

POLICIES, PROCEDURES, AND RULES

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| Subject: 1.2.2 Warrantless Detention, Search & Seizure | Effective Date: October 30, 2020 |
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| CALEA: 1.2.3, 1.2.4, 1.2.5, and 1.2.8 | No. Pages: 5 |

I. Purpose

The purpose of this policy is to establish guidelines for temporary detention, warrantless search and seizure decisions by officers in order to assure they are made in a manner consistent with constitutional guidelines, federal and state laws.

II. Definitions

Consent: Permission for an officer to search a constitutionally protected area given by a person with standing to grant it. Permission must be given without force, duress or coercion of any kind.

Field Interview: A field interview is a brief interview of a person to determine the person's identity and to resolve the officer's suspicions about possible criminal activity. A field interview is intended to resolve an ambiguous situation. A field interview contrasts with an investigative stop in that an investigative stop must be based upon reasonable suspicion of criminal behavior. A field interview may be conducted only with the voluntary cooperation of the citizen being interviewed and shall be immediately terminated if the citizen does not wish to speak.

Frisk: A frisk is a "pat down" of the outer garments for a weapon or contraband.

Investigative Stop: An investigative stop is the temporary detention of a subject when the officer has reasonable suspicion that criminal activity has occurred, is occurring or is about to occur and that the person to be stopped is involved or is a witness.

Probable Cause: Probable cause has been interpreted as facts and circumstances that amount to more than mere suspicion but less than proof beyond a reasonable doubt that would lead a prudent person to believe a crime has been committed or is about to be committed.

III. Procedure

- A. Field Interview – The fourth amendment allows an officer to approach a person and ask if he/she is willing to answer questions, and to ask questions if the person is willing to listen and respond. The person shall not be detained and may leave at any time without answering questions. No stop or detention of a person or a driver of a vehicle is allowed.

The person's voluntary answers to such questions may be offered into evidence in any subsequent criminal proceedings. [CALEA 1.2.3a]

- B. Investigative Stop – An officer may temporarily detain a person if reasonable suspicion exists that a crime has been committed, is committed or is about to be committed; or the officer reasonably suspects the person is illegally carrying a concealed weapon.
1. Officers may make such stops even if probable cause is insufficient to make an arrest.
 2. The following factors may be considered in determining whether reasonable suspicion exists to justify an investigative stop of a person. These factors must be considered in view of the officer's training, knowledge and experience. All of the factors need not be present in order to establish reasonable suspicion:
 - a. The officer has valid knowledge that a person has a prior felony record.
 - b. The person fits the description of a wanted person.
 - c. The person has exhibited conduct in an attempt to conceal an object from the officer's view.
 - d. The person exhibits unusual behavior.
 - e. The area or time of day is indicative of possible criminal activity.
 - f. Hearsay information or an anonymous tip is acceptable dependent upon the content of the information and the degree of reliability. An officer must corroborate some of the hearsay information when developing reasonable suspicion to conduct the investigative stop.
 3. An investigative stop must be conducted as briefly as possible. The stop must be restricted only to the time necessary to confirm or dispel the officer's reasonable suspicion of criminal activity.
 - a. Upon determining the basis for the stop no longer exists, the person detained will be immediately released.
 - b. The detention period may be lengthened only if the suspicion becomes reinforced with additional supportive information or if the officer develops probable cause.
 4. Field Interview (FI) Cards: Officers are encouraged to conduct field interviews as an investigative tool, crime prevention and information in collecting, preserving and disseminating information on potential suspects or criminal activity. Officers shall document all field interviews on a "Field Interview" form in order to provide other officers and investigators with information concerning suspicious activities or persons. Completed field interview cards will be submitted to the Criminal Investigation Division (CID) for entry in to the department's Records Management System.
- C. Frisk – Although an officer may have reasonable cause to stop an individual, there must be a separate belief, based on articulable facts, that the subject is armed and dangerous in order to justify a frisk. The purpose of the frisk is not to discover a crime, but to allow the officer to continue the investigation without fear of violence. [CALEA 1.2.4]
1. The frisk is limited to a pat down of the outer clothing.
 2. If bulky clothing, such as a heavy overcoat, is worn the officer may require the subject to open or temporarily remove the coat in order to complete the pat down.

- D. Search Incidental to Lawful Arrest – An officer shall search a subject incidental to that subject’s lawful arrest for any weapons, contraband or evidence of the crime. The search shall be confined to the subject arrested and that subject’s access area at the time of arrest [CALEA 1.2.5].
1. The search may extend beyond the arrestee’s access area for other persons who the officer has reason to believe may endanger the safety of the officer making the arrest.
 2. The search should be limited to locating and controlling the movements of such persons.
 3. An officer should not make an arrest solely as a pretext to search for evidence.
- E. Search by Consent – An officer may conduct a search of any person, place or thing without probable cause when the person having legal control over that area consents to the search. [CALEA 1.2.4]
1. Consent must be freely and voluntarily given. Consent must be granted by a person who appears to possess the competent mental ability and language skills to fully understand the circumstances.
 2. Burden of proof that consent was granted is on the officer.
 3. Consent may be verbal or written. Officers must inform the subject he/she has the right to refuse a consensual search of a residence; such warning is not required for consensual search of a vehicle.
 4. Consent may be withdrawn at any time by the subject.
 5. Scope of the search may be limited in any way the subject wishes.
 6. If the search exceeds the authorized scope, it is unlawful.
- F. Officers may enter and search a constitutionally protected area under lawful exigent circumstances to include medical emergencies, or public safety issues such as violent felony in progress. This exception only extends to the termination of the emergency. [CALEA 1.2.4]
- G. Search of Vehicle under Movable Exception Rule – Due to the inherent mobility of a motor vehicle, the courts have historically held officers to a standard of probable cause for their search. There are conditions under which the officer does not need a search warrant in order to search a motor vehicle [CALEA 1.2.4]
1. The passenger compartment incident to and contemporaneous with the arrest of an occupant only if it is reasonable to believe the arrestee might access the vehicle at the time of the search or the vehicle contains evidence of the offense of the arrest.
 2. Based on probable cause to believe the vehicle contains evidence of a crime or contraband. This search is only limited by the scope of where those items could be concealed.
 3. In the event of a detention of the driver or occupant, and the officer has a basis for a frisk of that person, the frisk may extend into the vehicle to the areas where the subject might leap or lunge for weapon.
 4. An inventory shall be conducted on all vehicles impounded by this department. Reference should be made to FPD 61.4.3 [CALEA 1.2.4]

H. Search at the Scene of a Crime – If a crime scene includes a constitutionally protected area, and the suspect might have a reasonable expectation of privacy, it will be searched pursuant to a search warrant. Exceptions include [CALEA 1.2.4]

1. Officers may conduct a protective sweep of a crime scene for their protection prior to securing the scene pending a warrant or consent.
2. Upon exigent entry, the scope of any search is limited to provide aid to those believed to be in need of assistance or to secure evidence in plain view. Once aid is provided, a search warrant must be obtained before searching for evidence or contraband.
3. Constitutionally protected areas may be searched with the consent of a person with standing to give it.
4. When the suspect is arrested in the crime scene, an officer may search the area under immediate control of the suspect contemporaneous with the arrest.
5. Officers may enter and search a constitutionally protected area under lawful exigent circumstances to include medical emergencies, or public safety issues such as a violent felony in progress. This exception only extends to the termination of the emergency.

I. Jail Booking Strip and Body Cavity Searches [CALEA 1.2.8]

1. Strip and body cavity searches during jail booking are sometimes necessary for officer safety, as well as the safety of the public, including other detainees. Such searches may be required to detect, secure and seize weapons, contraband or evidence of criminal activity. Body cavity searches are those that are conducted involving the anus or vagina.
2. Such intrusive searches shall be conducted only with proper authority, justification and within the policies and procedures of the adult or juvenile detention center where the detainee is to be taken. [CALEA 1.2.8 c.]
3. A strip search shall not be conducted unless there is a reasonable suspicion that such detainees are concealing weapons or contraband on their person [CALEA 1.2.8 a.].
4. A body cavity search shall not be conducted unless there is probable cause to suspect such detainees are concealing weapons or contraband and consent to search or a search warrant has been obtained.
5. For body cavity searches officers will notify county jail supervisors, and only a nurse or physician may conduct body cavity searches [CALEA 1.2.8 a.].
6. Officers involved in a strip search should ensure that the search is conducted by personnel of the same gender as that of the subject being searched and that the search is done out of the public view and with regard for human dignity [CALEA 1.2.8 b.]. If a question arises regarding the gender of the subject to be searched, the subject's gender will be determined based on the policies, procedures and rules of the detention facility.
7. Officers of the department that cause a strip or body cavity search to be conducted or that are involved in a strip search should include the details of the search in a report to include gender of the subject and identification, age of the individual if a juvenile and gender of personnel conducting the search. [CALEA 1.2.8 c d.].

J. Other Searches authorized by State and Federal Provisions [CALEA 1.2.4]

1. Officers may enter an open field and search it for items subject to seizure when they have reason to believe that the stated items are to be found at that location.
2. Officers may search public places, such as a public park, when they have reason to believe that the items subject to seizure are at that location.
3. Officers may search private locations open to the public, such as the lobby of a bank, when they have reason to believe that items subject to seizure are at that location.
4. Officers may seize items that are immediately apparent as evidence when they come into view and the officers have the right to be in the area at the time.
5. Officers may search abandoned property if it can be established that the owner or person in possession of the property intended to abandon it.

K. Warrantless Search by Law Enforcement Officer of a Supervised Probationer or Parolee.

1. A person who is placed on supervised probation or is released on parole is required to agree to a waiver as a condition of his or her supervised probation or parole that allows any certified law enforcement officer to conduct a warrantless search of his or her person, place of residence, or motor vehicle at any time, day or night, whenever requested by the certified law enforcement officer. A warrantless search that is based on a waiver shall be conducted in a reasonable manner (16-93-106).
2. Though Arkansas Law does not require an articulable suspicion that the person is committing or has committed a criminal offense, this department requires that an officer have some articulable law enforcement concern, however slight, prior to conducting such searches without the direct assistance of a parole or probation officer, or that the parolee/probationer be a party to an otherwise lawful stop based on reasonable suspicion or probable cause.
3. Examples of a law enforcement concern include but are not limited to: Anonymous tips/reports that would otherwise not be sufficient to conduct a search; parolee/probationer found in known crime areas or otherwise under suspicious circumstances less than reasonable suspicion for a terry stop; parolee/probationer is a party to a lawful traffic stop or other detention whereby a search would otherwise be unlawful.
4. Officers are prohibited from using this statute to harass.
5. Prior to a search of a parolee/probationer based on the sole fact that the person is merely a parolee/probationer, a member of this department shall verify the status of the person believed to be on supervised probation or parole and that a waiver exists prior to conducting a seizure and or search.
6. If a waiver does not exist or cannot be confirmed, the officer will need to follow rules of criminal procedures for any warrantless search.
7. Authority granted under this statute does not preclude other restrictions that may be applicable under law including 3rd party rights, co-occupants, etc.
8. In the event a co-occupant or other lawful third party prevents the search of a residence where a parolee or probationer resides based on applicable law, the officer will advise the third party that the parolee/probationer may be in violation of his/her parole based on their lawful objection, and the officer will report the incident to Parole/ Probation for their consideration of enforcement.

9. Officers will document all parole/probation searches or attempts to search in an incident or informational report. The report should document the date, time, location, parolee/probationer searched, scope of the search, the law enforcement concern that led to the search or an otherwise lawful stop, and the result of any such search.
10. In addition to typical enforcement that may occur, the discovery of any criminal violation will be immediately reported to the appropriate Parole/Probation Officer for further administrative consideration.