

**SAN BERNARDINO COUNTY
PROBATION DEPARTMENT PROCEDURE**

Forced Entry

Inter-Bureau Procedure #05-11-120

Authority:

Jerry L. Harper, Chief Probation Officer

Purpose:

To establish guidelines for the justification and execution of forced entry by probation officers.

Definitions:

Exigency –

- A. Hot pursuit of a fleeing felon; defined as any person who has committed a felony in the presence of the officer or has an active felony warrant and is in immediate flight from the officer to avoid arrest.
- B. Probable cause to believe entry is necessary to prevent injury to persons.
- C. For purposes of this procedure, destruction of evidence shall not be considered an exigent circumstance.

Forced Entry –

Any entry into a residence or private building without the owner/occupant's consent. This includes crossing the plane of any door, window or other point of entry into a residence, without the verbal, gesture, or tacit consent of the occupant/owner of the residence. Be aware that entering an unlocked, open doorway is legally construed as forced entry. Should an interior room belong to a separate tenant, crossing the plane of entry into that room without the aforementioned consent is also considered forced entry.

Knock Notice –

A legal requirement to identify yourself, your agency, and demand entry prior to taking action to enter. Subjects inside a residence should be given reasonable time to admit officers.

Probable Cause –

“Defined as facts and circumstances within [an] officer's knowledge that would warrant a person of reasonable caution to believe...”

Responsibilities:

Probation Officer (PO)/Supervising Probation Officer(SPO)

- I. The justification for forced entry shall be gauged by the risk the probationer represents if not arrested immediately. Refusal of the probationer/occupant/owner to admit officers to his/her residence is NOT, by itself, justification for forced entry without the presence of exigent circumstances.
- II. Exigent circumstances may exist to force entry without a warrant, court ordered search term that includes the residence, or permission of the occupant/owner. Exigency will be defined only as:
 - A. Hot pursuit of a fleeing felon; defined as any person who has committed a felony in the presence of the officer or has an active felony warrant and is in immediate flight from the officer to avoid arrest.

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- B. Probable cause to believe entry is necessary to prevent injury to persons.
 - C. For purposes of this procedure, destruction of evidence shall not be considered an exigent circumstance.
- III. The exigent circumstances justifying the forced entry must be known to the officer before entry is made. In other words, the articulated exigent circumstances cannot be based upon something that the officer observed or discovered after forced entry was made.
- IV. Knock Notice shall include all of the following:
- A. Knock on the door of the residence; and
 - B. Identify himself/herself as a probation officer; and
 - C. State the purpose of contact; and
 - D. Demand entry; and
 - E. A reasonable response time must be allowed.
 - 1. This response time may be shortened or eliminated with the existence of exigent circumstances; or, clear refusal of the probationer to admit officers when forced entry is justifiable as outlined below.
 - 2. The reasonable duration of the response time may be determined by, among other circumstances:
 - a. the size of the residence, or
 - b. the known proximity of occupants to the door.
 - F. Knock Notice must be given on any closed or locked interior door as well, although the officer's presence inside the residence after having already given knock notice at an exterior door may be taken into consideration in determining the appropriate amount of response time given at an interior door.
- V. Without the presence of exigent circumstances, forced entry into a probationer's residence or domicile is permitted to effect an arrest under the following conditions:
- 1. The PO must have probable cause (refer to Definitions section on page 1) to believe that the dwelling is owned or controlled by the probationer and have made an effort to verify as much; and
 - 2. The probationer must have a court ordered search term which includes the residence, or an active warrant for his/her arrest; and
 - 3. Knock notice requirements must be met; and
 - 4. The PO must identify the probationer inside the residence by visual or verbal recognition, confirming the probationer is in the residence. Confirmation may also be achieved if the probation officer sees the probationer enter the residence and not leave by the time knock notice is given, or has credible evidence the probationer is hiding in the residence.
 - 5. Forced entry may be made into a building not owned nor occupied by the probationer, when each of the above conditions are met; and there is credible belief that circumstances exist that may represent serious bodily injury or death to occupants of the dwelling, or others.
- VI. Extreme caution shall be used in forcing entry. If safety permits, officers should attempt to minimize actual property damage, where possible, by seeking alternate methods of entering the residence that lead to less damage.
- VII. "Non-physical forced entry," such as entering through an unlocked or open door, shall be considered "forced entry," and all of the required conditions shall be met prior to entry. Officers encountering an unsecured or open residence shall not consider that as tacit permission to enter the residence.

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- VIII. Following any forced entry in which there are no occupants inside the residence at the time the officers leaves the property, the PO shall, to the best of his/her ability, reasonably secure the residence to prevent theft or subsequent unauthorized entry.
- IX. In some circumstances, officers may foresee the need to force entry while planning an arrest warrant service. In this event, the officer shall advise his/her supervisor of the circumstances and seek authorization for the forced entry via the chain of command.
- X. During an arrest warrant service or planned arrest where forced entry becomes necessary, should the opportunity arise to contact a Supervising Probation Officer prior to forcing entry, authorization shall be obtained in this manner.
- XI. The reasonableness of the forced entry shall be measured by what the officer believed to be true at the time entry was made and the credibility of information known by the officer prior to entry.
 - A. Notwithstanding the above requirements for forced entry, the PO shall determine justification for forcing an entry. The standard for justification of forced entry is not limited to, but may be established as follows:
 - 1. The circumstances of the conviction or sustained offense, or criminal history of the probationer are serious.
 - a. Seriousness may be measured by, but is not limited to,
 - i. felony convictions, convictions defined under PC §667.5(c) or PC §1192.7,
 - ii. gang history,
 - iii. a history of assault, or
 - iv. a history of crimes against persons.
 - 2. There is credible information that if not arrested immediately, the probationer will re-offend or victimize others.
 - 3. If there is not currently a warrant for the probationer's arrest, the PO shall justify the reasons for forcing entry to effect an immediate arrest, rather than revoking probation and obtaining an arrest warrant.
 - 4. If warrant service attempts have been previously unsuccessful, the PO shall be able to justify the need for forcing entry to effect an arrest, rather than waiting for the probationer to eventually be arrested outside the residence.
 - 5. The PO shall assure that there is no way to reasonably affect an arrest outside the residence prior to the probationer re-offending or victimizing in the community.

Documentation:

- I. Documentation is a critical part of a probation officer's job and is one of the most important components of a case manager's duties. Each officer shall document all home calls, searches, arrests, forced entries, and communication with the probationer or persons involved with the case in field notes/Caseload Explorer.
 - A. An "Incident Report" shall be written when there is:
 - 1. Possible legal action or any extraordinary circumstances.
 - 2. Any physical confrontation between the probationer, other persons, and probation staff; or use of force.
 - 3. Any verbal or physical threat toward probation staff.
 - 4. Any incident that occurs in which probation staff feel they are in danger.
 - 5. When directed by a Supervising Probation Officer.
 - 6. When damage to property occurs.
 - B. Photograph any property damage prior to leaving the scene.

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- C. The "Field Service Incident Report," a probation department form, must be prepared as soon as possible and not later than the end of the next working day.
- D. After reviewing and approving the Incident Report the area Division Director II shall forward a copy of the Incident Report to the Community Corrections Bureau Secretary.
- E. As needed, an "Incident Report Form" (#15-13866-000) related to damage to county property or theft of county property should be completed by the involved employee and supervisor and forwarded to Risk Management within 24 hours. A copy of the "Incident Report" should be forwarded to the office of the Deputy Chief Probation Administrator within three workdays.

Inspections:

Independent

A Professional Standards Unit Supervisor shall coordinate an inspection regarding various aspects of this procedure no less than once per year and upon completion of said inspection submit a written Inspection Report to the Chief Probation Officer.

Foundation:

Penal Code Sections 815, 816, 817, 840, 842, 843, 844, 845, 848, 850, 851, 855, 1196, 1198, 1199, 1531, 1532, 1551, and 1203.2

Welfare and Institutions Code Sections 658 and 663

People v. Campos, 198 Cal. App. 3d 917, 244 Cal. Rptr. 75

References:

Department Policy

#3 Employee Responsibility

#7 Relations with Other Agencies

#9 Safety

#20 Use of Force Limitations

Community Corrections Bureau Procedure

#97-05-021-A Revocation of Probation

#97-05-203-C Arrests

#97-05-210-C Use of Force Incidents

#99-10-129-J Field Notes and Case History

Inter-Bureau Procedure

#00-01-79 Incident Reports Related to Damage of County Property and Theft of County Funds

#05-11-118 Home Calls and Searches in the Field

#05-11-119 Arrest Warrants: Requesting and Serving

Issued by:

Jerry L. Harper, Chief Probation Officer

Date: November 29, 2005

Revised: