

Contacts and Temporary Detentions

403.1 VERSION

Review Date	Effective Date	Approving Authority
07/15/19	07/09/18	Eric D. English, Chief of Police

403.2 POLICY AND PURPOSE

It is the policy of the Harrisonburg Police Department to conduct voluntary field contacts, investigative stops, frisks and searches necessary to accomplish lawful objectives and only to the extent reasonably necessary. Documentation of these contacts shall be initiated and maintained for the purposes of suspect, witness, or victim identification, intelligence gathering, crime prevention and crime analysis.

Field contact and interviews are widely recognized as a proactive means of detecting criminals and criminal activity, identifying witnesses, and gathering information and intelligence. Officers are expected to routinely initiate brief consensual encounters and appropriate investigatory stops. Field Interview Contact (FIC) provides vital information for the crime analyst to develop information and intelligence useful in developing suspects, associates, and witnesses; identifying suspicious or criminal trends and activity; and identifying wanted subjects. Officers conducting field interviews must understand the legal basis and authority for these actions.

Officers must be able to articulate specific facts and circumstances that support reasonable suspicion or probable cause for investigative detentions, traffic stops, arrests, nonconsensual searches, and property seizures.

Nothing in this policy is intended to discourage consensual contacts. Frequent casual contact with consenting individuals is encouraged by the Harrisonburg Police Department to strengthen community involvement, community awareness and problem identification.

403.3 ACCOUNTABILITY STATEMENT

All employees are expected to fully comply with the guidelines and timelines set forth in this policy. Responsibility rests with all supervisors to ensure that any violations of policy are investigated and appropriate training, counseling and/or disciplinary action is initiated. This directive is for internal use only, and does not enlarge an employee's civil liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violation of this directive, if proven, can only form the basis of a complaint by this Department, and then only in a non-judicial administrative setting.

403.4 DEFINITIONS

Consensual encounter - When an officer contacts an individual but does not create a detention through words, actions, or other means. In other words, a reasonable individual would believe that his/her contact with the officer is voluntary.

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Field Interview - A consensual encounter with a person to ask questions and/or gain information. Field interviews require voluntary cooperation from citizens.

Field photographs - Posed photographs taken of a person during a contact, temporary detention, or arrest in the field. Undercover surveillance photographs of an individual and recordings captured by the normal operation of a Mobile Audio/Video (MAV) system, body-worn camera (BWC), or public safety camera when persons are not posed for the purpose of photographing are not considered field photographs.

Pat-down search - A type of search used by officers in the field to check an individual for dangerous weapons. It involves a thorough patting-down of clothing to locate any weapons or dangerous items that could pose a danger to the officer, the detainee, or others.

Reasonable suspicion - When, under the totality of the circumstances, an officer has articulable facts that criminal activity may be afoot and a particular person is connected with that possible criminal activity.

Temporary detention - When an officer intentionally, through words, actions, or physical force, causes an individual to reasonably believe he/she is required to restrict his/her movement without an actual arrest. Temporary detentions also occur when an officer actually restrains a person's freedom of movement.

403.5 CONSENSUAL ENCOUNTERS

403.5.1 INITIATING CONSENSUAL ENCOUNTERS

- (a) Voluntary contacts may be initiated when an officer wants to approach someone to talk or to ask a person a question.
- (b) Officers do not violate an individual's Fourth Amendment rights if they merely approach a person and ask if that person is willing to answer some questions, or if they put questions to a person who is willing to listen. An individual's voluntary answers to such questions may be offered in evidence in a criminal prosecution.
- (c) The key to keeping a voluntary contact from becoming an investigatory stop is that the person does not have to answer any questions and may leave at any time.
- (d) Voluntary field contacts may be initiated any place where an officer has a legitimate right to be and generally include:
 - 1. City owned or controlled property normally open to members of the public.
 - 2. Areas intended for public use or normally exposed to public view.
 - 3. Places to which an officer has been admitted with the consent of the person empowered to give such consent.
 - 4. Places where circumstances require immediate law enforcement presence to protect life or property.
 - 5. Areas where an officer may be admitted pursuant to a lawful arrest or search warrant.

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6. Any other areas in which an officer may affect a warrant-less arrest.

403.5.2 FACTORS TO CONSIDER WHEN CONDUCTING A CONSENSUAL ENCOUNTER

Officers conducting consensual encounters shall consider the following factors that are relevant in determining whether a particular encounter between police and citizens is consensual or viewed as a Fourth Amendment seizure:

- (a) Physical contact - The slightest application of physical force for the purpose of stopping or holding a person is likely to constitute a seizure. Officers shall not use force until they have established reasonable suspicion to justify an investigative stop.
- (b) Display of weapons - The display of weapons is inherently coercive and is generally interpreted by citizens as compelling compliance. Thus, pointing firearms or threatening their use will, in most cases, transform the voluntary field contact into an investigative stop.
- (c) Advising citizens they have the right to refuse - Officers should advise citizens they have a right to refuse to consent to a search or frisk, or to answer questions, or accompany officers to a different location. This helps keep the contact voluntary. When appropriate, officers shall advise citizens the reason for the encounter.
- (d) Interfere with freedom of movement - The manner in which officers position themselves or their vehicles and the extent to which they block a citizen's pathway or freedom of movement may communicate to the citizen that they are not free to leave. Officers should position themselves in a manner to allow a path of egress for the citizen.
- (e) Number of officers - A number of officers surrounding a citizen may communicate that the citizen is not free to leave. Thus, where officer safety is not jeopardized, an encounter is more likely to be deemed consensual if the backup officers stay in the background.
- (f) Demeanor and appearance - An officer's use of coercive or intimidating language may be interpreted by a citizen as compelling compliance. Requests for consent to frisk or search should be conveyed in a manner that the citizen has a choice and that compliance is not required.
- (g) Retention of personal property - Although officers may request to examine a person's identification and ask questions about any discrepancies, such property should be promptly returned. Prolonged retention of identification may transform the contact into a stop.

403.6 FIELD INTERVIEWS

The Department expects and encourages officers to conduct field interviews. A field interview is a lawful and consensual stop of a citizen for investigative purposes. Officers may document field interviews for the purposes of identifying a suspect, witness, or victim, or for crime prevention, intelligence gathering, or community relations at the discretion of the police officer.

The Department further expects officers to gather information with proper observance of constitutional safeguards. Strict constitutional guidelines exist that protect both the civil rights of

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citizens and the rights of officers to obtain information crucial to the reduction and prevention of crime. Further, field interviews may contribute to the building of a reasonable suspicion or even probable cause to arrest or conduct a search.

A distinction is drawn herein between a field interview (which is made to resolve an ambiguous situation) and a stop (a brief detention of a person based upon reasonable suspicion that criminal activity is afoot).

403.6.1 PURPOSE

Field interviews and field interview cards serve as a source of information. The field interview is based on the principle that the opportunity to apprehend criminals and to prevent crime increases with the number and frequency of persons interviewed.

Frequently, it is the outgrowth of the action taken by a police officer who stops to question a person who has aroused his suspicions. Information obtained during a field interview may also be used later to identify a criminal.

The value of reported field inquiries becomes very pronounced when a crime is committed and there are but a few investigative leads. The investigator may rely on field interview cards to sift out useful information.

403.6.2 INITIATING A FIELD INTERVIEW

When initiating a field interview, the officer should be able to point to specific facts which, when considered with the totality of the circumstances, reasonably warrant the encounter. Such facts include, but are not limited to, an individual's:

- (a) Presence in an area at an inappropriate hour of the day or night.
- (b) Presence in a particular area is suspicious.
- (c) Location in proximate time and place to an alleged crime.
- (d) Physical description or clothing worn that matches a suspect in a recent crime.
- (e) Prior criminal record or involvement in criminal activity as known by the officer.
- (f) Hearsay information is acceptable. The use of hearsay information is dependent upon both the content of information possessed by officers and its degree of reliability.

403.6.3 CONDUCTING FIELD INTERVIEWS

A person may refuse or may discontinue the interview at any time. During a routine field interview, persons shall not be detained in any manner against their will, nor shall they be required to answer questions or respond in any manner if they choose not to do so. Since the distinction between a "interview" and a "stop" depends to a great extent on whether, under the circumstances, the citizen perceives that he is free to leave, officers shall comply with the following guidelines:

- (a) All requests during the interview should be phrased with neutral or optional words, such as "may," "would you mind," etc.

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- (b) Abrupt, short responses which could be misunderstood and requests which could be misinterpreted as commands must be avoided.
- (c) The durations of an interview should be as brief as possible.

The success or failure in obtaining information beneficial to crime analysis and criminal investigation will depend upon an officer's ability to put citizens at ease and establish a rapport.

403.6.4 COMPLETING THE FIELD INTERVIEW CARD

- (a) The Harrisonburg Police Department Field Contact Card shall be the primary document for recording voluntary field contacts. The card, when utilized, shall be completed as follows:
 - 1. If more than one person is interviewed, a separate FIC should be completed for each individual.
 - 2. All unusual characteristics about the person being interviewed should be documented on the FIC. Such characteristics include: scars, tattoos, physical characteristic, accents, and any other distinctive traits that make the person unique.
 - (a) When time and circumstances permit, a photograph of distinguishing features should be taken.
 - 3. FIC should not be completed in instances where the information is already being documented in an IBR report.
 - 4. A FIC may be completed in addition to a summons/warrant.

403.6.5 RECORDING, REVIEW AND MAINTENANCE OF THE FIELD INTERVIEW CARD

Information obtained as a result of conducting a field interview can be fully utilized only if the information is sufficiently recorded and available for analysis through the Department's records management system. The availability of this information allows greater efficiency in crime analysis and criminal investigation and also serves to ensure the proper exercise of law enforcement authority, as well as enhancing an officer's ability to reconstruct, at a later time, events surrounding the field contact or investigative stop.

Officers will enter field interview card information into the appropriate computer database. All field interview data will be transmitted to the department's Intel Officer, who will analyze and distribute as necessary.

Field contact cards shall be minimally maintained for two years from the date of completion and may be maintained for additional time periods when there is a determined or perceived need.

403.7 INVESTIGATIVE STOP

An investigative stop occurs when a person is detained temporarily in order to investigate the possibility that they may have committed a crime or are in the process of committing a crime. In order to justify an investigatory stop, the officer must have a well-founded, reasonable suspicion of criminal activity.

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403.7.1 PERIOD OF DETENTION

Courts have generally held that the period of detention is a brief intrusion upon a person's movement. Once the detaining officer determines that the basis for reasonable suspicion no longer exists, the person detained should be immediately released.

Reasonable suspicion should be reinforced with diligent, active investigation. Should the investigation reveal additional information, which strengthens reasonable suspicion, the detention period may be continued. If probable cause does not develop in a reasonable time period, the officer should immediately release the person.

403.7.2 USE OF FORCE IN INVESTIGATIVE STOPS

Generally, officers may use the force reasonably necessary, such as moderate pressure to stop, turn or guide a subject during an investigative stop.

Officers using force in an investigative stop for officer safety reasons must be prepared to articulate why their actions were reasonable under the circumstances.

403.8 PAT-DOWNS

Once a valid stop has been made, and consistent with the officer's training and experience, an officer may pat a suspect's outer clothing for weapons if the officer has a reasonable, articulable suspicion the suspect may pose a safety risk. The purpose of this limited search is not to discover evidence of a crime, but to allow the officer to pursue the investigation without fear of violence. Circumstances that may establish justification for performing a pat-down include, but are not limited to:

- (a) The type of crime suspected, particularly in crimes of violence where the use or threat of weapons is involved.
- (b) Where more than one suspect must be handled by a single officer.
- (c) The hour of the day and the location or area where the stop takes place.
- (d) Prior knowledge of the suspect's use of force and/or propensity to carry weapons.
- (e) The actions and demeanor of the suspect.
- (f) Visual indications which suggest that the suspect is carrying a firearm or other dangerous weapon.

Whenever practicable, a pat-down search should not be conducted by a lone officer. A cover officer should be positioned to ensure safety and should not be involved in the search.

403.8.1 SEARCH BEYOND PERSON

The United States Supreme Court held in *Michigan v. Long*, (1983) that although *Terry V. Ohio* involved the stop and subsequent pat-down for weapons of a person suspected of criminal activity, it did not restrict the protective search to the person of the detained suspect. The Court recognized that protection of police and others can justify protective searches when there exists reasonable suspicion that the suspect poses a danger. Thus, an officer can search an area within the person's reach where a weapon may be found. A lawful protective search for weapons, which extends to an

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area beyond the person in the absence of probable cause to arrest, must have all of the following elements present:

- (a) A lawful investigative stop of a person or vehicle.
- (b) Reasonable suspicion that the suspect poses a danger, as defined by the Court in *Michigan v. Long*: "... specific and articulable facts, which taken together with the rational inferences from those facts, reasonably warrant the officer to believe that the suspect is dangerous and the suspect may gain immediate control of weapons."
- (c) The search must be limited to those areas in which a weapon may be placed or hidden.
- (d) The search must be limited to an area, which would ensure that there are not weapons within the subject's immediate grasp. The Court added in *Michigan v. Long* that although the subject was under the control of two officers during the investigative stop, it did not render unreasonable a belief that the subject could injure them.