



<b>Search and Seizure Residences</b>	Related Policies:
<i>This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.</i>	
Applicable <b>Arkansas Statutes: Arkansas Criminal Procedure Rule §11.1 C; §13.2; §14.3 Arkansas Code 16-93-107.</b>	
CALEA Standard: 1.2.3; <b>1.2.4</b>	
Date Implemented:	Review Date:

- I. **Purpose:** The purpose of this policy is to direct officers and supervisors with respect to home entries.
- II. **Policy:** The policy of this department is to protect and serve the constitutional rights of all citizens when conducting home entries while balancing the needs of law enforcement in solving crime for the protection of the community.
- III. **Definitions**
  - A. **Probable Cause:** (search): Facts and circumstances based upon observations or information that would lead a reasonable law enforcement officer to believe that evidence of crime exists and that the evidence exists at the place to be searched.
  - B. **Exigent Circumstances Entry:** Entry of a dwelling without a warrant due to some existing emergency that would not allow an officer time to get a warrant.
  - C. **Search Incident to Arrest:** A search of the arrestee and their immediate area of control that is allowed whenever a custodial arrest is made.
  - D. **Consent:** The voluntary granting of permission for an officer to enter an area that is protected by the 4<sup>th</sup> Amendment, by a person who has a reasonable appearance of authority over that area.
  - E. **Dynamic Entry:** The utilization of a special team i.e. SWAT, ERU etc. when executing a high-risk warrant, entering to control a barricaded subject, or similar high-risk event.
- IV. **Procedure:** At the outset officers are directed that there are only three lawful methods upon which he or she may enter a person's dwelling. These methods include a warrant (arrest or search-with differing rules for each), exigent circumstances, or consent.
  - A. **Risk Assessment Matrix:** Unless exigent circumstances exist officers shall compile a risk assessment matrix prior to planning any entry of homes or other buildings.

- B. Written Operations Plan:** Unless exigent circumstances exist, officers shall complete a written operations plan prior to executing any warrant entry of a home or other building.
- C. Knock and Announce:** Prior to considering a forced entry into a dwelling, officers must knock at the entrance and announce their identity and purpose unless one of the following circumstances exist:
- i. The officer's purpose is already known to the occupant.
  - ii. When the personal safety of the officer or others would be jeopardized by the announcement.
  - iii. When the delay caused by the announcement may enable the suspect to escape.
  - iv. When a prisoner has escaped and retreated to his home.
  - v. When the announcement may cause evidence to be destroyed.
  - vi. **NOTE:** If officers believe that one of the above circumstances exist prior to obtaining the warrant, they should seek judicial approval for a "no-knock" warrant by outlining the factors believed to exist in their affidavit.
  - vii. In determining how long an officer must wait before forcing entry following the knock and announcement, officers should consider the nature of the item sought, and how long it would take to destroy the item. The United States Supreme Court found 15-20 seconds to be a reasonable amount of time in a drug warrant case.
- D. Arrest Warrant: Felony or Misdemeanor:** An officer may enter the home of the subject of an arrest warrant in cases where the officer also has probable cause to believe the subject is home.
- i. Knock and Announce Rules Apply
  - ii. Search Incident to Arrest-3 Zones
    - a. At the time of arrest, officers may search the arrestee's immediate area of control in the room of arrest.
    - b. At the time of arrest, officers may also look into, but not enter, areas adjoining the room of arrest, from which an attack could be launched.
    - c. Officers may conduct a protective sweep, limited to those places where a person could be, in cases where the officers have reasonable suspicion to believe someone else on the premises poses a danger to the officer.
    - d. Under Arkansas law these searches are limited to those events where at the time of the arrest:
      1. The accused is in or on premises all or part of which he is apparently entitled to occupy; and
      2. In view of the circumstances the officer has reason to believe that such premises or part thereof contain things which are:
        - subject to seizure; and
        - connected with the offense for which the arrest is made; and

- Likely to be removed or destroyed before a search warrant can be obtained and served; and
    - The arresting officer may search such premises or part thereof for such things, and seize any things subject to seizure.
  - iii. Officers must obtain a search warrant before entering the residence of a third party in order to search for the subject of an arrest warrant unless exigency or consent exists.
- E. Search Warrants:** Officers must have probable cause to believe that evidence of crime exists and must have probable cause to believe it will be located at the place to be searched.
- i. Knock and Announce Rules Apply: All necessary and reasonable force may be used to effect an entry into any building or part thereof to execute a search warrant if, after verbal notice or a good faith attempt at verbal notice by the officer executing the warrant which states the officer's authority and purpose:
    - a. He or she is refused admittance;
    - b. The person or persons on the premises refuse to acknowledge the verbal notice or the presence of persons inside the building is unknown to the officer; or
    - c. The building or property is unoccupied.
    - d. Note: where the officer has reasonable grounds to believe that the announcement will place the officer in greater peril or lead to the immediate destruction of evidence, the officer may dispense with the knock and announce requirement.
  - ii. The court issuing the warrant may authorize the officer executing the warrant to make entry without first knocking and announcing his or her office if it finds, based upon a showing of specific facts, the existence of the following exigent circumstances:
    - a. The officer reasonably believes that if notice were given a weapon would be used;
      - 1. Against the officer executing the search warrant; or
      - 2. Against another person.
    - b. That if notice were given there is an imminent danger that evidence will be destroyed.
  - iii. Nighttime Searches (All searches which occur between the hours of 8:00 p.m. and 6:00 a.m.): The affidavit must set forth facts justifying a nighttime search-the affiant must articulate facts outlining why:
    - a. The place to be searched is difficult of speedy access;
    - b. The objects to be searched are in danger of imminent removal; or
    - c. The warrant can only be safely or successfully executed at nighttime.
  - iv. The search warrant itself must particularly describe the place to be searched and must particularly describe the items to be seized.

- v. The scope of a search warrant is limited by information (i.e. information developed indicates that items are stored in a specific location). Scope may also be limited by the size of the item; (i.e. if looking for a stolen piano, one would not open a bureau drawer).
  - vi. All search warrants must be executed in a reasonable manner.
  - vii. Detention and Search of Persons on the Premises: When executing a search warrant, the officer may reasonably detain, and in some cases frisk any person in the place at the time under the following limitations (these limitations apply even in cases where the warrant calls for the “search of any person present”):
    - a. Frisk: To protect him or herself from attack when the officer has reasonable suspicion based upon specific facts, to believe that the individual present is armed and poses a threat.
    - b. Search: To prevent the disposal or concealment of any item particularly described in the warrant where there is probable cause, based upon specific facts, to believe that the person to be searched is in possession of said item.
    - c. Detain: Officers may detain any person who is present at the scene of a residence where officers are executing a search warrant. Where officers are executing a dangerous search warrant, all persons present may be handcuffed while officers conduct their search. If at any time it is determined that the person restrained in handcuffs is not dangerous, the handcuffs should be removed.
- F. Consensual Entry:** Officers may enter a dwelling based upon the consent of a person who appears to have authority over the premises without reasonable suspicion or probable cause,
- NOTE: These provisions apply to Knock and Talk events**
- i. Consent must be voluntary
  - ii. When a residence is involved, the person granting consent must be told that they have the right to refuse consent.
  - iii. Consent need not be in writing but written documentation will assist officers in proving that the consent was voluntary.
  - iv. Officers may not enter a dwelling in a case where a co-occupant is present and objecting to the entry.
  - v. The scope of a consensual entry and search rests with the consenting party who controls both how long the entry and search may last as well as what locations within the residence may be searched.
  - vi. Officers should not rely on the consent of a juvenile under the age of 15.
- G. Exigent Entry:** An officer may enter a home based on emergency circumstances when any of the following circumstances exist:
- i. Hot pursuit of a fleeing felon.
  - ii. Imminent destruction of evidence for any jailable offense.
  - iii. Need to prevent suspect’s escape from a serious misdemeanor that is a jailable offense.

- iv. Risk of danger to police or others inside or outside the dwelling.
  - v. Officers may enter a home without a warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such an injury.
  - vi. Once exigency has ended, officers should secure the scene and obtain a search warrant.
  - vii. The fact that an area is a crime scene does not create automatic exigency- There is no crime scene exception to the warrant requirement.
  - viii. Emergency Searches: An officer who has reasonable cause to believe that premises or a vehicle contain:
    - a. Individuals in imminent danger of death or serious bodily harm; or
    - b. Things imminently likely to burn, explode, or otherwise cause death, serious bodily harm, or substantial destruction of property; or
    - c. Things subject to seizure which will cause or be used to cause death or serious bodily harm if their seizure is delayed;
    - d. May, without a search warrant, enter and search such premises and vehicles, and the persons therein, to the extent reasonably necessary for the prevention of such death, bodily harm, or destruction.
- H. Dynamic Entry:** Whenever entering a residence in a manner designed to anticipate a potential deadly force encounter, the specially trained team should be utilized to ensure the safety of all persons involved. This determination as to whether a dynamic entry is necessary is done through the completion of a risk assessment matrix.
- i. Due to the nature of executing this high-risk entry, extreme care must be utilized in order to ensure that only the proper residence is entered. When considering the use of a dynamic entry, the following precautions must be followed:
    - a. A supervisor must be present and take responsibility for reviewing and approving the warrant as well as the affidavit prior to the execution of the warrant.
    - b. If the warrant involves narcotics, ensure that a purchase has been made or contraband observed within a reasonable period preceding the execution of the warrant.
    - c. If utilizing an informant for a narcotics purchase, an investigator must ensure that the informant has been observed at all possible times.
    - d. The officer supervising the special team will conduct a drive-by of the location with the lead investigator using the legal description on the warrant to locate the residence to ensure that the residence to be entered is verified with the warrant. If any discrepancies exist or if the house cannot be located by the description on the warrant, the warrant shall not be served.
    - e. Prior to execution of the warrant, all available data bases will be checked (telephone, electric, real estate etc.) to ensure that the residence matches the suspect of the investigation.

- f. A written operations plan will be prepared identifying the specific mission for the team, intelligence considered, a description of the targeted subjects and location, and the specific tasks assigned to each member of the entry team.
  - g. The lead investigator will accompany the special team during the execution of the warrant and direct officers to the doorway of the residence to ensure that the correct residence is entered.
  - h. Upon completion of the operation, photographs of all entryways into the building shall be taken to document both damage and lack of damage.
- I. Warrantless Search by Law Enforcement Officer for a Supervised Probationer or Parolee.**
- i. A person who is placed on supervised probation or is released on parole is required to agree to a waiver as a condition of his or her supervised probation or parole that allows any certified law enforcement officer to conduct a warrantless search of his or her person, place of residence, or motor vehicle at any time, day or night, whenever requested by the certified law enforcement officer. A warrantless search that is based on a waiver shall be conducted in a reasonable manner **(16-93-106)**.
  - ii. Though Arkansas Law does not require an articulable suspicion that the person is committing or has committed a criminal offense, this department requires that an officer have some articulable law enforcement concern, however slight, prior to conducting such searches without the direct assistance of a parole or probation officer, or that the parolee/probationer be a party to an otherwise lawful stop based on reasonable suspicion or probable cause.
  - iii. Examples of a law enforcement concern include but are not limited to: Anonymous tips/reports that would otherwise not be sufficient to conduct a search; parolee/probationer found in known crime areas or otherwise under suspicious circumstances less than reasonable suspicion for a terry stop; parolee/probationer is a party to a lawful traffic stop or other detention whereby a search would otherwise be unlawful.
  - iv. Officers are prohibited from using this statute to harass.
  - v. Prior to a 4th amendment seizure (detention or stop) and or search of a parolee/probationer based on the sole fact that the person is merely a parolee/probationer, a member of this department shall verify the status of the person believed to be on supervised probation or parole and that a waiver exists prior to conducting a seizure and or search by one of the following methods:
    1. As part of a consensual contact, a person admits to being on probation or parole, admits that a waiver exists, and consents to search. Under this scenario, no seizure has occurred and the Officer is conducting a search under the consent to search doctrine without having verified that a waiver exists via logical means.
    2. Officer determines person is on probation/ parole via ACIC and confirms that a waiver is on file.
    3. Officer determines person is on probation /parole and that a waiver exists through personal contact with the Departments of Correction or Community Correction or by contacting a Community Correction Officer prior to any warrantless search being conducted.

- vi.** The officer conducting the search must make a request to search the supervised probationer or parolee prior to search; however, obtaining consent to search is not required if it is determined through appropriate means that a waiver exists as a condition of release.
- vii.** Authority granted under this statute does not preclude other restrictions that may be applicable under law including third party rights, co-occupants, etc.
- viii.** In the event a co-occupant or other lawful third party prevents the search of a residence where a parolee or probationer resides, based on applicable law, the Officer will advise the third party that the parolee/probationer may be in violation of his/her parole based on their lawful objection, and the Officer will report the incident to Parole/Probation for their consideration of enforcement.
- ix.** Officers will document all parole/probation searches or attempts to search in a manner approved by their department. The report should document the date, time, location, parolee/probationer searched, scope of the search, the law enforcement concern that led to the search or an otherwise lawful stop, and the result of any such search.
- x.** In addition to typical enforcement that may occur, the discovery of any criminal violation will be immediately reported to the appropriate Parole/Probation Officer for further administrative consideration.