

STATEMENTS OF POLICY

Title 37—LAW

JUVENILE COURT JUDGES' COMMISSION

[37 PA. CODE CH. 200]

Standards Governing Searches of the Person and Property of Children by Juvenile Probation Officers

The Juvenile Court Judges' Commission (Commission) adopts Subchapter E (relating to standards governing searches of the person and property of children by juvenile probation officers) as a statement of policy to read as set forth in Annex A.

Authority

This statement of policy is promulgated in response to the requirements of the act of December 9, 2002 (P. L. 1705, No. 215) (Act 215).

Purpose and Requirements

This statement of policy is intended to provide guidance in the implementation of 42 Pa.C.S. § 6304(a.1) (relating to powers and duties of probation officers), which sets forth the statutory framework governing searches of the person and property of children by juvenile probation officers.

Affected Parties

This statement of policy will affect county juvenile probation officers.

Cost and Paperwork Estimates

Although advisory in nature, this statement of policy recommends the development of written reports and protocols that may not currently exist in all jurisdictions.

Effective Date

This statement of policy will become effective upon publication in the *Pennsylvania Bulletin*.

Contact Person

For further information regarding this statement of policy, contact Keith B. Snyder, Deputy Director, Juvenile Court Judges' Commission, 401 Finance Building, Harrisburg, PA 17120-0018, (717) 787-5634.

Findings

The Commission finds that this statement of policy is necessary for compliance with Act 215.

Order

The Commission, acting under the authorizing statute, orders that:

(a) The regulations of the Commission, 37 Pa. Code Chapter 200, are amended by adding a statement of policy in §§ 200.401, 200.402, 200.411, 200.421, 200.431—200.437 and 200.441—200.443 to read as set forth in Annex A.

(b) The Executive Director of the Commission will certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) The order shall take effect upon publication in the *Pennsylvania Bulletin*.

JAMES E. ANDERSON,
Executive Director

Fiscal Note: 23-4. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 37. LAW

PART III. AGENCIES AND OFFICES

Subpart N. JUVENILE COURT JUDGES' COMMISSION

CHAPTER 200. JUVENILE COURT JUDGES' COMMISSION

Subchapter E. STANDARDS GOVERNING SEARCHES OF THE PERSON AND PROPERTY OF CHILDREN BY JUVENILE PROBATION OFFICERS

GENERAL PROVISIONS

Sec.
200.401. Purpose.
200.402. Definitions.

AUTHORITY

200.411. General.

PERSONAL SEARCHES

200.421. General.

PROPERTY SEARCHES

200.431. General.
200.432. Searching a residence.
200.433. Nonapproved residence or other sites.
200.434. Extent of search.
200.435. Use of force.
200.436. Motor vehicles.
200.437. Additional requirements.

PROCEDURES

200.441. Written reports.
200.442. Agency protocols.
200.443. Training.

GENERAL PROVISIONS

§ 200.401. Purpose.

Pennsylvania's juvenile justice system is mandated to provide programs of supervision, care and rehabilitation which provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable children to become responsible and productive members of the community. The authority of juvenile probation officers to conduct searches of the person and property of children is essential to achieving the community protection and accountability goals of the system. These standards are intended to guide policy and practice relating to searches of the person and property of children by juvenile probation officers.

§ 200.402. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

Exigent circumstances—Include, but are not limited to, a reasonable suspicion by the probation officer that contraband or other evidence of violations of the conditions of supervision might be destroyed, or suspicion that a weapon might be used.

Personal search—A warrantless search of a child's person, including, but not limited to, the child's clothing and any personal property which is in the possession, within the reach or under the control of the child.

Property search—A warrantless search by a probation officer of real property, a vehicle or personal property which is in the possession or is under the control of a child.

Reasonable suspicion—The existence of reasonable suspicion to search shall be determined in accordance with constitutional search and seizure provisions as applied by judicial decision. Reasonable suspicion requires specific and articulable facts, that is, something more than an unparticularized suspicion or hunch. *Terry v. Ohio*, 392 U.S. 1 (1968) (reasonable suspicion requires that the officer “be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant” the intrusion on an individual’s privacy). Those specific facts must be such as to indicate that contraband or evidence of a violation of the conditions of a child’s supervision will be found in the place to be searched. In accordance with that case law, the following factors, when applicable, may be taken into account:

- (i) The observations of the officers.
- (ii) Information provided by others.
- (iii) The activities of the child.
- (iv) Information provided by the child.
- (v) The experience of the probation officer with the child.
- (vi) The experience of probation officers in similar circumstances.
- (vii) The prior delinquent and supervisory history of the offender.
- (viii) The need to verify compliance with the conditions of supervision.

AUTHORITY

§ 200.411. General.

Probation officers may search the person and property of the following children:

- (1) Children who are under their supervision as delinquent children or under a consent decree.
- (2) Children who are being taken into custody or who have been taken into custody under 42 Pa.C.S. § 6324 (relating to taking into custody).
- (3) Children who are in the process of being detained under 42 Pa.C.S. § 6304, § 6325 or § 6331 (relating to powers and duties of probation officers; detention of child; and release from detention or commencement of proceedings).
- (4) Children whose cases are the subject of an intake process conducted under 42 Pa.C.S. §§ 6304 and 6331.

PERSONAL SEARCHES

§ 200.421. General.

(a) A personal search may be conducted only under the following circumstances:

- (1) When the probation officer has a reasonable suspicion to believe that the child possesses contraband or other evidence of violations of the conditions of supervision.
- (2) When the child is being transported by the probation officer.
- (3) When the child is taken into custody by the probation officer.

(4) When a child is admitted to, or discharged from, a detention center, institution or other facility.

(b) Whenever possible, and consistent with the protection of the officer, child, and community, personal searches shall be conducted by officers who are of the same gender as the child who is the subject of the search.

PROPERTY SEARCHES

§ 200.431. General.

A property search may be conducted by a probation officer if there is reasonable suspicion to believe that the real or other property in the possession of, or under the control of, a child who is under supervision as a delinquent child or pursuant to a consent decree contains contraband or other evidence of violations of the conditions of supervision.

§ 200.432. Searching a residence.

The officer has the authority to make warrantless searches upon reasonable suspicion, of the portion of the residence to which the child normally has access. A residence in which the child shares living space with a parent or guardian can be divided into the following three zones for search purposes:

(1) Zone 1: The portion of the residence over which the child has exclusive control can be searched without a warrant based upon reasonable suspicion.

(2) Zone 2: The portion of the residence to which the child has access but shares with others can be searched without a warrant based upon reasonable suspicions even though the others may object. Deciding on a search in this situation is more difficult since the probation officer must be able to demonstrate that the child normally has access to the area.

(3) Zone 3: The portion of the residence to which the child has no access cannot be searched without a search warrant based upon probable cause or the consent of the person who has control over the area.

§ 200.433. Nonapproved residence or other sites.

(a) Any residence other than the child’s approved residence cannot be searched without the consent of a person who owns, leases or has access and appears to reside at that address. If consent is not obtained, a search warrant will be required to enter, except during hot pursuit.

(b) Landlords and owners, upon leasing a property, cannot enter that property without the lessee’s consent except in an emergency such as a fire or in the event of water damage when the landlord or owner is permitted to protect his property. Therefore, they cannot give probation officers access to their leased property.

(c) A warrantless search of the child’s job site cannot be made without consent of the owner. If consent is given, the area in which the child has exclusive control, such as a desk or locker, can effectively be searched for contraband.

(d) As with the job site, a shelter or rehabilitative program has constitutionally protected property rights. Thus, any search must be limited to an area over which the child has exclusive control. Searches or arrest should be coordinated with staff.

§ 200.434. Extent of search.

The extent of any search is limited to articulable reasons. If the reason for a search is to arrest the child and the child is located and arrested, the search must end. An exception is a search of the immediate area

around the child for safety reasons. Additional reasonable suspicion would be required to continue the search beyond that area.

§ 200.435. Use of force.

(a) Forced entry into an approved residence should only occur when the probation officer has reason to believe a fugitive is inside or evidence of violations, such as weapons or drugs, may be removed or destroyed if not seized immediately. For example, the officer hears the child's voice inside the home or notes movement, but no one responds to the officer's knocking and identification.

(b) Probation officers should enter using only the amount of force necessary.

§ 200.436. Motor vehicles.

Motor vehicles can be searched if any of the following conditions exist:

- (1) The child owns the vehicle.
- (2) The child is driving the vehicle although the child is not the owner.
- (3) The child is observed in the vehicle. This authorizes a limited search in the immediate area where the child is sitting unless consent is given by the operator/owner to search the entire vehicle.

§ 200.437. Additional requirements.

(a) Except when exigent circumstances are present, juvenile probation officers shall receive the approval of a supervisor to conduct a property search.

(b) Juvenile probation supervisors and administrators may conduct a property search without prior approval.

(c) The child may be detained for safety reasons if the child is present during a property search. Temporary confinement or restraint is permissible as long as the confinement ends as soon as it is reasonably safe to do so.

(d) If the child is not present during a property search, the probation officer in charge of the search shall make a reasonable effort to provide the child and the child's parent/guardian with notice of the search, including an inventory of the items seized, after the search is completed.

(e) Conditions of supervision for children under the supervision of probation officers as delinquent children, or pursuant to a consent decree, shall include a statement notifying the child that a property search may be conducted by a probation officer if there is reasonable

suspicion to believe that the real or other property in the possession of, or under the control of, the child contains contraband or other evidence of violations of the conditions of supervision.

PROCEDURES

§ 200.441. Written reports.

A written report of every person or property search shall be completed by the probation officer who conducted the search. The report shall be maintained in the child's case file.

(1) The written report of a personal search shall include the name of the child, the date and time of the search, other persons present, the location of the child when the search was conducted, the circumstances necessitating the search and an inventory of all items seized.

(2) The written report of a property search shall contain the elements in paragraph (1) and, if relevant to the search, any exigent circumstances that existed at the time of the search.

§ 200.442. Agency protocols.

(a) Each probation department shall develop a protocol for conducting personal and property searches that is approved by the court.

(b) The protocol should include, at a minimum, the following:

- (1) The circumstances under which searches should be conducted.
- (2) The procedures to obtain supervisory approval.
- (3) The documentation of reasonable suspicion and exigent circumstances, when appropriate.
- (4) The documentation, chain of custody and security of all items seized.

§ 200.443. Training.

Prior to conducting searches, probation officers should receive training in the following areas:

- (1) The legal requirements of searches.
- (2) The provisions of this subchapter.
- (3) The provisions of the agency's protocol for conducting searches and seizures.
- (4) The physical and verbal techniques involved in both personal and property searches.

[Pa.B. Doc. No. 04-846. Filed for public inspection May 14, 2004, 9:00 a.m.]