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ONE MINUTE BRIEF

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NUMBER: 2018-06 **DATE:** 04-26-18 **BY:** Devallis Rutledge
and Kraig St. Pierre **TOPIC:** Search Before Formal Revocation

ISSUE: After summary revocation of probation, parole, PRCS or mandatory supervision, but before a *formal* revocation hearing is held, does a previously-imposed search-and-seizure term continue in effect?

PC §§ 1203.2, 3000.08 and 3455 prescribe procedures for the revocation of probation, parole, PRCS and mandatory supervision (“status,” in short). In some cases, petitions may be filed for the revocation of status, violators may be re-arrested, or arrest warrants may be issued for absconders. Status is then sometimes said to have been “summarily revoked.”

To comply with constitutional due process, however, status cannot *actually* be revoked until the person has been afforded certain procedural protections at a **formal hearing**. *Morrissey v. Brewer* (1972) 408 US 471, 487-88 (parole); *Gagnon v. Scarpelli* (1973) 411 US 778, 782 (probation); *People v. Vickers* (1972) 8 Cal.3d 451, 460-61 (probation); *In re La Croix* (1974) 12 Cal.3d 146, 152 (parole); *People v. Deleon* (2017) 3 Cal.5th 640, 647 (applying *Morrissey* to post-realignment parole, noting that the declared purpose of § 1203.2 is to “provide for a **uniform** revocation process for petitions to revoke **probation, mandatory supervision, post-release community supervision and parole.**”).

- A person who is subject to warrantless search and seizure as a condition of his or her status **remains subject to that condition** (and all others) until status is **formally** revoked, following the **hearing** required to satisfy due process:

“[O]fficer retained the authority to conduct an otherwise permissible parole search while Hunter was incarcerated on a parole violation because Hunter was still a parolee until his parole was formally revoked. [P]arole is not revoked until a formal

revocation hearing is held. ... [A]uthorities may conduct a parole search until parole is formally revoked...." *People v. Hunter* (2006) 140 Cal.App.4th 1147, 1152-53, 1155.

"[Summarily] revoking probation for the purpose of bringing the probationer before the court for a Morrissey-Vickers hearing does not itself terminate probation, so that the **probationary conditions remain in effect**. ... Actual revocation cannot occur until the probationer has been afforded the **due process hearing rights** provided in Vickers. ... Hence, **the condition of probation authorized the search....**" *People v. Barkins* (1978) 81 Cal.App.3d 30, 33-34.

"The decision in *Barkins* is sound. As a matter of due process, summary revocation cannot affect a grant of probation or its conditions.... **The search condition remained in effect.**" *People v. Pipitone* (1984) 152 Cal.App.3d 1112, 1117-18.

- Officials may conduct searches under an applicable search term, **even if the person has been taken into custody** pending revocation proceedings, or for another crime. *Hunter*, *supra*, 140 Cal.App.4th at 1151 (search of parolee's storage unit was OK while he was incarcerated on a "parolee-at-large" warrant for absconding, before formal hearing and revocation); *People v. Johnson* (1988) 47 Cal.3d 576, 591-96 (search of parolee's home was OK while he was incarcerated for a new crime, before formal revocation); and *People v. Burgener* (1986) 41 Cal.3d 505, 529-36 (same).

BOTTOM LINE: A search-and-seizure condition of probation, parole, PRCS or mandatory supervision remains in effect between summary revocation and formal revocation, even if the person is incarcerated.

(Bold emphases added and citations omitted in quoted material.)