PROBATION AND PAROLE SEARCHES

"Forty-three percent of 79,000 felons placed on probation in 17 States were rearrested for a felony within three years while still on probation."[1]

Whenever a crime occurs, the odds are relatively high it was committed by a person on probation or parole.[2] This is not a new problem, and it's not limited to any particular societies or cultures. For whatever reason, some people tend to take and do what they want regardless of how their actions hurt others and, ironically, themselves.

The causes of this problem are, of course, complex. Trying to root them out is the life work of many dedicated people. And although officers and prosecutors share their concern and often work closely with them, their primary responsibility lies elsewhere: the protection of the public. That's where probation and parole searches come in.

These searches help officers determine whether probationers and parolees have reverted to their old ways and are continuing to possess drugs, weapons, stolen property, and so forth. This ability, according to the Court of Appeal, tends to "minimize the risk to the public safety inherent in the conditional release of a convicted offender."[3]

In addition to protecting the public,probation and parole searches actually help in the rehabilitation effort. The theory is that probationers and parolees will be less likely to keep committing crimes if they know they can be searched at any time.[4] Furthermore, this threat may serve to trengthen the resolve of those probationers and parolees who really want to go straight, and help motivate those who are at least thinking about it.[5] As the California Supreme Court observed in *In re Tyrell J.*, "[A] probationer must thus assume every law enforcement officer might stop and search him at any moment. It is this thought that provides a

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[1] *United States* v. *Knights* (2001) 534 US __ [151 L.Ed.2d 497, 506] Source: U.S. Department of Justice.

[2] See *Griffin* v. *Wisconsin* (1987) 483 US 868, 880.

[3] *People* v. *Constancio* (1974) 42 Cal.App.3d 533, 540. ALSO SEE *People* v. *Reyes* (1998) 19 Cal.4th 743, 752 ["The state has a duty not only to assess the efficacy of its rehabilitative efforts but to protect the public, and the importance of the latter interest justifies the imposition of a warrantless search condition."].

[4] See *Griffin* v. *Wisconsin* (1987) 483 US 868, 876 [the possibility of "expeditious searches" has a "deterrent affect"]; *People* v. *Wardlow* (1991) 227 Cal.App.3d 360, 366; *People* v. *Bravo* (1987) 43 Cal.3d 600, 610; *People* v. *Reyes* (1998) 19 Cal.4th 743, 752 ["The threat of a suspicionless search is fully consistent with the deterrent purposes of the search condition."]; *In re Anthony S.* (1992) 4 Cal.App.4th 1000, 1002, fn.1; *People* v. *Mason* (1971) 5 Cal.3d 759, 763; *People* v. *Lewis* (1999) 74 Cal.App.4th 662, 671 [one purpose of parole search is "ensuring that a parolee is sticking to the straight and narrow life of noncriminality"]; *People* v. *Balestra* (1999) 76 Cal.App.4th 57, 67.

[5] See *People* v. *Fleming* (1994) 22 Cal.App.4th 1566, 1571; *Russi* v. *Superior Court* (1973) 33 Cal.App.3d 160, 168 [search clause "furnishes motivation for a probationer to avoid further narcotics involvement."]; *People* v. *Robles* (2000) 23 Cal.4th 789, 795 ["(P)robation search conditions serve to promote rehabilitation and reduce recidivism while helping to protect the community from potential harm by probationers."]; *People* v. *Brown* (1987) 191 Cal.App.3d 761, 766.

strong deterrent effect upon the [probationer] tempted to return to his antisocial ways."[6]

As for those probationers and parolees who intend to keep committing crimes for as long as they're on the outside, search conditions also provide a valuable service: they help put them back on the inside—often permanently, thanks to the Three Strikes law.

It would seem that because probation and parole searches are so important to the criminal justice system and are based on fairly simple principles, the courts would have formulated a clear set of rules for their administration. Not quite. While the rules pertaining to most types of warrantless searches have been fairly stable and predictable, it's been a rocky road for probation and parole searches.

Can probationers and parolees reasonably expect privacy as to places and things that can be searched at any time without a warrant? Not a difficult question, or so it would seem. But it's one the U.S. Supreme Court has inexcusably evaded,[7] and one that has been causing much handwringing at the California Supreme Court.[8]

Must a probation or parole officer authorize the search or at least be present when it occurs? Some courts say yes; others, no.[9] While most courts approve of spontaneous probation searches just to make sure the probationer is complying with the law, other courts consider them an outrageous "form of harassment."[10] Stranger still, until recently it was actually *more* difficult for officers to conduct

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[6] (1994) 8 Cal.4th 68, 87. ALSO SEE *People* v. *Mason* (1971) 5 Cal.3d 759, 763 ["With knowledge he may be subject to a search by law enforcement officers at any time, the probationers will be less inclined to have narcotics or dangerous drugs in his possession."]; *People* v. *Bravo* (1987) 43 Cal.3d 600, 610; *In re Anthony S*, (1992) 4 Cal.App.4th 1000, 1002, fn.1 ["Being on probation with a consent search term is akin to sitting under the Sword of Damocles."]; *People* v. *Turner* (1976) 54 Cal.App.3d 500, 506.

[7] See *United States* v. *Knights* (2001) 534 US __ [151 L.Ed.2d 497, 505, fn.6].

[8] **NOTE:** In 1994 the court ruled that search conditions made most privacy expectations unreasonable. *In re Tyrell J.* (1994) 8 Cal.4th 68. In 2000 it decided to revisit this issue when it granted review of the unpublished decision in *People* v. *Moss* (S087478). In 2002, after the U.S. Supreme Court said that search conditions "significantly diminished" privacy expectations (*United States* v. *Knights* (2001) 534 US __ [151 L.Ed.2d 497, 505]), the California court decided not to decide *Moss*. A few weeks later it decided to decide the issue when it granted review of two unpublished cases in which the issue was directly presented, *People* v. *Hanks* (S102982) and *People* v. *Hester* (S102961).

[9] See *People* v. *Lewis* (1999) 74 Cal.App.4th 662, 667 [court noted that between 1992 and 1999 there was a "sea change" in the rules covering parole searches, and "that change is continuing."]; *People* v. *Reyes* (1998) 19 Cal.4th 743, 748-750 [court refers to the changes in this area of law as a "moveable feast"]; *People* v. *Thomas* (1975) 45 Cal.App.3d 749, 758 ["Parole status, in and of itself, does not justify a search by peace officers other than parole officers."]; *People* v. *Burgener* (1986) 41 Cal.3d 505, 533; *People* v. *Coffman* (1969) 2 Cal.App.3d 681, 688; *People* v. *Stanley* (1995) 10 Cal.4th 764, 790; *People* v. *Brown* (1989) 213 Cal.App.3d 187, 192; *People* v. *Palmquist* (1981) 123 Cal.App.3d 1, 7; *People* v. *Ott* (1978) 84 Cal.App.3d 118, 126; *People* v. *Knox* (1979) 95 Cal.App.3d 420, 429; *People* v. *Montenegro* (1985) 173 Cal.App.3d 983, 987; *People* v. *Natale* (1978) 77 Cal.App.3d 568, 574; *People* v. *Kanos* (1971) 14 Cal.App.3d 642, 649; *U.S.* v. *Ooley* (9th Cir. 1997) 116 F.3d 370.

[10] See *People* v. *Bremmer* (1973) 30 Cal.App.3d 1058, 1063.

parole searches than probation searches, even though parolees obviously pose a much greater threat to society.[11]

But here's the kicker: Two years ago, in the case of *U.S.* v. *Knights,*[12] a panel of the Ninth Circuit ruled that the probation search of a bombing suspect, although clearly justifiable, was unlawful because the officers who conducted it were not truly interested in rehabilitating him!

As the result of the uncertainty generated by these and other decisions, it's not surprising that many officers and prosecutors—and even some probation and parole officers—are unsure about this area of the law. Well, that should change because some fairly recent decisions have made this subject much more understandable. It's not as clear or coherent as it should be, but it's getting there.

Before we begin, a word about how this article is organized. We'll start by explaining when, or under what circumstances, officers can conduct probation and parole searches. Then we will cover the search procedure, including what places and things may be searched and the permissible intensity of the search. Finally, we will discuss pretext searches and special requirements for searching homes, such as proving the probationer or parolee actually lives there.

PROBATION SEARCHES

When a defendant is convicted of a crime, the judge usually has two options: (1) send him to jail or prison, or (2) grant probation.[13] If the judge grants probation, he or she may require the defendant to agree to reasonable conditions.[14] One of the most common is the so-called "search clause" or

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[11] See *People* v. *Burgener* (1986) 41 Cal.3d 505, 533; *People* v. *Montenegro* (1985) 173 Cal.App.3d 983, 988; *People* v. *Kanos* (1971) 14 Cal.App.3d 642, 647-8. ALSO SEE *People* v. *Palmquist* (1981) 123 Cal.App.3d 1, 8 [noting that some courts have ruled reasonable suspicion is required to search even a probationer].

[12] (9th Cir. 2000) 219 F.3d 1138 [overruled in *U.S.* v *Knights* (2001) 534 US __ [151 L.Ed.2d 497].

[13] See Penal Code § 1203.1; *People* v. *Balestra* (1999) 76 Cal.App.4th 57, 64; *People* v. *Beal* (1997) 60 Cal.App.4th 84, 86. ALSO SEE *Griffin* v. *Wisconsin* (1987) 483 US 868, 875 ["(P)robation has become an increasingly common sentence for those convicted of serious crimes."]; *In re Marcellus L.* (1991) 229 Cal.App.3d 134, 142 ["The Legislature has granted to the judiciary discretionary power to grant probation as a means of testing a convicted defendant's integrity and future good behavior."].

[14] See *United States* v. *Knights* (2001) 534 US __ [151 L.Ed.2d 497, 505]["(A) court granting probation may impose reasonable conditions that deprive the offender of some freedoms enjoyed by law-abiding citizens."]; *People* v. *Balestra* (1999) 76 Cal.App.4th 57, 64-6; *People* v. *Beal* (1997) 60 Cal.App.4th 84, 86. **NOTE:** Although most defendants gladly consent to these conditions, they are not required to do so. See *In re Bushman* (1970) 1 Cal.3d 767, 776 ["If the defendant considers the conditions or probation more harsh than the sentence the court would otherwise impose, he has the right to refuse probation and undergo the sentence."]; *People* v. *Woods* (1999) 21 Cal.4th 668, 678, fn.5; *People* v. *Bravo* (1987) 43 Cal.3d 600, 608; *In re Tyrell J.* (1994) 8 Cal.4th 68, 82; *In re Marcellus L.* (1991) 229 Cal.App.3d 134, 141. **NOTE: O.R. Search Clauses:** The California Supreme Court has approved of search conditions imposed as a condition of release on the defendant's own recognizance, provided the search clause is reasonably related to the charged crime; e.g., possession of drugs. *In re York* (1995) 9 Cal.4th 1133.

warrantless search condition.[15] This is especially common when the defendant is convicted of a theft-, weapons-, or drug-related crime.[16]

Initial determinations

Before conducting a probation search, officers need to make sure that, (1) the person whose property they want to search is subject to a search condition; and (2) the place or thing they want to search is searchable under the terms of probation.

WHERE TO FIND SEARCH CONDITIONS: Although the details of a search condition can be found in the probationer's court, officers will usually obtain this information from a departmental, countywide, or regional law enforcement telecommunication system. For example, officers in the nine Bay Area counties ordinarily obtain probation search information through the Automated Warrant System (AWS).

In some cases, officers will simply ask a suspect if he is subject to a probation search condition. If he says yes, officers can usually conclude he is telling the truth because there is no logical reason for the suspect to lie.[17] Consequently, officers may search him and any other property he says is covered under his search condition.[18]

SUMMARY REVOCATION: Officers will sometimes learn that a suspect's probation has been "summarily" revoked. This usually means that a petition to revoke his probation has been filed.

In any event, summary revocation does not affect the terms of probation, which can be terminated only when probation has expired or has been revoked as the result of formal revocation proceedings.[19] In other words, if the terms of probation include a search condition, officers may conduct a search despite summary revocation.

"ON REQUEST" SEARCH CLAUSES: Judges will sometimes—usually inadvertently—insert language into probation orders that require the probationer to submit to warrantless searches "on request" or "whenever requested to do so" by an officer. If such language appears in a probation order it means the search will be unlawful if officers fail to notify the probationer that the search is about to occur.[20] Otherwise, notice is not required.[21]

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[15] See *United States* v. *Knights* (2001) 534 US __ [151 L.Ed.2d 497, 503][Court refers to search conditions as a "common California probation condition"]; *People* v. *Howard* (1984) 162 Cal.App.3d 8, 13 [power to impose search clauses is "well established"].

[16] See *People* v. *Constancio* (1974) 42 Cal.App.3d 533, 540 ["The search condition is commonly employed when probation is granted to persons convicted of violation of the drug laws or of an offense against property such as burglary, theft, or receiving stolen property"].

[17] See *In re Jeremy G.* (1998) 65 Cal.App.4th 553, 556.

[18] **NOTE:** Even if the person 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 ["(T)he officer's] reliance on the minor's statement that he was searchable for weapons was reasonable. The minor was 16 year old, and nothing in the record shows he exhibited signs of immaturity or lack of normal intelligence."].

[19] See *People* v. *Barkins* (1978) 81 Cal.App.3d 30, 32-3.

[20] See *People* v. *Mason* (1971) 5 Cal.3d 759, 763; *People* v. *Superior Court (Stevens)* (1974) 12 Cal.3d 858, 861.

LIMITED SEARCH: A search condition may authorize a search for only certain items, such as drugs.[22] This is very rare, however, because most judges also want to know if the probationer is in possession of drug paraphernalia, stolen property, and other items that indicate continued drug use or other criminal activity.[23]

INTERPRETATION OF TERMS: If there is some ambiguity in a search condition, it will be resolved by applying common sense, not a hypertechnical analysis. As the California Supreme Court observed, "We cannot expect police officers and probation agents who undertake searches pursuant to a search condition of a probation agreement to do more than give the condition the meaning that would appear to a reasonable, objective reader."[24]

Is "reasonable suspicion" required?

Neither reasonable suspicion nor probable cause is required to conduct a probation search. In other words, probation searches may be conducted regardless of whether officers have reason to believe the probationer has committed a new crime or is otherwise in violation of probation.[25] To fully understand this rule, it is necessary to distinguish between "special needs" and (2) "investigatory" probation searches.

"SPECIAL NEEDS" PROBATION SEARCHES: A "special needs" probation search[26] is a search conducted for the purpose of supervising and rehabilitating the probationer.[27] These searches actually serve two purposes. First, they serve as a reminder to probationers that they may be searched at any time which, in theory, will induce them to not possess drugs, weapons, and so forth.[28] Second, they reveal whether probationers are in possession of such items which, if so,

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[21] See *People* v. *Lilienthal* (1978) 22 Cal.3d 891, 899; *People* v. *Bravo* (1987) 43 Cal.3d 600, 609.
[22] See, for example, *People* v. *Howard* (1984) 162 Cal.App.3d 8, 12.
[23] See *People* v. *Constancio* (1974) 42 Cal.App.3d 533, 540 ["It requires no recitation of authority to observe that drug offenders frequently commit burglary and theft as a means of funding their illegal activities with drugs."].
[24] *People* v. *Bravo* (1987) 43 Cal.3d 600, 606. ALSO SEE *In re Anthony S.* (1992) 4 Cal.App.4th 1000, 1004.
[25] **NOTE:** A search clause may specifically require reasonable suspicion. See, for example, *People* v. *Kasinger* (1976) 57 Cal.App.3d 975, 977; *People* v. *Constancio* (1974) 42 Cal.App.3d 533, 537; *People* v. *Bravo* (1987) 43 Cal.3d 600, 607, fn.6 [reasonable suspicion requirement will not be implied]. This is very rare, however, because most judges consider such a term to be counterproductive; i.e., the effectiveness of search clauses depends on the probationer's knowing that he can be stopped and searched at any time—not just when officers have developed reasonable suspicion. See *In re Tyrell J.* (1994) 8 Cal.4th 68, 87; *People* v. *Mason* (1971) 5 Cal.3d 759, 763; *People* v. *Bravo* (1987) 43 Cal.3d 600, 610; *In re Anthony S*, (1992) 4 Cal.App.4th 1000, 1002, fn.1.
[26] See *United States* v. *Knights* (2001) 534 US __ [151 L.Ed.2d 497, 504]; *Griffin* v. *Wisconsin* (1987) 483 US 868, 873-4.
[27] See *Griffin* v. *Wisconsin* (1987) 483 US 868, 873-5; *In re Tyrell J.* (1994) 8 Cal.4th 68, 77; *People* v. *Reyes* (1998) 19 Cal.4th 743, 748; *People* v. *Woods* (1999) 21 Cal.4th 668, 677.
[28] See *People* v. *Mason* (1971) 5 Cal.3d 759, 763 ["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."]; *People* v. *Reyes* (1998) 19 Cal.4th 743, 753 ["(T)he purpose of the search condition is to deter the commission of crimes and to protect the public, and the effectiveness of the deterrent is enhanced by the potential for random searches."].

may indicate a need to revoke probation or, at least, provide more intensive supervision.[29]

In any event, so long as the search is conducted for one or both of these purposes, it is settled that neither reasonable suspicion nor any other level of proof is required.

For example, in *People* v. *Brown*[30] an officer stopped Brown for making an illegal U-turn. When the officer learned that Brown was on probation with a search clause, he searched Brown's car and found a handgun. This was a "special needs" probation search because the officer was motivated by the desire to make sure that Brown was in compliance with the terms of probation, not to investigate a specific crime.[31] Consequently, it was irrelevant that the officer had no reason to believe that Brown was in violation of the terms of probation. Said the court:

> [T]o restrict warrantless probation searches to those situations where the probationer has engaged in conduct reasonably suggestive of criminal activity would render the probation order superfluous and frustrate its acknowledged purpose; i.e., to deter further offenses by the probationer and to ascertain whether he is complying with the terms of probation.

INVESTIGATORY PROBATION SEARCHES: In contrast to "special needs" probation searches are so-called "investigatory" probation searches. These searches are motivated by the desire to confirm or dispel an officer's suspicion that the probationer has committed a new crime.[32] In other words, a probation search is "investigatory" whenever officers have reasonable suspicion or some other level of proof that the probationer has committed a crime.

In the past, the Ninth Circuit believed that "investigatory" probation searches were unlawful, condemning them as "stalking horse" or "pretext" searches.[33] In

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[29] See *People* v. *Mason* (1971) 5 Cal.3d 759, 763 ["With knowledge he may be subject to a search by law enforcement officers at any time, the probationers will be less inclined to have narcotics or dangerous drugs in his possession."]; *People* v. *Robles* (2000) 23 Cal.4th 789, 795 ["Warrantless searches are justified in the probation context because they aid in deterring further offenses by the probationer and in monitoring compliance with the terms of probation."]; *In re Anthony S.* (1992) 4 Cal.App.4th 1000, 1002, fn.1 ["The purpose of an unexpected, unprovoked search of defendant is to ascertain whether he is complying with the terms of probation."]; *United States* v. *Knights* (2001) 534 US __ [151 L.Ed.2d 497, 504][Court notes that the purpose of a "special needs" search is to determine whether the probationer is complying with the probation restrictions].

[30] (1987) 191 Cal.App.3d 761, 766.

[31] See *People* v. *Reyes* (1998) 19 Cal.4th 743, 749 [the term "special needs" means needs "beyond normal law enforcement."]. ALSO SEE *People* v. *Woods* (1999) 21 Cal.4th 668, 678-9 [court notes that an officer's motivation for conducting a probation search, if relevant at all, would be relevant only if the search was a "special needs" probation search].

[32] See *U.S.* v *Knights* (2001) 534 US __ [151 L.Ed.2d 497, 504] [Court indicates there may be a distinction between "special needs" probation searches and other probation searches that are permitted under the Fourth Amendment]; *People* v. *Robles* (2000) 23 Cal.4th 789, 799 [court notes two valid reasons for conducting probation searches; i.e., routine monitoring, and investigating facts indicating a possible probation violation].

[33] See *U.S.* v. *Reyes* (2nd Cir. 2002) __ F.3d __ [discusses "The 'Stalking Horse' Theory]; *U.S.* v. *Ooley* (9th Cir.1997) 116 F.3d 370, 372 ["Unlike an investigation search, a probation search should advance the goals of probation, the overriding aim of which is to give the probationer a chance to further and to demonstrate his rehabilitation while serving a part of his sentence outside the prison walls."]; *U.S.* v. *Watts* (9th Cir. 1995) 67 F.3d 790, 794; *U.S.* v. *Knights* (9th Cir.

its opinion, all probation searches must be motivated solely by the desire to rehabilitate the probationer; and that a search motivated by the desire to solve a crime is distasteful (as if the commission of a new crime by a probationer was of no concern to the sentencing judge or the probation officer).

The matter finally came to a head in the case of *U.S.* v. *Knights* when the court invalidated the probation search by police of a suspected pipe-bomber on grounds the officers were not motivated by the desire to rehabilitate him. The U.S. Supreme Court reversed, pointing out that the goal of probation is not limited to rehabilitation—it is equally concerned with protecting society from probationers who continue to commit crimes:

> The State has a dual concern with the probationer. On the one hand is the hope that he will successfully complete probation and be integrated back into the community. On the other is the concern, quite justified, that he will be more likely to engage in criminal conduct than an ordinary member of the community. The view of the [Ninth Circuit] would require the State to shut its eyes to the latter concern and concentrate only on the former. But we hold that the Fourth Amendment does not put the State to such a choice. [34]

Although the Court ruled that "investigatory" probation searches are lawful, it did not decide whether they may be conducted in the absence of reasonable

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2000) 219 F.3d 1138, 1143 ["Detective Hancock, and his cohorts, were not a bit interested in Knights' rehabilitation. They were interested in investigating and ending the string of crimes of which Knights was thought to be the perpetrator."][overruled in *U.S.* v *Knights* (2001) 534 US __ [151 L.Ed.2d 497]]; *U.S. v. Johnson* (9th Cir.1983) 722 F.2d 525, 527-28; *U.S. v. Consuelo-Gonzalez* (9th Cir.1975) 521 F.2d 259, 266-67; *U.S.* v. *McFarland* (8th Cir. 1997) 116 F.3d 316, 318; *U.S.* v. *Merchant* (9th Cir. 1985) 722 F.2d 525, 528.

[34] *United States* v. *Knights* (2001) 534 US __ [151 L.Ed.2d 497, 506]. ALSO SEE *U.S.* v. *Stokes* (9th Cir. 2002) __F.3d __ ["(O)ur circuit's line of cases holding searches of probationers invalid on the ground that they were subterfuges for criminal investigations is, in that respect, no longer good law."]; *People* v. *Reyes* (1998) 19 Cal.4th 743, 752 ["The state has a duty not only to assess the efficacy of its rehabilitative efforts but to protect the public . . . "]; *U.S.* v. *Reyes* (2nd Cir. 2002) __ F.3d __ ["(T)he objectives and duties of probation officers and law enforcement officers are unavoidably parallel and are frequently intertwined."]; *People* v. *Bravo* (1987) 43 Cal.3d 600, 610; *People* v. *Woods* (1999) 21 Cal.4th 668, 675, 678 [court notes "dual purpose of search condition to deter further offenses by the probationer and to ascertain compliance with the terms of probation"]; *People* v. *Burgener* (1986) 41 Cal.3d 505, 536 ["Any violation of the law is also a violation of the conditions of a parole."]; *People* v. *Stanley* (1995) 10 Cal.4th 764, 790 ["Clearly, investigation of defendant's involvement in a murder would have a parole supervision purpose."]; *Russi* v. *Superior Court* (1973) 33 Cal.App.3d 160, 164; *People* v. *Brown* (1989) 213 Cal.App.3d 187, 192 ["(A)ny parole officer who refused to authorize a search given reasonable suspicion of criminal activity would have been derelict in his duties."]. **NOTE:** These cases that distinguish between "special needs" and "investigatory" probation searches also ignore U.S. Supreme Court precedent that probation searches are justified by evidence of misconduct (see *Griffin* v. *Wisconsin* (1987) 483 US 868, 876) and they are at odds with the view of the California Supreme Court that a probation search will not be invalidated merely because its purpose was to seek evidence of a new crime. See *In re Tyrell J.* (1994) 8 Cal.4th 68, 80, fn2; *People* v. *Bravo* (1987) 43 Cal.3d 600, 607; *In re Aaron C.* (1997) 59 Cal.App.4th 1365, 1373, fn.5.

suspicion or probable cause. Instead it ruled that *if* any level of suspicion were required, it would certainly not be greater than reasonable suspicion.[35]

This does not mean the issue is undecided. On the contrary, the California Supreme Court has clearly ruled that no level of suspicion is required. It reasoned that probationers who have agreed to a search condition in lieu of serving time in jail or prison have effectively *consented* to the search.[36] Consequently, no level of suspicion is required before officers may conduct an "investigatory" probation search.[37] Furthermore, there is no requirement that the new crime be identical or even similar to the type of crime for which the suspect was on probation.[38]

Pretext searches

Officers who are conducting criminal investigations will sometimes learn that a suspect in the case is living with a person who is on probation with a search condition. The question arises: Can officers conduct a probation search of the premises if they are looking only for evidence against the suspect, not the probationer?

Before answering this question, we should note that it is based on a faulty assumption; namely, that if officers are interested in obtaining evidence against a suspect who is not on probation they cannot be interested in obtaining evidence against any roommates who *are* on probation. As a practical matter, an officer's interests are not so compartmentalized.[39] True, the decision to conduct the search may have been prompted by evidence against the suspect. But it does not follow that officers necessarily have no interest in determining whether the probationer is also involved in the suspect's criminal activities or whether he is otherwise in violation of probation. [40]

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[35] See *United States* v. *Knights* (2001) 534 US __ [151 L.Ed.2d 497, 506][investigatory probation search "requires *no more than* reasonable suspicion . . . " Emphasis added]. ALSO SEE *People* v. *Zichwic* (2001) 94 Cal.App.4th 944, 952.

[36] See *People* v. *Bravo* (1987) 43 Cal.3d 600, 608-10. **NOTE:** This view is sometimes stated in terms of the waiver of privacy expectations; specifically, that probationers can have no reasonable expectation of privacy as to places and things they agreed could be searched pursuant to the terms of probation. See *People* v. *Bravo* (1987) 43 Cal.3d 600, 607-10; *People* v. *Viers* (1991) 1 Cal.App.4th 990, 993.

[37] See *In re Tyrell J.* (1994) 8 Cal.4th 68, 80 ["(A)n adult probationer subject to a search condition may be searched by law enforcement officers having neither a search warrant nor even reasonable cause to believe their search will disclose any evidence."].

[38] See *People* v. *Kasinger* (1976) 57 Cal.App.3d 975, 978 ["There is no requirement that a search pursuant to a probation condition be founded on indications that the probationer has resumed the very type of misconduct for which he was placed on probation."]; *People* v. *Constancio* (1974) 42 Cal.App.3d 533, 539 ["(T)he legality of a probation search is not determined by the relationship, or lack thereof, of the probation offense to the conduct relied upon to justify the search."].

[39] See *People* v. *Woods* (1999) 21 Cal.4th 668, 674, 681; *People* v. *Robles* (2000) 23 Cal.4th 789, 796, fn.3 ["different officers presented with the same facts may harbor varying motivations in deciding to search a probationer's house pursuant to a known search condition"].

[40] See *People* v. *Woods* (1999) 21 Cal.4th 668, 681 [although the trial court made a factual finding that the officer who conducted the probation search was looking solely for evidence against a roommate who was not on probation, the Supreme Court noted that "another officer, possessing the same knowledge and faced with the same circumstances as [the officer who conducted the search], legitimately and convincingly might have testified that she went to [the probationer's]

In any event, assuming officers were not even slightly interested in uncovering a probation violation, the California Supreme Court has ruled the search will, nevertheless, be upheld if it was objectively reasonable to conduct a probation search; meaning, officers were aware of circumstances that "show a possible probation violation that justifies a search of the probationer's house pursuant to a search condition."[41]

As noted, this is usually what happens. For example, when there is reason to believe a probationer's roommate committed a crime, there is usually a legitimate concern that the probationer—whether it's a roommate or spouse—is somehow involved, whether as a co-conspirator, accomplice, or aider and abettor. If so, the search would be upheld even though its purpose was to search for evidence against the probationer's roommate.

This issue arose in *People* v. *Woods*[42] in which an officer arrested a man named Mofield for possession of drugs. The officer knew that Mofield lived with a woman named Gayla Loza who was on probation with a search condition. He had also received a tip three days earlier that drugs were being sold at the house. The officer then conducted a probation search of the single-bedroom house, looking solely for evidence against Mofield. During a search of the bedroom, the officer found drugs belonging to Woods, who also lived in the house.

The California Supreme Court ruled that although the sole purpose of the search was to seek evidence against Mofield, the search was lawful because the officer was aware of facts that reasonably indicated Loza was in violation of probation. Said the court:

> [The officer] had been told, three days before the search, that drugs were being sold out of the house at Loza's address. On the night of the search, [the officer] had observed Loza's live-in boyfriend, Jason Mofield, walking from the area of the house in a suspicious manner. [The officer] later ascertained Mofield was carrying a weapon and illegal drugs. Regardless of [the officer's] ulterior motives, the circumstances presented ample justification for entry and search of the house pursuant to Loza's search condition.[43]

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house to determine if [the probationer] was complying with probation, even though she believed that evidence incriminating others might also be found."]. **NOTE:** The court in *Woods* indicated it did not agree with the trial court's factual finding. *Id.* at p. 674.

[41] See *People* v. *Woods* (1999) 21 Cal.4th 668, 678-9; *People* v. *Robles* (2000) 23 Cal.4th 789, 796 ["(T)he question is whether the circumstances, viewed objectively, show a proper probationary justification for an officer's search; if they do, then the officer's subjective motivations with respect to a third party resident do not render the search invalid."]. **NOTE:** The court in *Woods* pointed out that the search *might* be lawful even if officers were not aware of such facts. But because the officers in *Woods* had information that the probationer might be in violation of the probation terms, it did not decide that issue. If, however, officers were not even aware that the co-occupant was on probation, the search would be unlawful. See *People* v. *Robles* (2000) 23 Cal.4th 789, 797, fn.4.

[42] (1999) 21 Cal.4th 668.

[43] ALSO SEE *People* v. *Robles* (2000) 23 Cal.4th 789, 797 [discussing *Woods*, the court said: "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."]. **NOTE:** The court's analysis in *Woods* is consistent with *Whren* v. *United States* (1996) 517 US 806, 811 and *United States* v.

Harassment and arbitrary searches

Probation searches are unlawful if conducted for the purpose of harassing the probationer or for any arbitrary or capricious reason.[44] Although the terms "harassment," "arbitrary," and "capricious" have different dictionary meanings, in the context of probation searches they refer to essentially the same thing: a search motivated by something other than a legitimate law enforcement or rehabilitative interest.[45]

For example, a search motivated *solely* by an officer's dislike of a probationer, his friends or family, would fall into this category.[46] So would a search conducted after several unproductive probation searches in the recent past with no reason to believe the search in question would be fruitful; or if officers conducted several searches at an unreasonable hour; or if officers conducted searches that were unnecessarily intrusive.[47]

On the other hand, there is nothing wrong with conducting a probation search just because the opportunity presented itself, as when an officer who has made a routine traffic stop learns that the driver is subject to a search condition.[48] It is also appropriate when the officer believed the search was "necessary for his personal safety"[49] or, as noted earlier, when an officer just wants to make sure the probationer was not in possession of weapons, drugs, or contraband.

Knights (2001) 534 US __ [151 L.Ed.2d 497, 507] in which the Court ruled an officer's motivation for searching or seizing is irrelevant if the action, in light of the totality of circumstances, is objectively reasonable. For the reasons cited by the court in *Woods*, the search was objectively reasonable and, therefore, the officer's motivation was irrelevant. It is also supported by *Horton* v. *California* (1990) 496 US 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."].

[44] See *People* v. *Bravo* (1987) 43 Cal.3d 600, 610 ["A waiver of Fourth Amendment rights as a condition of probation does not permit searches undertaken for harassment or searches for arbitrary or capricious reasons."]; *In re Tyrell J.* (1994) 8 Cal.4th 68, 87; *People* v. *Woods* (1999) 21 Cal.4th 668, 682; *People* v. *Mason* (1971) 5 Cal.3d 759, 765, fn.3; *In re Binh L.* (1992) 5 Cal.App.4th 194, 206; *People* v. *Lewis* (1999) 74 Cal.App.4th 662, 671; *People* v. *Viers* (1991) 1 Cal.App.4th 990, 993; *People* v. *Velasquez* (1993) 21 Cal.App.4th 555, 559.

[45] See *In re Anthony S.* (1992) 4 Cal.App.4th 1000, 1004, fn.3 ["Consistent with Black's Law Dictionary, we treat 'arbitrary' and 'capricious' as anonymous."]; *People* v. *Robles* (2000) 23 Cal.4th 789, 797. ALSO SEE *In re Binh L.* (1992) 5 Cal.App.4th 194, 206 ["Here is question is whether the manner in which the officer conducted himself was so gross as to invade any residual expectation of privacy the minor might have had . . ."].

[46] See *In re Anthony S.* (1992) 4 Cal.App.4th 1000, 1004.

[47] See *People* v. *Clower* (1993) 16 Cal.App.4th 1737, 1742 ["(A)ppellant's proffered evidence—that he was subjected to six warrantless, fruitless searches in the preceding four and one-half months—clearly was relevant to the issue of whether he had been subjected to repetitive parole searches for harassment purposes."]; *People* v. *Reyes* (1998) 19 Cal.4th 743, 753 ["(A) parole search could become constitutionally unreasonable if made too often, or at an unreasonable hour, or if unreasonably prolonged or for other reasons establishing arbitrary or oppressive conduct by the searching officer."]; *People* v. *Zichwic* (2001) 94 Cal.App.4th 944, 951.

[48] See *People* v. *Bravo* (1987) 43 Cal.3d 600, 608 [court notes a search is not arbitrary or capricious merely because officers lacked reasonable suspicion].

[49] See *In re Marcellus L.* (1991) 229 Cal.App.3d 134, 140.

For example, in *In re Anthony S.*,[50] officers decided to conduct probation searches of the homes of several members of a street gang called the "Ventura Avenue Gangsters." The officers testified that although they had no specific reason to believe the gangsters were still involved in illegal activities, they decided to make sure. The trial judge ordered the suppression of the evidence discovered during the searches because, said the judge, "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 judge was wrong, said the Court of Appeal, noting, "Here the 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."

Other probation search issues

IS PROBATION OFFICER'S OK REQUIRED? No. A probation search need not be instigated by a probation officer, nor must a probation officer be present when the search occurs.[51]

JUVENILE PROBATION: A juvenile court may, as a condition of probation, require the minor to submit to warrantless searches.[52] Because minors are *required* to accept the terms of probation, juvenile search conditions are not based on "consent." [53] Instead, their legal basis is the same as that of adult parolees; i.e., juvenile probationers cannot reasonably expect privacy as to places and things subject to warrant search. [54]

OFFICERS UNAWARE OF SEARCH CONDITION: A search cannot qualify as a probation search unless the officers were aware of the search condition at the time of the search.[55] For example, in *People* v. *Robles*[56] officers discovered evidence while searching the defendant's garage. Although the search was clearly illegal, they subsequently learned that the defendant's brother, who also controlled the garage, was on probation with a search condition. So when the defendant filed a motion to suppress, the prosecution contended the search should be upheld as a probation search.

The California Supreme Court rejected the idea, pointing out that searches undertaken pursuant to a search clause "must be reasonably related to the

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[50] (1992) 4 Cal.App.4th 1000, 1004.
[51] See *People* v. *Palmquist* (1981) 123 Cal.App.3d 1, 7-8. **NOTE:** There is no requirement that officers actually possess the probation order when they conduct the search. *Id.* at p.14.
[52] See *In re Binh L.* (1992) 5 Cal.App.4th 194, 203; *In re Ardirahman S.* (1997) 58 Cal.App.4th 963, 968-9.
[53] See *In re Tyrell J.* (1994) 8 Cal.4th 68, 81-3; *People* v. *Robles* (2000) 23 Cal.4th 789, 798, fn.5; *In re Binh L.* (1992) 5 Cal.App.4th 194, 202.
[54] See *People* v. *Reyes* (1998) 19 Cal.4th 743, 750-2; *In re Tyrell J.* (1994) 8 Cal.4th 68, 86; *In re Binh L.* (1992) 5 Cal.App.4th 194, 204; *In re Marcellus L.* (1991) 229 Cal.App.3d 134, 145-6.
[55] **NOTE:** The reasoning here is similar to that behind the rule prohibiting post-arrest pooling of information; i.e. if the arresting officer lacked probable cause, the arrest cannot be saved by showing that probable cause would have existed if the arresting officer and others had pooled their information beforehand. See *People* v. *Coleman* (1968) 258 Cal.App.2d 560, 563, fn.2; *People* v. *Rice* (1967) 253 Cal.App.2d 789, 792; *People* v. *Ford* (1984) 150 Cal.App.3d 687, 698; *Dyke* v. *Taylor Implement Mfg. Co.* (1968) 391 US 216, 221-2.
[56] (2000) 23 Cal.4th 789.

purposes of probation." But a search cannot serve this purpose if the officers were unaware of the search condition when they conducted the search. Moreover, the search would have been "arbitrary" because, unless the probationer lived alone, its scope would have gone beyond places and things under the probationer's sole or joint control.[57]

NO SUPPRESSION AT PROBATION HEARING: Evidence will not be suppressed at a probation revocation hearing on grounds it was obtained as the result of a violation of the Fourth Amendment.[58]

NO REASONABLE EXPECTATION OF PRIVACY: Even if officers were unaware of the search condition, evidence obtained during the search may be admissible under another theory: lack of standing. Specifically, a probationer who has agreed that certain places and things may be searched without a warrant will lack standing to challenge a search of those places and things.[59]

For example, in *In re Tyrell J.* the defendant and two other gang members were detained by a Fresno police officer at a high school football game. One of the suspects was found to be carrying a hunting knife. The officer then searched Tyrell and discovered marijuana. Although the officer did not know it at the time, Tyrell was on juvenile probation with a search condition.

The California Supreme Court ruled that even though the search could not be upheld as a probation search, the marijuana could not be suppressed because Tyrell knew he was subject to warrantless searches of his person and, therefore, did not have a reasonable expectation of privacy as to the marijuana he was carrying. This ruling was based on the principle that a probationer cannot

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

[58] See *Pennsylvania Board of Probation and Parole* v. *Scott* (1998) 524 US 357; *People* v. *Harrison* (1988) 199 Cal.App.3d 803. **NOTE:** Evidence may be suppressed at a probation revocation hearing if the search or seizure was not only unlawful but egregious; i.e., "shocked the conscience." See *Harrison,* supra, at p.808; *People* v. *Hayko* (1970) 7 Cal.App.3d 604, 610.

[59] See *In re Tyrell J.* (1994) 8 Cal.4th 68, 89 ["(O)ne must *first* have a reasonable expectation of privacy *before* there can be a Fourth Amendment violation."]; *In re Marcellus L.* (1991) 229 Cal.App.3d 134, 145 ["(A) probationer who has been granted the privilege of probation on condition that he submit at any time to a warrantless search may have no reasonable expectation of Fourth Amendment protection. The lack of such expectation applies to adult and juvenile alike."]; *In re Binh L.* (1992) 5 Cal.App.4th 194, 205; *People* v. *Viers* (1991) 1 Cal.App.4th 990, 993; *Rakas* v. *Illinois* (1978) 439 US 128, 148; *Rawlings* v. *Kentucky* (1980) 448 US 98, 104; *United States* v. *Miller* (1976) 425 US 435, 440 ["[N]o interest legitimately protected by the Fourth Amendment is implicated by governmental investigative activities unless there is an intrusion into a zone of privacy, into the security a man relies upon when he places himself or his property within a constitutionally protected area."]; *Vernonia School Dist.* v. *Acton* (1995) 515 US 646, 654 ["The Fourth Amendment does not protect all subjective expectations of privacy, but only those that society recognizes as 'legitimate.'"]; *Minnesota* v. *Carter* (1998) 525 US __ [142 L.Ed.2d 373, 379]; *Hudson* v. *Palmer* (1984) 468 US 517, 525 ["The applicability of the Fourth Amendment turns on whether the person invoking its protection can claim a justifiable, a reasonable, or a legitimate expectation of privacy that has been invaded by governmental action."]; *People* v. *Jenkins* (2000) 22 Cal.4th 900, 972; *People* v. *Roybal* (1998) 19 Cal. 4th 481, 707; *In re Baraka H.* (1992) 6 Cal.App.4th 1039, 1044; *People* v. *Hoag* (2000) 83 Cal.App.4th 1198, 1203; *United States* v. *Taketa* (9th Cir. 1991) 923 F.2d 665, 669-70 ["(T)o say that a party lacks Fourth Amendment standing is to say that his reasonable expectation of privacy has not been infringed. It is with this understanding that we use 'standing' as a shorthand term."].

reasonably expect privacy as to places and things he specifically agreed could be searched without a warrant.[60]

We should note, however, that some members of the California Supreme Court seem to be having second thoughts about the wisdom of *Tyrell*. As the result, the court has decided to review two cases which may result in some changes to this area of the law.[61] We will let you know what happens.

As for the probationer's roommates and other co-occupants, they may challenge the admissibility of evidence that incriminates them because their privacy expectations, although somewhat reduced by the search condition, have not been extinguished.[62] For example, in the *Robles* case, discussed above, Robles had standing to challenge the search because he was not the one on probation.

PAROLE SEARCHES

With few exceptions, every inmate released from a California state prison is placed on parole.[63] The term of parole is three years except for inmates convicted of certain sex crimes and inmates sentenced to life in prison who may be placed on parole for five years.[64]

Furthermore, all parolees are subject to the same search condition[65] which reads as follows:

> 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.[66]

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[60] **NOTE:** The ruling in *Tyrell* is also justified on the following theory, expressed by the trial judge in *In re Marcellus L.* (1991) 229 Cal.App.3d 134, 137: "[S]ince the minor had given up his Fourth Amendment right the community is entitled to the benefit of the fact that the minor had waived his right and it would serve an insufficiently useful purpose to deny the People the right to use the evidence."

[61] *People* v. *Hanks* (S102982) and *People* v. *Hester* (S102961). **NOTE:** This issue did not arise in *Robles* because, as noted, it was Robles' brother who was on probation. Furthermore, the court in *Robles* rejected the idea that roommates and other co-occupants who are not subject to a search condition lack a reasonable expectation of privacy by virtue of the probationer's search condition. See *People* v. *Robles* (2000) 23 Cal.4th 789, 799 ["(C)ohabitants need not anticipate that officers with no knowledge of the probationer's existence or search condition may freely invade their residence in the absence of a warrant or exigent circumstances.].

[62] See *People* v. *Robles* (2000) 23 Cal.4th 789, 798-800.

[63] See Penal Code § 3000(b)(1). **NOTE:** Under the Determinate Sentencing Act of 1976, parole is mandatory, and the inmate must accept it. See *People* v. *Reyes* (1998) 19 Cal.4th 743, 749. The purpose of parole is to "help individuals reintegrate into society as constructive individuals as soon as they are able, without being confined for the full term of the sentence imposed. It also serves to alleviate the costs to society of keeping an individual in prison." *Morrissey* v. *Brewer* (1972) 408 US 471, 477.

[64] See Penal Code §§ 3000(b)(1), 3000(b)(3); *People* v. *Tellez* (1982) 128 Cal.App.3d 876, 879.

[65] See *People* v. *Burgener* (1986) 41 Cal.3d 505, 532 ["The distinction between felony parole and probation justifies the inclusion of the parole search condition in all parole agreements."]; *People* v. *Williams* (1992) 3 Cal.App.4th 1100, 1105 ["All parolees are subject to a search condition."]; *People* v. *Lewis* (1999) 74 Cal.App.4th 662, 668 ["(Search) conditions are now automatic, and imposed on every parolee."].

[66] 15 California Code of Regulations § 2511(b)(4). ALSO SEE *People* v. *Reyes* (1998) 19 Cal.4th 743, 746; *People* v. *Burgener* (1986) 41 Cal.3d 505, 528; *People* v. *Williams* (1992) 3 Cal.App.4th 1100, 1105; *People* v. *Lewis* (1999) 74 Cal.App.4th 662, 668.

Similar search conditions are imposed on parolees from the California Youth Authority[67] and the California Rehabilitation Center.[68] The purpose of these conditions is identical to those imposed on probationers: rehabilitation and protection of the public.[69]

The federal parole system works differently. For one thing, it's called "supervised release," not parole.[70] But the main difference, for our purposes, is that search clauses are not automatically included as a condition of supervised release. Instead, they are imposed at the discretion of the sentencing judge.[71]

When parole search is permitted

In the past, parole searches were permitted only if officers were aware of facts constituting "reasonable suspicion" that the parolee committed additional crimes

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[67] See 15 California Code of Regulations § 4929(a)(6) ["You and your residence and any property under your control may be searched without a warrant by a parole agent of the Department of the Youth Authority, parole agent of the Youthful Offender Parole Board, or any peace officer."].

[68] See 15 California Code of Regulations § 5302(b)(15) ["You shall submit to a search of your person, your residence and any property under your control by your agent of record, any agent of the Department of Corrections or law enforcement officer."].

[69] See *People* v. *Reyes* (1998) 19 Cal.4th 743, 752; *People* v. *Burgener* (1986) 41 Cal.3d 505, 534; *People* v. *Boyd* (1990) 224 Cal.App.3d 736, 743.

[70] See *U.S.* v. *Reyes* (2nd Cir. 2002) __ F.3d __ ["Like parole, supervised release is a term of supervision following incarceration. However, it differs from parole in an important respect: unlike parole, supervised release does not replace a part of a term of incarceration, but instead is given *in addition to* any term of imprisonment imposed by a court."].

[71] See *U.S.* v. *Reyes* (2nd Cir. 2002) __ F.3d __ ["(Supervised release) is imposed by a federal district court as part of a total sentence in addition to a period of incarceration at the time of the initial sentencing of a convicted federal criminal defendant. That is, the district court orders in the judgment of conviction itself that the offender is sentenced to a term of supervised release following incarceration. Thus, supervised release is an integral part of the original sentence imposed pursuant to court order and executed by the federal probation officer."]. **NOTE:** A typical search condition for federal Supervised Release reads as follows: "The defendant shall submit his person, residence, office, vehicle, or any property under his control to a search. Such a search shall be conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to such a search may be grounds for revocation; the defendant shall warn any residents that the premises may be subject to searches." **NOTE:** Because state and federal parolees, unlike probationers, have no choice as to whether they will be subject to search conditions, they have not "consented" to warrantless searches. See *People* v. *Reyes* (1998) 19 Cal.4th 743, 749 ["Without choice, there can be no voluntary consent to inclusion of the search condition."]; *In re Tyrell J.* (1994) 8 Cal.4th 68, 83. Nevertheless, they are just as tightly bound by these search conditions because the courts have ruled that parolees, having been given notice of the conditions of parole, cannot reasonably expect that their person, residence, and property under their control will not be searched. See *People* v. *Reyes* (1998) 19 Cal.4th 743, 750-2; *In re Tyrell J.* (1994) 8 Cal.4th 68, 86; *People* v. *Bravo* (1987) 43 Cal.3d 600, 608; *People* v. *Britton* (1984) 156 Cal.App.3d 689, 696; *U.S.* v. *Reyes* (2nd Cir. 2002) __ F.3d __ ["It is beyond doubt that Reyes's actual expectation of privacy in the environs of his home was necessarily and significantly diminished because Reyes was a convicted person serving a court-imposed term of federal supervised release that mandated home visits 'at any time' from his federal probation officer."]. **NOTE:** In the past, parole searches were based on the fiction that parolees, although not behind bars, were in "constructive" custody. See, for example, *People* v. *Triche* (1957) 148 Cal.App.2d 198, 202. For a variety of reasons, the courts now rely mainly on the theory, cited in the above cases, that parolees have no reasonable expectation of privacy. ALSO SEE 4 LaFave *Search and Seizure* (3rd edition) 760-1; *People* v. *Williams* (1992) 3 Cal.App.4th 1100, 1107.

or was otherwise in violation of parole.[72] That changed in 1998 when the California Supreme Court ruled that neither reasonable suspicion nor any other level of suspicion is required.[73] Instead, parole searches may be conducted for any "proper purpose,[74] which simply means that the search must not be arbitrary, capricious, or conducted for the purpose of harassment.[75] These terms are discussed in the section on probation searches.

Other parole search issues

PAROLE OFFICER'S APPROVAL: It is not necessary for police officers to obtain a parole officer's approval before conducting a parole search.[76]

PRETEXT SEARCHES: Pretext searches: It appears that pretext probation searches are not unlawful per se. Although we could not find any law directly on point, it would appear the courts would apply the rules covering prext probation searches, discussed earlier.

HARASSMENT: Like probation searches, parole searches will be invalidated if they were conducted for the purpose of harassing the parolee or for some arbitrary or capricious reason.

OFFICERS UNAWARE OF PAROLEE'S STATUS: It appears a search cannot be upheld as a parole search if officers were unaware of the parole search condition at the time they conducted the search.[77] But, as discussed in the section on probation searches, the parolee may not be permitted to challenge such a search if he did not have a reasonable expectation of privacy as to the places and things that were searched.

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[72] See *People* v. *Burgener* (1986) 41 Cal.3d 505, 535.
[73] See *People* v. *Reyes* (1998) 19 Cal.4th 743, 752; *People* v. *Lewis* (1999) 74 Cal.App.4th 662, 667.
[74] See *People* v. *Reyes* (1998) 19 Cal.4th 743, 754.
[75] See *People* v. *Reyes* (1998) 19 Cal.4th 743, 752-4.
[76] See *People* v. *Reyes* (1998) 19 Cal.4th 743, 751; *People* v. *Williams* (1992) 3 Cal.App.4th 1100, 1106 ["The purpose of the search, not the presence of a parole agent, is the vital element."]; *In re Tyrell J.* (1994) 8 Cal.4th 68, 80, fn.2; 15 California Code of Regulations § 2511(b)(4) [regulations expressly permit search by parole agent *or* "any law enforcement officer."]. **NOTE:** Although the court in *Reyes* did not specifically address the issue of the need for a parole officer's approval, it is apparent that such approval would be unnecessary because, as the court made clear, a parolee has no reasonable expectation of privacy as to places and things that were subject to warrantless and suspicionless search. Furthermore, such approval would be a meaningless formality because, as the court in *Reyes* stated, unexpected and unprovoked parole searches serve a legitimate parole purpose. Finally, the court made it clear that the only limitation on parole searches is that they may not be arbitrary, capricious or harassing. Furthermore, such a requirement would subvert one of the more important purposes of probation; namely, the need for "unexpected, unprovoked" searches. See *In re Anthony S.* (1992) 4 Cal.App.4th 1000, 1002, fn.1; *In re Tyrell J.* (1994) 8 Cal.4th 68, 87 ["A juvenile probationer must thus assume every law enforcement officer might stop and search him at any moment. It is this thought that provides a strong deterrent effect upon the minor tempted to return to his antisocial ways."]. ALSO SEE *People* v. *Brown* (1989) 213 Cal.App.3d 187, 192.
[77] **NOTE:** As noted above, arbitrary parole searches are unlawful. In *People* v. *Robles* (2000) 23 Cal.4th 789, 797 the California Supreme Court equated an officer's unawareness of a search condition with arbitrariness; viz, ["(I)f officers lack knowledge of a probationer's advance consent when they search the residence, their actions are wholly arbitrary in the sense that they search without legal justification and without any perceived limits to their authority."]. There does not seem to be any reason to believe this rule would not apply to parole searches.

NO SUPPRESSION AT PAROLE HEARING: Evidence will not be suppressed at a parole revocation hearing on grounds it was obtained as the result of a violation of the Fourth Amendment.[78]

SCOPE OF THE SEARCH

Having determined that a person is on probation or parole with a search condition, and having decided to conduct a search, officers must not begin unless they are clear on some procedural matters. These matters involve the scope and intensity of the search, plus some special rules pertaining to searches of homes.

The term "scope" of the search refers to its physical limitations; namely, what places and things officers may search.[79] To determine the permissible scope of a parole or probation search, officers must look to the wording of the search clause itself and how the wording has been interpreted by the courts. This might sound like a onerous task but it's not. As a practical matter, search conditions are fairly standardized, and the courts are in agreement as to how they should be interpreted.

Parole search scope

The permissible scope of parole searches is the same for all parolees. Specifically, officers may search, (1) the parolee, (2) his residence, and (3) any property under his control.[80] Although parole regulations do not specifically list car searches, cars are obviously "property" [81] and may, therefore, be searched if they are under the parolee's control.

Probation search scope

The permissible scope of a probation search can vary somewhat because it is set by the judge who grants probation.[82] As a practical matter, however, this does not cause significant problems because most judges realize that the system cannot function, or at least cannot function well, unless search conditions are fairly uniform.

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[78] See *Pennsylvania Board of Probation and Parole* v. *Scott* (1998) 524 US 357; *People* v. *Harrison* (1988) 199 Cal.App.3d 803. **NOTE:** Evidence may be suppressed at a probation revocation hearing if the search or seizure was not only unlawful but egregious; i.e., "shocked the conscious." See *Harrison*, supra, at p.808; *People* v. *Hayko* (1970) 7 Cal.App.3d 604, 610.

[79] See *People* v. *Woods* (1999) 21 Cal.4th 668, 682 ["In all cases, a search pursuant to a probation search clause may not exceed the scope of the particular clause relied upon."]. **NOTE:** The rules applicable to scope cover both probation and parole searches. See *U.S.* v. *Davis* (9th Cir. 1991) 932 F.2d 752, 759 ["We do not believe the distinction between the status of parolee and that of a probationer is constitutionally significant for purpose of evaluating the scope of a search."].

[80] See 15 California Code of Regulations § 2511(b)(4).

[81] **NOTE:** By any definition of the word, a vehicle is "property." See, for example, *The New Oxford American Dictionary* (2001) p. 1366 [Property: "a thing or things belonging to someone; possessions collectively."]; *Webster's Third New International Dictionary* (1993) p. 1818 [Property: . . . "something that is or may be owned or possessed."]; *Black's Law Dictionary* (4th Edition 1951) [Property: . . . "The word is also commonly used to denote everything which is the subject of ownership . . . It extends to every species of valuable right and interest, and includes real and personal property . . ."].

[82] See *People* v. *Woods* (1999) 21 Cal.4th 668, 682 ["(A) search pursuant to a probation search clause may not exceed the scope of the particular clause relied upon."].

HOW TO DETERMINE SCOPE: The permissible scope of a search can ordinarily obtained through the same countywide or regional law enforcement communications system that is used to determine if a person is searchable; e.g., AWS in the Bay Area.

FOUR WAY: The most common search condition is commonly known as "four-way" or, in Alameda County, an "S-7." Such a search condition authorizes a search of, (1) the suspect, (2) his home, (3) any vehicle under his control, and (4) any other property under his control.[83] Note that the scope of a "four-way" is essentially the same as the scope of a parole search; the only difference being a search of any vehicle under the person's control is expressly authorized in a "four-way," while it is implied in a parole search.

Occasionally, a search condition will authorize a search of the probationer and "property under his control," but omit the suspect's home and vehicle. In the absence of evidence to the contrary, this can be deemed a four-way because the category "property under his control" would seem to include his vehicle and home. In fact, 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.[84]

THREE WAY: A "three way" search condition authorizes a search of the probationer, his home and vehicle, but not other property under his control.[85]

ONE WAY: A "one way" search condition authorizes a search of only the probationer's person.[86]

Searching homes

Because homes are places in which privacy expectations are the highest,[87] and because probationers and parolees often live with people who are not subject to warrantless searches, the courts impose special limitations and procedural requirements on residential searches. Those limitations and requirements are as follows:

WHERE DOES HE "LIVE?" Before entering a residence to conduct a probation or parole search, officers must reasonably believe the probationer or parolee

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[83] See, for example, *People* v. *Mason* (1971) 5 Cal.3d 759, 762; *In re Anthony S.* (1992) 4 Cal.App.4th 1000, 1002; *People* v. *Tidalgo* (1981) 123 Cal.App.3d 301, 304; *United States* v. *Knights* (2001) 534 US __ [151 L.Ed.2d 497, 502].

[84] 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.].

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

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

[87] See *People* v. *Cove* (1964) 228 Cal.App.2d 466, 469 ["Constitutional alertness to possible police invasion of privacy is seemingly sharpened when the area of search is a home or apartment rather than an automobile or a pedestrian abroad on the midnight streets."]. **NOTE:** Officers who are conducting a lawful probation/parole search need not obtain the consent of a joint occupant of the premises, nor will the objections of a joint occupant invalidate the search. See *People* v. *Johnson* (1980) 105 Cal.App.3d 884, 888; *Russi* v. *Superior Court* (1973) 33 Cal.App.3d 160, 166; *People* v. *LaJocies* (1981) 119 Cal.App.3d 947, 955; *People* v. *Icenogle* (1977) 71 Cal.App.3d 576, 586.

actually lives there, at least temporarily.[88] Although probable cause is not required, the facts known to the officers must satisfy the lower standard of reasonable suspicion.[89] This means that officers must have some information that reasonably supports their belief.

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[88] **NOTE:** In determining the law on this issue, we have looked to cases interpreting the requirement under *Ramey-Payton* that officers reasonably believe that the home they entered was the home of the subject of an arrest warrant, as well as cases concerning probation and parole searches: See *Payton* v. *New York* (1980) 445 US 573, 603 ["reason to believe" is sufficient]; *People* v. *Boyd* (1990) 224 Cal.App.3d 736, 750 ["(The reasonable suspicion standard) avoids unreasonable intrusions into the privacy interests of persons with whom the parolee associates or resides."]; *People* v. *Palmquist* (1981) 123 Cal.App.3d 1, 9, fn.4 ["But the 'reasonable cause called for by the probation condition is not to be equated with probable cause for issuance of a warrant."]; *People* v. *Russi* (1973) 33 Cal.App.3d 160, 164 [includes apartment rentals]; *People* v. *Kanos* (1971) 14 Cal.App.3d 642, 648-9; *People* v. *Ott* (1978) 84 Cal.App.3d 118, 126; *People* v. *Fuller* (1983) 148 Cal.App.3d 257, 263-4; *People* v. *Tidalgo* (1981) 123 Cal.App.3d 301, 307 ["If it is objectively unreasonable for officers to believe that the residence or items falls within the scope of a search condition, any evidence seized will be deemed the product of a warrantless search absent other considerations."]; *People* v. *Jacobs* (1987) 43 Cal.3d 472, 478-9; *People* v. *Wader* (1993) 5 Cal.4th 610, 632-633; *People* v. *Alcorn* (1993) 15 Cal.App.4th 652, 655; *People* v. *Dyke* (1990) 224 Cal.App.3d 648, 658-9; *People* v. *White* (1986) 183 Cal.App.3d 1199, 1205; *People* v. *Marshall* (1968) 69 Cal.2d 51, 55-6; *People* v. *LeBlanc* (1997) 60 Cal.App.4th 157, 164; *People* v. *Ott* (1978) 84 Cal.App.3d 118, 126; *U.S.* v. *Dally* (9th Cir. 1979) 606 F.2d 861, 863 ["It is immaterial that he had not lived at this address for a long period of time."]; *Case* v. *Kitsap County Sheriff's Department* (9th Cir. 2001) 249 F.3d 921, 931 ["By all indicia, she was far more than a mere 'overnight guest.'"]; *Valdez* v. *McPheters* (10th Cir. 1999) 172 F.3d 1220, 1225; *U.S.* v. *Magluta* (11th Cir. 1995) 44 F.3d 1530, 1534 ["[The Supreme] Court did not and has not, ever held that probable cause is *required* to execute an arrest warrant for the resident"; and, although there was no direct authority that only reasonable suspicion was required, the court said it must assume that *Payton's* use of the term "reason to believe" "was a conscious effort on the part of the Supreme Court]; *U.S.* v. *Risse* (8th Cir. 1996) 83 F.3d 212, 216 ["(T)he officers' assessment need not in fact be correct; rather, they need only reasonably believe that the suspect resides at the dwelling to be searched and is currently present at the dwelling."]; *U.S.* v. *Lauter* (2nd Cir. 1995) 57 F.3d 212, 215 [reasonable suspicion, not probable cause, is required]; *U.S.* v. *De Parias* (11th Cir. 1986) 805 F.2d 1447. 1457; *U.S.* v. *Terry* (2nd Cir.. 1983) 702 F.2d 299, 319. Also note the potential relevance of cases concerning third-party consent. See *U.S.* v. *Risse* (8th Cir. 1996) 83 F.3d 212, 216-7. **PROSECUTORS NOTE:** If it turns out the probationer or parolee did not live on the premises he may or may not lack "standing" to challenge a search of the residence. Nevertheless, officers may be sued by the people who live there on grounds that the warrantless entry violated their civil rights. See, for example, *Perez* v. *Simmons* (9th Cir. 1989) 884 F.2d 1136. **NOTE:** In *Maryland* v. *Buie* (1990) 494 US 325, 332-3 the Court said, "Possessing an arrest warrant and probable cause to believe Buie was in his home, the officers were entitled to enter and to search anywhere in the house in which Buie might be found." This should not, however, be interpreted as a ruling that probable cause is a requirements. See *U.S.* v. *Magluta* (11th Cir. 1995) 44 F.3d 1530, 1534. The *Magluta's* courts reasoning is supported by *United States* v. *Knights* (2001) 534 US __ [151 L.Ed 2d 497, 504][Court noted that a ruling that a search is lawful does not automatically mean a search that is "not like it" is unlawful]. **NOTE:** Officers may also take into account that the suspect may be aware that officers are looking for him and may, therefore, try to make it appear he is not home. See *U.S.* v. *Magluta* (11th Cir. 1995) 44 F.3d 1530, 1535, 1538 ["(T)he officers were entitled to consider that [the arrestee] was a fugitive from justice, wanted on a 24 count drug trafficking indictment, who might have been concealing his presence [in the house]."].

[89] See *People* v. *Britton* (1984) 156 Cal.App.3d 689, 701 [error to apply probable cause standard]; *People* v. *Palmquist* (1981) 123 Cal.App.3d 1, 13 [reasonable suspicion, not probable cause, is required]; *People* v. *Boyd* (1990) 224 Cal.App.3d 736, 750 ["The reasonable suspicion standard should also be used to determine whether a particular object is within the scope of the parole

In many cases this won't be a problem because there will be direct and convincing evidence that the probationer or parolee lives in a certain house.[90]

But in some cases, he will be staying with a friend or relative for a night or two, then stay with someone else for a short time. Or he might actually have some ties to a certain residence but these ties are thin, at best. In situations such as these, a probation or parole search of the residence would not be justified. [91] But as his relationship to the premises becomes more stable, as his expectations of privacy become more reasonable, a point will be reached at which the courts would say it's "his" house, or he is "staying" there, or he's "taken up residence" there.[92]

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search being conducted."]; *U.S.* v. *Davis* (9th Cir. 1991) 932 F.2d 752, 758 ["The permissible bounds of a probation search are governed by a reasonable suspicion standard."]; *U.S.* v. *Route* (5th Cir. 1997) 104 F.3d 59, 62 ["All but one of the other circuits that have considered the question are in accord, relying upon the 'reasonable belief' standard as opposed to a probable cause standard. . . . (W)e adopt today the 'reasonable belief' standard of the Second, Third, Eighth, and Eleventh Circuits."]; *U.S.* v. *Risse* (8th Cir. 1996) 83 F.3d 212, 216 [, "[T]he officers' assessment need not in fact be correct; rather, they need only reasonably believe that the suspect resides at the dwelling to be searched . . . ."]; *Valdez* v. *McPheters* (10th Cir. 1999) 172 F.3d 1120, 1124-6 [reasonable suspicion—not probable cause—is required]; *U.S.* v. *Lauter* (2nd Cir. 1995) 57 F.3d 212, 215; *U.S.* v. *Magluta* (11th Cir. 1995) 44 F.3d 1530, 1534; *U.S.* v. *Manley* (2nd Cir. 1980) 632 F.2d 978, 983-4; *Case* v. *Kitsap County Sheriff's Department* (9th Cir. 2001) 249 F.3d 921, 931 [applies reasonable belief test]; *U.S.* v. *Lovelock* (2nd Cir. 1999) 170 F.3d 339, 343. **NOTE:** In *U.S.* v. *Harper* (9th Cir. 1991) 928 F.2d 894, 896 the Ninth Circuit ruled that probable cause was required. But, as the 10th Circuit noted in *Valdez* v. *McPheters* (10th Cir. 1999) 172 F.3d 1220, 1224, "In [*Harper*], the Ninth circuit concluded that 'the police may enter a home with an arrest warrant only if they have probable cause to believe the person named in the warrant resides there.' The court provided no rationale for adopting this standard, merely citing its prior decision in *Perez* v. *Simmons* (9th Cir. 1990) 900 F.2d 213." **NOTE:** In the related context of entering a home to execute an arrest warrant, the U.S. Supreme Court required only a reasonable belief that it was the arrestee's home. *Payton* v. *New York* (1980) 445 US 573, 603. The Court is certainly aware of the distinction between probable cause and other levels of proof. If it had meant probable cause it would have said so. Also, in discussing *Payton* the U.S. Court of Appeals noted, "[R]equiring actual knowledge of the suspect's true residence would effectively make *Payton* a dead letter. In the real world, people do not live in individual, separate, hermetically-sealed residences. They live with other people, they move from one residence to another. Requiring that the suspect actually reside at the residence entered would mean that officers could never rely on *Payton*, since they could never be certain that the suspect had not moved out the previous day . . . ." *Valdez* v. *McPheters* (10th Cir. 1999) 172 F.3d 1120, 1225.

[90] See *People* v. *LeBlanc* (1997) 60 Cal.App.4th 157, 164 [officers saw the arrestee standing at the door to his motel room].

[91] See *Steagald* v. *United States* (1981) 451 US 204, 211, fn.6; *U.S.* v. *Lovelock* (2nd Cir. 1999) 170 F.3d 339, 344 [no entry if suspect "is merely visiting"]; *Perez* v. *Simmons* (9th Cir. 1989) 884 F.2d 1136, 1139 ["inhabiting" a residence does not make it his "home."]; *U.S.* v. *Risse* (8th Cir. 1996) 83 F.3d 212, 216 ["(I)f the suspect is just a guest of the third party, then the police must obtain a search warrant for the third party's dwelling. . . ."]; *U.S.* v. *Litteral* (9th Cir. 1990) 910 F.2d 547, 553; *Watts* v. *County of Sacramento* (9th Cir. 2001) 256 F.3d 886, 889 ["If the suspect named in the arrest warrant is a guest of the third party, then, absent exigent circumstances, the police must obtain a search warrant . . . "]. **NOTE:** Although a temporary guest in a residence may have a reasonable expectation of privacy for Fourth Amendment purposes, this does not make it *his* home. See *Minnesota* v. *Olson* (1990) 495 US 91, 96-100.

[92] See *Bratton* v. *Toboz* (1991) 764 F.Supp. 965, 971; *U.S.* v. Lovelock (2nd Cir. 1999) 170 F.3d 339, 344 ["The colloquial use of ['stays'] is consistent with 'resides.'"].

Some courts have suggested that that point is reached when the probationer or parolee can be said to have "common authority over, or some other significant relationship to" the premises.[93] This "common authority" is said to exist if he has a *right* to access or control all or part of the residence.[94]

For example, a probationer or parolee has be deemed "living" in a friend's house when he told officers or others he was "staying" there;[95] or when he stayed there two to four nights per week, kept certain personal belongings there, and gave that address when he was booked.[96] Similarly, a probationer or parolee is "living" in a motel or hotel room when he is temporarily staying there,[97] or if he is living in a travel trailer.[98]

Officers may also believe that a probationer or parolee is living in two or more places at the same time. If so, each residence may be searched so long as the officers' belief is reasonable. As the U.S. Court of Appeal observed, "We have found no authority to support [the] assumption that a person can have only one residence for Fourth Amendment purposes."[99]

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[93] See *U.S.* v. *Risse* (8th Cir. 1996) 83 F.3d 212, 217 ["(S)o long as Rhoads possesses common authority over, or some other significant relationship to, the Huntington Road residence, that dwelling can certainly be considered her 'home' for Fourth Amendment purposes, even if the premises are owned by a third party and others are living there, and even if Rhoads concurrently maintains a residence elsewhere as well."]; *Valdez* v. *McPheters* (10th Cir. 1999) 172 F.3d 1120, 1225 ["The rule announced in *Payton* is applicable so long as the suspect possesses common authority over, or some other significant relationship to the residence entered by police."]. **NOTE:** The "joint access or control" test is based on the theory that a person who shares access to, or control over a place or thing with others necessarily assumes the risk that one of the others might permit officers to search it. See *United States* v. *Matlock* (1974) 415 US 164, 171, fn.7. **ALSO SEE** *People* v. *Veiga* (1989) 214 Cal.App.3d 817, 828 ["(A) police entry is countenanced when it is based upon a co-occupant's consent because by undertaking joint occupancy the defendant either has no actual (subjective) expectation or privacy, or, if he or she has such expectation, society is not prepared to recognize it as reasonable."]; *U.S.* v. *Duran* (7th Cir. 1992) 957 F.2d 499, 504 ["The theory of third-party consent is that when A shares control over a given premises with B, or grants B fairly liberal access, A surrenders some of his privacy interests in that he necessarily assumes the risk that B will permit inspection of the premises in his own right."]; *Case* v. *Kitsap County Sheriff's Department* (9th Cir. 2001) 249 F.3d 921 [officers reasonably believed the arrestee lived at the house "at least part of the time. By all indicia, she was far more than a mere 'overnight guest.'"].

[94] See *Frazier* v. *Cupp* (1969) 394 US 731, 740; *People* v. *Jenkins* (2000) 22 Cal.4th 900, 979 [defendant's sister was deemed to have common authority over an unlocked briefcase she was keeping for her brother even though there was no indication she had ever opened or otherwise used it]; *People* v. *Catlin* (2001) 26 Cal.4th 81, 163 ["Although [the consenting person] stated that he predominantly used one side of the garage/shop, the evidence established that [he] and defendant had common authority over the entire garage, including the cabinet."]; *U.S.* v. *Duran* (7th Cir. 1992) 957 F.2d 499.

[95] See *U.S.* v. *Risse* (8th Cir. 1996) 83 F.3d 212, 216-7. **NOTE:** It is often reasonable to infer that a person who "stays" in a certain residence actually lives or "resides" there. See *U.S.* v. Lovelock (2nd Cir. 1999) 170 F.3d 339, 344 ["The colloquial use of ['stays'] is consistent with 'resides.'"].

[96] See *Washington* v. *Simpson* (8th Cir. 1986) 806 F.2d 192, 196.

[97] See *People* v. *LeBlanc* (1997) 60 Cal.App.4th 157, 164; *People* v. *Fuller* (1983) 148 Cal.App.3d 257, 263.

[98] See *People* v. *Boyd* (1990) 224 Cal.App.3d 736, 744.

[99] *U.S.* v. *Risse* (8th Cir. 1996) 83 F.3d 212, 217. ALSO SEE *Case* v. *Kitsap County Sheriff's Department* (9th Cir. 2001) 249 F.3d 921, 931[officers reasonably believe the arrestee lived at the house "at least part of the time."].

For example in *Washington* v. *Simpson*[100] officers arrested a fugitive in a home owned by Washington. Although the fugitive was also living in another house, the court ruled the officers reasonably believed she was also living with Washington because she stayed there two to four nights a week, she kept clothing and other personal belongings there, and she listed Washington's address as her address on a booking form.

Probationers and parolees will sometimes deny that they live in the place the officers are planning to search. But, so long as officers reasonably believe he lives there, they may ignore his claims to the contrary.[101]

Still, if officers are unable to resolve conflicting evidence as to the probationer's or parolee's residence, they will be required to ask some questions, try to sort things out. As the Court of Appeal put it, "[W]hen police officers do not know who owns or possesses a residence or item and such information can easily be ascertained, it is incumbent upon them to attempt to ascertain ownership in order to protect the privacy interests of both probationer and nonprobationer."[102]

What circumstances are relevant in proving where a probationer/parolee lives? In the absence of direct evidence, the following circumstances are relevant—although not necessarily sufficient in and of themselves:[103] What circumstances are relevant? The following are commonly cited:
(P=Probationer/parolee)

☐ It was P's last known address[104]
☐ P signed the lease for the premises and paid the rent.[105]
☐ Utilities at that address were in P's name.[106]
☐ P's car was registered to that address.[107]
☐ It was the address P used on a credit card application.[108]

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[100] (8th Cir. 1986) 806 F.2d 192, 196.
[101] See *People* v. *Ott* (1978) 84 Cal.App.3d 118, 126. ALSO SEE *People* v. *Britton* (1984) 156 Cal.App.3d 689, 701 ["An officer could hardly expect that a parolee would claim ownership of a item which he knew contained contraband."].
[102] *People* v. *Fuller* (1983) 148 Cal.App.3d 257, 263. ALSO SEE *People* v. *Tidalgo* (1981) 123 Cal.App.3d 301, 307; *U.S.* v. *Lovelock* (2nd Cir. 1999) 170 F.3d 339, 344. ALSO SEE *Illinois* v. *Rodriguez* (1990) 497 US 177, 188 ["[L]aw enforcement officers [must not] always accept a person's invitation to enter premises. Even when the invitation is accompanied by an explicit assertion that the person lives there, the surrounding circumstances could conceivably be such that a reasonable person would doubt its truth and not act upon it without further inquiry]; *U.S.* v. *Whitfield* (D.C. Cir. 1991) 939 F.2d 1071, 1075 ["It is the government's burden to establish that a third party had authority to consent to a search. The burden cannot be met if agents, faced with an ambiguous situation, nevertheless proceed without making further inquiry. . . . ¶ The agents' superficial and cursory questioning of [the third person] did not disclose sufficient information to support a reasonable belief."].
[103] **NOTE:** Courts will consider the totality of circumstances in determining whether officers reasonably believed the probationer or parolee lived in a certain place. See *U.S.* v. Lovelock (2nd Cir. 1999) 170 F.3d 339, 344.
[104] See *People* v. *Ott* (1978) 84 Cal.App.3d 118, 126; *People* v. *Kanos* (1971) 14 Cal.App.3d 642, 648; *U.S.* v. *Risse* (8th Cir. 1996) 83 F.3d 212, 216.
[105] See *U.S.* v. *Edmonds* (3rd Cir. 1995) 52 F.3d 1236, 1248.
[106] See *U.S.* v. *Edmonds* (3rd Cir. 1995) 52 F.3d 1236, 1248; *U.S.* v. *Route* (5th Cir. 1997) 104 F.3d 59, 61, fn.1.
[107] See *U.S.* v. *Route* (5th Cir. 1997) 104 F.3d 59, 61, fn.1.
[108] See *U.S.* v. *Route* (5th Cir. 1997) 104 F.3d 59, 61, fn.1.

☐ Postal Inspector confirmed P was receiving mail at that address.[109]
☐ It was P's recent booking address or a known roommate's booking address.[110]
☐ It was the most current address on P's probation or parole records.[111]
☐ P was seen there multiple times.[112]
☐ P listed the address as his home address on a vehicle repair work order.[113]
☐ Property manager, citizen informant, or tested informant said P was living there.[114]
☐ Two or more untested informants, acting independently of one another, said P was living there.[115]
☐ P's roommate or other co-occupant said P was living there.[116]
☐ Untested informant said P was living there plus some additional circumstances indicating the information was correct.[117]
☐ P's phone number was listed to that address.[118]
☐ P possessed keys to the residence.[119]
☐ P's car was parked at or near the residence.[120]
☐ Officers saw P unlock a door to the residence and enter.[121]
☐ P admitted he lived there.[122]

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[109] See *U.S.* v. *Route* (5th Cir. 1997) 104 F.3d 59, 61, fn.1.
[110] See *Washington*. v. *Simpson* (8th Cir. 1986) 806 F.2d 192, 196.
[111] *U.S.* v. *Lovelock* (2nd Cir. 1999) 170 F.3d 339, 344.
[112] See *People* v. *Kanos* (1971) 14 Cal.App.3d 642, 645, 648-9.
[113] See *U.S.* v. *Manley* (2nd Cir. 1980) 632 F.2d 978, 983.
[114] See *People* v. *Kanos* (1971) 14 Cal.App.3d 642, 645, 646; *U.S.* v. *Lauter* (2nd Cir. 1995) 57 F.3d 212, 215-6; *U.S.* v. *Risse* (8th Cir. 1996) 83 F.3d 212, 217; *Washington* v. *Simpson* (8th Cir. 1986) 806 F.2d 192, 196; *U.S.* v. *Magluta* (11th Cir. 1995) 44 F.3d 1530, 1537; *U.S.* v. *Junkman* (8th Cir. 1998) 160 F.3d 1191, 1193 [hotel desk clerk]; *U.S.* v. *Edmonds* (3rd Cir. 1995) 52 F.3d 1236, 1248.
[115] See *Bratton* v. *Toboz* (1991) 764 F.Supp. 965, 972.
[116] See *U.S.* v. *Risse* (8th Cir. 1996) 83 F.3d 212, 217.
[117] *People* v. *Spratt* (1980) 104 Cal.App.3d 562, 568 [two informants, plus suspect admitted staying there some of the time, plus his car was parked in front]; *People* v. *Icenogle* (1977) 71 Cal.App.3d 576, 581 [multiple informants; a car the suspect was driving was parked in a lot adjacent to the residence]; *U.S.* v. *Harper* (9th Cir. 1991) 928 F.2d 894, 896-7 [tip plus officers saw parolee enter the home "with his own key once or twice during a three day period," plus the home was leased by the parolee's family with whom he had lived before going to prison, plus car of the parolee's known associates were parked in front of the house]; *Bratton* v. *Toboz* (1991) 764 F.Supp. 965, 972. COMPARE *Watts* v. *County of Sacramento* (9th Cir. 2001) 256 F.3d 886 ["In cases involving an anonymous tip where courts have found at least a reasonable belief that the suspect lived with a third party, the evidence supporting such a belief was far more substantial than the evidence in the case at bar."]; *U.S.* v. *Clayton* (8th Cir. 2000) 210 F.3d 841, 843-4; *U.S.* v. *Dally* (9th Cir. 1979) 606 F.2d 861, 863 [tip plus he was seen taking out the garbage from the house, taking in the laundry].
[118] See *People* v. *Icenogle* (1977) 71 Cal.App.3d 576, 581.
[119] See *People* v. *Kanos* (1971) 14 Cal.App.3d 642, 649; *People* v. *Icenogle* (1977) 71 Cal.App.3d 576, 582; *People* v. *Ford* (1975) 54 Cal.App.3d 149, 156. ALSO SEE *People* v. *Boyd* (1990) 224 Cal.App.3d 736, 740 [parole officers "were aware that the trailer was owned by [the parolee]. It is registered to [him] through the Department of Motor Vehicles."].
[120] See *People* v. *Icenogle* (1977) 71 Cal.App.3d 576, 581; *U.S.* v. *Magluta* (11th Cir. 1995) 44 F.3d 1530, 1537-8; *U.S.* v. *Morehead* (10th Cir. 1992) 959 F.2d 1489, 1496 ["(T)he presence of a car in the carport and a truck in front of the house gave the officers reason to believe [the arrestee] was on the premises."]; *U.S.* v. *Edmonds* (3rd Cir. 1995) 52 F.3d 1236, 1248.
[121] See *People* v. *Ford* (1975) 54 Cal.App.3d 149, 156.

☐ P said he was "staying with" the homeowner.[123]
☐ Photographs of P or his family were inside the residence.[124]
☐ Hotel registration listed P as the occupant of a hotel room.[125]
☐ Officers telephoned the residence and spoke with P.[126]
☐ Officers met with P at the residence on one or more occasions.[127]
☐ P told officers he could be contacted there.[128]
☐ Officers were unable to contact P at the other residence at which he claimed to live.[129]
☐ A man matching P's physical description fled into the house when officers identified themselves.[130]
☐ Neighbors or household staff identified P as the resident.[131]
☐ P was observed taking the garbage out of the house, bringing in the laundry, visiting with neighbors.[132]
☐ A visitor was present at P's home, indicating P was at home.[133]
☐ P was "young, unemployed, and 'transient' [which] suggests, if anything, that he was still living with his family," plus a "variety of sources" said P was living with his mother.[134]
☐ P gave evasive answers as to where he lived.[135]

KNOCK-NOTICE: Officers must comply fully or substantially with the knock-notice requirements unless compliance is excused for good cause.[136]

WHAT ROOMS MAY BE SEARCHED? If the probationer or parolee lives alone, officers may search all rooms in his home. If, however, he lives with one or more other people, officers may search only those rooms that they reasonably believe are, (1) controlled solely by the probationer or parolee, or (2) controlled jointly with another person, such as a spouse or roommate.[137] For example, officers may

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[122] See *People* v. *Icenogle* (1977) 71 Cal.App.3d 576, 581; *People* v. *Fuller* (1983) 148 Cal.App.3d 257, 263.
[123] See *U.S.* v. *Risse* (8th Cir. 1996) 83 F.3d 212, 216-7 [Officer reasonably "interpreted the use of the colloquial term 'staying with' to mean Rhoads was in fact living with Risse . . . ."].
[124] See *People* v. *Ford* (1975) 54 Cal.App.3d 149, 156.
[125] see *People* v. *Fuller* (1983) 148 Cal.App.3d 257, 263.
[126] See *Maryland* v. *Buie* (1990) 494 US 325, 328; *People* v. *Palmquist* (1981) 123 Cal.App.3d 1, 11; *U.S.* v. *Risse* (8th Cir. 1996) 83 F.3d 212, 217.
[127] See *U.S.* v. *Risse* (8th Cir. 1996) 83 F.3d 212, 217.
[128] See *U.S.* v. *Risse* (8th Cir. 1996) 83 F.3d 212, 216.
[129] See *U.S.* v. *Risse* (8th Cir. 1996) 83 F.3d 212, 217.
[130] See *U.S.* v. *Manley* (2nd Cir. 1980) 632 F.2d 978, 984.
[131] See *U.S.* v. *Magluta* (11th Cir. 1995) 44 F.3d 1530, 1537; *U.S.* v. *Manley* (2nd Cir. 1980) 632 F.2d 978, 984; *U.S.* v. Lovelock (2nd Cir. 1999) 170 F.3d 339, 344.
[132] See *U.S.* v. *Dally* (9th Cir. 1979) 606 F.2d 861.
[133] See *U.S.* v. *Magluta* (11th Cir. 1995) 44 F.3d 1530, 1538 ["The presence of a visitor at the residence supports the reasonable conclusion that the resident is at home."].
[134] See *Valdez* v. *McPheters* (10th Cir. 1999 172 F.3d 1220, 1227-8.
[135] See *People* v. *Boyd* (1990) 224 Cal.App.3d 736, 750.
[136] See *People* v. *Britton* (1984) 156 Cal.App.3d 689, 698; *People* v. *LaJocies* (1981) 119 Cal.App.3d 947, 952; *People* v. *Montenegro* (1985) 173 Cal.App.3d 983, 989; *People* v. *Mays* (1998) 67 Cal.App.4th 969, 972. **NOTE:** For more information on knock-notice, see the chapter on executing search warrants in *California Criminal Investigation 2002*.
[137] See *People* v. *Woods* (1999) 21 Cal.4th 668, 682 ["(O)fficers generally may only search those portions of the residence they reasonably believe the probationer has complete or joint control

search common areas, such as the living room, kitchen, garage, and garden.[138] They may also search bedrooms controlled jointly by the probationer/parolee and anyone else.[139] But they may not search rooms that are under the *exclusive* control of the spouse or roommate.[140]

Note that a probationer's or parolee's "control" over a room does not depend on whether he is actually exercising control at the time of the search. For example, it is immaterial that when the search began the probationer or parolee was under arrest and, therefore, had no control over any of the rooms in his home.[141]

PROTECTIVE SWEEPS OF OTHER ROOMS: There is one exception to the rule that officers may search only those rooms controlled by the probationer/parolee. Specifically, officers may conduct a "protective sweep" of all rooms if they reasonably believe there is someone on the premises who poses a threat to them.[142]

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over."]; *People* v. *Burgener* (1986) 41 Cal.3d 505, 533; *People* v. *Smith* (2002) 95 Cal.App.4th 912, 918; *People* v. *Britton* (1984) 156 Cal.App.3d 689, 701 [error to apply probable cause standard]; *People* v. *Palmquist* (1981) 123 Cal.App.3d 1, 13 [reasonable suspicion, not probable cause, is required]; *People* v. *Boyd* (1990) 224 Cal.App.3d 736, 750 ["The reasonable suspicion standard should also be used to determine whether a particular object is within the scope of the parole search being conducted."]; *People* v. *Woods* (1999) 21 Cal.4th 668, 682; *U.S.* v. *Davis* (9th Cir. 1991) 932 F.2d 752, 758 ["The permissible bounds of a probation search are governed by a reasonable suspicion standard."]; *U.S.* v. *Route* (5th Cir. 1997) 104 F.3d 59, 62 ["All but one of the other circuits that have considered the question are in accord, relying upon the 'reasonable belief' standard as opposed to a probable cause standard. . . . (W)e adopt today the 'reasonable belief' standard of the Second, Third, Eighth, and Eleventh Circuits."]; *U.S.* v. *Risse* (8th Cir. 1996) 83 F.3d 212, 216 [, "[T]he officers' assessment need not in fact be correct; rather, they need only reasonably believe that the suspect resides at the dwelling to be searched . . . ."]; *Valdez* v. *McPheters* (10th Cir. 1999) 172 F.3d 1120, 1124-6 [reasonable suspicion—not probable cause—is required]; *Case* v. *Kitsap County Sheriff's Department* (9th Cir. 2001) 249 F.3d 921, 931 [applies reasonable belief test].

[138] *People* v. *Smith* (2002) 95 Cal.App.4th 912, 916 ["It is also established a warrantless search, justified by a probation search condition, may extend to common areas, shared by nonprobationers, over which the probationer has 'common authority."]; *People* v. *Britton* (1984) 156 Cal.App.3d 689. 700-3 [search of closet used by both occupants]; *People* v. *Barbarick* (1985) 168 Cal.App.3d 731, 740 [home includes garden area].

[139] See *People* v. *Woods* (1999) 21 Cal.4th 668.

[140] *People* v. *Woods* (1999) 21 Cal.4th 668, 682 [rooms "under the sole control of a nonprobationer" may not be searched without a warrant, the nonprobationer's consent, or exigent circumstances]; *People* v. *Johnson* (1980) 105 Cal.App.3d 884, 888.

[141] See *People* v. *LaJocies* (1981) 119 Cal.App.3d 947, 954; *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. *Stanley* (1995) 10 Cal.4th 764, 790.

[142] See *Maryland* v. *Buie* (1990) 494 US 325; *People* v. *Brevetz* (1980) 112 Cal.App.3d 65; *People* v. *Maier* (1991) 226 Cal.App.3d 1670, 1673-7; *People* v. *Block* (1971) 6 Cal.3d 239; *People* v. *Schmel* (1975) 54 Cal.App.3d 46. 51-2; *People* v. *Baldwin* (1976) 62 Cal.App.3d 727, 742-3; *People* v. *Jordan* (1976) 55 Cal.App.3d 965, 967-968; *People* v. *Boragno* (1991) 232 Cal.App.3d 378, 386. ALSO SEE *People* v. *Woods* (1989) 21 Cal.4th 668, 682 [court noted the scope of a probation search may be extended if there are exigent circumstances]. **NOTE:** If officers observe evidence in plain view while conducting a lawful protective sweep, they may seize it without a warrant if there is probable cause to believe the item is, in fact, evidence. See *Maryland* v. *Buie* (1990) 494 US 325; *Arizona* v. *Hicks* (1987) 480 US 321, 326.

A sweep must, however, be limited to simply walking through the residence, looking into rooms, closets, or other areas in which a person may be hiding.[143] Thus, for example, officers may not search cabinets, drawers, clothing, or any other place or thing in which a person could not reasonably be found.

WHAT THINGS MAY BE SEARCHED? Officers who are conducting a probation or parole search of a room may search all containers and other property that they reasonably believe are, (1) controlled solely by the probationer/parolee, or (2) controlled jointly by the probationer/parolee and another person, such as a spouse or roommate.[144]

In determining whether such sole or joint control exists, officers should keep two things in mind. First, they may consider the totality of circumstances, not merely the appearance of the item.[145] Thus, regardless of an object's appearance, it would probably be reasonable to believe it was controlled by the probationer or parolee if he attempted to hide it or if he made a grab for it,[146] or if there were other indications of joint control.

For example, in *People* v. *Smith*,[147] Placerville police officers went to the home of John Kelsey, a probationer, 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. Officers subsequently searched the purse and found methamphetamine.

Smith contended the search of her purse was unlawful because it exceeded the permissible scope of the probation search. The court disagreed, ruling that the totality of circumstances provided sufficient grounds to believe the both Kelsey and Smith controlled the purse. Said the court, "[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."

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[143] See *Maryland* v. *Buie* (1990) 494 US 325, 327.

[144] *People* v. *Boyd* (1990) 224 Cal.App.3d 736, 745 ["(T)he critical issue is whether the officers reasonably suspected the handbag was owned or controlled by a parolee. If so, it was within the scope of the parole search."]; *People* v. *Britton* (1984) 156 Cal.App.3d 689. 701-3; *People* v. *Palmquist* (1981) 123 Cal.App.3d 1, 13 [reasonable suspicion, not probable cause, is required].

[145] See *People* v. *Boyd* (1990) 224 Cal.App.3d 736, 746 ["The appearance of the object searched is but one of many factors to consider in assessing whether the reasonable suspicion standard was satisfied."]; *People* v. *Smith* (2002) 95 Cal.App.4th 912, 918 ["(T)he reasonable suspicion standard may be satisfied based on an examination of the totality of circumstances surrounding the search."]; *People* v. *Veronica* (1980) 107 Cal.App.3d 906, 909 ["We do not, of course, suggest that simply because a garment or container is clearly designed for a person other than the parolee, it may never be searched under the parolee's prerelease consent."]. ALSO SEE *People* v. *Smith* (2002) 95 Cal.App.4th 912, 917 [court is critical of a decision in which an object's appearance, as opposed to the totality of circumstances, was pivotal].

[146] 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."].

[147] (2002) 95 Cal.App.4th 912. ALSO SEE *U.S.* v. *Davis* (9th Cir. 1991) 932 F.2d 752, 759-60.

The second thing to keep in mind when trying to determine whether an item can be searched is that unless there is reason to believe otherwise, it is usually reasonable to conclude that the probationer/parolee has control over all containers and other property in his bedroom and common areas.[148] What constitutes "reason to believe otherwise?" It may be something about the appearance of the object, such as a name or other marking that indicates it belongs to someone other than the probationer or parolee.

In addition, if the probationer or parolee is a male, an object that is utilized almost exclusively by women would probably fall outside the scope of the search (and, of course, vice versa) unless, as in *Smith*, there was good reason to believe the item was also used by the probationer or parolee. For example, the courts have ruled that officers exceeded the permissible scope of the search when they searched a female's jacket in the hall closet of a male probationer,[149] and a female's purse in home shared by male parolee and his wife.[150]

On the other hand, "gender neutral" objects may ordinarily be searched, absent specific indications it was controlled by someone other than the probationer or parolee. For example, searches of the following containers were deemed justified on grounds that officers reasonably believed they were under the exclusive or joint control of the probationer or parolee:

- Jewel box on a dresser in a female probationer's bedroom[151]
- "Gender neutral" handbag on a bed in a mobile home occupied by a male parolee and his girlfriend[152]
- Pouch lying on the floor of the probationer's bedroom[153]
- Paper bag in the closet of parolee's bedroom[154]
- dresser in parolee's one-bedroom apartment[155]
- Stationery box in a drawer in the living room[156]
- Papers in a desk in the living room[157]
- Refrigerator in the kitchen[158]
- Trash under the kitchen sink[159]

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[148] See *People* v. *Boyd* (1990) 224 Cal.App.3d 736; *Russi* v. *Superior Court* (1973) 33 Cal.App.3d 160; *People* v. *Britton* (1984) 156 Cal.App.3d 689; *People* v. *Icenogle* (1977) 71 Cal.App.3d 576; *People* v. *Palmquist* (1981) 123 Cal.App.3d 1; *People* v. *Burgener* (1986) 41 Cal.3d 505; *U.S.* v. *Davis* (9th Cir. 1991) 932 F.2d 752, 759 ["(T)he safe was located in Andrews' bedroom—increasing the likelihood she exercised control over the safe."]. COMPARE**:** *People* v. *Alders* (1978) 87 Cal.App.3d 313; *People* v. *Veronica* (1980) 107 Cal.App.3d 906.

[149] See *People* v. *Alders* (1978) 87 Cal.App.3d 313.

[150] See *People* v. *Veronica* (1980) 107 Cal.App.3d 906. **COMPARE:** *People* v. *Palmquist* (1981) 123 Cal.App.3d 1.

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

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

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

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

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

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

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

[158] See *People* v. *Palmquist* (1981) 123 Cal.App.3d 1 [overruled on other grounds in *People* v. *Williams* (1999) 20 Cal.4th 119, 135].

ASKING QUESTIONS: If there exists a legitimate doubt as to whether there is reasonable suspicion to believe a certain room or item is controlled solely or jointly by the probationer or parolee, officers must question the occupants or take other steps to resolve the matter.[160] In the absence of such a doubt, however, such questioning is not required. As the U.S. Court of Appeals observed, "Requiring the police to inquire into ownership, possession or control in all instances when ownership, custody, or control is not obviously and undeniably apparent, would force courts to undertake the difficult task of evaluating, in every case of doubt, the nature of the measures taken and the credibility of the responses given."[161]

Even if officers must conduct an inquiry, they are not required to accept a probationer's or parolee's denial that he controls certain places or things.[162] 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."[163] Although officers are not *required* to accept the representations of others on the premises who are not on probation or parole, the fact that a person has no apparent motive to lie may, depending on the surrounding circumstances, provide him with some credibility.[164]

INTENSITY OF THE SEARCH

The term "intensity" is used to describe how aggressive or intrusive the search may be. Although there are few cases pertaining directly to probation and parole searches, we have augmented them with cases dealing with two comparable areas of law: consent searches and searches incident to arrest.

THOROUGH SEARCH: Probation and parole searches may be reasonably intensive because, as one court pointed out, "If not thorough it is of little

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

[160] See *Russi* v. *Superior Court* (1973) 33 Cal.App.3d 160, 167; *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."]; *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."]; *People* v. *Britton* (1984) 156 Cal.App.3d 689, 701. ALSO SEE *Illinois* v. *Rodriguez* (1990) 497 US 177, 188 [in context of consent searches "the surrounding circumstances could conceivably be such that a reasonable person would doubt its truth and not act upon it without further inquiry."].

[161] *U.S.* v. *Davis* (9th Cir. 1991) 932 F.2d 752, 760. **NOTE:** Although there are cases indicating that questioning may be required if such information "can easily be ascertained (see *People* v. *Tidalgo* (1981) 123 Cal.App.3d 301, 306-7; *People* v. *Fuller* (1983) 148 Cal.App.3d 257, 263), as a practical matter it is seldom "easy" to determine with any certainty who controls a room or object especially when, as is often the case, a person who admits having control may be arrested.

[162] 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."].

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

[164] See *U.S.* v. *Davis* (9th Cir. 1991) 932 F.2d 752, 760 [court noted that the nonprobationer was not present to affirm or deny ownership].

value."[165] **NO DAMAGE OR DESTRUCTION:** Although the search may be thorough, it should not be destructive.[166]

LENGTH OF SEARCH: The permissible length of the search depends on the number and nature of the places and things that will be searched, the amount and nature of the evidence officers are seeking, and any problems that reasonably extended the length of the search.[167]

SEARCH OF THE PERSON: Officers who are searching a probationer or parolee may conduct a "full" or reasonably thorough search,[168] but it must not be "extreme or patently abusive."[169]

SEARCHES CONDUCTED BY DOGS: Officers may use a trained dog (drug-sniffing, explosives-sniffing, or whatever) to help with the search. This is because a dog's sniffing does not materially increase the intensity of the search.[170]

PLAIN VIEW SEIZURES: If, while conducting a probation or parole search, officers develop probable cause to believe an item in plain view is evidence of a crime, they may seize it.[171]

ARRESTING AN OCCUPANT: Officers who have lawfully entered a residence to conduct a probation or parole search, may arrest any occupant for whom probable cause existed at the time of entry or which developed. In other words, neither a *Ramey* warrant nor a complaint warrant is required to arrest a person

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[165] *U.S.* v. *Torres* (10th Cir. 1981) 663 F.2d 1019, 1027. ALSO SEE *U.S.* v. *Snow* (2nd Cir. 1995) 44 F.3d 133, 135 ["The word 'search' carries a common meaning to the average person. Dictionary definitions furnish some guide: 'to go over or look through for the purpose of finding something; explore, rummage; examine,' 'to examine closely and carefully; test and try; probe,' 'to find out or uncover by investigation' . . . ."]; *People* v. *Crenshaw* (1992) 9 Cal.App.4th 1403, 1415 ["(A) consent search, to be effective, must be thorough."]; *People* v. *Williams* (1980) 114 Cal.App.3d 67, 72-4; *Florida* v. *Jimeno* (1991) 500 US 248, 251-2.

[166] See *U.S.* v. *Strickland* (11th Cir. 1990) 902 F.2d 937, 941-2; *People* v. *Crenshaw* (1992) 9 Cal.App.4th 1403; *U.S.* v. *Gutierrez-Mederos* (9th Cir. 1992) 965 F.2d 800, 804.

[167] See *People* v. *$48, 715* (1997) 58 Cal.App.4th 1507, 1515.

[168] See *United States* v. *Robinson* (1973) 414 US 218, 235; *Gustafson* v. *Florida* (1973) 414 US 260, 266; *Chimel* v. *California* (1969) 395 US 752, 762-3 ["When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. . . . In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction."]; *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, 1176-7. *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 US 1. See *People* v. *Minjares* (1979) 24 Cal.3d 410, 417-21). The *Chadwick* rationale was repudiated in *California* v. *Acevedo* (1991) 500 US 565.

[169] See *United States* v. *Robinson* (1973) 414 US 218, 236; *People* v. *Laiwa* (1983) 34 Cal.3d 711, 726.

[170] 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, 770-1, 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.

[171] See *Arizona* v. *Hicks* (1987) 480 US 321, 326; *People* v. *Miller* (1999) 69 Cal.App.4th 190, 203.

inside a residence if officers have lawfully entered to conduct a probation or parole search.[172]

WAITING DECISION: Officers were aware of the probation search condition:

[172] 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.