



## *San Diego Community College District Police Department Policy and Procedures*

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### 4.11 PROBATION, PAROLE AND KNOCK & TALK SEARCHES

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#### **I. PURPOSE**

This Department procedure establishes standardized practices for conducting probation, parole and “knock and talk” searches, search warrants, and high-risk entries.

#### **II. SCOPE**

This procedure applies to all sworn members of the Department.

#### **III. DEFINITIONS**

- A. Case Agent- the police officer, regardless of rank, who is responsible for the coordination of the operation.
  - B. High-Risk Search - a search of a vehicle or house where the propensity for danger is so high that a tactical, dynamic entry is required to secure the area to be searched to minimize the danger to law enforcement officials.
  - C. Knock and Notice - a verbal demand made by a peace officer to inform the occupants of a residence or other building of the officer’s intent to enter the building for the purpose of conducting a search or arrest.
  - D. Knock and Talk Search – this type of search is an investigative tool that originates from a consensual contact wherein police officers go to a residence or other location where they suspect illegal activity is taking place. The officers knock, introduce themselves as police officers and ask to come in and talk to the residents. If the resident agrees, the officers enter the location, gather information and look around for signs of illegal activity. If illegal activity is still suspected, the officers seek the resident’s permission to search the location. In all cases, the entry and any search should be within legal parameters and must be consensual. A knock and talk search may be conducted when all other investigative methods (i.e. search warrant, parole or probation search) have been utilized and/or deemed inappropriate. The knock and talk search is not meant to supplant the use of search warrants. The knock and talk search
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should not be confused with contact made for the purpose of an investigative follow-up.

E. Parole/Probation Search - the search of a parolee's or probationer's person, vehicle or house where the subject's Fourth Amendment rights have been waived as a condition of his/her parole or probation status.

F. Search Warrant - a written order issued by a judge or magistrate, which directs police officers to conduct a search of a person, vehicle, or location for evidence of a criminal offense or to aid in an official investigation.

#### **IV. BACKGROUND**

Parole and probation searches have become a standard police tool used by law enforcement agencies throughout California. San Diego police officers have used this tool effectively to aid in investigations, arrests and in neighborhood policing projects.

The management and control of probationers and parolees is important to the safety and security of our neighborhoods. The law governing searches that result from parole conditions and Fourth Amendment waivers seeks to balance the diminished rights of probationers and parolees with the public's expectation that probationers and parolees will not commit new crimes.

The U.S. Supreme Court has held that a suspicionless search of a parolee does not violate the Fourth Amendment, *Samson v. California*, 126 S. Ct. 2193 (2006). Although the *Samson* case involved a parolee, a fair reading of the case indicates that a suspicionless search of a probationer is also valid. *Id.* at 2197-2198, see also *People v. Bravo*, 43 Cal. 3d 600, 610 (1987).

A probation or parole search may not be arbitrary, capricious, or harassing, *People v. Reyes*, 19 Cal. 4th 743, 753-754 (1998), Cal. Penal Code §3067(d). The search condition must be known to the officer prior to the search, *People v. Sanders*, 31 Cal. 4th 318, 331-332 (2003), *Moreno v. Baca*, 431 F.3d 633, 641 (9th Cir. 2005).

When searching a parolee's or probationer's residence, officers must have probable cause to believe that the subject is a resident of the house to be searched. *Motley v. Parks*, 432 F.3d 1072, 1074 (9th Cir. 2005), other grounds overruled by *U.S. v. King*, 687 F.3d 1189 (9th Cir. 2012). See also *U.S. v. Franklin*, 603 F.3d 652, 656 (9th Cir. 2010)(quoting *Motley*).

To ensure the lawfulness of the search, supervisors are to be actively involved anytime a building is searched pursuant to a parole or probation condition.

**V. GENERAL PROCEDURES****A. Operational Planning**

Prior to any knock and talk searches, search warrants, parole or probation Fourth Amendment waiver searches that involve building entry and searches, or high-risk entries, the case agent or patrol officer shall contact a sergeant (acting sergeants are not acceptable). The case agent or patrol officer and the sergeant will ensure that adequate personnel and resources are utilized and will ensure the suspect(s) name and address are cleared through the San Diego Law Enforcement Coordination Center (SDLECC).

An Operation Plan will be completed prior to any pre-planned knock and talk search, parole or probation search, high-risk entry, or search warrant service. The sergeant will make the final determination as to whether the search will be conducted.

1. Prior to the execution of any knock and talk search, probation or parole search, search warrant service, or high-risk entry, the case agent or sergeant will generally ensure the following:
  - a. Clear suspect(s) name and address through SDLECC;
  - b. Obtain the most recent copy of probation/parole conditions to include discharge date and Fourth Amendment waiver expiration date;
  - c. Conduct warrant and ONS checks; and,
  - d. Check SD Law for custody status.
2. Upon receiving plan approval, a team briefing will be conducted with all personnel involved. Each team member must fully understand the planned search and their role in the search.
3. All personnel should familiarize themselves with the building/suspect's residence and surrounding area (photographs of the residence are often useful, although not required).
4. Search Considerations

Once a search has been authorized and all briefings have taken place, personnel will:

  - a. Tactically approach and contain the building;
  - b. Give knock and notice;

- c. Tactically enter the building and conduct a security sweep;
- d. Identify and confirm the suspect's identity and determine the scope of the search;
- e. Explain the reason for the officers' presence;
- f. Conduct a legal search with courtesy and professionalism;
- g. Obtain Field Interviews on additional persons as potential witnesses in the event of an arrest or crime report;
- h. If no arrest is made, remind the suspect to notify his or her parole/probation officer of the police contact;
- i. Document any damage caused by officers;
- j. Secure the building as desired by the suspect (if arrested); and,
- k. Notify Probation/Parole Department of the results of your search.

#### B. Knock and Talk Searches

1. The assigned sergeant (acting sergeants are not acceptable) must be present throughout the duration of all knock and talk searches to provide supervision. On occasion, the assigned sergeant may be unavailable due to meetings, sick leave or vacation. In this event, another sergeant may assume command of the operation.

In the event the search takes place within another agency's jurisdiction, the sergeant will notify the appropriate law enforcement agency where the search is taking place prior to arriving at the location of the search.

2. A sergeant shall be present at all knock and talk searches and shall ensure that a minimum of two officers are present. All detectives shall carry a minimum of the following equipment: handcuffs, a portable radio, duty handgun and their Department badge and identification. Additional equipment should be utilized, when needed.
3. After contacting the occupants of a dwelling, officers or detectives should identify the person or persons who have control over the premises. A knock and talk search should not proceed without proper consent or warrant. Officers or detectives should obtain written consent in all cases where it is possible. A Consent to Search form for premises or vehicle shall be used unless another method of consent is utilized (i.e. recording, video tape, handwritten consent). After obtaining consent,

the rest of the search team should be directed to enter the dwelling. Personnel should include details in their reports relating to the initial contact between the officers and the occupants as to how entry was gained.

In filing a complaint, the District Attorney's Office will look at the voluntariness of the consent. They will also consider the following facts:

- a. Number of detectives/officers present;
  - b. Detective's attire;
  - c. Language barrier; and,
  - d. Subject's state of mind.
4. A Receipt and Inventory form should be completed as the search progresses and a copy should be left at the site. All seized items shall be impounded as outlined in Department Procedure 3.02, Property & Evidence Procedures, before the case agent secures from shift.

#### C. Parole/Probation Searches

1. Probation and parole searches are generally conducted between 0700 hours and 2200 hours unless:
  - a. Suspected criminal activity is occurring;
  - b. Suspects are determined to be present and awake;
  - c. Information obtained indicates that a parole/probation violation is taking place; or,
  - d. A specific law enforcement goal is being served (gang sweep, 290PC registration sweep, area specific or crime specific sweep).
2. A sergeant (acting sergeants are not acceptable) must be present throughout the duration of all probation and parole searches of residences and buildings to provide supervision.

In the event the search takes place within another agency's jurisdiction, College Police Dispatch will notify the appropriate law enforcement agency where the search is taking place prior to arriving at the location of the search.

3. As with knock and talk searches, the case agent will complete a written operational plan, which the sergeant must approve prior to the search. Upon receiving approval, a team briefing will be conducted with all personnel involved. Each team member must fully understand the planned search and their role in the search.
4. Prior to conducting a parole search, the case agent or patrol officer will make every reasonable effort to contact State Parole officials. However, current case law does not require State Parole authorization prior to conducting this type of search. If State Parole is not contacted, the case agent or patrol officer must have a valid reason and inform the unit supervisor of the reason. This reason must also be articulated in written reports.

Reports generated by the arrest or contact of probationers and parolees will be made available to probation and parole agents as soon as possible after the contact.

5. On rare occasions, officer safety, public safety or time constraints may cause an exception to this procedure. Any exception requires the approval of a supervisor.
6. Scope of the Search
  - a. Case agents and supervisors must carefully monitor the search to prevent exceeding the legal scope of the search. Generally, probation and parole searches allow the search of the subject's personal property, property under the subject's control and common areas of the subject's residence.
  - b. The search of a probationer or parolee while they are visiting another person's residence is limited to his or her person, his or her personal property and immediate area of control. Police cannot enter the residence of a non-probationer for the sole purpose of conducting a Fourth Amendment waiver search without a warrant, exigent circumstances or permission.

#### 7. Field Contacts

Probationers or parolees are often contacted in public places. Officers and detectives should take into consideration the circumstances of the contact before deciding if a probation or parole search is appropriate. Before carrying out a probation or parole search of an individual contacted in the field, the patrol officer must verify the current status and expiration date of the individual's search condition. The officer must determine whether there are any special conditions or restrictions placed on the search condition. This verification can take place via College Police Dispatch. The officer may search the person and his or her belongings as authorized in the search condition. The search may not be arbitrary, capricious or harassing.

#### D. Search Warrants

1. The case agent will present the signed search warrant to the supervisor who will check it for accuracy and ensure the warrant is valid. The supervisor in charge will read the entire search warrant before approving the written operational plan.
2. A sergeant (acting sergeants are not acceptable) shall assume overall responsibility for the warrant service and shall be present during its execution.

In the event the warrant service takes place within another agency's jurisdiction, College Police Dispatch the sergeant will notify the appropriate law enforcement agency where the service is taking place prior to arriving at the location of the search warrant service.

3. The case agent will complete a written operational plan, which the sergeant must approve prior to the warrant's execution. The plan will include an emergency contingency plan and identify a command post location in the event the warrant service becomes a critical incident.
4. Upon receiving approval, a team briefing will be conducted with all personnel involved. Each team member must fully understand the planned search and their role in the search. It will be the responsibility of the supervisor to brief the lieutenant regarding the operation.
5. During the briefing, the case agent shall:
  - a. Give a complete description of the place to be searched and the items to be seized;
  - b. Present a background on the suspect(s) and give all personnel participating in the warrant service information about the warrant location and the surrounding area, if available;
  - c. Ensure that each person involved in executing the warrant has read the warrant;
  - d. Give specific assignments to all personnel involved in the operation;
  - e. Establish a fall-back position in the event violent resistance is encountered during the search warrant service. This enables the on-scene supervisor to account for all involved police personnel and plan a response to the suspect(s) actions;
  - f. Identify all special equipment necessary to execute the warrant and ensure those

assigned are qualified to use it; and,

- g. Designate trauma hospitals for officers and suspects.
6. If forced entry is required, the supervisor shall contact the SDPD Field Lieutenant for additional resources. The entry will be made when the supervisor gives the order to enter unless an emergency situation develops requiring immediate action. Personnel making entry pursuant to a warrant will comply with §1531 PC, Knock and Notice.
7. If the person in control of the premises is present, he or she must be allowed to read the warrant. The case agent may read the warrant to them, if it is more expedient. A copy of the warrant will be left at the premises. The person in control of the premises will be allowed to remain present during the search, if safe and practical, and if that is his or her desire.
8. The case agent shall be responsible for coordinating the search and the disposition of all seized items. The sergeant shall ensure that at least two officers are present in each room as it is searched. A floor plan sketch facilitates documenting which personnel performed the search of each room. Photographs record the discovered items as well as the pre-existing and final conditions of the building relative to the search.
9. A Receipt and Inventory form should be completed as the search progresses and a copy should be left at the site. The case agent is responsible for the chain of custody of all seized evidence until it is impounded in the SDPD Property Room, as outlined in Department Procedure 3.02, Property & Evidence Procedures. All seized items shall be impounded as soon as possible and before the case agent secures from their shift. A copy of the Receipt and Inventory form shall be attached to the property tag when evidence is impounded. If a firearm or money is seized, a Receipt for Weapons/Currency (PD-1072) will not be necessary if the Receipt and Inventory form is attached to the property tag.
10. Due to the varying conditions under which search warrants are executed, the necessity to modify procedures may arise. The supervisor may alter these procedures when appropriate and will assume responsibility for doing so. Exigent circumstances should be documented in all reports.