

Cleveland Community Police Commission
Recommendations for Search and Seizure GPO

Version filed 01/17/2020	Recommended Modifications	Comments
<p>Consensual Encounter: A voluntary encounter between the police and an individual with the intent of engaging in a casual, and/or non-investigative conversation. A reasonable person in the individual's position would feel free to leave and/or decline any of the officer's requests at any point.</p>	<p>Consensual Encounter: A voluntary encounter between the police and an individual with the intent of engaging in a casual, and/or non-investigative conversation, in which the officer explains that the individual may decline any conversation, questions and/or is free to leave. A reasonable person in the individual's position would feel free to leave and/or decline any of the officer's requests at any point.</p>	<p>Definitions</p>
<p>Curtilage: Any land or building immediately adjacent to a dwelling that is directly connected to it or in close proximity.</p>	<p>Curtilage: Any land or building immediately adjacent to a dwelling that is directly connected to it or in close proximity, and land that is used for private purposes comparable to the home.</p>	<p>Definitions</p>
<p>Pat Down/Frisk: A limited search during an investigatory stop in which an officer conducts a pat down of the outer clothing of a person for weapons when the officer reasonably suspects that the particular person is armed and dangerous. It is limited to what is necessary to detect weapons and must be based on reasonable articulable suspicion that the person is armed. An officer may not manipulate objects that are discovered under the clothing to determine whether they are contraband.</p>	<p>Pat Down/Frisk: A limited flat-handed search during an investigatory stop in which an officer conducts a pat down of the outer clothing of a person for weapons when the officer reasonably suspects that the particular person is armed and dangerous. It is limited to what is necessary to detect weapons and must be based on reasonable articulable suspicion that the person is armed. An officer may not manipulate objects that are discovered under the clothing to determine whether they are contraband.</p>	<p>Definitions</p>
<p>Plain Feel Doctrine: An officer may seize an object while conducting a limited search during a permitted pat down/frisk if its nature as contraband is immediately</p>	<p>Plain Feel Doctrine: An officer may seize an object while conducting a limited weapons search during a permitted pat down/frisk if its nature as contraband is immediately</p>	<p>Definitions</p>

apparent by feel, and without manipulation of any objects.	apparent by feel, and without manipulation of any objects.	
Reasonable Suspicion: An objectively, justifiable suspicion that is based on specific and articulable facts or circumstances that justifies an officer stopping an individual that has committed, is committing, or is about to commit an offense. Reasonable suspicion is more than a hunch but less than probable cause. A police officer stopping an individual must be able to point to specific facts or articulable circumstances even though the level of suspicion need not arise to probable cause.	Reasonable Suspicion: An objectively, justifiable suspicion that is based on specific and articulable facts or circumstances to justify an officer stopping an individual that has committed, is committing, or is about to commit an offense. Reasonable suspicion is more than a hunch but less than probable cause. A police officer stopping an individual must be able to point to specific facts or articulable circumstances even though the level of suspicion need not arise to probable cause.	Definitions
Search Incident to Arrest: A search of an arrested person, their personal effects, or their area of immediate control at time of search.	Search Incident to Arrest: A search of an arrested person, their personal effects, limited to their area of immediate control at time of search.	Definitions
Added	Youth/Juvenile: An individual under the age of 18.	Definitions
5. Custodial Searches and Other Searches Incident to Arrest	5. Searches Incident to Arrest	Procedure I B
2. Explain in an age appropriate manner to the person being searched and/or seized, the reason for the search/seizure and how the search/seizure will be conducted.	2. Explain in an age appropriate manner and trauma informed manner to the person being searched and/or seized, the reason for the search/seizure and how the search/seizure will be conducted.	Procedure I C
Added	1. Use an individual's gender, race, ethnicity, national origin, age, or perceived sexual orientation as a factor in the decision to stop and search or seize unless such information is part of an actual and credible description of a specific subject in an investigation that includes other identifying factors.	Procedure I D

<p>Added</p>	<p>5. Rely on behavioral responses of youth/juveniles alone as the basis for probable cause, including fleeing, verbal exchanges, Freezing or unexpected non-responsiveness, Outright disregard for police directives, Presumption of mistreatment, (ref youth/juvenile policy)</p>	<p>Procedure I D</p>
<p>1. The open view doctrine allows officers to see and possibly seize contraband. To apply open view, the officer(s) must see the contraband or evidence from a vantage point available to the public. To seize the contraband or evidence, it must be located in an area open to the public and not protected by the Constitution.</p>	<p>1. The open view doctrine allows officers to see and possibly seize contraband. To apply open view, the officer(s) must see the contraband or evidence from a vantage point available to the public. To seize the contraband or evidence, it must be located in an area open to the public and not protected by the Constitution, and it must be immediately apparent that the item is contraband or evidence of a crime.</p>	<p>Procedure II A</p>
<p>2. Officers shall not enter a constitutionally protected place such as a vehicle, home, or habitation, and seize contraband that is visible to the public. (e.g. If officers see a marijuana plant growing in the window of a residence, they cannot enter the home, but may use the information as probable cause to seek a search warrant.)</p>	<p>2. Officers shall not enter a constitutionally protected place such as a vehicle, home, or habitation and curtilage, and to seize contraband that is visible to the public. (e.g. If officers see a marijuana plant growing in the window of a residence, they cannot enter the home, but may use the information as probable cause to seek a search warrant.)</p>	<p>Procedure II A</p>
<p>1. The plain view doctrine allows the police to discover contraband or evidence only after making a lawful intrusion in a constitutionally protected area, such as vehicle, home, or habitation. The evidence or contraband must be immediately recognizable as such and be in plain view.</p>	<p>1. The plain view doctrine allows the police to discover contraband or evidence only after making a lawful intrusion in a constitutionally protected area, such as vehicle, home, habitation, or curtilage. To seize the item, it must be immediately apparent that it is evidence or contraband</p>	<p>Procedure II B</p>
<p>D. Officers shall not physically or mentally coerce,</p>	<p>D. Officers shall not physically or mentally coerce,</p>	<p>Procedure III</p>

<p>threaten or exploit an individual in order to gain consent for a search.</p>	<p>threaten or exploit an individual in order to gain consent for a search. Examples of coercion include but is not limited to:</p> <ol style="list-style-type: none"> 1. Threatening to charge person with a crime such as obstruction or disorderly conduct. 2. Threatening a referral to Department of Children and Family Services. 3. Threatening to obtain a warrant as means of obtaining consent. 4. Threatening to use a K-9. 5. Using an officer's physical proximity or the number of officers as a means of intimidation. 6. Threatening to inconvenience or prolong the process. 	
<p>3. Parents may consent to search a child's living area if the parents have routine access to the area. (The child is not paying rent).</p>	<p>Deleted</p>	<p>Procedure III E</p>
<p>Added</p>	<p>F. Officers shall not ask for consent to search the electronic devices of adults or youth/juveniles.</p>	<p>Procedure III</p>
<p>A. Officers may conduct an immediate, warrantless search or seizure under emergency conditions, if there is probable cause to believe that the delay in getting a warrant would result in the loss of evidence, escape of the subject, or physical harm to police or public.</p>	<p>A. Officers may conduct an immediate, warrantless search or seizure under emergency conditions, if there is probable cause to believe that the delay in getting a warrant would result in the loss of evidence for a serious offence or and offence of violence, escape of a felony subject, or physical harm to police or public.</p>	<p>Procedure IV</p>
<p>C. In determining whether exigent circumstances exist, officers shall consider the following:</p>	<p>Deleted</p>	<p>Procedure IV</p>

<p>1. Is the offense serious or an offense of violence?</p> <p>2. Is there a reasonable belief the subject was armed?</p> <p>3. Is there probable cause to believe the subject committed a crime?</p> <p>4. Is there probable cause to believe the subject was on the premises?</p> <p>5. Did the police identify themselves and give the subject a chance to surrender prior to entry, if feasible?</p> <p>6. Is there an ongoing investigation or decision to arrest prior to the subject fleeing into the premises?</p>		
<p>A. Every investigatory stop does not automatically authorize a pat down/frisk. Officers may only conduct a pat down/frisk of a detained person(s) if they reasonably suspect that the detained person(s) may be armed and dangerous. The purpose and scope of the pat down/frisk is to discover weapons. It is not a generalized search of the entire person.</p>	<p>A. Every investigatory stop does not automatically authorize a pat down/frisk. Officers may only conduct a pat down/frisk of a detained person(s) if they reasonably suspect that the detained person(s) may be armed and dangerous. The purpose and scope of the pat down/frisk is to discover weapons. It is not a generalized search of the entire person, nor a search for evidence. Gender identity shall be respected (consistent with GPO 5.12.05).</p>	<p>Procedure V</p>
<p>1. A "Terry" pat down consists of the officer touching or patting areas, limited to outer clothing, on the suspected person capable of concealing an accessible weapon (pockets, waistline, neckline, ankles).</p>	<p>1. A "Terry" pat down consists of the officer touching or patting areas with a flat hand, limited to outer clothing, on the suspected person capable of concealing an accessible weapon (pockets, waistline, neckline, ankles).</p>	<p>Procedure V B</p>

1. Prior knowledge that the detained person has carried a weapon in the past.	1. Prior knowledge that the detained person has unlawfully carried a weapon in the past.	Procedure V D
3. Observations, such as weighted clothing, retention checks, and suspicious bulges, consistent with carrying a concealed weapon.	Deleted	Procedure V D
2. Custodial searches shall be conducted respectfully and, when possible, be conducted by officers of the same gender/gender identity as the arrestee.	2. Custodial searches shall be conducted respectfully, explained in an age appropriate manner (consistent with GPO 5.12.01) , and, when possible, be conducted by officers of the same gender/gender identity as the arrestee.	Procedure VI A
a. If an officer is uncertain regarding an arrestee’s gender/gender identity, officers shall respectfully request the arrestee’s gender/gender identity.	a. If an officer is uncertain regarding an arrestee’s gender/gender identity, officers shall respectfully request the arrestee’s gender/gender identity (consistent with GPO 5.12.05) .	Procedure VI A
1. Officers may, incident to arrest, search both an arrestee’s person and the area within the arrestee’s immediate control in order to recover weapons, evidence, or a means of escape. Searches of various areas, environments, or items must comply with the following parameters:	1. Officers may, incident to arrest, search both an arrestee’s person and the area within the arrestee’s immediate reach in order to recover weapons, evidence, or a means of escape. Searches of various areas, environments, or items must comply with the following parameters:	Procedure VI B
VIII. Open Fields	VIII. Open Fields and Curtilage	
C. Within seven calendar days , supervisors shall document and report through their chain of command:	C. Within three days (72 hours) , supervisors shall document and report through their chain of command:	Procedure IX
A. The Division shall provide officers with annual in-service training on search and seizure that is adequate in quality, quantity, type, and scope.	A. The Division shall provide officers with annual in-service training on search and seizure that is adequate in quality, quantity, type, and scope. Training on the policies	Procedure X

	shall be given in-person by a J.D. with subject matter expertise, given the policies' importance and complex nature (per Cleveland City Ordinance § 135.37).	
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