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Persons on Parole or Probation

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*“Department Training Bulletins shall be used to advise members of current police techniques and procedures and shall constitute official policy.”*

## LEGAL ASPECTS ON SEARCHING PERSONS ON PAROLE AND PROBATION

The purpose of this Training Bulletin is to inform OPD personnel of the legislative mandates of conducting parole or probation searches. This Training Bulletin further enumerates OPD’s directive to document the means of confirming the status of the parolee or, if a probationer, his or her status and whether they have an appropriate search clause. Finally, this Training Bulletin provides guidance in situations where inconsistent information is discovered in AWS, CORPUS, or CRIMS regarding a probationer’s status.

### Policy

Officers shall continually be respectful when engaging and providing service to the community. To help eliminate negative perceptions of peace officer’s conduct, officers are encouraged to focus on developing a rapport with community members and refraining from *immediately* asking if he or she is on probation or parole. Asking such a question, especially if it is the first question asked, infers that the community member must have some sort of criminal history. Community members may view this line of questioning as disrespectful and as an assumption without merit.

Officers’ primary motivation to conduct a parole or probation search shall serve as a legitimate law enforcement or rehabilitative interest. A parole or probation search shall not be:

- Arbitrary;
- Capricious; or
- Harassing<sup>1</sup>.

There are three (3) requirements necessary to invoke a search clause of a parolee or probationer:

- Knowledge of search condition

Prior to a probation or parole search, an officer must be aware of the person’s search conditions. If the parolee advises that he/she is on parole, or a probationer advises that he/she is on probation with an appropriate search clause, officers do not need to independently verify their status prior to conducting the search.<sup>2</sup>

<sup>1</sup> USSC: Samson v. California (2006) 547 US 843,856

<sup>2</sup> In re Jeremy G. (1998) 65 CA4 553,556



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- Rehabilitative or law enforcement motivation

The search must be reasonably related to the purpose of his or her probation or parole status, making certain they are adhering to the appropriate legal guidelines set forth.<sup>3</sup> A parolee or probationer's status is sanctioned by the courts to prevent recidivism and encourage accountability. The motivation behind invoking a parole or probation search shall not be to re-incarcerate an individual. It is rather an accountability mechanism to prevent any future criminal behavior.

- Scope and intensity

The search must be reasonable in its scope and intensity.<sup>4</sup>

### **Verifying Status**

To verify the status of a parolee or probationer, AWS, CRIMS, and CORPUS are available.

There have been numerous incidents where there is a discrepancy as to the date of termination of a probationer's conditions as calculated and displayed in AWS, CRIMS, and CORPUS. The contrariety is being addressed by the Alameda County Information Technology Department and the Alameda County Probation Department.

If an officer has no prior personal knowledge or has not been verbally advised by the parolee or probationer confirming his/her status, prior to conducting a probation search of an individual and/or their property, an officer shall ensure there are no status inconsistencies that may later jeopardize an investigation. In these cases, the officer shall verify the status of a parolee or probationer via AWS and CRIMS. In the event that an inconsistency is discovered, an officer shall rely on CRIMS as the verifying information.

**Note:** When a subject's probation is "revoked," he/she is still considered to be on active probation. The revoked status extends the Probation Termination Date, which may indicate different termination dates in the databases.

If the parolee advises that he/she is on parole, or a probationer advises that he/she is on probation with an appropriate search clause, it is not mandatory to confirm his/her status prior to the search. Officers shall, however, always confirm the parolee/probationer's status after the search is completed and document the findings in his/her applicable report. This step is necessary in the event the person is not actually on parole or probation to prevent future searches based on inaccurate information from the person and to mitigate risk to the officer and the City.

After the search of the parolee/probationer is complete, officers shall document the following in an appropriate offense report and/or Field Interview Report (via FBR):

- What led to the consensual encounter/detention of the subject;
- How it was determined that the subject was on parole or searchable probation;
- How parole or probation status was verified. If verified via AWS or CRIMS from an accessible computer terminal, officers shall cut and paste the information from the computer into their Field Based Reporting offense report and/or Field Interview Report. If verified via CORPUS and/or no accessible computer terminal is available to access AWS or CRIMS, officers shall document that the parolees/probationer's status was verified via the service channel.

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<sup>3</sup> People v. Zichwic (2001) 94 CA4 944, 951

<sup>4</sup> CAL: People v. Woods (1999) 21 C4 668, 682