

CITY OF OAKLAND

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2019 JUN 27 PM 8:34

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Anne E. Kirkpatrick
Chief of Police

SUBJECT: OPD General Order R-02--Searches
of Persons on Supervised Release

DATE: June 10, 2019

City Administrator Approval

Date:

6/27/19

RECOMMENDATION

Staff Recommends That The City Council Adopt A Resolution Adopting Oakland Police Department General Order R-02, Searches of Individuals on Supervised Release As Recommended By The Oakland Police Department.

EXECUTIVE SUMMARY

In June 2016, the Oakland Police Department (OPD) received a report from Stanford University's SPARQ¹ Initiative titled *Strategies for Change*², edited by Dr. Jennifer Eberhardt. This report, completed after intense study of OPD's practices on community interactions and police stops, detailed 50 recommendations to improve OPD's service delivery to the Oakland community. The City agreed to implement all 50 of these recommendations.

Pursuant to two of these recommendations (47 and 48), OPD drafted Department General Order (DGO) R-02 to provide direction limiting the use of supervised release searches by officers. This is a new policy and is a first-of-its-kind amongst comparable California law enforcement agencies. Through a collaborative process including discussions with the City's Police Commission ("Commission") and meetings of the Commission's ad-hoc committee for DGO R-02, OPD has developed a finalized policy, informed by feedback from the Commission and meeting the needs of OPD for policy clarity and transparency. Staff recommends that the City Council adopt the staff version of this policy (**Attachment A**) and reject the two versions voted on by the Police Commission.

¹ SPARQ = social psychological answers to real-world questions

² <https://stanford.box.com/v/Strategies-for-Change>

Item: _____

City Council
July 9, 2019

BACKGROUND AND LEGISLATIVE HISTORY

Basis for Policy

OPD drafted DGO R-02 in response to two recommendations from the June 2016 report, "Strategies for Change," edited by Stanford University Professor Jennifer Eberhardt. This report provides 50 recommendations to assist OPD with improving police-community relations.

Recommendation 47, *Review Search Policies*, read:

Does the discovery that someone is on probation or parole always trigger a search? If so, the department should query whether this practice helps or hinders community-police relations, individuals' rehabilitation process, and the protection of the community from crime.

Recommendation 48, *Review Use of Severe Legal Language*, read:

What are the legitimate reasons to ask whether someone is on probation or parole? When is the right time to ask? What is the right way to ask? Our analyses reveal that 93% of probation/parole searches were of African Americans and Hispanics. Are members of these groups more likely to be asked this question than are Whites or Asians? To clarify practice in the field, we recommend recording in the stop data report whether the officer asked about the community member's probation or parole status as well as the justification for asking that question.

Based on the above recommendations, OPD conducted a comprehensive review of its search policies. This review led OPD to craft a policy to assist officers in determining when they should conduct probation and parole searches (now referred to generally as "supervised release" searches). This policy reflects guidance from the Stanford report's recommendations, including the understanding that "those on Supervised Release and other community members can view searches as overly intrusive."³ The policy also states that "the Department seeks to build community trust through transparency of Department operations by requiring members to document articulable facts supporting a decision to search."⁴

DGO R-02 Legislative History

Beginning in February 2018, OPD's Policy and Publication Unit created a draft policy based on direction from OPD's Executive Team. After internal discussions, feedback, and multiple revisions, a draft was presented to, and approved by, the Chief of Police in April 2018. This version was submitted to the Oakland Office of the City Attorney (OCA) for legal review, and was subsequently submitted to Plaintiff Attorney Jim Chanin and the Independent Monitoring Team (IMT), appointed by the Federal Court to monitor OPD's compliance with Oakland's Negotiated Settlement Agreement (NSA). By July 2018, the draft of R-02 was reviewed and approved by OCA, Mr. Chanin, and the IMT.

³ DGO R-02, Command Intent

⁴ *Ibid*

Item: _____
City Council
July 9, 2019

On August 10, 2018, this draft was emailed to the then-Chair of the Police Commission, Mr. Thomas Smith, and on August 23, 2018 the draft was presented to the full Commission at a regular meeting. Thus began a process which culminated at the December 14, 2018 City Council meeting, where the Council rejected drafts of R-02 from both the Commission and the OPD. The Council directed OPD and the Commission to collaborate further and return to the Council after additional work on resolving the differences between the two drafts of the policy.

Developments Between January 2019 and Present Day

On January 24, 2019, OPD presented a new draft of R-02 to the Commission at a regular meeting. OPD produced this draft with the intent to bridge the gap between the two versions which had been submitted to the Council. The Commission formed an ad-hoc committee to work with OPD on the policy, consisting of Commissioner Prather, Commissioner (now Chair) Jackson, and then-Chair Smith.

On February 11, 2019, OPD and the ad hoc committee met and discussed the policy. The collaboration produced a revised OPD draft, which was sent to the Commission on February 21, 2019. The Commission discussed DGO R-02 at several regular meetings, and on April 11, 2019 the Commission voted to adopt a version of the policy, different in several respects from the version produced by OPD, as the official Commission version. This vote triggered the required submission of changes to OPD's policies to the City Council under City Charter Section 604(b)(4). OPD was afforded four weeks, until May 10, 2019, to respond.

During this time, OPD and the Commission's ad-hoc committee worked diligently on resolving differences. Another meeting was held with members of the ad-hoc committee and OPD Executive Staff, and further collaboration moved the two drafts closer. Unfortunately, OPD and the Commission could not resolve all outstanding differences before the Commission's regular meeting on May 9, 2019. At that meeting, the Commission voted to adopt a version of the policy, different not only from OPD's proposal but also from the version adopted on April 11, 2019 as the Commission's official version.

ANALYSIS AND POLICY ALTERNATIVES

Commission / OPD Collaboration

The policy put forth by OPD, attached to this report as **Attachment A**, incorporates policy fundamentals desired by both OPD and the Commission. Examples of concepts which were addressed or added at the suggestion of the Commission include:

Ensuring Global Applicability

Prior to the Commission's guidance, drafts of DGO R-02 referred to searches of persons on "probation and parole." The ad-hoc committee recommended that the scope of the policy encompass persons on all forms of supervision, including mandatory supervision and post-

Item: _____
City Council
July 9, 2019

release community supervision (PRCS). OPD, based on this feedback, now refers to all forms of post-release or other supervision generally as "supervised release" in DGO R-02.

Enhancement of the Command Intent and Inclusion of Community Voices

The "Command Intent" section of the policy draft was originally devised to inform the Department's staff of the intent and overall guidance on this policy from OPD Command. When the intricacies of policy require interpretation, a clear reference to the overarching intent of Department command can provide overall direction and allow members of all ranks the ability to interpret the dictates of policy accordingly.

The Commission recognized the unique opportunity to leverage this section to also speak to members of the community. Through assistance from Commissioners on the ad hoc committee, the Command Intent section now includes references to the high expectations the Department has regarding the decision making of officers and to community perspectives on the use of supervised release searches.

Prohibition of Searches on Routine Traffic Stops Absent Cause

The Commission informed OPD of concerns that persons on supervised release who may come into contact with police during a routine traffic infraction (e.g., stop sign violation) might be subjected to a search of their person pursuant to their supervised release status absent any cause. With the assistance of the Commissioners, OPD has since added an entire section (C-3) which expressly prohibits searches of persons on supervised release solely because they are pulled over for a traffic violation.

Differences Between OPD's Version And That Of The Commission

Policy Accessibility, Clarity, and Teachability

There are several outstanding differences between OPD's and the Commission's versions of DGO R-02 which lead staff to recommend that the City Council approve OPD's version of R-02 and reject the versions of R-02 presented by the Commission. OPD remains concerned that the Commission's version lacks the necessary clarity to provide direction to sworn personnel. R-02 provides direction for encounters which may at times be tense, uncertain, rapidly developing, and dangerous. To do so, the policy must be clear, understandable, and have concepts which can be easily taught and efficiently applied. OPD asserts that the policy put forth by OPD accomplishes the shared goals of the Commission and OPD while being clear and easy to teach.

Policy and Operational Fit

OPD is committed to procedurally just policing regardless of operational challenges. In section C-1, the OPD policy clearly lists the three acceptable ways in which an officer may show knowledge of a person's searchable supervised release status, which is a pre-requisite for a search. These ways of proving knowledge are consistent with case law, require officers to be objectively reasonable, and in some cases (such as prior knowledge) require supporting

Item: _____
City Council
July 9, 2019

documentation from the officer. These ways of proving knowledge allow officers to be held to a standard without impacting flexibility of operations in a fluid enforcement environment.

OPD has also improved on this section by incorporating concepts introduced by the Commission. This includes introducing a time limit for the amount of time an officer can consider "prior knowledge" fresh, as well as spelling out verifiable sources of obtaining this knowledge beyond a records check. OPD asserts that these changes bring the spirit of the OPD version in line with that of the Commission, while still remaining clear and easy to teach.

Need for City Council Decision

City Charter Section 604(b)(4) states that "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." Therefore, the City Council must approve a version of DGO R-02 before the 2019 City Council summer recess or the Police Commission version will become official policy. For the reasons stated above – for Accessibility, Clarity, and Teachability – staff recommends that the City Council approve the version presented by OPD as **Attachment A** to this report.

FISCAL IMPACT

There are no fiscal impacts associated with this report.

PUBLIC OUTREACH / INTEREST

This policy is the product of extensive outreach with diverse interest groups such as OPD members, the Alameda County District Attorney's Office, the Commission, and community interest groups.

COORDINATION

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

SUSTAINABLE OPPORTUNITIES

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

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

Social Equity: All Oakland residents and visitors benefit from clear policies and procedures that help OPD ensure procedurally just and operationally efficient police services.

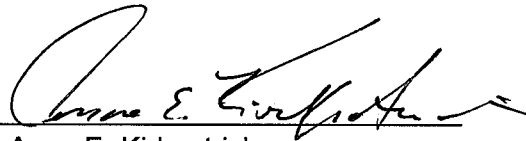
Item: _____
City Council
July 9, 2019

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Approve A Resolution Regarding Oakland Police Department General Order R-02, Searches of Individuals on Supervised Release.

For questions regarding this report, please contact LeRonne Armstrong, Deputy Chief of Police, Bureau of Field Operations II, at (510) 777-8563.

Respectfully submitted,



Anne E. Kirkpatrick
Chief of Police
Oakland Police Department

Reviewed by:
LeRonne Armstrong, Deputy Chief of Police
OPD, Bureau of Field Operations II

James J. Bassett, Captain of Police
OPD, Criminal Investigation Division Commander

Prepared by:
Joseph Turner, Sergeant of Police
OPD, Training Division, Policy and Publication Unit

Attachments (3):

A – DGO R-02 – OPD Proposed Version

B – DGO R-02 – Police Commission Proposed Version from April 11, 2019

C – DGO R-02 – Police Commission Proposed Version from May 9, 2019

Item: _____
City Council
July 9, 2019



DEPARTMENTAL GENERAL ORDER

R-02: SEARCHES OF INDIVIDUALS ON SUPERVISED RELEASE

Effective Date: XX XX 19
Coordinator: Training Division

Individuals on probation and mandatory supervision with certain search clauses, along with individuals on post-release community supervision (PRCS) and parole, may be subject to warrantless searches by law enforcement. For the purpose of this policy, these different forms of supervision are referred to generally as "Supervised Release." One role of law enforcement is to act as an arm of the Supervised Release system by ensuring that supervised persons are conforming to the conditions of their release.

COMMAND INTENT

The intent of this policy is to enhance the effectiveness of officers¹ while also reminding them to use their best judgment on when to use Supervised Release searches. The Department values the abilities of members to make sound judgments and decisions when using law enforcement tools available to them – such as searches of individuals on Supervised Release – to ensure officer, community, and subject safety. At the same time, the Department recognizes that those on Supervised Release and other community members can view searches as overly intrusive. Accordingly, the Department seeks to build community trust through transparency of Department operations by requiring members 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. Violent Crimes, Sex Crimes, and Crimes Threatening Public Safety

Any offense which includes the use of force, the threat of force, use or possession of a weapon, sexual violations against the person of another including human trafficking, residential burglary, and crimes against the justice system involving force or threats to public safety (e.g. Battery on a Peace Officer (243(b) PC) or Reckless Evasion in a Vehicle (2800.2(a) VC)).

A - 3. 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. Cursory searches typically require reasonable

¹ "Officer" refers to sworn members of the department of any rank.

suspicion that the person being searched is armed and/or dangerous, and are governed by applicable case law and OPD policy.²

A - 4. Full Search

A full search of a person is 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

Law enforcement contact with individuals on Supervised Release provides 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 unreasonable and shall be avoided.

To that end, officers shall refrain from immediately asking whether a person is on Supervised Release unless there is an immediate threat to the safety of officers or others. Any subsequent inquiries about an individual’s Supervised Release status shall be framed in a respectful manner.

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 must know that an individual is on searchable Supervised Release, with a clause or condition which allows the search the officer seeks to conduct, before the search.

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.

C - 2. Confirming or Obtaining Knowledge of Searchable Supervised Release Status

To satisfy the requirement of C-1, officers shall obtain or confirm their knowledge of the individual's searchable supervised release status by one of the three following methods:

1. **Check of law enforcement databases such as AWS, CRIMS, CLETS, and CORPUS⁵.** This is the preferred method, and officers should verify the individual's status via records check if possible and safe to do so.
2. **Prior knowledge of the individual's searchable Supervised Release status obtained from a reliable source⁸ within the past thirty (30) days.** Reliable sources of information include:
 - A database check as detailed above.
 - Another law enforcement officer, including parole and probation officers;
 - The individual's supervised release officer;
 - A verifiable law enforcement communication, such as an email from another law enforcement officer, a crime plan from a superior officer, a department intelligence summary, or a crime information bulletin from another law enforcement agency.

Officers should view the use of prior knowledge of supervised release conditions versus a verifying database check in the same manner as they view warrantless searches versus searches pursuant to a valid warrant. While the former have their place and, when used with proper discretion and adherence to law, are legitimate law enforcement tools, the latter are the most defensible and shift the burden of proof from the officer.

3. **The individual's confirmation of his or her searchable Supervised Release status.⁹** 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 information to the individual and document the results in the appropriate report.

C - 3. Individuals on Supervised Release for Non-Violent Offenses

When invoking the search condition(s) of an individual on Supervised Release for **non-violent** crimes, officers shall consider articulable fact(s) which demonstrate that the individual is connected in some way to criminal activity or that the individual is a threat to officer or citizen safety.

⁵ CRIMS is the recommended database for confirming probation status. CLETS is the recommended database for confirming parole status.

⁸ Officers shall document the basis of this knowledge pursuant to section D-1.

⁹ 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").

The mere fact that a person is on Supervised Release is not in itself a connection to criminal activity.

C – 4. Traffic Stops of Individuals on Supervised Release for Non-Violent Offenses

When officers contact a person 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 supervised individual is connected in some way to criminal activity, or that the individual is a threat to officer or citizen safety, officers **shall not** search that person pursuant to any Supervised Release search clauses or conditions.

C – 5. Individuals on Supervised Release for Violent Crimes, Sex Crimes, Crimes Threatening Public Safety, or Weapons-Related Offenses

Individuals contacted or detained who are found to be on searchable Supervised Release for **violent crime, sex crimes, crimes threatening public safety** (as set forth in section A-2), or **weapons-related offenses** may be searched pursuant to the terms of their Supervised Release conditions.

C – 6. Cursory and Full Searches

In those instances where a cursory search is justified and the individual to be searched is on Supervised Release, a full search of the area which would be subject to the cursory search may be conducted if the individual's search terms allow it.

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 it was determined that the individual was on searchable Supervised Release and, if the officer made this determination based on prior knowledge, the basis for that knowledge;
3. How searchable Supervised Release 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: _____



DEPARTMENTAL GENERAL ORDER

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

Effective Date: XX XX 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 by law enforcement. However, 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.

COMMAND INTENT

The intent of this policy is to enhance the effectiveness of officers when coming into contact with those individuals on probation, parole, mandatory supervision and PRCS and to provide clear guidelines for the use of probation, parole, mandatory supervision and PRCS searches. The Department values the abilities of officers to make sound decisions when using law enforcement tools available to them, such as probation, parole, mandatory supervision and PRCS searches, to ensure officer, community and subject safety. At the same time, the Department recognizes that those on probation, parole, mandatory supervision and PRCS, as well as the general public, can view these warrantless searches as 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 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. Violent Offense

A violent offense is as defined in California Penal Code § 667.5(c).

A - 3. 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. Cursory searches typically require reasonable suspicion that the person being searched is armed and/or dangerous, and are governed by applicable case law and Oakland Police Department policy.¹

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

A - 4. Full Search

A full search of a person is a “relatively extensive exploration”² 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. PROBATION, PAROLE, MANDATORY SUPERVISION AND PRCS SEARCHES AND THE COMMUNITY

B - 1. Purpose of Probation, Parole, Mandatory Supervision and PRCS Searches

Probation, parole, mandatory supervision and PRCS searches, as conducted by Oakland Police Department officers, shall further a legitimate law enforcement interest. Such searches shall³ not be:

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

B - 2. Procedural Justice Considerations

Officer contact with individuals on probation, parole, mandatory supervision and PRCS provides an opportunity for officers to demonstrate the tenets of procedural justice: voice, neutrality, respect, and trustworthiness.

B - 3. Inquiring About Probation, Parole, Mandatory Supervision and PRCS Status

Inquiring about an individual’s probation, parole, mandatory supervision and PRCS status, at the beginning of an interaction, or without an apparent basis for the inquiry, is unjust and an improper assumption that the individual has a criminal history. Officers shall refrain from immediately asking whether a person is on probation, parole, mandatory supervision and/or PRCS unless there is an immediate physical threat to the safety of officers or others. Any subsequent inquiries about probation, parole, mandatory supervision and PRCS status shall be framed in a respectful manner.

C. REQUIREMENTS FOR PROBATION, PAROLE, MANDATORY SUPERVISION AND PRCS SEARCHES

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

C - 1. Knowledge of Searchable Probation, Parole, Mandatory Supervision or PRCS Status

Prior to the use of the warrantless search condition of an individuals’ probation, parole, mandatory supervision or PRCS, an officer shall confirm

² *US v. Robinson*, 414 US 218, 236 (1973)

³ Manual of Rules 175.77: SHALL – Indicates that the action is mandatory.

that the warrantless search condition of that individuals' probation, parole, mandatory supervision or PRCS is current, valid and otherwise in effect. The officer shall obtain or confirm this information via:

1. A check of law enforcement databases such as AWS, CRIMS, CLETS, and CORPUS;⁴
2. Prior knowledge of the individual's searchable probation, parole, mandatory supervision or PRCS status shall be concurrently confirmed by a check of a law enforcement database such as AWS, CRIMS, CLETS, and CORPUS;
3. The individual's statement that he or she is subject to a warrantless search condition of probation, parole, mandatory supervision or PRCS, shall also be concurrently confirmed by a check of a law enforcement database such as AWS, CRIMS, CLETS, and CORPUS. In cases where the individual is mistaken concerning his or her status,⁵ the officer shall provide the correct information to the individual and document the results in the appropriate report.

C – 2. Individuals on Probation, Parole, Mandatory Supervision or PRCS for Non-Violent Offenses

In coming into contact with an individual on probation, parole, mandatory supervision or PRCS for **non-violent** crimes, an officer shall consider articulable facts which demonstrate that the individual is connected in some way to criminal activity or that the individual is a physical threat to officer or citizen safety. The mere fact that an individual is on probation, parole, mandatory supervision or PRCS is not in itself a connection to criminal activity.

C – 3. Traffic Stops of Individuals on Probation, Parole, Mandatory Supervision and PRCS

When officers contact an individual on probation, parole, mandatory supervision or PRCS for a non-violent offense during a vehicle stop for any infraction or vehicle code violation, 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 a physical threat to officer or citizen safety, officers **shall not** search that individual or his/her vehicle pursuant to any on probation, parole, mandatory supervision or PRCS search clauses or conditions.

⁴ CRIMS is the recommended database for confirming probation status. CLETS is the recommended database for confirming parole status.

⁵ 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").

C – 4. Individuals on Probation, Parole, Mandatory Supervision or PRCS for Violent or Weapons-Related Offenses

An individual contacted or detained who is determined to be on probation, parole, mandatory supervision or PRCS for a **violent or weapons-related offense**, and whose terms and conditions of probation, parole, mandatory supervision or PRCS include a warrantless search clause may be searched pursuant to that warrantless search clause.

C – 5. Cursory and Full Searches

In those instances where a cursory search is justified and the individual is on probation, parole, mandatory supervision or PRCS, a full search of the area which would be subject to the cursory search may be conducted if the terms and conditions of probation, parole, mandatory supervision or PRCS include a warrantless search clause and the individual's search terms allow for a full search under the circumstances.

D. MEMORIALIZING FACTS OF THE SEARCH

D - 1. Required Documentation

Officers conducting a warrantless search pursuant to a term and condition of an individual's probation, parole, mandatory supervision or PRCS 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 on probation, parole, mandatory supervision or PRCS and how it was determined that the probation, parole, mandatory supervision or PRCS included a warrantless search condition;
3. How the warrantless search condition of probation, parole, mandatory supervision or PRCS 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 utilize the warrantless search condition; and
5. The type(s) of search completed and disposition.

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

During the interaction in which it is determined that the individual was on probation, parole, mandatory supervision or PRCS, an officer shall record such interaction using the officer's portable digital recording device (PDRD) in addition to following the Department's General Order on PDRD use.

By order of

Anne E. Kirkpatrick
Chief of Police

Date Signed: _____



DEPARTMENTAL GENERAL ORDER

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

Effective Date: XX XX 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 as 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 (I)(D).

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: _____

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2019 JUN 27 PM 8:35

OAKLAND CITY COUNCIL

Approved as to Form and Legality


City Attorney

RESOLUTION NO. _____ C.M.S.

**RESOLUTION ADOPTING OAKLAND POLICE DEPARTMENT
GENERAL ORDER R-02, SEARCHES OF INDIVIDUALS ON
SUPERVISED RELEASE AS RECOMMENDED BY THE OAKLAND
POLICE DEPARTMENT**

WHEREAS, the Oakland Police Department (OPD) has an obligation to address crime - particularly violent crime - in the City of Oakland; and;

WHEREAS, one of the means of addressing violent crime in the City of Oakland is for OPD to conduct supervised release searches of individuals convicted of violent, sexual, and weapons offenses; and

WHEREAS, OPD values the abilities of Oakland Police Officers to make sound judgments when using available law enforcement tools, such as supervised release searches to ensure officer, community, and subject safety; and

WHEREAS, OPD recognizes that individuals who are searched and other community members can view searches as intrusive; and

WHEREAS, OPD seeks to build community trust through transparency of Department operations by requiring officers to document articulable facts supporting a decision to search; and

WHEREAS, OPD is in agreement with the Police Commission that there are systemic biases in criminal justice which can be exacerbated by court-mandated programs such as supervised release, and, to that end, OPD incorporated multiple changes in policy content proposed by the Police Commission; and

WHEREAS, Plaintiff counsel of OPD's Negotiated Settlement Agreement (NSA) and the Independent Monitoring Team (IMT) appointed by the Federal judge overseeing the NSA have both approved OPD's version of OPD Departmental General Order R-02 "Searches of Individuals on Supervised Release"; and

WHEREAS, on August 23rd, 2018, a draft of this policy was presented to the full Police Commission at a regular meeting which began a process

culminating at the December 14, 2019 City Council meeting, where the Council rejected drafts of R-02 from both the Commission and the OPD, and the City Council directed OPD and the Commission to collaborate further and return to City Council; and

WHEREAS, Article VI, Section 604(b)(4) grants the Commission authority to make changes to policies, procedures, customs or General Orders which govern, among other things, profiling based on any protected characteristics identified by federal, state or local law or which contain elements expressly listed in federal court orders or federal court settlements which pertain to the Department; and

WHEREAS, on January 24th, 2019, OPD presented a new draft of R-02 to the Police Commission in an attempt to bridge the gap between the two versions which had been submitted to the Council; the Commission formed an ad-hoc committee to coordinate policy discussions with OPD which met on February 11, 2019; and

WHEREAS, following the ad-hoc committee meeting OPD produced a revised DGO R-02 draft policy, which was sent to the Commission; the Commission discussed DGO R-02 at several regular meetings, and on April 11th 2019 the Commission voted to adopt a version of the policy – different in several respects from the version produced by OPD; and

WHEREAS, the Commission's April 11, 2019 vote triggered the required submission of changes to OPD's policies to the City Council under Charter section 604(b)(4); and

WHEREAS, OPD and the ad-hoc committee continued to meet and discuss policy differences but could not resolve all differences before the Commission's regular meeting on May 9th, 2019 at which time the Commission voted to adopt a version of the policy – different not only from OPD's proposal but also from the version adopted on April 11, 2019 – as the Commission's official version; and

WHEREAS, it is in the best interest of OPD and the City of Oakland to establish policies and procedures that provide sufficient clarity and transparency for all staff mandated to follow such policies; and

WHEREAS, the final Commission R-02 policy version contains sections that do not provide sufficient clarity and transparency; and

WHEREAS, OPD believes the Commission's version of Departmental General Order R-02 would place prohibitive burdens on OPD's ability to train officers on the policy and properly implement its tenets; now, therefore be it

RESOLVED: That the City Council recognizes that OPD consistently

needs to balance the need to address crime - particularly violent crime - in conjunction with building community trust; and be it

FURTHER RESOLVED: That OPD recognizes that building community trust requires transparency and good judgment in the application of law enforcement tools such as supervised release searches; and be it

FURTHER RESOLVED: That OPD has the ability to address crime through using the law enforcement tool of supervised release searches; and be it

FURTHER RESOLVED: That the City Council adopts OPD's version of Department General Order R-02, "Searches of Individuals on Supervised Release" provided below as *Attachment A*; and be it:

FURTHER RESOLVED: That pursuant to Article VI, Section 604(b)(4), the City Council rejects the Police Commission's versions of Departmental General Order R-02 "Searches of Individuals on Supervised Release " provided below as *Attachments B and C*; and be it

FURTHER RESOLVED: That any further changes to the OPD Department General Order R-02 must be adopted in accordance with City Charter Section 604 (b) of the City Charter, Powers and Duties of the Police Commission.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO
AND PRESIDENT KAPLAN

NOES -

ABSENT -

ABSTENTION -

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California