasonable suspicion is not required for pat searches at a residential facility location.
3. Strip Searches of Parolees/Probationers/Offenders on Extended Supervision are permitted only in situations where an offender is going to be transported and/or there is reasonable suspicion that the offender possesses a weapon.

#### **D. Additional Guidance for Residential Facilities.**

1. Communication Devices. Personally-owned communication devices or their components are not allowed in an ACC residential facility. State employees are allowed to carry agency-issued communication devices for business purposes. Contract employees who have been approved by the Center Supervisor may carry communication devices for business purposes. Employees must take reasonable precaution to ensure residents do not have access to them.

Note: It is a felony to furnish or provide a weapon, intoxicating beverage, controlled substance, money, a cellular telephone or other communication device, the components of a cellular telephone or other communication device, or any other items that would facilitate an escape or continue a criminal enterprise, Arkansas law section 5-64-404 or violence within a facility. (Arkansas law section 5-54-119)

2. Visitor Searches. Visitors are subject to search and may be asked to wait in a designated area for permission to enter. They are free to leave at any time, unless they are suspected of trying to introduce contraband or committing any other felony on ACC grounds. In those instances, they may be detained until law enforcement arrives to take them into custody.
3. General Security Search. General security searches at facilities should be organized by a supervisor and should be done in a reasonable manner.
4. Strip Search of Residents. Residents may be strip searched when there is reasonable suspicion or upon entering or departing from a secure area of a facility. A strip search of a resident must be done by an employee of the same gender and should be observed by another staff member of the same gender when such person is readily available. Strip searches must NOT be conducted by or observed by a person of the opposite gender except when performed/observed by medical practitioners or when the same-gender requirement is waived during an exigent situation. The search should be conducted in a location and manner that protects the resident's privacy and, to the extent possible, keeps the search and results confidential. All cross-gender strip searches of residents in exigent situations must be documented. (4-ACRS-2C-06; PREA 115.215).

5. Strip Search of Employees at a Residential Facility. Employees at a residential facility may be strip searched with the approval of the Deputy Director of Residential Services or higher authority when there is reasonable suspicion. Strip search of an employee must be done by an employee of the same gender and observed by a second employee of the same gender. The search must be conducted in a location and manner that protects the employee's privacy and, to the extent possible, keeps the search and results confidential. All strip searches of employees must be documented.
6. Body Cavity Search of Center Residents. Center residents may be required to undergo a body cavity search conducted by a nurse, nurse practitioner, physician assistant or physician when there is reasonable suspicion and with approval of the Center Supervisor or higher authority. When a body cavity search is conducted, medical personnel should also check the mouth, ears and nose. An ACC employee of the same gender as the offender must be present to witness the search and collect any contraband or evidence.

The search must be conducted in a location and manner that protects the resident's privacy and, to the extent possible, keeps the search and results confidential. All body cavity searches must be documented. (4-ACRS-2C-04 and -2C-05; PREA 115.215(c))

#### **E. Warrantless Searches Pertaining to Parolees, Probationers and Sex Offenders on Extended Supervision.**

1. Warrantless Searches in General. Parole/Probation Officers may conduct warrantless searches of an offender's person, residence, motor vehicle and property within these guidelines. Warrantless searches must be conducted in a reasonable manner. When feasible discuss the decision to search in advance with a manager.
2. Searches of an Offender's Residence. A search of a residence that an offender shares with others should be conducted in the presence of a member of the household. If possible, a search should be conducted in the presence of the offender.

##### Searchable Areas in an Offender's Residence.

If the offender is not the head of the household in which he or she resides, warrantless searches must be limited to:

- the offender's private living quarters
- any other area under his or her control, and
- areas of common usage such as bathrooms, living room, kitchen, out-buildings, and garage.

If there are additional areas in the house that need to be searched, the officer must obtain permission from the head of the household prior to searching.

3. Electronic Devices – Sex Offenders. Warrantless searches of a sex offender's electronic devices such as cell phones and computers are permitted at the Parole/Probation office and in the offender's vehicle and searchable areas of his/her residence.

Note: A sex offender may be instructed to bring his/her personal electronic devices to a searchable area or permission may be sought from the head of household to enter an area that is not listed as a searchable area.

4. Electronic Devices – NON-Sex Offenders. Warrantless searches of a NON-sex offender’s electronic devices such as cell phones and computers are permitted in the offender’s vehicle and searchable areas of his/her residence ONLY when there is reasonable suspicion. The search must be documented in eOMIS.
5. Contraband and Evidence. The Parole/Probation Officer should rely on local law enforcement officers if seizure of contraband or evidence is necessary. When an ACC officer must collect contraband or evidence, he/she should use the “Evidence or Confiscated Property/Contraband” form. Provide a copy of the form to the offender, and scan the form into eOMIS. ACC officers may use such evidence as the basis of a violation report regardless of whether criminal charges are filed.
6. After a Warrantless Search. After a warrantless search, officers must promptly inform the Parole/Probation Manager or Assistant Manager of any contraband or evidence they seized.
7. Legal Basis. A search is not unlawful just because it is also beneficial to the police or because evidence incriminating the offender is used in criminal prosecution. Case law guidance for parole/probation searches and seizures is provided by the United States Supreme Court in *Griffin v. Wisconsin*, 483 U.S. 868 (1987) and by the Arkansas Supreme Court in *Cherry v. State*, 302 Ark. 462 (1990) and *Williams v. State*, 321 Ark 344 (1995).

**F. Refusal to be Searched.** If a person refuses to submit to an authorized search, the refusal must be reported promptly to the appropriate supervisor.

1. Offenders who refuse to be searched are subject to the disciplinary/violation processes.
2. Employees may be ordered to remain in the area and under supervision at least until the supervisor is informed.
3. All others who refuse to be pat searched should be denied access to the facility. A person denied access may request reconsideration by the Center Supervisor for access at a later date.
4. Visitors on the Authorized Visitation List for a residential facility who refuse to be searched will have their visitation cancelled and visitation privileges revoked. Visitors whose privileges have been revoked for this reason may reapply for visitation privileges using procedures outlined in the visitation policy.

**G. Collecting, Handling, Storing, Transferring, and Disposition of Contraband or Evidence.** (4-ACRS-2C-03)

1. Contraband or Evidence Found at a Major Crime Scene. When a major criminal act has been committed, or is suspected, follow procedures in applicable policy. Protect the crime scene and evidence by securing the area or individuals and wait for the arrival of local law enforcement or Arkansas State Police. Whenever possible, an outside law enforcement agency should be used to manage all aspects of collecting and handling contraband/evidence. (4-APPFS-3G-04)

2. Contraband or Evidence Associated with any Incident, Allegation, or Suspicion of Sexual Abuse. In these situations, follow guidance in the “Sexual Abuse Checklist” and collect, handle and process the evidence pursuant to training on this topic.
3. Contraband or Evidence Found at Other Than a Major Crime Scene. When outside law enforcement is not involved, all evidence and contraband, with the exception of nuisance contraband, is to be collected by trained staff and documented on Form 1, Evidence or Confiscated Property/Contraband. If the property owner or the custodian of State property is apparent, he/she should be provided a copy of the form. The Incident or Hazard Report/Witness Statement must be completed as required.
4. Uniform Physical Evidence Collection Protocol for ACC Staff. Physical evidence collection must provide for strict accountability to preserve the integrity of the disciplinary and legal processes.
5. Contraband and Evidence Collection. Control and Handling of Evidence or Contraband (Excluding Nuisance Contraband). Complete Form 1 for evidence/contraband collected, and when appropriate tag the evidence/contraband.
6. Transfer of Evidence and Contraband. Transfer of evidence/contraband between staff and/or agencies should be kept to the minimum number of persons possible, and should be limited to persons trained in handling evidence/contraband. Whenever evidence/contraband is transferred to another trained custodian, the receiver must inspect the evidence/contraband to assure it is adequately described, sign for the evidence/contraband, and provide a copy of the transfer document to the person releasing custody. The ACC Area Manager, Center Supervisor or IAA, must decide whether the evidence should be turned over to the State Crime Lab for analysis. If turned over to the State Crime Lab, complete State Crime Lab Evidence Submission Forms, available on the State Crime Lab web site, and obtain a signature from the Crime Lab representative accepting custody. If someone else transports the evidence to the State Crime Lab, such as a State Police officer, have him/her sign the form, give him/her the original, and keep a copy. If it is not appropriate to send evidence to the State Crime Lab for analysis, the preferred step is to turn the evidence over to local or State Police using Form 1, “Evidence or Confiscated Property/Contraband.”
7. Contraband/Evidence Storage. Contraband/evidence must be stored in a designated secure area with access restricted to the custodian of the evidence until released to authorized individuals for appropriate use such as trial, transfer to local law enforcement, use during a disciplinary committee hearing, return to the owner, or withdrawal for destruction.
8. Disposition of Evidence/Contraband. Evidence and contraband will be disposed of as follows after the disciplinary committee hearing at residential facilities and all legal proceedings have been completed:
  - a. Weapons. Refer to the policy on Weapons and Security Equipment for guidance on processing confiscated firearms.

- b. Legal Materials Belonging to Residents. For offenders at an ACC residential facility, the Senior Residential Supervisor may direct the resident to dispose of the material by shipping the material at the resident's expense or giving it to an authorized visitor.
- c. Money Not Held as Evidence or Contraband. Money not held as evidence or contraband found by or in possession of an ACC resident will be forwarded to the Central Office; Administrative Services for deposit in the Resident Welfare Fund.
- d. Disposition of Other Contraband/Evidence. If contraband/evidence has not been transferred or stored according to previous paragraphs, and there are no anticipated court cases nor need to transfer or hold the material for an anticipated hearing, choose an appropriate alternative from the following:
  - (1) Excess Personal Property Confiscated from Residents. Using Form 3, notify the resident of the agency's intent to sell, discard, or destroy the excess property unless the resident disposes of the property by shipping it at the resident's expense or giving it to an authorized visitor. Such material cannot be given to an employee. If instructions are not received from the offender within 30 days of confiscation, follow disposition instructions below.
  - (2) Evidence should be returned to the owner if it is not illegal or against policy/rules to possess. Obtain a written receipt evidencing the return of the items.
  - (3) Contraband may be returned to a visitor, volunteer, or contractor when they leave the facility if the contraband is not illegal to possess.
  - (4) If property is estimated to be worth more than \$50.00, it can be turned in to the State Marketing and Redistribution Office. Contact the Central Office, Administrative Services Section for guidance.
  - (5) Drugs must be transferred to a local police department or State Police for destruction; if one of these agencies will not accept the drugs, dispose of them as described in the next paragraph.
  - (6) When the above alternatives are not appropriate, list the property on Form 1 and obtain supervisor approval for destruction/disposal. At least two ACC employees must be present during destruction/disposal. Indicate the method and date of destruction/disposal. Both employees must sign the form.

**H. Required Inspections.** Center Supervisors must ensure searches are conducted to minimize the presence of contraband. (4-ACRS-2C-02)

**I. Requirement to Provide Guidance.** Residents and Center staff must be provided written contraband policy guidance. (4-ACRS-2C-01)

## V. FORMS.

- AD 17-32 Form 1 Evidence or Confiscated Property/Contraband
- AD 17-32 Form 2 Evidence or Confiscated Property/Contraband Disposition
- AD 17-32 Form 3 Notification of the Destruction, Discard or Sale of Confiscated Property/Contraband
- AD 17-32 Form 4 Request Approval for a Body Cavity Search
- [Evidence Submission Form](#) (Arkansas State Crime Lab)