

# HONOLULU POLICE DEPARTMENT

## POLICY

### LAW ENFORCEMENT ROLE, RESPONSIBILITIES, AND RELATIONSHIPS

October 30, 2019

Policy Number 1.14

#### WARRANTLESS SEARCHES AND SEIZURES

##### POLICY

- I. The Honolulu Police Department shall conduct warrantless searches in a manner that protects constitutional rights, preserves evidence, and provides for the safety of all parties involved.
- II. Personnel shall obtain a search warrant whenever appropriate.

##### PROCEDURE

###### I. BACKGROUND

- A. The Fourth Amendment to the Constitution of the United States provides the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures.

Article I, Section 7, of the Hawaii State Constitution, additionally provides the right of the people to be secure against invasions of privacy.

- B. The courts are continuously interpreting the Fourth Amendment as it applies to police conduct. The complex history of search and seizure case law makes it difficult for law enforcement officers to apply standards and procedures to warrantless search and seizure situations. Each situation has to be judged by the individual facts and circumstances unique to each particular case.

Officers should consult with their supervisor when in doubt as to whether a warrantless search or seizure is proper.

II. PURPOSE

To provide departmental personnel with general guidelines and procedures when conducting warrantless searches.

- A. Each individual situation and case should be viewed as it pertains to the specific facts and circumstances relative to that specific case or situation.
- B. This policy does not prohibit action or decisions based on other knowledge, information, or case precedence not included in this policy.

III. WARRANTLESS SEARCHES

The Constitution of the United States, Supreme Court rulings, Hawaii state statutes, and other case law dictate when a police officer must obtain a warrant to search a person, place, or thing. There are limited exceptions to these rules and the key to the successful, legal discovery of evidence and/or contraband is the reasonableness of an officer's actions. The exceptions to a search warrant are:

- A. Search by Consent
  - 1. A warrantless search may be legally justified because the person in control of the property is said to have agreed to it.
  - 2. Consent must be given freely without coercion and without a promise of anything in return.
  - 3. Consent must be given by a competent party and must be from the person(s) whose expectation of privacy is involved.
  - 4. Generally, consent cannot be given to an area or item in which privacy consideration is shared with another. However, a third person can consent to a search of an area that is commonly held or cohabited or where they have common authority.

5. When a consent to search is obtained, it is recommended that the Written Consent to Search, HPD-393 form, be used to prevent subsequent denials of voluntary consent by the parties involved.

B. Stop and Frisk

1. A consensual encounter is a voluntary interaction between the police and the public. Generally, a consensual encounter does not invoke the Fourth Amendment of the Constitution. Legal principles regarding investigative stops/detentions do not prohibit officers from contacting persons and engaging such persons in conversation. Constitutionally, there is nothing that prevents a police officer from addressing questions, in an appropriate manner, to anyone on the streets when the individual to whom the questions are addressed is under no compulsion to cooperate. In a consensual encounter, the person need not cooperate with the police and is free to leave at anytime.

If a person is not free to leave, it is generally considered an investigative stop or detention.

2. Constitutionally, an investigative stop or detention by an officer is considered a seizure of a person. Generally, a person is "seized" if, from an objective standpoint and given the totality of the circumstances, a reasonable person would have believed that he or she was not free to leave. Also, a person is seized when a police officer approaches that person for the express or implied purpose of investigating him or her for possible criminal violations and begins to ask for information.

3. To justify an investigative stop, the police must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrants the intrusion. The ultimate test in these situations must be whether from these facts, measured by an objective standard, a person of reasonable caution would be warranted in believing that criminal activity was afoot and that the action taken was appropriate.
4. A "stop and frisk" situation refers to the use of lawful detention and a limited pat down for the protection of officers and others nearby without probable cause for an arrest. A situation where an officer has a legal right to stop does not automatically confer upon the officer the right to frisk. A "stop and frisk" involves two distinct aspects:
  - a. The first aspect is the "stop" itself. An officer, in an appropriate circumstance and in an appropriate manner, may approach a person for purposes of investigating criminal behavior even though there is a no probable cause to make an arrest.
  - b. The second aspect involves the right of the officer to further intrude upon the liberty of the person detained. The "frisk" is a limited search for weapons. It is usually restricted to a pat down of outer garments for weapons (e.g., guns, knives, and clubs) or other hidden instruments that could be used to assault an officer or another person nearby.
5. A pat down of outer garments that reveals a possible weapon or hidden instrument that could be used as a weapon justifies a further intrusion into the garments to disarm the person being searched.

C. Exigent Circumstances

1. Under certain emergency circumstances, the requirement of a search warrant is waived, and an officer may properly conduct a warrantless search. This immediate, warrantless search is justified to prevent the imminent danger to life, forestall or prevent the likely escape of a suspect, prevent serious damage to property, and/or preserve evidence from being destroyed or removed.
2. Exigent circumstances are said to occur where emergency considerations are involved that would make a delay for the acquisition of a warrant unreasonable.

D. Movable Vehicle Exception

1. Whenever practicable, a warrant shall be obtained for the search of a motor vehicle.
2. The movable vehicle exception is a form of exigent circumstances. Officers may search a motor vehicle without first obtaining a search warrant if there is:
  - a. Probable cause to believe the vehicle contains contraband or evidence of a crime; and
  - b. A foreseeable risk that, because of the vehicle's mobility or exposure, the vehicle might be moved or the evidence it contains might be removed or destroyed before a warrant could be obtained.
3. In general, warrantless inventory searches are not conducted on vehicles seized for criminal investigations. These cases involve searches after a warrant has been obtained.

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E. Documentation

1. A police report shall be prepared in accordance with Policy 8.06, POLICE REPORTS.
2. Anytime a warrantless search is conducted in which the property owner or occupant is not present, a Notice of Warrantless Search, HPD-443A form, shall be completed and a copy shall be displayed prominently at the property. In the event any property is seized, the officer shall also prepare a Property Receipt, HPD-83 form, and attach a copy to the HPD-443A form.

F. Crime Scene and Investigation Searches

Criminal investigations could develop into countless, warrantless search situations. The following are the common types that occur:

1. "Open view" is a warrantless exception where officers have a legal right to seize and recover evidence that is located in a place where there is no expectation of privacy or the expectation of privacy is such that the courts would deem it to be unreasonable. It usually involves evidence or criminal activity that is wide open for the public or the police to see or hear;
2. "Plain view" is used where a situation involves the discovery of evidence or the discovery of criminal activity by police officers after a legal intrusion has occurred.
  - a. An intrusion can take the form of a traffic stop, a police service call, or the service of a complaint received as a result of a 911 call.
  - b. As a general rule, "plain view" is the discovery of evidence or criminal activity by accident and the discovery is unplanned; and

3. "Abandonment" is the voluntary relinquishment of control over property. A person who abandons property does not have a constitutionally protected expectation of privacy. "Abandonment" must be overt and positive in nature. Examples are:

- a. When a person throws down an item and walks or runs away; and
- b. When a person denies ownership of the property in question.


NOTE: Discarded property cannot be assumed as abandoned. In Hawaii, property that is placed out (such as garbage left at a curbside for collection) is, for the most part, still considered to have an expectation of privacy.

When a subject fails to respond to an officer's inquiry about the ownership of an article or property, the subject does not relinquish any privacy rights nor shall the article or property be considered abandoned.

IV. SEARCH INCIDENTAL TO A LAWFUL ARREST

Searches incidental to a lawful arrest and preincarceration searches shall be in accordance with Policy 7.01, ARREST AND ARRESTED PERSONS; and Policy 7.02, SECURITY CONTROL OF ARRESTEES.

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Post on bulletin board for one week

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