An Empirical Overview of Searches and Seizures for Persons on Federal Post-conviction Supervision[1]

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IN THE FEDERAL system, convicted persons are typically supervised by federal probation officers under terms of supervised release (TSR) or probation[2] for a period averaging two to three years (Hughes, 2008). During this time, federal officers can, under certain circumstances, conduct searches of the person, residence, place of employment, or property of a supervisee (also referred to as a person under supervision in this article), for the purpose of identifying whether the supervisee is engaging in new criminal activities or violating the terms or conditions of supervised release; officers can also seize any contraband found during the search. Under the federal system, searches can take various forms, including searches that occurred because an officer had "reasonable suspicion" that a supervisee was committing new crimes or violating the terms of the person's supervised release. These searches fall under the label of pre-planned searches and typically must be approved by the probation office

chief before they can be executed. Officers can also initiate searches without a pre-approved plan if the person under supervision consents to the search, or if an urgent need arises that fulfills the requirements for an exigent search. Officers, moreover, can seize contraband if it is within plain view while conducting a home visit or during the course of regular interactions with the person under supervision. Finally, officers can search the supervisee's cell phone, computer, and/or electronic devices for various forms of contraband, which usually involves mostly illegal pornographic materials or other forms of electronic cyber-crime. The Judicial Conference[3] endorses guidance that reasonable suspicion should be present when conducting a computer search.

The policies designed to govern officer searches of persons under supervision on federal TSR or probation are well developed and clearly detailed both in the search and seizures guidelines (Search and Seizure Guidelines, 2010) and in the guidelines pertaining to cybercrime (Cybercrime Guidelines, 2016).[4] Although efforts have been made to examine the general patterns of search activity and the types of contraband seized during searches (Vicini, 2019), there have been relatively few efforts to gauge whether searches are associated with risk characteristics of persons under supervision, as measured by

the federal post-conviction risk assessment instrument (PCRA), or whether other factors, including the most serious conviction offense, have a stronger correlation with the likelihood of a search occurring. Moreover, there have been few systematic efforts to examine whether community safety is improved by federal searches through an assessment of the extent to which searches uncover contraband. Additionally, no empirical efforts have attempted to ascertain whether searches are associated with a reduction in rearrest activity while the person is under supervision.

This study seeks to provide an empirical overview of these and other issues pertaining to officer searches of persons on federal post-conviction supervision (that is, TSR or probation). Several issues will be covered, including the likelihood of a person being searched while under supervision, the total number of searches conducted by officers within a specified time frame, the most common types of searches (e.g., computer search, pre-planned search, exigent search, consent, etc.) directed against persons under supervision, and the extent to which these different metrics of search activity vary by a supervisee's PCRA risk and supervision levels. The study will also investigate the extent to which searches are associated with other factors not directly attributable to the PCRA, including the most serious conviction offense and the judicial district where the search is conducted. The presence of safety issues encountered during searches will also be explored. Last, the extent to which searches are associated with improvements in community safety will

[2] Supervised release (e.g., TSR) refers to persons sentenced to a term of community supervision following a period of imprisonment within the Federal Bureau of Prisons (18 U.S.C. §3583). Probation refers to persons sentenced to a period of supervision without any imposed incarceration sentence (18 U.S.C. §3561).

[3] The Judicial Conference of the United States is the national policy-making body for the federal courts (AOUSC, 2018).

[4] It should be noted that the search and seizure and cybercrime policy guidelines are available only to the federal judiciary and are not publicly accessible.

be examined through two measures. First, I'll investigate whether searches by federal probation officers resulted in the seizure of contraband that could be used in criminal activity, including illegal drugs, prohibited weapons/firearms, unauthorized cell phones, child pornography, etc. Second, I'll examine whether searches are associated with reductions in rearrest activity during the supervision term of a person under supervision.

By examining these issues, the current study will provide an effort to ground federal search practices within an evidence-based framework. Over the past several years, the U.S. federal probation system has undergone numerous conceptual and structural changes in moving toward an outcome-based approach that emphasizes crime reduction (Alexander & VanBenschoten, 2008; IBM Strategic Assessment, 2004). Presently, one of federal supervision's primary goals is defined as the protection of the community through the reduction of risk and recurrence of crime (that is, recidivism), both during and after the supervision period of a person under supervision (Hughes, 2008). To meet this key objective, the U.S. probation system has attempted to ground its supervision practices within the risk, needs, and responsivity (RNR) framework (AOUSC, 2018), where the intensity and strategies of supervision are guided by a person under supervision's criminogenic risk and needs profile (AOUSC, 2018; Lowenkamp, Johnson, VanBenschoten, Robinson, & Holsinger, 2013). The RNR model postulates that high-risk supervisees should receive more intense levels of correctional services and monitoring stratagems (including searches) than lower risk supervisees (Andrews & Bonta, 2017). An empirical investigation of federal search practices will gauge whether searches are in fact guided by the RNR framework and hence embedded within the system of evidence-based practices that informs the community corrections model (Andrews & Bonta, 2017).

Present Study

The present study will provide an empirical overview of how officers conduct searches on persons under supervision currently on federal terms of supervised release (TSR) or probation. First, I will assess the patterns of officer search activity to explore the extent to which searches are or are not associated with the PCRA risk classification or supervision levels of a person under supervision, and to investigate whether searches are perhaps influenced by other factors outside the PCRA, including the most serious conviction offense and judicial district where the search originated. The following issues will form the main components of this research:

1. How likely is a person under federal supervision to be searched?
2. Given that persons under supervision can be searched multiple times, how often are officers searching them within a specified time frame?
3. What are the most common types of searches (e.g., pre-planned searches, computer searches, exigent searches, etc.) executed by officers?
4. To what extent are searches associated with a person under supervision's PCRA risk or supervision levels?
5. How do other factors. including the most serious conviction offense and judicial district, interplay with the likelihood and number of searches?

The second part delves into outcomes and orients itself to the following issues:

1. How frequently are safety and other issues encountered during the execution of a search?
2. To what extent is contraband seized when a search is conducted?
3. Are persons under supervision subjected to a search less likely to be rearrested while under supervision compared to similarly situated supervisees who are not searched?

Method

Participants

The study sample used to examine the imposition of searches on federally supervised persons initially encompassed all supervisees who were under active federal post-conviction supervision (i.e., TSR or probation) any time during the period between fiscal years 2015 and 2018 ($n = 327,904$).[5] Searches conducted on earlier cohorts of federally supervised persons were not included because the search data were not uniformly integrated into the electronic reporting system used to capture search events until fiscal year 2015, and the

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[5] It should be noted that persons under supervision could have started their supervision terms prior to fiscal year 2015 or anytime between the period spanning fiscal years 2015 through 2018. Regardless of when the supervision term commenced, they were included in the study sample if they were under active supervision sometime between fiscal years 2015 and 2018 and had a search condition allowing them to be searched within this time frame.

fiscal year 2019 supervision cohort was not included because too little time had passed between the supervision start date and the data extraction date to capture searches and recidivism behavior.[6] It is also important to note that persons under supervision without a search condition were removed from this analysis, as hardly any of these (less than 1 percent) were actually searched (n lost = 183,983). Overall, 44 percent of persons on federal supervision between fiscal years 2015 and 2018 had a search condition; however, the percentage of persons under supervision with a search condition ranged from 4 percent for supervisees convicted of traffic/DUI offenses to 88 percent for supervisees convicted of sex offenses (data not shown in table). Forty-five percent of persons under supervision convicted of drug offenses (the largest offense category within the federal system) had a search condition.

Table 1 (next page) provides a descriptive overview of persons under supervision in the study sample. About two-fifths of the study sample (39 percent) comprised non-Hispanic whites, while most of the remaining persons under supervision were either black (29 percent) or Hispanics of any race (25 percent). Males accounted for 84 percent of the study population, and the average age was about 40 years. Approximately 9 out of 10 supervisees were on TSR. Nearly half of supervisees in the study population (46 percent) were convicted of drug offenses, while the remaining half were primarily convicted of either weapons/firearms (17 percent), financial (16 percent), sex (11 percent), or violent (6 percent) offenses. In regards to the PCRA risk classifications of these supervisees, 29 percent were classified low risk, 38 percent low/moderate, 24 percent moderate, and 9 percent high risk.

Measures

Types of Searches

As previously stated, federal probation officers can conduct several types of searches for the purpose of identifying persons under supervision who might be committing new criminal activity or violating their terms of supervised release. The types of searches used in the federal system are detailed below.

Pre-planned searches: Encompasses searches in which the officer had reasonable suspicion that contraband or evidence of a violation of the conditions of supervision

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[6] The study did not focus on searches executed during the pretrial release phase.

may be found in the place or item being searched and a special condition allowing for a search was attached to the person's supervision term (Search and Seizure Guidelines,

TABLE 1.
Descriptive statistics of federal supervisees in study sample

Variable	n	% or mean
Race/ethnicity		
White, non-Hispanic	56,161	39.2%
Black, non-Hispanic	41,030	28.7
Hispanic any race	35,121	24.5
American Indian or Alaska Native	6,822	4.8
Asian or Pacific Islander	4,058	2.8
Gender		
Male	120,208	83.5%
Female	23,711	16.5
Type of supervision		
Term of supervised release	128,936	89.6%
Probation	13,741	9.6
Other/a	1,244	0.9
Most serious conviction offense		
Drugs	65,400	45.9%
Weapons/Firearms	23,612	16.6
Financial	22,365	15.7
Sex Offense	15,660	11.0
Violence	8,280	5.8
Immigration/Customs	5,099	3.6
Public Order	1,135	0.8
Obstruction/Escape	841	0.6
Traffic/DWI	261	0.2
PCRA risk categories		
Low	41,571	28.9%
Low/Moderate	54,670	38.0
Moderate	34,225	23.8
High	13,455	9.4
Average PCRA score	143,921	7.7
Average age (in years)	143,880	39.6
Number of supervisees	143,921	

Includes 143,921 supervisees under federal supervision during the period between fiscal years 2015–2018 with search condition.

PCRA = Post conviction risk assessment

a/Includes transfers, military parole, and other forms of federal supervision.

2010). Pre-planned searches can only be conducted after a written search plan has been submitted to the Administrative Office of the U.S. Court's (AO) Safety and Information Reporting System (SIRS) and approved by the chief probation officer (or the chief's designee) of the district where the search is taking place (Search and Seizure Guidelines, 2010).

Exigent searches: Includes searches initiated without the existence of a pre-approved written search plan if exigent circumstances make it reasonably foreseeable that delay will result in danger to any individual or the public or to the loss or destruction of evidence. These searches require both a search condition and the presence of reasonable suspicion; moreover, although prior approval of a formal search plan is not required, the officer instigating this search must receive verbal approval from the chief probation officer (or the chief's designee) prior to conducting this search (Search and Seizure Guidelines, 2010).

Consent searches: Includes searches taking place in the absence of a search condition, reasonable suspicion, or a pre-approved search plan where the person under supervision consented to being searched. These searches tend to be limited in scope and involve mostly persons under supervision providing any form of consent (verbal or non-verbal) to an officer's request to conduct a search (Search and Seizure Guidelines, 2010).

Plain view seizures: Officers have discretion to seize contraband observed during a home visit or other exchanges with the supervisee if the contraband falls within plain view of the officer while justifiably interacting with the supervisee. Under the plain view exception, the officer does not need a search condition, reasonable suspicion, or pre-approved plan to seize contraband found within plain view (Search and Seizure Guidelines, 2010).

Computer searches: There are four types of computer searches currently used by federal officers including initial searches, compliance searches, investigative searches, and suspicionless searches. Officers will typically conduct an initial computer search to provide a baseline analysis of a monitored system, to verify that there is no contraband stored on the system, and to ensure compatibility with any monitoring application placed on the supervisee's electronic devices. Conversely, compliance searches are conducted to ensure that the applications used to monitor a supervisee's electronic devices are working as intended and have not been subjected to tampering;

moreover, these searches are employed to verify compliance with supervision conditions (Cybercrime Guidelines, 2016). Suspicionless computer searches entail the search of a supervisee's electronic devices for the presence of contraband without any evidence of wrongdoing. Although suspicionless computer searches are not endorsed by the Judicial Conference, many districts impose search conditions allowing for suspicionless computer searches. The three above-described computer searches—initial, compliance, and suspicionless—can be conducted without the presence of reasonable suspicion; however, they do require a special search condition and/or a supervisee's consent in order to be executed. Unlike the other forms of computer searches, investigative computer searches involve the targeted search of a specific electronic device and cannot occur unless reasonable suspicion has been established.

In this study any searches —pre-planned, exigent, consent, plain view, or computer—executed on persons under supervision during the period encompassing fiscal years 2015 through 2018 were counted as a search. Pre-planned searches that were never executed at the time of data extraction were removed from the analysis. Searches that occurred prior to fiscal year 2015 or after 2018 were also omitted. When an officer conducts a search, information about that search is entered into the AOUSC's Safety and Information Reporting System (SIRS). Details about the search event were extracted from SIRS and then matched with persons on federal post-conviction supervision. Information about the supervisee's PCRA risk characteristics, adjusted PCRA supervision levels, most serious conviction offenses, judicial district, and rearrest activity were obtained from the Probation and Pretrial Services Automated Case Management System or PACTS.

PCRA Risk and Outcome Measures

The PCRA risk classification categories were used to assess a supervisee's risk of general recidivism. The PCRA's history, development, risk scoring scales, and predictive validity are detailed elsewhere (see AOUSC, 2018; Johnson, Lowenkamp, VanBenschoten, & Robinson, 2011; Lowenkamp et al., 2013; Lowenkamp, Holsinger, & Cohen, 2015; Luallen, Radakrishnan, & Rhodes, 2016). In brief, the PCRA is a fourth-generation dynamic risk assessment tool developed to assess the risk of general and violent recidivism among persons placed on supervised

release in the U.S. federal system (AOUSC, 2018; Johnson et al., 2011; Lowenkamp et al., 2013).

In terms of assessing general recidivism, the PCRA's risk mechanism works through a process in which federal probation officers score supervisees on 15 static and dynamic risk predictors measuring criminal history, education/employment, substance abuse, social networks, and supervision attitude characteristics. These 15 predictors are used to generate a raw PCRA score ranging from 0 to 18, which translates into the following four risk categories: low (0–5 points), low/moderate (6–9 points), moderate (10–12 points), or high (13 or more points). These risk categories provide crucial information about a supervisee's likelihood of general recidivism and inform officers about the appropriate levels of supervision intensity that should be adopted (AOUSC, 2018; Johnson et al., 2011; Lowenkamp et al., 2013). While federal officers tend to adhere to the initial PCRA risk designations, it is important to note that judicial policy provides officers with discretion to override supervisees into alternative supervision levels if they think, in their own professional judgment, that the PCRA risk score under or over represents a supervisee's risk to reoffend (Cohen, Pendergast, & VanBenschoten, 2016).

In addition to predicting the probability of general recidivism, a violence trailer was recently integrated into the PCRA in order to provide officers with an assessment of a supervisee's likelihood of committing violent recidivism (Serin, Lowenkamp, Johnson, & Trevino, 2016). The violence trailer works by having officers score persons under supervision on 10 risk factors and 3 criminal thinking styles that are separate from the 15 factors used to gauge the likelihood of general recidivism.[7] The violence trailer produces a risk score that is used to place supervisees into one of three violence predictor risk categories. Since the violence trailer was deployed starting in 2017, an initial violent assessment score was available for only 24 percent of 143,921 persons under supervision included in the current study. Given the limited availability of the violence flags, I chose to focus primarily on the PCRA risk classifications measuring the likelihood of general recidivism.

In the outcomes section of this study,

the association between searches and supervisees' recidivism outcomes was examined. Specifically, recidivism was defined to include rearrests for any felony or misdemeanor offenses (excluding arrests for technical violations) that occurred while a person was on supervision during the period spanning fiscal years 2015-2018. Rearrests for new criminal activity were obtained from the New Charge Module, which is a component within PACTS that allows officers to enter details about any new arrest activity that occurred during supervision.[8]

Analytical Plan

Descriptive statistics are primarily used to measure how searches are employed among the federal post-conviction population. However, for the component of this study examining the recidivism rates between searched and non-searched persons under supervision, an exact matching process was employed (see Cook, 2015) to generate comparable groups of searched and non-searched supervisees matched on several characteristics, including age, race/ethnicity, sex, most serious conviction offense, and raw PCRA risk scores. This process allowed us to generate groups of searched and non-searched supervisees that

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[8] It should be noted that information was extracted from the PACTS new charge module rather than from the rap sheet data. As a check, I examined the arrest rates generated from the new charge module and rap sheets and found relatively similar arrest rates between the two sources.

were comparable in their recidivism risk characterics when examining the association between searches and recidivism outcomes.

Results

Patterns of Search Activity

Relationship between Searches and Most Serious Conviction Offenses

I start with an exploration of how the most serious conviction offenses are associated with the likelihood of being searched and the types of searches because, as will be shown, the most serious conviction offenses had a greater influence on officer search activity than the supervisee's risk characteristics. In general, about 5 percent of persons under supervision on TSR or probation during the period spanning fiscal years 2015 through 2018 were searched by federal probation officers (see Table 2). The search rate reported in Table 2 covers any type of search, including computer searches, consent searches, exigent searches, plain view seizures, or pre-planned searches. Nearly a third of supervisees convicted of sex offenses (31 percent) were searched during their supervision term. Conversely, the overall search rate was about 5 percent or less for supervisees convicted of public-order (5 percent), weapons (4 percent), violence (3 percent), drug (2 percent), or financial (2 percent) offenses. Given that supervisees can be searched multiple times, the average number of searches conducted during the study time frame are shown. On average,

TABLE 2.
Percent of supervisees searched by most serious conviction offense, fiscal years 2015-18

Conviction offense	Number of supervisees	Percent any search	Average searches per supervisee
All supervisees	143,921	5.4%	2.5
Most serious conviction offense			
Sex Offense	15,660	30.8%	3.3
Public Order	1,135	4.7	2.2
Weapons/Firearms	23,612	3.5	1.3
Violence	8,280	2.9	1.3
Drugs	65,400	2.0	1.2
Financial	22,365	2.0	1.4
Obstruction/Escape	841	1.9	1.4
Traffic/DWI	261	1.2	—
Immigration/Customs	5,099	0.9	1.4

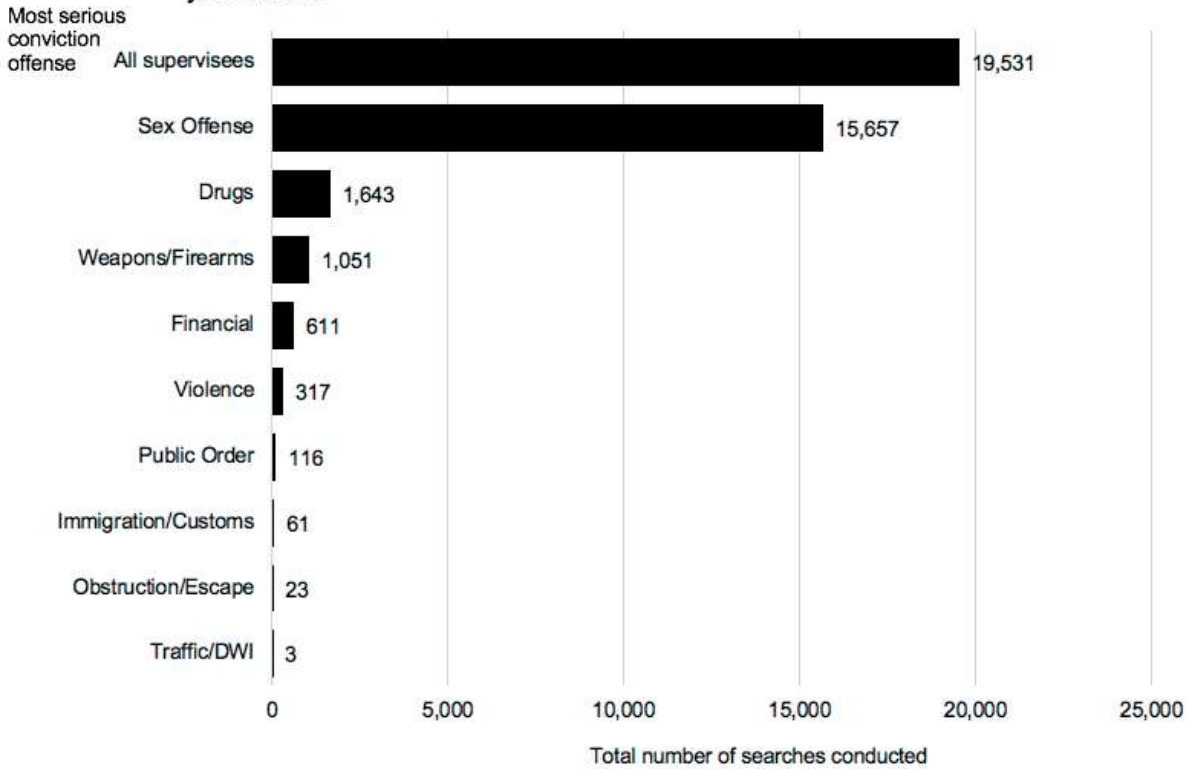*Includes 143,921 supervisees under federal supervision during the period between fiscal years 2015–18 with search condition. Data on most serious offense available for 99% of supervisees.*

Totals include supervisees with unknown offense types.

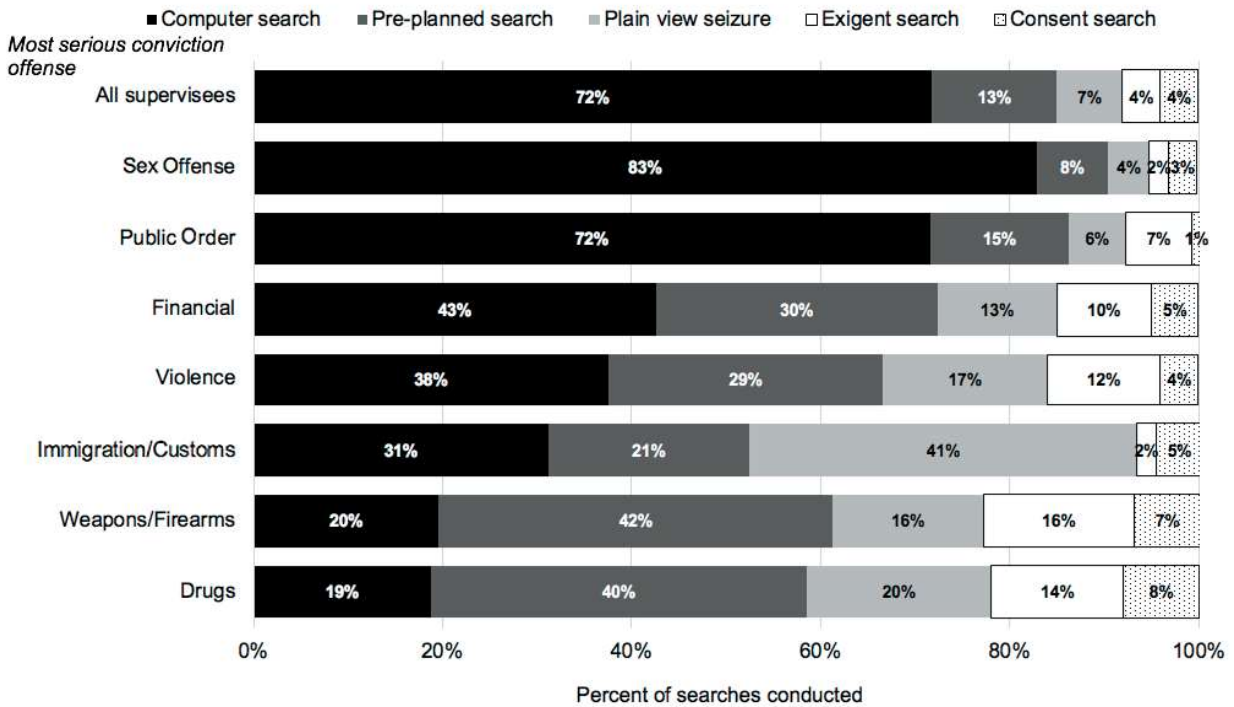*— Not enough cases to produce statistically reliable estimates (see Figure 2).*

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[7] See Serin el al. (2016) for a list of the ten factors embedded within the PCRA violence trailer.

Figure 1. Total number of searches conducted by most serious conviction offense, fiscal years 2015-18

Most serious conviction offense

Offense	Value
All supervisees	19,531
Sex Offense	15,657
Drugs	1,643
Weapons/Firearms	1,051
Financial	611
Violence	317
Public Order	116
Immigration/Customs	61
Obstruction/Escape	23
Traffic/DWI	3

Total number of searches conducted

Note: Includes 19,531 searches conducted on 7,795 supervisees searched on supervision during fiscal years 2015-18. Data on most serious offense type available for 99% of supervisees. Total includes supervisees with unknown or unclassifiable offense types.

Figure 2. Types of searches by most serious conviction offense, fiscal years 2015-18

■ Computer search ■ Pre-planned search ■ Plain view seizure ☐ Exigent search ☐ Consent search

Most serious conviction offense

Offense	Computer search	Pre-planned search	Plain view seizure	Exigent search	Consent search
All supervisees	72%	13%	7%	4%	4%
Sex Offense	83%	8%	4%	2%	3%
Public Order	72%	15%	6%	7%	1%
Financial	43%	30%	13%	10%	5%
Violence	38%	29%	17%	12%	4%
Immigration/Customs	31%	21%	41%	2%	5%
Weapons/Firearms	20%	42%	16%	16%	7%
Drugs	19%	40%	20%	14%	8%

Percent of searches conducted

Note: Includes 19,531 searches involving 7,795 supervisees searched on supervision during fiscal years 2015-18. Traffic offenses and escape/obstruction offenses excluded from figure as there were too few searches of these supervisees (n < 50) to produce statistically reliable estimates.

officers searched supervisees convicted of sex offenses 3 times and supervisees convicted of public-order offenses 2 times while under supervision.[9] The remaining offense categories recorded an average of about 1 search occurring during a supervision term.

In addition to examining the overall search rate and average number of searches, it is useful to review the total number of searches officers conducted within the study time frame broken down by the most serious conviction offense. A total of 19,531 searches took place between fiscal years 2015 through 2018, and four-fifths of these searches were executed on supervisees convicted of sex offenses (see Figure 1, previous page). Among the remaining 3,800 searches, 43 percent were directed at supervisees convicted of drug offenses, 27 percent at supervisees convicted of weapons offenses, and 16 percent at supervisees convicted of financial offenses.

Information about the types of searches (e.g., computer, pre-planned, plain view, exigent, consent) broken down by the most serious conviction offense are provided in Figure 2 on the previous page. For the 19,531 searches, 72 percent involved a computer search, while the remainder encompassed pre-planned searches (13 percent), plain view seizures (7 percent), exigent searches (4 percent), or consent searches (4 percent). Computer searches were the dominant form of search for supervisees convicted of sex or public-order offenses; 83 percent of searches for supervisees convicted of sex offenses, and 72 percent of searches for supervisees convicted of public-order offenses involved a computer search. In comparison, 80 percent of searches for supervisees convicted of drug or weapons offenses involved a non-computer search. Pre-planned searches accounted for about two-fifths of searches directed against supervisees convicted of drug or weapons offenses, while approximately a third of searches executed on these supervisees involved plain view seizures or exigent searches.

Relationship between Searches and PCRA Risk Classifications

The next series of tables and figures gauges whether persons under supervision who were designated higher risk as assessed by the PCRA were more likely to be searched compared to those classified into the lower PCRA risk categories. In general, findings show higher risk supervisees were not subjected to searches at substantially elevated rates compared to their lower risk counterparts. The percentage of supervisees who received any type of search, for example, was essentially the same for those classified into the PCRA low/moderate, moderate, or high-risk categories; about 4 to 5 percent of supervisees in these risk categories were searched during the study period (see Table 3). Interestingly, PCRA low-risk supervisees were nearly two times more likely to be searched (8 percent searched) than PCRA high-risk supervisees (5 percent searched). Much of these findings can be explained by persons convicted of sex offenses, who tend to score on the lower end of the PCRA risk continuum (see Cohen & Spidell, 2016). When persons convicted of sex offenses are removed from the analysis, there was a modest relationship between searches and risk, with the percentage searched increasing from 1 percent for PCRA low-risk supervisees to 4 percent for PCRA high-risk supervisees.

Rather than examining searches by the PCRA risk levels, it can be more instructive to assess the rates at which supervisees are searched according to the supervision levels which officers ultimately assign them. Unlike the original PCRA risk categories, the supervision levels are adjusted to account for supervision overrides (Cohen et al., 2016). An examination of the association between searches and the PCRA supervision levels shows that supervisees placed into the highest supervision levels were 17 times more likely to be searched (17 percent search rate) than supervisees placed into the lowest supervision category (1 percent search rate).

Table 4 (next page) highlights the percentage of persons under supervision searched according to whether they did or did not receive an upwards supervision override. As previously discussed, officers have discretion to override a supervisee's original PCRA risk classifications into higher supervision levels if they determine that, in their own professional judgment, the PCRA score underrepresents a supervisee's likelihood of reoffending (Cohen et al., 2016).[10] Officers can also override certain subcategories of supervisees, particularly those convicted of sex offenses, into higher supervision levels. Our analysis generally shows supervisees with supervision overrides

[10] Only upward overrides are shown, as very few supervision overrides (less than 1 percent) involved downward departures in supervision levels.

TABLE 3.
Percent of supervisees searched by PCRA risk or supervision levels, fiscal years 2015-18

PCRA characteristics	All Supervisees		Convicted Sex Supervisees Excluded	
	Number of supervisees	Percent searched	Number of supervisees	Percent searched
PCRA risk levels				
Low	41,571	7.7%	33,369	0.9%
Low/Moderate	54,670	4.4	50,155	2.2
Moderate	34,225	4.4	32,160	3.3
High	13,455	4.8	12,577	4.2
Violence categories/a				
One	21,611	4.3%	18,661	1.1%
Two	9,326	3.2	8,772	2.4
Three	3,563	3.5	3,431	3.0
PCRA supervision levels/b				
Low	27,494	0.9%	27,351	0.8%
Low/Moderate	45,551	2.3	44,980	2.0
Moderate	31,303	3.9	30,282	3.3
High	27,750	16.6	15,656	5.0

Notes: PCRA = Post Conviction Risk Assessment

a/Violence categories generated from PCRA 2.0 assessments available for 24% of supervisees supervised during fiscal years 2015 through 2018 as officers did not begin conducting PCRA 2.0 assessments until early 2017.

b/PCRA supervision level information available for 92% of supervisees on supervision during fiscal years 2015 through 2018.

[9] While the results for convicted public-order persons under supervision might be somewhat surprising, it is important to note that about 7 percent of them had a prior arrest or conviction record for sex offenses.

TABLE 4.
**Percent of supervisees searched by supervision overrides, fiscal years 2015-18**

Risk levels and supervision overrides	All Supervisees		Convicted Sex Supervisees Excluded	
	Number of supervisees	Percent searched	Number of supervisees	Percent searched
Low supervision - no override	27,451	0.9%	27,309	0.8%
Low to low/moderate	2,275	5.1	2,011	1.4
Low to moderate	825	15.9	340	3.2
Low to high	6,470	34.8	415	8.4
Low/Moderate supervision - no override	43,262	2.1%	42,957	2.0%
Low/Moderate to moderate	1,629	7.6	1,410	4.8
Low/Moderate to high	4,843	25.0	1,303	7.9
Moderate supervision - no override	28,841	3.3%	28,525	3.2%
Moderate to high	3,417	15.1	1,773	6.8
High supervision - no override	13,020	4.9%	12,165	4.3%

Notes: PCRA supervision override information available for 92% of supervisees on supervision during fiscal years 2015 through 2018. Searches for downward overrides not shown. Less than 1% of supervision overrides involved a downward departure in supervision levels.

having higher search rates than supervisees whose initial PCRA risk designations were never changed. For example, low-risk supervisees who never received any override manifested a 1 percent search rate, while 35 percent of low-risk supervisees overridden into the highest supervision category were searched. Interestingly, low, low/moderate, and moderate-risk supervisees overridden into the highest supervision level were at least 3 times more likely to be searched than those originally classified into the PCRA high-risk category. Similar patterns of elevated search activity occurred for supervisees with supervision overrides across the PCRA risk levels.

Most of these findings can be explained by persons convicted of sex offenses, who are almost always subjected to supervision overrides (see Cohen et al., 2016) and, if searched, are overwhelmingly likely to receive a search focused on computers or other electronic devices (see Figure 4). When persons convicted of sex offenses were omitted from the analysis, the remaining supervisees with

Figure 3. Total number of searches conducted by PCRA supervision levels and presence of overrides, fiscal years 2015-18
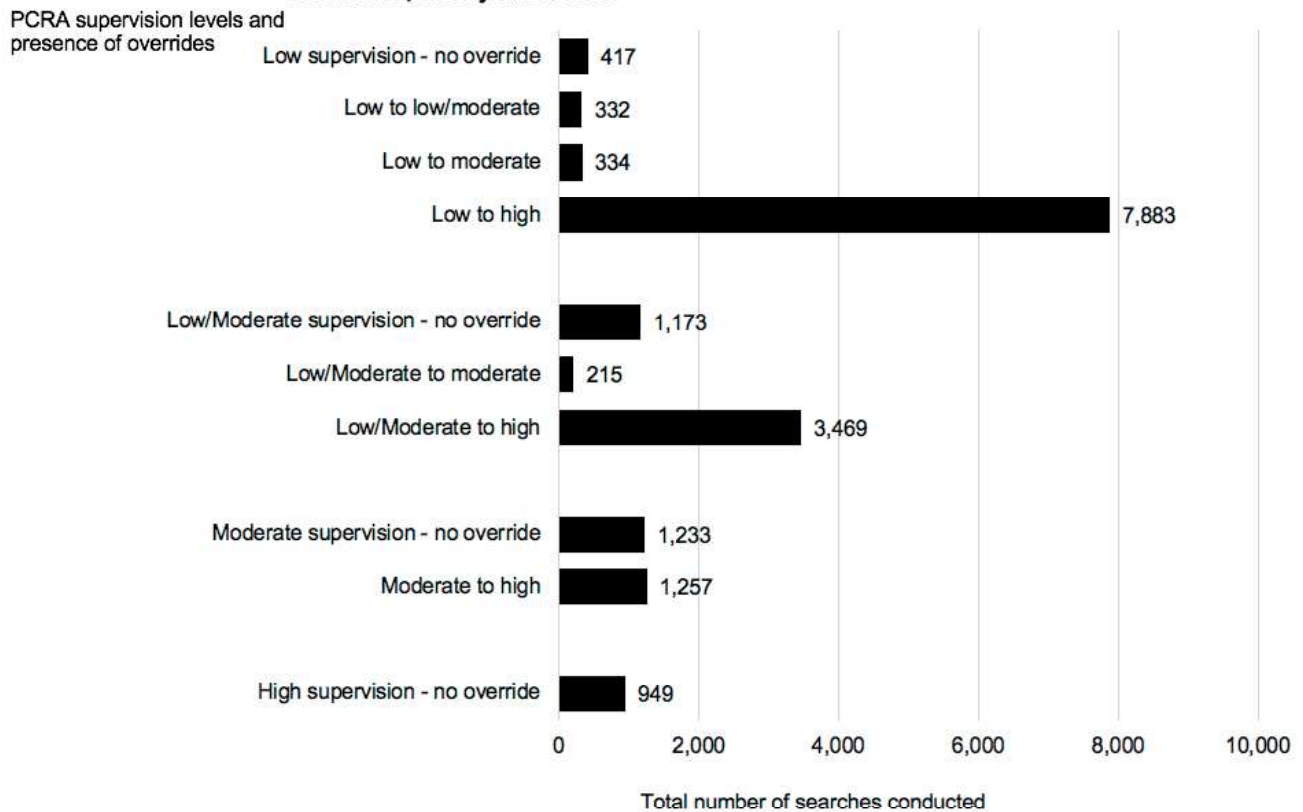
PCRA supervision level and override information available for 92% of supervisees on supervision during fiscal years 2015 through 2018. Number of searches for supervisees with downward overrides not shown.

supervision overrides were still more likely to be searched than supervisees whose PCRA risk classifications were unchanged, but the differences were less substantial. Low-risk supervisees overridden into the highest supervision category, for example, were only twice as likely to be searched (8 percent search rate) as supervisees originally classified into the PCRA high-risk category (4 percent search rate).

The importance of overrides in officer search activity can also be gleaned by examining the total number of searches conducted according to whether the person under supervision received an override (see Figure 3). Among the 17,000 searches conducted during the study period,[11] nearly 80 percent were executed on supervisees with an upwards supervision override. For the 3,772 searches executed on supervisees whose risk classifications were not changed, 64 percent targeted supervisees initially assessed into the low/moderate or moderate PCRA risk categories.

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[11] Data on supervision levels and overrides were available for 92 percent of persons under supervision.

Figure 4 presents information on the types of searches conducted according to whether a supervisee witnessed an upwards supervision override or saw no changes in his or her original PCRA risk classification. Not surprisingly, the overwhelming majority of searches executed on persons under supervision with supervision overrides involved computer searches, while supervisees whose original PCRA risk categories remained unchanged were generally more likely to receive non-computer searches. Computer searches, for instance, accounted for 86 percent of all searches conducted on low-risk supervisees placed into the highest supervision category through an override. Pre-planned searches, conversely, comprised approximately two-fifths of searches executed on low/moderate- and moderate-risk supervisees reporting no changes in their supervision levels. It is notable that supervisees with an initial PCRA risk classification of high risk witnessed higher percentages of computer searches (38 percent) than pre-planned searches (31 percent).

Examining Computer Searches Executed on Federally Supervised Supervisees

Given the overwhelming presence of searches focused on a supervisee's cell phones, computers, or other electronic equipment, it is important to provide a brief overview of the types and characteristics of computer searches executed on federally supervised persons. As previously stated, federal probation officers have authority to conduct four types of computer searches: compliance searches, initial searches, investigative searches, and suspicionless searches. Nearly two-fifths of computer searches were executed to ensure a supervisee's compliance with supervision terms, while about a third were initiated for investigative purposes (data not shown). Though the Judicial Conference discourages suspicionless computer searches, about a quarter of computer searches fell within this particular search category. Last, it is important to note that 8 out of 10 computer searches targeted a supervisee's cell phone or tablet, while most of the remaining computer searches

Figure 4. Types of searches conducted by PCRA supervision levels and presence of overrides, fiscal years 2015-18
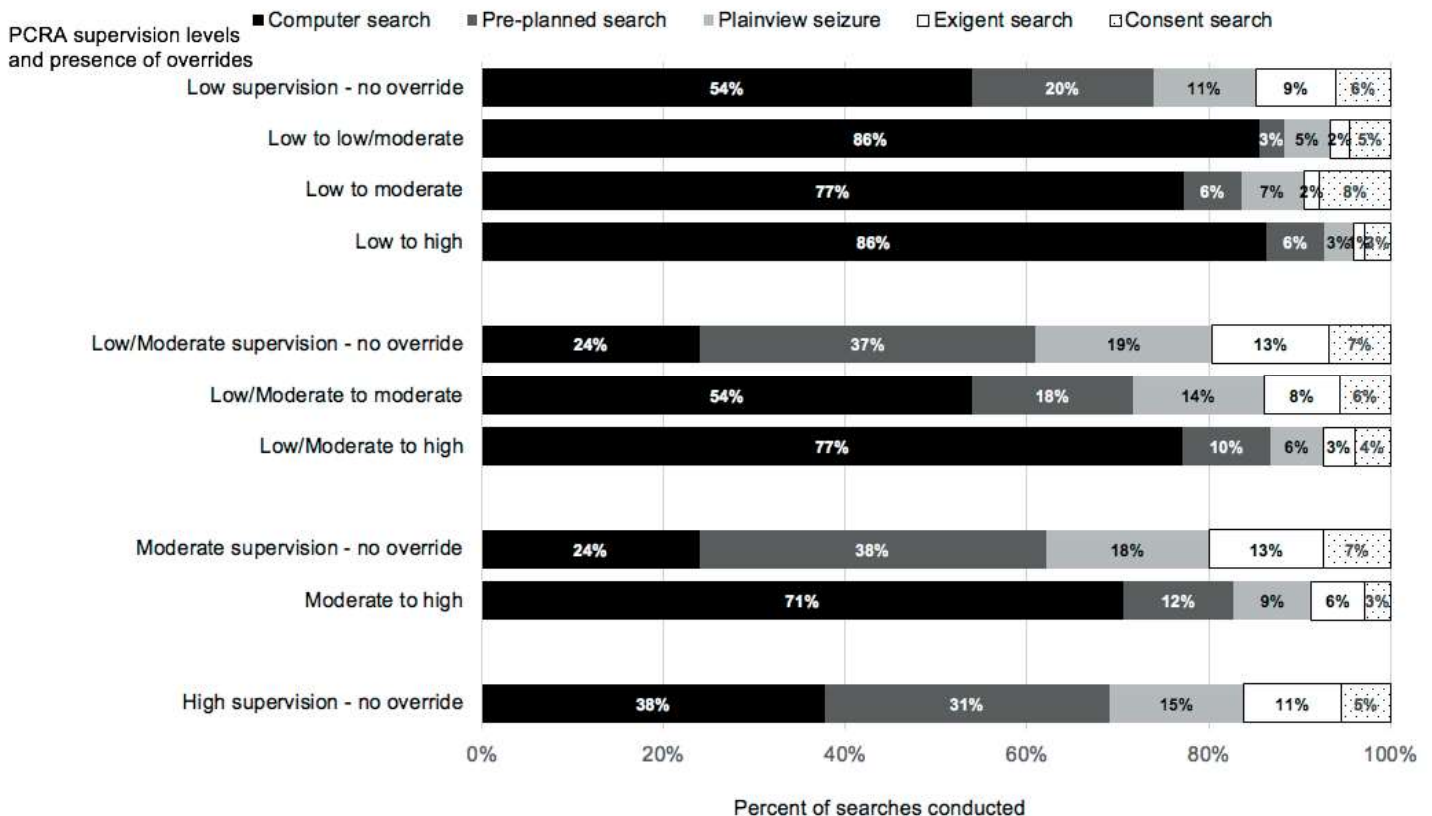
Note: Includes 17,262 searches involving 7,795 supervisees searched on supervision during fiscal years 2015 - 18.

focused on personal computers or laptops (data not shown).

Computer searches, moreover, can involve divergent investigative methods. Some computer searches, including software-based or forensic inspections, encompass diagnostic investigations of a supervisee's computer or electronic devices, which can be fairly intrusive. Non-software related computer searches, in comparison, consist of officers inspecting electronic devices with the intent of conducting a quick spot check of a supervisee's activities with cell phones, computers, tablets, etc. Figure 5 (below) shows 93 percent of computer searches being conducted against persons convicted of sex offenses; about three-fourths of these searches were non-software related investigations. The remaining computer searches of persons convicted of sex offenses involved software investigations (13 percent), forensic inspections (11 percent), and remote inspections (2 percent).

Examining Searches Across the Federal Judicial Districts

It is also important to acknowledge that there are substantial disparities in the use of searches across the federal judicial districts. Some districts make extensive use of searches, while in other districts, searches are relatively rare or not conducted at all. Eight of the 94

judicial districts, for example, accounted for nearly half of the 19,000 searches executed (data not shown). Each of these eight districts conducted at least 600 searches, with some administering over 1,000 searches between fiscal years 2015 and 2018. In comparison, most of the judicial districts executed 200 or fewer searches. Almost all of these disparities can be explained by the divergent application of non-software related computer searches.

Searches and Outcomes

This section examines the presence of safety and other issues that arose during the search, the percentage of searches resulting in the seizure of contraband, and the association between searches and the rearrest behavior of persons under supervision.

Presence of Safety Issues

Table 5 (page 23) illustrates the presence of various safety or other issues (e.g., video recording, pre-search surveillance) that arose during an executed search and the association between these safety issues and the searched supervisee's PCRA risk levels and most serious conviction offenses.[12] Officers
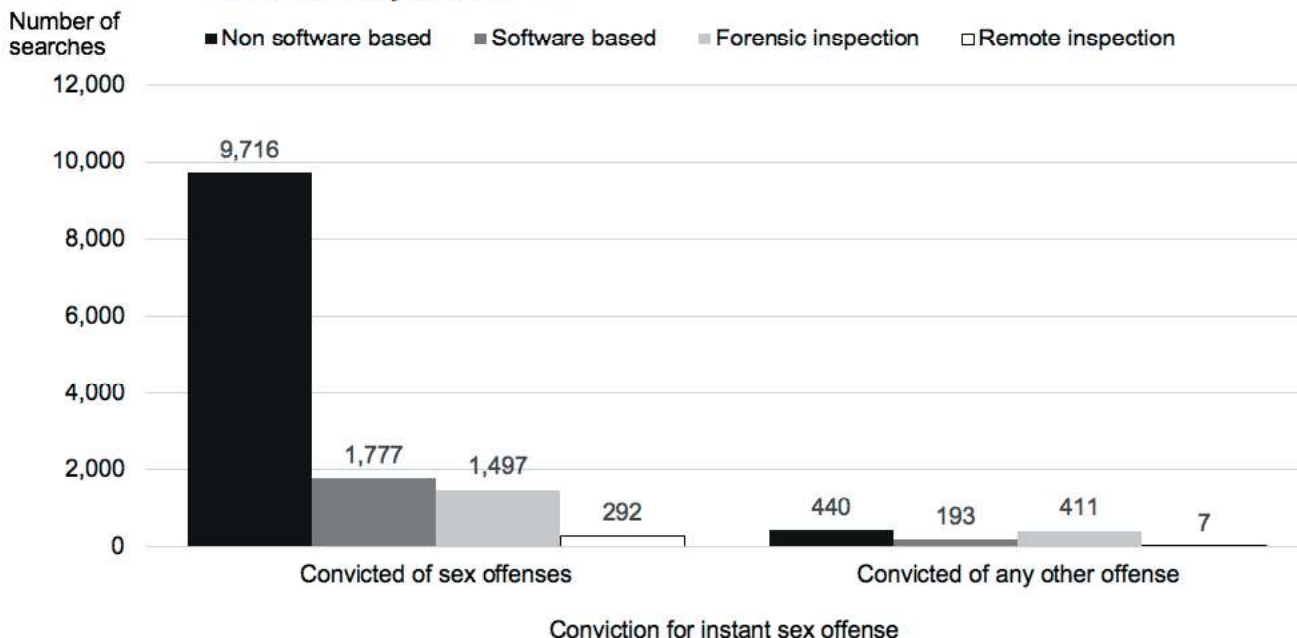
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[12] It should be noted that computer searches and plain view seizures were omitted from this table as safety issues were not applicable for these types of searches.

reported restraining supervisees in 27 percent of searches, arresting supervisees in 16 percent of searches, dealing with safety incidents in 2 percent of searches, encountering risks in 15 percent of searches, and handling third parties in 51 percent of searches. All of these reported safety issues were more likely to be present among searches conducted for high- rather than low-risk supervisees. For example, officers were 4 times more likely to apply restraints for searches conducted on high-risk supervisees (48 percent restrained) than among searches applied to low-risk supervisees (12 percent restrained). Additionally, federal officers had to handle third parties in 38 percent of searches administered on low-risk supervisees, while third parties were an issue of concern for 70 percent of searches conducted on high-risk supervisees. These safety issues also arose more frequently for persons under supervision convicted of drugs or weapons offenses than for the other offense types.

Seizure of Contraband

Illegal contraband was seized in about two-thirds of consent, exigent, or pre-planned searches (see Table 6, next page). It is important to note that, for this analysis, plain-view seizures are omitted, as these types of searches always result in the seizure of illegal items. Computer searches are also omitted, as

Figure 5. Number of computer search types conducted by instant conviction for sex offenses, fiscal years 2015 - 18

Number of searches

■ Non software based   ■ Software based   ▨ Forensic inspection   □ Remote inspection

Convicted of sex offenses: 9,716 · 1,777 · 1,497 · 292
Convicted of any other offense: 440 · 193 · 411 · 7

Conviction for instant sex offense

Note: Includes supervisees who received a computer search during the time period between fiscal years 2015-18.

TABLE 5.
Presence of safety and other issues by PCRA risk levels and most serious conviction offense

PCRA risk and most serious offense	Supervisee restrained/a	Supervisee arrested/a	Safety Incident occurred/b	Risk encountered/a	Search videotaped/a	Surveillance conducted/c	Third party present/a
All supervisees	27.2%	15.9%	1.8%	15.2%	31.2%	31.2%	51.1%
PCRA risk levels							
Low	11.5%	6.6%	0.6%	10.3%	32.7%	20.7%	37.9%
Low/Moderate	26.4	16.4	2.0	15.1	30.5	32.4	51.3
Moderate	39.0	22.5	2.0	18.8	30.2	38.2	59.2
High	48.1	25.8	3.8	21.2	31.5	39.1	69.6
Most serious conviction offense							
Drugs	42.9%	27.2%	3.2%	19.0%	29.8%	42.2%	65.2%
Financial	27.7	16.4	2.6	17.2	25.9	40.7	61.7
Sex offense	9.6	5.6	0.6	9.6	32.0	19.5	35.2
Violence	39.2	19.6	3.0	17.5	32.9	40.2	62.2
Weapons/Firearms	52.1	27.1	2.7	23.5	32.0	40.1	68.1

Notes: Presence of safety and other issues for supervisees convicted of immigration, obstruction, public-order or traffic offenses not shown as there were too few supervisees in these offense categories to produce reliable estimates.
a/Excludes computer searches and plain-view seizures.
b/Excludes computer searches.
c/Excludes computer searches, consent searches, exigent searches, and plain-view seizures.

relatively few of these searches (13 percent) resulted in contraband being seized (Pyburn, 2019). Among the remaining search types, exigent and pre-planned searches were more likely to yield illegal contraband than consent searches. About two-fifths of consent searches resulted in the seizure of contraband, while over 7 out of 10 exigent searches (78 percent) and pre-planned searches (73 percent) witnessed contraband being seized. By the PCRA risk levels, contraband was 10 percentage points more likely to be seized among high- compared to low-risk supervisees; however, among pre-planned searches, there were negligible differences in the contraband seizure rates across the four PCRA risk categories. In general, contraband seizure rates were highest for supervisees convicted of financial offenses and lowest for supervisees convicted of sex offenses.

Various forms of illicit contraband are often seized upon the successful completion of a search. The most common types of contraband seized included cell phones, illegal drugs, paraphernalia, computer hardware/software/electronic storage devices, ammunition, financial information and documents related to violations, weapons (firearms and non-firearms), pornography, and cash (Vicini, 2019). Cell phones were typically seized when officers conducted searches to investigate supervisees who were guilty of sex offenses or suspected of drug activity or financial crimes. Furthermore, various types of illegal drugs are frequently seized during searches including marijuana, methamphetamine, cocaine, heroin, fentanyl, designer drugs, and unauthorized prescription narcotics (Vicini, 2019). During fiscal year 2018, for example, one search yielded approximately 80 pounds of marijuana and 130 pounds of methamphetamine (Vicini, 2019). Other searches generated various weapons including pistols, hunting rifles, assault rifles, and shotguns. Lastly, officers reported recovering approximately $700,000 in cash during fiscal year 2018.

TABLE 6.
Percent of searches with contraband seized by PCRA risk levels and most serious conviction offense (computer searches and plain-view seizures excluded)

| PCRA risk and most serious offense | Percent with contraband seized | | | |
	All searches	Consent search	Exigent search	Pre-planned search
All supervisees	68.2%	43.2%	78.0%	72.6%
PCRA risk levels				
Low	63.5%	34.9%	84.4%	71.8%
Low/Moderate	68.5	42.2	76.6	72.9
Moderate	71.4	54.6	74.8	73.5
High	73.7	75.0	78.2	72.0
Most serious conviction offense				
Drugs	72.8%	57.9%	77.6%	74.1%
Financial	77.7	72.7	74.6	79.7
Sex offense	62.6	34.2	78.3	71.0
Violence	70.6	64.3	73.0	70.7
Weapons/Firearms	73.0	61.8	79.7	72.2

Notes: Contraband seizures for supervisees convicted of immigration, obstruction, public-order, or traffic offenses not shown as there were too few supervisees in these offense categories to produce reliable estimates.
Percent estimations exclude computer searches and plain-view seizures.

Searches and Recidivism

The final part of the extant study focuses on whether searches executed by federal probation officers are associated with reductions in rearrest activity by supervisees compared to supervisees who were never searched. When assessing the extent to which searches might be correlated with supervisee arrest patterns, it is important to account for the fact that searched supervisees differ on a variety of dimensions from non-searched supervisees. Specifically, searched supervisees diverged from non-searched supervisees on several factors associated with their likelihood of recidivism, including their PCRA risk scores, most serious conviction offenses, demographic characteristics, etc. In order to gauge whether supervisees subjected to searches manifested different arrest behavior from that of supervisees not searched, it is important to account or control for the various factors that could influence a supervisee's likelihood of recidivism outside the search event.

An exact matching process (see Cook, 2015) was used in order to statistically account or control for the dissimilarities between searched and non-searched supervisees. Exact matching works by randomly selecting searched and non-searched supervisees who possessed the same characteristics on several risk dimensions. The criterion used in the matching process included the supervisee's age, sex, race/ethnicity, most serious conviction offense, and raw PCRA risk score. After matching, the non-searched supervisee population had the exact same age, sex, race/ethnic, convicted offense types, and PCRA risk distributions as the searched population of persons under supervision (see Appendix, Table 1). Moreover, because computer searches are applied in a very different manner than non-computer searches, two additional matched subgroups were generated. The first compared supervisees subjected to a computer search with a matched group of non-searched supervisees, and the second compared supervisees who received a non-computer search with a matched group of non-searched supervisees. Hence, this process generated three subsamples comparing supervisees who were never searched with matched groups of supervisees receiving (1) any search, (2) computer searches, or (3) non-computer searches. [13]

An examination of the recidivism rates for the matched groups of searched and non-searched persons under supervision across the four PCRA risk levels is provided in Table 7. In general, supervisees who were searched during their supervision terms were significantly more likely to garner a new criminal arrest than non-searched supervisees. For example, the arrest percentages for searched high-risk supervisees were 10 points higher (46 percent arrest rate) than those of high-risk supervisees never subjected to any type of search (36 percent arrest rate).[14] This pattern of higher arrest percentages for the searched compared to non-searched supervisees held for all the PCRA risk classification categories.

A different pattern of supervisee rearrest activity, however, emerges when computer and non-computer searches are examined separately. In general, supervisees subjected

to computer searches exhibited recidivism behavior similar to that of matched samples of non-searched supervisees. This finding held regardless of a supervisee's initial PCRA risk classification. Conversely, supervisees garnering non-computer searches were significantly more likely to be rearrested than matched groups of non-searched supervisees. This manifested itself across all the PCRA risk categories, indicating higher rates of failure for searched compared to similarly situated non-searched supervisees.

The finding of higher recidivism rates for supervisees with non-computer searches compared to similarly situated non-searched supervisees can be explained by the nexus between searches and the searching officer's discretion to have law enforcement personnel present at the search to effect an arrest.[15]

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[13] Given the differences in the use of searches at the district level, I also used logistic regression models with matched subsamples to control for the district where the searches were conducted. Results from the logistic regression models parallel those of the cross-tabulations highlighted in this report.

[14] Chi-square tests show all arrest rate differences between searched and non-searched persons under supervision testing at the .001 level.

[15] It is the policy of the Judicial Conference that a probation officer may not initiate a revocation proceeding by a warrantless arrest and must instead first obtain court approval, after which the United States Marshals Service shall execute the arrest warrant. Given the limitations placed on the federal

TABLE 7.

Percent of matched searched and non-searched supervisees arrested for any offense by PCRA risk level

PCRA risk & search type	Not searched		Searched	
	Number of supervisees	Percent arrested	Number of supervisees	Percent arrested
Any search				
All supervisees	7,143	13.1%	7,143	20.5%***
Low	2,973	3.9	2,973	7.3***
Low/Moderate	2,210	12.9	2,210	22.4***
Moderate	1,416	23.5	1,416	35.5***
High	544	36.0	544	46.3***
Computer search				
All supervisees	4,193	9.1%	4,193	11.0%**
Low	2,366	4.1	2,366	5.5
Low/Moderate	1,147	10.6	1,147	12.7
Moderate	509	20.0	509	23.2
High	171	33.9	171	39.2
Non-computer searches/a				
All supervisees	4,345	17.4%	4,345	28.5%***
Low	1,228	4.9	1,228	11.0***
Low/Moderate	1,523	15.3	1,523	28.2***
Moderate	1,130	25.7	1,130	39.5***
High	464	37.3	464	49.6***

Note: Searched and non-searched supervisees matched on age, race/ethnicity, gender, most serious conviction offense, and PCRA raw scores.

Matching results in the loss of about 7% - 8% of supervisees searched.

a/Includes post searches, exigent searches, consent searches, and plain-view seizures.

**p < .01; ***p < .001

Specifically, law enforcement personnel from other local, state, or federal agencies are often present while a search is being conducted by federal probation officers, and these law enforcement officials have the authority to place a person under supervision under arrest prior to the search or at the time when illegal contraband is seized. An examination of the number of days between the search and arrest date, for example, reveals that 26 percent of supervisees who were both searched and arrested were arrested on the same day that they were searched (see Figure 6, below). Moreover, about 43 percent of supervisees subjected to a search and an arrest were arrested within 30 days of their search date. It should be noted that this pattern only held for non-computer searches.

Discussion

The current study provided a profile of searches conducted on persons under federal post-conviction supervision (that is, TSR or probation). In general, it found that the decision to execute a search was not closely associated with the risk characteristics of supervisees as measured by the PCRA; rather, searches tended to be offense-specific. Notably, the study found that federally supervised persons convicted of

sex offenses were substantially more likely to be searched, searched on multiple occasions, and subjected to computer searches than those under federal supervision for non-sex related offenses (e.g., drugs, financial, violence, weapons, etc.). The concentration of searches on those convicted of sex offenses meant that searches were typically directed at supervisees whose supervision levels were adjusted upwards since, as previously noted, nearly all persons convicted of sex offenses initially designated into the PCRA low or low/moderate risk categories were placed by overrides into the highest supervision categories (Cohen et al., 2016). Moreover, certain districts used searches to a substantially greater extent than others, and the differential application of computer searches accounted for most of this inter-district variation. Finally, the majority of computer searches encompassed non-software related spot checks and usually did not uncover contraband. Given that many computer searches are not informed by the presence of reasonable suspicion, it should not be too surprising that most of these searches do not result in the successful seizure of prohibited/unlawful items.

Non-computer searches, in comparison, were somewhat more likely to be executed on supervisees classified as higher risk by the PCRA. Yet, these searches too were mostly focused on supervisees convicted of certain offenses, specifically drugs or weapons, and

although there was some association between non-computer searches and supervisee risk, it is notable that relatively few of even the PCRA high-risk persons under supervision (about 5 percent) were subjected to non-computer searches. Non-computer searches tended to occur after approval of a pre-approved search plan, though a sizable minority took place under the plain view, exigent, or consent search doctrines.

Importantly, the current research shows that searches had mixed effects in terms of ensuring community safety. On the one hand, most non-computer searches yielded some form of contraband; about two-thirds of all non-computer searches and three-fourths of pre-planned searches resulted in contraband being seized. This is an important finding, as it demonstrates that when officers conduct searches because they have reasonable suspicion that illegal activity is taking place, and when these searches are executed purposively and strategically, they are likely to result in the seizure of illicit items. Many items seized during searches are often the products of criminal activity or could be used to commit future crimes. Hence, searches have the capacity to enhance community safety by removing illegal drugs, firearms, or cash from public circulation as well as keeping persons under supervision from using these items to either assist in the commission of or engagement in illegal conduct.

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probation officer's arrest authority, law enforcement personnel from other entities are often present at searches for the purpose of placing a person under supervision on arrest.

Figure 6. Percentage of supervisees with non-computer searches arrested before, the same day of, or after the search occurred

43% of arrested supervisees arrested one month before or after the search
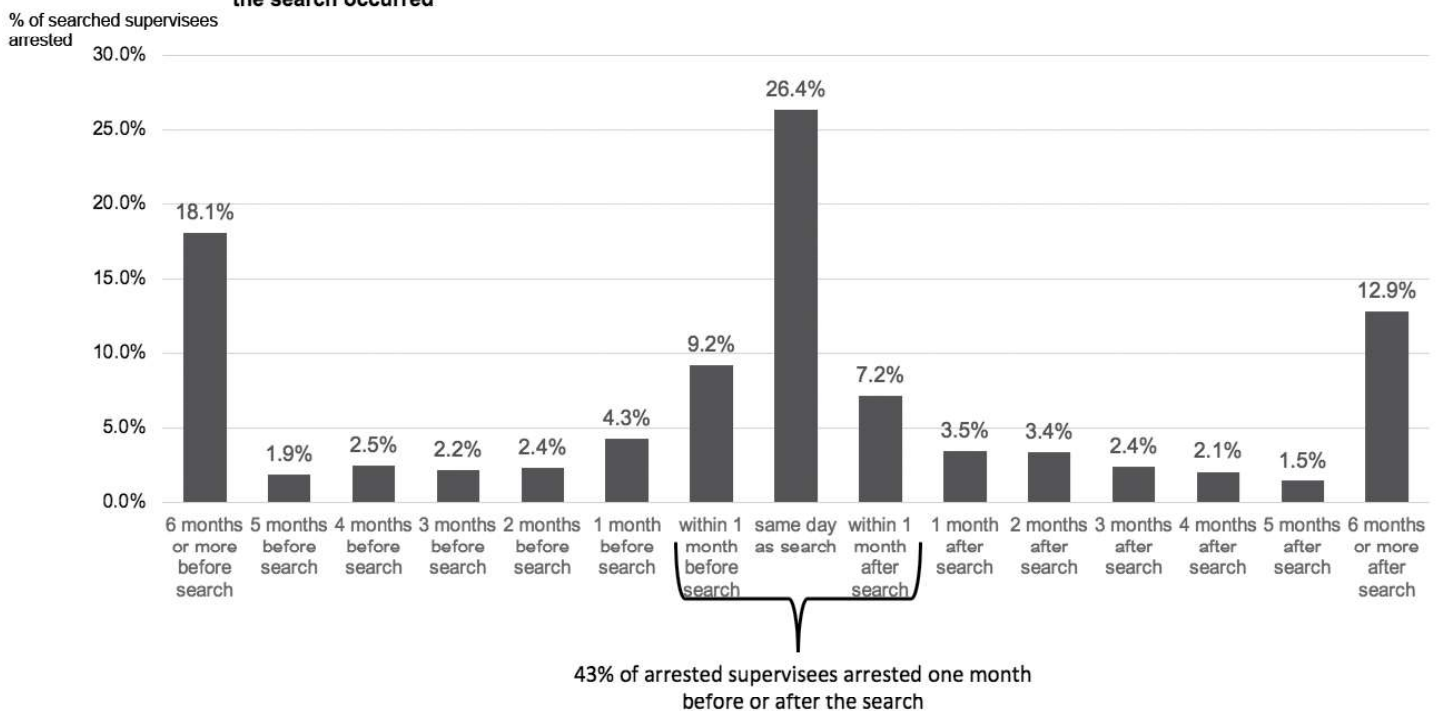
While evidence suggests that seizure of contraband could improve community safety, the extant research also shows that searches were not correlated with improved recidivism outcomes. Specifically, supervisees subjected to any forms of search did not manifest lower rearrest rates compared to similarly situated supervisees who were never searched. The relationship between searches and rearrests, however, was highly dependent upon the type of search executed. Supervisees targeted with computer searches manifested recidivism rates similar to those of non-searched supervisees; conversely, supervisees receiving non-computer searches were more likely to be rearrested than their non-searched counterparts. The positive association between non-computer searches and arrests results from the fact that officers have discretion to authorize other law enforcement personnel present during the search to execute an arrest when contraband is discovered. In fact, the current study showed that sizable percentages of persons under supervision who had both a non-computer search and an arrest were arrested on the same day that the search occurred.

The current study's findings that searches are most frequently executed on those convicted of sex offenses and aimed at the cell phones and other electronic devices of these supervisees, that non-computer searches are not closely guided by the PCRA's risk classification categories but rather are centered on certain offense types (e.g., drugs and weapons), that the use of searches varies substantially across the federal judicial districts, and that searches are not associated with reductions in a supervisee's rearrest behavior suggest that this strategy of monitoring the behavior of persons under supervision might be better informed by the RNR framework of supervision. In light of this research, officers might want to consider modifying their search stratagems so that they more intensely target moderate- or high-risk supervisees as assessed by the PCRA.

It is also important to note that searches do produce several positive benefits. Importantly, the fact that a sizable percentage of non-computer searches resulted in the seizure of contraband illustrates that these monitoring techniques do uncover various forms of illegal behavior. Moreover, the intensive use of computer searches on those convicted of sex offenses constitutes a mechanism for monitoring these supervisees' internet activity for prohibited conduct. These specific forms of monitoring have the potential to enhance community safety and hence, should be encouraged. Whether the efficacy of searches could be further augmented by more closely grounding this technique within the RNR framework is a topic requiring further debate and discussion within the federal probation system.

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Statute citations

18 U.S. Code § 3561. Sentence of probation.
18 U.S. Code § 3583. Inclusion of a term of supervised release after imprisonment.

APPENDIX TABLE 1.
Matching searched and non-searched supervisees

Matching variables	Non-Matched sample		Matched sample	
	Supervisee not searched	Supervisee searched	Supervisee not searched	Supervisee searched
PCRA risk levels				
Low	28.2%	41.2%	41.6%	41.6%
Low/Moderate	38.4	31.0	30.9	30.9
Moderate	24.0	19.5	19.8	19.8
High	9.4	8.3	7.6	7.6
Avg PCRA score	7.7	6.9	6.8	6.8
Most serious conviction offense				
Drugs	47.5%	17.0%	18.0%	18.0%
Financial	16.3	5.8	5.7	5.7
Immigration/Customs	3.8	0.6	0.5	0.5
Obstruction/Escape	0.6	0.2	0.0	0.0
Public Order	0.8	0.7	0.3	0.3
Sex Offense	8.0	62.0	61.4	61.4
Traffic/DWI	0.2	0.0	0.0	0.0
Violence	6.0	3.1	2.8	2.8
Weapons/Firearms	16.9	10.8	11.3	11.3
Race/ethnicity				
American Indian or Alaska Native	4.9%	2.6%	2.2%	2.2%
Asian or Pacific Islander	2.9	1.5	0.8	0.8
Black, non-Hispanic	29.3	17.7	17.7	17.7
Hispanic, any race	25.4	9.3	8.7	8.7
White, non-Hispanic	37.5	68.9	70.7	70.7
Sex				
Male	82.9%	94.5%	95.5%	95.5%
Female	17.1	5.5	4.5	4.5
Avg age (in years)	39.5	42.3	42.2	42.2
Number of supervisees	136,126	7,795	7,143	7,143

Note. Table shows matching procedure used to generate equivalent groups of supervisees with supervisees with no searches and supervisees with any search. Similar matching approaches were used to generate subsamples of supervisees not searched who were matched with supervisees who received computer searches or supervisees targeted with non-computer searches.