

ROLL CALL TRAINING ONLINE

Deployment Period 03 -2018

TOPIC: Laws of Arrest
SUBJECT: Consensual Encounters
PREPARED BY: Legal Training Unit,
Training Division (310) 342-3190
Date Prepared: 06-15
REFERENCES: California Peace Officer Legal Sourcebook, 2.6
Training Bulletin: Legal Contacts with the Public, 2006
LD 15, Laws of Arrest, Version 4.3

INTRODUCTION

We have daily contact with the public for a variety of reasons. Each public contact is classified by law as a consensual encounter, a detention, or an arrest. This course will help you identify and articulate the unique elements of consensual encounters.

What is a Consensual Encounter?

A consensual encounter is a face-to-face contact with a person under circumstances which would cause a reasonable person to believe they are **free to leave or otherwise not cooperate**. No legal justification is needed as long as officers are in a place they have a right to be.

"Would a reasonable person in the suspect's position feel as if they were compelled to submit to the officer's authority?" The focus is not on what a *particular suspect subjectively believes* but rather is on what a *reasonable person* would have believed when confronted by the officer's words and conduct.

Consensual encounters can take place on streets and sidewalks, in cars, on buses, in airports, homes, or businesses. A consensual encounter allows an officer who has a hunch or some minimal information that a person may be violating the law to engage the person in a brief conversation for the purpose of confirming or dispelling the officer's suspicions.

What makes these encounters unique is that officers **cannot legally prevent the individual from just walking away**, because they have neither reasonable suspicion to detain nor probable cause to arrest. The individual has a right to refuse to cooperate, in which case officers must leave the individual alone. Refusal to cooperate, by itself, is not reason enough to detain. Nor would a refusal to cooperate constitute a violation of Penal Code Section 148, which makes it unlawful for a person to willfully resist, delay, or obstruct an officer in the performance of his or her duties.

Appropriate Applications

During a consensual encounter, officers can gather information, interview witnesses at the scene of a crime or accident, have a casual conversation, and disseminate information. Officers may also approach an individual and **request** the person to show identification, remove hands from pockets, or step to the side and answer questions. Officers **cannot require** the individual to stay and talk with them, or require the individual to identify him/herself. The key element is that the person remains totally free to leave or not cooperate.

Note: An officer has no authority to conduct any kind of search during a consensual encounter, unless the person gives the officer voluntary consent. It is always permissible to ask for consent to search. Mere questioning is neither a search nor a seizure.

Elevating a Consensual Encounter into an Illegal Detention

Officers must exercise care not to say or do anything during a consensual encounter that would cause a reasonable person to feel obliged to comply. The exact words officers use, and even their body language and tone of voice, are extremely important to a court that is trying to decide if the contact was voluntary or not. If an officer starts to **give orders, demand answers, display a weapon, use a harsh tone, tell the person to stop what he or she is doing, or to move to some other location**, the encounter will be viewed as an illegal detention, unless supported by “reasonable suspicion.”

Elevating a consensual encounter by improper behavior can have negative legal and professional repercussions. An officer could:

- Violate the Fourth Amendment right against unreasonable searches and seizures, resulting in the suppression of evidence
- Be civilly prosecuted for a violation of civil rights
- Be criminally prosecuted for false imprisonment
- Face disciplinary action

CONCLUSION

If an individual refuses to cooperate during a consensual encounter, we may not require them to do so. The person must be allowed to leave unless we obtain or develop sufficient additional information which would justify a detention or arrest.

QUIZ

1. What is the key element of a consensual encounter?

Answer: The key element is that the person remains totally free to leave or not cooperate.

Consensual Encounter or Illegal Detention?

2. Late one evening, an officer observed someone sitting alone in a parked car in the empty parking lot of a closed business. Wishing to investigate, the officer drove up to the parked car. He turned on his emergency lights to identify himself as a peace officer.

Answer: Illegal Detention. Because the officer's red light means "Stop," and because there was no reasonable suspicion that the person was connected to any criminal activity, this was an illegal detention.

3. An officer arrived at the scene of an accident to assist another officer. The second officer interviewed the witnesses to the accident and took their statements.

Answer: Consensual Encounter. The individuals voluntarily remained at the scene and were free to leave or not cooperate with the officer.

4. Two officers were leaving a restaurant when an elderly couple approached them and asked for directions to the zoo. The officers gave them directions and then asked general questions about their visit to town.

Answer: Consensual Encounter. The individuals spoke with the officers voluntarily and were free to end the encounter.

5. An officer suspects an individual of possessing a controlled substance but does not have enough information to legally detain him. The officer approaches the person and asks if he would be willing to answer a few questions.

Answer: Consensual Encounter. During a consensual encounter, an officer may approach an individual and **request** information but **cannot require** the individual to stay and talk with them.

6. An officer ordered a potential witness not to leave the scene until after an interview was completed.

Answer: Illegal Detention. There is no enforceable duty to be a witness. If an officer starts to give orders during a consensual encounter, the encounter will be converted to an illegal detention.