

2018

CPC Search & Seizure Work Group

The 4th Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

A report and recommendations on the (5) draft Search & Seizure Policies submitted to the Cleveland Community Police Commission for review on 8/20/18 by the City of Cleveland Division of Police.

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CPC SEARCH AND SEIZURE WORK GROUP POLICY REPORT 2018

The CPC engagement process for Search and Seizure consisted of the following elements which contributed to this report;

1. Pre- Education Policy Campaign

Recognizing that community feedback related to Search and Seizure requires some foundational knowledge of the legal concepts the CPC developed a presentation that covered constitutional law, searches, seizures and police encounters. The presentation was given at the full CPC community meeting on March 27th, 2018. A video of the presentation was also placed on the CPC Website for Community members who were not able to attend.

2. The Search and Seizure Work Group

The CPC formed a work group of local experts on criminal and constitutional law, practitioners from local criminal justice systems, and policy experts from community advocacy groups. The purpose of the group was to review the (5) draft policies submitted on 8/20/18 and make recommendations for improvements to the City of Cleveland. The following is a list of work group members and contributors:

Community Police Commission Members

Gordon Friedman, Work Group Chair
Mario Clopton-Zymler, Commission Co-Chair emeritus
Sgt. Richard Jackson, Black Shield Police Association
Gail Maxwell, Fraternal Order of Police, Lodge #8 (ret.)
Mr. Jason Goodrick, Executive Director (Staff)

Work Group Subject Matter Experts

Prof. Lewis Katz, CWRU Law
Prof. Jonathan Witmer-Rich, CSU Cleveland Marshall College of Law
Mr. James Hardiman, NAACP Cleveland
Ms. Emma Keeshin, ACLU Ohio
Ms. Jocelyn Rosnick, ACLU Ohio
Mr. Cullen Sweeney, Deputy Public Defender, Cuyahoga County, OH
Mr. Ed Little, NAACP Cleveland, Policy Advisor
Ms. Gwendolyn Stembridge, Policy Advisor, Equality Ohio

Additional Subject Matter Expert Contributors

Prof. David Gray, Maryland Carey School of Law, Baltimore, MD
Ms. Gabriella Celeste, CWRU Schubert Center for Child Studies

Special Project Support

Dana Beveridge, Brenden Carlin & Joseph Primiano, CSU Juris Doctor Candidates

CPC SEARCH AND SEIZURE WORK GROUP POLICY REPORT 2018

The work group met (5) times for 3 hours between October 21st and November 15 to discuss the following drafts: “Search and Seizure”, “Investigatory Stops”, “Probable Cause/ Warrantless Arrests”, “Miranda Warning and Waiver”, “Strip Searches & Body Cavity Searches”

Summary of Key Search and Seizure Work Group Findings:

- Many of the legal definitions in this policy could be strengthened with edits. In application of law the words chosen are critically important. Language changes make up bulk of the recommended edits to the proposed polices.
- Some extra-legal concepts in the draft policies caused confusion amongst the work group. The proposed solution was to limit or remove concepts that can cause chaos such as “non-custodial interview”
- It would greatly benefit the officers who must adhere to the policy if some concepts were simplified to “rules of thumb” or quick reference lists that balance people’s rights and officer’s safety and ability to enforce the law. An example of a concept that this can be applied to is “curtilage”
- In a few places the policies should be updated based on the Ohio Revised Code, other statutory reference, or most current case law.
- Some groups such as youth (juveniles) and gender non-confirming individuals deserved additional special mentions, or procedural adjustments in the draft policies.

CPC Draft Policy Recommendations for Response by the City:

- ✓ Review and fully adopt each of the five revised drafts submitted in this report or, in the alternative; review each proposed language change, addition or deletion as a single item and respond per item;
- ✓ Consider combining the Warrantless Arrests Policy with the Miranda Rights Policy.
- ✓ Utilize the higher Ohio Police Officer Training Academy instructor standard of a licensed Ohio attorney (bar card) with experience in the subject to be taught to teach topics 2-1 through 2-7 including laws of Arrest, Search & Seizure at Cleveland’s Basic Police Academy and for any continuing education topics related to these topics.; and
- ✓ Agree to partner with the Police Commission’s Search and Seizure Work Group to conduct a minimum of (1) know your rights/ search and seizure policy presentation at all 5 district policing committee meetings next year and (1) additional special weekend event hosted by the CPC.

* All polices with recommended changes are attached to this report with tables of changes.

3. Direct Community Engagement Efforts by the CPC

Search and Seizure/ Police Encounters CPC Survey

The CPC made an effort to solicit feedback on the proposed policies via an online and print survey. Limited marketing ability and the technical legal concepts were contributing factors in a low return rate. The volume of returned surveys were statistically insignificant, however the CPC reviewed any open ended, qualitative feedback provided and considered all of it prior to making these recommendations.

4th Amendment/ Search and Seizure Community Forum

On Saturday October 27th, 2018 the Commission hosted a 4th Amendment Search and Seizure Policy Forum. The forum occurred at Tri-C's Jerry Sue Thornton Center was attended by approximately 20 Community members. The program included a presentation of the Search & Seizure Work Groups policy recommendations and gave the public the opportunity to ask questions. Commissioner Gordon Friedman hosted the event and special guest participants were Prof. Lewis Katz (CWRU Law), Mark Stanton, Cuyahoga County Public Defender.

Full Community Police Commission Meeting- September & October

Attendees at the September and October 2018 Community Police Commission Meetings were provided copies of the (5) Search and Seizure policies. There was an open comment period at each meeting giving the community an opportunity to provide input and ask questions about the policies.

Families of Victims Affected By Police Violence Special Engagement

At the request of Ms. Brenda Bickerstaff, liaison to the CPC from a group representing families of victims affected by police violence, the Executive Director of the CPC hosted a series of (4) Search and Seizure meetings. The purpose was to review the policies and suggested changes with Ms. Bickerstaff. These meetings and any other meetings requested by community groups interested in the Search and Seizure policy will continue beyond this reports date. The CPC views all policy as living and considers the feedback cycle as on-going regardless of court deadlines.

An appendix of all written comments received related to our work is attached for reference and research purposes.



NAACP

CLEVELAND BRANCH • 16400 Miles Avenue - Cleveland, Ohio 44128 - Phone 216-231-6260 Fax 216-283-0115

NAACP SUPPORTS SEARCH & SEIZURE RECOMMENDATIONS

The National Association for the Advancement of Colored People (“NAACP”) was founded in 1909 and is the oldest, largest and most widely respected membership civil rights organization in the country. Throughout its history the NAACP has stood firm in its commitment to addressing issues involving racial discrimination and disparate treatment in employment, housing, civic engagement, education and police relations. In discharging its responsibilities, the Cleveland Branch NAACP was one of the first organizations to call for the U. S. Department of Justice to investigate the Cleveland Division of Police for the use of excessive force against people who live, work and visit the City.

The NAACP is well-aware of the Fourth Amendment prohibition against “unreasonable searches and seizures.” In spite of the clear language of the Fourth Amendment, however, illegal searches and seizures was one of the primary concerns of the Department of Justice in its investigation of the Cleveland Division of Police. The fact that Cleveland Police were involved in unconstitutional practices in the enforcement of the laws of the City of Cleveland, the State of Ohio and the U.S. Constitution was well-known prior to the time that the City of Cleveland entered into an agreement with the federal government to eliminate unconstitutional police practices. Of course, the elimination of illegal police practices and the transformation to a police force that honors the U. S. constitution will present significant obstacles and is fraught with both practical and logistical challenges. Not only must all police practices comply with both local and state laws but the mentality of police officers has to be addressed so that they will be committed to understanding and implementing practices that permit them to make the City a safer environment while respecting the various protections contained in the U. S. Constitution.

The NAACP is also keenly aware of the significant time and resources that the members of the Community Police Commission Work Group invested in researching and presenting recommendations for Search and Seizure procedures for the Cleveland Division of Police. If these recommendations are implemented and, more importantly, internalized, the Cleveland Division of Police will come much closer to discharging its obligations in a constitutional manner to the benefit of all parties. Furthermore, if these recommendations become a reality, not only will people who live, work and visit the City be able to function in a safer environment but they will have a more realistic understanding and appreciation of their rights and responsibilities.

Therefore, the Cleveland Branch NAACP would commend the CPC Work Group and recommend that the parties to the Consent Decree adopt their recommendations and recommend to the Federal Court that these recommendations receive appropriate consideration in a timely manner.

November 15, 2018

VIA EMAIL AND U.S. MAIL

Chief Calvin Williams
Cleveland Division of Police
1300 Ontario St.
Cleveland, Ohio 44113
cwilliams3@city.cleveland.oh.us

Matthew Barge, Monitor
40 Washington Square South
New York, New York 10012
matthew.barge@21cpsolutions.com

cc: eorozco@cleveland.city.oh.us
jgoodrick@clecpc.org
gfriedman@clecpc.org



AMERICAN CIVIL LIBERTIES UNION

Ohio

4506 Chester Avenue
Cleveland, OH 44103
P: (216) 472-2220
F: (216) 472-2210

1108 City Park Avenue
Suite 203
Columbus, OH 43206
P: (614) 586-1959
F: (614) 586-1974

acluohio.org
contact@acluohio.org

Jack Guttenberg
President

J. Bennett Guess
Executive Director

RE: Recommendations for search and seizure GPOs

Dear Chief Williams and Mr. Barge:

We write today to express our support for the CPC's revisions to the Cleveland Division of Police's Search and Seizure, Investigatory Stops, Probable Cause/Warrantless Arrests, Miranda Warning and Waiver, and Strip Searches and Body Cavity Searches GPOs ("search and seizure policies").

Comprehensive reform of CDP's search and seizure policies is long overdue. In December 2012 the ACLU of Ohio was one of several organizations that requested a federal investigation into CDP's excessive use of force arising from police interactions with Cleveland community members. In January 2016 we requested that search and seizure reform be prioritized in the first year of the consent decree. Fundamental changes to CDP's search and seizure policies and practices are crucial to re-building community trust and implementing constitutional policing in all of Cleveland's neighborhoods.

We urge you to adopt *each and every* recommendation, as they are necessary for the policies to conform to nationally-recognized best practices. Some of the most critical changes include:

- Provide guidance for officer interactions with juveniles, including those who have experienced trauma;
- Mandate that trainings on the policies be given by a lawyer with in-depth knowledge of Fourth Amendment law and practices; and
- Allow transgender individuals to choose the gender of the officer to conduct any searches.

Because the success of these policy reforms hinge on their implementation and enforcement, we respectfully request to review the training curriculum in advance of it being finalized.

If you have any questions or would like to discuss further, please don't hesitate to contact us via email or by phone at 614/586-1959.

Sincerely,



Jocelyn Rosnick
Policy Director
ACLU of Ohio
jrosnick@acluohio.org
614/586-1959



Emma Keeshin
Advocacy Associate
ACLU of Ohio
ekeeshin@acluohio.org
614/586-1959

Enclosures: January 26, 2016 letter regarding search and seizure reforms
December 19, 2012 letter requesting federal investigation of CDP

*Note enclosures referenced to recipients are not included in this edition of the report



GENERAL POLICE ORDER

CLEVELAND DIVISION OF POLICE



ORIGINAL EFFECTIVE DATE :	REVISED DATE: 10/31/2018 CPC	NO. PAGES: 1 of 10	NUMBER:
SUBJECT: <p style="text-align: center;">SEARCH AND SEIZURE</p>			
ASSOCIATED MANUAL:		RELATED ORDERS: 2.2.04 Warrant Service	
CHIEF OF POLICE:			

Replaces 2.3.09 Frisk Searches and 2.3.10 Searches Incident to Arrest

PURPOSE: To establish Cleveland Division of Police guidelines so that all searches and seizures are conducted in accordance with the rights secured and protected by Constitution and federal and state law. The Division will conduct searches and seizures fairly and respectfully consistent with the Division’s commitment to procedural justice, community and problem-oriented policing, and community values.

POLICY: It is the policy of the Division to respect the fundamental privacy rights of all individuals. Officers shall conduct searches in strict accordance with the rights secured and protected by the Constitution and federal and state laws. All seizures by the Division shall comply with relevant federal and state laws governing the seizure of persons and property. Officers shall not use an individual’s gender, race, ethnicity, national origin, **age** or perceived sexual orientation as a factor, to any extent or degree, in establishing reasonable suspicion or probable cause, unless such information is part of an actual and credible description of a specific suspect in an investigation that includes other identifying factors. Supervisors must review documentation of all searches and seizures to ensure that they were supported by reasonable suspicion and/or probable cause.

DEFINITIONS:

Area of Immediate Control: The reaching and grabbing distance within which the person might gain possession of a weapon or destructible evidence or contraband.

Arrest: The taking of a person into custody by an officer based upon a warrant or probable cause. To constitute an arrest, there must be an actual restraint of the person. The restraint may be imposed by force or may result from the submission of the person arrested to the custody of the officer arresting him/her. An arrest is a restraint of greater scope or duration than an investigatory stop or detention.

Consensual Encounter: A voluntary encounter between the police and an individual with the intent of engaging in a casual, and/or non-investigative conversation. A reasonable person in the individual’s position would feel free to leave and/or decline any of the officer’s requests at any point.

Curtilage: Any land or building immediately adjacent to a dwelling that is directly connected **to it** or in close proximity.

Investigatory Stop (Terry Stop): A brief, minimally intrusive detention of an individual, including the occupants of a vehicle, during which a reasonable person in the individual’s position would not feel free to

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leave, as defined in *Terry v. Ohio*, 392 U.S. 1. To justify a stop, the officer must have reasonable suspicion that the stopped individual has, is, or is about **to commit a crime**. The stop must be based on specific, objective, articulable facts that the officer knew before the stop. Information learned during a stop can lead to additional reasonable suspicion or probable cause that a crime has occurred, but it cannot provide the justification for the original stop.

Juvenile: An individual under the age of 18.

Pat Down/Frisk: A limited search during an investigatory stop in which an officer conducts a pat down of the outer clothing of a person for weapons when the officer reasonably suspects that the particular person is armed and dangerous. It is limited to what is necessary to detect weapons and must be based on reasonable articulable suspicion that the person is armed. An officer may not manipulate objects that are discovered under the clothing to determine whether they are contraband.

Plain Feel Doctrine: An officer may seize an object while conducting a limited search during a **permitted** pat down/frisk if its nature as contraband is immediately apparent by feel, and without manipulation of any **objects**.

Probable Cause: The facts and circumstances that point to facts known to the officer(s) that would lead a reasonable person to believe an individual is committing or has committed a crime.

Reasonable Suspicion: An objectively, justifiable suspicion that is based on specific and articulable facts or circumstances that point to facts that justifies an officer stopping an individual that has committed, is committing or is about to commit an offense. Reasonable suspicion is more than a hunch but less than probable cause. A police officer stopping an individual must be able to point to specific facts or articulable circumstances even though the level of suspicion need not arise to probable cause.

Search: A search is either a physical intrusion into a constitutionally protected area (a “person, house, paper, or effect”) for the purpose of gathering information or any conduct that violates a manifested and reasonable expectation of privacy. A search can be conducted by officers, by civilians acting as law enforcement agents, by the use of technology that allows officers to obtain information about the interior of a constitutionally protected area, by the use of technology to gather information that, by virtue of its nature or degree, is reasonably expected to be private, or by the use of technology to conduct long-term surveillance of an individual.

Search Incident to Arrest: A search of an arrested person, their personal effects or their area of immediate control at time of search.

Seizure: When an officer's words or actions would make a reasonable person believe that under the circumstances he or she cannot terminate the encounter.

Trauma-informed: An approach that realizes the widespread impact of trauma, and recognizes the signs and symptoms of trauma in community members, and responds to situations in a manner that actively resists re-traumatization. This can include: slowing down the speed of the interaction, reducing stimuli such as lights and loud sounds, explaining the reason for the interaction, avoiding use of threats, and repeating instructions in a calm manner until they are understood.

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PROCEDURES:

- I. General Requirements for Searches and Seizures
 - A. Searches generally must be made pursuant to a warrant.
 - B. Exceptions when searches may be made without a warrant:
 1. Open View and Plain View Searches
 2. Consent Searches
 3. Exigent Circumstances
 4. Pat Down/Frisks During Investigatory Stops
 5. Custodial Searches and Other Searches Incident to Arrest
 6. Vehicle Inventory Searches
 7. Open Fields and Curtilage
 - C. Officers shall:
 1. Treat searched and/or seized persons with courtesy, professionalism, respect, dignity, and equality.
 2. Explain to the person being searched and/or seized the reason for the search/seizure and how the search/seizure will be conducted. **If the person is a juvenile this explanation should be age-appropriate and trauma-informed.**
 3. Carry out searches with due regard and respect for private property interests and in a manner that minimizes damage. Property should be left in a condition as close as reasonably possible to its pre-search condition.
 4. Use accurate and specific descriptive language to articulate the justification for any search or seizure in their reports. Articulation of reasonable suspicion and/or probable cause shall be specific, clear, and based on information not influenced by bias or prejudice.
 - D. Officers shall not:
 1. Use or rely on information known **or reasonably suspected** to be materially false, incorrect, or unreliable in establishing reasonable suspicion for a search or seizure.
 2. Compromise their safety, or the safety of other officers, in order to justify searches or seizures.
 3. Detain non-occupants present at the location where a search warrant is executed for longer than reasonably necessary to secure the area or determine whether they are occupants of the premises being searched, unless the officer has reasonable suspicion that the non-occupant is involved in criminal activity or poses a danger to officer safety.

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II. Open View and Plain View Searches

A. Open View

1. The open view doctrine allows officers to see and possibly seize contraband. To apply open view, the officer(s) must see the contraband or evidence from a vantage point available to the public. To seize the contraband or evidence, it must be located in an area open to the public and not protected by the Constitution.
2. Officers shall not enter a constitutionally protected place such as a vehicle, home, or habitation, and seize contraband that is visible to the public. (e.g. If officers see a marijuana plant growing in the window of a residence, they cannot enter the home, but may use the information as probable cause to seek a search warrant.)

B. Plain View

1. The plain view doctrine allows the police to discover contraband or evidence only after making a lawful intrusion in a constitutionally protected area, such as vehicle, home, or habitation. The evidence or contraband must be immediately recognizable as such and be in plain view.

The key to the plain view doctrine is being in the protected place with consent or otherwise lawfully present.

III. Consent Searches

- A. Where an officer seeks consent for a search, the officer will inform the person of his or her right to refuse and to revoke consent at any time. If the person is a juvenile this explanation should be age-appropriate and trauma-informed
- B. A person's consent to search shall be documented using their Wearable Camera System (WCS). Officers electing to search by consent may also have the consenting person sign a Consent to Search form (Form #).
- C. Officers must ensure that an individual is consenting to the search voluntarily. Officers shall consider the age, intelligence, education, and authority of the person providing consent.
- D. Officers shall not physically or mentally coerce or exploit an individual in order to gain consent for a search. **Examples of coercion include but is not limited to:**
 1. **Threatening to charge person with a crime such as obstruction or disorderly conduct.**
 2. **Threatening a referral to Department of Children and Family Services.**
 3. **Threatening to obtain a warrant as means of obtaining consent.**

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4. **Threatening to use a K-9.**
5. **Using an officer's physical proximity or the number of officers as a means of intimidation.**
6. **Threatening to inconvenience or prolong the process.**

E. Third party consents are valid under certain conditions:

1. Consent is valid if the third person has **common** authority over **the area to be searched.**
2. Consent to search is not allowed if one cohabitant (roommate) or business partner objects to the consent, even if the other person gives permission. Consent must be given by both people, if present.
3. Parents may consent to search a child's living area if the parents have routine access to the area. (The child is not paying rent).
4. Landlords cannot give consent to search if a lease or rental agreement is still valid.

IV. Exigent Circumstance Searches

- A. Officers may conduct an immediate, warrantless search or seizure under emergency conditions, if there is probable cause to believe that the delay in getting a warrant would result in the loss of evidence, escape of the suspect, or **physical** harm to police or public.
- B. Exigent circumstances also exist if officers are responding to a call of violence and there is evidence a person's health, welfare, or safety is **immediately threatened.**
- C. In determining whether exigent circumstances exist, officers shall consider the following:
 1. Was the offense serious or an offense of violence?
 2. Was there a reasonable belief the suspect was armed?
 3. Was there probable cause to believe the suspect committed a crime?
 4. **Is** there probable cause to believe the subject was on the premises?
 5. Did the police identify themselves and give the suspect a chance to surrender prior to entry, if feasible?

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6. Was there an ongoing investigation or decision to arrest prior to the suspect fleeing into the premises?

D. Officers shall not create exigent circumstances in order to justify a warrantless search or seizure.

V. Pat-Down/Frisks During Investigatory Stops

A. Every investigatory stop does not automatically authorize a pat down/frisk. Officers may only conduct a pat down/frisk of a detained person(s) if they reasonably suspect that the detained person(s) may be armed and dangerous. The purpose and scope of the pat down/frisk is to discover weapons. It is not a generalized search of the entire person.

B. During an investigatory stop, officers who develop articulable reasonable suspicion that an individual may be armed **and dangerous** may perform a “Terry” pat down of an individual in accordance with the United States Supreme Court’s *Terry v. Ohio* ruling.

1. A “Terry” pat down consists of the officer touching or patting areas, limited to outer clothing, on the suspected person capable of concealing an accessible weapon (pockets, waistline, neckline, ankles).

2. Pat downs may not extend to the interior of the clothing, wallet, or **shoes**.

3. If during a lawful pat down an officer detects an object that is contraband or other criminal evidence, then the object may be seized (Referred to as the “plain feel” doctrine). Non-threatening items may only be removed **during the frisk if there is probable cause to believe the item is contraband or evidence of a crime. Threatening items such as weapons may always be removed during frisks.**

C. The decision to conduct a pat down/frisk must be based upon the totality of the circumstances and the reasonable conclusions that the person is **armed and dangerous** drawn from the officer’s training and experience.

1. Officers may not frisk for weapons on a consensual **encounter**; this converts the encounter into an investigatory stop.

2. The fact that an investigatory stop occurs in a high crime area is not by itself sufficient to justify a pat down/frisk.

D. **When the objective of the frisk, determining whether or not the suspect is armed, is completed, the search must end. If the search continues, any contraband or evidence seized is inadmissible results of an unreasonable search.**

E. It is a violation of the Fourth Amendment to conduct a pat down/frisk of a person solely because an officer is placing someone in the backseat of a zone car (*State of Ohio v Holder III*). A pat down/frisk conducted for officer safety before placing a person in a zone car can be justified when the person is legally detained and there is a possibility of ambush, or when

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there is a dangerous condition that requires the placement of the person in the zone car for their safety.

F. **A person exercising his/ her right to openly carry a firearm, standing alone or in connection with a call to police that only reports the open carry itself (no other suspicious behavior), does not justify a stop and frisk.**

G. **Officers should be aware of the behavioral responses people, especially youths, may employ that can impact the tenor and evolution of an investigatory stop in unintended ways. Responses may include:**

1. **Physical resistance, including fleeing;**
2. **Verbal challenges;**
3. **Outright disregard for police directives; and**
4. **Resignation to perceived mistreatment.**

Officers must resist the tendency to escalate the encounter by reacting to this less mature behavior and focus instead on the basis for the stop.

VI. Custodial Search and Other Searches Incident to Arrest

A. Custodial Search of Arrestee

1. Officers shall, incident to a lawful arrest, search an arrestee's person and the area within the arrestee's immediate control (*i.e., within reaching and grabbing distance*).
 - a. If the removal of a religiously significant garment is required, it shall be done respectfully and, if known and possible, in accordance with the person's religious beliefs, **and such objects shall be returned upon search.**
 - b. The search shall be conducted as soon as possible after the arrest and before transporting the arrestee(s).
2. Custodial searches shall be conducted respectfully and, when possible, be conducted by officers of the same gender as the arrestee.
 - a. If an officer is uncertain regarding an arrestee's gender/gender identity, officers shall respectfully request the arrestee's gender/gender identity. **An officer may not use a search to determine an arrestee's gender/gender identity.**
 - b. If an officer is alone and needs to conduct a custodial search, the officer will request an officer of the same gender/gender identity to conduct the search or an officer of any gender to witness the search.

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- c. An officer may conduct a custodial search of an individual, of any gender/ gender identity, if the delay in getting a second officer on scene may result in the loss of evidence, escape of the suspect, or harm to officers or the public.

B. Searches Incident to Arrest:

1. Officers may, incident to arrest, search both an arrestee's person and the area within the arrestee's immediate control in order to recover weapons, evidence, or a means of escape. Searches of various areas, environments, or items must comply with the following parameters:
 - a. **Vehicles** - After a person is arrested from a vehicle, officers do not have the authority to search the passenger compartment and **locked or** unlocked containers incident to arrest, unless one of the following apply:
 1. Officers have consent to search;
 2. Exigent circumstances exist;
 3. Officers are performing an inventory search pursuant to impounding the vehicle; or
 4. Officers obtain a search warrant.
 - b. **Residence** - **When a person is arrested in a residence, officers may only search the arrestee's area of immediate control where the arrest occurred with the exception of protective sweep.**
 - c. **Personal Items** - Officers may only search personal items such as wallets, backpacks, or other bags if the individual had them in his or her actual and exclusive possession either at or immediately preceding the time of his or her arrest.
 - d. **Electronic Devices** - Absent some other exception, such as exigent circumstances, officers may not search digital information on a cell phone or other electronic devices without a search warrant.

C. Protective Sweeps

1. Incident to arrest, an officer(s) may look **for other** persons in spaces immediately adjacent to the place where the suspect was arrested (closets and other areas where an attack against the officer(s) could originate) for officer safety purposes.
2. **Incident to arrest**, if there is an articulable reasonable suspicion that the area to be swept harbors an individual posing a danger to those on the arrest scene, officers may conduct a limited protective sweep of the entire house subsequent to an in-house arrest. Such a protective sweep is not a full search of the premises. The sweep may

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extend only to a cursory inspection of those spaces where a person may be found. The sweep shall last no longer than is necessary to dispel the reasonable suspicion of danger and, in any event, no longer than it takes to complete the arrest and depart premises.

3. **This type of search does not permit an officer to open a container or object that could not contain a person.**

VII. Vehicle Inventory Search

- A. **A vehicle inventory search may only be conducted pursuant to a lawful impoundment.**
- B. When a vehicle is towed, under state law or city ordinance, an inventory search of the vehicle shall be conducted to protect the individual's property, the officer(s), and others, as well as the Division from claims of lost or damaged property resulting from the seizure of the vehicle or items.
- C. Officers shall record vehicle inventory searches using their WCS, including a 360 degree walk around of the vehicle to be towed.
- D. Officers shall use the following criteria when an inventory search is conducted:
 1. When a vehicle is in lawful police custody.
 2. Inventory searches include the entire passenger compartment, glove box, trunk, and containers that can be **searched without** damaging the property, at or near the time the vehicle was lawfully placed within police custody.
 3. Containers found during an inventory search of a vehicle can be opened if accomplished without damage to the container and the search is conducted in accordance with Division policy.

VIII. Open Fields and Curtilage

- A. Open fields surrounding a home are not constitutionally protected from a warrantless search and seizure because no reasonable expectation of privacy extends to these areas.
- B. The curtilage surrounding a home is constitutionally protected from a warrantless search and seizure. **Officers shall not enter a constitutionally protected place such as a curtilage, home, or habitation, and seize contraband that is visible to the public. (e.g., If officers see a marijuana plant growing in the window of a residence, they cannot enter the home, but may use the information as probable cause to seek a search warrant.)**
- C. Officers shall consider **curtilage to begin at the start of the lawn and beyond that consult with a supervisor or get a warrant.**

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- IX. Documenting Reporting/Review of Searches and Seizures
- A. Officers shall articulate the justification for a search or seizure in a specific and clear manner articulating the reasonable suspicion and/or probable cause in specific, clear language based on information not influenced by bias or prejudice in their reports. Officers shall not use “canned” or conclusory language without supporting detail in reports documenting searches or seizures.
 - B. Supervisors shall review all documentation of investigatory stops, searches, and arrests for completeness and adherence to law and division policy including, but not limited to:
 - 1. Searches and seizures that were not supported by reasonable suspicion or probable cause
 - 2. use “canned” or conclusory language without supporting detail in reports documenting searches or seizures
 - C. Within seven calendar days, supervisors shall document and report through their chain of command:
 - 1. Searches and seizures unsupported by reasonable suspicion or probable cause;
 - 2. Searches and seizures that are in violation of CPD policy; or
 - 3. Searches and seizures that, while comporting with law and policy, indicate a need for corrective action or review of agency policy, strategy, tactics, or training.
 - D. Supervisors shall take appropriate action to address all apparent violations or deficiencies in arrests. Appropriate action may include recommending non-disciplinary corrective action for the involved officer and documenting such action in the tracking software, or referring the incident for administrative or criminal investigation.
- X. Training
- A. **The Division shall provide officers with annual in-service training by an instructor with a J.D. who are subject matter experts per Ohio Police Officer Training Commission on Search and Seizure/probable cause/warrantless arrests that is adequate in quality, quantity, type, and scope.**

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Page/ Section	Original version	Updated version	Notes
Pg. 1	It is the policy of the Division to respect the fundamental privacy rights of all individuals. Officers shall conduct searches in strict accordance with the rights secured and protected by the Constitution and federal and state laws. All seizures by the Division shall comply with relevant federal and state laws governing the seizure of persons and property. Officers shall not use an individual's gender, race, ethnicity, national origin, or perceived sexual orientation as a factor, to any extent or degree, in establishing reasonable suspicion or probable cause, unless such information is part of an actual and credible description of a specific suspect in an investigation that includes other identifying factors. Supervisors must review documentation of all searches and seizures to ensure that they were supported by reasonable suspicion and/or probable cause.	It is the policy of the Division to respect the fundamental privacy rights of all individuals. Officers shall conduct searches in strict accordance with the rights secured and protected by the Constitution and federal and state laws. All seizures by the Division shall comply with relevant federal and state laws governing the seizure of persons and property. Officers shall not use an individual's gender, race, ethnicity, national origin, age or perceived sexual orientation as a factor, to any extent or degree, in establishing reasonable suspicion or probable cause, unless such information is part of an actual and credible description of a specific suspect in an investigation that includes other identifying factors. Supervisors must review documentation of all searches and seizures to ensure that they were supported by reasonable suspicion and/or probable cause.	Added age
Pg. 1 Definitions	Area of Immediate Control: The physical area within which the person might gain possession of a weapon or destructible evidence or contraband.	Area of Immediate Control: The reaching and grabbing distance within which the person might gain possession of a weapon or destructible evidence or contraband.	
Pg. 1	Curtilage: Any land or building immediately adjacent to a dwelling that is directly connected or in close proximity.	Curtilage: Any land or building immediately adjacent to a dwelling that is directly to it connected or in close proximity.	
Pg. 1-2 Definitions	Investigatory Stop (Terry Stop): A brief, minimally intrusive detention of an individual, including the occupants of a vehicle, during which a reasonable person in the individual's position would not feel free to leave, as	Investigatory Stop (Terry Stop): A brief, minimally intrusive detention of an individual, including the occupants of a vehicle, during which a reasonable person in the individual's position would not	also changed in investigatory stops

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	defined in Terry v. Ohio, 392 U.S. 1. To justify a stop, the officer must have reasonable suspicion that the stopped individual has, is, or is about to <i>engage in criminal conduct</i> . The stop must be based on specific, objective, articulable facts that the officer knew before the stop. Information learned during a stop can lead to additional reasonable suspicion or probable cause that a crime has occurred, but it cannot provide the justification for the original stop.	feel free to leave, as defined in Terry v. Ohio, 392 U.S. 1. To justify a stop, the officer must have reasonable suspicion that the stopped individual has, is, or is about to commit a crime . The stop must be based on specific, objective, articulable facts that the officer knew before the stop. Information learned during a stop can lead to additional reasonable suspicion or probable cause that a crime has occurred, but it cannot provide the justification for the original stop.	
Pg. 2 Definitions	Non-Custodial Interview: A voluntary and consensual investigatory interview that an officer conducts with an individual during which the individual is free to leave and/or decline any of the officer's requests at any point.	Deleted	It is recommended that all references to non-custodial interview be removed and that policy only references consensual encounter or investigatory stop to avoid any confusion and grey area.
P. 2 Definitions	Added	Juvenile: An individual under the age of 18.	
P.2 Definitions	Plain Feel Doctrine: An officer may seize an object while conducting a limited search during a permitted pat down/frisk if its nature as contraband is immediately apparent by feel, and without manipulation of any objects under the clothing.	Plain Feel Doctrine: An officer may seize an object while conducting a limited search during a permitted pat down/frisk if its nature as contraband is immediately apparent by feel, and without manipulation of any objects.	
P.2 Definitions	Probable Cause: The facts and circumstances known to the officer(s) that would lead a reasonable person to believe an individual has more likely than not committed or is committing a crime.	Probable Cause: The facts and circumstances that point to fact known to the officer(s) that would lead a reasonable person to believe an individual is committing or has committed a crime	Also changed in Investigatory Stops
P. 2 Definitions	Reasonable Suspicion: An objectively, justifiable suspicion that is based on specific and articulable facts or circumstances that justifies an officer stopping an individual that has committed, is committing, or is about to commit	Reasonable Suspicion: An objectively, justifiable suspicion that is based on specific and articulable facts or circumstances that point to facts that justifies an officer stopping an individual that has committed, is	

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	an offense. Reasonable suspicion is more than a hunch but less than probable cause. A police officer stopping an individual must be able to point to specific facts or articulable circumstances even though the level of suspicion need not arise to probable cause.	committing or is about to commit an offense. Reasonable suspicion is more than a hunch but less than probable cause. A police officer stopping an individual must be able to point to specific facts or articulable circumstances even though the level of suspicion need not arise to probable cause.	
P. 2 Definitions	Search Incident to Arrest: A search of an arrested person, their personal effects, and the passenger compartment of their motor vehicle or their area of immediate control, incident to, and conducted during the same time period as their arrest.	Search Incident to Arrest: A search of an arrested person, their personal effects or their area of immediate control at time of search.	
P.2 Definitions	No definition for search	"A search is either a physical intrusion into a constitutionally protected area (a "person, house, paper, or effect") for the purpose of gathering information or any conduct that violates a manifested and reasonable expectation of privacy. A search can be conducted by officers, by civilians acting as law enforcement agents, by the use of technology that allows officers to obtain information about the interior of a constitutionally protected area, by the use of technology to gather information that, by virtue of its nature or degree, is reasonably expected to be private, or by the use of technology to conduct long-term surveillance of an individual."	Newly added from professor David Grey, Baltimore Md.
p. 2 Definitions	Seizure: When an officers words or actions would make a reasonable person believe that he or she is not free to leave	Seizure: When an officer's words or actions would make a reasonable person believe that under the circumstances he or she cannot terminate the encounter.	
p. 2 Definitions	Added	Trauma-informed: An approach that realizes the widespread	Based of definition from the Substance Abuse

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		<p>impact of trauma, and recognizes the signs and symptoms of trauma in community members, and responds to situations in a manner that actively resists re-traumatization. This can include: slowing down the speed of the interaction, reducing stimuli such as lights and loud sounds, explaining the reason for the interaction, avoiding use of threats, and repeating instructions in a calm manner until they are understood.</p>	<p>and Mental Health Services Administration (SAMHSA), part of HHS</p>
<p>p.3 Section I C #2</p>	<p>2. Explain to the person being searched and/or seized the reason for the search/seizure and how the search/seizure will be conducted.</p>	<p>2. Explain to the person being searched and/or seized the reason for the search/seizure and how the search/seizure will be conducted. If the person is a juvenile this explanation should be age-appropriate and trauma-informed.</p>	<p>ACLU youth advocacy suggestion -* should address mental health and disability as well? Bickerstaff et al.</p>
<p>P.3 Section I Part D. #1</p>	<p>1. Use or rely on information known to be materially false, incorrect, or unreliable in establishing reasonable suspicion for a search or seizure.</p>	<p>1. Use or rely on information known or reasonably suspected to be materially false, incorrect, or unreliable in establishing reasonable suspicion for a search or seizure.</p>	
<p>P. 4 Section II Part B #1</p>	<p>1. The plain view doctrine allows the police to inadvertently discover contraband or evidence only after making a lawful intrusion in a constitutionally protected area, such as vehicle, home, or habitation. The evidence or contraband must be immediately recognizable as such and be in plain view.</p> <p>The key to the plain view doctrine is being in the protected place with consent or on legitimate police business. Once the inadvertent discovery is made, officers have the probable cause to seek a search warrant for a more thorough search.</p>	<p>1. The plain view doctrine allows the police to discover contraband or evidence only after making a lawful intrusion in a constitutionally protected area, such as vehicle, home, or habitation. The evidence or contraband must be immediately recognizable as such and be in plain view.</p> <p>The key to the plain view doctrine is being in the protected place with consent or otherwise lawfully present.</p>	

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P. 4 Section III Part A	Where an officer seeks consent for a search, the officer will inform the person of his or her right to refuse and to revoke consent at any time.	A. Where an officer seeks consent for a search, the officer will inform the person of his or her right to refuse and to revoke consent at any time. If the person is a juvenile this explanation should be age-appropriate and trauma-informed	ACLU Youth Advocacy Suggestion
P. 4 Section III Part D.	D. Officers shall not physically or mentally coerce or exploit an individual in order to gain consent for a search.	<p>D. Officers shall not physically or mentally coerce or exploit an individual in order to gain consent for a search. Examples of coercion include but is not limited to:</p> <ol style="list-style-type: none"> 1. Threatening to charge person with a crime such as obstruction or disorderly conduct. 2. Threatening to refer to the Department of Children and Family Services. 3. Threatening to obtain a warrant as means of obtaining consent. 4. Threatening to use a K-9. 5. Using an officer's physical proximity or the number of officers as a means of intimidation. 6. Threatening to inconvenience or prolong the process. 	
P. 5 Section III E	1. Consent is valid if the third person has equal authority over the business or residence and it can be concluded the absent person assumed the risk the cohabitant (roommate) might permit a search.	1. Consent is valid if the third person has common authority over the area to be searched.	
P.5 Section IV A	A. Officers may conduct an immediate, warrantless search or seizure under emergency	A. Officers may conduct an immediate, warrantless search or seizure under emergency	

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	conditions, if there is probable cause to believe that the delay in getting a warrant would result in the loss of evidence, escape of the suspect, or harm to police or public.	conditions, if there is probable cause to believe that the delay in getting a warrant would result in the loss of evidence, escape of the suspect, or physical harm to police or public.	
P. 5 Section IV B	B. Exigent circumstances also exist if officers are responding to a call of violence and there is evidence a person's health, welfare, or safety is concerned.	B. Exigent circumstances also exist if officers are responding to a call of violence and there is evidence a person's health, welfare, or safety is immediately threatened.	
p. 5 Section IV C. #4	4. Was there probable cause to believe the subject was on the premises?	4. Is there probable cause to believe the subject was on the premises?	
p. 6 Section V B	B. During an investigatory stop, officers who develop articulable reasonable suspicion that an individual may be armed may perform a "Terry" pat down of an individual in accordance with the United States Supreme Court's Terry v. Ohio ruling.	B. During an investigatory stop, officers who develop articulable reasonable suspicion that an individual may be armed and dangerous may perform a "Terry" pat down of an individual in accordance with the United States Supreme Court's Terry v. Ohio ruling.	
p. 6 Section V B 2	2. Pat downs may not extend to the interior of the clothing, wallet, or shoes, absent other justification such as consent or a warrant.	2. Pat downs may not extend to the interior of the clothing, wallet, or shoes.	
p. 6 Section V B 3	3. If during a lawful pat down an officer detects an object that is or might reasonably be an item that is contraband or other criminal evidence, then the object may be seized (Referred to as the "plain feel" doctrine). Non-threatening items may only be removed if an officer detects it is contraband or it is immediately apparent that it is evidentiary. 4. Threatening items such as weapons may always be removed during frisks.	3. If during a lawful pat down an officer detects an object that contraband or other criminal evidence, then the object may be seized (Referred to as the "plain feel" doctrine). Non-threatening items may only be removed during the frisk if there is probable cause to believe the item is contraband or evidence of a crime. Threatening items such as weapons may always be removed during frisks.	Combined previous 3&4 and edited.
p. 6 Section V C	B. The decision to conduct a pat down/frisk must be based upon the totality of the	C. The decision to conduct a pat down/frisk must be based upon the totality of the	

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	circumstances and the reasonable conclusions drawn from the officer's training and experience.	circumstances and the reasonable conclusions that the person is armed and dangerous drawn from the officer's training and experience.	
p.6 Section V C #1	1. Officers may not frisk for weapons on a consensual encounter or noncustodial interview; this converts the encounter into a investigatory stop.	1. Officers may not frisk for weapons on a consensual encounter; this converts the encounter into an investigatory stop.	
P. 6 Section V D	<p>D. In addition to the basis for the stop itself, officers must have reasonable suspicion that the detained person may be armed. This may include, but is not limited to:</p> <ol style="list-style-type: none"> 1. Prior knowledge that the detained person has carried a weapon in the past. 2. Suspicious behavior, such as failure to comply with instructions to keep hands in sight. 3. Observations, such as weighted clothing, retention checks, and suspicious bulges, consistent with carrying a concealed weapon. 	Deleted	Contains vague and canned language and recommended to remove
p. 6 Section V E	E. When the objective of the frisk, determining whether or not the suspect is armed, is completed, the search must end. If the search continues, any contraband or evidence seized may be considered inadmissible results of an unreasonable search.	D. When the objective of the frisk, determining whether or not the suspect is armed, is completed, the search must end. If the search continues, any contraband or evidence seized is inadmissible.	There was a point made that exclusion should not be mentioned in any of the policy because it is an ever changing legal landscape
p.6 Section V F	Add F	A person exercising his/ her right to openly carry a firearm, standing alone or in connection with a call to police that only reports the open carry itself (no other suspicious behavior), does not justify a stop and frisk.	Based on research from Ohio Law and recent 6 th Circuit court of appeals decision Northrup V. City of Toledo Police Department.

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p. 6 Section V G	Add G	<p>G. Officers should be aware of the behavioral responses people, especially youths, may employ that can impact the tenor and evolution of an investigatory stop in unintended ways. Responses may include:</p> <ol style="list-style-type: none"> 1. Physical resistance, including fleeing; 2. Verbal challenges; 3. Outright disregard for police directives; and 4. Resignation to perceived mistreatment. <p>Officers must resist the tendency to escalate the encounter by reacting to this less mature behavior and focus instead on the basis for the stop.</p>	Suggested by ACLU pursuant to review for youth advocacy.
p.6 Section VI A #1	1. Officers shall, incident to a lawful arrest, search an arrestee's person and the area within the arrestee's immediate control.	1. Officers shall, incident to a lawful arrest, search an arrestee's person and the area within the arrestee's immediate control (i.e., within reaching and grabbing distance).	In Procedure VI A
p. 7 Section VI A 1 a	a. If the removal of a religiously significant garment is required, it shall be done respectfully and, if known and possible, in accordance with the person's religious beliefs.	a. If the removal of a religiously significant garment is required, it shall be done respectfully and, if known and possible, in accordance with the person's religious beliefs, and such objects shall be returned upon completion of search.	
p. 7 section VI 2 a	a. If an officer is uncertain regarding an arrestee's gender/gender identity, officers shall respectfully request the arrestee's gender/gender identity.	a. If an officer is uncertain regarding an arrestee's gender/gender identity, officers shall respectfully request the arrestee's gender/gender identity. An officer may not use a search to determine an arrestee's gender/gender identity.	Brought in line with the Prison Rape Elimination Act Standards. PREA Gender definitions are included in Strip Search Policy. Should be in line with CDP's Bias Free Policing Policy definitions as well.

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p. 7 Section VI B 1 a	a. Vehicles - After a person is arrested from a vehicle, officers do not have the authority to search the passenger compartment and unlocked containers incident to arrest, unless one of the following apply:	a. Vehicles - After a person is arrested from a vehicle, officers do not have the authority to search the passenger compartment, locked or unlocked containers incident to arrest, unless one of the following apply:	
p.7 Section VI B 1. b	b. Residence - When a person is arrested in a residence, officers may only search the arrestee's area of immediate control where the arrest occurred. Officers may only search other areas of the residence if it is objectively reasonable to believe: 1. Officer safety is threatened; or 2. There is a reasonable chance that the arrested person might escape or destroy evidence.	b. Residence - When a person is arrested in a residence, officers may only search the arrestee's area of immediate control where the arrest occurred with the exception of a protective sweep described in section C.	Eliminated numbered exceptions in favor of a single sentence.
p.8 Section VI C #1-2	1. Incident to arrest, an officer(s) may look in spaces immediately adjacent to the place where the suspect was arrested (closets and other areas where an attack against the officer(s) could originate) for officer safety purposes. 2. If there is an articulable reasonable suspicion that the area to be swept harbors an individual posing a danger to those on the arrest scene, officers may conduct a limited protective sweep of the entire house subsequent to an in-house arrest. Such a protective sweep is not a full search of the premises. The sweep may extend only to a cursory inspection of those spaces where a person may be found. The sweep shall last no longer than is necessary to dispel the reasonable suspicion of danger and, in any event, no	1. Incident to arrest, an officer(s) may look for other persons in spaces immediately adjacent to the place where the suspect was arrested (closets and other areas where an attack against the officer(s) could originate) for officer safety purposes. 2. Incident to arrest , if there is an articulable reasonable suspicion that the area to be swept harbors an individual posing a danger to those on the arrest scene, officers may conduct a limited protective sweep of the entire house subsequent to an in-house arrest. Such a protective sweep is not a full search of the premises. The sweep may extend only to a cursory inspection of those spaces where a person may be found. The sweep shall last no	

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	longer than it takes to complete the arrest and depart premises.	longer than is necessary to dispel the reasonable suspicion of danger and, in any event, no longer than it takes to complete the arrest and depart premises. 3. This type of search does not permit an officer to open a container or object that could not contain a person.	
VII A	New Header "A" Added	A. A vehicle inventory search may only be conducted pursuant to a lawful impoundment.	New A moves components down and the section is now A-D
p. 8 Section VII D #2	2. Inventory searches include the entire passenger compartment, glove box, trunk, and containers without damaging the property, at or near the time the vehicle was lawfully placed within police custody.	2. Inventory searches include the entire passenger compartment, glove box, trunk, and containers <i>that can be searched without</i> damaging the property, at or near the time the vehicle was lawfully placed within police custody.	Previously in C. #2
p. 9 Section VIII B	B. The curtilage surrounding a home is constitutionally protected from a warrantless search and seizure.	B. The curtilage surrounding a home is constitutionally protected from a warrantless search and seizure. Officers shall not enter a constitutionally protected place such as a curtilage, home, or habitation, and seize contraband that is visible to the public. (e.g., If officers see a marijuana plant growing in the window of a residence, they cannot enter the home, but may use the information as probable cause to seek a search warrant.)	Repeated language from section II A, 2
p. 9 Section VIII C	C. Officers shall consider the following factors when determining whether a specific location is within the curtilage of a residence: 1. The proximity of the location to the house;	C. Officers shall consider curtilage to begin at the start of the lawn and beyond that consult with a supervisor or get a warrant.	Suggestion is a simple "rule of thumb" recommended by officers on the work group for ease of training.

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	<p>2. Whether the same enclosure surrounding the house also encloses the location;</p> <p>3. The uses of the location;</p> <p>4. The steps that are taken to protect the location from observation by passerby.</p>		
P. 10 Section X	<p>X. Training</p> <p>A. The Division shall provide officers with annual in-service training on search and seizure that is adequate in quality, quantity, type, and scope.</p>	<p>X. Training</p> <p>A. The Division shall provide officers with annual in-service training by an instructor with a J.D. who are subject matter experts per Ohio Police Officer Training Commission on Search and Seizure/probable cause/warrantless arrests that is adequate in quality, quantity, type, and scope.</p>	<p>In Procedure X To bring in line with warrantless arrest procedures.</p>

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GENERAL POLICE ORDER

CLEVELAND DIVISION OF POLICE



ORIGINAL EFFECTIVE DATE :	REVISED DATE: 10/31/2018 CPC	NO. PAGES: 1 of 9	NUMBER:
SUBJECT: <p style="text-align: center;">INVESTIGATORY STOPS</p>			
ASSOCIATED MANUAL:		RELATED ORDERS: <p style="text-align: center;">Search and Seizure</p>	
CHIEF OF POLICE:			

This policy has been revised in its entirety

PURPOSE: To establish Cleveland Division of Police guidelines so that all investigatory stops are conducted in accordance with the rights secured or protected by the Constitution and federal and state law. The Division will conduct investigatory stops fairly and respectfully, consistent with the Division’s commitment to procedural justice, community and problem-oriented policing, and community values.

POLICY: It is the policy of the Division of Police that all investigatory stops will be conducted in a manner that not only promotes the safety of police officers and the public but also conforms to the constitutions of the United States and the State of Ohio. Officers shall not use an individual’s gender, race, ethnicity, national origin, or perceived sexual orientation as a factor, to any extent or degree, in establishing reasonable suspicion or probable cause, unless such information is part of an actual and credible description of a specific individual in an investigation that includes other identifying factors.

DEFINITIONS:

Anonymous Tip: information from a person not known by police and is not to be assumed trustworthy without additional details which point to criminal activity.

Arrest: The taking of a person into custody by an officer based upon a warrant or probable cause. To constitute an arrest there must be an actual restraint of the person. The restraint may be imposed by force or may result from the submission of the person arrested to the custody of the officer arresting him/her. An arrest is a restraint of greater scope or duration than an investigatory stop or detention.

Consensual Encounter: A casual encounter between the police and an individual with the intent of engaging in non-investigative conversation in which the officer explains that the individual may decline any conversation, questions and/or is free to leave.

Investigatory Stop (Terry Stop): A brief, minimally intrusive detention of an individual, including the occupants of a vehicle, during which a reasonable person in the individual’s position would not feel free to leave, as defined in *Terry v. Ohio, 392 U.S. 1*. To justify a stop, the officer must have reasonable suspicion that the stopped individual has, is, or is about to engage in criminal conduct. The stop must be based on specific, objective, articulable facts that the officer knew before the stop. Information learned during a stop can lead to additional reasonable suspicion or probable cause that a crime has occurred, but it cannot provide the justification for the original stop.

Juvenile: An individual under the age of 18.

Pat Down/Frisk: A limited search during an investigatory stop in which an officer conducts a pat down of the outer clothing of a person for weapons when the officer reasonably suspects that the particular person is armed and dangerous. It is limited to what is necessary to detect weapons and must be based on reasonable articulable suspicion that the person is armed. An officer may not manipulate objects that are discovered under the clothing to determine whether they are contraband.

Probable Cause: The **facts** known to the officer(s) that would lead a reasonable person to believe an individual **is committing or has committed a crime.**

Reasonable Suspicion: An objectively, justifiable suspicion that is based on specific and articulable facts that justifies an officer stopping an individual that has committed, is committing or is about to commit an offense. Reasonable suspicion is more than a hunch but less than probable cause. A police officer stopping an individual must be able to point to specific facts or articulable circumstances even though the level of suspicion need not arise to probable cause.

Seizure: When an officer's words or actions would make a reasonable person believe that **under the circumstances he or she cannot terminate the encounter.**

PROCEDURES:

- I. Levels of / Civilian/ Police Encounters
 - A. There are three levels of civilian-police encounters. The following are the three types of encounters, listed in order from consensual to most intrusive: voluntary contacts, investigatory (Terry) stops, and arrests.
 1. **Consensual Encounters are the only category of voluntary contacts** that do not constitute a seizure.
 2. Investigatory (Terry) Stops – A seizure based on reasonable suspicion
 3. Arrests – A seizure based on probable cause. Separate guidelines govern searches in the context of an arrest. [cross-reference to “Search & Seizure, “Arrests” policies.]
 - B. Officers must distinguish between voluntary contacts and Terry stops:
 1. The inquiry into whether an individual would feel free to leave and/or decline any of the officer’s requests at any point is an objective one, depending on all of the circumstances surrounding the contact between an officer and an individual, including but not limited to:
 - a. Number of officers present

- b. Physical contact with the individual
- c. Whether the officer's language or tone of voice indicates that compliance with the officer's requests is required
- d. Display of a weapon
- e. Blocking the individual's vehicle **or freedom to move**
- f. Display of official police vehicle indicators such as signals of flashing, oscillating, or rotating lights.

2. **Officers should be aware a juvenile may not feel free to leave when an adult in the same circumstances would.**

II. Basis for an Investigatory Stop

- A. Law enforcement and investigatory decisions must be based upon observable behavior, facts, and/or specific intelligence, which form the basis for, among other things, determinations of reasonable suspicion and probable cause.
- B. Officers shall not conduct investigatory stops unless they have developed the necessary reasonable suspicion or probable cause.
- C. An officer(s) may conduct an investigative stop of an individual after identifying themselves as a Cleveland Police Officer(s), if they have reasonable suspicion that the individual has committed, is committing, or is about to commit an offense.
- D. A vehicle stop for a traffic code violation is not an investigative stop. An officer shall have probable cause to conduct a vehicle stop for a traffic code violation or completed misdemeanor.
- E. Every officer conducting a stop must be prepared to articulate specific facts and circumstances in support of the officer's determination that reasonable suspicion or probable cause was present and identified.
- F. Pedestrians, persons in vehicles, and persons on bicycles may be stopped.
- G. Officers may take into account the race, ethnicity, age, gender or other demographic characteristics of an individual in establishing reasonable suspicion or probable cause only when the characteristics are part of an actual and credible description of a specific individual in an investigation that includes other identifying factors.
- H. Officers shall not use or rely on information known to be materially false or incorrect in effectuating an investigatory stop or detention, or in establishing reasonable suspicion for a search.

- I. Officers shall not rely solely upon an individual's geographic location, or presence in a **"high crime area"** without any other specific and articulable facts indicating that the individual has been, is, or is about to engage in criminal activity, as the basis for an investigatory stop. **Direct observation or a call of an individual openly carrying a firearm does not alone, without some additional suspicion, give reasonable suspicion for an investigatory stop.**
- J. **An individual's reluctance to engage or cooperate with the police or choosing not to answer questions or ignore police is not a sole basis for reasonable suspicion.**

III. Articulating Reasonable Suspicion

- A. The existence of reasonable suspicion is determined by the totality of the circumstances. The totality of the circumstances is based on all of the facts known to the officer and the circumstances that existed **prior to the stop.**
- B. Officers shall not rely solely upon any single factor listed below without other specific and articulable facts indicating that the individual has been, is, or is about to engage in criminal activity, as the basis for an investigatory stop.
- C. When formulating reasonable suspicion, officers may rely on activity they perceive through their own senses, through information obtained from other credible persons, or through a combination of both factors, including but not limited to the following:
 1. *The Person's Appearance:* Does this person fit the specific description of an individual in a particular unlawful incident?
 2. *The Person's Actions:* What suspicious activity has been observed? Is the person attempting to flee, making inexplicable movements, displaying signs of nervousness or involved in activity commonly known to the officer as criminal in nature?
 3. *Prior Knowledge of the Person:* Does the person have a criminal history? Has the person been arrested in the past for certain types of criminal behavior? What information has been received from other parties about the person?
 4. *Area of Stop:* Is the person in the area of or at the location of a recently committed crime? Is this area known for high levels of criminal activity like drug trafficking? Has this area been inundated with a certain type of crime?
 5. *Time of Day:* Is it unusual for people to be in this area at this time? Is it the time of day when a certain type of crime has been taking place according to reports or your knowledge?
 6. *Law Enforcement Purpose:* Are you investigating a specific crime, type of crime or pattern of criminal activity?

7. *Source of Information:* From whom did you receive your information? How credible is the person you are receiving information from? How did this person obtain their information? Can you corroborate the information?

IV. Police Conduct During Investigatory Stops

- A. If during an investigatory stop, probable cause is developed resulting in a custodial arrest for obstructing official business, resisting arrest, or assaulting a police officer with no other substantive violation alleged, officers shall request a supervisor respond to the scene.
- B. Officers shall limit the investigatory stop to a reasonable scope.
1. Actions that would indicate to a reasonable person that they are being arrested or indefinitely detained may convert an investigatory (*Terry*) stop into an arrest requiring probable cause or an arrest warrant.
 2. **During an investigatory Terry stop officers should not further limit a person's freedom of movement in the ways listed below unless justified by the specific circumstances:**
 - a. Taking a person's identification/driver's license away from the immediate vicinity;
 - b. Ordering a motorist to exit a vehicle;
 - c. Placing a pedestrian up against a wall;
 - d. Directing a person to stand or remain standing, or to sit on a zone car bumper or any other place not of their choosing;
 - e. Directing a person to lie or sit on the ground;
 - f. Applying handcuffs;
 - g. Transporting any distance away from the scene of the initial stop, including for the purpose of witness identification;
 - h. Placing the individual into a police vehicle;
 - i. Pointing a firearm; and
 - j. Pat down/Frisking for weapons
- C. Officers shall limit the investigatory stop to a reasonable amount of time
1. Individuals may be stopped for only that period of time necessary to affect the purpose of the stop. Any delays in completing the necessary actions must be

objectively reasonable **and supplemented by additional reasonable suspicion and probable cause and specifically articulated in any applicable reports documenting the investigatory stop.**

2. Officers shall not extend a detention solely to await the arrival of a supervisor.

D. Officers shall be courteous and professional during all investigatory stops.

1. When feasible and as early in the contact as safety permits, officers shall inform the individual of the following:

- a. The officer's full name and badge number
- b. The fact that the officer is a Cleveland Police Officer
- c. The reason for the stop
- d. The fact that the stop is being recorded, if applicable [cross-reference to WCS Policy]

2. During the stop officers may offer further explanation of the circumstances and reason for stop. Officers will not extend a detention unreasonably to explain the stop.

3. Wherever time and circumstances permit, officers shall listen to the individual and answer any reasonable questions that the individual has relating to the interaction

V. Rights of Person(s) Subject to Investigatory Stop(s)

A. Ohio Revised Code 2921.29 (Failure to Disclose Personal Information) states that no person who is in a public place shall refuse to disclose the person's **legal** name, address, or date of birth when requested by a law enforcement officer who reasonably suspects the following:

1. The person is committing, has committed, or is about to commit a criminal offense;
2. The person witnessed any of the following:
 - a. An offense of violence that would constitute a felony under the laws of the state;
 - b. A felony offense that causes or results in, or creates substantial risk of, serious physical harm to another person or to property.

B. A detained person must also, by statute, provide identification when:

1. The person is a driver stopped for a traffic violation
2. The person is attempting to purchase liquor

3. The person is a concealed carry permit holder

- C. Officers may not transport a person to any police facility or jail merely for the purpose of identifying them unless they have probable cause for arrest.
- D. During the investigatory stop, the detained person(s) need not be advised of their *Miranda* rights until probable cause to arrest develops or until the questioning becomes sustained and coercive rather than brief and casual.

VI. Anonymous Tips

A. **Information from a person not known by police is not to be assumed trustworthy without additional details which point to criminal activity. Officers must carefully develop reasonable suspicion in cases involving anonymous tips by corroborating information received with what the officer observes on scene. Officers cannot search or seize based on an anonymous tip alone.**

B. Officer's observations while on scene, securing more complete information from an anonymous person and/or other circumstances that would tend to support the information received are all ways that officers can use to articulate reasonable suspicion allowing a Terry stop.

VII. Documentation and Reporting/Review of Investigatory Stops

A. Documentation of Investigatory Stops

- 1. Officers conducting investigatory stops shall complete a the relevant computer automated dispatch (CAD) form(s), a person form, a vehicle form or both, recording the information of individuals involved, subject to the following guidelines:
 - a. Officers shall complete a CAD form(s) in connection with a stop, whether or not an arrest, report, citation, or summons is completed.
 - b. The primary unit initiating the stop shall be responsible for completion of the CAD form(s). Only one person/vehicle CAD form(s) shall be made for each incident.
 - c. Detective Units operating with assistance of basic patrol officers shall be responsible for completion of the CAD form(s) via the assisting officers Mobile Data Terminal (MDT).
- 2. All CAD entries shall be completed via the MDT, if available. If no MDT is available to the officer, a hard copy of the CAD form(s) shall be completed and entered via computer network terminals at the officer's district or bureau.
- 3. All CAD entry forms shall be completed prior to the end of the officer's assignment or shift.

4. The documentation should contain all information requested in the CAD form, but at a minimum must contain at least the following elements:
 - a. Location of the stop;
 - b. Subjects race, ethnicity, age, and gender;
 - c. If a vehicle stop, the presence and number of any passengers;
 - d. If a vehicle stop, whether the driver or any passenger was required to exit the vehicle, and the reason for doing so;
 - e. Reason for the stop, including brief description of the facts creating reasonable suspicion;
 - f. Whether any individual was asked to consent to a search and whether such consent was given;
 - g. Whether a pat down, frisk, or other non-consensual search was performed on any individual or vehicle, including a brief description of the facts justifying the action;
 - h. A full description of any contraband or evidence seized from any individual or vehicle; and
 - i. Disposition of the investigatory stop, including whether a citation or summons was issued to, or an arrest made of any individual, including charges.
 - j. Disposition of any search conducted including if a search was conducted and nothing was found.

B. Reporting and Review of Investigatory Stops

1. Officer Responsibilities
 - a. Officers shall articulate the justification for an investigatory stop in a specific and clear manner in their reports. Officers must be able to clearly articulate the information they relied upon, that was not influenced by bias or prejudice, in determining reasonable suspicion.
 - b. Officers shall not use “canned” or conclusory language without supporting detail in reports documenting investigatory stops. Instead, officers will use specific and individualized descriptive language in reports.
2. Supervisor Responsibilities

- a. Supervisors shall review all documentation of investigatory stops for completeness and adherence to law and Division policy.
 - b. Within seven days, supervisors shall document and report investigatory stops that appear unsupported by reasonable suspicion, or that are otherwise in violation of CDP policy and investigatory stops that, while adhering with law and policy, indicate a need for corrective action or review of policy, tactics, or training.
 - c. If a supervisor concludes that a stop appears to be inconsistent with Division policy, the supervisor, in consultation with the Commander, shall address the concern with the officer involved and either:
 1. Provide non-disciplinary corrective action and document such action in the tracking software. or
 2. Refer the matter to Internal Affairs for administrative or criminal investigation. **When considering referral to Internal Affairs the following should be considered:**
 - (a) **The existence of reasonable suspicion the officer may have violated the law**
 - (b) **Observed or documented patterns of behavior**
 - (c) **The seriousness of the offense**
3. Commander Responsibilities
 - a. The officer's commander shall review, within seven days of their completion, all supervisory reports of investigatory stops not supported by reasonable suspicion, were otherwise in violation of CDP policy, or otherwise indicated a need for corrective action or review of agency policy, strategy, tactics, or training.
 - b. The commander shall evaluate the supervisor's assessment and recommendations and ensure that all appropriate action is taken, including referring the incident to Internal Affairs for investigation, if warranted.
 - c. The commander shall take appropriate non-disciplinary corrective action and/or will initiate the disciplinary process against supervisors who fail to conduct complete, thorough, and accurate reviews of officers' investigatory stops.
 4. The Division shall take into account the quality and completeness of these supervisory and commander reviews of officers' investigatory stops in supervisory and commander performance evaluations.

VIII. Training

- A.** The Division shall provide officers with annual **in-service training by an instructor with a J.D. who are subject matter experts per Ohio Police Officer Training Commission on Investigatory Stops that is adequate in quality, quantity, type, and scope.**

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Location	Original	Modified	Notes
Definitions p. 1	Added	Anonymous Tip: information from a person not known by police and is not to be assumed trustworthy without additional details which point to criminal activity.	
Definitions p. 1	Consensual Encounter: A voluntary encounter between the police and an individual with the intent of engaging in casual, and/or non-investigative conversation. A reasonable person in the individual's position would feel free to leave and/or decline any of the officer's requests at any point.	Consensual Encounter: A casual encounter between the police and an individual with the intent of engaging in non-investigative conversation in which the officer explains that the individual may decline any conversation, questions and/or is free to leave.	
Definitions p. 2	Non-Custodial Interview: A voluntary and consensual investigatory interview that an officer conducts with an individual during which the individual is free to leave and/or decline any of the officer's requests at any point.	Deleted	
Definitions P. 2	Added	Juvenile: An individual under the age of 18.	
P.2 Definitions	Probable Cause: The facts and circumstances known to the officer(s) that would lead a reasonable person to believe an individual has more likely than not committed or is committing a crime.	Probable Cause: The facts and circumstances that point to fact known to the officer(s) that would lead a reasonable person to believe an individual is committing or has committed a crime	Also changed in S&S
	Probable Cause: The facts or circumstances that point to facts known to the officer(s) that would lead a reasonable person to believe an individual is committing or has committed a crime.	Probable Cause: The facts known to the officer(s) that would lead a reasonable person to believe an individual is committing or has committed a crime.	
Definitions p. 2	Seizure: When an officer's words or actions would make a reasonable person believe that he or she is not free to leave	Seizure: When an officer's words or actions would make a reasonable person believe that under the circumstances he or she cannot terminate the encounter.	Also changed in Search and Seizure.
I A, p. 2	1. There are two categories of voluntary contacts that do not constitute a seizure: a. Consensual Encounters b. Non-custodial Interviews	1. Consensual Encounters are the only category of voluntary contacts that do not constitute a seizure.	Removed reference to non-custodial interview in all policy

I B, 1 e. p. 3	e. blocking the individuals vehicle	e. blocking the individuals vehicle or freedom to move	
I B, 2 p. 3		2. Officers should be aware a juvenile may not feel free to leave when an adult in the same circumstances would.	
I B, p. 3	Added	f. Display of official police vehicle indicators such as signals of flashing, oscillating, or rotating lights.	
II G, p. 3			Section G left unmodified for now. It is recognized and acknowledged that other demographics and characteristics exist
II I, p. 3	I. Officers shall not rely solely upon an individual's geographic location, or presence in a high crime area without any other specific and articulable facts indicating that the individual has been, is, or is about to engage in criminal activity, as the basis for an investigatory stop.	I. Officers shall not rely solely upon an individual's geographic location, or presence in a "high crime area" without any other specific and articulable facts indicating that the individual has been, is, or is about to engage in criminal activity, as the basis for an investigatory stop. Direct observation or a call of an individual openly carrying a firearm does not alone, without some additional suspicion, give reasonable suspicion for an investigatory stop.	
II J, p. 4	Added J	J. An individual's reluctance to engage or cooperate with the police or choosing not to answer questions or ignore police is not a sole basis for reasonable suspicion.	
III A, p. 4	A. The existence of reasonable suspicion is determined by the totality of the circumstances. The totality of the circumstances is based on all of the facts known to the officer and the circumstances that existed at the time the stop took place.	A. The existence of reasonable suspicion is determined by the totality of the circumstances. The totality of the circumstances is based on all of the facts known to the officer and the circumstances that existed prior to the stop.	
III C, #4 p. 4	4. Demeanor during the Contact: What is the nature of the person's answers? Were questions answered evasively or were they suspicious or obviously false? What nonverbal cues	Deleted	List now numbers 1-7

	were observed? Is the person cooperative or resistant?		
III C, p. 4	1. Law Enforcement Training and Experience: Is the person's appearance or demeanor consistent with specific criminal activity? Are the person's actions or demeanor consistent with the environment and/or others in the area?	Deleted	The questions did not match the definition of "Law enforcement experience and training"
III B, p. 4	B. Officers shall not rely solely upon any single factor listed above without other specific and articulable facts indicating that the individual has been, is, or is about to engage in criminal activity, as the basis for an investigatory stop.	Unmodified, just moved and changed to "listed below"	Moved from III C 10 to III B
Throughout	Sections and numbers out of sequence	Reordered and sequenced	Procedures appropriately reordered
IV B, #2 p. 5	2. Taking any of the below actions does not necessarily convert a Terry stop into an arrest. Unless justified by the reasons articulated for the original stop, officers must have additional, articulable justification for further limiting a person's freedom during an investigatory (Terry) stop, to include actions such as:	2. During an investigatory Terry stop officers should not further limit a person's freedom of movement in the ways listed below unless justified by the specific circumstances:	
IV C, p. 5			"Affect" is the correct term.
IV C, p. 5	1. Individuals may be stopped for only that period of time necessary to affect the purpose of the stop. Any delays in completing the necessary actions must be objectively reasonable and specifically articulated in any applicable reports documenting the investigatory stop.	1. Individuals may be stopped for only that period of time necessary to affect the purpose of the stop. Any delays in completing the necessary actions must be objectively reasonable and supplemented by additional reasonable suspicion and probable cause and specifically articulated in any applicable reports documenting the investigatory stop.	
IV D, p. 6			"Shall" is the correct term.
Throughout	Suspect	Individual	
IV D, p. 6	b. The officer's rank or title	deleted	Group felt this was not important to identifying factors
V A, p. 6	A. Ohio Revised Code 2921.29	A. Ohio Revised Code 2921.29	

	(Failure to Disclose Personal Information) states that no person who is in a public place shall refuse to disclose the person's name, address, or date of birth when requested by a law enforcement officer who reasonably suspects the following:	(Failure to Disclose Personal Information) states that no person who is in a public place shall refuse to disclose the person's legal name, address, or date of birth when requested by a law enforcement officer who reasonably suspects the following:	
VI, A p. 7	Officers must carefully develop reasonable suspicion in cases involving anonymous tips by corroborating information received with what the officer observes on scene.	A. Information from a person not known by police is not to be assumed trustworthy without additional details which point to criminal activity. Officers must carefully develop reasonable suspicion in cases involving anonymous tips by corroborating information received with what the officer observes on scene. Officers cannot search or seize based on an anonymous tip alone.	
Throughout	Tour of duty	shift	
VII, 4, j p. 8	Add j	j. Disposition of any search conducted including if a search was conducted and nothing was found.	
VII, B, 2, c, 2 p. 9	2. Refer the matter to Internal Affairs for administrative or criminal investigation.	2. Refer the matter to Internal Affairs for administrative or criminal investigation. When considering referral to Internal Affairs the following should be considered: (a) The existence of reasonable suspicion the officer may have violated the law (b) Observed or documented patterns of behavior (c) The seriousness of the offense	
VIII P. 10	A. The Division shall provide officers with annual search and seizure/ investigatory stops in service training that is adequate in quality, quantity, type and scope	A. The Division shall provide officers with annual in-service training by an instructor with a J.D. who are subject matter experts per Ohio Police Officer Training Commission on Investigatory Stops that is adequate in quality, quantity, type, and scope.	Use this similar language in all legal policies



GENERAL POLICE ORDER CLEVELAND DIVISION OF POLICE

ORIGINAL EFFECTIVE DATE :	REVISED DATE: 10-31-2018 CPC	NO. PAGES: 1 of 6	NUMBER:
SUBJECT: PROBABLE CAUSE/WARRANTLESS ARRESTS/MIRANDA WAIVER			
ASSOCIATED MANUAL:		RELATED ORDERS: 2.2.04 Warrant Service	
CHIEF OF POLICE:			

Replaces GPO 2.3.04, Probable Cause: Establishing and Filing for Warrantless Arrests.”

PURPOSE: To establish Cleveland Division of Police guidelines so that all arrests are conducted in accordance with the rights secured and protected by Constitution and federal and state law. The Division will conduct arrests fairly and respectfully as part of an effective overall crime prevention strategy consistent with community values.

POLICY: It is the policy of the Division to respect the fundamental privacy rights of all individuals. Officers shall conduct arrests in strict accordance with the rights secured and protected by the Constitution and federal and state laws. All seizures by the Division shall likewise comply with relevant federal and state laws governing the seizure of persons and property. Officers shall not use an individual’s gender, race, ethnicity, national origin, or perceived sexual orientation as a factor, to any extent or degree, in establishing probable cause, unless such information is part of an actual and credible description of a specific suspect in an investigation that includes other identifying factors. **When a person is taken into custody, or otherwise deprived of his or her freedom of action in a significant way, and when he or she is to be questioned, the Division shall afford him or her the procedural safeguards required to protect his or her Fifth Amendment right against involuntary self-incrimination.**

DEFINITIONS:

Arrest: The taking of a person into custody by an officer based upon a warrant or probable cause. To constitute an arrest, there must be an actual restraint of the person. The restraint may be imposed by force or may result from the submission of the person arrested to the custody of the officer arresting him/her. An arrest is a restraint of greater scope or duration than an investigatory stop or detention.

Custody: When an officer has arrested that individual or when a reasonable person in the individual’s position would not feel free to leave based on a totality of the circumstances. Questioning incident to a routine traffic stop are not considered custodial.

Deaf: An individual who is deaf, late-deafened, or hard-of-hearing.

Hard of Hearing: An individual who has a hearing deficit and who may or may not primarily use visual aids for communication and may or may not use auxiliary aids.

Interrogation: Any direct questioning, or any words or actions (other than those normally attendant to arrest and custody) that the officer knows or reasonably should know would elicit an incriminating response from an individual.

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Juvenile: An individual under the age of 18.

Limited English Proficiency (LEP) person: An individual whose primary language is not English and who has only a limited ability to read, write, speak, or understand English. LEP designations are context-specific: an individual may possess sufficient English language skills to function in one setting, but may find these skills are insufficient in other situations. Additionally, LEP individuals may be competent in certain types of communication (e.g., speaking or understanding), but still be LEP for other purposes (e.g., reading or writing).

Probable Cause: The facts and circumstances known to the officer(s) that would lead a reasonable person to believe that an individual has more likely than not committed or is committing a crime.

PROCEDURES:

I. General Requirements for Probable Cause/Warrantless Arrests

- A. Unless possessing a warrant, an officer may not arrest a suspect unless the officer:**
 - 1. Has probable cause that the suspect has committed or is committing a felony offense;**
 - 2. Has probable cause that the suspect has committed or is committing the following misdemeanor offenses: an OVI; an offense of violence; criminal child enticement; public indecency; domestic violence; violation of a protection order; menacing by stalking, aggravated trespass, or theft.**
 - 3. Has probable cause from the officer's own observations that the suspect has committed or is committing any other misdemeanor offense (other than a minor misdemeanor).**
- B. An officer may not conduct a warrantless arrest for a minor misdemeanor under any circumstances.**
- C. When taking a suspect into custody, as early as practical under the circumstances, officers shall identify themselves, inform the suspect that he/she is under arrest, and state the reason for the arrest.**
- D. Prior to interrogating an individual, officers shall advise arrestees of their full Miranda rights. (Refer to G.P.O. #TBD, Miranda Warning and Waiver)**

II. Entering a Residence/Habitation Without a Warrant to Make a Warrantless Arrest

- A. Officers may enter a residence without a warrant to make a warrantless arrest when :**

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1. Officer(s) reasonably believe the person(s) is within the residence at the time of entrance; and
2. Consent to enter the residence is given by a person who shares access and control of the premises. The burden is on the officer to ascertain whether the person granting access has:
 - a. **The right to give permission (*Cross-Reference to GPO X.XX Searches, § IV.E. Third Party Consents*); or**
 - b. **Exigent circumstances (e.g., hot pursuit, spontaneous violence, prevention of a crime, or imminent escape to avoid apprehension).**

III. Officer's Responsibilities for Reporting Probable Cause/Warrantless Arrests

A. Where no other substantive violation is alleged Officers shall immediately notify a supervisor when effectuating a custodial arrest for:

1. Obstructing official business;
2. Resisting arrest; or
3. **Assaulting an officer; or**
4. **Refusal to sign citation, per ORC 2935.263a**

B. Officers shall make an arrest report for all Non Uniform Traffic Ticket/Minor Misdemeanor Citation (UTT/MMC) arrests.

1. Arrest reports shall be completed before the end of the officer's **shift**.
2. Officers shall not use "canned" or conclusory language without supporting detail in their arrest incident reports.
3. Officers shall articulate the justification for an arrest in a specific and clear manner in all reports related to the arrest using individualized, descriptive language.
4. Officers shall complete the appropriate Probable Cause Affidavit in accordance with Sections IV.-VI. below.

IV. Completion and Forwarding of Probable Cause (PC) Affidavit Forms for all Non-UTT/MMC Warrantless Arrests

- A. Arresting officers shall properly complete the Affidavit Establishing Probable Cause (PC Affidavit) form, checking only the "Warrantless Arrest" box on the form for all Non-UTT/MMC warrantless arrests.

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- B. Officers shall complete the form before the end of the arresting officer's **shift**.
 - C. Officers shall complete the "Warrantless Arrest" PC Affidavit form in the following manner:
 - 1. Officers shall check the "Warrantless Arrest" box on the form.
 - 2. Only one officer's name may appear on the Officer/Detective/Complaint line.
 - 3. When completing the PC affidavit form, officers shall begin the narrative with the day, date, time, and location or approximate location (e.g., On Friday, April 12, 2018, at approximately 1020 hours at a residence located at 1234 Maple Street).
 - 4. Officers shall explain the established probable cause that led to the arrest in the narrative section.
 - D. Officers shall ensure the form is presented to a supervisor or the Clerk of Courts for review and notarization. In the case of officers working secondary employment, the supervisor in the district of occurrence shall review and notarize the PC affidavit form unless a supervisor of a higher rank than the arresting officer is concurrently working that secondary employment.
 - E. Officer shall then place the PC Affidavit Forms in a file basket designated solely for the original PC affidavit forms.
- V. Completion and Forwarding of PC Affidavit Forms for all Felony, Combination Felony/Misdemeanor, Escalating Misdemeanor, and Misdemeanor arrests where the assigned detective is also handling the charging duties.
- A. Officers shall file the original "Warrantless Arrest" PC affidavit form in a file basket designated solely for original PC affidavit forms.
 - B. Detectives shall ensure the proper follow-up is completed in charging or releasing of arrested persons as applicable.
 - C. Detectives shall handle the charge/release of escalating misdemeanors generated by the Patrol Section regardless if the misdemeanor has been determined to not have escalated to a felony. This is necessary to ensure that persons are charged/released within the 36 hour requirement
- VI. PC Affidavit Forms for all Non UTT/MMC Misdemeanor Arrests where a detective is not handling the charging duties.
- A. In addition to the "Warrantless Arrest" PC affidavit described in Section IV., officers arresting for Non UTT/MMC misdemeanors shall complete a second PC affidavit form checking only "Statement of Facts" box on the form. This second form is required by the Record Section supervisor to file charges on the misdemeanor arrest.
 - B. Officers shall complete the form before the end of the arresting officer's **shift**.

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- C. Officers shall ensure that the form is presented to a supervisor or the Clerk of Courts for review and notarization. In the case of officers working secondary employment, the supervisor in the district of occurrence shall review and notarize the PC affidavit form unless a supervisor of a higher rank than the arresting officer is concurrently working that secondary employment.
- D. Officer shall then place both PC Affidavit Forms (one with only the Warrantless Arrest box checked and the other with only the Statement of Facts box checked) in a file basket designated solely for the original PC affidavit forms.
- E. Officers assigned to investigative units are not required to route the misdemeanor charging process through the Record Section, but rather may opt to handle the charging process as is normally handled in their investigative unit, as long as all the filing requirements are met.

VII. Supervisor's Responsibilities for Probable Cause/Warrantless Arrests

- A. The supervisor shall respond to the scene whenever officers notify a supervisor that they are effectuating a custodial arrest for obstructing official business; resisting arrest; or assault on an officer, where no other substantive violation is alleged.
- B. Supervisors shall review all documentation of arrests for completeness and adherence to law and division policy.
- C. Supervisors shall review each report and PC affidavit forms by officers under their command, whether or not they involve the seizure of contraband, and sign off on those reports to memorialize their review within 24 hours of the arrest, absent exceptional circumstances. Supervisors shall review reports and forms for deficiencies, including but not limited to:
 - 1. Canned or conclusory language without supporting detail, inconsistent information, insufficient articulation of the basis for the action, or other information in the reports or forms that is not correct or complete;
 - 2. Arrests following stops that were not supported by reasonable suspicion;
 - 3. Arrests that are not supported by probable cause, or are otherwise in violation of the law or CDP policy; and
 - 4. For every search or arrest involving the recovery of contraband evidence, whether the circumstances by which the evidence was recovered and/or probable cause for arrest was established are plausible and complete, **unless they ordered the recovery, in which case another officer must conduct the review.**
- D. Officers-in-Charge (OIC) shall ensure that all PC affidavit forms are hand delivered to the Record Section daily at 0230 hours, 0830 hours, and 1530 hours.
- E. Within seven calendar days, supervisors shall document and report through their chain of command:
 - 1. Arrests unsupported by probable cause;

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2. Arrests that are in violation of CPD policy; or
 3. Arrests that, while comporting with law and policy, indicate a need for corrective action or review of agency policy, strategy, tactics, or training.
- F. Supervisors shall take appropriate action to address all apparent violations or deficiencies in arrests. Appropriate action may include recommending non-disciplinary corrective action for the involved officer and documenting such action in the tracking software, or referring the incident for administrative or criminal investigation.

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VIII. The Miranda Warning General Requirements.

- A. The Miranda Warning is required by *Miranda v. Arizona*, 384 U.S. 436 (1966), and applies only to sworn police officers who **observes or participates in questioning or interrogating an individual who is in custody.**
- B. Officers shall provide the Miranda Warning when both of the following criteria are met:
 - 1. An individual is in custody; AND
 - 2. The officer is to question or interrogate the individual about **any** crime.
- C. The officer shall provide the Miranda Warning before any related questioning begins.
- D. Miranda Warnings are not required prior to any incriminating, spontaneous statement. **If an individual makes a spontaneous statement, the officer will provide Miranda warning before clarifying the statement or asking any questions related to the statement.**
- E. If there is any doubt about whether custody and/or interrogation is/are present, officers shall resolve the doubt in favor of giving the Miranda Warning.

IX. Advising of Rights

- A. When advising an individual of his or her Miranda rights, officers shall include the **following**:
 - 1. “You have the right to remain silent.”
 - 2. “Anything you say can be used against you in court.”
 - 3. “You have the right to an attorney prior to and during any questioning.”
 - 4. “If you cannot afford an attorney, one will be appointed for you.”
 - 5. “You can decide at any time to exercise these rights and not answer any questions or make any statements.”
- B. The questioning officer shall ask the individual to verbally affirm that he or she understands the Miranda Warning (rather than by a nod of the head, or other physical gesture). **The Miranda Warning and subsequent affirmation should be recorded in its entirety via Wearable Camera System (WCS).**
- C. **Officers shall stop questioning when the arrestee has requested an attorney. Officers may resume questioning when the attorney is present.**

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X. Case-Specific Requirements

A. Deaf and Hard of Hearing Individuals and Individuals with Limited English Proficiency (LEP)

1. In the case of an individual who is deaf or hard of hearing or of Limited English Proficiency, the Miranda Warning shall be administered via a qualified interpreter or an **officer who is fluent in the language**.
2. For LEP individuals, where possible, the officer shall use a “Your Rights” form that has been translated into the **individual’s** primary language.

B. Juveniles

1. When questioning a juvenile, officers **shall** consider the juvenile’s age when determining whether the juvenile would not feel free to leave. A child may be in custody for purposes of the Miranda rule when an adult in the same circumstances would not.
2. Officers shall explain the Miranda Warning in an age-appropriate manner, **and each warning should be read slowly and one at a time, e.g.,:**
 - a. “You have the right to remain silent. That means you do not have to talk to me.”
 - b. “Anything you say can be used against you in court.”
 - c. “You have the right to get help from a lawyer before you talk to me.”
 - d. “You may also have your parent, or legal guardian here.”
 - e. “If you or your family cannot pay a lawyer, the court will get you one for free.”
 - f. “You have the right to stop this interview at any time.”
 - g. “Do you understand these rights that I have explained to you?”
 - h. “Do you want to have a lawyer with you while you talk to me?”
 - i. “Do you want your mother, father, or legal guardian here **if you choose to talk to me?**”
 - j. “Do you want to talk to me?”
3. To ensure the juvenile understands his or her rights, the officer shall ask the individual to explain each of the advisements in his or her own words.

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4. Officers shall stop questioning when the juvenile has requested an attorney, parent, or guardian. Officers may resume questioning when the attorney, parent, or guardian is present; however, no parent or guardian may waive the child's right to counsel.

XI. Waiving Miranda General Guidelines

- A. Once an officer has informed an individual of his or her Miranda rights, that individual may waive those rights and consent to a custodial interrogation without an attorney present.
- B. Such a waiver must be knowing and voluntary – that is, the individual must understand his or her rights, and any waiver must not be due to coercion.
- C. To ascertain whether an individual will waive his or her Miranda rights, after advising an individual of his or her rights, officers shall ask:
 1. “Having these rights in mind, and having stated that you understand these rights, do you wish to talk to me (or us) now?”
 2. **Prior to seeking a waiver with a juvenile, officers should assess whether the juvenile possesses the capacity to understand the Miranda warnings and to also appreciate the consequences of a waiver. To determine this, officers should ask youth to spell out the consequences of a waiver.**
 3. Officers shall only question an individual if the individual has answered in the affirmative to the above question.
- D. **The validity of a juvenile’s Miranda waiver may be inferred from the totality-of-the-circumstances surrounding the alleged waiver, including:**
 1. **The youth’s age; mentality; and prior criminal experience;**
 2. **The length; intensity; and frequency of the interrogation; and**
 3. **The existence of physical deprivation or inducement.**

XII. Reporting Requirements

- A. In all cases of a custodial interrogation, regardless whether an arrest is made or not, an officer shall record the Miranda Warning advisement and any waiver, if provided, on their Wearable Camera System and document the Miranda Warning advisement and any waiver, if provided, in their incident report, if applicable.

XIII. Invocation of Miranda Rights by Individual

- A. Questioning of an individual shall not take place when the subject of a custodial interrogation:

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1. Invokes his/her right to remain **silent**; or
2. Is unable or indicates his/her inability to either understand the Miranda Warning or to make a knowing, intelligent, and voluntary waiver of his/her rights; or
- 3. If an adult indicates he or she wants to have counsel, or if a juvenile indicates he or she wants to have counsel or a parent or guardian, present before answering questions, or anytime during the interrogations; or**
- 4. Is significantly impaired by substances or mental impairment.**

- B. If an individual waives his Miranda rights but subsequently states that he or she does not want to answer questions or wants an attorney present, all questioning shall cease immediately.
- C. If an individual is vague in his/her response about whether he/she wants to have an attorney present, nor does he/she explicitly waive his/her right to an attorney, officers shall specifically determine whether the individual wishes to have counsel present or if the individual will waive his/her right to counsel. **To make this determination, the officer shall ask the individual to confirm, with a “yes” or “no” answer, whether the individual is requesting an attorney.**

XIV. Re-Questioning an Individual After Individual Has Invoked Miranda

- A. If an individual invokes his or her right to silence but does not invoke the right to an attorney, all questioning shall cease immediately:
1. Questioning may be reinitiated by officers if they:
 - i. Wait a significant amount of time (at least **8** hours);
 - ii. Provide the Miranda Warning again; and
 2. If, after invoking his or her right to silence, an individual initiates conversations with the officers about the same topic, officers’ questioning may proceed after providing the Miranda Warning again.
- B. If an individual invokes his/her right to an attorney, all officers shall immediately cease questioning.
1. Questioning may be resumed only if:
 - a. The individual is in the presence of his or her attorney; or
 - b. The individual re-initiates communications with the police, and

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- i. **Officers provide the Miranda Warning again, and**
 - ii. **The individual voluntarily agrees to waive his/her rights.**
- C. In addition, if there is a break in custody, officers can ask the individual to waive his or her Miranda rights after 14 days.
- D. Questioning of a juvenile who has invoked Miranda may not occur without first allowing juvenile to consult with counsel.**

XV. Breaks in Interrogation

- A. Breaks in interrogation may require officers to reread the Miranda Warning before subsequent questioning. Officers shall consider the following factors when determining whether to re-read the Miranda Warning:
 1. If there is a significant delay (more than 30 minutes) between the times the Miranda Warning is first given and questioning begins.
 2. An officer questions any individual for the first time, even though the individual received the Miranda Warning previously from another officer.
 3. The location where the individual is being questioned differs from the location where the individual was read the Miranda Warning.
- B. If there is any doubt about whether a break in interrogation has occurred, officers shall resolve the doubt in favor of re-reading the Miranda Warning and securing a Waiver.

XVI. Public Safety Exception to the Miranda Warning

- A. Officers may temporarily forgo the Miranda Warning when necessary if they or the public are in immediate danger.**
- B. In order for this public safety exception to apply, officers shall first determine that there is an objectively reasonable need to protect the police or public from an immediate danger associated with a weapon or other harmful objects.
- C. Once an officer has determined that the public safety exception applies, the officer may question an individual without the Miranda Warning as long as the questions asked are related to the danger and reasonably necessary to secure public safety.
- D. Once the emergency ends, this exemption no longer applies.**

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XVII. Training

- A. The Division shall provide officers with annual in-service training **by an instructor with a J.D. who are subject matter experts per Ohio Police Officer Training Commission on Search and Seizure/probable cause/warrantless arrests that is adequate in quality, quantity, type, and scope.**

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Location	Original	Revised	Notes
Purpose, p. 1	To establish Cleveland Division of Police guidelines so that all questioning of criminal suspects comply with the Constitution, federal, and state laws.	To establish Cleveland Division of Police guidelines so that all questioning of individuals suspected of crimes comply with the Constitution, federal, and state laws.	
Throughout	Suspect	Individual	
Definitions, p. 1	Added	Deaf: An individual who is deaf, late-deafened, or hard-of-hearing. Hard of Hearing: An individual who has a hearing deficit and who may or may not primarily use visual aids for communication and may or may not use auxiliary aids.	Based on ADA definitions: https://www.ada.gov/concord_hosp.htm
Definitions, p. 1	Interrogation: Interrogation is any conduct that the officer knows or reasonably knows would elicit an incriminating response from an individual. Interrogation is not just direct questioning but also any words or actions (other than those normally attendant to arrest and custody) that the officer knows or reasonably knows is reasonably likely to elicit an incriminating response.	Interrogation: Any direct questioning, or any words or actions (other than those normally attendant to arrest and custody) that the officer knows or reasonably should know would elicit an incriminating response from an individual.	
Definitions, p. 1	Added	Limited English Proficiency (LEP) person: An individual whose primary language is not English and who has only a limited ability to read, write, speak, or understand English. LEP designations are context-specific: an individual may possess sufficient English language skills to function in one setting, but may find these skills are insufficient	From GPO 1.3.38

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		<p>in other situations. Additionally, LEP individuals may be competent in certain types of communication (e.g., speaking or understanding), but still be LEP for other purposes (e.g., reading or writing).</p>	
<p>P.1-2 Section I</p>	<p>I. General Requirements for Probable Cause/Warrantless Arrests</p> <p>A. Unless possessing a warrant, officers must have probable cause that a suspect has committed or is committing a crime in order to affect an arrest.</p> <p>B. When taking a suspect into custody, as early as practical under the circumstances, officers shall identify themselves, inform the suspect that he/she is under arrest, and state the reason for the arrest.</p> <p>C. Prior to interrogating an individual, officers shall advise arrestees of their full Miranda rights. (Refer to G.P.O. #TBD, Miranda Warning and Waiver)</p>	<p>I. General Requirements for Probable Cause/Warrantless Arrests</p> <p>A. Unless possessing a warrant, an officer may not arrest a suspect unless the officer:</p> <ol style="list-style-type: none"> 1. Has probable cause that the suspect has committed or is committing a felony offense; 2. Has probable cause that the suspect has committed or is committing the following misdemeanor offenses: an OVI; an offense of violence; criminal child enticement; public indecency; domestic violence; violation of a protection order; menacing by stalking, aggravated trespass, or theft. 3. Has probable cause from the officer's own observations that the suspect has committed or is committing any other misdemeanor offense (other than a minor misdemeanor). <p>B. An officer may not conduct a warrantless arrest for a minor misdemeanor under any circumstances.</p>	<p>Summarized From R.C. 2935.03 with additional legal case research and statutory reference.</p>

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		<p>C. When taking a suspect into custody, as early as practical under the circumstances, officers shall identify themselves, inform the suspect that he/she is under arrest, and state the reason for the arrest.</p> <p>D. Prior to interrogating an individual, officers shall advise arrestees of their full Miranda rights. (Refer to G.P.O. #TBD, Miranda Warning and Waiver)</p>	
<p>P. 2 Section II A</p>	<p>2. Consent to enter the residence is given by a person who shares access and control of the premises. The burden is on the officer to ascertain whether the person granting access has the right to give permission (Cross-Reference to GPO X.XX Searches, § IV.E. Third Party Consents); or</p> <p>3. Exigent circumstances (e.g., hot pursuit, spontaneous violence, prevention of a crime, or imminent escape to avoid apprehension).</p>	<p>2. Consent to enter the residence is given by a person who shares access and control of the premises. The burden is on the officer to ascertain whether the person granting access has:</p> <p>a. The right to give permission (Cross-Reference to GPO X.XX Searches, § IV.E. Third Party Consents); or</p> <p>b. Exigent circumstances (e.g., hot pursuit, spontaneous violence, prevention of a crime, or imminent escape to avoid apprehension).</p>	
<p>P 2. Section III A.</p>	<p>A. Officers shall immediately notify a supervisor when effectuating a custodial arrest for:</p> <p>1. Obstructing official business;</p> <p>2. Resisting arrest; or</p> <p>3. Assaulting an officer, where no other</p>	<p>A. Where no other substantive violation is alleged Officers shall immediately notify a supervisor when effectuating a custodial arrest for:</p> <p>1. Obstructing official business;</p> <p>2. Resisting arrest; or</p>	

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	substantive violation is alleged.	3. Assaulting an officer; or 4. Refusal to sign citation per ORC 2935.263a.	
Entire Document	Tour of duty	Shift	Multiple places
P. 5 Section VII C #4	4. For every search or arrest involving the recovery of contraband evidence, whether the circumstances by which the evidence was recovered and/or probable cause for arrest was established are plausible and complete.	4. For every search or arrest involving the recovery of contraband evidence, whether the circumstances by which the evidence was recovered and/or probable cause for arrest was established are plausible and complete, unless they ordered the recovery, in which case another officer must conduct the review.	

Location	Original	Modified	Notes
VIII A, p. 7	A. The Miranda Warning is required by Miranda v. Arizona, 384 U.S. 436 (1966), and applies only to sworn police officers who will be questioning or interrogating an individual who is in custody.	A. The Miranda Warning is required by Miranda v. Arizona, 384 U.S. 436 (1966), and applies only to sworn police officers who observes or participates in questioning or interrogating an individual who is in custody.	
VIII B, p. 7	2. The officer is to question or interrogate the individual about the crime for which they are in custody.	2. The officer is to question or interrogate the individual about any crime.	
VIII D, p. 7	D. Miranda Warnings are not required prior to any incriminating, spontaneous statement in order for it to be admissible at trial. However, the officer shall provide the Miranda Warning before clarifying the statement or asking any questions as a result of the statement.	D. Miranda Warnings are not required prior to any incriminating, spontaneous statement. If an individual makes a spontaneous statement, the officer will provide Miranda warning before clarifying the statement or asking any questions related to the statement.	
IX, p.	II. Advisement of Rights	II. Advising of Rights	
IX A, p. 7	A. When advising an individual of his or her Miranda rights, officers shall include the following advisements:	A. When advising an individual of his or her Miranda rights, officers shall include the following:	

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IX A, p. 7	3. "You have the right to an attorney prior to and during and questioning."	3. "You have the right to an attorney prior to and during any questioning."	
IX A, p. 7	4. "If you cannot afford an attorney, one will be appointed for you, if you wish"	4. "If you cannot afford an attorney, one will be appointed for you."	
IX, B p.7	The questioning officer shall ask the individual to verbally affirm that he or she understands the Miranda Warning (rather than by a nod of the head, or other physical gesture).	B. The questioning officer shall ask the individual to verbally affirm that he or she understands the Miranda Warning (rather than by a nod of the head, or other physical gesture). The Miranda Warning and subsequent affirmation should be recorded in its entirety via Wearable Camera System (WCS)	
IX, p. 7	Added	C. Officers shall stop questioning when the arrestee has requested an attorney, Officers may resume questioning when the attorney is present.	
X A, p.8	1. In the case of an individual who is deaf or hard of hearing or of Limited English Proficiency, the Miranda Warning shall be administered via a qualified interpreter consistent with General Police Order 1.3.38 on Communication with Limited English Proficiency (LEP) or Deaf/Hard of Hearing Individuals.	1. In the case of an individual who is deaf or hard of hearing or of Limited English Proficiency, the Miranda Warning shall be administered via a qualified interpreter or an officer who is fluent in the language.	
X A, p. 8	2. For LEP individuals, where possible, the officer shall use a "Your Rights" form that has been translated into the suspect's primary language.	2. For LEP individuals, where possible, the officer shall use a "Your Rights" form that has been translated into the individual's primary language.	
X B, p. 8	1. When questioning a juvenile, officers should consider the juvenile's age when determining whether the juvenile would not feel free to leave. A child may be in custody for purposes of the Miranda rule	1. When questioning a juvenile, officers shall consider the juvenile's age when determining whether the juvenile would not feel free to leave. A child may be in custody for purposes of the Miranda rule	G. Celeste

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	when an adult in the same circumstances would not.	when an adult in the same circumstances would not.	
X B, p. 8	2. Officers shall explain the Miranda Warning in an age-appropriate manner. 3. An example of the Miranda Warning given in an age appropriate manner is as follows:	2. Officers shall explain the Miranda Warning in an age-appropriate manner, and each warning should be read slowly and one at a time, e.g.,:	G. Celeste
X B, p. 8	d. You also have a right to have a lawyer here.	Deleted	Group agreed this was not a true statement
X B, p. 8	j. "Do you want your mother, father, or legal guardian here while you talk to me?"	i. "Do you want your mother, father, or legal guardian here if you choose to talk to me?"	
X B, p. 8	h. "Do you want to talk to me?"	j. "Do you want to talk to me?"	Moved from h to j
X B, p. 8	3. To ensure the juvenile understands his or her rights, the officer shall ask the individual to explain the advisements in his or her own words.	3. To ensure the juvenile understands his or her rights, the officer shall ask the individual to explain each of the advisements in his or her own words.	G. Celeste
X B, p. 9	4. Officers shall stop questioning when the juvenile has requested an attorney, parent, or guardian. Officers may resume questioning when the attorney, parent, or guardian is present.	4. Officers shall stop questioning when the juvenile has requested an attorney, parent, or guardian. Officers may resume questioning when the attorney, parent, or guardian is present; however, no parent or guardian may waive the child's right to counsel.	G. Celeste
XI C, p. 9	Added	2. Prior to seeking a waiver with a juvenile, officers should assess whether the juvenile possesses the capacity to understand the Miranda warnings and to also appreciate the consequences of a waiver. To determine this, officers should ask youth to spell out the consequences of a waiver.	G. Celeste
XI, p. 9	Added	D. The validity of a juvenile's Miranda waiver may be inferred from the totality-of-the-	G. Celeste

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		<p>circumstances surrounding the alleged waiver, including:</p> <ol style="list-style-type: none"> 1. The youth's age; mentality; and prior criminal experience; 2. The length; intensity; and frequency of the interrogation; and 3. The existence of physical deprivation or inducement. 	
XIII A, p.10	1. Invokes his/her right to remain silent [he/she declines to make a statement]; or	1. Invokes his/her right to remain silent; or	
XIII A, p. 10	3. Indicates he/she wants to have counsel present before answering questions	3. If an adult indicates he or she wants to have counsel, or if a juvenile indicates he or she wants to have counsel or a parent or guardian, present before answering questions, or anytime during the interrogations; or	G. Celeste
XIII A, p.10	Added	4. Is significantly impaired by substances or mental impairment.	
XIII C, p.10	<p>C. If an individual is vague in his/her response about whether he/she wants to have an attorney present, nor does he/she explicitly waive his/her right to an attorney, officers shall specifically determine whether the individual wishes to have counsel present or if the individual will waive his/her right to counsel.</p> <p>1. To make this determination, the officer shall ask the individual to confirm, with a "yes" or "no" answer, whether the individual is requesting an attorney.</p>	<p>C. If an individual is vague in his/her response about whether he/she wants to have an attorney present, nor does he/she explicitly waive his/her right to an attorney, officers shall specifically determine whether the individual wishes to have counsel present or if the individual will waive his/her right to counsel. To make this determination, the officer shall ask the individual to confirm, with a "yes" or "no" answer, whether the individual is requesting an attorney.</p>	

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	2. Failure to do so could result in a confession being excluded from evidence.		
XIV A, p. 10	a. Wait a significant amount of time (at least 2 hours);	a. Wait a significant amount of time (at least 8 hours);	
XIV A, p.10	c. Limit the questions to a crime that was not the subject of earlier questioning	Deleted	
XIV B, p. 10	1. Questioning may be resumed if: a. The individual is in the presence of his or her attorney; or b. The individual re-initiates communications with the police, and c. Officers provide the Miranda Warning again, and d. The individual voluntarily agrees to waive his/her rights.	1. Questioning may be resumed only if: a. The individual is in the presence of his or her attorney; or b. The individual re-initiates communications with the police, and i. Officers provide the Miranda Warning again, and ii. The individual voluntarily agrees to waive his/her rights.	Note: ask about phrasing for c and d Note: needs further clarification
XIV, p. 11	Added	D. Questioning of a juvenile who has Invoked Miranda may not occur without first allowing juvenile to consult with counsel.	
XVI, p. 11	A. Officers may temporarily forgo the Miranda Warning when necessary to secure their own immediate safety or the public's safety.	A. Officers may temporarily forgo the Miranda Warning when necessary if they or the public are in immediate danger.	
XVI, p. 11	Added	D. Once the emergency ends, this exemption no longer applies.	
XVII p.12 A	A. The Division shall provide officers with annual in-service training on Search and Seizure/probable cause/warrantless arrests that is	A. The Division shall provide officers with annual in-service training by an instructor with a J.D. who are subject matter experts per Ohio Police Officer	In Procedure VIII

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	adequate in quality, quantity, type, and scope.	Training Commission on Search and Seizure/probable cause/warrantless arrests that is adequate in quality, quantity, type, and scope.	
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GENERAL POLICE ORDER CLEVELAND DIVISION OF POLICE



ORIGINAL EFFECTIVE DATE :	REVISED DATE: 10/31/18 CPC	NO. PAGES: 1 OF 4	NUMBER:
SUBJECT: <div style="text-align: center; font-weight: bold; padding: 5px;">STRIP SEARCHES & BODY CAVITY SEARCHES</div>			
ASSOCIATED MANUAL:		RELATED ORDERS:	
CHIEF OF POLICE:			

PURPOSE: To establish Cleveland Division of Police guidelines so that all strip and body cavity searches are conducted in accordance with the rights secured and protected by Constitution and federal and state law. The Division will conduct strip and body cavity searches fairly and respectfully, consistent with the Division’s commitment to procedural justice, and community and problem-oriented policing, and community values.

POLICY: It is the policy of the Division to respect the fundamental privacy rights of all individuals. Officers shall conduct strip and body cavity searches in strict accordance with the rights secured and protected by the Constitution and federal and state laws. **Under no circumstances should a strip search be conducted during investigatory stops or a misdemeanor arrest. If a justified partial strip search must be done in a public place, an officer should be cognizant of protecting the privacy of the arrestee.**

DEFINITIONS:

Body Cavity Search: An inspection of the anal or vaginal cavity of an arrestee that is conducted visually, manually, by means of an instrument, apparatus, or object, or in any manner while the individual is in Division custody.

Gender nonconforming: means a person whose appearance or manner does not conform to traditional societal gender expectations.

Intersex: A person who’s sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female.

Juvenile: An individual under the age of 18.

Strip Search: An inspection of the genitalia, buttocks, breasts, or undergarments of an arrestee that is preceded by the removal or rearrangement of some or all of the arrestee’s clothing that directly covers the arrestee’s genitalia, buttocks, breasts, or undergarments and that is conducted visually, manually, by means of an instrument, apparatus, or **object**.

Transgender: A person whose gender identity (i.e., internal sense of feeling male or female) is different from the person’s assigned sex at birth.

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PROCEDURES:

I. General Requirements for Strip Searches and Body Cavity Searches

- A. A strip search or body cavity search may be conducted if there is probable cause to believe that the person is concealing evidence of the commission of a criminal offense, including fruits or tools of a crime, contraband, or a deadly weapon that was not otherwise discovered through less-intrusive means.
- B. A strip search or body cavity search must be supported by articulable facts considering the nature of the offense, circumstances of the arrest, and if known, prior criminal/conviction record of the person or that the arrestee may possess weapons or contraband on or in their body.
- C. Prior to conducting the strip search or seeking a warrant for a body cavity search, the officer or sergeant shall explain to the individual the reason for the search and give the individual the opportunity to voluntarily produce the suspected item.
 1. The individual shall be allowed to voluntarily produce the item only if the officer or supervisor believes that the item can be produced without compromising officer **safety**.
- D. Strip searches and body cavity searches shall not be video recorded or photographed unless required for evidentiary reasons and specifically authorized in writing, in advance, by a CDP supervisor.**

II. Body Cavity Searches

- A. A body cavity search shall be conducted only after a warrant has been issued that authorizes the search, unless there is legitimate medical reason or medical emergency justifying a warrantless search.
- B. All body cavity search warrant requests must be pre-approved in writing by a Division of Police supervisor.
- C. A body cavity search shall be conducted only by a physician, or registered nurse, or licensed practical nurse, which is registered or licensed to practice in the State of Ohio.
- D. Parents/ guardians must be notified if a body cavity search is conducted on a juvenile.**

III. Strip Searches

- A. Strip searches shall be conducted only in a secure holding facility, when less intrusive means of discovering a weapon or contraband are not available.
 1. A supervisor shall immediately respond to the holding facility when an officer requests permission to conduct a strip search and if conducted, must be done under conditions that provide privacy.

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- B. The following requirements apply to all strip searches:
1. All strip searches must be pre-approved in writing by a Division of Police supervisor and the supervisor shall be on-scene at all times during the search.
 2. Strip searches shall be conducted in a professional manner by the officer and a supervisor to the search who are the same gender/gender identity as the arrestee. The search shall be conducted in a manner that permits only the person(s) conducting it the search to observe the search.
 - a. **If an officer is uncertain regarding an arrestee's gender/gender identity, officers shall respectfully request the arrestee's gender/gender identity. An officer may not use a strip search to determine an arrestee's gender/gender identity, or to determine if an arrestee is transgender or intersex.**
 - b. **Transgender or Intersex arrestees shall be searched by an officer who's gender/gender identity the arrestee is most comfortable being searched by.**
 3. **Strip searches conducted on juveniles should only occur in a juvenile detention facility with the appropriate staff and conducted in a manner that minimizes trauma, and parent/ guardians must be notified if a strip search is conducted.**
 4. Officers shall use appropriate methods and personal protective equipment when conducting strip searches.
 5. Officers involved with strip searches shall take reasonable steps to minimize the potential embarrassment or discomfort to the party being searched and shall include the least number of personnel necessary.
 6. Officers conducting the search shall not touch the genital area, buttocks, or female breasts of the person being searched.

IV. Reporting of Strip Searches/Body Cavity Searches

- A. A Cleveland Division of Police Prisoner Search Report (Attachment A) shall be made upon completion of any strip or body cavity search. When medical personnel conduct a body cavity search, the officer who caused the search to be conducted shall complete the report.
- B. The Police Prisoner Search Report narrative shall contain the facts upon which the officer based probable cause, including factors such as the nature of the offense, the circumstances of the arrest and if known, any prior criminal/conviction record of the offender.
- C. If a body cavity search is conducted without a warrant, the officer shall list the emergency exigent reasons that make obtaining a warrant impractical.
- D. The original Prisoner Search Report shall be maintained in the unit files of the officer causing the search to be conducted.

- E. A copy shall be attached to the booking paperwork that accompanies the arrestee.
 - F. Third copy shall be given to the arrestee.
- V. Supervisory Responsibilities for Strip Searches/Body Cavity Searches
- A. Supervisory officers shall review all information pertaining to any request by a police officer to conduct a strip or body cavity search.
 - B. After the responsible supervisor determines that a strip or body cavity search is warranted, the supervisor shall give “prior written authorization” to seek a search warrant or conduct the search. The supervisor shall sign his/her name along with the date and time in the space provided near the top of the Prisoner Search Report prior to the search being conducted. (Noted exception – Unless a medical emergency makes doing so impracticable.)
 - C. The endorsing supervisor shall sign his/her name in the space provided near the bottom of the Prisoner Search Report and include the date and time that the strip or body cavity search was completed. This endorsement shall serve as a confirmation that the strip or body cavity search was performed in the manner prescribed by law.

Location	Original	Modified	Notes
Entire Document	Procedures ordered I, II, III, II, III	Procedures ordered I, II, III, IV, V	Throughout
p. 1 Policy	It is the policy of the Division to respect the fundamental privacy rights of all individuals. Officers shall conduct strip and body cavity searches in strict accordance with the rights secured and protected by the Constitution and federal and state laws.	It is the policy of the Division to respect the fundamental privacy rights of all individuals. Officers shall conduct strip and body cavity searches in strict accordance with the rights secured and protected by the Constitution and federal and state laws. Under no circumstances should a strip search be conducted during investigatory stops or a misdemeanor arrest. If a justified partial strip search must be done in a public place, an officer should be cognizant of protecting the privacy of the arrestee.	
Entire Document	Detainee	Arrestee	Throughout
Entire document	Minor	Juvenile	Throughout
p. 1 Definitions	Strip Search: An inspection of the genitalia, buttocks, breasts, or undergarments of a arrestee that is preceded by the removal or rearrangement of some or all of the arrestee's clothing that directly covers the arrestee's genitalia, buttocks, breasts, or undergarments and that is conducted visually, manually, by means of an instrument, apparatus, object, or in any other manner while the individual is detained or in Division custody.	Strip Search: An inspection of the genitalia, buttocks, breasts, or undergarments of an arrestee that is preceded by the removal or rearrangement of some or all of the arrestee's clothing that directly covers the arrestee's genitalia, buttocks, breasts, or undergarments and that is conducted visually, manually, by means of an instrument, apparatus, or object.	
P. 1 Definitions	New definitions	Transgender: A person whose gender identity (i.e., internal sense of feeling male or female) is different from the person's assigned sex at birth. Intersex: A person who's sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female Gender nonconforming: means a person whose appearance or	Used definitions from Prison Rape Elimination Act Jail Standards.

		manner does not conform to traditional societal gender expectations.	
p. 1 Definitions	added	Juvenile: An individual under the age of 18.	
p. 2 Section I C #1	1. The individual shall be allowed to voluntarily produce the item only if the officer or supervisor believes that the item can be produced without compromising officer safety or risking destruction of evidence.	1. The individual shall be allowed to voluntarily produce the item only if the officer or supervisor believes that the item can be produced without compromising officer safety.	
p.2 Section I D.	Unresolved debate around video taping	If done should it be recorded to protect the officers from complaints? If so what would law department recommend to preserve privacy and protect evidence	CPC ED reached out to City law G. Singletary with question. Awaiting response.
p. 2 Section II D	Add D	1. Strip searches conducted on juveniles should only occur in a juvenile detention facility with the appropriate staff and conducted in a manner that minimizes trauma, and parent/ guardians must be notified if a strip search is conducted.	ACLU youth advocacy recommendation
p. 2 Section III B #2	2. Strip searches shall be conducted in a professional manner by the officer and a witness to the search who are the same gender as the arrestee. The search shall be conducted in a manner that permits only the person(s) conducting it the search to observe the search.	<p>1. Strip searches shall be conducted in a professional manner by the officer and a supervisor to the search who are the same gender/gender identity as the arrestee. The search shall be conducted in a manner that permits only the person(s) conducting it the search to observe the search.</p> <p>a. If an officer is uncertain regarding an arrestee's gender/gender identity, officers shall respectfully request the arrestee's gender/gender identity. An officer may not use a strip search to determine an arrestee's gender/gender identity, or to determine if an arrestee is transgender or intersex.</p> <p>b. Transgender or Intersex arrestees shall be searched by an officer who's gender/gender identity the arrestee is most comfortable being searched by.</p>	Recommended based on the Prison Rape Elimination Act Jail Standards.

PAGE: 7 of 3	SUBJECT: STRIP SEARCHES & BODY CAVITY SEARCHES	GPO NUMBER:
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p.3 Section III B	Add new #3, renumber	3. Strip searches conducted on juveniles should only occur in a juvenile detention facility with the appropriate staff and conducted in a manner that minimizes trauma, and parent/guardians must be notified if a strip search is conducted.	ACLU youth advocacy recommendation
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Appendix A: Source References and Community Commentary

This appendix serves as reference of raw comments received and includes Memoranda regarding updated policies, including:

- Civil Forfeiture – Brenden Carlin, J.D. Candidate
- Warrantless Arrests – Cullen Sweeney, J.D.
- Fourth Amendment – Prof. David Gray, J.D.
- Search and Seizure General Policy – Emma Keeshin
- Trauma Informed Policing- Emma Keeshin
- Transgender Individuals – Jocelyn Rosnick, J.D.
- Weapons – Prof. Jonathan Witmer-Rich, J.D.
- Investigatory Stops Survey Search and Seizure – Joseph Primiano, J.D. Candidate
- Investigatory Stops – Prof. Lewis Katz, J.D.
- Juveniles – Lisa H. Thureau, J.D.
- Probable Cause, Strip Searches, Terry searches - Patt Needham
- Search and Seizure and Warrants – Patt Needham

Includes comments from experts and from a community survey

From: **Brenden Carlin**, J.D. Candidate, CSU Cleveland-Marshall College of Law

Subject: **Civil Forfeiture**

I. Before the Updated Statutory Framework

In the previous statutory structure, property and/or cash could be seized without a conviction or even a charge.¹ In the Institute for Justice's Policing for Profit report in 2013, Ohio was given a "D- for its civil forfeiture laws."² In its determination the group presented the bar to allow forfeiture was too low and the protections for innocent third parties were poor.³ The current statutory framework offers provisions which address these issues and change how civil forfeiture actions go forward. Below I address the new statute and the pertinent changes to Ohio civil forfeiture laws.

II. After the Updated R.C. 2981 Became Effective

Ohio's current civil forfeiture statute was signed into law on January 4th 2017 and became effective on April 6, 2017. After R.C. 2981 became effective three major changes took place. Those changes include; the barring of the forfeiture for property or cash valued below fifteen thousand dollars, the heightened evidentiary standard for the state to be successful in a forfeiture action, and the barring of using the federal forfeiture laws for property or cash valued less than one-hundred thousand dollars.

a. Amounts seized below \$15,000

The first major change in the statute is the threshold set for the state to bring a civil forfeiture action. R.C. 2981.05(D)(3) provides that the state can only bring forward a civil forfeiture action if the amount exceeds fifteen thousand dollars. This means amounts initially seized worth less than \$15,000 cannot be forfeited to the state.

b. Amounts seized exceeding \$15,000 and heightened evidentiary standard

Once the state has seized property and/or cash valued above the \$15,000 threshold, the state now must prove its case in a civil forfeiture suit. Prior to the updated statute the state only had to show by a preponderance of evidence that the items seized were in connection with illegal activity. This means the state only had to show that it is more likely than not that the evidence is connected to illegal activity. Today the state must each of the following elements by clear and convincing evidence;

- a) That the person received, retained, possessed, or disposed of the proceeds involved;
 - b) The person knew or had reasonable cause to believe that the proceeds were derived from the alleged commission of an offense subject to forfeiture proceedings in violations of section 2927.21 of the revised code;
 - c) Subject to division (d)(7) of this section, the actual amount of the proceeds received, retained, possessed, or disposed of by the person that exceeds fifteen thousand dollars
- This higher evidentiary standard was affirmed in, *In re \$18,823.06 United States Currency*, 2018-Ohio-876, 96 N.E.3d 349 (1st Dist.). It was acknowledged that "under the former version of R.C. 2981.05, the state had to prove its case by a preponderance of the evidence. See former R.C. 2981.05(D)(3). The current version requires the state to meet a higher 'clear and convincing evidence' burden of proof." *Id.*, at footnote 1. This heightened standard requires the state to show evidence "which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought be established." *In re Ra. R.*, 8th Dist. Cuyahoga No. 106852, 2108-Ohio-3188

¶ 19, citing *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), ¶ 3 of the syllabus. Note that this heightened standard does not apply retroactively. see *In re Forfeiture of Property of Astin*, 2d Dist. Montgomery No. 27657, 2018-Ohio-1723, ¶ 21.

c. Working in Coordination with Federal Forfeiture Laws

Finally, this statute bars law enforcement from using federal asset forfeiture laws for seizures under \$100,000. This comes from R.C. 2981.14(B) which provides;

“A law enforcement agency or prosecuting authority shall not directly or indirectly transfer or refer any property seized by the agency or authority to any federal law enforcement authority or other federal agency for purposes of forfeiture under federal law unless the value of the seized property exceeds one hundred thousand dollars, excluding the potential value of the sale of contraband, or the property is being transferred or referred for federal criminal forfeiture proceedings.”

State and local law enforcement often would get around stricter state laws by participating in federal drug task forces, allowing them to use federal forfeiture laws and keep up to 80 percent of the proceeds from seizures. This prevents the opportunity to abuse civil forfeiture powers.

Notes:

¹C.J. Ciramella, *Ohio Legislature Passes Civil Asset Forfeiture Reform*, reason, Dec. 9, 2016 see also Nick Sibilla, *Ohio’s Governor Signs New Conviction Requirement for Civil Forfeiture*, Institute for Justice, January 4, 2017, at ¶ 1

²Institute for Justice, *Policing for Profit: The Abuse of Civil Asset Forfeiture* 2nd Edition, Ohio, (2012), available at <https://ij.org/pfp-state-pages/pfp-ohio/>

³*Id.*, at ¶ 1.

⁴Ciramella, at ¶ 7

From: **Cullen Sweeney**, J.D., Cuyahoga County Deputy Public Defender

Subject: **Warrantless Arrests**

Unless possessing a warrant, an officer may not arrest a suspect unless the officer:

- Has probable cause that the suspect has committed or is committing a felony offense;¹
- Has probable cause that the suspect has committed or is committing the following misdemeanor offenses: an OVI; an offense of violence;² criminal child enticement; public indecency; domestic violence; violation of a protection order; menacing by stalking, aggravated trespass, or theft.³
- Has probable cause from the officer's own observations that the suspect has committed or is committing any other misdemeanor offense (other than a minor misdemeanor).⁴

An officer may not conduct a warrantless arrest for a minor misdemeanor under any circumstances⁵.

Notes:

¹United States v. Watson, 423 U.S. 411, 418 (1976) ("The cases construing the Fourth Amendment thus reflect the ancient common-law rule that a peace officer was permitted to arrest without a warrant for a misdemeanor or felony committed in his presence as well as for a felony not committed in his presence if there was reasonable ground for making the arrest.")

However, there is a line of cases from the Second District that imposes the additional requirement that a warrantless arrest is only proper if obtaining a warrant is impractical. *State v. Jones* (2009), 183 Ohio App. 3d 839, 844 (citing *State v. Heston* (1972), 29 Ohio St. 2d 152, paragraph two of the syllabus). See *State v. Smith*, Montgomery App. 6139, 1979 WL 208438, *3; *State v. Jones* (2009), 183 Ohio App. 3d 839, 844; *State v. VanNoy* (2010), 188 Ohio App. 3d 89, 95-96; *State v. Anderson*, Clark App. No. 2009-CA-60 & 2009-CA-61, 2011-Ohio-22, ¶ 21.

The existence of probable cause does not "excuse the unexplained failure of police officers to procure an arrest warrant when there was ample opportunity to do so." *Jones*, 183 Ohio App. at 848. A warrantless arrest, "when a warrant can timely, safely, and readily be obtained," denies the arrestee "the constitutional right to have a neutral magistrate determine whether there is probable cause to seize the person." *Id.* at 847. Absent exigent circumstances, "judicially untested determinations by police officers are simply not reliable enough to justify an arrest without a warrant—at least where the officers had sufficient opportunity to seek one beforehand." *Id.* at 847.

²Offense of violence is statutorily defined in R.C. 2901.01(A)(9).

³R.C. 2935.03(B)(1) and (C).

⁴R.C. 2935.03(A). "As a general rule, an officer may not make a warrantless arrest for a misdemeanor unless the offense is committed in the officer's presence." *State v. O'Neill*, 2015-Ohio-815, P31, 29 N.E.3d 365, 372, 2015 Ohio App. LEXIS 763, *17; see also *State v. Kirkland*, 2015-Ohio-1978, P20, 2015 Ohio App. LEXIS 1912, *11, 2015 WL 2452305 (The basic rule is that, to be lawful, a warrantless misdemeanor arrest must be committed in the presence of the officer. *State v. Lewis*, 50 Ohio St. 179, 33 N.E. 405 (1893); *State v. Henderson*, 51 Ohio St.3d 54, 56, 554 N.E.2d 104 (1990)).

⁵*State v. Brown*, 99 Ohio St.3d 323, 2003-Ohio-3931, 792 N.E.2d 175

From: **David Gray**, J.D., Professor of Law, University of Maryland

Subject: **Fourth Amendment**

My apologies for the delay in responding. I hope that these thoughts may still be useful. You have asked me to review some of the proposed changes to general procedures governing the Cleveland Division of Police based on my knowledge of Fourth Amendment law and police procedure. You also asked me to pay particular attention to how these polices might address new and emerging search and surveillance technologies. Below are a few thoughts and suggestions.

Search and Seizure

1. This policy is missing a definition of “search.” I would suggest something along the lines of: “A search is either a physical intrusion into a constitutionally protected area (a “person, house, paper, or effect) for the purpose of gathering information or any conduct that violates a manifested and reasonable expectation of privacy. A search can be conducted by officers, by civilians acting as law enforcement agents, by the use of technology that allows officers to obtain information about the interior of a constitutionally protected area, by the use of technology to gather information that, by virtue of its nature or degree, is reasonably expected to be private, or by the use of technology to conduct long-term surveillance of an individual.”
2. The definition of “Probable Cause” as requiring a quantifiable level of certainty (“more likely than not”) diverges from the relevant Supreme Court doctrine. The Court has long resisted quantifying probable cause, preferring instead a more “fluid” definition along the lines of “reason to believe.” That does not mean that you need to abandon your “more likely than not” formulation. This standard probably provides more protection than is required by the Fourth Amendment.
3. The “Purpose” paragraph is missing a “the” before “Constitution.
4. Section I.B.7 suggests that searches of the curtilage surrounding a home do not require a warrant. That falls below Fourth Amendment standards. Under the Fourth Amendment, the curtilage is regarded as part of the home, and therefore enjoys full Fourth Amendment protection, including the warrant requirement.
5. Section IX.B.2 seems to be missing an “of.” Perhaps “use of “canned” or conclusory . . .)

Strip and Body Cavity Searches

1. As defined, strip and body cavity searches are limited to physical searches. Insofar as the policy is designed to protect the privacy of citizens and to limit the discretionary use of means and methods that reveal or intrude upon citizens’ bodies, you may want to expand your definitions to include imaging technologies. For example, the costs associated with millimeter wave x-ray scanners continue to drop, making it quite likely that local law enforcement agencies will soon have access to these devices. There is also much less expensive camera technology that is capable of seeing through some clothes. And, of course, existing x-ray and ultrasound technologies allow for quite detailed imaging of bodies, including body cavities. Although the use of these kinds of imaging technologies may mark an improvement over physical strip and body cavity searches, they are, nevertheless, intrusive. Expanding your definition of

strip searches and body cavity searches to include the use of these technologies would therefore protect citizen privacy while also setting limits on the discretionary use of these technologies by officers.

2. You might consider altering the text of Section III.A. to read “Strip searches shall be conducted only in a secure holding facility, when less intrusive means of discovering a weapon or contraband have been exhausted or are not available.”
3. You have an errant “it” in Section III.B.2.

Investigatory Stops

1. You might add “Blocking paths of egress” to the list of conduct marking a stop in Section I.B.
2. “Prior Knowledge of the Person” in III.B. raises some concerns for me that it might be read as providing a partial license for officers to stop and even frisk persons based on past conduct or reputation rather than actual conduct at the time. It may also be read a partial license for officers to harass the “usual suspects.” I suspect these are conversations you have had, but thought it was worth raising them.
3. I have similar reservations about “Area of Stop.” Designation of an area as “high crime” has been identified as culprit in licensing routine Fourth Amendment violations in just about every DOJ investigation. Again, I suspect that you have talked about this, but I would advise making an explicit break from the use of “high crime area” as providing any justification for a stop. If nothing else, citizens engaged in daily life live in these neighborhoods, and should be able to go about their daily lives without fear of being stopped because they are walking the sidewalks of their own neighborhoods.
4. I think you have an errant “a” before “the relevant computer automated dispatch” in Section VIII.A.1.
5. You use the phrase “tour of duty” to refer to a work day on Section VIII.A.3. It is well-documented at this point that many of the constitutional violations identified in these DOJ investigations stem from what has been described as a “warrior mentality” among police officers. In this context, language matters. In particular, the use of military and paramilitary terms reinforces the view among officers that they are part of an occupying force whose first order of business is to assert authority and control rather than public servants whose role is to protect and serve. “Tour of duty” is one of those phrases. It suggests a military action and casts police officers as an occupying force in hostile territory. That is not how we want officers to think of their jobs or their days. I would therefore suggest “shift” or “work day.”

Probable Cause/Warrantless Arrests

1. Same comments from above on the PC standard and use of the phrase “tour of duty.”
2. I think you want “effect” rather than “affect” in Section I.A.
3. I think you want “form” rather than “forms” in VII.C.

Miranda Warning and Waiver

1. You adopt the “free to leave” test from the Fourth Amendment as your definition of “custody.” This is problematic. The Court requires more than mere “seizure” to establish “custody” for Miranda purposes. You are certainly free to adopt a more protective standard for purposes of your procedures, but using the “free to leave” test as your standard for “custody” would require officers conducting a Terry stop to give Miranda warnings. That is not required by the Fifth Amendment, and I suspect that is also not a requirement you want to impose on officers in Cleveland. Unfortunately, the Court has not provided a concise definition of “custody” in the Miranda context out of recognition that constitutional concerns attach not to custody or interrogation, but to custodial interrogation and the inherently coercive atmosphere created by custodial interrogation. For purposes of this policy, you might try something like:

“An individual is in custody for purposes of this policy when he has been arrested, is subject to significant restraints on his freedom to a degree associated with arrest, or in conditions that might reasonably be expected to create a coercive atmosphere. Factors to consider when assessing whether an individual is in custody include the duration of a seizure, the location of a seizure, the use of force or restraints, and forced movement. A Terry stop in a public place normally will not constitute “custody” for purposes of this policy.”

2. Section I.B. implies that Miranda warnings are not necessary if officers intend to question a suspect about a crime other than the one for which he is in custody. That is not correct as a matter of Fifth Amendment law. Although Sixth Amendment rights are crime specific, Fifth Amendment Miranda rights are not. Miranda warnings are therefore required anytime officers want to conduct a custodial interrogation, no matter the topic. I would therefore delete the phrase “about the crime for which they are in custody.”

3. I think you have an extra “and” in Section II.A.3.

4. III.B. repeats the “free to leave” test. I would replace that language with “whether the juvenile might believe that he is in custody.”

5. I am sure that the guidance provided in III.B for questioning juveniles reflects considerable debate and compromise, but I urge you to adopt a blanket rule against interrogating juvenile suspects outside the presence of a lawyer. It is the safest course.

6. I do not understand the import of Section VII.A.1.c. If officers have followed the law before reinitiating an interrogation after a prior invocation of the right to remain silent, I am not sure why they would need to change the subject.

Again, I hope that these thoughts, comments, and suggestions are helpful. Please feel free to follow-up with any additional questions.

In reading these policies, and in light of our brief conversation, I wondered whether you might want to draft a separate set of policies for technology. The problem is that this is a very broad topic area that intersects with many of the policies you have already drafted. So, I am not sure what such a policy would look like or what it would address. If this is something you want to work on, I’d be happy to help, but I think you can cover most of the bases by including search and surveillance technologies in your

definition of “search” and adding references to specific technologies where relevant. One potential exception might be predictive policing technologies. If and when your department seeks to start using these technologies, it will be important to establish some guidelines for selecting technologies and for their deployment and use. Professor Ferguson is the world’s expert on this topic, but I am happy to help if the circumstance arises.

Thanks again for thinking of me.

From: **Emma Keeshin**, ACLU of Ohio

Subject: **Search and Seizure General Policy**

To elaborate on our below comment regarding revoking consent, the policy requires documenting that this was explained to the person, but not how to explain this or what to do if the person exercises that right. Both of those should be added.

The following is feedback on the Search and Seizure General policy:

- In general, the policy tries to hew closely to constitutional requirements and the consent decree rather than setting out guidance that is operationally clear. This means that there are a lot of points where the policy sets out factors for making judgments without providing clear answers or step-by-step guidance, which is not ideal and puts a heavy burden on the training programs for officers.
 - VI (A) 1 (a) – strengthen the presumption that a religious garment will not be removed except in rare circumstances
 - “The removal of a religiously significant garment is to be avoided except in rare circumstances. If the removal of a religiously significant garment is required, it shall be done respectfully and, if known and possible, in accordance with the person’s religious beliefs.”
 - VI (A) 2 – This part is confusing. Is the presumption that arrestees will be searched by an officer of the same gender, barring rare circumstances? Are the 3 exceptions in Part (c) the only three justifiable exceptions? Is inconvenience ever a justifiable excuse? The text needs to make these things clear.
 - VI (B) 1 (d) – “Absent some other exception, such as exigent circumstances” is too broad if not further explained.
 - IX (B)
 - Add a Part (3): Supervisors involved in a search or seizure, including having ordered it, shall not review that search or seizure.
 - Small typo in Part (2) – I believe this should say “use of.” Otherwise it sounds like a suggestion to use canned language.
-

From: **Emma Keeshin**, ACLU of Ohio

Subject: **Trauma Informed Policing**

I have spoken with Gabriella Celeste (Schubert Center) and Lisa Thureau (Strategies for Youth) about fleshing out the meaning of trauma-informed. Your definition of trauma-informed in the S&S GPO (p. 8 of the report) is almost exactly what I came to. Based on my conversations with Lisa I suggest adding to the definition: “This can include: slowing down the speed of the interaction, reducing stimuli such as lights and loud sounds, explaining the reason for the interaction, avoiding use of threats, and repeating instructions in a calm manner until they are understood.”

Because trauma-informed is not a concept that CDP officers have ever been trained on, we will need to push hard for the training curriculum to include significant instruction on this.

The last of Lisa’s recommendations is that to legally harmonize with our additions to the Miranda GPO, the Investigatory Stops GPO, Section I(B)(1) (p. 30 of the report), should include as (a): “If a juvenile, the individual’s age. A child may not feel free to leave when an adult in the same circumstances would not.”

Thank you for considering these additions.

What Does Trauma-Informed Policing Look Like?

A program, organization, or individual that is trauma-informed realizes the widespread impact of trauma and understands potential paths for recovery; recognizes the signs and symptoms of trauma in clients, families, staff, and others involved with the system; responds by fully integrating knowledge about trauma into policies, procedures, and practices; and seeks to actively resist re-traumatization. Trauma-informed law enforcement officers and agencies are aware, recognize and respect how historical events have contributed to contribute to traumatized perceptions and distrust of specific cultural, gender, and religious groups perceptions. Similarly, with this understanding, the law enforcement officer and agency adopt racial, ethnic and gender-responsive approaches informing police/youth interactions with the goal of reducing trauma triggers.

A trauma-informed law enforcement officer:

- Realizes how trauma affects individuals, families, groups, organizations, and communities.
- Recognizes the signs of trauma, which may be gender-, age-, or setting-specific and may appear in those individuals seeking or providing services in these settings.
- Responds by applying the principles of a trauma-informed approach to all parts of police/youth interactions.
- Resists re-traumatization of youth by understanding “triggers” and the fight/flight/freeze responses and how they can use best practices with persons appearing to express traumatic responses.

To be a trauma-informed officer, an officer recognizes that the person with whom they are interacting may be responding to a current and/or past trauma. The officer needs to depart from the assumption that:

- traumatic responses may result from personal experience, vicarious exposure, and historical transmission of fear,

- traumatic exposures have caused the person to feel in fear and “triggered,”
- the greatest “trigger” is perceiving that one is out of control and perceives oneself to be at risk of harm,
- this perception pushes all other considerations out of the triggered person’s view and makes them more reactive,
- when triggered, a traumatized person’s reactions fall into four categories:
 - fight
 - flight
 - freeze
 - re-enactment;
- the purpose of these reactions is to achieve safety and control over their situation.

A trauma-informed officer uses best practices including:

- de-escalating the triggers that appear to make a person feel at risk and out of control,
- slowing down the speed of the conversation,
- reducing stimuli (flashing lights, loud sounds, use of weapons, shouting commands),
- explaining the reason for the interaction,
- avoiding use of threats,
- repeating instructions in a calm, consistent manner until they are heard and understood,
- reassuring the person that he/she is safe,
- taking all reasonable steps to resist and avoid further traumatization of the person.

A trauma-informed law enforcement agency empowers officers to take an individualized approach to youth when trauma is recognized or suspected.

- Continuous training and workforce development on trauma, trauma responses, and secondary traumatic stress from exposure to stressful events.
- Supports collaboration and mutual partnerships with youth and youth-serving community-based programs to reach out to youth who are especially vulnerable to trauma.^Φ
- Support officers’ use of best practices listed above and discipline officers who use their power to lead to traumatizing interactions,
- Provides officers with trauma-informed self-care support, including counseling, peer group supports, and support after they have witnessed traumatic incidents.
- Continuous evaluation and quality assurance to ensure ongoing assessment, tracking, and monitoring of demographic & cultural events, officer responses to trauma, and youth interactions.

Sources:

**Substance Abuse and Mental Health Services Administration
Justice Center of the Council of State Governments
National Child Traumatic Stress Network**

^Φ Youth exposed to chronic community violence, who witness family violence, who are victims of abuse by peers, parents, or others, are in foster care, are immigrants, have been exploited commercially or sexually.

From: **Jocelyn Rosnick**, J.D., ACLU of Ohio

Subject: **Transgender Individuals**

I wanted to circle back around with some additional, brief feedback since I had to leave Friday's meeting early. Please see below. Thank you.

Policy: Investigatory Stops

- Section (V)(C)(1) – “Period of time necessary to affect the purpose of the stop.”
 - This section is vague and should be edited to be less broad.

Policy: Strip Searches & Body Cavity Searches

- This policy is silent on transgender and gender non-conforming individuals.
- We recommend using PREA best practices for searches –
 - The gender of the staff member searching a transgender inmate should be *individualized* and will depend on the specific needs of the inmate and on the operational concerns. *Genitalia should not be the only factor.*
 - *The best practice is to allow a transgender detainee to state their preference for the gender of the staff to conduct any searches shortly after intake.*

Policy: Probable Cause and Warrantless Arrests

- Section (II)(A)(2) – “Entering a residence...”
 - This section should include language related to the right to revoke consent.
-

From: **Jonathan Witmer-Rich**, J.D., Professor of Law, CSU Cleveland-Marshall College of Law

Subject: **Weapons**

Re: Open Carry/Concealed Carry and Terry stops/frisks

Q: Does the open carry or concealed carry of a firearm give rise to reasonable suspicion to stop and/or frisk the person?

A: No.

There do not appear to be any Ohio court decisions addressing this question.

The Sixth Circuit recently held that the open carry of a firearm, combined with a 911 call that reported the open carry in question, does not give rise to reasonable suspicion to stop or frisk. Officers are free to approach and initiate a consensual encounter, but not to stop or frisk unless some additional factors are present. Northrup v. City of Toledo Police Dept., 785 F.3d 1128 (6th Cir. 2015).

In contrast, the Fourth Circuit (en banc) recently held that during a lawful Terry stop, an officer who has reasonable suspicion that the suspect is armed may conduct a pat down for weapons, even if concealed carry is legal in the jurisdiction and even if there is no other reason (beyond the suspicion of the gun itself) to believe the suspect is dangerous. United States v. Robinson, 846 F.3d 694 (4th Cir. 2017) (en banc).

The cases can be distinguished on the ground that Northrup involves the question of whether open carry justifies both a stop and a frisk, whereas Robinson involves the question of whether suspected concealed carry, during a lawful Terry stop, justifies a frisk.

As a substantive matter, however, the cases appear to be in conflict. The Sixth Circuit in Northrup expressly refused to automatically infer dangerousness from lawful gun possession, whereas the Fourth Circuit in Robinson expressly embraced that inference. (See case excerpts below.)

Given that Cleveland falls within the Sixth Circuit, it is recommended that the CDP policies should be consistent with the ruling in Northrup.

Thus the CDP policy should indicate that the open carry of a firearm, standing alone or in connection with a call to police that only reports the open carry itself (and no other suspicious behavior), does not justify either a stop or frisk. Officers may attempt a consensual encounter. Additional suspicious factors, such as threatening behavior, may justify a stop and frisk.

In addition, during a lawful Terry stop, the mere fact that there is reasonable suspicion that the suspect may be lawfully armed does not justify a frisk, unless there are facts or circumstances indicating that the gun possession is unlawful or the suspect is also dangerous.

Finally, it should be noted that Ohio's concealed carry law requires permit-holders who are carrying a concealed weapon to follow a number of requirements during any stop by law enforcement officer. R.C. § 2923.12. Specifically, the permit holder must:

- promptly notify police that they have a CCW permit and that they are carrying a firearm on their person
- keep their hands in plain sight
- ensure that they do not touch or reach for the weapon while the officer is present, unless they are removing the weapon at the direction of the officer, and
- follow all lawful commands of the officer

Officers should follow the legal framework set forth in the statute.

Notes:

Excerpts from the cases:

Northrup v. City of Toledo Police Dept., 785 F.3d 1128 (6th Cir. 2015):

Police received a 911 call of a person openly carrying a handgun in public. Police respond and approach the individual, who is walking his dog and has a handgun visible in a holster on his hip.

“Officer Bright claims that he had a ‘reasonable suspicion’ that Northrup was engaged in criminal activity based on two undisputed facts: (1) Northrup was visibly carrying a gun on his holster, and (2) Bright was responding to a 911 call.” Id. at 1311.

“The Fourth Amendment no doubt permitted Bright to approach Northrup and to ask him questions. But that is not what he did. He relied on these facts to stop Northrup, disarm him, and handcuff him. Ohio law permits the open carry of firearms, Ohio Rev.Code § 9.68(C)(1), and thus permitted Northrup to do exactly what he was doing.” Id. at 1311.

“Clearly established law required Bright to point to evidence that Northrup may have been ‘armed and dangerous.’ Sibron v. New York, 392 U.S. 40, 64, 88 S.Ct. 1889, 20 L.Ed.2d 917 (1968) (emphasis added). Yet all he ever saw was that Northrup was armed—and legally so. To allow stops in this setting ‘would effectively eliminate Fourth Amendment protections for lawfully armed persons.’” Id. at 1132 (citing cases).

“[T]he Ohio legislature has decided its citizens may be entrusted with firearms on public streets. Ohio Rev.Code §§ 9.68, 2923.125. The Toledo Police Department has no authority to disregard this decision—not to mention the protections of the Fourth Amendment—by detaining every ‘gunman’ who lawfully possesses a firearm.” Id. at 1133.

“Officer Bright adds that he faced a difficult choice: ‘[R]espond to the communities’ fear and the appearance of the gunman by performing an investigatory stop, or do nothing while Northrup continued walking down Rochelle and hope that he was not about to start shooting.’ Appellant’s Br. 16. Law enforcement, to be sure, is not an easy job, and it often puts officers to difficult choices. But this was not one of them. The argument indeed presents a false dichotomy. Nothing in the Fourth Amendment prohibited Officer Bright from responding to the call and ascertaining through a consensual encounter whether Northrup appeared dangerous. Until any such suspicion emerged, however, Bright’s *hope* that Northrup ‘was not about to start shooting’ remains another word for the *trust* that Ohioans have placed in their State’s approach to gun licensure and gun possession.” Id. at 1133.

United States v. Robinson, 846 F.3d 694 (4th Cir. 2017) (en banc):

Majority:

“[A]n officer who makes a lawful traffic stop and who has a reasonable suspicion that one of the automobile's occupants is armed may frisk that individual for the officer's protection and the safety of everyone on the scene.” Id. at 696.

“It is also inconsequential that the passenger may have had a permit to carry the concealed firearm. The danger justifying a protective frisk arises from the combination of a forced police encounter and the presence of a weapon, not from any illegality of the weapon's possession.” Id. at 696.

“[The defendant] argues that while the officers may well have had good reason to suspect that he was carrying a loaded concealed firearm, they lacked objective facts indicating that he was also dangerous, so as to justify a frisk for weapons, since an officer must reasonably suspect that the person being frisked is both armed and dangerous.” Id. at 698.

“[But the defendant] fails to recognize that traffic stops alone are inherently dangerous for police officers. . . . [H]e also fails to recognize that traffic stops of persons who are armed, whether legally or illegally, pose yet a greater safety risk to police officers. And . . . he argues illogically that when a person forcefully stopped may be legally permitted to possess a firearm, any risk of danger to police officers posed by the firearm is eliminated.” Id. at 698.

“[W]hen the officer reasonably suspects that the person he has stopped is armed, the officer is warranted in the belief that his safety is in danger, thus justifying a Terry frisk.” Id. at 699 (internal quotations and alterations omitted).

Four judges, dissenting:

“[I]n West Virginia, citizens are legally entitled to arm themselves in public, and there is no reason to think that a person carrying or concealing a weapon during a traffic stop—conduct fully sanctioned by state law—is anything but a law-abiding citizen who poses no threat to the authorities. And as behavior once the province of law-breakers becomes commonplace and a matter of legal right, we no longer may take for granted the same correlation between ‘armed’ and ‘dangerous.’” Id. at 707 (Harris, J., dissenting).

From: **Joseph Primiano**, Fmr. Police Officer, Mentor and Euclid
J.D. Candidate, CSU Cleveland-Marshall College of Law

Subject: **Investigatory Stops Survey Search and Seizure**

As we wrapped up the 9-21 meeting, I had a brief point to make on the survey formation. My thoughts pertain to the survey entitled "Police Encounters Part 1: Investigatory Stops". This is a minor issue of semantics that could prove important. I would suggest referring to police throughout the entire document as Cleveland Police or Cleveland Police Officer. We live in a highly mobile society. An individual that has had interactions with Cleveland Police has likely had interactions with other agencies. This becomes particularly important in questions 7-14. Furthermore, by clarifying who we are seeking feedback on, we could create additional question(s) asking for comparisons to other law enforcement agencies.

Topics for debate on Investigatory Stops:

1 Consensual Encounters

Have officers make it affirmatively clear to people they stop that they are free to leave.

Pat down frisk page 2. Add "armed and presently dangerous" to the language.

No requirement to tell people they are free to leave during an investigatory stop.

Should there be different language for encounters started by a police officer v. encounters started by citizens?

Delete non-custodial interview. Non-custodial interview should just fall under consensual encounters. Reasonable suspicion definition- add "circumstances that a crime has occurred or is occurring" after "articulable circumstances".

2 Policy p.1

Add gender identity, economic status, homelessness status, disability and religion

3 Seizure

p.2 Add "or circumstances" after words "words or actions"

p.2 procedures- eliminate "non custodial interviews"

p.3 add to e. "blocking an individual's ability to move"

p.3 create subsection f. activation of police lights (I would call them emergency lights)

Sections to change

Page 3

II G add "such as weight, height, clothing"

IIIA change "at the time of stop" to "prior to stop"

IIIB4 remove #4. Remove displaying signs of nervousness.

-Add "a persons reluctance to engage or cooperate with police should not be considered when forming reasonable suspicion"

Page 4

IIIB3 officers shall not rely solely on someone's criminal history as a basis for an investigatory stop.

Page 5

IIIB10- add this paragraph to the intro paragraph.

Remove IIIB7

IIIB9 refer to VII

VB2 add "may but" between "action" and "does"

VB2 cleanup language

Page 6

C- objectively reasonable- add- "and supported by further reasonable suspicion

D1b remove

Page 7

VII add- define anonymous tip.

Revisit anonymous tips in a later meeting

Page 8

Change "tour of duty" to "shift"

4i – document in CAD if nothing is found during a search

Page 9

Add a sentence- In taking into account whether to refer a matter to IA, a supervisor shall take into account previous discipline action...

From: **Lewis Katz**, J.D., Professor of Law, Case Western Reserve University Law School

Subject: **Investigatory Stops**

I have reviewed the section on Investigatory Stops and the same subject covered in the Search and Seizure section. I think the improvements on local procedures are noticeable. I have additional comments.

(1) I am not certain that I understand the difference, if any, between a consensual encounter and a non-custodial interview. If there is a difference, it may help to define the identifying characteristics and consequences of any differences. The tests used throughout the policy rely upon U.S. Supreme Court decisions and Ohio law; I don't think that such a distinction exists, nor is it self-explanatory.

(2) I think the basic weakness in the current law and the policy is how it distinguishes between a consensual encounter and an investigatory stop. The objective test (what a reasonable person would perceive) does not work in identifying a consensual encounter: it may be useful in court and in law treatises, but not on the street (not even in classrooms). The reasonable person rarely, if ever, feels free to refuse a police officer's request for information, nor does the reasonable person ever feel free to ignore the officer's request and walk away. It is the ultimate legal fiction to apply this so-called objective standard. Moreover, police invariably use the standard to exploit the situation and detain the citizen while claiming it wasn't a stop and need not be justified. It is virtually impossible to replicate the tone of the street encounter in a courtroom, and the officer usually can rely upon a judge to find in favor of the officer that the encounter was consensual, even though the citizen feels he was stopped. Even the well-meaning judge will have difficulty, except in the obvious case, to distinguish between a consensual encounter and an investigative stop. (I'm not even certain that Chief Justice Warren understood his own definition of an investigative stop in *Terry*, nor did he clearly identify the moment when the stop occurred.)

If we want to treat the citizen fairly we need to adopt a standard that exceeds the present legal test. A reasonable person will only feel free to ignore a police officer and walk away, if the officer indicates to the citizen that compliance with the officer's request is voluntary. Obviously the current law, a product of the war on drugs, does not require the officer to make such a statement, but the law was designed to promote citizen "cooperation" with little concern for Fourth Amendment rights. In Section (D)(1) and (2), the officer is required ("When feasible") to explain that the encounter is a "stop" and "[t]he reason for the stop." That requirement is commendable and makes abundant sense, even though not required by current law. Therefore, requiring an officer to explain to a citizen that he need not comply with an officer's request for information and is free to walk away would help to ensure that the encounter is really consensual and would enable the reasonable person to understand the situation and make a real choice consistent with the Fourth Amendment.

(3) In (V)(B) the policy indicates that extreme measures during a *Terry* stop must be justified. The law has evolved in the fifty years since *Terry*. Fifty years ago most of the enumerated measures would have converted the stop into an arrest requiring probable cause. Police use some of the enumerated measures as a matter of course during an investigatory stop. The policy would be strengthened if the language of (V)(B)(2) second sentence was, itself, strengthened to send a stronger message to CDP officers that the enumerated demonstrations of force are never available as a matter of course during an investigatory stop, and that the additional measures must be justified by articulable facts and circumstances.

(4) The policy regarding corroboration of anonymous tips (VII) needs elaboration. It should spell out the corroboration of what type of facts will justify reliance upon an anonymous tip. (VII)(A) is too general and does not meet the requirements of current law.

(5) The enumeration of a policy regarding “Documentation and Reporting/Review of Investigatory Stops” (VIII) is commendable if it represents a real commitment by CDP.

From: **Lisa H. Thurau**, J.D., Strategies for Youth

Subject: **Juveniles**

I am writing to add my support to the comments Gabriella Celeste has shared with you regarding the draft standards for new Cleveland Division of Police General Police Orders on the topics of Miranda warnings, Investigative Stops, and Search and Seizures.

My comments relate solely to the extent to which the new policies protect youth. I have been working with Gabriella to urge the CDP to adopt new policies that ensure the protection of youths' constitutional rights.

Miranda Warning & Waiver:

The existing draft is very good and represents a major improvement. But for the policy to be truly sound, I recommend you adopt each and every one of Gabriella's proposed revisions.

Investigative Stops:

I agree with Gabriella that this policy as currently written does not reflect developmentally-appropriate, trauma-informed guidance for officers' interactions with youth especially in the section on Basis for Investigatory Stops. This section permits officers to conduct investigatory stops for what is normative adolescent behavior--including running in fear.

Gabriella has helpfully identified some of those behaviors in her comments to you. Youths' responses must be understood by officers--in the policy and through training--as Gabriella noted, resulting from youth being "socialized to avoid contact and conflict with the police due to mistrust fueled by past abuses and ongoing structural inequalities." Officers who ignore these realities as manifested in youths' behaviors will not understand and be able to adhere to the spirit of this new policy.

These are my recommendations:

- add "juvenile" to the definitions section;
- in section B(1), it is absolutely essential to insert the language from Section III(B) of the Miranda warning policy otherwise it will not legally harmonize with the Miranda warnings;
- in section II, articulate in greater detail how "age" would be taken into account by officers;
- in section III(V)(B)(1) Police Conduct During Investigatory Stops, should again refer to the considerations raised in the Miranda warning that a reasonable child may assume an investigatory stop means a loss of freedom and explain how officers should respond to youths' likely misunderstanding of their legal status;
- in Section VI, there is no guidance available for officers for use with juveniles and there is no guidance for officers when a youth does not or cannot disclose the required information;
- in Section VIII(B)(2), we recommend adding a provision to track all CAD data on stops by individual officer, as well as by location, time of day, and age/gender/race of the person, especially youth, to ascertain whether there are officers who are involved in disproportionately large numbers of such stops;
- We also recommend adopting the policy used by other departments that requires supervisory overview of stops that result in discretionary arrests for resisting, fleeing, and disorderly conduct to ensure that the Terry stops are not escalating into unnecessary low-level arrests.

Search & Seizure:

This section completely omits any consideration of including a developmentally appropriate, trauma-informed approach to conducting Terry stops and searches of youth. At the very least, this section must include:

- definition of a juvenile;
- recognition of youths' likely responses to pat frisks;
- in Section I(C), there needs to be more guidance to explain to officers HOW they will conduct a pat frisk/search in a manner that is developmentally appropriate and trauma informed--the policy provides no guidance;
- in Section III(D), regarding consent searches, is inadequate in prohibiting coercive searches of youth;
 - there needs to an entire section added on the specific risk of such coercion being inferred by youth in such situations.

Please feel free to contact me if my comments need further explication.

From: **Patt Needham**, Cleveland Nonviolence Network

Subject: **Probable cause, strip searches, terry searches**

Probable Cause/Warrantless Arrest 2.2.04 Warrant Service

CDP needs to embrace the values and philosophy of community policing by removing military jargon from their official documents.

Pg. 1 – Policy – Add age and religion to the list of protected classes.

Pg. 2 – IV. B. Officers serve shifts, not ‘tours of duty’. *This is not the military.*

Pg. 3 – VI. B. - Officers serve shifts, not ‘tours of duty’. *This is not the military.*

Pg. 4 – VII, A. – ‘making’ instead of effectuating. No need to be pretentious.

Pg. 4 – VII. C, E. – Supervisors also should review documents for good training examples and positive feedback also.

Strip searches and Body Cavity Searches -

Pg. 1 – Definitions – Isn’t the mouth a body cavity?

Pg. 3 – II. B. – Reporting – Why would a prior criminal record be pertinent to a strip search? The basis for the search is probable cause to believe the person is hiding evidence. This probable cause shouldn’t involve the person’s record; only the circumstances of the stop and the person’s behavior at the time.

Investigatory Stops

Pg. 1 – Policy – Add age and religion to the list of protected classes in the definition.

Pg. 2 – Pat Down – Does armed *always* mean dangerous? If so, just say armed. If not, when does armed *not* also mean dangerous?

Pg. 2 – Seizure – Things are seized. People are detained or arrested.

People in Cleveland have been clear that treating people like things is not OK. Doing so does NOT incorporate the values of community policing into the culture of the Division.

Pg. 2 – I.A.2 – An investigatory stop should NOT be called a seizure; it should be called a detention.

Things are seized. People in Cleveland have been clear that treating people like things is not OK. Doing so does NOT incorporate the values of community policing into the culture of the Division.

Pg. 2 – I.A.3 – An arrest should not be called a seizure. It should be called a detention. Things are seized.

People in Cleveland have been clear that treating people like things is not OK. Doing so does NOT incorporate the values of community policing into the culture of the Division.

Pg. 3 – 1.e. – Blocking an individual’s vehicle is dangerous. This should not be included on this list, or encouraged in any way, shape, or form.

Pg. 4 – III.B.3. – Prior knowledge of the person – This is NOT a sensible basis for establishing reasonable suspicion for stopping someone.

Pg. 5 – V.B.2.f. – How is it possible that applying handcuffs to a person doesn’t change a “*Terry stop*” into an arrest?!

Pg. 6 – VI.B. – clarify the differences between detained, seized and arrested.

From: **Patt Needham**, Cleveland Nonviolence Network

Subject: **Search and Seizure and Warrants**

Search and Seizure – 2.2.04 Warrant Service – 8/20/18?! – 9/25/18!

CDP needs to embrace the values and philosophy of community policing by removing military jargon from their official documents.

Pg. 1 - POLICY: add *age* and *perceived religion* to the list of features protected by law from being used as a factor in determining reasonable suspicion or probable cause. These are also protected classes in federal law.

Pg. 1 - Area of Immediate Control – this definition needs to be much clearer; use plain English or cite a source for additional information. Within arm's reach?

Pg. 1 – Curtilage – “The area [often enclosed] encompassing the grounds and buildings immediately surrounding a home or business, that is used in the daily activities of domestic life.” This is an actual definition from a legal dictionary. Please use one.

Pg. 2 – Pat Down – is armed always dangerous? Likely, some unarmed people are dangerous. Is there a case where someone is armed and not dangerous? Otherwise, this is needlessly repetitive. Just say dangerous, and define it more clearly. What makes someone dangerous? What creates reasonable suspicion that someone is dangerous?

Pg. 2 – Frisk: “May not manipulate objects to determine contraband” – are weapons contraband? What kind of contraband is obvious from manipulation under someone's outerwear? An example would be helpful to everyone – particularly officers.

Pg. 2 – Plain Feel – give an example of contraband that would be immediately apparent by feel without manipulation.

Pd. 2 – Seizure – describe how this is different from arrest. Things are seized; people are detained or arrested. Common use in legal arenas may not say so, but people in Cleveland are sensitive to this. CDP could show some respect for the community by changing how it uses the word seizure.

Pg. 3 – B. Exceptions, #3 – “exigent circumstances” is completely vague; be more specific or give an example.

Pg. 3 – B. Exceptions, #7 – “open fields and curtilage” is also too vague. Why and how would these spaces provide an exception the need for a search warrant? Based on what? How extensive – particularly for the open fields?

Pg. 4 - #2 – “Officers shall not enter... a vehicle or habitation” – could this mean a tent? Or a shopping cart that clearly holds all of someone's possessions?

Pg. 4 – “Plain view” – contradicts the open view standard described above. Police can inadvertently discover contraband [or evidence] after a lawful intrusion into a protected area, if the evidence or

contraband is immediately recognizable and in plain view. Seeing evidence that is in plain view and recognizable makes an intrusion into a protected area legal - Yes?

Pg. 4 – III. C. - Consent – What does authority mean in relation to giving consent? Please say more or reference a source that provides this detail.

Pg. 5 – IV. A and B. Exigent circumstances – How are A. and B. different?

Pg. 5 – IV. C. 1. – How is “serious” defined? Where?

Pg. 5 - 3 and 4 – It seems that both of these – suspect committed a crime and is on the premises -need to be true to justify a warrantless search due to exigent circumstances of any premises. Yes?

Pg. 6 – 3. If you use “Plain Feel” as a doctrine you need to define it somewhere. It seems quite different from Plain View, and if it can be used to justify a search and confiscation; this makes it important to be very clear about it.

Pg.6 -D. 3. – “retention checks” – what is this? What does it mean? How would someone observe a retention check?

Pg. 6 – F. This needs much more detail and explanation. Say more about the difference (if any) between being detained and being arrested. How does a pat down do anything to protect someone being put in the back of the car for *their* safety?

Pg.6 – VI – custodial and arrest searches. Presumably, the custodial searches aim to keep officers safe during detention and transport, and prevent the destruction of evidence in the same time period – while being detained as part of an investigation on the street. Searches incident to an arrest differ slightly in being preparatory to transport, booking, placement in confinement and arraignment. These distinctions and their significance should be clearer.

Pg.6 – VI. A. 1. – Define : “area within the arrestee’s immediate control.” Within arm’s reach?

Pg. 7 - a. – “Removal of a religiously significant garment”. Give an example of when or why this might be necessary. This should be temporary, only for the time of the search, and replaced.

Pg. 7 – B. 2. – Clarify exigent circumstances; give examples, “including, but not limited to ...”

Pg. 7 – B. 1. b. – What is the arrestee’s “area of immediate control” when they are arrested, and cuffed? Within arm’s reach?

Pg. 8 - B. 1. b. 2. – An arrested person is cuffed and restrained; more than 1 officer is present; how is there risk of escape, or destruction of evidence?

Pg. 8 – B. 1. D – give an example of an exigent circumstance that would make the search of an electronic device necessary or OK?

Pg. 9 VIII. C. – Factors in searching ‘curtilage’. The word location is too vague. “The uses of the location”? Does curtilage only pertain to residences? Or also to businesses?

Item #3 – the uses of what location? A building? An apartment? A garage? An alley? A hallway?

Item #4 – What would elements (such as fencing) imply about searching curtilage?

Responses from Survey

Respondent 1

65-74, female, white

Comments about draft policies:

CDP should remove all of the military jargon from its policies, plans, documents. This will be important to the community policing effort.

About your encounter:

So much depends on how the officer behaves. They have a lot of control [or at least influence] over how people respond to them.

Additional Comments:

These policies could create better understanding by the community of police procedures; so much depends on the training and implementation process. Trust won't come from these changes alone - without some kind of reconciliation process there will be little reason for the community to be open enough to see any difference in police behavior.

Respondent 2

Comments about draft policies:

If watched the video. The term "reasonable" is way to subjective. One person may think something is "reasonable" that another person may not. I would hope that the only time someone can get their property searched is when they are actually charged with a crime, not during Terry stops or general questioning.

Additional comments:

In the video I only saw like 10 citizens. I know you are trying to be transparent, but these things need to be taught in schools, at they Y, where citizens usually already are. If they already don't trust police they probably aren't attending these meetings.

Respondent 3

16, male, black

Additional Comments:

I was detained by police in 2018 august due to driving my mom's car at 15. The officers patted me down, detained me in the vehicle and then searched my vehicle. None of this was done with my consent. If it says in the policy now they cannot automatically search or frisk, why did they? And how will this policy change things?

Respondent 4
35-44, female, black

About your encounter:

Most individuals, especially youth, are unaware of their rights or afraid to exercise their rights. The policies have largely been written with constitutional compliance, yet officers continue to violate civil rights by

- 1) disregarding the policy
- 2) omitting portions of the policy
- 3) using language that is coercive and intimidating A
- 4) authoritative intimidation and/or abuse do to police account accepted as fact.

It is unclear how this policy effects the community. Instead, it seems the measurement will be included in the practice, through training and accountability.

Additional comments:

Why no inclusion for under 18? - Considering the high volume of police contact with youth of color 13-17.

The CPC should have done a better job of including a diverse panel, hosting this event organizations who serve people often effected by policing practices, specifically - persons of color, youth, etc. Its unfortunate the event had approx 5 people of color - minus commissioners and Mr. Tramble - which is a poor reflection of the City of Cleveland.