

HONOLULU POLICE DEPARTMENT

POLICY

LAW ENFORCEMENT ROLE, RESPONSIBILITIES, AND RELATIONSHIPS

January 1, 2003

Policy Number 1.10

ASSISTANCE IN WARRANTLESS SEARCHES OF PROBATIONERS

I. POLICY

Officers who assist the Adult Probation Division (APD), First Circuit Court, in warrantless searches of probationers shall act in accordance with this directive and the attached memorandum of agreement.

II. BACKGROUND

- A. The Hawaii Supreme Court has ruled that APD officers have the authority to execute warrantless searches on the person, residence, vehicle, or other property of a probationer. In so doing, the court also ruled that such searches must be reasonable and must be justified by a reasonable suspicion supported by specific and articulable facts that probation is being violated.
- B. The purpose of searching a probationer is to provide correctional supervision and rehabilitation to the probationer. The APD is restricted to searching for evidence of probation violation.
- C. The search cannot be used as a pretext to investigate and prosecute criminal activity. Therefore, new and additional criminal cases must be investigated through appropriate police channels.
- D. Warrantless searches of probationers must be initiated and conducted by APD officers.

III. RESPONSIBILITIES

- A. The commander of the Specialized Services Division (SSD) shall serve as the HPD liaison with the APD.
- B. Upon request by APD, SSD officers will assist APD officers in warrantless searches of probationers.

- C. SSD officers may be requested by probation officers to perform the following services:
 - 1. Provide security to APD officers confronting a probationer.
 - 2. Arrest the suspect and initiate a criminal investigation and police reports if criminal evidence is discovered by APD officers during the warrantless search or if other on-view criminal violations are observed. APD officers will be witnesses in the criminal case.
 - 3. Assume evidential custody of contraband items discovered by APD officers.
- D. See the attached memorandum of agreement with APD for additional information.
- E. Police officers exceeding police powers in an APD investigation may jeopardize the prosecutability of any resulting criminal cases.

IV. REFERENCE

State v. Propios and Palea, 76 Hawaii 474, 879 P.2d 1057 (1994).

BOISSE P. CORREA
Chief of Police

Attachments

Post on bulletin
board for one week

Policy first issued
October 12, 1995

[MEMORANDUM OF AGREEMENT attachment not included]

SCOPE OF RESPONSIBILITY
ADULT PROBATION DIVISION
THE JUDICIARY

1. APD shall provide timely notice to HPD of any planned search and shall work with HPD to agree upon a mutually convenient date and time to conduct the search.
2. APD shall provide all background information necessary for HPD to prepare appropriate plans/personnel for secure entry into the search site.
3. APD shall conduct the actual search of any vehicle, sites or property under the control of the defendant.
4. APD shall conduct all questioning of the defendant or other defendants present who are under the jurisdiction of APD, either before or during the search, except when HPD has made an arrest.
5. APD shall provide a copy of the APD search report to HPD upon request

SCOPE OF RESPONSIBILITY

HONOLULU POLICE DEPARTMENT

1. HPD shall determine the composition of the HPD search support team; e.g., the number of officers required, which officers will be assigned to the team, etc.
2. Upon review of facts provided by APD, HPD shall determine which agency (APD and/or HPD) will enter the search site first.
3. When it has been determined that security requires that HPD officers enter the search site prior to APD personnel, HPD shall announce to the probationer and other parties present the reason for entry.
4. Upon entry into the search site, HPD shall secure the scene to allow APD staff to safely enter.
5. HPD shall maintain security for APD staff during the search and shall remain at the scene until the search is completed and APD personnel depart the search site.
6. HPD shall determine the level of restraint/action necessary to maintain security.
7. HPD shall handle and recover all firearms and explosive/dangerous devices located during the search.
8. HPD shall take possession from APD staff of all contraband, which is criminally prohibited, recovered during the search.
9. HPD shall determine whether laboratory tests shall be conducted on contraband recovered during the search, shall conduct the necessary tests, and shall provide the test results to APD upon request.