

Arrests and Investigatory Stops

September 2019

The IACP Law Enforcement Policy Center creates four types of documents: Model Policies, Considerations Documents, Concepts & Issues Papers, and Need to Know one-page summaries. Typically, for each topic, either a Model Policy or a Considerations Document is created, supplemented with a Concepts & Issues Paper. This file contains the following documents:

- ***Model Policy***: Provides police agencies with concrete guidance and directives by describing in sequential format the manner in which actions, tasks, and operations are to be performed.
- ***Concepts & Issues Paper***: Designed to provide context and background information to support a Model Policy or Considerations Document for a deeper understanding of the topic.

Model Policy

Updated: September 2019

Arrests and Investigatory Stops

I. PURPOSE

The purpose of this policy is to define the limitations of authority and acceptable conduct and practices of law enforcement officers when making contact with individuals in the community. Included in this policy are voluntary contacts, investigatory detentions, pat-downs, and arrests.

II. POLICY

Interactions with community members form the cornerstone of effective law enforcement operations. All officers should follow the provisions of this policy to maximize the usefulness of police-public contacts to include voluntary contacts, investigatory detentions, pat-downs, and arrests. It is the policy of this agency that all community-police contacts made by agency personnel shall be conducted professionally and in accordance with established legal principles.¹

III. DEFINITIONS

Arrest: Taking a person into custody.

Arrest Warrant: A written order issued by a judge, magistrate, or other proper authority that commands a law enforcement officer to place a person under arrest.

Custody: Placed under formal arrest or when a reasonable person in the individual's position would have understood the situation to constitute a restraint of freedom of movement of the degree that the law associates with formal arrest.²

Exigent Circumstances: Those circumstances that would cause a reasonable person to believe that a particular action is necessary to prevent physical harm to an individual, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.³

Investigatory Detention: Temporary detention of a person for investigative purposes based upon reasonable suspicion that the person has committed, is committing, or is about to commit a crime, under circumstances that do not amount to probable cause for arrest.⁴

¹ This policy does not apply to stops of motor vehicles. Please refer to the IACP's *Model Policy* and *Concepts & Issues Paper on Motor Vehicle Stops* for further information on that topic.

² Agencies should consult with their legal advisors to determine if there are any additional requirements related to custody based on applicable law.

³ Based on the definition from *United States v. McConney*, 728 F.2d 1195, 1199 (9th Cir.), cert. denied, 469 U.S. 824 (1984).

⁴ Agencies should consult with their legal advisor concerning applicable laws in their jurisdiction regarding specific definitions regarding seizures and detentions.

Pat-Down: A frisk or external feeling by utilizing the hands without manipulation of the outer garments of an individual for weapons.

Probable Cause: When articulable facts and circumstances within an officer's knowledge are sufficient to warrant a prudent person or one of reasonable caution to believe that the suspect has committed, is committing, or is about to commit an offense.

Reasonable Suspicion: A particularized and objective basis, supported by specific and articulable facts, for suspecting a person of criminal activity.⁵ Reasonable suspicion must be more than a hunch or feeling but need not meet the test for probable cause sufficient to make an arrest.

Voluntary Contact: An encounter between a law enforcement officer and an individual that may be initiated by the officer for any reason and during which the individual is free to leave at any time.

IV. PROCEDURES

A. Voluntary Contacts

Voluntary contacts may be initiated without probable cause, reasonable suspicion, or other indication of criminal activity by the individual when officers adhere to provisions of this policy.

1. Initiation of Voluntary Contacts

- a. Officers may initiate a voluntary contact in any location where they have a legal right to be.
- b. Officers are prohibited from initiating contacts based on individual demographics to include, but not limited to race, ethnic background, national origin, gender, gender identity, sexual orientation, religion, socioeconomic status, age, disability, cultural group, or political status, except when such characteristics are part of a specific subject description.⁶
- c. Officers shall not use contacts on a pretextual basis to intimidate, harass, or coerce individuals.

2. Voluntary Contact Protocol – Voluntary contacts are based on the presumption that the individual is not under any reasonable suspicion of criminal activity.

- a. Persons contacted may not be detained in any manner against their will or frisked unless they provide consent or reasonable suspicion is established during the course of the contact to believe they present a danger to the officer and the officer has reasonable suspicion that they have committed, are committing, or are about to commit a crime.⁷
- b. An officer may not use force or coercion to require an individual to stop or respond to questions or directions absent any other legal reason.
- c. Officers shall strive to ensure that their actions and requests could not be reasonably perceived by the individual as a restraint on their freedom to leave. As such, officers should"
 - i. Introduce themselves and explain the reason for making the contact;
 - ii. Act in a professional, respectful, and restrained manner at all times;
 - iii. Establish rapport;
 - iv. Avoid requests that sound like commands;
 - v. Phrase requests using optional words such as “may,” “would you mind,” or similar terms and phrases;
 - vi. Ensure the contact remains reasonable and voluntary; and

⁵ *Black's Law Dictionary*, 9th ed., s.v. “Reasonable Suspicion.”

⁶ See the IACP Policy Center documents on Unbiased Policing at <https://www.theiacp.org/resources/policy-center-resource/unbiased-policing>.

⁷ In the United States, see *Terry v. Ohio*, 392 U.S. 1 (1968).

- vii. Not create a physical or other barrier to the individual's ability to leave, to include keeping identification, such as a driver's license, or by creating a physically imposing and intimidating presence.
- d. If individuals ask whether they must respond to questions or remain in the officer's presence, they shall be informed that they do not have to answer any questions and are free to leave at any time.
- e. Where individuals refuse or cease to cooperate during a contact, they shall be permitted to leave.
- f. Refusal of the individual to cooperate cannot be used as the basis for turning the "contact" into a "detention."

B. Investigatory Detentions

1. Justification for Conducting an Investigatory Detention

- a. Officers may stop individuals for the purpose of conducting an investigatory detention only where reasonable suspicion is present.
- b. In justifying the stop, the officer must be able to point to specific articulable facts that, when taken together with rational inferences, reasonably warrant the stop. Such facts include but are not limited to the following:
 - i. The actions of the suspect suggest that they are engaged in a criminal activity.
 - ii. The suspect is carrying a suspicious object.
 - iii. The suspect's clothing bulges in a manner that suggests they are carrying a weapon.
 - iv. The suspect is located in proximate time and place to an alleged crime.

2. Procedures for Conducting an Investigatory Detention

- a. When approaching the suspect, officers shall clearly identify themselves as law enforcement officers. If not in uniform, officers should announce their identity and display agency identification.
- b. Officers shall, as soon as feasible, explain to the stopped individual(s) why they were stopped.
- c. Before approaching more than one suspect, individual officers should determine whether the circumstances warrant a request for backup assistance and whether the detention can and should be delayed until such assistance arrives.
- d. Officers should confine their questions to those concerning the suspect's identity and other inquiries necessary to resolve the officer's suspicions. In no instance shall an officer detain a suspect longer than is reasonably necessary to make these limited inquiries and resolve suspicions. Officers shall be aware that prolonging an investigatory detention unnecessarily may cause a court to view the detention as an unlawful seizure if probable cause does not exist for an arrest.
- e. Officers are not required to give suspects warnings related to custodial interrogation in order to conduct investigatory detentions.⁸
- f. Individuals are not required nor can they be compelled to answer any questions posed during investigatory detentions.⁹ Failure to respond to an officer's inquiries is not in and of itself sufficient grounds to make an arrest.
- g. Officers shall take precautionary measures for their own safety and the safety of others during an investigatory detention, including display of firearms or handcuffing the detainee. Officers shall be

⁸ Custodial interrogations occur when one or more law enforcement officers question an individual while they are in custody. In the United States, when an individual is not free to leave, officers are required to inform them of certain rights (e.g., *Miranda* warning). In some countries, warnings must be administered prior to non-custodial interviews. Agencies should consult with their legal advisor for guidance in this area.

⁹ Agencies should consult with their legal counsel regarding applicable law dictating whether individuals are required to provide personal identification or information.

aware that unnecessary or prolonged display of firearms and handcuffing during the investigatory detention may cause a court to view the detention as an arrest.

- h. If the officer has no basis for making an arrest after conducting an investigatory detention, they shall record the facts of the detention as prescribed by agency policy or procedure.

C. Pat-Downs

1. Justification for Conducting Pat-Downs

- a. Officers shall remain vigilant and strictly adhere to agency training when performing pat-down searches.
- b. A law enforcement officer has the right to perform a pat-down of the outer garments of a suspect for weapons when:
 - i. The suspect has been legitimately stopped with reasonable suspicion, and
 - ii. The officer has specific articulable facts that the suspect possesses weapons on their person and poses a threat to the officer's or another person's safety.
- c. Not every investigatory detention poses sufficient justification for conducting a pat-down. The following are some criteria that may form the basis for establishing articulable justification for performing a pat-down. Officers should note that these factors are not all-inclusive, and the totality of the circumstances should be considered. The existence of more than one of these factors may be required in order to justify a pat-down. Consider the following:
 - i. The type of crime suspected—particularly in crimes of violence where the use or threat of deadly weapons is involved.
 - ii. Prior knowledge of the suspect's use of force and/or propensity to carry deadly weapons.
 - iii. Visual indications that suggest that the suspect is carrying a firearm or other deadly weapon.
- d. Pat-downs shall be performed only to protect the safety of officers and others and shall never be used as a pretext to obtain evidence or for other purposes.

2. Procedures for Performing a Pat-Down

- a. When reasonable suspicion justifies a pat-down, the search should be performed with due caution, restraint, and sensitivity.
- b. Whenever possible, pat-downs should be conducted by at least two officers – one who performs the search while the other provides protective cover.
- c. Whenever practical, pat-downs should be performed by officers of the same sex as the suspect.¹⁰
- d. Pat-downs should generally be conducted with a suspect in a standing position; however, circumstances may exist where an officer can articulate justification of a more secure position in which to conduct the cursory search.
- e. During the pat-down, officers shall feel only the outer clothing of the suspect using their hands but without manipulation of fingers. Officers shall not place their hands in pockets unless they feel an object that could reasonably be a weapon.
- f. If the suspect is carrying an object such as a handbag, suitcase, briefcase, sack, or other item that may conceal a weapon, the officer should not open the item, but instead place it out of the suspect's reach.
- g. If, during a pat-down, an officer recovers an illegal weapon or contraband, the officer may initiate an arrest based on probable cause.

¹⁰ Agencies should follow their policy regarding conducting searches of transgender or gender non-conforming individuals.

D. Arrests

Officers shall conduct arrests only when based upon probable cause or an arrest warrant.

1. Probable Cause

- a. Probable cause for arrest may be established by one of the following:
 - i. Observations of the officer,
 - ii. Information or evidence obtained during an investigatory detention or voluntary contact,
 - iii. An identified individual's specific complaint,
 - iv. Information provided by a law enforcement informant of proven reliability,
 - v. Information provided by other law enforcement sources.
- b. Officers shall not make any arrest based solely on the following:
 - i. Information received from an anonymous source,
 - ii. Mere suspicion not amounting to probable cause.

2. Arrest Warrants

- a. Except when a warrantless arrest is justified by the existence of probable cause, arrests shall be made under an arrest warrant.
- b. Arrest warrants shall be obtained from the legal authority empowered to issue such warrants in this jurisdiction.
- c. Warrants shall be in the form prescribed by the law of this jurisdiction and shall adequately identify the person to be arrested. The warrant shall also provide such other information as is required by law.
- d. Any officer to whom an arrest warrant is delivered shall examine it to ensure that it is in proper form, that all information required by law is provided, and that the warrant appears to be valid. The officer shall also take note of any restrictions placed upon the arrest by the language of the warrant.
- e. Once received, an arrest warrant shall be executed without delay, except as otherwise may be required by the circumstances of the case.

3. Making the Arrest

- a. No arrest shall be made at a time or in a manner contrary to any express limitations included in a warrant or in a manner or at a time or place prohibited by:
 - i. Agency regulation,
 - ii. Applicable legislation, or
 - iii. Relevant court decisions.
- b. Arrests shall be made at a time and place and in a manner that will maximize the probability of a successful arrest and minimize the danger to officers, innocent bystanders, and suspects.
- c. The arresting officers shall identify themselves, inform the suspect of their arrest, and specify the charges for which the arrest is being made.
- d. Officers not in uniform shall display their badges and credentials when making the arrest to ensure proper identification.¹¹
- e. Officers shall follow agency policy and applicable law regarding knock and announce when executing arrest warrants.

¹¹ For more information, see the IACP Policy Center documents on Off-Duty Arrests at <https://www.theiacp.org/resources/policy-center-resource/off-duty-arrests>.

- f. No officer shall enter premises owned or occupied by a third person to make an arrest unless the officer has a separate legal basis for entering the premises. Such a basis may be provided by:
 - i. Possession by the officer of a search warrant for those premises,
 - ii. Consent of a person with apparent authority by law to give such consent, or
 - iii. Exigent circumstances.
 - g. Officers shall use only the level of force that they reasonably believe is necessary to make an arrest in accordance with this agency's use-of-force policy.
 - h. Arrestees shall be advised of their rights pertaining to custodial interrogation before any questioning designed to elicit incriminating statements. Those rights should, whenever reasonably possible, be read verbatim from a standardized agency-approved form.¹²
4. Arrestee Requests
- a. Following the arrest, officers should not permit arrestees to leave the immediate area of the arrest for personal purposes (e.g., to get a coat).
 - b. In exceptional cases where it is deemed necessary to grant the arrestee's request to leave the immediate area, they shall first be searched for weapons, contraband, evidence, or implements of escape and then be accompanied and closely monitored by the arresting or other officers.
5. Safety Precautions
- a. Officers shall approach every arrest situation with the knowledge that any arrest, regardless of the offense involved, may present an element of danger. Therefore, officers making arrests shall take all reasonable precautions to ensure their own safety.
 - b. Restraint of the Arrestee
 - i. Officers should handcuff arrestees in accordance with training and agency policy.
 - ii. Officers may handcuff the arrestee with their hands in front, or use other appropriate and approved restraining device(s) where the arrestee:
 - Is in an obvious state of pregnancy,
 - Has a physical handicap,
 - Displays behaviors consistent with mental illness or an intellectual/developmental disability,¹³
 - Has injuries that could be aggravated by standard handcuffing procedures, or
 - Where other special circumstances exist.
 - iii. Multiple handcuffs shall be used when needed to prevent injury.
 - iv. Additional approved restraint devices may be used to secure an individual who violently resists arrest or who acts in a manner that indicates they pose a threat to themselves or to the public. Officers should use only those restraints that appear necessary to control the situation and only for the period of time required.
 - v. When restraining individuals on the ground, officers should position the subject in a manner that will assist breathing, such as placement on their side, and avoid pressure to the chest, neck, or head.

¹² See the IACP Policy Center documents on Interrogations and Confessions at <https://www.theiacp.org/resources/policy-center-resource/interrogations-and-confessions>.

¹³ See the IACP Policy Center documents on Interactions with Individuals with Intellectual and Developmental Disabilities at <https://www.theiacp.org/resources/policy-center-resource/intellectual-and-developmental-disabilities> and Responding to Persons Experiencing a Mental Health Crisis at <https://www.theiacp.org/resources/policy-center-resource/mental-illness>.

- c. Search Incident to Arrest
 - i. Officers shall conduct a thorough search of the person arrested.
 - ii. Any criminal evidence discovered during the search of the arrestee's person shall be seized and preserved in accordance with agency procedures.
 - iii. The search incident to arrest shall include not only the arrestee, but also areas within their reach and control.
 - iv. Officers shall follow agency policy and protocol related to strip and body cavity searches.¹⁴
- d. Protective sweeps of the premises or area where the arrest occurs may be performed if there is a reasonable belief that there are third parties that pose a danger to those on the arrest scene.¹⁵
- e. Post-Arrest Protection
 - i. Officers are responsible for the safety of the arrestee. In addition, officers shall take the steps reasonably necessary to protect:
 - The officer from the arrestee,
 - Victims and third persons from the arrestee, and
 - The arrestee from self-injury or injury by others.
 - ii. In particular, officers shall not allow victims into close proximity with the arrestee and shall prevent bystanders from approaching the arrestee.
 - iii. Officers shall not allow the arrestee out of their immediate presence for any reason until the arrestee is properly secured and transported.¹⁶
- 6. Arrest of Juveniles – All officers shall be aware that the arrest, transportation, and booking of juveniles are subject to specific legal requirements. Officers shall be familiar with and observe these requirements at all times when arresting juveniles.¹⁷
- 7. Arrest of Agency Members – When arresting a member of their own agency, officers shall take all precautions and follow all procedures as provided by agency policy.
- 8. Citation in Lieu of Arrest – Officers shall issue citations in lieu of arrest in all situations where citation is directed by law. In situations where citation is discretionary, officers shall consider whether:
 - a. The person is likely to disregard a citation;
 - b. The person, if cited and released, is likely to cause harm to themselves or any other person; and/or
 - c. There are other factors that should be considered and are permitted by law and agency policy.
- 9. Release after Arrest
 - a. If it becomes apparent that there is no probable cause to support an arrest, the individual shall be released, and a supervisor shall be notified.
 - b. The officer should document their actions as to the reason(s) for releasing the individual.
 - c. If the person is released, officers shall ensure that they are released at a safe location and not otherwise placed at risk as a result of the incident. If necessary, officers should provide transportation for the released person to a safe location.

¹⁴ See the IACP Policy Center documents on Strip and Body Cavity Searches at <https://www.theiacp.org/resources/policy-center-resource/strip-and-body-cavity-searches>.

¹⁵ See *Arizona v. Gant* 556 U.S. 332 (2009) for restrictions on conducting warrantless searches of vehicles incident to arrest. Also see *Lankford v. City of Pullman*, No. 2:16-CV-00377-SMJ (E.D. Wash. Mar. 1, 2018) for more information regarding protective sweeps.

¹⁶ Please refer to the IACP Policy Center documents on Transportation of Prisoners at <https://www.theiacp.org/resources/policy-center-resource/transportation-of-prisoners>.

¹⁷ Please refer to the IACP Policy Center documents on Juvenile Diversion and Custody at <https://www.theiacp.org/resources/policy-center-resource/juvenile-custody>.

E. Reporting

1. The agency should provide an annual report regarding investigatory detentions and arrests to the public, indicating the total number of stops, location of stops, time and day information, outcome of the stops (arrest, non-arrest, etc.), weapon recovery, race, and gender of the stopped individual.
2. The agency should consider an audit and review of voluntary contacts, investigatory detentions, pat-downs, and arrests and ensure they are conducted and performed within agency policy and applicable laws. Contacts, detentions, searches, or arrests that do not conform to policy or law shall result in an administrative investigation.

Every effort has been made by the IACP Law Enforcement Policy Center staff and advisory board to ensure that this document incorporates the most current information and contemporary professional judgment on this issue. However, law enforcement administrators should be cautioned that no model policy can meet all the needs of any given law enforcement agency. In addition, the formulation of specific agency policies must take into account local political and community perspectives and customs, prerogatives, and demands; often divergent law enforcement strategies and philosophies; and the impact of varied agency resource capabilities, among other factors. Readers outside of the United States should note that, while this document promotes procedures reflective of a democratic society, its legal basis follows United States Supreme Court rulings and other federal laws and statutes. Law enforcement administrators should be cautioned that each law enforcement agency operates in a unique environment of court rulings, state laws, local ordinances, regulations, judicial and administrative decisions, and collective bargaining agreements that must be considered and should therefore consult their legal advisor before implementing any policy.

© Copyright 2020. Agencies are encouraged to use this document to establish one customized to their agency and jurisdiction. However, copyright is held by the International Association of Chiefs of Police, Alexandria, Virginia, U.S.A. All rights reserved under both international and Pan-American copyright conventions. Further dissemination of this material is prohibited without prior written consent of the copyright holder.

Concepts & Issues Paper

Updated: September 2019

Arrests and Investigatory Stops

I. INTRODUCTION

A. Purpose of Document

This paper is designed to accompany the Model Policy on Arrests and Alternatives to Arrest established by the IACP Law Enforcement Policy Center. This paper provides essential background material and supporting documentation for greater understanding of the developmental philosophy and implementation requirements of the model policy. This material will be of value to law enforcement executives in their efforts to tailor the model policy to the requirements and circumstances of their communities and their law enforcement agencies.

B. Overview

Law enforcement officers must understand their powers, duties, and responsibilities when interacting with members of the public. Types of interactions fall into several distinct categories, arranged in order of the least to most intrusive to an individual's personal freedom rights: voluntary contacts, investigatory detentions, arrest alternatives, and arrests. This discussion paper provides overall legal principles guiding each of these categories, as well as pat-downs,¹ and reflects commonly held legal principles.²

II. VOLUNTARY CONTACTS

A. Background

Law enforcement contacts with members of the public that do not involve an interrogation or arrest are sometimes referred to as voluntary contacts. Voluntary contacts do not need to be based upon probable cause, reasonable suspicion, or other indication of criminal activity by an individual and are available to officers under a wide variety of circumstances.

The ultimate goal of making contact with the public in a non-enforcement capacity should be to forge relationships with communities and build trust between law enforcement and community members.³ The ability to

¹ A pat-down is also referred to in this paper as a "frisk."

² Agencies should be aware that individual localities may impose more restrictive limitations. Officers should be aware of those departures where appropriate in individual jurisdictions.

³ President's Task Force on 21st Century Policing, *Final Report of the President's Task Force on 21st Century Policing* (Washington, DC: Office of Community Oriented Policing Services, 2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

approach a member of the public and ask questions is a very valuable and useful tool that an officer may employ in a variety of situations. Obtaining cooperation in circumstances where the situation does not rise to the level of arrest or the issuance of a citation is important in most aspects of law enforcement patrol and investigations.

If conducted properly and skillfully, voluntary contacts can encourage cooperation with the public and, in many instances, may produce helpful information. As such, an understanding of the nature and limitations of such contacts is essential.

B. Initiating Voluntary Contacts

Locations. Officers may conduct a voluntary contact in any location where they have a legal right to be present. These locations generally include the following.

- *Public areas.* An officer normally may conduct a contact in any area that is intended for public use or one that is exposed to public view. A public street is a common example of such a location.
- *Locations where the officer has been legally admitted.* Even though an area is not a public place, an officer may conduct a voluntary contact in that area if they have been given permission to enter or be present there. This might include, for example, a residence or place of business. Such locations are not usually open to the public or to public view, but an officer may be admitted into them by an individual who is authorized to give legal consent. While in many cases, this individual is the owner of the location, this is not always the case. For example, a landlord, though the owner of the premises, is not normally authorized to give consent for an officer to enter or be present upon the portion of the premises that is lawfully occupied by a tenant. An apartment occupied by a lessee of that apartment is an example of such a location.

The issue of who may give consent in a specific situation can be a complicated one. It usually arises in the context of searches and seizures, but it is equally applicable for the officer who merely wishes to initiate a routine voluntary contact. A contact initiated in an area that the officer has entered without proper consent is unlawful, unless certain conditions exist.

- *Locations entered pursuant to a court order.* Officers may lawfully enter areas pursuant to a search or arrest warrant or other court order. In such situations, contacts with those on the premises are often matters of arrest or investigatory detention, but consensual contacts may also occur with persons found in such areas who are not the subject of probable cause or reasonable suspicion.
- *Locations where an immediate law enforcement presence is required.* In an emergency, law enforcement officers may be authorized to enter areas where they would otherwise have no legal right to be present. Such entries may be for the purpose of saving life, protecting property, or for other legitimate reasons associated with an emergency. This is an exception to the search warrant requirement, but such emergency circumstances may also give the officer legal standing to be in a location where a voluntary contact may be initiated. However, this exception is a narrow one and is carefully scrutinized by the courts. It should not be used as a pretext for gaining access to an area for purposes other than those associated with the emergency.
- *Locations where law enforcement may effect a lawful warrantless arrest.* Where probable cause exists to arrest an individual without a warrant, the officer's presence in that location may be proper even in the absence of a search warrant or consent. During the period of presence in such locations, voluntary contacts may be properly initiated for legitimate purposes.
- *Other locations.* The foregoing list is provided as an example and is not intended to be exhaustive. Under the virtually limitless variety of circumstances that an officer may encounter in the field, voluntary contacts may be initiated in many places not specifically mentioned above. However, it must be remembered that if the officer is not authorized to be in a particular location, the voluntary contact is improper, just as the officer's presence in the unauthorized area is improper.

Restrictions. In an effort to ensure that officers are conducting themselves in a lawful manner and promoting community trust, agency policy should stress that voluntary contacts should never be used on a pretextual basis to intimidate, harass, or coerce individuals. In keeping with an agency's commitment to unbiased and fair and impartial policing, strict prohibitions should be included in policy regarding initiating contacts based on individual demographics.⁴ These demographics include but are not limited to race, ethnic background, national origin, gender, gender identity, sexual orientation, religion, socioeconomic status, age, disability, cultural group, or political status. However, an exception to this prohibition occurs when such characteristics are part of a specific suspect description.

C. Voluntary Contact Protocol

Voluntary contacts are primarily based on the presumption that the individual is not under any reasonable suspicion of criminal activity. Therefore, officers must adhere to the following agency protocols when conducting voluntary contacts.

Freedom to leave. Where there are no grounds for reasonable suspicion, a criminal violation has not occurred, or there is no probable cause that the individual being contacted is engaged in criminal behavior, the individual is not detained and is free to terminate or discontinue the contact at any time.⁵ Officers may not require individuals to answer questions or prevent them from walking away. An officer may make requests of the individual, such as those related to safety, but the contacted individual may refuse the request.

In the United States, this is an important and inalienable right; the courts have determined that law enforcement officers have no authority to detain any individual where there is no reasonable suspicion based upon objective, articulable facts that the person is involved in a crime.

Prohibition against use of force and coercion. An officer may not use coercion of any kind to initiate or carry out a voluntary contact. No coercion may be employed to force the individual to stop or require them to respond to questions. The use of physical force, threats of arrest, and similar coercive measures is improper and may not be employed when initiating or conducting a voluntary contact. Should force or coercion be used, the contact by definition is no longer voluntary.

Right to refuse the contact or to answer questions. During a voluntary contact, individuals may ask whether they must remain there or respond to the officer's questions. The officer may not falsely state to the individual that there is any such requirement. When individuals make this type of inquiry, the officer must inform them that they do not have to answer any questions and are free to leave at any time.

Some agencies may require that, at the beginning of the contact, officers voluntarily advise individuals of their right to refuse to answer questions and their freedom to leave, whether or not an inquiry has been made. Even in the absence of such a requirement, the officer may elect to inform the individual of these rights in order to reduce the possibility of a later claim of coercion or improper behavior by the officer. Such assurances on the part of the officer may reduce hostility on the part of the individual and contribute to communication during the contact.

In some instances, an individual may refuse to consent to a contact or fail or cease to cooperate during the course of the contact, such as through silence or by not answering questions. This behavior, in and of itself, should not form the basis for any further action by the officer. After such a refusal or cessation of cooperation, the individual must be permitted to leave.

Prohibition against pat-downs. Pat-downs are not allowed during voluntary contacts unless consent is obtained or reasonable suspicion is established during the course of the contact to believe the individual presents a danger to

⁴ See the IACP Law Enforcement Policy Center documents on Unbiased Policing at <https://www.theiacp.org/resources/policy-center-resource/unbiased-policing>.

⁵ There may be circumstances during which an officer may detain a person for mental health evaluations or civil conditions, according to applicable law and agency policy.

the officer and there is reasonable suspicion that the individual has committed, is committing, or is about to commit a crime.⁶

D. Rapport and Communication During Voluntary Contacts

The ways in which members of the public develop opinions about a specific interaction with an officer are based primarily upon two things: the process of the encounter and its outcome. When community members perceive that they are treated with dignity and respect, they are more likely to recognize a law enforcement officer as having legitimate authority to enforce laws.⁷ Referred to as procedural justice, the process by which an officer engages with members of the public can be even more critical to public perceptions than the actual outcome of the encounter itself.⁸

Throughout a voluntary contact, officers should strive to ensure that their actions and requests are not perceived by individuals as a restraint on their freedom to leave. If an individual perceives a voluntary contact as coercive or as a restraint on their freedom, the possibility of hostility increases, and the officer's chances of obtaining useful information diminishes. Handled properly, such contacts can produce cooperation and useful information and may enhance goodwill and improve the agency image. Regardless of the outcome of the contact, the individual should feel that they were treated with dignity and fairness. Therefore, it is important for officers to keep in mind certain basic principles when conducting a voluntary contact.

Provide an introduction and explain the reason for the contact. Officers conducting a voluntary contact should introduce themselves and explain the reason for making the contact in an effort to establish a favorable personal relationship with the individual. The officer should address and treat the person being contacted in the same manner that might be used in establishing rapport with any person in any situation.

Act in a professional and respectful manner. Officers should act in a professional and respectful manner at all times. An authoritative business persona should not be utilized, as it might not be effective for these types of voluntary interactions. Adoption of an aggressive, officious, or belligerent attitude should be avoided. An officer should behave in a non-threatening manner. Even when the individual is uncooperative, officers should maintain a calm, professional demeanor.

Establish rapport. It is helpful to establish some sort of personal rapport during the course of a voluntary contact. How this is accomplished depends upon the officer, the individual, and the situation. It may involve a brief comment about matters unrelated to the purpose for the contact or other subjects pertinent to the situation. Even a comment about something outside of policing may provide a basis for building rapport.

Be aware of language and phrasing. The language and phrasing used by an officer is just as important as the manner in which the information is provided and questions are posed. Officers should be aware of the individual's reaction to the words they use and the demeanor they project in such situations. It is recommended that officers avoid requests that may be interpreted as commands. Instead, officers should phrase requests using words such as "may," "would you mind," or similar terms.

Keep contacts reasonable and voluntary. Where possible, officers should keep the contact brief. There is no exact time frame, as this depends on many circumstances surrounding the situation. However, extended contacts may generate complaints against the officer and even result in a court finding that the officer exceeded the permissible bounds of a consensual contact and turned it into an illegal investigatory detention.

Regarding the voluntariness of the stop, officers should be instructed not to create a physical or other barrier to the individual's ability to leave. For instance, officers should not keep an individual's identification or physically

⁶ In the United States, see *Terry v. Ohio*, 392 U.S. 1 (1968).

⁷ President's Task Force on 21st Century Policing, *Final Report*, https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

⁸ Dennis P. Rosenbaum et al., "Measuring Procedural Justice and Legitimacy at the Local Level: The Police-Community Interaction Survey," *Journal of Experimental Criminology* 11, no. 3 (September 2015): 335–366.

place themselves in an imposing and intimidating manner that may lead an individual to believe they are not free to leave.

III. INVESTIGATORY DETENTIONS

A. Legal Basis

A law enforcement officer may stop a person for questioning if the officer reasonably suspects that the person has committed, is committing, or is about to commit a crime. It is not necessary that the officer have probable cause at the time that the stop is made to detain the individual. All that is required is that the officer have a *reasonable suspicion* that the individual is involved in criminal activity. However, to be reasonable, this suspicion must be based upon articulable facts that would lead a reasonable person to suspect that the individual is involved in criminal activity.⁹

Individual jurisdictions may place limits upon an officer's authority to detain and frisk suspects that are more restrictive than federal requirements. Consequently, when drafting a policy for investigatory detentions and pat-downs, law enforcement agencies should examine applicable statutes and decisions. Consultation with legal counsel is strongly advised—to include whether there are applicable laws in the jurisdiction regarding specific definitions pertaining to seizures and detentions.¹⁰

B. Voluntary Contact vs. Investigatory Detention

In some circumstances, what begins as a voluntary contact may become something more as the result of information developed by the officer during the interaction. During the course of the contact, circumstances may appear or statements be made that give rise to reasonable suspicion that the individual has committed, is committing, or is about to commit a criminal act. The contact may then become an investigatory detention.

If the officer feels that a voluntary contact has become an investigative detention, they should be prepared to describe very clearly the factors that, in the officer's mind, created this transition. The following factors, among others, may be considered in determining whether the contact was a voluntary contact or an investigatory detention.

- *Interference with the suspect's freedom of movement.* If officers position themselves or their vehicles in such a manner as to block the individual's path, this indicates that the individual is not free to leave and may render the encounter an investigatory detention.
- *Number of officers and their behavior.* Confrontation of the individual by more than one officer may create an atmosphere of intimidation that may cause the contact to be considered an investigatory detention. Excessive display of weapons, such as drawn or pointed firearms, or a threatening or bullying manner may have the same effect. Even the prolonged or repeated display of badges or other law enforcement identification may be considered intimidating.¹¹
- *Physical contact with the individual.* Any physical contact with the individual for purposes of stopping or holding them or to search for weapons or evidence will almost certainly cause the contact to be considered a non-consensual investigatory detention or even a full-fledged arrest.
- *Retaining personal property of the individual.* If the officer wishes a contact to be regarded as consensual, any personal property taken from the individual, such as a driver's license or other identification, should

⁹ *Terry v. Ohio*, 392 U.S. 1 (1968). In the United States, this is the landmark legal decision that grants officers the authority to conduct investigatory detentions (also called "field interviews" or "Terry stops") and pat-downs (often referred to as "frisks").

¹⁰ In the United States, agency policies and procedures should also recognize that investigatory detentions are "seizures" of the person within the meaning of the Fourth Amendment, and the discovery of any physical evidence during such an interview is valid only if Fourth Amendment considerations are met.

¹¹ Officers must, for reasons of both legality and personal safety, adequately identify themselves as law enforcement officers. Proper identification as a law enforcement officer does not render an encounter non-consensual. It is only the excessive, unnecessary, or deliberately intimidating display of authority that affects the consensual nature of the encounter.

be returned promptly. Prolonged retention by the officer of such items may lead a court to conclude that the individual was not free to leave.

- *Refusal to cooperate.* Refusal of an individual to cooperate during a voluntary contact does not form the basis for reasonable suspicion; refusal of a person to cooperate does not, in and of itself, form the basis for turning the voluntary contact into an investigatory detention.

Flight from voluntary contact. In some instances, when a law enforcement officer attempts to make a voluntary contact, the individual may make efforts to avoid the contact by fleeing. An individual's flight from contact with law enforcement officers may be considered in determining whether reasonable suspicion exists to conduct an investigatory detention. In addition, certain types of behavior by the individual may be pertinent factors in determining whether or not reasonable suspicion exists.¹²

C. Initiating and Conducting Investigatory Detentions

An investigatory detention is justified only when the officer has a reasonable suspicion that the individual is engaged in criminal activity. Reasonable suspicion must be more than a hunch or feeling but does not have to meet the threshold for probable cause. In justifying the detention, officers must be able to point to specific articulable facts that, when taken together with rational inferences, reasonably warrant the stop. Such facts may include the actions of the suspect that suggest they are engaged in criminal activity; the fact that the suspect is carrying a suspicious object; objective evidence that the suspect may be armed, such as a bulge in the clothing; and/or officer knowledge that a crime has recently been committed in the area, especially if the suspect matches the description of the perpetrator of the crime. Knowledge by the officer that this particular individual has a prior criminal history or has been involved in criminal activity may also be considered; however, this shouldn't be the sole basis for the stop.

Officers should conduct an investigatory detention in a manner that will not be considered an unlawful arrest and act in a way that the suspect understands they are not under arrest. When conducting an investigatory detention, officers should do the following:

- Clearly identify themselves as law enforcement officers when approaching the suspect. If not in uniform, officers should announce their identities and display agency identification.
- Explain the reason for the stop as soon as feasible.
- Determine whether circumstances warrant a request for backup assistance and/or whether the contact can and should be delayed until such assistance arrives. This is especially important when there is only one officer and/or more than one suspect.
- Restrict questions to those concerning the suspect's identity and other inquiries necessary to resolve the officers' suspicions.
- Detain suspects no longer than is reasonably necessary to make these limited inquiries. Unnecessarily prolonging an investigatory detention may cause a court to view the detention as an unlawful seizure if probable cause does not exist for an arrest.
- Limit any movement of the suspect from the location of initial contact to a location that is reasonably necessary for officer safety and the determination of criminal involvement, such as to an area where there is more light.

Officers are generally not required to provide warnings related to custodial interrogations before beginning questioning during an investigatory detention.¹³ Individuals are not required, nor can they be compelled to answer

¹² See Appendix B for more information regarding specific United States case law.

¹³ Custodial interrogations occur when one or more law enforcement officers question an individual while they are in custody. In the United States, when an individual is not free to leave, officers are required to inform them of certain rights (e.g., *Miranda* warning). In some countries, warnings must be administered prior to non-custodial interviews. Agencies should consult with their legal advisor for guidance in this area.

questions posed during investigatory detention. An individual's refusal to answer questions in these situations does not provide the officer with probable cause to arrest.

Officers should take precautionary measures for their own safety during an investigatory detention, including displaying firearms or handcuffing the detainee as appropriate and allowed by agency policy or law. However, the prolonged displaying of firearms and handcuffing during the investigatory detention may also cause the detention to be viewed as an actual arrest.

If after conducting the investigatory detention, the officer has no basis for making an arrest, they should record the facts of the detention as prescribed by agency policy or procedure. Regular review of this documentation should occur to ensure that officers are following appropriate policy and procedures and to determine if any corrective action is necessary.

However, if during the investigatory detention it becomes apparent that there is probable cause that the individual has committed a criminal offense, the individual should be placed under arrest, a search incident to the arrest should be conducted, and all appropriate booking procedures should be completed as instructed by agency policy.

IV. PAT-DOWNS

Officers have the authority to conduct a pat-down or "frisk" of the outer garments of a suspect when (1) the suspect is the subject of a valid investigatory detention, and (2) the officer has specific articulable facts that the suspect possesses weapons on their person and poses a threat to the officer's or another person's safety.¹⁴ Officers shall remain vigilant and strictly adhere to agency training when performing pat-down searches.

A. Justification for Conducting Pat-Downs

The following points are vital to a valid pat-down:

- Only a valid investigative detention based upon reasonable suspicion of criminal activity justifies a pat-down or consent search. If the stop is invalid, the pat-down is also invalid.
- The right to stop a suspect for questioning does not automatically give the officer the right to conduct the pat-down. Even if the stop is valid, before a pat-down may be conducted, there must be a separate basis for believing that the person who has been stopped may possess a weapon and may be a threat to the officer.
- Factors that may justify an officer's reaching the conclusion that a suspect who has been validly stopped may possess a weapon include:
 - the type of crime suspected, particularly in crimes of violence where the use or threat of use of deadly weapons is involved;
 - any visual indication that the suspect may be carrying a weapon, such as a bulge in the clothing;¹⁵ and
 - any prior knowledge of the suspect's use of force and/or propensity to carry deadly weapons.

Some agencies link justification to perform a pat-down directly to indications that the suspect is armed and dangerous. However, agencies may also consider including the circumstances of the stop, to include the number of suspects and officers present; the time of day and location or neighborhood of the stop; and the demeanor or behavior of the suspect, such as belligerence, as factors to consider when making the justification decision.

¹⁴ Specifically, in the United States, the Supreme Court declared that an officer who has stopped a suspect may "search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual." *Terry*, 392 U.S. at 27.

¹⁵ Even the fact that the suspect is wearing loose or voluminous clothing such as a large, heavy overcoat or raincoat that may easily conceal the presence of a weapon may justify a pat-down.

B. Performing a Pat-Down¹⁶

When reasonable suspicion justifies a pat-down, the search should be performed with due caution, restraint, and sensitivity. The goal of these types of searches is to protect the safety of officers and others. They should never be used as a pretext to obtain evidence or for other purposes. In fact, if the pat-down itself is not justified, any evidence found during the search may not be admissible in court.

Whenever possible, pat-downs should be conducted by at least two officers. One officer should perform the search, while the other provides protective cover. The pat-down should generally be conducted with the suspect in a standing position. However, circumstances may exist where an officer can articulate a more secure position to conduct the search.

The pat-down should be limited to a frisk of the suspect's outer clothing only. Officers should utilize their hands, but not manipulate their fingers, when conducting the search and should not reach into the suspect's clothing or pockets unless and until the presence of a weapon has been detected. Once the officer has detected the presence of a weapon, or what the officer reasonably believes to be a weapon, the officer may reach into the clothing to remove the object. If the object proves to be a weapon or contraband or other evidence that would justify an arrest, the officer may then place the individual under arrest and conduct a full-scale search of the person.

There may be situations where an individual is stopped for an investigatory detention and is carrying an object such as a handbag, suitcase, briefcase, sack, or other item that may conceal a weapon. These items should not be opened. Rather, the officer should place such items out of reach of the suspect during the investigatory detention. This ensures the officer's safety while avoiding the risk of an unlawful search.

V. ARRESTS

A. Basis for Making Arrests

An arrest should be conducted only based on probable cause or an arrest warrant. There are several general factors that should be taken into account when establishing probable cause:

- Observations made by the officer
- Information or evidence obtained during an investigatory detention or a voluntary contact
- Specific, verifiable information or complaints provided by a member of the public
- Information provided by an informant of proven reliability
- Information provided by other law enforcement sources

Probable cause for arrest exists when facts and circumstances within an officer's knowledge are sufficient to warrant a prudent person, or one of reasonable caution, in believing that the suspect has committed, is committing, or is about to commit an offense.

B. Arrest Warrants

Arrest warrants should identify the individual to be arrested, the criminal offense, and other information as required by law. Once the arrest warrant has been issued, the officer who is responsible for its execution should examine it to ensure that it is in proper form, that all information required by law is provided, and that the warrant appears to be valid. The arresting officer should also be aware of any restrictions that may be placed upon the arrest by the warrant (i.e.g., time of day, no-knock, and notice requirement), as well as limitations issued by agency regulation, legislation, or applicable court decisions.

¹⁶ For a discussion of the "plain touch" rule in the United States, see Appendix A.

An arrest warrant authorizes limited invasion of a person's privacy interest when it is necessary to arrest the individual in their home. Arrest warrants do not authorize law enforcement entry into the residence of a third party in order to arrest the individual named in the warrant. As such, absent exigent circumstances¹⁷ or consent, law enforcement officers cannot legally search for the subject of an arrest warrant in the home of a third party without first obtaining a search warrant or consent.

C. Anonymous Informants¹⁸

Anonymous tips to law enforcement are among the most productive pieces of information available for solving crimes and interdicting criminal conspiracies and are generally regarded as acts of persons concerned for the safety of themselves and their communities. In some cases, cause to question the veracity and motivation of a particular tipster can be present. However, the act of coming forward openly with information absent an identifiable ulterior motive—distinct from criminal informants who are paid or receive other concessions—means that tips from community members are normally taken at face value. Identifying oneself, allowing officers to question one's knowledge and veracity, and being aware that filing a false report could result in criminal prosecution, all affect the greater willingness to accept such statements as credible and reliable.

Compared to the identified informant, or even a criminal informant with a known record of good performance, the anonymous informant carries no known reliability. Many anonymous informers are undoubtedly concerned members of the public who fear for their safety and the safety of their families. However, anonymous informants can also be disgruntled persons who are acting on personal vendettas or prejudices. Whatever the case, the fact that a tip comes from an anonymous person means that officers have no indication of the tipster's ability to provide accurate and credible information. For these and related reasons, independent verification of such information by law enforcement officers or others of known reliability to justify enforcement action is required.

Verification requires that the tipster be able to provide sufficient details of the perpetrator or incident to demonstrate specific personal knowledge. Without this information, officers are without the necessary details to provide verification of the tip. Details concerning the tipster's observations, such as identification of vehicles; clear description of persons and places; the proximity of the tipster to the event or other basis for knowledge of events; exact locations and times; and present and anticipated actions of suspects and their identities, are among the types of information that should be solicited from an anonymous informant when possible. As many details about anticipated behavior or actions of the suspect as possible should be obtained, as this is the type of information that can be corroborated by officers to support enforcement actions. Gathering as much predictive and related information from anonymous callers as possible is paramount in these situations. Communications personnel and others should be made aware of this fact and provided with appropriate prompts that they can use to assist them in gathering information from callers in these cases.

D. Pre-Arrest Diversion or Deflection Programs

Agencies should consider developing guidelines for when to utilize alternatives to arrest, such as pre-arrest diversion or deflection programs. Such programs can help prevent vulnerable individuals from developing a pattern of offending or cycling through the criminal justice system. Pre-arrest diversion programs not only help low-level, non-violent offenders avoid the collateral consequences of arrest and reduce the chances of further criminal offending, but

¹⁷ The phrase *exigent circumstances* generally refers to those circumstances that would cause a reasonable person to believe that a particular action is necessary to prevent physical harm to an individual, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts. In short, circumstances which, when viewed as of the time of the entry would lead a reasonable person to believe that unless an entry and arrest are made immediately, the suspect may escape, destroy evidence, or continue the commission of an ongoing crime (of the violent type), represent exigencies of the type justifying immediate law enforcement action on probable cause without first obtaining a warrant.

¹⁸ For additional discussion regarding U.S. case law concerning anonymous informants, please refer to Appendix B.

also enhance community-police relations by contributing to police legitimacy, reducing incarceration rates, and more effectively using governmental resources.¹⁹

E. Citation in Lieu of Arrest

There are also many instances when issuing a citation instead of physically taking a person into custody for the offense is preferred. Citations can typically be issued for misdemeanors that are nonviolent and do not expose the public to additional dangers by allowing the suspect to remain out of jail. These offenses may include driving offenses, larceny, and other nuisance crimes. There are several benefits of issuing citations. First, research has shown that issuing a citation rather than arrest produces an average time savings of approximately one hour per incident.²⁰ Another benefit for officers is that allowing them to cite and release emphasizes their ability to use discretion to make decisions that are best for the offender, community, and officer. In allowing officers discretion, the public's trust and opinion of law enforcement officers may be improved.²¹

When determining whether a particular situation is appropriate for citation in lieu of arrest, officers should consider whether the person is likely to disregard the citation; if cited and released, whether they are likely to cause harm to themselves or another; and whether there are any other factors that should be considered and are permitted by law and agency policy.

F. Arrest Planning

The location, timing, and manner of the arrest should be planned carefully in order to maximize the probability of a successful arrest and minimize the danger to officers, suspects, and third parties. For example, wherever possible, arrests should not be made in a location where they will pose a threat to the safety of the public, for example, crowded places where bystanders may be injured should the arrestee offer resistance. If time permits and/or the situation is high-risk, an arrest may be planned in advance in consultation with a supervisor or other experienced officers.

Advance planning may include deconfliction with surrounding agencies and a risk assessment, which may identify information concerning the suspect and location. Specific information to be collected may include items such as the suspect's:

- Potential for violence;
- Past law enforcement encounters;
- Possession of firearms; and
- Probation and parole status.

Likewise, information about the location is extremely important, to include:

- The owner;
- Past incidents of violence with law enforcement;
- Entrances/exits;
- The presence of other individuals who might interfere with the arrest; and
- Any potential known hazards.

Agencies should also check with other government entities to obtain information regarding environmental, animal, and community development concerns.

¹⁹ For more information, visit The Police, Treatment, and Community Collaborative (PTACC) website at <https://ptaccollaborative.org/>.

²⁰ See IACP, *Citation in Lieu of Arrest: Examining Law Enforcement's Use of Citation Across the United States* (Alexandria, VA: IACP, 2016), <https://www.theiacp.org/sites/default/files/all-i-j/IACP%20Citation%20Final%20Report%202016.pdf>.

²¹ For more information, see the IACP resources available on citation in lieu of arrest at <http://www.theiacp.org/citation>.

Some agencies develop a scoring or matrix system to assess various risk factors pertaining to the suspect(s) and location. Once a certain number of risk factors are met, consideration is given to including tactical personnel.

Officers should approach every arrest situation with the knowledge that any arrest, regardless of the offense, involves an element of danger. Therefore, all arresting officers should take reasonable precautions to ensure their own safety in addition to the safety of third parties. General precautions include the following:

- Restraining the arrestee as soon as possible,
- Searching the arrestee for weapons, and
- Conducting a protective sweep of the premises or the immediate area where the arrest occurs when there is reasonable suspicion that a dangerous person may be present.

G. Making the Arrest

As soon as practical once the individual to be arrested has been positively identified and located, the arresting officers should identify themselves as law enforcement officers, inform the suspect of their arrest, and specify the charges for which the arrest is being made. Officers should follow agency policy and applicable law regarding knock and announce when executing arrest warrants. Officers not in uniform should display their shields and credentials when making the arrest to ensure proper identification.

While conducting the arrest, officers should follow their agency's policy on use of force and use only that degree of force that is reasonably necessary to ensure the safety of the officers, the suspect, and the public. The arrestee should be restrained by use of handcuffs or other authorized devices after being taken into custody, except as otherwise provided by agency policy. Other lawful forms of restraint may be used in order to ensure the safety of the arresting officers. Officers should use only those restraints that appear necessary to control the situation and only for the period of time required. When restrained on the ground, officers should position the subject in a manner that will assist breathing, such as placement on their side, and avoid pressure to the chest, neck, or head.

H. Post-Arrest Procedures²²

Officers are responsible for the safety of the arrestee(s). Generally, officers should not allow victims or other bystanders to come into close proximity with the arrestee. In addition, officers should not allow the arrestee out of their immediate presence for any reason until the arrestee is properly secured and transported. For example, officers should not permit arrestees to leave the immediate area of the arrest to acquire personal items or to perform other tasks prior to being transported. In exceptional cases where such requests are granted, the arrestee should first be searched for weapons and then be accompanied and closely monitored by the arresting or other officers.

Once the arrestee is completely secured and out of reach from both victims and the public, officers should conduct a thorough search of the person for weapons and contraband if they have not already done so. Agencies should develop policies and procedures regarding searches incident to arrest.²³ Specifically, this may include policies that individuals should be searched by an officer of the same sex, where available. However, agencies should also offer guidance for when there are no officers available that are the same sex of the arrestee. In addition, agencies should consider their policies for searching transgender prisoners.²⁴ The search incident to arrest may include not only the person of the arrestee, but also the areas within their reach and control. Officers should follow their agency policy and protocol related to strip and body cavity searches.²⁵

²² See the IACP Law Enforcement Policy Center documents on Transportation of Prisoners available at <https://www.theiacp.org/resources/policy-center-resource/transportation-of-prisoners>.

²³ See *Arizona v. Gant*, 556 U.S. 332 (2009) for restrictions on conducting warrantless searches of vehicles incident to arrest.

²⁴ See the IACP Policy Center document on Interactions with Transgender and Gender-Nonconforming Individuals at <https://www.theiacp.org/resources/policy-center-resource/transgender>.

²⁵ See the IACP Law Enforcement Policy Center documents on Strip and Body Cavity Searches available at <https://www.theiacp.org/resources/policy-center-resource/strip-and-body-cavity-searches>.

Agencies may also wish to consider whether officers who use force on an arrestee during the arrest process should be allowed to transport the suspect in situations where no transport officer is available. This determination should include the level of force necessary to trigger this requirement.

I. Arrest of Juveniles

Arrest, transportation, and booking of juveniles is subject to special legal requirements. When interacting with juveniles, law enforcement officers are given reasonable discretion on deciding appropriate enforcement options. Generally, based on the seriousness of and circumstances surrounding the offense and the background and demeanor of the juvenile and other relevant factors, an officer may release a juvenile to their parents, guardian, or other responsible adult. Therefore, officers should follow their agency's policy regarding juvenile diversion and custody.²⁶

J. Release after Arrest

If it becomes apparent that there is no probable cause to justify the arrest, the individual must be released. The officer should first be satisfied that there are insufficient grounds for making an arrest based on probable cause and a supervisor should be notified of the decision to release.

If the person is released, officers should ensure that they are released at a safe location and not otherwise placed at risk as a result of the incident. If necessary, officers should provide transportation for the individual to a safe location.

VI. REPORTING

Regular documentation of officer interactions with members of the public while conducting enforcement activities, to include voluntary contacts, investigatory detentions, pat-downs, and arrests, is a key component to ensuring agency transparency and provides an agency with a means of auditing these encounters for policy compliance. Agencies should develop specific procedures that outline what information should be collected and in what circumstances. For instance, it is unreasonable to expect officers to fully document each interaction that they have with every member of the public, as these may include a casual greeting or providing directions. However, agencies should ensure that contacts involving suspicious activity and reasonable suspicion, at a minimum, are documented. Agencies may elect to create standardized forms for officers to complete in these situations.

When practical, agencies should attempt to collect information with data related to investigatory detentions and arrests, collectively referred to herein as stops, conducted by the agency and should provide a report to the public on a regular basis. Agencies may elect to include such items as the total number of stops, location of stops, time and date information, outcome of the stops (arrest, non-arrest, etc.), weapon recovery, and race and gender of the stopped individual in this report. This data should also be reviewed by the chief executive or their designee to ensure that officers are conducting lawful, unbiased voluntary contacts, investigatory detentions, and arrests. Any of these types of interactions that do not conform to policy or law should result in an administrative investigation.²⁷

²⁶ See the IACP Law Enforcement Policy Center documents on Juvenile Diversion and Custody available at <https://www.theiacp.org/resources/policy-center-resource/juvenile-custody>.

²⁷ See the IACP Law Enforcement Policy Center documents on Investigation of Allegations of Employee Misconduct available at <https://www.theiacp.org/resources/policy-center-resource/employee-misconduct>.

APPENDIX A: THE “PLAIN-TOUCH” RULE IN THE UNITED STATES

The plain-touch rule, where it is applicable, enables officers to seize contraband or other evidence discovered by sense of touch during a pat-down for weapons, even though the officer conducting the search is aware that the item detected through the suspect’s clothing is not a weapon. Not all courts accept the plain-touch doctrine, and those that do, including the U.S. Supreme Court, draw a very fine line between what is acceptable and what is not.

To understand the plain-touch rule, officers must understand two basic concepts of search and seizure law: the rules of stop-and-frisk and the plain-view doctrine. The validity of a plain-touch seizure depends upon compliance with these requirements.

Plain View. Under the plain-view doctrine, an object may lawfully be seized if, at the time of the seizure, the object was in plain sight of law enforcement. This rule is subject to the following requirements:

1. The officers must lawfully be in the place or position from which the evidence was first seen. For example, officers could not illegally gain entry to a dwelling and then successfully contend that evidence found inside the dwelling was admissible because it was lying in plain view on the kitchen table. The illegal entry would make the plain-view rule inapplicable.²⁸
2. The officers must have probable cause to believe that the items observed are contraband or evidence of a crime. Even though officers are lawfully in a position to observe the evidence, and even though the object is in plain view from that position, there must be probable cause to believe that what is observed is in fact contraband or evidence of a crime. If the officers lack probable cause to believe that the object is contraband or evidence of a crime, the object may not be seized under the plain-view doctrine.²⁹
3. The incriminating character of the evidence must be “immediately apparent.” If the probable cause to believe that the observed object is contraband or evidence of a crime does not arise unless and until the officers have conducted some further investigation of the object, the plain-view doctrine is not applicable.

Stop-and-Frisk Plus Plain View Equals Plain Touch. The U.S. Supreme Court has held that the plain-view rule applies to evidence discovered during an investigatory detention. In *Michigan v. Long*,³⁰ police approached a man who had driven his vehicle into a ditch. The man exited his car and appeared to be intoxicated. As they approached this individual, who was by then attempting to reenter the car, the officers observed a knife on the floor of the vehicle. The officers then stopped the man, frisked him, and inspected the interior of the vehicle for other weapons. During this inspection, the officers discovered an open pouch of marijuana.

The Supreme Court held that if, during a roadside detention, law enforcement officers have a reasonable suspicion, based upon specific and articulable facts, to believe that the driver of the vehicle may be armed and dangerous, they may conduct a “protective search” (i.e., a *Terry* “frisk”) for weapons; this protective search, it was held, could extend not only to the person concerned, but also to the passenger compartment of the vehicle.³¹ As with any other protective search, this “frisk” of the vehicle must be limited to those areas in which a weapon may be placed or hidden. The court then further held that if, while conducting a valid “frisk” of the vehicle, the officer should discover contraband other than weapons, such contraband may be seized as evidence under the plain-view doctrine.³²

The Plain-Touch Doctrine. Under *Terry*, if an officer frisks a suspect, and if, during that frisk, the officer by sense of touch detects an object in the suspect’s clothing that feels like a weapon, the officer may seize the weapon. Further, as noted above, if the object that was believed to be a weapon turns out not to be a weapon after all, but it is nevertheless something that is contraband or evidence of a crime, the seizure of that item is still lawful.

²⁸ See *Horton v. California*, 496 U.S. 128 (1990); *Texas v. Brown*, 460 U.S. 730 (1983).

²⁹ *Horton*, 496 U.S. 128; and *Brown*, 460 U.S. 730.

³⁰ *Michigan v. Long*, 463 U.S. 1032 (1983).

³¹ As with any other protective search, this “frisk” of the vehicle must be “limited to those areas in which a weapon may be placed or hidden.” *Long*, 463 U.S. at 1049.

³² *Long*, 463 U.S. 1032.

The issue addressed by the modern plain-touch doctrine concerns situations where while conducting a pat-down for weapons during an investigatory detention, an officer detects an object in the suspect's clothing. If an officer knows immediately by the way an object feels through the clothing that it is not a weapon, but, through knowledge and experience, the officer by sense of touch alone recognizes the object as being contraband or some other item of incriminating evidence, "its warrantless seizure would be justified by the same practical considerations that inhere in the plain view context."³³

³³ *Minnesota v. Dickerson*, 508 U.S. 366 (1993).

APPENDIX B: ANONYMOUS INFORMANTS – UNITED STATES CASE LAW**A. United States Supreme Court Cases.**

The United States Supreme Court has addressed whether information gleaned from an anonymous tip provides justification for law enforcement action in several cases.

- In 2014, in *Navarette v. California*, the court held that a 911 call had sufficient indicia of reliability and, under the totality of the circumstances, the officer had a reasonable suspicion that the truck's driver was intoxicated, thereby justifying the traffic stop.³⁴
- In 2000, in *Florida v. J.L.*, the court held that an anonymous tip that an individual was carrying a firearm was not sufficient to justify a police officer's stopping a person and conducting a *Terry* frisk for weapons.³⁵
- In a 1990 decision, *Alabama v. White*, the court found that an anonymous tip that a suspect was carrying cocaine was sufficient to conduct a stop and frisk since the officers obtained independent corroboration of the information provided by the tipster.³⁶
- In the 1983 *Illinois v. Gates* case, the U.S. Supreme Court broke away from a more confining test for reliability of tipsters by adopting the "totality of the circumstances" rule in determining the veracity and reliability of such information.³⁷

In the *Gates* case, police received an anonymous handwritten letter that provided the name and address of a couple who were allegedly engaged in drug trafficking. The letter provided information on the location of their buys, the logistics for transporting the contraband, and the location of stored drugs and those being purchased.

A Drug Enforcement Administration (DEA) agent subsequently established surveillance on the couple and documented their independent travel to and from Florida. These facts along with their mode of transportation, vehicle identification, and contact while in Florida confirmed the information in the letter. The court examined the totality of the facts contained in the letter and the accuracy of predicted actions spelled out by the tipsters that would not have been obtained by someone who was not familiar with the actions of the suspects. In light of these verifiable facts, the court upheld the probable cause basis upon which the warrant was issued for a search of the suspect's home and car.

Several years following *Gates*, the court again upheld the validity of law enforcement action taken on the basis of an anonymous tip, this time in relation to determining whether an anonymous tip provided reasonable suspicion to conduct an investigative vehicle stop. In *White*, an anonymous telephone caller provided police with information concerning a woman who the caller said would be leaving an apartment complex at a particular time and proceeding to a designated motel with an attaché case containing a small quantity of cocaine. The caller identified the model of the car and the damage to its taillight. Officers observed the woman in question leave the designated building and proceed in a direct route toward the motel identified by the caller. Just prior to arriving at the motel, the undercover officers requested that a marked unit conduct an investigative stop of the vehicle. Officers conducting the stop were granted consent to search the vehicle and subsequently found marijuana in the attaché case and, during booking, cocaine in her purse.

This case lacks the number of detailed observations concerning the suspect and anticipated actions as was evident in *Gates*. However, the court noted that the officers' actions required the establishment of only reasonable suspicion rather than the greater burden of probable cause required to issue the warrant in *Gates*. In addition, the caller was able to predict future actions of the suspect. As in *Gates*, the court attached great significance to the issue of predictability because it indicated that the caller was particularly familiar with the suspect and had an understanding of the suspect's

³⁴ *Navarette v. California*, 572 U.S. 393, 134 S. Ct. 1683 (2014).

³⁵ *Florida v. J.L.*, 529 U.S. 266, 120 S. Ct. 1375 (2000).

³⁶ *Alabama v. White*, 496 U.S. 325 (1990).

³⁷ *Illinois v. Gates*, 462 U.S. 23, 103 S. Ct. 2317 (1983).

future actions that goes beyond merely describing facts that could be observed at the time of the tip. The court found these combined factors sufficient to support reasonable suspicion to conduct the vehicle stop.

In *Navarette*, the court found that a California Highway Patrol officer did have reasonable suspicion to stop a pick-up truck because it matched the description of a truck that a 911 caller reported as having run her off the road. The court, using a totality of the circumstances test, held that the officer had reasonable suspicion that the driver was intoxicated and that the traffic stop complied with the Fourth Amendment. In reaching its decision, the court noted that the 911 call had “indicia of reliability” for the officer to rely upon; by stating that she had been run off the road, the 911 caller was identifying herself as an eyewitness victim of reckless driving. Also, only a short time had passed between the incident and the 911 call, which the court found allowed little time for the caller to fabricate information. Finally, the officer’s corroboration of the description of the truck, the direction of travel, and its location helped establish that the tip was reliable and justified the stop.

In contrast to the *Gates*, *White*, and *Navarette* opinions, in *Florida v. J.L.*, the court did not find sufficient reliability in an anonymous caller’s tip to support a stop and frisk. In that case, police received a tip from an anonymous caller that a certain person, described by the caller as a young, black male wearing a plaid shirt and standing at a specified bus stop, was carrying a handgun. Officers dispatched to the scene subsequently found the defendant, who matched the description at that location. A frisk of the defendant produced a handgun, and the defendant was charged with firearms violations. The court held that the evidence was wrongfully obtained and should be suppressed.

The court pointed out the differences between this case and *White* that led to suppression of the evidence in *J.L.* The court stated:

*The tip in the instant case lacked the moderate indicia of reliability present in White and essential to the Court’s decision in that case. The anonymous call ... provided no predictive information [emphasis added] and therefore left the police without means to test the informant’s knowledge or credibility ... All the police had to go on in this case was the bare report of an unknown, unaccountable informant who neither explained how he knew about the gun nor supplied any basis for believing he had inside information.*³⁸

Here as in prior cases brought before the court, the issue of being able to verify predictive information is critical to determining the reliability and credibility of an anonymous tip. Had the caller provided law enforcement with information such as the defendant’s plans to travel to a specific location or to meet another person who could have adequately been described, officers would have had information that could be corroborated. Lacking such information, officers are left with only the description of an individual that could have been relayed by direct observation of the caller at the time of the call.

It should be noted, however, that had the officers, in the course of observing the defendant, developed independent reasonable suspicion to believe that he was in possession of a handgun, the stop would probably have been upheld, even though the anonymous tip was lacking in reliability. In addition, the court in *J.L.* commented on the fact that not all locations or settings provide persons with the same expectation of privacy, nor are all potential threats to the public regarded equally:

*We do not say, for example, that a report of a person carrying a bomb need bear the indicia of reliability we demand for a report of a person carrying a firearm ... Nor do we hold that public safety officials in quarters where the reasonable expectation of Fourth Amendment privacy is diminished, such as airports ... and schools ... cannot conduct protective searches on the basis of information insufficient to justify searches elsewhere.*³⁹

³⁸ *J.L.*, 529 U.S. at 271.

³⁹ *J.L.*, 529 U.S. at 273–274.

In these and related circumstances, officers would, according to the commentary of the court, be justified in acting on an anonymous tip that did not carry the predictive indicia otherwise required in court cases discussed here.

B. Circuit Court Cases.

In another recent case, *United States v. Lowe*, officers received an anonymous tip that a black male wearing a gray hoodie with a gun in his waistband was talking to a female subject in front of a house in an area known to the officers to be a high crime area with drug activity.⁴⁰ The officers also knew earlier that evening, a gunshot had been fired at a house around the corner from the location provided in the tip. Officers responded and saw a man fitting the description from the anonymous tip talking to a woman. The officers did not observe a gun and did not see or hear an argument or any other type of disturbance but approached the pair and frisked Lowe after he refused to remove his hands from his pockets. The officers found a handgun in Lowe's waistband and he was later charged with being a felon in possession of a firearm.

Lowe sought to have the handgun suppressed on the grounds that the officers did not have reasonable suspicion to conduct a frisk. The court agreed. After determining that Lowe was seized for Fourth Amendment purposes, it had to determine if that seizure was supported by reasonable suspicion. In this case, the facts known to the officers included an anonymous tip that a man matching Lowe's description possessed a gun, the location where they were responding was known for high crime activity, and a gunshot had been heard in that area just a short time earlier. The court found that those facts did not establish reasonable suspicion that Lowe was involved in criminal activity, and the anonymous tip alone did not support a stop and the subsequent frisk of Lowe.

In contrast, in *United States v. Edwards*, an unidentified person called 911 and reported that a young black male at the corner of West Boulevard and Hyde Park Boulevard was shooting at passing cars.⁴¹ The caller provided a physical description, which included his approximate height, age, and dress. He also reported that the shooter had a black handgun and was entering Penny Pincher's Liquor Store. Officers responded within five minutes and observed a man matching that description approximately 75 feet from the liquor store. There was only one other person in the area, and he was a Hispanic male wearing different clothing than described by the 911 caller. After additional officers arrived, both men were ordered to their knees and handcuffed. An officer frisked the black male subject, later identified as Edwards, and a silver .22 caliber revolver was found.

Edwards was subsequently charged as a felon in possession of a firearm and sought to have the firearm suppressed. One of his arguments for suppression was that the anonymous 911 call did not provide the officers with reasonable suspicion to detain him. The court disagreed finding that information provided by the 911 caller was sufficiently reliable to provide reasonable suspicion to conduct a *Terry* stop; Edwards was the only person near the liquor store matching the description of the person who had been reportedly shooting at vehicles right before the officers arrived. The court stated that the 911 caller was an eyewitness who was reporting an "ongoing and dangerous situation and providing a detailed description of the suspect."

⁴⁰ *United States v. Lowe*, 525 F. App'x 167 (3rd Cir. 2013).

⁴¹ *United States v. Edwards*, 761 F.3d 977 (9th Cir. 2014).

APPENDIX C: ADDITIONAL APPLICABLE UNITED STATES CASE LAW

- *Arizona v. Hicks*, 480 U.S. 321 (1987): Provides an example of the plain-touch rule.
- *Florida v. Royer*, 460 U.S. 491 (1983): An individual's behavior and appearance provide sufficient reasonable suspicion to initiate a voluntary contact. An investigatory detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop.
- *Hiibel v. Sixth Judicial District Court of Nevada*, 542 U.S. 177 (2004): Officers are not required to provide warnings related to custodial interrogations before demanding an individual provide his or her name pursuant to a state law that required such disclosure.
- *Illinois v. Wardlow*, 528 U.S. 119 (2000): An individual's flight from contact with law enforcement officers may be considered in determining whether reasonable suspicion exists to conduct an investigatory detention.
- *Michigan v. DeFillippo*, 443 U.S. 31, 37 (1979): Probable cause for arrest is defined.
- *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975): Nervous, evasive behavior is a pertinent factor in determining whether reasonable suspicion exists.
- *United States v. Cortez*, 449 U.S. 411, 412 (1981): Law enforcement officers have the authority to conduct investigatory detentions when they "have a particularized and objective basis for suspecting the particular person stopped of criminal activity."
- *United States v. Sokolow*, 490 U.S. 1, 7 (1989): For investigatory detentions, only reasonable suspicion is necessary, a standard that is "considerably less than proof of wrongdoing by a preponderance of the evidence."

© Copyright 2020. Agencies are encouraged to use this policy to establish one customized to their agency and jurisdiction. However, copyright is held by the International Association of Chiefs of Police, Alexandria, Virginia, U.S.A. All rights reserved under both international and Pan-American copyright conventions. Further dissemination of this material is prohibited without prior written consent of the copyright holder.



International Association of Chiefs of Police
44 Canal Center Plaza, Suite 200
Alexandria, VA 22314
703.836.6767 | FAX 703.836.4743
www.theIACP.org