



CITY AND COUNTY OF SAN FRANCISCO
Department of Police Accountability
ONE SOUTH VAN NESS AVE., 8th FLOOR
SAN FRANCISCO, CA 94103



PAUL DAVID HENDERSON
EXECUTIVE DIRECTOR

September 30, 2021

President Malia Cohen
Vice President Cindy Elias
Commissioners
San Francisco Police Commission

Second Quarter 2021 Policy Work

Highlights of key Second Quarter 2021 Policy Recommendations are described below.

I. DPA-initiated Department General Order (DGO) Limiting Questioning and Searching Individuals on Probation, Parole, and Other Forms of Supervised Release

To guard against bias in policing, Department of Police Accountability (DPA) drafted and proposed to the San Francisco Police Commission (Commission) a “General Order Limiting the Questioning and Searching of Persons who may be on Probation, Parole, or Other Forms of Supervised Release.” As background, on February 10, 2021, the Center for Policing Equity (CPE) presented its report to the Police Commission examining disparities in San Francisco Police Department’s (SFPD’s) interactions with community members from 2014 to 2018. SFPD’s Quarterly Activity Data Report presented more recent data from Q4 2020 regarding the disparities raised by CPE. SFPD’s disparity analysis showed that Black and Hispanic residents remain over-represented as suspects in stops, during searches, as recipients of uses of force, and in arrests.

On February 17, 2021, Commission Vice President, Cindy Elias, asked DPA to bring policy ideas that address the current racial disparities that occur during traffic stops, searches, and use of force against people of color. In response, the DPA proposed to the Commission that SFPD adopt a DPA-initiated Department General Order which limits questioning and searching individuals who may be on probation, parole, or other forms of supervised release.

On May 5, 2021, in the second quarter of 2021, the Commission approved DPA to begin the policy development process with SFPD based on DPA’s proposed Probation/Parole DGO. It is noteworthy that SFPD does not currently have a comprehensive policy providing guidance to officers regarding probation and parole searches. Because no policy exists, officers have unfettered discretion to search, or not search, individuals who have a warrantless search clause as a condition of probation or parole. “The potential for bias is greatest where discretion is greatest[.]” (US DOJ 2016, Cops Report, p. 67.) Therefore, and as DPA explained to the Commission, adopting a policy in this area is important to combat bias because it would provide officers clear rules to follow when executing probation and parole searches, potentially reducing arbitrary, capricious, or harassing searches that are disproportionately carried out against our minority community members.



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Key features of DPA’s draft Probation/Parole Policy are as follows:

A. Questions about supervised release status

Police officers are precluded from asking whether a member of the public is on probation or parole unless:

- The person is detained for a misdemeanor or felony
- Or is an immediate threat to officer or public safety

Officers may not inquire about a person’s probation or parole status during consensual encounters or when the person is detained or arrested for an infraction. This policy is important because the community considers questions about probation and parole status, particularly during consensual encounters and routine traffic stops, to be unnecessarily intrusive and based on an improper assumption that people of color are more likely to have a criminal record than others.

B. Warrantless search when a person is on probation or parole for a non-violent offense

Probation or Parole search condition “plus” is required. If a person is on probation or parole for a non-violent offense and is subject to a warrantless search condition, that person may be searched according to the terms of their supervised release only if one of the below conditions are met.

- A nexus to new criminal activity exists.
- An immediate threat to officer or public safety exists.

Absent a connection to criminal activity or a threat to officer or public safety, the search condition cannot be exercised. The fact that a person is on probation or parole in and of itself, is inadequate to search. Restricting probation and parole searches for people who are on probation or parole for non-violent offenses is necessary because doing so will limit officer discretion in executing these searches which are disproportionately exercised against people of color.

C. Verification

Officers shall verify through official channels that a person is currently on probation or parole and is subject to search condition before a search occurs. The verification must occur within 72 hours before the search and must be documented. Clearly, sound police practices should require that searches be based upon verified data, rather than on hunches, assumptions, or incorrect information.



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D. Warrantless Search of Cellular Telephones

A general search condition does not permit the warrantless search of cellular telephones. As directed by the Commission in the second quarter, DPA has sought input from SFPD on this proposed policy and discussions are ongoing.

II. DPA Recommended that Plainclothes Officers Be Required to Wear Body Worn Cameras When taking Enforcement Actions

In the second quarter of 2021, and in light of the May 7, 2021, officer-involved shooting on Varney Place and Third Street involving a plainclothes officer, DPA revived recommendations previously made in July 2020 regarding the need for SFPD to revise DGO 5.08, SFPD’s policy on Non-Uniformed (plainclothes) officers. Specifically, DPA recommended that SFPD require plainclothes officers to activate their Body Worn Camera when they decide to take enforcement actions for traffic stops, citations, and arrests which is not required under current SFPD policies.¹

Specifically, DPA recommended the following to Chief Scott:

- SFPD should make a distinction in DGO 5.08 between non-uniformed officers who are undercover versus those who are merely plainclothes; and,
- Plainclothes officers should be required to carry their Body Worn Cameras in their vehicles and mount them on their person once the plainclothes officers decided to take an enforcement action listed in DGO 10.11.02(c), the “Authorized Use” section of DGO 10.11.02(c), SFPD’s Body Worn Camera policy.

III. Recommendation Tracking Matrix

Also, in the second quarter, the DPA created a Recommendation Tracking Matrix after community input and presented it to the Police Commission. The Matrix creates a feedback loop that allows the Police Commission to track community, DPA, and stakeholder recommendations submitted for review to SFPD. The Matrix also allows the Commission to monitor and log actions SFPD takes in response to those recommendations. (See Attachment A.)

¹ DPA initially raised this issue after reviewing the cases DPA has on file relating to DGO 5.08. The complaints against non-uniformed officers were almost always in the context of traffic enforcement, and DPA was rarely able to make factual determination because of the lack of Body Worn Camera footage.



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IV. DGO Revisions

During the second quarter of 2021, DPA researched and provided to SFPD recommendations on four existing DGO's and made approximately fifty-seven (57) policy recommendations to SFPD as delineated in the below table.

	DGO	No. of DPA Recommendations	Date of Submission to SFPD
1.	6.16 Sexual Assault	6	6/30/21
2.	5.06 Citation Release	8	6/29/21
3	9.03 Chemical Testing for DUI's	12	6/2/21
4.	3.01 Written Directives	31	May and June of 2021
		57 Recommendations	2 nd Quarter 2021

Regarding DGO 3.01, SFPD's policy on Written Communications, the DPA did a deep policy dive with SFPD and Vice President Elias in an effort to make the DGO revision and initiation process more transparent, inclusive, and timely. Notably, DPA has strongly advocated for having a greater voice in deciding whether SFPD should form community Working Groups when SFPD revises, updates, and initiates DGO's.

Sincerely,

Paul Henderson
Executive Director

Attachment A

Reported Issues		Evaluation of Issues				Corrective Action(s)	
Raised By	Recommendation	Police Commission Response	Police Commission Response Explanation	Police Department Response	Police Department Response Explanation	Implementation Status (determined by Police Commission)	Implementation Deliverable(s)
DPA	Implement mental health services at every facility.						
DPA	Adopt a Pretext Stop DGO to give direction to officers on the Commission's policy.						
Public Defender	Eliminate "Quality of Care" stops, including: license plate violations, broken tail lights, tinted windows, registration expired by less than 6 months						