



TRAINING BULLETIN

Los Angeles Police Department

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Volume L, Issue 3

March 2021

CONTACTS WITH THE PUBLIC – PART I LEGAL CONSIDERATIONS

Police officers 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. The purpose of this Bulletin is to assist officers in identifying and articulating the unique and specific details of encounters which may lead to an arrest.

The Fourth Amendment

The first part of the Fourth Amendment of the U.S. Constitution deals with the right of people to be free from unreasonable searches and seizures. A Fourth Amendment “seizure” i.e., detention, does not occur merely because an officer approaches an individual and asks a few questions, or asks for identification, as in a consensual encounter. Nor does a detention exist, regardless of the officer’s words or commands, if the person ignores the officer’s commands. However, a detention may result from physical restraint, unequivocal verbal commands, or words or conduct by the officer which induce or compel the person’s compliance.

Procedural Justice

To be successful in daily contacts, officers must rely on a combination of their common sense, persuasive ability, personal restraint, and a good working knowledge of the law. Applying the four tenets of procedural justice during each public contact increases the likelihood of a successful encounter and better relations with the community. The four tenets that create the fundamental framework for operating in a procedurally just manner include:

- **Respect**
- **Neutrality**
- **Voice**
- **Trustworthiness**

Note: These tenets are examined thoroughly in Contacts with the Public – Part II, Procedural Justice Training Bulletin.

CONSENSUAL ENCOUNTER

A consensual encounter is a face-to-face contact between a police officer and an individual under circumstances which would cause a reasonable person to believe they are free to leave or otherwise not cooperate. Consensual encounters can take place almost anywhere, on streets and sidewalks, in cars, on buses, in airports, homes, or businesses. No legal justification is needed as long as officers are in a place they have a right to be. What makes consensual encounters unique, is that officers, because they have neither reasonable suspicion to detain nor probable cause to arrest, **cannot legally prevent the person from just walking away.** The person has a lawful right to refuse to cooperate. Refusal to cooperate, by itself, is not reason enough to detain. Nor would a refusal to cooperate constitute a violation of Penal Code §148, which makes it unlawful for a person to willfully resist, delay, or obstruct an officer in the performance of his or her duties. So, effective and lawful consensual encounters require officers to obtain the individual's cooperation, without resorting to force, threats, coercion or intimidation.

Officers must exercise care not to do or say anything during a consensual encounter that would cause a reasonable person to feel obligated to comply. Lawful consensual encounters do not require officers to terminate questioning even if a person walks away (provided the officer stays in a public place).

For example: After observing somewhat suspicious conduct by a would-be passenger at an airport, the uniformed officer asked the individual if she would mind answering some questions. The individual said she did not want to miss her flight (leaving shortly), so they walked along together. The officer obtained information that eventually led to the discovery of narcotics at the destination airport. The court found no detention, only a consensual encounter.

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 individual to show identification, remove hands from pockets, ask about parole and probation status, 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 reasonable person would feel free to leave or not cooperate.

For example: A highway patrol 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.

Two peace 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.

A peace 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.

It is important to remember that before a “detention” exists in the law, it is necessary that the person actually submits to your assertions of authority. If the person runs away for example, there has been no detention, and none occurs until and unless you actually effect a stop. In other words, a person is not 'seized' within the meaning of the Fourth Amendment unless he or she is somehow physically restrained or voluntarily submits to a peace officer's authority.

Consensual Search Requirements

Absent a search warrant, officers may conduct a search in a limited set of circumstances. One such circumstance is when the subject of the search gives his or her consent for the search. There are five basic lawful requirements to consent searches:

1. Consent was given (the person must give expressed or implied consent)
 - a. Express Consent – when a person responds to an officer's request for permission to search using words that reasonably indicate the person is agreeing to the specific request.
 - b. Implied Consent – when a person's actions, gestures or response sufficiently communicates permission to the officer's request to search. Failure to object or respond to an officer's request to search **does not** constitute implied consent.
2. Consent was given voluntarily
 - a. Authorization is given of one's own free will, absent any duress.
 - b. No threats, promises or demands for consent were used.
3. Scope of consent (only search those places and/or things that the person gave consent to search)
4. Intensity of search (the search shall not be unduly intrusive and consent to search does not provide authorization to destroy or damage the thing being searched).
5. Duration of search (the search shall not be unreasonable in length of time)

Note: Remember, at any time, the consenting person can modify the scope of the search or withdraw consent to search.

Consent may be obtained either in writing or verbally:

When obtaining written consent, use the Department's Consent to Search In-House Form 11 (English language form) or In-House Form 12 (Spanish language form). The Spanish language form shall only be given by an officer fluent in Spanish (meets Department language proficiency standards) and is capable of testifying in Spanish.

These forms allow for the documentation of the consent to search a premises, person, personal property or vehicle, and include necessary provisions for obtaining a lawful consent to search.

When obtaining verbal consent, the entire interaction involving the request for and obtaining of consent shall be captured on Body Worn Video (BWV) or a Digital In-Car Video System (DICVS).

For verbal consent, each of the following points shall be declared (or asked) and recorded on Body Worn or Digital In-Car Video:

- A clear request for consent to search the premises, person, personal property (including mobile devices) or vehicle.
- Advisement that the person can refuse or withdraw consent to the search at any time, even after he or she has consented, and the search has begun; and,
- Confirmation of the person's understanding of the consent they have provided.

Even when granted Implied Consent, Department personnel shall still confirm the consent verbally and ensure that the confirmation is captured by Body Worn or In-Car Video. In the absence of BWV or DICVS at scene, Department personnel shall obtain written consent for a search, absent probable cause.

After consent has been requested, granted and recorded on BWV, DICVS or the In-House Forms, the individual consenting should be placed in a safe distance from the location or items to be searched. Best practices suggest that an officer should use the BWC and DICVS as an audio recording device to narrate their actions to the best of their ability and indicate information such as but not limited to the following:

1. Why they are searching the premises, vehicle, item or person;
2. What they are searching for;
3. Where they are searching;
4. What was discovered and/or recovered; and,
5. Where the items were located.

If nothing is discovered during the consent search officers should make an attempt to explain to the individuals the reason they asked for consent to search and how the search was conducted.

Automated Field Data Report (AFDR) Reminder: State law and Department policy require all sworn personnel assigned to any field, specialized, or investigative assignment (e.g., patrol, task force, detective, and plain clothes assignments) to complete an AFDR for every person detained or searched no matter what the reason for the initiation of the encounter. For example, you are not required to complete an AFDR when engaging in a consensual encounter because it is not a detention. If, however, you conduct a pat down search based on either consent or reasonable suspicion, you must complete an AFDR.

Elevating Consensual Encounters

Officers must exercise care not to do or say anything during a consensual encounter that would cause a reasonable person to feel obligated to comply. The exact words officers use, and even their 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 a detention, and it will be illegal unless supported by reasonable suspicion.

For example: Officers saw two men walk past each other in an alley in an area with a lot of drug trafficking. They believed the men would have met each other if the police hadn't been there. This "looked suspicious" to the officers, so they contacted one of the men and asked for identification. When he refused, they ordered him to stay and investigated further. Refusal to cooperate, by itself, is not reason enough to detain, so the detention was illegal.

There are usually alternate actions that an officer can take to avoid elevating a consensual encounter into a detention.

Possible Elevating Actions	Alternate Actions
Use of emergency lights	Use a spotlight rather than emergency lights
Location of the officer or the police vehicle that prevents the person or car from leaving	Select an unobstructive position or location
Issuing orders or commands	Request consent, seek voluntary cooperation
Use of accusatory questioning or tone of voice	Use of nonaccusing, helpful, inquisitive tone of voice; request compliance rather than ordering it
Conducting patdown searches without legal justification	Ask for consent to patdown
Demanding and/or keeping a person's identification	Request identification and return it when finished or upon request

REASONABLE SUSPICION

Reasonable suspicion is the standard used to justify a detention. It exists when an officer has specific and articulable facts that lead an officer to reasonably believe that:

- unusual activity has occurred, is occurring, or is about to occur; and
- the unusual activity is related to a crime; and
- the person to be detained is connected to that activity.

Reasonable suspicion must be supported by **articulable facts** rather than hunch or instinct. These facts can be drawn from the officer's observations, personal training and experience, or information from eyewitnesses, victims, or other officers. In some cases, the decision to detain is based on a single circumstance; e.g., the individual matched the description of a wanted person or a person who had just committed a crime in the area. But often the decision to detain is based on a variety of circumstances which, when considered as a whole, are sufficiently suspicious to justify a detention.

Contributing Factors

The following are some of the factors that contribute to establishing reasonable suspicion. **Although none of these circumstances alone will necessarily justify a detention, various combinations of them will.**

- appearance of suspect
- actions (hiding objects, furtive movements, flight from officers or crime scene)
- driving behaviors
- prior knowledge of the person (criminal record or conduct),
- demeanor (nonresponsive, nervous)
- time of day (unusualness)
- area of the detention (near crime scene, known criminal activity in area)
- officer training and experience (modus operandi, expertise in certain area such as narcotics or gang activity)

Note: Flight by itself does not establish reasonable suspicion and cannot justify a detention.

It is important that the officer's training and experience can allow an officer to draw conclusions that would escape a lay person. A drug recognition expert may recognize the symptoms of a person under the influence of a controlled substance. Similarly, officers with demonstrable expertise in a particular field (i.e., narcotics, vice, or gangs) may be able to articulate reasons for a stop, while a less tenured officer, confronted with identical facts, may not be able to do so.

For example: An officer observed a man and woman standing on a corner in an area known for high drug activity. The woman appeared nervous, slyly looking in all directions. The woman reached into her pocket and gave the man a baggie in return of for something; he then walked away. The officer is justified in detaining the man and woman on reasonable suspicion of drug-dealing.

An officer was driving when a car passed him. The car swerved and almost hit another car. The officer had reasonable suspicion to stop the driver for vehicle code violations.

It was reasonable to detain a man with an axe who was riding a bicycle at 3:00 a.m., even though no “axe crime” had been reported. “Some activity is so unusual, so far removed from everyday experience that it cries out for investigation.”

Investigative Actions

Once officers have stopped or detained a person, they may take whatever investigative actions are reasonable under the circumstances to determine the person’s possible participation in a crime. **A detainee is not obligated to answer any questions** an officer may ask during a lawful detention. The refusal to answer questions alone does not provide probable cause for escalating a detention to an arrest.

Common investigative actions include:

- questioning the person about their identity and conduct;
- contacting other persons to (e.g., witnesses) confirm explanations, verify identification, or determine whether a person is wanted (warrant check);
- checking premises, examining objects, or contacting neighbors or other individuals to determine whether a crime (e.g., burglary) actually occurred;
- conducting a field show-up.

For example: An officer detained a robbery suspect based on a broadcast description of the person and the area of the robbery. The officer contacted the store clerk to identify the person. The detention was legal even if the clerk says the person is not the one who robbed the store.

Length of Detention

A detention must be temporary and last no longer than is necessary to carry out the purpose of the stop. A detention which is legal at the beginning can become an illegal arrest if extended beyond what is reasonably necessary under the circumstances. Often what officers see and hear during a detention (evasiveness, nervousness, conduct, property) will increase their suspicion, justify a longer detention, lead to investigation of a different offense, or possibly even provide probable cause for arrest. If the person answers all questions about the suspicious circumstances satisfactorily, so that suspicion decreases or disappears, the person must be released.

For example: A traffic stop, originally based on an excessively loud muffler, was validly prolonged to ascertain positive identification and vehicle ownership. When the driver did not have a license, the car was not registered to any of the three occupants, and the occupants gave conflicting answers to questions.

An officer detained a possible murder suspect. The officer confirmed the person's identity and alibi. The officer must release the person as the initial reason for the detention had been satisfied and no other suspicious behavior was observed.

Transporting a Person During a Detention

The person usually will be considered under arrest if transported, without consent, by an officer to a different location. Because of this, officers must be careful before transporting a detained person. Officers should not transport a person during a detention unless:

- the detainee gives permission
- it is impractical to bring the witness/victim to the detainee's location
- the conditions of the detention are dangerous to the person
- the conditions of the detention are dangerous to the officer(s)
- independent probable cause exists to arrest the subject

Patdown Search

Usually, searches are not permitted during a detention unless the person gives voluntary consent, is on parole, on probation with search conditions. However, if an officer reasonably believes that the person is carrying a concealed weapon, a dangerous instrument, or an object that can be used as a weapon, the officer is justified in conducting a patdown search to protect the officer or others from unexpected assault. The scope of the search is limited to a patdown of the outer clothing for possible weapons only.

Officers must be able to articulate the specific facts which lead to the search. The following factors may support reasonable suspicion to believe the person may be carrying a weapon or pose a danger:

- person's clothing (e.g., a bulge in clothing, or wearing a heavy coat on a hot night)
- person's actions (e.g., trying to hide something, overly nervous, threatening)
- prior knowledge of person for carrying weapons or violent behavior
- isolated location so officer is unlikely to receive immediate aid if attacked
- time of day
- reason for detention (e.g., serious, violent, or armed offense)
- similar patdown of detainee's companion revealed a weapon
- ratio of suspects to officers

For example: *It was proper to detain and patdown a man who had been standing on a corner in a high narcotics area for several minutes, where two other persons nearby, believed to be sellers, had yelled “rollers” to him, after which he had started to leave, then turned towards the approaching officers and reached into his jacket.*

It was proper for an officer to detain and pat down a man who was walking along the street at 3:00 a.m. carrying what appeared to be a metal pry bar or billy club and wearing bulky clothing, and the officer knew him from numerous prior police contacts and drug arrests.

Parole or Probation Search

Many probationers and all paroles are required to submit to warrantless searches as a condition of their release from custody. The purpose of the search condition is to deter the commission of crimes and to protect the public, and the effectiveness of the deterrent is enhanced by the potential for random searches, giving probationers and parolees an incentive to avoid drugs, weapons, etc. Officers are not required to justify the search but are still obligated to verify search conditions prior to search to ensure the search conditions are current via the Want and Warrant System. Additionally, officers may contact probation or parole if any questions arise about the search conditions or the active status.

PROBABLE CAUSE

The Fourth Amendment requires probable cause to make an arrest. Probable cause to arrest is a set of facts that would cause a person of ordinary care and prudence to entertain an honest and strong belief that the person to be arrested has committed, is committing, or is about to commit a crime. Definite information, or enough to convict the individual is not needed, only the fair probability that the individual committed the crime. Facts required to establish probable cause may include, but are not limited to:

- direct investigation or reports
- circumstantial evidence
- second-hand statements from reliable sources

Officers' expertise is part of the equation for determining probable cause. For officers versed in a specific field of law enforcement, an activity which might otherwise appear innocent may provide probable cause to a trained eye.

For example: *An officer stopped a driver for a traffic violation and as he approaches the car, observes a cardboard box in the back seat. The box contained glass beakers and flasks with a white residue. The officer's training and experience enable him to recognize the contents of the box as items commonly used to manufacture methamphetamine and the officer makes an arrest.*

In addition to the facts, knowledge, training, expertise, experience, observations, etc., that the officer personally has, probable cause can consist of information conveyed to the officer by others (such as victims, citizens, other officers, and “official channels,” informants, tipsters, etc.), as long as it is reasonable to rely on this information under the totality of the circumstances.

Increased Suspicion

Often what officers see and hear during the detention (evasiveness, nervousness, other conduct, or property) will increase their suspicion and provide probable cause for arrest.

For example: An officer saw Gonzales, an admitted and known narcotics user, in a deteriorated physical state and asked him what he was doing. Gonzales gave some improbable answers, and kept reaching toward a pocket out of which the officer could see one-half inch of a “cylindrical rolled-up” clear plastic baggie protruding. Based on the officer’s considerable training and experience in the identification and packaging of controlled substances, the officer believed it to be a bindle of contraband, and removed it. The officer’s actions were legal: the encounter was originally consensual, but quickly developed into probable cause to arrest based on Gonzales’ background, emaciated condition, track marks, hand movements, the story he told, and the type of container which the experienced officer could see. This probable cause to arrest justified the search and seizure, even though the actual arrest did not occur until moments later.

Factors that contribute to establishing reasonable suspicion can also be used to establish probable cause, or can escalate into probable cause.

Factors for Reasonable Suspicion	Probable Cause to Arrest
Possible influence of alcohol or drugs	Illegal level of intoxication, contraband
Actions/words/demeanor during detention	Self-incrimination, contraband, stolen property
Erratic driving behaviors	DUI, contraband
Patdown for weapons	Possession of illegal weapons or contraband
Possible connection to burglary/robbery	Discovery of stolen property

Documenting Probable Cause

Officers must be able to articulate in court and convey in the arrest report, the facts leading up to the arrest. The specific details of each incident and all relevant circumstances that reasonably caused the officer to believe the suspect was engaged in criminal activity must be documented, usually in chronological order, so that no obvious questions are left unanswered. Not only does the arrest report provide investigative leads and a basis for prosecution, it is also critical for refreshing an officer's recollection of events prior to testifying in court.

REVIEW

The following scenario shows how a consensual encounter can escalate into probable cause to arrest.

Note: The tactics used in this scenario run counter to the tactics taught by the Department. Officers contacting an individual while seated in their vehicle seriously compromise their ability to react and defend themselves should they encounter an armed suspect. This scenario is provided because of its legal significance.

Officers patrolling a commercial area at 2:30 a.m. observe two young men walking quickly down the street. Most, if not all of the businesses in the area are closed. The officers decide to contact the two individuals.

Consensual Encounter: *The officers pull their vehicle up along side the individuals and illuminate them with their spotlight. Shining a spotlight on defendant did not amount to a detention. One of the officers then asks the individuals if they would mind stopping for a second. When the individuals stop, the officers get out of their vehicle and approach. The officers ask both individuals for their identification. They both comply. The officers ask several questions of the individuals, all of which they readily answer.*

Reasonable Suspicion: *As one officer began to fill out field interview cards, a "Burglary Just Occurred" crime broadcast came across the police radio describing suspects similar in appearance to the two men and involving a location two blocks away. As the broadcast ended, both men bolt and attempt to flee. The officers ordered both to stop. One does and the other continues to run until tackled by one of the officers. Thus, both are detained.*

Probable Cause: *The witness, a security guard, is transported to the officers' location and identifies both men as the suspects he had observed exiting and running from the burglarized location.*

CONCLUSION

It will be to the officer's advantage to have a thorough understanding of consensual encounters, reasonable suspicion, and probable cause through the lens of procedural justice. Proper application in conjunction with building trust with the community will ensure the officer's success with enforcing the law both fairly and impartially. Becoming confident in expressing the corresponding facts in reports and testimony will ensure that prosecutors file charges and cases do not get dismissed in court.

This Bulletin cancels and supersedes Volume XXXVIII, Issue 1, Legal Contacts with the Public, April 2006

Field Training Services Unit
Police Training and Education

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