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# **ONE MINUTE BRIEF**

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**ISSUE:** Can courts impose search terms on a defendant as a condition of OR release or release on bail?

One of the recognized exceptions to the general requirement of search warrants for conducting searches and seizures is that a person known to police to be subject to warrantless search and seizure as a condition of **probation, parole, PRCS or supervised release** may be searched without suspicion. *Samson v. California* (2006) 547 US 843, 857. See 1MBs 2008-07, 2013-26. A suspect might also be subject to search and seizure terms by virtue of having had terms judicially imposed as a reasonable condition of release on “**own recognizance**” or on **bail**.

- The California Supreme Court has previously **upheld search terms as a condition of OR release**, concluding that “*the imposition of such conditions does not violate Fourth Amendment protections.*” *In re York* (1995) 9 Cal.4<sup>th</sup> 1133, 1149 (but see *US v. Scott* (9<sup>th</sup> Cir. 2006) 450 F.3d 863, 872, fn. 12, 874, restricting federal pretrial-release search conditions in the Ninth Circuit). As with probation search conditions, “*the reasonableness of a[n OR search] condition necessarily depends upon the relationship of the condition to the crime or crimes with which the defendant is charged and to the defendant's background, including his or her prior criminal conduct.*” *York*, at 1151, fn.10.

- The California Supreme Court has now ruled that a reasonable search condition may also be imposed as a condition of release on **bail**. The court noted that PC § 1275 provides that “*In setting, reducing or denying bail, a judge or magistrate shall take into consideration the **protection of the public,***” and that “*The **public safety shall be the primary consideration.***” Therefore, said the court:

*“[W]e conclude that trial courts have authority to impose reasonable conditions related to public safety on persons released on bail. ... Any condition must be reasonable, and there must be a sufficient nexus between the condition and the protection of public safety.”* In re *Webb* (2019) \_\_\_ Cal.5<sup>th</sup> \_\_\_, No. S247074, Slip opn. at 11-12 (reversing the opinion of the Court of Appeal in *People v. Webb* (2018) 20 Cal.App.5<sup>th</sup> 44).

- In appropriate cases, prosecutors should be alert to the need to **request reasonable search conditions** when a magistrate sets bail or releases a defendant OR.

- Law enforcement officers inquiring in the field about a person’s search status should not only explore **probation, parole, PRCS** and **supervised release** terms, but should also try to determine whether the person is on search terms as a condition of **OR** or **bail**. (“Don’t you have a case pending in court? You out on bail, or OR? The judge put you on search and seizure terms, right?”)

[As the court noted in *Webb*, amendments in PC § 1320.7 *et. seq.* could change California’s pretrial release procedures. These changes are in suspense, pending the outcome of voting on a referendum petition at the election to be held on November 10, 2020.]

**BOTTOM LINE: When releasing a defendant OR or on bail, a magistrate may impose reasonable search-and-seizure conditions related to the defendant’s charges and history, and to the protection of public safety.**

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