



KANSAS CITY, MO. POLICE DEPARTMENT

PROCEDURAL INSTRUCTION

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NO.

17-06

SUBJECT

Detaining & Questioning and Search & Seizure Procedures

AMENDS

REFERENCE

P.I.: Arrest Guidelines/Procedures, Language Interpreting Services, Intoxicated Driving Arrests, State Search Warrant Procedures, Towing/Protective Custody of Vehicles and Contents

RESCINDS

PI: 09-12, Questioning and Detaining Persons, Arrest, Search and Seizure
12-3, Miranda Warning and Miranda Waiver
DM: 13-10, "Miranda Warning and Waiver"

*I. INTRODUCTION

This procedural instruction will establish procedures and guidelines pertaining to legal limitations and restrictions on the detaining and questioning of persons, the use of the Miranda Warning and Miranda Waiver, search of vehicles and premises, and seizure of items.

II. TERMINOLOGY

- A. **Contact and Advise** (formerly Questioning Advisory) – A record intended to provide a way to let sworn members know of an interest to interview the individual named in the record. It is not a request to arrest an individual. Members should refer to the current written directive entitled, "Arrest Guidelines/Procedures" for further information.
- B. **Content Inventory** – Required for the towing and protective custody of any vehicle. A content inventory is a list of all items that are contained in a vehicle that are not recovered when a vehicle is being towed. The content inventory permits opening closed compartments and containers to determine content. Any materials or items of contraband or of evidentiary nature discovered may be admissible evidence in court.
- C. **Exigent Circumstances** – An emergency demanding immediate action by a sworn member with insufficient time for the sworn member to obtain a search warrant or court order.
 - 1. This authority is normally invoked when human life is endangered by accidents, sudden illnesses, or criminal activity.
 - 2. Exigent circumstances include those circumstances which make obtaining a warrant impossible or ill advised in light of the urgent need for immediate action.
 - 3. Members should thoroughly articulate the circumstances in case reports.

- D. **Frisk** – A pat down by a sworn member of the outer clothing of a person in an attempt to discover weapons which might be used to assault the sworn member, based on reasonable suspicion to believe that a person may be armed and dangerous.
- *E. **Plain Feel Exception** – Evidentiary exception applying to items that are immediately apparent while conducting a frisk to be contraband to the sworn member by sense of touch. If the sworn member must squeeze, slide, or otherwise manipulate the object, the “plain feel exception” will not apply.
- F. **Plain View Doctrine** – If a sworn member is at a place where they have a right to be and observes in plain view objects which they have probable cause to believe, and are immediately apparent as contraband or fruits or instrumentalities of crime, those items may be seized without a warrant.
- G. **Probable Cause** – A set of facts and circumstances available to the sworn member upon inquiry which warrants a person of reasonable prudence and caution to believe that certain items may be contraband, stolen property, or subject to seizure as evidence of a crime or that a crime has been committed and that the suspect has committed the crime.
- H. **Reasonable Suspicion** – Circumstances when a sworn member may justifiably approach a person for purposes of investigating possible criminal behavior even though there is no probable cause for arrest. The sworn member must be able to point to specific and articulable facts, which, taken together with rational inferences from those facts, reasonably warrants intrusion.
- I. **Reliable Source** – An individual who in the past has provided reliable information to the sworn member which aided in the arrest for, or prosecution of, a crime. Present information should be accompanied by facts and circumstances to show the individual had a means to observe or come by the information to show present reliability.
- J. **Search** – A visible and/or physical examination of a person’s house, place, or personal property where the right of privacy is expected, or of the person, with the intent to discover contraband, illicit or stolen property, or some evidence of guilt to be used in the prosecution of a criminal action for some crime or offense with which the person is charged.

III. TABLE OF ANNEXES

This directive has been organized into annexes for easy reference.

- Annex A Stop and Frisk
- Annex B Custodial Interrogations / Miranda Warning and Miranda Waiver
- Annex C Search of a Vehicle
- Annex D Search of Premises by Consent

Darryl Forté
Chief of Police

Adopted by the Board of Police Commissioners this _____ day of _____,
20__.

Alvin Brooks
Board Vice President

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***TERRY STOP**

A. Stopping/Detaining an Individual

1. A sworn member may stop or detain any individual(s) abroad, without making an arrest, only when the sworn member has reasonable suspicion to believe that the person is committing, has committed, or is about to commit a crime.
2. Reasonable suspicion can be based on the sworn member's experience and one or more of the following facts:
 - a. Personal observation of incriminating matters.
 - b. Facts learned by the sworn member in the investigation of a crime.
 - c. Individual in the vicinity at the time of a crime.
 - d. Flight of an individual from the presence of sworn members, when at or near the scene of a crime.
 - e. Odors and sounds especially when combined with other facts such as apparent flight.
 - f. Computer entry or information broadcast by the police dispatcher.
 - g. Information from a reliable source.
 - h. An individual's reputation is known to a sworn member.
 - *i. Anonymous tips that contain predictive information about future movements of the suspect so that the sworn member may sufficiently corroborate the information.
3. A brief stop or detention may take place even though there is no probable cause for an arrest at that time.
 - a. Sworn members may ask the individual's name, address, business abroad, and where they are going.

- b. An individual's refusal to give their name, address, and business abroad is not a chargeable offense, however, it does add to reasonable suspicion.
- *4. Reasonable suspicion for the detention of an individual must be included in any reports completed.
- *5. The stop and detention must last no longer than necessary to confirm or deny the suspicion of criminal activity afoot.

B. Frisking an Individual

- 1. A sworn member may frisk an individual for a weapon when they have additional reasonable suspicion to believe that the individual may be armed and dangerous.
 - a. Officer safety alone will not be considered reasonable suspicion to conduct a frisk.
 - b. Other factors must be present, e.g., quick movements by an individual, time and place of stop, sworn member's experience, unusual conduct by an individual.
- 2. The examination of the outer clothing cannot exceed a frisk unless what is believed to be a weapon is discovered. Only then can the pockets or concealment areas of the clothing be entered for the purpose of extracting what is reasonably believed to be a weapon.
 - a. In the course of the frisk, if the sworn member comes into contact with objects immediately recognizable as contraband, the sworn member will seize the contraband and may arrest the individual, based on the Plain Feel Exception.
 - b. A sworn member will seize items which are immediately apparent as contraband or fruits or instrumentalities of crime which are in plain view.
 - c. A sworn member questioning an individual or conducting a pedestrian check cannot, at any time, conduct a general exploratory search for evidence of criminal activity.

3. When a sworn member has additional reasonable suspicion to believe an occupant of a vehicle may be armed and that individual has not satisfactorily proven that they have a legal reason to be in possession of a firearm, e.g., a permit or endorsement from any issuing state to carry a concealed weapon, the sworn member may frisk the individual and conduct a limited search of the vehicle where a weapon may be placed or hidden. This search must be limited to:
 - a. The passenger compartment of the vehicle.
 - b. Those areas readily accessible in which a weapon may be placed or concealed.
4. Members should refer to the current written directive entitled, "Arrest Guidelines/Procedures" regarding weapon possession charges.
5. Sworn members are allowed to search an individual who is not under arrest. This kind of search frequently occurs at an airport when sworn members make contact with individuals who match drug courier indicators. This search may only be done with the consent of the person. Verbal consent is sufficient for a search of an individual under these circumstances. Sworn members should be aware that the ability to search an individual with their consent in no way alters or eliminates the specific procedures that must be followed when conducting a strip search or body cavity search as discussed in the written directive "Arrest Guidelines/Procedures."

***CUSTODIAL INTERROGATIONS / MIRANDA WARNING AND MIRANDA WAIVER**

A. General Guidelines

1. When an adult has been taken into police custody or is otherwise deprived of their freedom of movement in any significant way, it will be the duty of the sworn member initiating custodial questioning to give the Miranda Warning. There is absolutely no necessity to give a Miranda Warning at the time of arrest as long as the sworn member does not undertake any questioning.
2. Any spontaneous statement or admission not the result of questioning may still be, and has always been, admissible in court. Spontaneous statements or admissions should be documented by the member hearing each statement.
3. The Crimes Against Children Section will be contacted before an in-custody interview or interrogation begins with a juvenile.
4. The Miranda Warning does not need to be given when:
 - a. An individual is stopped at any location under suspicious circumstances, it is not necessary to give the Miranda Warning until such time as the sworn member has decided to place the individual in police custody or otherwise deprive them of freedom of movement in any significant way, and desires to question them further.
 - b. A citation or summons is issued. Although an ordinary traffic stop temporarily curtails the "freedom of movement" of the driver, questioning at the scene does not constitute custodial interrogation. A driver taken into physical custody and removed to a police facility for purposes of booking, bonding, verification, etc., must be read the Miranda Warning prior to any questioning at the police facility.
 - c. A sworn member is engaged in general, on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process. It is considered an act of responsible citizenship for individuals to give whatever information they may have to aid in law enforcement.

- d. An individual enters a police facility and states that they wish to confess to a crime, or an individual calls the police to offer a confession or any other statement they desire to make.
 - (1) Such are strictly volunteered statements and are not barred by the Fifth Amendment.
 - (2) Their admissibility in court is not affected by the U.S. Supreme Court ruling in *Miranda vs. Arizona*.
 - (3) However, if before any questioning the individual is placed in custody, the Miranda Warning should be given.
5. Members must read the Miranda Warning and Miranda Waiver in order to effectively advise an individual of their rights. The Miranda Warning will be read directly from any of the following:
 - a. This written directive.
 - b. The Miranda Warning Card, Form 72 P.D.
 - c. The Miranda Warning and Waiver, Form 340 P.D.
 - d. Pocket Reference Book (Blue Book), Form 321 P.D.

B. Procedure

1. Miranda Warning

When a sworn member takes an individual into police custody, or otherwise deprives them of their freedom of movement in any significant way, that individual will be issued Miranda Warning before any questioning takes place. The Miranda Warning is as follows:

- a. You have the right to remain silent.
- b. Anything you say can and will be used against you in a court of law.
- c. You have the right to talk to a lawyer and have him/her present with you while you are being questioned.
- d. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish.

- e. You can decide at any time to exercise these rights and not answer any questions or make any statements.

2. Miranda Waiver

- a. After reading the Miranda Warning and in order to secure a “waiver” the following questions should be asked and an affirmative reply secured to each question.
 - (1) Do you understand each of these rights I have explained to you?
 - (2) Having these rights in mind, do you wish to talk to us now?
- b. If the individual wishes to waive their rights, the Miranda Warning and Waiver, Form 340 P.D. will be completed and signed by the individual before any questioning begins.
 - (1) A witness will be present through the signing of the waiver by the person. The witness must be someone other than the member providing the Miranda Warning and Waiver.
 - (2) If the custodial questioning will be electronically recorded, the signing of the Miranda Warning and Waiver Form should be captured in the recording.
- c. If an individual wants to give a statement but refuses to sign the Miranda Warning and Waiver, Form 340 P.D., the sworn member should write "refused" in the signature space and complete the remainder of the form.

3. Custodial Questioning

- a. Custodial questioning can begin if an individual understands the warning and still wishes to talk without consulting a lawyer and/or having them present.
 - (1) It is the discretion of the investigative element whether to electronically record or type the statement except for those crimes required by law.
 - (2) The names of all persons present during questioning and the time should be documented in the formal statement. The person will be requested to date and sign the statement.

- b. Questioning must stop if the individual indicates prior to or during custodial questioning that:
 - (1) They wish to remain silent. Questioning will not begin or continue until the person voluntarily reinitiates communication with the police which leads to re-interrogation and voluntarily, knowingly, and intelligently waiving their rights, or
 - (2) They affirmatively state they want to consult with a lawyer. Questioning will not begin or continue until:
 - (a) The individual has consulted with a lawyer, or
 - (b) The individual voluntarily reinitiates communication with the police which leads to re-interrogation and voluntarily, knowingly, and intelligently waiving their rights, or
 - (3) There is a break in custody or the person is released from custody and fourteen days have passed (Bright Line Rule).
[REDACTED]

4. Recording Custodial Interrogations

- a. Recordings include any form of audio tape, videotape, motion picture, or digital media.
- b. An interrogation may be recorded with or without the knowledge or consent of a subject.
- c. When feasible, custodial interrogations should be recorded of persons suspected of committing or attempting to commit:
 - (1) Murder.
 - (2) Assault in the first degree.
 - (3) Assault of a law enforcement officer in the first degree.
 - (4) Domestic assault in the first degree.
 - (5) Elder abuse in the first degree.

- (6) Robbery in the first degree.
 - (7) Arson in the first degree.
 - (8) Forcible rape.
 - (9) Forcible sodomy.
 - (10) Kidnapping.
 - (11) Statutory rape in the first degree.
 - (12) Statutory sodomy in the first degree.
 - (13) Child abuse.
 - (14) Child kidnapping.
- d. Members are not required to record an interrogation when:
- (1) The interrogation occurs outside the state of Missouri.
 - (2) Exigent public safety circumstances prevent recording.
 - (3) The subject makes spontaneous statements.
 - (4) The recording equipment fails.
 - (5) Recording equipment is not available at the location of the interrogation.
- e. Members will record the interrogation in its entirety. If the recording equipment:
- (1) Is turned off during the interrogation, members will document the reasons and notify a supervisor.
 - (2) Fails to operate, members will document the circumstances and notify their supervisor immediately.
- f. A copy of the recording will be made for the investigative element case file and provided to a prosecutor.
- g. Recordings will be recovered as evidence in accordance with the current written directive, "Recovered Property Procedures."

- h. Members are not required to record non-custodial questioning conducted:
 - (1) During arrest bookings.
 - (2) When a subject voluntarily agrees to questioning.
 - (3) When the subject is detained but not arrested.
 - (4) Questioning during the transportation of an arrest.
 - (5) Questioning for an intoxicated arrest report.

5. Report Requirements

- a. Although rare, anytime a sworn member, not assigned to an investigative element, reads an individual the Miranda Warning, the sworn member will:
 - (1) Notify the detective handling the investigation that the Miranda Warning was given and the response given by the person.
 - (2) State such in the report(s).
- b. In the rare instance that a sworn member, not assigned to an investigative element, takes a confession, admission, or statement, the sworn member will state the following information in their report(s) to eliminate any question of admissibility of the utterance or writing:
 - (1) The circumstances of the utterance or writing.
 - (2) The location the utterance or writing was made.
 - (3) The length of time the individual had been in custody.
 - (4) The individual's ability to understand their own actions, e.g., education level, physical and mental condition, criminal background, age, experience, or anything else that would tend to show that the suspect knew what they were doing when they agreed to talk to the officer. This evidence indicates a knowing and intelligent waiver.

6. When interrogating an intoxicated driving arrest, members should refer to the current written directive entitled, "Intoxicated Driving Arrests."
7. When a sworn member wishes to question an individual who does not speak English, the current written directive entitled, "Language Interpreting Services," will be referred to.
8. Hearing impaired individual(s) who are arrested or otherwise deprived of freedom of movement in any significant way, will be provided the services of an interpreter before any questioning. Communications Unit personnel should be contacted for the names and telephone numbers of qualified interpreters.

C. Facts for Consideration by Law Enforcement Officers

1. If the warnings are not given before any questioning, the statements themselves and evidence obtained through such statements are not admissible in court.
2. The waiver of their rights to remain silent and to have a lawyer with them must be knowingly and intelligently made. Care should be taken that the suspect is in such physical and mental condition that they can give a knowing and intelligent waiver.

SEARCH OF A VEHICLE

A. General Guidelines

1. No search of a vehicle or occupant(s) will take place during the course of a traffic violation unless one of the following exists:
 - a. The sworn member has reasonable suspicion to believe that their life and/or the lives of others are in danger or that the individual is armed or dangerous.
 - b. The sworn member observes contraband in plain view in the vehicle (Plain View Doctrine). The sworn member may then make an arrest and seize the contraband.
2. When a sworn member has probable cause to believe a vehicle, which is readily movable, contains articles which they are entitled to seize and for which a warrant could be obtained, i.e. contraband, the entire vehicle may be searched for such articles without obtaining a search warrant. This includes closed containers found in the vehicle.
 - a. The right to search and the validity of the seizure in this instance are not dependent upon arrest.
 - b. The extent of the search is defined by the object of the search and the places in which it could reasonably be concealed.
- *3. Refer to the current written directive entitled, "Towing/Protective Custody of Vehicles and Contents," for information regarding content inventory of a vehicle prior to towing and the search of a vehicle under the authority of a search warrant.

B. Consent to Search

1. A valid consent to search can be given by an individual having an immediate and present right to possess the vehicle.
2. When an individual gives verbal consent to search a vehicle, the sworn member will make every effort to obtain the consenting individual's signature on a completed Consent to Search, Form 155 P.D. (Consent to Search Form), prior to initiating the search. A Department video camera can be utilized to document a verbal or a written consent to search.

- a. The original Consent to Search Form will be scanned into the Intellivue system as a supplement to the original report. If an original report does not exist, a report will be completed in ARS using the Nature of Call "GEN-Consent to Search."
 - b. The copy of the Consent To Search Form will be given to the consenting individual.
 - c. Guidelines regarding video "hold" procedures will be followed in accordance with the current written directive entitled, "Internal Technologies."
3. If the individual chooses not to sign the Consent To Search Form after giving prior verbal consent to search, this would not be viewed as a revocation of the verbal consent and the sworn member may search the vehicle. The sworn member will document in the applicable report(s) the verbal consent and where recovered items were found.
 4. The following must be kept in mind by sworn members who conduct a search by consent:
 - a. Consent must be voluntary. It must be given without force, duress, or compulsion of any kind.
 - b. The extent of the search must be limited to:
 - (1) The places where the items may reasonably be found .
 - (2) The area specifically consented to, if applicable.
 - c. Once consent for a search has been given it is not required that the consenting individual remain at the scene.
 - d. The consent may be revoked by the consenting individual any time during the search. If the consent to search is revoked, the searching sworn members must discontinue their search immediately, unless another legal basis exists to continue or a search warrant is obtained.

SEARCH OF PREMISES BY CONSENT

A. General Guidelines

1. A valid consent to search may be given by an individual who has apparent rights to the premises.
 - a. Any individual who possesses common authority over the premises or personal effects contained therein may give consent to search. This consent is valid even when the non-consenting individual with whom authority is shared, is absent.
 - b. Consent to search must be obtained from the individual who has apparent exclusive control over a portion of the premises or a particular container which is not commonly controlled.
 - c. When multiple individuals who possess common authority are present, **and one individual does not agree to the search, a search based on consent cannot be conducted.**
 - d. Sworn members will keep in mind that a signed Consent to Search, Form 155 P.D. (Consent to Search Form), is the preferred method of documenting consent.
2. If a signed Consent to Search Form is obtained:
 - a. The original Consent to Search Form will be scanned into the Intellivue System as a supplemental to the original report. If an original report does not exist, a report will be completed in ARS using the Nature of Call "GEN-Consent to Search."
 - b. The copy of the Consent to Search Form will be given to the consenting individual.
3. If the individual chooses not to sign the Consent to Search Form after giving prior verbal consent to a search, it would not be viewed as a revocation of the verbal consent and the sworn member(s) may search the premises. The sworn member will document in the applicable report(s) the verbal consent and where any items recovered or individual(s) taken into custody were found.

4. The following should be kept in mind by sworn members who conduct a search by consent:
 - a. The U.S. Supreme Court has ruled that police at the scene of a crime may not conduct a search for evidence unless a search warrant has been obtained or the owner or individual in apparent lawful possession of the premises has given permission for the search.
 - b. The owner does not need to be present to give permission.
 - c. The individual giving consent must have the apparent legal capacity to consent, i.e., possess common authority or exclusive control to grant consent. The consent must be voluntary. It must be given without force, duress, or compulsion of any kind.
 - d. The extent of the search must be limited to:
 - (1) The places where the items may reasonably be found.
 - (2) The area specifically consented to, if applicable.
 - e. The consent may be revoked by the consenting individual at any time during the process of the search. If the consent to search is revoked, members must discontinue the search immediately, unless another legal basis exists to continue the search or a search warrant is obtained.

B. Search of a Non-Public Area (without consent)

1. If the search of a non-public area (without consent) is dictated or desired, the sworn member will contact the appropriate investigative element to determine if a warrant will be obtained.
2. If a search warrant will be obtained, the procedures outlined in the current written directive entitled, "State Search Warrant Procedures," will be followed.

C. If a crime scene is located in a place fully accessible to the general public, a search warrant for evidence is not needed.

D. Items in plain view may be seized when:

1. The sworn member views the object from a place where he/she has a legal right to be;

2. The sworn member can lawfully obtain access to the object;
 3. The incriminating nature of these items must be immediately apparent, which means that the serial numbers or other identifying characteristics must be visible to the officer without moving, turning over or opening the object in question for further inspection.
- *E. For information regarding forcing entry into premises, members should refer to the current written directive entitled, "Patrol Procedures," **[REDACTED]**