

**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: AUGUST 27, 2021
NUMBER: 4.01 – LEGAL
SUBJECT: STOP/DETENTION AND PAT DOWN PROCEDURES
RELATED POLICY: 1.04
ORIGINATING DIVISION: TRAINING & EMPLOYEE DEVELOPMENT
NEW PROCEDURE:
PROCEDURAL CHANGE: **MINOR CHANGES**
SUPERSEDES: DP 4.01 – 09/16/2019

I. PURPOSE

This Department procedure establishes guidelines for officers when contacting subjects for the purpose of investigating criminal activity.

II. SCOPE

This procedure applies to all sworn members of the Department.

III. BACKGROUND

NEW

The Department understands that direct contact with officers is, to the vast majority of the public, a rare and infrequent event. As a consequence, such contact can often be uncomfortable, awkward, or unnerving for citizens when they do not know why they are being contacted. A way to alleviate this is to provide citizens being contacted with the reasons for the interaction. Officers should communicate the reasons for the necessity of contact with citizens to the extent this is possible, in light of investigatory and safety concerns. Interactions with citizens must be consistent with Fourth Amendment search and seizure principles. Interactions that exceed the scope of the Fourth Amendment may lead to negative impacts in criminal and civil cases.

IV. PROCEDURES FOR CONSENSUAL CONTACTS, CONSENSUAL SEARCHES, STOPS, PAT DOWNS

A. Consensual Contact

Officers are encouraged to initiate consensual contacts with individuals in the community in order to gain a more thorough knowledge of their beats and the community.

Consensual contacts are different from detentions or arrests, in that they do not involve the "seizure" of persons within the meaning of the Fourth Amendment. Officers do not need "reasonable suspicion," "probable cause," or any other specific indication of criminal activity in order to initiate this type of contact.

During the course of citizen contacts, officers should not ask about a person's probation or parole status, or other legally documented status, unless the officer has independent knowledge of the person's criminal history or the totality of the circumstances would necessitate the information be immediately ascertained.

1. Initiation of a Consensual Contact

Officers may find it necessary to investigate the activities of a person when they do not possess sufficient information to make a detention or arrest. In such a case, the officers may initiate a contact with the person in any place in which the officer has a right to be. Unless an officer concludes that an arrest should be made or that a detention is reasonable, communications with a private person should begin with a consensual conversation that does not imply detention or arrest.

2. The Reasonable Person Test

The test: Would a reasonable person under the same or similar circumstances believe that he or she is free to leave?

It is not what the person contacted believes or should believe. It is what a reasonable person in the same circumstances would believe.

If a reasonable person would not believe they have a choice under the circumstances, then the person contacted is being detained, and absent sufficient legal cause to detain the person, it is an illegal detention.

3. Conduct During Consensual Contacts

Although no legal cause need be present for the officer to initiate a "contact," the persons contacted may not be halted, detained, or frisked against their will. They may not be required to answer questions or to

cooperate in any way, if they do not wish to do so. If they refuse to cooperate, they must be permitted to go on their way, unless the officer has developed reasonable suspicion to detain or probable cause to arrest. If it seems appropriate under the circumstances, however, the person may be kept under surveillance. Since a consensual contact is not a stop or an arrest, and those persons contacted may be innocent of wrongdoing of any kind, officers should take special care to act in a restrained and courteous manner.

Note: Except in situations that would jeopardize an investigation, officers shall ensure that all persons contacted are advised of the officer's affiliation with the Police Department, if it is not apparent by the officer's appearance.

4. Reporting Consensual Contacts

Officers are expected to make a variety of contacts with members of the community throughout each work shift. Contacts that do not lead to enforcement action may be documented on the Officer's Daily Journal, at the officer's discretion. If enforcement action results from a consensual contact, the resulting citation, warning, field interview, juvenile contact report, arrest or detention report shall be documented on the Officer's Daily Journal.

NEW

5. Consensual Searches

- a. Absent a search warrant, officers may conduct a search of a person or a person's property under limited circumstances. This includes incidents when a subject gives their consent for a search.
- b. Consent may be express or implied.
 - (1) Express Consent: When a person responds in the affirmative to an officer's request for permission to search, specifically any word(s) that reasonably indicates the person is agreeing to the specific request. Express consent may be verbal or written.
 - (2) Implied Consent: When a person's actions or responses effectively communicate permission to search; for example an individual handing an officer his or her car keys after the officer requests to search the vehicle. A failure to object to a search or a request to search does not constitute implied consent.

- (3) Consensual searches shall be conducted within the following legal parameters. Failure to adhere to these parameters may cause negative impacts in criminal or civil cases:
 - (a) Express or implied consent is given by the subject;
 - (b) Consent is freely and voluntarily given by the subject;
 - (c) The search shall not exceed the scope of consent given by the subject;
 - (d) The search is not unduly intensive or intrusive;
 - (i.) For example, consent to search does not authorize officers to destroy or damage the property or location during the search.
 - (e) The search is not unreasonable in its duration.
- (4) When verbal consent is obtained, the entire interaction shall be captured on BWC. Each of the following shall be included in the BWC recording:
 - (1) For instance, an officer may request to search any of the following: a house, vehicle, person, cellphone, computer, other mobile device, or purse/backpack.
 - (2) A request to search one's person may include fingerprints, DNA, or other identifying biological samples. A request for a biological sample should include an explanation of the method of analysis or comparison, such as running the sample through a comparison database.
 - (3) Members shall follow all applicable Department procedures and forms when obtaining biological samples.
- c. Officers shall make a clear request for consent to search the premise, person, personal property, or vehicle.
 - (1) For instance, an officer may request to search any of the following: a house, vehicle, person, cellphone, computer, other mobile device, or purse/backpack.
 - (2) A request to search one's person may include fingerprints, DNA, or other identifying biological samples. A request for a biological sample should include an explanation of the method of analysis or comparison, such as running the sample through a comparison database.
 - (3) Members shall follow all applicable Department procedures and forms when obtaining biological samples.
- d. The officer shall explain to the person they have the right to refuse, modify, or withdraw consent to search at any time, even after consent was given and the search has begun.

6. If a person's actions indicate implied consent, the officer shall confirm the consent verbally and ensure the confirmation is captured on BWC.
7. In the absence of a BWC recording of the subject's consent, members shall obtain written consent for a search using applicable Department forms.

NEW

B. Written Consent to Search

1. Consent to Search forms are available in the F: Drive under Templates/Patrol Based Forms/Consent to Search – Person and Personal Items.
2. These forms were translated into many of the languages spoken in our communities, and shall be used to facilitate communication and clearly document consent searches as circumstances dictate.
3. In addition to forms, officers are encouraged to continue to use qualified bilingual officer and civilian translators, as well as interpretation services contracted by the Department to enhance communication efforts as detailed by DP 1.47 – Limited English Speakers.

C. Detention

A detention, also referred to as a “stop”, occurs when officers use their authority to compel a person to halt, to remain in a certain place, or to perform some act, such as walking to a nearby location. Courts have used the terminology “investigative stop” for a detention. A detention is allowed so an officer may have a reasonable amount of time to investigate a person's possible involvement in actual or perceived criminal activity, allowing the officer to make an informed decision whether to arrest, or to release, the subject.

If the persons have been told they are not free to leave the officer's presence, a detention has occurred. When conducting a detention, the officer shall notify the subject contacted that he or she is no longer free to leave. However, officers are not required to make such a notification if it would hamper an investigation or jeopardize the officer's safety.

1. If an officer reasonably suspects that a person has committed, is committing, or is about to commit any crime, the authority to detain that person exists. Courts have used the terminology “Criminal activity is afoot” to describe these circumstances. The officer may exercise this authority in any place that the officer has the right to be. Both pedestrians and persons in vehicles may be detained. A detention is warranted if there is a reasonable suspicion by the officer that:

- a. Some activity relating to crime has taken place, is presently taking place, or is about to occur; and,
 - b. The person to be stopped or detained is involved in that activity.
2. “Reasonable suspicion” is a term that is not capable of precise definition; it is more than a hunch or mere speculation on the part of an officer, but less than the probable cause necessary for arrest. It may arise out of a contact, or it may exist prior to a contact. The following list contains some, but certainly not all, factors that should be considered in determining whether reasonable suspicion exists for a detention.

Note: A single factor listed below, or a combination of factors, may or may not individually justify a detention. An officer shall consider the totality of the circumstances present when deciding whether a detention is reasonable.

- a. Factors to Consider Regarding a Person's Appearance:
 - (1) The detainee fits the description of a person wanted for a known offense;
 - (2) The person appears to be suffering from a recent injury; or,
 - (3) The person appears to be under the influence of alcohol, drugs or other intoxicants.
- b. Factors to Consider Regarding a Person's Behavior/Actions:
 - (1) The person is fleeing from an actual or possible crime scene;
 - (2) The person is behaving in a manner indicating possible criminal conduct;
 - (3) The person was overheard making incriminating statements; or,
 - (4) The person is associating himself/herself with someone the officer determined to be reasonably suspicious.

- c. Factors to Consider Regarding Prior Knowledge of the Person:
 - (1) The person has an arrest or conviction record; or,
 - (2) The person is known to have committed an offense similar to the one that just occurred or is about to occur.

- d. Factors to Consider Regarding Demeanor
 - (1) The person's answers are evasive, suspicious, or incriminating; or,
 - (2) The person is excessively nervous during the consensual contact.

- e. Factors to Consider Regarding the Location of the Detention:
 - (1) The person is near the location of a known offense soon after its commission; or,
 - (2) The person is in an area known for a particular criminal activity and it is that type of activity that the person is thought to have committed, is committing, or is about to commit.

Note: Officers are cautioned that the courts find no credence in the term "high crime area", and that the term should be avoided. If reference is to be made to the area of the detention, officers should be able to articulate specific facts concerning that area (i.e., four commercial burglaries in the past week within several blocks of the location of the stop; 25 acts of vandalism within the past month at San Diego High School, etc.).

- f. Factors to Consider Regarding the Time of Day:
 - (1) It may be unusual for people to be in that area at that particular time; or,
 - (2) It is the time of day or night during which the suspected criminal activity usually occurs.

g. Police Training and Experience

The person's conduct is similar to the pattern followed in particular criminal offenses based on the investigating officer's training

and/or experience in dealing with that particular kind of criminal activity.

h. Emergency Circumstances

Public safety may be endangered if investigative action is not taken.

i. Factors to Consider Regarding the Source of Information:

If the basis of the officer's reasonable suspicion is in whole, or in part, based upon information supplied by another person, the officer should consider the reliability of the source of the information. The reliability of the information includes such things as:

- (1) Whether the officer knows the informant(s);
- (2) Whether they have supplied accurate information in the past;
- (3) How they came by this information; and,
- (4) Whether this information has been corroborated in any way, prior to making the detention.

3. Every officer who conducts a detention, as opposed to a consensual contact, must be prepared to document all of those specific factors that led the officer to believe the detention was reasonable.

4. Detention vs. Arrest

- a. If not handled properly, a "detention" could become an "arrest" which, if not supported by "probable cause" to arrest, would be illegal.
- b. General Rule: The least intrusive means should be used during a detention.
- c. The following list contains some factors that could cause a detention to turn into an arrest:
 - (1) Numerous officers involved;
 - (2) Display of weapons;
 - (3) Use of handcuffs;

- (4) Person is placed in back of a patrol car;
- (5) Encounter is in non-public setting;
- (6) The officer's authoritative manner and actions imply that compliance is compelled; and,
- (7) The officer did not advise the detainee of his right to terminate the encounter.

Note: The use of handcuffs or weapons or placing someone in a patrol car do not automatically make the contact an arrest if the actions are seen as reasonably necessary under the circumstances (person attempts to flee, officer safety concerns) and the person is told that they are only being detained, as opposed to arrested.

5. Proper justification for a detention does not permit unreasonable conduct during the detention. All police activity during a detention shall be done in a reasonable manner. The courts, in determining whether the detention was reasonable and lawful, will consider every phase of a detention.

a. Duration of the Detention

A person stopped pursuant to this procedure may be detained for a reasonable amount of time under the circumstances. Officers should detain a person only for the length of time necessary to determine if the person should be arrested or released.

b. Scope of the Detention

A reasonable on-the-scene investigation is all that is authorized by law during a detention. Therefore, an officer shall not move a detainee unless:

- (1) The officer obtains the detainee's consent to be moved;
- (2) The officer has probable cause to arrest the detainee;
- (3) A victim cannot, for valid reasons, be brought to the scene of the detention;
- (4) The movement is for a reasonable distance and facilitates the completion of the investigation (i.e., securing the

detainee in a patrol car while completing an investigation);
or,

(5) The movement is for the safety of the officer or the detainee.

c. Explanation to a Detained Person

Officers shall act with as much restraint and courtesy towards the detained person as is possible under the circumstances. Plain-clothes officers making a detention shall identify themselves as law enforcement officers as soon as it is appropriate. At some point during the detention, the officer should give the detainee an explanation of the purpose of the stop, unless such an explanation would jeopardize officer safety or hamper an investigation.

d. Questioning of a Detained Person

The officer may direct questions to detained persons for the purpose of obtaining their name, address, and an explanation of their presence and conduct. The detained person may not be compelled to answer these questions, even that of identity. During this questioning, it is not necessary to advise the person of their Constitutional rights under Miranda until such time as the person is placed under arrest, or the questioning has become coercive, rather than brief and casual.

e. Effect of Refusal to Cooperate

Refusal to answer questions does not, by itself, establish probable cause to arrest, but such refusal may be considered along with other facts as an element in determining whether the investigation should be continued. However, a person who flees during a lawful detention may be arrested for a violation of Penal Code Section 148 (a)(1), provided that such flight delayed or obstructed the investigation and there is sufficient proof to show that the person knew he/she was being detained by a police officer.

f. Tactical Options

Officers should strive to maintain a position of advantage (POA) and place the subject(s) contacted at a disadvantage whenever possible. Three techniques are: placing a subject on the curb, on the patrol vehicle's push bumper, or in the back seat of a patrol vehicle. While officer safety is of primary concern, curb sitting was not designed to

be a standard practice in all situations and officers recognize that community members find this tactic disrespectful.

If a situation justifies having a subject sit on the curb, the subject should be removed from that position once the threat has been mitigated (i.e., additional officers arrive on scene). This technique is only appropriate under circumstances where officer safety is threatened.

- g. Use of Force to Detain Officers shall comply with Department Procedure 1.04 - Use of Force, when deciding how much force, if any, should be used in effecting a detention.

6. Reporting Detentions

- a. In cases where a subject is detained and released at the scene, without being transported away from that scene, the “contact officer” shall complete a Field Interview (FI) form (ARJIS-1). The contact officer shall document in the FI those facts that led to the reasonable suspicion required to detain the subject. The contact officer shall log the FI on his/her Officer’s Daily Journal.
- b. In cases where a subject is detained, transported away from the scene and later released without booking, the contact officer shall prepare a “detention only” arrest report that properly documents the probable cause, special circumstances, or consent that was required for the detention and movement of the subject.
- c. If the need for photographs and/or fingerprints arises during the course of a detention, the person may be detained until a camera and/or fingerprinting equipment can be obtained, provided the detention does not become unreasonably long. Moving a subject to another location for photographs and/or prints requires either consent from the subject, probable cause to arrest, or special circumstances such as an injured victim, etc. Absent those exceptions, officers shall not transport a subject away from the scene for photographs and/or fingerprints. In cases where the suspect is a juvenile, the officer shall notify parents that he/she is taking photographs of the juvenile and the circumstances surrounding the incident.

D. Pat Downs

A “pat down” is a limited search for the purpose of finding weapons or other instruments that could be used against an officer. A pat down is not a search for

evidence or contraband, and, absent consent, officers shall not use a pat down as a pretext to conduct an evidentiary search.

1. An officer may pat down any person who has been detained when the officer reasonably suspects that the person is carrying a concealed weapon or dangerous instrument and that a pat down is reasonable to protect the officer or others. The pat down may be conducted immediately upon making the stop or at any time during the stop whenever a "reasonable suspicion to pat down" appears.
2. "Reasonable suspicion for a valid pat down" is more than a vague hunch and less than probable cause. If a reasonably prudent officer, under the circumstances, would believe the officer's safety or that of other persons in the vicinity is in danger because a particular person might be carrying a weapon or dangerous instrument, a pat down is justified. The following list (which is not all inclusive) contains some factors that should be considered in determining whether reasonable suspicion exists for a pat down.

Note: A single factor listed below, or even a cluster of factors, may or may not individually justify a pat down. An officer shall consider the totality of the circumstances present when deciding whether or not a pat down is reasonable.

- a. The person's appearance – their clothes may contain a bulge that suggests the presence of an object capable of inflicting injury.
- b. The person's actions - he/she may have made a furtive movement, as if to hide a weapon. The subject may be excessively nervous during the detention. The subject may be exhibiting threatening actions or words.
- c. Prior knowledge – the officer may know that the subject has a prior record for weapons violations or assaultive behavior.
- d. Location – the area may be sufficiently isolated so as to limit immediate police assistance, if needed.
- e. Time of day – darkness may inhibit visibility.
- f. Police purpose – the officer's detention of the subject may be for an armed, serious, or violent offense.
- g. Companions – the officer may have detained multiple subjects. If a weapon is found on one person, it may indicate a greater likelihood that a weapon may be found on others being detained.

3. Every officer who conducts a pat down must be prepared to document those specific factors which led the officer to conclude that "reasonable suspicion" existed before the pat down began. A mere statement that the officer feared for his/her safety is not sufficient. Instead, the officer shall cite specific factors listed above.
4. Pat downs that reveal items reasonably believed to be weapons or other dangerous objects vary slightly from those that reveal items that are reasonably believed to be an otherwise seizable item.
 - a. Weapon or dangerous instrument - if, when conducting a pat down, the officer feels an object which the officer reasonably believes is a weapon or dangerous instrument or is a hard object which may contain such an item, the officer may reach into the area of the person's clothing where the object is located (i.e., a pocket, waistband, or sleeve) and remove the object.
 - b. Other seizable item - if, while conducting a pat down, an officer feels an object which the officer does not reasonably believe to be a weapon or dangerous instrument, but which he immediately recognizes as an item of contraband, based on the nature of the object felt, along with or in combination with other factors, the officer has probable cause to believe that a crime is being committed in the officer's presence, and the officer should tell the person he/she is under arrest for that crime. The officer may then conduct a full custody search incidental to arrest but must not take any step to examine the object before making the arrest. If a seizable item is not found, the person should be released.

E. Photographing Guidelines

1. The taking of a field photograph must be connected to an investigation of a crime or an arrest. All photographs taken in connection with the investigation of a crime or an arrest must be attached to the appropriate reports or forwarded to the appropriate investigative unit. Refer to Department Procedure 3.26, Media Evidence Recovery and Impounding/Preserving Procedures, for further instruction.
2. An officer may, with the individual's consent, take a photograph in conjunction with a Field Interview (FI). That photograph must be attached to the yellow copy of the FI, which is forwarded to the appropriate investigative section.

3. When an officer takes a photograph of a juvenile, parental notification will be made. Refer to Department Procedure 3.08, Juvenile Procedures, for guidelines for photographing juveniles and making parental notification.
8. Officers are not to keep field photographs for the purpose of personal intelligence files or for personal use.

V. ASSEMBLY BILL 953

Assembly Bill 953 (AB 953), also known as the Racial and Identity Profiling Act (RIPA) of 2015, requires law enforcement agencies to collect data on all stops, detentions, and searches. This includes consensual searches and instances where force was utilized. In order to capture this data, a new application became available for every event generated through the Department's MPS and Intranet systems beginning July 1, 2018. There is a template to collect the required data in the F: Drive under Templates/Patrol Based Forms/PD-953, if the database application is temporarily unavailable. The data documented on this form shall be entered into the electronic application prior to the end of officer's shift unless exigent circumstances exist.

Under this mandate, the data collected will include the date, time, and duration of the stop, the location, perceived race or ethnicity, perceived gender, perceived LGBT, perceived or known disability, English fluency, perceived age, and the reason for the stop, detention, or search. The reason for the stop may be generated from a call for service, a traffic violation, reasonable suspicion or knowledge that the person was engaged, or about to engage in criminal activity and conclude with the actions taken by the officer. These actions will describe the basis of the search, whether or not contraband or other evidence is discovered, the reason for and type of property seized and the results of the stop or detention. The data collected under RIPA replaces the data previously collected from vehicle stop data cards.

- A. When completing a detention and/or arrest report, officers will ensure the narrative includes that a RIPA entry was submitted for every person being arrested or detained.
- B. Supervisors will verify officers have documented the RIPA entry in their narrative prior to approval.