

# ALBUQUERQUE CRIMINAL LAWYER BLOG

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## Police May Not Use Probation Officers as Proxy in Criminal Investigations

It is well established that individuals on probation have significantly fewer rights than the general population. One of the rights that is generally forfeited by a probationer is the right against search and seizure by the probation officer.

While on probation, the probation officer has a right and a duty to insure that the probationer is complying with the terms of probation. The terms of probation universally prohibit the use of illegal drugs while on probation. Likewise, a probation officer can order the probationer to cease contact with known felons or drug dealers.

These variables came together in the New Mexico Court of Appeals case of *State v. Sundae Bolin*. In *Bolin*, local law enforcement was seeking to execute a warrant on an associate of Ms. Bolin who was suspected of drug trafficking. In order to try to locate the suspect, the police enlisted the aid of Bolin's probation officer.

Upon request of the police officers, the probation officer escorted the police to Bolin's residence where she was questioned about the suspect's whereabouts. The suspect was not present, nor was there any reason to believe the suspect would be present at Bolin's residence. After questioning Ms. Bolin about the location of the suspect, the police officers and probation officer began questioning Bolin about drug use. Ms. Bolin admitted drug use precipitating a search of the premises. Police discovered a variety of contraband for which Bolin was charged with trafficking a controlled substance.

Interestingly, the court noted that contact with felons or drug dealers is not necessarily a violation of probation unless there is an express prohibition against such contact. Nor is it a crime. As such, neither the police nor the probation officer had any reasonable basis for being at Ms. Bolin's home. Without grounds for presence at her home, they also lacked any basis for questioning her about her drug use which led to the search of her residence.

The Court made clear that probationers have a lessened expectation of privacy under the 4th Amendment while on probation. The court also made clear that probation officers may call upon law enforcement in the performance of their duties. To the contrary, police may not enlist probation officers in their law enforcement duties. In short, the court would not allow a police investigation to be conducted under the pretense of a probationary visit.

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The court found that when Bolin answered that the suspect was not there, the encounter should have ended. There was no legitimate law enforcement purpose for their continued presence, nor was there a legitimate probationary purpose. The probation officer was at Bolin's home purely for the purpose of assisting the police officers in a criminal investigation.

The Court found that the search and seizure upon which the charges against Bolin were illegal under the 4th Amendment. As such, the district court's decision to suppress the evidence seized as a result of the illegal search was upheld.

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