

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	CASE NO.: 1:15-CV-01046
)	
Plaintiff,)	
)	JUDGE SOLOMON OLIVER, JR.
vs.)	
CITY OF CLEVELAND)	<u>MOTION TO APPROVE SEARCH AND</u>
)	<u>SEIZURE POLICIES</u>
Defendant.)	
)	
)	

Pursuant to Paragraphs 160 through 172 of the Consent Decree and the Fourth-Year Monitoring Plan in the above-captioned matter, the City of Cleveland (the “City”), on behalf of the Cleveland Division of Police (“CDP” or “Division”), submitted five policies (collectively, the “Search and Seizure Policies”) relating to stops, searches, and arrests: (1) Search and Seizure; (2) Investigatory Stops; (3) Probable Cause/Warrantless Arrests; (4) Strip Searches & Body Cavity Searches; and (5) Miranda Warning and Waiver, attached hereto as Exhibits A through E, respectively.

The Monitoring Team has carefully reviewed the Division’s proposed Search and Seizure policies. Altogether, they conform to the terms of the Consent Decree, to federal and state law, and to the safeguards of the U.S. Constitution. They provide appropriate guidance to Division

members on the expectations that accompany all officer-citizen encounters. The Monitoring Team therefore recommends that the Court approve CDP's proposed Search and Seizure Policies.

I. SUMMARY OF CONSENT DECREE REQUIREMENTS REGARDING SEARCH AND SEIZURE POLICIES

The Consent Decree contains substantial requirements relating to the Division of Police's search and seizure practices. Under the Decree, "CDP will revise, develop, and implement search and seizure policies that comply with applicable law, and include the requirements below[:]

- Officers will not use an individual's gender, race, ethnicity, national origin, or perceived sexual orientation as a factor, to any extent or degree, in establishing reasonable suspicion or probable cause, unless such information is part of an actual and credible description of a specific suspect in an investigation that includes other identifying factors.
- Officers will not conduct investigatory stops when they lack reasonable suspicion.
- Officers will not conduct pat down searches without specific and articulable facts to reasonably suspect that a particular person is armed and dangerous. This does not restrict an officer's ability to conduct a search incident to arrest or prior to transport.
- Where an officer seeks consent for a search, the officer will inform the person of his or her right to refuse and to revoke consent at any time and document the person's consent.
- CDP officers will not rely solely upon an individual's geographic location, or presence in a high crime area without any other specific and articulable facts indicating that the individual has been, is, or is about to engage in criminal activity, as the basis for an investigatory stop.
- Officers will immediately notify a supervisor when effectuating a custodial arrest for obstructing official business, resisting arrest, or assaulting an officer and no other substantive violation is alleged. Upon notification, the supervisor will respond to the scene.
- Officers will not use 'canned' or conclusory language without supporting detail in documents or reports documenting investigatory stops, searches, or arrests.

- Officers will articulate the justification for an investigatory stop, search, or arrest in a specific and clear manner in their reports.
- CDP supervisors will review each arrest report by officers under their command, whether or not they involve the seizure of contraband, and will sign off on those reports to memorialize their review within 24 hours of the arrest, absent exceptional circumstances.”
- CDP supervisors will take appropriate action to address all apparent violations or deficiencies in investigatory stops, searches, and arrests.”
- A command-level official will review, within seven days of their completion, all supervisory reports of investigatory stops and pat-down searches not supported by reasonable suspicion, all searches and arrests not supported by probable cause, and all investigatory stops, searches, and arrests that were in violation of CDP policy, or that indicated a need for corrective action or review of agency policy, strategy, tactics, or training. The commander will evaluate the supervisor’s assessment and recommendations and ensure that all appropriate corrective action is taken, including referring the incident to Internal Affairs for investigation, if warranted.”

Dkt. 7-1 at ¶¶ 160-72.

II. PROCEDURAL HISTORY

In the fall of 2017, the Parties and Monitoring Team began drafting five related policies: Search and Seizure, Investigative Stops, Probable Cause/Warrantless Arrests, Strip Searches & Body Cavity Searches, and Miranda Warning and Waiver. The Parties and Monitoring Team worked to ensure that the policies aligned with legal requirements as well as the specific mandates of the Consent Decree.¹

Consistent with the Decree, there have been substantial opportunities for the residents of Cleveland to offer input on the Search and Seizure Policies. In March 2018, as the initial drafts of the policies were being developed, the Community Police Commission (“CPC” or “Commission”),

¹ In drafting the policies, CDP elected to address a number of important issues relating to stops, searches, and arrests, such as certain procedures around vehicle stops, consent searches, and juvenile interactions, through officer in-service training rather than directly in the policies. CDP is currently working to design Search and Seizure training that will address such procedures that otherwise are not covered in detail in the submitted policies.

led by its Search and Seizure workgroup, put together a comprehensive presentation to educate community members on the legal parameters of police encounters, the Fourth Amendment, voluntary contacts, detention, arrests, and warrantless searches.

On August 15, 2018, the Parties and Monitoring Team completed initial drafts of the Search and Seizure Policies and shared the drafts publicly to solicit input from the Cleveland community. The CPC’s Search and Seizure workgroup gathered public feedback on the draft policies and shared its final report of policy recommendations to the City on November 14, with support from groups such as the ACLU of Ohio, the Cleveland Branch of the NAACP, and the Legal Aid Society of Cleveland. At the same time, the City gathered community feedback separate from the Commission, utilizing the Division’s District Policing Committees.

Throughout the remainder of 2018 and early 2019, the Parties and Monitoring Team continued to work on the Search and Seizure Policies, considering and incorporating the CPC’s recommendations, as appropriate. On April 28, 2019, the Division submitted proposed final drafts of the five Search and Seizure Policies.

III. STANDARD OF REVIEW

The Monitoring Team’s role is to “assess and report whether the requirements” of the Consent Decree “have been implemented.” Dkt. 7-1 at ¶ 351; *accord id.* ¶ at 352 (requiring the Monitor to “review . . . policies, procedures, practices, training curricula, and programs developed and implemented under” the Decree). The task of the Monitoring Team here is to determine whether the five submitted policies comply with the Consent Decree’s requirements.

IV. ANALYSIS OF THE SEARCH AND SEIZURE POLICIES

A. Search and Seizure

The Search and Seizure Policy constitutes CDP's general practice, consistent with the law, that searches "generally must be made pursuant to a warrant[;]" without a warrant, there must be specific circumstances that, under state and federal law, permit a warrantless search. Ex. A at 2; *see, e.g., Katz v. United States*, 389 U.S. 347, 357 (1967). Consistent with law, the policy identifies those exceptions:

1. Open View and Plain View Searches
2. Consent Searches
3. Exigent Circumstances
4. Pat Down/Fisks During Investigatory Stops
5. Custodial Searches and Other Searches Incident to Arrest
6. Vehicle Inventory Searches
7. Open Fields

Ex. A at 2-3. These exceptions to the warrant requirement are established via case law, and they are appropriately described at length in the Division's Search and Seizure Policy. *See id.* at 3-9.

Under the policy, officers shall "[t]reat searched and/or seized persons with courtesy, professionalism, respect, dignity, and equality." *Id.* at 3. Officers also must "[u]se accurate and specific descriptive language to articulate the justification for any search or seizure in their reports. Articulation of reasonable suspicion and/or probable cause shall be specific, clear, and based on information not influenced by bias or prejudice." *Id.* CDP officers cannot "[u]se or rely on information the officer knows or reasonably suspects to be materially false, incorrect, or unreliable in establishing reasonable suspicion[.]" *Id.*

The Search and Seizure Policy further outlines the expectation that officers may not, when articulating the justification for a search or seizure, "use 'canned' or conclusory language without

supporting detail[.]” *Id.* at 9. Supervisors must review all documentation of stops, searches, and arrests, assessing the basis for reasonable suspicion or probable cause and the use of “canned” or conclusory language. *Id.* Where supervisors identify searches and seizures that are unsupported by reasonable suspicion or probable cause; in violation of Division policy; or that “indicate a need for corrective action or review of agency policy, strategy, tactics, or training[,]” they will document and report their findings through the CDP chain of command. *Id.*

B. Investigatory Stops

There is a dedicated policy for Investigatory Stops, otherwise known as “Terry” stops, so named after *Terry v. Ohio*, 392 U.S. 1 (1968)—precedent established by the United States Supreme Court pursuant to a case that occurred in downtown Cleveland in 1963. The Investigatory Stops Policy appropriately notes the various levels of police-citizen encounters, from voluntary contacts to investigatory stops to arrests. Importantly, “officers must distinguish between voluntary contacts and Terry stops.” Ex. B. at 2.

The Investigatory Stops Policy outlines the specific conditions that may form the basis for an investigatory stop: “[a]n officer(s) may conduct an investigative stop of an individual after identifying themselves as a Cleveland Police Officer(s), if they have reasonable suspicion that the individual has committed, is committing, or is about to commit an offense.” *Id.* at 3. The policy specifically articulates that the open-carry of firearms, standing alone, does not justify an investigatory stop-and-frisk. Further, “[e]very officer conducting a stop must be prepared to articulate specific facts and circumstances in support of the officer’s determination that reasonable suspicion or probable cause was present and identified.” *Id.* In establishing reasonable suspicion or probable cause, CDP officers “may take into account the race, ethnicity, gender, or other demographic characteristics of an individual . . . only when the characteristics are part of an actual

and credible description of a specific suspect in an investigation that includes other identifying factors.” *Id.* at 3. Further, officers “shall not rely solely upon an individual’s geographic location, or presence in a high crime area without any other specific and articulable facts indicating that the individual has been, is, or is about to engage in criminal activity, as the basis for an investigatory stop.” *Id.* at 4 (emphasis in original).

The policy further lists the factors that may inform reasonable suspicion under the totality of the circumstances. Relying on activity they personally perceive or through information obtained from credible persons, officers may consider such factors as the person’s appearance or actions, the officer’s prior knowledge of the person, the area of the stop, the time of day, and the source of the information. *Id.* at 4-5. But CDP officers “shall not rely solely upon any single factor . . . without other specific and articulable facts indicating that the individual has been, is, or is about to engage in criminal activity[.]” *Id.* at 4.

Under the Division’s Investigatory Stops Policy, “[o]fficers shall limit the investigatory stop to a reasonable scope.” *Id.* at 5. Officers must articulate additional justification for further limiting a person’s freedom during an investigatory stop. Actions that would further limit a person’s freedom include taking a person’s identification away from him or her; ordering a motorist to exit a vehicle; placing a pedestrian up against a wall; directing a person to lie or sit on the ground; applying handcuffs; pointing a firearm; and frisking the individual for weapons. *Id.* The investigatory stop also must be limited to a “reasonable amount of time,” or “that period of time necessary to affect the purpose of the stop.” *Id.*

Officers conducting investigatory stops must document the stop prior to the end of the officer’s assignment or tour of duty. At a minimum, the information provided must include such variables as the location of the stop; the subject’s race, ethnicity, age, and gender; the presence and

number of any passengers; the reasonable articulable suspicion that justifies the stop; whether any individual was asked to consent to a search and whether such consent was given; whether a pat down, frisk, or other non-consensual search was performed; a full description of any contraband or evidence seized; and the disposition of the stop, including whether a citation or summons was issued or an arrest made of any individual. *Id.* at 8. CDP policy aims to ensure that the officer documenting the encounter can point to specific “facts available to the officer at the moment of the seizure” that would “warrant a man of reasonable caution in the belief” that “criminal activity may be afoot.” *Terry*, 392 U.S. at 21–22, 30. Insufficiently specific justifications for a stop, frisk, or search violate policy and do not satisfy the requirements of *Terry* and its progeny.

C. Probable Cause/Warrantless Arrests

As the standard for warrantless arrests, probable cause is a foundational legal doctrine put into daily practice by law enforcement officers. Appropriately, CDP’s Probable Cause/Warrantless Arrests Policy outlines the contours of probable cause and the circumstances under which officers may arrest an individual in the absence of a judicial warrant. Under the policy, officers may not make a warrantless arrest unless the officer has probable cause (1) that a subject has committed or is committing a felony offense; (2) that a subject has committed or is committing certain misdemeanor offenses, such as an offense of violence, criminal child enticement, aggravated trespass, theft, and others; or (3) that a subject, from the officer’s own observations, has committed or is committing any other misdemeanor offense. Ex. C. at 1-2.

In addition to notifying supervisors and submitting an arrest report upon all warrantless arrests, officers must properly complete the appropriate Probable Cause Affidavit, which will make its way through the Division’s chain of command. In the case of an arrest for a felony and certain misdemeanors, detectives will ensure that the arrested persons are charged or released as

applicable. *Id.* at 4. Supervisors must review arrest reports and probable cause affidavits, reviewing them for deficiencies such as “canned or conclusory language without supporting detail, inconsistent information, insufficient articulation of the basis for the action, or other information in the reports or forms that is not correct or complete” and arrests “following stops that were not supported by reasonable suspicion” and “that are not supported by probable cause.” *Id.* at 5.

D. Strip Searches & Body Cavity Searches

Under the CDP’s submitted policy, “[a] strip search or body cavity search may be conducted if there is probable cause to believe that the person is concealing evidence of the commission of a criminal offense[.]” Ex. D. at 1. The search “must be supported by articulable facts considering the nature of the offense, circumstances of the arrest, and if known, prior criminal/conviction record of the person or that the arrestee may possess weapons or contraband on or in their body.” *Id.* The officer or sergeant shall explain the reason for the search and give the individual an opportunity to voluntarily produce the suspected item. *Id.* at 1-2.

Body cavity searches shall be conducted only after a warrant has been issued that authorizes the search (absent a medical emergency justifying a warrantless search) and warrant requests must be pre-approved in writing by a CDP supervisor. Body cavity searches shall be conducted only by a licensed physician, registered nurse, or practical nurse. “Officers shall make a reasonable effort to notify a parent/guardian if a body cavity search is conducted on a juvenile.” *Id.* at 2.

The policy also states that strip searches shall only be conducted in a secure holding facility, unless there are “exigent circumstances when an officer(s) have probable cause to believe that the subject is hiding a firearm or dangerous ordnance, when less intrusive means of discovering a weapon or contraband are not available.” *Id.* Strip searches “shall be conducted in a professional

manner by the officer and a witness to the search who are the same gender as the arrestee. . . . If an officer is uncertain regarding an arrestee’s gender/gender identity, officers shall respectfully request the arrestee’s gender/gender identity.” *Id.* at 2-3.

Supervisors “shall review all information pertaining to any request by a police officer to conduct a strip or body cavity search.” *Id.* at 3.

E. Miranda Warning and Waiver

The last of the five Search and Seizure policies addresses the questioning of criminal subjects with respect to Miranda warnings. Previously, the Division of Police did not have a separate policy addressing the requirements that officers advise an individual taken into custody of his or her Fifth Amendment and related rights.

The Division’s new Miranda Warning and Waiver Policy states that CDP officers shall provide the Miranda warning when “[a] subject is in custody AND [t]he officer is to question or interrogate the individual about any crime.” Ex. E. at 1 (emphasis in original). Where there is “any doubt whether custody and/or interrogation is/are present, officers shall resolve the doubt in favor of giving the Miranda Warning.” *Id.* at 2. The Miranda warning and any waiver shall be recorded on officers’ body cameras and noted in their incident report. *Id.* Officers are required to ask the subject to verbally affirm that he or she understands the Miranda warning, rather than by a physical gesture. *Id.*

When questioning a criminal subject who is deaf, hard of hearing, or has limited English proficiency, the Miranda warning “shall be administered via a qualified interpreter[.]” *Id.* For individuals with limited English proficiency, officers shall use a “Your Rights” form that has been translated into the subject’s primary language, where possible. *Id.*

When questioning a criminal subject who is a juvenile, “officers shall consider the juvenile’s age when determining whether the juvenile would not feel free to leave. A child may be in custody [a reasonable person in the individual’s position would not feel free to leave based on a totality of the circumstances] for purposes of the Miranda rule when an adult in the same circumstances would not.” *Id.* To that effect, “[o]fficers shall explain the Miranda Warning in an age-appropriate manner, and each warning shall be read slowly and one at a time.” *Id.* at 3.

After a CDP officer has informed a subject of his or her Miranda rights, the individual may waive those rights, provided that the waiver is “knowing and voluntary . . . and any waiver must not be due to coercion.” *Id.*

Additionally, the Miranda Warning & Waiver Policy addresses the subject’s invocation of his or her Miranda rights, re-questioning a subject after he or she has invoked Miranda, officers’ potential duty to reread the Miranda warning after breaks in interrogation, and an exception to the Miranda warning when “there is an objectively reasonable need to protect the police or public from an immediate danger associated with a weapon or other harmful objects.” *Id.* at 4-5.

V. CONCLUSION

The task of the Monitoring Team is to duly consider whether the City’s proposed Search and Seizure policies satisfy the terms of the Consent Decree. The Monitoring Team concludes that the policies meet the terms of the Consent Decree. An important initial milestone in the Consent Decree’s implementation with respect to Search and Seizure, the submitted policies provide appropriate written guidance for officers engaging in police-citizen encounters. Accordingly, the Monitoring Team approves the Search and Seizure Policies in their entirety and requests that this Court order them effective immediately so that the Division can provide comprehensive training on the policies and implement them actively in the field.

Respectfully submitted,

/s/ Matthew Barge

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CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2019, I served the foregoing document entitled Motion to Approve Search and Seizure Policies via the court's ECF system to all counsel of record.

/s/ Matthew Barge
MATTHEW BARGE

EXHIBIT A



CLEVELAND DIVISION OF POLICE GENERAL



EFFECTIVE DATE:	CHAPTER:	04-25-2019	PAGE:	1 of 10	NUMBER:
SUBJECT:	SEARCH AND SEIZURE				
CHIEF:					

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

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

DEFINITIONS:

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

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

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

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

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

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Non-Custodial Interview: A voluntary and consensual investigatory interview that an officer conducts with an individual during which the individual is free to leave and/or decline any of the officer's requests at any point.

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

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

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

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.

Search: A search is either a physical intrusion into a constitutionally protected area (a person, house, paper, or effect) for the purpose of gathering information or any conduct that violates a reasonable expectation of privacy by officer(s) or civilians acting as an agent of law enforcement.

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

Seizure: When an officer's words or actions would make a reasonable person believe that he or she is not free to leave or terminate the encounter.

PROCEDURES:

I. General Requirements for Searches and Seizures

- A. Searches generally must be made pursuant to a warrant.
- B. Exceptions when searches may be made without a warrant:
 - 1. Open View and Plain View Searches
 - 2. Consent Searches
 - 3. Exigent Circumstances

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4. Pat Down/Fisks During Investigatory Stops
5. Custodial Searches and Other Searches Incident to Arrest
6. Vehicle Inventory Searches
7. Open Fields

C. Officers shall:

1. Treat searched and/or seized persons with courtesy, professionalism, respect, dignity, and equality.
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.
3. Carry out searches with due regard and respect for private property interests and in a manner that minimizes damage. Property should be left in a condition as close as reasonably possible to its pre-search condition.
4. Use accurate and specific descriptive language to articulate the justification for any search or seizure in their reports. Articulation of reasonable suspicion and/or probable cause shall be specific, clear, and based on information not influenced by bias or prejudice.

D. Officers shall not:

1. Use or rely on information the officer knows or reasonably suspects to be materially false, incorrect, or unreliable in establishing reasonable suspicion for a search or seizure.
2. Compromise their safety, or the safety of other officers, in order to justify searches or seizures.
3. Detain non-occupants present at the location where a search warrant is executed for longer than reasonably necessary to secure the area or determine whether they are occupants of the premises being searched, unless the officer has reasonable suspicion that the non-occupant is involved in criminal activity or poses a danger to officer safety.

II. Open View and Plain View Searches

A. Open View

1. The open view doctrine allows officers to see and possibly seize contraband. To apply open view, the officer(s) must see the contraband or evidence from a vantage point available to the public. To seize the contraband or evidence, it must be located in an area open to the public and not protected by the Constitution.

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2. Officers shall not enter a constitutionally protected place such as a vehicle, home, or habitation, and seize contraband that is visible to the public. (e.g. If officers see a marijuana plant growing in the window of a residence, they cannot enter the home, but may use the information as probable cause to seek a search warrant.)

B. Plain View

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

The key to the plain view doctrine is being in the protected place with consent or otherwise lawfully present. Once the discovery is made, officers may have the probable cause to secure a search warrant for a more thorough search.

III. Consent Searches

- A. Where an officer seeks consent for a search, the officer shall inform the person, in an age appropriate manner, of his or her right to refuse and to revoke consent at any time.
- B. A person's consent to search shall be documented using their Wearable Camera System (WCS). Officers electing to search by consent may also have the consenting person sign the Consent to Search form (Form #).
- C. Officers must ensure that an individual is consenting to the search voluntarily. Officers shall consider the age, intelligence, education, and authority of the person providing consent.
- D. Officers shall not physically or mentally coerce, threaten or exploit an individual in order to gain consent for a search.
- E. Third party consents are valid under certain conditions:
 1. Consent is valid if the third person has common authority over the area to be searched.
 2. Consent to search is not allowed if one cohabitant (roommate) or business partner objects to the consent, even if the other person gives permission. Consent must be given by both people, if present.
 3. Parents may consent to search a child's living area if the parents have routine access to the area. (The child is not paying rent).
 4. Landlords cannot give consent to search if a lease or rental agreement is still valid.

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IV. Exigent Circumstance Searches

- A. Officers may conduct an immediate, warrantless search or seizure under emergency conditions, if there is probable cause to believe that the delay in getting a warrant would result in the loss of evidence, escape of the subject, or physical harm to police or public.
- B. Exigent circumstances also exist if officers are responding to a call of violence and there is evidence a person's health, welfare, or safety is immediately threatened.
- C. In determining whether exigent circumstances exist, officers shall consider the following:
 - 1. Is the offense serious or an offense of violence?
 - 2. Is there a reasonable belief the subject was armed?
 - 3. Is there probable cause to believe the subject committed a crime?
 - 4. Is there probable cause to believe the subject was on the premises?
 - 5. Did the police identify themselves and give the subject a chance to surrender prior to entry, if feasible?
 - 6. Is there an ongoing investigation or decision to arrest prior to the subject fleeing into the premises?
- D. Officers shall not create exigent circumstances in order to justify a warrantless search or seizure.

V. Pat-Down/Fisks During Investigatory Stops

- A. Every investigatory stop does not automatically authorize a pat down/frisk. Officers may only conduct a pat down/frisk of a detained person(s) if they reasonably suspect that the detained person(s) may be armed and dangerous. The purpose and scope of the pat down/frisk is to discover weapons. It is not a generalized search of the entire person.
- B. During an investigatory stop, officers who develop articulable reasonable suspicion that an individual may be armed and dangerous may perform a "Terry" pat down of an individual in accordance with the United States Supreme Court's *Terry v. Ohio* ruling.
 - 1. A "Terry" pat down consists of the officer touching or patting areas, limited to outer clothing, on the suspected person capable of concealing an accessible weapon (pockets, waistline, neckline, ankles).
 - 2. Pat downs may not extend to the interior of the clothing, wallet, or shoes.

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- 3. If during a lawful pat down an officer detects an object that is or might reasonably be an item that is contraband or other criminal evidence, then the object may be seized (Referred to as the “plain feel” doctrine).
 - a. Non-threatening items may only be removed during the frisk if it is immediately apparent the item is contraband or evidence of crime.
 - b. Threatening items such as weapons may always be removed during frisks.
- C. The decision to conduct a pat down/frisk must be based upon the totality of the circumstances and the reasonable conclusions that the person is armed and dangerous drawn from the officer’s training and experience.
 - 1. Officers may not frisk for weapons on a consensual encounter or noncustodial interview; this converts the encounter into a detention.
 - 2. The fact that an investigatory stop occurs in a high crime area is not by itself sufficient to justify a pat down/frisk.
- D. In addition to the basis for the stop itself, officers must have reasonable suspicion that the detained person may be armed and dangerous. This may include, but is not limited to:
 - 1. Prior knowledge that the detained person has carried a weapon in the past.
 - 2. Suspicious behavior, such as failure to comply with instructions to keep hands in sight.
 - 3. Observations, such as weighted clothing, retention checks, and suspicious bulges, consistent with carrying a concealed weapon.
- E. When the objective of the frisk, determining whether or not the subject is armed, is completed, the search must end.
- F. It is a violation of the Fourth Amendment to conduct a pat down/frisk of a person solely because an officer is placing someone in the backseat of a zone car (*State of Ohio v Holder III*). A pat down/frisk conducted for officer safety before placing a person in a zone car can be justified when the person is legally detained and there is a possibility of ambush, or when there is a dangerous condition that requires the placement of the person in the zone car for their safety.

VI. Custodial Search and Other Searches Incident to Arrest

- A. Custodial Search of Arrestee
 - 1. Incident to a lawful arrest, officers shall search an arrestee’s person and the area within the arrestee’s immediate control.

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- a. If the removal of a religiously significant garment is required, it shall be done respectfully and, if known and possible, in accordance with the person's religious beliefs. Such objects shall be returned upon the conclusion of the encounter.
- b. The search shall be conducted as soon as possible after the arrest and before transporting the arrestee(s).
- 2. Custodial searches shall be conducted respectfully and, when possible, be conducted by officers of the same gender/gender identity as the arrestee.
 - a. If an officer is uncertain regarding an arrestee's gender/gender identity, officers shall respectfully request the arrestee's gender/gender identity.
 - b. If an officer needs to conduct a custodial search, the officer shall request an officer of the same gender/gender identity as the arrestee to conduct the search. If an officer of the same gender/gender identity is not available, an officer of any gender shall witness the search,
 - 1. The witnessing officer shall position themselves to capture the entire search on their Wearable Camera System.
 - c. An officer may conduct a custodial search of an individual, of any gender/gender identity, if the delay in getting a second officer on scene may result in the loss of evidence, escape of the subject, or harm to officers or the public.

B. Searches Incident to Arrest

- 1. Officers may, incident to arrest, search both an arrestee's person and the area within the arrestee's immediate control in order to recover weapons, evidence, or a means of escape. Searches of various areas, environments, or items must comply with the following parameters:
 - a. **Vehicles** - After a person is arrested from a vehicle, officers do not have the authority to search the passenger compartment and locked or unlocked containers incident to arrest, unless one of the following apply:
 - 1. Officers have consent to search;
 - 2. Exigent circumstances exist;
 - 3. Officers are performing an inventory search pursuant to impounding the vehicle; or
 - 4. Officers obtain a search warrant.

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- b. **Residence** - When a person is arrested in a residence, officers may only search the arrestee's area of immediate control where the arrest occurred, with the exception of a protective sweep.
- c. **Personal Items** - Officers may only search personal items such as wallets, backpacks, or other bags if the individual had them in his or her actual and exclusive possession either at or immediately preceding the time of his or her arrest.
- d. **Electronic Devices** - Absent some other exception, such as exigent circumstances, officers may not search digital information on a cell phone or other electronic devices without a search warrant.

C. Protective Sweeps

- 1. Incident to arrest, an officer(s) may look for other persons in spaces immediately adjacent to the place where the subject was arrested (closets and other areas where an attack against the officer(s) could originate) for officer safety purposes.
- 2. Incident to arrest, if there is an articulable reasonable suspicion that the area to be swept harbors an individual posing a danger to those on the arrest scene; officers may conduct a limited protective sweep of the entire house subsequent to an in-house arrest. Such a protective sweep is not a full search of the premises. The sweep may extend only to a cursory inspection of those spaces where a person may be found. The sweep shall last no longer than is necessary to dispel the reasonable suspicion of danger and, in any event, no longer than it takes to complete the arrest and depart premises.

VII. Vehicle Inventory Search

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

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- 3. Containers found during an inventory search of a vehicle can be opened if accomplished without damage to the container and the search is conducted in accordance with Division policy.

VIII. Open Fields

- A. Open fields surrounding a home are not constitutionally protected from a warrantless search and seizure because no reasonable expectation of privacy extends to these areas.
- B. The curtilage surrounding a home is constitutionally protected from a warrantless search and seizure.
- C. Officers shall consider the following factors when determining whether a specific location is within the curtilage of a residence:
 - 1. The proximity of the location to the house;
 - 2. Whether the same enclosure surrounding the house also encloses the location;
 - 3. The uses of the location;
 - 4. The steps that are taken to protect the location from observation by passerby.

IX. Documenting Reporting/Review of Searches and Seizures

- A. Officers shall articulate the justification for a search or seizure in a specific and clear manner articulating the reasonable suspicion and/or probable cause in specific, clear language based on information not influenced by bias or prejudice in their reports. Officers shall not use “canned” or conclusory language without supporting detail in reports documenting searches or seizures.
- B. Supervisors shall review all documentation of searches and seizures for completeness and adherence to law and division policy including, but not limited to:
 - 1. Searches and seizures that were not supported by reasonable suspicion or probable cause.
 - 2. Use “canned” or conclusory language without supporting detail in reports documenting searches or seizures.
- C. Within seven calendar days, supervisors shall document and report through their chain of command:
 - 1. Searches and seizures unsupported by reasonable suspicion or probable cause;
 - 2. Searches and seizures that are in violation of CPD policy; or
 - 3. Searches and seizures that, while comporting with law and policy, indicate a need for corrective action or review of agency policy, strategy, tactics, or training.

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- D. Supervisors shall take appropriate action to address all apparent violations or deficiencies in arrests. Appropriate action may include recommending non-disciplinary corrective action for the involved officer and documenting such action in the tracking software, or referring the incident for administrative or criminal investigation.

X. Training

- A. The Division shall provide officers with annual in-service training on search and seizure that is adequate in quality, quantity, type, and scope.

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EXHIBIT B



CLEVELAND DIVISION OF POLICE GENERAL



EFFECTIVE DATE:	CHAPTER:	04-25-2019	PAGE:	1 of 9	NUMBER:
SUBJECT:	INVESTIGATORY STOPS				
CHIEF:					

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

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

DEFINITIONS:

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

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

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

Juvenile: An individual under the age of 18.

Non-Custodial Interview: A voluntary and consensual investigatory interview that an officer conducts with an individual during which the individual is free to leave and/or decline any of the officer's requests at any point.

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

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person is armed and dangerous. It is limited to what is necessary to detect weapons and must be based on reasonable articulable suspicion that the person is armed. An officer may not manipulate objects that are discovered under the clothing to determine whether they are contraband.

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

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.

Search: A search is either a physical intrusion into a constitutionally protected area (a person, house, paper, or effect) for the purpose of gathering information or any conduct that violates a reasonable expectation of privacy by officer(s) or civilians acting as an agent of law enforcement.

Seizure: When an officer's words or actions would make a reasonable person believe that he/she is not free to leave or terminate the encounter.

PROCEDURES:

I. Levels of / Civilian/ Police Encounters

A. There are three levels of civilian-police encounters. The following are the three types of encounters, listed in order from consensual to most intrusive: voluntary contacts, investigatory (Terry) stops, and arrests.

1. There are two categories of voluntary contacts that do not constitute a seizure:

- a. Consensual Encounters
- b. Non-custodial Interviews

2. Investigatory (Terry) Stops – A seizure based on reasonable suspicion

3. Arrests – A seizure based on probable cause. Separate guidelines govern searches in the context of an arrest. [Cross-reference to “Search & Seizure,” “Arrests” policies.]

B. Officers must distinguish between voluntary contacts and Terry stops:

1. The inquiry into whether an individual would feel free to leave and/or decline any of the officer's requests at any point is an objective one, depending on all of the circumstances surrounding the contact between an officer and an individual, including but not limited to:

- a. Number of officers present

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- b. Blocking the individual's vehicle or freedom to move
 - c. Physical contact with the individual
 - d. Whether the officer's language or tone of voice indicates that compliance with the officer's requests is required
 - e. Display of a weapon
 - f. Display of official police vehicle indicators such as signals of flashing, oscillating, or rotating lights.
2. Officers shall be aware that a juvenile may not feel free to leave when adults in the same circumstances would feel free to leave.

II. Basis for an Investigatory Stop

- A. Law enforcement and investigatory decisions must be based upon observable behavior, facts, and/or specific intelligence, which form the basis for, among other things, determinations of reasonable suspicion and probable cause.
- B. Officers shall not conduct investigatory stops unless they have developed the necessary reasonable suspicion or probable cause. An individual's unwillingness to engage or cooperate with the police, choosing not to answer questions, or ignore police is not a sole basis for reasonable suspicion.
 1. A person exercising the right to openly carry a firearm, standing alone or in connection with a call to police that only reports the open carry itself (no other suspicious behavior), does not justify an investigatory stop and frisk.
- C. An officer(s) may conduct an investigative stop of an individual after identifying themselves as a Cleveland Police Officer(s), if they have reasonable suspicion that the individual has committed, is committing, or is about to commit an offense.
- D. A vehicle stop for a traffic code violation is not an investigative stop. An officer shall have probable cause to conduct a vehicle stop for a traffic code violation or completed misdemeanor.
- E. Every officer conducting a stop must be prepared to articulate specific facts and circumstances in support of the officer's determination that reasonable suspicion or probable cause was present and identified.
- F. Pedestrians, persons in vehicles, and persons on bicycles may be stopped.
- G. Officers may take into account the race, ethnicity, age, gender or other demographic characteristics of an individual in establishing reasonable suspicion or probable cause only when the characteristics are part of an actual and credible description of a specific subject in an investigation that includes other identifying factors.

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- H. Officers shall not use or rely on information the officer knows or reasonably suspects to be materially false or incorrect in effectuating an investigatory stop or detention, or in establishing reasonable suspicion for a search.
- I. Officers shall not rely solely upon an individual's geographic location, or presence in a high crime area without any other specific and articulable facts indicating that the individual has been, is, or is about to engage in criminal activity, as the basis for an investigatory stop.

III. Articulating Reasonable Suspicion

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

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- g. Law Enforcement Purpose: Are you investigating a specific crime, type of crime or pattern of criminal activity?
- h. Source of Information: From whom did you receive your information? How credible is the person you are receiving information from? How did this person obtain their information? Can you corroborate the information?

IV. Police Conduct During Investigatory Stops

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

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C. Officers shall limit the investigatory stop to a reasonable amount of time.

1. Individuals may be stopped for only that period of time necessary to affect the purpose of the stop. Any delays in completing the necessary actions must be objectively reasonable and supplemented by additional reasonable suspicion or probable cause and specifically articulated in any applicable reports documenting the investigatory stop.
2. Officers shall not extend a detention solely to await the arrival of a supervisor.

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

1. When feasible and as early in the contact as safety permits, officers shall inform the subject of the following:
 - a. The officer's full name and badge number
 - b. The fact that the officer is a Cleveland Police Officer
 - c. The reason for the stop
 - d. The fact that the stop is being recorded, if applicable [cross-reference to WCS Policy]
2. During the stop officers may offer further explanation of the circumstances and reason for stop. Officers will not extend a detention unreasonably to explain the stop.
3. Wherever time and circumstances permit, officers shall listen to the individual and answer any reasonable questions that the individual has relating to the interaction

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

- A. No person who is in a public place shall refuse to disclose the person's legal name, address, or date of birth when requested by a law enforcement officer who reasonably suspects the following:
 1. The person is committing, has committed, or is about to commit a criminal offense;
 2. The person witnessed any of the following:
 - a. An offense of violence that would constitute a felony under the laws of the state;
 - b. A felony offense that causes or results in, or creates substantial risk of, serious physical harm to another person or to property.

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- B. A detained person must also, by statute, provide identification when:
 - 1. The person is a driver stopped for a traffic violation
 - 2. The person is attempting to purchase liquor
 - 3. The person is a concealed carry permit holder
- C. Officers may not transport a person to any police facility or jail merely for the purpose of identifying them unless they have probable cause for arrest.
- D. During the investigatory stop, the detained person(s) need not be advised of their *Miranda* rights until probable cause to arrest develops or until the questioning becomes sustained and coercive rather than brief and casual.

VI. Anonymous Tips

- A. Officers cannot search or seize a subject based on an anonymous tip alone.
- B. Information from a person not known by police is not to be assumed trustworthy without additional details which point to criminal activity.
- C. Officers must carefully develop reasonable suspicion in cases involving anonymous tips by corroborating information received with what the officer observes on scene.
- D. Officer's observations while on scene, securing more complete information from an anonymous person and/or other circumstances that would tend to support the information received are all ways that officers can use to articulate reasonable suspicion allowing a Terry stop.

VII. Documentation and Reporting/Review of Investigatory Stops

- A. Documentation of Investigatory Stops
 - 1. Officers conducting investigatory stops shall complete an entry into the data collection software program. Officers shall complete a person entry, a vehicle entry or both, recording the information of individuals involved, subject to the following guidelines:
 - a. Officers shall complete a data collection entry in connection with a stop, whether or not an arrest, report, citation, or summons is completed.
 - b. The primary unit initiating the stop shall be responsible for completion of the data collection entry.

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2. All data collection entries shall be completed using the approved data collection software.
3. All data collection entry forms shall be completed prior to the end of the officer's assignment or tour of duty.
4. The documentation should contain all information requested in the data collection software, but at a minimum must contain at least the following elements:
 - a. Location of the stop;
 - b. Subject's race, ethnicity, age, and gender;
 - c. If a vehicle stop, the presence and number of any passengers;
 - d. If a vehicle stop, whether the driver or any passenger was required to exit the vehicle, and the reason for doing so;
 - e. Reason for the stop, including brief description of the facts creating reasonable suspicion;
 - f. Whether any individual was asked to consent to a search and whether such consent was given;
 - g. Whether a pat down, frisk, or other non-consensual search was performed on any individual or vehicle, including a brief description of the facts justifying the action;
 - h. A full description of any contraband or evidence seized from any individual or vehicle;
 - i. Disposition of the investigatory stop, including whether a citation or summons was issued to, or an arrest made of any individual, including charges; and
 - j. Disposition of any search conducted including if a search was conducted and nothing was found.

B. Reporting and Review of Investigatory Stops

1. Officer Responsibilities
 - a. Officers shall articulate the justification for an investigatory stop in a specific and clear manner in their reports. Officers must be able to clearly articulate the information they relied upon, that was not influenced by bias or prejudice, in determining reasonable suspicion.

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- b. Officers shall not use “canned” or conclusory language without supporting detail in reports documenting investigatory stops. Instead, officers will use specific and individualized descriptive language in reports.

2. Supervisor Responsibilities

- a. Supervisors shall review all documentation of investigatory stops for completeness and adherence to law and Division policy.
- b. Within seven days of the stop, supervisors shall document and report investigatory stops that appear unsupported by reasonable suspicion, or that are otherwise in violation of CDP policy and investigatory stops that, while adhering with law and policy, indicate a need for corrective action or review of policy, tactics, or training.
- c. If a supervisor concludes that a stop appears to be inconsistent with Division policy, the supervisor, in consultation with the Commander, shall address the concern with the officer involved and either:
 - 1. Provide non-disciplinary corrective action and document such action in the tracking software, or
 - 2. Refer the matter to Internal Affairs for administrative or criminal investigation.

3. Commander Responsibilities

- a. The officer’s commander shall review, within seven days of their completion, all supervisory reports of investigatory stops not supported by reasonable suspicion, were otherwise in violation of CDP policy, or otherwise indicated a need for corrective action or review of agency policy, strategy, tactics, or training.
 - b. The commander shall evaluate the supervisor’s assessment and recommendations and ensure that all appropriate action is taken, including referring the incident to Internal Affairs for investigation, if warranted.
 - c. The commander shall take appropriate non-disciplinary corrective action and/or will initiate the disciplinary process against supervisors who fail to conduct complete, thorough, and accurate reviews of officers’ investigatory stops.
4. The Division shall take into account the quality and completeness of these supervisory and commander reviews of officers’ investigatory stops in supervisory and commander performance evaluations.

VIII. Training

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- A. The Division shall provide officers with annual search and seizure/investigatory stops in-service training that is adequate in quality, quantity, type, and scope.

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EXHIBIT C



CLEVELAND DIVISION OF POLICE GENERAL



EFFECTIVE DATE:	CHAPTER:	04-25-2019	PAGE:	1 of 5	NUMBER:
SUBJECT:	PROBABLE CAUSE/WARRANTLESS ARRESTS				
CHIEF:					

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

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

POLICY: It is the policy of the Division to respect the fundamental privacy rights of all individuals. Officers shall conduct arrests in strict accordance with the rights secured and protected by the Constitution and federal and state laws. All seizures by the Division shall likewise comply with relevant federal and state laws governing the seizure of persons and property. Officers shall not use an individual's gender, race, ethnicity, national origin, or perceived sexual orientation as a factor, to any extent or degree, in establishing probable cause, unless such information is part of an actual and credible description of a specific subject in an investigation that includes other identifying factors.

DEFINITIONS:

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

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

PROCEDURES:

I. General Requirements for Probable Cause/Warrantless Arrests

- A. Unless possessing a warrant, officers may not arrest a suspect unless the officer:
 - 1. Has probable cause that a subject has committed or is committing a felony offense;
 - 2. Has probable cause that the subject has committed or is committing certain misdemeanor offenses (e.g. and offense of violence, criminal child enticement, public indecency, domestic violence, violation of a protection order, menacing by stalking, aggravated trespass or theft); or
 - 3. Has probable cause from the officer's own observation that the subject has committed or is committing any other misdemeanor offense (other than a minor misdemeanor).

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- B. An officer may not conduct a warrantless arrest for a misdemeanor unless one of the following apply:
 - 1. The subject requires medical care or is unable to provide for one's own safety;
 - 2. The subject cannot or will not offer satisfactory evidence of one's own identity; or
 - 3. The subject refuses to sign the citation.
- C. When taking a subject into custody, as early as practical under the circumstances, officers shall identify themselves, inform the subject that he/she is under arrest, and state the reason for the arrest.
- D. Prior to interrogating an individual, officers shall advise arrestees of their full Miranda rights. (Refer to G.P.O. #TBD, Miranda Warning and Waiver)

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

- A. Officers may enter a residence without a warrant to make a warrantless arrest when officer(s) reasonably believe the person is within the residence at the time of entrance and:
 - 1. Consent to enter the residence is given by a person who shares access and control of the premises. The burden is on the officer to ascertain whether the person granting access has the right to give permission (*Cross-Reference to GPO XXX Searches, § IV.E. Third Party Consents*); or
 - 2. Exigent circumstances exist (e.g., hot pursuit, spontaneous violence, prevention of a crime, or imminent escape to avoid apprehension).

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

- A. Where no other substantive violation is alleged, officers shall immediately notify a supervisor when effectuating a custodial arrest for:
 - 1. Obstructing official business;
 - 2. Resisting arrest; or
 - 3. Assaulting an officer, where no other substantive violation is alleged.
- B. Officers shall make an arrest report for all Non Uniform Traffic Ticket/Minor Misdemeanor Citation (UTT/MMC) arrests.
 - 1. Arrest reports shall be completed before the end of the officer's tour of duty.
 - 2. Officers shall not use "canned" or conclusory language without supporting detail in their arrest incident reports.

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3. Officers shall articulate the justification for an arrest in a specific and clear manner in all reports related to the arrest using individualized, descriptive language.
4. Officers shall complete the appropriate Probable Cause Affidavit in accordance with Sections IV through VI.

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

- A. Arresting officers shall properly complete the Affidavit Establishing Probable Cause (PC Affidavit) form, checking only the "Warrantless Arrest" box on the form for all Non-UTT/MMC warrantless arrests.
- B. Officers shall complete the form before the end of the arresting officer's tour of duty.
- C. Officers shall complete the "Warrantless Arrest" PC Affidavit form in the following manner:
 1. Officers shall check the "Warrantless Arrest" box on the form.
 2. Only one officer's name may appear on the Officer/Detective/Complaint line.
 3. When completing the PC affidavit form, officers shall begin the narrative with the day, date, time, and location or approximate location (e.g., On Friday, April 12, 2018, at approximately 1020 hours at a residence located at 1234 Maple Street).
 4. Officers shall explain the established probable cause that led to the arrest in the narrative section.
- D. Officers shall ensure the form is presented to a supervisor or the Clerk of Courts for review and notarization. In the case of officers working secondary employment, the supervisor in the district of occurrence shall review and notarize the PC affidavit form unless a supervisor of a higher rank than the arresting officer is concurrently working that secondary employment.
- E. Officer shall then place the PC Affidavit Forms in a file basket designated solely for the original PC affidavit forms.

V. Completion and Forwarding of PC Affidavit Forms for all Felony, Combination Felony/Misdemeanor, Escalating Misdemeanor, and Misdemeanor arrests where the assigned detective is also handling the charging duties.

- A. Officers shall file the original "Warrantless Arrest" PC affidavit form in a file basket designated solely for original PC affidavit forms.
- B. Detectives shall ensure the proper follow-up is completed in charging or releasing of arrested persons as applicable.

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- C. Detectives shall handle the charge/release of escalating misdemeanors generated by the Patrol Section regardless if the misdemeanor has been determined to not have escalated to a felony. This is necessary to ensure that persons are charged / released within the 36 hour requirement.

VI. PC Affidavit Forms for all Non UTT/MMC Misdemeanor Arrests where a detective is not handling the charging duties.

- A. In addition to the “Warrantless Arrest” PC affidavit described in Section IV., officers arresting for Non UTT/MMC misdemeanors shall complete a second PC affidavit form checking only “Statement of Facts” box on the form. This second form is required by the Record Section supervisor to file charges on the misdemeanor arrest.
- B. Officers shall complete the form before the end of the arresting officer’s tour of duty.
- C. Officers shall ensure that the form is presented to a supervisor or the Clerk of Courts for review and notarization. In the case of officers working secondary employment, the supervisor in the district of occurrence shall review and notarize the PC affidavit form unless a supervisor of a higher rank than the arresting officer is concurrently working that secondary employment.
- D. Officer shall then place both PC Affidavit Forms (one with only the Warrantless Arrest box checked and the other with only the Statement of Facts box checked) in a file basket designated solely for the original PC affidavit forms.
- E. Officers assigned to investigative units are not required to route the misdemeanor charging process through the Record Section, but rather may opt to handle the charging process as is normally handled in their investigative unit, as long as all the filing requirements are met.

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

- A. The supervisor shall respond to the scene whenever officers notify a supervisor that they are effectuating a custodial arrest for obstructing official business; resisting arrest; or assault on an officer, where no other substantive violation is alleged.
- B. Supervisors shall review all documentation of arrests for completeness and adherence to law and division policy.
- C. Supervisors shall review each report and PC affidavit forms by officers under their command, whether or not they involve the seizure of contraband, and sign off on those reports to memorialize their review within 24 hours of the arrest, absent exceptional circumstances. Supervisors shall review reports and forms for deficiencies, including but not limited to:
 - 1. Canned or conclusory language without supporting detail, inconsistent information, insufficient articulation of the basis for the action, or other information in the reports or forms that is not correct or complete;

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2. Arrests following stops that were not supported by reasonable suspicion;
 3. Arrests that are not supported by probable cause, or are otherwise in violation of the law or CDP policy; and
 4. For every search or arrest involving the recovery of contraband evidence, whether the circumstances by which the evidence was recovered and/or probable cause for arrest was established are plausible and complete.
- D. Officers-in-Charge (OIC) shall ensure that all PC affidavit forms are hand delivered to the Record Section daily at 0230 hours, 0830 hours, and 1530 hours.
- E. Within seven calendar days, supervisors shall document and report through their chain of command:
1. Arrests unsupported by probable cause;
 2. Arrests that are in violation of CPD policy; or
 3. Arrests that, while comporting with law and policy, indicate a need for corrective action or review of agency policy, strategy, tactics, or training.
- F. Supervisors shall take appropriate action to address all apparent violations or deficiencies in arrests. Appropriate action may include recommending non-disciplinary corrective action for the involved officer and documenting such action in the tracking software, or referring the incident for administrative or criminal investigation.

VIII. Training

- A. The Division shall provide officers with annual in-service training on Search and Seizure/probable cause/warrantless arrests that is adequate in quality, quantity, type, and scope.

EXHIBIT D



CLEVELAND DIVISION OF POLICE GENERAL



EFFECTIVE DATE:	CHAPTER:	04-25-2019	PAGE:	1 OF 4	NUMBER:
SUBJECT:	STRIP SEARCHES & BODY CAVITY SEARCHES				
CHIEF:					

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

POLICY: It is the policy of the Division to respect the fundamental privacy rights of all individuals. Officers shall ensure strip and body cavity searches are conducted in strict accordance with the rights secured and protected by the Constitution and federal and state laws.

DEFINITIONS:

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

Juvenile: An individual under the age of 18.

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

PROCEDURES:

I. General Requirements for Strip Searches and Body Cavity Searches

- A. A strip search or body cavity search may be conducted if there is probable cause to believe that the person is concealing evidence of the commission of a criminal offense, including fruits or tools of a crime, contraband, or a deadly weapon that was not otherwise discovered through less-intrusive means.
- B. A strip search or body cavity search must be supported by articulable facts considering the nature of the offense, circumstances of the arrest, and if known, prior criminal/conviction record of the person or that the arrestee may possess weapons or contraband on or in their body.
- C. Prior to conducting the strip search or seeking a warrant for a body cavity search, the officer or sergeant shall explain to the individual the reason for the search and give the individual the opportunity to voluntarily produce the suspected item.

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1. The individual shall be allowed to voluntarily produce the item only if the officer or supervisor believes that the item can be produced without compromising officer safety or risking destruction of evidence.

- D. Strip searches and body cavity searches shall not be video recorded or photographed unless required for evidentiary reasons and specifically authorized in writing, in advance, by a CDP supervisor.

II. Body Cavity Searches

- A. A body cavity search shall be conducted only after a warrant has been issued that authorizes the search, unless there is legitimate medical reason or medical emergency justifying a warrantless search.

- B. All body cavity search warrant requests must be pre-approved in writing by a Division of Police supervisor.

- C. A body cavity search shall be conducted only by a physician, or registered nurse, or licensed practical nurse, which is registered or licensed to practice in the State of Ohio.

- D. Officers shall make a reasonable effort to notify a parent/guardian if a body cavity search is conducted on a juvenile. Officers shall document such efforts in their dispositions and incident reports.

III. Strip Searches

- A. Strip searches shall only be conducted in a secure holding facility, with the exception being during exigent circumstances when an officer(s) have probable cause to believe that the subject is hiding a firearm or dangerous ordnance, when less intrusive means of discovering a weapon or contraband are not available.
 1. A supervisor shall immediately respond to the holding facility or to the scene when an officer requests permission to conduct a strip search and if conducted, must be done under conditions that provide privacy.

- B. The following requirements apply to all strip searches:
 1. Strip searches shall not be conducted during a misdemeanor arrest.

 2. All strip searches must be pre-approved in writing by a Division of Police supervisor and the supervisor shall be on-scene at all times during the search.

 3. Strip searches shall be conducted in a professional manner by the officer and a witness to the search who are the same gender as the arrestee. The search shall be conducted in a manner that permits only the person(s) conducting the search to observe the search.

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- a. If an officer is uncertain regarding an arrestee's gender/gender identity, officers shall respectfully request the arrestee's gender/gender identity.
- 4. Officers shall use appropriate methods and personal protective equipment when conducting strip searches.
- 5. Officers involved with strip searches shall take reasonable steps to minimize the potential embarrassment or discomfort to the party being searched and shall include the least number of personnel necessary.
- 6. Officers conducting the search shall not touch the genital area, buttocks, or female breasts of the person being searched.
- C. Strip searches conducted on juveniles shall only occur in a juvenile detention facility with the exception being during exigent circumstances when an officer(s) have probable cause to believe that the juvenile is hiding a firearm or dangerous ordnance.

IV. Reporting of Strip Searches/Body Cavity Searches

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

V. Supervisory Responsibilities for Strip Searches/Body Cavity Searches

- A. Supervisory officers shall review all information pertaining to any request by a police officer to conduct a strip or body cavity search.
- B. After the responsible supervisor determines that a strip or body cavity search is warranted, the supervisor shall give "prior written authorization" to seek a search warrant or conduct the search. Sign his/her name along with the date and time in the space provided near the top of the Prisoner Search Report prior to the search being conducted. (Noted exception – Unless a medical emergency makes doing so impracticable.)

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- C. The endorsing supervisor shall sign his/her name in the space provided near the bottom of the Prisoner Search Report and include the date and time that the strip or body cavity search was completed. This endorsement shall serve as a confirmation that the strip or body cavity search was performed in the manner prescribed by law.

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EXHIBIT E



CLEVELAND DIVISION OF POLICE GENERAL



EFFECTIVE DATE:	CHAPTER:	04-25-2019	PAGE:	1 OF 6	NUMBER:
SUBJECT:	MIRANDA WARNING AND WAIVER				
CHIEF:					

PURPOSE: To establish Cleveland Division of Police guidelines so that all questioning of criminal subjects complies with the Constitution, federal, and state laws.

POLICY: It is the policy of the Division to respect the fundamental rights of all individuals. When a person is taken into custody, or otherwise deprived of his or her freedom of action in a significant way, and when he or she is to be questioned, the Division shall afford him or her the procedural safeguards required to protect his or her Fifth Amendment right against involuntary self-incrimination.

DEFINITIONS:

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

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

Juvenile: An individual under the age of 18.

PROCEDURES:

I. The Miranda Warning General Requirements

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

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- E. If there is any doubt about whether custody and/or interrogation is/are present, officers shall resolve the doubt in favor of giving the Miranda Warning.
- F. In all cases of a custodial interrogation, regardless whether an arrest is made or not, an officer shall record the Miranda Warning advisement and any waiver, if provided, on their Wearable Camera System and document the Miranda Warning advisement and any waiver, if provided, in their incident report, if applicable.

II. Advising of Rights

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

III. Case-Specific Requirements

- A. Deaf and Hard of Hearing Individuals and Individuals with Limited English Proficiency (LEP)
 - 1. In the case of an individual who is deaf or hard of hearing or of Limited English Proficiency, the Miranda Warning shall be administered via a qualified interpreter consistent with General Police Order 1.3.38, Limited English Proficiency (LEP).
 - 2. For LEP individuals, where possible, the officer shall use a "Your Rights" form that has been translated into the subject's primary language.
- B. Juveniles
 - 1. When questioning a juvenile, officers shall consider the juvenile's age when determining whether the juvenile would not feel free to leave. A juvenile may be in custody for purposes of the Miranda rule when an adult in the same circumstances would not.

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2. Officers shall explain the Miranda Warning in an age-appropriate manner, and each warning shall be read slowly and one at a time.
3. An example of the Miranda Warning given in an age appropriate manner is as follows:
 - a. "You have the right to remain silent. That means you do not have to talk to me."
 - b. "Anything you say can be used against you in court."
 - c. "You have the right to get help from a lawyer before you talk to me."
 - d. "You may also have your parent, or legal guardian present."
 - e. "If you or your family cannot pay a lawyer, the court will get you one for free."
 - f. "You have the right to stop this interview at any time."
 - g. "Do you understand these rights that I have explained to you?"
 - h. "Do you want to have a lawyer present if you choose to talk to me?"
 - i. "Do you want your mother, father, or legal guardian present if you choose to talk to me?"
 - j. "Do you want to talk to me?"
4. To ensure the juvenile understands his or her rights, the officer shall ask the individual to explain each of the advisements in his or her own words.
5. Officers shall stop questioning when the juvenile has requested an attorney, parent, or guardian. Officers may resume questioning when the attorney, parent, or guardian is present; however no parent or guardian may waive the juvenile's right to counsel.

IV. Waiving Miranda General Guidelines

- A. Once an officer has informed a subject of his or her Miranda rights, that individual may waive those rights and consent to a custodial interrogation without an attorney present.
- B. Such a waiver must be knowing and voluntary - that is, the subject must understand his or her rights, and any waiver must not be due to coercion.
- C. To ascertain whether a subject will waive his or her Miranda rights, after advising a subject of his or her rights, officers shall ask:
 1. "Having these rights in mind, and having stated that you understand these rights, do you wish to talk to me (or us) now?"

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- a. Officers shall only question a subject if the subject has answered in the affirmative to the above question.
- D. Officers shall consider the totality of the circumstances when determining whether a juvenile has knowingly and voluntarily waived Miranda including:
1. The youth's age, mentality, and prior criminal experience;
 2. The length, intensity, and frequency of the interrogation; and
 3. Whether or not a parent was present at the time of the waiver.

V. Invocation of Miranda Rights by Subject

- A. Questioning of a subject shall not take place when the subject of a custodial interrogation:
 1. Invokes his/her right to remain silent; or
 2. Is unable or indicates his/her inability to either understand the Miranda Warning or to make a knowing, intelligent, and voluntary waiver of his/her rights; or
 3. Indicates he/she wants to have counsel, or if a juvenile indicates he or she wants to have counsel, a parent, or guardian present before answering questions, or anytime during the interrogation; or
 4. Appears to be significantly impaired by substances or mental impairment.
- B. If a subject waives his Miranda rights but subsequently states that he or she does not want to answer questions or wants an attorney present, all questioning shall cease immediately.
 1. If a subject is vague in his/her response about whether he/she wants to have an attorney present, nor does he/she explicitly waive his/her right to an attorney, officers shall specifically determine whether the subject wishes to have counsel present or if the subject will waive his/her right to counsel. To make this determination, the officer shall ask the subject to confirm, with a "yes" or "no" answer, whether the subject is requesting an attorney.

VI. Re-Questioning a Subject after Subject has Invoked Miranda

- A. If a subject invokes his or her right to silence but does not invoke the right to an attorney, all questioning shall cease immediately:
 1. Questioning may be reinitiated by officers if they:
 - a. Wait a significant amount of time (at least 2 hours);
 - b. Provide the Miranda Warning again; and

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- c. Limit the questions to a crime that was not the subject of earlier questioning
- 2. If, after invoking his or her right to silence, a subject initiates conversations with the officers about the same topic, officers' questioning may proceed after providing the Miranda Warning again. (Refer to Sections I and II)
- B. If a subject invokes his/her right to an attorney, all officers shall immediately cease questioning.
 - 1. Questioning may be resumed if:
 - a. The subject is in the presence of his or her attorney; or
 - b. The subject re-initiates communications with the police, and
 - 1. Officers provide the Miranda Warning again, and
 - 2. The subject voluntarily agrees to waive his/her rights.
- C. In addition, if there is a break in custody, officers can ask the subject to waive his or her Miranda rights after 14 days.

VII. Breaks in Interrogation

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

VIII. Public Safety Exception to the Miranda Warning

- A. Officers may temporarily forgo the Miranda Warning when necessary if they or the public are in immediate danger.
- B. In order for this public safety exception to apply, officers shall first determine that there is an objectively reasonable need to protect the police or public from an immediate danger associated with a weapon or other harmful objects.

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- C. Once an officer has determined that the public safety exception applies, the officer may question a subject without the Miranda Warning as long as the questions asked are related to the danger and reasonably necessary to secure public safety.
- D. Once the emergency ends, this exemption no longer applies.

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