

Number: TBD

EFFECTIVE DATE: December 4, 2000 (Amended February 14, 2001)

## POLICY STATEMENT

**Policy Area:** Supervision

**Issue:** Staff Safety - Offender Compliance with Conditions of Supervision

**Action/Guidance:** Role of CSO in Search and Seizure

**Context:** The role of the CSO in search and seizure is to recommend the imposition of a special search condition or to suggest that appropriate law enforcement agencies obtain a search warrant when circumstances suggest that an offender may possess contraband or may be at a risk of reoffending. CSOSA policy prohibits CSOs from conducting searches and seizing **weapons and/or controlled substances** from the persons or premises of the offenders they supervise. If the releasing authority orders the seizure of **other contraband** (e.g., pornographic magazines, videos, etc.) and the CSO obtains the written consent of the offender, the CSO may seize the contraband **only** if the prohibited items are in plain view<sup>1</sup>. All searches, with the exception noted above, must be performed only by law enforcement personnel, based upon either a special condition, the consent of the offender or a search warrant. **NOTE: For purposes of this policy statement, law enforcement personnel refers exclusively to sworn officers with arrest powers and the legal authority to carry a firearm such as Metropolitan Police Department officers, Federal Bureau of Investigation special agents, and District of Columbia Housing Authority Police officers.**

### I. Background

All laws and statutes regulating search and seizure are based on the Fourth Amendment to the Constitution of the United States which provides 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.*

CSOSA's search and seizure policy is grounded in three other important concerns. First, as unarmed law enforcement personnel, CSOs are not properly suited to execute searches of potentially uncooperative or hostile offenders and their property. Second, without an established chain-of-custody protocol and secure storage facilities, it is unwise to allow CSOs to seize offender property. Third, it is the preference of CSOSA to avoid an overreliance by CSOs on searches to the exclusion of other supervision techniques. Other techniques should be relied upon to monitor an offender's compliance with conditions of supervision.

### II. Policy

#### A. Grounds for Search of an Offender's Person or Premises

##### 1. Special Search Conditions

##### a. Requirement for Imposition of Search Condition

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<sup>1</sup> The plain view seizure doctrine can be summarized as follows: contraband that falls within the plain view of a CSO who is justified in being in the place where the contraband is seen may properly be seized by the CSO. It must be immediately apparent that the item is contraband with respect to the offender.

A special search condition should only be imposed if the CSO requests the condition, or if the releasing authority considers such a condition to be necessary in a particular case. The CSO's request for a search condition should be based upon a determination that the offender's criminal history, screener assessment, or adjustment while under supervision, suggest that a condition is necessary to enforce the other conditions of release or to protect the public. A CSO should not routinely recommend that the USPC or the sentencing court impose a special condition authorizing searches of persons under supervision.

**b. Model Special Search Condition**

In cases where a CSO deems a special search condition to be warranted, the CSO shall propose the model search condition attached as Attachment A.

**c. Scope of Search under Special Search Condition:**

- A special search condition shall permit searches by authorized law enforcement officials of the offender's person, residence, workplace, training site, or vehicle.
- A special search condition shall permit searches by authorized law enforcement officials only if the CSO reasonably believes that contraband or evidence of a violation of the conditions of release may be found, or that effective supervision of a particular offender otherwise warrants the imposition of the condition.
- A special search condition shall provide that any searches by authorized law enforcement officials be conducted in a reasonable manner, at a reasonable time, and be based upon reasonable suspicion of the existence of contraband or other evidence of a violation of conditions of release.

**d. Consequences of Failure to Comply with a Search under Special Condition**

A special search condition shall provide that failure to permit a lawful search may be grounds for probation or parole revocation.

**2. Computer Special Search Condition**

If the circumstances warrant, the CSO may recommend that the USPC or sentencing court impose a condition restricting an offender's possession and use of certain computer equipment. For example, if the CSO believes that a significant risk exists that an offender may use an online computer service to (a) engage in criminal activity or conduct prohibited by the offender's conditions of release, or (b) associate with individuals who are likely to encourage the offender to engage in criminal activity, or (c) violate the offender's conditions of release, the CSO may recommend that the USPC or sentencing court impose a condition restricting the offender from possession or use of certain computer equipment. The particular form of the computer-related condition will depend upon individual circumstances. Given that computers are used for numerous legitimate purposes, the least restrictive condition appropriate (consistent with the need for restriction and the need to monitor the offender's compliance with the restriction) shall be imposed.

An example of a condition restricting the offender from possession of a computer with access to an online computer service is set forth as Attachment B.

### 3. **Notice to Offender and Potentially Affected Third Parties of Search Condition**

A search condition shall also require that the offender, and those with whom s/he resides, be notified of the existence of the condition and that failure of the offender to cooperate can result in a revocation request to the releasing authority. It is the primary responsibility of the offender to notify those with whom s/he resides of the search condition. In the event the offender refuses to make the required disclosure, the CSO shall notify the household residents of the search condition.

There are three reasons why it is useful to forewarn the offender and potentially affected third parties of the existence of the search condition:

- a. Forewarning the household residents reduces their expectation of privacy. The Supreme Court has held that the Fourth Amendment serves to protect an individual's "reasonable and justifiable expectation of privacy." (*Katz v. U.S.*, 389 U.S. 347 (1967)). By so ruling, the court extended the protection of the Fourth Amendment to people rather than to places.
- b. Informing an offender of the search condition may act as a deterrent to criminal activity because it may be easier to detect. For example, the offender may be less likely to have weapons in the home, thus increasing an officer's safety while conducting home contacts.
- c. Clearly delineating the existence of the condition and the consequence for non-compliance may serve to reduce debate and increase cooperation in the event that a search is conducted.

### 4. **Consent Searches**

- a. A law enforcement officer may conduct a search in the absence of a special condition if the offender gives written consent for the search.
- b. To ensure that consent is freely and voluntarily given, the CSO shall advise the offender before the consent is given that the consent may be refused without the adverse consequence of revocation of community supervision. A search based upon consent may not exceed the scope of the consent. The CSO shall utilize the CSOSA Search Consent Form (see attachment) to document the offender's consent.

### 5. **Search Warrants**

In the event that a CSO believes that a search of the offender's premises has become necessary and there is no special search condition in place, and the offender will not consent to a search, the CSO will consult his or her immediate supervisor to determine the appropriate course of action. In the event that it is determined that a search warrant may be required to protect the public safety, the CSO's supervisor shall consult law enforcement.

## **B. General Rules for Searches**

1. CSOs are prohibited from conducting searches of an offender's person, residence, workplace, training site or vehicle. Such searches are to be conducted by authorized law enforcement personnel.

2. Warrantless searches can be conducted incident to a lawful arrest, or in certain instances, when made a condition of parole or probation. In both instances, the search may only be conducted by a law enforcement officer. CSOs shall limit their participation to observing the search and shall not become active participants in the search.
3. All persons entering a CSOSA operated facility are subject to a search and/or scan by a metal detector for weapons. When a physical pat down search is required, it shall only be conducted by law enforcement or designated office security personnel.
4. In the event a CSO believes that the possession of contraband by an offender constitutes an immediate threat to the CSO's safety, the CSO will follow the practices described in greater detail in the "Safety Procedures for Conducting Work with Offenders on and off CSOSA Premises" policy statement.
5. In some instances, while making field visits, accountability tours, etc., a CSO may observe items in plain view which the CSO believes to be unlawful and illegal such as a controlled substance or weapon. The CSO should not make any attempt to take possession of the item(s). Instead, the CSO should make a mental note of everything observed and extricate himself/herself from the situation. Upon reaching a safe place, the CSO shall make a written record of his/her observations. Immediately thereafter, the CSO shall make contact with local law enforcement for further investigation if the situation presents an urgent threat to the public safety, or make contact with the CSO's supervisor if the situation presents a violation of conditions of release that is not an urgent threat to public safety.

**III. Authority:** Fourth Amendment to the United States Constitution

**IV. Procedural References/Supercedures:**

- References: United States Parole Commission Rules and Procedures Manual; June 2, 1997, § 2.40-20; Safety Procedures for Conducting Work with Offenders on and off CSOSA Premises.
- Amends: Policy Statement dated December 4, 2000.

### **Attachment A: Model Special Search Condition**

*The [parolee or probationer] shall submit his person, residence, workplace, training institution, or vehicle to a search, conducted by [insert law enforcement representative] at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of (a) conditions(s) of release. Failure to submit to a search may be grounds for a revocation hearing. The parolee shall warn any other residents that the premises may be subject to searches pursuant to this condition.*

## **Attachment B: Model Computer Condition**

*You shall not possess or use a computer with access to any online computer service at any location (including employment) without the prior written consent of the D.C. Superior Court or United States Parole Commission. This includes any Internet service provider, bulletin board system, or any other public or private computer network. Any approval by the D.C. Superior Court or United States Parole Commission shall be subject to any conditions set by the Court or Commission with respect to that approval.*

*In addition, you shall not possess or use any data encryption technique or program.*

*In addition, you shall (a) consent to law enforcement personnel conducting periodic unannounced examinations of your computer(s) equipment which may include retrieval and copying of all data from your computer(s) and any internal or external peripherals to ensure compliance with this condition and/or removal of such equipment for the purposes of conducting a more thorough inspection; and (b) consent at the direction of your CSO to having installed on your computer(s), at your expense, any hardware or software systems to monitor your computer use.*