Army Regulation 190–22

Military Police

Searches, Seizures, and Disposition of Property

Headquarters
Department of the Army
Washington, DC
1 January 1983

Unclassified

SUMMARY of CHANGE

AR 190–22
Searches, Seizures, and Disposition of Property

This is a transitional reprint of this publication which places it in the new UPDATE format. Any previously published permanent numbered changes have been incorporated into the text.

Headquarters
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*Army Regulation 190–22

Effective 1 February 1983

Military Police

Searches, Seizures, and Disposition of Property

By Order of the Secretary of the Army:

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General, United States Army
Chief of Staff

Official:

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Major General, United States Army
The Adjutant General

History. This UPDATE issue is a reprint of the original form of this regulation that was published on 1 January 1983. Since that time, no changes have been issued to amend the original. This reprint originally carried a cover date of 7 August 1987.

Summary. This regulation prescribes HQDA policies concerning the conduct of searches and inspections and the disposition of property seized in conjunction with those activities.

Applicability. a. This regulation applies to—

(1) Active Army personnel.
(2) U.S. Army Reserve personnel.
(3) DA civilians.
(4) Army National Guard personnel in a federalized status.

b. Additionally, this regulation is applicable in—

(1) The United States, its possessions and territories, and the Commonwealth of Puerto Rico.
(2) Enemy territories occupied by the United States.
(3) Other areas to the extent that is consistent with the provisions of applicable international agreements or arrangements with proper foreign authorities.

c. Provisions of this regulation are not applicable to—

(1) Disposition of personal effects of deceased, missing, or captured personnel or of those persons who desert the military service.
(2) Property taken from enemy prisoners of war.
(3) Captured enemy public property.

Proponent and exception authority. Not applicable

Impact on New Manning System. This regulation does not contain information that affects the New Manning System.

Army management control process.

Supplementation. Supplementation of this regulation is prohibited without prior approval from the Office of Army Law Enforcement, HQDA(DAPE–HRE), Washington, DC 20310-0300.

Interim changes. Interim changes to this regulation are not official unless they are authenticated by The Adjutant General. Users will destroy interim changes on their expiration dates unless sooner superseded or rescinded.

Suggested Improvements. The proponent agency of this regulation is Office of Army Law Enforcement. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to HQDA(DAPE–HRE), Washington, DC 20310.

Distribution. Active Army, USAR, and ARNG—A.

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*This regulation supersedes AR 190–22, 12 June 1970.

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RESERVED

Chapter 1
General Provisions

1–1. Purpose
This regulation prescribes HQDA policies concerning the conduct of searches and inspections and the disposition of property seized in conjunction with those activities.

1–2. Applicability
a. This regulation applies to—

(1) Active Army personnel.

(2) US Army Reserve personnel.

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c. Provisions of this regulation are not applicable to—

(1) Disposition of personal effects of deceased, missing, or captured personnel or of those persons who desert the military service.

(2) Property taken from enemy prisoners of war.

(3) Captured enemy public property.

1–2. References
Required and related publications are listed in appendix A.

1–3. Explanation of terms
Special terms used in the regulation are listed in the glossary.

Chapter 2
Searches, Seizures, Inspections, and Inventories

2–1. Initiating a search, seizure, inspection, and inventory
a. Commanders and law enforcement personnel must be aware of the distinction between searches, seizures, inspections, and inventories. Whenever possible, consult with the Staff Judge Advocate's Office before the initiation of any of these actions.

b. Searches conducted off military installations or in areas or buildings not under military control normally must be conducted by civilian authorities under the authority of a search warrant. These searches may be conducted in the United States, its territories and possessions, and the Commonwealth of Puerto Rico. Military personnel will not execute search warrants or assist civilian police during a search. However, military personnel, when directed by competent authority, may accompany civilian police in the execution of a search warrant. Policy and procedures for providing off-installation military law enforcement services are contained in AR 190–24.

c. When the person or property to be searched is located in a foreign country, a search or seizure may be authorized according to this regulation. However, the authorization and actual conduct of the search or seizure is subject to international legal considerations. Thus, when the property is located outside of premises controlled by US forces, US military personnel will conduct searches only if such action has been consented to by host country authorities or if consistent with applicable international agreements or policy arrangements with host country authorities. Searching and seizing of persons or properties in occupied countries is governed by the Law of Land Warfare (FM 27–10). However, noncompliance with international agreements will not render an otherwise lawful search unlawful for courts-martial or other disciplinary purposes.

2–2. Probable cause searches
Guidelines for probable cause searches are listed below.

a. Search authorization. Generally, probable cause searches should be conducted only under the authority of a search authorization or a search warrant. Exceptions to this policy are found in paragraph 2–2*g*.

b. Power to authorize a search. An authorization to search may be granted by—

(1) The commander or acting commander. However, the commander or acting commander must not have become an active participant in gathering evidence to be used as the basis for requesting the authorization.

(2) A military judge.

(3) A military magistrate.

(4) Civilian judicial officials.

(5) Any other person authorized to exercise such authority under the provisions of AR 27–10.

c. Request for search authorization.

(1) Requests for authorization to search may be oral or in writing. Sample forms for written requests for search authorization are in AR 27–10. Nothing in this regulation prohibits oral requests for search authorization or supplementing a written request with oral requests. However, all oral requests should be summarized in writing within a reasonable period following the granting of the authorization. This will insure the basis for authorization is duly recorded and available for use as evidence during any subsequent judicial or administrative proceeding.

(2) A request for search authorization must contain enough information to establish probable cause. (See para 2–2*d* concerning the information on which probable cause is based.)

(3) The information provided in the request for search authorization, whether oral or written, need not be obtained under oath. However, the authorizing official should place the requester under oath when time and circumstances permit. Sworn information is more credible than unsworn information and is more likely to withstand judicial scrutiny. A form of oath suggested in these situations is contained in AR 27–10.

d. Probable cause determination.

(1) The person authorized to grant a search authorization will—

(a) Deny the request if he or she is not satisfied that probable cause has been established.

(b) Grant the request if he or she is satisfied that probable cause has been established.

(c) Request additional information in order to determine whether probable cause exists.

(d) Disqualify themselves as lacking authority or as not being neutral and detached, to order a search of the person or property in question.

(2) The authorizing official should consider the following guidelines when ruling whether probable cause exists:

(a) Probable cause exists when there is reasonable belief that a crime has been committed and that a person, property, or evidence sought in connection with the crime is located in the place or on the person to be searched.

(b) Before probable cause to search exists, there must be a reasonable belief that the information supporting the request for the authorization or warrant to search is believable and has a factual basis.

(3) The authorizing official must determine why the source of information is believable. The following factors may be considered in making this determination:

(a) The number of times, frequency, and specific character of information provided by this person in the past and how often this information has proved accurate.

(b) Whether the information is adverse to the financial or penal interest of the person providing the information to a degree that would create a reasonable presumption of its accuracy.

(c) The identity, demeanor, character, and reputation of the person providing the information.

(d) The military or other disciplinary record of the person providing the information.

(e) Independent corroboration of the information.

(f) Whether the person providing the information has any bias against the person or persons who will be affected by the search.

(g) Other factors considered appropriate to such a determination.

(4) The authorizing official must also determine whether the source acquired the information in a reliable manner. The following factors should be considered in making this determination:

(a) Whether the information is based on direct observation of the person reporting the information or is so detailed that a reasonable person can conclude that it must be based on firsthand information.

(b) Whether the information was related to the source by a party who is reliable and in a position to know the information firsthand.

(c) Whether the information was related to the source by the person or persons who will be affected by the search.

(d) Whether the information was acquired by smell and if the person reporting the information was experienced in identifying the substance smelled. Also consider if the person has smelled the substance before, how many times, and training received in the identification of different substances by smell.

(5) The information establishing probable cause must be given to the authorizing official. The authorizing official will do more than approve the conclusions of another that probable cause exists. He or she must personally weigh the information received.

(e) Power to conduct a search. Any commissioned officer, warrant officer, noncommissioned officer, criminal investigator, or military policeman may conduct a search. Other persons designated by proper authority to perform guard or police duties or agents of such persons may conduct a search.

(f) Execution. When conducting a probable cause search, the following procedures apply:

(1) Time limit. A search authorization normally should be executed within 10 days of its issue. The sooner a search authorization is executed, the better. Delay may diminish or negate the probable cause to search.

(2) Notice. If the person whose property is to be searched is reasonably available, the authority conducting the search should, when possible, notify him or her of the authorization to search. Such a notice may be made before or during the search.

(3) Inventory. An inventory for property seized should be made at the time of seizure or as soon as possible thereafter. Within 3 days, a copy of the inventory should be given to the person from whose possession or premises the property was taken.

(4) Foreign searches. Execution of a search authorization within the jurisdiction of a foreign nation will comply with existing agreements between the United States and the appropriate foreign nation (para 2–1*c*).

(5) Disposition of authorization. After the authorization has been executed, the original authorization, inventory, and all other documents and papers relating to a search or seizure will be kept by the appropriate law enforcement authorities.

(6) Noncompliance. Failure to comply with the provisions of (1) through (5) above will not render an otherwise lawful search unlawful for courts-martial or other disciplinary purposes.

g. Exigencies. A search based on probable cause may be conducted without a search authorization or warrant when one or more of the following exigencies exist:

(1) Insufficient time. It is reasonable to believe that the delay to obtain a search authorization or warrant will result in the removal, destruction, or concealment of the property or evidence sought.

(2) Lack of communications. It is reasonable to believe that a military operational necessity may prohibit or prevent communication with the person authorized to grant a search authorization or warrant. It must also be reasonable to believe that the delay necessary to obtain a search warrant or a search authorization would result in the removal, destruction, or concealment of the property or evidence sought.

(3) Search of an operable vehicle. A vehicle reasonably believed to be operable may be searched when there is probable cause to believe it contains persons, property or evidence connected with crime. Every part of the vehicle and its contents that may reasonably conceal the persons or objects sought may be searched. This rule applies to all closed compartments and containers (including clothing) within a vehicle. For example, under this rule it would generally be lawful to open and search a small purse found in a vehicle when there is probable cause to search for marijuana cigarettes. However, that same purse could not be opened when the object of the search is a stolen typewriter. There may be situations where the information giving rise to probable cause indicates that the persons or objects sought are located in a specific container within the vehicle. In these cases, every part of the vehicle that could reasonably conceal that container may be searched. Once the container is found, it may be opened. A search of the rest of the vehicle may not be conducted thereafter, unless such search is conducted incident to a lawful apprehension (para 2–3*b*) or pursuant to some independent exigency (para 2–2*g*). For example, if there is probable cause to believe that heroin is concealed in a briefcase that has been placed in the trunk of a vehicle, the trunk may be searched for the briefcase. Once found, the briefcase may be opened and searched for the heroin. However, after the briefcase is found no other parts of the vehicle may be searched, unless some other legal basis exists to support further searches. On the other hand, the information may merely indicate there is heroin somewhere in the vehicle. In this case, the entire vehicle including all closed containers and compartments where heroin may be found may be searched. If both probable cause and opportunity exist to secure a container and to obtain a search authorization before the container is placed in an operable vehicle, do not search the container (even if it is later found within the vehicle) without first obtaining a search authorization or consulting with a judge advocate. Moreover, because of the complexity and rapidly changing nature of the law in this area, a search authorization or the advice of a judge advocate officer should always be sought when time and circumstances permit. Note, a vehicle is presumed to be "operable" unless a reasonable person knew at the time of the search that the vehicle was not functional for purposes of transportation. (See para 2–3*e* for searches of Government vehicles.)

2–3. Searches not requiring probable cause

The following categories of searches do not require probable cause and may be conducted without a search authorization or warrant:

a. Consent searches. A person may consent to a search of person or property or both. The person giving consent must be the one exercising control over the property to be searched. Consent may be limited in any fashion by the person granting consent. Consent may be withdrawn at any time. To be valid, consent must be given voluntarily. Mere submission to authority of a superior or personnel performing law enforcement duties or yielding to an announced search is not voluntary consent. A person from whom consent is requested need not be advised of his or her rights to refuse to give consent. However, giving this advice could rebut subsequent claims that the consent was not voluntary.

b. Searches incident to a lawful apprehension. A person who has been lawfully apprehended may be searched. A search for weapons or destructible evidence may be conducted in the area where the person apprehended could reasonably reach with a sudden movement to obtain such property. When an apprehension occurs where other persons reasonably might be present who might interfere with the apprehension or endanger those apprehending, a reasonable examination should be made of the general area in which such other persons may be located. When the person apprehended is the occupant of a motor vehicle, the entire passenger compartment of the vehicle may be searched at that time. All closed compartments and containers (including clothing) within the vehicle may be opened and searched. This rule may also apply to other areas of a vehicle (except the trunk) not generally considered part of the passenger compartment. The rule applies when the apprehended person could reasonably reach these other areas with a sudden movement in order to obtain weapons or destructible evidence. Law enforcement personnel must realize that this area of the law changes rapidly.

c. Frisk incident to a lawful stop.

(1) A person authorized to apprehend by the Manual for Courts-Martial and others performing law enforcement duties may "stop" a

person when he or she reasonably suspects that the person has been, is, or is about to be involved in a criminal act. (A person authorized to apprehend includes all commissioned, warrant, and noncommissioned officers and, in the execution of their guard or police duties, military police and persons designated by proper authority to perform guard or police duties.) More than a mere hunch is required. The suspicion must be based on actions or events that are observed by the person making the "stop" or that have been reported by a reliable source, or a combination of these.

(2) Once a lawful stop has been made and there is a reasonable belief that the person may be armed and presently dangerous, a "frisk" is performed. The "frisk" is limited to weapons only. The method used is a "pat-down" of the outer clothing. When a "pat–down" reveals objects that reasonably could be weapons, the person making the stop will remove them from the inner clothing. If the objects removed fall within any categories of property described in paragraph 2–9, they are seized.

d. Searches of open fields and woodlands. A search of open fields or woodlands is conducted without probable cause within the limitations prescribed by paragraphs 2–1*b* and *c*.

e. Searches of Government property. Government property, including vehicles, may be searched without probable cause. However, the person to whom the property is issued or assigned may have a reasonable expectation of privacy therein at the time of the search. Normally, a person does not have a reasonable expectation of privacy in Government property that is not issued for personal use. Wall or floor lockers in living quarters are normally issued for storing personal possessions. If the lockers are used only for this purpose, they should not be searched under the provisions of this subparagraph. However, whether there is a reasonable expectation of privacy in Government property issued for personal use depends on the unique facts and circumstances surrounding each case. While searching a Government vehicle without probable cause, if separately contained personal property such as a suitcase or duffel bag is found, this property may not be seized or searched without a separate authorization or exigency. However, such property may be searched under the provisions of paragraph 2–2*g*(3) when there is probable cause to believe an operable Government vehicle contains persons, property, or evidence connected with crime, or that a personal container such as a suitcase or duffle bag located in an operable vehicle contains contraband or other property or evidence connected with a crime. Such property may be searched under the provisions of paragraph 2–3*b* if persons are apprehended while occupants of a Government vehicle.

f. Emergency searches to save life or for other medical purposes. In emergencies to save life, or for other medical purposes, persons or property may be searched in a good faith effort to—

(1) Give immediate medical aid.

(2) Obtain information needed to give medical aid.

(3) Prevent immediate or ongoing personal injury. For example, a search for identification or information on blood type would be within this provision, but a mere search to obtain information to complete an accident report would not.

g. Searches within jails, confinement facilities, or similar facilities. A search of a jail, confinement facility or similar facility may be made without probable cause. These searches are authorized by persons with authority over the institution.

h. Restricted area searches. See AR 380–20.

2–4. Inspections

Inspections are a necessary and legitimate exercise of a commander's powers and responsibilities. A commander may examine the whole or part of a unit, organization, installation, vessel, aircraft, or vehicle, including entrance and exit points. An inspection may not be used as a subterfuge for conducting a search. However, unlawful weapons, contraband, or other evidence of crime located during an inspection may be seized and used in a criminal prosecution. Inspectors may use any type of reasonable natural or technological aids. They may use narcotic or contraband detection dogs and metal detectors to assist in the inspection. See AR 210–10 for detailed instructions on inspections.

2–5. Inventories

Inventories will be conducted in accordance with the proper regulation requiring the inventory to be conducted. Unlawful weapons, contraband, or other evidence of a crime discovered in an administrative inventory may be seized. An inventory may not be used as a subterfuge for a search. Inventories include but are not limited to—

a. Complying with regulatory requirements.

b. Safeguarding property while it is in the Government's custody.

c. Protecting Government personnel against the potential hazards that might result should the Government unknowingly come into possession of dangerous substances.

d. Fixing pecuniary liability on those responsible for any loss or misuse of Government property or protecting the Government from possible claims.

2–6. Customs inspections

Customs inspections performed by military personnel will comply with the procedures contained in DOD 5030.49–R and AR 190–41.

2–7. Bodily views and intrusions

a. General. Where possible, the search of a person's body should be made in private and by members of the same sex. Failure to comply with this provision will not make inadmissible any evidence discovered and otherwise legally obtained.

b. Bodily views. Bodily views or "strip searches" are searches of the nude body. They are authorized under the following circumstances:

(1) Consensual. Visual examinations of the nude body may be made with the consent of the individual (para 2–2*a*).

(2) Involuntary. An involuntary display of the nude body including a visual examination of body cavities may be conducted if performed in a reasonable fashion. This search is authorized under the following circumstances:

(a) Customs inspections (para 2–6).

(b) Searches in accordance with a search authorization that specifically authorizes the bodily view of a particular person (see para 2–2) and searches based on probable cause not requiring a search authorization or warrant (para 2–2*g*).

(c) Searches of confinement facilities if reasonably necessary to maintain the security of the institution or its personnel (para 2–3*g*).

(d) Emergency searches (para 2–3*f*).

(e) Inspections (see AR 210–10).

(f) Inventories (para 2–5).

c. Intrusions into body cavities.

(1) Consensual. An individual may consent to an intrusion of his or her body cavities (para 2–3*a*). Intrusions will be performed by persons with proper medical qualifications.

(2) Involuntary. A reasonable nonconsensual physical intrusion into the mouth, nose, and ears may be made when a visual examination of the body under the provisions of paragraph 2–7*b*(2) is permissible. Nonconsensual intrusions into the other body cavities may be made—

(a) To search for weapons, contraband, or evidence of a crime if authorized by search authorization or warrant. This search will be conducted by qualified medical personnel.

(b) To search for weapons, contraband, or evidence of a crime on personnel in confinement facilities or similar facilities provided there is a "real suspicion." A "real suspicion" is suspicion based on facts that would lead a reasonable person to suspect, in light of his or her experience, that the individual is concealing such items.

(c) When the search is to comply with a valid medical purpose to preserve the health of a service member.

(d) To seize those items found during a visual examination (para 2–7) or observed in plain view (para 2–9*b*(3). Such seizure will be made in a reasonable fashion by a person with proper medical qualifications.

d. Seizure of bodily fluids.

(1) Consensual. An individual may consent to the extraction of

bodily fluids such as blood and urine (para 2–3*a*). Extraction of bodily fluids must be done in a reasonable fashion by a person with proper medical qualifications.

(2) Involuntary. Bodily fluids such as blood and urine may be extracted involuntarily in a reasonable fashion by persons with proper medical qualifications. These extractions may be done—

(a) With a valid search authorization or warrant in accordance with paragraph 2–2.

(b) Without a search authorization or warrant only when (1) there is a clear indication that evidence of a crime will be found and (2) there is reason to believe that the delay, that would result if a search warrant or authorization were sought, would result in the destruction of the evidence.

(c) In the course of medical action reasonably necessary to preserve the health of a service member.

(d) In accordance with the procedures for the nonintrusive collection of urine as prescribed in AR 600–85 which are not in conflict with this subparagraph.

e. Other intrusive searches.

(1) Nonconsensual intrusive searches of the body that do not fall within the scope of those described in paragraphs 2–7*b* and *c* are made only—

(a) With a lawfully issued search authorization or warrant, and

(b) If conducted in a reasonable fashion by a person with proper medical qualifications, and

(c) If the search does not endanger the health of the person to be searched.

(2) Intrusions covered by this subparagraph include but are not limited to surgery and X-rays. It also includes the forcible ingestion of substances designed to locate evidence or force its excretion. Seizure of fluids and substances that have been excreted from the body by natural processes would not be a search within the meaning of this subparagraph.

(3) An involuntary intrusion for the sole purpose of recovering evidence of a crime may be conducted only upon a person who is a suspect or an accused.

2–8. Property subject to seizure

The following types of property are subject to seizure under the provisions of this regulation:

a. Property of the United States.

b. Contraband.

c. Property reasonably believed to have been stolen.

d. Property reasonably believed to have been used in the commission of a crime.

e. Weapons or property that might be used to resist apprehension, make an escape, inflict injury, or commit a crime.

2–9. Seizures

a. The following categories of property may be seized without a search authorization or warrant and without probable cause:

(1) Abandoned property. Any person may seize abandoned property.

(2) Government property. Government property may be seized by any person listed in paragraph *d* below without a search warrant or authorization. This is provided the person to whom the property has been issued does not have a reasonable expectation of privacy in such property. (See para 2–3*e*.)

b. Other property. Property or evidence may be seized by any person listed in paragraph *d* below if based upon—

(1) Consent (para 2–3*a*).

(2) Exigent circumstances (para 2–2*g*).

(3) Plain view. If the person, while in the course of otherwise lawful activity, observes in a reasonable fashion property or evidence that the person has probable cause to seize (as defined in *c* below).

c. Property may also be seized according to a search authorization or warrant based on probable cause. Probable cause to seize exists if there is a reasonable belief that the property or evidence is an unlawful weapon, contraband, evidence of a crime, or might be used to resist apprehension or to escape. Before a person may conclude that probable cause to seize property is present, he or she must insure that a probable cause determination has been made in accordance with paragraph 2–2*d*.

d. Any commissioned officer, warrant officer, noncommissioned officer, and when in the execution of guard or police duties, any criminal investigator, members of the military police, or individual designated by proper authority to perform guard or police duty, or any agent of such person, may seize property according to this regulation.

Chapter 3
Disposition of Property

3–1. Disposition of evidence

a. Property lawfully seized during a search, inspection, or inventory will be processed in accordance with AR 195–5. This regulation should be used in conjunction with FA 19–20, which provides guidance on handling and processing of evidence.

b. Information or material pertaining to espionage, sabotage, criminal subversion, sedition, or treason affecting the United States will be immediately directed to the appropriate intelligence organization. Accountability procedures, set forth in paragraphs 3–4*a*(1) and 3–4*b* will apply.

3–2. Stolen Government property

a. In order to establish proper accountability and control of recovered stolen property the following steps will be taken:

(1) Commanders will insure that the US Army law enforcement organization with jurisdiction over the person who was found in possession of stolen Government property is informed of the circumstances concerning the seizure of the stolen property.

(2) Commanders will insure that all DOD property is expeditiously returned to military channels.

b. When notification of the discovery of Government property is received, the law enforcement organization will—

(1) Obtain a complete description of the property. The law enforcement organization will obtain the name, grade, social security number, and organization of the person who was found in possession of the stolen Government property. In case of firearms, the make, caliber, and serial number will be obtained. When the item is seized from the mail, a complete address of both the sender and the addressee is obtained.

(2) Request that the agency concerned release the articles to the military law enforcement authorities, when it is determined that the articles are Government property.

(3) Prepare a military police report and/or report of investigation. All reports will be processed in accordance with AR 190–45 and AR 195–2.

(4) When appropriate, furnish Federal, State, or municipal police agencies information pertaining to the incident. This information will be of value to those agencies in suppressing crime and/or in the apprehension of persons trafficking stolen Government property. However, prior to releasing any information, law enforcement officials must insure that the release complies with provisions in AR 340–17 and AR 340–21.

(5) Account for and dispose of all property released under the provisions of this and other applicable regulations.

3–3. Proof of ownership

In many cases, US Forces personnel and those employed by or accompanying the Armed Forces, legally obtain Government property. Therefore, law enforcement personnel must use extreme caution to insure that such property is not improperly seized.

3–4. Accountability

a. General.

(1) When releasing property of any of the types discussed in this

regulation, receipts will be obtained from the person or organization receiving the property.

(2) Where the owners are known, receipts in exchange for property are given to such owners for property acquired. Receipts are given for property acquired by search and seizure, confiscation, impoundment, or otherwise.

(3) Without conclusive proof or a judicial determination that personal property, including money, taken from a prisoner belongs to someone else, the property should be returned to that prisoner upon his or her release.

(4) The Army has no authority to adjudicate disputes about ownership of property. This authority is usually exercised by civil courts. Hence, when a dispute about ownership exists, there must be conclusive proof or judicial determination that the property belongs to another, or the property must be returned to the person from whom it was taken. When judicial proceedings to decide ownership are pending, property should be retained and safeguarded pending the outcome. Property not acquired by military police from a known person, and without conclusive proof or judicial determination of ownership, property should be treated as lost, unclaimed, or abandoned property.

b. Disposition of property seized as evidence. Physical evidence will be processed, accounted for, and safeguarded in accordance with AR 195–5. Final disposition of property seized as evidence will be made promptly after it is no longer required. Staff Judge Advocates and their staff will cooperate with evidence custodians to insure that timely release of such property is made in accordance with the procedures in the Manual for Courts-Martial, U.S., 1969 (Rev. Ed.).

c. Processing of other property. Other property not classified as physical evidence will be processed according to the following procedures:

(1) Contraband. Contraband includes certain weapons, counterfeiting equipment, counterfeit bills and coins, and illegal drugs. The disposition of contraband which is defined by Federal statutes must be in accordance with laws and regulations issued by the designated Federal agency. When retention of contraband is no longer necessary, it will be transferred to the proper Federal agency, except that narcotics, marijuana, and other dangerous drugs will be disposed of in accordance with paragraph (*c*).

(a) Firearms and ammunition. A contraband firearm or ammunition is any firearm or ammunition that has been used or attained in violation of Federal law or any regulation that relates to the taxation of certain firearms. If a contraband firearm is acquired by law enforcement personnel, it should be turned over to the nearest agent of the Bureau of Alcohol, Tobacco, and Firearms (BATF), and a receipt must be obtained. Outside CONUS and in cases where BATF refuses to accept the firearm, it will be turned over to the proper property disposal activity. Contraband ammunition will be turned in to the nearest ammunition supply point or depot.

(b) Counterfeit currency and counterfeiting equipment. The Secret Service of the Department of Treasury is responsible for preventing the illegal manufacture and use of US currency. The nearest office of the Secret Service will be contacted when counterfeiting equipment and counterfeit currency or forged obligation of the Government is seized from members of the Armed Forces. Finance officers will release counterfeit money to the nearest US Army Criminal Investigation Command (USACIDC) unit for proper action.

(c) Narcotics, marijuana, and dangerous drugs. Narcotics, marijuana, and other dangerous drugs acquired by law enforcement personnel will be disposed of when no longer needed for legal proceedings. Seized drugs having medical value will be transferred to the nearest military medical facility.

(2) Prohibited property.

(a) Intoxicants. Intoxicants seized during an inspection or the search of persons or property on a military installation may be impounded. If so, a completed DA Form 4137 (Property Receipt) must be given the person having the article in his or her possession. The seizure by a law enforcement official does not divest the owner of the right to the intoxicant. It must be returned or compensation must be paid upon approval of a claim for loss or damage incurred while being held as evidence at a court-martial or other legal proceedings.

(b) Other prohibited property. Prohibited property other than that specified in paragraph (*a*) above will be confiscated. It will be returned to the issuing agency or to the agency that has jurisdiction over the property.

(3) *Lost, abandoned, or unclaimed property.* This property is privately owned, personal property that comes into the possession, custody, or control of the Army and is unclaimed by the owner. Property is considered to be abandoned only after diligent effort has been made to determine and locate its owner, the heir, or next of kin, or legal representative. A military person who is ordered overseas and unable to dispose of their personal property should be referred to the nearest Army installation commander. The commander will appoint a board to rule on the disposition of the property. If a law enforcement agency takes custody of the property it will be tagged and a record made as shown in paragraph (*a*) below. A report will be made to the installation commander who will take action in accordance with DOD 4160.21–M, chapter VI, paragraph 3–56, Defense Disposal Manual. Pending board action under DOD 4160.21–M, the law enforcement agency having physical custody is responsible for the safekeeping of seized property. The following procedures should be used:

(a) Property will be tagged using DA Form 4002 (Evidence/Property Tag) or clearly identified by other means, inventoried, and made a matter of record. These records are kept by the custodian of the property.

(b) Lost, abandoned, unclaimed property will be kept in a room or container separate from one used to store property held as evidence. Records or logs of property not held as evidence will be separated from those pertaining to evidence. However, all property will be tagged, accounted for, and receipted for in a similar manner as evidence.

(c) Property that has been properly identified through board action under DOD 4160.21–M as having an owner will be segregated and tagged with the name of that person.

(d) Abandoned or unclaimed property will be held until its status can be determined. In many instances, lost property can be returned to the owner upon presentation of proof of ownership.

(e) In all cases, a receipt should be obtained at time of release.

3–5. Seizure of vehicles used in controlled substances offenses

When a vehicle is used as an instrumentality in a drug offense, it is evidence and may be seized. (Whether a vehicle is actually an instrumentality of a drug offense is a question of fact in each case.) When a vehicle is seized, military investigators may coordinate with the Drug Enforcement Administration (DEA) to determine if forfeiture action will be initiated (21 USC 881). If forfeiture is instituted, the vehicle will be released to the DEA when no longer needed for military investigative purposes. Military investigators are not authorized to seize vehicles solely for forfeiture purposes, under 21 USC 881.

Appendix A
References

Section I
Required Publications

AR 27–10
Military Justice. (Cited in para 2–2.)

AR 190–45
Records and Forms. (Cited in para 3–2.)

AR 195–2
Criminal Investigative Activities. (Cited in para 3–2.)

AR 195–5
Evidence Procedures. (Cited in paras 3–1 and 3–4.)

AR 210–10
Administration. (Cited in para 2–4 and 2–7.)

AR 340–17
Release of Information and Records from Army Files. (Cited in para 3–2.)

AR 340–21
The Army Privacy Program. (Cited in para 3–2.)

AR 380–20
Restricted Areas. (Cited in para 2–3.)

DOD 4160.21–M
Defense Disposal Manual. (Cited in para 3–4.)

FM 19–20
Law Enforcement Investigations. (Cited in para 3–1.)

FM 27–10
The Law of Land Warfare. (Cited in para 2–1.)

Section II
Related Publications

AR 190–5
Motor Vehicle Traffic Supervision

AR 190–24
Armed Forces Disciplinary Control Boards and Off-Installation Military Enforcement

AR 190–41
Customs Law Enforcement

AR 600–85
Alcohol and Drug Abuse Prevention and Control Program

DOD 5030.49–R
Customs Inspection Manual for Courts-Martial, United States, 1969 (Revised Edition).

Glossary

Section I
Abbreviations

BATF
Bureau of Alcohol, Tobacco, and Firearms

CONUS
Continental United States

DEA
Drug Enforcement Administration

DOD
Department of Defense

HQDA
Headquarters, Department of the Army

MACOM
Major Army Command

U.S.C.
United States Code

USACIDC
U.S. Army Criminal Investigation Command

Section II
Terms

Admission
A self-incriminating statement falling short of an acknowledgement of guilt, even if it was intended to be exculpatory.

Authorization to search
An express permission, written or oral, issued by competent military authority to search a person or an area for specified property or evidence or to search for a specific person and to seize such property, evidence, or person.

Commander
a. A commissioned, warrant, or noncommissioned officer who, by virtue of his or her rank and assignment, exercises primary command authority over a military organization or prescribed territorial area.

b. One who has control over the place where the property or person to be searched is located, or, if that place is not under military control, has control over a person subject to military law or the law of war.

Contraband property
Material declared to be unlawful by appropriate statute, regulation, or order. It is subject to seizure when in one's posession, except when possessed pursuant to official business.

Controlled substance
A substance placed by the Attorney General on one of the five schedules established by the comprehensive Drug Abuse Prevention and Control Act of 1970. This act is commonly referred to as the Controlled Substance Act of 1970.

Dangerous drug
A nonnarcotic substance which has a potential for abuse due to its stimulative, depressive, or hallucinogenic effect upon the human nervous system. Controlled dangerous drugs are listed in the current schedules of Section 812, Title 21, United States Code, as updated and interpreted by the Code of Federal Regulations.

Enemy public property
The property of an enemy state.

Frisk
Limited pat-down of the outer clothing of a person after a lawful "stop," in an attempt to discover weapons, by an authorized person who reasonably believes that the person stopped is armed and presently dangerous.

Hearsay
A statement presented as the truth based on what others have said.

Inspection
An examination of the whole or part of a unit, organization, installation, vessel, aircraft, or vehicle, including entrance and exit points, conducted as an incident of command. The primary purpose is to determine and to insure that security, military fitness, or good order and discipline is maintained.

Inventory
An administrative intrusion into an area in which an individual has a reasonable expectation of privacy to compile a detailed list of property.

Military judge
A commissioned officer on active duty in the Armed Forces, a member of the bar of a Federal court or the bar of the highest court of a State and who is certified to be qualified for duty as a military judge.

Military magistrate
A person authorized to issue a search authorization upon probable cause, in accordance with the Military Rules of Evidence and AR 27–10.

Military property
Property of the United States or of nonappropriated fund activities of an Armed Force of the United States, wherever located.

Narcotic drug
Opium, opiates, and leaves of the coca plant and their compounds, manufacture, salts, derivatives, or preparations. Also substances that chemically produce the same results as the previously mentioned substances. Note that cocaine has been designated a narcotic under the Controlled Substances Act of 1970.

Nonmilitary property within a foreign country
Property owned, used, occupied by, or in the possession of an agency of the United States other than DOD when situated in a foreign country.

Persons and property within military control
Persons or property located on or in a military installation, encampment, vessel, aircraft, vehicle, or any other location under military control, wherever located.

Private property
Property that belongs to a person and over which he or she has a right of disposition.

Probable cause
a. To search. A reasonable belief that a crime has been committed and that the person, property, or evidence sought in connection with the crime is located in the place or on the person to be searched.

b. To apprehend. A reasonable belief that a crime has been committed and that the person to be apprehended committed it.

Prohibited property
Property, other than contraband, the possession of which is forbidden by law or regulation to persons subject to military law.

Reasonable suspicion
A belief based on facts that would lead a reasonable person to conclude in light of his or her experience that criminal activity may be afoot.

Search
An examination, authorized by law, of a specific person, property, or area for specified property or evidence, or for a specific person for the purpose of seizing such property, evidence, or person.

Search warrant
An express authorization to search and seize issued by competent civilian authority.

Seizure
The taking or dispossession of property from the possessor by an authorized person or the restriction of the freedom of movement of an individual against his or her will by an agent of the Government.

Stop
A limited detention of a person for the purpose of making an inquiry into activities which leads the detaining official reasonably to conclude, in light of his or her experience, that criminal activity may be afoot. The purpose of the stop must be investigatory in nature.

Section III
Special Abbreviations and Terms
There are no special terms.

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