

Monthly Progress Report

Of the Office of Inspector General



May 2017

Office of the Inspector General

Oakland Police Department

455 7th Street, 9th Floor | Oakland, CA 94607 | Phone: (510) 238-3868

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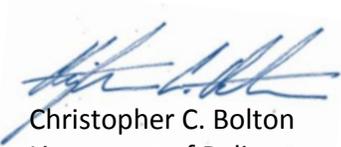
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INTRODUCTION

This month's report addresses two distinctly different and separate organizational performance issues, but OIG evaluated each through the same lens: does the outcome of our work efficiently serve public safety, and how does the related performance potentially affect our mission of sustaining and improving increased levels of public trust?

Our review of the search warrant process led to our recommendation to better and more consistently document the circumstances of property seizures to provide better service. Likewise, our review of probation and parole search circumstances not only asked whether officer contacts with probationers and paroles were lawful and within policy, but challenged us to discuss outcomes and processes under the knowledge that stops and searches of persons predicated upon probation or parole conditions – while a very small percentage of our city's overall population - are a significant contributor to racially disparate data. OIG will continue to participate in policy meetings and discussions designed to evaluate existing practices along with their potential effects on safety, stop data results, and community trust.

Respectfully submitted,



Christopher C. Bolton
Lieutenant of Police
Office of Inspector General

AUDITS, REVIEWS, and INSPECTIONS

Probation and Parole Analysis

Lead Auditor: Officer Aaron Bowie, Office of Inspector General (OIG)

Contributors: Rose Sutton, Police Performance Auditor and Lieutenant Chris Bolton, Commanding Officer of OIG

Objectives

1. Determine how Oakland Police Department (OPD) officers discover probation or parole supervisory or search conditions during discretionary enforcement stops.
2. Evaluate whether OPD officers who conduct higher percentages of probation and parole searches utilize different means for determining parole or probation statuses.
3. Evaluate individual officer probation and parole search rates, search recovery rates, and “intelligence-led” stops within the sample.

Policies/Materials Referenced

- Departmental Training I-O.02 ¹- *Legal Aspects of Searching Persons* (effective April 13th, 2013)
- Departmental Informational Bulletin - *Non-Revocable Parole* (effective March 9th, 2010)
- [Alameda County District Attorney’s Office Point of View, Probation and Parole Searches \(Fall 2016\)](#)
- [Strategies for Change: Research initiatives and recommendations to improve police-community relations in Oakland, Calif.](#) Stanford University, SPARQ: Social Psychological Answers to Real-world Questions.

Overview

Through partnership and collaboration with Stanford social psychologists, the Oakland Police Department (OPD) learned that Stanford University’s review of discretionary stop and search data found that OPD officers, “use more severe legal language (e.g., mentioned *probation, parole, and arrest*)” when speaking with African American persons during stop encounters.² This disparity was revealed through use of incident narrative and body-camera footage analysis. Although neither motive nor conclusion were made, the associated risk and potential harm was obvious to OPD: a baseless, speculative or assumptive use of these terms may not only represent egregious insensitivity, but may also demonstrate objective indications of bias. In response to Stanford recommendations to continuously use data to analyze trends and to review practices, the Office of Inspector General developed a review to more closely examine the contextual circumstances surrounding police encounters with probationers and parolees: Are officers presumptively questioning persons as to their probation or parole statuses? How may the practice or manner of determining probation or parole statuses affect search rates? To what extent do these factors affect recovery rates and stop outcomes?

¹ Departmental Training Bulletin I-O.02; see also *Samson v. California* (2006) 547 U.S. 843, 856; *People v. Bravo* (1987) 43 Cal.3d 600, 610; *People v. Schmitz* (2012) 55 Cal.4th 909, 916 [the search must not be “arbitrary, capricious, or harassing”].

² Eberhardt, J. L. (2016). *Strategies for change: Research initiatives and recommendations to improve police community relations in Oakland, Calif.* Stanford University, SPARQ: Social Psychological Answers to Real-world Questions.

Significant Findings

All reviewed probation and parole search encounters (219 searches) were determined to follow department policy regarding the avoidance of immediately asking for an individual's probation or parole status. In 96% of reviewed incidents involving an officer's stop and search of a probationer or parolee, officers neither mentioned nor requested a person's probation or parole status prior to the status becoming independently known. In 4% of all probation or parole search encounters, officers mentioned or requested probation or parole statuses when the person detained was either unable or unwilling to produce identification.

Despite varying degrees of search frequencies among officers, the methods of determining probation and parole status, in addition to search recovery rates did not differ. However, a small fraction of officers who searched persons the most (6 or more probation or parole searches within the month) produced greater felony and misdemeanor arrest outcomes.

Lastly, patterns in officer word choice and dialogue remain consistent among all search groups with no significant observations.

Recommendation

Current OPD policy encourages officers to develop a rapport with community members during police-community encounters and to refrain from **immediately** asking if a person is on probation or parole (emphasis added). OIG recommends that the Department consider providing additional instruction through revised policy or future training to further restrict questioning which may be perceived as assumptive.

Further research regarding the use and effectiveness of probation or parole searches within public safety practices and strategies is warranted. While search conditions are designed to provide rehabilitative incentive through a means of evaluation to "minimize the risk to the public safety,"³ the searches associated with these conditions contribute a significant quantity of racially disparate search data. Holistic reviews of data require a focus on the policies, direction, practices, training, laws, and culture that may be shaping actions from which the data result. All department intent, action, and results should serve to achieve the OPD mission of crime reduction through ways which also promote community trust and relationships. In line with related recommendations made by Dr. Jennifer Eberhardt in [*Strategies for Change: Research initiatives and recommendations to improve police-community relations in Oakland, CA*](#), OPD is now evaluating stop data through these lenses.

Background

OPD training and policy provides legal and procedural direction to officers who may conduct a search pursuant to a probation and parole search. Legally, when individuals are subject to probation or parole conditions they may, in line with the terms and conditions of their probation or parole status, be searched by a law enforcement officer without reason to believe the probationer or parolee has

³ *Point of View*, Fall 2016, Alameda County District Attorney's Office; See *People v. Constancio* (1974) 42 Cal.App.3d 533, 540.

committed a new crime or was otherwise in violation of the terms of probation or parole.⁴ Many probationers and all State of California parolees are required to submit to these warrantless searches as a condition of their release from custody.⁵

Per OPD policy and the law, the officers' primary motivation to conduct a probation or parole search must serve a legitimate law enforcement or rehabilitative interest and shall not be arbitrary, capricious, or harassing.⁶ To support probation and parole search decisions, OPD officers are required to possess knowledge that the search is legal, have a rehabilitative or law enforcement motivation, and ensure the search is reasonable in its scope and intensity. OPD policy also encourages officers to develop a rapport with community members and refrain from **immediately** asking if a person is on probation or parole (emphasis added).

Methodology

Search Compliance

To conduct the audit, the Auditor utilized department policy, procedures and informational bulletins pertaining to the legal aspects and circumstances under which officers conduct probation and parole searches. These standards were applied to a sample of 219 probation and parole searches performed in January 2017 (from a population of 269 probation and parole searches). It is important to note that a true random sample of all officers was not drawn since not all officers with stop data for the period conducted a probation or parole search. Only those officers with at least one probation or parole search during the period were selected. For this reason, neither a true sample mean nor distribution was constructed.

Of the 219 probation and parole encounters reviewed, each was assessed based on the following:

- Did the officer ask the probation or parole status prior to performing a file check?
- Did the subject voluntarily provide probation or parole details?
- Did the officer use the computer or dispatch to ascertain the information?
- Did the officer immediately question whether a person was on probation or parole?
- Did the officer have prior knowledge that the subject was on probation or parole?
- If probation or parole status was mentioned or asked by an officer prior to the receipt of independent information, under what circumstances?

To assess word choice, possible patterns in conversational dialogue, and how the probation and parole status was determined, the Auditor reviewed 219 body camera videos of stop and search footage and read corresponding field contact reports.

⁴ *Point of View*, Fall 2016, Alameda County District Attorney's Office; See *People v. Bravo* (1987) 43 Cal.3d 600, 611; *People v. Douglas* (2015) 240 Cal.App.4th 855, 861.

⁵ *Point of View*, Fall 2016, Alameda County District Attorney's Office; See *United States v. Knights* (2001) 534 U.S. 112, 116 [a search clause is a "common California probation condition"].

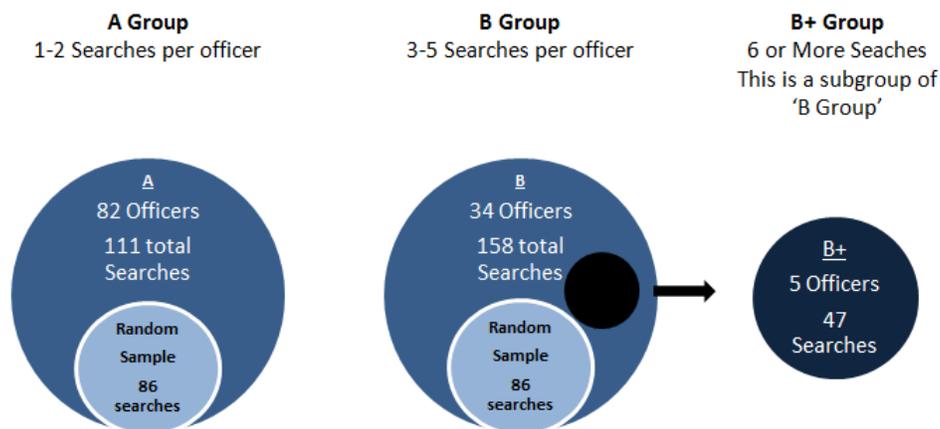
⁶ *Point of View*, Fall 2016, Alameda County District Attorney's Office ;See *Samson v. California* (2006) 547 U.S. 843, 856; *People v. Bravo* (1987) 43 Cal.3d 600, 610; *People v. Schmitz* (2012) 55 Cal.4th 909, 916 [the search must not be "arbitrary, capricious, or harassing"].

Search Rates and Outcomes

The sample was divided into categories based on an individual officer's probation and parole search frequency. The group labeled "A Group" represents 82 officers who conducted an average or below average number of probation or parole searches (1-2 searches) as compared to the sample. The total number of searches from "A Group" was 111 unique searches, of which a statistically significant sample of 86 was randomly drawn for further review.

The group labeled "B Group" represents 34 officers who searched probationers or parolees at a higher frequency, 3-5 times during the month, which totaled 158 individual searches. The "B Group" was further subdivided to separate out the most active searchers within the sample, labeled "B+ Group." This subset consists of 5 officers who conducted 6 or more probation or parole searches (47 searches total) within the month.

Table 1- Sample search groups: 116 Total Officers who conducted 269 Total Searches



Findings

1) Officers are not immediately asking for probation and parole statuses.

Of the 219 probation and parole encounters reviewed, all followed department policy regarding the avoidance of immediately asking an individual for their probation or parole status. The table below provides a more detailed breakdown of the number of probation and parole searches that were conducted related to Departmental compliance. None of the 219 reviewed encounters appeared to present circumstances in which an officer questioned a driver, pedestrian or occupant about their probation or parole status as a matter of routine.

Table 2- Breakdown of probation and parole searches and respective Departmental compliance for avoidance of “immediately” asking for probation or parole statuses

Search Conducted	#	In Compliance	Not in Compliance
Probation Search	204	204	0
Parole Search	15	15	0
Total	219	219	0

Probation and parole search conditions were most commonly discovered as the results of routine file checks during investigatory encounters. Furthermore, there was no indication that any of the reviewed probation or parole searches were conducted in an apparently arbitrary, capricious, or harassing manner.

2) Probation and parole statuses were discovered as the results of routine file checks or were independently and objectively known without the need for questioning in 95% of reviewed stops.

Although policy only addresses the timing of probation or parole inquiries, OIG wanted to evaluate these circumstances more fully to understand whether questioning was occurring in ways which could be seen and perceived as assumptive. Although officers used words such as “probation” or “parole” during the encounters, probation or parole statuses were most commonly first mentioned by an officer only after independent information regarding the person’s status became known. Table 3 provides a breakdown of the discovery process in which probation or parole status was determined.

Table 3 - Breakdown of probation or parole status discovery

Corroboration Process	#	%
Officer discovered probation or parole status utilizing criminal database information via in-vehicle computer	146	67%
Officer has confirmed previous knowledge about probation or parole status	36	16%
Offender voluntarily provided probation or parole status	20	9%
Officer questioned probation or parole status prior to a file check	9	4%
Officer discovered probation or parole status utilizing a dispatch file check	8	4%
Officer immediately questioned probation or parole status	0	0%
Total	219	100%

All 9 instances (4% of the reviewed sample) where an officer preemptively mentioned probation or parole prior to conducting a file check and without independent knowledge were reviewed in detail. Each incident involved a unique phase of questioning in which the person stopped was either unable or unwilling to produce a form of corroborating identification upon request. The Auditor subjectively believes that each questioning officer intended to gain additional information about the person stopped

to better identify him or her. OIG is not subjectively determining whether these instances of questioning were appropriate, only that a pattern or trend within these circumstances existed.

3) Officers who conducted the highest number of probation or parole searches within the sample were more likely to document the encounters as “intelligence-led.”

From review of the sample, officers who engaged in the highest number of probation or parole searches were more prone to contact probationers and parolees during “intelligence-led” stops.⁷ Officers who conducted 6 or more searches during the period documented that 62% of all their probation and parole searches were predicated on intelligence compared to 22% - 33% of searches associated with intel-led stops for officers who conducted fewer probation and parole searches. The Department wide average for intelligence-led stop rates in all data from November 2016 through April 30, 2017 is currently 26%.

The higher than average relationship between intelligence–led stops and probation or parole conditions (if we assume stops are coded correctly and the bases for intelligence-led stops are sound) may suggest that persons with search conditions may be more prone to be described as connected to criminal activity. It may also be possible that persons with search conditions may be engaged or associated with factors of criminal activity more often (for instance, per a recent internal report, 67% of identified homicide suspects thus far in 2017 are active to probation and/or parole conditions) and that officers with higher than average probation and parole search rates may be more effectively and efficiently using criminal intelligence to inform stop decisions.

Search recovery rates are often generally used to gauge potential search legitimacy, but in these cases we found examples of higher arrest outcomes despite relatively average search recovery rates. The relationship between intelligence-led focuses and probation and parole searches may be important when evaluating the effective use and evaluation of these searches.

2017 Annual Search Warrant Audit

Auditor: Charlotte Hines, Office of Inspector General

Objective(s):

- 1) To ensure all required search warrant forms are correctly completed and submitted.
- 2) To verify all items recorded on the search warrant inventory sheet are listed on the case property record

Policy Referenced:

- Training Bulletin I-F “*Search Warrants*”,
- California Penal Code Chapter 3 ...*Sections 1523, 1527, 1528, 1534 and 1537*

⁷ Intel-led stops are defined by OPD as when officers possess specific crime or suspect information which is knowingly linked to an initiation of a stop. The Intelligence-Led factor (source) may be very specific, such a named person, or information about a recent crime trend or pattern tied to a specific location or area.

Recommendation

The Department should consider a process to verify that all property seized pursuant to the service of a search warrant is listed on, and corresponds with, all required and written reports.

BACKGROUND

The Fourth Amendment of the United States Constitution prohibits unreasonable search and seizures -

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

One mechanism for assuring that a search is reasonable is by obtaining a search warrant.

California Penal Code section 1523 states -

“A search warrant is an order in writing, in the name of the people, signed by a magistrate, directed to a peace officer, commanding him or her to search for a person or persons, a thing or things, or personal property, and, in the case of a thing or things or personal property, bring the same before the magistrate.”

Officers must have a sound knowledge of the legal requirements associated with obtaining a search warrant and be aware that material errors, omissions, or misstatements of the factual basis for the warrant – whether intentional or not – could result in an illegal search and seizure, cause a violation of a persons’ constitutional rights, expose the officer(s) to disciplinary action and/or criminal prosecution as well as expose the officer and Department to civil liability.

Overview

The Office of Inspector General of the Oakland Police Department is mandated to conduct an internal annual compliance audit of the Department’s search warrant process. Departmental Training Bulletin I-F has set forth policy and procedures for obtaining and serving a search warrant. The auditor reviewed policy and developed a methodology to assess search warrant compliance through available documentation.

Methodology

All required forms are correctly completed and submitted in a timely manner as required.

The OIG auditor was provided the electronic file and a detailed listing (spreadsheet) of all search warrants processed during the 2016 calendar year from the Criminal Investigations Division (CID). A spreadsheet was compiled to detail each component of the search warrant process. Each search warrant file was reviewed to verify that all required forms and documents were completed and submitted as required:

- Search Warrant Approval Tracking Sheet- TF-3343
- Search Warrant - a written order signed by a judge, magistrate or other judicial authority, authorizing and directing a peace officer to search for a person or persons, a thing or things, or personal property and other evidence of a crime and bring it before the court. (*Penal Code 1523, 1528*)
- Search Warrant Affidavit - a legal document, signed under penalty of perjury containing the facts upon which probable cause is based. The affidavit must set forth the facts tending to

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establish the grounds of the application, or probable cause for believing that they exist (*Penal Code 1527*). It must contain the descriptions of the places(s), person(s), vehicle(s), and item(s) to be searched and the evidence to be seized.

- Sealing Order (if applicable) – certain limited circumstances provide for sealing of a search warrant (*Penal Code 1534*), sealing of a warrant may be necessary to protect the identity of a confidential informant or to protect the integrity of an on-going investigation. If any portion of the affidavit is to be sealed, that fact may be disclosed on the face of the warrant and the request shall be included in the affidavit.
- Chemical Analysis Report (if applicable) – TF-708
- Search Warrant Inventory and Return (*Penal Code 1537*) – TF-3079-1 / TF-3079-2

The auditor ensured that the Search Warrant Tracking sheet and the Search Warrant Inventory and Return were legible and complete and all other applicable required forms were included in each case file. A spreadsheet was created detailing the results of the review of each case file. Search warrants within the 2016 population were served by various units throughout the Department (see Table I below).

TABLE I: 2016 Search Warrants served

Bureau of Field Operations	28
Ceasefire	84
Felony Assault / Robbery / Burglary	108
Homicide	158
Intel	10
Special Victims	55
Theft & Misdemeanor Crimes	3
Traffic Investigations	170
Major Crimes Section	1
Alameda County Regional Auto Theft Taskforce (ACRATT))	1
Grand Total	618

A total of 618 search warrants were completed during 2016. Using a one-tail test, to achieve a 95% confidence level with an error rate of +/- 4%, a sample of 83 search warrants was selected. The auditor ensured the sample included search warrants from each of the units in the audit population (See Table II below).

TABLE II: 2016 Search Warrant sample detail

Unit	# of Warrants Reviewed	% of Audit Sample
Bureau of Field Operations	3	3%
Ceasefire	14	17%
Felony Assault / Robbery / Burglary	15	18%
Homicide	19	23%
Intel	1	1%
Special Victims	8	10%

Theft & Misdemeanor Crimes	1	1%
Traffic Investigations	22	27%
Grand Total	83	100%

To verify that all items recorded on the Search Warrant Inventory and Return were listed on the case Property Record as required, a random sample of sixteen property records was requested from the Property and Evidence Unit (PEU). Each property record was compared to the appropriate Search Warrant Inventory and Return to verify that items listed as being seized per the search warrant (copy provided to the person from whom the property was taken, or in whose possession it was found. In the absence of a person, a copy of the Search Warrant Inventory and Return shall be left at the location)¹ were submitted and received in the PEU if appropriate. A spreadsheet was created detailing the results of the comparison. To ensure there were no extenuating circumstances, the auditor reviewed the related crime report to verify the conditions of seizure and if the seizure was associated with the search warrant service.

FINDING 1

All required forms are correctly completed and submitted.

All required forms were completed correctly and submitted in a timely manner; however, some of the Search Warrant Inventory and Returns were illegible partly because the carbon copy was very faint and/or the penmanship on several of the Inventory Sheets was hard to read.

FINDING 2

Discrepancies were found when comparing descriptions or lists of seized items found on Inventory Returns, offense reports, and property records.

Three of the sixteen cases reviewed had discrepancies. Two cases recorded items on the Property Record and were listed in the crime report as being seized from the location listed on the search warrant, however the items were not listed on the Search Warrant Inventory and Return. The Search Warrant Inventory and Return is used as a receipt to be provided to homeowners or property owners and inaccuracy or error invites mistrust and poor service. The one remaining case listed items on the Search Warrant Inventory and Return and was recorded in the crime report, but was not recorded on the Property Record.

CID personnel stated they do not have access to property records and/or crime reports which are not included in the Search Warrant package and therefore are unable to verify that all property seized, if appropriate is submitted to the PEU. Each of these instances exposes the department to risk and/or claims of misconduct.

CONCLUSION

The ability to properly execute and process valid search warrants prevents the suppression of evidence, protects the Constitutional rights of persons, and can promote public confidence in the Department’s ability to carry out the police function in an ethical and legal manner.

NEXT MONTH'S PLANNED REVIEWS

The reviews scheduled for the June 2017 Report are:

1. Training Requirements for Commanders
2. Timeliness of Internal Affairs Division Investigations
3. Stop Data Assessment: Evaluating mechanisms of change

ⁱ Penal Code Section 1535