

SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 3

Meeting Date: July 12, 2022

Item Number: 18

Item Description: Revisions to Section 311.6 Warrantless Searches of Individuals on Supervised Release Search Conditions of the Berkeley Police Department Law Enforcement Services Manual

Submitted by: Councilmember Terry Taplin

The attached supplemental item contains the following:

1. Changed to permit compliance checks, which was the catalyst for the policy recommendation.
2. Upon the advice of the City Attorney's office, I am keeping the reasonable suspicion language.
3. The introductory, unchanged paragraph of Policy 311.6 was also included.
4. An outline of the various proposals and language of the Warrantless Search policy to aid Council and the public in tracking the various versions.

ACTION CALENDAR

July 12, 2022

To: Honorable Members of the City Council

From: Councilmember Terry Taplin

Subject: Alternative Revisions to Section 311.6 Warrantless Searches of Individuals on Supervised Release Search Conditions of the Berkeley Police Department Law Enforcement Services Manual

RECOMMENDATION

In accordance with California law, individuals on probation, parole, Post Release Community Supervision, or other supervised release status may be subject to warrantless search as a condition of their probation. Officers shall only conduct probation or parole searches to further a legitimate law enforcement or rehabilitative purpose. Searches shall not be conducted in an arbitrary, capricious, or harassing fashion.

~~Officers shall not detain and search a person on probation or parole solely because the officer is aware of that person's probation or parole status.~~ **Individuals contacted or detained who are found to be on searchable Supervised Release for Violent Offenses¹ may be searched pursuant to the terms of their Supervised Release conditions.** The decision to detain a person and conduct a probation or parole search or otherwise enforce probation or parole conditions **for those on supervised release for nonviolent crimes², should be made, at a minimum, in connection with articulable facts that create a reasonable suspicion that a person may have committed a crime, be committing a crime, or be about to commit a crime or which demonstrate that the individual is connected in some way to criminal activity or that the individual is an imminent threat to officer or citizen safety.** In the conduct of all such detentions and searches, officers shall consciously avoid the application of bias, shall not use such detentions or searches as a means to harass or annoy, and shall not conduct such detentions and searches in a manner that targets or is discriminatory toward any protected class.

¹ Offenses involving the use of force, the threat of force, the use or possession of a weapon, sexual violations against the person of another, human trafficking, and the use of force or threats to public safety. Battery on a Peace Officer (Penal Code § 243(b)), Reckless Evasion in a Vehicle (Vehicle Code § 2800.2(a)), or a violent felony as defined in Penal Code § 667.5(c.), fall into the categories of violent crimes, weapons offenses, sex crimes and/or crimes involving threats to public safety in accordance with state law.

² "Non-Violent Offenses" are defined as offenses in which violence or use of a weapon or threat to life safety is not a factor.

DROSTE'S AMENDMENTS

In accordance with California law, individuals on probation, parole, Post Release Community Supervision, or other supervised release status may be subject to warrantless search as a condition of their probation. Officers shall only conduct probation or parole searches to further a legitimate law enforcement or rehabilitative purpose. Searches shall not be conducted in an arbitrary, capricious, or harassing fashion.

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MAYOR ARREGUIN AND VICE MAYOR HARRISON'S AMENDMENTS

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~~Officers shall not detain and search a person on probation or parole solely because the officer is aware of that person's probation or parole status. The decision to detain a person and conduct a probation or parole search or otherwise enforce probation or parole conditions should be made, at a minimum, in connection with articulable facts that create a reasonable suspicion that a person may have committed a crime, be committing a crime, or be about to commit a crime. In the conduct of all such detentions and searches, officers shall consciously avoid the application of bias, shall not use such detentions or searches as a means to harass or annoy, and shall not conduct such detentions and searches in a manner that targets or is discriminatory toward any protected class.~~

Notwithstanding this general policy, consistent with the special status assigned to sex offenders specified in California Penal Code 290, officers may search registered sex offenders on probation or parole as otherwise permissible by law.