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# ONE MINUTE BRIEF

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## **ISSUE: What determines the proper scope of a probation search?**

*“The test of reasonableness under the Fourth Amendment ... must consider the **scope of the particular intrusion....**”* *Bell v. Wolfish* (1979) 441 US 520, 559. Every police search, whether under warrant or exception, has a particular scope of search, which may not be exceeded. The scope of searches under parole, PRCS and supervised release terms are set by statute. PC §§ 3067, 3465, 1170(h)(5)(B). By contrast, the scope of probation searches is defined by the particular terms imposed by the sentencing court—and those terms may vary.

This means that searching officers must do more than determine before searching that the person is **on probation**. In addition, it must be determined whether the person is **on search terms** (not all probationers are), and whether the **scope of those terms** is broad enough to allow the search the officer plans to make. A probation search *“remains limited in scope to the terms articulated in the search clause.”* *People v. Woods* (1999) 21 Cal.4<sup>th</sup> 668, 681.

Because sentencing courts *“attempt to individualize the terms and conditions of probation to fit the offender, ... in the case of probation searches, the officer must have some knowledge not just of the fact someone is on probation, but of the existence of a **search clause broad enough** to justify the search at issue.”* *People v. Douglas* (2015) 240 Cal.App.4<sup>th</sup> 855, 863.

*“Unlike parole searches—where a searching officer’s knowledge of a person’s parole status alone is enough to justify a search of the parolee’s person or any property under his control, including his residence—the permissible scope of a **probation***

*search is circumscribed by the **terms of the search clause**, and **the scope may vary**. ... [M]ere knowledge that someone is on probation and subject to search, without more, may be insufficient where there is a challenge to the search.”*

*People v. Romeo* (2015) 240 Cal.App.4<sup>th</sup> 931, 951-52.

For example, see *People v. Hoeninghaus* (2004) 120 Cal.App.4<sup>th</sup> 1180, 1195-96, and fn. 2, rejecting a probation search where the officer was unaware the probationer’s search term was limited to searching “for drugs.” As noted in *Romeo, supra*, at 951, “*probation search clauses are not worded uniformly. On occasion, judges may **limit the scope** ... to searches for **particular contraband** ... or place **spatial limits** on where searches may take place.*”

Therefore, it is not enough for an officer to ask a suspect before searching if he is **on probation**. Nor is it enough that the suspect confirms that he’s **on search terms**. If officers do not take the **additional step** of confirming that **the scope of the probation search clause covers the search contemplated**, evidence could still be suppressed. If the suspect confirms that his search terms cover the places to be searched, without limitation, officers are entitled to rely on this representation, even if the suspect is mistaken. *In re Jeremy G.* (1998) 65 Cal.App.4<sup>th</sup> 553, 556.

**BOTTOM LINE:** “*In all cases, a search pursuant to a probation search clause may not exceed the scope of the particular clause relied upon.*” *People v. Woods, supra*, at 682.

(Citations omitted and emphases added in quoted material.)

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