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TRAINING BULLETIN: LEGAL UPDATE

PROBATION AND PAROLE SEARCHES

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Probation and Parole

Probation is an act of clemency, a gift with strings attached. One of those strings can be, and usually is, a requirement that the probationer submit his or her person and residence to a search by law enforcement. Parole is simply an extension of the convicted felon's sentence, which also requires him or her to submit to a search. The purpose of allowing this warrantless search as an exception to the Fourth Amendment is rehabilitation and public safety, since parolees and probationers are more apt to commit crimes. (*U.S. v. Sampson* [2006] 547 U.S. ____)

Grounds for a Probation or Parole Search

Officers do not need reason to believe the suspect is involved in criminal activity or in violation of the terms of his or her probation or parole, and the search can be a random check, but it can't be arbitrary or harassing, or unnecessarily intrusive. (*U.S. v. Sampson, supra*; *U.S. v. Knights* [2001] 534 U.S. 112; *People v. Reyes* [1998] 19 Cal.4th 743)

What officers *do* need is knowledge, at the time the search is conducted, that the suspect is on parole (in which case the search condition is automatic) or on probation with a search clause (*People v. Sanders* [2003] 31 Cal.4th 318). Confirmation that a suspect is on probation or parole could come from the probation or parole officer, though that person doesn't need to authorize a search. (*People v. Williams* [1992] 3 Cal.App.4th 1100) Confirmation could also come from the suspect. If the suspect denies he's on probation or parole, the officer is not required to believe the statement. (*People v. Downing* [1995] 33 Cal.App.4th 1641). On the other hand, if a suspect states he is on probation or parole, but he's mistaken, he's (probably) searchable because he's just announced he has no reasonable expectation of privacy (no standing to object to the search). (*In re Jeremy G.* [1998] 65 Cal.App.4th 553)

It is most likely that confirmation of parole, or of probation with a search clause, will come from a records check. But what if the records are wrong and the officer doesn't realize it? Will the good faith exception of *Leon* save the search? It depends on whose mistake it is. If the mistake is one made by a judge, court clerk, or other court employee, the search will be upheld. (*People v. Hamilton* [2002] 102 Cal.App.4th 1311) But if the mistake is one made by law enforcement (anyone in your agency or another agency) or by an "adjunct to the law enforcement team", such as probation and parole officers (and their staffs) then the search is invalid. (*People v. Willis* [2002] 28 Cal.4th 22)

Note that the exclusionary rule operates only to exclude evidence at trial. If an invalid search were conducted of a probationer or parolee, and that search yielded contraband, the evidence would be excluded at any trial for the possession of the contraband. It could still be admitted at a probation or parole revocation hearing. (*People v. Harrison* [1988] 199 Cal.App.3d 803)

In re Tyrell J. Reversed

In 1994 the California Supreme Court determined that the “special needs” of the juvenile probation scheme justified an exception to the above rule for juveniles. Under *In re Tyrell J.* [1994] 8 Cal.4th 68 a search of a juvenile probationer with a search clause could be upheld on that ground, even if the officer was unaware of the existence of the suspect’s probation. The court has since thought better of it, and reversed.

On November 30 the California Supreme Court announced its decision in *In re Jamie P.* (2006 DJDAR 15618). In *Jamie P.* an officer followed a vehicle turn without signaling and pull over to the curb without signaling. No other vehicles were affected, but the officer made the stop anyway. The court determined that the stop was illegal, and once that happens, the “fruit of the poisonous tree” doctrine kicks in and all suspects and evidence seized after that are seized illegally. In this case the suspect seized was the minor, for driving without a license, and the evidence seized was the loaded firearm found in the vehicle during an inventory search.

The minor was on probation at the time, unknown to the officers, which would have saved the search under *Tyrell J.*, but the California Supreme Court used *Jamie P.*’s case to reject the ruling in *Tyrell J.*. Their reasoning in *Jamie P.* was that while probationers and parolees have a reduced expectation of privacy, they still have some expectation of privacy, and the dual purposes of probation and parole (rehabilitation and public safety) are not eroded by requiring the officers to be aware of the suspect’s status before the search is conducted.

Henceforth, for both adults and juveniles, officers must have *either* a reasonable suspicion of criminal activity *or* advance knowledge that the suspect is on parole or on probation with a search condition to justify the search.

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