



**PROBATION AND PAROLE BUREAU
STANDARD OPERATING PROCEDURES**

Procedure No.: P&P 60-4	Subject: SEARCHES OF OFFENDER’S PERSON, VEHICLE, RESIDENCE/CONFISCATION OF OFFENDER’S PROPERTY
Chapter: SIGN-UP PROCEDURE/SUPERVISION STANDARDS	Page 1 of 8
	Revision Date: 05/07/01; 06/17/02; 9/16/02; 03/14/03; 08/01/05
Signature: /s/ Ron Alsbury	Effective Date: 06/01/00

I. BUREAU DIRECTIVE:

The Probation and Parole Bureau will ensure employees are in legal compliance with city, county, state and federal laws regulating searches and confiscation and disposal of property. This procedure provides directions for Bureau employees conducting searches of offender’s person, vehicle and/or residence; seizing offender property; storing offender property; and for the destruction or disposition of confiscated property.

II. AUTHORITY:

- 44-12-102, M.C.A. *Things Subject to Forfeiture*
- 44-12-103, M.C.A. *When Property may be Seized*
- 44-12-104, M.C.A. *Summary Forfeiture of Certain Controlled Substances*
- 44-12-201, M.C.A. *Petition to Institute Forfeiture Proceedings-Summons-Service*
- 46-5-101, M.C.A. *Searches and Seizures*
- 46-5-102, M.C.A. *Scope of Search Incident to Arrest*
- 46-5-103, M.C.A. *When Search and Seizure not Illegal*
- 46-5-305, M.C.A. *Disposition of Unclaimed Property*
- 46-5-307, M.C.A. *Petition for Destruction, Disposal or Use of Evidence*
- 46-5,308, M.C.A. *Order*
- 46-5-311, M.C.A. *Custody and Disposition-Seizure without Search Warrant*
- 46-5-312, M.C.A. *Return of Property Seized-Right to Possess*
- 46-23-1032, M.C.A. *Federal Forfeiture Funds-Use*
- 46-24-206, M.C.A. *Property Return-Right to be heard on Disposition of Evidence*
- Griffin vs. Wisconsin*
- State of Montana vs. Burke and Roth*
- ARM 20-7-1101 (Amended 7/17/92)*

III. DEFINITIONS:

Reasonable suspicion means an officer can point to specific, objective facts and rational inferences that the officer is entitled to draw from those facts in light of the officer’s experience.

Moreover, the officer’s suspicions must be individualized, i.e., specifically directed to the person who is targeted. A reasonable suspicion is something stronger than a mere hunch, but something weaker than probable cause and the officer must be able to substantiate and/or clearly articulate the suspicion.

Procedure No.: P&P 60-4	Chapter: Sign-up Procedure/Supervision Standards	Page 2 of 8
Subject: SEARCHES OF OFFENDER'S PERSON, VEHICLE, RESIDENCE/ CONFISCATION OF OFFENDER'S PROPERTY		

IV. PROCEDURES:

A. Search of Offender's Property

When an officer believes *reasonable suspicion* exists indicating an offender has violated the conditions of his/her Probation or Parole or inmate status on Intensive Supervision Program, the officer may perform, assist, or authorize a search. The search may include inspection of the offender's person, vehicle, residence, curtilage or outbuildings, rented storage units or place of self-employment.

Officers are encouraged to request assistance from local law enforcement prior to performing a search if another P&P Officer is not available. If a law enforcement officer or another P&P Officer is not available, the search should be delayed until proper witnesses are available. Unassisted searches are initiated only for officer safety or other exigent circumstances.

In situations where law enforcement requests to search with or without an officer present, the officer must still have independent reasonable *suspicion* to believe the search will reveal evidence of a violation.

Forced entries - Entry into a home/building without the consent of the owner/offender, must be approved by a supervisor prior to entry. Exceptions to this may be in cases where the offender, officer, or a third party is in imminent danger and/or the situation warrants immediate action. If this situation occurs, the officer will notify the supervisor as soon after the incident as possible.

When a Probation and Parole Officer is conducting a search and discovers what appears to be evidence of a serious crime that may result in prosecution, the officer shall contact the Regional Administrator of designee, law enforcement and/or the county attorney before taking any further action. Officers must not disturb or otherwise compromise potential evidence or the crime scene.

The officer can search any area of the offender's residence to which the offender has access.

All pat searches should be performed by same-sex officers whenever possible following the guidelines in *P&P 100-4 (A) Pat Searches*. Support personnel should not be called on to perform searches unless they are trained as Probation Officer Technicians. In an emergency, and if no same sex officer is available to perform the pat search of an offender, the opposite sex officer can proceed.

It is advisable for officer's conducting opposite sex pat searches to locate a witness as a protection against allegations of an improperly conducted search.

The opposite sex officer, however, needs to use common sense and quit the pat search if the offender gets visibly upset or in some way evidences trauma.

If the officer believes the offender poses a threat to his/her personal safety or the safety of others, the officer may proceed or attempt to detain the offender until law enforcement, a same sex officer or witness can be made available.

Procedure No.: P&P 60-4	Chapter: Sign-up Procedure/Supervision Standards	Page 3 of 8
Subject: SEARCHES OF OFFENDER’S PERSON, VEHICLE, RESIDENCE/ CONFISCATION OF OFFENDER’S PROPERTY		

Officers also have access to search offender’s computers when necessary to assure that the offender is adhering to their conditions as in the case of a sex offender through the use of computer searching software such as the Computer Cop. Each region will have officers trained to use such programs to assist other officers if such a search is required.

Probation and Parole officers must have reasonable *suspicion* that the offender is violating the terms and conditions of their probation/parole/Intensive Supervision Program status before they can conduct a search of the person, residence or vehicle without a warrant. This holds true even if the court has ordered the offender subject to search and seizure without a warrant.

B. Applicability:

PAROLEES

Officers may conduct a search of a parolee without a warrant. *Review Conditions of Probation and Parole, P&P 60-1 (E)*, signed by the parolee when released for specific search conditions imposed by the BOPP.

PROBATIONERS

In any case where the Court, as a condition of a suspended or deferred sentence, orders that a probationer may be searched, upon *reasonable suspicion*, and without a warrant, the Officer has the authority to perform such a search.

In the case where the Court does not specify a search without a warrant but the “offense date” is subsequent to July 17, 1992, a search without a warrant is still applicable as a standard condition of supervision.

Should the offense date precede July 17, 1992, a Court Order regarding search must exist to perform a search without a warrant.

DOC COMMITMENTS/INTENSIVE SUPERVISION PROGRAM

Offenders who are screened, accepted and placed on the Intensive Supervision Program while serving their sentence in the community as a probationer, parolee or inmate, must be notified of the search without a warrant condition while on the Intensive Supervision Program. All ISP offenders must agree to a search without a warrant as stated and signed in the Intensive Supervision Program rules, policy and handbook.

CONDITIONAL DISCHARGE FROM SUPERVISION

Offenders granted a Conditional Discharge from Supervision per P&P 60-3, shall be subject to search upon reasonable suspicion if they have violated the conditions of Supervision on CDFS, a state or federal law.

C. Control and Storage of Confiscated Property

1. The Regional Administrator shall identify staff in each office where confiscated property is stored who will be responsible for receiving, receipting, and storing confiscated property. No other staff shall be granted access to the storage area or the keys to the storage area. In

Procedure No.: P&P 60-4	Chapter: Sign-up Procedure/Supervision Standards	Page 4 of 8
Subject: SEARCHES OF OFFENDER'S PERSON, VEHICLE, RESIDENCE/ CONFISCATION OF OFFENDER'S PROPERTY		

offices with only two persons, a procedure will be established to preserve the chain of custody.

2. Confiscated property will be placed in secure storage and will be maintained in a way that preserves a chain of custody. The property will be accurately inventoried by the officer and labeled with an evidence tag (See 60-4 (D)) to include:
 - a) the name of the officer confiscating the property;
 - b) the date the property was confiscated;
 - c) the time the property was confiscated;
 - d) the offender's name and DOC ID#;
 - e) an item number;
 - f) an accurate description of the property (the description will be used consistently throughout all legal proceedings).

A log will be maintained indicating when property arrives for storage and the staff responsible for placing the property in storage.

Whenever possible offenders will be issued a receipt for evidence seized. In all cases when a search warrant is served, a receipt will be issued for seized property and given to the offender, or left in plain view at the location where the warrant is served. The receipt will include a description of all property seized and will be signed by the officer confiscating the property using *P&P 60-4 (A) Confiscated Property Log*

Additionally, each region will establish a protocol for a person other than the officer that confiscated the property to enter confiscated property into the State Computer System Confiscated Property Log. In two person offices, procedures will be established to assure accountability for property seized. The Confiscated Property Log is an inventory of items seized from offenders and/or held as evidence in the Evidence Locker/Storage. The same protocol will be used to keep this Confiscated Property Log updated when any movement or disposition of this confiscated property occurs.

3. **Dangerous drugs** seized by an officer will be sealed in a tamper proof container and labeled with an evidence tag and taken to law enforcement for processing as evidence.

The evidence tag will include the initials of another Probation and Parole Officer, or Police Officer/Deputy Sheriff, to verify the validity of the evidence in the container.

4. **Currency** seized and held in custody by the officer will be placed in a tamper proof container and labeled with an evidence tag indicating the exact amount of currency confiscated. The evidence tag will include the initials of another Probation and Parole Officer, or Police Officer/Deputy Sheriff, to verify the validity of the evidence and amount of currency.
5. **Firearms** seized and held in custody by the officer will be unloaded. The bolt or slide on rifles or semi-automatic pistols will remain open. The cylinder on revolvers will remain

Procedure No.: P&P 60-4	Chapter: Sign-up Procedure/Supervision Standards	Page 5 of 8
Subject: SEARCHES OF OFFENDER'S PERSON, VEHICLE, RESIDENCE/ CONFISCATION OF OFFENDER'S PROPERTY		

open. The firearm(s) will be labeled with an evidence tag indicating make, model and serial number (if available). Ammunition or shell casings for the firearm will be marked indicating where they originated, packaged in a tamper proof container, labeled with an evidence tag and attached to the firearm.

The evidence tag will include the initials of another Probation and Parole Officer, or Police Officer/Deputy Sheriff, to verify the validity of the evidence. Weapons/firearms seized will never be removed from the evidence room without a court order or approval of the Regional Administrator or the Probation and Parole Bureau Chief. Department employees will not use confiscated weapons/firearms for any reason. Weapons/firearms will be disposed of when they are no longer needed as evidence.

6. **Urine samples** will be labeled with an evidence tag, packaged in a tamper proof container, and refrigerated. The person requesting the sample and the Probation and Parole Officer taking custody of the evidence will initial the container.

E. Removal, Destruction or Disposition of Confiscated Property from Storage

1. Removal

Officers needing access to confiscated property for use as evidence in court, to return to the rightful owner, or for any other legitimate purpose will first gain permission from his/her supervisor. Once permission is granted, the staff responsible for secure confiscated property shall retrieve the evidence from the storage area and have the person sign their name, and note the date, time and purpose of the removal from the area on a form designated for that purpose. Property will be returned to the storage area using the same procedure. Property returned to the rightful owner will be signed for by the owner on an inventory sheet kept in the storage area.

2. Destruction/Disposition

Confiscated property, no longer having any evidentiary value, will not be destroyed or disposed of without approval of the court or the P&P Bureau Chief/designee. The Regional Administrator will determine if it is necessary to petition the court for approval to dispose of confiscated property other than firearms. Staff will complete *P&P 60-4 (B) Request for Destruction/Disposal of Confiscated Property* and forward to the Bureau Chief for approval to destroy or dispose of confiscated property.

Firearms will require a petition to the court and an order from the court before they can be disposed. The officer will complete *P&P 60-4 (B) Request for Destruction/Disposal of Confiscated Property* and forward to the Bureau Chief for signature. The Bureau Chief will return the signed form to the officer for submission to the County Attorney. The court will be advised through the use of *P&P 60-4 (B)* referenced above, that the Forensic Sciences Division in Missoula will accept confiscated firearms. Unless the court orders otherwise, firearms will be sent to the Forensic Sciences Division. Upon receipt of a court order to transfer the firearms to the Forensic Services Division, the Regional Administrator or designee shall ensure the firearm is transferred in a timely manner. Within 10 days following the transfer, destruction or

Procedure No.: P&P 60-4	Chapter: Sign-up Procedure/Supervision Standards	Page 6 of 8
Subject: SEARCHES OF OFFENDER’S PERSON, VEHICLE, RESIDENCE/ CONFISCATION OF OFFENDER’S PROPERTY		

other disposition of the firearm, a return notice must be filed with the court, indicating the date and method the order was carried out.

If possible, the Regional Administrator should establish a method of approval through the courts and/or law enforcement to dispose of all confiscated property.

If the court/law enforcement does not assist in the disposal of confiscated property other than firearms, the Regional Administrator/designee will make the arrangements for destroying and/or disposing of this confiscated property through community resources. This property would be miscellaneous items such as drug paraphernalia, pornographic materials, alcohol, illegal drugs, knives, etc. Community resources and landfill regulations will largely dictate the manner of destruction/disposal. Printed pornography may be shredded

A list of all items to be destroyed shall be prepared using form *P&P 60-4 (B) Request for Destruction/Disposal of Confiscated Property* and this form is forwarded to the P&P Bureau Chief/designee for approval and signature. If approval has been granted for destruction of the items outside the office, the items will be placed in a box or other container and sealed. A minimum of two staff will transport the items and witness the destruction/disposal. If the items are being destroyed or disposed in the office, a minimum of two staff shall carry out the destruction/disposal. Staff disposing of the property will date and sign the bottom of *P&P 60-4 (B) Request for Destruction/Disposal of Confiscated Property*. The original of this form will be filed in the offenders file and a copy forwarded to the Regional Administrator. In cases where it is a petition to the court for destruction of firearms, a copy of this form will be placed in the offenders file a the original will be submitted to the County Attorney.

Miscellaneous confiscated property will never be removed from the evidence room without a court order or approval of the Regional Administrator or the Probation and Parole Bureau Chief.

F. Search Procedure

PROCEDURE:

1. Determine if “search without a warrant” is a condition of supervision. (See applicability section)
2. Determine if reasonable *suspicion* exists. (There must be reasonable *suspicion* to believe the search will reveal evidence of a violation).
3. If it is unclear that reasonable *suspicion* exists, the matter is discussed with the Regional Administrator. In situations when the law enforcement requests to search without a P&P officer present, the law enforcement officer must articulate reasonable *suspicion* for wanting to conduct the search.

RESPONSIBILITY:

- P&P Officer
- P&P Officer
- P&P Officer
Regional Administrator

Procedure No.: P&P 60-4	Chapter: Sign-up Procedure/Supervision Standards	Page 7 of 8
Subject: SEARCHES OF OFFENDER'S PERSON, VEHICLE, RESIDENCE/ CONFISCATION OF OFFENDER'S PROPERTY		

- | | |
|--|--|
| 4. If reasonable <i>suspicion</i> is determined, the search is coordinated. | P&P Officer |
| 5. Upon arrival at the residence, the offender is notified of the search (whenever possible). Reasonable <i>suspicion</i> must be articulated. | P&P Officer |
| 6. The search is performed in a professional manner, and in the least demeaning and disruptive fashion possible. (The officer can search any area of the offender's residence to which the offender has access). | P&P Officer |
| 7. If evidence of a new crime is discovered during the search without a warrant the search will cease and/or Regional Administrator/designee, law enforcement or the county attorney will be contacted. | P&P Officer |
| 8. Any property confiscated during the search is to be labeled as evidence and marked with the date, time and location of the found property. | P&P Officer |
| 9. Confiscated property will be logged into the State Computer Confiscated Property Log. The Regional Protocol will dictate who this person(s) will be. This person(s) will also be responsible to enter any movement or destruction of this confiscated property. | Person other than officer that confiscated property (Follow Established Regional Protocol) |
| 10. Request destruction/disposal of confiscated property to the county attorney or P&P Bureau Chief/designee if is no longer needed as evidence using <i>P&P 60-4 (B) Request for Destruction/Disposal of Confiscated Property</i> . | P&P Officer
Evidence Officer |
| 11. Dispose/Destroy property upon receipt of court order or approval from the P&P Bureau Chief/designee and document date and time of destruction on the bottom of <i>P&P 60-4 (B) Request for Destruction/Disposal of Confiscated Property</i> . | P&P Officer
Evidence Officer |
| 12. If the property was disposed or destroyed at the order of the court, send notice to the court within ten days regarding how the property was disposed or destroyed. | P&P Officer
Evidence Officer |

Procedure No.: P&P 60-4	Chapter: Sign-up Procedure/Supervision Standards	Page 8 of 8
Subject: SEARCHES OF OFFENDER'S PERSON, VEHICLE, RESIDENCE/ CONFISCATION OF OFFENDER'S PROPERTY		

V. **CLOSING:** Questions concerning this procedure will be addressed to the Regional Administrator

Forms

- | | |
|--------------|--|
| P&P 60-4 (A) | Confiscated Property Form |
| P&P 60-4 (B) | Request for Destruction/Disposal of Confiscated Property |
| P&P 60-4 (C) | Pat Search Procedures |
| P&P 60-4 (D) | Evidence Tag |