Probation and Parole Searches

"Parolees, like drunk drivers on our highways, are a discrete group that are a demonstrable menace to the safety of the communities into which they are discharged."[1]

For some people, committing or planning crimes is a way of life—just part of the daily routine. So it was not too surprising when a study reported that 70% of California's parolees committed new crimes within 18 months of their release.[2] That's the highest recidivism rate in the nation. And though there is no solid information on the recidivism rate for probationers, the U.S. Supreme Court has pointed out that "the very assumption of the institution of probation is that the probationer is more likely than the ordinary citizen to violate the law."[3]

While some people contend that the recidivism rate is somewhat inflated,[4] it is probably much worse. After all, it includes only those crimes for which the parolees and probationers were caught. Because it is unlikely that they were apprehended for each and every crime they committed (in which case they would have thrown in the towel), the actual number is probably much larger. In fact, a 15-year study published in the book *The Criminal Personality* reported that each of the felons who were studied committed "enough crimes to spend over 1,500 years in jail." Summing up their research, the authors said, "If we were to calculate the total number of crimes committed by all the men with whom we worked, it would be astronomic."[5]

The causes of recidivism are, of course, complex. One reason, according to the United States Supreme Court, is that criminals "have necessarily shown a lapse in the ability to control and conform their behavior to the legitimate standards of society by the normal impulses of self-restraint."[6] There are certainly other causes, and many dedicated people have made it their life's work to address them. Officers and prosecutors certainly share their concern and often work closely with them. But their primary responsibility lies elsewhere: protecting the public from those parolees and probationers who continue to inflict misery on others.

And that's where parole and probation searches come in. Among other things, they help provide the criminal justice system with the information it needs to determine whether parolees and probationers are continuing to possess drugs or weapons, or are otherwise still committing crimes. Thus, the California Court of Appeal observed that parole and probation searches tend to "minimize the risk to the public safety inherent in the conditional release of a convicted offender."[7]

In addition to protecting the public, parole and probation searches help in the rehabilitation effort because some parolees and probationers will be less likely to keep committing crimes if they know they can be searched at any time.[8] As the court pointed out in *In re Anthony S.*:

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[1] *U.S.* v. *Crawford* (9th Cir. 2004) 372 F.3d 1048, 1071 (conc. opn. of Trott, J.)
[2] Joan Petersilia, *Challenges of Prisoner Reentry and Parole in California*, 12 CPRC (June 2000). ALSO SEE *Samson* v. *California* (2006) 547 U.S. 843, 853 ["As of November 30, 2005 . . . California's parolee population has a 68-70% recidivism rate."]; *Ewing* v. *California* (2003) 538 U.S. 11, 26 ["According to a recent report, approximately 67 percent of former inmates released from state prisons were charged with at least one 'serious' new crime within three years of their release."].
[3] *United States* v. *Knights* (2001) 534 U.S. 112, 120.
[4] See U.C. Irvine Center for Evidence-Based Corrections, *Are California's Recidivism Rates Really the Highest?"* (2005). **NOTE**: Some of these lower rates might have resulted from the authors' decision not to count drug-related arrests as arrests.
[5] Samuel Yochelson and Stanton Samenow, *The Criminal Personality* (Published by J. Aronson, 1976).
[6] *Hudson* v. *Palmer* (1984) 468 U.S. 517, 526. ALSO SEE *Samson* v. *California* (2006) 547 U.S. 843, 854.
[7] *People* v. *Constancio* (1974) 42 Cal.App.3d 533, 540.
[8] See *Griffin* v. *Wisconsin* (1987) 483 U.S. 868, 876 [the possibility of "expeditious searches" has a "deterrent affect"].

> Being on probation with a consent search term is akin to sitting under the Sword of Damocles. With knowledge he may be subject to a search by law enforcement officers at any time, [the probationer] will be less inclined to have narcotics or dangerous drugs in his possession.[9]

As for those parolees and probationers who continue to commit crimes while they are on the outside, search conditions provide another valuable service: they help put them back inside—sometimes permanently, thanks to the Three Strikes law.

Although parole and probation searches provide a vital public service, there is an unusual amount of uncertainty in this area of the law among officers, prosecutors, and even judges. This is mainly because the law has seen a lot of fluctuation over the years. The Court of Appeal called it a "sea change,"[10] while the California Supreme Court used the term "moveable feast."[11] A more descriptive term is "chaotic."

There are several causes of this unhealthy situation. For one thing, the courts have been unable to decide on the legal basis of these searches. Some have said they are simply a form of consent search. Others had said that a person's acceptance of a search condition cannot be deemed consensual if his refusal will result in a prison sentence or an extended stay. Still others have sought to justify these searches on grounds that the privacy expectations of parolees and probationers were "completely waived,"[12] or "waived,"[13] or "greatly reduced,"[14] or "somewhat diminished,"[15] or "significantly diminished,"[16] or "severely diminished,"[17] or just plain "diminished."[18]

The courts have also had difficulty deciding whether parole and probation searches could be conducted in the absence of proof that the parolee or probationer had committed new crimes. In 1985, the Court of Appeal ruled that officers could not conduct probation searches unless they had reasonable suspicion of recidivism.[19] One year later, the California Supreme Court ruled that reasonable suspicion was also required for parole searches.[20] The next year, it ruled that reasonable suspicion was no longer required for probation searches.[21]

That same year, when the issue presented itself before the United States Supreme Court, it announced that it was going to duck it.[22] In 1998, the California Supreme Court eliminated the reasonable-suspicion requirement for parole searches.[23] In 1998 and 2001 the United States Supreme Court steadfastly continued its policy of evasion.[24] But it did provide a helpful hint: If and when it ever decided to decide the question, it would probably require "no more than" reasonable suspicion.[25]

Adding to the confusion, some courts were ruling that parole and probation searches were unlawful unless they were authorized by parole or probation officers. Others said it didn't matter. In 1981, the Court of Appeal eliminated that requirement as it applied to probation searches,[26] and in 1992 it did the same for parole searches.[27]

On another front, the California Supreme Court ruled in 1994 that juvenile probationers would not be permitted to challenge the legality of searches of places that could be searched under the terms of their

[9] *In re Anthony S.* (1992) 4 Cal.App.4th 1000, 1002, fn.1.
[10] *People* v. *Lewis* (1999) 74 Cal.App.4th 662, 667.
[11] *People* v. *Reyes* (1998) 19 Cal.4th 743, 748. **ALSO SEE** *Motley* v. *Parks* (9th Cir. 2005) 432 F.3d 1072, 1083 ["disarray"].
[12] See *Samson* v. *California* (2006) 547 U.S. 843, 852, fn. 3; *United States* v. *Knights* (2001) 534 U.S. 112, 118.
[13] See *People* v. *Bravo* (1987) 43 Cal.3d 600, 607; *People* v. *Medina* (2007) 158 Cal.App.4th 1571, 1576 ["complete waiver"].
[14] *People* v. *Reyes* (1998) 19 Cal.4th 743, 753.
[15] See *People* v. *Burgener* (1986) 41 Cal.3d 505, 533.
[16] *United States* v. *Knights* (2001) 534 U.S. 112, 120.
[17] *Samson* v. *California* (2006) 547 U.S. 843, 852.
[18] *People* v. *Reyes* (1998) 19 Cal.4th 743, 752.
[19] *People* v. *Bravo* (1985) 211 Cal.Rptr. 439 [superseded by *People* v. *Bravo* (1987) 43 Cal.3d 600, 611].
[20] *People* v. *Burgener* (1986) 41 Cal.3d 505, 535.
[21] *People* v. *Bravo* (1987) 43 Cal.3d 600, 611.
[22] *Griffin* v. *Wisconsin* (1987) 483 U.S. 868, 872 ["[W]e find it unnecessary to embrace a new principle of law."].
[23] *People* v. *Reyes* (1998) 19 Cal.4th 743.
[24] *Pennsylvania Board of Probation and Parole* v. *Scott* (1998) 524 U.S. 357, 362, fn.3; *U.S.* v. *Knights* (2001) 534 U.S. 112, 120, fn.6.
[25] *United States* v. *Knights* (2001) 534 U.S. 112, 121.
[26] *People* v. *Palmquist* (1981) 123 C.A.3d 1, 7-8.
[27] *People* v. *Williams* (1992) 3 Cal.App.4th 100, 1106. ALSO SEE *People* v. *Brown* (1989) 213 Cal.App.3d 187, 192.

probation.[28] The case was *In re Tyrell J.,* and it was based on the idea that a probationer who knows that law enforcement officers can search a certain place or thing at any time cannot reasonably expect that those officers will not find the weapons, drugs, stolen property, and other incriminating evidence that he keeps in those places and things. But while *Tyrell J.* was a sound and pragmatic decision, the defense bar and its allies in some law schools thought it was outrageous. Subsequently, the court significantly undermined *Tyrell J.* in 2000 and 2003,[29] and then overturned it in 2006.[30]

Meanwhile, the Ninth Circuit was muddying up the waters even more by ruling that parole and probation searches were unlawful if the officers' objective was to obtain evidence of criminal activity, as opposed to rehabilitation[31] (as if the commission of new crimes by parolees and probationers had no bearing on whether they were rehabilitated). In 2001, the United States Supreme Court ended this nonsense.[32]

Our historical snapshot would not be complete without one additional entry. In 1993, a career criminal named Richard Allen Davis was paroled from the California Men's Colony in San Luis Obispo after serving a 16-year sentence for kidnapping. Three months later, he kidnapped 12-year old Polly Klass from her bedroom in Petaluma, sexually assaulted her, then killed her. This horrific crime resulted in passage of California's Three Strikes law and, of importance to the subject at hand, it heightened the public's awareness of the danger presented by recidivists, and the need to closely monitor their activities.

Parole Searches

With few exceptions, every inmate released from prison in California is placed on parole for three years.[33] Discussing the concept of parole, the United States Supreme Court explained that it is "a variation on imprisonment of convicted criminals, in which the State accords a limited degree of freedom in return for the parolee's assurance that he will comply with the often strict terms and conditions of his release."[34] But, as the Ninth Circuit pointed out, "Parole is a risky business. Recidivism is high."[35] That's why the law imposes search conditions.

Search conditions

Under California's old indeterminate sentencing system, the parole board decided whether to release a prisoner before he had served his entire sentence. And in most cases it would not do so unless the inmate agreed to submit to warrantless searches. Because he could refuse and complete his sentence, the courts would say that he "consented" to the search conditions. Thus, parole searches were treated the same as any other consent search.

That changed in 1976 when California converted to the current determinate sentencing system whereby most prisoners are automatically paroled when they complete their sentences.[36] Although they can technically avoid some of the conditions of release by choosing to serve their period of parole behind bars,[37] the courts have determined that parole searches can no longer be viewed as "consensual."[38] They have also concluded that, even though parolees remain "under the legal custody" of the Department of Cor-

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[28] (1994) 8 Cal.4th 68, 89.
[29] See *People* v. *Robles* (2000) 23 Cal.4th 789, 797; *People* v. *Sanders* (2003) 31 Cal.4th 318, 330.
[30] See *In re Jaime P.* (2006) 40 Cal.4th 128, 134.
[31] See *U.S.* v. *Knights* (9th Cir. 2000) 219 F.3d 1138, 1143.
[32] *United States* v. *Knights* (2001) 534 U.S. 112, 122.
[33] See Pen. Code §§ 3000(b)(1), 3000(b)(3). **NOTE** re federal parole: With passage of the Sentencing Reform Act of 1984, "Congress eliminated most forms of parole in favor of supervised release, a form of postconfinement monitoring overseen by the sentencing court, rather than the Parole Commission." *Johnson* v. *United States* (2000) 529 U.S. 694, 696-97. But the main difference for our purposes is that federal search conditions are not an automatic condition of release. Instead, they are imposed at the discretion of the sentencing judge. See *U.S.* v. *Hanrahan* (10th Cir. 2007) 508 F.3d 962, 970.
[34] *Pennsylvania Board of Probation and Parole* v. *Scott* (1998) 524 U.S. 357, 365.
[35] *Latta* v. *Fitzharris* (9th Cir. 1975) 521 F.2d 246, 249.
[36] See Pen. Code § 3000 et seq.
[37] See Pen. Code § 3060.5; *Samson* v. *California* (2006) 547 U.S. 843, 851 ["A California inmate may serve his parole period either in physical custody, or elect to complete his sentence out of physical custody and subject to certain conditions."]; *People* v. *Middleton* (2005) 131 Cal.App.4th 732, 740 ["Any inmate who refuses to agree to warrantless search shall not be released until he agrees or has served his/her entire sentence."].
[39] See *People* v. *Reyes* (1998) 19 Cal.4th 743, 749.

rections,[39] these searches cannot be deemed "prison" searches.[40] So now they are justified on the basis of the fundamental Fourth Amendment test that their need outweighs their intrusiveness.[41]

One thing that hasn't changed is that all parolees are subject to the same search condition. Specifically, they must "agree in writing to be subject to search or seizure by a parole officer or other peace officer at any time of the day or night, with or without a search warrant and with or without cause."[42] As we will discuss later, all parole searches are also subject to the same scope and intensity limitations.

Grounds not required

Before conducting most types of searches, officers must have probable cause or reasonable suspicion to believe that the search is warranted. But because one of the objectives of parole searches is to make sure that parolees are *not* in possession of the fruits or instrumentalities of crime, officers are not required to justify their decision to search. As we will now discuss, this was not always the law in California, which, as noted earlier, is one reason for some of the confusion today.

In 1986, the California Supreme Court ruled that officers could not conduct parole searches unless they had reason to believe that the parolee had committed a new crime or was otherwise in violation of the terms of parole.[43] Thus, the court gutted a key component of the parole system by prohibiting officers from conducting the kinds of unprovoked or "suspicionless" parole searches that are necessary to determine whether parolees are "sticking to the straight and narrow life of noncriminality."[44]

In 1998, however, a reconstituted court eliminated this requirement. In *People* v. *Reyes*[45] the court said that, "[b]ecause of society's interest both in assuring the parolee corrects his behavior and in protecting its citizens against dangerous criminals, a search pursuant to a parole condition, without reasonable suspicion, does not intrude on a reasonable expectation of privacy." This principle was then affirmed by the United States Supreme Court in 2006 when it said in *Samson* v. *California*:

> The California Legislature has concluded that, given the number of inmates the State paroles and its high recidivism rate, a requirement that searches be based on individualized suspicion would undermine the State's ability to effectively supervise parolees and protect the public from criminal acts by reoffenders. This conclusion makes eminent sense. Imposing a reasonable suspicion requirement, as urged by petitioner, would give parolees greater opportunity to anticipate searches and conceal criminality.[46]

Requirements

Having explained what is *not* required, we must now discuss what *is*. Actually, the requirements are fairly straightforward: (1) officers must have known that the suspect was on parole, (2) the search must have been motivated by a legitimate law enforcement or rehabilitative interest, and (3) the search must have been reasonable in its scope and intensity.

NOTICE OF SEARCH CONDITION: The first requirement is that the officers who conducted the search must have known that the suspect was on parole.[47] This probably sounds obvious, but because this requirement has been interpreted so as to provide parolees with greater privacy rights than those of law-abiding citizens, it has become controversial. (See "The 'Notice' Requirement: Unsound and Unnecessary" on the next page.)

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[39] See Pen. Code § 3056; *Samson* v. *California* (2006) 547 U.S. 843, 851 ["[A parolee] remains in the legal custody of the California Department of Corrections through the remainder of his term"].

[40] See *U.S.* v. *Crawford* (9th Cir. 2004) 372 F.3d 1048, 1068 (conc. opn. of Trott, J.) ["Although parole restrictions and conditions strictly speaking are not prison regulations, they are akin to that category."].

[41] See *Samson* v. *California* (2006) 547 U.S. 843, 853-55; *Motley* v. *Parks* (9th Cir. 2005) 432 F.3d 1072, 1083.

[42] Pen. Code § 3067(a). ALSO SEE *Samson* v. *California* (2006) 547 U.S. 843, 846.

[43] *People* v. *Burgener* (1986) 41 Cal.3d 505, 533.

[44] See *People* v. *Lewis* (1999) 74 Cal.App.4th 662, 671.

[45] (1998) 19 Cal.4th 743. ALSO SEE *People* v. *Hunter* (2006) 140 Cal.App.4th 1147, 1152 ["A suspicionless parole search is constitutionally permissible because the parolee lacks a legitimate expectation of privacy, and the state has a substantial interest in supervising parolees and reducing recidivism."].

[46] (2006) 547 U.S. 843, 854.

[47] See *People* v. *Sanders* (2003) 31 Cal.4th 318, 332 ["[A] search conducted under the auspices of a properly imposed parole search condition, presumes the officer's awareness of the search condition"].

Where can officers obtain information on parolees and probationers? The most common sources are departmental, countywide, and regional law enforcement databases. For instance, officers in the nine Bay Area counties can obtain it through the Automated Warrant System (AWS).[48] Another source is the suspect, himself. If officers ask him if he is on parole or searchable probation, and he says yes, they can usually conclude that he is telling the truth because there is no logical reason for someone to lie.[49]

Note that because parole search conditions are mandatory, officers need not confirm that a parolee was released with a search condition.[50]

REHABILITATIVE OR LAW ENFORCEMENT MOTIVATION: The second requirement is that the search must have been motivated by a legitimate law enforcement or rehabilitative interest.[51] This has been interpreted to mean that the officers' objective must have been to determine whether the parolee or probationer was continuing to commit crimes or was otherwise in violation of the terms of release.

But more and more, the courts have been expressing this requirement in the negative, saying it means that parole searches must not have been arbitrary, capricious, or harassing.[52] Unfortunately, this has become another source of confusion because the courts do not apply the common definitions of "arbitrary" and "capricious." For example, officers sometimes decide to conduct a parole search because they see a known parolee driving down the street and they had nothing else to do at the time. These searches might technically qualify as "arbitrary" (i.e., depending completely on individual discretion) or "capricious" (i.e., sudden, impulsive, random), yet they are unquestionably lawful because, as noted earlier, random and unprovoked searches serve important law enforcement and rehabilitative interests.

The courts do, however, apply the common definition to the term "harassment." Thus, a search would not have been motivated by a law enforcement or rehabilitative interest if the officers' objective was to annoy the parolee. For instance, a search would likely be deemed harassing if officers had conducted several unproductive searches of the parolee in the recent past with no reason to believe the search in question would be fruitful, or if the search was conducted in an unnecessarily oppressive or intrusive manner.[53]

SCOPE AND INTENSITY: The third requirement—that the search must have been reasonable in its scope and intensity—is covered below in the section "Scope and Intensity of the Search."

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[48] **NOTE**: The terms of probation may also be found in the probationer's court file. See *People* v. *Bravo* (1987) 43 Cal.3d 600, 606 [officers "must be able to determine the scope of the condition by reference to the probation order"].

[49] See *In re Jeremy G.* (1998) 65 Cal.App.4th 553, 556. **NOTE:** Even if the suspect was mistaken and was not subject to a probation search condition, the search is lawful if it reasonably appeared the person comprehended what he was saying and the consequences of saying it. See *In re Jeremy G.* (1998) 65 Cal.App.4th 553, 556.

[50] See *People* v. *Middleton* (2005) 131 Cal.App.4th 732, 739.

[51] See *People* v. *Reyes* (1998) 19 Cal.4th 743, 754 [the search must be "for a proper purpose"]. **NOTE**: Although the Supreme Court in *U.S.* v. *Knights* (2001) 534 U.S. 112, 121 said "there is no basis for examining official purpose" for conducting probation searches, this does not mean the officers' motivation is irrelevant. The officers' motivation was not significant in *Knights* because the Court had assumed that the search was supported by reasonable suspicion and, thus, its ruling was based on "the objective circumstances of a search," not the officers' motivation. See *Whren* v. *United States* (1996) 517 U.S. 806, 812 [officer's motivation for making a traffic stop is irrelevant if the stop is based on probable cause]. But because California does not require reasonable suspicion before officers may conduct parole and probation searches, it appears the officers' motivation remains relevant, at least if they did not have reasonable suspicion.

[52] See *People* v. *Reyes* (1998) 19 Cal.4th 743, 754 [court notes that a search "is arbitrary and capricious when the motivation for the search is unrelated to rehabilitative, reformative or legitimate law enforcement purposes"]; *In re Anthony S.* (1992) 4 Cal.App.4th 1000, 1004 ["Where the motivation is unrelated to rehabilitative and reformative purposes or legitimate law enforcement purposes, the search is 'arbitrary.'"]; *People* v. *Zichwic* (2001) 94 Cal.App.4th 944, 951 ["A search is arbitrary when the motivation for the search is unrelated to rehabilitative, reformative or legitimate law enforcement purposes"]; *People* v. *Medina* (2007) 158 Cal.App.4th 1571, 1577 ["A search is arbitrary and capricious when the motivation for it is unrelated to rehabilitative, reformative or legitimate law enforcement purposes, or when it is motivated by personal animosity toward the probationer."]. ALSO SEE *People* v. *Cervantes* (2002) 103 Cal.App.4th 1404, 1408 [a mere legal or factual error "does not render the search arbitrary, capricious or harassing"].

[53] See *People* v. *Clower* (1993) 16 Cal.App.4th 1737, 1743 ["Six searches over a four- to five-month period, without more, do not necessarily indicate harassment."].

Search after arrest or parole hold

The question arises: Can officers conduct a parole search if the parolee is in custody on a new case or on a parole hold.[54] The answer is yes, because parole does not terminate until it has been formally revoked by the Board of Prison Terms.

For example, in *People* v. *Hunter*[55] the driver of a stolen car bailed out when officers signaled him to stop. Although he got away, the officers who searched the car found a slip of paper with the name of a parole officer. With this information, it didn't take long before they learned that the driver was Hunter, and that shortly after the pursuit he had been arrested on a parole hold and was now back in prison awaiting a parole revocation hearing. They also learned that he had rented a storage unit, so they decided to search it under the terms of parole. Inside it they found several items that had been taken in a burglary.

On appeal, Hunter argued that the search could not be justified as a parole search because his "parole was violated and he was physically returned to prison as a result of that violation." The court pointed out, however, that the terms of parole remained in effect "while Hunter was incarcerated on a parole violation because Hunter was still a parolee until his parole was formally revoked."

Similarly, in *United States* v. *Holiday*[56] the Ninth Circuit ruled that "Holiday's arrest for a parole violation did not end the need for a parole search." Said the court, "California had a continuing interest in Holiday's progress so it could determine whether to continue, modify or revoke his parole."

Note, however, that when a parolee absconds and a parolee-at-large (PAL) warrant is issued, his parole is automatically suspended until he has been arrested, at which point it is reinstated.[57]

Pretext searches

Officers will sometimes learn that the suspect in a case they are investigating is living with a person who is on parole or searchable probation. The question arises: Can officers conduct a parole or probation search of the residence if their sole objective is to obtain evidence against the suspect?

Before answering that question, it is important to note that searches of this sort—known as "pretext" searches—are extremely rare. This is because the officers' objective will seldom be limited to seeking evidence against only the suspect. After all, when officers have reason to believe that a person has committed a crime, and they learn that that person is living with a parolee or probationer, they will naturally have a legitimate concern that the parolee or probationer is involved.[58]

But even if the officers' only objective was to obtain evidence against the suspect, the search would be lawful if, (1) they had reason to believe that the parolee or probationer was in violation (this is an exception to the rule that grounds to search are not required), and (2) the search was limited to places and things over which the parolee or probationer had sole or joint control.

For example, in *People* v. *Woods*[59] an police officer in Antioch arrested a man named Mofield for possessing drugs and an illegal weapon. The officer was

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[54] See *People* v. *Burgener* (1986) 41 Cal.3d 505, 536 ["Nor is it relevant that the parolee may already be under arrest when the search is conducted."]; *People* v. *Johnson* (1988) 47 Cal.3d 576, 594; *People* v. *Stanley* (1995) 10 Cal.4th 764, 790 ["Neither police participation nor the fact the parolee is already under arrest invalidates an otherwise proper parole supervision purpose."]; *Latta* v. *Fitzharris* (9th Cir. 1975) 521 F.2d 246, 252 ["A parole officer's interest in inspecting [the parolee's] place of residence [does] not terminate upon his arrest; if anything, it intensified."]; *U.S.* v. *Dally* (9th Cir. 1979) 606 F.2d 861, 863 ["Holiday's arrest for a parole violation did not end the need for a parole search"].

[55] (2006) 140 Cal.App.4th 1147.

[56] (9th Cir. 1979) 606 F.2d 861, 863.

[57] See 15 CCR § 2000(b)(75) ["Parolee at large: an absconder from parole supervision, who is officially declared a fugitive by board action suspending parole."]; 15 CCR § 2515 ["Any time during which the parolee has absconded from supervision while on parole or during a period of revocation shall not be credited to the period of parole."]; 15 CCR § 3060 ["parole authority shall have full power to suspend or revoke any parole"]; 15 CCR § 2600 ["absconder whose parole has been suspended"].

[58] See, for example, *Maryland* v. *Pringle* (2003) 540 U.S. 366, 373 [drug dealing is "an enterprise to which a dealer would be unlikely to admit an innocent person with the potential to furnish evidence against him"].

[59] (1999) 21 Cal.4th 668. ALSO SEE *Horton* v. *California* (1990) 496 U.S. 128, 138 ["The fact that an officer is interested in an item of evidence and fully expects to find it in the course of a search should not invalidate its seizure if the search is confined in area and duration by the terms of a warrant or a valid exception to the warrant requirement."].

aware that Mofield lived in a house with Gayla Loza who was on probation with a residential search condition. The officer had also received a tip three days earlier that drugs were being sold at the house. So he decided to conduct a probation search, during which he found drugs belonging to a third occupant, Cheryl Woods.

Woods argued that the search was unlawful because the officer was using Loza's search condition as a pretext to obtain evidence against Mofield. But the California Supreme Court ruled it didn't matter because, "Regardless of [the officer's] ulterior motives, the circumstances, viewed objectively, show a possible probation violation."[60]

Probation Searches

When a defendant is convicted of a crime, the sentencing judge usually has two options: (1) send him to jail or prison, or (2) grant probation.[61] If the judge grants probation, he or she will usually do so only if the defendant agrees to certain terms that the judge determines are appropriate; e.g., obey all laws, try to get a job, don't use drugs.[62]

Another common requirement imposed by judges in California is that the probationer must submit to warrantless searches by law enforcement and probation officers.[63] This requirement is especially common when the defendant was convicted of a crime involving drugs, weapons, or stolen property as it helps "in deterring further offenses by the probationer and in monitoring compliance with the terms of probation."[64] Search conditions are also useful if officers are investigating the possibility that the probationer has committed a new crime.

But unlike parolees, probationers in California are not required to accept search conditions. As the California Supreme Court observed

> If the defendant considers the conditions of probation more harsh than the sentence the court would otherwise impose, he has the right to refuse probation and undergo the sentence.[65]

Of course, this doesn't happen very often. But because defendants technically have this choice, the courts have determined that a defendant's decision to accept probation with a warrantless search condition makes these searches consensual.[66]

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[60] **NOTE**: One year later, the court summarized its decision in *Woods* as follows: "We concluded there that, regardless of the searching officer's ulterior motives, the circumstances presented ample justification for a search pursuant to the probation clause at issue because the facts known to the officer showed a possible probation violation." *People* v. *Robles* (2000) 23 Cal.4th 789, 797.

[61] See *Griffin* v. *Wisconsin* (1987) 483 U.S. 868, 874 ["Probation, like incarceration, is a form of criminal sanction imposed by a court upon an offender after verdict, finding, or plea of guilty."]; *People* v. *Burgener* (1986) 41 Cal.3d 505, 532-33 ["A convicted defendant released on probation, as distinguished from a parolee, has satisfied the sentencing court that notwithstanding his offense imprisonment in the state prison is not necessary to protect the public."]. ALSO SEE Pen. Code § 1203(a) ["[probation] means the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervisions of a probation officer"].

[62] See *In re Anthony S.* (1992) 4 Cal.App.4th 1000, 1006 ["With the benefit of probation comes the burden of a consent search term."]; *People* v. *Balestra* (1999) 76 Cal.App.4th 57, 67 ["[A] warrantless search condition is intended to ensure that the subject thereof is obeying the fundamental condition of all grants of probation [i.e., obey all laws]."]; *People* v. *Lent* (1975) 15 Cal.3d 481, 486 ["The Legislature has placed in trial judges a broad discretion in the sentencing process, including the determination as to whether probation is appropriate and, if so, the conditions thereof."]; *People* v. *Welch* (1993) 5 Cal.4th 228, 233 ["The sentencing court has broad discretion to determine whether an eligible defendant is suitable for probation and what conditions should be imposed."]. ALSO SEE *United States* v. *Knights* (2001) 534 U.S. 112, 119, fn5.

[63] See *United States* v. *Knights* (2001) 534 U.S. 112, 116 [such a search clause is a "common California probation condition"].

[64] *People* v. *Robles* (2000) 23 Cal.4th 789, 795. ALSO SEE *People* v. *Bravo* (1987) 43 Cal.3d 600, 611 [the "dual purpose" of search conditions is "to deter further offenses by the probationer and to ascertain whether he is complying with the terms of his probation."].

[65] *In re Bushman* (1970) 1 Cal.3d 767, 776. ALSO SEE *U.S.* v. *Barnett* (7th Cir. 2005) 415 F.3d 690 692 ["[S]ince imprisonment is a greater invasion of personal privacy than being exposed to searches of one's home on demand," the bargain that Barnett struck was "advantageous to him"].

[66] See *People* v. *Bravo* (1987) 43 Cal.3d 600, 608 ["A probationer, unlike a parolee, consents to the waiver of his Fourth Amendment rights in exchange for the opportunity to avoid service of a state prison term."]; *People* v. *Medina* (2008) 158 Cal.App.4th 1571, 1575 ["[T]he basis for the validity of a probation search is consent, not reasonableness under a general Fourth Amendment analysis."]; *People* v. *Ramos* (2004) 34 Cal.4th 494, 506 ["[B]y accepting probation, a probationer consents to the waiver of Fourth Amendment rights in order to avoid incarceration."]; *People* v. *Baker* (2008) 164 Cal.App.4th 1152, 1158 [parole and probation "searches have repeatedly been evaluated under the rules governing consent searches"].

Grounds not required

Like parole searches, probation searches may be conducted even though officers have no reason to believe that the probationer committed a new crime or was otherwise in violation of the terms of probation.[67] As the California Supreme Court observed:

> The purpose of an unexpected, unprovoked search of defendant is to ascertain whether he is complying with the terms of probation; to determine not only whether he disobeys the law, but also whether he obeys the law. Information obtained under such circumstances would afford a valuable measure of the effectiveness of the supervision given the defendant and his amenability to rehabilitation.[68]

For example, in *In re Anthony S*.[69] officers in Ventura learned that several members of a street gang called the "Ventura Avenue Gangsters" were on probation, the terms of which included authorization to search their homes for stolen property and gang paraphernalia. So they decided to search, and in the home of the defendant they found handguns, a sawed-off rifle, nunchakus, knives, and marijuana. The trial judge ruled, however, that the search was unlawful saying, "I think this was a random search. The officers decided, 'let's go search the gang members today' and you've got to have something [more]."

The Court of Appeal ruled the judge was wrong because, as it explained, "[T]he evidence shows that the officers were motivated by a law enforcement purpose; i.e., to look for stolen property, alcohol, weapons, and gang paraphernalia at the homes of the Ventura Avenue Gangsters members. This is a legitimate law enforcement purpose."

It should be noted that, although it seldom happens, sentencing judges will sometimes permit probation searches only if officers have reason to believe the probationer has committed a new crime.[70] Such a requirement will not, however, be implied.[71]

(We have heard that some departments have been advised by a civil lawyer to prohibit their officers from conducting suspicionless probation searches so as to avoid any possible liability. But when a sentencing judge does not require reasonable suspicion, and when California's highest court has ruled that suspicionless probation searches are lawful, and when there is a consensus that these searches are necessary to help protect the public against criminal predators, this advice is, in our opinion, irresponsible.)

Requirements

The requirements for conducting probation searches are essentially the same as those for conducting parole searches.

KNOWLEDGE OF SEARCH CONDITION: A search will not qualify as a probation search unless the searching officers were aware of the search condition.[72] This requirement was discussed in detail in the section on parole searches. Note, however, that because some probationers are not subject to search conditions, it is important that officers who testify at suppression hearings make it clear that they knew that the defendant was on *searchable* probation.

PROBATIONARY PURPOSE: Although probation searches must be "reasonably related to a probationary purpose,"[73] this requirement will be satisfied if the officer's objective was, (1) to determine whether the probationer had committed a new crime for

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[67] See *People* v. *Medina* (2008) 158 Cal.App.4th 1571, 1576 ["[A] search of a probationer pursuant to a search condition may be conducted *without any reasonable suspicion of criminal activity*"]; *People* v. *Bravo* (1987) 43 Cal.3d 600, 611 ["[A] search condition of probation that permits a search without a warrant also permits a search without 'reasonable cause'"].

[68] *People* v. *Reyes* (1998) 19 Cal.4th 743, 752.

[69] (1992) 4 Cal.App.4th 1000.

[70] See *People* v. *Bravo* (1987) 43 Cal.3d 600, 607, fn6 ["[I]f a sentencing judge believes that a 'reasonable cause' requirement is warranted . . . he has the discretion to place such language in the probation search condition."].

[71] See *People* v. *Bravo* (1987) 43 Cal.3d 600, 607, fn.6 ["Absent such express language, however, a reasonable-cause requirement will not be implied."]. **NOTE**: The United States Supreme Court has not ruled on whether a sentencing judge can authorize a probation search in the absence of some level of suspicion. See *United States* v. *Knights* (2001) 534 U.S. 112, 121 [Court notes that it would require "no more than" reasonable suspicion]; *U.S.* v. *Barnett* (7th Cir. 2005) 415 F.3d 690, 691 [the Court in *Knights* "left open the question whether the waiver alone could justify the search"]. But, as noted, the California Supreme Court has ruled that judges have such an option. See *People* v. *Medina* (2007) 158 Cal.App.4th 1571, 1580 ["[U]ntil the United States Supreme Court provides direct authority, we are bound to follow the law of the California Supreme Court."].

[72] See *In re Jaime P.* (2006) 40 Cal.4th 128; *People* v. *Medina* (2007) 158 Cal.App.4th 1571, 1577 ["[T]he officer must be aware of the search condition before conducting the search; after-acquired knowledge will not justify the search."].

[73] *People* v. *Robles* (2000) 23 Cal.4th 789, 797.

which he was a suspect;[74] or (2) to make sure he was not in violation of the terms of probation by, for example, possessing drugs or weapons.[75]

As with parole searches, this requirement is now usually framed in the negative; i.e., the search must not have been arbitrary, capricious, or harassing.[76] Likewise, a search does not lose its probationary purpose merely because the probationer was in custody or because his probation had been summarily revoked. A search may not, however, have a probationary purpose if the officers' *sole* objective was to obtain evidence against someone other than the probationer. The limitation was covered in section on parole searches ("Rehabilitative or law enforcement motivation" and "Pretext searches").

SCOPE AND INTENSITY: The third requirement for probation searches is that they must be reasonable in their scope and intensity. See "Scope and Intensity of the Search," below

"ON REQUEST" SEARCH CONDITIONS: Judges will sometimes—usually inadvertently—insert language into probation orders that requires the probationer to submit to warrantless searches "on request" or "whenever requested to do so" by an officer. In a strained interpretation of this language, some courts have ruled that it means officers must notify the probationer that the search was about to occur,[77] even though he cannot refuse their "request."[78]

Post-arrest and pretext searches

Officers may conduct probation searches even though the suspect had been arrested or his probation had been summarily revoked. This is because the terms of probation do not terminate until probation expires or has been revoked by a judge following a hearing.[79] The subject of pretext searches was covered in the section on parole searches.

Scope and Intensity of the Search

As noted, another requirement for both parole and probation searches is that they must be reasonable in their scope and intensity. Fortunately, the permissible scope and intensity of all parole searches and most probation searches are the same.[80]

What can be searched

Determining the scope of parole searches is easy because it's the same for all parolees. Specifically, the California Administrative Code states that officers may search, (1) the parolee, (2) his residence, and (3) any property under his control.[81]

In contrast , the scope of probation searches varies because it depends on the terms of the sentencing judge's probation order.[82] The most common search condition—which goes by various names, such as the "four-way"—authorizes searches of, (1) the probationer, (2) his residence, (3) any vehicle under his control, and (4) any other property under his control. Note that the scope of a four-way is essentially the same as the scope of parole searches; the only difference being that a vehicle search is implied by the terms of parole (i.e., property under the parolee's control), while it is expressly authorized by the terms of probation.

A probation search condition will sometimes permit officers to search the probationer and property under his control, but omit specific authorization to search his home and vehicle. In the absence of evidence to the contrary appearing in the court's probation order, this can be interpreted as a four-way because the category "property under his control" would plainly include his vehicle and home. In fact, the California Supreme Court ruled that a probation order that permitted officers to search only the

[74] See *People* v. *Robles* (2000) 23 Cal.4th 789, 799; *People* v. *Bravo* (1987) 43 Cal.3d 600, 611 [the search may be conducted for "legitimate law enforcement purposes"].
[75] See *People* v. *Robles* (2000) 23 Cal.4th 789, 799 ["routine monitoring" is permissible].
[76] See *People* v. *Medina* (2007) 158 Cal.App.4th 1571, 1576.
[77] See *People* v. *Mason* (1971) 5 Cal.3d 759, 763; *People* v. *Superior Court (Stevens)* (1974) 12 Cal.3d 858, 861.
[78] See *People* v. *Mason* (1971) 5 Cal.3d 759, 763.
[79] See *People* v. *Barkins* (1978) 81 Cal.App.3d 30, 32-33 ["Actual revocation of probation cannot occur until the probationer has been afforded the due process hearing rights provided [by law]. Thus, until [then], the terms of probation remain in effect."].
[80] See *U.S.* v. *Davis* (9th Cir. 1991) 932 F.2d 752, 758 ["We do not believe the distinction between the status of parolee and that of a probationer is constitutionally significant for purposes of evaluating the scope of a search."].
[81] 15 CCR § 2511(b) ["You and your residence and any property under your control may be searched without a warrant at any time by any agent of the Department of Corrections or any law enforcement officer."].
[82] See *People* v. *Woods* (1999) 21 Cal.4th 668, 682; *People* v. *Bravo* (1987) 43 Cal.3d 600, 607.

probationer's "person and property" impliedly authorized a search of his residence.[83]

Although not as common, probation orders will sometimes authorize searches of only the probationer, his home and vehicle, but not other property under his control.[84] Even less common is the "one-way" which authorizes a search of only the probationer's person.[85]

SEARCHING HOMES: DOES HE "LIVE" THERE? Officers may search a home pursuant to the terms of parole or probation only if the parolee or probationer lives there.[86] This requirement can be troublesome because many parolees and probationers move around a lot or stay in several residences—sometimes for the purpose of making it difficult for officers to find them. Still, it is strictly enforced.

Technically, a search is permitted whenever officers have "reason to believe" that the parolee or probationer lives in the residence, either alone or with others.[87] While it could be argued that this "reason to believe" standard is essentially the same as mere reasonable suspicion, the Ninth Circuit has consistently interpreted it to mean probable cause.[88] Thus, in *United States* v. *Howard* the court explained:

> We have applied a relatively stringent standard in determining what constitutes probable cause that a residence belongs to a person on supervised release. It is insufficient to show that the parolee may have spent the night there occasionally. Instead, the facts known to the officers at the time of the search must have been sufficient to support a belief, in a man of reasonable caution, that [he] lived [there].[89]

Although the California courts have not yet ruled on the issue, it is likely that, because of the high privacy expectations in homes, they will also rule that probable cause is required.[90]

SEARCHING HOMES: SEARCHABLE ROOMS AND AREAS: Officers may search the parolee's or probationer's bedroom, all common areas, (such as the living room, kitchen, bathroom, and garage), all other rooms in which the parolee or probationer has exclusive or joint control,[91] and all other places to which he "normally had access," such as a locked room to which he had a key.[92]

SEARCHING PROPERTY: WHAT IS "CONTROL?" As noted earlier, officers can usually search all personal property that is under the parolee's or probationer's "control." At the outset, two things should be noted

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[83] *People* v. *Bravo* (1987) 43 Cal.3d 600, 607. **NOTE**: Even a search condition that authorized a search of only the probationer's "person and property" has been interpreted to include a search of the probationer's home. See *People* v. *Bravo* (1987) 43 Cal.3d 600, 603, fn.1 [Probation order stated: "Submit his person and property to search or seizure . . ." Discussing the search of the probationer's home, the court ruled, "We think the wording of appellant's probation search condition authorized the instant search." At p. 607].

[84] See, for example, *In re Marcellus L.* (1991) 229 Cal.App.3d 134, 137.

[85] See, for example, *In re Binh L.* (1992) 5 Cal.App.4th 194, 199.

[86] See15 CCR § 2511(b) [officers may search "your residence"].

[87] See *People* v. *Palmquist* (1981) 123 Cal.App.3d 1, 11 [officers "may search a residence reasonably believed to be the probationer's"]; *Motley* v. *Parks* (9th Cir. en banc, 2005) 432 F.3d 1072, 1079; *People* v. *Fuller* (1983) 148 Cal.App.3d 257, 264 [the record was "devoid of any substantial evidence" that the probationer lived there]; *U.S.* v. *Howard* (9th Cir. 2006) 447 F.3d 1257, 1262 ["[B]y its own clear and explicit language, the search clause only applies if the West Bonanza apartment was Howard's residence."]; *U.S.* v. *Taylor* (5th Cir. 2007) 482 F.3d 315, 318-19. ALSO SEE *Payton* v. *New York* (1980) 445 US 573, 602 ["[F]or Fourth Amendment purposes, an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within."].

[88] See *U.S.* v. *Mayer* (9th Cir. 2008) 530 F.3d 1099, 1104 ["Before law enforcement officers may conduct a warrantless probation search, they must also have probable cause to believe that the probationer actually lives at the residence searched."]; *Cuevas* v. *De Roco* (9th Cir. 2008) 531 F.3d 726, 732; *Motley* v. *Parks* (9th Cir. en banc, 2005) 432 F.3d 1072, 1080 ["Law enforcement officers are allowed to search a parolee's residence, but they must have probable cause to believe that they are *at* the parolee's residence."]; *U.S.* v. *Howard* (9th Cir. 2006) 447 F.3d 1257, 1262 [probable cause is required].

[89] (9th Cir. 2006) 447 F.3d 1257, 1262.

[90] See *People* v. *Tidalgo* (1981) 123 Cal.App.3d 301, 307.

[91] See *People* v. *Robles* (2000) 23 Cal.4th 789, 798 ["[I]f persons live with a probationer, common or shared areas of their residence may be searched"]; *People* v. *Smith* (2002) 95 Cal.App.4th 912, 916 [probation searches "may extend to common areas, shared by nonprobationers, over which the probationer has common authority"]; *People* v. *Pleasant* (2005) 123 Cal.App.4th 194, 197 ["Persons who live with probationers cannot reasonably expect privacy in areas of a residence that they share with probationers."].

[92] *People* v. *Pleasant* (2005) 123 Cal.App.4th 194, 197.

about the term "control." First, either sole or joint control is sufficient. Consequently, it is immaterial that someone other than the parolee or probationer also controls the item that was searched. Second, the required level of proof that the parolee or probationer controlled personal property is only reasonable suspicion, not probable cause.[93]

Reasonable suspicion may be based on direct evidence, circumstantial evidence, or reasonable inference. Direct evidence that a parolee or probationer controlled a car would exist, for example, if officers knew that he was listed on the vehicle registration or rental documents, or if he admitted that he owned it. Similarly, a marking on a container or other personal property might constitute direct evidence that it was owned by a parolee or probationer; e.g., "These burglar tools are the property of Paul Prowler."

Examples of circumstantial evidence include an attempt by the parolee or probationer to hide or grab the item,[94] or the discovery of a key in his possession that unlocks the place or thing.[95]

If there is no direct or circumstantial evidence of "control," officers may rely on reasonable inference. The most common inference is that, in the absence of evidence to the contrary, parolees and probationers have sole or joint control over all containers in the rooms and vehicles that are under their sole or joint control.[96] For example, the courts have ruled that officers reasonably believed that parolees or probationers had sole or joint control of the following property:

- A jewelry box on the dresser in a female probationer's bedroom.[97]
- A "gender neutral" handbag on a bed in a home occupied by a male parolee and his girlfriend.[98]
- A pouch lying on the floor of the probationer's bedroom.[99]
- A paper bag in the closet of the parolee's bedroom.[100]
- A dresser in the parolee's one-bedroom apartment.[101]
- A stationery box in a drawer in the living room.[102]
- Papers in a desk in the living room.[103]
- Trash under the kitchen sink.[104]
- The refrigerator in the kitchen.[105]

On the other hand, parolees and probationers will not have control over things that obviously belonged exclusively to someone else. For example, the California Court of Appeal recently ruled that it was unreasonable for officers to believe that a purse at the feet of a female passenger in a vehicle was controlled by the driver, a male parolee. Said the court, "Here, there is nothing to overcome the obvious presumption that the purse belonged to the sole female occupant of the vehicle who was not subject to a parole-condition search."[106]

It is possible that any container on the premises may be searched if it reasonably appeared that the location was "permeated with criminality," meaning there was so much incriminating evidence all over the premises that it was reasonable to believe that all

[93] See *People* v. *Baker* (2008) 164 Cal.App.4th 1152, 1159; *People* v. *Boyd* (1990) 224 Cal.App.3d 736, 749; *U.S.* v. *Davis* (9th Cir. 1991) 932 F.2d 752, 758 ["police must have reasonable suspicion that an item to be searched is owned, controlled, or possessed by probationer"].

[94] See *People* v. *Alders* (1978) 87 Cal.App.3d 313, 317 ["[Probationer's] very act of reaching demonstrated that he exercised control, joint or otherwise, over the bed."].

[95] See *People* v. *Pleasant* (2005) 123 Cal.App.4th 194, 197; *U.S.* v. *Davis* (9th Cir. 1991) 932 F.2d 752, 759.

[96] See *People* v. *Icenogle* (1977) 71 Cal.App.3d 576. 586 [suppression would be required if "the portion of the bedroom where the two balloons were found constituted an area under the sole dominion and control of defendant"].

[97] *Russi* v. *Superior Court* (1973) 33 Cal.App.3d 160.

[98] *People* v. *Boyd* (1990) 224 Cal.App.3d 736, 745.

[99] *Russi* v. *Superior Court* (1973) 33 Cal.App.3d 160.

[100] *People* v. *Britton* (1984) 156 Cal.App.3d 689.

[101] *People* v. *Icenogle* (1977) 71 Cal.App.3d 576.

[102] *Russi* v. *Superior Court* (1973) 33 Cal.App.3d 160.

[103] *Russi* v. *Superior Court* (1973) 33 Cal.App.3d 160.

[104] *People* v. *Burgener* (1986) 41 Cal.3d 505.

[105] *People* v. *Palmquist* (1981) 123 Cal.App.3d 1.

[106] See *People* v. *Baker* (2008) 164 Cal.App.4th 1152, 1160. ALSO SEE *People* v. *Palmquist* (1981) 123 Cal.App.3d 1, 13 ["Presumably the parka was not 'distinctly female'"]; *People* v. *Alders* (1978) 87 Cal.App.3d 313, 317-18 ["there was no reason to suppose that a distinctly female coat was jointly shared by her and [the probationer]."].

of the occupants were jointly controlling all of the containers on the premises in which such evidence might have been stored.[107]

For example, in *People* v. *Smith*[108] officers in Placerville went to the home of a probationer named John Kelsey to conduct a probation search. When they arrived they spoke with Pamela Smith who said that she and Kelsey shared the rear bedroom. During a search of the bedroom, officers found drugs and paraphernalia on several shelves and in a desk. They also found a safe in the bedroom closet. Smith said there was a gun in the safe, and that the key to the safe was in her purse. When officers opened her purse to get the key, they found methamphetamine.

Smith contended that her purse could not be searched under the terms of Kelsey's probation because there was insufficient proof that Kelsey had joint control over it. The court disagreed, saying, "[O]nce it was determined the bedroom Kelsey and defendant shared was being used for a criminal enterprise, there was no reason for the officers not to believe the purse, regardless of its appearance, was one being jointly used, even if not jointly owned, by the probationer subject to search."

THE NEED TO ASK QUESTIONS: If there exists a legitimate question as to whether there is reasonable suspicion to believe that a certain item is controlled solely or jointly by the parolee or probationer, officers must question the occupants or take other steps to resolve the matter.[109] Officers are not, however, required to accept a parolee's or probationer's denial that he controls certain places or things.[110] As the Court of Appeal observed, "An officer could hardly expect that a parolee would claim ownership of an item which he knew contained contraband."[111]

Nor are officers required to accept the word of other people on the premises that the parolee or probationer did not control something. Still, it is a circumstance that should be considered if the person had no apparent motive to lie.

What officers can look for

There are no restrictions on what things officers may look for when they are conducting parole searches.[112] That's also true for most probation searches, but sometimes a sentencing judge will throw a curve and permit a search for only certain things, such as drugs, weapons, or stolen property.[113] This can cause problems if officers are only permitted to search for fairly large items, in which case they could not search areas and containers in which such items could not reasonably be found. This is another reason why officers need to know the terms and conditions of probation.

Intensity of the search

The term "intensity" of the search is used to denote the permissible intrusiveness of the search. Because there are few cases pertaining directly to the intensity of parole and probation searches, we have looked to cases covering search warrants, consent searches and searches incident to arrest.

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[107] **NOTE**: Our use of the term "permeated with criminality" is based on a rule in the law of search warrants that a warrant may authorize a search of *all* records or documents in a business if the affidavit establishes that the business is so corrupt—so "permeated with fraud"—that there is probable cause to believe that all, or substantially all, of the documents on the premises are evidence. See *U.S.* v. *Smith* (9th Cir. 2005) 424 F.3d 992, 1006; *In re Grand Jury Investigation* (9th Cir. 1997) 130 F.3d 853, 856; *U.S.* v. *Sawyer* (11th Cir. 1986) 799 F.2d 1494, 1508.

[108] (2002) 95 Cal.App.4th 912.

[109] See *People* v. *Boyd* (1990) 224 Cal.App.3d 736, 749 ["Depending upon the facts involved, there may be instances where an officer's failure to inquire, coupled with all of the other relevant facts, would render the suspicion unreasonable and the search invalid."]. ALSO SEE *U.S.* v. *Davis* (9th Cir. 1991) 932 F.2d 752, 760 ["We interpret *Boyd* as holding that the police should inquire into the ownership, possession, or control of an item sought to be searched when the totality of the circumstances do not otherwise give rise to reasonable suspicion that the item to be searched belongs to, or is under control of, the parolee."].

[110] See *People* v. *Boyd* (1990) 224 Cal.App.3d 736, 749 ["The officer should not be bound by the [parolee's] reply in the face of overwhelming evidence of its falsity."].

[111] *People* v. *Britton* (1984) 156 Cal.App.3d 689, 701.

[112] See 15 CCR § 2511(b) ["You and your residence and any property under your control may be searched without a warrant at any time by any agent of the Department of Corrections or any law enforcement officer."].

[113] See *People* v. *Gomez* (2005) 130 Cal.App.4th 1008, 1016 [the officer "could lawfully search in any area of the house or shed that might contain narcotics, firearms, or weapons"].

MANNER OF ENTRY: Officers must enter the premises in a "reasonable" manner.[114] It would appear, therefore, that in most cases they should comply with the knock-notice requirements unless compliance is excused for good cause. As the Court of Appeal explained in *People* v. *Urziceanu*, "[T]he remaining policies and purposes underlying the statutory knock-notice provisions must be satisfied in the execution of a probation search of a residence."[115]

PROTECTIVE SWEEPS: Officers may conduct protective sweeps of all common areas in the residence and all rooms in which the parolee or probationer has exclusive or joint control.[116] As for rooms that are under the exclusive control of someone else, it appears that a protective sweep would be permitted only if officers reasonably believed there was someone inside who posed a threat to them.[117]

THOROUGH SEARCH: Probation and parole searches may be reasonably thorough because, as one court put it, if a search is not thorough "it is of little value."[118] Thus officers who are searching a parolee or probationer may conduct a "full" search,[119] but it must not be "extreme or patently abusive."[120]

NO DAMAGE OR DESTRUCTION: Although the search may be thorough, it must not be destructive.[121]

LENGTH OF SEARCH: The permissible length of the search will depend on the number and nature of the places and things that will be searched, the amount and nature of the evidence the officers are seeking, and any problems that reasonably extended the length of the search.[122]

SEARCHES CONDUCTED BY K-9S: Officers may use a trained dog (e.g., drug sniffing, explosives-sniffing) to help with the search. This is because a dog's sniffing does not materially increase the intensity of the search.[123]

PLAIN VIEW SEIZURES: If, while conducting a parole or probation search, officers develop probable cause to believe that an item in plain view is evidence of a crime, they may seize it.[124]

ARRESTING OCCUPANTS: Finally, officers who have entered a residence to conduct a parole or probation search may arrest anyone on the premises if there is probable cause to do so, regardless of whether it existed at the time of entry or developed in the course of the search. In other words, neither a conventional arrest warrant nor a *Ramey* warrant is required to arrest a person inside a residence if officers have lawfully entered to conduct a parole or probation search.[125]

POV

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[114] See *Wilson* v. *Arkansas* (1995) 514 U.S. 927, 934 [manner of entry is "among the factors to be considered in assessing the reasonableness of a search or seizure"].
[115] (2005) 132 Cal.App.4th 747, 790.
[116] See *People* v. *Ledesma* (2003) 106 Cal.App.4th 857; *U.S.* v. *Lopez* (9th Cir. 2007) 474 F.3d 1208, 1213 ["Because a protective sweep is a less extensive search than a parole search, *Samson* necessarily makes both the protective sweep, and the parole search, lawful."].
[117] See *Maryland* v. *Buie* (1990) 494 U.S. 325, 333; *U.S.* v. *Nascimento* (1st Cir. 2007) 491 F.3d 25, 49.
[118] *U.S.* v. *Torres* (10th Cir. 1981) 663 F.2d 1019, 1027. ALSO SEE *People* v. *Crenshaw* (1992) 9 Cal.App.4th 1403, 1415.
[119] See *United States* v. *Robinson* (1973) 414 US 218, 235; *Gustafson* v. *Florida* (1973) 414 US 260, 266; *People* v. *Avila* (1997) 58 Cal.App.4th 1069, 1075; *People* v. *Guajardo* (1994) 23 Cal.App.4th 1738, 1742; *People* v. *Boren* (1987) 188 Cal.App.3d 1171, 1176-77. *People* v. *Dennis* (1985) 172 Cal.App.3d 287, 290; *People* v. *Cressy* (1996) 47 Cal.App.4th 981, 988 ["Deputy Howe would have been derelict in his duties had he failed to search defendant before putting him in his patrol car and transporting him to jail."]. **NOTE**: California's old restrictive rule governing searches of containers was based primarily on principles announced in *United States* v. *Chadwick* (1977) 433 U.S. 1. See *People* v. *Minjares* (1979) 24 Cal.3d 410, 417-21). The *Chadwick* rationale was repudiated in *California* v. *Acevedo* (1991) 500 U.S. 565.
[120] See *United States* v. *Robinson* (1973) 414 U.S. 218, 236; *People* v. *Laiwa* (1983) 34 Cal.3d 711, 726.
[121] See *U.S.* v. *Strickland* (11th Cir. 1990) 902 F.2d 937, 941-42; *People* v. *Crenshaw* (1992) 9 Cal.App.4th 1403; *U.S.* v. *Gutierrez-Mederos* (9th Cir. 1992) 965 F.2d 800, 804.
[122] See *People* v. *$48, 715* (1997) 58 Cal.App.4th 1507, 1515.
[123] See *People* v. *$48,715* (1997) 58 Cal.App.4th 1507, 1516 ["[U]se of the trained dog to sniff the truck . . . did not expand the search to which the [suspect] had consented . . ."]; *People* v. *Bell* (1996) 43 Cal.App.4th 754, 770-71, fn.5; *U.S.* v. *Gonzalez-Basulto* (5th Cir. 1990) 898 F.2d 1011,1013; *U.S.* v. *Perez* (9th Cir. 1994) 37 F.3d 510, 516
[124] See *Arizona* v. *Hicks* (1987) 480 U.S. 321, 326; *People* v. *Miller* (1999) 69 Cal.App.4th 190, 203.
[125] See *People* v. *Lewis* (1999) 74 Cal.App.4th 662, 673; *People* v. *Palmquist* (1981) 123 Cal.App.3d 1, 15; *People* v. *McCarter* (1981) 117 Cal.App.3d 894, 908.