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OAKLAND

2018 NOV 29 PM 3:10

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Stephanie Hom
Deputy City Administrator

SUBJECT: Probation and Parole Search Policy

DATE: November 26, 2018

City Administrator Approval

Date:

11/29/18

RECOMMENDATION

Staff Recommends That The City Council Adopt A Resolution Regarding Oakland Police Department General Order R-02, Searches Of Individuals On Probation Or Parole.

EXECUTIVE SUMMARY

Oakland Police Department (OPD) General Order R-02 (DGO R-02), is related to searches of individuals on probation or parole. Under Measure LL Section 604(b)(4), the City of Oakland's Police Commission has the authority to recommend modifying certain OPD internal policies and procedures. At its meeting on September 13, 2018, the Police Commission voted to amend DGO R-02 as provided in **Attachment A**. Per the requirements of Measure LL, if the Police Commission and OPD disagree on a proposed General Order, then the policy is to be forwarded to the City Council for determination. The City Council has 120 days to modify, approve or reject the Police Commission's recommendations. The deadline for City Council action on DGO R-02, is January 11, 2019.

Staff recommends adoption of the Resolution provided in the Supplemental Report that will determine DGO R-02 as proposed by OPD. Taking no action on the proposed Resolution means that the amendments as provided by the City of Oakland's Police Commission would go into effect.

This report serves to transmit the Police Commission's recommendations regarding DGO R-02 (**Attachment A**) and OPD's recommended policy (**Attachment B**).

BACKGROUND / LEGISLATIVE HISTORY

The City of Oakland's Police Commission, authorized by Measure LL in the November 2016 election, is a seven Commissioner, and two alternate Commissioners, civilian oversight board that oversees the policies, practices and customs of the OPD to meet national standards of constitutional policing and oversees the Community Police Review Agency (CPRA) that investigates complaints of police misconduct and makes recommendations for discipline.

Item: _____
Public Safety Committee
December 4, 2018

Under Measure LL Section 604(b)(4) the Commission has the authority to "propose changes, including modifications to the Department's proposed changes, to any policy, procedure, custom, or General Order of the Department which governs use of force, use of force review boards, profiling based on any of the protected characteristics identified by federal, state, or local law, or First Amendment assemblies, or which contains elements expressly listed in federal court orders or federal court settlements which pertain to the Department and are in effect at the time this Charter Section 604 takes effect for so long as such federal court orders and settlements remain in effect. All such proposed changes and modifications shall be submitted to the City Council for approval or rejection. If the City Council does not approve, modify and approve, or reject the Commission's proposed changes or modifications within one hundred and twenty (120) days of the Commission's vote on the proposed changes, the changes or modifications will become final."

At its meeting of September 13, 2018, the Police Commission met with representatives from OPD to discuss proposed revisions to DGO R-02. The Police Commission unanimously approved its revisions, which are included in redline form as **Attachment A**.

ANALYSIS AND POLICY ALTERNATIVES

Staff recommends that the City Council adopt the Resolution provided in a Supplemental Report prepared by OPD. The Supplemental Report also provides an analysis of DGO R-02.

FISCAL IMPACT

Currently, there are no new direct fiscal impacts associated with this report and Resolution.

PUBLIC OUTREACH / INTEREST

No additional public outreach was deemed necessary other than the standard noticing procedures of posting the City Council's Agenda.

COORDINATION

Preparation of this report was coordinated with the assistance of the City of Oakland's Police Commission, OPD, City Attorney's Office and Budget Bureau.

SUSTAINABLE OPPORTUNITIES

Economic: There are no economic opportunities associated with this report.

Environmental: There are no environmental opportunities associated with this report.

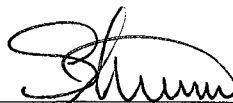
Social Equity: Social equity opportunities associated with DGO R-02 will be incorporated in the OPD Supplemental Report.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Consider Adopting A Resolution Regarding Oakland Police Department General Order R-02, Searches Of Individuals On Probation Or Parole.

For questions regarding this report, please contact Stephanie Hom, Deputy City Administrator, at 510-238-7542.

Respectfully submitted,



STEPHANIE HOM
Deputy City Administrator

Prepared by:
Richard J. Luna, City Administrator Analyst

Attachments (2):

- A – DGO R-02 – redlined changes proposed by Police Commission
- B – DGO R-02 – as proposed by Oakland Police Department

Item: _____
Public Safety Committee
December 4, 2018



DEPARTMENTAL GENERAL ORDER

R-02: SEARCHES OF INDIVIDUALS ON PROBATION OR PAROLE

Effective Date: XX Jul 18
 Coordinator: Training Division

Individuals on probation with certain court-imposed search clauses and individuals on parole/PRCS (Post-Release Community Supervision) may be subject to warrantless searches by law enforcement. One role of Law Enforcement is to act as an arm of the probation and parole/PRCS systems by ensuring that probationers and parolees are conforming to the conditions of their release.

COMMAND INTENT

The intent of this policy is to enhance the effectiveness of Oakland Police Officers while also reminding them to use their best ~~judgement~~ judgment on when to use probation and parole/PRCS searches. The Department values the abilities of Oakland Police Officers to make sound ~~judgements~~ judgments when using law enforcement tools available to them, such as probation and parole/PRCS searches. At the same time, the Department recognizes that those searched and other community members can view searches as intrusive. Accordingly, the Department seeks to build community trust through transparency of Department operations by requiring officers to document articulable facts supporting a decision to search.

A. PROBATION OR PAROLE SEARCHES AND THE COMMUNITY**A - 1. Purpose of Probation and Parole/PRCS Searches**

Probation and parole/PRCS searches must further a legitimate law enforcement or rehabilitative interest. Such searches shall not be:

1. Arbitrary;
2. Capricious; or
3. Harassing

A - 2. Procedural Justice Considerations

Law enforcement contact with individuals on probation, parole, and PRCS provides an opportunity to practice the tenets of procedural justice: voice, neutrality, respect, and trustworthiness. Probation and parole/PRCS contacts can be used as a means of providing counseling, referral to rehabilitative resources, and a deterrent against recidivism.

A - 3. Inquiring About Probation or Parole/PRCS Status

Inquiring about an individual's probation or parole/PRCS status, especially at the beginning of an interaction, or without an apparent basis for the inquiry, can be viewed as unjustly assuming that the individual has a criminal history. Officers ~~should~~ must refrain from immediately asking whether a person is on probation or parole/PRCS. Any subsequent inquiries about probation or parole/PRCS status ~~should~~ must be framed in a respectful manner.

B. REQUIREMENTS FOR PROBATION OR PAROLE/PRCS SEARCHES

B - 1. Knowledge of Searchable Probation or Parole/PRCS Status

Officers must know that an individual is on searchable probation or parole/PRCS, with a clause which allows the search the officer seeks to conduct, before the search. This information may be obtained/confirmed via:

1. Prior knowledge of the individual's searchable probation or parole/PRCS status;
2. Check of law enforcement databases such as AWS, CRIMS, CLETS, and CORPUS; in case of discrepancies:
 - a. CRIMS ~~should~~must be used to confirm probation terms.
 - b. CLETS ~~should~~must be used to confirm parole or PRCS status.
3. The individual's confirmation of his or her searchable probation or parole/PRCS status.¹ In such cases, officers ~~should~~must confirm the status of the individual with a records check. In cases where the individual is mistaken concerning status, the officer ~~should~~must provide the correct information to the individual and document the results in the appropriate report.

B - 2. Rationale for Probation or Parole/PRCS Searches

An officer must have reasonable suspicion based on specific and articulable facts taken together with rational inferences from those facts that an individual on probation or parole is engaged in criminal activity before engaging in a stop and frisk or any other search of the individual's person, property or place of residence. Probation and parole/PRCS searches ~~should~~must be conducted in consideration of the totality of the circumstances surrounding the encounter. In those instances where a cursory search is justified and the individual is on probation or parole/PRCS, a full search should be conducted.

Individuals contacted or detained who are found to be on searchable probation or parole/PRCS for **weapons-related** or **violent** crimes, if searched, ~~should~~must be searched pursuant to the terms of their supervised release parole or probation conditions to ensure officer, community, and subject safety.

For individuals on probation or parole/PRCS for **non-weapons-related** or **non-violent** crimes, officers ~~should~~must consider articulable fact(s) which tend to show that the individual is connected in some way to criminal activity, that the individual is a threat to officer or citizen safety, or that a probation or parole/PRCS search would further a rehabilitative interest. The mere fact that a person is on probation or parole/PRCS is not in itself a connection to criminal activity.

Comment [i1]: What exactly does supervised release mean? Please explain.

¹ See In re Jeremy G. (1998) 65 Cal.App.4th 553, 556 (officer reasonably relied on minor's statement that he was on probation or parole; "[t]he fact that the minor was in error is immaterial").

Some examples of facts that could support a search include, **but are not limited to**, the following:

- The individual is a ~~known gang member or affiliate~~
- The individual has been identified as a person of interest in a crime
- ~~The individual is in the company of another who is a person of interest in a crime~~
- ~~The individual is connected to a crime reduction strategy (such as Ceasefire or a specific crime reduction plan)~~
- The individual is a person of interest in, or uncooperative witness to, an ongoing criminal investigation

Comment [i2]: What is the standard of proof to show that the person is a known gang member or affiliate?

C. MEMORIALIZING FACTS OF THE SEARCH

C - 1. Required Documentation

Officers conducting a probation or parole/PRCS search shall at a minimum document the following in the appropriate report:

1. The circumstances of the encounter/detention;
2. How it was determined that the individual was on searchable probation or parole/PRCS;
3. How searchable probation or parole/PRCS status was verified including, if verified via the MDT, a paste of this information from the MDT to the body of the report (if feasible);
4. Any articulable fact(s) which informed the decision to search; and
5. The type(s) of search completed and disposition.

Comment [i3]: What is MDT? Please define this acronym.

By order of

Anne E. Kirkpatrick
Chief of Police

Date Signed: _____

**R-02: SEARCHES OF INDIVIDUALS ON PROBATION OR PAROLE**

Effective Date: XX Jan 19
Coordinator: Training Division

Individuals on probation with certain court-imposed search clauses and individuals on parole/PRCS (Post-Release Community Supervision) may be subject to warrantless searches by law enforcement. One role of Law Enforcement is to act as an arm of the probation and parole/PRCS systems by ensuring that probationers and parolees are conforming to the conditions of their release.

COMMAND INTENT

The intent of this policy is to enhance the effectiveness of Oakland Police Officers while also reminding them to use their best judgment on when to use probation and parole/PRCS searches. The Department values the abilities of Oakland Police Officers to make sound judgments when using law enforcement tools available to them, such as probation and parole/PRCS searches, to ensure officer, community, and subject safety. At the same time, the Department recognizes that those searched and other community members can view searches as intrusive. Accordingly, the Department seeks to build community trust through transparency of Department operations by requiring officers to document articulable facts supporting a decision to search.

A. DEFINITIONS**A - 1. Non-Violent Offense**

An offense in which violence or use of a weapon is not a factor. Examples include simple possession of controlled substances or property crimes such as petty theft.

A - 2. Cursory Search

A cursory search (also known as a pat search or search for weapons) is a limited search of the outer clothing in a manner designed to determine whether the person being searched is in possession of any weapons or items which may be used as such. A cursory search is most typically conducted if the officer has reasonable suspicion to believe that the person being searched is armed and/or dangerous.

A - 3. Full Search

A full search of a person is a "relatively extensive exploration"¹ of the person being searched, including their clothing, their pockets, and containers in their possession. A full search of a person is most typically conducted incident to that person's arrest.

¹ *US v. Robinson*, 414 US 218, 236 (1973)

B. PROBATION OR PAROLE SEARCHES AND THE COMMUNITY

B - 1. Purpose of Probation and Parole/PRCS Searches

Probation and parole/PRCS searches must further a legitimate law enforcement or rehabilitative interest. Such searches shall not be:

1. Arbitrary;
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3. Harassing

B - 2. Procedural Justice Considerations

Law enforcement contact with individuals on probation, parole, and PRCS provides an opportunity to practice the tenets of procedural justice: voice, neutrality, respect, and trustworthiness. Probation and parole/PRCS contacts can be used as a means of providing counseling, referral to rehabilitative resources, and a deterrent against recidivism.

B - 3. Inquiring About Probation or Parole/PRCS Status

Inquiring about an individual's probation or parole/PRCS status, especially at the beginning of an interaction, or without an apparent basis for the inquiry, can be viewed as unjustly assuming that the individual has a criminal history. Officers must refrain when possible from immediately asking whether a person is on probation or parole/PRCS. Any subsequent inquiries about probation or parole/PRCS status must be framed in a respectful manner.

C. REQUIREMENTS FOR PROBATION OR PAROLE/PRCS SEARCHES

Probation and parole/PRCS searches shall be conducted in consideration of the totality of the circumstances surrounding the encounter.

C - 1. Knowledge of Searchable Probation or Parole/PRCS Status

Officers must know that an individual is on searchable probation or parole/PRCS, with a clause which allows the search the officer seeks to conduct, before the search. This information may be obtained/confirmed via:

1. Prior knowledge of the individual's searchable probation or parole/PRCS status;
2. Check of law enforcement databases such as AWS, CRIMS, CLETS, and CORPUS;²
3. The individual's confirmation of his or her searchable probation or parole/PRCS status.³ In such cases, the officer shall confirm the status of the individual with a records check. In cases where the individual is mistaken concerning status, the officer shall provide the correct

² CRIMS is the recommended database for confirming probation status. CLETS is the recommended database for confirming parole status.

³ See *In re Jeremy G.* (1998) 65 Cal.App.4th 553, 556 (officer reasonably relied on minor's statement that he was on probation or parole; "[t]he fact that the minor was in error is immaterial").

information to the individual and document the results in the appropriate report.

C – 2. Individuals on Probation or Parole/PRCS for Non-Violent Offenses

For individuals on probation or parole/PRCS for **non-violent** crimes, officers shall consider articulable fact(s) which tend to show that the individual is connected in some way to criminal activity, that the individual is a threat to officer or citizen safety, or that a probation or parole/PRCS search would further a rehabilitative interest. The mere fact that a person is on probation or parole/PRCS is not in itself a connection to criminal activity.

Some examples of facts that could support a search include, **but are not limited to**, the following:

- The individual is a known gang member or affiliate
- The individual has been identified as a person of interest in a crime
- The individual is in the company of another who is a person of interest in a crime
- The individual is connected to a crime-reduction strategy (such as Ceasefire or a specific crime-reduction plan)
- The individual is a person of interest in, or uncooperative witness to, an ongoing criminal investigation

C – 3. Individuals on Probation or Parole/PRCS for Violent or Weapons-Related Offenses

Individuals contacted or detained who are found to be on searchable probation or parole/PRCS for violent or weapons-related offenses may be searched pursuant to the terms of their probation or parole/PRCS conditions.

C – 4. Cursory and Full Searches

In those instances where a cursory search is justified and the individual is on probation or parole/PRCS for any reason, with a clause which allows a full search of their person, a full search may be conducted.

D. MEMORIALIZING FACTS OF THE SEARCH

D - 1. Required Documentation

Officers conducting a probation or parole/PRCS search shall at a minimum document the following in the appropriate report:

1. The circumstances of the encounter/detention;
2. How it was determined that the individual was on searchable probation or parole/PRCS;
3. How searchable probation or parole/PRCS status was verified including, if verified via a Mobile Data Terminal (MDT), a paste of this information from the MDT to the body of the report (if feasible);
4. Any articulable fact(s) which informed the decision to search; and
5. The type(s) of search completed and disposition.

By order of

Anne E. Kirkpatrick
Chief of Police

Date Signed: _____