



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Hawai'i

BY EMAIL

March 27, 2020

Chief Susan Ballard
Chief of Police, Honolulu Police Department
801 S. Beretania Street
Honolulu, HI 96813

RE: Guidance of Enforcement of COVID-19 Related Restrictions on the General Public

Dear Chief Ballard:

As you respond to COVID-19, please consider the ACLU of Hawai'i as a resource in your work to develop a response plan that protects the health, safety, and civil liberties of all Hawai'i residents.

During a disease outbreak, we recognize that individual rights may need to be balanced against that of the larger community. As you consider measures to keep the public safe, we encourage you to consider the following things. Bearing in mind that custodial arrest to enforce any restrictions is not a suitable public health response and should be the last resort of any enforcement efforts.

The overall principle of using the least restrictive means to protect public health should apply to police enforcement practices when implementing COVID-19-related restrictions (e.g., shelter-in-place orders, curfews, etc.). This guidance concerns enforcement of movement restrictions that are directed at the general public, such as Mayor Caldwell's March 22, 2020, stay at home order and the Governor's March 23, 2020, Third Supplemental Declaration (collectively, the "Shelter in Place Orders"), rather than enforcement of quarantine or isolation

orders directed at a specific individual, and is not intended to suggest that all such movement restrictions are justified or lawful.

This guidance is especially important in light of the risk that these restrictions might be enforced in ways that raise Equal Protection concerns (for example, being enforced with appropriate restraint in wealthier and historically favored communities, but without such restraint in poorer and marginalized communities that have historically been heavily-policed such as people experiencing homelessness).

This guidance assumes that police will play a significant role in enforcing these public restrictions, as is already occurring in many communities around the country, including Honolulu. However, this does not mean that law enforcement is best positioned for doing so; wherever possible, public health and other authorities should identify alternative methods of encouraging compliance with COVID-19-related restrictions. Indeed, making police officers the sole or primary enforcers of COVID-19-related restrictions could result in public backlash, especially from communities that have historically been heavily-policed, regardless of the form such enforcement takes. Approaching these tasks with a punitive, traditional law enforcement approach will both intensify this backlash and harm the people and communities whom the public health restrictions are intended to help. Unfortunately, many institutions that may have a deeper societal reservoir of public trust, such as medical workers and social workers, are either occupied with other tasks in the pandemic or have been required to scale back their work in order to comply with social distancing requirements. Agency leadership should acknowledge these dynamics rather than dismiss them, and instruct officers to perform their duties with compassion, patience, and in a non-punitive manner befitting their public health role in these difficult and stressful circumstances.

Accordingly, when police officers are enforcing COVID-19-related restrictions, the following principles should apply:

- 1) The goal of enforcing COVID-19-related restrictions is always to protect public health by preventing the infliction of harm. Accordingly, the goal of police enforcement should be to facilitate long-term compliance rather than to punish non-compliance.**

- 2) Enforcement of COVID-19-related restrictions should be carried out in a non-militarized manner. This means that officers should be dressed in normal patrol uniforms (though they may be supplemented with medical personal protective equipment, such as surgical masks and gloves, as appropriate) rather than wearing military uniforms, SWAT uniforms, or helmets. Officers should avoid the public display of long guns, military-style weapons, and armored vehicles.

- 3) To the extent possible, police should address violations (especially first-time violations) with an explanation of the rules and a warning rather than an immediate sanction. This is particularly important here because the Shelter in Place Orders are complex, with several exceptions, and for some people might be difficult to understand. When confronting individuals who refuse to comply, officers should seek to understand why the particular individual is not complying with COVID-19-related restrictions, particularly because individuals may have rational reasons for non-compliance. Common examples could include people who are unhoused and therefore do not have a fixed location where they can shelter in place; people who are experiencing domestic violence or other dangerous living situations; minors who lack a stable home environment to return to while school is canceled; people who are experiencing medical or mental health conditions that make it challenging for them to comply (including, by way of example, anxiety, claustrophobia, and depression); and people who are employed by businesses deemed essential and who must travel at unusual hours. In such circumstances, and where a warning is not alone a sufficient response; the officer should work with the individual or refer the individual to public health authorities to identify a means of achieving the public health goals of the COVID-19-related restrictions rather than mechanically enforcing the restrictions in a punitive manner. Officers should also consider whether repeated violations are attributable to some underlying anxiety, trauma, stress, or circumstantial difficulty; in such cases, officers should work to deescalate the situation and take steps to address these underlying issues in conjunction with public health authorities.

- 4) In some circumstances, an individual may be willfully and intentionally violating the restrictions without having a rational reason for their

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noncompliance. If the officer attempts to explain and de-escalate the situation but the individual continues to defy the restriction, it is within the officer's discretion to respond to such violations with non-custodial sanctions, such as issuing a citation. However, officers should keep in mind that financial sanctions can have a particularly serious impact on individuals with a low income, especially given the economic disruption created by the pandemic.

Because of the grave risks of COVID-19 exposure for people in police custody and jail, the use of custodial arrest to enforce these restrictions is not an appropriate public health measure and should almost never be the outcome of these enforcement efforts. Such arrests should be prohibited unless necessary to prevent imminent and serious bodily harm to another person and all non-incarceration alternatives have been exhausted

As you work to keep our communities safe and strong, we are happy to meet phone to discuss how best to protect civil liberties in your COVID-19 response planning. Please contact me if we can be of service. I can be reached at mespitia@acluhawaii.org or (808) 294-6258.

Sincerely,

Monica Espitia
Smart Justice Campaign Director