

City of
SACRAMENTO

Office of Public Safety Accountability

Office of Public Safety Accountability (OPSA):

External Audit Report



**An Audit of the Sacramento Police Department (SPD):
Misconduct Complaint Cases – Improper Search and Seizure**

April 19, 2023

Contents

Introduction.....4

Background.....4

Objective.....6

Fourth Amendment Rules8

Audit Overview.....9

 Chart 1: SPD Case Dispositions..... 9

Case Disposition Comparison 10

 Chart 2: OPSA vs. SPD Fourth Amendment Violations..... 11

 Chart 3: SPD Sustained Cases 12

 Chart 4: OPSA Sustained Cases 13

 Chart 5: SPD vs. OPSA Sustained Cases 14

Audit Findings 15

 Finding 1: SPD Does Not Have a Current, Stand-Alone Policy Regarding the Fourth Amendment and Includes Search and Seizure. 15

 Finding 2: Automatic Pat Downs of Citizens are in Direct Conflict with the 1968 United States Supreme Court Decision, *Terry v. Ohio*. 16

 Finding 3: SPD Officers Improperly Searched or Seized Citizens Cell Phones in Direct Violation of State and Federal Laws. 17

 Finding 4: Rights of Non-Probation Citizens were Violated During Probation Waiver Searches..... 18

 Finding 5: Inconsistent Vehicle Tow Procedures. 19

 Finding 6: SPD Does Not Have a Policy Regarding Handcuffing Minor Children..... 19

 Finding 7: Warrantless Entry into Citizens’ Homes and Conducting Searches without Sufficient Legal Authority 20

 Finding 8: SPD Does Not Have a Policy Regarding Officers Interacting with Citizens Holding a Concealed Carry Weapon (CCW) license..... 21

 Finding 9: Stops Based on Minor Traffic Infractions Such as Improper Window Tint with No Apparent Intention to Enforce the Vehicle Code or Ticket the Driver Amount to Pretextual Stops. 22

 Traffic Stop Breakdown 24

 Chart 6: Type of Traffic Violations 24

 Traffic Violation Breakdown:..... 25

 Improper Window Tint Violation 25

 Table 1: Breakdown of Improper Window Tint Violations 25

 Finding 10: Internal Reviews by Supervisors do not Consistently 26

Identify Fourth Amendment Violations.	26
Statistical Findings: Complainant Demographics	28
Chart 7: Complainant Age	28
Chart 8: Complainant Gender.....	28
Chart 9: Complainant Race	29
Complaint Location.....	30
Chart 10: Complaints by Council District.....	30
Chart 11: Complaints by SPD Command Area.....	30
Chart 12: Complaints by SPD Police Beat Locations	31
Chart 13: Complaints by Officer Assignment	32
Type of Police – Citizen Interactions	33
Chart 14: Type of Police-Citizen Interaction	33
Conclusion	34

Introduction

The mission of the Office of Public Safety Accountability (OPSA) is to enhance relationships between the City of Sacramento’s public safety employees and the community they protect and serve. Under the direction, control, and supervision of the City of Sacramento Mayor and City Council, OPSA has broad oversight authority of the Sacramento Police Department (SPD) and the Sacramento Fire Department (SFD). Established in 1999 by the City of Sacramento Mayor and City Council, OPSA is charged with independently accepting, tracking, monitoring, and reviewing misconduct complaint investigations. OPSA also tracks and monitors critical incident investigations involving public safety personnel. The role of OPSA oversight practitioners was expanded in 2020 by the City of Sacramento Mayor and City Council establishing an Inspector General (IG) position within OPSA to independently investigate officer involved shootings and use-of-force incidents.

The current climate of policing in the United States (U.S.) demand the institutionalization of police reform efforts combating systemic racism, excessive uses of force, unreasonable stops and searches, and the lack of police accountability. Independent oversight of police organizations is a necessary ingredient of police reform.

OPSA adds an independent layer of oversight review to SPD and SFD misconduct complaint cases and critical incident investigations. OPSA’s primary responsibility is to ensure that the investigation of misconduct complaint cases and critical incident investigations are conducted timely, thoroughly, and fairly. OPSA’s broad oversight authority includes evaluating the overall quality of performance of public safety employees as well as encouraging systematic change to improve it.

Background

The frequency of high-profile police killings of minorities across the country in recent years has led to unprecedented levels of public scrutiny regarding police operations and the need to hold officers accountable. With racial justice at the forefront, the number of police oversight agencies has expanded around the country. Currently, there are more than 160 police oversight agencies in the U.S., distinctly different from a total of seven oversight agencies in existence in 1975. Recognizing the need for a higher level of accountability to the public and responding directly to demands to “defund” the police, the Sacramento City Council directed its OPSA Director to deploy the newly created Inspector General, and its staff, to provide review and oversight of all police practices on its behalf.

Oversight agencies throughout the U.S. have experienced challenges fulfilling their mission and meeting set objectives due to the police, police unions, and other interest groups who have worked to successfully block oversight practitioners from performing their job duties and responsibilities. Oversight practitioners are undermined consistently by law enforcement. Police personnel as well as police unions contend that oversight practitioners are ill-equipped to judge police officers because they lack the expertise and experience of trained law enforcement professionals. OPSA oversight practitioners dispel this notion by encompassing law enforcement professionals with extensive knowledge, expertise, and experience in the profession, but resistance remains.

External Audit: SPD Misconduct Complaint Cases – Improper Search and Seizure

Under the direction, control and supervision of the City Council, the Director of the Office of Public Safety Accountability shall have the following authority and responsibility as related to the Sacramento Police Department and Sacramento Fire Department:

- A. Audit all citizen complaint investigations of the police department and fire department, as the director deems necessary;
- B. Monitor all citizen complaint investigations conducted by the police department and fire department;
- C. Request the police department and fire department perform further investigation in those citizen complaint cases that require additional investigation as determined by the director;
- D. Receive all documents, reports, or any other item necessary to monitor or audit a complaint investigation;
- E. Assist the city council, or any duly appointed committee of the council, in performing its investigative functions under section 34 of the charter;¹
- F. As needed, request the city council, or any duly appointed committee of the council, to issue subpoenas as provided in section 34 of the charter. The city council may, by resolution, establish the procedures for the request, issuance, and service of those subpoenas;
- G. Perform such other inquiries and investigations as prescribed by council resolution;
- H. Accept and document complaints directly from citizens as an alternative procedure for citizen complaints concerning public safety personnel, using a complaint form distinct from that used by the police department or fire department. All such complaints shall be promptly forwarded to the respective public safety department for investigation;
- I. Provide complainants with timely updates on the status of investigations, excluding disclosure of any information that is confidential or legally protected;
- J. Explain how the complaint process works to all complainants;
- K. Monitor or independently investigate any other matter as directed by the city council pursuant to section 34 of the charter;
- L. Serve in a public information capacity, including providing public information, excluding disclosure of any information that is confidential or legally protected, on pending investigations as directed by the city council; and making presentations in community forums; and
- M. Respond to critical incidents involving police or fire personnel and provide a report to city council regarding the details and concerns of those incidents.²

¹ Pursuant to Sacramento City Charter Section 34

² OPSA general responsibilities outlined in City Council Report #2016-01504, November 29, 2016

In May of 2022, concerns emerged during the review of misconduct complaint cases.³ OPSA oversight practitioners discovered an initial pattern of Fourth Amendment violations of Sacramento community members, specifically Black and Latino community members, during police-citizen interactions. From the evaluation of the initial pattern, apparent issues with improper search and seizure demonstrate a lack of understanding of what officers learn from training on the law and the actual application of that training in the field. With such a limited amount of information, oversight practitioners could not make a conclusive determination of whether a systemic problem within the police department existed. Therefore, a determination was made that an external audit would be conducted to obtain a conclusive finding of whether there is a systemic problem or only isolated incidents were discovered. The external audit consisted of all misconduct complaint cases encompassing the allegation of improper search and seizure over the course of a two-year period, from June of 2020 to June of 2022.

Objective

The objective of this audit was to determine whether there is a systemic problem in the Sacramento Police Department (SPD) regarding officers engaging in pattern or practice of unreasonable stops, searches, and seizures that violate the Fourth Amendment rights of Sacramento community members, specifically Black and Latino community members, during police-citizen interactions. If the audit deemed any conduct to be unlawful policing, an evaluation of organizational practices contributing to the unlawful conduct would be performed.

Scope

This audit included a review of 109 misconduct complaint cases only for the period June 1, 2020, through June 30, 2022. Case information beyond this period was reviewed as deemed necessary to fulfill the objectives of the audit.

Methodology

To achieve the audit objective, OPSA performed the following:

- Reviewed 109 misconduct complaint case files with the allegation of improper search and seizure (e.g., officer, complainant, witness statements, investigative summaries, offense/incident reports, interview transcripts, dispatch call sheet logs, police radio transmission audio, observation reports, emails);
- Reviewed body worn camera (BWC) footage and dash cam footage relevant to completed misconduct complaint cases;
- Reviewed SPD General Orders, Reference Materials (RMs), Training and Education materials, City of Sacramento City Ordinances, and City of Sacramento City Code;
- Reviewed California Penal Code, U.S. Constitution, U.S. Supreme Court legal decisions, and applicable laws;
- Researched national best practices and reviewed numerous major city police organizations' policies and procedures; and

³ A misconduct complaint case is the investigation of an internal or external complaint filed citing allegation(s) of misconduct against any department employee involving a violation of any law, rule, regulation, policy, or other improper job performance.

- Reviewed relevant materials from the National Policing Institute (NPI), the Police Executive Research Forum (PERF), International Association Chiefs of Police (IACP), U.S. Department of Justice Office of Community Oriented Policing Services (COPS Office), and Department of Justice (DOJ)'s Civil Rights Division – Special Litigation Section.

In accordance with the Sacramento City Code, Chapter 2.22 Office of Public Safety Accountability duties and responsibilities, OPSA oversight practitioners performed this external audit of the Sacramento Police Department's misconduct complaint cases that encompass the allegation of 'Improper Search and Seizure'. This audit evaluated misconduct complaint cases from June 1, 2020, through June of 2022. In addition, OPSA began reviewing all incoming cases encompassing an allegation of misconduct for improper search and seizure as of August of 2022.

Fourth Amendment Rules

- The Fourth Amendment of the United States Constitution prohibits the government from performing unreasonable searches and seizures on citizens.

"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" ⁴
- This means the arrests, searches, and detentions of citizens cannot be **unreasonable**.
- An arrest of a person is reasonable if it is supported by an arrest warrant or by **probable cause**.⁵
- In California, probable cause exists when the facts known to the arresting officer at the time of arrest, would lead an **objectively reasonable officer** to believe that the person arrested has committed the crime in which they are being arrested for.⁶
- A detention or investigatory stop is reasonable if the officer has "**reasonable suspicion**" some criminal activity is occurring, and the person being detained is/was/or about to be involved in that criminal activity in some capacity.⁷
- Police officers are permitted to perform warrantless pat down searches on people they detain, if they reasonably believe that the person being patted down is **presently armed and dangerous**.⁸
- During traffic stops, police officers have the power as a matter of course to order drivers and passengers out of their vehicles.⁹ However, a mere traffic violation does not grant officers the right to perform pat-down searches.¹⁰ Even during a traffic stop officers still must **reasonably believe** that the person they are patting down is armed or dangerous.¹¹
- Although certain amounts of cannabis are legal to possess and consume in California, it is still illegal to drive or operate a vehicle under the influence of cannabis or with open containers of cannabis in the vehicle. If a police officer smells or observes cannabis cigarettes or loose cannabis in a car, they have the power to pat down all the occupants in the vehicle and search the entire vehicle to ensure the statutory requirements of the law are being upheld.¹²

⁴ U.S. Constitution, Amend. 4

⁵ *Kaupp v. Texas*, 538 US 626 (2003)

⁶ *People v. Souza*, 9 Cal.4th 224 885 (1994)

⁷ *Terry v. Ohio* 392 US 1 (1968)

⁸ *Terry v. Ohio* 392 US 1 (1968)

⁹ *Pennsylvania v. Mimms*, 434 U.S. 106 (1977), *Maryland v. Wilson*, 519 U.S. 408, (1997)

¹⁰ *People v. Superior Court (Simon)* 7Cal.3d 186, 206 (1972), *People v. Superior Court (Kiefer)* 3 Cal.3d 807, 830 (1970) *People v. Lawler* 9 Cal.3d 156, 161(1973)

¹¹ *Arizona v. Johnson*, 555 U.S. 323 (2009)

¹² *People v Fews*, 27 Cal.App.5th 553 (2018)

Audit Overview

OPSA performed an external audit of SPD completed misconduct complaint cases that encompassed allegations of improper search and seizure from June 1, 2020, through June 30, 2022. The case list for the audit included one duplicate case as well as three cases that were not able to be reviewed due to the lack of pertinent information missing from the case file. Although complaints were filed in these three cases, SPD was unable to obtain the necessary information to conduct a full investigation of the allegations. As a result, SPD closed two of these complaints with a disposition of unfounded and the other complaint was closed with a disposition of not sustained.

A total of 109 misconduct complaint cases met the audit criteria for the two-year period and were reviewed for the audit. As depicted in Chart 1 below, 86 of the 109 completed misconduct complaint cases received a disposition of UNFOUNDED from SPD. SPD defines the disposition of unfounded as the investigation clearly established that the alleged act did not occur, or the identified employee was not involved. This also included frivolous complaints, which are found to be totally and completely without merit, or those for the sole purpose of harassing an employee. Sustained, Not Sustained, and Exonerated are the other three dispositions in which allegations of misconduct can receive. SPD defines the disposition of sustained as when sufficient evidence supports the allegation against the employee(s). SPD defines the disposition of not sustained as when sufficient evidence does not exist to clearly prove or disprove the allegation. SPD defines the disposition of exonerated as the investigation clearly established that the alleged act occurred and was justified.¹³

Chart 1: SPD Case Dispositions

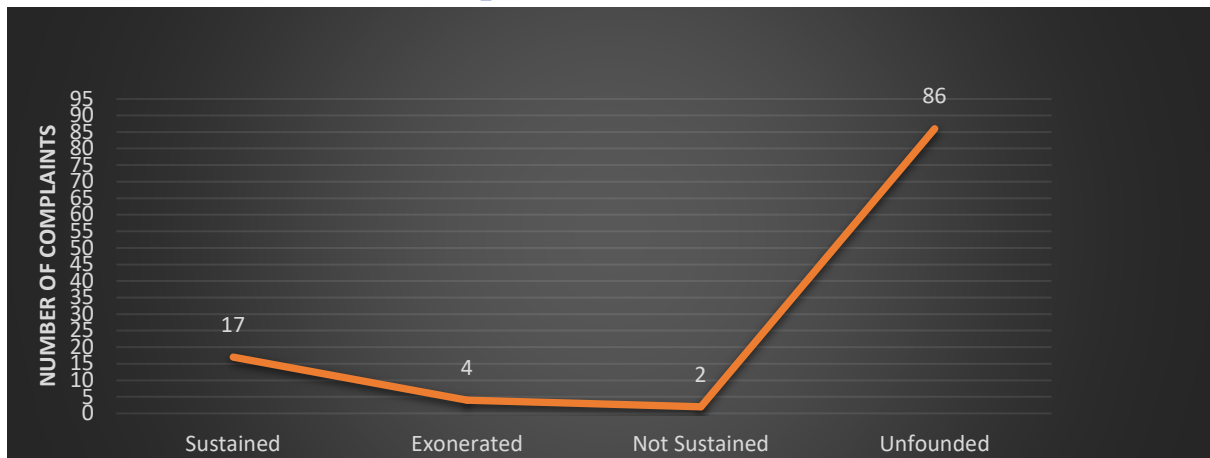


Chart 1 shows that 17 of the 109 misconduct complaint cases reviewed for this audit were SUSTAINED by SPD and referred to Police Command Staff for disciplinary action against employees.

Dispositions

Each allegation of misconduct shall receive one of the following dispositions:

¹³ Sacramento Police Department Internal Affairs Investigations Manual 220.01 Disposition of Complaints

SUSTAINED:	Sufficient evidence supports the allegation against the employee(s).
NOT SUSTAINED:	Sufficient evidence does not exist to clearly prove or disprove the allegation.
EXONERATED:	The investigation clearly established that the alleged act occurred and was justified.
UNFOUNDED:	The investigation clearly established that the alleged act did not occur, or the identified employee was not involved. This also includes frivolous complaints, which are found to be totally and completely without merit, or those for the sole purpose of harassing an employee.

Case Disposition Comparison

During initial review of completed misconduct complaint cases, there have been instances when SPD changed their initial disposition of unfounded to sustained after detailed discussions with OPSA. OPSA has also experienced instances in which SPD agreed with OPSA that the disposition should be changed to sustained but the disposition was unable to be changed due to issues with the timing of the case completion.

SPD and OPSA disagreed on the disposition of several completed misconduct complaint cases in this audit regarding Fourth Amendment Violations. The differences between OPSA and SPD completed misconduct complaint case dispositions are illustrated below in Chart 2. OPSA determined that 35% of the 109 completed misconduct complaint cases contained Fourth Amendment violations. SPD determined that only 16% of the 109 completed misconduct complaint cases contained Fourth Amendment violations. Pursuant to this audit, OPSA also discovered additional Fourth Amendment violations that were not discovered during the initial review of the completed misconduct complaint cases.

The largest proportion of completed misconduct complaint cases with sustainable Fourth Amendment violations arose from improper searches and seizures related to cell phones, unlawful detention during traffic stops, unlawful pat downs, and unlawful warrantless residential searches. These cases consisted of multiple Fourth Amendment violations. In each case, the evaluation of whether the officer's conduct violated the Fourth Amendment was based on published Fourth Amendment decisions by the United States Supreme Court that existed at the time of the incident. Other applicable California state court decisions, California State law, and the SPD Search and Seizure Manual was also utilized in the evaluation of each completed misconduct complaint case.

Chart 2: OPSA vs. SPD Fourth Amendment Violations

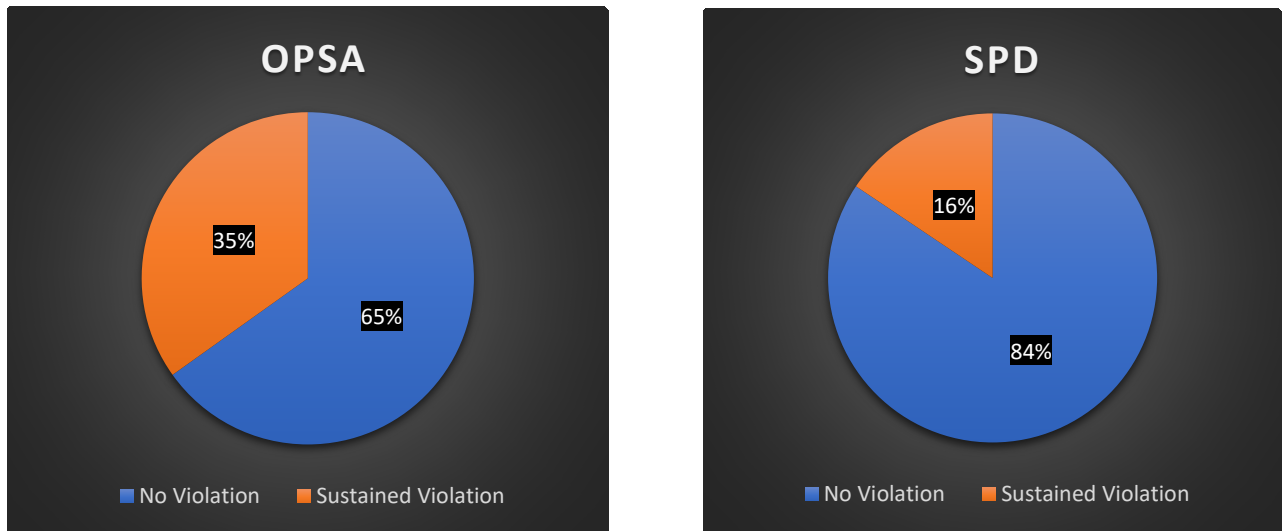


Chart 2 compares OPSA and SPD findings regarding Fourth Amendment violations for the completed misconduct complaint cases reviewed for this audit. OPSA determined that 38 of the total completed misconduct complaint cases reviewed contained Fourth Amendment violations. Contrastingly, SPD determined that 17 of the total completed misconduct complaint cases reviewed contained Fourth Amendment violations.

In Charts 3,4, and 5 below, challenges were experienced categorizing the information due to more than one Fourth Amendment violation being discovered in multiple misconduct complaint cases.

Chart 3: SPD Sustained Cases

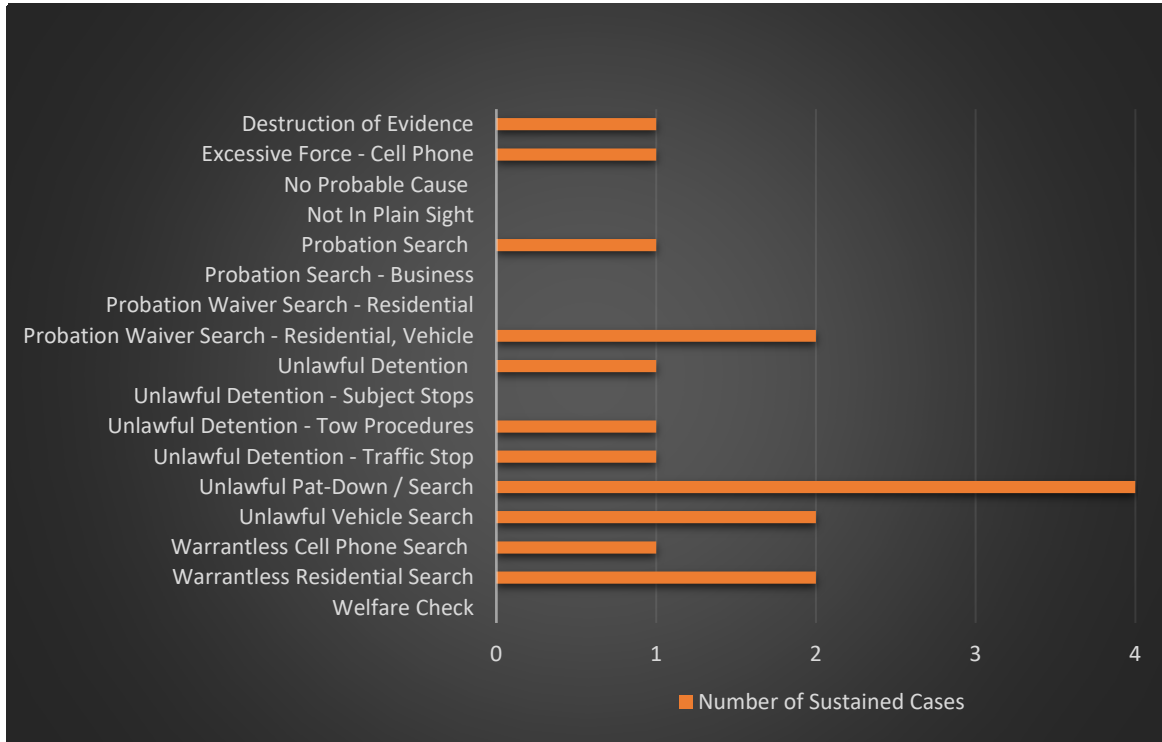


Chart 3 illustrates the breakdown of the types of Fourth Amendment violations in the 17 completed misconduct complaint cases.

Chart 4: OPSA Sustained Cases

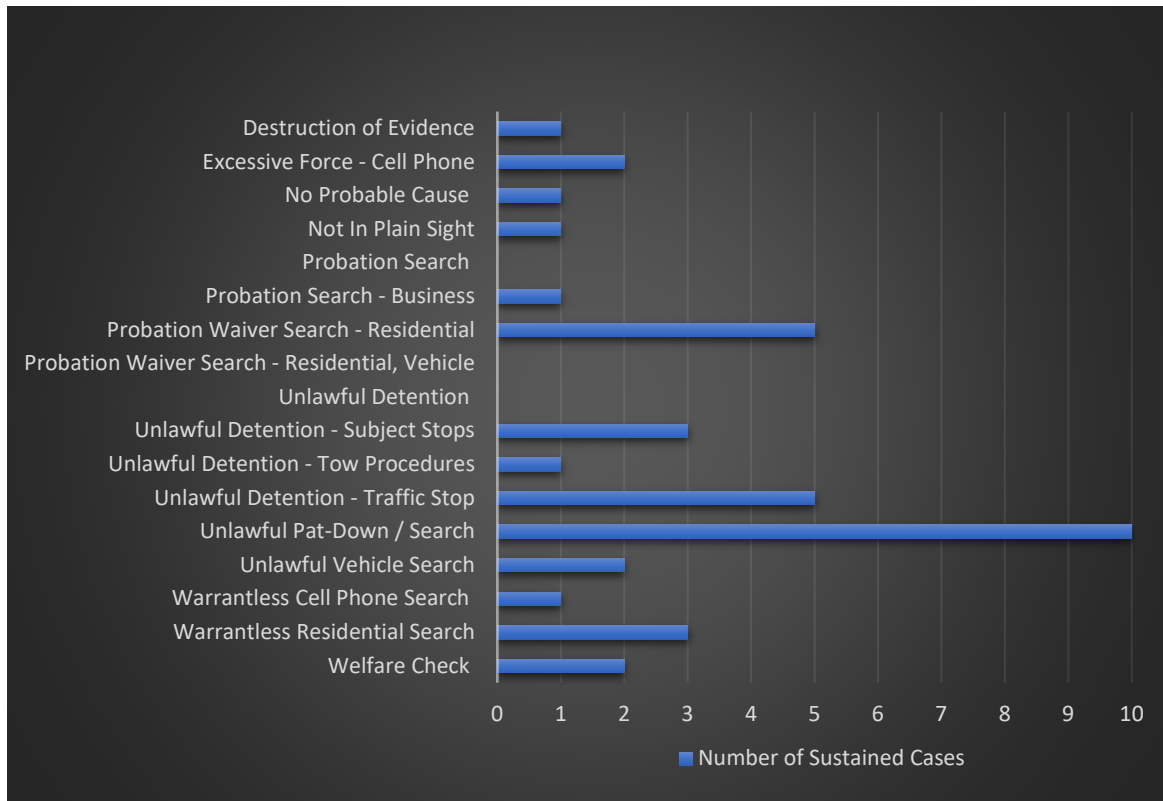


Chart 4 illustrates the breakdown of the types of Fourth Amendment violations in the 38 completed misconduct complaint cases.

Chart 5: SPD vs. OPSA Sustained Cases

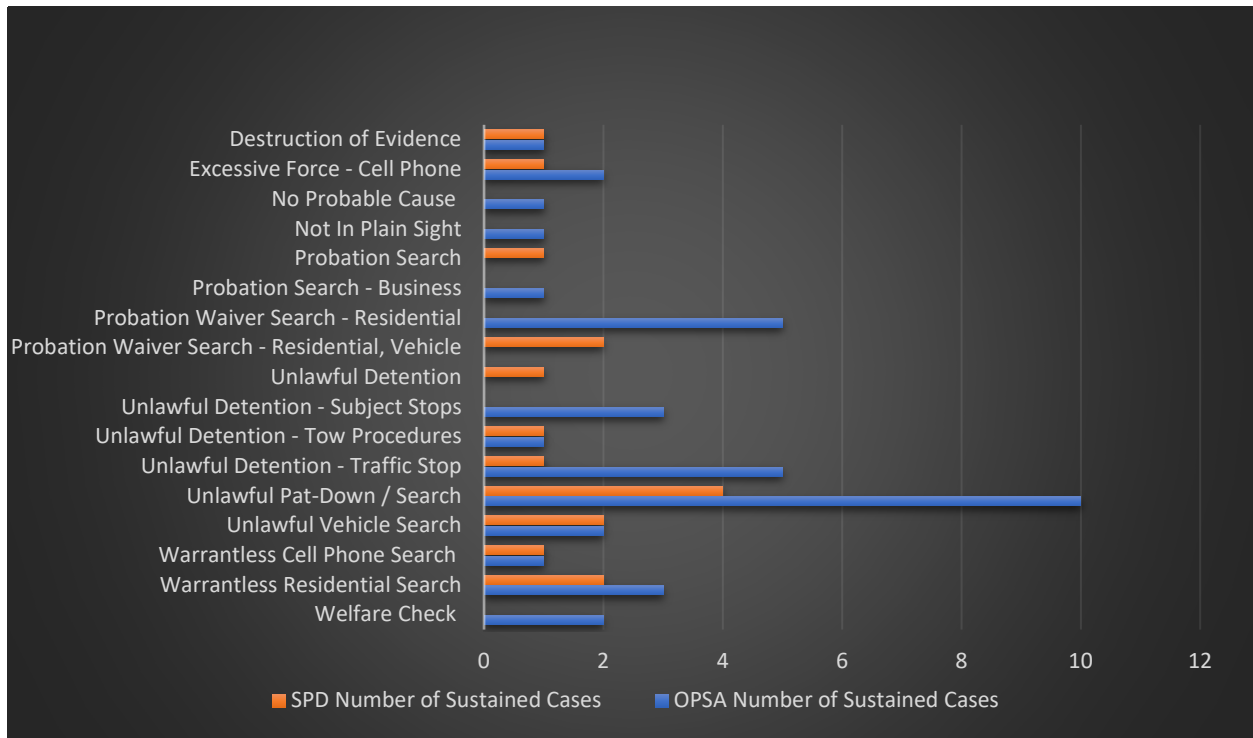


Chart 5 depicts the differences between SPD and OPSA’s breakdown of the types of Fourth Amendment violations for completed misconduct complaint cases.

Audit Findings

Finding 1: SPD Does Not Have a Current, Stand-Alone Policy Regarding the Fourth Amendment and Includes Search and Seizure.

The Fourth Amendment is implicated in just about every interaction between police officers and citizens. In addition, a violation of the Fourth Amendment was alleged in 109 misconduct complaint cases in two years. Therefore, SPD should have a search and seizure policy that clearly lays out the responsibility of the responding officers and the fundamental legal standards of detaining and searching a citizen.

SPD has a search and seizure manual. However, this manual is from 2007, and only generically describes search and seizure issues. It is unclear how SPD distinguishes a manual from a policy. This is significant because the United States Supreme Court, federal district court, and California state courts have issued several significant decisions pertaining to the Fourth Amendment since 2007.¹⁴ SPD should either update this 16-year-old manual or create a completely new, stand-alone policy that describes the specific instances of search and seizure issues that officers face daily. It would be beneficial for SPD to create a policy that addresses cell phone searches for arrestees and bystanders, the manner and scope of probation searches, the technical aspect of investigatory stops, and consent searches versus show of force.

Recommendations

- **SPD should update its search and seizure manual from 2007.**
- **SPD should draft a clear and detailed stand-alone Fourth Amendment policy that includes such things as cell phone searches, probations searches, investigatory stops, and consent searches.**
- **A sample policy from the San Francisco Police Department and Baltimore Police Department can be found in Appendix A.**

¹⁴ The below cases were decided after 2007 and have significant Fourth Amendment implications:

Arizona v. Gant, 556 U.S. 332 (2009)

Arizona v. Johnson, 555 U.S. 323 (2009)

Glik v. Cunniffe, 655 F.3d 78 (1st Cir. 2011)

United States v. Jones 565 U.S. 400 (2012)

Riley v. California, 573 U.S. 373 (2014)

Rodriguez v. United States, 575 U.S. 348 (2015)

Carpenter v. United States, 585 U.S. ____, [138 S. Ct. 2206] (2018)

People v Fews, 27 Cal.App.5th 553 (2018)

U.S. v. Landeros. 913 F.3d 862 (9th Cir. 2019)

Caniglia v. Strom, 593 U.S. ____, [141 S. Ct. 1596] (2021)

Finding 2: Automatic Pat Downs of Citizens are in Direct Conflict with the 1968 United States Supreme Court Decision, *Terry v. Ohio*¹⁵.

Unlawful pat down searches occurred in a substantial number of the sustained cases reviewed. For officers to conduct a pat down or stop and frisk of a citizen, the Fourth Amendment requires the officer to be able to articulate that the citizen is armed or dangerous.

From the review of body worn camera footage associated with the misconduct complaint cases, there were instances in which police officers assigned to the Gang Enforcement Team stated, "I pat everyone down" or demonstrated a pattern of conducting pat downs as an automatic police practice when officers encounter a citizen. In addition, the police reports associated with these searches rarely articulated what was dangerous about the citizen that necessitated a pat down. Since there is nothing in their reports to indicate that the officers do not perceive the citizen to be armed or dangerous, these automatic pat downs can be viewed as being per se unlawful according to the established law of *Terry v. Ohio*.

Example One

SPD Gang Enforcement officers pulled over a citizen for going 47-mph in a 40-mph zone. In viewing the body worn camera footage, the citizen was not an apparent threat to the officers. The citizen was apologetic for speeding, non-aggressive, calm, and respectful in his interaction with police officers. Although the driver was compliant, the officer decided to order the citizen out of the vehicle, conduct a pat down search of his body, and ordered him to sit on the hood of their car. There was no report and no articulation of what made the officer believe the driver was currently armed and dangerous.

In 1977, the United States Supreme Court ruled in a decision entitled *Pennsylvania v. Mimms*¹⁶ that officers have the ability to order citizens out of their vehicle based on officer safety reasons as a matter of course. However, this power does not automatically extend to conducting pat down searches on citizens once they have been ordered out of their vehicles. Even during a routine traffic stop, officers must still be able to articulate the reasons why they suspect that the person being patted down is armed or dangerous. Otherwise, pat down searches based solely on routine traffic violations without required justification violate the Fourth Amendment.

Recommendations

- **SPD should require officers to articulate in their reports why they stopped a citizen and/or why they felt the need to pat down the person.**
- **SPD should establish a clear detailed policy on pat downs, investigatory stops, and investigative detentions. A sample policy from the San Francisco Police Department can be found in Appendix B.**
- **SPD should provide training to new recruits and police officers on investigatory stops, pat downs, reasonable suspicion, and Fourth Amendment fundamentals, in accordance with the newly issued policy.**

¹⁵ *Terry v. Ohio*, 392 U.S. 1 (1968)

¹⁶ *Pennsylvania v. Mimms*, 434 U.S. 106 (1977)

Finding 3: SPD Officers Improperly Searched or Seized Citizens Cell Phones in Direct Violation of State and Federal Laws.

The Supreme Court established in *Riley v. California*¹⁷ that warrantless searches of an arrestee's cell phone are unconstitutional. Searching the cell phone of a probationer without specific language in the probation waiver agreement allowing officers to search is also a Fourth Amendment violation.¹⁸

Example Two

In one case, police officers towed a citizen's vehicle for his failure to consent to a cell phone search.

Federal courts have held that individuals have a right to record police officers in the performance of their public duties if the police activity is in public and the individual has the right to be there.¹⁹ SPD officers searched a citizen's cell phone without a warrant and threatened a detainee with jail time for failing to allow the officers to search their cell phone. There were multiple cases reviewed in which SPD officers forcibly seized cell phones from bystanders who were recording officers in public.

Example Three

In one case, an elderly woman was outside recording several officers while they arrested her son. Her demeanor was calm, and she was on the sidewalk away from the officers who were on the street. Without speaking to her or obtaining her consent, one officer grabbed her while another officer twisted her arm until she lost control of her phone. The officers then seized the cell phone.

Recommendation

- **SPD should develop a clearly defined policy outlining procedures for the search and seizure of cell phones. A sample policy from the San Francisco Police Department and Baltimore Police Department can be found in Appendix E.**

¹⁷ *Riley v. California*, 573 U.S. 373 (2014)

¹⁸ *United States v. Lara*, 815 F. 3d 605 (9th Cir. 2016)

¹⁹ The below cases recognized the First Amendment right to record the police and/or other public officials by the U.S. Courts of Appeals.

Gilk v. Cunniffe, 655 F. 3d 78, 85 (1st Cir. 2011)

ACLU v. Alvarez, 679 F. 3d 583, 595 (7th Cir. 2012)

Fordyce v. City of Seattle, 55 F. 3d 436, 438 (9th Cir. 1995)

Smith v. City of Cumming, 212 F. 3d 1332-1333 (11th Cir. 2000)

Finding 4: Rights of Non-Probation Citizens were Violated During Probation Waiver Searches.

The Fourth Amendment protects citizens against unreasonable searches and seizures. However, when citizens are granted probation, they generally agree to waive their Fourth Amendment right. When a citizen is on probation and signs this waiver, they consent to warrantless searches by law enforcement officers of their homes and vehicles.

Although probationers sign over their Fourth Amendment rights, citizens who are not on probation still have a constitutional right against unreasonable searches and seizures. In some cases, police officers are allowed to conduct warrantless searches on citizens who are not on probation. For example, if a citizen is in a vehicle with a probationer or seen hanging out with the probationer. However, issues generally surface in the context of the home due to officers searching an entire house and bedrooms that are not controlled or occupied by the probationer rather than limiting the search to the probationer's bedroom and common areas. There were multiple cases where officers conducted a probation search of every room in a house or apartment, even those rooms that the probationer did not occupy or control.

Example Four

In one case, officers conducted a probation search on a car belonging to a citizen that was not on probation. The probationer was not in the vehicle and was not seen driving the vehicle.

Example Five

In one case, officers searched and detained everyone at a local business establishment. The officers detained the employees and customers for over an hour and further detained them even after it was clear that the customers and employees were not a part of any wrongdoing.

There were cases involving warrantless searches being conducted despite the fact that substantial opportunity and time existed to request a search warrant. Instead, the officers relied solely on a citizen's probation waiver to conduct the search. The SPD manual does speak to conducting probation searches. However, the manual excludes any reference to the limitations that apply when conducting probation searches.

Recommendations

- **SPD should develop a clear policy defining the rules and procedures for conducting probation searches. See Appendix A.**
- **SPD should implement continuous education and training for legal updates, probation search waivers, implicit bias, and community-oriented policing.**
- **SPD should train officers to obtain search warrants whenever feasible and not rely so heavily on search waivers.**

Finding 5: Inconsistent Vehicle Tow Procedures.

This issue is significant enough to warrant a finding in this audit due to concerns with the unlawful detainment of citizens when police officers are towing citizens' vehicles. There have been cases when citizens are allowed to obtain their personal property from their vehicles and leave the scene. In other cases, citizens were prohibited from obtaining their personal property from their vehicle and were not permitted to leave until after the tow truck left the scene with the vehicle. Whether the detainment is in violation of policy appears to be dependent upon which supervisor reviews the case.

Recommendation

- **SPD should establish a clear policy outlining towing procedures as well as procedures for releasing personal property from their respective vehicles and releasing citizens from police custody when their vehicles are being towed.**

Finding 6: SPD Does Not Have a Policy Regarding Handcuffing Minor Children.

Although this issue appeared in just one case, it is significant enough to warrant a finding in this audit. SPD should have a policy regarding the handcuffing of minor children.

Example Six

The incident involves a ten-year-old African American female child who was scared and crying in her pajamas after being handcuffed and reprimanded by an SPD officer. The female child turned off the lights inside her home and failed to open the door fast enough for the officer. The female child was clearly not a threat to officers but was still handcuffed immediately upon opening the door of her home. Although the child in this case was not handcuffed for a long period of time, this incident was obviously traumatic to the child and will certainly shape her view of police officers in the future. A policy outlining procedures in dealing with minor children would be beneficial to officers and lead to less traumatized children in the future.

Recommendations

- **SPD should develop policy specifying handcuffing procedures for minors.²⁰ A sample policy from the San Jose Police Department Baltimore Police Department can be found in Appendix F.**
- **SPD should receive continuous education and training on implicit bias.**

²⁰ This recommendation is not referencing juveniles arrested for criminal offenses.

Finding 7: Warrantless Entry into Citizens' Homes and Conducting Searches without Sufficient Legal Authority.

In many circumstances, police officers need to gain entry into people's homes. However, "the physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed."²¹ As a result, "warrantless home entry is unreasonable unless it falls within a recognized exception to the warrant requirement, like exigent circumstances, which includes the need to render emergency aid."²² Despite the importance of this subject, SPD does not have a policy for warrantless entry into homes.

Police officers are routinely requested to respond to the homes of citizens to check on their general well-being. For instance, citizens may ask officers to check on the welfare of a family member who they haven't heard from in an unusually long time, just in case they are in need of medical assistance but are incapacitated. For decades, welfare checks were viewed as an exception to the warrant requirement. Welfare checks were covered under the so-called 'Community Care Taking Doctrine' in the State of California until 2019 when the California Supreme Court abolished it in the decision of *People v. Oviedo*.²³ In that case, the court ruled that police officers cannot make warrantless entries and searches into a person's home under the theory of community care taking or under the mere possibility of exigent circumstances. The court held that officers must perceive actual exigent circumstances before making a warrantless entry.

The audit found that despite the 2019 decision, SPD officers still make warrantless entry into citizens' homes. In some cases, SPD officers were observed breaking down doors or physically pushing citizens aside to conduct these welfare checks. These welfare checks are performed without documentation as to the actual perceived emergency situation. Additionally, SPD officers continue to perform welfare checks without any policies or procedures to protect officers or citizens. Numerous complaints have been filed by citizens alleging that officers damaged their property or were overzealous in conducting these welfare checks.

In other complaint cases, SPD officers forced entry into citizens' homes to search for felony suspects. Police officers searching for criminal suspects is a vital function of policing, but police officers are prohibited from forcibly entering citizens' homes in search of suspects without a warrant or exigent circumstances.

Recommendation

- **SPD should develop a policy for conducting welfare checks that encompasses warrantless entry into citizen's homes. A sample policy from the Baltimore Police Department can be found in Appendix B.**

²¹ *People v. Oviedo*, 7 Cal. 5th 1034, 1041(2019)

²² *People v. Oviedo*, 7 Cal. 5th 1034, 1038(2019)

²³ *People v. Oviedo*, 7 Cal. 5th 1034 (2019)

Finding 8: SPD Does Not Have a Policy Regarding Officers Interacting with Citizens Holding a Concealed Carry Weapon (CCW) license.

Although this issue appeared in just one case, it was significant enough to warrant a finding in this audit. SPD should have a policy and train officers on properly dealing with citizens who hold a CCW. As more citizens obtain a CCW, police interactions with CCW holders will become more prevalent. To ensure the safety of police officers and citizens holding CCWs, SPD must establish clear guidelines and tactically sound training protocols to mitigate unnecessary uses of force.

Example Seven

During a routine traffic stop for a tinted windows violation, the driver notified the officer that he had a CCW license and that he was carrying his weapon on his side. The officer immediately took out her weapon, held the driver at gunpoint in the low ready position, and called for backup. Several officers responded to the scene and tactically ordered the driver out of his vehicle. The officers took his firearm, handcuffed him, and sat him on the ground. Throughout the interaction the driver was calm and cooperative. Several officers remained on scene while the driver's information was checked and CCW permit verified. The officers released the driver once they were finished with the records check. Although this is not a blatant Fourth Amendment violation, a clearly defined policy and effective tactics training for these interactions would be beneficial to the department.

Recommendation

- **SPD should develop a policy for police interactions with citizens who have a CCW license and carrying their weapon at the time of the interaction.**

Finding 9: Stops Based on Minor Traffic Infractions Such as Improper Window Tint with No Apparent Intention to Enforce the Vehicle Code or Ticket the Driver Amount to Pretextual Stops.

More than half of the complaints received during the review period regarding improper search and seizure stemmed from traffic stops²⁴. In many instances, the Fourth Amendment is violated when these "window tint" traffic stops get needlessly prolonged. In a 2015 decision, *Rodriguez v. US*²⁵, the Supreme Court ruled that when a traffic violation is the purpose of a stop, the stop "may last no longer than is necessary to effectuate th[at] purpose". The traffic stop can become unlawful if it is unnecessarily prolonged for an unrelated matter that has nothing to do with the purpose of the stop, even if an officer's initial traffic stop of the citizen was lawful.

Although pretext stops are not a technical violation of the Fourth Amendment, they are extremely subjective in their enforcement. If performed without restrictions, pretext stops can deteriorate relationships within the community between citizens and the police. During this review period, every complaint regarding the conduct of traffic stops for illegal window tint was filed by a Black or Latino driver²⁶.

In most cases, the officers did not investigate or question the driver about the window tint. The window tint appears to be a pretext to initiate an unrelated investigation that had nothing to do with the window tint. These interactions are intense and can become needlessly adversarial. Officers question drivers stopped for window tint violations about their criminal history, specifically asking if the individual has ever been in jail, arrested, or whether they are on probation or parole even though the citizens were only being stopped for minor traffic violations. Although asking criminal background questions during a routine traffic stop is not by themselves unconstitutional, they serve no real purpose, and are irrelevant to whether the driver violated a vehicle code or traffic law. Furthermore, this criminal background information is readily available to officers when they run the citizen's driver's license information. These types of exchanges can lead to the perception that the officers are dishonest and attempting to harass the drivers for improper reasons.

Example Eight

A driver was pulled over for illegal window tint and was observed to be in his employment uniform. The driver was ordered out of his vehicle, placed in handcuffs, patted down and detained for 15 minutes. During this traffic stop, the officer conducted an investigation on a completely unrelated criminal matter. The officer suspected the driver was involved in an unrelated criminal offense in the same area, but the officer had no physical description of the suspect. The officer did not have any information or evidence that would lead a reasonable officer to believe that the driver was involved in the criminal activity.

The officer made the driver call his supervisor for an alibi. Even though the supervisor confirmed the driver's whereabouts, the officer continued to detain the driver. The officer did not release the driver until he consented to have his vehicle searched. The search did not yield any contraband and the driver was not cited for any violations.

²⁴ See Chart 14 page 33

²⁵ *Rodriguez v. United States*, 575 U.S. 348 (2015)

²⁶ See Table 1 page 25

Example Nine

A Latino female was pulled over by SPD patrol officers for an improper window tint violation. The officer asked for her driver's license and the driver told the officer that her license was in her purse located in the back seat of her car. Without the driver's consent, the officer reached into the backseat, pulled out her purse, and then handed it to her through the driver's side window. The officer then quickly snatched the purse from the driver. The driver, still holding on to her purse, struggled to retrieve her purse from the officer. After a short struggle over the purse, the officer ultimately arrested the driver for resisting arrest. The officer then searched her purse and her car and found nothing. The woman had never been arrested before and did not have a criminal record. The officer had no legal authority to reach into the driver's car or search the driver's purse.

Recommendations

- **SPD should eliminate the practice of pretextual stops or set clear restrictions on conducting pretextual stops. San Francisco Police Department has a policy curtailing the use of pretextual stops. See Appendix C.**
- **SPD should develop a policy for traffic stops. A sample policy from the Tampa Bay Police Department can be found in Appendix D.**

Traffic Stop Breakdown

Chart 6: Type of Traffic Violations

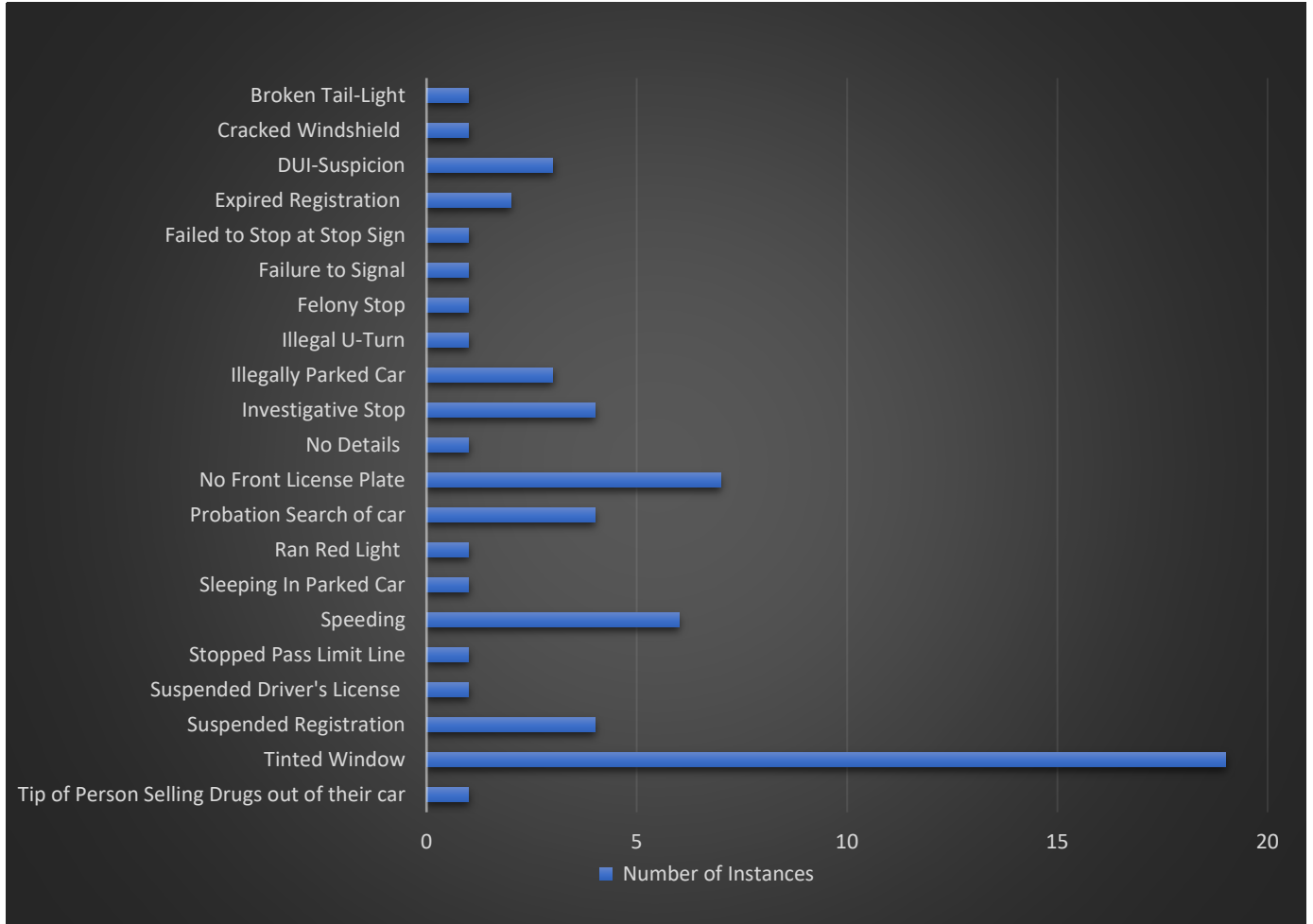


Chart 6 shows the breakdown of traffic stops by listing the violations warranting the traffic stop. A total of 19 traffic stops were conducted due to a window tint violation.

Traffic Violation Breakdown: Improper Window Tint Violation

94.74% of the traffic stops conducted by SPD officers for improper window tint encompassed the driver’s vehicle being searched. From the vehicle searches conducted, two firearms were located. Two arrests were made for Unlawful Possession of a Firearm. 26.32% of the traffic stops discovered drugs during the searches. The drugs were usually minimal amounts of cannabis, and the driver received a citation.

SPD officers reported the smell of cannabis on the driver or reported that loose cannabis was observed in the vehicle during these traffic stops. Because it is illegal to smoke cannabis and drive or have open containers of cannabis in the State of California, officers performed searches of the entire vehicle and pat down searches of vehicle occupants to determine if they were in possession of an illegal amount of cannabis. These types of searches are legal in California.

The audit revealed that this practice of making traffic stops based on improper window tint violations disproportionately affect Black and Latino drivers more than any other racial demographic. The table below illustrates that only Black and Latino males and females filed complaints pertaining to traffic stops for improper window tint violations.

Table 1: Breakdown of Improper Window Tint Violations

Traffic Violation	Search	Guns	Drugs	Arrest	Citation	Race	Sex	Age	Beat
Improper Window Tint	no	no	no	no	no	Black	M	43	2B
Improper Window Tint	yes	no	no	no	no	Black	M	48	1B
Improper Window Tint	yes	no	no	no	no	Black	M	24	2A
Improper Window Tint	yes	no	no	no	tow	Latino	M	24	2A
Improper Window Tint	yes	no	no	no	no	Latino	M	29	2A
Improper Window Tint	yes	yes	yes	yes	tow	Latino	M	53	2C
Improper Window Tint	yes	no	no	no	no	Black	M	41	2A
Improper Window Tint	yes	no	yes	no	tow	Black	M	34	Arden
Improper Window Tint	yes	no	no	no	no	Black	M	43	2C
Improper Window Tint	yes	no	no	no	no	Black	M	20	2A
Improper Window Tint	yes	no	no	no	no	Black	M	29	2A
Improper Window Tint	yes	no	no	yes	no	Latino	F	30	1C
Improper Window Tint	yes	no	yes	no	yes	Black	F	28	1B
Improper Window Tint	yes	yes	no	yes	tow	Black	M	21	2C
Improper Window Tint	yes	no	yes	no	no	Black	M	31	2C
Improper Window Tint	yes	no	no	no	no	Black	M	20	2B
Improper Window Tint	yes	no	yes	no	yes	Black	M	20	5B
Improper Window Tint	yes	no	no	no	no	Black	M	53	6A
Improper Window Tint	yes	no	no	no	yes	Black	M	20	2B

Finding 10: Internal Reviews by Supervisors do not Consistently Identify Fourth Amendment Violations.

The audit revealed multiple examples of allegations of improper search and seizure that progressed through several levels of SPD supervision without recognition of Fourth amendment violations.

Example Ten

A citizen was alleged to have been in possession of a handgun. However, the officer can be heard on the body worn camera footage saying, "It was somebody in white, I can't tell you who it was though - probably this guy [points to a guy in a white shirt sitting near him]". The officer then arrested this individual for being in possession of a handgun without knowing whether he had the firearm or not. A misconduct complaint was filed alleging the arrest was made without probable cause in violation of the Fourth Amendment. This complaint was reviewed by the area captain, and it was deemed unfounded. The OPSA Director and the IG met with the reviewing captain who admitted to not fully reviewing the entire case. The arrested citizen sued the city, and the matter was settled out of court. It is OPSA's opinion that this matter might have been avoided had the officer been better trained on fundamental Fourth Amendment laws and had the SPD supervisors fully reviewed the unlawful arrest during the initial review of the citizen's complaint.

Example Eleven

Gang Enforcement Team officers detained and conducted a search of a citizen without apparent reasonable suspicion of criminal wrongdoing other than the fact that he was wearing a satchel. The reviewing lieutenant believed the interaction was consensual and submitted another case to the IG for review between the same officers and the same citizen that occurred two weeks prior. The second case was more egregious. Three Gang Enforcement Team officers tactically surrounded the citizen as soon as he parked his car in a parking lot. The officers observed no vehicle code or any other violations before detaining him. After a short exchange where the officers questioned him about the clothes he was wearing, the citizen asked, "Can I go finish out my day?" The officer responded in the negative. Since the officer denied his request to leave the interaction, this was a detention or seizure that the Fourth Amendment requires the officers to have a reasonable suspicion of criminal activity. However, when the citizen filed a complaint alleging the Fourth Amendment violation, it was reviewed internally by a captain and deputy chief who found there was no wrongdoing by officers because it deemed a consensual encounter outside of the reach of the Fourth Amendment, not a detention. The case progressed through every rank up to the Chief of Police before it was finally sent back for further review. In both interactions, the police officers clearly did not have reasonable suspicion of criminal activity to justify the detention of the citizen. Routine training on investigatory stops, shows of force, and consensual encounters would have likely prevented this citizen from having his Fourth Amendment rights violated.

Example Twelve

SPD officers arrived at a local barbershop due to suspicion that one of the barbers who worked in the shop was in violation of his probation terms. The officers stopped the suspected barber outside of the business. Then ten SPD officers ascended into the barbershop to conduct a probation search, stopped the normal business, and detained all the customers and employees. The officers then searched everyone in the shop, searched the entire shop, and refused to allow anyone to enter or leave the establishment. This detention lasted over an hour without any reasonable suspicion that the customers and employees were involved in any criminal activity. This matter went through multiple review channels, including the Chief of Police each finding that the customers and employees consented to the encounter. No one in SPD management identified any issues with the search or detention of these citizens even though there was a United States Supreme Court decision that clearly prohibited these types of detentions and searches against citizens. Moreover, no one in SPD leadership had any issues with how the employees, or customers were treated throughout the interaction when the discourtesy behaviors were pointed out by OPSA oversight practitioners.

Recommendations

- **SPD misconduct complaint cases investigated by the Internal Affairs Division as well as misconduct complaint cases investigated by supervising personnel within an employee's assigned division must be investigated impartially and thoroughly to ensure the most accurate findings.**
- **SPD leadership team received supplemental search and seizure training on January 24, 2023, from the Sacramento Assistant District Attorney Office. Sacramento Assistant District Attorney advised that supplemental training would be developed specifically for officers. All SPD officers should be mandated to attend this supplemental training.**
- **Police officers as well as SPD leadership should take cultural sensitivity training, fair and impartial policing training, implicit bias training, and constitutional policing training. A sample policy pertaining to these trainings from the Baltimore Police Department can be found in Appendix D.**

Statistical Findings: Complainant Demographics

Chart 7: Complainant Age

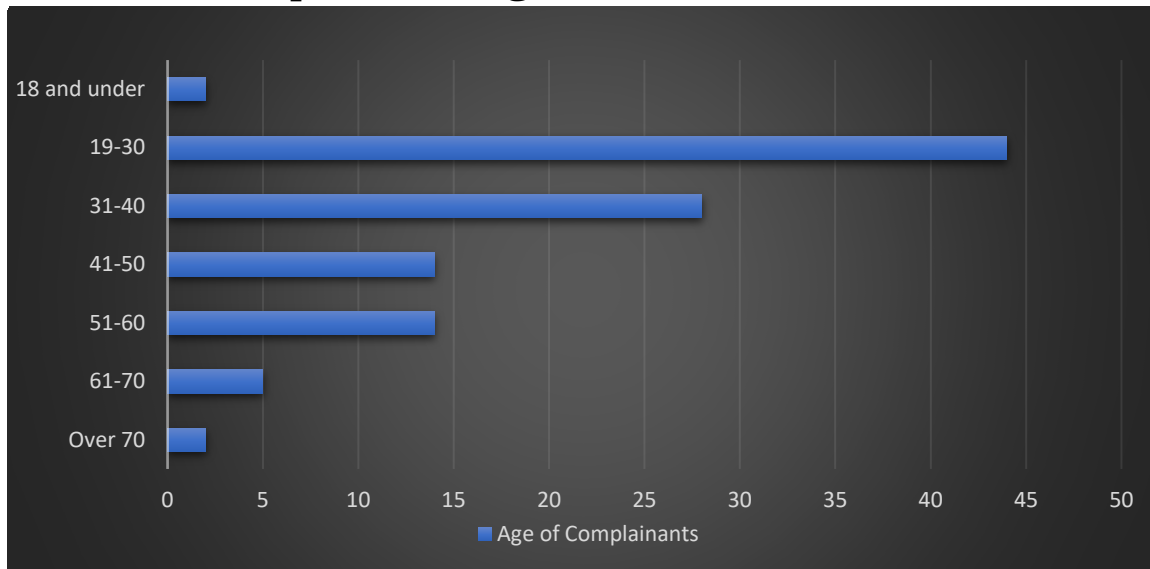


Chart 7 shows the age breakdown of the complainants who filed the completed misconduct complaints included in this audit.

Chart 8: Complainant Gender

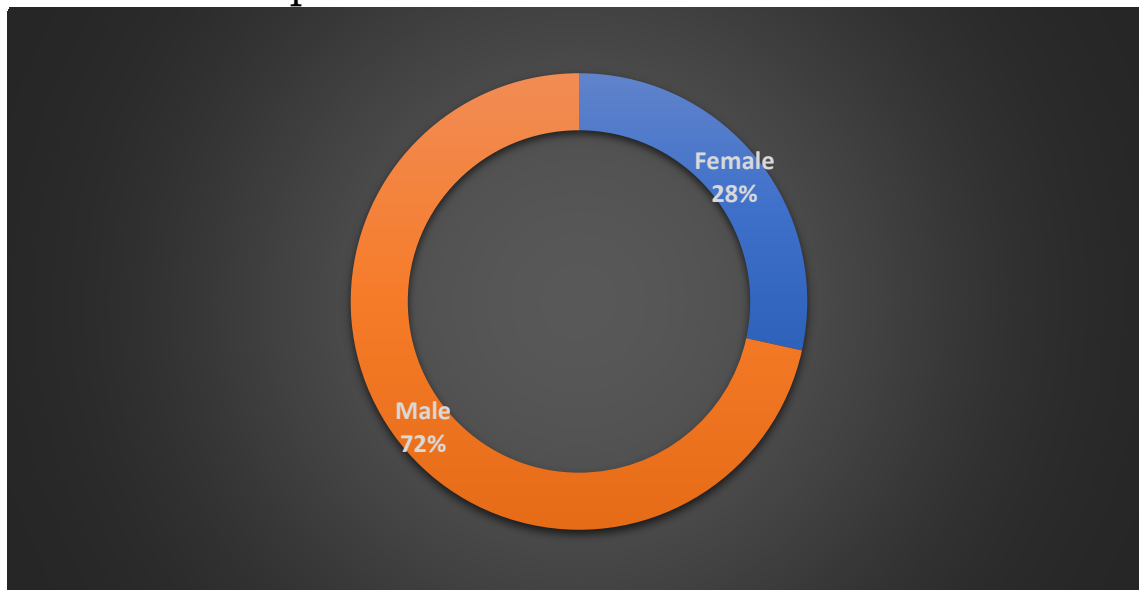


Chart 8 shows the gender breakdown of the complainants who filed the completed misconduct complaints included in this audit.

Chart 9: Complainant Race

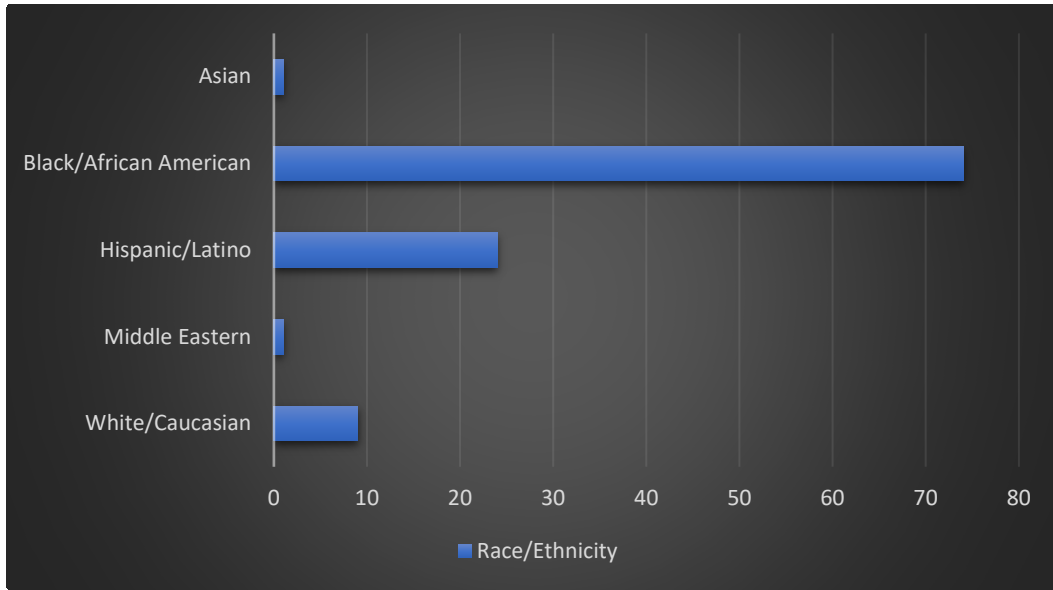


Chart 9 shows the racial breakdown of the complainants who filed the completed misconduct complaints included in this audit.

Complaint Location

Chart 10: Complaints by Council District

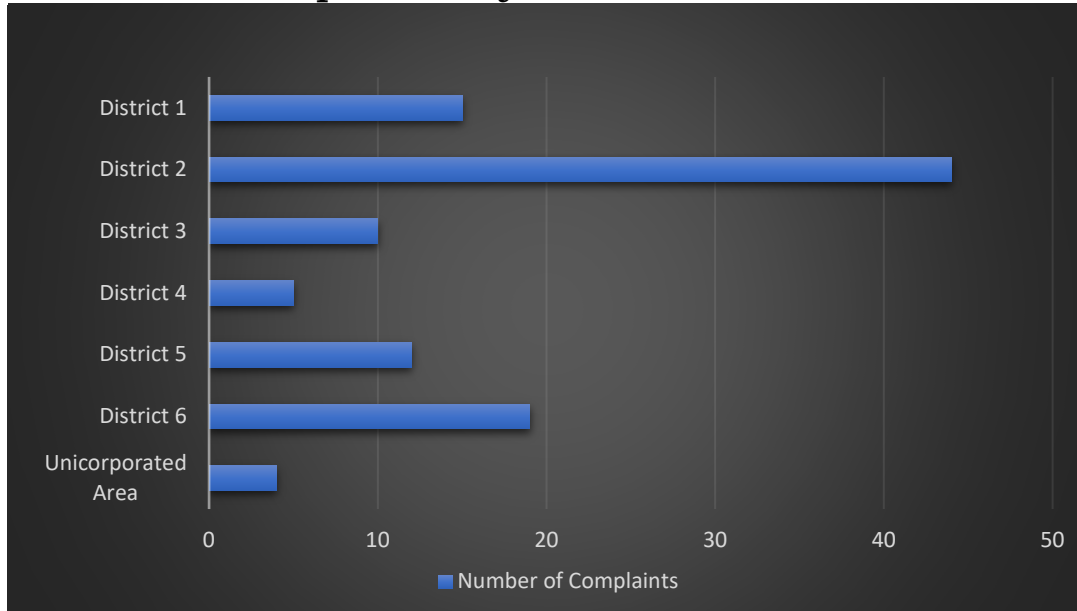


Chart 10 shows the breakdown of the completed misconduct complaints included in this audit by the City of Sacramento council district. There were not any completed misconduct complaints filed in District 7 and District 8.

Chart 11: Complaints by SPD Command Area

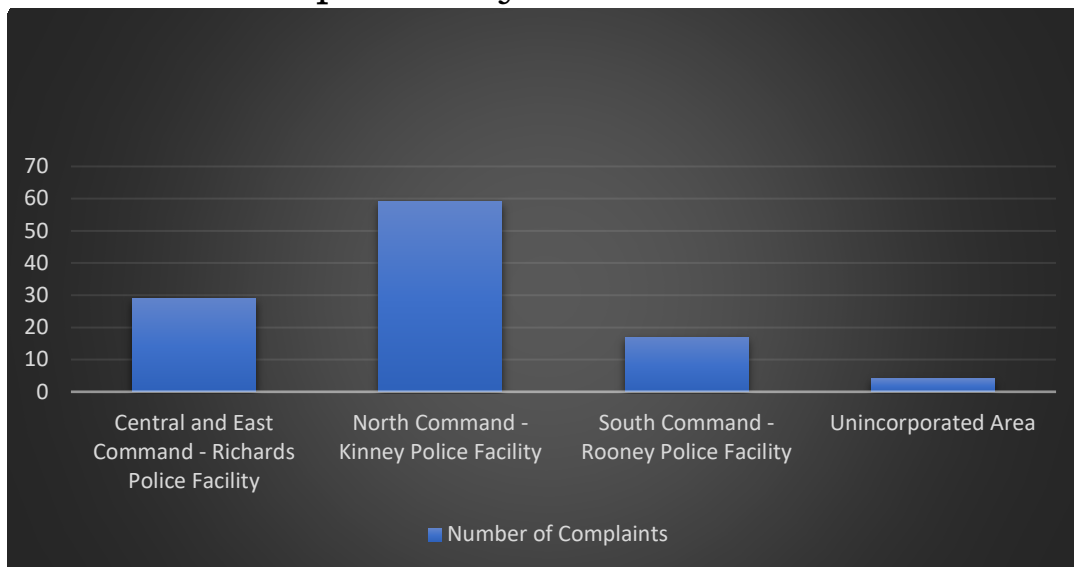


Chart 11 shows the breakdown of the completed misconduct complaints included in this audit by the Sacramento Police Department police command area.

From the corresponding police beats listed in Chart 12 below, the most traffic stops for improper window tint violations occurred in Council District 2. Specifically, these traffic stops occurred in the Raley Industrial Park neighborhood, Del Paso Heights neighborhood, Hagginwood neighborhood, and the Cal Expo/Arden neighborhood.

Chart 12: Complaints by SPD Police Beat Locations

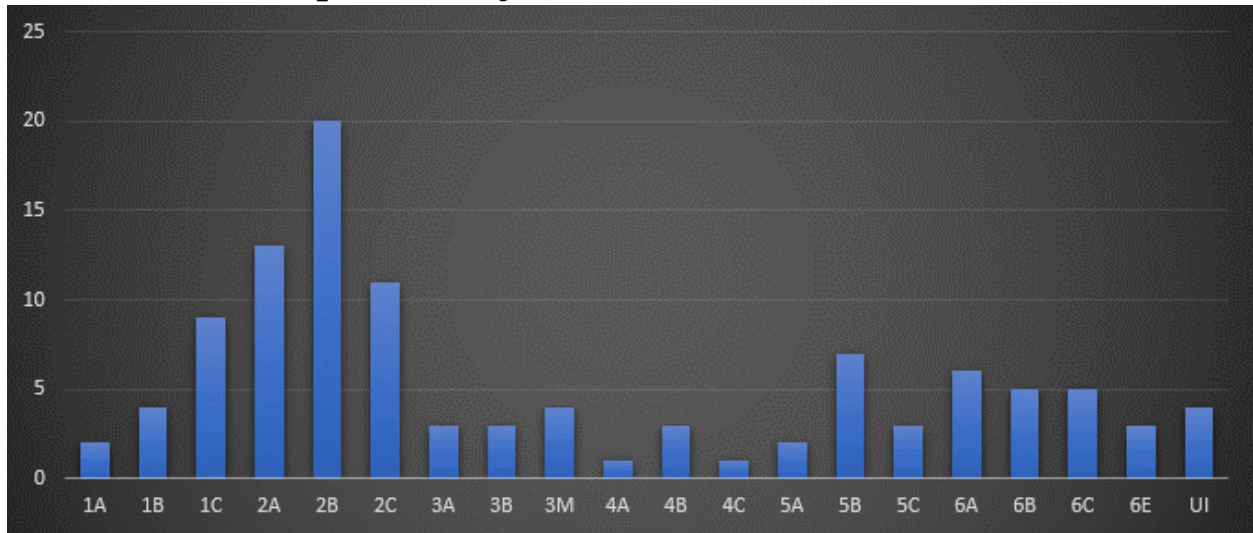


Chart 12 shows the breakdown of the completed misconduct complaints included in this audit by the Sacramento Police Department police beat locations.

Chart 13: Complaints by Officer Assignment

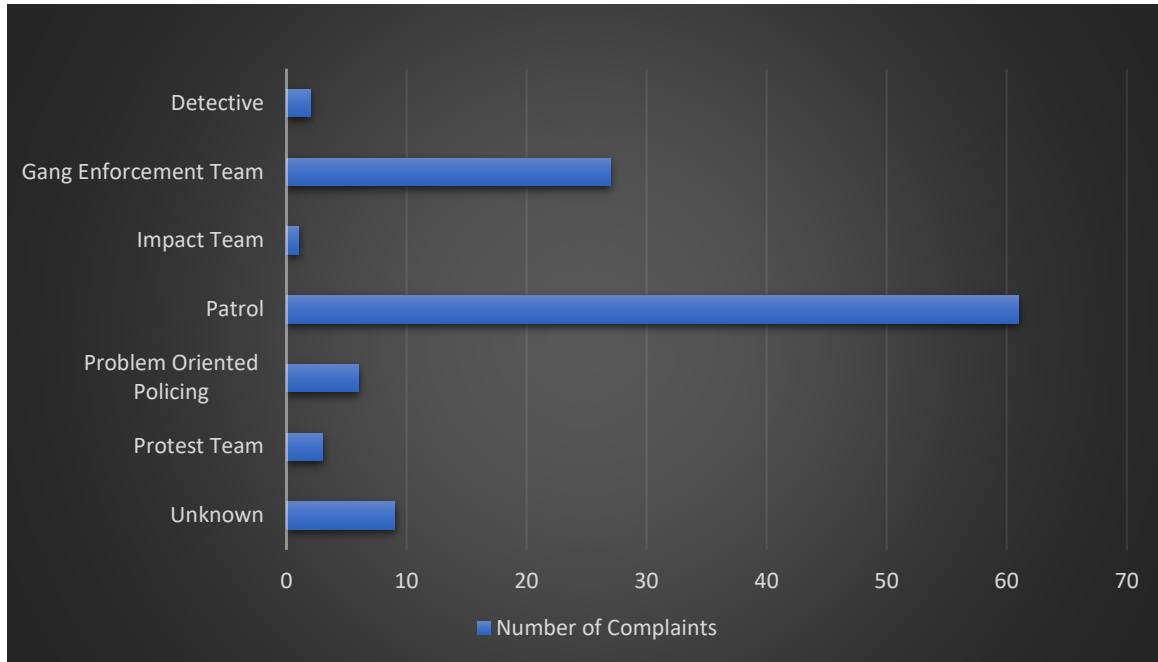


Chart 13 shows the breakdown of the completed misconduct complaints included in this audit by the Sacramento Police Department officer's assignment.

Type of Police – Citizen Interactions

Chart 14: Type of Police-Citizen Interaction

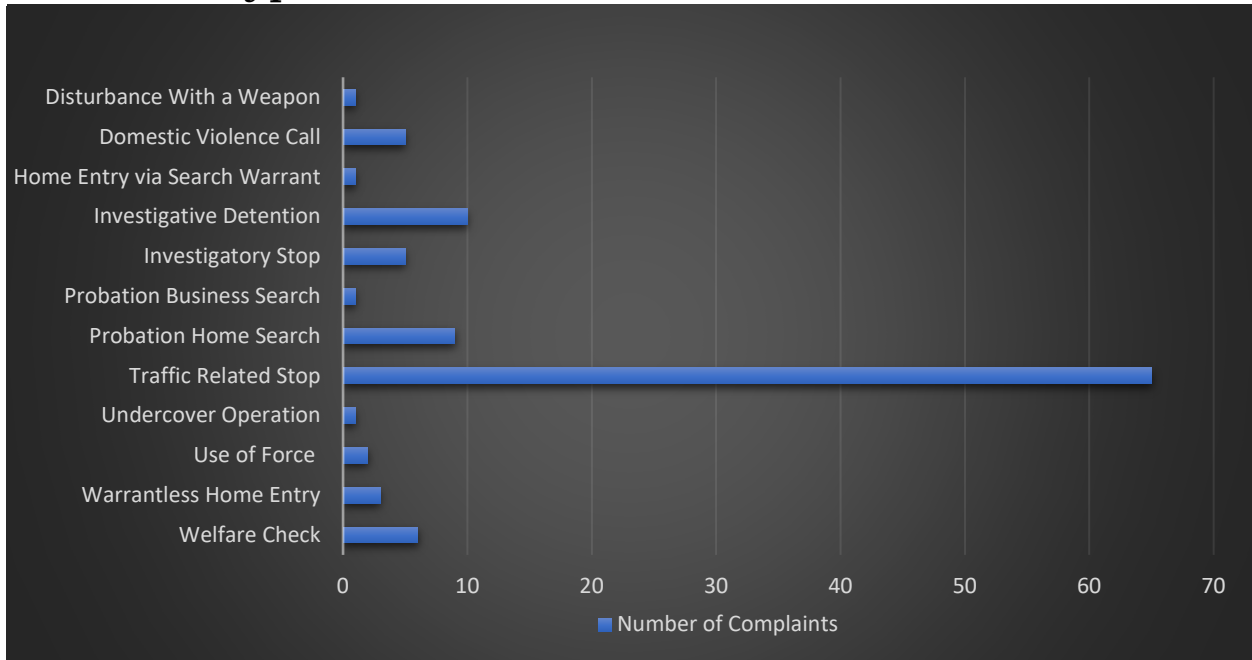


Chart 14 shows the breakdown of the completed misconduct complaints included in this audit by the type of interaction. A total of 65 complaint cases resulted from traffic stops conducted by SPD.

Conclusion

Constitutional policing is the mere foundation for ethical and lawful police practices that work to eliminate bias and seek to protect the civil rights of citizens. Constitutional policing practices adhere to the U.S. Constitution, court decisions, laws, and regulations. Proactively addressing unconstitutional law enforcement practices leads to more effective organizations making the necessary changes to build trust by strengthening relationships with their respective communities.

Police organizations engaging in unconstitutional policing can become potential subjects for investigation by the Civil Rights Division of the U.S. Department of Justice (DOJ). The Civil Rights Division – Special Litigation Section conducts pattern-or-practice investigations to foster constitutional and effective policing. Patterns-or-practice investigations focus on systemic misconduct such as uses of excessive force, repeated stops, searches, or arrests that are unreasonable, and discrimination based on race, ethnicity, national origin, religion, disability, or sex.

Many of the findings and recommendations outlined in this audit report are not unique to SPD and include challenges that police organizations across the country grapple with daily. The negative connotation associated with the policing profession is a direct result of continued high-profile incidents of violence against unarmed Black males and females. The continued occurrence of unlawful stops, searches, and seizures could lead to disastrous results and more victimization of Sacramento residents. Federal courts in the United States have held that a pattern or practice may be found where incidents of violations are repeated and are not isolated instances. Courts interpreting the term “pattern or practice” in similar states have established that statistical evidence is not required. Additionally, a court does not need a specific number of incidents to find a pattern or practice, instead each case must turn on its own facts. Clear, detailed policies aligned with effective training will assist in achieving constitutional policing practices as well as mitigating the identified Fourth Amendment issues.

While OPSA is encouraged by SPD’s eagerness to receive these audit findings and recommendations, OPSA’s expectation is that SPD acknowledges the areas in need of improvement. Our expectation as oversight practitioners is that SPD acts in good faith. True collaboration requires effective communication, mutual respect, honest dialogue, and ownership of one’s actions. SPD and OPSA working together will be crucial to ensuring the successful implementation and sustainability of the changes necessary. Organizational leadership plays a pivotal role in signaling change. Engaged supervisors who model the practices and principles in accordance with organizational policy and training standards. SPD supervision must recognize when officers are not in compliance and hold them accountable.

APPENDIX A

Office of Public Safety Accountability (OPSA): External Audit Report

**An Audit of the Sacramento Police Department (SPD):
Misconduct Complaint Cases – Improper Search and Seizure**

Requested Date: Tuesday, April 25, 2023

Completed Date: Tuesday, April 25, 2023

REQUEST #1

This spreadsheet was created at the request of the Sacramento Police Department Chief of Police, K. Lester.

Chief Lester requested a list of the cases that the Office of Public Safety Accountability (OPSA) had findings on that differed from the Sacramento Police Department (SPD) findings.

Number	SPD Case Number	Fourth Amendment Violation Y/N	SPD Case Dispositions	OPSA Case Dispositions	Case Information
1	COMPL2020-269	N			
2	COMPL2020-184	N			
3	COMPL2020-284	N			
4	COMPL2020-257	N			
5	COMPL2020-326	N			
6	COMPL2020-332	Y	Unfounded	Disagree-Sustained	
7	COMPL2020-156	Y	Exonerated	Disagree-Sustained	
8	COMPL2020-279	N			
9	COMPL2020-248	N			
10	COMPL2020-139	Y	Unfounded	Disagree-Sustained	
11	COMPL2020-145	N			
12	COMPL2020-186	N			
13	COMPL2020-196	Y	Sustained	Agree-Sustained	
14	COMPL2020-238	Y			
15	COMPL2020-267	N			
16	COMPL2020-260	Y	Sustained	Agree-Sustained	
17	COMPL2020-277	N			
18	COMPL2020-201	N			
19	COMPL2020-301	N			
20	COMPL2020-200	N			
21	COMPL2020-204	N			
22	COMPL2020-311	Y	Exonerated	Disagree-Sustained	
23	COMPL2020-217	N			
24	COMPL2020-304	N			
25	COMPL2020-330	N			
26	COMPL2020-297	N			
27	IAD2021-013	N			
28	IAD2021-014	Y	Unfounded	Disagree-Sustained	
29	IAD2021-025	N			
30	IAD2021-026	Y	Sustained	Agree-Sustained	
31	IAD2021-029	Y	Unfounded	Disagree-Sustained	
32	IAD2021-031	N			
33	IAD2021-037	Y	Exonerated	Disagree-Sustained	
34	IAD2021-042	N			
35	IAD2021-054	N			
36	IAD2021-059	N			
37	AD2021-071	N			
38	IAD2021-096	Y	Sustained	Agree-Sustained	
39	IAD2021-097	N			
40	IAD2021-132	Y	Sustained	Agree-Sustained	
41	IAD2021-232	N			
42	IAD2021-203	N			

43	IAD2021-204	N			
44	IAD2021-206	Y	Unfounded	Disagree-Sustained	
45	IAD2021-211	N			
46	IAD2021-213	N			
47	IAD2021-215	N			
48	IAD2021-222	N			
49	IAD2021-223	Y	Unfounded	Disagree-Sustained	
50	IAD2021 - 227	N	Unfounded		SPD unable to find information on this case.
51	IAD2021-228	N			
52	IAD2021-229	Y	Unfounded	Disagree-Sustained	
53	IAD2021-156	Y	Exonerated	Disagree-Sustained	
54	IAD2021-135	N			
55	IAD2021-146	Y	Sustained	Agree-Sustained	
56	IAD2021-147	Y	Sustained	Agree-Sustained	
57	IAD2021-154	Y	Sustained	Agree-Sustained	
58	IAD2021-156	DUPLICATE	DUPLICATE	DUPLICATE	DUPLICATE CASE
59	IAD2021-159	N			
60	IAD2021-161	N			
61	IAD2021-164	N			
62	IAD2021-168	Y	Sustained	Agree-Sustained	
63	IAD2021-175	N			
64	IAD2021-179	N			
65	IAD2021-185	N			
66	IAD2021-186	Y	Unfounded	Disagree-Sustained	
67	IAD2021-187	Y	Sustained	Agree-Sustained	
68	IAD2021-243	N			
69	IAD2021-250	Y	Sustained	Agree-Sustained	
70	IAD2021-252	N	Unfounded		SPD unable to find information on this case.
71	IAD2021-253	N			
72	IAD2021-260	N			
73	IAD2021-262	Y	Unfounded	Disagree-Sustained	
74	IAD2021-265	Y	Sustained	Agree-Sustained	
75	IAD2021-268	N			
76	IAD2021-271	N			
77	IAD2021-276	N	Not Sustained		This matter occurred in 2014 and no information was available to prove or disprove the allegation.
78	IAD2021-278	N			
79	IAD2021-281	Y	Unfounded	Disagree-Sustained	

80	IAD2021-003	N			
81	IAD2021-011	Y	Sustained	Agree-Sustained	
82	IAD2022-027	N			
83	IAD2022-040	Y	Unfounded	Disagree-Sustained	
84	IAD2022-050	N			
85	IAD2022-052	N			
86	IAD2022-054	N			
87	IAD2022-059	N			
88	IAD2022-282	N			
89	IAD2022-061	Y	Unfounded	Disagree-Sustained	
90	IAD2022-072	N			
91	IAD2022-073	N			
92	IAD2022-075	Y	Unfounded	Disagree-Sustained	
93	IAD2022-079	N			
94	IAD2022-081	N			
95	IAD2022-090	Y	Unfounded	Disagree-Sustained	
96	IAD2022-092	Y	Unfounded	Disagree-Sustained	
97	IAD2022-106	N			
98	IAD2022-108	N			
99	IAD2022-114	N			
100	IAD2022-118	N			
101	IAD2022-010	N			
102	IAD2022-022	Y	Sustained	Agree-Sustained	
103	IAD2022-039	Y	Sustained	Agree-Sustained	
104	IAD2022-047	Y	Sustained	Agree-Sustained	
105	IAD2022-068	N			
106	IAD2022-074	Y	Unfounded	Disagree-Sustained	
107	IAD2022-080	N			
108	IAD2022-121	N			
109	COMPL2019-143	Y	Unfounded	Disagree-Sustained	This case was not included in the original cases. Although it occurred before the review period, it was reviewed and adjudicated during the review period.
110	IAD2021-165	Y	Sustained	Agree-Sustained	This case was not included in the original cases but occurred during the audit review period.

Office of Public Safety Accountability (OPSA): External Audit Report

**An Audit of the Sacramento Police Department (SPD):
Misconduct Complaint Cases – Improper Search and Seizure**

Requested Date: Friday, April 28, 2023
Completed Date: Wednesday, May 3, 2023

REQUEST #2

The additional information in the ‘Case Details’ section of this spreadsheet was requested by the Sacramento Police Department Chief of Police, K. Lester, on Friday, April 28, 2023. The police chief requested the Office of Public Safety Accountability (OPSA) to specify the actual Fourth Amendment violation in each case where OPSA disagrees with the Sacramento Police Department (SPD) regarding the disposition of the case.

Number	SPD Case Number	Fourth Amendment Violation Y/N	SPD Case Dispositions	OPSA Case Dispositions	Case Information
1	COMPL2020-269	N			
2	COMPL2020-184	N			
3	COMPL2020-284	N			
4	COMPL2020-257	N			
5	COMPL2020-326	N			
6	COMPL2020-332	Y	Unfounded	Disagree-Sustained	<p>This was a prolonged traffic stop. Officers stopped complainant for an illegal window tint. After receiving his license, the officer ran his name. The officer then walked back to the car, held onto the complainant's license, and questioned him about a plastic bag initiating an unrelated investigation.</p> <p>The United States Supreme Court recently has reiterated that "a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures. <i>Rodriguez V. United States</i> 575 U.S. 348, (2015). Although this stop did not involve a dog sniff, the officer's failure to give back the complainant's license because he wanted to search a plastic bag without any reasonable suspicion is an issue.</p>
7	COMPL2020-156	N			
8	COMPL2020-279	N			
9	COMPL2020-248	N			
10	COMPL2020-139	Y	Unfounded	Disagree-Sustained	<p>An officer detained a media member for asking for an arrestee's name. The officer incorrectly believed that the media member was inciting a crime. However, asking for an arrestee's name is not inciting a crime. The officer ultimately released the media member. However, since the media member was detained in handcuffs without violating any laws this was an unreasonable detention. <i>Terry v. Ohio</i>, 392 U.S. 1, (1968).</p>
11	COMPL2020-145	N			
12	COMPL2020-186	N			
13	COMPL2020-196	Y	Sustained	Agree-Sustained	<p>This case was sustained by SPD.</p>
14	COMPL2020-238	Y	Unfounded	Disagree - Sustained	<p>The US Supreme court has held that allegations that an officer used excessive force should be analyzed under the 4th Amendment. Here the officer pushed a woman and knocked her cell phone out of her hand while she was filming officers. SPD sustained the conduct unbecoming allegation but not the 4th Amendment allegation. In <i>Graham v. Connor</i>, 490 US 386 (1989), the court ruled claims that law enforcement officers have used excessive force—deadly or not—in the course of an arrest, investigatory stop, or</p>

					other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard. Since the officer pushing and knocking the cell phone away from the citizen was unreasonable, it is also a technical violation of the Fourth Amendment.
15	COMPL2020-267	N			
16	COMPL2020-260	Y	Sustained	Agree-Sustained	This case was sustained by SPD.
17	COMPL2020-277	N			
18	COMPL2020-201	N			
19	COMPL2020-301	N			
20	COMPL2020-200	N			
21	COMPL2020-204	N			
22	COMPL2020-311	Y	Exonerated	Disagree-Sustained	Police performed a PRCS search on the complainant's car. The car was parked outside the complainant's residence in the driveway. The person on PRCS was not in the complainant's house nor was he in or near the car. Since the person was not near or in the car to exercise control over the vehicle, the search was not constitutionally sufficient.
23	COMPL2020-217	N			
24	COMPL2020-304	N			
25	COMPL2020-330	N			
26	COMPL2020-297	N			
27	IAD2021-013	N			
28	IAD2021-014	Y	Unfounded	Disagree-Sustained	Officers searched the room of someone not on probation or on parole and did not have their consent. Probation searches are limited to citizens on probation.
29	IAD2021-025	N			
30	IAD2021-026	Y	Sustained	Agree-Sustained	This case was sustained by SPD.
31	IAD2021-029	Y	Unfounded	Disagree-Sustained	The driver was pulled over for illegal window tint and no license plate. Officer ordered citizen out of car and patted him down. However, mere traffic violations do not grant officers authority to perform pat downs. Lawler 9 Cal.3d 156, 161(1973).
32	IAD2021-031	N			
33	IAD2021-037	Y	Exonerated	Disagree-Sustained	The driver was stopped for no front license plate and patted down. The pat down was performed without any indication the citizen was armed or dangerous. The search of

					the car was likely not sufficient. The citizen was compliant throughout interaction and officer discovered a very minimum amount of cannabis in his pocket.
34	IAD2021-042	N			
35	IAD2021-054	N			
36	IAD2021-059	N			
37	AD2021-071	N			
38	IAD2021-096	Y	Sustained	Agree-Sustained	This case was sustained by SPD.
39	IAD2021-097	N			
40	IAD2021-132	Y	Sustained	Agree-Sustained	This case was sustained by SPD.
41	IAD2021-232	N			
42	IAD2021-203	N			
43	IAD2021-204	N			
44	IAD2021-206	Y	Unfounded	Disagree-Sustained	Officer stopped the complainant for a window tint violation. The officer ordered the complainant out of the car, patted him down, and detained him in handcuffs. The officer immediately began investigating complainant for a burglary matter even though the officer had no description of the burglary suspect or suspects. This represented a prolonged stopped in violation of Rodriguez V. United States 575 U.S. 348, (2015).
45	IAD2021-211	N			
46	IAD2021-213	N			
47	IAD2021-215	N			
48	IAD2021-222	N			
49	IAD2021-223	Y	Unfounded	Disagree-Sustained	Officer pulled complainant over for speeding. The complainant was compliant. After running the complainant's license, officers returned to the car and ordered the complainant out of the car and performed a pat down. One officer can be heard saying "he pats everyone down". There was nothing about the complainant that would make a reasonable officer believe that the complainant was armed or dangerous. Although complainant did have a criminal record, California courts have held that knowledge of a person's prior criminal involvement is not, standing alone, sufficient to create reasonable suspicion.
50	IAD2021 - 227	N	Unfounded		SPD unable to find information on this case.
51	IAD2021-228	N			

52	IAD2021-229	Y	Unfounded	Disagree-Sustained	The driver was ordered out of the car and patted down without any reasonable suspicion of being armed and dangerous. In the report, officers talk about the citizen having a satchel as the main reason for the pat down. Officers must believe that the person they are patting down is armed or dangerous.
53	IAD2021-156	Y	Exonerated	Disagree-Sustained	Not in plain sight. Officers observed a dog that a citizen possibly complained about in a house while performing a welfare check. However, the officer did not immediately know whether the dog was hers or the other person's dog, so the officer tested the dog in violation of nonintrusive search to get probable cause. The plain sight doctrine requires that the incriminating character of the object must be immediately apparent. And thus, even nonintrusive tests are prohibited Arizona v. Hicks, 480 U.S. 321 (1987)
54	IAD2021-135	N			
55	IAD2021-146	Y	Sustained	Agree-Sustained	This case was sustained by SPD.
56	IAD2021-147	Y	Sustained	Agree-Sustained	This case was sustained by SPD.
57	IAD2021-154	Y	Sustained	Agree-Sustained	This case was sustained by SPD.
58	IAD2021-156	DUPLICATE	DUPLICATE	DUPLICATE	DUPLICATE CASE
59	IAD2021-159	N			
60	IAD2021-161	N			
61	IAD2021-164	N			
62	IAD2021-168	Y	Sustained	Agree-Sustained	This case was sustained by SPD.
63	IAD2021-175	N			
64	IAD2021-179	N			
65	IAD2021-185	N			
66	IAD2021-186	Y	Unfounded	Disagree-Sustained	Prolonged stop – Officers stopped a car for speeding. The subject's name was run and then the car was searched. Officers did not diligently try to enforce the traffic violation and instead focused solely on what was in the car. Rodriguez v. United States 575 U.S. 348, (2015).
67	IAD2021-187	Y	Sustained	Agree-Sustained	This case was sustained by SPD.

68	IAD2021-243	N			
69	IAD2021-250	Y	Sustained	Agree-Sustained	This case was sustained by SPD.
70	IAD2021-252	N	Unfounded		SPD unable to find information on this case.
71	IAD2021-253	N			
72	IAD2021-260	N			
73	IAD2021-262	Y	Unfounded	Disagree-Sustained	Officers went to the home to conduct a welfare check, but the person was not home. Neighbors advised that a single male lives at the house alone. One officer said he heard a baby crying but this was not heard through BWC. Officers forced their way inside without perceived exigency.
74	IAD2021-265	Y	Sustained	Agree-Sustained	This case was sustained by SPD.
75	IAD2021-268	N			
76	IAD2021-271	N			
77	IAD2021-276	N	Not Sustained		This matter occurred in 2014 and no information was available to prove or disprove the allegation.
78	IAD2021-278	N			
79	IAD2021-281	Y	Unfounded	Disagree-Sustained	Officer did not immediately recognize contraband. Per Minnesota v. Dickerson (1993), "plain feel" exception permits seizure only if the nature of the object was immediately apparent to the officer during the pat down.
80	IAD2021-003	N			
81	IAD2021-011	Y	Sustained	Agree-Sustained	This case was sustained by SPD.
82	IAD2022-027	N			
83	IAD2022-040	Y	Unfounded	Disagree-Sustained	Officer handcuffed 10-year-old who was not a threat to officers and who was only crying.
84	IAD2022-050	N			
85	IAD2022-052	N			
86	IAD2022-054	N			
87	IAD2022-059	N			

88	IAD2022-282	N			
89	IAD2022-061	Y	Unfounded	Disagree-Sustained	Several violations but Ybarra v. Illinois, 444 U.S. 85, (1979). In a public place, mere proximity to a wrong doer doesn't give police reasonable suspicion to pat down every person in the business without independent basis of reasonable suspicion. Police also detained patrons and customers for 20 minutes after it was clear that no wrongdoing had occurred. A sergeant snatched a cell phone out of the hands of a patron.
90	IAD2022-072	N			
91	IAD2022-073	N			
92	IAD2022-075	Y	Unfounded	Disagree-Sustained	The officer did not observe the complainant go into the vehicle. Thus, the probation search was invalid because the police did not observe complainant as a passenger of the vehicle. Officer pulled the vehicle over a block away. Then went and grabbed the probationer and walked him over to the traffic stop and proceeded to search vehicle.
93	IAD2022-079	N			
94	IAD2022-081	N			
95	IAD2022-090	Y	Unfounded	Disagree-Sustained	The officers were looking for the subject of a felony warrant and made entry into a house. Officers entered claiming that they could not see the hands of a person that was not the subject of the warrant. Yet, his hands were visible the entire time. The entry and arrest were unlawful. The police entered the residence and stayed in the living room arguing search incident to an arrest to search the living room. Violation of Payton v. New York 445 U.S. 573, (1980)
96	IAD2022-092	Y	Unfounded	Disagree-Sustained	Officers went to the location for a 911 hang up involving a woman being heard in the background crying. Although when officers arrived at the residence, they no longer heard a woman crying. The officers were also not sure if they were at the right house. Officers forced their way inside the house after the complainant did not consent to search. People v. Ovieda, 446 P. 3d 262 (2019)
97	IAD2022-106	N			
98	IAD2022-108	N			
99	IAD2022-114	N			
100	IAD2022-118	N			
101	IAD2022-010	N			
102	IAD2022-022	Y	Sustained	Agree-Sustained	This case was sustained by SPD.
103	IAD2022-039	Y	Sustained	Agree-Sustained	This case was sustained by SPD.

104	IAD2022-047	Y	Sustained	Agree-Sustained	This case was sustained by SPD.
105	IAD2022-068	N			
106	IAD2022-074	Y	Unfounded	Disagree-Sustained	This was a routine traffic stop for speeding. There was no information advising the driver was armed and dangerous. Officer performed an unlawful pat down with no indication that the driver was armed or dangerous. This was a routine traffic stop for speeding and thus did not necessitate a pat-down.
107	IAD2022-080	N			
108	IAD2022-121	N			
109	COMPL2019-143	Y	Unfounded	Disagree-Sustained	This case was not included in the original cases. Although it occurred before the review period, it was reviewed and adjudicated during the review period.
110	IAD2021-165	Y	Sustained	Agree-Sustained	This case was not included in the original cases but occurred during the audit review period.



Policy: Search and Seizure

3.08.03

Effective: 4/18/2018

Authority: [Penal Code §833](#), [§1203.71](#), & [§3453](#)

Replaces: 3.08.03
(9/1/2015)

Responsible for Updates: Division Directors

Karen L. Metcher

4/18/2018

Approved by

Chief Adult Probation Officer

Date

Forms

- APD-31 – Property Receipt
- APD-77 – Field Plan
- APD-233A – Incident Report
- APD-233B – Supplemental Incident Report

I. Principles

The Fourth Amendment to the U.S. Constitution guarantees all persons the right to be free from unreasonable search and seizure. Even when the Court has imposed a warrantless search condition, all searches must be conducted reasonably to ensure that clients' rights are protected and that any evidence obtained through a search is admissible if needed for a Court proceeding.

Table of Contents

I. Principles	1
II. Policy	1
Authority to Search or Seize	2
Search & Seizure Guidelines	3
III. Procedures – Search	5
Pre-planning Residential Searches Pursuant to a Warrantless Search Condition	5
Conducting a Person, Property, or Residential Search	6
IV. Procedures – Seizure	7
Evidence or Contraband that May be Presented in Court	7
Contraband that Will Not be Presented in Court	8
Follow-Up & Documentation	8
Compliance	9

II. Policy

The Adult Probation Department is committed to protecting the public by providing evidence-based supervision practices and enforcing Court orders. Probation officers may use their discretion to employ their search and seizure authority for these purposes as dictated by law and as further outlined in this policy. Whether in the field or office, the safety of sworn staff, the client, and the public is of utmost importance and must be a high priority in any decision to search. All searches – whether person, vehicle, or residential – must be conducted with at least two officers. The only exception is when an exigent circumstance search is appropriate due to a perceived immediate threat or danger to any person.

Officers must always exercise caution and sound judgment to determine when it is lawful, safe, and procedurally sound to conduct search or seizure activities, and to determine when it is preferable to collaborate with law enforcement partners. Officers always have the option to disengage from a search and take alternative steps, including but not limited to: leaving the scene, requesting SFPD assistance, having the client report for an office visit, consulting the SPO, or addressing noncompliance with search conditions per Rewards and Responses to Client Behavior Policy 5.02.04.

Revision History: 9/1/15; 1/8/15

Probable Cause:

Probable cause is a stronger standard of evidence than reasonable suspicion, but a lower threshold than what is required to secure a criminal conviction. Probable cause must exist for a law enforcement officer to make an arrest without a warrant, to obtain a search or arrest warrant from a court, or to make a plain view seizure in the belief that the property is incriminating.

Reasonable Suspicion:

Reasonable suspicion must exist for a law enforcement officer to conduct a Terry search, temporarily detain non-client third parties (not including the occupants of a residence during a search of that residence), or conduct a protective sweep of areas controlled exclusively by third parties. Reasonable suspicion is a lower threshold than probable cause but still requires specific, articulable facts to suspect that someone is engaged in criminal activity. It is more than a guess or a hunch.

Authority to Search and Seize

Officers may exercise their discretion to search as follows.

1. **Warrantless Search Condition:** All postrelease community supervision (PRCS) clients and many mandatory supervision and probation clients have warrantless search conditions for their person and property. Officers may exercise their discretion to conduct a search that falls within the scope of the search condition. Officers must always verify – and never assume – that a client has a valid search condition and is still on active supervision.
2. **Terry Search:** To ensure safety, officers may conduct a limited pat down of a person's outer clothing to search for weapons (Terry search) if the officer has reasonable suspicion, based on specific articulable facts, which would warrant a reasonable officer to suspect that a person may possess a weapon. If the outer search identifies an object that the officer believes to be a weapon, the officer may reach inside the pockets or inner garments in order to seize the object. If the outer clothing search identifies an object that the officer immediately recognizes as contraband, the officer may seize that item. If unsure whether the object is contraband, the officer cannot conduct a more thorough search unless the client has a search condition or there is probable cause to believe the object is contraband.ⁱ
3. **Plain View Doctrine:** An item that is in an officer's plain sight can be seized if the officer is on the premises legally (e.g., conducting a home visit) and the officer has probable cause to believe the item is incriminating.ⁱⁱ Note: See below regarding SFPD assistance for evidence that may be used in Court.
4. **Search Incident to an Arrest:** After lawfully arresting a person, officers may search the arrestee and his or her immediate belongings, and may search areas under the arrestee's immediate control.ⁱⁱⁱ
5. **Consent Search:** In the absence of or in addition to other legal justification, officers may ask a person's permission to search.
 - Consent must be obtained voluntarily and expressly, not as the product of explicit or implicit coercion.^{iv}
 - The person may limit the scope of a consent search (e.g., the areas to be searched or the duration) and may revoke consent at any time, at which point officers must withdraw from the search.^v
6. **Exigent Circumstance Searches:** The urgency of some situations may make a search reasonable under the Fourth Amendment. In the absence of a warrantless search condition, officers may initiate an exigency search if there is a threat of death or serious bodily harm or to aid those in distress. Officers may not initiate other types of exigency searches (hot pursuit of a suspect, imminent destruction of evidence), but may assist law

Safety

Safety is always a top priority when conducting search or seizure activities. Officers must always reevaluate safety considerations before and during a search and disengage from the search if it becomes unsafe to proceed.

Transgender Clients

Transgender refers to a person who is born with genetic traits and anatomy of one sex but who self-identifies as another sex. A transgender person can be pre-operative, post-operative, or non-operative.

When an individual is identified as a transgender person, Department employees shall respect the gender identification expressed by the individual. Staff shall not inquire about intimate details of anatomy or surgical status; proof of an individual's gender is not required.

enforcement partners with such searches that arise during authorized field assistance.

Note: A standard warrantless search condition **does not** extend to electronic devices.^{vi} Officers have authority to search electronic devices (computers, cell phones, tablets, gaming systems, etc.) only if the client is on PRCS (PC §1546.1(c)(9)), a probation or mandatory supervision client has a clear and unambiguous electronic device search condition (PC §1546.1(c)(10)), or the client specifically consents to the device's search (PC §1546.1(c)(4)).

Search and Seizure Guidelines

1. **Safety Equipment:** Officers must always have their badge and Department ID on hand, and must wear puncture-resistant gloves whenever possible. For any search in the field, each officer must also have required field gear per Safety and Field Equipment Policy 3.04.03.
2. **Person Searches:** The officer who searches the client's person should wear puncture-resistant gloves and should be of the same gender as the client whenever possible. If the client identifies as transgender, officers should ask whether the client prefers to be searched by a male or female officer and should accommodate that preference whenever possible. Officers shall not conduct strip searches under any circumstances.
3. **Residential Searches:** Officers must always exercise due diligence to be familiar with a client's circumstances, home situation, mental health, substance abuse, weapons and other history in order to determine any potential safety risk that a residential contact may pose.
 - a. Residential searches must be pre-planned and case-conferenced with the SPO. Exceptions can be made when cause to search arises unexpectedly and the search can be safely conducted with the number of officers present. SFPD backup must be obtained as needed.
 - b. Officers may search a residence in the client's absence if the client has a warrantless search condition and officers are granted access by an authorized resident of the home or a hotel manager if an APD-managed housing unit.
4. **Conduct and Disruption to Property:** Officers must always demonstrate good judgment and respect for personal property. Disruption to a client's property or residence must be limited to only that which is necessary to complete the search.
5. **Force or Resistance:** Whenever possible, officers must use verbal de-escalation skills to resolve any resistance to a search. Refusal to comply with a warrantless search condition should generally be handled as a technical violation per Rewards and Responses to Client Behavior Policy

Field Assistance Authorization

Requests for field assistance to law enforcement partners require approval as follows:

1. SPO approval if assisting SFPD or SFSD.
2. Division Director approval if assisting any other law enforcement agency.
3. Chief Adult Probation Officer approval for a Special Operation (see Special Operations with Law Enforcement Agencies Policy 3.08.01).
4. Under exigent circumstances, officers may render mutual aid to law enforcement partners without prior approval.

Note: Department staff are prohibited from assisting Immigration and Customs Enforcement (ICE) to enforce civil immigration laws, including any investigation, detention, or arrest. See Immigrant Clients and Compliance with the Sanctuary Ordinance Policy 3.06.01.

- 5.02.04. Reasonable force may be used to effect a search if necessary for officer, client, or public safety.
6. **Scope:** Searches must stay within the appropriate scope, which will depend on the search authority. The scope of a warrantless search condition includes the entire residence if the client lives alone. If there are co-residents, the search is limited to rooms that the officer reasonably believes are controlled solely by the client or jointly with another person; rooms under the exclusive control of third parties cannot be searched under the search condition.^{vii}
7. **Reasonableness:** All searches must be reasonable. The reasonableness depends on the circumstances and authority to search. In particular, searches pursuant to a warrantless search condition could be unreasonable if made too often; if at an unreasonable hour; if conducted after a series of recent unproductive searches and there is no reason to believe the next search will be fruitful; if unreasonably prolonged, destructive, or unnecessarily intrusive; or for other factors that illustrate arbitrary, capricious, or harassing conduct.^{viii}
8. **Children:** Children can experience trauma when witnessing their home or loved ones being searched. In line with the Department's family-focused approaches, officers must make all efforts to minimize trauma to children during searches and to avoid conducting searches in the presence of children when possible. See below for specific steps.
9. **Managing Third Parties:** Officers may detain and/or conduct Terry searches on third parties in the course of a probation search if the officer has reasonable suspicion, based on specific articulable facts, that the person has a weapon or presents an immediate safety risk. However, non-residents should not be detained for the duration of the search unless specific, articulable facts connect them to criminal activity on the premises or if they would present danger to officers if released.^{ix}
10. **Assisting Partner Agencies:** With proper authorization (see text box), officers may assist law enforcement partners to conduct searches. Note that police officers have the authority to conduct probation searches without probation assistance or permission. However, staff should advise police officers about the scope of the warrantless search condition.
11. **Seizure:** Officers may exercise their discretion to seize contraband that is in the officer's plain view or identified during the course of a properly conducted search when safe to do so. Upon finding evidence that may be presented in Court, regarding either a new crime or a technical violation, officers must request that police respond and seize the evidence. Officers may only handle the evidence in extraordinary circumstances, such as to remove a weapon from an arrestee's person or if officer safety will be at immediate risk while waiting for SFPD response. If evidence is potentially dangerous (such as a methamphetamine lab or explosives), officers must

get to safety and request SFPD response. If safe to do so, officers may also encourage or assist occupants to exit the building. DPOs must consult an SPO if unsure how or whether to handle a specific item.

III. Procedures – Search

Pre-Planning Residential Searches Pursuant to a Warrantless Search Condition

Pre-planning steps include:

1. Verify the warrantless search condition.
2. Run local and state record checks (including QCA, QRAP, QALL, QHY, QN, and QW) to ensure the officer has updated information and that the client is not already in custody.
3. Verify that it is reasonable to believe that the client lives at the search location, at least temporarily.^x A motel room can constitute a residence if the client has legal and controlled access to the room.^{xi}
4. Determine the client's history of violence, weapons, mental health issues, substance abuse, etc.
5. Whenever possible, identify the layout of the residence, including exits.
6. Attempt to determine whether anyone who is likely to be at the search location poses a safety issue. If any third parties are known to be Department clients or on parole, attempt to notify the assigned DPO or parole agent of the intended search and coordinate or share information as appropriate.
7. Ensure that necessary field safety equipment and property envelopes/forms are on hand.
8. For field searches, complete a Field Plan APD-77 and provide the SPO/covering SPO with a copy. The team can complete one Field Plan, but must submit copies to each SPO if from separate Units. See also Field Safety Policy 3.08.04.
9. Case conference with the SPO. SPO approval is required to proceed.
10. Obtain any additional assistance needed, including SFPD assistance when necessary. Consider the team's ability to communicate effectively with limited English-language speaking clients or co-residents.
 - Brief assisting officers on the above information.
 - Determine who will be the lead officer and direct all search activities at the scene.

Children and Searches

Children can experience trauma when witnessing their home or a loved one being searched. In line with APD's family-focused approaches, officers must take basic – yet important – steps to minimize trauma to children during searches.

Person Searches

A person search may be authorized either when there is a warrantless search condition, the person consents, incident to an arrest, or if the officer has reasonable suspicion that the person may possess a weapon.

- Determine who will conduct a protective sweep of the residence, monitor subjects within the residence, and serve as the “finder” and “recorder.” Finders shall locate and describe evidence/contraband and recorders shall carefully document a description of each item, where it is found, and how it is secured (e.g., placed in a property envelope).

Conducting a Person, Property, Vehicle, or Residential Search

1. Ensure authority to search, depending on the circumstances (e.g., verify the warrantless search condition, obtain written consent, determine that there is reasonable suspicion that the person may possess a weapon, etc.).
2. Use effective communication, including motivational interviewing skills, to facilitate compliance and minimize impact to the officer-client relationship. Officers shall do the following when possible:
 - Briefly explain the purpose and scope of the intended search.
 - Prior to a person search, ask whether the client has any sharp objects in his or her pockets. This is preferable to asking general or investigatory questions such as “what is in your pocket,” which may elicit an incriminating response.

Note: For *Miranda* purposes, a client is in custody during a probation search because the client is not free to leave and may be the subject of the search.^{xii} As a result, officers shall use caution when asking questions that may illicit an incriminating response without first issuing a *Miranda* warning. The client’s statements may be admissible for a probation violation but may not be admissible in a new criminal proceeding.^{xiii} See Advisement of *Miranda* Rights Policy 3.08.03.

3. For residential searches pursuant to a warrantless search condition, officers must adhere to all field safety standards. The lead officer will ensure that the following steps are taken:
 - Notify SFPD dispatch via radio upon arriving at and when leaving the location.
 - Double check arrival at the correct address before approaching the building.
 - Before officers enter under the authority of a search warrant, arrest warrant, or warrantless search condition, officers must knock and announce their presence and purpose. Officers may enter the residence if the client refuses or does not respond after a reasonable amount of time, and the officers believe the client is inside;^{xiv} most Courts require a minimum 10-20 second wait.^{xv} The level of force must be reasonable

to the circumstances, and officers must have an articulable reason that immediate entry is necessary.

- Ask if there are any animals or other people on the premises.
 - Make a protective sweep of the common areas and areas in which the client has exclusive or joint control. The protective sweep can extend to other areas of the residence, such as a third party's bedroom, only if there is reasonable suspicion, based on specific articulable facts, which would warrant a reasonable officer to suspect that there may be a person on the premises who poses a danger to officers or others.^{xvi}
 - The client may be handcuffed for the duration of the search when circumstances warrant it for safety purposes. Refer to Handcuffing Policy 3.08.05 for guidelines.
 - As stated above, a non-client third party may be Terry searched or handcuffed if the officer has reasonable suspicion, based on specific articulable facts, that the person presents an immediate safety risk.^{xvii}
4. If a child is present, make every effort to conduct the search in a manner that minimizes trauma to the child.
 5. If the client is uncooperative, the officer must handle the matter reasonably and in accordance with Use of Force Policy 3.02.01.
 6. If the officer believes he or she has identified evidence of criminal activity by a third party (including a juvenile), the officer shall immediately call for SFPD response and may not ask incriminating questions in the meantime.
 7. If at any point the officer believes that he or she has identified evidence that the client has committed a new crime, the officer shall either read the client his or her *Miranda* rights prior to proceeding with questioning, or stop questioning and allow the police to proceed with the matter. Any *Miranda* violations may result in evidence being inadmissible in Court. See Advisement of *Miranda* Rights Policy 3.08.02.
 8. If exposed to any hazards – such as a needle prick, potential communicable disease, or dangerous chemicals – officers should immediately notify the SPO and seek medical attention as needed.

IV. Procedures – Seizure

Evidence or Contraband that May be Presented in Court

Upon finding physical evidence that may be presented in Court, either regarding a new crime or a technical violation, officers must request SFPD response and allow SFPD to process and take possession of the evidence. Officers may detain the client while waiting for SFPD response.

To ensure chain of custody, officers may not handle evidence/contraband that may be presented in Court except in extraordinary circumstances, such as:

- To remove a weapon from an arrestee's person.
- If officer safety will be at immediate risk while waiting for SFPD response. Officers must meticulously document the details of the seizure on a property receipt and designate one officer to take possession of items and bring them to the nearest SFPD district station.

Contraband that Will Not be Presented in Court

For contraband that will not be presented in Court:

1. The recorder shall document each item seized on a property receipt (APD-31) or stabilization housing room check form, if applicable. Provide the client with a copy and place the other in the client's file.
2. One officer shall fill out a property envelope and place the contraband in the envelope; if too large, secure the envelope to the item.
3. One officer shall take possession of the contraband and bring it to Southern Station or the nearest district station for processing. Obtain a receipt or copy of the property log (to be retained in the client's file) and an incident report number from SFPD. If the officer at the station does not want to take the contraband, request to see a sergeant.

Follow-Up and Documentation

1. If resistance, force, injury, or other issues arise during the course of a residential search, the lead officer shall coordinate debriefing with the SPO and Department search team. The SPO shall follow up as appropriate if significant training or procedural issues are identified.
2. Per Incident Reports Policy 3.02.04, the primary reporter shall file a Department Incident Report APD-233A within one business day of each person, property, residence, or vehicle search or seizure, with the exception of standard security screenings during home visits, at the Community Service and Assessment Center (CASC), or at the Bayview office which do not result in seizure. Note whether the client was cooperative.
 - If any items were seized or an issue arose (such as force, resistance, injury), all involved officers must submit a Supplemental Incident Report APD-233B to the lead officer's SPO within one business day. If force is used, refer to Use of Force Policy 3.02.01.
3. Place a copy of the property receipt and/or SFPD receipt in the client's file.

4. The lead officer shall document details of the search and/or seizure in the Department's case management system, including:
 - Reason and legal authority.
 - Date, time, and location.
 - Evidence or contraband seized, what agency seized it, and its disposal or storage.
 - Lab results from seized items, if applicable.
 - The Department Incident Report number.
 - The SFPD Incident Report number, if applicable.
 - If a transgender client, document whether the client prefers to be searched by a male or female officer.

Compliance

The Department strives to adequately train all staff in order to ensure that staff are successful in carrying out their duties in a manner consistent with all federal, state, and local laws and all policies of the Department and the City and County of San Francisco. Violation of this policy will be reviewed on a case by case basis, but may result in discipline, up to and including termination, in accordance with appropriate progressive discipline policies and collective bargaining agreements.

ⁱ *Terry v. Ohio* (1968) 392 U.S. 1; *People v. Lee* (1987) 194 Cal.App. 3d 975; *People v. Thurman* (1989) 209 Cal.App. 3d 817

ⁱⁱ *Harris v. U.S.* (1968) 390 U.S. 234; *Coolidge v. New Hampshire* (1971) 403 U.S. 443; *U.S. v. Giannetta* (1990) 909 F.2d 571

ⁱⁱⁱ *U.S. v. Martin* (1950) 183 F.2d 436; *Chimel v. California* (1969) 395 U.S. 752; *U.S. v. Workman* (1978) 585 F.2d 1205; *Illinois v. LaFayette* (1983) 462 U.S. 640

^{iv} *Schneekloth v. Bustamonte* (1973) 412 U.S. 227

^v *Pace v. U.S.* (1990) 893 F.2d 1103

^{vi} *Riley v. California* (2014) 573 U.S. 783; *U.S. v. Lara*, No. 14-50120 (9th Cir. 2016)

^{vii} *People v. Woods* (1999) 21 Cal.4th 668

^{viii} *Griffin v. Wisconsin* (1987) 483 U.S. 868; *In re: Anthony S.* (1992) 4 Cal.App. 4th 1000; *People v. Reyes* (1998) 19 Cal.4th 229

^{ix} *People v. Thurman* (1989) 209 Cal.App. 3d 817; *People v. Glaser* (1995) 11 Cal.4th 354; *People v. Matelski* (2000) 82 Cal.App. 4th 837; *Muehler v. Mena* (2005) 544 U.S. 93; *Sanchez v. Canales* (2009) 574 F.3d 1169; *People v. Rios* (2011) 193 Cal.App.4th 584.

^x *People v. Mason* (1971) 5 Cal.3d 759; *People v. Biddinger* (1996) 49 Cal.Rptr. 2d 91; *People v. Downey* (2011) 198 Cal.App.4th 652

^{xi} *U.S. v. Franklin* (2010) 603 F.3d 652

^{xii} *People v. Wilson* (1968) 268 CA 2d 581; *People v. Farris* (1981) 120 Cal.App 3d 151.

^{xiii} *People v. Cressy* (1996) 47 Cal.App.4th 981

^{xiv} *People v. Rosales* (1968) 68 Cal.2d 299; PC 844

^{xv} *U.S. v. Allende* (1973) 486 F.2d 1351 (9th Cir.)

^{xvi} *Maryland v. Buie* (1990) 494 U.S. 325; *People v. Ledesma* (2003) 106 Cal.App.4th 857

^{xvii} *People v. Thurman* (1989) 209 Cal.App. 3d 817; *Muehler v. Mena* (2005) 544 U.S. 93; *Sanchez v. Canales* (2009) 574 F.3d 1169

Policy 1112



Subject	
FIELD INTERVIEWS, INVESTIGATIVE STOPS, WEAPONS PAT-DOWNS & SEARCHES	
Date Published	Page
9 February 2021	1 of 24

By Order of the Police Commissioner

PURPOSE

The purpose of this policy is to ensure that Baltimore Police Department (BPD) members conduct all Voluntary Contacts, Field Interviews, Investigative Stops, Vehicle Stops, Weapons Pat-Downs, Searches and Arrests in accordance with the rights secured and protected by the U.S. Constitution, federal and state law, as well as BPD policy. This policy instructs members on how to conduct any interaction with persons fairly and respectfully, to enhance trust between the Department and the community it serves. Additionally, this policy provides guidance to supervisors on proper response, review and documentation regarding the aforementioned law enforcement activities.

CORE PRINCIPLES

Constitutional Stops. Members may conduct a brief stop of a person when there is Reasonable Articulate Suspicion (RAS) to believe that they have committed, are committing, or are about to commit a crime under the Supreme Court's decision in *Terry v. Ohio*, 392 U.S. 1 (1968), and consistent with the 4th and 14th Amendments to the Constitution and Article 26 of the Maryland Declaration of Rights.

Procedural Justice. Procedural justice refers to the perception of fairness and impartiality in an encounter by treating all persons with dignity and respect, giving persons a voice during encounters, being impartial in their decision making, and conveying trustworthy motives. Conduct that conforms to these principles has the potential of building community trust and confidence in the police and the community's willingness to cooperate with police to advance shared public safety goals.

Distinct and Separate Actions. A Voluntary Contact, Field Interview, Investigative Stop, Vehicle Stop, Weapons Pat-Down, Search, and Arrest are distinct and separate actions, and each is governed by different legal and policy standards depending on the action. An Investigative Stop or a Voluntary Contact between the police and the community **DOES NOT** automatically justify a Weapons Pat-Down or a Search (refer to the table on page 3 of this policy).

Non-Discriminatory Policing. Members are prohibited from relying, to any extent or degree, on a person's race, ethnicity, national origin, religion, gender, sexual orientation, age, disability, gender identity or expression, or affiliation with any other similar identifiable group as a factor in conducting a Field Interview, Investigative Stop, Vehicle Stop, Weapons Pat-Down, Search, or Arrest except when physically observable as part of an actual and credible description of a specific suspect or suspects in any criminal investigation that includes other appropriate non-demographic identifying factors (such as clothing or associated vehicle). See Policy 317, *Fair and Impartial Policing*.

DEFINITIONS

Contacts

Voluntary Contact – A non-investigative consensual encounter between a BPD member and one or more person(s) with the intent of engaging in a casual and/or non-investigative conversation (e.g., chatting with a local business owner or resident). The person(s) is free to leave or decline any request by the member at any point.

Field Interview – A consensual, non-hostile Voluntary Contact during which a member may ask questions or try to gain information about possible criminal activity without indicating or implying that a person is not free to leave or is obligated to answer the member's questions.

Investigative Stop – The temporary involuntary detention and questioning of a person where the person was stopped based on Reasonable Articulate Suspicion that the person is committing, is about to commit, or has committed a crime. It occurs whenever a member uses words or takes actions to make a person halt, or to keep a person in a certain place, or to compel a person to perform some act. If a reasonable person under the circumstances would believe that they are not free to leave, a "stop" has occurred.

Vehicle Stop – The involuntary detention of a vehicle and the driver and/or the occupants of the vehicle.

Weapons Pat-Down – A brief, non-probing running of the hands over the outside of a person's clothing feeling for a weapon with an open palm. A Weapons Pat-Down is authorized when the member has Reasonable Articulate Suspicion that the person is armed, and the pat-down is designed to ensure the safety of members and others while a member is conducting an investigation. This can include situations in which the member reasonably suspects that the person has committed, is committing, or is about to commit a violent crime or when the member observes something on the person that they reasonably suspect is a weapon. A Weapons Pat-Down may not be conducted to discover evidence or the proceeds or instrumentalities of a crime. A member cannot "pat-down" a bag or item of personal property unless the member has a reasonable suspicion that the person is armed and the bag or item could contain a weapon and is within the person's reach.

Search – An inspection, examination or viewing of persons, places, or items in which a person has a legitimate expectation of privacy. A Search need not be visual; it may include grasping, prying into or manipulating persons or objects (e.g., reaching into a purse or pocket, feeling inside of the trunk of a car; physical manipulation of a duffel bag, etc.). In some circumstances, a dog sniff may constitute a Search as well. See Policy 1602, *Canine Procedures*.

Arrest – The taking, seizing or detaining of a person by any act that indicates an intention to take the person into custody by a BPD member, and that subjects the person to the actual control and will of the member making the arrest. An arrest is effected (1) when the arrestee is physically restrained or (2) when the arrestee is told of the arrest and submits. In addition, a person is seized within the meaning of the Fourth Amendment when, "In view of all the circumstances surrounding the incident, a reasonable person would have believed that they were not free to leave." An arrest requires Probable Cause that a crime was committed or is being committed.

General Terminology

Boilerplate Language — Words or phrases that are standardized, “canned” or patterned and that do not describe a specific event, situation or set of circumstances (e.g., “furtive movement” or “fighting stance”).

Demographic Category — Race, ethnicity, color, national origin, age, gender, gender expression or identity, sexual orientation, disability status, religion, or language ability.

Pretext Stop — Stopping a person for an infraction to investigate other suspected or possible criminal activity for which the BPD member has neither RAS nor Probable Cause. Members must have RAS for the infraction or violation for which they are stopping a person.

Probable Cause — Where facts and circumstances taken as a whole, known to the member at the time of the arrest, would lead a reasonable member to believe that a particular person has committed or is committing a crime. As with Reasonable Articulate Suspicion, Probable Cause is based upon an objective assessment of the facts and circumstances presented to the member.

Reasonable Articulate Suspicion (RAS) — A well founded suspicion based on specific, objective, articulable facts, taken together with the member’s training and experience, that a subject has committed, is committing, or is about to commit a crime.

DIRECTIVES

A quick reference chart is provided below to assist members in determining the minimum legal and reporting requirements for each type of contact with a person.

TYPE OF CONTACT	JUSTIFICATIONS		MINIMUM FORMS REQUIREMENT		
	Reasonable Articulate Suspicion	Probable Cause	Citizen/Police Contact Receipt	Form 309	Incident Report, Form 8
Voluntary Contact					
Field Interview			X		
Investigative Stop	X*			X	X
Weapons Pat-Down	X*			X	X
Searches		X		X	X
Arrest		X			X
Vehicle Stop – traffic violation		X	X		

Vehicle Stop – criminal investigation	X		X		X ¹
--	---	--	---	--	----------------

* Remember that for an Investigative Stop, the member must have RAS that the person is committing, is about to commit, or has committed a crime. For a Weapons Pat-Down, the member must have RAS that the person is armed.

Voluntary Contacts

1. Members are encouraged to conduct Voluntary Contacts in order to enhance communication, trust and understanding between BPD and members of the public.
2. Strong relationships between members and community residents are a key aspect of community policing and a significant contributor to neighborhood safety. Voluntary Contacts are a great way to build strong relationships, as well as to foster community support in crime prevention and intervention efforts.
3. Voluntary Contacts, like all other community contacts, shall be conducted in a friendly, professional manner.
4. Voluntary Contacts do not require any written documentation or Body-Worn Camera (BWC) recording.
5. If the member is seeking information about a suspected crime, the Voluntary Contact becomes a Field Interview.

Field Interviews

Required Actions

6. A member may initiate Field Interviews for legitimate law enforcement purposes. The person is free to end the Field Interview at any time and refuse to answer the member's questions.
7. Members conducting a Field Interview shall:
 - 7.1. Activate BWC at the onset of the observation or activity on which they base their decision to conduct a Field Interview, and shall not deactivate BWC until the completion of the Field Interview (see Policy 824, *Body-Worn Camera*);
 - 7.2. Before asking any questions, introduce themselves by name and rank unless exigent circumstances require gathering information immediately;
 - 7.3. Use words, tone, and actions indicating that the person's responses are voluntary, and refrain from using words or actions that tend to communicate that the person(s) are not free to leave or that they must answer questions (e.g., blocking path of person's vehicle, placing hands on shoulder, holding a person's property); and

¹ Member must complete an Incident Report, Form 8, when conducting a Vehicle Stop, when that stop leads to an Investigative Stop, Weapons Pat-Down, Search or Arrest.

- 7.4. If asked by the person(s) whether they are free to leave or may decline to answer questions, inform them that they may decline to answer and leave without consequences.
8. If a person refuses to answer questions during a Field Interview, they must be permitted to leave. A person's failure to stop, refusal to answer questions, decision to end the encounter, or decision to walk or run away, cannot be used as the basis for establishing RAS or to extend the encounter or further intrude on the person through an Investigative Stop, Weapons Pat-Down, Search, or Arrest of the person.
9. If asking a person to identify themselves, members must inform the person(s) that providing identification is voluntary. People are not required to carry any means of identification, nor are persons required to identify themselves or account for their presence in a public place.
10. The duration of the Field Interview should be as brief as possible. The success or failure of a meaningful Field Interview rests on the member's ability to put the person at ease and establish a rapport.

Prohibited Actions

11. Because a person is free to end the Field Interview at any time and to refuse to answer the member's questions, members shall not engage in conduct that would lead a reasonable person to believe they must comply, provide identification, or respond. Where many people view a marked patrol car, police uniform, firearm or other weapons as symbols of authority and potential coercion, members shall act in a manner that would inform a reasonable person that the encounter is voluntary, such as using a non-coercive tone of voice, asking questions, and refraining from giving orders.
12. Field Interviews shall not be conducted in a hostile or aggressive manner, or as a means of harassing any person or attempting to coerce a person to do anything (e.g., leave the area, consent to a Search, etc.).
13. Taking action intended to create RAS without previous particularized facts to justify action, such as "jump outs."
14. Targeting treatment facilities and prior arrestees for CDS possession, based solely on knowledge of drug addiction.

Documentation Requirements

All Field Interviews require the completion and issuance of a Citizen/Police Contact Receipt (See Appendix A).

Investigative Stops

The Fourth Amendment of the U.S. Constitution protects individuals from unreasonable seizure when they are lawfully present in a place. It permits officers to briefly detain a person for investigation where an officer has a reasonable suspicion that a person is involved in criminal activity.

Justification

15. Reasonable Articulate Suspicion (RAS) is an objective legal standard that is less than Probable Cause but more than a hunch or general suspicion. RAS depends on all of the circumstances which the member observes and the reasonable assumptions that are drawn based on the member's training and experience. RAS can result from a combination of particular facts, which may appear harmless in and of themselves, but taken together amount to reasonable suspicion.
16. RAS should be founded on specific and objective facts or observations about how a person behaves, what the person is seen or heard doing, and the circumstances or situation in regard to the person that are/is either witnessed or known by the member. Accordingly, RAS must be described with reference to facts or observations about a particular person's actions or the particular circumstances that a member encounters. The physical characteristics of a person are never, by themselves, sufficient. Instead, those characteristics must be combined with other factors, including a specific, non-general description matching the suspect or the observed behaviors of the person.

Required Actions

17. For all Investigative Stops, a member must possess specific and articulable facts which, combined with rational assumptions from these facts, reasonably warrant a belief that the person is committing, is about to commit, or has committed a crime.

NOTE: One factor alone is typically not sufficient to establish RAS and circumstances will vary in each case.

18. Before conducting an Investigative Stop, members must:
 - 18.1. Activate BWC at the onset of the observation or activity on which they base their reasonable suspicion, to the extent practicable and safe, and shall not deactivate BWC until the completion of the Investigative Stop.
 - 18.2. Notify the dispatcher and include the location, number of persons being stopped and whether additional units are needed, and when safe to do so, a brief basis for the stop.
 - 18.3. Always determine whether the circumstances warrant a request for backup assistance and whether the Investigative Stop can and should be delayed until such backup arrives.
19. During an Investigative Stop, members must:
 - 19.1. Remain courteous and respectful at all times.
 - 19.2. Inform the person(s) stopped that they are not free to leave, and explain the reason for the stop if safe and practicable to do so.
 - 19.3. Limit questions to those relevant and necessary to resolve the member's suspicions.
 - 19.4. Ensure that the person is stopped for only that period of time necessary to effect the purpose of the stop. If the stop is not brief, then it may become an arrest and must be supported by Probable Cause.

20. The scope of the stop must be tied to the basis for it. Actions that would indicate to a reasonable person that they are being arrested or indefinitely detained may convert an Investigative Stop into an arrest, which would require Probable Cause or an arrest warrant. Unless justified by the RAS for the original stop, members must have additional articulable justification for further limiting a person's freedom during an Investigative Stop by doing any of the following:
- 20.1. Taking a person's identification or driver's license away from the immediate vicinity;
 - 20.2. Ordering a motorist to exit a vehicle;
 - 20.3. Directing a person to stand (or remain standing), or to sit any place not of their choosing;
 - 20.4. Directing a person to lie or sit on the ground;
 - 20.5. Applying handcuffs;
 - 20.6. Transporting any distance away from the scene of the initial stop (including for the purpose of witness identification);
 - 20.7. Placing a person into a police vehicle;
 - 20.8. Pointing a firearm;
 - 20.9. Performing a Weapons Pat-Down;
 - 20.10. Or any level of force.
21. Notify a supervisor immediately, as soon as it is safe to do so, if the person is:
- 21.1. Injured during the Investigative Stop or complains of injury;
 - 21.2. Transported from the initial place of contact;
 - 21.3. Stopped more than 20 minutes; or
 - 21.4. Handcuffed and/or subjected to an Arrest and control technique.
- NOTE:** When the encounter is over, it is over. Member shall not detain the person for longer than needed in order to wait for the arrival of a supervisor.
22. Members shall immediately release a person from an Investigative Stop if:
- 22.1. The member no longer has RAS that the person is committing, is about to commit, or has committed a crime; or
- NOTE:** This may occur when, upon stopping the person, the member learns that the person is not a specific suspect being sought or that the person's actions or behaviors are justified and do not indicate a violation of law.

- 22.2. If the member fails to develop the Probable Cause necessary to arrest within a reasonable time.
23. Members shall not transport or otherwise move the person from the location where they are stopped unless they voluntarily consent or there is an exigency necessitating relocation (e.g., hostile crowd, immediate threat to safety, etc.).
- NOTE: If intending to move the person from the stop location as a result of one of the above circumstances, obtain the approval of a permanent-rank supervisor before relocating the person and inform the supervisor where the person will be taken.
24. If the person stopped is to be released:
- 24.1. Immediately release the person and explain the reason for the Investigative Stop and the release.
- 24.2. If the person was taken to another location, provide return transportation to the scene of the initial stop.

Prohibited Actions

Members are prohibited from:

25. Conducting Pretext Stops that lack RAS that the subject has committed, is committing, or is about to commit a crime or on the basis of a person's race, national origin, or other demographic categories. Such stops may violate the Fourteenth Amendment, federal law, and BPD policies;
26. Conducting Pretext Stops in which the pretext justification is loitering or misdemeanor trespass. This does not prohibit stops that are not pretextual, such as a stop in response to a call for service concerning loitering or misdemeanor trespass;
27. Using Boilerplate Language or language that states a conclusion without providing supporting detail in the report documenting the Investigative Stop;
28. Relying on information known at the time of reliance to be materially false or incorrect in effectuating an Investigative Stop;
29. Making an Investigative Stop based **solely** on a person's presence in a location known for criminal activity.

NOTE: Despite this prohibition, a member may use the fact that a location is known for a particular type of criminal activity as one fact among multiple facts that, in combination, establish RAS (Reasonable Articulate Suspicion). To conclude that the type of criminal activity in a specific location contributes to establishing RAS, the member should be able to articulate how the nature of the criminal activity in that location, its frequency, and its recency are relevant to the suspected crime. For example, the fact that drug dealing is known to occur on a specific corner at a particular time of day within the past two weeks could be one fact that, when considered together with other facts, establishes RAS that two people exchanging money on that corner at that time of day are engaged in a drug transaction. By contrast, the fact that there has been a recent rash

of nighttime, forced rear window burglaries in a particular area does not help to establish RAS that a person flagging down cars in that area during the daytime is a burglar.

NOTE: In order to be used as a fact that helps to establish RAS, a location known for a certain type of criminal activity must be a specific location (e.g., an address, a specific business location, a specific corner, a specific block or blocks, a park, etc.) and must not be a general location (e.g., a district, or an entire neighborhood for a crime that is location-specific (for example, CDS distribution)). Members shall avoid broad, boilerplate phrases such as “high crime area” when articulating RAS.

30. Making an Investigative Stop based **solely** on a person’s response to the presence of police, including a person’s attempt to avoid contact with a member (e.g., walking away, declining to talk, running away, or crossing the street to avoid contact). People may avoid contact with police for many reasons other than involvement in criminal activity.

NOTE AS TO 29 AND 30: Despite the prohibitions in Directives 29 and 30, members **may** conduct an Investigative Stop when a person in a location known for certain criminal activity runs, unprovoked, from the police **and** there is an articulable reason to believe the person is running because they are involved in the type of criminal activity prevalent in that location. In this situation, the member must be able to articulate the specific facts establishing RAS, including how the individual’s unprovoked flight is linked to their suspected participation in the type of criminal activity prevalent in that location. Examples of facts that may establish a link between a person’s unprovoked flight and the type of criminal activity prevalent in a location include: the member observes the person taking actions that are consistent with the commission of the particular crime prevalent at that location; the member has personal knowledge that a person has committed the crime previously; the member has personal knowledge that there was a recent call for service about that particular crime being committed at that location.

31. Intentionally provoking or attempting to provoke flight to justify an Investigate Stop or a Foot Pursuit. For example, a member may not drive at a high rate of speed toward a group congregated on a corner, perform a threshold brake, and exit quickly with the intention of stopping anyone in the group who flees.
32. Making an Investigative Stop based **solely** on a person’s proximity to the scene of a reported or suspected crime.

NOTE: Members may use a person’s proximity to the scene of a specific reported or suspected crime as a fact in formulating RAS that the person committed that specific crime, but must explain how close the person was to the scene and why it was reasonable to believe the person was involved in the reported or suspected crime based on their proximity to the scene. Facts to consider include: how long ago the crime was committed and whether a person could have travelled that distance in that time, whether the member observes the person taking actions that are consistent with someone who just committed that crime, whether the person matches any witness’s descriptions or observations of the incident, etc.

NOTE: The prohibition in 32 does not interfere with a member’s ability to “freeze” a crime scene under Policy 1002, *Securing and Interviewing Witnesses*.

Documentation Requirements

33. Members shall not use Boilerplate Language when describing the basis for an Investigative Stop. Members must use specific and descriptive language individualized to the person stopped and the circumstances of the stop to describe the basis of the contact. The amount of detail required depends on the complexity of the encounter.
34. Following an Investigative Stop:
 - 34.1. A central complaint number must be issued from police dispatch, and an Incident Report, Form 8, must be completed. Members should describe in detail the circumstances which led to the Investigative Stop in a Supplemental Report, Form 7, including clearly and specifically documenting the facts on which the member's RAS was based (See Appendix B and C).
 - 34.2. The report must include the following information:
 - 34.2.1. A complete description of the person, including height, weight, hair color, eye color, skin tone, identifying features (e.g., tattoos, scars), clothing type and color, and any other notable features or descriptors relevant to RAS.
 - 34.2.2. Perceived race, ethnicity, gender and age of the person stopped;
 - 34.2.3. The location of the stop, including the address or nearest intersection;
 - 34.2.4. The central complaint number;
 - 34.2.5. Specific, individualized description of the facts that established RAS for the stop, prior to the stop being made;
 - 34.2.6. Approximate duration of the stop;
 - 34.2.7. Outcome of the stop, including whether member(s) issued a civil or criminal citation, made an Arrest or issued a warning;
 - 34.2.8. Whether member(s) conducted a Weapons Pat-Down, and if so, the RAS that the person was armed;
 - 34.2.9. Whether member(s) conducted a Search based on Probable Cause, and if so, the facts establishing Probable Cause for the Search;
 - 34.2.10. Whether member(s) asked any person(s) to consent to a Search whether such consent was given, and in what form (i.e., verbal or written) See Policy 1109, *Warrantless Searches*;
 - 34.2.11. Whether member(s) found any unlawful weapons, narcotics, or other contraband during a Search, and the nature of the contraband;
 - 34.2.12. Whether the Investigative Stop began as a Voluntary Contact or Field Interview;

34.2.13.If the person was moved from the initial stop location, document that they were moved, where they were taken to, and why they were moved from the stop location; and

34.2.14.If the member receives information during the call or the facts that the member observes indicate that a person has or is experiencing behavioral health disabilities.

35. The member must provide the person with an explanation of the purpose of the stop, and provide Form 309 (Appendix E) to the person with the member's name, the date, and central complaint number.

Weapons Pat-Downs

Justification

For a Weapons Pat-Down, a member must possess specific and articulable facts, combined with rational assumptions from these facts, that the person is armed, and the pat-down must be designed to ensure the safety of the member and others while a member is conducting a legitimate investigation. Pertinent factors may include the member's prior knowledge that the person carries a weapon. However, members must also be mindful that most persons carry mobile phones, wallets, or other personal items in their pockets.

NOTE: An Investigative Stop and a Weapons Pat-Down are two distinct actions – both require independent RAS (e.g., to stop a person there must be RAS of criminal activity, but to stop a person and perform a Weapons Pat-Down there must be RAS of criminal activity and RAS that the person is armed).

Required Actions

36. In determining whether sufficient RAS exists to support the Weapons Pat-Down, a member should consider the following factors:
- 36.1. The type of crime suspected, particularly in crimes of violence where the use or threat of deadly weapons is involved.
 - 36.2. The hour of the day and the location where the stop takes place.
 - 36.3. Prior knowledge of the person's history of carrying deadly weapons or committing crimes of violence.
 - 36.4. Visual indications that suggest the person is carrying a firearm or other deadly weapon, such as a bulge under the person's clothing, although a bulge could also indicate personal items such as a cell phone or wallet.
37. Whenever possible, Weapons Pat-Downs should be conducted by at least two members – one who performs the Weapons Pat-Down and another who provides protective cover.
38. Absent exigent circumstances, when conducting a Weapons Pat-Down, members will 1) honor the person's preference about the gender identity of the member conducting the search; and 2) in the absence of a stated preference, the gender identity of the person being searched shall be

consistent with the gender identity of the member conducting a search. See Policy 720, *Interactions with Lesbian, Gay, Bisexual, Transgender, Queer/Questioning (LGBTQ) Individuals*.

39. Members are permitted only to pat the outer clothing of the person.
40. If, during a Weapons Pat-Down, the member feels an item which is the shape and size of a weapon that could be used to harm the member or others, the member may reach into or disturb the article of clothing and remove the item.

NOTE: If, during the process of removing the suspected weapon, the member discovers other items which are contraband or evidence of a crime, the member may lawfully seize those items, and the items may be considered when establishing Probable Cause to make an Arrest or to conduct a Search of the person.

41. If the person stopped is arrested because a weapon was found, a Search incident to Arrest, may be conducted in accordance with departmental training and procedures. See Policy 1109, *Warrantless Searches*.
42. If the person stopped is to be released because no weapon was found, and there is no Probable Cause for an Arrest, the member must immediately release the person, comply with the documentation guidelines in number 2 under **Documentation Requirements** below, and explain the reason for the Investigative Stop, the Weapons Pat-Down, and the release.

Prohibited Actions

43. Members are prohibited from automatically engaging in a Weapons Pat-Down during an Investigative Stop for "member safety."
44. Members shall not place their hands in pockets or reach into an article of clothing unless the member feels an object they reasonably believe is a weapon, such as a firearm, knife, club, or other item, that could be used to harm the member or others. The member may not manipulate an object underneath clothing in an effort to determine the nature of the object.
45. A Weapons Pat-Down shall not be used to conduct full Searches designed to produce evidence or other incriminating material.
46. Members may not request the consent of a person to conduct a Weapons Pat-Down without RAS that the person is carrying a weapon.
47. Members shall not open an object that a person is carrying – such as a handbag, suitcase, briefcase, sack, or other object that may conceal a weapon. Instead, the member should place it out of the person's reach.
48. The member may not manipulate the exterior or Search the interior of the object the person is carrying. If the member reasonably suspects that harm may result if the unsearched object is returned to the person, the member *may briefly* feel the exterior of the object in order to determine if the object contains a weapon or other dangerous item.

Documentation Requirements

49. Members must use specific and individualized descriptive language sufficient to describe the basis of the contact. The amount of detail required depends on the complexity of the encounter. Members shall not use Boilerplate Language when describing the basis for a Weapons Pat-Down.
50. If the stopped person is to be released, and there is no Probable Cause for an Arrest, the member must:
 - 50.1. Obtain a central complaint number from police dispatch and complete an Incident Report, Form 8. Describe in detail the circumstances which led to the Weapons Pat-Down in a Supplemental Report, Form 7 (See Appendix B and D), and follow the reporting guidelines listed under **Investigative Stops - Documentation Requirements**.
 - 50.2. Provide Form 309 (Appendix E) to the person with the member's name, the date and central complaint number.
51. If the person stopped is arrested because a weapon was found for which they did not have a permit, a Search incident to Arrest, may be conducted in accordance with departmental training and procedures. See Policy 1109, *Warrantless Searches*.

NOTE: Complete any related reports and submit to a supervisor. The completed reports shall make it clear that the Arrest was the result of an Investigative Stop or Weapons Pat-Down, and the member must follow the reporting guidelines listed under **Investigative Stops - Documentation Requirements**.

Vehicle Stops

Required Actions

52. A member may conduct a Vehicle Stop only when they have Probable Cause to believe that the driver has committed a traffic violation, or RAS that the driver or an occupant of the vehicle has committed, is committing or is about to commit a crime.

NOTE: A "routine" Vehicle Stop conducted for the purposes of issuing a traffic citation is a seizure under the Constitution. The stop may last no longer than the time reasonably required to issue a ticket for the violation. If the stop lasts longer than the time reasonably required to issue the ticket, this is a Fourth Amendment violation. Activities that ensure vehicles on the road are operated safely and responsibly are considered part of the reasonable time to issue the ticket. Such activities typically involve checking the driver's license, determining whether the driver has outstanding warrants, and inspecting the vehicle's registration and proof of insurance.

53. Activate BWC upon initiating a Vehicle Stop, prior to approaching vehicle. The BWC shall not be deactivated until the completion of the Vehicle Stop.
54. Members shall notify dispatch to report all Vehicle Stops, and shall state the location of each stop.

Documentation Requirements

55. Members will use specific and individualized descriptive language sufficient to describe the basis of the contact. The amount of detail required depends on the complexity of the encounter. Members shall not use Boilerplate Language when describing the basis for the contact.

EXAMPLE: If a person is stopped in a vehicle because they ran through a stop sign, member may write "Person ran through stop sign at XYZ location." Whereas, if a person is stopped because they engaged in erratic driving near the scene of a homicide and matches the suspect description, a correspondingly more detailed report is required.

56. No matter the outcome of the Vehicle Stop, members shall document the following information after conducting all Vehicle Stops:
- 56.1. Members' names and sequence numbers;
 - 56.2. Date and time of the stop;
 - 56.3. Location of the violation and/or stop;
 - 56.4. Duration of the stop;
 - 56.5. The driver's apparent demographic category, to include race, ethnicity, gender and age;
 - 56.6. Reason for the Vehicle Stop, such as a statement of the traffic offense observed prior to the Vehicle Stop or other facts creating Probable Cause or RAS that were observed prior to initiating the Vehicle Stop;
 - 56.7. Whether the driver was ordered by a member to exit the vehicle, and the reason;
 - 56.8. Whether any member approached the vehicle with a service weapon drawn;
 - 56.9. Whether members conducted a Weapons Pat-Down and, if so, the specific RAS that the person(s) was/were armed with a dangerous and deadly weapon;
 - 56.10. Whether members conducted a Search of the vehicle based on Probable Cause and, if so, the facts establishing the Probable Cause to conduct a Search;
 - 56.11. Whether members asked any person(s) to consent to a Search and whether such consent was given, and in what form (See Policy 1109, *Warrantless Searches*);
 - 56.12. Whether members found any unlawful weapons, narcotics, or other contraband during a Search, and the nature of such contraband; and
 - 56.13. Disposition of the Vehicle Stop, including whether member(s) issued a citation, warning or made an Arrest.

NOTE: If a passenger of a stopped vehicle is questioned, required to produce an ID, or is required to exit the vehicle, these law enforcement actions require their own documentation as the actions relate to the passenger.

Superiors' Responsibilities for Field Interviews, Vehicle Stops, Investigative Stops, Weapons Pat-Downs and Searches**First-line Supervisor**

57. Review all Citizen/Police Contact Receipts and all documentation for Investigative Stops, Weapons Pat-Downs and Searches. This should be completed during the shift, by the end of the tour of duty, but no later than 72 hours after the encounter occurred.

NOTE: This deadline may be extended only if deficiencies are found and additional investigation or corrective action is required.

57.1. Ensure the encounter and law enforcement action taken was constitutional and complied with policy.

NOTE: For any actions that require further review in order to confirm compliance, review the member's BWC footage and that of any other members present.

57.2. Ensure the documentation is complete and complies with policy. Review reports and forms for deficiencies, including:

57.2.1. Boilerplate Language and language that comes to a conclusion without providing supporting detail, inconsistent information, lack of articulation of the legal basis for the action, or other indicia that the reports or forms may contain information that was not accurate at the time it was reported;

57.2.2. Consult with the member to assess whether additional information from the member may remedy the deficiency.

57.3. Upon confirming completion and sufficiency, sign off on the report and forward through proper channels.

58. Document and report in BlueTeam:

58.1. Investigative Stops that appear unsupported by RAS, or that otherwise violate BPD policy;

58.2. Searches that appear to be without legal justification or are in violation of BPD policy;

58.3. When a Search resulting in the recovery of contraband appears to be unsupported by Probable Cause; and

58.4. Stops or Searches that, while complying with law and policy, indicate a need for corrective action or review of agency policy, strategy, tactics, or training.

59. Submit all Incident Reports, Form 8, Supplemental Reports, Form 7, and Citizen/Police Contact Receipts through the unit administrative staff.

60. Take appropriate action to address all apparent violations or deficiencies in Field Interviews, Vehicle Stops, Investigative Stops, Weapons Pat-Downs, Searches, and Arrests including deficiencies in reporting.

- 60.1. All corrective action documentation should occur in BlueTeam for tracking purposes.
 - 60.2. When a member's actions comply with the law and policy, but indicate a need for positive corrective action, provide training, mentoring, counseling or other appropriate measures. Document non-punitive corrective action in BlueTeam as a performance notice.
 - 60.3. Refer policy and law violations to the Public Integrity Bureau (PIB) for administrative or criminal investigation and document in BlueTeam. For these situations, it may still be appropriate to provide non-punitive counseling, mentoring, training, or other support as a complement to PIB's investigation.
 - 60.4. For each subordinate, the supervisor shall track each violation or deficiency and the corrective action taken, if any, to identify members needing repeated corrective action.
61. Document evidence of employee negligence or repeated failures to accurately complete applicable reporting in BlueTeam for progressive discipline.
 62. Consider the quality and completeness of members' reports for Field Interviews, Investigative Stops, Searches and Arrests in members' performance evaluations.

Lieutenant

63. Review and evaluate Sergeant's review of member's activity, and any corrective action taken. If the documentation is complete, and the Sergeant's actions appropriately resolved the underlying issue, approve the documentation. If additional action is needed, return to Sergeant for further action.
64. Mentor and counsel Sergeants, where needed, regarding their responsibilities towards members and the Department.
65. Refer a member or Sergeant's policy and law violations to PIB for administrative or criminal investigation and document in BlueTeam. Referral to PIB does not preclude non-punitive counseling, mentoring, training, or other support, which should be provided as a complement to PIB's investigation.

Commanding Officer

66. Provide training and conduct reviews of Incident Reports, Form 8, Supplemental Reports, Form 7, and Citizen/Police Contact Receipts, as necessary, to ensure members understand and apply appropriate legal standards when conducting Field Interviews, Vehicle Stops, Investigative Stops, Weapons Pat-Downs, Searches, and Arrests.
67. Provide training and conduct audits of supervisory reviews of Investigative Stops, Vehicle Stops, Weapons Pat-Downs, Searches and Arrests to evaluate the supervisor's review and conclusions within seven days of their completion.
68. If misconduct is identified through any of the above-mentioned audits, evaluate the supervisor's assessment and recommendations and ensure that all appropriate corrective action was taken, including referring the incident to PIB for investigation. For supervisors who fail to conduct

complete, thorough, and accurate reviews of members' Field Interviews, Investigative Stops, Weapons Pat-Downs, Searches and Arrests, take appropriate corrective or disciplinary action.

69. Ensure all Citizen/Police Contact Receipts are forwarded daily to the Records Management Section for entry into the "Stop Ticket" database on a timely basis.
70. Forward daily all hard copies of all Incident Reports, Form 8 and Supplemental Reports, Form 7, to the Records Management Section (RMS).
71. Consider the quality and completeness of supervisory reviews of Investigative Stops, Searches and Arrests in performance evaluations.

Administrative Officer, Patrol

72. Review all Field Interview, Investigative Stops, Weapons Pat-Down and Search documentation received for data entry.
73. If reporting errors or deficiencies are noted, return the documentation to the member's supervisor and report the error or deficiency to the member's commanding officer.

Records Management Section, Commanding Officer

74. Whenever a Weapons Pat-Down was conducted without recovering a firearm, and an Incident Report, Form 8, was received, complete a Maryland State Police Firearms Report and forward the report to:

Superintendent Maryland State Police
Pikesville, Maryland. 21208-3899

75. Collect and forward, on a daily basis, copies of all reports relating to recovered firearms to the Director, Crime Laboratory Section.
76. Ensure Citizen/Police Contact Receipts are entered into the Stop Ticket database within ten business days of receipt.
77. Retain copies of all Citizen/Police Contact Receipts indefinitely.

Crime Laboratory Section, Director

78. Shall ensure a Maryland State Police Firearms Report is completed for each firearm recovered and forwarded daily to:

Superintendent Maryland State Police
Pikesville, Maryland. 21208-3899

Performance Standards Section

79. Audits of documentation in support of Field Interviews, Vehicle Stops, Investigative Stops, Weapons Pat-Downs, Searches and Arrests will be included in the yearly audit plan. Documents to review may include, but are not limited to, Incident Reports, Form 8, Supplemental Reports, Form 7, Citizen/Police Contact Receipts, and Body-Worn Camera footage.

NOTE: Audits will be conducted to identify deficiencies and gaps in practice of these activities, and those findings will assist in informing future trainings and/or policy on Field Interviews, Vehicle Stops, Investigative Stops, Weapons Pat-Downs, Searches and Arrests.

80. Frequency of these audits will be determined by the Commander of Performance Standards Section, in accordance with the year's audit plan.

Education & Training, Director

81. Ensure that the procedures of this policy are consistent with entrance level and in-service training curricula.

82. Provide ongoing roll call training on the contents and subject of this policy.

APPENDICES

- A. Citizen/Police Contact Receipt
- B. Incident Report, Form 8
- C. Supplemental Report – Investigative Stop, Form 7
- D. Supplemental Report – Weapons Pat Down, Form 7
- E. Victim Assistance/Incident Information Form 309

ASSOCIATED POLICIES

- Policy 720, *Interactions with Lesbian, Gay, Bisexual, Transgender, Queer/Questioning (LGBTQ) Individuals*
- Policy 808, *Criminal and Civil Citation Procedures*
- Policy 809, *Marijuana – Uniform Civil Citation*
- Policy 824, *Body-Worn Camera*
- Policy 906, *Traffic Citations*
- Policy 1007, *Search and Seizure Warrants*
- Policy 1013, *Strip Searches and Body Cavity Searches*
- Policy 1018, *Quality of Life Offenses – Core Legal Elements*
- Policy 1106, *Warrantless Arrest Procedures and Probable Cause Standard*
- Policy 1109, *Warrantless Searches*

RESCISSION

Removed and destroyed/recycled Policy 1112, *Field Interviews, Investigative Stops, Weapons Pat-Downs & Searches*, dated 26 August 2017.

COMMUNICATION OF POLICY

This policy is effective on the date listed herein. Each employee is responsible for complying with the contents of this policy.

APPENDIX A

Citizen/Police Contact Receipt

**Baltimore Police Department
Citizen/Police Contact Receipt**

<input type="checkbox"/> Vehicle	Date	Time	Duration	CC# (If applicable)
<input type="checkbox"/> Pedestrian				
Block	Full Street Address (Location of F.I., Stop, etc.)		Post / Sector	
Officer's Name (Last, First)			Seq #	
Officer's Signature		Assignment	Unit #	

CITIZEN INFORMATION

Citizen Name (Last, First, MI)		DOB
Race: <input type="checkbox"/> Black <input type="checkbox"/> White <input type="checkbox"/> Asian or Pacific Islander <input type="checkbox"/> Native American/Alaskan Native <input type="checkbox"/> Other Ethnicity: <input type="checkbox"/> Hispanic or Latino <input type="checkbox"/> Unknown Sex: <input type="checkbox"/> Male <input type="checkbox"/> Female Primary Language Spoken (Other than English)		

Block	Full Street Address	Phone
City, State		<input type="checkbox"/> Not Baltimore City Address Zip

Identification Driver's License State Issued ID None Other

State	License/ID Number
-------	-------------------

VEHICLE INFORMATION

Stop Involved	Registration/License Plate	State	Exp
<input type="checkbox"/> Radar <input type="checkbox"/> VASCAR <input type="checkbox"/> Laser			
Year	Make	Model	Color

PRIMARY REASON FOR CONTACT (Mark only one)

Field Interview
 Investigative Stop
 Weapons Pat-down
 Vehicle Safety Equipment Violation
 Traffic Violation

INCIDENT/VIOLATION:

Article	Section	Description (Traffic Stops MUST INCLUDE the Primary Violation)
---------	---------	---

ACTION(S) TAKEN (Mark all that apply)

None
 Repair Order
 Traffic Citation
 Civil Citation
 Criminal Citation

 Warrant Check
 Arrest
 Warning

 Other:

Primary Charge Criminal Civil Traffic

Article	Section	Description
---------	---------	-------------

Supervisor's Name (Last, First)		Reviewer		
Supervisor's Signature		RMS Data Entered By		
Seq #	Date	Seq #	Date	Time

APPENDIX B

Incident Report, page 1

INCIDENT REPORT Form 8 1160-25-56 Revised 12/17		POLICE DEPARTMENT BALTIMORE, MARYLAND				Crime / Incident	Attempt	Complaint Number
<input type="checkbox"/> Person <input type="checkbox"/> Property <input type="checkbox"/> Vehicle <input type="checkbox"/> Miscellaneous <input type="checkbox"/> Domestic Related <input type="checkbox"/> Gang Related <input type="checkbox"/> Juvenile Related <input type="checkbox"/> Hate Crime <input type="checkbox"/> Investigative Stop		8 Location of Offense / Incident (Exact Street Address)				Page 1 of		
9 Unit		7 Post of Occurrence		6 Reporting Area		4 Date / Time Occurred		5 Date / Time Reported
13 Case Status <input type="checkbox"/> Open <input type="checkbox"/> Closed		14 Case Disposition <input type="checkbox"/> Cleared <input type="checkbox"/> Not Cleared		15 Follow-up <input type="checkbox"/> Yes <input type="checkbox"/> No		16 Crime Code		17 Crime Classification
20 Complainant Name (Last, First, MI), or Firm Name if Business		Residence / Address (Include City, County, State, Zip)				Age		DOB
Race <input type="checkbox"/> Black <input type="checkbox"/> Asian or Pacific Islander Native <input type="checkbox"/> Other		Ethnicity <input type="checkbox"/> Hispanic or Latino <input type="checkbox"/> Unknown		Limited English Proficient? <input type="checkbox"/> Yes <input type="checkbox"/> No		If yes, Primary Language		How did officer proceed? <input type="checkbox"/> Lang. Line <input type="checkbox"/> Professional Interpreter <input type="checkbox"/> Qualified Bilingual Member
21 Injuries and Location on Body		Victim's Condition		Victim Hospitalized Facility		22 Victim / Assailant Relationship		23 Current / Former Cohabitant
24 Reporting Person Name (Last, First, MI)		Sex		Race		Age		DOB
25 Witness Parent/Guardian Name (Last, First, MI)		Address (Include City, County, State, Zip)				Residence Phone		Other Phone
26 Suspect Name (Last, First, MI)		Address (Include City, County, State, Zip)				Age		DOB
Race <input type="checkbox"/> Black <input type="checkbox"/> Asian or Pacific Islander Native <input type="checkbox"/> Other		Ethnicity <input type="checkbox"/> Hispanic or Latino <input type="checkbox"/> Unknown		Limited English Proficient? <input type="checkbox"/> Yes <input type="checkbox"/> No		If yes, Primary Language		How did officer proceed? <input type="checkbox"/> Lang. Line <input type="checkbox"/> Professional Interpreter <input type="checkbox"/> Qualified Bilingual Member
27 Trademarks of Suspect(s) (Action / Conversation)		28 Point of Entry		29 Location Last Seen		30 Manner of Escape		31 Direction of Escape
32 Weapon / Means of Attack		33 Method Used to Commit Crime		34 Type of Property Taken		35 Total Loss Value		
36 Vehicle Information <input type="checkbox"/> Suspect <input type="checkbox"/> Victim <input type="checkbox"/> Stolen <input type="checkbox"/> Towed <input type="checkbox"/> Other		Tag Number		State		Expiration		Vehicle Year/Make
37 Registered Owner Name (Last, First, MI)		Sex		Race		Age		DOB
38 Recovered by		39 Method of Theft		40 Evidence of Stripping / Tampering		41 Rape Check		42 Tow List Check
43 Owner Notified		44 Tow Information		45 Detective Notified		46 Medical Examiner Notified		47 Crime Lab Technician Name
48 Communications Supervisor Notified		50 Citywide Broadcast		51 Victim Assistance/Incident Information Form(s) Provided		52 Copies Forwarded To		
Cont'd Sections: (1) Contribution of any preceding items (2) Property listing to include property description and serial/unique identifier, property inventory number(s) when applicable (3) Describe details of incident, include all steps taken in preliminary investigation (4) List all additional notifications, including name, agency or assignment, unit number, telephone number, date, time (5) List all arrests, including Arrest Numbers and charges								
Continued <input type="checkbox"/>								
53 Reporting Officer Name (PRINT CLEARLY)		Sequence No.		Assignment		Signature		
54 Approving Supervisor Rank and Name		Sequence No.		Assignment		Signature		
55 RMS Data Entered By		Sequence No.		Date		Time		56 Reviewer
57 Referred To								

REPORT SHOULD BE TYPED OR LEGIBLY PRINTED IN BLACK INK

APPENDIX C

Incident Report, page 2 for Investigative Stop

SUPPLEMENT REPORT Form 04/007 1160-25-23		POLICE DEPARTMENT BALTIMORE, MARYLAND			1 Crime / Incident		Attempt <input type="checkbox"/>		Complaint Number			
<input type="checkbox"/> Continuation		<input type="checkbox"/> Follow Up		3 Location of Offense / Incident (Street Address, Zip)		Page		of				
Person <input type="checkbox"/>		Property <input type="checkbox"/>		Mechanisms <input type="checkbox"/>		Vehicle <input type="checkbox"/>		Missing Person <input type="checkbox"/>		Custody <input type="checkbox"/>		
6 Unit		7 Post of Occurrence		8 Reporting Area		9 Street Code		10 CAD Number		11 Original Report Date / Time		
13 Case Status <input type="checkbox"/> Open <input type="checkbox"/> Closed		14 Multiple Clearance <input type="checkbox"/> Yes <input type="checkbox"/> No		15 Case Disposition <input type="checkbox"/> Cleared <input type="checkbox"/> Not Cleared		16 Follow Up <input type="checkbox"/> Yes <input type="checkbox"/> No		17 Crime Code		18 Criminal Association		
19 Complainant / Victim		Name (Last, First, MI) or Firm Name / Business				Residence / Address (Include city, county, state, zip)				Sex Race Age (YOB)		
20 Copies Forwarded To												
<p>21 Narrative (1) Continuation of any preceding form. (2) Property listing to include property taken and seized (submitted evidence property, not property inventory numbers) when applicable. (3) Record all activity and all developments in case subsequent to last report. Include names and arrest numbers of all persons arrested. Explain any continuing case (classification change (4) if all applicable) with date, including name, agency or assignment unit number, telephone number, date, time. (5) Recommended case status, when applicable. (6) Multiple Clearance include all affected complaint numbers.</p> <p style="text-align: center;">INVESTIGATIVE STOP</p> <p>Person stopped for an investigative stop is the complainant</p> <p>Reporting person is the officer</p> <p>Person arrested (if any) is the suspect</p> <p>You must write an "investigative stop report" for every "investigative stop" performed, whether or not an arrest is made, and whether or not the subject stopped cooperates by identifying himself/herself to you. The incident for which the investigative stop was made must be placed in box #1 of the report. For example, if the subject is stopped for a robbery investigation, then the incident will read "robbery" in box #1 of the report. The first line of the narrative must read "investigative stop."</p> <p>NARRATIVE REQUIREMENTS</p> <p>Property listing at the beginning of the narrative if a weapon and/or other contraband is recovered</p> <p>Date, time and location of the investigative stop</p> <p>The reasonable articulable suspicion that existed to justify the investigative stop, including but not limited to:</p> <ul style="list-style-type: none"> - Visual indications that suggest the individual is carrying a firearm or other deadly weapon, such as a bulge under the individual's clothing - Informant tips and information - Observations of what appears to be criminal conduct based on experience - Furtive behavior - The hour of the day and the location where the stop takes place - Presence in a high crime area - Evasive conduct or unprovoked flight 												
										Continued <input type="checkbox"/>		
21 I affirm and declare that the statements above are true to the best of my knowledge:										Reporting Person's Signature		Date
22 Reporting Officer Name (Identify CLEARLY)				Sequence No. Assignment				Signature				
23 Approving Supervisor Name and Name				Sequence No. Assignment				Signature				
24 Date Entered By		Sequence No. Date		Time		25 Reviewer		26 Returned To				

REPORT SHOULD BE TYPED OR LEGIBLY PRINTED IN BLACK INK

APPENDIX D

Incident Report, page 2 for Weapons Pat-Down

SUPPLEMENT REPORT Form 04/007 1160-25-23		POLICE DEPARTMENT BALTIMORE, MARYLAND			1 Crime / Incident		Attempt <input type="checkbox"/>		Complainant Number				
<input type="checkbox"/> Continuation		<input type="checkbox"/> Follow Up		3 Location of Offense / Incident (Street Address, Zip)		Page		of					
Person <input type="checkbox"/>		Property <input type="checkbox"/>		Miscellaneous <input type="checkbox"/>		Vehicle <input type="checkbox"/>		Missing Person <input type="checkbox"/>		Custody <input type="checkbox"/>			
6 Unit		7 Plot of Occurrence		8 Reporting Area		9 Street Code		10 CAD Number		11 Original Report Date / Time			
13 Case Status <input type="checkbox"/> Open <input type="checkbox"/> Closed		14 Multiple Clearance <input type="checkbox"/> Yes <input type="checkbox"/> No		15 Case Disposition <input type="checkbox"/> Cleared <input type="checkbox"/> Not Cleared		16 Follow-up <input type="checkbox"/> Yes <input type="checkbox"/> No		17 Crime Code		18 Crime Classification			
19 Complainant / Victim		Name (Last, First, MI), or Firm Name if Business				Residence / Address (Include City, County, State, Zip)				Sex Race Age DOB			
20 Copies Forwarded To													
21 Narrative (1) Continuation of any preceding forms. (2) Property listing. (3) include property taken and seized/submitted evidence/property. (4) Record all activity and all developments in case subsequent to last report. (5) include names and arrest numbers of all persons arrested. (6) Explain any crime/incident classification change. (7) List all additional notifications, including name, agency or assignment, unit number, telephone number, date, time. (8) Reopened case status when applicable. (9) Multiple Clearance include all affected complainant case numbers.													
WEAPONS PAT-DOWN													
Person stopped for a weapons pat-down is the complainant.													
Reporting person is the officer.													
Person arrested (if any) is the suspect.													
You must write a "weapons pat-down report" for every "weapons pat-down" performed, whether or not an arrest is made or a weapon is found, and whether or not the subject stopped cooperates by identifying himself/herself to you. The incident for which the weapons pat-down was made must be placed in box #1 of the report. For example, if the subject is stopped for a robbery investigation, then the incident will read "robbery" in box #1 of the report. The first line of the narrative must read "weapons pat-down."													
NARRATIVE REQUIREMENTS													
Property listing at the beginning of the narrative if a weapon and/or other contraband is recovered.													
Date, time and location of the weapons pat-down.													
The reasonable articulable suspicion that existed to justify the weapons pat-down, including but not limited to:													
<ul style="list-style-type: none"> - The type of crime suspected, particularly in crimes of violence where the use or threat of deadly weapons is involved. - The hour of the day and the location where the stop takes place. - Prior knowledge of the individual's criminal history and propensity to use force or carry deadly weapons. - The appearance and demeanor of the individual. - Furtive behavior. - Visual indications that suggest the individual is carrying a firearm or other deadly weapon, such as a bulge under the individual's clothing 													
										Continued <input type="checkbox"/>			
21 I affirm and declare that the statements above are true to the best of my knowledge:													
										Reporting Person's Signature		Date	
22 Reporting Officer Name (PRINT CLEARLY)				Sequence No./Assignment				Signature					
23 Approving Supervisor Rank and Name				Sequence No./Assignment				Signature					
24 RMS Data Entered By				Sequence No.		Date		Time		25 Reviewer		26 Referred To	
REPORT SHOULD BE TYPED OR LEGIBLY PRINTED IN BLACK INK													

APPENDIX E

Victim Assistance/Incident Information, Form 309, Page 1

MARYLAND CRIMINAL INJURIES COMPENSATION BOARD

- The Board manages a state fund to reimburse innocent victims of crime for losses caused by crime.

1. *Who may be eligible to apply for compensation?*

- Adult crime victims, or if under 18, parents or guardians on their behalf, or,
- Dependents of homicide victims, or
- Person or persons who paid for the funeral expenses of homicide victims, or
- Persons injured while preventing a crime or assisting a police officer.

2. *What is required?*

- Report to law enforcement within 48 hours of the crime, unless good cause is shown for delay in reporting.
- A **completed** and **signed** CICB claim sent to the Board within 3 years of the crime.
- Physical injury, death or a psychological injury resulting from a felony or delinquent act directly resulting from the crime.
- Victims cannot have contributed to their injuries, or initiated, consented to, provoked, or unreasonably failed to avoid a physical confrontation that led to the victimization.
- The victim cannot have been participating in a crime or delinquent act at the time the injury was inflicted.
- Victims must cooperate with the police or other law enforcement agencies, prosecutors and the CICB staff.
- Although not required, you may have an attorney represent you.

3. *Eligibility criteria for an award – CICB is the fund of last resort. All other available sources of compensation, such as insurance, must be exhausted before CICB can make an award. Certain restrictions apply for each of these benefits:*

Medical or dental – Up to \$45,000. Claimants without private insurance must apply for Medical Assistance.

Psychological counseling – Up to \$5,000 for victim or \$1,000 for a parent, child or spouse living with the victim.

Lost wages or disability – Up to \$25,000 – To be eligible, the claimant must lose time from work due to a criminal victimization, or a parent or guardian caring for a child victim.

Funeral and/or burial – Up to \$5,000 – Persons who assume the responsibility for the funeral or burial expenses may be eligible to apply. Claims may be reduced or denied if there is an applicable life insurance policy over \$25,000.

Dependency – Up to \$25,000 for a parent, child or spouse residing with the homicide victim who was dependent on the victim for principal support. Also, specified victims who resided with an abuser prior to the abuse, may claim loss of support benefits during the time the abuser is incarcerated.

Crime scene clean up – Maximum award up to \$250 – The claim must be related to a physical injury, fourth degree sexual assault or felony psychological injury.

* *Property loss is not eligible.*

* *If a claimant receives an award, then later obtains insurance or other type of welfare benefits, including restitution from the offender, the claimant must repay that amount to the Board.*

* *Upon receipt of an application, the claimant may be contacted for additional information.*

For further information and assistance in filing, call or write:

Maryland Criminal Injuries Compensation Board
Suite 206, Plaza Office Center
6776 Reisterstown Road
Baltimore, Maryland 21215-2340
Phone (410) 585-3010; FAX (410) 764-3815
Toll Free (888) 679-9347; TTY USERS (800) 735-2285

CICB Website:
<http://www.dpscs.state.md.us/victim/srvs/cicb/index.shtml>

Baltimore City Police Department 309 Form

**BALTIMORE POLICE DEPARTMENT
Baltimore, Maryland**

Victim Assistance/Incident Information Form

An Incident/Offense Report has been prepared under the complaint number indicated below. Please retain this form and refer to the number when making inquiries or to report additional information.

Complaint No.: _____ Date: _____

Incident Type: _____

Officer's Name: _____

Seq. No.: _____ Badge No.: _____ Assignment _____

Telephone No.: _____

If you have additional information to report on this incident, please call the following number for report taking services.

District/Unit: _____ Phone: _____

Baltimore City Non-Emergency Numbers

Police Information(410) 396-2525
City Hall Switchboard (410) 396-3100
Animal Control & Bites(410) 396-4694
Social Services Public Assistance (443) 423-6400

Baltimore City Emergency Numbers

Police.....911
Fire.....911
Ambulance.....911
Poison Control Center.....(410) 706-7701

Please take a moment to review the additional information in this pamphlet. We welcome your involvement and participation.

APPENDIX E

Victim Assistance/Incident Information, Form 309, Page 2

When Calling for Police Service

POLICE NON-EMERGENCY SERVICE. CALL (410) 396-2525 to obtain assistance or referral to the appropriate agency that can address your non-emergency.

- POLICE EMERGENCY. CALL 911
- Describe the type of crime or suspicious activity.
- Give the exact address or location of the activity.
- Provide details or circumstances of the incident.
- Give the license number and description of any vehicles.
- Describe all suspects.
- Give the direction of escape by suspects.
- Provide any details concerning weapon(s) used by suspects.
- If requested, please remain on the phone in the event further information is needed about the incident.

Baltimore Police Districts

Central (410) 396-2411	Northwest (410) 396-2466
Southeast (410) 396-2422	Western (410) 396-2477
Eastern (410) 396-2433	Southwest (410) 396-2488
Northeast (410) 396-2444	Southern (410) 396-2499
Northern (410) 396-2455	

Drug Related Information

- Drug activity needing immediate police attention – Call 911.
- To report information on drug activity – Call (410) 666-DRUG.

Victim Assistance Information

First Call for Help (Information and Referral)	(410) 685-0525
TDD (for hearing impaired).....	(410) 685-2159
Maryland Crime Victim's Resource Center.....	(410) 234-9885
Juvenile Crime Victim Assistance.....	(410) 230-3225
State's Attorney Victim Service.....	(410) 396-1897
Child Abuse/Neglect (24 hour).....	(410) 361-2235
Sexual Assault and Domestic Violence Hotline (24 hour).....	(410) 828-6390
House of Ruth (Battered Women and Children).....	(410) 889-RUTH
Recovery Network Center.....	(410) 366-1717
Baltimore Health Department Alcoholism Center.....	(410) 637-1900
Baltimore City Community Relations Commission.....	(410) 396-3141

A Crime Victim or Witness Should:

- (1) Be informed by appropriate criminal justice agencies of these Guidelines:
- (2) Be treated with dignity, respect, courtesy and sensitivity.
- (3) Receive crisis intervention assistance, if needed, or be informed by the appropriate criminal justice agency where crisis intervention assistance, emergency medical treatment, creditor intercession services, or other social services and counseling may be obtained.
- (4) Be notified in advance of dates and times of trial court proceedings in the case, and, on written request, of post sentencing proceedings, and be notified if the court proceedings to which they have been summonsed will not proceed as scheduled.

Guidelines for Treatment and Assistance to Crime Victims and Witnesses

Maryland Annotated Code §11-1001(e) of the Criminal Procedure Article

(5) Be advised of the protection available, and, on request be protected by criminal justice agencies, to the extent reasonable, practicable, and, in the agency's discretion.

(6) During any phase of the investigative proceedings or Court proceedings, be provided, to the extent practicable, a waiting area that is separate from a suspect and the family and friends of a suspect.

(7) Be informed by the appropriate criminal justice agency of financial assistance, criminal injuries compensation and any other social services available as a result of being a crime victim and receive assistance or information on how to apply for service.

(8) Be advised of and, on request, be provided with employer intercession services, when appropriate, by the State's Attorney's Office or other available resource to seek employer cooperation in minimizing an employee's loss of pay or other benefits resulting from participation in the criminal justice process.

(9) On written request, be kept reasonably informed by the police of the State's Attorney of the apprehension of a suspect, closing of the case, and an office to contact for information about the case;

(10) Be advised of the right to have stolen or other property promptly returned and, on written request, have the property promptly returned by law enforcement agencies when means can be employed to otherwise satisfy evidentiary requirements for prosecution unless there is a compelling law enforcement reason for retaining it;

(11) For a crime of violence, as defined in Code §11-1001(e) of the Code, on written request, be kept informed by pre-trial release personnel, the State's Attorney or Attorney General, as appropriate, of any proceeding that affects the crime victim's interests, including bail hearing, dismissal, nol pros, or setting of charges, trial disposition, whether at a hearing or trial.

(12) On request of the State's Attorney to and in the discretion of the judge, be permitted to address the judge or jury or have a victim impact statement read by the judge or jury at sentencing before the imposition of the sentence or at any hearing to consider altering the sentence;

(13) Be informed, in appropriate cases by the State's Attorney of the right to request restitution and, on request, be provided assistance in the preparation of the request and advice as to the collection of the payment of any restitution awarded;

(14) Be entitled to a speedy disposition of the case in which the individual is involved as a crime victim or witness.

(15) On written request to the parole authority, be informed any time there is to be a hearing or provisional release from custody and any time the offender is to receive such a release;

(16) On written request to the Patuxent Institution, Division of Correction, or Parole Commission, as appropriate, have a victim impact statement read at any hearing to consider temporary leave status or a provisional release; and

(17) On written request to the agency that has custody of the offender after sentencing, be informed by the agency any time the offender escapes or receives a mandatory supervision release.

BLOCK REPRESENTATIVE PROGRAM

Report suspicious activity to the police. Organize or participate in a Block Representative Program in your neighborhood. Neighbors who look out for each other and report suspicious activity to the police can reduce the criminal's ability to operate undetected. By becoming a block representative you may remain anonymous when providing information.

Engrave your valuables using your Maryland Driver's License Number. The inventory and property marking program can reduce the risk of theft and increases the chances of recovering stolen property. Easily identified items are difficult for a thief to sell. For more information about these and other programs call the Neighborhood Services Sergeant for your District.

METRO CRIME STOPPERS - Metro Crime Stoppers pays cash for tips on crime. Receive up to \$1,000 for information leading to the arrest and indictment of criminals. Call (410) 276-8888 anytime. You do not have to give your name.

REPORT COPIES

The Baltimore Police Department via the Central Records Section, Community Correspondence Unit will process your request, to obtain a copy of an Incident/Offense Report. Visit the Baltimore Police Official Web Site at www.baltimorepolice.org. Download the Report Request Form. Provide as much information as requested on the Report Request Form and mail your request to:

Attention Community Correspondence Unit
Baltimore Police Department
242 W. 29th Street
Baltimore, Maryland 21211

The written request must be accompanied by: 1) A self addressed stamped envelope, (the BPD will respond to the request using the self addressed stamped envelope provided), and, 2) A check or money order in the amount of \$10.00 payable to the Director of Finance, Baltimore City. **DO NOT SEND CASH. Administrative fee is non-refundable.** Further information can be obtained by contacting the Community Correspondence Unit at (410) 396-2222 between the hours of 7:00 a.m. and 3:00 p.m.

APPENDIX B

821 SEARCH AND SEIZURE

I. GENERAL PRINCIPLES:

A. 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 person or things to be seized; in accordance with the Fourth Amendment to the United States Constitution.

1. The United States Supreme Court has applied the Fourth Amendment to prohibit the introduction into evidence of tangible materials seized during an unlawful search (this principle of excluding evidence obtained in violation of the Fourth Amendment is known generally as the "Exclusionary Rule").
2. The primary purpose of the Fourth Amendment Exclusionary Rule is to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable searches and seizures.
 - a. The rule is a judicially created safeguard.
 - b. The rule is designed to serve as a deterrent rather than as a personal constitutional right.

B. Searches Authorized Without A Warrant:

1. A search by consent;
2. A "stop and frisk" search of an individual under circumstances where the officer has articulable reasons to fear for his or her safety;
3. A search of a movable vehicle which can be put out of reach of a search warrant;
4. A search at the scene of a crime;
5. A search under exigent circumstances when the public safety is endangered;
6. An inventory search of a seized vehicle or other property;
7. A search incident to a lawful arrest; and
8. Plain view.

II. SEARCH BY CONSENT:

A. General Principles:

1. As the Fourth Amendment only proscribes unreasonable searches, it is reasonable for the police to conduct a search once they have been permitted to do so.
2. The general prohibition against the warrantless entry into a person's home, business, or other constitutionally protected area does not apply to situations in which voluntary consent has been obtained.
3. Valid consent acts as a substitute for a search warrant or probable cause.

B. Determination of Consent:

1. It must be voluntary and the burden is on the State to prove voluntariness by "a preponderance of the evidence."
2. The person giving consent must have a "reasonable appearance of authority" over the area to be searched.

C. Determination of Voluntariness:

1. Whether consent is voluntary is generally a question of fact to be determined from the totality of the circumstances (meaning simply that no one factor will determine the voluntariness of the consent). The conduct of the police, the ability of the suspect to understand and rationally respond to the request for consent, age, education, intelligence, and knowledge of the accused are all relevant in making this determination.
 - a. It is not necessary that a police officer advises suspects of a right to refuse to consent. However, it will help to establish voluntariness. See *Schneckloth v. Bustamonte*, 93 S. Ct. 2041 (1973).
2. Coercive conduct by police is not consent. The following examples may be found as evidence of coercion:
 - a. A prolonged detention of the suspect;
 - b. A statement that the suspect is free to leave if he consents to a search;
 - c. A threat to obtain a search warrant if the police have insufficient evidence for such a warrant;

- d. A statement that a search warrant is not needed when the suspect asks if the searching officer has a warrant;
 - e. An implied promise that the suspect will not be prosecuted; and
 - f. Repeated requests for consent.
3. The presence of uniformed and armed police officers, without anything more, is insufficient to raise an issue of lack of consent. Psychological coercion as a defense for lack of consent to search is insufficient without statements by the officers.
- D. Reasonable Appearance of Authority:
1. The officer must reasonably and in "good faith" believe the person giving consent has authority to do so.
 2. This good faith is to be decided by viewing officer's determination based on relationship of person to area of search.
- E. Common Authority to Consent:
1. The question most commonly asked by the courts is whether the person charged has a "reasonable expectation of privacy" in the area where the third person consented to a search.
 2. The third party must possess common authority, with the person charged, over the area searched or have some other sufficient relationship to the premises, or effects sought to be inspected, in order for there to be valid consent. Examples:
 - a. A parent can give consent to search their home, including the room of a **minor** child.
 - b. A **minor** may give consent to search the home of an absent parent if the minor shares the home, and the minor's consent is voluntary based on the totality of the circumstances (the minor's age, maturity, and intelligence, among other facts).
 - c. A person may provide consent to search their spouse's home, including their jointly occupied bedroom.
 - d. A joint owner of an automobile or truck can give consent to search.
 - e. A business partner who jointly occupies office space, files, etc. can give consent to search.

- f. A cousin who has joint control over a duffel bag may provide consent to search it. Joint control results in valid consent.
 - g. An innkeeper/motel clerk cannot give an officer consent to search a room he has rented. Exception: where occupant had left and did not pay for another day's rent. The consent to search is valid.
3. A consent search of a shared residence (or similar location) may **not** be performed over the objection, or refusal to consent, of another physically present resident. See Legal Bulletin No. 06-6. *Georgia v. Randolph*, 2006 WL 707380 (March 22, 2006).

F. Extent of Search Pursuant To Consent:

- 1. The scope of a consent search is confined to its expressed limits (the area or thing which the officer asks to search).
- 2. The scope may not exceed the area or thing that the officer asks to search, nor may it extend to containers or adjacent areas to which a reasonable person would not have understood the scope of the consent to pertain.
 - a. A consent to search an automobile does not authorize consent to open closed containers found in the passenger compartment, but a general consent to search may authorize the search of a closed container found therein if the suspect's consent reasonably would be understood to extend to that container.
 - b. A general consent to let an officer look into a car does not include consent to search the trunk. Furthermore, consent to look into the trunk does not constitute consent to pry open a locked piece of luggage inside the trunk.
 - c. A consent to search luggage or other bags does not authorize the search of a sealed container found within that bag.
 - d. A consent to search a person does not extend to the genital area unless the police specifically request to search this area (this search must always be done by an officer of the same sex as the suspect). See SOP 371 and Legal Bulletin No. 05-10.
 - e. Consent may be withdrawn, as well as limited, by the person from whom the consent is sought.

III. STOP AND FRISK OF AN INDIVIDUAL:

A. General Principles:

1. If there are articulable facts supporting a reasonable suspicion that a person has committed a criminal offense or is about to commit a criminal offense, that person may be stopped in order to identify him, question him briefly, or detain him briefly while attempting to attain additional information. F.S. §901.151
2. Where an officer observes unusual conduct and forms a reasonable suspicion, in light of his or her experience, that a detained person may be in possession of a weapon of any kind, and the officer is concerned for his or her own safety or for the safety of others, he or she may conduct a "pat down" search of the subject in question for the sole purpose of discovering weapons.

B. Reasonable Suspicion:

1. Reasonable suspicion is more than a bare suspicion.
2. The officer must be able to articulate facts and circumstances that justify a stop in light of the officer's knowledge, training, and practical experience. This is sometimes referred to as a "founded suspicion."
3. The test to determine whether a stop is justified is based on the totality of the circumstances.

Certain factors **taken alone** will not justify a stop of a person. However, if they are taken with other factors, the stop may be justified. Examples:

- a. The suspect's presence in a **high crime** area **alone** does not justify a stop.
- b. A suspect's **flight** from an approaching officer **taken alone** will not justify a stop.
- c. An appearance of a drug transaction **without** observing a hand to hand transaction of some kind of object will not suffice.
- d. Quick, furtive, or suspicious movements **alone** are not enough to sustain a temporary detention.

C. Third Parties and Anonymous Tips:

1. A stop may be based on information communicated to law enforcement through third parties provided the third party identifies himself/herself and provided the information is objectively reliable based on the officer's training and experience.

2. Information that is provided by a known, reliable confidential informant will provide reasonable suspicion to justify a stop if the information contains sufficient detail to identify the suspect and the information is verified as far as possible.
3. An anonymous tip that an individual has engaged in or is about to engage in criminal conduct **is not sufficient** to justify a stop without **independent evidence** of criminal activity apart from the anonymous tip.

D. Scope and Length of Stop and Frisk:

1. An officer in a stop and frisk situation shall not extend his or her search beyond a "pat down" of a suspect's outer clothing unless that pat down or other circumstances leads the officer to conclude that the suspect has a weapon on his/her person or the officer feels and immediately recognizes an object as contraband. (See "plain feel" exception below.)
2. The observance of a bulge in the suspect's clothing does not provide the basis for a "pat down" search if there were no facts articulated to support the stated fear that the bulge might be a weapon.

Note: A distinctively shaped bulge in the suspect's pocket that appears to be a weapon warrants a limited "pat down" search.

3. An investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop.
4. "Plain Feel" exception:
 - a. An object that a law enforcement officer detects on a suspect's person during the course of a valid protective frisk may be seized without a warrant if the officer's sense of touch makes it **immediately apparent** to the officer that the object, though not threatening in nature, is contraband.
 - b. The officer **must instantly know**, without further investigation or manipulation of the item, what the item is, that it is illegal to possess, and/or is evidence of a crime.

IV. SEARCH OF A MOVABLE VEHICLE:

A. Probable Cause:

1. A warrantless, valid search may be made of a car and any containers within, when there is **probable cause** to believe that the automobile contains contraband, a weapon, or evidence of a crime.

2. Under these circumstances, a search for specific items may be made of the entire vehicle, including the trunk, locked or unlocked containers, and locked glove compartment to the extent that such containers may be capable of holding the item(s) believed to be inside the vehicle.

B. Search of a Vehicle Incident to Arrest:

1. If the driver or any passenger of a vehicle has committed an offense which subjects him/her to arrest, a warrantless, valid search may be made of the arrestee's person and only that area **within the arrestee's reach**, i.e., the passenger compartment, including any locked or unlocked containers therein. This search is for evidence relating to the crime for which the subject has been arrested. If it is unlikely that the vehicle could contain evidence relating to the crime for which the subject was arrested, the search should not proceed on this basis. See *Arizona v. Gant*, 128 S. Ct. 1443 (2009).
2. The trunk **may not** be searched in this situation unless the vehicle is to be impounded and an inventory search is made pursuant to standard operating procedures or some other basis for the search exists.
3. A passenger may not be searched unless there is a reasonable, articulable suspicion that he/she has committed a crime or poses a threat to the officer.

C. Investigative Stops: Where an officer makes an investigative stop of a vehicle, the vehicle may be searched for weapons if facts known to the officer create a **reasonable** belief that a suspect might gain control of a weapon.

D. Requirement That Vehicle Is Movable: The vehicle must be **movable** or **mobile** to authorize its search without a warrant because the justification for this rule is that the vehicle is capable of being moved before an officer can secure a search warrant and the opportunity to search is fleeting.

V. SEARCH AT A CRIME SCENE:

A. General Principles:

1. The existence of exigent circumstances, at the scene of a crime, will justify a warrantless search when an **emergency** exists.
2. To invoke the **emergency** rule to search a person's home, the exigency of the situation must be so compelling as to make a warrantless search objectively reasonable.

B. Homicide Scene:

1. When the police are called to the scene of a homicide, they may make warrantless entries on the premises where they reasonably believe that a person within is in need of immediate aid, and they make a prompt warrantless search of the area to see if there are other victims or if the killer is still on the premises.
2. A warrantless search of the premises/home is not constitutionally protected simply because a homicide has occurred there.

VI. EXIGENT CIRCUMSTANCES:

A. Destruction of Evidence:

1. An officer may enter a citizen's home without a search warrant to prevent the imminent use of a dangerous weapon, or to prevent the potential destruction of fruits of a crime.
2. The officer must be prepared to show that a weapon or drugs were likely to be removed or destroyed before a warrant could be obtained.

B. Protection of Life and Property:

1. An officer can enter premises without a warrant to protect individuals in distress, to assist victims of crimes, or to investigate suspicious signs of impending danger.
2. The officer must be prepared to justify his or her actions by showing that entry **was not made** for the purpose of gathering or seizing evidence.

C. Security Search Subsequent to Arrest:

1. An officer can enter premises as part of a security sweep based on **exigent circumstances** surrounding a particular arrest.
2. This security check permits the officer to protect him or herself by looking for other persons who may be present in an area and who may pose a danger to the officer.
3. If the security check is conducted inside the premises after an arrest is made outside, the officer must be prepared to establish that there was evidence to suggest the presence of other persons in the premises.

VII. INVENTORY SEARCHES:

A. General Principles:

1. Inventory searches are a well-defined exception to the warrant requirement of the Fourth Amendment.
2. Inventory procedures serve to protect an owner's property while it is in the custody of the police to insure against claims or disputes over lost, stolen, or vandalized property, and to protect the police from potential danger.
3. If contraband or the fruits or instrumentalities of a crime are discovered within the vehicle, pursuant to a valid inventory search, they are subject to valid seizure and are admissible as evidence.
4. Before a vehicle can be inventoried, it must be necessary to impound it.

B. Impoundment of Vehicles: A vehicle may **not** be impounded when the owner/driver requests and has the ability to have his car removed by someone else without intervention by police, or the vehicle at the time of the arrest is **not** a traffic hazard and the owner consents to leave it where it is.

C. Scope of Inventory Search:

1. The scope of the search is limited to what standard operating procedure for inventory searches permits for inventory searches.
2. Simply search all areas which standard operating procedure mandates be searched.
3. The scope of the search is not discretionary with the officer. All areas of the vehicle, including closed containers, locked glove compartment, and trunk, must be searched.

VIII. SEARCH INCIDENT TO ARREST:

A. General Principles:

1. In the case of a lawful custodial arrest, a full search of the person is an exception to the requirement of a warrant.
2. By statute in Florida, when a lawful arrest is effected, an officer may search the person arrested and the area within the person's immediate presence for the purpose of protecting the officer from attack, preventing the person from escaping, or discovering the fruits of a crime. F.S. §901.21(1).

3. An officer making an arrest may seize all instruments, articles, or things discovered on the person arrested or within the person's immediate control. F.S. §901.21(2).
4. Any search incident to arrest, of a vehicle or premises, is limited to a search for evidence of the specific crime for which the subject was arrested. If the nature of the crime is such that no evidence of that specific crime is likely to be found, i.e., DWLS, reckless driving, etc. the search may not proceed as a search incident to arrest. See Legal Bulletin No. 09-07.

B. Extent of Search Incident to Arrest:

1. A search incident to arrest is a reasonable intrusion if the object of the search was within the suspect's immediate area of control just prior to his detention and the seizure relates to the crime for which the subject was arrested.
2. As an incident to an arrest in a home, officers may look in closets and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched.

C. Automobiles and Containers Within:

1. The police may lawfully search, following a lawful custodial arrest of the driver or any passenger, the passenger compartment of an automobile as long as the confrontation between the police and the citizen is commenced while the citizen is actually in the vehicle or the citizen has just exited the vehicle. The passenger compartment consists of all interior areas of the vehicle that could be accessed by a person without exiting the vehicle including the rear area of a hatchback or an S.U.V. and all locked or unlocked containers within those areas.
2. The search of an automobile incident to a lawful arrest includes the examination of the contents of any containers found within the passenger compartment whether open or closed, locked or unlocked. Again, this search is for evidence relating to the specific crime for which the subject is arrested. However, if during a proper search evidence of unrelated crime(s) is discovered, that evidence may be seized and may be the basis of additional charges.

IX. PLAIN VIEW:

A. General Principles:

1. The officer must have had a prior justification for an intrusion into a constitutionally protected area.

2. The item must be in plain view and its incriminating character must be immediately apparent.
 3. The officer must have a lawful right of access to the object itself.
- B. Extension of Search: The officer must not extend the search after seizure of the item(s) in plain view without a warrant or some other exception to the warrant requirement.

X. SEARCH WARRANTS:

- A. General Principle: In general, a search of premises, a vehicle, or a person **should not** be conducted without first obtaining a search warrant.
- B. Grounds for Issuance of a Search Warrant:
1. In order for a police officer to obtain a search warrant, he or she must present to a neutral judge or magistrate, information in the form of a sworn affidavit, which constitutes probable cause to believe that evidence of an offense is likely to be found at a specific location identified in the warrant.
 2. The following are grounds for the issuance of a warrant:
 - a. When the property shall have been stolen or embezzled in violation of law;
 - b. When property shall have been used as a means to commit a crime;
 - c. When any property constitutes evidence relevant to proving that a felony has been committed.
- C. Private Dwellings:
1. Per F.S. §933.18, no search warrant shall issue to search any private dwelling unless:
 - a. It is being used for the unlawful sale, possession, or manufacture of intoxicating liquor.
 - b. Stolen or embezzled property is contained within the dwelling.
 - c. The dwelling is being used to carry on gambling.
 - d. The dwelling is being used to perpetrate frauds and swindles.
 - e. The law relating to narcotics or drug abuse is being violated in the dwelling.

- f. A weapon, instrumentality, or means by which a felony has been committed, or evidence relevant to proving a felony has been committed, is contained in the dwelling.
 - g. One or more of the following misdemeanor child abuse offenses is being committed there:
 - 1) Interference with child custody (now a 3rd degree felony);
 - 2) Commission of an unnatural and lascivious act with a child; and
 - 3) Exposure of sexual organs to a child.
 - h. The dwelling is in part used for some business purpose such as a store, shop, saloon, restaurant, hotel or boarding, or lodging house.
 - i. The dwelling is being used for the unlawful sale, possession, or purchase of wildlife, saltwater products, or freshwater fish being unlawfully kept therein.
 - j. The laws in relation to the cruelty to animals have been or are being violated within the dwelling, although such a search may not be made after sunset and before sunrise unless specially authorized by the judge issuing the warrant, upon a showing of probable cause.
- D. Narcotics Laws Being Violated: An affidavit **does not** establish probable cause for issuance of a warrant under provision when it only alleges that marijuana was observed growing on the property surrounding the residence and does not allege that a violation of the narcotics law existed within the residence.
- E. Affidavit for Search Warrant:
- 1. A search warrant must be based upon a duly sworn to and subscribed to affidavit which sets forth facts to establish probable cause to believe that the property sought to be seized is upon the premises, person, or vehicle to be searched.
 - 2. A search warrant must describe the place to be searched with sufficient particularity so that a reasonable person who is unfamiliar with the investigation could read the description and find the premises, person or vehicle to be searched.
 - 3. A search warrant must particularly describe the property sought to be seized.

4. A confidential source can provide sufficient probable cause upon which to base a sworn affidavit for a search warrant.
5. When an informant's information is used to support a search warrant, the sworn affidavit must set out supporting facts, which show the judge, why the confidential informant should be believed:
 - a. The past reliability of the information provided by the informant;
 - b. The source of the informant's knowledge;
 - c. The specific information; and
 - d. Independent police corroboration of the information.
6. Mere conclusions of an informant are insufficient to support a search warrant.

F. Execution of a Search Warrant:

1. A search warrant and its attendant sworn affidavit must be reviewed and signed by a judge, and must be executed and returned to the judge within ten days after its issuance.
2. "No knock" search warrants are not authorized per s. 933.09, F.S.
3. "Knock and Announce" required:
 - a. An officer engaged in the execution of a search warrant must notify those within the residence of the officer's presence by knocking, or some other reasonable means, and announce his or her authority and the purpose of his or her presence before making entry.
 - b. An officer executing a search warrant may break open any outer door, inner door, or window of a house, or any part of a house or anything therein, to execute the warrant if, after giving due notice of his or her authority and purpose, he or she is refused admission to the house or access to anything therein.
4. There are exceptions to the "knock and announce" requirement such as:
 - a. The person within already knows of the officer's authority and purpose.
 - b. The officer is justified in the belief that the persons within are in imminent peril or bodily harm.

- c. The officer's peril would have been increased had he or she demanded entrance and stated his or her purpose.
- d. Those within, made aware of someone outside, are engaged in activities which justify the belief that an escape or destruction of evidence **is being** attempted, and that evidence **would be** destroyed if the officer announced his or her presence.

XI. REPORTS:

- A. All searches of persons, structures or vehicles must be fully documented even if no evidence or other item of interest is revealed by the search. Documentation must include:
 - 1. The legal basis for the search;
 - 2. The area covered during the search;
 - 3. The type of items for which the search was conducted; and
 - 4. A description of all items of interest located or a statement that nothing was found.
- B. If an officer is requested by another officer to perform a search, the requesting officer will document this in the report along with the reason why he or she requested the other officer i.e. female searches.
- C. If **contraband** or **evidence** of a crime is located by the searching officer, that officer will supplement to the original report and document their findings.
- D. If no offense report results from an investigation or search, the incident will be documented in an information report or a street check by the investigating officer at the scene. See Legal Bulletin No.11-16.

Supersedes SOP 821, dated 4/19.



Policy 1109

Subject	
WARRANTLESS SEARCHES	
Date Published	Page
9 February 2021	1 of 9

By Order of the Police Commissioner

POLICY

It is the policy of the Baltimore Police Department (BPD) to respect the fundamental privacy rights of all persons. Members will conduct Searches in strict accordance with the rights secured and protected by the Constitution and laws of the United States and the State of Maryland. All Searches shall be conducted with concern for safety, dignity, courtesy, and respect for privacy.

See Policy 1007, *Search and Seizure Warrants*, Policy 1013, *Strip Searches and Body Cavity Searches*, and Policy 1112, *Field Interviews, Investigative Stops, Weapons Pat-Downs, and Searches* for directives regarding other types of Searches that are not fully covered in this policy.

CORE PRINCIPLES

Constitutional Searches. BPD members will conduct Searches in compliance with the 4th and 14th Amendments to the Constitution as well as Maryland law and Declaration of Rights.

Non-Discriminatory Policing. BPD members shall not consider, to any extent or degree, the following actual or perceived personal characteristics when exercising discretion to conduct a warrantless Search, except as part of an actual and apparently credible description of a specific suspect in any criminal investigation: age, race, ethnicity, disability, economic status, gender expression, gender identity, immigration status, homelessness, national origin, political ideology, sexual orientation, HIV status, religion, veteran status, social status, or familial status.

DEFINITIONS

Probable Cause to Search — Where facts and circumstances, known to the member and taken as a whole, would lead a reasonable member to believe that, based on their training and experience, either contraband or evidence of a crime will be found in a particular location.

Reasonable Articulate Suspicion (RAS) — A well founded suspicion based on specific, objective, articulable facts, taken together with the member's training and experience, that a subject has committed, is committing, or is about to commit a crime.

Search — An inspection, examination, or viewing of persons, places, items, or information in which a person has a legitimate expectation of privacy. A Search need not be visual; it may include grasping, prying into or manipulating persons or objects (e.g., reaching into a purse or pocket, feeling inside of the trunk of a car, physical manipulation of a duffel bag, etc.). An entry into the home or the curtilage (area immediately around the home) will generally be considered a search. In some circumstances, a dog sniff may constitute a Search as well. See Policy 1602, *Canine Procedures*.

Search Warrant – A written order, issued by the court, authorizing and directing a member to seize and Search a specified person, premises, vehicle, dwelling or other location in order to seek and recover contraband or evidence related to the commission of a crime. A Search Warrant generally consists of a Search Order, a Warrant Application, and an Affidavit in Support of the Search Warrant.

SEARCHES

1. A Search occurs when law enforcement intrudes on a person's reasonable expectation of privacy.
2. The U.S. Constitution generally requires law enforcement to obtain a Search Warrant prior to conducting a Search. There are, however, *limited* exceptions to the warrant requirement. The most common of these exceptions are:
 - 2.1. Probable Cause Search of a Vehicle;
 - 2.2. Exigent Circumstances;
 - 2.3. Search Incident to Arrest; and
 - 2.4. Consent Search.
3. Because case law regarding Searches is constantly changing and subject to interpretation by the courts, members shall be alert to legal updates sent by the Department regarding Searches. **When in doubt as to the existence or applicability of an exception to the Search Warrant requirement, the member should take the time to obtain a Search Warrant. See Policy 1007, Search and Seizure Warrants.**
4. Reasonable Articulate Suspicion and Probable Cause should be founded on specific and objective facts or observations about how a person behaves, what the person is seen or heard doing, and the circumstances or situation in regard to the person that is either witnessed or known by the member. Accordingly, Reasonable Articulate Suspicion and Probable Cause must be based on facts or observations about a particular person's actions or the particular circumstances that a member encounters.
 - 4.1. The physical characteristics of a person, including generic clothing descriptions, are never, by themselves, sufficient. Instead, those characteristics must be combined with other factors, including a specific, non-general description matching the suspect or the observed behaviors of the person. A mere hunch or suspicion is not enough.
 - 4.2. An anonymous tip must be sufficiently detailed and all facts and circumstances must provide indicia of the tip's reliability to give rise to RAS. Mere allegation that a person is carrying a gun is not sufficient. Neither is a very general description based on race and clothing.
5. Discoveries made during a warrantless Search under exigent circumstances may be used to establish Probable Cause for a Search Warrant.

DIRECTIVES

General Procedures

Required Actions

6. BPD members shall strive to conduct Searches courteously and in a way that promotes the dignity of the person Searched.
7. BPD members shall explain to the person being Searched the reason for the Search and how the Search will be conducted.
8. Since all Searches are investigative in nature, members shall record every Search on their BWC. BPD members shall attempt to record the activity on which they base their reasonable suspicion on their BWC, to the extent practicable and safe. Consistent with Policy 824, *Body-Worn Camera*, members must activate their BWC at the onset of any call for service or activity that is investigative or enforcement related in nature.
9. As a general rule, a person shall only be Searched by a BPD member of the same gender, unless the person expresses health or safety reasons for a cross-gender search. Absent exigent circumstances, the person's preferences for health or safety reasons with respect to the gender of the member conducting a Search will be honored. When it is not practicable to summon a member of the mandated or preferred gender, the member shall have another member or a supervisor witness the Search. See Policy 1013, *Strip Searches and Body Cavity Searches*, and Policy 720, *Interactions with Lesbian, Gay, Bisexual, Transgender, and Queer/Questioning (LGBTQ) Individuals* for further guidance.
10. BPD members shall carry out Searches with due regard and respect for private property interests and in a manner that minimizes damage. Members shall leave property as close as reasonably possible to its pre-Search condition.
11. In order to minimize property damage and the need for forcible entry, and where doing so would not place BPD members at heightened risk, members shall attempt to lawfully obtain keys, combinations, or access codes when a Search of locked property is anticipated.
12. BPD members shall use accurate and specific descriptive language and not rely on "boilerplate" or "pat" language in any reports documenting Searches. Articulation of RAS and Probable Cause shall be specific and clear.

Prohibited Actions

13. BPD members shall not conduct a Search beyond the scope of the underlying justification for the Search. Any Search conducted past that point requires either a Search Warrant or another exception to the Search Warrant requirement.
14. BPD members shall not use or rely on information known to be materially false or incorrect to justify any type of Search.
15. Items or contraband recovered from a Search which was not permissible under this policy shall not be used as justification for the Search.

16. BPD members shall not Search, seize, or otherwise coerce (implicitly or explicitly) production of recorded images, videos or sounds without obtaining a warrant, unless the person voluntarily provides the recorded material or the below exigency exists:
 - 16.1. If the person declines to voluntarily provide recordings but there is Probable Cause to believe that the recording contains critical evidence related to a crime, and if such evidence is in immediate danger of being tampered with, altered, deleted, or destroyed, then a BPD member may temporarily secure the recording device while a legal subpoena, Search Warrant or other valid court order is obtained.
 - 16.2. See policy 1016, *Public Observation/Recording of Officers* for full guidance.

Probable Cause Searches of Vehicles

Since operable vehicles are capable of movement, members may conduct a warrantless Search if there is Probable Cause to believe the vehicle contains evidence of a crime or contraband.

Required Action

Prior to conducting a warrantless Search of a movable vehicle, members shall:

17. When practical, first seek to obtain consent to the Search prior to Searching a person or a movable vehicle without a warrant (See Policy 1112, *Field Interviews, Investigative Stops, Weapons Pat-Downs & Searches*).
18. Members must have Probable Cause to Search in order to conduct a warrantless Search.
 - 18.1. If a member has Probable Cause to Search a vehicle, the member may Search anywhere in the vehicle where the evidence or contraband sought may reasonably be found.
 - 18.2. This may include containers within the vehicle regardless of the ownership of those containers.

NOTE: Members are encouraged to seek out a Search Warrant where practical prior to conducting a Search that will likely cause damage to a vehicle.

Prohibited Action

19. Members shall not conduct a warrantless Search of a vehicle located in a driveway or within the curtilage of a home (area immediately surrounding a home).

Exigent Circumstances

Required Action

20. A Search may be justified by exigent circumstances where there is:
 - 20.1. Probable Cause, AND
 - 20.2. Substantial risk that waiting for a warrant would result in:

- 20.2.1. Harm to a person,
- 20.2.2. Destruction of evidence, or
- 20.2.3. Escape of someone subject to arrest.

Entry into Residences and Non-Public Structures

21. Warrantless arrests in the home are generally disfavored as physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed to guard. The United States Supreme Court has long adhered to the view that the warrant procedure minimizes the danger of needless intrusions. Therefore, absent **exigent circumstances**, law enforcement must obtain a warrant before entering into a private **residence** or non-public building where there is a reasonable expectation of privacy to make an arrest or conduct a Search.
22. There are three types of exigent circumstances that would justify a warrantless entry into a residence or non-public building where there is a reasonable expectation of privacy:
 - 22.1. **Hot Pursuit of Fleeing Felons:** Officers may enter a residence or non-public building where there is a reasonable expectation of privacy if they are in hot pursuit of a fleeing felony suspect. Officers are not allowed to make a warrantless hot pursuit entry when there is only probable cause of a misdemeanor or a minor offense. Examples of misdemeanors include DUI, traffic offenses, curfew violations, citation offenses, and non-arrestable violations (See Policy 1018, *Quality of Life Offenses – Core Legal Elements*).
 - 22.2. **Destruction of Evidence:** The law allows entry into a residence or non-public building where there is a reasonable expectation of privacy if the officers have a reasonable belief that evidence of a felony is about to be removed or destroyed. If entry is made to prevent the destruction of evidence, except in exceptional circumstances such as danger to members or the public, members shall not seize the evidence or contraband. Members shall secure the premises and the evidence, freeze the scene to include all occupants while allowing for occupants to leave if they wish, and await the arrival of a search warrant.
 - 22.3. **Protection of the Police or the Public:** When members have reasonable grounds to believe there was an immediate need to ensure their safety and the safety of others, they may make a warrantless entry into a residence or non-public building where there is a reasonable expectation of privacy to guarantee the safety of themselves and others. Prior to the entry the members must:
 - 22.3.1. Have a reasonable belief that there is an immediate need to protect the lives or safety of themselves or the public;
 - 22.3.2. Conduct the search absent a motivation or desire to discover evidence or make an arrest; and
 - 22.3.3. Have a reasonable basis, approaching probable cause, to associate the emergency with the place to be searched.
23. A warrantless Search conducted due to exigent circumstances is valid only as long as the exigent circumstances last. When the exigency has ended, any further Search must be justified by a warrant or another exception to the warrant requirement.

Searches Incident to Arrest**Required Action**

24. A member must have Probable Cause to arrest, the authority to arrest, and the intent to arrest before performing a Search incident to arrest.
25. A Search incident to arrest shall include a weapons pat-down and Search of the individual's pockets. It may also include Search of any articles of property found on the person, and the minor manipulation of clothing that does not expose a person's groin/genital area, buttocks, female breasts, or more than the waistband or upper portions of the undergarments.
26. The areas included in this Search are the person being arrested and the area in their immediate control.

NOTE: Once the arrestee has been removed from the area and has been rendered incapable of gaining "immediate control" of items in that area, a warrantless Search incident to arrest may no longer be conducted of that area.

26.1. If an arrestee is an occupant or was recently an occupant of a vehicle, a limited Search of the passenger compartment of the vehicle (including glove box, center console or containers therein) may be conducted, if:

26.1.1. The arrestee is unsecured and within reaching distance of the passenger compartment at the time of the Search, or

26.1.2. There is RAS that a Search of the passenger compartment will uncover evidence related to the crime for which the occupant was arrested.

27. See Policy 1104, *Arrest Warrants*, Policy 1106, *Warrantless Arrest and Probable Cause Standard* and Policy 1114, *Persons in Police Custody*.

Consent Searches**Required Action**

28. To request to conduct a consent Search of a person or property for contraband or other evidence of a crime, members must have (1) RAS that a crime has been committed, and (2) RAS that the person is involved in the crime or possesses evidence of the crime or the place to be searched contains evidence of the crime.
29. Prior to a consent Search, the member shall provide a Permission to Search, Form 29 (see Appendix A), to the person whose person or property they wish to Search and shall explain the purpose of the form. The member shall affirmatively explain that the person has a right to refuse, limit, and revoke consent at any time that the person will not be punished or detained longer if they refuse.
 - 29.1. If the person requests further explanation of their rights or if it is apparent that the person giving consent has difficulty reading or understanding their rights, the member shall explain until the person acknowledges their full understanding of the consent. If applicable,

refer to Policy 1103, *Communicating with Individuals who are Deaf and Hard of Hearing* or Policy 1735, *Language Access Services for Limited English Proficient (LEP) Persons*.

29.2. If the person gives verbal consent to Search but refuses to sign the form, the member may proceed with the Search but **MUST** document the person's verbal consent and refusal to sign the Permission to Search form.

29.1.1. Record on Body-Worn Camera (BWC) if the member has a BWC.

29.1.2. If member does not have a BWC, document the verbal consent but refusal to sign the Permission to Search on the Permission to Search, Form 29.

29.3. Include on the back of the Permission to Search, Form 29:

29.3.1. The events giving rise to RAS for a search.

29.3.2. How consent was obtained (i.e., verbally or in writing).

29.3.3. How the search was conducted.

29.3.4. The location of any contraband or evidence that was discovered, and the name of the member who found and seized the evidence.

29.3.5. If anything was seized during the search.

29.3.6. Whether the search resulted in an arrest.

NOTE: Members may instead attach a copy of the incident report to the form so long as it contains the above information.

30. Consent can only be given by a person who the member can demonstrate, or that the member can reasonably articulate, has the authority to give consent to Search the property.

31. If two or more people with equal apparent authority over the property are present and disagree about permission to Search, the consent Search shall not be conducted. This includes situations in which a parent gives permission to search but a youth refuses permission to search areas of the home which are in control of the youth, such as the youth's room, closet, or bags stored in the home.

32. The scope of the Search must be established and may be limited in any way the person wishes. If the Search exceeds the authorized scope, it must be justified by another exception or will be unlawful.

33. The person providing consent may stop the Search at any point and must be able to communicate their request to stop the Search.

34. If the consent Search has begun, but the person then decides to revoke their consent:

34.1. The member must stop the Search unless another exception to the Search Warrant requirement applies. Consent may be withdrawn at any time by any person with apparent

authority over the property, and the Search must be terminated immediately should this occur;

- 34.2. The member must not use threats or other forms of coercion to obtain or induce the person not to revoke consent; and
 - 34.3. Even if property return is requested, the member may retain custody of evidence or contraband lawfully seized prior to revocation of consent.
35. For consent searches of Youth, please see Policy 1202, *Youth: Consensual, Non-Custodial Contacts and Custody Procedures*.

Prohibited Action

36. Members may not conduct a Search until the person has signed the Permission to Search form, unless the circumstances under 2.2. above are met.
37. Members shall not use a person's refusal to give consent to Search as a factor in establishing reasonable suspicion or Probable Cause.
38. Members shall not tell a person that refusal to provide consent may lead to adverse consequences, such as arrest or warrantless seizure of their property.

APPENDICES

- A. Permission to Search, Form 29

ASSOCIATED POLICIES

- Policy 317, *Fair and Impartial Policing*
Policy 824, *Body-Worn Camera*
Policy 720, *Interactions with Lesbian, Gay, Bisexual, Transgender, and Queer/Questioning (LGBTQ) Individuals*
Policy 1007, *Search and Seizure Warrants*
Policy 1013, *Strip Searches and Body Cavity Searches*
Policy 1016, *Public Observation/Recording of Officers*
Policy 1103, *Communicating with Individuals who are Deaf and Hard of Hearing*
Policy 1112, *Field Interviews, Investigative Stops, Weapons Pat-Downs & Searches*
Policy 1114, *Persons in Police Custody*
Policy 1401, *Control of Property and Evidence*
Policy 1602, *Canine Procedures*
Policy 1735, *Language Access Services for Limited English Proficient (LEP) Persons*

COMMUNICATION OF POLICY

This policy is effective on the date listed herein. Each employee is responsible for complying with the contents of this policy

APPENDIX A

Permission to Search, Form 29

POLICE DEPARTMENT**BALTIMORE, MD**

PERMISSION FOR SEARCH

Form 29

Right to Refuse

The Baltimore Police Department would like to conduct a search of your person, residence, vehicle and/or other property described below. You have the right to refuse this search. If you agree, you may limit and/or revoke consent at any time.

By signing below, I affirm that I understand my right to refuse, limit and revoke consent at any time.

PRINTED NAME: _____

SIGNATURE: _____

Scope of Search

I, _____, having been informed of my rights, hereby authorize _____ of the Baltimore Police Department to conduct a search of

- my person;
 my residence located at _____
and/or
 my vehicle (year/make/model/license #) _____
 other: _____

My consent is:

- not subject to any limitation
 limited to _____

This officer is authorized by me to take from my person, residence, vehicle or other property herein described, any letters, papers, materials or other property related to a law enforcement investigation or action, subject to any limitation described above.

This written permission is being given by me to the above-named officer voluntarily and without threats or promises of any kind.

SIGNED: _____

DATE: _____ 20____ TIME _____ M.

WITNESSES: _____

APPENDIX C

CURTAILING THE USE OF PRETEXT STOPS

9.07.01 PURPOSE

The San Francisco Police Department's traffic enforcement efforts shall focus on ensuring the safety of our sidewalks and roadways. To that end, the goal of this General Order is to curtail the practice of stopping vehicles for low-level traffic offenses as a pretext to investigate hunches that do not amount to reasonable suspicion that a crime occurred. Pretext stops are disproportionately carried out against people of color and return negligible public safety benefits. The fiscal, human, and societal costs they impose on our City are unjustified in light of more effective public safety tools at the Department's disposal.

Reducing the number of stops made for low-level offenses will allow the Department to redirect resources and time to more effective public safety strategies, including prioritizing traffic safety to reduce injuries and fatalities, while also helping to fulfill its obligation to accord every person equal treatment under the law.

9.07.02 DEFINITIONS

- A. **Pretext Stop.** A pretext stop occurs when a member conducts a traffic stop as a pretext to investigate whether the person stopped is engaged in criminal activity unrelated to the traffic violation.
- B. **Biased Stop.** A stop in which a member inappropriately considers characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, socio-economic status, age, cultural group, or disability, in deciding whether to initiate a stop. (See DGO 5.17 § II.B.).
- C. **Reasonable Suspicion.** A set of specific facts and circumstances that would lead a reasonable person to believe that a crime has occurred, is occurring, or is about to occur and the person to be stopped is involved in the crime. Reasonable suspicion cannot be based solely on a hunch or instinct. (See DGO 5.03.02(D)).
- D. **Probable Cause.** A set of specific facts that would lead a reasonable person to objectively believe and strongly suspect that a person committed a crime. (See DGO 5.03.02(G)).
- E. **Investigatory Question.** A question or statement that is intended to elicit, or is reasonably likely to elicit, information relevant to a criminal investigation or criminal activity. Whether a question or statement is investigatory will depend on the specific facts and circumstances of each case. *Examples.* Questions such as

“where are you coming from?” or “where are you going?” are generally investigatory. Conversely, asking “how is your day going?” is not investigatory.

F. Criminal Offense. Any misdemeanor or felony.

9.07.03 POLICY

- A. **Pretext Stops Limited.** Pretext stops produce little if any public safety benefits, while imposing substantial fiscal and societal costs. They may only be used in a manner that is consistent with this policy.
- B. **Biased Stops Banned.** Biased stops are illegal, unconstitutional, and contrary to the Department’s values. They are banned under all circumstances. (See DGO 5.17).
- C. **Stops Based on Reasonable Suspicion or Probable Cause.** Except for those specified violations listed in 9.07.04(A), nothing in this DGO prevents members from initiating a stop for any infraction or criminal offense based on reasonable suspicion or probable cause. (See DGO 5.03).

9.07.04 LIMITING STOPS FOR LOW-LEVEL OFFENSES

- A. Except as provided in 9.07.04(B), a member shall not stop or detain the operator of a motor vehicle solely based on one or more of the following nine (9) categories of violations:
 - 1. A vehicle that has a rear license plate with the plate number clearly visible. (Cal. Veh. Code §§ 5200(a), 5201(a)). *Note:* Members may stop vehicles for these violations in all other circumstances, including where a vehicle has no license plates or only has a front license plate and no rear license plate.
 - 2. A vehicle that fails to display registration tags or is driving with expired registration of more than one (1) year. (Cal. Veh. Code §§ 4000(a)(1), 5204(a)). *Note:* Members may stop vehicles for either of these violations if the vehicle’s registration has been expired for one (1) year or more.
 - 3. A vehicle that fails to illuminate the rear license plate. (Cal. Veh. Code § 24601).
 - 4. A vehicle driving without functioning or illuminated rear taillights. (Cal. Veh. Code § 24600). *Note:* Members may stop vehicles for this violation if

the vehicle has no functioning or illuminated rear taillights during sundown.

5. A vehicle that is driving without functioning or illuminated rear brake lights. (Cal. Veh. Code § 24603). *Note:* Members may stop vehicles for this violation if none of the vehicle's brake lights are functioning or illuminated.
6. A vehicle that has objects affixed to windows or hanging from the rearview mirror, unless the object obstructs the driver's vision such that it creates a condition that substantially increases the likelihood of a crash. (Cal. Veh. Code § 26708(a)(1)-(2)). *Examples:* A hanging air freshener or prayer beads from the rear-view mirror will not generally create a condition that substantially increases the likelihood of a crash. Conversely, affixing an electronic GPS device to the windshield that creates a vision-obstructing glare while driving at night (*see* Cal. Veh. Code § 26708(b)(12)) may create a condition that substantially increases the likelihood of a crash.
7. A vehicle that fails to activate a turn signal continuously for 100 feet before turning. (Cal. Veh. Code § 22108). *Note:* Members may stop vehicles for unsafe turns or lane changes. (*E.g.* Cal. Veh. Code § 22107).
8. A vehicle that has a person sleeping in the vehicle. (S.F. Trans. Code § 97). *Note:* Members may make a stop for this code violation when another City agency (including HSOC, MTA, or Public Health) requests that the Department do so.
9. Any stop of a pedestrian for an infraction in violation of the California Vehicle Code or San Francisco Transportation Code unless there is an immediate danger that the pedestrian will crash with a moving vehicle, scooter, bicycle, or other device moving exclusively by human power.

Nothing in section 9.07.04(A) above prohibits a member from taking any of the following actions so long as it does not result in an investigative detention as defined in DGO 5.03: (a) issuing a citation to a parked car, (b) warning an individual that their conduct is in violation of the law, (c) requesting that an individual conform their conduct to the law, or (d) mailing a citation as permitted by state and local law.

- B. Exceptions.** A member may stop, detain, or issue a citation to a person or an operator of a motor vehicle for any violation enumerated in section 9.07.04(A) above if:

1. the member lawfully stopped or detained the person or operator of the motor vehicle for any infraction or criminal offense not specifically enumerated in section 9.07.04(A); or
2. the operator is driving a commercial vehicle; or
3. a person or motor vehicle matching the description of a suspect or suspect vehicle involved in a felony offense where the risk of death or life-threatening injuries is imminent if the suspect is not immediately apprehended, including murder, attempted murder, manslaughter, armed robbery, kidnapping, forcible sex offense, a felony committed against a child.
4. the member is investigating a traffic crash as outlined in Cal. Veh. Code § 40600(a).

9.07.05

LIMITING SEARCHES & QUESTIONING

- A. During a traffic stop for a violation punishable as an infraction under either the California Vehicle Code or San Francisco Transportation Code, members shall only ask investigatory questions regarding criminal activity if reasonable suspicion or probable cause for a criminal offense arises during the traffic stop. (*Example:* During a routine traffic stop, officers smell the odor of an alcoholic beverage on the driver's breath, they may then begin to ask investigatory questions about a potential DUI violation). Nothing in this DGO shall prohibit a member from asking a driver for their license, registration, or proof of insurance.
- B. During a traffic stop for a violation punishable as an infraction under either the California Vehicle Code or San Francisco Transportation Code, members shall only ask for permission to conduct a consent search of a person or vehicle if reasonable suspicion or probable cause for a criminal offense arises during the stop.
- C. **Exceptions.** The above limits on searches and questioning set forth in section 9.07.05(A)-(B) shall not apply to stops made pursuant to section 9.07.04(B)(2)-(B)(4).

9.07.06

DATA COLLECTION, REPORTING & SUPERVISORY REVIEW

- A. Nothing in this DGO shall require a member to write an incident report if it is not otherwise required by another Department policy. Any member who requests consent to search an individual or asks an investigatory question unrelated to the purpose of the stop under section 9.07.05(A)-(B) shall document the following in an

incident report and/or chronological report of investigation: (a) the reason for the stop, and (b) the circumstances justifying a request to conduct a consent search and/or asking any investigatory questions. If an incident report is not otherwise required, members shall memorialize (a) and (b) in CAD and on their body-worn camera.

- B. Members shall enter all stop data into the Stops Data Collection System (SDCS) prior to the end of their shift, unless exigent circumstances prevent entry, in which case, members shall enter data by the end of their next shift.
- C. Superior officers are responsible for reviewing traffic stop data for members under their direct supervision (PIP Group) on a quarterly basis.
- D. On a quarterly basis, the Department must transmit to the Commission and to the Department of Police Accountability all raw SDCS data (other than personal identifying information) containing the information that the Department must collect pursuant to Cal. Gov't Code § 12525.5, Cal. Code Regs. tit. 11, § 999.226, and any other related laws governing stop data collection. The Department shall also make this raw data publicly available on its website in a machine-readable format.

References

DGO 5.03
DGO 5.17

APPENDIX D

635 TRAFFIC DEPLOYMENT RESPONSIBILITY AND TRAFFIC ENFORCEMENT GUIDELINES

- I. PURPOSE: This directive assigns responsibility for the deployment of officers to enforce traffic laws and establishes guidelines for the enforcement of such laws.
- II. DISCUSSION: The enforcement of traffic laws is a basic law enforcement responsibility and a major function of the uniformed districts. Officers assigned to other divisions and units of the department, particularly those assigned to plainclothes duty, do not normally enforce traffic laws unless a driver is operating a vehicle in such a manner as to endanger the lives or property of other citizens.

The Tampa Police Department is committed to ensuring vehicle traffic stops are conducted in a fair and effective manner for the purpose of improving safety and reducing crime. The desired outcome of the department's traffic law enforcement efforts is to persuade drivers to comply voluntarily with traffic laws and regulations. The purpose of traffic laws and the enforcement thereof is to modify driver behavior and subsequently to reduce crashes. Priority is placed on citing those drivers who commit hazardous moving violations.

The intent of these guidelines is to provide officers with acceptable actions to take when traffic violations are observed. These guidelines are not meant to supplant officer judgment, for it is impossible to foresee every conceivable situation. In unusual circumstances, officers must decide what enforcement action is proper based on a combination of training, experience, and common sense.

Refer also to other traffic procedures contained in the 635 series of directives as well as in SOP 402.4 and SOP 634.

- III. DEFINITIONS:
 - A. Consensual Encounter: A request by an officer to speak to an individual but not a command. During consensual encounters, the individual must reasonably feel he or she is free to leave or to otherwise decline the request to speak with the officer. No suspicion is necessary to justify a consensual encounter and it can last any length of time as long as the individual is not made to feel that he or she is no longer free to leave. If facts develop into reasonable suspicion, an individual may be lawfully detained or arrested if additional facts are developed. *See* Legal Bulletin # 11-04.
 - B. Reasonable Suspicion: The articulable facts justifying a vehicle traffic stop which provide more than a mere hunch that a violation of the law has been committed, is in the process of being committed, or is about to be committed. (Legal Bulletin # 11-04). Even if the officer has a reasonable suspicion, the duration of the vehicle traffic stop cannot be indefinite. A vehicle traffic stop must be temporary or last no longer than is necessary to affect the original purpose of the detention to be considered reasonable.

Reasonable Suspicion does not necessarily require an officer to observe a violation of the law.

IV. LEGAL CONSIDERATIONS:

- A. All vehicle traffic stops must be supported by reasonable suspicion of a particular violation of the law. Without reasonable suspicion, any contact with the citizen is a consensual encounter from which the citizen may depart at any time. Citizens may also lawfully refuse to speak with an officer or provide any information during a consensual encounter.
- B. Whether the officer who initiated the traffic stop had an objectively reasonable basis for making the stop is based upon reasonable suspicion. The validity of a traffic stop is determined by considering whether the officer who stopped the vehicle had an objective basis to do so, not whether it would be standard police practice to stop the vehicle
- C. Biased-based policing is forbidden. (See SOP 536.1). Vehicle traffic stops must be based on reasonable articulable facts when viewed through the eyes of a trained and experienced law enforcement officer that are sufficient to cause him or her to believe that criminal activity or civil violations have occurred, or are about to occur, without regard to the race, ethnic origin, gender, age (except when gender or age is an element of the offense), economic status, or sexual orientation of the person stopped.
- D. Officers must ensure vehicle traffic stops terminate promptly once the officer has dealt with the violation unless there is some additional reasonable suspicion. A vehicle traffic stop is limited in scope and duration and cannot be unlawfully prolonged. (See Legal Bulletin # 2020-21 Unlawfully Prolonged Traffic Stops).

V. ENFORCEMENT RESPONSIBILITY:

- A. The Special Operations Division Commander, who utilizes data available from the department's crime analysts, has the responsibility to evaluate the department's traffic law enforcement programs on a quarterly basis. The Special Operations Division commander shall recommend to the Assistant Chief of Investigations and Support the initiation of certain department-wide programs when needed.
- B. Uniform district commanders possess primary responsibility for identifying enforcement problems in each district, planning enforcement programs at the district level, and effectively deploying officers and equipment to accomplish such programs.
- C. Sector commanders, by utilizing data available from the department's crime analysts, have primary responsibility for identifying enforcement

problems, planning enforcement programs at the sector level, and effectively deploying officers and equipment to accomplish such programs.

- D. Squad sergeants, utilizing data available from the department's crime analysts, have primary responsibility for identifying enforcement problems, planning enforcement programs at the squad level, and deploying officers and equipment effectively.
- E. The Traffic Unit Sergeant, by utilizing data available from the department's crime analysts, has the responsibility to address traffic problems citywide and deploy traffic unit officers to conduct enforcement programs in areas experiencing a high number of traffic crashes and/or traffic-related complaints.
- F. Officers assigned to a zone have primary responsibility for traffic law enforcement within that zone , to include moving, non-moving and vehicle equipment violations

VI. ENFORCEMENT TACTICS:

- A. In normal circumstances, officers enforce traffic laws by taking enforcement action for observations made while patrolling their zone in a marked police vehicle. Enforcement actions of moving, non-moving and equipment violations are guided by Florida State Statutes. Officers are required to become familiar with any changes to the Florida State Statutes.
- B. On occasion, and with supervisory approval, officers can be issued unmarked police vehicles to patrol designated areas and concentrate enforcement efforts on those crash-causing violations that have been identified by the department's traffic analyst.
- C. On occasion, and with supervisory approval, officers may utilize covert and/or overt observation techniques at certain designated locations. These covert and/or overt techniques will assist with the enforcement of moving, non-moving and equipment violations.
- D. Officers trained and certified in the use of speed measuring devices, to include radar and laser, may use those devices to assist with the enforcement of speed limit laws.
- E. Communications should ensure officers are out on a signal 50 for all vehicle traffic stops or a signal 50B for bicycle stops where the stop was initiated for a traffic law or ordinance violation. Signal 15T will be used for "Special Traffic Assignments" where multiple traffic stops may be

conducted under one event number (generally used by Motor and DUI Squads).

VII. ENFORCEMENT ACTIONS:

A. General:

1. The issues of when to issue a citation and when to issue a warning are, and have been, questions asked by law enforcement officers throughout the history of law enforcement. These questions cannot be answered in a simple manner because of the many circumstances that might surround a particular violation. The decision becomes easier when one understands the purpose of taking enforcement action, which is modification of driver behavior.
 - a. It is the department's enforcement policy to take a sufficient amount of enforcement action to deter the offender from repeating the violation. For example, if a person is stopped for a minor equipment violation, or for violating a newly enacted law, or if the violator is from out of state or in the military service and newly assigned to this area, and the violation is not a serious or flagrant one, the best enforcement action would probably be a warning. However, if a person commits a serious violation or a violation that causes a crash or is flagrant in his disregard for the law by committing such violations as reckless driving or speeding considerably over the speed limit, the best enforcement action would be a citation.
 - b. In most cases, the decision as to whether to issue a citation or a warning to a motorist for committing a traffic violation is made prior to speaking to the motorist. The decision is usually based upon the seriousness and the flagrancy of the violation. In most circumstances, it is best to greet the violator with a "good morning" or a "good afternoon", then state the reason for the stop. Unless unusual circumstances are present, the initial decision to issue a citation or a warning should be followed.
2. Officers should maintain a courteous and professional manner when contacting traffic violators. It should be remembered that one of the few contacts the average citizen has with the police is during a traffic stop.

3. The officer's safety is of the utmost importance. At no time should the officer stand between the police and the violator's vehicles. When issuing the citation, the officer should be positioned in a manner that affords a clear view of the violator and a place out of the flow of traffic. Normally, a position behind the open passenger's side door of the police vehicle provides the best line of sight and safety. With the advent of electronic traffic citations, issuing citations while seated in the patrol vehicle has become a matter of practice. Officers should maintain extreme vigilance to their respective surroundings and the utilization of back-up officers is strongly encouraged. Officers should only remain in the vehicle for the time it takes to issue the citation.

This practice should also apply to officers utilizing the MDT for the purpose of conducting wanted persons checks and obtaining DL records.

4. The violator should remain inside his/her vehicle during the traffic stop unless the officer instructs the person to exit it. If the driver is allowed to exit the vehicle, he/she should be instructed to remain out of the flow of traffic.
5. Passengers are considered detained, just as much as the driver is, for the reasonable duration of the stop. Passengers are not free to walk or run from the scene of the stop. However, unlike a driver who is required to provide certain information, a passenger is not initially required to provide information unless other facts are developed making an investigation of the passenger necessary. See Legal Bulletin 2011-11.

B. Violations committed by pedestrians, bicyclists, and operators of off-road vehicles, such as all-terrain vehicles (ATV), dirt bikes and dune buggies:

1. Warnings should be given in most cases. Citations should be given for flagrant violations or when appropriate based on the circumstances.

C. D.U.I. Cases: Persons driving while under the influence of alcoholic beverages or drugs, except those persons specifically exempt from arrest according to SOP 307, "Arrest Procedures", and persons admitted to a hospital, will be physically arrested.

1. If a suspect is transported to a medical facility, the officer shall:

- a. Have the suspect medically cleared and follow procedures already established for arrests and Central Breath Testing.
 - b. If the suspect requires medical treatment but will not be admitted to the medical facility, and the treatment will cause a delay in excess of two hours, the officer shall complete all appropriate paperwork, including the CRA. The officer will request that the medical facility notify his shift commander thirty minutes prior to the release of the suspect. Upon receiving notification, the shift commander will cause the officer to return to the medical facility and take custody of the suspect. The officer will follow procedures already established for arrests and Central Breath Testing. If the officer's tour of duty ends prior to the notification of pending release, the officer shall deliver the paperwork to his shift commander. When the medical facility notifies the shift commander of the pending release of the suspect, the shift commander shall cause an officer to respond, with the paperwork, and take custody of the suspect and complete the investigation and booking.
 - c. If the suspect is to be admitted to the medical facility, the officer shall complete all of the paperwork, including the e-CRA and traffic citations. The editing supervisor shall cause the charging instruments to be forwarded to the Intake Office of the S.A.O., "Direct File Process."
- D. Referral of Drivers for Re-examination: When officers encounter drivers who are suspected to be incompetent drivers because of physical or mental disability, disease, or other conditions which might prevent them from exercising reasonable and ordinary care over a motor vehicle, they will complete the "Re-Examination Investigation" form and submit it to the Department of Highway Safety and Motor Vehicles, Division of Driver Licenses. An officer with access to the Florida DAVID System may also access and complete this form electronically for submission to the State of Florida.
- E. Operators of Public Carriers/Commercial Vehicles: Officers should treat the operator the same as other operators unless the operator must be physically arrested. They should contact the public agency or commercial enterprise for instructions regarding the disposition of the vehicle.
- F. Multiple Violations: Officers should charge an offender who has committed more than one violation with the most serious violation that can be supported by evidence. Lesser violations normally are elements of

the more serious violation and should be incorporated into a single charge when possible.

VIII. D.U.I. ENFORCEMENT COUNTERMEASURE PROGRAM:

- A. From time to time as needs dictate, the department will activate a task force to concentrate on the enforcement of alcohol and/or drug-related traffic offenses.
- B. The primary goal of the task force is to reduce the number of personal injuries and fatal crashes caused by persons who drive while under the influence of alcohol or drugs.
- C. When the task force is activated, the Special Operations Division becomes responsible for the management of the unit. Staffing requirements are coordinated through the Special Operations Commander.
- D. Officers assigned to the task force receive specialized training in the techniques of D.U.I. arrests and are directed to concentrate enforcement efforts in areas where D.U.I. activity and crashes are known to occur.

Supersedes SOP 635, dated 6/19.



Policy 325

Subject PROCEDURAL JUSTICE IN INTERACTIONS	
Date Published 17 March 2021	Page 1 of 4

By Order of the Police Commissioner

POLICY

It is the policy of the Baltimore Police Department (BPD) to police in a Procedurally Just manner that recognizes the dignity of all persons with whom officers interact. Procedural Justice is essential to building Police Legitimacy and public trust, which are critical to protecting and serving the public effectively.

Procedural Justice refers to the perception of fairness in an encounter with police, achieved by treating all persons with dignity and respect, giving persons a voice during encounters, being impartial in decision making, and conveying trustworthy motives. Conduct that conforms to these principles has the potential to build community trust and confidence in the police and foster the community's willingness to cooperate with police to advance shared public safety goals.

Procedural Justice is essential for fostering positive interactions with the public and is foundational of the Department's Community Policing Plan, which establishes a framework for improving police-community relations and reducing crime and disorder through collaborative problem-solving partnerships with the community.

PRINCIPLES OF PROCEDURAL JUSTICE

Throughout encounters with the public, members shall demonstrate the principles of Procedural Justice whenever possible to increase the likelihood of a positive interaction and build Police Legitimacy.

- **Fairness:** Procedural Justice is ultimately about fairness and consistency in both the process and outcomes of policing interactions. When the public perceives interactions as fair, these interactions contribute to public trust and Police Legitimacy.
- **Respect:** Be professional and courteous throughout the interaction and treat people with dignity and concern for their rights.
- **Voice:** Provide people the opportunity to explain their actions and ask questions before making a final decision. Listening to a person's perspective is important to conducting a fair decision-making process. Engaging and listening to community members prior to reaching a conclusion leads to more informed decision-making and increases community members' acceptance of the resolution.
- **Transparency:** Ensure people know why and how decisions are being made to foster understanding and cooperation with the decision-making process and outcome.
- **Impartiality:** Make transparent, neutral decisions based only on relevant information.
- **Trustworthiness:** Convey trustworthiness throughout your interactions by acting with

professionalism, understanding, and transparency.

DEFINITIONS

Police Legitimacy – The public’s belief that the police can be trusted to act properly and in the public interest.

Procedural Justice – Treatment of a person by law enforcement officers in such a way that the person feels they were treated fairly and with consistency, dignity and respect, they were given voice, the officer was neutral and transparent, and the officer conveyed trustworthy motives.

DIRECTIVES

BPD members can take specific actions and practice certain behaviors that communicate to a person that the member is treating them in a Procedurally Just manner.

1. All members shall treat all persons with the courtesy and dignity that is deserving of every person as a human being.
2. All members shall act, speak, and conduct themselves in a professional manner, recognizing their obligation to safeguard life and property, and maintain a courteous, professional attitude in all contacts with the public.
3. Members shall conduct law enforcement encounters and actions, including voluntary contacts, field interviews, investigative stops, weapons pat-downs, vehicle stops, searches, interrogations, citation issuance, and arrests, among others, in strict accordance with BPD policy in order to demonstrate neutral decision-making and fair treatment, and avoid accusations or perceptions of discriminatory policing or bias.
4. All members shall use the following measures whenever reasonably possible while conducting law enforcement actions:
 - 4.1. Be professional and courteous.
 - 4.2. Introduce yourself.
 - 4.3. Explain to the person, as soon as possible, the reason for the contact unless providing this information will compromise the investigation or the safety of members or other persons.
 - 4.4. Answer any questions the person may have.
 - 4.5. Explain actions throughout the encounter.
 - 4.6. Ensure the length of an investigative stop or vehicle stop is no longer than reasonably necessary to take appropriate action for the known or suspected offense, as well as any offense which is legitimately discovered during the course of the investigation.
 - 4.7. Ensure that the purpose of reasonable delays is explained to the stopped person.

- 4.8. Provide name and sequence number when requested, verbally, in writing, or on a business card.
 - 4.9. If the reasonable suspicion for the stop is dispelled or the stop was made in error, immediately release the person, explain the reason for the stop and the release, thank the individual for their patience, ask if they have any questions related to the interaction, and apologize for any inconvenience if an error was made.
5. Members should express appreciation for the person's cooperation during the encounter.
6. Members shall employ de-escalation tools like treating the individual respectfully and slowing down the encounter whenever possible (see Policy 1107, *De-Escalation*). Not only does this decrease the chances of the use of force or a violent outcome, but it also allows the member to listen to and communicate productively with the person. De-escalation tools that will be helpful to secure a non-violent outcome and to advance Procedural Justice include, but are not limited to:
 - 6.1. Verbal tools, such as listening to the person to give them voice, then explaining what the member is doing, what the person can do, and what will happen, explaining why the member is taking action and showing that the reason for that action is fair, and treating the person with dignity throughout the interaction.
 - 6.2. Physical tools, such as moving to a safer position, communicating from a safer position, diminishing potential threat by using distance or cover, or calling for assistance – such as CIT trained officers.
7. Unless the member or someone else is in imminent danger of harm, the member shall consider whether any lack of compliance may be due to the person's inability to comply. Someone who is unable to comply may be experiencing a:
 - 7.1. Medical condition,
 - 7.2. Behavioral health disability,
 - 7.3. Developmental disability,
 - 7.4. Physical limitation,
 - 7.5. Language or cultural barrier, or
 - 7.6. Drug or alcohol impairment.
8. Members shall ensure the safety of all individuals in arrest processing, searches, placement in custody, and transports.
9. Youth are particularly attuned to Procedural Justice. A Youth's earliest interactions with law enforcement can have a lasting impact on their perceptions of the legitimacy of the justice system and their likelihood of reoffending. Additionally, members should be mindful of the fact that not all problems that young people encounter are best dealt with by the criminal justice system, and diversion strategies may provide a more effective resolution than traditional enforcement methods (See Policy 1202, *Interactions with Youth*).

ASSOCIATED POLICIES

Policy 317,	<i>Fair and Impartial Policing</i>
Policy 712,	<i>Crisis Intervention Program</i>
Policy 720,	<i>Interactions with LGBTQ Individuals</i>
Policy 803,	<i>Criminal Citation Procedures</i>
Policy 808,	<i>Civil Citation Procedures</i>
Policy 809,	<i>Marijuana: Uniform Civil Citation</i>
Policy 812,	<i>Misdemeanor Theft Procedures</i>
Policy 1018,	<i>Lesser Offenses & Alternatives to Arrest</i>
Policy 1105,	<i>Custodial Interrogations</i>
Policy 1106,	<i>Warrantless Arrest Procedures and Probable Cause Standard</i>
Policy 1107,	<i>De-Escalation</i>
Policy 1109,	<i>Warrantless Searches</i>
Policy 1112,	<i>Field Interviews, Investigative Stops, Weapons Pat-Downs & Searches</i>
Policy 1202,	<i>Interactions with Youth</i>
Policy 1735,	<i>Language Access Services for Limited English Proficient Persons</i>

COMMUNICATION OF POLICY

This policy is effective on the date listed herein. Each employee is responsible for complying with the contents of this policy.

November 27, 2019
Memorandum to the Public
Open for Public Comment until December 13, 2019

Public Comment: Proposed Youth-Specific Provisions in the Use of Force Policy

The Baltimore Police Department (BPD), United States Department of Justice (DOJ), and the court-appointed Monitoring Team (MT) are releasing the below drafted provisions regarding Youth Interactions for public comment. The BPD intends to include these provisions within Policy 1115, *Use of Force*, which was approved by the MT on July 3rd, 2018, with certain revisions subsequently approved on June 10th, 2019, and effective department-wide on November 24, 2019.

The below content should be considered within the entirety of Draft Policy 1115, *Use of Force*, which includes a section on Children and Youth on page 10. In addition to definitional guidance and use of force core principles, Draft Policy 1115 reaffirms a BPD member's duty to de-escalate, intervene, provide medical assistance, and apply a critical decision-making model when determining how and when to use force for a lawful purpose. The policy can be found via the following link: <https://www.baltimorepolice.org/1115-draft-use-force>

The BPD intends to include the following youth-specific provisions in Draft Policy 1115:

1. Members are prohibited from utilizing pain compliance or pressure point control techniques on youth unless the encounter rises to a deadly force situation.
2. A youth 14 years of age or older retains the legal right to refuse medical treatment, even in life-threatening situations; however, a parent, guardian, or other interested person has the right to authorize treatment for the youth, unless the youth is emancipated.
3. Members are prohibited from using Force on youth who are restrained.

Additionally, the BPD intends to edit the below policy directives (new directives in **bold**):

1. As with any encounter, members are expected to continually assess the situation, employ De-Escalation Techniques, and seek peaceful resolutions during incidents involving children and youth. **Officer presence may be intimidating and threatening to youth, therefore, members should approach youth calmly and respectfully in a non-confrontational manner while avoiding physical contact, if possible, in order to diffuse tension and anxiety while maintaining safety.**
2. Members will, when feasible, recognize and employ developmentally-appropriate and trauma-informed communication tactics including, but not limited to, using a calm and **measured tone, simple and concrete language, and direct phrases. Members may use repetition in a clear voice in order to reinforce instructions. Members will not use threats and intimidation to gain compliance. When appropriate, members will allow youth time to comply with instructions.** Members will also account for any fear-based reactions children and youth may experience during an encounter **which may manifest as aggression, defensiveness, defiance, or flight.**

3. When force against a **youth** is necessary, **members will** take into account articulable personalized factors of the **youth** including: apparent age **of the youth**, body size, relative strength of the member relative to the **youth**, and risk posed by the **youth**.
4. In the case of injury resulting from a Use of Force, in addition to the requirements to render aid, summon medical care, and notify a supervisor, members will ensure that a supervisor or a member not involved with the Use of Force will notify the **youth's** parent, guardian, or other responsible adult.

In addition to the core Use of Force Policy (1115), the BPD intends to edit the below force instrument policies with the following guidance:

1. Policy 719, Conducted Electrical Weapon: Members shall not use a Conducted Electrical Weapon (CEW) on an individual who the member knows is a preteen or younger, or an individual who is a preteen or younger and whose age is objectively apparent to a reasonable officer, unless the encounter rises to a situation in which the only available alternative is Deadly Force. (Policy 719, Conducted Electrical Weapon, November 24, 2019, page 7 of 13).
2. Policy 1111, Batons: Except where Deadly Force/Lethal Force is justified, the member shall not use a Baton or IIW [Improvised Impact Weapon] to strike an individual who the member knows is a preteen or younger, or an individual who is a preteen or younger and whose age is objectively apparent to a reasonable officer. (Policy 1111, Batons, November 24, 2018, page 6 of 8).
3. Policy 1118, Oleoresin Capsicum (OC) Spray: Members should not use OC Spray against persons who are obviously pregnant, are apparently elderly, is known to be a preteen or younger or whose age is objectively apparent to a reasonable officer to be a preteen or younger, or are visibly frail, unless exceptional circumstances are present that pose an Imminent Threat of harm to the member or another party, and no reasonable alternative is available. (Policy 1118, Oleoresin Capsicum Spray, November 24, 2019, page 5 of 7).

Please direct any comment or suggestions you may have by clicking on the "Let's Hear Your Feedback" button above the policy. We look forward to collectively reviewing your feedback on these additions to Policy 1115. We will continually post items for public review as we revise our policies and training regarding Interactions with Youth.

Thank you for taking the time to assist BPD in improving policy guidance to our members.

APPENDIX E

RIGHTS OF ONLOOKERS

This order establishes policies regarding when persons are permitted to remain as onlookers, their right to overhear conversations between the officer and suspect, and their right to act as a witness.

I. POLICY.

A. **WITNESSING STOPS, DETENTIONS, ARRESTS.** It is the policy of this Department that persons not involved in an incident be allowed to remain in the immediate vicinity to witness stops, detentions and arrests of suspects occurring in public areas, except under the following circumstances:

1. When the safety of the officer or the suspect is jeopardized.
2. When persons interfere or violate law.
3. When persons threaten by words or action, or attempt to incite others to violate the law.

B. **OVERHEARING CONVERSATION.** If the conditions at the scene are peaceful and sufficiently quiet, and the officer has stabilized the situation, persons shall be allowed to approach close enough to overhear the conversation between the suspect and the officer, except when:

1. The suspect objects to persons overhearing the conversation.
2. There is a specific and articulable need for confidential conversation for the purpose of police interrogation.

C INQUIRIES

1. Persons shall be permitted to make a short, direct inquiry as to the suspect's name and whether the officer or the suspect wishes a witness. The suspect shall be allowed to respond to the inquiry.
2. If a citizen is a witness to the activity for which the suspect was detained or arrested, the officer may request his/her name; however, the citizen is not compelled to disclose such information..

D BYSTANDER FILMING OF OFFICER-SUSPECT CONTACTS. It is increasingly common for bystanders, who are not involved in any criminal activity, to record contacts between officers and citizens, during which officers are detaining, citing or arresting a suspect or engaging in crowd control at a demonstration. Bystanders have the right to record police officer enforcement activities by camera, video recorder, or other means (except under certain narrow circumstances as set forth in Sections A and B above).

1. An officer shall not seize, compel or otherwise coerce production of these bystander recordings by any means without first obtaining a warrant. Without a warrant, an officer may only request, in a non-coercive manner, that a bystander voluntarily provide the film or other recording. These requests should be made only if the officer has probable cause to believe that a recording has captured evidence of a crime and that the evidence will be important to prosecution of that crime. If a bystander refuses to voluntarily provide the recording, an officer may request the person's identity as provided in Section C., 2, above.
2. If a bystander voluntarily provides his or her recording and/or equipment, the officer shall provide the bystander with a receipt (SFPD 315). The receipt shall contain a written statement verifying that the recording and/or equipment has been voluntarily provided to the Department and shall be signed by the bystander.

E VIOLATIONS/COMPLIANCE. As an alternative to arresting an onlooker who is in violation of Penal Code Section 148 or other related offenses (e.g., 647 c P.C., 22 Municipal Police Code) officers may order onlookers to "move on"; however, the person shall not be ordered to move any farther distance than is necessary to end a violation (see DGO 5.03, Investigative Detentions and DGO 6.11, Obstruction of Streets and Sidewalks). Persons who believe that an officer did not comply with the provisions of this order shall be referred to an appropriate supervisor or to the Office of Citizen Complaints.

References

DGO 5.03, Investigative Detentions
DGO 6.02, Physical Evidence
DGO 6.11, Obstruction of Streets and Sidewalks
DGO 6.15, Property Processing



Policy 1017

Subject	
MOBILE DEVICE SEARCHES	
Date Published	Page
1 August 2016	1 of 3

By Order of the Police Commissioner

POLICY

The United States Supreme Court in *Riley v. California*, October Term, 2013, No.: 13-132, ruled that absent exigent circumstances, warrantless searches of cell phone data, incident to an arrest, are unreasonable under the Fourth Amendment of the United States Constitution.

This policy addresses Baltimore Police Department (BPD) issued and privately owned cell phones of sworn and civilian employees, who have recorded events, which might contain evidence.

Employee Privacy Advisory

1. Employees DO NOT have any reasonable expectation of privacy when using any BPD issued communications device. The BPD retains the right to monitor the content of all communications and the usage of any BPD issued personal communications device.
2. BPD supervisors may access without notice: data or text caches, pager memory banks, and voice mail boxes or accounts and other employer-provided electronic storage systems where there are reasonable grounds to believe a search is necessary for either non-investigatory work-related purpose or for the investigation of work-related misconduct. See Policy 1307, *Personal Communication Devices*.

REQUIRED ACTION

Member

Cell Phone / Personal Communication Device / Tablet

In keeping with this ruling, members must obtain a search warrant prior to a search of a cell phone, when an exigent circumstance is not present.

1. When recovering a cell phone from an individual:
 - 1.1. Do not allow anyone to manipulate the phone, if possible.
 - 1.2. Try to determine if the phone is protected by any type of security lock or if it is encrypted. If so, try to obtain the code. Do not assume the security lock can be defeated.

- 1.3. Cell phones must not be accessed by someone who is not properly trained to extract digital evidence, if the evidence is going to be discoverable.

NOTE: Today's phones have numeric pass codes and/or passwords, facial recognition (which will only unlock by detecting the owner's face), signature locks which recognize the owner's handwriting, encryption (data within the phone is unreadable without the encryption key), and can be remotely locked and/or wiped from a laptop personal computer or another phone in a matter of one minute. If possible, have the owner remove the security lock before examination.

2. Submitting cell phones to Cyber and Electronic Crimes Unit for examination :

- 2.1. If you are seizing a phone/tablet in the field:

- 2.1.1. If it is off, leave it off. Remove the battery.

- 2.1.2. If it is on, remove the battery.

- 2.1.3. Do not attempt to manipulate the phone (ie, guess the password, look at photos, thumb through the phone, or power it on). These actions can cause the phone to be locked, wiped, and are sometimes recorded by the phone which will conflict with any search warrant later written.

- 2.1.4. If you are unable to turn the phone off or remove the battery for any reason, (eg, bio-hazard), request the Crime Laboratory Section to recover the device with the use of a Faraday Bag or Arson Can.

- 2.1.4.1. If the phone is bio-hazard, label it according to the Evidence Control Unit's guidelines and make a note of this on the Cyber and Electronic Crimes Unit request form.

NOTE: Given the nature of the bio-hazard, the Cyber and Electronic Crimes Unit might not be able to examine the phone due to the risk of contamination of the equipment and the risk of cross contaminating other devices awaiting examination.

3. When submitting phones to the Evidence Control Unit, which are to be examined later by the Cyber and Electronic Crimes Unit:

- 3.1. Submit no more than one device in either a yellow evidence envelope, an Arson Can and/or a Faraday Bag.

- 3.2. Only submit the device and any USB/power cords that come with the phone. **NO OTHER PROPERTY OR EVIDENCE.**

- 3.3. If necessary, submit the device to the Trace Laboratory before submitting a request to the Cyber and Electronic Crimes Unit.

ASSOCIATED POLICIES

Policy 1016, *Citizen Observation/Recording Of Officers*
Policy 1307, *Personal Communication Devices*

RESCISSION

Remove and destroy/recycle Policy 1017, *Cell Phone Searches* date 31 October 2014.

COMMUNICATION OF POLICY

This policy is effective on the date listed herein. Each employee is responsible for complying with the contents of this policy.



Policy 1016

Subject	
PUBLIC OBSERVATION/RECORDING OF OFFICERS	
Date Published	Page
7 September 2021	1 of 7

By Order of the Police Commissioner

POLICY

Members shall respect, and shall not infringe, the right of all persons to observe and record the actions of law enforcement officers in the public discharge or their duties in all public spaces (including sidewalks, parks, and other locations for lawful public protest), as well as in all other areas in which persons have a legal right to be present (including a person's home or business and common areas of public and private facilities and buildings), so long as the observation or recording does not threaten the safety of any member or any other person and does not physically interfere with the performance of any member's duties. See Policy 804, *First Amendment Protected Activity*, for guidance on respecting and protecting the First Amendment rights of all persons.

The right to observe and record law enforcement officers in the public discharge of their duties, and the right to retain the recorded material free from government intrusion, are protected by the First, Fourth and Fourteenth Amendments to the United States Constitution; Articles 10, 24 and 26 of the Maryland Declaration of Rights; and 42 U.S.C. 2000aa-(b).

DIRECTIVES

1. Members shall permit persons to observe and/or record police activity in all public settings, such as parks, sidewalks, streets, and locations of public protest, and in their homes or businesses, common areas of public and private facilities and buildings, and in any other public or private facility at which the person has a legal right to be present.
2. Members shall allow a person to record their own interaction with police. However, a member may instruct a person to cease recording and put away the recording device when that person is being placed under lawful arrest.
3. Members shall restrict persons, regardless of their intent to video and/or audio record any police activity, from entering any marked and protected crime scene or a restricted area that would normally be unavailable to the general public. Responding members and follow-up investigators will determine who enters or leaves a secure scene, per Policy 1008, *Investigative Operations*.
4. If a person is photographing or recording police activity from a position that threatens the safety of a member or others, or physically interferes with a member's ability to perform their duties, a member shall first inform the person that they are engaged in prohibited activity and then direct the person, where practicable, to move to a position that will not threaten anyone's safety or physically interfere with a member's ability to perform duties. The member shall give the person a reasonable opportunity to comply prior to taking further enforcement action. However, a member shall not order the person to stop photographing or recording, except as described in Section 2 of "Prohibited Actions" below.

- 4.1. Interference consists of conduct, threats, actions, or activities that prevent or hinder members from doing their job. Examples of interference may include, but are not limited to:
 - 4.1.1. Direct physical intervention with a lawful arrest;
 - 4.1.2. Tampering with a witness (including repeatedly instructing a witness being questioned by a member not to respond to the member's questions);
 - 4.1.3. Persistently engaging or attempting to engage a member in conversation while the member is executing their duties;
 - 4.1.4. Inciting bystanders to hinder or obstruct a member in the performance of their duties.
 - 4.1.5. Unreasonably obstructing the movement of emergency equipment and personnel or the flow of vehicular or pedestrian traffic; and
 - 4.1.6. Entering a marked crime scene or an area not accessible to the general public.
- 4.2. Observing or recording police activity, alone, does not constitute interference.
- 4.3. A person's expression of criticism of any police activity, even when observing it or recording it, is not interference so long as that expression does not jeopardize the safety of any member, suspect or bystander, and so long as that expression does not violate the law or incite others to engage in imminent lawless action that is likely to occur. See Policy 804, *First Amendment Protected Activity*.

NOTE: Verbal disagreements, criticism, insults, name calling, or obscene gestures directed at members or others do not in themselves justify a member taking law enforcement action against that person. Whenever possible, de-escalation techniques should be employed. During hostile situations, members should consider, prior to making contact with a person who is photographing or recording, whether initiating contact may incite the person or others.

5. Members must document on their BWC any instance in which they order a person to stop recording police activity that occurs in public because there is a threat to the safety of a member or others, or the recording is compromising legitimate police actions, rescue efforts, or is physically interfering with a member's duties.
 - 5.1. The member must memorialize on the BWC a statement explaining the basis for ordering the person to stop recording.
 - 5.2. When titling this BWC footage, the member shall choose "Ordered to Stop Recording" as one of the categories attached to this footage (more than one category may be selected).
 - 5.3. If the member does not have a working BWC at the time they give the order to stop recording, the member shall document the basis for ordering the person to stop recording on an Administrative Report, Form 95, and submit the Form 95 to the member's supervisor before the completion of the member's tour of duty.

6. In the event that an incident escalates to where a member determines that a person should be arrested for obstructing or hindering law enforcement while recording police activity, that member must seek approval to make the arrest from the highest-ranking supervisor who is present (at the scene).
7. In areas open to the public, members shall allow any person the same access for photography and recording as is given to the news media, as long as the person has a legal right to be present where they are located.

Prohibited Actions

8. Members shall not tell a person observing, photographing, or recording police activity that the person's actions are not allowed, require a permit, or require a member's consent.
 9. Members shall not order that person to cease such activity, unless that activity threatens the safety of a member or others, or physically interferes with a member's ability to perform their duties. A member should direct the person to move to a position that will not physically interfere as a first step, instead of ordering the person to cease recording. If these efforts are unsuccessful, a supervisor shall be consulted.
- NOTE: For the purpose of preserving the privacy of another person, such as an injured person or a crime victim, a member may respectfully request that the person who is photographing or recording the other person voluntarily stop photographing or recording. If the person recording or photographing insists on continuing to do so, the member may ask the person they are interacting with whether the person would like to go to a more private location.
10. Members shall not in any way threaten, intimidate or otherwise discourage a person, who is not violating any other law, from observing, photographing or recording a member's enforcement activities.
 11. Members shall not demand a person's identification because the person is observing, photographing or recording police activity.
 12. Members shall not demand that the person state a reason why the person is observing, photographing or recording police activity.
 13. Members shall not stop, detain, search, arrest, issue a citation to, or use force against a person solely because the person is observing, photographing or recording police activity.
 14. Members shall not regard observing, photographing, or recording police activity as suspicious conduct on its own. Members may initiate consensual encounters with any person, but the person's refusal to answer questions or speak to the member during a consensual encounter does not provide a basis for ordering a person to stop observing, photographing or recording police activity, nor is it a basis for an investigative stop or search (See Policy 1112, *Field Interviews, Investigative Stops, Weapons Pat-Downs, & Searches*).
 15. Members shall not intentionally block or obstruct cameras or recording devices.
 16. Members shall not demand to review or erase any image, sound or video recording.

17. Members shall not request or seize a person's camera or recording device for the purpose of deleting, destroying, or otherwise concealing any recorded material, including sounds, images, or videos, which they believe may portray individual members or the Department in a negative light. Concerns of this nature do not provide a basis to request or seize cameras or recording devices.
18. Members shall not retaliate against any person who lawfully exercises the lawful rights to witness, observe, record, comment on, criticize, or peacefully protest police activity, and shall not take any other type of police action in retaliation for the exercise of any of those rights. This includes:
 - 18.1. Ordering persons or groups to disperse;
 - 18.2. Stopping, detaining, searching, arresting, or issuing a citation to any person or group; or
 - 18.3. Threatening to stop, detain, search, arrest, or issue a citation to any person or group.

NOTE: See Policy 804, *First Amendment Protected Activity* for further guidance.

12. Members shall not, under any circumstances, erase or delete, or instruct any other person to erase or delete, any recorded images, videos or sounds from any camera or other recording device that is in the possession of a non-member or that has been voluntarily turned over or seized under the terms of this policy.
13. Members shall not search, seize, or otherwise coerce (implicitly or explicitly) production of recorded images, videos or sounds without obtaining a warrant, unless the person in possession of the recorded material voluntarily provides the recorded material or unless the exigency described in the "Seizure of Evidentiary Video/Audio/Photographs" Section below exists.

Permanent-Rank Supervisor Requirements

14. If a member contacts a supervisor after unsuccessful attempts at directing an observer to move to a position that does not threaten or physically interfere with the member's ability to perform their duties, the supervisor shall determine the best course of action to protect the rights of the observer while ensuring the member is able to perform their duties fully.
15. Supervisors shall ensure that members who have stopped the recording of police activity in public because of legitimate safety or interference concerns have properly ordered the person(s) to stop recording and have properly documented the order and the reasons for the order.

REQUIRED ACTION

Seizure of Evidentiary Video/Audio/Photographs

16. If a member has probable cause to believe that a bystander or witness has captured video, audio or photographic evidence related to a crime on a recording device, the member shall request that the person in possession of that device either (1) voluntarily provide the device or

recording medium (e.g., the memory chip) to the member; or (2) where possible and practicable, and in the presence of the member, voluntarily transmit the evidence, via electronic mail or text message, to the member's official electronic mail account or to the member's Departmental mobile phone.

NOTE: Consent is not considered voluntary when the member asserts their official status and claims a right to the evidence and the person gives the evidence or allows a search because of these assertions. If consent is obtained under duress, threat or intimidation, it is not voluntary and thus not valid.

17. If the person voluntarily provides the recording device or recording medium to the member, the member shall:

17.1. Complete Permission for Search, Form 29, including specifically what item(s) the person is consenting to be searched and/or taken, and indicating if there are any limitations to what the BPD is permitted to search.

NOTE: The property owner has a right to revoke consent at any time. If the person decides to revoke their consent, the member must return the property to the person.

17.2. Give the person the opportunity to review the device or medium prior to handing it over.

17.3. Exercise care and caution with the device or medium.

17.4. Complete a Property Receipt, Form 56, provide the pink copy to the person, and inform the person of the process of retrieving the device/media, per Policy 1401, *Control of Property and Evidence*. Retain all other copies.

17.5. Provide the person with the name and contact information of the member who took custody of the device or medium.

17.6. In the Property Listing/Evidence Recovered section of any applicable field report, list the item(s) surrendered by the person and held/submitted as evidence.

17.7. Document their request, and the person's response, in the narrative of applicable field reports and/or charging documents.

17.8. Refrain from any attempt to view, download, or otherwise access any material contained on the device or medium.

18. If the person declines to voluntarily provide the recording device or to electronically transmit the recorded video, audio or photographic evidence to BPD, if there is probable cause to believe that the recording device or medium contains critical evidence related to a serious crime, and if such evidence is in immediate jeopardy of being tampered with, altered, deleted, or destroyed, then a member may temporarily secure the recording device while a legal subpoena, search warrant, or other valid court order is obtained.

18.1. Members shall not make any attempt to view, download, or otherwise access any material contained on the device or medium without first obtaining a search warrant,

unless a warrantless search is justified by exigent circumstances, such as an immediate threat to public safety.

EXAMPLE: If a person was recording video and caught a fleeing suspect of a violent crime on their video, if the suspect is armed and still at large, and if the suspect's flight poses an immediate threat to public safety, a member may be required to view the video for prompt suspect identification purposes.

18.2. Members shall apply for, execute, and return any search and seizure warrant(s) in accordance with Policy 1007, *Search and Seizure Warrants* as soon as reasonably possible with diligent effort.

NOTE: If the subpoena, warrant, or other court order is denied for lack of probable cause, members **shall not** continue to hold the recording device or medium while seeking additional evidence to support the request for subpoena, warrant, or other court order. Instead, members shall return the recording device or medium to the person immediately.

18.3. Members shall obtain approval from the Shift Commander within two hours when exigent circumstances have required the warrantless seizure of a recording device or medium. If approval is not obtained, the recording device or medium must be returned to the person immediately.

18.4. Members shall submit the recovered device or medium to BPD in accordance with Policy 1401, *Control of Property and Evidence*.

18.5. Members shall complete all appropriate field reports.

19. Members shall maintain recording devices and media that are in BPD custody so that they can be returned to the owner intact with all images or recordings undisturbed.

20. Only members of the Special Activities Unit may make efforts to access material contained on a recording device or medium after a subpoena, warrant, or other court order permitting the search and seizure is obtained.

Permanent-Rank Supervisors

21. Supervisors shall approve/deny requests of any warrantless seizures by members of a recording device or medium due to exigent circumstances as soon as practicable, and no later than two hours after the seizure. If reasonably practicable, supervisors shall respond to the scene and assess the situation in person.

22. Supervisors shall ensure that any recording device, recording medium, video recording, audio recording or photograph that comes into BPD custody has only come into custody in one of the following circumstances:

15.1. Through the voluntary consent of the person in possession of the item;

15.2. Through execution of a search and seizure warrant; or

15.3. Through some valid exception to the warrant requirement. See Policy 1112, *Field*

Interviews, Investigative Stops, Weapons Pat-Downs & Searches, 1007, Search and Seizure Warrants. A valid exception could include the seizure for safekeeping of a recording device or medium that appears to be lost, discarded or abandoned.

16. Supervisors shall review and approve/disapprove all applications for search and seizure warrants, as required by Policy 1007, *Search and Seizure Warrants*.

Special Activities Unit Duty Detective Requirements

17. Duty Detectives in the Special Activities Unit (SAU) shall provide guidance and assistance to members on those occasions when an application for a search and seizure warrant is made for a recording device or medium.
- 17.1. SAU Detectives shall give specific attention to helping those members properly define or describe the various data formats and storage devices they may be seeking in the warrant application.
- 17.2. SAU Detectives shall make any appropriate recommendations that may assist in the preservation of dates, photographs, video clips, audio clips, etc.
18. In the course of a criminal investigation, and/or at the request of a member of the BPD, an SAU Detective shall access and download evidence contained on a recording device or medium in the member's custody, provided that the member or another member furnishes the Detective either (1) a completed Permission for Search, Form 29, indicating that the owner of the device or medium consented to access or (2) a valid search warrant or other court order explicitly authorizing access.

ASSOCIATED POLICIES

Policy 804, *First Amendment Protected Activity*
Policy 1007, *Search and Seizure Warrants*
Policy 1008, *Investigative Operations*
Policy 1112, *Field Interviews, Investigative Stops, Weapons Pat-Downs, & Searches*
Policy 1401, *Control of Property and Evidence*

RESCISSION

Remove and destroy/recycle Policy 1016, *Citizen Observation/Recording of Officers*, dated 1 July 2016.

COMMUNICATION OF POLICY

This policy is effective on the date listed herein. Each employee is responsible for complying with the contents of this policy.

APPENDIX F

Memorandum

TO: ALL DEPARTMENT PERSONNEL **FROM:** Edgardo Garcia
Chief of Police

SUBJECT: DUTY MANUAL ADDITION **DATE:** October 30, 2020
L 3011.5 – HANDCUFFING
JUVENILES

Memo# 2020-042

BACKGROUND

On September 15, 2020 the San Jose City Council directed the San Jose Police Department to amend Department policy to set a minimum age at which juveniles will not be handcuffed.

California law establishes the minimum age for booking juveniles at Juvenile Hall as 12 years old for all but five very serious offenses. Section 602(b) of the Welfare and Institutions Code lists those offenses as; murder, rape by force, sodomy by force, oral copulation by force, and sexual penetration by force. This subject was addressed in a recent memorandum (2020-030) which updated Duty Manual section L 3012 – LAW VIOLATORS to comport with section 602 of the Welfare and Institutions Code. Additionally, the County of Santa Clara maintains a booking protocol for arrested juveniles.

These standards provide a logical framework for an age at which to prohibit the handcuffing of a juvenile. However, the Department recognizes that on rare occasions officers will need an exemption to restrain violent juveniles until calm may be restored.

ANALYSIS

Department members shall complete a Street Check for each juvenile under the age of 12 that is placed in handcuffs. A Street Check shall be required in addition to any other documentation completed in the event (e.g. a General Offence report or JCR). In each Street Check, the Department member will select “Handcuffed Juvenile Under 12” as the *Street Check Type*. In addition, the Department member will select the appropriate *Reason Code(s)* as follows:

- J1 – JUV HANDCUFF – ACTIVE THREAT TO SELF/OTHERS: The juvenile was handcuffed because they were an active violent threat to themselves or others.
- J2 – JUV HANDCUFF – IN CUSTODY: The juvenile was handcuffed because they were taken into custody for one of the five sections applicable under 602(b) W&I: murder, rape by force, sodomy by force, oral copulation by force, and sexual penetration by force.

- J8 – JUV UN-HANDCUFFED – BEFORE AGE KNOWN: The juvenile was handcuffed when they were believed to be twelve years old or older. Once their correct age was determined to be under twelve, and the juvenile was not in custody for a violation applicable under 602(b) W&I or an active violent threat to themselves or others, they were released from handcuffs.

- J9 – JUV UN-HANDCUFFED – NO LONGER ACTIVE THREAT TO SELF/OTHERS: The juvenile, having initially been handcuffed because they were an active violent threat to themselves or others, was released from handcuffs because they were no longer deemed an active violent threat to themselves or others.

There may be more than one applicable *Reason Code*, for example if a juvenile was handcuffed because they were actively violent toward themselves or others, and they are no longer actively violent toward themselves or others, they should be un-handcuffed. In this case, both “J1” and “J9” should be checked.

At the conclusion of the Street Check, the appropriate event disposition shall be selected. Department members will complete the Street Check as thoroughly as possible with the information available.

See the screenshots below for additional details. Remember to update your Versaterm MDT Helptables.

Duty Manual section L 3011.5 is being added to set a minimum age for handcuffing juveniles, to create an exemption for handcuffing juveniles who are law violators or are acting violently toward themselves or others, and to ensure appropriate documentation.

The Duty Manual has been revised to reflect changes described below. Additions are shown in *italics and underlined*.

L 3011.5 **HANDCUFFING JUVENILES:**

Added 10-30-20

Juveniles under 12 years old should not be placed in handcuffs unless the juvenile is being arrested for having committed an offense for which the juvenile can be taken into custody per 602(b) W&I.

EXCEPTION: Juveniles under 12 years old may be handcuffed when being actively violent toward themselves or others. However, the handcuffs should be removed as soon as it is safe or practical to do so.

When a juvenile under 12 years old is placed in handcuffs, a thoroughly completed Street Check shall be performed. All the appropriate checkboxes and disposition of the juvenile shall be completed.

ORDER

Effective immediately, all sworn personnel will adhere to the above listed Duty Manual changes.



EDGARDO GARCIA
Chief of Police

EG:SD:MB

SCREENSHOTS:

Figure 1: STREET CHECK TYPE

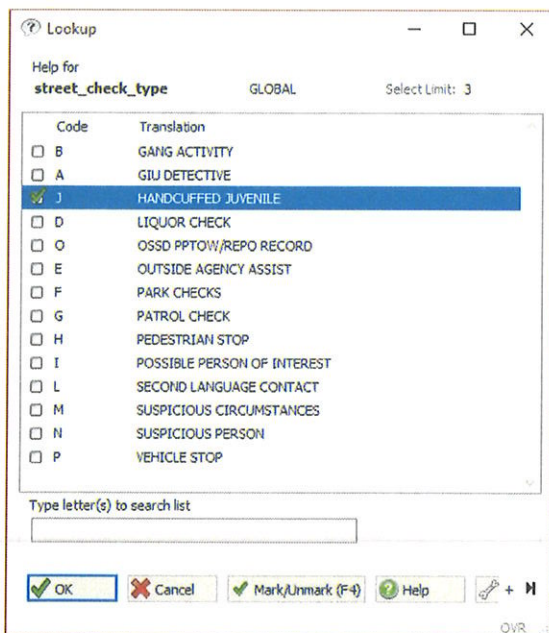
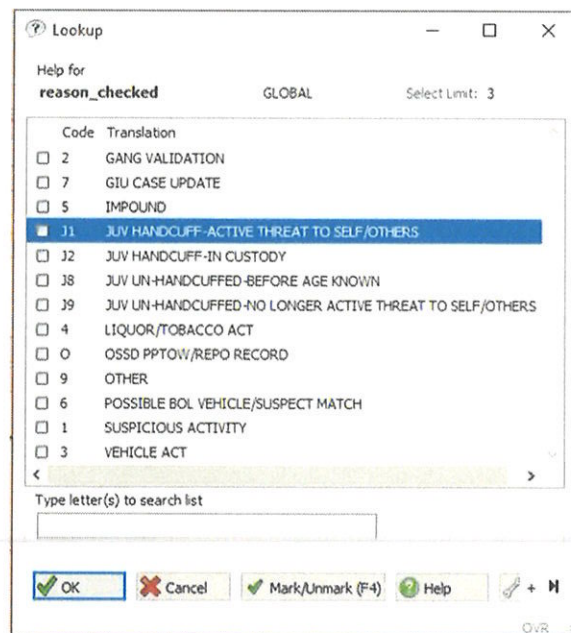


Figure 2: REASON CODE(S)



Temporary Custody of Juveniles

901.1 PURPOSE AND SCOPE

This policy provides guidelines for juveniles taken into temporary custody by members of the Saratoga Springs Police Department.

901.1.1 DEFINITIONS

Definitions related to this policy include (Family Court Act § 301.2; CPL § 1.20):

Adolescent offender - A juvenile delinquent 16 or 17 years of age who is in custody for a felony.

Juvenile non-offender - An abused, neglected, dependent, or alien juvenile who may be legally held for the juvenile's own safety or welfare. This also includes any juvenile who may have initially been contacted for an offense that would not subject an adult to arrest (e.g., fine-only offense) but was taken into custody for the juvenile's protection or for purposes of reuniting the juvenile with a parent, guardian, or other responsible person.

Juvenile delinquent - A juvenile 7 to 17 years of age who is alleged to have committed a crime that would subject an adult to arrest (a non-status offense) or a juvenile 16 -17 years of age who is alleged to have committed a violation where such violation occurred in conjunction with the alleged criminal act. It also includes an offense under Penal Law § 265.05 for unlawful possession of a weapon by persons under 16 (28 CFR 31.303).

Juvenile offender - A juvenile delinquent 13 to 15 years of age who is in custody for a serious violent offense listed in Penal Law § 10.00.

Non-secure custody - When a juvenile is held in the presence of an officer or other department member at all times and is not placed in a locked room, cell, or behind any locked doors. Juveniles in non-secure custody may be handcuffed but not to a stationary or secure object. Personal supervision, through direct visual monitoring and audio two-way communication, is maintained. Monitoring through electronic devices, such as video, does not replace direct visual observation.

Safety checks - Direct visual observation by a member of this department performed at random intervals, within time frames prescribed in this policy, to provide for the health and welfare of juveniles in temporary custody.

Secure custody - When a juvenile or adolescent offender is held in a locked room, a set of rooms, or a cell. Secure custody also includes being physically secured to a stationary object.

Examples of secure custody include:

- (a) A juvenile left alone in an unlocked room within the secure perimeter of the adult temporary holding area.
- (b) A juvenile handcuffed to a rail.
- (c) A juvenile placed in a room that contains doors with delayed egress devices that have a delay of more than 30 seconds.

Saratoga Springs Police Department

Policy Manual

Temporary Custody of Juveniles

- (d) A juvenile being processed in a secure booking area when a non-secure booking area is available.
- (e) A juvenile left alone in a secure booking area after being photographed and fingerprinted.
- (f) A juvenile placed in a cell within the adult temporary holding area, whether or not the cell door is locked.
- (g) A juvenile placed in a room that is capable of being locked or contains a fixed object designed for cuffing or restricting movement.

Sight and sound separation - Located or arranged to prevent physical, visual, or auditory contact (34 USC § 11103).

Status offender - A juvenile suspected of committing a criminal violation of the law that would not be a criminal violation but for the age of the offender. Examples may include running away, underage possession of tobacco, curfew violation, and truancy. A juvenile in custody on a court order or warrant based upon a status offense is also a status offender.

901.2 POLICY

The Saratoga Springs Police Department is committed to releasing juveniles from temporary custody as soon as reasonably practicable and to keeping juveniles safe while in temporary custody at the Department. Juveniles should be held in temporary custody only for as long as reasonably necessary for processing, transfer or release.

901.3 JUVENILES WHO SHOULD NOT BE HELD

Juveniles who exhibit certain behaviors or conditions should not be held at the Saratoga Springs Police Department. These include:

- (a) Unconsciousness or having been unconscious while being taken into custody or transported.
- (b) Serious injuries or a medical condition requiring immediate medical attention.
- (c) A suspected suicide risk or showing obvious signs of severe emotional or mental disturbance (see the Emergency Admissions Policy).
 - 1. If the officer taking custody of a juvenile believes that he/she may be a suicide risk, the officer shall ensure continuous direct supervision until evaluation, release or transfer to an appropriate facility is completed.
- (d) Significant intoxication or showing signs of having ingested any substance that poses a significant risk to their health, whether or not they appear intoxicated.
- (e) Extremely violent or continuously violent behavior.
- (f) Afflicted with, or displaying symptoms of, a communicable disease that poses an unreasonable exposure risk.

Officers taking custody of a juvenile exhibiting any of the above conditions should take reasonable steps to provide medical attention or mental health assistance and should notify a supervisor of the

Saratoga Springs Police Department

Policy Manual

Temporary Custody of Juveniles

situation. These juveniles should not be held at the Department unless they have been evaluated by a qualified medical or mental health professional, as appropriate for the circumstances.

901.4 CUSTODY OF JUVENILES

Officers should take custody of a juvenile and temporarily hold the juvenile at the Saratoga Springs Police Department when there is no other lawful and practicable alternative to temporary custody. Refer to the Child Abuse Policy for additional information regarding detaining a juvenile who is suspected of being a victim.

No juvenile should be held in temporary custody at the Department without authorization of the arresting officer's supervisor or the Shift Supervisor. Juveniles taken into custody shall be held in non-secure custody unless otherwise authorized by this policy.

Any juvenile taken into custody shall be released to the care of the juvenile's parent, legal guardian, or other responsible adult, or transferred to a juvenile custody facility or to other authority as soon as practicable. A juvenile should not be held beyond six hours from the time of his/her entry into the Department (34 USC § 11133).

901.4.1 CUSTODY OF JUVENILE NON-OFFENDERS

Non-offenders taken into protective custody in compliance with the Child Abuse Policy should generally not be held at the Saratoga Springs Police Department. Custodial arrangements should be made for non-offenders as soon as reasonably possible. Juvenile non-offenders may not be held in secure custody (34 USC § 11133).

A child taken into custody due to an emergency removal without a court order under Family Court Act § 1024 or Social Services Law § 417 shall be taken as soon as practicable to an approved facility. Every reasonable effort to inform the parent or other person legally responsible for the child's care shall be made.

901.4.2 CUSTODY OF JUVENILE STATUS OFFENDERS

Status offenders should generally be released by a court appearance ticket or with a warning rather than taken into temporary custody. However, officers may take custody of a status offender if requested to do so by a parent or legal guardian in order to facilitate reunification (e.g., transported home or to the station to await a parent). Juvenile status offenders may not be held in secure custody (34 USC § 11133).

901.4.3 CUSTODY OF JUVENILE DELINQUENTS

Juvenile delinquents should be held in non-secure custody while at the Saratoga Springs Police Department unless another form of custody is authorized by this policy or is necessary due to exigent circumstances.

A member serving as a peace officer or a police officer may take a juvenile delinquent into custody under the same circumstances for which an adult may be arrested for a crime.

Saratoga Springs Police Department

Policy Manual

Temporary Custody of Juveniles

Juvenile delinquents and juvenile offenders should generally be released to the custody of a parent or other legally responsible person upon the issuance of an appearance ticket to the child and the person to whose custody the child is released (Family Court Act § 305.2).

- (a) Upon being taken into custody, adolescent offenders, juvenile offenders, and other juvenile delinquents with special circumstances should be taken to the youth part of the superior court or family court, as appropriate. If the court is not in session, members should take the juvenile before an appropriate magistrate as designated by the court (Family Court Act § 305.2; Family Court Act § 312.2; CPL § 140.20; CPL § 140.27; CPL § 722.21).
- (b) In cases where the member determines that it is necessary to question the juvenile delinquent, the child may be transported to a location specifically designated for the purpose of questioning juveniles, even in cases where the member intends to later transport the juvenile to court. If the member intends to release the juvenile after questioning, and upon the consent of a parent or other person legally responsible for the care of the child, the juvenile may be taken to the juvenile's residence for questioning for a reasonable period of time (Family Court Act § 305.2; CPL § 140.20).
- (c) Special circumstances may make a release inappropriate due to a substantial probability that a juvenile will not appear in court or a significant risk the juvenile may commit further serious criminal acts. In these cases, taking a juvenile to family court is appropriate. When family court is not in session, the member should take the juvenile before an appropriate magistrate as designated by the court. The supervisor or designee may then contact a juvenile detention facility and seek authorization for further detention (Family Court Act § 305.2; Family Court Act § 320.5).

Upon arrest, every reasonable effort should then be made to give notice and location of the custody to a parent or other person legally responsible for the child as soon as practicable (Family Court Act § 305.2; CPL § 120.90; CPL § 140.20; CPL § 140.27).

901.5 ADVISEMENTS

Any member taking a juvenile delinquent or juvenile or adolescent offender into custody shall immediately notify the parent or other person legally responsible for the juvenile's care, or if such legally responsible person is unavailable, the person with whom the child resides, that the juvenile has been taken into custody and provide the juvenile's location (Family Court Act § 305.2; CPL § 140.20; CPL § 140.27).

901.6 JUVENILE CUSTODY LOGS

Any time a juvenile is in temporary custody at the Saratoga Springs Police Department, the custody shall be promptly and properly documented in the juvenile custody log, including:

- (a) Identifying information about the juvenile.
- (b) Date and time of arrival and release from the Department.
- (c) Shift Supervisor notification and approval to temporarily hold the juvenile.
- (d) Any charges for which the juvenile is being held and classification of the juvenile as a juvenile offender, adolescent offender, status offender, or non-offender.

Saratoga Springs Police Department

Policy Manual

Temporary Custody of Juveniles

- (e) Any changes in status (e.g., emergency situations, unusual incidents).
- (f) Time of all safety checks.
- (g) Any medical and other screening requested and completed.
- (h) Any other information that may be required by other authorities, such as compliance inspectors or a local juvenile court authority.

The Shift Supervisor should initial the log to approve the temporary custody, including any secure custody, and should initial the log when the juvenile is released.

901.7 NO-CONTACT REQUIREMENTS

Sight and sound separation shall be maintained between all juveniles and adults while in custody at the Saratoga Springs Police Department (34 USC § 11133; 28 CFR § 115.114). There should also be sight and sound separation between non-offenders and juvenile and status offenders.

In situations where brief or accidental contact may occur (e.g., during the brief time a juvenile is being fingerprinted and/or photographed in booking), a member of the Department shall maintain a constant, immediate, side-by-side presence with the juvenile or the adult to minimize any contact. If inadvertent or accidental contact does occur, reasonable efforts shall be taken to end the contact.

In the event that a juvenile has erroneously been placed in custody through deception, impersonation or other reason, the incident must be immediately reported to the Shift Supervisor and a record made for reporting to the New York State Commission of Correction (reportable incident and annual reporting as required by Commission guidelines).

901.8 TEMPORARY CUSTODY REQUIREMENTS

Members and supervisors assigned to monitor or process any juvenile at the Saratoga Springs Police Department shall ensure:

- (a) The Shift Supervisor is notified if it is anticipated that a juvenile may need to remain at the Department more than four hours. This will enable the Shift Supervisor to facilitate the juvenile's release or transfer from the Department within six hours.
- (b) Safety checks and significant incidents/activities are noted on the log.
- (c) Juveniles in custody are informed that they will be monitored at all times, except when using the toilet.
 1. There shall be no viewing devices, such as peep holes or mirrors, of which the juvenile is not aware.
 2. This does not apply to surreptitious and legally obtained recorded interrogations.
- (d) A member of the same sex will supervise personal hygiene activities and care, such as changing clothing or using the restroom, without direct observation to allow for privacy.
- (e) There is reasonable access to toilets and wash basins.
- (f) There is reasonable access to a drinking fountain or water.

Saratoga Springs Police Department

Policy Manual

Temporary Custody of Juveniles

- (g) Food is provided if a juvenile has not eaten within the past four hours or is otherwise in need of nourishment, including any special diet required for the health of the juvenile.
- (h) There are reasonable opportunities to stand and stretch, particularly if handcuffed or otherwise restrained.
- (i) There is privacy during family, guardian and/or attorney visits.
- (j) Juveniles are generally permitted to remain in their personal clothing unless it is taken as evidence or is otherwise unsuitable or inadequate for continued wear while in custody.
- (k) Clean blankets are provided as reasonably necessary to ensure the comfort of an individual.
 - 1. The supervisor should ensure that there is an adequate supply of clean blankets.
- (l) Adequate shelter, heat, light and ventilation are provided without compromising security or enabling escape.
- (m) Adequate furnishings are available, including suitable chairs or benches.
- (n) Juveniles have the right to the same number of telephone calls as adults in temporary custody (see the Temporary Custody of Adults Policy).
- (o) Discipline is not administered to any juvenile, nor will juveniles be subjected to corporal or unusual punishment, humiliation or mental abuse.

901.8.1 COURT APPROVAL

The Patrol Division Commander will ensure that only areas that have been approved by the chief administrator of courts are used for the custody or questioning of juveniles. Members should not allow a juvenile in custody to be in an unapproved area (Family Court Act § 305.2).

901.9 RELIGIOUS ACCOMMODATION

Juveniles have the right to the same religious accommodation as adults in temporary custody (see the Temporary Custody of Adults Policy).

901.10 USE OF RESTRAINT DEVICES

Juvenile delinquents, juvenile offenders, and adolescent offenders may be handcuffed in accordance with the Handcuffing and Restraints Policy. A juvenile delinquent or juvenile or adolescent offender may be handcuffed at the Saratoga Springs Police Department when the juvenile presents a heightened risk. However, non-offenders and status offenders should not be handcuffed unless they are combative or threatening.

Other restraints shall only be used after less restrictive measures have failed and with the approval of the Shift Supervisor. Restraints shall only be used so long as it reasonably appears necessary for the juvenile's protection or the protection of others.

Juveniles in restraints shall be kept away from other unrestrained individuals in custody and monitored to protect them from abuse.

Saratoga Springs Police Department

Policy Manual

Temporary Custody of Juveniles

901.10.1 PREGNANT JUVENILES

Juveniles who are known to be pregnant should be restrained in accordance with the Handcuffing and Restraints Policy.

901.11 PERSONAL PROPERTY

The personal property of a juvenile shall be processed in the same manner as an adult in temporary custody (see the Temporary Custody of Adults Policy).

901.12 SECURE CUSTODY

Only juvenile or adolescent offenders 14 years of age or older may be placed in secure custody. Shift Supervisor approval is required before placing a juvenile or adolescent offender in secure custody.

Secure custody should only be used for juvenile or adolescent offenders when there is a reasonable belief that the juvenile is a serious risk of harm to him/herself or others.

Members of this department should not use secure custody for convenience when non-secure custody is, or later becomes, a reasonable option.

When practicable, handcuffing one hand of a juvenile or adolescent offender to a fixed object while otherwise maintaining the juvenile in non-secure custody should be considered as the method of secure custody. A member must be present at all times to ensure the juvenile's safety while secured to a stationary object.

Generally, juveniles should not be secured to a stationary object for more than 60 minutes. Supervisor approval is required to secure a juvenile to a stationary object for longer than 60 minutes and every 30 minutes thereafter. Supervisor approval should be documented.

901.12.1 LOCKED ENCLOSURES

A thorough inspection of the area shall be conducted before placing a juvenile into the locked enclosure to ensure there are no weapons or contraband and that the area is clean and sanitary. An inspection should be conducted when he/she is released. Any damage noted to the area should be photographed and documented.

The following requirements shall apply:

- (a) Anything that could create a security or suicide risk, such as contraband, hazardous items, belts, shoes or shoelaces, and jackets, shall be removed.
- (b) The juvenile shall constantly be monitored by an audio/video system during the entire temporary custody.
- (c) The juvenile shall have constant auditory access to department members.
- (d) The juvenile's initial placement into and removal from a locked enclosure shall be logged.
- (e) Unscheduled safety checks by department members shall occur no less than every 15 minutes.

Saratoga Springs Police Department

Policy Manual

Temporary Custody of Juveniles

1. All safety checks shall be logged.
 2. The safety check should involve questioning the juvenile as to his/her well-being.
 3. Juveniles who are sleeping or apparently sleeping should be awakened.
 4. Requests or concerns of the juvenile should be logged.
- (f) Males and females shall not be placed in the same locked room.
- (g) Juvenile and adolescent offenders should be separated according to severity of the crime (e.g., felony or misdemeanor).
- (h) Restrained juveniles shall not be placed in a cell or room with unrestrained juveniles.

901.13 SUICIDE ATTEMPT, DEATH OR SERIOUS INJURY

The Patrol Division Commander will ensure procedures are in place to address any suicide attempt, death or serious injury of any juvenile held at the Saratoga Springs Police Department.

The procedures should include the following:

- (a) Immediate request for emergency medical assistance if appropriate
- (b) Immediate notification of the Shift Supervisor, Chief of Police and Investigation Division Commander
- (c) Notification of the parent, guardian or person standing in loco parentis of the juvenile
- (d) Notification of the appropriate prosecutor
- (e) Notification of the City Attorney
- (f) Notification of the Coroner
- (g) Notification of the juvenile court
- (h) Evidence preservation
- (i) Reporting to the New York State Division of Criminal Justice Services for the Death in Custody Reporting Act.

901.14 INTERVIEWING OR INTERROGATING

No interview or interrogation of a juvenile should occur unless the juvenile has the apparent capacity to consent, and does consent, to an interview or interrogation.

Juvenile delinquents and adolescent and juvenile offenders in custody shall not be questioned unless the juvenile and either the juvenile's parent or other person legally responsible for the child's care, or if such legally responsible person is unavailable, the person with whom the child resides, are advised of the juvenile's department-approved *Miranda* rights for juveniles (Family Court Act § 305.2).

Any custodial interrogation of a juvenile shall be video recorded consistent with the requirements of the Division of Criminal Justice Services (Family Court Act § 305.2). This recording should intelligibly capture the entire interrogation, including the administration of *Miranda* rights and the

Saratoga Springs Police Department

Policy Manual

Temporary Custody of Juveniles

identities of all persons present. For the policy on retention and additional notice requirements, see the Investigation and Prosecution Policy.

901.15 RESTRICTION ON FINGERPRINTING AND PHOTOGRAPHING

Fingerprints and palm prints may not be taken of juvenile delinquents unless (Family Court Act § 306.1):

- (a) The juvenile is in custody for a class A or B felony and the child is 11 years of age or older.
- (b) The juvenile is in custody for a class C, D, or E felony and is 13 years of age or older.
- (c) The juvenile is 16 years old and is in custody for a misdemeanor defined in the Vehicle and Traffic Law (Penal Law § 30.00; CPL § 160.10).

The taking of fingerprints, palm prints, photographs, and related information concerning a juvenile delinquent or juvenile or adolescent offender in custody shall conform with standards established by the Commissioner of the New York State Division of Criminal Justice Services, the Family Court Act, and the Criminal Procedure Law (Family Court Act § 306.1; CPL § 120.90; CPL § 140.20; CPL § 140.27).

POLICIES AND PROCEDURES FOR JUVENILES DETENTION,
ARREST, AND CUSTODY

The purpose of this order is to set policy and procedures regarding arrest, detention, shelter bookings, and diversion of juveniles.

I. POLICY:

It is the policy of the San Francisco Police Department that all members shall treat individuals with respect and courtesy regardless of age or social status, and shall comply with all relevant General Orders, including but not limited to General Order 5.15 (Enforcement of Immigration Laws), General Order 5.17 (Policy Prohibiting Biased Policing) and General Order 5.20 (Language Access Services for Limited English Speaking Persons). Members of the San Francisco Police Department have a unique opportunity to influence the lives of children and youth. Members shall seek partnerships with families, schools and juvenile-centered groups to prevent and solve problems affecting children and youth. When detaining, arresting or taking a juvenile into temporary custody members shall choose the alternative that least restricts the juvenile's freedom of movement, provided that alternative is compatible with the best interests of the child and the community.

Members shall protect the constitutional rights of all individuals with whom they come into contact regardless of age. Every juvenile shall be treated in accordance with all applicable laws. Airport Bureau members will comply with the contents of this order, however, since the Airport Bureau utilizes San Mateo County Juvenile Facilities, these members will comply with exceptions to this order defined in Airport Bureau General Order 97-013.

II. DEFINITIONS:

- A. JUVENILE: Any person under 18 years of age.
- B. CHILD: Any person under 14 years of age.
- C. INFANT: Any person under 2 years of age.
- D. DEPENDENT: Any person under the age of 21 who is under the jurisdiction of the Juvenile court because of parental abuse, neglect, or abandonment.
- E. GUARDIAN: Adult responsible in the absence of a parent.
- F. MINOR: Any person under 21 years of age.

G. EXIGENT CIRCUMSTANCES:

Exigent circumstances are defined as situations that require deviation from procedures, such as a threat to life, safety, or property, a fleeing suspect, or the potential loss or destruction of evidence. (e.g., physical loss of property, witness or victim.)

III. PROCEDURES: Members should avoid bringing juveniles into any police facility (including district stations) that contain a lockup for adults. Members should make reasonable efforts to investigate, facilitate release, or arrange transfer of the juvenile from the field or from juvenile facilities such as Huckleberry House, Community Assessment and Referral Center (CARC), and Juvenile Justice Center (JJC- formerly YGC). Only after a member has made reasonable efforts from the field or from juvenile-centered facilities such as Huckleberry House, CARC, and JJC to investigate, facilitate release, or arrange for transfer of the juvenile, may a member bring a juvenile to a police facility that contains a lockup for adults. In the extraordinary circumstance that requires a member to bring a juvenile to a police facility containing a lockup for adults, the member shall strictly comply with the following procedures:

A. EMERGENCY OR TEMPORARY SHELTER (300 W&I). Members shall take all juveniles detained for emergency or temporary shelter to the Child Protective Services (CPS) for medical screening and placement. Detention for emergency or temporary shelter is appropriate when any of the following conditions exist:

1. The juvenile is in immediate need of medical care.
2. The juvenile's physical environment poses an immediate threat to the juvenile's health or safety.
3. A juvenile left unattended poses an immediate threat to the juvenile's health or safety. Prior to detaining the juvenile, members shall attempt to contact the juvenile's parent or guardian to determine if the parent or guardian is able to take custody of the juvenile.
4. The juvenile is in immediate danger of physical or sexual abuse.
5. The juvenile has been ordered by juvenile court to be temporarily removed from the custody of his or her parents and a member has reason to believe that the juvenile has violated an order of the juvenile court or has left any placement ordered by the juvenile court.
6. WRITTEN STATEMENT: When the juvenile has been taken into temporary custody pursuant to Section 305 W&I, officers shall take reasonable steps to inform the parent, guardian, or responsible person, that the juvenile has been taken into protective custody. Further, the parent, guardian, or responsible person shall be advised that a written statement is

available which explains the parent's or guardian's procedural rights and the preliminary stages of the dependency investigation and hearing. The written statement is available through all public schools, probation offices, and welfare offices.

- B. TEMPORARY DETENTION: When taking a juvenile into temporary detention under Section 601 W&I (runaway, beyond parental control) or 602 W&I (violation of criminal law), members shall follow these procedures:
1. SEARCHES: Search the juvenile for weapons, evidence or contraband, refer to Section H.
 2. MIRANDA: Read the juvenile the Miranda advisement (625 W&I Code). Members shall take reasonable steps to read the advisement as soon as practical, but with-in a half-hour of taking the juvenile into custody. The name of the member reading the Miranda advisement shall be included in the police report. If the juvenile was taken to a police facility, the arresting officer shall document on the Secure or Non-Secured Detention of Juvenile Log Forms (SFPD 473/472) their name, star and who provided the Miranda advisement to the juvenile.
 3. PARENTAL NOTIFICATION: Take immediate steps to notify the juvenile's parent, guardian, or a responsible person that the juvenile is in custody and the place where he or she is being held.
 4. JUVENILE FACILITY: After a member has made reasonable efforts from the field or from appropriate juvenile-centered facilities (e.g. Huckleberry House, CARC, or JJC) to investigate, arrange release, or transfer, may a member bring a juvenile to a police facility containing an adult lockup.
 5. DETENTION LOGS: Prior to the end of each watch, the platoon commander shall ensure that the Secure or Non-Secured Detention of Juvenile Log Forms (SFPD 473/472) have been properly completed.
 6. TELEPHONE CALLS: Immediately after taking the juvenile to a place of confinement and, except where physically impossible, no later than one hour after he/she has been taken into custody, members shall allow the juvenile to make at least two telephone calls: one call completed to his/her parent or guardian, a responsible person or his/her employer, and another call completed to an attorney.
 7. ACCESS TO BASIC AMENITIES. In secure and non-secure detention, members shall ensure that the following amenities are made available to juveniles:
 - a. Reasonable access to toilets and washing facilities,

- b. A snack if the juvenile has not eaten within 4 hours,
 - c. Reasonable access to drinking water,
 - d. Privacy during visits with family, guardian, and/or lawyer,
 - e. Reasonable access to a telephone.
8. WELL-BEING: Members are responsible for the security, safety, and well-being of detained juveniles.
9. SUICIDE RISK AND PREVENTION: Members shall keep any juvenile who appears suicidal under constant personal observation while in their temporary custody. Members shall, as soon as practical, contact a supervisor who shall then be responsible for having the juvenile appropriately evaluated for psychiatric services. Members shall notify the juvenile's parent, legal guardian, or responsible person (foster parent, boarding school, etc.), in the event of a suicide attempt. (See DGO 7.02, Psychological Evaluation of Juveniles).
10. MEDICAL ASSISTANCE AND SERVICES: Members shall ensure that juveniles who are obviously injured or ill are examined at SFGH prior to being booked. In the event of an emergency medical situation, an ambulance should be summoned immediately. Members shall make notification to the juvenile's parent, legal guardian, or responsible person (foster parent, boarding school, etc.), in the event of a serious illness or injury. (Also see DGO 5.09, Absentia Bookings and Prisoner Security.)
- C. JUVENILE DETAINED FOR 601 W&I OFFENSES: A juvenile held in non-secure custody for any violation of 601 W&I may not be securely detained unless the juvenile commits separate criminal violations which would violate 602 W&I (criminal offense) while in custody. If a juvenile commits a separate criminal violation, members shall refer to Section D and follow procedures for a 602 W&I or a 5150 W&I detention. When detaining for 601 W&I, members shall strictly comply with the following policies:
1. Members shall not hold a juvenile in a locked room.
 2. Members shall not handcuff juveniles to themselves or any fixed object.
 3. Members shall ensure that juveniles do not have any contact with any adult or other juvenile prisoners.
 4. Members shall maintain direct visual supervision of the juvenile at all times to prevent any communication between adult prisoners and juveniles and to ensure the safety of the unsecured juvenile.

5. Members shall not use video equipment as a substitute for constant personal observation.
6. No juvenile shall be detained at a district station more than six hours.
7. If a member is unable to reach the juvenile's parent(s), guardian, or responsible person or if the parent/guardian cannot or will not respond, members shall take the juvenile to Huckleberry House or other agency contracted by the City and County to receive juveniles for any violation of 601 W&I.
8. Members shall make an entry into the Non-Secure Detention Log (SFPD 472) indicating the reasons and circumstances for the non-secure detention, starting time and ending time of the detention, and the officer's name and star.

D. JUVENILE DETAINED FOR 602 W&I OFFENSES:

1. NON-SECURE CUSTODY. Juveniles detained for 602 W &I offense, under the age of 14 (regardless of the offense), and juveniles age 14 and over, who do not reasonably present a serious security risk of harm to themselves or others, shall be held in non-secure custody. These juveniles shall be held in accordance with section C.1 through C.8 of this general order.
2. SECURE DETENTION: A juvenile age 14 and over, who the detaining members reasonably believe present a serious security risk of harm to self or others, may be held in secure detention.
 - a. Members shall take reasonable steps and consider the following factors before placing a juvenile in secure detention:
 - 1) The juvenile's physical and emotional age, maturity, and history of delinquency and criminal contacts,
 - 2) The seriousness of the offense,
 - 3) The juvenile's behavior,
 - 4) Availability of staff to adequately supervise a juvenile, and
 - 5) The age, type and number of other subjects being held at the facility.
 - b. Members shall adhere to the following policies when holding a juvenile in **secure detention**:

- 1) Members shall inform the juvenile of the purpose for his or her detention, the expected detention time and of the 6 hour maximum.
- 2) Members may handcuff the juvenile to a stationary object for a maximum of 30 minutes. After 30 minutes, members shall either remove the juvenile from secure detention or obtain approval from a supervisor to extend the secure detention. Each 30 minute extension shall be approved and recorded by a supervisor on the detention log.
- 3) If an adult prisoner is present with the juvenile in the same room or area, members shall maintain constant direct visual supervision of the juvenile at all times to prevent any communication between adult prisoners and juveniles and to ensure the safety of the juvenile.
- 4) Members shall make an entry in the Secure Detention log (SFPD 473) indicating the offense, reasons and circumstances for the secure detention, the starting and ending time of the detention, and the names of the member and the supervisor who approved the detention.
- 5) A juvenile shall be permitted to retain and wear his/her personal clothing unless the clothing is inadequate, presents a health or safety problem, or is required to be utilized as evidence of an offense.
- 6) When a juvenile is released from secure detention but remains at the police facility, the non-secure detention log (SFPD 472) shall also be completed.

3. INTERROGATIONS:

- a. Immediately prior to questioning a juvenile, members shall again advise the juvenile of the Miranda admonishment. Such admonition shall be given in language appropriate to the age and the sophistication of the juvenile and in accordance with General Order 5.20. In addition to the Miranda admonishment, the officer shall tell the juvenile that he or she may have a parent/guardian present before and during an interrogation.
- b. Immediately after taking the juvenile to a place of confinement and, except where physically impossible, no later than one hour after he/she has been taken into custody, allow the juvenile to make as least two telephone calls: one call completed to his/her parent or guardian, a responsible person or his/her employer, and another call completed to an attorney

- c. If a juvenile expresses a wish to have a parent/guardian present during the interrogation, this will be allowed unless the parent/guardian is a witness or suspect to the crime for which the juvenile is being interrogated or exigent circumstances exist (e.g., unduly hampered by the delay or if an emergency exists).
 - d. The number of officers interrogating a juvenile shall be limited to two at any given time.
 - e. Interrogations shall be audio recorded absent exigent circumstances.
 - f. Members shall take reasonable steps to notify parents or guardians as described in Section III.G, below.
- E. 601 & 602 W&I CODE OPTIONS: When determining which disposition of the juvenile to choose, the officer shall elect the alternative which least restricts the juvenile's freedom of movement, provided that alternative is compatible with the best interests of the minor and the community. If circumstances do not warrant admonishing, diverting or citing, members shall phone a juvenile probation officer assigned to the Community Assessment Referral Center (CARC) or other designated receiving facility
- F. PROCEDURES FOR ADMONISHMENT, DIVERSION, CITATION AND BOOKING:
- 1. ADMONISHMENT: If circumstances do not warrant diverting, citing, or booking, members may admonish the juvenile at the scene, or in the presence of a parent or guardian. Members should only admonish juveniles who have no prior 602 W&I contacts and whose involvement in the crime was minimal. Notification may be made by telephone, in person, by leaving a note, or by going to the juvenile's home, as appropriate.

Upon admonishment and release of a detained juvenile, the officer shall issue an 849(b)(1) PC form and prepare an incident report as required by DGO 5.03.

Upon admonishment of a juvenile who was free to leave at any time during the contact (i.e. not detained) or briefly detained, members need not issue a certificate of release or complete an incident report (DGO 5.03).
 - 2. DIVERSION: When admonishment is insufficient, but circumstances do not warrant citing or booking, members may divert the juvenile as follows:
 - a. 601 W&I VIOLATION: A juvenile may be diverted for 601 W&I violation (runaway, beyond parental control) to the Huckleberry House or other agency contracted by the City and County to receive juveniles held for any violation of 601 W&I. A member of the Juvenile

Probation Department will be on duty to process the offender. Members shall prepare an incident report and an admission form and shall attach a copy of the form to the report.

- b. 602 W&I VIOLATION: If a juvenile has been arrested for a non-violent offense and has little or no criminal record, the juvenile may be eligible for diversion. ALL of the criteria on the Diversion Form shall be met. When diverting a juvenile for a criminal offense (602 W&I), members shall follow these procedures:
 - 1) Members shall obtain parental consent to divert the juvenile from the juvenile's parent or guardian and inform the parent or guardian that a diversion officer will contact him or her.
 - 2) Complete the Juvenile Diversion Checklist (SFPD 245) and fax it with a copy of the incident report to the Juvenile Division.
 - 3) When completing SFPD 245 members shall enter an "X" in the subject code and list the offense(s) committed. Members shall title the report by naming the incident followed by the phrase "Juvenile Diverted" (e.g. Vandalism/Juvenile Diverted). A juvenile may be diverted in the same incident where others are cited or booked.
 - 4) Members shall forward a photo of any evidence to the Juvenile Division.
 - 5) Members shall not process or obtain "J" numbers for diverted juveniles.
 - 6) Members shall attach a copy of SFPD 245 to the incident report.
3. CITATIONS: Whenever possible, members should cite juveniles and release them to their parent, guardian or responsible person. Members who believe that a violation should be brought to the attention of the Courts, but believe booking the juvenile is not necessary, shall cite the juvenile.
 - a. CRIMINAL CITATION (602 W&I)
See DGO 5.06, Citation Release.
 - b. TRAFFIC INFRACTION CITATION
See DGO 9.01, Traffic Enforcement.
4. BOOKING: Members shall book when any of the following exists.
 - a. The seriousness of the offense is such that the release of the juvenile would prove dangerous to the public, as determined by the

Risk Assessment Instrument and in consultation with a Juvenile Probation Officer.

- b. The juvenile is arrested pursuant to a warrant.
- c. The juvenile is in possession of a firearm.
 - i. Pursuant to a Memorandum of Understanding between the Department of Social Services and the Juvenile Probation Department, members shall book any child under the age of eleven who is being booked for 602 W&I offenses at the Child Protection Center (CPC) not the Juvenile Justice Center (JJC).
 - ii. Before booking a juvenile, the arresting officer shall complete an admission form summarizing the circumstances of the offense and declaring the probable cause for arrest.
 - iii. The officer shall phone a juvenile probation officer assigned to the Community Assessment Referral Center (CARC) or other designated receiving facility. Members shall not transfer the juvenile to other members, JJC, CARC or other receiving facilities unless an admission form has been completed by the arresting officer.

5. Members shall follow juvenile procedures established through "A" Priority Department Bulletins.

G. NOTIFICATION OF PARENT OR GUARDIAN: When a juvenile has been detained, brought into a police or juvenile facility, or has been transported by a member, that member shall take immediate steps to notify the juvenile's parent, guardian, or a responsible person that the juvenile is in custody and the place where he/she is being held, was transported or temporarily detained.

- 1. NOTIFICATION: Notification may be made by telephone, in person, by leaving a note, or by going to the juvenile's home, as appropriate.
 - a. When a parent, guardian or responsible person is contacted, he/she shall be notified where the juvenile is in custody, the violation or the reason for the detention and/or transportation. Further, he/she shall be informed of the Miranda Rights of the juvenile and that such admonishments have been given to the juvenile. Parent and juvenile will be allowed to speak with one another (at this point) if either party so desires.
 - b. Should an initial attempt to contact a parent, guardian or responsible person fail, renewed attempts shall be made by phone every thirty minutes until the processing and investigation has been completed.

The time of all calls shall be entered on the Non-Secured or Secured Detention Logs.

- c. If a parent, guardian or responsible person has not been contacted at the conclusion of the investigation and processing, the assigned officer shall be responsible for arranging for delivery of the written notification to the parent, guardian, or responsible person (providing information about the juvenile's detention, his/her present whereabouts, and the name of the assigned officer or responsible contact officer).
2. **OUT OF TOWN:** If the juvenile resides outside of the city, members shall make a telephone call to the parent, guardian or responsible person. When possible, members should attempt to make this call collect. If notification cannot be made by telephone, members shall arrange for notification through the local law enforcement agency.
 3. **JUVENILE VICTIMS:** When a member takes a report from a juvenile who is a victim of a crime, the member shall notify the juvenile's parent, legal guardian, or responsible person as soon as reasonable. This notification is not to be made in the event that the suspect is the parent, guardian or responsible person. If the report is being taken at a school, the member may request school personnel make the notification.
 4. **DOCUMENTING NOTIFICATION:** Members shall include in their incident report how notification was made or what actions the member took in attempting to notify parents or guardians.
- H. **SEARCHING JUVENILES:** Members shall search juvenile arrestees immediately for weapons, contraband and items of evidence. Juvenile searches shall be conducted only by a member of the same gender as the juvenile.
1. **EXIGENT CIRCUMSTANCES:** If a member has knowledge or reasonably believes that a juvenile of the opposite sex has a dangerous weapon concealed upon him or her, the juvenile may be restrained (handcuffed) until a search can be made by a member of the same gender as the juvenile. If there is a life-threatening situation, a member may search a juvenile of the opposite gender.
- I. **TRANSPORTING JUVENILES:** Members may only transport a juvenile for a lawful police purpose. Members shall make parental notification as per Section III. G.
1. **WITH ADULTS:** Members shall not knowingly transport juveniles with adult arrestees.

2. FEMALE JUVENILES: Female juveniles shall, when possible, be transported by female officers. If a female officer is unavailable, then two male members shall transport female juveniles with a supervisor's approval.
3. DOCUMENTING THE TRANSPORT OF JUVENILES: Prior to the transport of any juvenile, officers shall broadcast to Department of Emergency Management (DEM) his or her destination and the police vehicle's starting mileage. Upon arrival, officers shall inform DEM of their ending mileage. In both instances, dispatch shall broadcast and record in CAD a starting time and ending time for the transport.
4. USE OF SEATBELTS:
(See DGO 9.04) Seat Belt Policy

J. JUVENILE NUMBERS AND PROCESSING

1. JUVENILE NUMBERS: Members shall obtain a juvenile number (J number) when formal action is taken against a juvenile under Section 601 or 602 W&I Code.
2. PROCESSING: Members shall process a juvenile when:
 - a. The juvenile is arrested for any felony offense, or
 - b. The juvenile is arrested for any firearm or weapon related offense, or
 - c. The juvenile is arrested for sex/prostitution related offenses, or
 - d. The juvenile has a failure to appear on his/her record, or
 - e. The juvenile's identity cannot be confirmed.

When booking a juvenile for 601 or 602 W&I Code and processing is not necessary, members shall affix the juvenile's right thumb print on the back of the police liaison copy (goldenrod) of the admission form. Members shall document in the incident report the method used to confirm the juvenile's identity.

K. CHANGES OF CUSTODY

1. If a subject is taken into custody for an adult warrant and prior to booking it is discovered that the subject is a juvenile, members shall process the subject as a juvenile and book him or her at JJC. Members shall notify CJ #9 and request that a booking form be completed with a notation that the subject is a juvenile and is being held at JJC.

2. If a subject booked at CJ #9 is found to be a juvenile, a unit from Southern Station, shall process and transport the juvenile to JJC. If the juvenile is violent, members may use a patrol wagon to transport the juvenile.
3. If a subject over 18 years of age is arrested for a juvenile warrant, members shall book the subject at County Jail #9. If the subject has additional charges, members shall notify JJC, book the subject at County Jail #9 and place a hold on the subject for Juvenile Court.

L. UNDER THE INFLUENCE OF ALCOHOL, DRUGS OR NARCOTICS:

Members shall have juveniles who are under the influence of alcohol or drugs taken by paramedics to SFGH for medical examination prior to being booked at JJC. If the juvenile must remain in the hospital and booking is required, members shall complete an admission form and deliver it to JJC. Members shall place a police hold on the juvenile and request that a counselor be dispatched to the hospital for the purpose of taking custody of the juvenile.

Members shall remain with the juvenile until medically cleared or relieved by the counselor from JJC. If released by medical staff while still in police custody, members shall transport the juvenile to JJC. If the juvenile is violent, members may request the patrol wagon from Mission Police Station.

M. JUVENILE JUSTICE CENTER ADMISSIONS AND REPORT REQUIREMENTS.

1. Members shall complete Section (A) of the Juvenile Detention Disposition Report Form (#JUS 8716) for any arrest of a juvenile for any criminal offense except 647(f) P.C. and Vehicle Code Violations that are categorized as infractions.
2. When a juvenile is being admitted to Juvenile Justice Center (JJC) for a criminal offense, the member shall provide the incident report to JJC as soon as possible.
3. When a juvenile is being admitted to (JJC) for a criminal offense, members shall complete Section (A) of the Juvenile Detention Disposition Report Form (#JUS 8716) and submit this form to the on-duty probation officer along with the admission form, San Francisco Juvenile Court, Form #1202-03. Members shall also attach a photocopy of the face sheet of the Juvenile Detention Disposition Report Form (#JUS 8716) to the original incident report to be forwarded to the Report Management Section.
4. When completing the admission form, in addition to providing a probable cause statement, members shall provide, when available, aggravating and mitigating information about the juvenile and offense. For example, relevant information may include the seriousness and extent of injury to a victim, value of property stolen or damaged, degree of juvenile's

involvement in an offense, prior offense history or lack thereof, ability of family member to supervise juvenile, flight risk, juvenile's school and employment record.

5. When members are instructed by the probation officer assigned to the Community Assessment Referral Center (CARC) or other designated receiving facility to transport the juvenile to the Center for citing and release, the member shall complete Section (A) the Juvenile Detention Disposition Report Form (#JUS 8716). Members shall also attach a photocopy of the face sheet of the Juvenile Detention Disposition Report Form (#JUS 8716) to the original incident report to be forwarded to the Report Management Section.
6. If CARC or other designated receiving facility is closed or declines to receive a juvenile and the juvenile is not going to be referred to JJC, members shall issue a citation to the juvenile and release the juvenile to a responsible person.

Members shall complete Section (A) of the Juvenile Detention Disposition Report Form (#JUS 8716) and submit the original form along with an attached photocopy of the incident report through inter-department mail to the Juvenile Division, attention JJC liaison officer. A photocopy of the face sheet of the Juvenile Detention Disposition Report Form (#JUS 8716) shall be attached to the original report to be forward to the Report Management Section.

- N. **RELEASING A JUVENILE:** Members are required to ensure the safety of the juvenile in their care or custody. Members shall document the name of the responsible person to whom the juvenile was released in the police report or in the CAD history. Members shall consider factors such as time of day, location of release, and the age and known vulnerability of the juvenile in determining the best circumstances for releasing that juvenile.
- O. **PSYCHIATRIC CASES:**
(See DGO 7.02, Psychological Evaluation of Juveniles.)
- P. **MISSING JUVENILES:**
(See DGO 6.10, Missing Persons)
- Q. **SEXUAL ASSAULTS:**
(See DGO 6.16, Sexual Assaults)
- R. **IN-CUSTODY DEATH**
(California Code of Regulations (CCR) Title 15, Section 1046; See DM 12, Booking and Detention Manual, Section 12, Emergency Procedures)
- S. **REVIEW OF DEPARTMENT BULLETINS CONCERNING JUVENILE PROCEDURES.**

DGO 7.01
Rev. 05/07/08

All Department Bulletins concerning Juveniles will be reviewed 90 days before their expiration date in accordance with department policy.

Reference:

DGO 5.03, II A (1) and (2), Brief Detentions & Prolonged Detentions.
DGO 5.06, Citation Release.
DGO 5.20, Language Access Services for Limited English Proficient Persons.
DGO 6.10, Missing Persons.
DGO 6.16, Sexual Assaults.
DGO 7.02, Psychological Evaluation of Juveniles.
DGO 9.01, Traffic Enforcement.
DGO 9.04, Seat Belt Policy.
DM 12, Booking and Detention Manual.





Policy 1202

Subject	
INTERACTIONS WITH YOUTH	
Date Published	Page
14 December 2022	1 of 24

By Order of the Police Commissioner

POLICY

The purpose of this policy is to provide the necessary background and guidance to members of the Baltimore Police Department (BPD) so they may effectively interact with Youth in non-custody, enforcement, and custody situations. This policy requires that BPD members:

- Uphold the Constitutional and statutory rights of Youth during contacts with law enforcement,
- Recognize that Youth are developmentally different from adults and therefore require the use of special approaches during voluntary contacts, investigative stops, searches, and custodial contacts,
- Use their discretion to promote positive outcomes for Youth offenders when reasonable alternatives that Divert Youth away from the juvenile justice system exist,
- Avoid taking a Youth into Secure Custody unless no other effective alternatives exist, and
- Balance the rights and safety of Youth and their parents or guardians when Youth are witnesses or victims of a crime.

BACKGROUND

Adolescent Development and Youth-Specific Context

- i. The nature of adolescent development makes it difficult for Youth to consider the consequences of their behavior, especially when faced with stressful situations, such as interactions with law enforcement. The part of the brain that controls rational thinking and long-term planning is not fully developed in adolescents. Therefore, adolescents are more prone to risky and dangerous behavior, making them vulnerable to delinquency. Youth also have normal developmental tendencies to react anxiously and distrustfully to unfamiliar adults, especially if the adult(s) appear physically or verbally angry, threatening, or intimidating.
- ii. As Youth are still in their development and learning stages, law enforcement officers are uniquely positioned to influence Youth as figures of authority. Building healthy relationships with Youth and creating a positive adult influence during interactions can foster healthy Youth development. Youth are particularly attuned to Procedural Justice. A Youth's earliest interactions with law enforcement can have a lasting impact on their perceptions of the legitimacy of the justice system and their likelihood of reoffending.
- iii. Many Youth in Baltimore have experienced Adverse Childhood Experiences and trauma. The BPD recognizes the existence of this trauma – often multi-generational – has contributed to a general distrust of law enforcement among some Youth. Research also has shown that law enforcement and the general public (e.g., witnesses or complainants) perceive Youth of color as significantly older than they actually are, leading to differential treatment of these Youth. The BPD

is committed to the pursuit of equitable policing practices to build positive relationships and trust between law enforcement and Baltimore's Youth and families.

- iv. Research has shown that many Youth, particularly those accused of low-level offenses, achieve better life outcomes and are less likely to commit future offenses when given an appropriate level of intervention that promotes pro-social behavior while protecting public safety. Youth who are Diverted from formal involvement in the juvenile justice system can still be held accountable for their actions while receiving more Developmentally Appropriate services and support from community-based providers.

DEFINITIONS

Adverse Childhood Experiences (ACEs) – According to the Centers for Disease Control¹, ACEs are potentially traumatic events that occur in childhood (0-17 years) that include, but are not limited to, experiencing violence or abuse, witnessing violence in the home or community, and having a family member attempt or die by suicide. Also included are aspects of a Youth's environment that can undermine their sense of safety, stability, and bonding, such as growing up in a household with: substance misuse, mental health problems, and instability due to parental separation or household members being in jail or in prison. ACEs are linked to chronic health problems, mental illness, and substance misuse in adulthood. ACEs also can negatively impact education and job opportunities.

Age-Appropriate/Developmentally Appropriate – Interchangeable terms used to reflect a general understanding of the social, emotional, physical, neurological, behavioral, and moral aspects of development in a Youth. See **BACKGROUND** above.

Custodial Contact – Contact wherein a member determines that a Youth will be taken into police custody.

Deinstitutionalization of Status Offenders – The Juvenile Justice and Delinquency Prevention Act of 1974 requires that Youth charged with Status Offenses, and/or abused and neglected Youth, shall not be placed in secure detention or locked confinement. BPD members shall seek alternatives to arrest and seek to Deinstitutionalize Youth with Status Offense violations absent more serious, Delinquent Offense violations.

Delinquent Act – An offense committed by a Youth that would be a crime if committed by an adult.

Department of Juvenile Services (DJS) – An executive agency whose primary task is to appropriately manage, supervise, and treat Youth who are involved in the juvenile justice system in Maryland.

Diversion – Intervention strategies that redirect Youth away from formal involvement in the juvenile justice system. Diversion can occur at any point in the juvenile justice system, from a Youth's contact with law enforcement through a Youth's adjudication in juvenile court.

Non-Custodial Contact – An interaction between a member and a Youth where the Youth is free to leave the interaction at any time. Examples may include when the Youth is a witness or victim of a crime, or the member lacks reasonable articulable suspicion that the Youth has committed or is committing a Delinquent Offense or Status Offense.

¹ United States Department of Health & Human Services, Centers for Disease Control, "Preventing Adverse Childhood Experiences." <https://www.cdc.gov/violenceprevention/childabuseandneglect/aces/fastfact.html>

Non-Secure Custody – Any custody by a BPD member where the Youth is not free to leave (e.g., the Youth is in the presence of a law enforcement officer, or on the premises of a law enforcement facility, but is not in secure detention or confinement status), other than Secure Custody.

Secure Custody – A secure detention area where a Youth is physically detained or confined including a locked room, a cell, or area designated for the specific purpose of physically restricting the movements and activities of a Youth who is in police custody. The Baltimore City Juvenile Justice Center (BCJJC) is classified as a secure detention facility. For the purpose of this policy, the terms “secure detention,” “secure confinement,” and “secure holding” are synonymous with Secure Custody.

Status Offense – An offense committed by a Youth that would not be a crime if committed by an adult. Examples of Status Offenses in Maryland include: underage alcohol and tobacco violations, daytime and nighttime curfew violations, truancy, running away from home, and court jurisdiction for the civil offense of possession of less than 10 grams of marijuana (See Policy 809, *Marijuana - Uniform Civil Citation*).

Strip Search – The search of a person requiring the removal or rearrangement of some or all clothing to permit the visual inspection of the person’s groin/genital area, buttocks, female breasts, or undergarments covering these areas.

NOTE: The following does not constitute a Strip Search or Body Cavity Search: (a) the removal or rearranging of clothing reasonably required to render medical treatment or assistance; (b) the removal of articles of outer clothing, such as coats, ties, belts, shoes; or (c) a weapons pat-down that includes minor manipulation at or around the waistband of the pants, including the untucking and shaking out of a person’s shirt, which may expose the waistband of a person’s undergarments only.

Youth – A person who is under 18 years of age. For purposes of this policy, a Youth is an individual with whom a member is interacting that: a member knows (e.g., through prior interaction, Youth self-reporting) is under 18 years of age, or whose Youth status is objectively apparent to a reasonable officer.

GENERAL

1. Members shall be guided by the most effective and least intrusive enforcement response to Youth offenses. In many cases, an arrest is not the most effective response to a Youth offense as other responses may be more effective in promoting pro-social behavior while maintaining public safety. As with certain lesser offenses for adults (See Policy 1018, *Lesser Offenses & Alternatives to Arrest*), a warning, verbal counseling, or referral to Diversion services are all preferable to citation or arrest.
2. For voluntary contacts, field interviews, investigative stops, and searches of Youth, members shall follow the requirements in Policy 1112, *Field Interviews, Investigative Stops, Weapons Pat-Downs, & Searches*, Policy 1002, *Securing and Interviewing Witnesses*, and Policy 1109, *Warrantless Searches* in addition to the below directives.
3. Members shall see Policy 1207, *Youth Interrogations*, for specific requirements for interrogations of Youth.
4. In order to determine the preferred enforcement response to certain Status and Delinquent Offenses, members may consult the Youth Offense & Resolution Categories chart found in Appendix A.

5. Given the considerations listed in **BACKGROUND**, iii, above, if it is not objectively apparent whether an individual is a Youth or adult, members shall ask an individual's age rather than make assumptions, unless exigent circumstances preclude such an inquiry.

Youth Interactions: Standards for Contacts & Youth-Specific De-Escalation Techniques

6. Problem-solving and Developmentally Appropriate communication strategies are especially important tactics to employ while interacting with Youth. During interactions with Youth, members shall, when feasible:
 - 6.1. Adhere to the principles and policy of procedural justice during the interaction (See Policy 325, *Procedural Justice in Interactions*).
 - 6.2. Recognize that a Youth may not comply right away with orders and that multiple attempts may be needed without resorting to the use or threats of force. The BPD's policy requirements governing the use of force in encounters with Youth are included in Policy 1115, *Use of Force*.
 - 6.2.1. Repeat instructions in a clear voice, and remind the Youth that the purpose of a member's actions is to protect the safety of the Youth and others.
 - 6.2.2. Make efforts to slow down and not rush through interactions absent an emergency situation. For example, when safe and feasible under the circumstances, a member may walk alongside a Youth who initially refuses to stop on the member's orders to try to get the Youth to comply as opposed to physically restraining the Youth.
 - 6.2.3. Repeat back what the Youth says to demonstrate understanding and give an opportunity for clarification. Answer any questions a Youth may have in order to help them understand the Member's actions.
 - 6.2.4. Allow time for the Youth to vent their frustrations, and give them an opportunity to comply (consider environment and other competing stimulus – e.g., sirens, flashing lights, noise, commotion).
 - 6.2.5. Allow the Youth to make choices, or remind them that they may request the help of a parent or guardian, when appropriate. This may include arriving at a way to resolve the situation together.
 - 6.2.6. Be attentive to a Youth's actions over their words. Youth often may comply regardless of verbalizing otherwise.

DIRECTIVES

Youth Interviews: Witnesses and Victims

7. For interviews with Youth, the initial responding member must contact and receive consent of the Youth's parent or guardian before proceeding with the interview unless one of the below-listed exceptions applies. The member shall also inform the Youth that they can have a parent, guardian

or other supportive adult present during the interview, and if the Youth wants such a person present, the member shall not conduct the interview until the person is present.

NOTE: This policy does not apply to victims of child abuse. See Policy 1201, *Child Abuse Investigations*, for the investigatory requirements for child abuse cases.

- 7.1. If there is an imminent need to render aid, to protect the Youth's safety, or to protect public safety (e.g., immediately apprehending the perpetrator of a crime or locating a deadly weapon), the member may ask questions of the Youth related to that need prior to contacting the Youth's parent, guardian, or supportive adult.
- 7.2. If the situation is unclear, the member may ask questions of the Youth related to the need to render aid, protect the Youth's safety, protect public safety, or assess the situation prior to contacting the Youth's parent, guardian, or supportive adult (e.g., if the member encounters an individual that appears to be unconscious on the ground, the member, in order to render aid, may ask a nearby Youth "what happened to them?").
- 7.3. Members may interview the Youth without parental consent if the Youth initiated a call for service or otherwise requested assistance from authorities (such as law enforcement, school officials, or other mandatory reporters under Maryland law), though members still must inform the Youth that they can have a parent, guardian, or other supportive adult present if they wish. The member shall limit the interview to questions about the alleged crime for which the Youth has requested assistance.
- 7.4. Members may interview the Youth without parental consent if the member has a call for service or other factual basis to suspect that the parent or guardian is the perpetrator of an offense against the Youth, though members still must inform Youth that they can have a different parent, guardian, or supportive adult present if they wish. Members shall adhere to Policy 1201, *Child Abuse Investigations*, for situations in which the parent/guardian is the suspect in a crime with a Youth victim. Members are referred to Policy 708, *Rape and Sexual Assault*, for incidents involving a 16- or 17-year-old victim of rape or another sexual assault offense.
8. Whenever a member asks a Youth the limited questions allowed under 7.1. – 7.4., the member may not ask questions intended to further the investigation of the crime beyond the scope of those exceptions prior to contacting the Youth's parent, guardian, or supportive adult.
9. When interviewing a Youth, members shall use simple, concrete, age-appropriate language to ensure the Youth understands that their responses are voluntary and that they are free to leave. Youth may not understand initially that a field interview represents a non-hostile, voluntary contact, therefore in addition to notifying the Youth that they are free to leave, members shall not use words or actions that would communicate that the Youth is not free to leave or that they must answer questions (See Policy 1112, *Field Interviews, Investigative Stops, Weapons Pat-Downs & Searches*). Whenever possible, a member who is trained in Youth interviewing should conduct the interview.
10. When interviewing a Youth pursuant to the above, members shall seek to ensure the Youth's safety in a manner that addresses the Youth's safety (e.g., conduct a discreet, off-scene interview, and ensure that the Youth returns home safely). All off-site interviews, as defined in Policy 1002, *Securing and Interviewing Witnesses*, with a Youth **must** be audio and video recorded.

11. Members should not ask a Youth witness a question intended to get the Youth to incriminate themselves. If the Youth makes a self-incriminating statement in the course of an interview, and/or is considered a suspect, the member shall instead follow Policy 1207, *Youth Interrogations*.
12. Upon the conclusion of an interview, members shall issue the Youth a Baltimore Police Contact Card.

Investigative Stops

13. An investigative stop of a Youth is only permitted when the member has reasonable articulable suspicion (RAS) that the Youth has committed, is committing, or is about to commit a Delinquent Act or Status Offense. RAS allows the member to temporarily detain the Youth for the purpose of confirming or dispelling that suspicion. If the member has no legal basis to detain the Youth, the Youth must be informed that they are free to leave the encounter at any time.
14. For all investigative stops of a Youth, the member must complete a Juvenile Custody Report, Form 11/83, detailing the facts that gave rise to RAS. The member must document these facts whether or not that suspicion is dispelled.
15. Members shall not arrest Youth for disorderly conduct and similar discretionary offenses when the arrest would be based solely on the Youth's response to a stop instead of the behavior justifying the initial contact.

Youth Searches

16. Regarding Youth, members shall adhere to the same procedural search requirements for adults as described in BPD policy (See Policy 1112, *Field Interviews, Investigative Stops, Weapons Pat-Downs, and Searches*; Policy 1109, *Warrantless Searches*; Policy 1007, *Search and Seizure Warrants*; Policy 1013, *Strip Searches and Body Cavity Searches*) with some, Developmentally Appropriate, exceptions that are listed below.
17. **Consent Searches:** When seeking consent to search a Youth or their belongings for contraband or evidence of a crime, members shall make reasonable, Developmentally Appropriate accommodations in addition to the requirements of Policy 1109, *Warrantless Searches* to include:
 - 17.1. Requesting permission from a permanent-rank supervisor to seek consent to search from a Youth.
 - 17.2. Fully explaining the Youth's right to refuse, limit, or revoke consent at any time in Age Appropriate terminology.
 - 17.3. Informing the Youth that they may call a parent, guardian, or supportive adult for guidance before granting or revoking consent to the search.
 - 17.4. Reading the Permission to Search, Form 29 line-by-line, and confirming that the Youth understands the contents of the Form, as well as their right to refuse to sign. The explanation of the Form and any subsequent clarification, explanation, or consent that is refused or granted **must** be captured on BWC.

- 17.5. During all consent search interactions with a Youth, members shall take into account the following factors in determining the Youth's capacity to understand the interaction, or the voluntariness of any consent to search given:
- 17.5.1. The Youth's age: consent to search shall **not** be sought for Youth under 15 years of age.
- 17.5.2. Whether the Youth is under the influence of drugs or alcohol.
- 17.5.3. Whether the Youth's primary language is English (See Policy 1735, *Language Access Services for Limited English Proficient Persons*).
18. **Field Strip Searches:** Field Strip Searches of Youth are **prohibited** except in the case where a member has probable cause to believe that the Youth is concealing a deadly weapon, the Youth is a threat to themselves or others, and the Youth cannot be transported safely to a private location (e.g., district station or headquarters). Members must obtain express approval from a permanent-rank supervisor, lieutenant or above, unless taking the time to seek approval would pose an imminent threat to the safety of the Youth, the member, or the public.
- 18.1. Field Strip Searches of a Youth to retrieve a concealed deadly weapon shall be performed with enhanced protection and privacy:
- 18.1.1. Away from members of the public,
- 18.1.2. Conducted by a member of the same gender identity as the Youth (See Policy 1013, *Strip Searches and Body Cavity Searches*), with the fewest number of members possible to secure the weapon, protect the Youth, and ensure officer safety,
- 18.1.3. With as little rearranging/removal of clothing as possible to safely retrieve the weapon. The Field Strip Search shall **not** be performed if it would fully expose the Youth's groin/genital area, buttocks, or a female Youth's breasts, and
- 18.1.4. If the Youth requests that the BWC not visually record the search, the search shall be audio recorded to protect the Youth and the members conducting the search.
- 18.2. This policy does not apply to BPD members assigned to BCJJC acting in the ordinary course of their duties.
19. Following any search of a Youth, members shall complete an incident report including the appropriate search fields and Juvenile Custody Report fields, the paper Juvenile Custody Report, Form 11/83, in addition to the required paperwork that accompanies the type of search performed. Attach legible images of any physical forms and paperwork to the Incident Report. Multiple images of a single form may be necessary to ensure legibility.

Youth Offense and Resolution Categories

20. For instances of Delinquent Offenses where a member has probable cause to arrest, members shall select the most appropriate option proportionate to the alleged offense (See Fig. 1 below

and Appendix A, Youth Offense and Resolution Categories) which least restricts the Youth's freedom and provides an alternative consistent with public safety and this policy.

21. Consistent with Policy 1106, *Warrantless Arrest Procedures and Probable Cause Standard*, Youth shall not be arrested for misdemeanors committed outside of a member's presence unless a statutory exception applies.

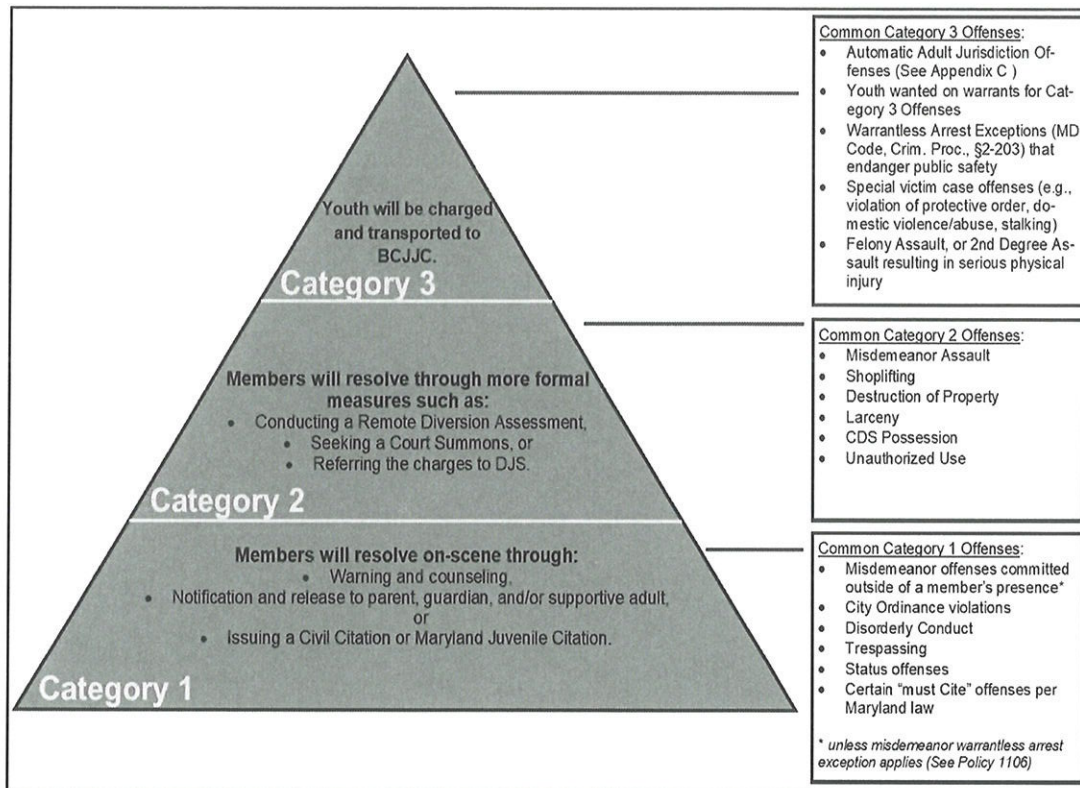


Figure 1: Youth Offense and Resolution Categories (also included as Appendix A)

22. **Category 1 Offenses – Warning or Citation:** Members shall select the least-restrictive resolution, such as:
- 22.1. Warning and/or informal counseling, and release without further action;
 - 22.2. Notification and/or release to a parent or legal guardian;
 - 22.3. Maryland Juvenile Citation.

Status Offenses

23. Status Offenses that occur in the presence of law enforcement shall be resolved by the member through the least-intrusive and most effective enforcement option consistent with public safety.
- 23.1. Generally, Status Offenses should be resolved informally through the options listed in 21 above. Youth shall not be arrested for Status Offense violations.
 - 23.2. For curfew violations, members shall adhere to Policy 1205, *Youth Curfew*.

23.3. Maryland law permits that certain Status Offenses be enforced through a Maryland Juvenile Civil Citation for which a Youth must appear at a hearing with DJS. Members may only issue a Maryland Juvenile Civil Citation for the following Status Offenses provided that less-intrusive measures have been exhausted or are ineffective:

23.3.1 Possession of marijuana under 10 grams (See Policy 809, *Marijuana – Uniform Civil Citation*),

23.3.2. Possessing false documentation to obtain an alcoholic beverage,

23.3.3. Unlawful possession of an alcoholic beverage,

23.3.4. Obtaining liquor for consumption by a person under the age of 21,

23.3.5. Misrepresentation of age to purchase beer, light wine, or liquor,

23.3.6. Possession of an unregistered keg,

23.3.7. Drinking or possessing an alcoholic beverage on public school property.

24. **Category 2 Offenses – Formal Arrest Diversion:** Members shall select more formal Diversion alternatives to arrest, such as:

24.1. Contacting the Diversion Coordinator to perform a Remote Diversion Assessment to determine the appropriate next steps, and/or forwarding the paperwork to the Diversion Coordinator;

24.2. Referring the paper charges to the Department of Juvenile Services and contacting the Youth's parent or guardian to retrieve their child; or

24.3. Seeking a court summons.

NOTE: Members may select a more or less-restrictive disposition to the corresponding category of the offense with approval from their first-line supervisor. Members shall include the specific, articulable circumstances describing the mitigating or aggravating factors describing the reason the disposition was selected.

25. **Category 3 Offenses – Arrest:** For the offenses listed as Category 3 Offenses in Fig. 1 and Appendix A, if a member determines that arrest and Secure Custody of the Youth is the most effective enforcement option given the severity of the offense, the totality of the circumstances, and in order to protect public or the Youth's safety, members shall refer to the below procedures in section **Custody and Transport of Youth**.

Remote Diversion Assessment Procedures

26. Members may contact the Diversion Coordinator to perform a remote Diversion assessment of the Youth in order to determine the appropriate disposition of the incident. The purpose of the assessment is to avoid unnecessary transportation and booking of a Youth who may already be eligible for a formal Diversion program. In conducting a remote Diversion assessment, members shall take the following steps:

- 26.1. Members shall immediately notify their Supervisor that a Youth is in the member's custody, the nature of the offense, and that the member intends to complete a remote assessment for the Youth's Diversion eligibility instead of transporting the Youth to BCJJC.
- 26.2. Members shall positively identify the Youth and contact the Diversion Coordinator to perform an intake assessment over the phone by providing the Coordinator with the facts and circumstances of the Youth's Delinquent Act. The Diversion Coordinator will advise the member whether the Youth is eligible for a pre-arrest Diversion Program.
 - 26.2.1. For after-hours (later than 1900 hrs.) incidents where a Youth does not have open warrants and is not under active supervision, members shall, by the end of their tour of duty, forward a copy of the Incident Report including the parent or guardian's contact information via email to the Diversion Coordinator for assessment and follow-up. Members shall then follow the steps in **29.** below.
- 26.3. For after-hours (later than 1900 hrs.) incidents where a Youth has open warrants and/or is under active supervision, members shall contact DJS Intake to perform an assessment. The Youth may still be eligible for arrest Diversion upon further screening. DJS will instruct whether or not the Youth would be released to their parent(s)/guardian(s) if taken to BCJJC.
- 26.4. If DJS advises that the Youth would be released to their parent(s)/guardian(s), members shall follow the steps listed in **28.** below and forward the paper charges by the end of their tour of duty to DJS.
- 26.5. If the Youth would **not** be released to their parent(s)/guardian(s), members shall transport the Youth to BCJJC for booking.
27. If the Youth has an open warrant for a Category 3 Offense, members shall take the Youth into secure custody and transport to BCJJC.
28. If the Youth is eligible for a pre-arrest Diversion program, the member shall contact and notify the Youth's parent or guardian that:
 - 28.1. The Youth is alleged to have committed a Delinquent Act,
 - 28.2. The Youth is currently in Non-Secure Custody with the member,
 - 28.3. The Youth is eligible for a formal Diversion program and that the parent/guardian will be contacted by the Diversion Coordinator within 24-48 hours, and
 - 28.4. The Youth may be released to the custody of the parent or guardian immediately.
29. Members shall then coordinate with the parent(s) or guardian(s) to obtain custody of the Youth from the scene, or to determine whether the Youth should be transported home. Members shall honor all reasonable requests from a parent(s) or guardian(s) related to the transport of a Youth, and inform them of the method of transportation and the Youth's condition (e.g., in a patrol vehicle, Non-Secure Custody). Members shall activate their BWC during any instance of transporting a Youth.

30. If, following a Remote Diversion Assessment, the Youth is **not** eligible for a pre-arrest Diversion program, members shall contact DJS Intake to determine whether the Youth would be held at BCJJC, or if paper charges to DJS are more appropriate.
31. Members shall complete, by the end of their tour of duty, an incident report including the appropriate Youth diversion fields and the paper Juvenile Custody Report, Form 11/83 detailing the probable cause for the charges and whether the Youth has been referred to a Diversion Program. Completed reports shall be forwarded to the Diversion Coordinator.

Custody and Transport of Youth

32. Absent exigent circumstances, members shall request approval from a permanent rank supervisor to arrest any Youth between 10 and 14 years of age.
33. Members shall not arrest Youth under the age of 10 for any crime. Members may arrest Youth ages 10 to 12 ONLY for crimes of violence under Maryland Criminal Law §14-101.
34. Members shall not handcuff Youth aged 12 or under unless the Youth presents a danger to themselves or others.
35. Members may only handcuff Youth over the age of 12 for the following reasons:
 - 35.1. For safety purposes when arresting or transporting Youth;
 - 35.2. To prevent a Youth from hurting themselves or others;
 - 35.3. And/or to prevent a Youth from fleeing the scene during an initial investigation where the member has reasonable articulable justification for limiting the Youth's freedom, consistent with Policy 1112, *Field Interviews, Investigative Stops, Weapons Pat-Downs, & Searches*.
36. Members are prohibited from handcuffing Youth who will be left unsupervised or in order to attach Youth to a fixed object.
37. Unless a Youth is being arrested and taken in to custody, members shall not handcuff a Youth during transport unless the Youth presents a danger to themselves or others. For custodial transports to return a Youth to a parent/guardian, or witness transport, members may conduct a pat-down for safety consistent with Policy 1002, *Securing and Interviewing Witnesses*.
38. For Youth whose wrists are too small for regular handcuffs, and if members are permitted to restrain them in accordance with this policy, members shall use plastic Flex-Cuffs for restraint.
39. Whenever a Youth is arrested or taken into custody, members shall:
 - 39.1. Provide medical care as necessary and ensure discharge documentation is obtained (See Policy 1114, *Persons in Police Custody*).
 - 39.2. Immediately notify parents/legal guardians, in a manner reasonably calculated to give actual notice, that the Youth is in custody, the Youth's location (including any future destination if the Youth is to be transported), and the reason the Youth is in custody. See Policy 1207, *Youth Interrogations*, for further notification requirements if the member intends to question the Youth.

- 39.3. Immediately notify Department of Social Services (DSS)/Out-of-Home Placement (OHP) at **410-361-2235** if the Youth is committed to the agency.
- 39.3. Explain to the Youth the procedure for retrieving any property that may have been seized during the arrest, to the extent that it may be eligible for retrieval (i.e., non-evidentiary or contraband).
- 39.4. Only transport Youth in prisoner transport wagons if they are charged or will be charged with a Delinquent Act or as an adult.
40. The transporting member shall adhere to the following directives in addition to the requirements of Policy 1114, *Persons in Police Custody*:
- 40.1. Do not transport any prisoners or adults in the same compartment as the Youth.
- 40.2. Complete incident report and paper Juvenile Custody Report, Form 11/83, regardless of the reason for or the duration of the custody.
- 40.3. Complete a Use of Force report whenever force is used to control a Youth during the arrest or transport. See Policy 725, *Use of Force Reporting, Review, and Assessment*.
41. If a Youth is taken into custody in the service of an Emergency Petition, members shall transport the Youth to the closest designated psychiatric emergency facility or to the medical facility directed by the physician or health officer (See Policy 713, *Petitions for Emergency Evaluation & Voluntary Admission*).
42. When the decision to charge a Youth and take them into custody is made, transport the Youth in a prisoner transport vehicle to the BCJJC. The member responsible for taking the Youth into custody shall complete an incident report and paper Juvenile Custody Report (Form 11/83). The operator of the transport vehicle is not required to complete a companion Form 11/83.
43. When requested by the staff at BCJJC to return for the medical care of a Youth, members shall immediately respond and transport the Youth to the nearest medical facility.
- 43.1. Prior to returning the Youth to BCJJC, obtain discharge documents from the medical facility.
- 43.2. Ensure that an incident report and paper Juvenile Custody Report (Form 11/83) is completed, noting the name of the medical facility, reason(s) for the transport, the physician's name, and the disposition of medical care.

Youth Wanted on Warrants

44. BCJJC will only accept Youth wanted on warrants issued in Baltimore City. To verify whether or not a Youth has an active warrant, members shall:
- 44.1. Obtain the Youth's name, address, and age. Accept the response as accurate unless there is an articulable reason to believe the response is not factual.
- 44.2. Relay the Youth's information to the dispatcher. Further verification may be required by the Hot Desk and/or the DJS.

- 44.3. If the Hot Desk confirms the existence of a warrant, transport the Youth to the BCJJC. Once at BCJJC, DJS must verify the warrant. If the warrant is confirmed, members shall follow the directions of the staff at BCJJC and DJS.
- 44.4. In cases of out-of-jurisdiction warrants, members shall verify the warrant with the jurisdiction/agency that issued the warrant. Once verified, members shall request that a detainer be faxed to the Juvenile Booking Facility for jurisdiction of the warrant.

NOTE: Members may bypass obtaining a detainer and take the Youth directly to the Juvenile Courthouse to be seen by a judge, Monday through Friday from 7am to 3pm.

- 44.5. Ensure that BCJJC can take custody of and house the Youth until they are able to appear before a judge. If the warrant has been verified and a detainer cannot be obtained, BCJJC will make provisions to temporarily detain the Youth until they can stand before a judge.

Runaway Youth

45. Members shall adhere to the following guidance for preserving the safety of Runaway Youth by taking the following steps.
46. Members shall ask the Youth limited questions, as described in **Youth Interviews** above, in order to determine the Youth's circumstances and how best to connect the Youth to the proper care and/or supervision. Often, Youth run away because of physical or sexual abuse, neglect, or substance use disorder in the family.
47. Members shall obtain the Youth's name, address, and age.
48. Members shall relay the Youth's information to the dispatcher for a warrant check.
49. Members shall make every attempt to return the Youth to their parent(s) or guardian(s) **unless** the member has a reasonable belief that the parent(s) or guardian(s) are a suspect in a crime involving the Youth. Members are referred to Policy 1201, *Child Abuse Investigations*, for situations in which the parent/guardian is the suspect in a crime with a Youth victim. Members are referred to Policy 708, *Rape and Sexual Assault*, for incidents involving a 16- or 17-year-old victim of rape or other sexual assault offense.
- 49.1. If the Youth resides with a parent or guardian, members shall contact the parent or guardian to come to the scene and obtain custody of their Youth, or offer to transport the Youth to the parent/guardian's location. Upon arrival, confirm the identification of the parent or guardian with the Youth, have the parent sign the Juvenile Custody Report, and supply the parent or guardian with a Baltimore Police Contact Card.
- 49.2. If attempts to reunite the Youth with the parent or guardian are unsuccessful and/or the Youth's residence is outside the jurisdiction of Baltimore City, or the Youth is a runaway from the custody of the State of Maryland members shall immediately contact DSS/CPS to take custody of the Youth.
50. Members shall complete an incident report and include the final disposition of the Youth, the result of the warrant check, and when applicable, the number of attempts made to contact the Youth's

parent or guardian within the report. Include the names of all contact persons from DJS and/or DSS/CPS.

51. Members shall forward all related reports to a first-line permanent rank supervisor by the end of the member's tour of duty.

Lost and Abandoned Youth or Children in Need of Assistance (CINA)

52. Youth may be taken in to custody because they are lost, unattended, abandoned, or otherwise in need of assistance. It is the responsibility of members to reconnect these Youth with their families, guardians, or to protective custody.
53. Members shall make every attempt to positively identify the Youth, their address, and phone number.
54. If a Youth cannot remember their phone number, ask them if they know the number of a close relative or family friend who may be able to contact their parent/guardian.
55. Members shall then contact the parent or guardian and make arrangements to meet them in order to obtain custody of the Youth **unless** the member has a reasonable belief that the parent(s) or guardian(s) are a suspect in a crime involving the Youth. Members are referred to Policy 1201, *Child Abuse Investigations*, for situations in which the parent/guardian is the suspect in a crime with a Youth victim. Members are referred to Policy 708, *Rape and Sexual Assault*, for incidents involving a 16- or 17-year-old victim of rape or other sexual assault offense.
56. If the parent or guardian is unable to access transportation, members shall transport the Youth to the parent or guardian.
57. If the parent or guardian is unable to be reached, members shall call DSS/OHP Team's hotline at **410-361-2235** for guidance.
 - 57.1. If directed to transport the Youth by DSS/OHP Team, members shall transport to DSS/CPS located at:

**1525 N. Calvert St.
Baltimore, MD 21202**

58. Members shall then turn custody over to CPS and document the custody exchange in an incident report and Juvenile Custody Report, Form 11/83. CPS caseworkers will author an independent report related to the incident, and will not sign-off on the Juvenile Custody Report.

NOTE: Members may turn over custody to CPS/DSS without waiting for a Youth's parent or guardian to arrive.

REQUIRED ACTION

Members

59. For all instances of stops and searches, members shall document the facts and circumstances leading to their reasonable articulable suspicion, and whether that suspicion was confirmed or dispelled.
60. Members shall complete an incident report and the Juvenile Custody Report, Form 11/83 for interactions where the Youth is in the member's custody, to include all instances of:
- 60.1. Investigative stops,
 - 60.2. Weapons pat downs,
 - 60.3. Arrest,
 - 60.3.1. Transporting members are **not** required to complete a Juvenile Custody Report, Form 11/83, however the member responsible for taking the Youth into custody shall complete a report.
 - 60.3.2. Members shall consult with an Assistant State's Attorney or the Automatic Adult Jurisdiction Offenses list (Appendix C) to confirm the Youth's charging status.
 - 60.3.3. Using the Juvenile Field Based Reporting (FBR) system at the Juvenile Booking Section or via district processing, members shall include a detailed narrative and charges in the Juvenile Custody Report, Form 11/83. If there is more than one charge, members shall itemize and specify each charge. When applicable, members shall submit an Incident Report. Members shall ensure that the report includes:
 - 60.3.3.1. A Juvenile Custody Number (which starts with "Y").
 - 60.3.3.2. The Youth's previous custody report entitled "List of Priors", written on the first line of a supplemental report.
 - 60.3.3.3. The results of the warrant check of the Youth in custody.
 - 60.3.3.4. Members shall ensure that all reports are transported to the Juvenile Booking Section.

Patrol Supervisors

61. Supervisors shall monitor the enforcement decisions of their subordinates, specifically the manner in which their subordinates use alternatives to arrest and custody for enforcing Youth offenses through the most effective and least intrusive means available.
62. Supervisors shall review and authorize all Juvenile Custody Reports, Form 11/83, of their subordinates. In their review, supervisors shall determine whether a member appropriately assessed:
- 62.1. Informal resolution or Diversion options based on the Youth's offense, and

- 62.2. Additional resources to resolve the situation (e.g., Youth's parents, DJS, School Police), including any attempts to contact the above resources, and with whom they successfully contacted.
63. For instances of a Youth in Secure Custody during transport or processing at the district, Supervisors shall ensure sight and sound separation between Youth and adults at all times.
64. For instances of Youth transport, Supervisors shall ensure that Youth are secured by the appropriate safety devices (e.g., child safety seat for Youth under 8 years of age and less than 4 feet 9 inches tall).
65. Supervisors shall approve or disapprove a subordinate's request to arrest a Youth less than 15 years of age based on the specific articulable facts of the incident as presented by the subordinate and the availability/effectiveness of alternatives to custody.

Chief of Patrol

66. The Chief of Patrol shall receive, on a monthly basis, a report from the Diversion Coordinator to include:
 - 66.1. An accounting of the specific offenses that were forwarded to Diversion from BPD patrol members from the previous month,
 - 66.2. All Comprehensive Needs and Strengths (CANS) assessment determinations including the Youth's demographic information (age, race, gender, charge, and the program to which they were diverted),
 - 66.3. An accounting of the cases that were ineligible for Diversion and either forwarded to DJS or recommended for custody and booking at BCJJC, and
 - 66.4. The number of remote Diversion assessments conducted in the prior month.
67. In coordination with DJS, School Police, and DSS, the Chief of Patrol will continually assess this policy and the Diversion program as related to the availability of additional Diversion options and resources in the City.
68. The Chief of Patrol shall continually assess the BPD's training on Developmentally Appropriate communication and de-escalation techniques, and provide annual refresher training to the department on pre-arrest Diversion.

APPENDICES

- A. Youth Offense & Resolution Categories
- B. Uniform Juvenile Civil Citation for Alcohol and Tobacco Offenses
- C. Automatic Adult Jurisdiction Offenses
- D. Juvenile Custody Report, Form 11/83

ASSOCIATED POLICIES

- Policy 325, *Procedural Justice in Interactions*
- Policy 708, *Rape and Sexual Assault*
- Policy 713, *Petitions for Emergency Evaluation & Voluntary Admission*
- Policy 725, *Use of Force Reporting, Review, and Assessment*
- Policy 809, *Marijuana - Uniform Civil Citation*
- Policy 1002, *Securing and Interviewing Witnesses*
- Policy 1013, *Strip Searches and Body Cavity Searches*
- Policy 1018, *Lesser Offenses & Alternatives to Arrest*
- Policy 1106, *Warrantless Arrest and Probable Cause Standard*
- Policy 1109, *Warrantless Searches*
- Policy 1112, *Field Interviews, Investigative Stops, Weapons Pat-Downs, & Searches*
- Policy 1114, *Persons in Police Custody*
- Policy 1201, *Child Abuse Investigations*
- Policy 1205, *Youth Curfew*
- Policy 1207, *Youth Interrogations*
- Policy 1735, *Language Access Services for Limited English Proficient Persons*

RESCISSION

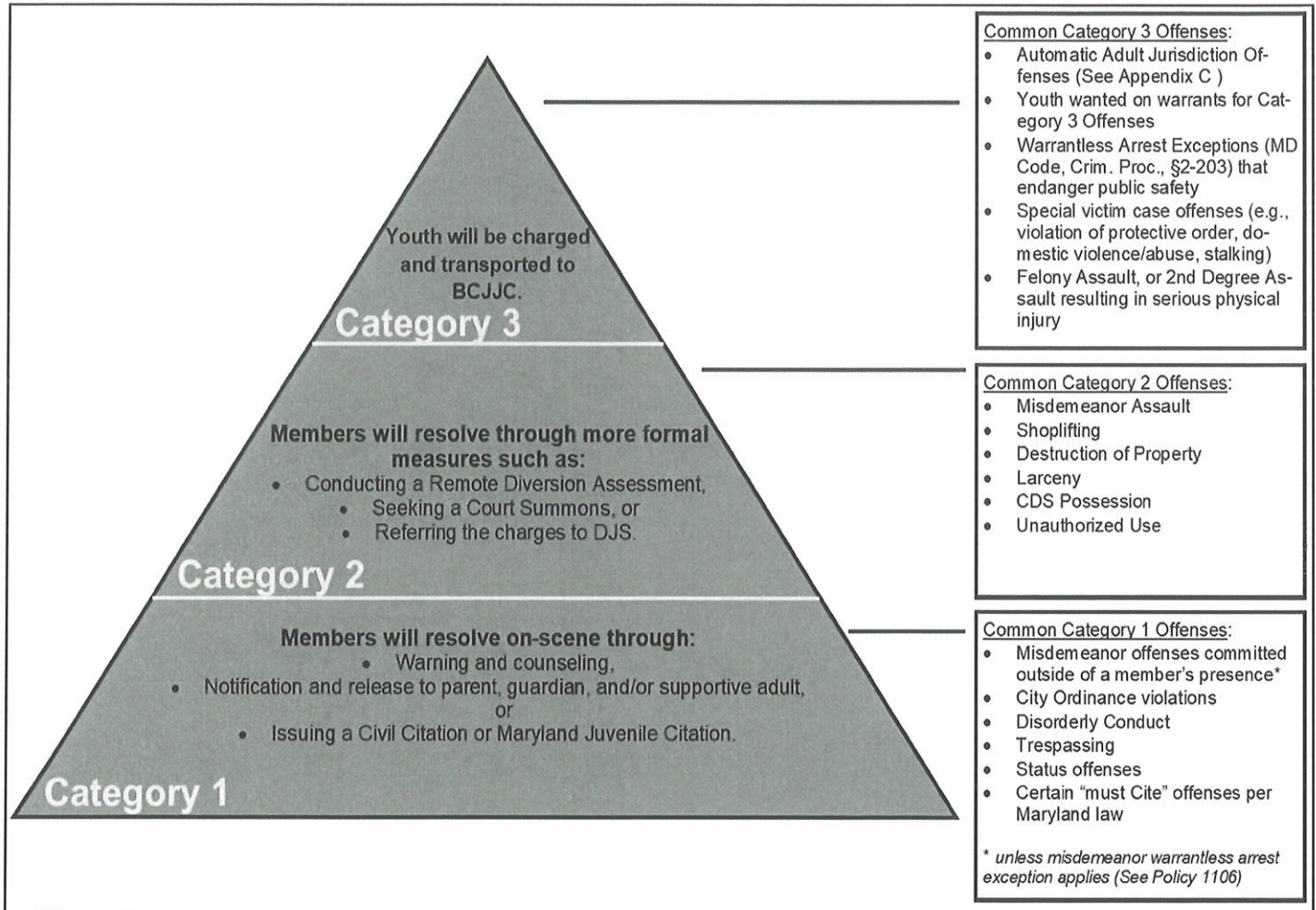
Remove and destroy Policy 1202, *Juveniles: Consensual, Non-Custodial Contacts and Custody Procedures*, dated 1 July 2016.

COMMUNICATION OF POLICY

This policy is effective on the date listed herein. Each employee is responsible for complying with the contents of this policy.

APPENDIX A

Youth Offense & Resolution Categories



APPENDIX B

Uniform Juvenile Civil Citation for Alcohol and Tobacco Offenses

Possession of Marijuana Less than 10 grams
Article: CL, Section: 5-601, Sub-Section (c)(2), Paragraph II 00781526

UNIFORM JUVENILE CIVIL CITATION FOR ALCOHOL AND TOBACCO OFFENSES

Baltimore City AD
County/City Agency
vs. John Matthew Doe
Child's (First) Name Middle Last
601 E. Fayette Street 2nd Floor
Current Address (Include street no. or post office box no.)
Baltimore MD 21202
City State Zip Code
5'3" 200 lbs M B 2-25-2002
Height Weight Sex Race Birth Date Soundex
Driver's License Number and State

Related Citations Telephone No.
Day: 443-000-1234 Night:
It is formally charged that the above named child on April 12 2016
at 3:00 P.M at 500 E. Baltimore Street
Location City/County, Maryland

did Possession of a controlled dangerous substance of schedule I to wit:
marijuana in an amount of less than 10 grams

In violation of Article CL Section 5-601 Sub-Section(c)(2) Paragraph II of the Annotated Code of Maryland

Form with checkboxes for notification: 'You are hereby notified to appear on...' and 'You will be notified by the Dept. of Juvenile Services...' Includes fields for parent/guardian name, signature, and address.

NOTE: YOUR FAILURE TO APPEAR MAY RESULT IN FORMAL COURT ACTION.

I sign my name as a receipt of a copy of the Citation and not as to admission. I hereby agree to appear.
Defendant's refusal to sign the citation does not negate the issuance of same. Just provide "Refused to Sign"

X Child's Signature on the signature line. Please make every professional & courteous attempt to obtain a signature.
I solemnly affirm under the penalties of perjury that the contents of the foregoing citation are true to the best of my knowledge, information, and belief.
Officer's Signature Issuing Officer Sign Your Name Date AD 59XX Sequence
Date Agency Sub-Agency I.D. No.

Intake Decision form with checkboxes: 'Referred to smoking cessation clinic.', 'Assigned to alcohol rehabilitation program.', 'Assigned to supervised work program for ___ hours.', 'Parent/Guardian agrees to withdraw consent...', 'Forwarded to State's Attorney.' Includes fields for Intake Officer's Signature, Hearing Date, and Signature of Parent/Guardian.



APPENDIX B**Uniform Juvenile Civil Citation for Alcohol and Tobacco Offenses (con.)***Introduction to Uniform Juvenile Civil Citations**Maryland Juvenile Civil Citation*

Maryland Juvenile Civil Citations may be issued to juveniles for violation of certain alcohol, tobacco, salvia laws, and, as of October 1, 2014, possession of marijuana under 10 grams. A juvenile defendant must appear at a hearing with the Department of Juvenile Services (DJS). A hearing date will be set and entered by DJS Intake when they receive the citation. Leave that section blank.

The following violations are civil, not criminal, violations. They may only be charged using the Maryland Juvenile Civil Citation.

1. Criminal Law Article § 5-601(C) (2) (II): Possession of Marijuana less than 10 grams.
2. Criminal Law Article § 10-108: Possession of tobacco or use of false identification to obtain tobacco products or rolling papers.
3. Criminal Law Article § 10-113: Misrepresentation of age to purchase beer, light wine, or liquor.
4. Criminal Law Article § 10-114: Unlawful possession of an alcoholic beverage.
5. Criminal Law Article § 10-115: Possessing false documentation to obtain alcoholic beverage.
6. Criminal Law Article § 10-116: Obtaining liquor for consumption by person under the age of 21.
7. Criminal Law Article § 10-118: Possession of unregistered keg.
8. Criminal Law Article § 10-132: Possession of Salvia Divinorum by person under 21 years of age.
9. Education Article § 26-103: Drinking or possessing intoxicating beverages on school premises.

Issuance of the Citation

- (a) If an officer determines a violation of one of the above listed civil violations has occurred, the juvenile would then be issued a Uniform Juvenile Civil Citation and complete an incident report. For cases involving suspected marijuana under 10 grams, the suspected marijuana must be seized and submitted under Departmental Guidelines. The officer must conduct a warrant check before issuing the citation.
- (b) A juvenile may refuse to sign the civil citation. It is important that the full name, phone number, and address of the juvenile's parent or legal guardian be entered on the citation where specified. The juvenile's parent or legal guardian be entered on the citation where specified. The juvenile will be given a copy of the citation, as will the parent or guardian, if present. If the parent or guardian is not present, a copy of the citation will be mailed to them by DJS. Persons (adults and juvenile) who violate any of the alcohol, tobacco, or marijuana offenses may be issued a citation even in cases where the officer does not witness the violation. If an officer receives sufficient information from a complainant to justify the placing of charges, the officer may issue a citation and common the complainant to testify at any hearing or trial.
- (c) Every attempt should be made to identify the juvenile at the scene. This includes contacting the parent or guardian. If a juvenile cannot be identified, the officer will contact Juvenile Booking (JB) in an attempt to help identify the juvenile. If the juvenile cannot be identified on the street, they will be taken to the BJJC front entrance at 300 N. Gay St. Before going to BJJC, contact JB so they can meet you at the front entrance and help you identify the juvenile.
 - (1) If the juvenile is identified, the officer is responsible for issuing the citation and returning them home.
 - (2) If the juvenile is not identified, DJS intake may shelter the juvenile and they will be transported to the appropriate shelter.
- (d) While it's allowed to detain a juvenile for a Status Offense for a "brief time" for identification purposes or for the purpose of allowing return to the juvenile's parents or guardian, this should not occur at a secure facility. Juvenile Booking is a secure facility and cannot be used for this purpose. If a juvenile needs to be detained for this purpose, it must be done at the Front Entrance of BJJC.
- (e) After issuing the citation, an Incident Report will be written and the Citation will be attached to the report and sent through the proper channels. Submission will be done per Departmental guidelines. (Policy 808 Criminal & Civil Citations)

APPENDIX C**Automatic Adult Jurisdiction Offenses****Contact for Additional Guidance:**

State's Attorney's Office, Juvenile Division – 443-263-8100

State's Attorney's Office, Juvenile Charging Unit – 443-263-2764

Baltimore City Central Booking and Intake – 410-545-8094

Effective: May 8, 2020

MD Code, Courts and Judicial Proceedings, § 3-8A-03

- (1) A child at least 14 years old alleged to have done an act that, if committed by an adult, would be a crime punishable by life imprisonment, as well as all other charges against the child arising out of the same incident, unless an order removing the proceeding to the court has been filed under § 4-202 of the Criminal Procedure Article;
- (2) A child at least 16 years old alleged to have done an act in violation of any provision of the Transportation Article or other traffic law or ordinance, except an act that prescribes a penalty of incarceration;
- (3) A child at least 16 years old alleged to have done an act in violation of any provision of law, rule, or regulation governing the use or operation of a boat, except an act that prescribes a penalty of incarceration;
- (4) A child at least 16 years old alleged to have committed any of the following crimes, as well as all other charges against the child arising out of the same incident, unless an order removing the proceeding to the court has been filed under § 4-202 of the Criminal Procedure Article:
- (i) Abduction;
 - (ii) Kidnapping;
 - (iii) Second degree murder;
 - (iv) Manslaughter, except involuntary manslaughter;
 - (v) Second degree rape;
 - (vi) Robbery under § 3-403 of the Criminal Law Article;
 - (vii) Third degree sexual offense under § 3-307(a)(1) of the Criminal Law Article:
 - (a) A person may not:
 - (i) engage in sexual contact with another without the consent of the other; and
 - (ii) 1. employ or display a dangerous weapon, or a physical object that the victim reasonably believes is a dangerous weapon;
 - 2. suffocate, strangle, disfigure, or inflict serious physical injury on the victim or another in the course of committing the crime;
 - 3. threaten, or place the victim in fear, that the victim, or an individual known to the victim, imminently will be subject to death, suffocation, strangulation, disfigurement, serious physical injury, or kidnapping; or
 - 4. commit the crime while aided and abetted by another;

APPENDIX C**Automatic Adult Jurisdiction Offenses (con.)**

- (viii) A crime in violation of § 5-133, § 5-134, § 5-138, or § 5-203 of the Public Safety Article;
 - (ix) Using, wearing, carrying, or transporting a firearm during and in relation to a drug trafficking crime under § 5-621 of the Criminal Law Article;
 - (x) Use of a firearm under § 5-622 of the Criminal Law Article;
 - (xi) Carjacking or armed carjacking under § 3-405 of the Criminal Law Article;
 - (xii) Assault in the first degree under § 3-202 of the Criminal Law Article;
 - (xiii) Attempted murder in the second degree under § 2-206 of the Criminal Law Article;
 - (xiv) Attempted rape in the second degree under § 3-310 of the Criminal Law Article;
 - (xv) Attempted robbery under § 3-403 of the Criminal Law Article; or
 - (xvi) A violation of § 4-203, § 4-204, § 4-404, or § 4-405 of the Criminal Law Article;
- (5) A child who previously has been convicted as an adult of a felony and is subsequently alleged to have committed an act that would be a felony if committed by an adult, unless an order removing the proceeding to the court has been filed under § 4-202 of the Criminal Procedure Article; or
- (6) A peace order proceeding in which the victim, as defined in § 3-8A-01(cc)(1)(ii) of this subtitle, is a person eligible for relief, as defined in § 4-501 of the Family Law Article.

APPENDIX D

Juvenile Custody Report, Form 11/83

JUVENILE CUSTODY REPORT FORM 83/11				POLICE DEPARTMENT BALTIMORE, MARYLAND				1 JUVENILE'S NAME (LAST, FIRST, MIDDLE)				AGE		2 COMPLAINT NO									
20 CAR NO		21 POST		22 REPORTING AREA		STREET CODE		3 ADDRESS				CITY		ZIP CODE		4 CUSTODY NO							
23 TAKEN INTO CUSTODY (LOCATION AND TIME)								5 SEX		RACE		D.O.B		HT		WT		HAIR		EYES		6 RES PHONE	
24 LOCATION OF INCIDENT				25 SOBRIETY				7 SCHOOL				GRADE		RELIGION				8 PHOTO <input type="checkbox"/>		FINGER P <input type="checkbox"/>			
26 DATE & TIME OF INCIDENT				27 NARCOTIC YES <input type="checkbox"/> NO <input type="checkbox"/>				9 ALIAS OR NICKNAME				10 SOCIAL SEC NO				11 PLACE OF BIRTH							
28 VEHICLE INVOLVED- LICENSE				STATE				YEAR				12 EMPLOYED				BUS. PHONE				13 CENT NO			
29 OFFICER IN CASE				SEQ NO				DIST OR UNIT				14 INCIDENT (EXPLAIN)				15 COMP FILED YES <input type="checkbox"/> NO <input type="checkbox"/>				16 DATE OF CUSTODY			
(1)																							
(2)																							
30 PARENT <input type="checkbox"/>				GUARDIAN <input type="checkbox"/>				CUSTODIAN <input type="checkbox"/>				ADDRESS				CITY		ZIP CODE		RES PH		BUS PH	
(1)																							
(2)																							
31 PARENT <input type="checkbox"/>				GUARDIAN <input type="checkbox"/>				CUSTODIAN <input type="checkbox"/>				ADDRESS				CITY		ZIP CODE		RES PH		BUS PH	
32 COMPLAINANT				ADDRESS				CITY		ZIP CODE		RES PH		BUS PH									
33 REPORTING PERSON <input type="checkbox"/>				WITNESS <input type="checkbox"/>				ADDRESS				CITY		ZIP CODE		RES PH		BUS PH					
34 ACCOMPLICE				SEX		RACE		AGE		ADDRESS				PH NO		CUSTODY NO							
35 HOW TRANSPORTED				36 CAR NO		37 SEARCHED BY				SEQ NO		38 NATURE OF INJURY				39 HOSPITALIZED							
40 DATE & TIME ADM TO YOUR SECTION				41 DETENTION APPROVED BY				42 ADMITTING OFFICER				SEQ NO											
43 NAME OF PARENT, GUARDIAN OR CUSTODIAN NOTIFIED								44 DATE & TIME				45 OFFICER				SEQ NO							
46 RELEASED TO (SIGNATURE)				47 ADDRESS				ZIP CODE				48 PH NO		49 RELATIONSHIP									
50 DATE & TIME RELEASED				51 RELEASING OFFICER				SEQ NO				52 SUPERVISOR				SEQ NO							
53 CHECK ONE				IN NEED OF SUPERVISION <input type="checkbox"/>				DELINQUENT <input type="checkbox"/>				NEGLECT <input type="checkbox"/>				DEPENDENT <input type="checkbox"/>				MENTALLY HANDICAPPED <input type="checkbox"/>			
54 JUVENILE'S MONEY (PROPERTY)																							
55 NARRATIVE																							
<p align="center">IMPORTANT NOTICE FROM THE CIRCUIT COURT OF BALTIMORE CITY, DIVISION FOR JUVENILE CAUSES</p> <p>To: _____ (Parent, Guardian or Custodian); _____ is released to you after being in the custody of the Baltimore Police Department.</p> <p>You will receive a summons if a complaint is filed with the Juvenile Court of Baltimore City. You are required to notify the Circuit Court for Baltimore City, Division for Juvenile Causes, 300 North Gay Street, Room A-3300, Baltimore, MD 21202, 443-263-6300, of any change of address for you or the child.</p> <p>Courts and Judicial Proceeding Article, 3-814, of the Annotated Code of Maryland, requires your written promise to bring the child to Court when summoned and to notify the Court of any change of address. Failure to obey a Court summons or give notification of change of address will result in the arrest of the child and a proceeding against you for contempt of Court.</p> <p>I acknowledge receipt of this notice: _____ (Signature of Person Released To) _____ (Relationship)</p> <p>Address: _____ Telephone: (home) _____ (work) _____ Age: _____</p> <p>Releasing Officer: _____ Seq. No. _____ Unit: _____ Date/Time _____</p>																							

APPENDIX D

Juvenile Custody Report, Form 11/83 (Continuation)

SUPPLEMENT REPORT Form 04/007 1160-26-23		POLICE DEPARTMENT BALTIMORE, MARYLAND			1 Crime / Incident Attempt <input type="checkbox"/>		2 Complaint Number	
<input type="checkbox"/> Continuation <input type="checkbox"/> Follow Up				3 Location of Offense / Incident (Street Address, Zip)		Page _____ of _____		
Person <input type="checkbox"/> Property <input type="checkbox"/> Miscellaneous <input type="checkbox"/>		Vehicle <input type="checkbox"/> Missing Person <input type="checkbox"/> Custody <input type="checkbox"/>		4 Date / Time of This Report		5 Arrest / Custody Number		
6 Unit		7 Post of Occurrence		8 Reporting Area		9 Street Code		
10 CAD Number		11 Original Report Date / Time		12 Offense / Incident Changed From				
13 Case Status <input type="checkbox"/> Open <input type="checkbox"/> Closed		14 Multiple Clearance <input type="checkbox"/> Yes <input type="checkbox"/> No		15 Case Disposition <input type="checkbox"/> Cleared <input type="checkbox"/> Not Cleared		16 Follow-up <input type="checkbox"/> Yes <input type="checkbox"/> No		
17 Crime Code		18 Crime Classification		19 Complainant / Victim Name (Last, First, MI), or Firm Name if Business				
20 Residence / Address (Include City, County, State, Zip)				Sex		Race		
Age		DOB		21 Copies Forwarded To				
22 Narrative (1) Continuation of any preceding items. (2) Property Listing, to include property taken and seized, identified, address to property, and property inventory number(s) when applicable. (3) Record all activity and all developments in case subsequent to last report. Include names and arrest numbers of all persons arrested. Explain any crime/resident classification change. (4) List all additional notifications, including name, agency of assignment, unit number, telephone number, date, time. (5) Recommend case status when applicable. (6) If Multiple Clearance, include all affected complaint/case numbers.								
INVESTIGATIVE STOP								
1. Person frisked is the complainant.								
2. Reporting person is the officer.								
3. Person arrested (if any) is the suspect.								
4. You must write an "Investigative Stop" for every "Investigative Stop" performed, whether or not a weapon is found, whether or not an arrest is made, and whether or not the subject stopped cooperates by identifying himself/herself to you.								
5. A separate report is required for each person in which an "Investigative Stop" is conducted.								
6. Narrative requirements:								
6.1. Property listing at the beginning of the narrative if a weapon/contraband is recovered.								
6.2. Date, time, location of the "Investigative Stop."								
6.3. Date, time, location of the report.								
6.4. Charges placed (if any).								
6.5. Full description of the circumstances and conduct of the "Investigative Stop."								
6.6. Full explanation of reasons/justifications for the "Investigative Stop."								
6.7. Officer's signature, rank and sequence number.								
6.8. Supervisor's signature, rank and sequence number, as well as the date/time he/she signed and approved the report.								
6.9. Results of NCIC check on recovered weapons.								
6.10. Subject's soundex number.								
6.11. Subject's social security number.								
6.12. Subject's DOB.								
6.13. Subject's height/weight.								
21 I affirm and declare that the statements above are true to the best of my knowledge:						Reporting Person's Signature		
Date								
22 Reporting Officer Name (PRINT CLEARLY)		Sequence No / Assignment		Signature				
23 Approving Supervisor Rank and Name		Sequence No / Assignment		Signature				
24 RMS Data Entered By		Sequence No		Date		Time		
25 Receiver				26 Returned To				

REPORT SHOULD BE TYPED OR LEGIBLY PRINTED IN BLACK INK