

HONOLULU POLICE DEPARTMENT

POLICY

LAW ENFORCEMENT ROLE, RESPONSIBILITIES, AND RELATIONSHIPS

October 15, 2019

Policy Number 1.10

ASSISTANCE IN WARRANTLESS SEARCHES OF PROBATIONERS

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 (MOA).

PROCEDURE

I. 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.

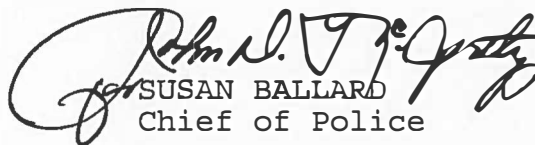
II. RESPONSIBILITIES

- A. The commander of the Specialized Services Division (SSD) shall serve as the Honolulu Police Department (HPD) liaison with the APD.
- B. Upon request by the 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 MOA with the APD for additional information.
- E. Police officers exceeding police powers in an APD investigation may jeopardize the prosecutability of any resulting criminal cases.

III. REFERENCE

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


SUSAN BALLARD
Chief of Police

Attachments

Post on bulletin
board for one week

Policy first issued
October 12, 1995

SCOPE OF RESPONSIBILITY

ADULT PROBATION DIVISION (APD)

THE JUDICIARY

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

SCOPE OF RESPONSIBILITY

HONOLULU POLICE DEPARTMENT (HPD)

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

JUD No. J96104

MEMORANDUM OF AGREEMENT

BETWEEN THE

HONOLULU POLICE DEPARTMENT, CITY AND COUNTY OF HONOLULU

AND

THE JUDICIARY, STATE OF HAWAII

ADULT PROBATION DIVISION, FIRST CIRCUIT COURT

I. INTRODUCTION

This Memorandum of Agreement is entered into as of the 7th day of August, 1995 by and between the Honolulu Police Department, City and County of Honolulu (hereinafter referred to as "HPD") and Judiciary, First Circuit Court, Adult Probation Division (hereinafter referred to as "APD") of the State of Hawaii.

Whereas, as a condition of probation, individuals may be subject to warrantless searches conducted by the Adult Probation Division, and,

Whereas, such warrantless searches may require the aid of the police in order to provide protection for probation personnel, to detain probationers and to take possession of any contraband found during the search,

Therefore, the Honolulu Police Department and the Judiciary, First Circuit Court, Adult Probation Division agree to enter into this Memorandum of Agreement.

The purpose of this Memorandum of Agreement is to acknowledge APD's request of HPD to provide security and related services for APD personnel and to define the responsibilities of each agency relative to the provision of such services.

II. GENERAL STATEMENTS OF RESPONSIBILITY

1. The Adult Probation Division administrator shall serve as APD liaison.
2. The Division Commander of Specialized Services Division shall serve as HPD liaison.

3. APD will undertake responsibilities as described under SCOPE OF RESPONSIBILITY, ADULT PROBATION DIVISION, ATTACHMENT 1, of this Agreement.
4. HPD will provide services as described under SCOPE OF RESPONSIBILITY, HONOLULU POLICE DEPARTMENT, ATTACHMENT 2, of this Agreement.
5. Unless specifically noted within any section or attachment of this Agreement, each party to the Agreement shall be responsible for its own budgetary planning in order to fulfill its responsibilities under the Agreement.
6. This Agreement shall be acknowledged and approved by signatures of the Administrative Director of the Courts and the Chief of the Honolulu Police Department.

III. EFFECTIVE DATES OF AGREEMENT

This Agreement shall commence as of August 7, 1995 and continue in force and effect until revised, amended, or terminated in accordance with the provisions set forth for such action.

IV. RESPONSIBILITY

Each party shall be responsible under tort actions for that portion of the action which relates directly to the action or failure of its employees, equipment, and/or buildings or premises.

V. REVISIONS OR AMENDMENTS TO AGREEMENT

This Agreement may be revised or amended by written request of either party setting forth the conditions/terms of the revision or amendment and the justification for same. Approval of the revision or amendment shall require mutual agreement in writing.

VI. RESOLUTION OF AGREEMENT DISPUTES

For the purpose of this Agreement, all of the provisions and terms shall be mutually agreed to by representatives of each agency involved. In the event of an issue which cannot be resolved by these representatives, it is agreed that the issue shall be presented for resolution to the Office of the Chief of Police and the Office of the Administrative Director of the Courts.

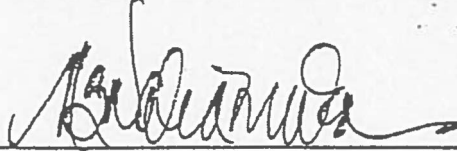
VII. TERMINATION OF AGREEMENT

A request for termination of this Agreement may be initiated by either party in writing. A request for termination shall be made as far in advance of the anticipated termination date as possible, but not later than three months prior to the proposed expiration date. Upon termination of this Agreement and except as provided herein, the personnel, supplies, and equipment of each agency shall be retained by that agency.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this 7th day of August, 1995.

THE HONOLULU POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

By



MICHAEL S. NAKAMURA
Chief of Police

THE JUDICIARY, STATE OF HAWAII

By



SHARON Y. MIYASHIRO
Administrative Director of
the Courts

Approved as to Form:


Judiciary Staff Attorney