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SUBJECT: FIELD INTERVIEWS AND PAT DOWN SEARCHES

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IACLEA STANDARD: 2.2.1, 2.2.5(b)

CSU POLICE DEPARTMENTS SYSTEMWIDE OPERATIONAL GUIDELINE – No

APPROVED: Anne P. Glavin, Chief of Police

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## I. PURPOSE

To establish policy and procedures for police officer contacts with individuals in the field. This policy also governs the conduct of interviews and completing a contact/interview RIMS entry to record the interview.

A police officer, in appropriate circumstances and in an appropriate manner, may temporarily stop and briefly detain a person for the purpose of inquiring into possible criminal activity even though the officer does not have probable cause to make a lawful arrest at the time. In addition, an officer may pat-down search such a person for weapons as a matter of self-protection when he/she reasonably believes that his/her own safety, or that of others nearby, is endangered. This authority of police to stop, detain and question is vital to the detection of crime and the courts have held that persons found under suspicious circumstances may have their freedom temporarily interrupted in order that the police may inquire as to their identity and actions. The purpose of this temporary detention for questioning is to enable the police officer to determine whether to make an arrest, whether to investigate further, or whether to take no police action at that time because the officer is satisfied with the explanation given.

## II. POLICY

It is the policy of the California State University, Northridge Police Department to allow police officers, in appropriate circumstances and in appropriate manner, to temporarily stop and briefly detain a person for the purposes of inquiring into possible criminal activity. All instances of such contacts between officers and citizens shall be documented as outlined in this policy.

## III. DEFINITIONS (from the California Legal Sourcebook Sept. 2012)

A. Consensual Encounter

When dealing with a member of the public, the law will classify the contact as either a "consensual encounter," a "detention," or an "arrest." A "**consensual encounter**" is the least intrusive of these and is defined as a contact between an officer and an individual that is strictly voluntary and where the person remains totally free to leave or not cooperate.

B. Detentions / Stops

A temporary "**detention**" or "**stop**" is an exertion of authority that is something less than a full-blown arrest but more substantial than a simple "contact" or "consensual encounter." A "detention" occurs whenever a reasonable and innocent person would believe he is not free to leave or otherwise disregard the police and go about his or her business. The purpose of a detention is to resolve whether or not suspicious behavior is "innocent" or relates to crime. If during a detention the officer does not learn facts rising to the level of probable cause, the individual must be allowed to go on his/her way.

C. Patdowns/Frisk Searches

During a detention, you have no power to conduct a general, full, exploratory search of the suspect. (Of course, if the detainee is on parole or searchable probation, you are entitled to search him without any suspicion of criminal activity.) You may however conduct a patdown or limited weapons search of someone you have detained, but (1) only for weapons, (2) only of his/her outer clothing, and (3) only if you have specific facts which make you feel in danger. "Standard procedure" isn't good enough and you must reasonably suspect that the person is armed or may be armed.

D. Reasonable Suspicion

For an investigative stop or detention to be valid, you must have "**reasonable suspicion**" that: (1) criminal activity may be afoot and (2) the person you are about to detain is connected with that possible criminal activity. To establish "reasonable suspicion," both the quality and quantity of the information you need is considerably less than the "probable cause" you need to arrest or search.

IV. PROCEDURES

A. The Field Interview – Overview

1. Justification of a Field Interview (Consensual/Casual Encounters vs. Detentions)

- a. An arrest is not always based upon the immediate recognition of a wanted criminal. Frequently, it is the consequence of an action taken by a police officer who stopped to question an individual who aroused the officer's suspicions.
- b. Information obtained during a field contact may also be used by other patrol officers, investigators and other law enforcement agencies, at a later date, to identify a criminal.
- c. Officers must determine when a field interview (consensual encounter or detention) is warranted. To do so, the officer must be aware of the following:

- 1) A fine line exists between a consensual encounter and a lawful detainment.
- 2) Detentions and casual/consensual encounters, as defined in U.S. Supreme Court case *Terry v. Ohio*, 392 U.S. 1 (1968), permit officers to contact individuals absent an actual arrest.
- 3) A field interview is neither a custody scenario nor an interrogation. Therefore:
  - a) The individual is free to leave in a consensual encounter unless the officer escalates the status of the investigation to a detention due to new observations, information, or actions on the part of the individual which indicate that criminal activity has or is about to occur.
  - b) A Miranda admonishment is NOT required since no custody issue is involved. The California 4<sup>th</sup> Circuit Court of Appeals ruled (*People vs. Davidson* (2013) 221 Cal.App.4<sup>th</sup> 966) that handcuffing a suspect during an investigative detention and briefly questioning him/her to confirm or dispel suspicion does not constitute custodial interrogation under Miranda. The Court however stressed that an officer must consider the totality of the circumstances surrounding the police encounter and subsequent detention. The following are factors in the detention that should be present in such situations to safeguard an officer from committed a violation of custody and Miranda.
    - questioning is “brief and casual;”
    - questioning must not be aggressive, confrontational, accusatory, coercive, or sustained
    - detainee was obviously handcuffed for officer safety and/or because the officer believed he/she was going to flee;
    - officer was alone;
    - detained in a place other than a police station (e.g., public street);
    - detention was short in duration (in the aforementioned case, the detainee was detained for only 2 minutes).
  - c) There is no precise formula for determining the validity and legality of a detention; however it must be based upon the reasonable belief or suspicion on the part of the officer that some activity out of the ordinary is taking place; that such activity is crime related; and that the person under suspicion is connected with, or involved in that criminal activity. Detentions must be based upon the officer’s own observations or information supplied by others. It should be well-founded and reasonable information upon which to act. It may not be based upon a hunch or the result of pure guess work, or on an officer’s unsupported intuition.

- 4) No single factor is normally sufficient, but the following are some of the factors which may be considered in determining the reasonableness of an investigative stop by a police officer in the field:
  - a) the personal observations of the officers and his/her police training and experience;
  - b) his/her knowledge of criminal activity in the area;
  - c) the time of day or night and the place of observation;
  - d) the general appearance and demeanor of the suspect and any furtive behavior which indicates possible criminal conduct;
  - e) the suspect's proximity to the scene of a recently reported crime;
  - f) the knowledge of the suspect's prior criminal record or of his/her association with known criminals;
  - g) visible objects in the suspect's possession or obvious bulges in his/her clothing;
  - h) resemblance of the suspect to a person wanted for a known crime; or
  - i) information received from police sources or from other reasonably reliable sources of information.

## 2. Issues in Conducting a Field Interview (consensual encounter vs. detention)

The fact that the individual has aroused the officer's suspicion should cause the officer to make his/her approach with vigilance and to be alert for any possibility of danger. A routine check of suspicious circumstances may uncover the commission of a serious crime or the presence of a dangerous criminal. If the stopped suspect has just committed a major crime he/she may be an immediate threat to the officer's safety or he/she may suddenly attempt to flee from the scene.

When a police officer makes a decision to stop a person for a field interview, unless the officer is in uniform, he/she should identify himself/herself as a police officer as soon as it is safe and practical to do so and also announce the purpose of his/her inquiry unless such information is obvious. The reasonableness of the manner in which the stop is achieved must also be taken into consideration. The courts will consider the nature of the investigation, the manner in which the stop was initiated, the length of the detention, and the availability of alternative courses of conduct to determine whether the stop itself was reasonable.

The display of force to effect a stop must be proportional to the circumstances which warrant the stop. The more proportionate the actions of the police are to the circumstances of the case, the more likely the stop will be considered lawful. The showing of a firearm or the presence of numerous officers will be warranted when stopping an individual suspected of participation in a crime often associated with weapons – murder, rape, robbery, drug trafficking, etc. (U.S. vs. Coades, 549 F. 2d 1303). A show of more force can be justified not only by the type of crime that is suspected, but also by the number of suspects detained and/or the behavior of the suspect(s), such as failure to heed the first request to stop or indications that the suspect is preparing to flee or, on the contrary, to attack. However, should the showing of force be excessive under the circumstances of a stop, a court might conclude that the stop was actually an arrest and thus justifiable only if supported by probable cause to arrest.

3. Contacting the subject:

- a. Whenever possible prior to the actual stop, officers preparing to make a field interview shall notify the dispatcher of the impending stop and the location of the stop.
- b. Officers are to remain cognizant of the rights of the subject of the interview.
- c. The method(s) employed to contact and converse with the subject will depend upon the purpose of the interview.
- d. Whenever possible, officers should select a field interview location that is well-lighted and at a distance from bystanders.
- e. Officers must at all times protect themselves and others in the area.
- f. Officers working in civilian attire have the added responsibility of identifying themselves as police officers before stopping a person for a field interview.
- g. In the event the person detained displays aggressive behaviorisms, or when there are multiple detainees, the officer should request an additional police unit as needed for support.

4. Interviewing the subject:

- a. Once a stop is made, any questioning of the suspect should be conducted at the location of the stop as investigative stops are intended to be on-the-spot inquiries.
- b. An investigatory inquiry should begin with exploratory questions regarding the suspect's identity, place of residence, and other questions necessary to resolve the officer's suspicions. Social security numbers shall only be requested if the need arises to verify and confirm someone's identity due to situations where multiple matches were located on the name and date of birth provided or when the return shows no match on file.
- c. To verify the information obtained from the suspect, it may be necessary to move a short distance to use the radio or a telephone.
- d. Every officer should acquire the ability to initiate an investigatory inquiry in a calm, conversational and courteous manner in order to gain as much information as possible without placing the suspect on the defense. However, this does not preclude officers from utilizing interviewing techniques taught within more advanced POST interview and interrogation courses (i.e., good cop/bad cop scenarios).
- e. Even in a brief conversation with a suspect, an alert and perceptive officer can often detect or sense that something is suspicious and further police investigation is required.
- f. An officer should always bear in mind, however, that he/she must have a firm foundation for his/her initial suspicions in order to justify an investigative detention and inquiry.
- g. Under special circumstances, such as the gathering of a hostile crowd, heavy traffic, or a safety need arises when using the police radio, the suspect may be placed in the rear seat of a police vehicle.
- h. As part of an investigatory inquiry, police may detain a suspect for a short time so that an eyewitness may be brought to the scene to make an in-person identification (i.e., field show-up).
- i. No hard and fast rule can be formulated to determine the period of time required for an investigative detention but it should be reasonably brief under the particular circumstances. Generally it should be no longer than the period of time necessary to check the suspect's identity and the credibility of his/her

story, unless information is obtained which established probable cause for arrest.

- j. If the answers given by the suspect are unsatisfactory because they are false, contradictory or incredible, they may serve as elements or factors to establish probable cause.
- k. Once an officer's suspicions are increased, he/she must be careful that the questioning does not become sustained and focused specifically on the stopped suspect as a criminal offender, in which case the suspect's right to remain silent would become an issue and a custodial interrogation situation created where a Miranda admonition would be required.

## B. Using a Field Interview Card

1. A field interview card is a note-taking tool and may be utilized as a resource in recording information involving the field contact for entry into the department's RIMS database.
2. Actually detaining someone (as opposed to obtaining their voluntary cooperation) for the purpose of obtaining information about them, or photographing them, is illegal unless you have a specific basis for believing the person is involved in criminal activity. (Rodriguez (1993) 21 Cal.App.4th 232, 238-240.) Furthermore, extending a detention in order to fill out a field interrogation card may or may not be reasonable, depending (like everything else) on all the circumstances. Generally speaking, if there is something specific which might connect the person to a crime, filling out a field interrogation card will be proper.
3. A field interview card may be used either in conjunction with, or instead of a traffic citation when an officer contacts an individual for a traffic violation. Such a decision will remain at the discretion of the investigating officer.
4. A field interview card may also be used as an observation only (no contact made) recording tool. In such an instance, the officer should complete the card as fully as possible and include his/her prior knowledge of the individual/vehicle as well as the current observation being made.
5. Field interview cards and RIMS entry could also be made in these instances:
  - a. An officer stops an individual for the purpose of conducting an interview and obtains his/her identifying information; however the individual refuses to provide the officer any information and there is no legal justification for a detention or arrest.
  - b. An officer wishes to make note of a suspicious individual in a specific place at a specific time.
  - c. An officer observes a vehicle that arouses his/her suspicions, but the owner/driver of the vehicle cannot be interviewed (e.g., an unfamiliar vehicle parked in a parking lot or near a campus facility after normal university business hours).
  - d. An officer observes a known criminal at a suspicious place or time, but is unable to stop immediately to talk to that individual.
6. Prior to entering the field interview information into RIMS, the officer shall gain approval from his/her shift supervisor for entry.
  - a. The officer will enter the approved information into the RIMS system under the "Records" section of the RIMS toolbar and choose the "FI" dropdown menu selection. The RIMS database shall be the only official Field Interview (FI)

documentation as all information entered is protected once locked and any changes are recorded for auditing purposes. If a field interview card was utilized for note-taking, it shall be destroyed via a shredder upon completion of the RIMS entry.

- b. Should the supervisor conclude that the information provided on a particular field interview involved probable criminal activity or noteworthy suspicious circumstances, he/she shall forward notice of the field interview RIMS entry to the detective sergeant via the RIMS email messaging system.

#### C. Pat-Down Searches – Field Interview Procedures

If an officer reasonably believes that his/her safety or that of others is in danger, he/she may pat-down search the outer garments of a person stopped for a field interview for purposes of discovering any weapon that may be used to inflict physical injury.

1. It is not necessary that the officer be absolutely certain that such person is armed but he/she must perceive danger to himself or others because of events leading to the stop or which occurred after or during the stop.
2. If the officer has reasonable belief or suspicion, based upon reliable information or personal observation, that a weapon is being carried or concealed in some specific place on the person of the suspect, he/she should immediately check that area before performing a general pat-down search.
3. A consensual encounter or detention should not be made as a pretext to search for evidence of a crime: the pat-down search must be done solely as a protective measure.
4. The search must initially be limited to an external pat-down search of the suspect's outer clothing but if such outer clothing is bulky, such as a heavy overcoat, these garments may be opened to permit a pat-down of the inner clothing.
5. If the suspect is carrying an object such as a handbag, suitcase, briefcase, sack or other item that may conceal a weapon, the officer should not open the item but instead place it out of the suspect's reach. This does not take away an officer's ability to search incident to gaining a person's consent to search. It is recommended that the officer's digital voice recorder be used for evidence in instances where consent is orally granted by the interviewee.
6. If the officer feels an object that could reasonably be concluded to be a weapon, he/she may conduct a further search for the particular object and remove that item only.
7. If after completing the pat-down search of the suspect the officer does not feel any object which could reasonably be a weapon, he/she should discontinue his/her search.
8. If a valid pat-down search produces evidence which can amount to reasonable cause for arrest, an arrest should then be made and a more extensive search conducted incident to that valid arrest.