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The Use of Police Narcotic Canines

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ABSTRACT

The purpose of this project is to create a general guideline or policy for the Narcotic Canine officers. The Narcotic Canine officer is well trained in his regular duties. However, there are numerous situations that fall outside the scope of these regular duties. This project hopes to address these problems and offer a workable and legal solution in a written policy format.

Research was conducted on the legal standing of using Narcotic canines in areas outside the scope of normal duties. Once this was complete, a financial percentage was included in the policy.

The recommendation made by this proposal is to have a general guideline or policy for the Narcotic canine officers. This guideline is meant to promote a more professional standard in dealing with the public or other agencies.

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Introduction

Presently, the Texas City Police Department has two Narcotic police canines and one Patrol canine. There is a general policy for the Canine Division but it is written with emphasis primarily on the Patrol Canine Division. This is in response to liability issues. The two Narcotic canines have only recently been added to the police department. Since then, there have been numerous occasions in which the use of canines has been questioned. The areas covered in this paper are situations that have previously occurred. These include: automobile searches, person searches, school searches, outside agency calls, and assisting the public. It is important that these issues are addressed by policy so that the canine officer will have a clear procedure to follow in the event that questions or problems arise in the future.

The intended audience for this policy is the Chief of Police and the Patrol Captain of the Texas City Police Department. Once the policy has been approved, a similar policy will be proposed to surrounding police departments in the county.

The sources of information for this article are case laws that determine the legal uses of police canines.

These case laws are from different courts and are to be used as the core of the guideline.

This paper proposes a policy be written that covers the more common situations in which a police narcotic canine is used. This research will assist the City of Texas City in creating a policy that will enhance its professional standards and working relations both within the city and with neighboring police agencies.

Historical/Legal Background

The earliest known time when dogs were used for police work in the United States was 1907 through 1911 by the South Orange Police Department in New Jersey. Several other police departments were identified as having K-9 units during that time, including New York City (Chapman, 1983).

According to Samuel Chapman's research, An Update on United States and Canadian Police Dog Programs, there has been two distinct periods ranging from 1907 to 1947 and 1954 to present when police dogs were used. The reason for the seven year period of no K-9 units between 1947 and 1954 was cited by Chapman as a "lack of properly trained and functional dogs" (Chapman, 1983).

Of the departments listed in Samuel Chapman's research as having K-9 units, they all returned to using dogs on their forces citing the effectiveness and cost efficiency of the canines as the major reasons. Furthermore, other agencies at all levels of government also report that they have found the use of dogs to be very cost-effective, saving many man-hours in the on-going fight against crime (Stuart, 1989).

One of the most often asked questions is: Why the use of dogs in police work? It has been reported that some breeds of dogs have a sense of smell over one million times more sensitive than a human's nose (Butterworth, 1989). It is also reported that a dog's hearing is fifty times more keen than the human ear. According to J.L. Hickman, narcotic dogs have been able to detect small and large quantities of narcotics that have been covered in shaving cream, submerged in gasoline, or buried under a foot of dirt with apparent ease. Trained dogs have even located narcotics in factory sealed tuna cans (Hickman, 1988).

As for the legality of searches conducted by K-9 units, the courts have upheld that the dog's search is an extension of the officer's senses, much like binoculars and metal detectors. As long as the search does not violate the Fourth Amendment, the courts have accepted canine

searches as legal. The courts recognize that a trained dog's indication, or alert, is probable cause and that any contraband found is admissible evidence. Furthermore, records of the dog's previous successful searches can be admitted to court to establish the dog as an expert witness.

Review of the Literature

There have been many court cases concerning the use of police dogs. This paper will concentrate on only the Narcotics cases. The following court cases cited for each type of search are examples of several similar cases filed in the U.S. The cases will cover the five previously mentioned topics: automobile searches, person searches, school searches, outside agency calls, and assisting the public.

- A. Automobile Searches: "We hold that the canine sniff of the exterior of a vehicle which is legitimately within the custody of the police is not a search within the meaning of the Fourth Amendment; and that subjecting the exterior of such a motor vehicle to the olfactory genius of a drug detection dog does not infringe upon the

vehicle owner's Fourth Amendment rights" (*United States v. Rodriguez-Morales*, 1991).

- B. Person Searches: "Society recognizes the interest in the integrity of one's person, and the Fourth Amendment applies with its fullest vigor against any intrusion on the human body...We hold that sniffing by dogs of the students' person, i.e., sniffing around each child, putting his nose on the child and scratching and manifesting other signs of excitement in the case of an alert...is a search within the preview of the Fourth Amendment" (*Horton v. Goose Creek Independent School District*, 1982).
- C. School Searches: "The dog's sniffing of student lockers in public hallways and automobiles parked in public parking lots...did not constitute a search" (*Horton v. Goose Creek Independent School District*, 1982).
- D. Outside Agency Calls: Depending on the call for service, officers are empowered by the state on Mutual Aide Calls.
- E. Assisting the Public: Depending on the call for service, officers are still governed by search and seizure guidelines.

The policy of the Texas City Police Department is similar to other departments except for the fact that the narcotics section is very vague. All of the police departments rely on the narcotic officer to only use their canine when legally allowed. This paper will not question the legality of the K-9, only clarify those areas in question.

K-9 officers of other agencies were interviewed and their agencies' policies were reviewed. These agencies are listed below:

- A. Galveston County Sheriff Department- No policy on use of K-9s (Hebert).
- B. LaMarque Police Department- Policy on use of Patrol dogs, none on Narcotic dogs (Daniels).
- C. Dickinson Police Department- Policy on use of Patrol dogs, none on Narcotic dogs (Krone).
- D. League City Police Department- Policy on use of Patrol dogs, none on Narcotic dogs (Smith).
- E. Webster Police Department- Policy on use of Patrol dogs, none on Narcotic dogs (Worley).
- F. Hitchcock Police Department- Policy on use of Patrol dogs, none on Narcotic dogs (Desmoreaux).

Most of the police departments have K-9 policy regarding Patrol K-9s. This is due to a "Use of Force" consideration. All K-9 officers are trained in the legal use of Narcotic K-9s but none of the above listed departments have policies regarding the use of these K-9s in asset finds, assisting other agencies, and assisting the public.

Relevant Finds

The relevant issues covered in this proposal are asset division, unilateral agency assistance, and public assistance.

One of the greatest tools law enforcement uses in its War on Drugs is asset forfeiture. There are untold millions of dollars being used in the drug trade. This money, either used for the purchase of narcotics, or the proceeds of the sale of narcotics, is subject to forfeiture under federal law.

There are several court cases covering the use of Narcotic trained K-9s alerting to money but the dogs are not alerting to the money itself. When the money has been in direct contact, or close to a sufficient quantity of narcotics, it will impact a sufficient odor for the Narcotic K-9 to alert.

Court cases such as U.S. v \$13,715.00 in U.S. Currency, Lobo v Metro-Dade Police Department, and Fitzgerald v Metro Dade, have all confirmed the K-9 alert to narcotic tainted money as part of the probable cause for forfeiture. With this tool, the opportunity for police departments to be awarded large sums of money is a good incentive to promote the Narcotic K-9 program. However, this does pose a problem. If a police department files a seizure, the Galveston County D.A.'s office receives 40%. Thus, a Texas City K-9 goes to LaMarque for a vehicle search and they find currency hidden in a secret compartment. When LaMarque P.D. files the seizure, the D.A.'s office receives 40%, but what does Texas City receive? For if it wasn't for the use of the K-9, the money and or narcotics may not have been found. A recommended policy to address this problem is that 10% of the seizure be awarded to the police agency supplying the K-9. This will offset the costs incurred in the K-9 program as well as compensating the officer's time. For many departments, this 10% fee is a small price to pay for the greater benefit they will receive in the asset forfeiture.

In the case of school searches, a request to check school lockers or cars in parking lots should be on a

contract basis, or overtime basis. Some schools are under contract to have Narcotic K-9s on the property. However, if a school calls for a special search, or is not under contract, then this should be set up in advance. Any narcotics found are to be handled by the respective school police department.

The last area to be covered is assisting the public. There have been occasions when a parent has asked for a Narcotic K-9 to search their child's room or a business has asked for assistance on searching their premises. In the case of parent request, the homeowner needs to be aware that criminal charges may be filed. This type of search would only be performed by an on-duty officer. The case of a business request would be set up as on extra-job contract for an off-duty officer. The K-9 officer would handle any narcotics found. This service to the community would have to be screened, as officers do not have the time to search every business and residence.

Recommendations

The purpose of this paper is to submit a policy on the use of the Texas City Police Narcotic K-9s on non-departmental services. There have been numerous occasions when the police K-9s have been requested and used for

service without a clear policy on their use. These situations have included automobile searches, person searches, school searches, outside agency searches, and assisting the public. It is important for the canine officer to have a clear policy on these issues to address any future questions or problems that may arise.

It is the recommendation of this paper that the Texas City Police Department adopt a general guideline on the use of its Narcotic K-9s. The use of canines has been ruled legal by many courts of law as long as the search does not violate the Fourth Amendment. This policy must include correct procedures for vehicle searches, person searches, school searches, outside agency calls, and assisting the public. With the implementation of this policy, the Narcotic K-9 officers will have a clear understanding of their professional conduct. Once the Texas City Police Department approves the policy, a similar proposal will be made available to departments in the surrounding cities.

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