



DEPARTMENTAL GENERAL ORDER

R-02: SEARCHES OF INDIVIDUALS ON PROBATION, PAROLE, MANDATORY SUPERVISION AND PRCS (POST-RELEASE COMMUNITY SUPERVISION)

Effective Date: 11 Oct 19
Coordinator: Training Division

Individuals on probation with certain court-imposed search clauses and individuals on probation, parole, mandatory supervision and post-release community supervision (PRCS) may be subject to warrantless searches as a term and/or condition of their supervised release by law enforcement. While these searches are a legitimate law enforcement tool, the Department emphasizes that the mere fact that an individual is on probation, parole, mandatory supervision or PRCS is not in itself a connection to criminal activity.

For the purpose of this Policy, probation, parole, mandatory supervision and PRCS are collectively referred to as “Supervised Release.”

COMMAND INTENT

The intent of this Policy is to enhance the effectiveness of Officers¹ when coming into contact with those individuals on Supervised Release and to provide clear guidelines for the use of Supervised Release searches. The Department values the abilities of officers to make sound judgments and decisions when using law enforcement tools available to them – such as Supervised Release searches – to ensure Officer, community and subject safety. At the same time, the Department recognizes that those on Supervised Release, as well as the community at large, consider warrantless searches to be overly 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 affect a warrantless search.

A. DEFINITIONS

A - 1. Non-Violent Offenses

“Non-Violent Offenses” are defined as offenses 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. Violent Offenses

Offenses involving the use of force, the threat of force, the use or possession of a weapon, sexual violations against the person of another, human trafficking, and the use of force or threats to public safety. Battery on a Peace Officer (Penal Code § 243(b)), Reckless Evasion in a Vehicle (Vehicle Code § 2800.2(a)), or a violent felony as defined in Penal Code § 667.5(c.), fall into the categories of violent crimes, weapons offenses, sex crimes and/or

¹ “Officer” or “Officers” refer(s) to sworn members of the Department of any rank.

crimes involving threats to public safety. These categories of crimes are collectively referred to as “Violent Offenses.”

A – 3. Cursory Search

A “Cursory Search”, also known as a pat search or search for weapons, is further defined as 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. Cursory searches typically require reasonable suspicion that the person being searched is armed and/or dangerous, and are governed by applicable case law and Department policy.²

A – 4. Full Search

A “Full Search” of a person is defined as a “relatively extensive exploration”³ 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.

B. SUPERVISED RELEASE SEARCHES AND THE COMMUNITY

B - 1. Purpose of Supervised Release Searches

Warrantless searches of individuals on Supervised Release shall⁴ further a legitimate law enforcement purpose. Such searches shall not be:

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

B - 2. Procedural Justice Considerations

Officer contact with individuals on Supervised Release provides Officers with an opportunity to practice the tenets of procedural justice: voice, neutrality, respect, and trustworthiness.

B - 3. Inquiring About Supervised Release Status

Inquiring about an individual’s Supervised Release status, at the beginning of an interaction without proper justification is unjust. Such an immediate inquiry is viewed by the community as an improper assumption by the Officer that the individual has a criminal history. To that end, Officers shall not immediately inquire whether an individual is on Supervised Release unless there is an Immediate Threat⁵ to Officer safety or the safety of others. Any subsequent inquiries about probation, parole, mandatory supervision and PRCs status shall be framed in a respectful manner.

² See for example *Terry v. Ohio*, 392 US 1 (1968) and OPD Training Bulletin I-O.02, *Legal Aspects of Searching Persons*.

³ *US v. Robinson*, 414 US 218, 236 (1973)

⁴ Manual of Rules 175.77: SHALL – Indicates that the action is mandatory.

⁵ An “Immediate Threat” is defined in Departmental General Order K-3 (II)(B).

C. REQUIREMENTS FOR SUPERVISED RELEASE SEARCHES

Supervised Release searches shall be conducted in consideration of the totality of the circumstances surrounding the encounter.

C - 1. Knowledge of Searchable Supervised Release Status

Officers shall have knowledge and confirm that knowledge that an individual is currently on Supervised Release, with a clause or condition which allows the Officer to conduct a warrantless search, prior to conducting any such warrantless search. Officers may learn of, and confirm, an individual's Supervised Release status: from a check of law enforcement databases such as AWS, CRIMS⁶, CLETS⁷, and CORPUS; by direct contact with the individual's Supervised Release officer/supervisor; or from direct contact with another Department Officer who fulfilled one of the two above methods of confirmation.

In situations where an Officer has prior knowledge of the individuals' searchable Supervised Release status, the Officer shall confirm the validity of the individual's Supervised Release status via a records check prior to effecting any warrantless search.

For purposes of this Section, confirmation within the prior 72 hours shall be deemed sufficient. Officers shall also document the basis of their knowledge and confirmation, in conformance with Section D-1.

In situations where an individual communicates to an Officer that the individual is on Supervised Release with a warrantless search condition, the Officer shall still confirm the validity of the individual's Supervised Release status via a records check. If the individual is mistaken concerning his or her Supervised Release status, the Officer shall provide the correct information and document the results in the appropriate report.

C - 2. Individuals on Supervised Release for Non-Violent Offenses

When considering conducting a warrantless search condition for an individual on Supervised Release for a Non-Violent Offense, Officers shall consider articulable facts which demonstrate that the individual is connected in some way to criminal activity or that the individual is an Imminent Threat to Officer or citizen safety. Absent a connection to criminal activity or a threat to the Officer or citizen safety, the warrantless search condition **shall not** be invoked.

The mere fact that an individual is on probation, parole, mandatory supervision or PRCS is not in itself a connection to criminal activity.

⁶ CRIMS is the recommended database for confirming probation status.

⁷ CLETS is the recommended database for confirming parole status.

C – 3. Traffic Stops of Individuals on Supervised Release for Non-Violent Offenses

When officers contact an individual on Supervised Release for a Non-Violent Offense during a vehicle stop for any infraction and there are no articulable facts present which demonstrate that the individual is connected in some way to criminal activity, or that the individual is an Imminent Threat to Officer or citizen safety, Officers **shall not** search that individual or his/her vehicle pursuant to any Supervised Release search clauses or conditions.

C – 4. Individuals on Supervised Release for Violent Offenses

Individuals contacted or detained who are found to be on searchable Supervised Release for Violent Offenses may be searched pursuant to the terms of their Supervised Release conditions.

C – 5. Cursory and Full Searches

In those instances where a Cursory Search is justified and the individual to be searched is on Supervised Release and the terms and/or conditions of an individual's Supervised Release allow for a warrantless search, a Full Search may be conducted of the area which would be subject to a Cursory Search.

D. MEMORIALIZING FACTS OF THE SEARCH

D - 1. Required Documentation

Officers conducting a Supervised Release search shall, at a minimum, document the following in the appropriate report:

1. The circumstances of the encounter/detention;
2. How and when it was determined that the individual was Supervised Release and, if the Officer made this determination based on prior knowledge, the basis for that knowledge;
3. How the Supervised Release status and warrantless search condition 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 facts which informed the decision to search; and
5. The type(s) of search completed and disposition.

D - 2. Use of Portable Digital Recording Devices During the Encounter

Officers shall follow Department General Order I-15.1 (II)(A) regarding the activation of an Officer's portable digital recording device during encounters with individuals on Supervised Release.

By order of



Anne E. Kirkpatrick
Chief of Police

Date Signed: [Enacted City
Council 9 Jul 19, 87804 CMS]